



UTE INDIAN TRIBE

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Ute Indian Tribe of the Uintah and Ouray Reservation Comments to the Surface Transportation Board's Draft Environmental Impact Statement for the Uintah Basin Railway Project, STB Finance Docket No. FD 36284

January 28, 2021

The Ute Indian Tribe of the Uintah and Ouray Reservation ("Ute Indian Tribe" or "Tribe") respectfully submits the following comments in response to the Surface Transportation Board's ("STB")¹ Draft Environmental Impact Statement ("DEIS") for the Uintah Basin Railway Project, STB Finance Docket No. FD 36284.

INTRODUCTION

The Ute Indian Tribe is located on the Uintah and Ouray Reservation ("Reservation") in northeastern Utah, approximately 150 miles east of Salt Lake City. The Reservation lies within the drainage of the Upper Colorado River Basin. The Ute Indian Tribe consists of three bands: Uintah, White River and Uncompahgre. They once lived in an area from the Wasatch Front all the way to the Colorado Front Range – from present-day Salt Lake City, Utah to Denver, Colorado.

The Uintah and Ouray Reservation was originally two separate reservations. The first, the Uintah Valley Reservation, was established by Executive Order on October 3, 1861, confirmed by Congress in the Act of May 5, 1864, § 2, 13 Stat. 63, and encompasses 2,039,040 acres in the Uinta Basin of Utah. The second reservation, known as the Uncompahgre Reservation, was established pursuant to the Act of June 15, 1880 (ch. 223, 21 Stat. 1999), and the Executive Order of January 5, 1882, and it encompasses approximately 2,000,000 acres. Both Reservations were established to provide a permanent homeland for the Ute Indians and to enable the Tribe and its members to become self-sustaining through agricultural and other economic pursuits. Together, the Uintah Valley Reservation and Uncompahgre Reservation are organized under the Indian Reorganization Act to form a single reservation known today as the Uintah and Ouray Reservation. By area, the

¹ As used in these comments, "STB" is inclusive of the STB's Office of Environmental Analysis, referred to in the DEIS under the acronym "OEA."

Uintah and Ouray Reservation is the second largest Indian reservation in the United States, and most of the Tribe's nearly 3,000 members reside within Reservation boundaries.

The Tribe relies heavily on revenue from oil and gas development on its Reservation. The Tribe's substantial mineral estate is managed by its Energy and Minerals Department, which is responsible for tracking and maintaining data on tribal mineral assets, monitoring energy and mineral production on the Reservation, and collecting and forecasting royalties and severance taxes. The Tribe has developed strong and longstanding working relationships with industry partners in oil and gas development. Yet, the opportunity for sustainable tribal economic growth from its mineral estate cannot be fully realized due to limited access to refineries capable of processing black wax and yellow wax crude. The relative remoteness of the Uintah and Ouray Reservation, combined with limited means of transportation, have forced the Tribe to rely on refineries in Salt Lake City with limited capacity to process crude oil.

The Uintah Basin Railway Project (sometimes referred to herein as simply "the Project"), presents a critical opportunity to expand Tribal access to the oil and gas market by connecting the Uinta Basin to the National Rail Network. By establishing a consistent and reliable means of transporting tribal minerals to refineries in other regions, the Project could significantly enhance on-Reservation energy development relied upon by the Tribe and its members. While the Tribe supports this Project, it is important to ensure the STB, as well as other agencies and stakeholders, properly recognize the sovereignty and jurisdiction of the Tribe over the certain lands and resources impacted by the Project and account for the appropriate role of the Tribe in establishing and implementing the mitigation measures identified in the DEIS.

TRIBAL JURISDICTION LANDS WITHIN EACH ALTERNATIVE

At various points throughout the DEIS, STB states that the Wells Draw Alternative does not include lands within the jurisdiction of the Tribe. This is not an accurate characterization. While the preferred Whitmore Park Alternative and the Indian Canyon Alternative both affect a greater amount of Tribal lands than the Wells Draw Alternative, the Wells Draw Alternative still contains lands within Indian country – and thus within the civil regulatory jurisdiction of the Ute Indian Tribe – in both the Uintah Valley and Uncompahgre portions of the Uintah and Ouray Reservation.

Tribal jurisdiction over lands within the borders of the Uintah and Ouray Reservation was fully, fairly, and conclusively adjudicated by the United States Court of Appeals for the Tenth Circuit in *Ute Indian Tribe of the Uintah and Ouray Reservation v. Utah*, 773 F.2d 1087 (10th Cir. 1985) (en banc) (*Ute III*); modified and reaffirmed, *Ute Indian Tribe of the Uintah and Ouray Reservation v. Utah*, 114 F.3d 1513 (10th Cir. 1997) (*Ute V*); *Ute Indian Tribe of the Uintah and Ouray Reservation v. Utah*, 790 F.3d 1000 (10th Cir. 2015) (*Ute VI*) (reaffirmed); and *Ute Indian Tribe of the Uintah and Ouray Reservation v. Myton*, 835 F.3d 1255 (10th Cir. 2016) (*Ute VII*) (reaffirmed).

In *Ute V*, the Tenth Circuit drew a bright-line demarcation for the boundary between state and tribal jurisdictional authority over lands within the Uintah and Ouray Reservation:

[T]he Tribe and the federal government retain jurisdiction over all trust lands, the National Forest Lands, the Uncompahgre Reservation, and the three categories of non-trust lands that remain within the boundary of the Uintah Valley Reservation. The state and local defendants have jurisdiction over the fee lands removed from the Reservation under the 1902-1905 allotment legislation.

Ute V, 114 F.3d at 1530. The “three categories of non-trust lands” referenced above are:

(b) lands apportioned to the “Mixed Blood” Utes under the Ute Partition Act, Act of Aug. 27, 1954, Pub.L. No. 97-698, ch. 1009, 68 Stat. 868 (codified at 25 U.S.C. §§ 677-677aa);

(c) lands allotted to individual Indians that have passed into fee status after 1905;

(d) lands that were held in trust after the Reservation was opened in 1905 but that since have been exchanged into fee status by the Tribe for then-fee (now trust) lands in an effort to consolidate its land holdings pursuant to the Indian Reorganization Act, Act of June 18, 1934, ch. 576, 48 Stat. 984 (codified at 25 U.S.C. §§ 461-79) and the Indian Land Consolidation Act of 1983, Pub.L. No. 97-459, 96 Stat. 2517 (codified at 25 U.S.C. §§ 2201-11).

Id. Each category of lands identified above retains its status as Indian country land under tribal jurisdiction, despite not being held in trust.

The Maps displayed in **Appendix A** show the Indian Country Jurisdiction Lands within each of the proposed routes that were examined in the DEIS, including the Wells Draw Alternative. Through consultation with the Tribe, STB must properly recognize the Tribal jurisdictional interests at issue in the Wells Draw Alternative in both establishing mitigation measures and identifying the parties that must be involved and consulted in the development and implementation of mitigation measures.

TRIBAL JURISDICTION OVER RESERVATION RESOURCES

A. Tribal Jurisdiction Over Water Rights and Water Resources

In its DEIS, STB fails to recognize tribal jurisdiction over its water rights and water resources. As stated throughout the DEIS, the Project could impact the quality of both surface water and groundwater. Yet, the DEIS only requires the applicant to work with the Utah Division of Water Rights and the Utah Water Quality Board to mitigate impacts on water resources.

Water plays an essential role in the health, safety, and culture of the Ute Indian Tribe. The scarce water resources on the Uintah and Ouray Reservation are used for agricultural, municipal, and industrial purposes. The Tribe also relies on quality water to sustain fish habitat and allow sensitive aquatic wildlife to survive within the Reservation ecosystem. As stated in the Preamble of the Tribe's Floodplain Development Ordinance: “The Utes believe that water is sacred; it is the

source of all living things. We pray with water and perform many religious practices with it. It is to be protected so that it will continue to provide the many blessings to the Ute people.”

Because water is such an essential commodity for the Tribe and its members, the Tribe established laws and regulations to protect the quality of both surface water and groundwater on the Uintah and Ouray Reservation. For example, the Tribe has enacted Ordinance No. 13-023, governing the disposal of oil and gas wastewater on the Reservation. Tribal Ordinance No. 17-001 establishes protocols and restrictions in commercial activities on or near floodplains, to prevent disruption to riparian habitat and to minimize sedimentation. The Tribe has also made it a criminal offense to pollute or knowingly interfere with the natural flow of a stream. A selection of Tribal laws and regulations governing water, and water quality in particular, is contained in **Appendix B** and include the following:

- The Tribal Floodplain Development Ordinance
- The Tribal Oil and Gas Wastewater Disposal Ordinance
- Tribal Statement on Water Policy
- Tribal Fish Stocking and Transfer Policy
- Excerpt from the Tribe's Criminal Code on Waters Offenses

In furtherance of its sovereign authority over water rights and water resources, the Tribe has established a Tribal Water Quality Department, the Tribal Fish and Wildlife Department, and the Tribal Water Resources Department. Each of these Departments plays a role in managing and protecting water quality on the Reservation pursuant to authority delegated by the Ute Indian Tribe Business Committee. These tribal departments, along with the Business Committee, must be acknowledged and included in all mitigation measures in the Final STB EIS? relating to water quality that entail review, cooperation, and consultation with government agencies.

B. Tribal Jurisdiction Over Hunting and Impacts on Wildlife Habitat

Wildlife is an indispensable component of the ecosystem on the Uintah and Ouray Reservation. Protecting wildlife and wildlife habitat naturally occurring on the Uintah and Ouray Reservation is an essential part of the Tribe's sovereignty over its Reservation lands. Section 8-1-3 of the Tribe's Law and Order Code, enacted and approved in accordance with the Indian Reorganization Act of 1934, states that “[a]ll wildlife now or hereafter within the Uintah and Ouray Reservation, not held by private ownership legally acquired...are hereby declared to be the Property of the Ute Indian Tribe.” The Tribe regulates disruptions to wildlife and habitat on the Uintah and Ouray Reservation through the Ute Indian Tribe Business Committee and powers specifically delegated by the Business Committee to the Tribe's Fish and Wildlife Department. The unauthorized taking of wildlife on the Uintah and Ouray Reservation is a violation of tribal law.

Hunting is highly regulated on the Uintah and Ouray Reservation. Through annual proclamations developed by the Tribe's Fish and Wildlife Department and approved by the Business Committee, the Tribe establishes protocols and restrictions for trapping and big-game hunting on the Reservation, including laws on hunting seasons, tagging requirements, areas that are open and closed for hunting, and restrictions on activities such as snowmobile and ATV use that could disturb the habitat of big game and fur-bearing wildlife.

In the DEIS, STB acknowledges that the “Ute Indian Tribe has strong hunting traditions that are still practiced today and that are important to tribal members’ way of life.” STB further states that impacts on big game from habitat disturbance and noise would have a disproportionate impact on the Ute Indian Tribe, but that “the effect would not be high and adverse because large areas of suitable habitat around the Action Alternatives would be sufficient to allow for wildlife movement and dispersal.” However, there is no indication in the DEIS that due consideration was given to the jurisdiction of the Tribe to govern, on an ongoing basis throughout the life of this project, hunting and limit areas appropriate for hunting at the sole discretion of the Tribe and in accordance with the Tribe’s sovereign authority over the disposition of Reservation wildlife. The extent to which the disproportionate impact on the Ute Indian warrants mitigation must be reassessed and determined in consultation with the Ute Indian Tribe.

DISPROPORTIONATE IMPACTS ON TRIBAL MEMBERS AND COMMUNITIES

In 1994, President Clinton issued Executive Order No. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, directing all federal agencies to identify and address “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States.” Thus, federal law requires STB to protect the Ute Indian Tribe from having to shoulder a disproportionate share of the adverse environmental impacts caused by the Project.

In Section 3.14 of the DEIS, titled “Environmental Justice,” STB aims to “assess potential high and adverse impacts of the Action Alternatives and the No-Action Alternative on minority populations, low-income populations and American Indian tribes; and evaluate whether high and adverse impacts would be borne disproportionately by minority populations, low-income populations, or American Indian tribes.”

However, STB takes a truncated approach to identifying and addressing potential disproportionate impacts on Tribal members and Tribal communities in the Project area. In Section 3.13.1.3, “Analysis Methods,” STB states that, “[t]hrough consultation with the Ute Indian Tribe, OEA identified impacts related to air emissions, vehicle safety and delay, rail operations safety, and cultural resources as areas of concern to the [Ute Indian] tribe.” STB then “reviewed these resource impacts to determine if impacts would be otherwise high and adverse for tribal members specifically.”

STB’s approach arbitrarily limits its review of impacts on tribal members based on its conclusion of what does and does not constitute a priority item for the Tribe. For instance, in adopting this limited scope of review, STB has not considered the potential socioeconomic and safety impacts on Tribal communities if the applicant is not required to work with the Tribe to establish measures to protect against the use of the rail line as a means to transport firearms and contraband onto the Uintah and Ouray Reservation. As a necessary next step, determining areas of priority for the Tribe will require government-to-government consultation with the Tribe which, as detailed above, has not taken place at this time. Further, STB’s truncated approach is not consistent with minimum requirements to assess environmental justice factors pertinent to the Ute Indian Tribe, nor STB’s trust responsibility to the Tribe and its members.

RIGHT-OF-WAY AGREEMENT BETWEEN THE TRIBE AND THE APPLICANT

Land Use and Recreation Mitigation Measure 2 (“LUR-MM 2”), found on pages 4-15 of the DEIS, states that “[i]f the Board authorizes the Indian Canyon Alternative or the Whitmore Park Alternative, the Coalition shall implement the reasonable mitigation measures imposed by the Ute Indian Tribe during negotiations for the consent of the Tribe for a right-of-way across Tribal trust land.” The Tribe appreciates STB’s recognition of the applicant’s requirement to work with the Tribe to obtain a right-of-way for the Project. However, the Tribe rejects the qualifying language contained in this mitigation measure.

First, this requirement as drafted only applies to the Whitmore Park and Indian Canyon Alternatives. However, as discussed above, the Wells Draw Alternative includes Indian country lands, and the Tribe may have a full or fractionated ownership interest in these lands. Therefore, a Tribally-approved right-of-way may still be required for the Wells Draw Alternative. The location and status of these lands should be ascertained in consultation with the Tribe.

Second, LUR-MM 2 only requires the applicant to comply with “reasonable mitigation measures” established under a right-of-way agreement with the Tribe. This could be construed as creating a standard for when and how the applicant must meet its performance obligations under a separate agreement with the Tribe. The Tribe and the applicant each retain the independent legal capacity to enter into a contract establishing conditions for the applicant’s access to and use of tribal lands. Therefore, this LUR-MM 2 should be revised to either remove the reference to “reasonable” mitigation measures or to expressly state that the EIS does not diminish agreed upon conditions to access and use Reservation lands.

ONGOING CONSULTATION REQUIREMENT

Without detailing the persons or agencies involved, STB states that government-to-government consultation with the Ute Indian Tribe took place during the development of the DEIS. However, STB has not yet engaged in government-to-government consultation with the Ute Indian Tribe Business Committee, which will be required as part of STB’s development of a Final EIS.

Pursuant to Executive Order 13175, “[o]n issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty or other rights, each agency should explore and, where appropriate use of consensual mechanisms for developing regulations, including negotiated rulemaking.” As detailed in the following Section, the Uintah Basin Railway Project would traverse Indian country land within the Uintah and Ouray Reservation, potentially impacting Tribal communities, waters, wildlife, and other Tribal resources. STB is obliged not only to engage in government-to-government consultation with the Ute Indian Tribe Business Committee, but also to obtain the free, prior and informed consent of the Tribe, as required under United Nations Declaration on the Rights of Indigenous People.

Government-to-government consultation is a critically important step in the development of a Final EIS. Not only does consultation allow STB to gain firsthand insight on the issues and concerns that are priority issues for the Tribe, but it also gives STB a more informed perspective on how best to ensure it satisfies its trust responsibility to the Tribe and its members.

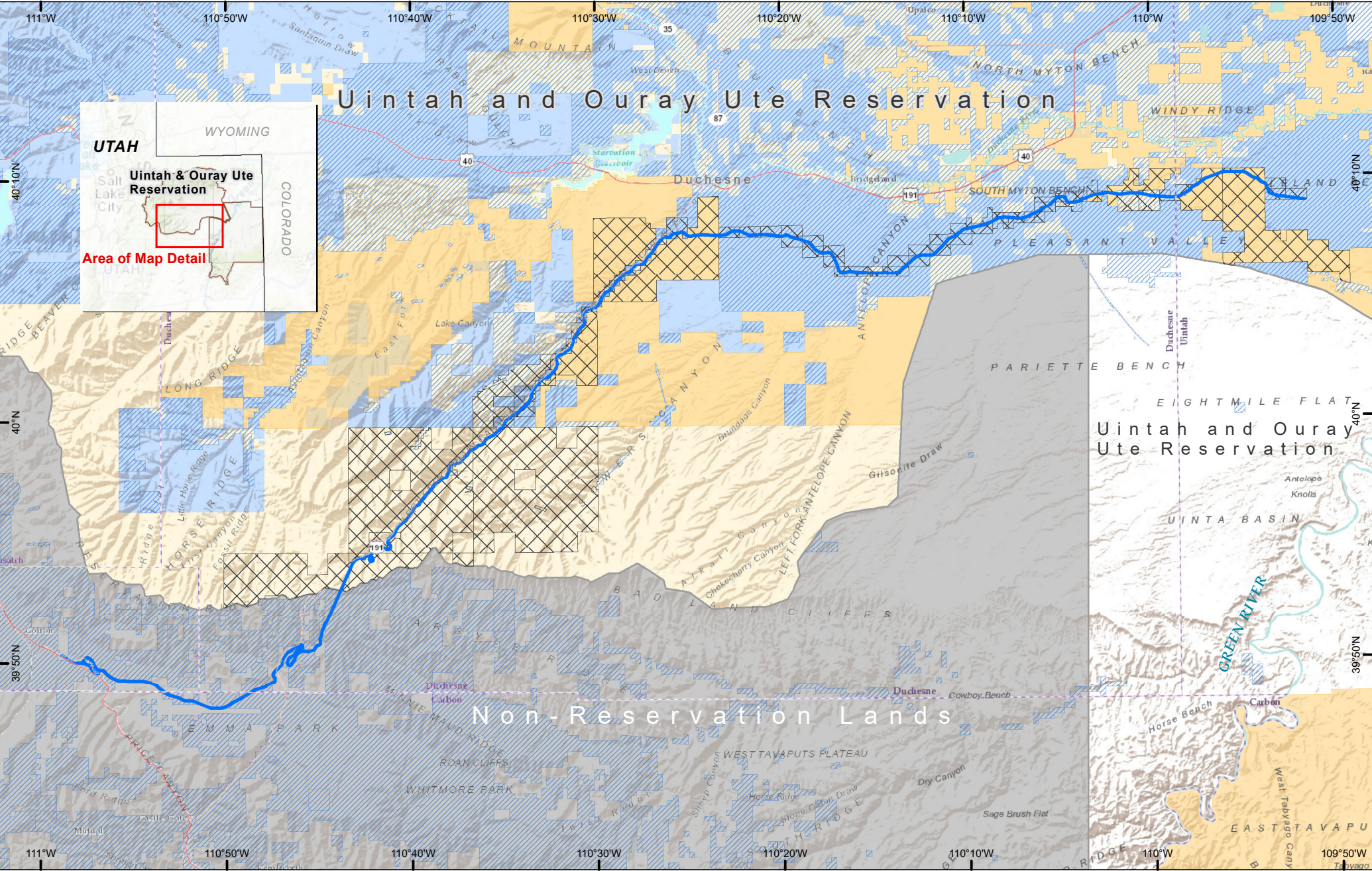
Pursuant to the Constitution and By-Laws of the Ute Indian Tribe, the Ute Indian Tribe Business Committee acts as both the legislative branch and the top executive authority of the Tribe. Therefore, as a matter of Tribal law and policy, government-to-government consultation is conducted through the Business Committee, and not any other department or agency of the Tribe. The Ute Indian Tribe acknowledges and appreciates the STB's outreach and correspondence with the Ute Indian Tribe and its representatives to date. However, in light of STB's characterization of these correspondences as "consultation" in the DEIS, it is important to clarify these requisites for government-to-government consultation with the Ute Indian Tribe moving forward.

CONCLUSION

The Uintah Basin Railway Project will satisfy a long-needed means of expanding the Tribe's access to energy markets nationwide, providing a critical step forward in allowing the Tribe to realize the economic opportunity in its vast mineral estate. The Tribe supports this project and very much looks forward to this rail line becoming operational in the near future. However, like any project that traverses Tribal lands and impacts Tribal resources, it is critical that the regulatory jurisdiction of the Ute Indian Tribe over its Reservation resources be recognized on a continuous basis throughout each stage of this project, just as the STB has recognized and deferred the jurisdictional authority of federal and state agencies throughout the DEIS.

Appendix A

Route Maps



Uintah Basin Railroad Analysis -- Indian Canyon Alternative

0 2.5 5 Miles

Alternative Rail Routes

- Indian Canyon
- Parcels Crossed by Indian Canyon Alternative Rail Route

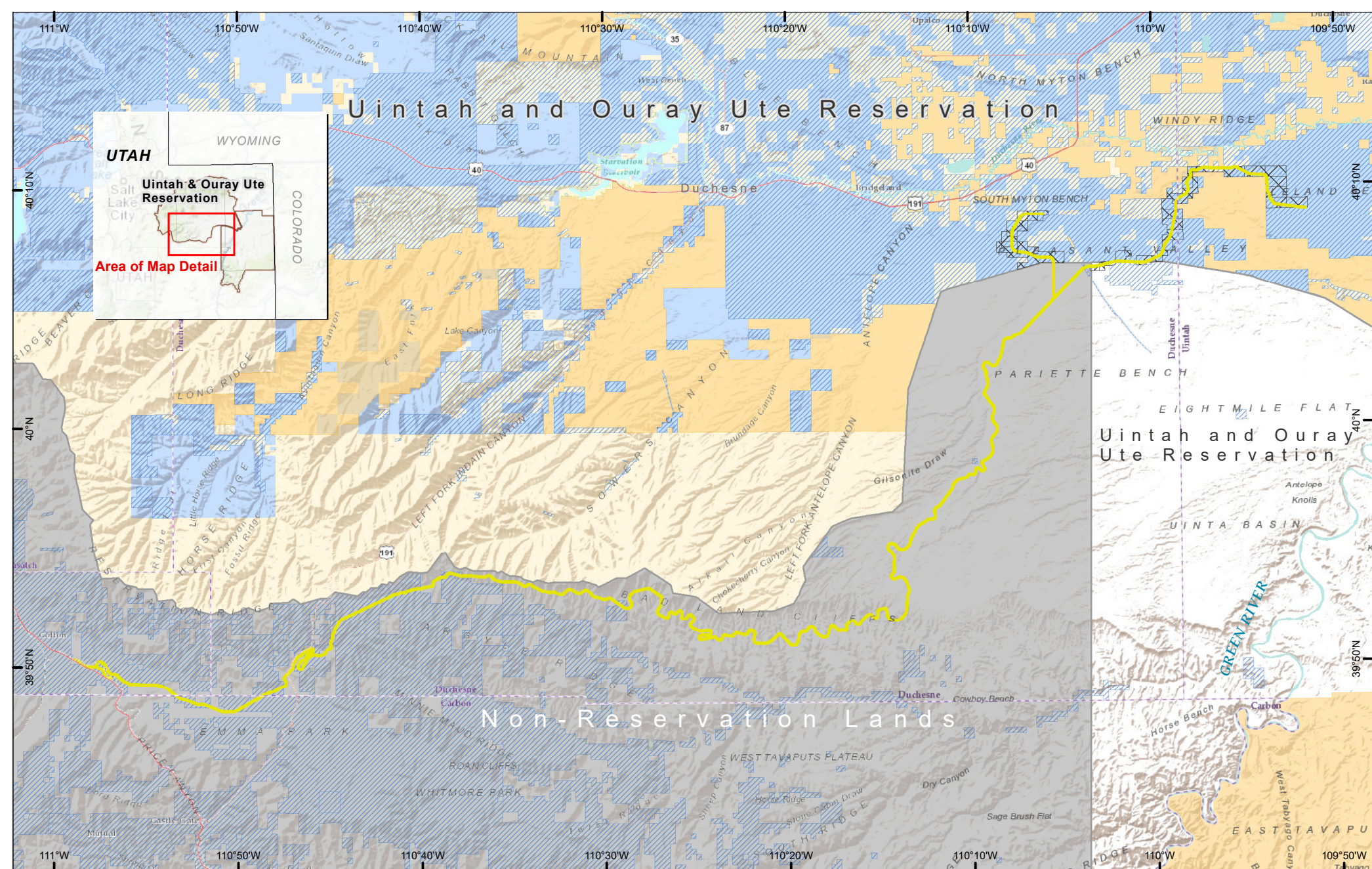
Land Ownership (SITLA; 4/2020)

- Private
- Tribal

Jurisdiction (Ute Database; ver. 20150727)

- Indian Country
- Non Indian Country

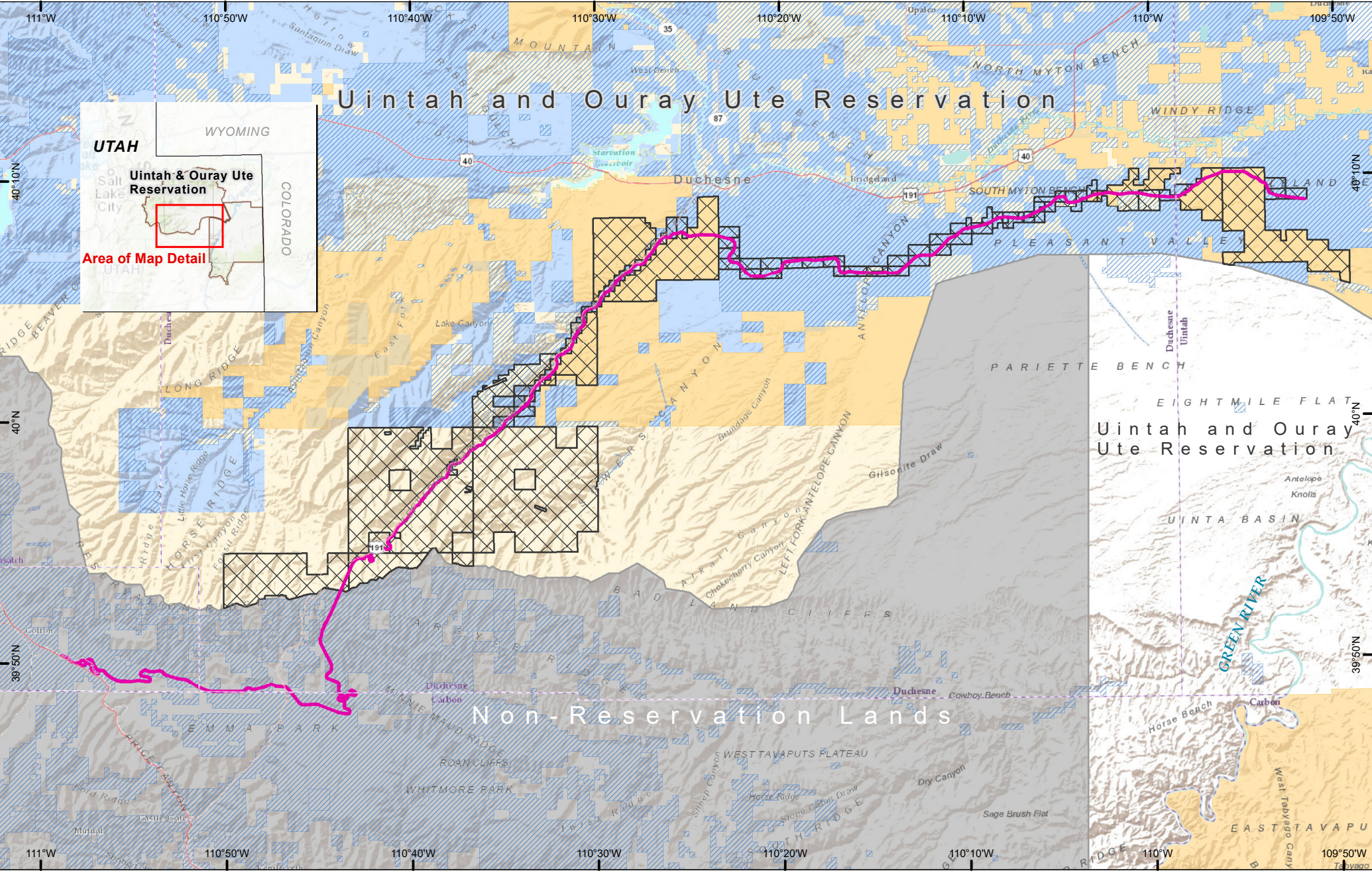
Prepared for the Ute Tribe by:
S3 Spatial Support Systems
Rick Tingey
Spatial Support Systems, LLC
Data Sources: Utah AGRC, ESRI,
uintabasinrailwayeis.com



Uintah Basin Railroad Analysis -- Wells Draw Alternative



0 2.5 5 Miles



Utah Basin Railroad Analysis -- Whitmore Park Alternative

Alternative Rail Routes

- Whitmore Park
- Parcels Crossed by Whitmore Park Alternative Rail Route

Land Ownership (SITLA; 4/2020)

- Private
- Tribal

Jurisdiction (Ute Database; ver. 20150727)

- Indian Country
- Non Indian Country

Prepared for the Ute Tribe by:

S3 Spatial Support Systems

Rick Tingey
Spatial Support Systems, LLC
Data Sources: Utah AGRC, ESRI,
uintabasinrailwayeis.com

Appendix B

Selection of Tribal Laws and Regulations Governing Water

TO ADOPT A TRIBAL FLOODPLAIN DEVELOPMENT ORDINANCE

WHEREAS, the Uintah and Ouray Tribal Business Committee ("Business Committee") of the Ute Indian Tribe ("Tribe") is empowered by Article VI, Section 1(1) of the Tribe's Constitution to safeguard and promote peace, safety, morals and general welfare of the Ute Indian Tribe of the Uintah and Ouray Reservation by regulating the conduct of trade and the use and disposition of property upon the Reservation; and

WHEREAS, the Business Committee has designated the Ute Tribe Natural Resources Department primarily responsible for the protection of the Tribe's natural resources, including water quality and cultural resources.

WHEREAS, the Energy and Minerals Department has been designated the responsibility of developing the Tribe's oil and gas resources, including oversight and monitoring of businesses licenses and permitting requirements for compliance and enforcement.

WHEREAS, the Business Committee recognizes that significant Tribal oil and gas resources are located beneath lands within the floodplain;

WHEREAS, under the direction of the Business Committee, the Natural Resources and Energy and Minerals departments have realized the importance of regulating oil and gas exploration and development near floodplains and believes it is in the best interest of the Tribe to adopt a tribal ordinance to regulate oil/gas development within floodplains located on the Uintah and Ouray Reservation.

BE IT ENACTED BY THE UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE OF THE UTE INDIAN TRIBE by virtue of its inherent authority as a sovereign Indian Tribe to safeguard and promote peace, safety, morals, and general welfare of the Ute Indian Tribe of the Uintah and Ouray Reservation by regulating the presence and conduct of persons developing natural resources on lands of the Reservation, and pursuant to the police and regulatory powers of the Tribal Business Committee as enumerated in the Constitution of the Ute Indian Tribe of the Uintah and Ouray Reservation, including Article VI, Section 1(1), that this Floodplain Development Ordinance is hereby established.

PREAMBLE

The Ute Indian Tribe has a rich tradition, culture and history. The Nooch (Ute) were brought to this land by the Creator who had created other people of the world. Oral history tells of a story

that because the Utes were the only one to endure the trek of the creator, we were chosen to be the care-takers of Ute homelands, which began on the western plains of Kansas to the Great Basin of Utah- from southern Wyoming to northern New Mexico. This was the vast territory of the Ute Nations.

The Northern Ute Tribe is comprised of three bands of the Ute Nation. The Uintah band once occupied the Wasatch front from southern Idaho to central Utah. The Uncompahgre band roamed from central Colorado to northern New Mexico. The Whiteriver band was found from the silver mountain of Colorado north into southern Wyoming and onto the plains of Nebraska and Kansas.

The Utes believe that water is sacred; it is the source of all living things. We pray with water and perform many religious practices with it. It is to be protected so that it will continue to provide the many blessings to the Ute people.

Utes are taught all living things have a spirit and a purpose. Everything is interconnected. We are taught to respect the world around us "we are a part of this earth and it is a part of us."

It is with this mind-set and purpose we choose to develop our resources responsibly, ensuring the integrity of all living things. We seek to achieve a balance of nature with the needs of the Northern Ute people. We recognize the dynamics of the environment around us and the ever-changing statues of nature's evolving. We seek to respect this change and wish to ensure the survival of the Northern Ute Tribe.

We reserve the right to decide and choose for ourselves how to administer policies and regulations in keeping with Ute values, traditions, culture and beliefs.

FLOODPLAIN DEVELOPMENT ORDINANCE:

Title I. POLICY AND DEFINITIONS

Section 101: Declaration of Policy

As a guide to the interpretation and application of this Ordinance, the public policy of the Ute Indian Tribe (hereinafter the "Tribe") is declared to be as follows:

The Ute Indian Tribe has the right to enact laws to protect the environment and its members within the Uintah and Ouray Reservation. The Ute Indian Tribal Business Committee therefore declares that it is in the best interest of the public good and welfare of the Tribe to require the enactment of the Floodplain Development Ordinance, pursuant to its inherent sovereign and police powers, in order to protect the environment, health, safety and welfare of the Ute Indian Tribe and its members.

Section 102: Jurisdiction

The Tribe has the civil and regulatory jurisdiction over the lands within the exterior boundaries of the Uintah and Ouray Indian Reservation ("Reservation") as more thoroughly defined by *Ute*

Indian Tribe v. State of Utah, 773 F.2d 1087 (10th Cir. 1985) and *Ute Indian Tribe v. Utah*, 114 F. 3d 1513 (10th Cir. 1993), at follows:

- 1) all Indian trust lands within the Uintah Valley Reservation;
- 2) all lands apportioned to mixed blood Utes under the Ute Partition Act of 1954;
- 3) all lands allotted to individual Indians that passed into fee status after 1905; and
- 4) lands held in trust after the Uintah Valley Reservation was opened in 1905 but that were later exchanged by the Tribe into fee status in order to consolidate the Tribe's land holdings; and
- 5) the entire Uncompahgre Reservation.

This Ordinance shall apply to all lands identified above.

Section 103: Definitions

The Ute Indian Tribe reserves the right to define, delineate, and determine what constitutes the edge or boundaries of any Floodplain, Riparian area, Wetland, or Critical Gathering Area identified below.

- (A) "Director" means the administrative director of the Ute Indian Tribe's Natural Resources Department and Energy and Minerals Department, or his authorized designee.
- (B) "Floodplain" means any area of land determined by the Tribe to have a one percent chance of flooding in any given year.
- (C) "Riparian areas" are those areas along lakes, ponds, marshland, streams, springs, river corridors and tributaries. The edge of a riparian area shall be defined as the vegetation or tree line, which directly contributes to the protection of any such area. Dominating vegetation will include but not be limited to the following: cottonwood, aspen, willow, chokecherry, buffalo berry, current, lodge pole and ponderosa pine.
- (D) "Wetlands" means those areas considered naturally occurring wet areas fed by natural flows of spring and ground water sources which provide a year round source water maintain a given wetland. The defining edge of a wetland will be delineated and determined by the Tribe. The plants and wildlife that utilize this area for habitat will be taken into consideration when determining wetland designations. Dominating vegetation will include but not be limited to the following: cattails, wire grass, willows, cottonwoods, buffalo berries, and choke cherries.
- (E) "Critical gathering areas" means areas where traditional and culturally significant plant life is found. Critical gathering areas (CGA) adjacent to or in close proximity to riparian and wetlands may be included within the delineation of these two areas for protection. Vegetation included in characterization of a CGA shall include but not be limited to mint, sweet grass, sweet sage, Indian potatoes, garlic, buffalo berry, chokecherry, and young cottonwood.
- (F) "Operator" means the person who has been designated by the owners of a lease made with the Tribal Business Committee to conduct oil and gas activity within the

Reservation.

- (G) "Tribal Business Committee" means the governing body of the Ute Indian Tribe of the Uintah and Ouray Reservation.
- (H) "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

Title II: GENERAL RULES

Section 201: Scope of Rules

- (A) The following general rules adopted by the Tribal Business Committee pursuant to Article VI, Section 1 (I) of the Constitution of the Ute Indian Tribe, shall apply to all lands within the jurisdiction of the Tribe, as defined above, and are intended to protect human health and the environment.
- (B) Exceptions to this Ordinance may be granted by the Tribal Business Committee by recommendation from the Natural Resources Director in consensus with the Energy and Minerals Director for good cause shown and shall prevail as against this Ordinance.

Section 202: Right to Inspect

- (A) The Tribe shall have the right at all reasonable times to go upon and inspect any oil and gas operations, oil and gas locations, including, but not limited to all wells, tanks, separation equipment, containment berms, production tanks, special purpose tanks and flowback tanks located within a floodplain for the purpose of making any investigations or tests reasonably necessary to ensure compliance with the provisions of this Ordinance and Tribal law. The Director shall report any observed violation to the Tribal Business Committee.

Title III: REQUIREMENTS FOR OIL AND GAS FACILITIES, DRILLING, AND WELL SERVICING OPERATIONS WITHIN THE FLOODPLAIN

Section 301: Areas of No Surface Occupancy:

- (A) No surface disturbance or occupancy would be allowed within 300-feet of the edge of a riparian area or 500-feet from the edge of surface waters, including rivers, streams, springs, lakes, ponds, and marsh land, whichever is greater.

Section 302: Oil and Gas Operations within a Floodplain

- (A) Prior to citing a well pad in a designated floodplain, operators should examine all possibilities to access minerals through horizontal or directional drilling. Wells should only be cited in floodplains when there are no other reasonably feasible alternatives.
- (B) When operating within a floodplain, the following requirements apply to new oil and gas locations and wells:
 - 1) Operators must notify the Ute Tribe Energy and Minerals Department and Natural Resources Department when a new proposed oil and gas location will

be within a floodplain.

- 2) Operators shall utilize closed-loop drilling for all wells within a floodplain.
 - 3) New wells must be equipped with remote shut-in capabilities prior to commencing production. Remote shut-in capabilities include, at a minimum, the ability to shut-in the well from outside the relevant floodplain.
 - 4) New oil and gas locations must have secondary containment areas around tanks constructed with a synthetic or geo-synthetic liner that is mechanically connected to the steel ring or another engineered technology that provides equivalent protection from floodwaters and debris.
 - 5) Best Management Practices (BMPs) should be used to minimize sedimentation, and needless damage or alteration to the natural streambed. BMPs should also ensure construction related byproducts do not enter the riverine ecosystem that will cause negative impacts to aquatic organisms.
 - 6) Mitigation for permanent impacts to floodplain/riparian areas will be achieved through completion of a riparian restoration project implemented at a ratio of 3:1 for all disturbed acres. Similarly, temporary impacts will be mitigated at a 2:1 ratio for all disturbed acres. The Tribe will determine on a site-specific basis whether to collect a restoration fee or work with the operator to implement a riparian restoration project.
 - 7) The operator will work with the Tribe's Natural Resources Department to determine planting techniques. This will specifically include planting willows and cottonwoods. This will also include removal of certain noxious weeds.
 - 8) The mitigation restoration project will occur within one year post-construction.
 - 9) The planting success criteria and monitoring will be coordinated with the Tribe's Natural Resources Department and the Bureau of Indian Affairs. Both entities will follow-up on future revegetation needs if the planting is not successful.
 - 10) Native species of grasses, forbs, shrubs, will be used to revegetate disturbed areas. All seed will be certified weed and noxious seed free.
 - 11) The disturbed area would be restored to natural grade, tilled if necessary to loosen compacted soils, and planted with a combination of riparian trees, shrubs and other native plants.
- (C) The following requirements apply to both new and existing wells, tanks, separation equipment, containment berms, production tanks, special purpose tanks, and flowback tanks located within a floodplain and constructed after August 1, 2016:
- 1) Operators must maintain a current inventory of all existing wells, tanks, separation equipment, and chemicals stored on-site in a floodplain.
 - 2) Operators shall ensure that a list of all such wells, tanks, separation equipment, and chemicals stored on-site is filed with the Ute Tribe Energy and Minerals

Department. As part of this inventory, Operators must maintain a current and documented plan describing how wells within a floodplain will be timely shut-in. This plan must include what triggers will activate the plan and must be made available for inspection by the Tribe upon request.

- 3) Tanks, including partially buried tanks, and separation equipment must be anchored to the ground. Anchors must be engineered to support the tank and separation equipment and to resist flotation, collapse, lateral movement, or subsidence.
- 4) Containment berms must be constructed around all tanks and must be constructed of steel rings or another engineered technology that provides equivalent protection from floodwaters and debris.
- 5) Production tanks, special purpose tanks (other than emergency pits), and flow back tanks containing any exploration and/or production waste shall not be allowed within a floodplain without prior approval by the Tribe.
- 6) Facilities shall be constructed as far from waterways as practicable and should be aligned parallel to stream flow. Structural fencing barriers shall be installed upstream of all facilities and wells located in floodplains to deflect debris during a flood event.
- 7) All facilities must be built on compacted structure fill to reduce sub-grade failures.

Section 302: Exemptions

- (A) Operators may seek a variance from the guidelines set forth in this Ordinance via request made to the Ute Tribe Energy and Minerals Department Attn: E&M Director P.O. Box 130 Fort Duchesne, Utah 84026, in consensus with the Ute Tribe Natural Resources Director.

Section 303: Collaboration

- (A) Federal agencies, including the U.S. Fish and Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, U.S. Forest Service shall work collaboratively with the Tribe to ensure a uniform and consistent application of this Ordinance to conserve and protect floodplain areas within the exterior boundaries of the Reservation.

Title IV: MISCELLANEOUS

Section 401: Rule of Construction

This Ordinance is to be construed liberally to achieve its purposes. This Ordinance is to be read in conjunction with all other applicable ordinances of the Tribe.

Section 402: Severability

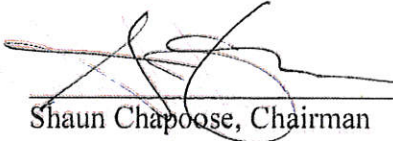
If for any circumstance, provisions or sections of this Ordinance are held invalid by an appropriate court of jurisdiction, the remainder of this Ordinance and other provisions or sections will not be affected in the application of the Ordinance to any person, employer, and others

covered by the Ordinance.

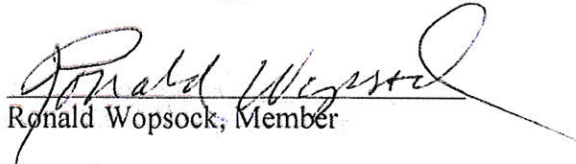
Section 403: Effective Date

This Ordinance shall be effective on the date of its approval by the Tribal Business Committee.

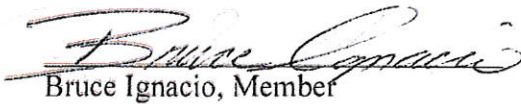
Enacted this 1st day of March, 2017.


Shaun Chapoose, Chairman


Edred Secackuku, Vice-Chairman


Ronald Wopsock, Member


Cummings Vanderhoop, Member


Bruce Ignacio, Member


Tony Small, Member

CERTIFICATION

I HEREBY CERTIFY THAT THE FOREGOING Ordinance was adopted by the Tribal Business Committee of the Ute Indian Tribe of the Uintah and Ouray Reservation pursuant to the Constitution and By-Laws of the Ute Indian Tribe of the Uintah and Ouray Reservation at a duly called meeting in Ft. Duchesne, Utah, on the 1st day of March, 2017, at which time a quorum was present and votes 6 for, 0 against, 0 abstaining and 0 absent.


Tribal Business Committee - Secretary
Ute Indian Tribe, Uintah & Ouray Reservation

Ordinance No. _____

TO ADOPT A TRIBAL OIL/GAS WASTE AND DISPOSAL ORDINANCE

- WHEREAS, the Uintah and Ouray Tribal Business Committee ("Business Committee") of the Ute Indian Tribe ("Tribe") is empowered by Article VI, Section 1(l) of the Tribe's Constitution to safeguard and promote peace, safety, morals and general welfare of the Ute Indian Tribe of the Uintah and Ouray Reservation by regulating the conduct of trade and the use and disposition of property upon the Reservation; and
- WHEREAS, the Business Committee has designated the Ute Energy and Minerals Department as being primarily responsible for the development of the natural resources of the Ute Indian Tribe, including oversight and monitoring of businesses licenses and permitting requirements for compliance and enforcement; and
- WHEREAS, the Business Committee has been presented with and has considered constructing evaporation pits to receive produced water from oil and gas producers located in surrounding areas; and
- WHEREAS, the Business Committee has considered the federal and state regulatory permitting requirements to construct and oversee evaporation pits receiving oil and gas production wastes and believes it to be in the best interest of the Tribe to adopt a tribal ordinance to regulate oil/gas waste and disposal on the Uintah and Ouray Reservation.

NOW, THEREFORE, BE IT ENACTED BY THE UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE OF THE UTE INDIAN TRIBE by virtue of its authority as a sovereign Indian Tribe to safeguard and promote peace, safety, morals and general welfare of the Ute Indian Tribe of the Uintah and Ouray Reservation by regulating the conduct of trade and the use and disposition of property upon the Reservation, and pursuant to the police and regulatory powers of the Tribal Business Committee as enumerated in the Constitution of the Ute Indian Tribe of the Uintah and Ouray Reservation, including Article VI, Sections 1(l), that this Oil/Gas Waste and Disposal Ordinance is hereby established.

OIL/GAS WASTE AND DISPOSAL ORDINANCE**TITLE I. POLICY AND DEFINITIONS**

Section 101: Declaration of Policy. As a guide to the interpretation and application of this Ordinance, the public policy of the Ute Indian Tribe (hereinafter the "Tribe") is declared to be as follows:

The Ute Indian Tribe has the right to enact laws to protect the environment and its members within the Uintah and Ouray Reservation. The Ute Indian Tribal Business Committee therefore declares that in its considered judgment, the public good and welfare of the Tribe to require the enactment of this measure, under its inherent sovereign and police powers, for the establishment of a Oil/Gas Waste and Disposal Ordinance in order to protect the environment, health, safety and welfare of the Ute Indian Tribe and its members.

Section 102: Jurisdiction. The Tribe has the civil and regulatory jurisdiction over the lands within the exterior boundaries of the Uintah and Ouray Indian Reservation as more thoroughly defined by *Ute III & V*, as follows:

- 1) all Indian trust lands within the Uintah Valley Reservation;
- 2) all lands apportioned to mixed blood Utes under the Ute Partition Act of 1954;
- 3) all lands allotted to individual Indians that passed into fee status after 1905; and
- 4) lands held in trust after the Uintah Valley Reservation was opened in 1905 but that were later exchanged by the Tribe into fee status in order to consolidate the Tribe's land holdings; and
- 5) the entire Uncompahgre Reservation.

This Ordinance shall apply to all lands identified above.

Section 103: Definitions

- (A) "Authorized Agent" means a representative of the Executive Director as authorized by the Tribal Business Committee.
- (B) "Artificial Liner" means a pit liner made of material other than clay or other in-situ material and which meets the requirements of Section 303: Permitting of Disposal Pits.
- (C) "Commercial Disposal Facility" means a disposal well, pit or treatment facility whose owner(s) or operator(s) receives compensation from others for the temporary storage, treatment, and disposal of produced water, drilling fluids, drill cuttings, completion fluids, and any other exempt E and P waste, and whose primary business objective is to provide these services.
- (D) "Disposal Facility" means a pit, handling or management facility, or combination thereof at which E and P waste is disposed. This includes both commercial and noncommercial facilities.

- (E) "Disposal Pit" means a lined or unlined pit approved for the disposal and/or storage of E and P waste.
- (F) "Department" means the Ute Energy and Minerals Department.
- (G) "E and P Waste" means exploration and production waste, and is defined as those wastes resulting from the drilling of and production from oil and gas wells as determined by the U.S. Environmental Protection Agency ("EPA"), prior to January 1, 1992, to be exempt from Subtitle C of the federal Resource Conservation and Recovery Act ("RCRA").
- (H) "Executive Director" means the executive and administrative head of the Ute Indian Tribe Energy and Minerals Department.
- (I) "Ground Water" means water in a zone of saturation below the ground surface.
- (J) "Hearing" means any matter heard before the Tribal Business Committee or its designated hearing examiner.
- (K) "Oil and Gas" shall not include gaseous or liquid substances derived from coal, oil shale, tar sands or other hydrocarbons classified as synthetic fuel.
- (L) "Operator" means the person who has been designated by the owners of a disposal facility or by the Tribal Business Committee to operate a disposal facility.
- (M) "Person" means and includes any natural person, bodies politic and corporate, partnerships, associations and companies.
- (N) "Pollution" means such contamination or other alteration of the physical, chemical or biological properties of any waters of the Uintah and Ouray Reservation, or the discharge of any liquid, gaseous or solid substance into any waters of the Uintah and Ouray Reservation in such manner as will create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety or welfare; to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses; or to livestock, wild animals, birds, fish or other aquatic life.
- (O) "Produced Water" means water produced in conjunction with the conventional production of oil and/or gas
- (P) "State" means the State of Utah.
- (Q) "Tribal Business Committee" means the governing body of the Ute Indian Tribe of the Uintah and Ouray Reservation.

- (R) "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.
- (S) "Underground Source of Drinking Water" or "USDW" means a fresh water aquifer or a portion thereof that supplies drinking water for human consumption or that contains less than 10,000 mg/l total dissolved solids.

TITLE II. GENERAL RULES

Section 201: Scope of Rules.

- (A) The following general rules adopted by the Tribal Business Committee pursuant to Article VI, Section 1(l) of the Constitution of the Ute Indian Tribe, shall apply to all lands within the jurisdiction of the Tribe, as defined above, and are intended to protect human health and the environment.
- (B) Exceptions to this Ordinance may be granted by the Executive Director or the Tribal Business Committee for good cause shown and shall prevail as against this Ordinance.

Section 202: Right to Inspect.

- (A) The Executive Director or authorized agent of the Department shall have the right at all reasonable times to go upon and inspect any disposal facility and/or disposal pit for the purpose of making any investigations or tests reasonably necessary to ensure compliance with the provisions of this Ordinance and tribal law. The Executive Director or authorized agent of the Department shall report any observed violation to the Department.

Section 203: Access to Records.

- (A) Any person, who disposes of E and P waste within the Uintah and Ouray Reservation, shall make and keep appropriate books and records covering his operations within the Uintah and Ouray Reservation from which he shall be able to make and substantiate all reports required by the Tribal Business Committee or the Department.
 1. Such books and records, together with copies of all reports and notices submitted to the Tribal Business Committee or the Department shall be kept on file in the file room of the Ute Energy and Minerals Department and available for inspection by the Executive Director or an authorized agent of the Department at all reasonable times for a period of at least six years.
 2. The Executive Director or the authorized agent of the Department shall also

have access to all pertinent records wherever located.

TITLE III. WASTE MANAGEMENT AND DISPOSAL.

Section 301: Introduction.

- (A) It is the intent of the Tribal Business Committee and Department to regulate E and P waste and facilities for the disposal of these wastes in a manner that protects the environment, limits liability to producers, and minimizes the volume of waste.
- (B) These rules specify the informational and procedural requirements for waste management and disposal, the permitting of disposal facilities and the cleanup requirements for E and P waste related sites.

Section 302: General Waste Management.

- (A) These rules address E and P waste that are exempt from the RCRA hazardous waste management requirements. Before using a commercial disposal facility the operator may contact the Department to verify the status of the facility.
- (B) Each site and/or facility used for disposal must be permitted and in good standing with the Department. Reduction of the amount of material generated that must be disposed of is the preferred practice.
 - i. Recycling should be used whenever possible and practical.
 - ii. In general, good housekeeping practices shall be used.
 - iii. Operators shall catch leaks, drips, contain spills, and cleanup promptly.
- (C) The method of disposal used shall be compatible with the waste that is the subject of disposal.
 - i. RCRA exempt waste shall not be mixed with nonexempt waste and be managed in a disposal pit. The person who mixes RCRA exempt waste with non-exempt waste must handle such mixture in accordance with the requirements of RCRA and all other applicable laws.
- (D) Every operator shall file an Annual Waste Management Plan by January 15 of each year describing operation and maintenance practices, and schedules, and an accounting of the proper disposition of produced water and other E and P waste received at each disposal facility the prior year.

1. If changes are made to the plan during the year, then the operator shall notify the Department in writing of this change.
2. This plan will include the type and estimated annual volume of wastes that will be or have been generated, the disposal facility (central or commercial facility) to be used for disposal, the description of any waste reduction or minimization procedures, and any onsite disposal/treatment methods or programs to be implemented by the operator.

Section 303: Permitting of Disposal Pits.

- (A) All commercial disposal pits and disposal pits located off of an existing mineral lease shall be bonded in accordance with Section 309: Bonding of Disposal Facilities to assure proper operation, maintenance, and closure of the pits.
- (B) All disposal facilities shall develop contingency plans to ensure immediate clean-up of oil released into disposal pits to prevent wildlife, waterfowl and livestock mortalities.
- (C) All disposal facilities shall provide annual training for facility staff to provide them with a refresher on permit requirements, health and safety issues and emergency spill procedures.
- (D) All disposal facilities shall implement controlled access either with locked gates or onsite personnel to prevent unauthorized discharge of hazardous or unauthorized wastes into the facility.
- (E) All disposal facilities shall establish separate disposal areas for drilling fluids and hydraulic fracturing fluids.
- (F) All produced water received by a disposal facility shall be treated in the receiving and pre-treatment facilities to remove hydrocarbons from the produced water before it is released to the disposal pits.
- (G) All disposal pits shall be inspected and logged on a daily basis for sheens or other indications of petroleum hydrocarbon carry-over. All disposal pits shall be kept virtually oil free at all times.
- (H) Application shall be made to the Department for approval of any disposal pit.
 1. The pit shall be designed appropriately for the intended purpose.
 2. Commercial disposal pits shall be designed and constructed under the supervision of a registered professional engineer.

3. The application and site shall meet the following requirements:
- (a) The pit shall be located on level, stable ground, and an acceptable distance away from any established or intermittent drainage.
 - (b) The pit shall not be located in a geologically and hydrologically unsuitable area, such as aquifer recharge areas, flood plains, drainage bottoms, or areas near faults.
 - (c) The pit shall have adequate storage capacity to safely contain all produced water even during those periods when evaporation rates are at a minimum.
 - (d) The pit shall be designed and constructed so as to prevent the entrance of surface water.
 - (e) The pit shall be designed, maintained and operated to prevent unauthorized surface or subsurface discharge of the fluids contained therein.
 - (f) All pits and/or opened-topped tanks in the receiving facility shall be fenced and maintained to prevent access by livestock, wildlife and unauthorized personnel and if required, equipped with effective netting or a screen to deter entry of birds and/or other wildlife. The netting or screen shall be constructed so it remains intact and above the surface of the liquid in the tank even during winds of up to 80 mph and/or weighted with snow, ice or rain. Netting should be installed at a minimum of 4 to 5 feet from the surface of the pond to prevent the net from sagging into the oil-covered pond during heavy snow-loads. The netting or screen shall be inspected on a regular monthly basis to ensure the requirements outlined above are met.
 - (g) The pit levees for produced water pits receiving volumes in excess of five barrels per day, shall be constructed so that the inside grade of the levee is no steeper than 3:1 and the outside grade no steeper than 2:1. The top of the levee shall be level and of sufficient width to allow for adequate compaction.
 - (h) All approved produced water pits not located at a well site shall be identified with a suitable sign.
 - (i) The artificial materials used in lining pits shall be impervious and resistant to weather, sunlight, hydrocarbons, aqueous acids, alkalies,

salt, fungi, or other substances that might be contained in the produced water.

(I) If rigid materials are used, leak proof expansion joints shall be provided, or the material shall be of sufficient thickness and strength to withstand, expansion, contraction and settling movements in the underlying earth, without cracking.

1. If flexible materials are used, they shall be of sufficient thickness and strength to be resistant to tears and punctures.
2. All disposal pits shall be lined with a minimum liner thickness of 40 mils or as approved by the Department.
3. Lined pits constructed in relatively impermeable soils shall have an underlaying gravel filled sump and lateral system or suitable leak detection system.
4. Lined pits constructed in relatively permeable soils shall have a secondary liner underlaying the leak detection system that is graded so as to direct leaks to the observation sump.
5. Test borings shall be taken in sufficient quantity and to an adequate depth to satisfactorily define subsurface conditions including depth to groundwater and stratigraphy and assure that the liner will be placed on a firm stable base and to determine the appropriate leak detection system.

(J) Application Requirements for Produced Water Pits.

1. Applications for disposal of produced water into lined pits shall include the following information:
 - (a) A topographic map and drawing of the site, on a suitable scale, that indicate the pit dimensions, cross section, side slopes, leak detection system and location relative to other site facilities. The drawings shall be of professional quality.
 - (b) A reasonable estimate of maximum daily quantity of water to be disposed of and a representative analysis of water anticipated to be received, which includes the concentrations of chlorides, sulfates, pH, TDS, oil, grease, heavy metals, aromatic hydrocarbons and information regarding any other significant constituents if requested.
 - (c) An estimate of number of days until capacity of the disposal pit(s) is

reached assuming the maximum transfer of water to the facility or pit(s).

- (d) Climatological data indicating the average annual evaporation and precipitation for the area.
- (e) The method and schedule for disposal of precipitated solids.
- (f) Drawings of unloading facilities and explanation of the method for controlling and disposing of any liquid hydrocarbon accumulation so that the evaporation process is not hampered.
- (g) The engineering data and design criteria used to determine the pit size that includes a 2-foot free-board.
- (h) The type, thickness, strength, and life span of material to be used for lining the pit and the method of installation.
- (i) A description of the leak detection method to be utilized:
 - (1) The proposed inspection frequency of the detection system.
 - (2) The proposed procedures for repair of the liner should leakage occur.
- (j) A management plan, which shall include the following components:
 - (1) Engineering design report;
 - (2) Construction plan;
 - (3) Operation plan; which specifies the design and management measures for the removal of hydrocarbons from the wastewater before it is released into the disposal pits; and
 - (4) Financial assurance, closure, post closure, spill contingency plan and corrective action plan.
 - (5) The management plan shall also incorporate measures to prevent the direct discharge of wastewater by off-loading trucks into the disposal pits.

- (K) Within 30 days of the submission of an application for disposal of produced water into a commercial disposal pit, the Department shall review the application as to its

completeness and adequacy for the intended purpose and shall require such changes that are found necessary to assure compliance with the applicable rules. If the application is in order, the Department shall provide for a public notice to the tribal membership where the pit is to be located. The Department shall allow the tribal membership to comment regarding the application. If there are no negative responses received within 15 days of the notice, the Department shall issue a permit. However, if the Department receives negative response(s) from the tribal membership, the Department shall forward those comments to the Tribal Business Committee for review and if necessary, the Tribal Business Committee may set a hearing for the resolution of the comments that are substantive in nature to the health and welfare of the membership. The Tribal Business Committee shall set a hearing not later than thirty (30) days upon receiving the comments to the proposed application should it find it necessary to hold a hearing.

Section 304: Permitting of Other Disposal Facilities.

- (A) Facilities used for the treatment and disposal of E and P waste other than evaporation pits shall also be permitted by the Department. This would include such activities as landfarming, composting, solidifying, bioremediation, and others.
- (B) All commercial treatment and disposal facilities must be bonded in accordance with Section 309: Bonding of Disposal Facilities, to assure proper operation, maintenance, and closure of the facility.
- (C) Application Requirements for Treatment and Disposal Facilities. The application shall contain the following:
 - 1. A complete description of the proposed facility,
 - 2. Processes involved including a complete list of all wastes and other materials to be accepted at the facility and products to be generated.
 - 3. Maps and drawings of suitable scale showing all facilities and equipment.
 - 4. Materials or products to be applied to the land surface or subsurface shall be applied only in a manner that ensures that affected land continues to meet the Department's Cleanup Levels for Contaminated Soil and other wastes.
 - 5. If leachability and/or toxicity is of concern due to the type or source(s) of wastes, tests will be required and may utilize the Toxicity Characteristic Leaching Procedure ("TCLP") prior to any application to the land.
 - 6. The U.S. Environmental Protection Agency ("EPA") directly implements its federal environmental programs including the Clean Water Act ("CWA")

and Safe Drinking Water Act ("SDWA") on the Uintah and Ouray Reservation. Owners and/or operators must apply directly to the EPA for permits where CWA National Pollutant Discharge Elimination System ("NPDES") and/or the SDWA Underground Injection Control ("UIC") permits would be required.

Section 305: Construction and Inspection Requirements for Disposal Facilities.

- (A) Department personnel shall be afforded a reasonable opportunity for inspection of any proposed disposal facility during the construction and operation of the facility.
- (B) The Department shall be notified at least two working days prior to the installation of a pit liner so that an inspection of the leak detection system can be conducted.
- (C) In any case, the Department shall be notified after completion of facility construction, at least two working days prior to its use, so that an inspection can be conducted to verify that the facility has been constructed in accordance with the approved application.
- (D) Disposal facilities shall be operated in accordance with an approved application and in a manner that does not cause pollution or safety and health hazards.
- (E) Failure to meet the requirements and standards for construction and operation of a disposal facility shall be considered as noncompliance and will result in the imposition of corrective actions and compliance schedules or a cessation of operations order.

Section 306: Reporting and Recordkeeping Requirements for Disposal Facilities.

- (A) All unauthorized discharges or spills from disposal facilities including water observed in a leak detection system shall be promptly reported to the Department.
- (B) Each producer who utilizes any approved produced water disposal facility shall comply with the Sundry Notice and Reporting requirements of Section 503 of this Ordinance.
- (C) Each operator of a disposal facility, excluding disposal wells, shall report to the Department on a quarterly basis. This report shall include the volume and type of wastes received at the facility during the quarter and results of the leak detection system inspections. The report shall also include a log of the repairs conducted at the facility, a log of the daily inspections of the disposal pits for sheens or other indications of petroleum hydrocarbon carry-over, and any remedial actions taken.
- (D) The occurrence of water in a leak detection system during operation of a pit

constitutes liner failure and requires immediate action.

1. The Department has the option of allowing the operator a short period of time to take corrective action.
 2. Further utilization of the pit will be allowed only after liner repairs and an inspection by the Department.
- (E) Each owner/operator of a commercial disposal facility shall keep records showing at a minimum the following: date and time waste was received, origin, volume, type, transporter, and generator of the waste. These records shall be available for inspection by the Department for at least six years.
- (F) Each owner/operator of a commercial disposal facility shall immediately notify the EPA, Energy & Minerals Department and the Tribal Department of Homeland Security if any waste which contains oil leaks or spills into waters of the United States or Tribal Waters.

Section 307: Final Closure and Cleanup of Disposal Facilities.

- (A) A proposed plan for final closure of a disposal facility shall be submitted to the Department for approval with the initial application, and amended if necessary, within ninety (90) days of approval of the application. The closure plan shall include the following:
1. Provisions for removal of all equipment at the site.
 2. Proposed plans and procedures for sampling and testing soils and ground water at the site.
 3. Soils will need to meet the Department Cleanup Levels for Contaminated Soils or background levels whichever is less stringent.
 4. Provisions for a monitoring plan if required by the Department, and
 5. A consideration of post disposal land use and landowner requests when the closure plan is developed.
- (B) A bond for a disposal facility will be released when the requirements of a closure plan approved by the Department has been met as determined by the Department.

Section 308: Variances from Requirements and Standards.

Requests for approval of a variance from any of the requirements or standards of this Title shall be

submitted to the Executive Director in writing and shall provide information as to the circumstances that warrant approval of the requested variance and the proposed alternative means by which the requirements or standards will be satisfied. Variances may be approved only after proper notice and public hearing before the Tribal Business Committee.

Section 309: Bonding of Disposal Facilities.

- (A) Disposal facilities shall be bonded according to this Section in order to protect the Tribe and oil and gas producers from unnecessary liabilities and cleanup costs in the future. The objectives are to provide the Tribe with adequate security to allow rehabilitation of a site to the point of preventing further or future pollution, and avoiding health and safety hazards should a facility owner default.
 - 1. Bonds accepted shall be surety, collateral, or a combination of the two as described further in Section 401(F).
 - (a) In order to assist owners of facilities operating prior to 2008 to establish bonding, the total bond amount provided may consist of an initial amount as determined by the Department and an additional amount collected at a price per barrel and/or price per cubic yard of waste collected until the total bond amount is reached.
 - (b) The total bond will be held by the Department or by a financial institution of the Department's choosing until the facility has been closed and inspected by the Department in accordance with a Department approved closure plan.
 - 2. Total bond amount is calculated using values for pit area, pit storage capacity, and volume of stock piled waste material.
 - (a) No salvage value of equipment or removal cost is used.
 - (b) This bond will only be used by the Tribe to treat or remove waste from the site and secure the facility to prevent any future contamination should the facility owner default on cleanup responsibilities.
 - (c) Bond amounts will be calculated as follows, and the per volume or per acre figures may be adjusted periodically to compensate for change in cost to perform the necessary cleanup work:

\$14,000 per acre of pit, partial acres will be calculated at the rate of \$14,000 per acre; plus

\$1.00 per barrel of produced water for one-quarter of the total storage capacity of the facility; plus
 \$30 per cubic yard of solid or semi-solid waste material stockpiled at the facility.
 \$20,000 Minimum bond amount.

3. All commercial disposal facilities will be covered by an adequate and acceptable bond before being permitted to accept any exploration and production waste. The initial and minimum bond payment will be at least \$20,000. The total bond amount will be calculated as described in Section 309(A)(2)(c). If requested by the disposal facility owner, the bond beyond the initial amount may be posted at a rate of two cents per barrel of liquid or sixty cents per cubic yard of solid/semi-solid waste material accepted for disposal at the facility.

TITLE IV. BONDING REQUIREMENTS.

Section 401: Bonding.

- (A) An owner or operator shall furnish a bond to the Department prior to approval of a permit for treatment and disposal of E and P waste, including evaporation pits.
- (B) A bond furnished to the Department shall be payable to the Department and conditioned upon the faithful performance by the operator of the duty to maintain and restore a disposal facility.
- (C) Bond liability shall be for the duration of the operating and restoration of the disposal facility.
 1. The bond shall remain in full force and effect until liability thereunder is released by the Department.
 2. Release of liability shall be conditioned upon compliance with the rules and orders of the Department.
- (D) If a developer/operator desires bond coverage in a lesser amount than required by these rules, the operator may file a Request for Agency Action with the Department for a variance from the requirements of this Section.
 1. Upon proper notice and hearing and for good cause shown, the Tribal Business Committee may allow bond coverage in a lesser amount for specific disposal facilities.
- (E) The bond shall provide a mechanism for the surety or other guarantor of the bond, to

provide prompt notice to the Department and the operator of any action alleging the insolvency or bankruptcy of the surety or guarantor, or alleging any violations that would result in suspension or revocation of the surety's or guarantor's charter or license to do business as a surety in Utah.

1. Upon the incapacity of the surety or guarantor to guarantee payment of the bond by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the operator shall be deemed to be without bond coverage.
2. Upon notification of insolvency or bankruptcy, the Department shall notify the operator in writing and shall specify a reasonable period, not to exceed 90 days, to provide bond coverage.
3. If an adequate bond is not furnished within the allowed period, the operator shall be required to immediately stop accepting waste at the facility, and to cease operations immediately and shall not resume operations until the Department has received an acceptable bond. If the operator must continue operations for a short period to avoid environmental harm the operator must do so and provide immediate oral notice to the Department, and follow up within forty eight (48) hours with written notice to the Department providing all details necessary for the Department to determine whether operations were shut down as quickly as possible.

(F) The Department shall accept a bond in the form of a surety bond, a collateral bond or a combination of these bonding methods.

1. A surety bond is an indemnity agreement in a sum certain payable to the Department, executed by the operator as principal and which is supported by the performance guarantee of a corporation authorized to do business as a surety in Utah.
 - (a) A surety bond shall be executed by the operator and a corporate surety authorized to do business in Utah that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating ("FPR") of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. When the Department in the course of examining surety bonds notifies an operator that a surety company guaranteeing its performance does not meet the standards of this Section, the operator has 120 days after notice from the Department by mail to correct the deficiency, or face enforcement action.
 - (b) The Department shall advise the surety, within 30 days after receipt

of a notice to cancel a bond, whether the bond may be canceled.

2. A collateral bond is an indemnity agreement in a sum certain payable to the Department, executed by the operator that is supported by one or more of the following:

(a) A cash account.

- (1) The operator may deposit cash in one or more accounts at a federally insured bank authorized to do business in Utah, made payable upon demand only to the Department.
- (2) The operator may deposit the required amount directly with the Department.
- (3) Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the Department has approved the payment of interest to the operator.
- (4) The Department shall not accept an individual cash account in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation.

(b) Negotiable bonds of the United States, Utah, or a municipality.

- (1) The negotiable bond shall be endorsed only to the order of and placed in the possession of the Department.
- (2) The Department shall value the negotiable bond at its current market value, not at face value.

(c) Negotiable certificates of deposit.

- (1) The certificates shall be issued by a federally insured bank authorized to do business in Utah.
- (2) The certificates shall be made payable or assigned only to the Department both in writing and upon the records of the bank issuing the certificate.
- (3) The certificates shall be placed in the possession of the Department or held by a federally insured bank authorized to do business in Utah.
- (4) If assigned, the Department shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates.
- (5) The Department shall not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation.

- (d) An irrevocable letter of credit.
 - (1) Letters of credit shall be placed in the possession of and payable upon demand only to the Department.
 - (2) Letters of credit shall be issued by a federally insured bank authorized to do business in Utah.
 - (3) Letters of credit shall be irrevocable during their terms.
 - (4) Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least 30 days before their expiration date with other acceptable bond types or letters of credit.

- (G) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing from the Department at the time collateral is offered.

- (H) The Department may allow the operator to replace existing bonds with other bonds that provide sufficient coverage.
 - 1. Replacement of a bond pursuant to this Section shall not constitute a release of bond under subsection (I) of this Section.
 - 2. The Department shall not allow liability to cease under an existing bond until the operator has furnished, and the Department has approved, an acceptable replacement bond.
 - 3. Upon receipt of a request for change of operator, the Department will review the proposed new operator's bond coverage, and if bond coverage is acceptable, the Department will issue a notice of approval of the change of operator.
 - (a) If the Department determines that the new operator's bond coverage will be insufficient, the Department may deny the change of operator, or the Department may require a change in the form and amount of the new operator's bond coverage in order to approve the change of operator. In such cases, the Department will support its case for a change of the new operator's bond coverage in the form of written findings, and the Department will provide a schedule for completion of the requisite changes in order to approve the operator change. The written findings and schedule for changes in bond coverage will be sent to both the operator of record of the applicable disposal facility(s) and the proposed new operator.

4. If the request for operator change included a request to cancel liability under the existing operator's bond, and the Department approves the operator change, then the Department will issue a notice of approval of termination of liability under the existing bond for the disposal facility(s) included in the operator change. When the Department has approved the termination of liability under a bond, the original operator is relieved from the responsibility of restoring any disposal facility affected by the operator change.
5. If all of the disposal facilities covered by a bond are affected by an operator change, the bond may be released by the Department in accordance with subsection (I) of this Section.

(I) Bond release procedures are as follows:

1. Requests for release of a bond held by the Department may be submitted by the operator when the requirements of a closure plan have been met or the Department has issued a notice of approval of termination of liability for an existing bond.
2. If the Department disapproves the application for release of the bond or portion thereof, the notification shall state the reasons for disapproval, recommend corrective actions necessary to secure the release, and allow an opportunity for a public hearing.

(J) The following guidelines will govern the Forfeiture of Bonds.

1. The Department shall take action to forfeit the bond if any of the following occur:
 - (a) Noncompliance as to the conditions of a permit issued by the Department.
 - (b) The operator defaults on the conditions under which the bond was accepted.
2. In the event forfeiture of the bond is necessary, the matter will be considered by the Department.
3. For matters of bond forfeiture, the Department shall send written notification to the parties.
4. After proper notice and hearing of the forfeiture of a bond, the Tribal Business Committee may order the Department to do any of the following:

- (a) Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts.
 - (b) Use funds collected from bond forfeiture to complete closure of disposal facilities to which bond coverage applies.
 - (c) Enter into a written agreement with the operator or another party to perform closure operations in accordance with a compliance schedule established by the Department as long as such party has the ability to perform the necessary work.
 - (d) Allow a surety to complete the closure, if the surety can demonstrate an ability to complete the closure plan.
 - (e) Any other action the Department deems reasonable and appropriate.
5. In the event the amount forfeited is insufficient to pay for the full cost of the closure plan, the Department may complete or authorize completion of the closure plan and may recover from the operator all costs in excess of the amount forfeited.
 6. In the event the amount of bond forfeited was more than the amount necessary, the unused funds shall be returned by the Department to the party from whom they were collected.

TITLE V. ENVIRONMENTAL IMPACT FEE

Section 501: All producers and operators of oil & gas facilities located on Indian lands, including Indian fee lands, are subject to an environmental impact fee based on total sales from oil which is skimmed off disposal pits as follows:

- (A) 10% of sales between \$100,000 and \$499,999.99;
- (B) 15% of sales between \$500,000 and \$999,999.99;
- (C) 20% of sales between \$1,000,000 and 1,499,999.99; and
- (D) 25% of sales over \$1,500,000.00.

Section 502: All producers and operators shall report to the Energy & Minerals department the monthly total sales of skimmed oil no later than the 15th of the month for the previous month's sales. All producers and operators shall submit the Environmental Impact Fee no later than the 20th of the month for the previous month's sales.

Section 503: The Energy & Minerals Department shall provide the forms to be used for complying with this Section.

Section 504: Fees collected under this Section shall be used by the Ute Indian Tribe to fund governmental services provided to residents and users of the Uintah and Ouray Indian Reservation.

TITLE VI. REPORTING AND REPORT FORMS.

Section 601: General Report Forms.

The forms listed below, as modified by the Department from time to time shall be used for the purpose indicated in accordance with the instructions and the applicable rule.

Form 1 Bond

Form 2 Sundry Notices and Reports on Disposal Sites

Section 602: Form 1, Bond.

Except where a bond in satisfactory form has been filed by the operator in accordance with this Ordinance and evidence has been furnished to the Department that such bond has been approved, the Department shall require from the operator a good and sufficient bond in accordance with Title IV of this Ordinance.

Section 603: Form 2, Sundry Notices and Reports on Disposal Sites.

- (A) This report form shall be used to notify the Department of the intention to do miscellaneous work on any disposal facility for which a specific report form is not provided, and to report the subsequent results of that work.
 - 1. A notice of intention to change plans previously approved shall be submitted in duplicate and must be received and approved by the Department before the work is commenced.
 - 2. The operator is responsible for receipt of the notice by the Department in ample time for proper consideration and action. In cases of emergency the operator may obtain verbal approval to commence work.
 - 3. Within five days after receiving verbal approval, the operator shall submit a Sundry Notice describing the work and acknowledging the verbal approval.
- (B) In addition to the types of work listed on the form, a Sundry Notice is required for the following:
 - 1. Notice of change of operator. The report form should be submitted by both the previous operator and the new operator.

TITLE VII. MISCELLANEOUS.**Section 701: Sovereign Immunity**

Except for those remedies expressly provided herein, nothing in this Ordinance shall be construed to waive the sovereign immunity of the Ute Indian Tribe.

Section 702: Severability

If for any circumstance, provisions or sections of this Ordinance are held invalid by the appropriate court of jurisdiction, the remainder of this Ordinance and other provisions or sections will not be affected in the application of the Ordinance to any person, employer and others covered by the Ordinance.

Section 703: Effective Date

This Ordinance shall be effective on the date of its approval by the Tribal Business Committee.

Enacted this 27 day of March, 2013.


Irene C. Cuch, Chairwoman


Ronald J. Wopsock, Vice-Chairman


Frances M. Poowegup, Member

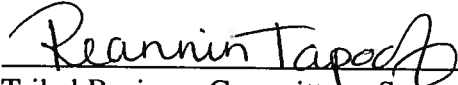
absent
Richard Jenks, Jr., Member

absent
Phillip Chimburas, Member


Stewart Pike, Member

CERTIFICATION

I HEREBY CERTIFY THAT THE FOREGOING Ordinance was adopted by the Tribal Business Committee of the Ute Indian Tribe of the Uintah and Ouray Reservation pursuant to the Constitution and By-Laws of the Ute Indian Tribe of the Uintah and Ouray Reservation at a duly called meeting in Vernal, Utah, on the 27 day of March, 2013, at which time a quorum was present and votes 4 for, 0 against, 0 abstaining and 2 absent.


Tribal Business Committee - Secretary

**UINTAH AND OURAY
TRIBAL BUSINESS COMMITTEE
Resolution No. _____**

- WHEREAS:** The Ute Tribal Business Committee ("Business Committee") of the Ute Indian Tribe of the Uintah and Ouray Reservation ("Tribe") is empowered by article VI, Sections 1(c) and 1(f) of the Constitution and By-Laws of the Tribe to regulate the economic affairs of the Tribe; and
- WHEREAS:** The Business Committee is empowered by Article VI, Section (I) of the Constitution and By-Laws of the Ute Indian Tribe to safeguard and promote the peace, safety, morals and general welfare of the Tribe by regulating the use and disposition of property on the Reservation; and
- WHEREAS:** The Business Committee has discussed the need to maximize the use of its Tribal water resources in order to increase tribal revenues for the benefit of the Tribe and its membership and has determined that the creation of a Tribal Water Policy to guide the development of Tribal water would be in the best interest of the Tribe and its membership; and
- WHEREAS:** The Business Committee has determined that a Tribal Water Policy shall declare that the Tribe's authority over the reserved waters arising upon, flowing through, bordering upon, and underlying the Reservation shall be the property of the Tribe with the purpose of establishing a permanent homeland, and recognize 480,594 acre-feet per year of Tribal water in perpetuity; and
- WHEREAS:** The Business Committee now desires that a Tribal Water Resource Development Plan be developed for the purpose of maximizing the use of Tribal water rights, consistent with the Tribal Water Policy to support economic development, water conservation, and environmental quality of the Tribe's water rights; and
- WHEREAS:** The Business Committee has considered, reviewed, and determined that there are four essential elements that must be included in the Ute Water Compact in order to be consistent with the Tribal Water Policy and to support a Tribal Water Resource Development Plan, which are: (1) tribal water storage; (2) rehabilitation and betterment of the Uintah Indian Irrigation Project; (3) Tribal administration, regulation, and enforcement of the Tribal water rights; and (4) the restoration of the application of the Non-Intercourse Act, 25 U.S.C. § 177, to all the Tribe's reserved water rights; and
- WHEREAS:** The Business Committee has determined that it is in the best interests of the Tribe and its membership to adopt a Tribal Water Policy and to develop a Tribal Water Resource Development Plan for the purpose of maximizing the use of Tribal water rights and promoting the economic development of Tribal water.
- NOW, THEREFORE, BE IT RESOLVED:** that the Business Committee, at a duly called meeting with a quorum present, hereby authorizes and approves the Tribal Water Policy, attached and incorporated herein by reference, in order to guide the development of the Tribe's water and to establish the essential elements of the Ute Water Compact, which will

promote the maximum use of the Tribe's water resources for economic benefit, water conservation, and environmental quality.

BE IT FURTHER RESOLVED: that the Business Committee shall cause a detailed Tribal Water Resource Development Plan ("Plan") to be developed, consistent with the Tribal Water Policy, through the joint efforts of the Water Commission, the Water Department, the Tribe's General Counsel, and the Tribe's water engineers, Natural Resources Consulting Engineers, Inc. ("NRCE"), that maximizes the benefits of the Ute Tribe's reserved water rights and its senior priority, with a draft Plan to be provided to the Business Committee within five months for consideration and input from the Business Committee.

BE IT FURTHER RESOLVED: that the Tribal Water Engineers, NRCE, shall be the lead entity of the Tribe in the development of the Tribal Water Resource Development Plan and shall be responsible for explaining the Plan to the Tribal membership through the involvement of the Tribal Water Commissioners.

BE IT FINALLY RESOLVED: that the Business Committee hereby authorizes and approves its Chairman or, in his absence, the Vice-Chairman, to execute any and all documents as may be necessary and appropriate to carry out the terms, conditions and intent of this Resolution.

absent

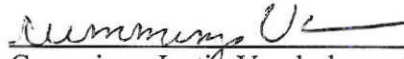
Shaun Chapoose, Chairman



Edred Secakuku, Vice-Chairman

absent

Ronald Wopsock, Member



Cummings Justin Vanderhoop, Member



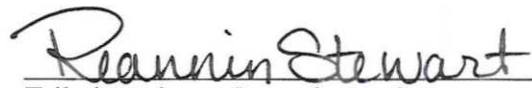
Bruce Ignacio, Member



Tony Small, Member

CERTIFICATION

I HEREBY CERTIFY THAT THE FOREGOING Resolution was adopted by the Tribal Business Committee of the Ute Indian Tribe of the Uintah and Ouray Reservation pursuant to the Constitution and By-Laws of the Ute Indian Tribe of the Uintah and Ouray Reservation at a duly called meeting in Las Vegas, NV, on the 28 day of September, 2016, at which time a quorum was present and votes 4 for, 0 against, 0 abstaining and 2 absent.



Tribal Business Committee - Secretary

Ute Indian Tribe, Uintah & Ouray Reservation

Policy Statement

Tribal Water Policy and Water Resource Development Plan

The Ute Tribal Business Committee declares that, under the authority of the Ute Indian Tribe, a sovereign, federally recognized Indian Tribe, and pursuant to the powers of the Business Committee under the Ute Indian Tribe's Constitution and By-Laws, the waters within the exterior boundaries of the Uintah and Ouray Reservation are essential to the life, future well-being, and perpetual existence of the Tribe through the sustenance and continuing development of the Tribal homeland. The Ute Indian Tribe claims all reserved waters arising upon, flowing through, bordering upon, and underlying the Reservation to be the property of the Ute Indian Tribe, for the benefit of the Ute Indian Tribe and its membership as required to make the Reservation inhabitable as a permanent homeland.

The United States, the State of Utah, and the Ute Indian Tribe recognize the reservation of 480,594 acre-feet per year of water in perpetuity from all waters arising upon, flowing through, bordering upon and underlying the Reservation. The Tribe holds the beneficial title to these water rights, with legal title vested in the United States in trust for the Tribe. It is the policy of the Ute Indian Tribe to preserve, protect, and assert the senior, federally guaranteed rights to the use of the waters within the exterior boundary of the Reservation.

It shall be the primary responsibility of the Business Committee to plan for the management, development and allocation of the use of Tribal waters. The Tribe shall have the right to impound, divert, withdraw, use, or affect the use of waters of the Ute Indian Tribe through tribal management and tribal laws and regulations. The Business Committee, consistent with Tribal and Federal laws, is empowered by the Tribal Constitution to regulate the economic affairs of the Tribe, and shall thereby determine all rights to the use of Tribal water with the purpose of promoting the general welfare of the Tribe and its membership. The Business Committee shall cause to be developed a Tribal Water Resource Development Plan consistent with the Tribal Water Policy for the purpose of utilizing all presently used and unused waters of the Tribe and designed to promote economic development, water conservation, and environmental quality. The objectives of the Water Resource Development Plan shall be the following:

- To maximize the beneficial use of Tribal water through economically sound and efficiently designed and carefully managed Tribal water projects. The use of Tribal waters includes irrigation, municipal, domestic, industrial, commercial, recreation, storage, instream flow, cultural activities, the leasing of excess water, hydroelectric power, and such other uses that may be developed in the future.
- To review all formal and informal agreements between the Bureau of Indian Affairs, the Bureau of Reclamation, and private water users of the use of Tribal water rights and determine their legality and whether said agreements are in the best interest of the Tribe.
- To recognize and preserve Tribal water rights as a sacred and finite natural resource. Waters of the reservation shall be available for cultural and sacred uses by Tribal membership. Water resource development shall promote the development of water projects that utilize efficient conservation strategies to maximize the availability and use of the Tribal water rights within the Reservation.
- To promote environmentally sound water projects that maintain water quality within the natural streams and rivers of the Reservation that will protect the fish and wildlife habitat, preserve the water quality of the Tribe, and promote a clean drinking water resource for our Tribal membership in perpetuity.

Consistent with this Policy, the Business Committee hereby declares that the Ute Water Compact must contain four essential elements, to wit: (1) tribal water storage; (2) rehabilitation and betterment of the Uintah Indian Irrigation Project; (3) Tribal administration, regulation, and enforcement of the Tribal water rights; and (4) the restoration of the application of the Non-Intercourse Act, 25 U.S.C. § 177, to all the Tribe's reserved water rights.

UTE TRIBE FISH STOCKING AND TRANSFER POLICY

I. AUTHORITY

Under authority of the Ute Tribe Business Committee, the Ute Tribe Fish and Wildlife Department is empowered to protect and enhance the fish and wildlife resources of the Uintah and Ouray Reservation. Except as provided by cooperative agreement with other agencies, only the Ute Tribe Fish and Wildlife Department may stock and transfer fish on trust lands of the Uintah and Ouray Reservation.

I. PURPOSE

This policy constitutes the procedures and guidelines for the Ute Tribe Fish and Wildlife Department to stock and transfer native and nonnative fishes for conservation, recovery, sportsfishing recreation, and other purposes.

II. POLICY

Fish stocking and transfer is an essential and integral component of fish management within the Uintah and Ouray Reservation. Fish stocking and transfer will be conducted in a manner so as not to effect negative impacts nor adverse modification to native aquatic species or their habitat. Fish stocking and transfer will aid in the conservation and restoration of native species, enhance existing native fish populations, or augment the efficient and effective management of recreational fisheries. The purpose of such fish stocking and transfer is to provide maximum benefits to the recreational angler while protecting and enhancing the aquatic resources of the Uintah and Ouray Reservation.

III. DEFINITIONS

- A. **Advanced Fingerling:** This refers to hatchery fish with a mean size of five (5) inches.
- B. **Annual Fish Stocking Schedule:** This is an annual summation of hatchery production allocation by species, size, and target stocking date for waters managed by the Ute Tribe Fish and Wildlife Department. This schedule include all fish to be stocked within the Uintah and Ouray Reservation or as provided by mutual agreement with the Utah Division of Wildlife Resources or the U.S. Fish and Wildlife Service. Exceptions to this schedule shall be noted as excess production and/or emergency deviations as specified in other parts of this document (See IV.F. Stocking of Nonnative Salmonids 3., Excess Production a., and IV. D.2. En route Problems).
- C. **Annual Fish Transfer Schedule:** Annually, a list of proposed wild fish transfers will be compiled so that appropriate approval and coordination can be completed.
- D. **Basic Yield Waters:** Management focus is on family-oriented recreation. This management concept utilizes available habitat and biological productivity to grow fish to an acceptable size. These water may be stocked with fingerling-sized fish or be sustained through natural reproduction. Generally catchable fish are stocked only to supplement the fishery, but they

do not provide the majority of the harvest. In a few situation where avian or fish predators prohibit fingerling plants, catchable fish may be stocked. Catchables still provide a put-grow-and-take type fishery and are not stocked for immediate return as they are in “intensive yield waters”. Although some large fish may be produced in basic yield waters, trophy-sized fish are not the goal of this type of management.

- E. **Catchable:** This refers to a hatchery raised fish a minimum of 8 inches or larger.
- F. **Conservation Population:** A reproducing and recruiting group of native fish, geographically isolated, that is managed to sustain the existence of the species.
- G. **Conservation Water / Drainage:** A water or drainage that contains a conservation population.
- H. **Fingerling:** This refers to hatchery fish with a mean size of three (3) inches.
- I. **Fisheries Management Plan:** A fish species management plan, primarily for the purpose of recreational sportsfishing, developed for an individual water body, stream reach, or watershed as appropriate.
- J. **Fry:** Fish with a mean size of one (1) inch.
- K. **Hatchery Production Plan:** A three year plan establishing production quotas by species, size and stocking or target transfer dates by the Ute Tribe Fish and Wildlife Department. This may be amended by stocking and/or transfers from U.S. Fish and Wildlife Service, the Utah Division of Wildlife Resources, or other fish production sources.
- L. **Hydrologic Unit Management Plan:** The Ute Tribe Aquatic Resource Management Plan is currently under development. This plan accesses the potential for beneficial uses of the aquatic resources within the jurisdiction of the Ute Tribe. The aquatic resources are inventoried by watershed (hydrologic [HUC] units for drainage, sub-drainage) to layout management considerations for aquatic species and their habitats. This document will also serve as a reservation-wide baseline inventory for the purposes of a programmatic environmental assessment.
- M. **Intensive Yield Waters:** These waters provide fishing opportunity where angling pressure is heavy or where habitat conditions are marginal for fish growth and survival. These waters are generally smaller than “basic yield waters” and are usually more heavily used recreation sites. Management involves the stocking of catchable fish. These fish are stocked to provide immediate fishing opportunities. The fish are not intended to stay in the water and grow to a larger size. Family, youth and senior and/or handicap anglers are the primary focus of this management strategy. This type of stocking is usually not done in waters managed with native or wild trout.
- N. **Introduction:** Release or stocking of fish into historically unoccupied water for promoting conservation or sportsfishing purposes.

- O. **Native Fish:** Fish species that existed historically within the exterior boundaries of the Uintah and Ouray Reservation or within its historic range.
- P. **Re-introduction:** Release of a native fish into historically occupied sites for the purpose of reestablishing populations.
- Q. **Short Stopping:** Fish being diverted from a stocking quota scheduled for one water to a water that is not scheduled to receive those fish (e.g. field personnel meeting a hatchery truck to assist with stocking and instructing the driver to divert some or all of the load of fish into another water without approval). This does not include emergency shifts of fish due to mechanical problems or water quality problems where those fish will be used as part of a scheduled and approved quota.
- R. **Stocking:** The introduction or reintroduction of native or nonnative fish produced in a hatchery and released into any water designated by the Ute Tribe Fish and Wildlife Department consistent with the intent of the Ute Tribe Stocking Policy.
- S. **Sub-catchables:** Fish with a mean size of seven (7) inches.
- T. **Transfer:** The movement of fish from one water to another water (i.e. salvage, restocking), including transfer of fish (e.g. fertilized fish eggs) between hatcheries.
- U. **Trophy Waters:** Under this concept, waters are oriented toward providing quality fishing opportunities, not necessarily quantity. Management efforts are directed toward producing “larger than average” sized fish. Habitat quality and water size are usually determinant factors. Trophy water can be managed through either stocking or natural reproduction. Other angling use created under this concept is secondary to trophy fish production.
- V. **Wild Fish:** Free ranging fish that are the result of natural reproduction.
- W. **Wild Fish Water:** This concept allow the fish species and its habitat to dictate what can naturally be produced and sustained. Fisheries are maintained solely through natural reproduction. Whether or not this group can produce substantial fishing opportunities is not a primary management issue. The Wild Fish concept differs from the Basic Yield concept in that management efforts are directed toward sustaining fisheries that never require stocking, other than the initial transplant. Aquatic habitats under this concept are usually more pristine than those in other concepts, since it would be impossible to sustain a wild fishery in a degraded environment. Habitat preservation and enhancement receive emphasis under this concept, as do special regulations.
- X. **Wild Trout:** Any population of trout species or subspecies that is sustained solely through natural reproduction.

IV. PROCEDURES

A. FISH HEALTH REQUIREMENTS

1. All fish stocking and transfer into and out of Ute Tribal fish rearing facilities will be free of serious pathogens. In order to implement this policy and to prevent the spread of serious pathogens to other hatcheries and watersheds, the Ute Tribe will cooperate with the U. S. Fish and Wildlife Service Fish Health office.

B. FISH FROM HATCHERIES:

1. No fish, with the exception of eggs, shall be moved from one Tribal hatchery / fish rearing facility to another within the Uintah and Ouray Reservation without written authorization from the Ute Tribe Aquatic Resource Specialist.
2. No fish, with the exception of eggs, shall be moved from a Tribal hatchery / fish rearing facility to a State, Federal or private facility without prior written authorization from the Ute Tribe Aquatic Resource Specialist and corresponding authority within the jurisdiction of the receiving agency.
3. The number and size of fish stocked from a Tribal hatchery / fish rearing facility will be identified in a Fish Stocking / Transfer Schedule. A record of the Fish Stocking / Transfer Schedule will be maintained by the Ute Tribe Fisheries Biologist and available for inspection at the Ute Tribe Fish and Department upon authorization from the Department Director.
4. Long-range (over 3 years) fish production targets will be determined in consultation with the appropriate agencies within the jurisdiction where fish will be stocked.

C. FISH TRANSFERS

The Ute Tribe Fish and Wildlife Department recognizes the importance of cooperating and coordinating with other State and Federal resource agencies. Input from these agencies will be highly regarded. The number and size of fish to be transferred between waters will be identified in the Fish Stocking / Transfer Schedule maintained by the Ute Tribe Fisheries Biologist and available for inspection at the Ute Tribe Fish and Department upon authorization from the Department Director. All transfers will comply with applicable Utah Department of Agriculture Procedures pursuant to 4-37-501 Health Approval Exceptions (R58-17).

1. Wild populations of fish and/or aquatic species shall be exempt from pre-transfer health approval requirements.

2. Fish health inspections of wild populations will be performed by the Ute Tribe Fish and Wildlife Department or their designate.
3. Findings will be reported to the U.S. Fish and Wildlife Service Fish Health Center, the Utah State Health Board, Utah Department of Agriculture and/or State Veterinarian.
4. In consultation with other state or federal resource agencies, the Ute Tribe Fish and Wildlife Department may determine to take the following actions:

Transfer of salmonid species:

- a. Emergency transfers - it may be necessary for Ute Tribe Fish and Wildlife Department to transfer fish from a de-watered habitat or aquatic habitat endangered by environmental emergency. The Ute Tribe Fish and Wildlife Department will transfer salmonid fish from the endangered habitat to sites within the same drainage basin, and downstream from the endangered habitat, under the following conditions:
 - that the health of the fauna in the receiving water not be adversely impacted by the transfer, and
 - that transfers not be made to waters that serve as sources for fish culture operations, and
 - such transfers will be reported to the Utah Division of Wildlife Resources within one week of the transfer.
- b. Planned management transfers - Most transfers can be anticipated or are planned. The Ute Tribe Fish and Wildlife Department will consult and advise the appropriate resource agency when considering a management transfer between watersheds of mixed jurisdiction or interstate transfer. Information about the watersheds where the fish are transferred and the receiving watershed may include the need for transfer, disease history of fish, condition of habitat, potential risks of pathogens and to genetic diversity, and the presence and proximity of fish culture operations.

D. TRANSPORTATION OF NATIVE AND NONNATIVE FISH

Guidelines for pre-haul handling, additive, and hauling densities are as follows:

1. Record Keeping

Stocking forms will be filled out accurately and as completely as possible for each water stocked (whether it is a regular hatchery stocking, a wild fish transfer, or fish salvage). Water quality measurements and pH, will be made in the truck tanks and for each water stocked, where possible. If multiple hauls are made within one week, the receiving water be measured once.

2. En-route Problems

If there are mechanical failure during a haul, the first step is to contact the Ute Tribe Fisheries Biologist to determine the appropriate course of action. A copy of important phone numbers and radio frequencies should be kept in the fish hauling truck at all times. In the event that stocking an alternative site is the selected course of action, the alternative site must be consistent with conservation agreements and current management programs. Species cannot be stocked into new waters on Trust lands without prior authorization from the Ute Tribe Fisheries Biologist. Species cannot be stocked into new waters outside the boundaries of the Uintah and Ouray Reservation without prior authorization from the appropriate authority. If no prior contingency plans have been made, the fish must be returned to the hatchery if possible or killed rather than stocked into an unauthorized water.

If there are water quality problems (e.g. high temperature, ice cover, high pH, or insufficient water) at the designated delivery site, the Ute Tribe Fisheries Biologist should be contacted to determine an appropriate course of action. If no contact can be made, return to the Ute Tribe hatchery / rearing facility as soon as possible. Fish transport personnel should contact field personnel or conservation officer with responsibilities in the receiving waters about water quality conditions prior to leaving the hatchery.

Transport fish tanks will be checked prior to leaving the hatchery, after the first half hour, and every hour thereafter. Check will include temperature, oxygen levels in the water, oxygen gauge and valve, and/or paddle. Visual inspection inside the tank for surface foam, signs of stress, and air stone and/or paddle aeration activity.

3. Tempering and Water Quality Limits

Water temperature differences between tank and receiving waters that are greater than $\pm 2^{\circ}\text{C}$ at arrival, or within $\pm 8^{\circ}\text{C}$ cumulative over 5 hours of tempering should not be stocked.

Cold water fishes will not be stocked into waters with temperatures greater than 22°C or pH greater than 9.5 or less than 4.5.

4. Disinfection

After loading water from a different hatchery or from a receiving water, the transport trucks are to be filled with water and disinfected with 200 ppm sodium hypochlorite for thirty minutes. The outside of the vehicle and tank will be disinfected with 1000 ppm sodium hypochlorite and rinsed with pathogen free water. Rinse tank after disinfection to prevent any toxicity

problems when loading the next time. Any nets, buckets, etc. used during the haul must be disinfected for ½ hour in 200 ppm sodium hypochlorite solution after being used. Trucks are to be cleaned at a car-wash if stocking muddy sites, with special attention given to removing mud and dirt from the tires and underbody. Truck tanks not exposed to water different from its origin need not to be disinfected, but should be cleaned to keep air stones and tank interior in good condition.

E. CONSERVATION AND RECOVERY STOCKING OF NATIVE SPECIES

General Guidelines

1. All entries made into the Ute Tribe Stocking / Transfer Schedule will include codes and/or entries to address the following:
 - a. Define goals and objectives for stocking
 - b. Provide justification of fish selected.
 - c. Describe and justify the location to be stocked.
 - d. Describe potential impacts.
 - e. Provide rationale for size of fish.
 - f. Provide rationale for any marks and tags to be used.
 - g. Describe rationale for timing of stocking.
 - h. Discuss the likelihood of success.
 - i. Refer to Tribal monitoring assessment protocol
2. The Ute Tribe Fish and Wildlife Department recognizes the importance of cooperating and coordinating with other natural resource agencies, particularly with the signatories to the Colorado River Cutthroat Conservation Strategy Agreement. Production and stocking requests received from these entities regarding native fish stocking conducted by the Ute Tribe Fish and Wildlife Department on non-trust lands will be honored where possible. Other inputs from these agencies and other stakeholders including the angling public on trust lands will be considered.
3. Augmentation stocking may be conducted in areas where wild populations are depressed or where successful recruitment is needed to establish self-sustaining wild populations within the historic range of the species. A determination by the Fisheries Biologist in consultation with other resource agencies will be made prior to stocking that the activity will not adversely affect the overall status of the same or other native species.
4. Re-introductions will be conducted to recolonize unoccupied habitat that is suitable and occurs within the species historic range. Reintroduced populations will typically be stocked into conservation water and drainages. A determination by the Fisheries Biologist in consultation with other resource agencies will be made prior to stocking that the activity will not adversely affect the overall status of the same or other native species.

5. Stocking for purposes of establishing refugia populations may be conducted in areas where suitable habitat exists within the known historic range of the species.

Coordination with Recovery and Conservation Programs

Stocking will be consistent with the Colorado River Cutthroat Conservation Strategy Agreement, other applicable conservation agreements and recovery plans, and the Ute Tribe Fisheries Management Plan.

F. NATIVE AND NONNATIVE SPORTFISH AND RECREATION STOCKING

Where there is biological potential, management should emphasize wild fish whenever practical. In particular the Ute Tribe has indicated a preference for re-establishing Colorado River Cutthroat Trout throughout its historic range. The Ute Tribe Fisheries management plan will take advantage of available biological potential and habitat given the constraints of providing diverse angling opportunities and meeting angling catch rate targets.

General Guidelines:

1. Stocking native species for recreation purposes is consistent with and promotes the goals of the Ute Tribe Fish and Wildlife Department.
2. Some waters within the Uintah and Ouray Reservation are capable of supporting populations of desirable game fishes as a result of natural reproduction. These waters may be considered for management as wild, self-sustaining fisheries to provide limited sports fishing opportunities. Waters managed as wild fisheries will generally not be stocked, unless environmental variables dictate augmentation stocking. Special regulations may be recommended for such waters to ensure sustainable harvest and to protect the wild population.
2. The Ute Tribe Fish and Wildlife Department recognizes the importance of cooperating and coordinating with other natural resource agencies, particularly with the signatories to the Colorado River Cutthroat Conservation Strategy Agreement. Production and stocking requests received from these entities regarding native and nonnative sportsfish stocking conducted by the Ute Tribe Fish and Wildlife Department on non-trust lands will be honored as means permit. Other inputs from these agencies and other stakeholders including the angling public on trust lands will be considered.
3. Generally, fish raised for sport fishing purposes will only be stocked into lakes or streams that have public access in accordance with the Ute Tribe Fishing Proclamation. Areas closed to the public may be stocked upon

recommendation of the Ute Tribe Fisheries Biologist and authorized by the Department Director.

4. All stocking of fish over which the Ute Tribe exercises fisheries management jurisdiction shall be in accordance with the Fish Stocking / Transfer Schedule, the Ute Tribe Fisheries Management Plan, and the Ute Tribe Aquatic Resource Management Plan (Hydrologic Unit Management Plan).
5. Stock for sportsfishing recreation will be consistent with the Colorado River Cutthroat Conservation Agreement and Strategy and other applicable conservation and recovery program objectives and goals.
6. Stocking within the Exterior Boundaries of the Uintah and Ouray Reservation within designated Wilderness areas will comply with policies and guidelines as described in the Fish Stocking and Transfer Procedures of the Utah Division of Wildlife Resources.
7. Hatchery fish will be used in altered streams that will not support an acceptable wild fishery or in man-made wild fishery when:
 - a. Natural reproduction and recruitment is not sufficient to provide an acceptable fishery (acceptable will vary depending on the management objective for the fishery as described in the Fisheries Management Plan).
 - b. The resulting fishery justifies the cost of the stocking program (e.g. return of the stocked fish will meet objectives set for catchable and fingerling fish described in this document and/or the value of the fish caught exceeds the cost of stocking). This is not a definitive criteria by itself but should be considered in the overall evaluation of a stocking program.
 - c. The proposed stocking is consistent with Conservation Agreements or inter-agency agreements for that drainage.

New Introductions:

1. The following steps will be followed for the introduction of non-native fish species into waters of the Uintah and Ouray Reservation.
 - a. Determine that the proposed stocking is consistent with interagency stocking agreements, conservation agreements, and recovery programs covering the drainage or sub-basin. Attempt to resolve conflicts if any with existing agreements on a case-by-case basis.

- b. A proposal addressing the following will be submitted for review to the Colorado River Conservation Team prior to introduction of a non-native fish species into waters of the Uintah and Ouray Reservation.
 - Management goals and objective to be achieved by proposed stocking
 - location of proposed stocking
 - Species, numbers and rationale for selecting the species, the potential for escapement, control measures that could be implemented to reduce the risk of escapement, and the potential for survival in habitat outside the target area.
 - the potential impacts to native species and existing wild trout populations and what can be done to avoid or remedy those impacts, including information on the feasibility and likelihood those remedies will be successful.
 - a monitoring plan for assessment of whether the goals and objective of the introduction have been achieved.
- c. Review by members of the Colorado River Basin Conservation Team and the Ute Tribe will attempt to resolve concerns regarding proposed introduction.

Stocking of Nonnative Salmonids:

1. The stocking of non native salmonids will follow all procedures outlined herein and in the general guidelines above.
2. Stocking of non-native salmonids will occur in waters that are man-made impoundments where surface connection to streams do not exist, or the likelihood of escapement into stream designated as an element in the Colorado Cutthroat Conservation Plan is unlikely.
3. Excess production fish from Ute Hatchery and/or other State, Federal hatcheries may be allocated to waters where:
 - the biological potential (e.g. growth / survival) exists to sustain more fish, or
 - catch-rate targets are not being met, and
 - the species is consistent with Ute Stocking/Transfer Schedule, and
 - the excess fish will not adversely impact the existing fishery
4. Catchable Trout Stocking
 - a. There are no established stocking rates (fish/acre) for catchables.

- b. Catchable should be stocked on waters within the jurisdiction of the Ute Tribe where those waters produce a 40% or greater return by number or at least one pound return per pound stocked based on return to creel surveys conducted by the Fish and Wildlife Department.
 - c. Catchable should be stocked on waters beyond the jurisdiction of the Ute Tribe as requested by the agency with appropriate jurisdiction, within the guidelines provide herein.
 - d. Preference will be given to catchable requests for flat water where put-grow-and take programs are not feasible, especially waters that meet criteria b. above and where 25% or more of the anglers are juveniles, seniors, and/or disabled.
 - e. Where competition, predation, or habitat conditions prohibits the use of fingerlings or advanced fingerlings, catchables may be used to maintain a fishery.
5. Fingerling, Advanced Fingerling and Sub-Catchable Trout Stocking
- a. Stocking rates may range from 50-400 fish per surface acre
 - b. Stocking quotas should be optimized within the biological potential of a specific water (fish should maintain good growth rates) and angler use.
 - c. The smallest fish possible will be stocked that will provide an acceptable return to the angler of at least one pound to the creel for each pound stocked. This is based on a mean catch rate of 0.50 (± 0.25) fish per hour of trout averaging approximately 11 inches for Basic Yield, Intensive Yield, and Wild Fisheries.

Stocking of Other Nonnative Fish

- 1. General Stocking:
 - a. The stocking of other nonnative fish will follow all procedures outlined herein and in the general sportfishing recreation stocking guidelines above.
 - b. In most situations, stocking of warm water species will be done on an introductory basis (fish will be stocked 1-3 years to start a self-sustaining population. The objective is to manage with species that can sustain fisheries through natural reproduction. Some general exceptions are stocks of hybrids for specifically identified purposes and locations.

- c. Generally, initial stocking of predator and forage fish into fishless waters should be at least a 1:10 ratio (1 predator : 10 forage fish).
 - d. Introduction of catfish, or predators like tiger muskies, wipers, walleyes, and smallmouth bass will be considered by the Ute Tribe Fish and Wildlife Advisory Board on a case-by-case basis. Introduction will be limited to man-made reservoirs with no surface connection to stream and rivers, and where the potential for escapement to the Duchesne River system where impacts to Colorado Pikeminnow is limited.
2. Two-story Fisheries (salmonids with cool water non-salmonids)
- a. Tiger muskies or walleyes will not be stocked into waters where native and non-native trout are part of the management program.
 - b. Waters that have been trout fisheries but due to deteriorating water quality are only producing marginal or seasonal trout fisheries should be considered two story fishery or strictly cool water fisheries.

Special Event Stocking

Stocking for special events may be allowed for the following reasons:

- c. Special event stocking of catchable trout may be made for organized fishing events for:
 - physically or mentally challenged groups
 - aquatic education events to promote sport fishing
 - senior citizens and/or youth groups
- d. Generally, special event stocking will be done in water that the public will be able to access following the event.
- e. Special event stocking will occur in small ponds or isolated stream reaches where an acceptable return to anglers can be anticipated in a limited time. Fish should be stocked at least 24 hours before the event so they can acclimate to their new surroundings and be readily caught.
- f. Species and locations for special event stocking must be consistent with Conservation Agreement and Recovery Plans and avoid water managed for native and wild fish.

§13-4-118. Waters Offense.

(1) A person is guilty of waters offense if he:

- (a) interferes with or alters the flow of water in any stream, river, ditch, canal or lateral without lawful authority to do so and in violation of the right of any other person; or
- (b) knowingly breaks, injures, alters or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure intended to create hydraulic power or pressure or direct the flow of water, without lawful authority to do so; or
- (c) takes irrigation water out of turn or in excess amount without lawful authority to do so and in violation of the right of any other person; or
- (d) pollutes or befouls any water in any of the following ways:
 - i) constructs or maintains a corral, sheep pen, goat pen, stable, pig pen, chicken coop, or other offensive yard or outhouse where the waste or drainage therefrom shall flow directly into the waters of any stream, well, spring, or source of water used for domestic purposes; or
 - ii) deposits, piles, unloads or leaves any manure heap, rubbish, or the carcass of any dead animal where the waste or drainage therefrom will flow directly into the waters of any stream, well, spring or source of water used for domestic purposes; or
 - iii) constructs, establishes or maintains any corral, yard, vat, pond, camp, or bedding place for the shearing, dipping, washing, storing, herding, holding or keeping of livestock in such proximity to a stream, or other source of water used for domestic purposes or which flows through a city or town, so that the waste, refuse or filth therefrom find their way into said source of water; or
 - iv) knowingly causes or allows any substance harmful or potentially harmful to human life to enter into a source of water used for domestic purposes.

(2) The presence of lawful authority need not be disproved by the prosecution but shall be presented as an affirmative defense.

(3) Waters offense is a Class B offense.

§13-4-119. Public Nuisance.

(1) A person is guilty of public nuisance if, without lawful authority to do so, he does any act or fails to perform any duty, which act or omission either:

- (a) unreasonably annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons; or
- (b) offends public decency; or
- (c) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, highway or road; or
- (d) in any way unreasonably renders three or more persons insecure in life or the use of property.

(2) An act or omission to act which affects three or more persons in the ways specified in this Section is still a nuisance regardless that the extent of the annoyance or damage inflicted on the individuals is unequal.

(3) The presence of lawful authority need not be disproved by the prosecution but shall be presented as an affirmative defense.

(4) The commission by act or omission of a public nuisance shall not be punished under this section if the same conduct constitutes another offense which has also been charged against a defendant.

(5) Public nuisance is a Class C offense.