

River Report

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Will Animas-La-Plata Become Reality?

Native American water rights have been labeled “the sleeping giant” within the Colorado River Basin, in part, because some rights have yet to be quantified. In other instances, tribal water rights have been quantified but because of a lack of infrastructure, no water has been delivered (the water exists on “paper” but is not “wet”). Also, legal uncertainties about whether or not tribes can lease their water off-reservation or out-of-state remain undecided, clouding use of their allocations.

As those connected with the Colorado River know, the politics of the river seldom flow as quickly as its waters. For over 30 years opponents and proponents have waged a bitter battle over Animas-La Plata (ALP) – a water project that would settle the water rights claims of two Colorado River Indian Tribes, the Southern Ute Indian and Ute Mountain Ute Tribes. As envisioned, the original project, located in the Four Corners area of the Southwest (the intersection of Arizona, New Mexico, Utah and Colorado), would have pumped water out of the larger Animas River (with flows averaging 720,000 acre-feet annually) and moved it across a divide to the drier La Plata River (averaging 30,000 acre-feet annually) primarily for irrigation. Two failed proposals and \$67.5 million later, a fourth-generation proposal to meet a 12-year-old water rights settlement with the Colorado Ute tribes hinges on the approval of Congress and federal environmental regulators.

H.R. 3112, sponsored by Congressman Scott McInnis (R-CO), would allow the federal government to meet contractual obligations on water rights for the Colorado Ute tribes, essentially amending a 1988 congressional act that quantified those water rights.

H.R. 3112 is a variation of a 1998 Clinton administration ALP proposal dubbed “Ultra Lite,” but there are several discernable differences between the two. While Ultra Lite calls for building a 90,000 acre-foot reservoir (one-third the size of the reservoir in the original proposal) for approximately \$160 million, H.R. 3112 does not detail a reservoir of specific size. Instead, the bill’s supporters chose to wait for the January 2000 release of the Draft Supplemental Environmental Impact Statement (2000 EIS) by the Bureau of Reclamation (Bureau), yet another supplement to the original 1980 EIS. The 2000 EIS details a comparison of 10 alternatives for building ALP, given current restrictions under the Clean Water Act (CWA) and the Endangered Species Act (ESA), including two non-structural alternatives strongly supported by those opposed to building a reservoir. From those 10 alternatives, the Bureau has selected what it deems to be the most environmentally feasible – a 120,000 acre-foot reservoir.

“What is motivating us to propose this very scaled-down, off-stream reservoir is that it will provide the tribes with the potential to realize and utilize their water right,” said David J. Hayes, deputy secretary of the Interior. “We need to exercise our trust responsibility and settle those water rights.”

But opposing groups still aren't convinced that building a reservoir is a worthwhile endeavor for taxpayers or the environment, especially when it is still not known how the project's water will be used for certain.

"Primarily, our objection to ALP is the waste of taxpayers' dollars in a heavily subsidized water development scheme in which there is no use for the water," said Michael Black, president of Taxpayers for the Animas River. Instead, opponents have suggested that tribes be given money to purchase land and water rights to meet the settlement instead of building a reservoir – a plan which the recent 2000 EIS determined was not the best alternative.

To add to the conundrum, the clock is ticking on a potential time bomb for non-Indian water users of the rivers. As stipulated in the agreement intended to grant outstanding water rights to the tribes – the 1988 congressionally approved Settlement Act – water must be delivered from a constructed ALP to the tribes by 2000 or the tribes have an option until 2005 to re-open water rights settlements on the Animas and La Plata rivers through the courts. The Bureau conceded several years ago that it does not have time to meet the deadline even if funds were available.

"We've waited a heck of a long time, over 10 years, since we signed an agreement with the president of the United States to have that water delivered to us," said Clement Frost, former chairman of the Southern Ute Indian Tribe. "Why wait longer for something to happen when nothing has happened to date?"

The possibility of the tribes reopening litigation over water rights on the Animas and La Plata rivers is a potentially detrimental situation for non-Indian parties in the basin (ironically, most of whom side with the Colorado Utes in their support of H.R. 3112). Such reopened litigation could allow the Colorado Utes even greater water allocations than currently allotted them under the '88 agreement because of their senior water rights holder status.

"The implications are extremely far reaching," said Greg Walcher, executive director of the Colorado Department of Natural Resources, "The state would be the defendant if such a lawsuit were to occur and we'll have to come up with enormous amounts of money to deal with it." Walcher said local governments and other water users in the state could stand to lose large volumes of water.

This issue of *River Report* profiles the evolution of ALP through the decades, the decisions, dilemmas and debates encompassing this issue, from the Winters Doctrine to the latest preferred alternative for ALP recommended by the Bureau