

PUBLIC LAW 102-575

(formerly BILL H. R. 429)

OCT. 30, 1992

102nd CONGRESS

An Act

To authorize additional appropriations for the construction of the Buffalo Bill Dam and Reservoir, Shoshone Project, Pick-Sloan Missouri Basin Program, Wyoming.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Reclamation Projects Authorization and Adjustment Act of 1992'.

SECTION 2. DEFINITION AND TABLE OF CONTENTS.

For purposes of this Act, the term 'Secretary' means the Secretary of the Interior.

TITLE V - UTE INDIAN RIGHTS SETTLEMENT

SEC. 501. FINDINGS.

(a) FINDINGS. - The Congress finds the following -

- 1965 Deferral Agreement*
- (1) The unquantified Federal reserved water rights of the Ute Indian Tribe are the subject of existing claims and prospective lawsuits involving the United States, the State, and the District and numerous other water users in the Uinta Basin. The State and the Tribe negotiated, but did not implement, a compact to quantify the Tribe's reserved water rights.
 - (2) There are other unresolved tribal claims arising out of an agreement dated September 20, 1965, where the Tribe deferred development of a portion of its reserved water rights for 15,242 acres of the Tribe's Group 5 Lands in order to facilitate the construction of the Bonneville Unit of the Central Utah Project. In exchange the United States undertook to develop substitute water for the benefit of the Tribe.
 - (3) It was intended that the Central Utah Project, through construction of the Upalco and Uintah units (Initial Phase) and the Ute Indian Unit (Ultimate Phase) would provide water for growth in the Uinta Basin and for late season irrigation for both the Indian and non-Indian water users. However, construction of the Upalco and Uintah Units has not been undertaken, in part because the Bureau was unable to find adequate and economically feasible reservoir sites. The Ute Indian unit has not been authorized by Congress, and there is no present intent to proceed with Ultimate Phase construction.
 - (4) Without the implementation of the plans to construct additional storage in the Uinta Basin, the water users (both Indian and non-Indian) continue to suffer water shortages and resulting economic decline.
- Ultimate Phase CUP not funded. Ute Indian Unit not authorized*

(b) PURPOSE. - This Act and the proposed Revised Ute Indian Compact of 1990 are intended to -

- (1) quantify the Tribe's reserved water rights;
- (2) allow increased beneficial use of such water; and
- (3) put the Tribe in the same economic position it would have enjoyed had the features contemplated by the September 20, 1965 Agreement been constructed.

SEC. 505. RESERVOIR, STREAM, HABITAT AND ROAD IMPROVEMENTS WITH RESPECT TO THE UTE INDIAN RESERVATION.

- (a) REPAIR OF CEDARVIEW RESERVOIR. - Of the amount authorized to be appropriated by section 201, \$5,000,000 shall be available to the Secretary, in cooperation with the Tribe, to repair the leak in Cedarview Reservoir in Dark Canyon, Duchesne County, Utah, so that the resultant surface area of the reservoir is two hundred and ten acres.
- (b) RESERVATION STREAM IMPROVEMENTS. - Of the amount authorized to be appropriated by section 201, \$10,000,000 shall be available for the Secretary, in cooperation with the Tribe and in consultation with the Commission, to undertake stream improvements to not less than 53 linear miles (not counting meanders) for the Pole Creek, Rock Creek, Yellowstone River, Lake Fork River, Uinta River, and Whiterocks River, in the State of Utah. Nothing in this authorization shall increase the obligation of the District to deliver more than 44,400 acre-feet of Central Utah Project water as its contribution to the preservation of minimum stream flows in the Uinta Basin.
- * (c) BOTTLE HOLLOW RESERVOIR. - Of the amount authorized to be appropriated by section 201, \$500,000 in an initial appropriation shall be available to permit the Secretary to clean the Bottle Hollow Reservoir on the Ute Indian Reservation of debris and trash resulting from a submerged sanitary landfill, to remove all non-game fish, and to secure minimum flow of water to the reservoir to make it a suitable habitat for a cold water fishery. The United States, and not the Tribe, shall be responsible for cleanup and all other responsibilities relating to the presently contaminated Bottle Hollow waters.
- * (d) MINIMUM STREAM FLOWS. - As a minimum, the Secretary shall endeavor to maintain continuous releases into Rock Creek to maintain twenty-nine cubic feet per second during May through October and continuous releases into Rock Creek of twenty-three cubic feet per second during November through April, at the reservation boundary. Nothing in this authorization shall increase the obligation of the District to deliver more than forty-four thousand four hundred acre-feet of Central Utah Project water as its contribution to the preservation of minimum stream flow in the Uinta Basin.
- (e) LAND TRANSFER. - The Bureau shall transfer 315 acres of land to the Forest Service, located at the proposed site of the Lower Stillwater Reservoir as a wildlife mitigation measure.
- * (f) RECREATION ENHANCEMENT. - Of the amount authorized to be appropriated by section 201, \$10,000,000 shall be available for the Secretary, in cooperation with the Tribe, to permit the Tribe to develop, after consultation with the appropriate fish, wildlife, and recreation agencies, big game hunting, fisheries, campgrounds and fish

and wildlife management facilities, including administration buildings and grounds on the Uintah and Ouray Reservation, in lieu of the construction of the Lower Stillwater Dam and related facilities.

- (g) MUNICIPAL WATER CONVEYANCE SYSTEM. – Of the amounts authorized to be appropriated in section 201, \$3,000,000 shall be available to the Secretary for participation by the Tribe in the construction of pipelines associated with the Duchesne County Municipal Water Conveyance System.

CHAPTER IV

UINTA BASIN PORTION

Ute Indian Tribal Development

As explained in Summary of Aquatic Impacts, the Ute Indian Tribal Development was based on a 1965 agreement (Bureau of Reclamation, 1965) that deferred development of Indian water in Rock Creek to be used for the Bonneville Unit. A portion of the agreement included mitigation for losses of fish, wildlife, and recreational values caused by the project.

Midview Reservoir

The operation and maintenance of the recreational, fishery, and wildlife resources of Midview Reservoir were transferred to the Ute Indian Tribe in 1968 along with storage rights in the reservoir sufficient to maintain a 1,500-acre-foot minimum conservation pool for fisheries. This action fulfilled the commitment made in the Bonneville Unit Final Environmental Statement (Bureau of Reclamation, 1973) and was consistent with the Coordination Act Report (Fish and Wildlife Service, 1965) and the 1965 Agreement (Bureau of Reclamation, 1965) that deferred development of Indian water in Rock Creek. The Ute Indian Tribe has maintained a trout and smallmouth bass fishery in the reservoir. No waterfowl hunting has been allowed which provides a needed preserve for ducks and geese in the Uinta Basin area during the hunting season.

Reservoir construction

Bottle Hollow Reservoir

Bottle Hollow Reservoir (near the Tribal headquarters in Fort Duchesne) was completed in 1970 by the Bureau of Reclamation for the Ute Indian Tribe. This 420-acre reservoir provides about 50 percent of the flatwater fishery habitat for fishery losses on Indian land as recommended in the Coordination Act Report (Fish and Wildlife Service, 1965) and identified in the Deferral Agreement (Bureau of Reclamation, 1965). Historically, Bottle Hollow Reservoir has been a good fishery providing rainbow, brown, cutthroat, and brook trout. Since the reservoir was not a water supply, its water elevation remains relatively stable providing excellent fishery benefits.

Minimum flow on Rock Creek

With the completion of Upper Stillwater Reservoir anticipated in late 1987, control of the flows on Rock Creek would be possible. The commitment to maintain a 25 cfs minimum flow at the Indian Reservation boundary (about 8 miles below the dam) would be met. There may be a higher minimum flow on Rock Creek as a result of the Streamflow Agreement.

* Waterfowl management areas

The 1964 Definite Plan Report (Bureau of Reclamation, 1964) and the Bonneville Unit FES (Bureau of Reclamation, 1973) both committed to the development of waterfowl areas along the Duchesne River to mitigate for

waterfowl losses that were predicted with construction and operation of the Strawberry Aqueduct and Collection System. This commitment was based upon an analysis and recommendation (Fish and Wildlife Service, 1965) to mitigate for about 3,000 acres of waterfowl habitat that would be adversely affected by the project.

At the time these estimates were made, there was a lack of hydrologic, habitat, and waterfowl use information on the Duchesne River and its tributaries. Funds were provided to the Bureau of Indian Affairs to prepare feasibility studies on the recommended development areas. These studies were completed in 1978 (Call Engineering, 1975, and Kaiserman Associates, 1978).

In 1977 a study was initiated by the Bureau of Reclamation to document the quality of wetland habitat along the water courses affected by the Strawberry Aqueduct and Collection System; determine waterfowl and hunter use; and predict changes (in habitat, use, and harvest) resulting from the operation of the system.

The total amount of wetland habitats (riverine, lacustrine, and palustrine) were classified using the Fish and Wildlife Service's (Cowardin, et al., 1977) draft report, entitled Classification of Wetlands and Deep Water Habitats of the United States. The amounts calculated for the study area were for both preproject and postproject conditions. Waterfowl use was determined based on breeding pair surveys and linear transects in the area. Breeding pair and migratory use studies (Jensen, 1974, and Sangster, 1976) were also utilized where applicable. Hunter use and harvest data were obtained from the Utah Division of Wildlife Resources.

Results of the study (Swenson, 1979) indicated that, while there would be losses of palustrine (27 percent) and riverine (11 percent) habitat, lacustrine habitat would increase by 161 percent. With the system in full operation, it was estimated that there would be less than 1 percent reduction in breeding pair use. Changes in migratory use were impossible to predict accurately. Hunter use could increase because of the increase in total available habitat resulting from the project.

Based upon the conclusion that there would be small losses in waterfowl production within the area, it was recommended that approximately 250 acres of palustrine habitat be developed to compensate for those losses (Swenson, 1979).

Several meetings have been held with the Ute Indian Tribe subsequent to the publication of the waterfowl study. This issue is being resolved by the Department of the Interior.

Summary of mitigation commitments

Mitigation commitments for the Ute Tribal Development are summarized in Table 16. Figure 5 shows the location of the mitigation areas.

Table 16
Summary of aquatic and terrestrial mitigation commitments
for the Ute Indian Tribal Development

Commitment	Current status
1. Operation of Midview Reservoir for fish and wildlife resource purposes be given to the Ute Tribe. <u>1/</u> , <u>2/</u>	Operation of Midview Reservoir for fish and wildlife resource purposes transferred to Ute Tribe in 1968.
2. Water releases from Starvation Reservoir to maintain 1,500 acre-feet in Midview Reservoir for fishery. <u>1/</u> , <u>2/</u>	Since Starvation Reservoir was initially filled, releases have been and will continue to be maintained.
3. Construction of 800 surface acres of reservoirs to mitigate for stream fishery losses on Rock Creek Indian lands. <u>1/</u> , <u>2/</u>	Bottle Hollow Reservoir (420 acres) constructed by Bureau of Reclamation. The construction of Lower Stillwater Reservoir (380 acres) has been eliminated from the project plan.
4. Releases from Upper Stillwater Reservoir sufficient to maintain a 25 cfs minimum flow on Rock Creek at the Indian Reservation/ Forest Service Boundary. <u>1/</u> , <u>2/</u>	25 cfs minimum flow will be maintained. As a result of the Streamflow Agreement a higher (approximately 35 cfs) minimum flow will be guaranteed to the year 2000. Plans are being developed to provide this flow in perpetuity.
5. Develop six waterfowl management areas along Duchesne River to mitigate for waterfowl losses of the Strawberry Aqueduct and Collection System. <u>1/</u> , <u>2/</u>	Unresolved issue with the Ute Indian Tribe that is to be resolved by the Department of the Interior.
6. Ute Indian Tribe to be reimbursed by Bureau of Reclamation for damage or loss to wildlife resources when loss sustained on Indian land. <u>1/</u> , <u>2/</u>	No wildlife habitat losses have been sustained on Indian land. It is not anticipated that habitat losses would occur.

1/ Bureau of Reclamation, 1964, Central Utah Project, Initial Phase, Bonneville Unit, Definite Plan Report, with appendixes, Salt Lake City, Utah.

2/ Bureau of Reclamation, 1973, Bonneville Unit Final Environmental Statement (INT-FES 73-42), Central Utah Project, Salt Lake City, Utah.