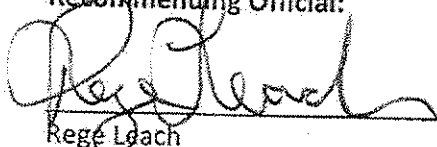


COLORADO DIVISION OF WATER RESOURCES' PROTOCOL FOR ADMINISTRATION OF
ANIMAS-LA PLATA PROJECT WATER RIGHTS

DATED: August 2013

Recommending Official:

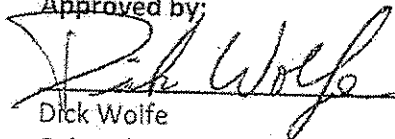


Rege Leach
Division Engineer, Water Division 7

8-26-13

Date:

Approved by:



Dick Wolfe
Colorado State Engineer
Director of Colorado Division of Water Resources

August 26, 2013

Date:

**COLORADO DIVISION OF WATER RESOURCES' PROTOCOL FOR ADMINISTRATION OF
ANIMAS-LA PLATA PROJECT WATER RIGHTS**

August 2013

The purpose of this Protocol is to identify guidelines and provide a reference document for use by State and Division Engineers in the State of Colorado (collectively "Engineers") when administering the water rights in Colorado related to the Animas-La Plata Project ("A-LP" or "Project"). The A-LP is a federally owned and congressionally-authorized water project. Its authorized purposes include providing water to the Southern Ute Indian Tribe and Ute Mountain Ute Tribe ("Colorado Ute Tribes") as part of a congressionally authorized settlement, as well as serving Project Participants by delivering municipal and industrial water for use in Colorado and New Mexico. The Bureau of Reclamation ("Reclamation") holds title to the A-LP facilities, and has currently contracted with the Animas-La Plata Operation, Maintenance and Replacement Association ("A-LP OM&R Assn."). The A-LP OM&R Assn. was created by a March 4, 2009 Intergovernmental Agreement ("IGA") among certain State and Tribal parties to operate A-LP in furtherance of its congressional authorization. In Colorado, the Southwestern Water Conservation District ("SWCD") currently holds the water rights appropriated for Project purposes.*

Among other things, this Protocol describes how the Engineers will account for uses of Project water in Colorado under the A-LP Decrees to maximize beneficial use and protect the vested water rights of others. It also identifies other relevant documents that define the Project. This Protocol is not binding on the Engineers, Project Participants, A-LP OM&R Assn., SWCD, the United States of America ("United States") or anyone else, and may be revised following consultation with water users, including, but not limited to, the A-LP OM&R Assn., SWCD, United States, the State of New Mexico, and the Project Participants, which include in Colorado the Tribes, State of Colorado, and Water Resource and Power Development Authority by separate agreement with the Animas La Plata Conservancy District, and, in New Mexico, the Navajo Nation, San Juan Water Commission ("SJWC"), and the La Plata Conservancy District ("LPCD"). This Protocol will be revised to reflect any relevant final court-approved changes to the underlying decrees or congressionally-authorized changes to A-LP, but does not amend or control any underlying decrees, compacts, federal statutes, agreements or other documents that define the A-LP water rights, define the Tribes' water rights, identify Project allocations or address A-LP operations.

This Protocol is intended only to assist the Engineers in meeting their statutory duties and is not intended to, nor does it, create any right, benefit, claim, duty or obligation, implied

* In New Mexico, the United States Secretary of the Interior currently holds the water rights that were appropriated for Project purposes. The New Mexico State Engineer has requested the Secretary assign a portion of these rights to the San Juan Water Commission and the La Plata Conservancy District of New Mexico pursuant to Section 303 of the Colorado Ute Settlement Act Amendments of 2000 (Pub. L. No. 106-554, 114 Stat. 2763A 258 (2001)), and also has requested the Secretary hold a portion of these rights in trust on behalf of the Navajo Nation.

or otherwise, enforceable at law or equity by any person, including but not limited to third parties.

Finally, this Protocol does not modify, supersede, alter or impair the obligations and entitlements of Colorado and New Mexico under the Animas-La Plata Project Compact, Section 501 of the Colorado River Basin Project Act, Pub. L. No. 90-537, 82 Stat. 885, the Upper Colorado River Basin Compact, 63 Stat. 31, ch. 48, and the Colorado River Compact of 1922 as approved by Congress in the Boulder Canyon Project Act of December 1928, 45 Stat. 1057. Moreover, this Protocol is not intended to account for the use or administration of Project water within the State of New Mexico.

I. SUMMARY OF THE ORIGINAL 1966 DECREE OF A-LP WATER RIGHTS IN THE ANIMAS RIVER (Civil Action No. 1751-B)

The conditional water rights for the A-LP were originally adjudicated in Civil Action 1751-B (Animas River) and 807-C (La Plata River), both decreed on March 21, 1966 with a 1938 appropriation date. As outlined below, this Protocol concerns only the three water "Storage Rights" and three "Direct Flow Rights" in CA 1751-B ("1966 Decree"), and their subsequent changes in Case No. 80CW237, entered on August 24, 1984 ("Change Decree")(together "A-LP Decrees"). This Protocol addresses the A-LP Decrees only to the extent they are used to serve the Project as it is defined in the Colorado Ute Settlement Act Amendments of 2000, Pub. L. No. 106-554, 114 Stat. 2763A 258 (2001), ("2000 Amendments")(see Part III, below). The administration of any remaining water rights under the A-LP Decrees is outside the scope of this document.

A. Reservoir Storage Rights

The following three Storage Rights from the 1966 A-LP Decree were each granted an alternate point of storage at Ridges Basin Reservoir, a.k.a. Lake Nighthorse in the Change Decree:

- 1) Howardsville Reservoir:
93,700 acre feet ("af") initial storage. Annual storage: 90,700 af + 90,700 af refill
- 2) Animas Mountain Reservoir:
17,640 af initial storage. Annual storage: 14,640 af + 14,640 af refill
- 3) Hay Gulch Reservoir:
56,330 af initial storage. Annual storage: 53,730 af + 46,740 af refill

B. Direct Flow Rights

The following three Direct Flow Rights in the 1966 A-LP Decree were later each granted an alternate point of diversion at the Durango Pumping Plant ("DPP"):

- 1) Animas Diversion Canal – Teft Diversion Dam: 600 cfs

- 2) Falls Creek Diversion Dam and Canal: 60 cfs
- 3) Junction Creek Diversion Dam and Pipeline: 100 cfs

The 1966 Decree did not establish a filling rate for the Storage Rights independent of the rate decreed for the Direct Flow Rights. To avoid expansion of the A-LP Decree water rights, diversions to storage and diversions for direct use may not exceed the amount of water physically and legally available at the originally decreed points of diversion.

C. Place and Manner of Use

The manner of use for the water supply in the 1966 Decree includes irrigation, domestic, municipal, industrial, recreation, fish and wildlife, flood control and other beneficial uses. Other than for irrigation, the 1966 A-LP Decree is silent on place of use:

The purpose of the Animas-La Plata Project, and the appropriation of water therefore, is to provide a full supply of water to irrigate 58,900 acres of land to be brought under cultivation, of which 44,200 acres of land are in La Plata and Montezuma Counties in Colorado, and 14,700 acres are in San Juan County, New Mexico, and to provide a supplemental supply of water to 25,600 acres of land now under cultivation, of which 20,100 acres are in Colorado and 5,500 acres are in New Mexico. In addition, the Project will supply water for domestic, municipal, industrial, recreation, fish and wildlife, flood control and other beneficial purposes.

1966 A-LP Decree at 121, para 5. A reasonable implied place of use of the A-LP Decrees for non-irrigation purposes may be within the geographical boundaries of the SWCD, if the use is in Colorado, including within the boundaries of the Colorado Ute Tribes' Reservations and within the geographical boundaries set forth in the permits issued by the New Mexico State Engineer's Office in New Mexico.

D. Anticipated Demand

The Reclamation studies prior to the 1966 A-LP Decree demonstrate that the contemplated draft under the three Storage Rights and three Direct Flow Rights was larger than the amount needed for the Project operations described herein. See A-LP Project Feasibility Report (Chapter 4 – Water Supply) (Reclamation, Feb. 1962).

II. SUMMARY OF THE CHANGE DECREE

The Change Decree authorized an alternate point of diversion for the three Direct Flow Rights at the "Durango Pumping Plant and Ridges Basin Inlet Conduit," with a flow rate of 600 cfs. Change Decree at pp. 6-7 and 12. It also authorized an alternate place of storage for the three Storage Rights in Ridges Basin Reservoir, a.k.a. Lake Nighthorse, with a capacity of 280,040 af. Change Decree at 7-9 and 12.

The Change Decree requires “that measuring devices be placed at the original points of diversion in accordance with specifications as required by the Colorado Division of Water Resources.” *Id.* at 14, para 1(a). Diversions at the DPP are limited to “the amount of water available at the original heading in accordance with their priority, and allowances made for transportation losses, if any.” *Id.* at 14, para 2. In addition, “the amount of water to be stored at the alternate reservoir sites [is] limited to that amount which would have been available at the original reservoir in accordance with their priority, and allowances made for transportation losses, if any.” *Id.* at 14, para 3. These three conditions are referenced collectively in the Tribal Decrees, described in Part IV, *below*, as “the Teft Limitations.” See *Findings of Fact, Conclusions of Law, and Decree*, dated November 9, 2006, (discussed below) at 15, para 38.

Regarding place of use, the Change Decree states only that, “In general, there is no change in the place of use other than some reduction in total irrigated acres.” *Id.* at 2, para 2.

In the Change Decree, the Colorado District Court, Water Division 7 retained jurisdiction for three years from the completion of the Project pursuant to C.R.S. 37-92-304(6). *Id.* at 14, para 7.

III. DESCRIPTION AND CAPACITY OF PROJECT WORKS AS BUILT

In the 2000 Amendments, Congress amended Section 6 of the Colorado Ute Indian Water Rights Settlement Act of 1988 (Pub. L. No. 100-585) to authorize the Secretary of the Interior to “settle the outstanding claims of the Colorado Ute Tribes on the Animas and La Plata Rivers” by having Reclamation construct, operate and maintain:

- (i) . . . a reservoir, a pumping plant, a reservoir inlet conduit, and appurtenant facilities with sufficient capacity to divert and store water from the Animas River to provide for an average annual depletion of 57,100 acre feet of water to be used for a municipal and industrial water supply, which facilities shall . . . (IV) . . . (ii) deliver, through the use of the project components referred to in clause (i), municipal and industrial water allocations....”

Pub. L. No. 106-554 § 302 (a)(1)(A).

In the 2000 Amendments, Congress limited the use of Project water to municipal and industrial (“M&I”) uses only, as discussed in *Part V* below, and provided that “[i]f constructed, the facilities described in subparagraph (A) shall constitute the Animas-La Plata Project.” § 302(a)(1)(C). Absent further congressional authorization, “other [P]roject features authorized by Public Law 90-537 [i.e., the act that authorized the Colorado River Basin Project] shall not be commenced.” Pub. L. No. 106-554 § 302(a)(1)(C)(i).

The authorized Project components have the following capacities:

A. DPP and Inlet Conduit

The anticipated pumping capacity of the DPP was 280 cfs. The actual maximum pumping capacity ("DPP Capacity"), which includes the DPP and Inlet Conduit and pumping for the City of Durango, will be determined by Reclamation through its testing of the A-LP facilities.

B. Ridges Basin Reservoir, a.k.a. Lake Nighthorse

Live Storage Capacity:	115,075 af	"Live Storage Pool"
Dead Storage Capacity:	8,466 af	"Dead Storage Pool"
Total Storage Capacity:	123,541 af	

The reservoir's Live Storage Capacity is 115,075 af. See Attachment A (Reclamation diagram showing actual volume of all storage pools). Live Storage Capacity indicates the volume that sits above the intake of the outlet works and can be released by gravity.

IV. SUMMARY OF THE COLORADO UTE TRIBES' DECREES CONFIRMING THEIR A-LP ALLOCATIONS

The following summary of the Colorado Ute Tribes' water rights on the Animas and La Plata Rivers is intended to assist with the overall administration of Project water allocations. This summary, as well as the entire Protocol, is not intended to, nor can it, limit the Tribes' rights under the Tribal Decrees. Moreover, nothing in this Protocol affects, amends, or otherwise alters the 1986 Settlement Agreement, 1988 Settlement Act or 2000 Amendments, identified below. In addition, this Protocol does not address the Tribes' other existing water rights or future appropriations. Finally, this Protocol does not address, control, or limit the Tribes' respective abilities to take water without a water right under free river conditions.

A. Background

The water rights of the Colorado Ute Tribes on the Animas and La Plata Rivers are the subject of Colorado court decrees, a settlement agreement, and federal legislation. A listing of these documents is provided in Attachment B.

In 1976, the United States filed claims in the Colorado District Court, Water Division 7, Case No. W-1603-76, asserting federal reserved water rights on behalf of the Colorado Ute Tribes. The case was divided into eleven separate cases, each addressing claims on a different regional river. Rather than litigate the claims, the Tribes, the State of Colorado, the United States, and other parties negotiated settlements for each river. In 1986, the negotiating parties entered into the Colorado Ute Indian Water Rights Final Settlement Agreement ("1986 Settlement Agreement"), which Congress authorized in the Colorado Ute Indian Water Rights Settlement Act of 1988, Pub. L. No.100-585 (102. Stat. 2973) ("1988 Settlement Act").

In 1991, the Tribes, the State of Colorado, the United States, and other parties entered into a Stipulation for a Consent Decree, resulting in the Colorado District Court, Water Division 7's Consent Decrees entered on December 19, 1991, in Case Nos. W-1603 and W-1603-76A through J. Each of the 1991 Consent Decrees recognized and incorporated the 1986 Settlement Agreement and the 1988 Settlement Act. This Protocol addresses only two of these Consent Decrees -- Case No. W-1603-76F (Animas River) and W-1603-76J (La Plata River). See *Stipulation for a Consent Decree* in Case No. W-1603-76F (Nov. 12, 1991) and Case No. W-1603-76J (Nov. 12, 1991) (collectively "1991 Consent Decrees"). Furthermore, although these two Consent Decrees address a variety of water rights, this Protocol addresses only those portions that concern the Tribes' surface water allocations from the A-LP Project.

Complications with endangered species, water quality and other concerns prevented implementation of the 1986 Settlement Agreement, 1988 Settlement Act, and 1991 Consent Decrees on the Animas and La Plata Rivers. To address these concerns, Congress amended the 1988 Settlement Act in the 2000 Amendments. Pursuant to Section 18 (a), the 2000 Amendments expressly provide for "the final settlement of the tribal claims to water rights on the Animas and La Plata Rivers in the State of Colorado."

Congress also directed the Attorney General of the United States to file "such instruments as may be necessary to request the [Colorado Water] court to amend the final consent decree to provide for the Amendments made to this Act under the [2000 Amendments]" *Id.* at Sec. 18(c). Ultimately, the Colorado District Court, Water Division 7 issued a Decree amending the two 1991 Consent Decrees. See *Findings of Fact, Conclusions of Law, and Decree*, dated November 9, 2006, in Case Nos. W-1603-76F and W-1603-76J, 02CW85, 02CW86 ("Nov. 9, 2006 Order"), and *Order Amending November 9, 2006 Decree*, dated February 8, 2007 ("Feb. 8, 2007 Order")(collectively "Tribal Change Decrees").

B. A-LP Allocations to the Colorado Ute Tribes

Under the 1991 Consent Decrees, as amended by the Tribal Change Decrees (collectively, "Tribal Decrees"), each of the Colorado Ute Tribes is entitled to a separate allocation of water from the Project for municipal and industrial uses. The Tribal Decrees provide:

A. Animas-La Plata Project

A water right to water supplied from the Animas-La Plata Project. This water right shall have a March 2, 1868 priority date, shall be subordinated to all water rights decreed and senior to the Animas-La Plata Project, and shall share on a pro rata basis the priority of the Animas-La Plata Project, which has an adjudication date of March 21, 1966, and an appropriation date of September 2, 1938, C.A. 1751-B, District Court, La Plata County, Colorado.

- i. The water right shall entitle the Tribe to receive and beneficially use, on that part of the [Ute Mountain Ute Reservation/Southern Ute Reservation] within the State or within the boundaries of the Animas-La Plata Water Conservancy District, an allocation of water from the Animas-La Plata Project (as measured at Ridges Basin Dam and Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant), consistent with the [2000 Settlement Act Amendments], for present and future municipal and industrial uses with an average annual depletion not to exceed 16,525 acre-feet of water.

1991 Consent Decrees at 10, paras. 6.A and 7.A, as amended by the Nov. 9, 2006 Order at 6-7, para. I.C.27, and Feb. 8, 2007.

C. Administration of the Colorado Ute Tribes' Rights to A-LP Project Water

Administration of the Colorado Ute Tribes' reserved water rights under the Tribal Decrees is set forth in Section IV of the 1986 Settlement Agreement and in paragraph 12 of the 1991 Consent Decrees. Elements relevant to administering the Tribes' respective Project water allocations include, but are not limited to, recognizing that:

- (i) The Tribal Decrees do not recognize an independent diversion right from the Animas River for the Colorado Ute Tribes. The Tribal Decrees state that diversions for the Project are controlled by the A-LP Decrees, and that the A-LP Decrees remain unchanged by the amendments made to the Tribal Change Decrees. *See, e.g.*, Feb. 8, 2007 Order at 1. As such, the A-LP Decrees control the diversions for the Tribes' shares of the Project water supply that may be taken at the DPP, as described below. *See, e.g.*, Feb. 8, 2007 Order at 1, para. 2.a;
- (ii) Each Tribe's decreed place of use encompasses the entire Animas La Plata Water Conservancy District ("ALPWCD") and its respective Reservation. The Tribes may change their water rights from those set forth in the Tribal Decrees, including their place of use, under special provisions contained in paragraph 12 of the 1991 Consent Decrees. No change shall be allowed unless the Tribes and the United States file, to the same extent other project water users are required to file, an application for a change of water right in the Colorado Water District Court for Water Division No. 7 and the Court grants such change." 1991 Consent Decrees at para. 12.D; and
- (iii) The Colorado Ute Tribes' reserved water rights are permanent, and cannot be lost as a result of change of use, forfeiture, abandonment, or non-use. *See, e.g.*, 1991 Consent Decrees at Section 13.

Finally, the Colorado District Court, Water Division 7, required that until the water is put to actual M&I beneficial use, the United States should file reports every six years demonstrating progress in applying the Colorado Ute Tribes' respective A-LP reserved water rights to beneficial

use. Nov. 9, 2006 Order at 35, paras. 3e, and 3f. The Feb. 8, 2007 Order *amending* the November 9, 2006 Decree clarifies at paragraph 1.b. that “notification shall be done through the resume process.” Although this filing is not an application for finding of reasonable diligence, nor is it a prerequisite to making the reserved water rights absolute pursuant to C.R.S. § 37-92-301(b)(1), the Colorado District Court, Water Division 7 found it reasonable for the “[Colorado Ute] Tribes to report on their progress toward application of their water rights to a beneficial use.” Nov. 9, 2006 Order at 32, para. 18 (citing U.S. v. City and County of Denver, by and through Bd. of Water Com’rs., 656, P.2d 1, 35 (Colo. 1982)).

V. SUMMARY OF THE ALLOCATIONS OF PROJECT PARTICIPANTS

In the 2000 Amendments, Congress authorized the Secretary of the Interior to “(i) complete construction of, and operate and maintain, a reservoir, a pumping plant, a reservoir inlet conduit, and appurtenant facilities with sufficient capacity to divert and store water from the Animas River to provide for an average annual depletion of 57,100 acre-feet of water to be used for a municipal and industrial water supply.” Pub. L. No. 106-554, § 302(a)(1)(A)(i) (emphasis added). Congress further authorized the Secretary to “(ii) deliver, through the use of the project components referred to in clause (i), municipal and industrial water allocations” for the seven parties listed below, and identified each party’s allocation of A-LP water as an “average annual depletion” not to exceed the following amounts:

<u>Project Participant</u>	<u>Average Annual Depletion Limit (af)</u>
(I) Southern Ute Indian Tribe	16,525
(II) Ute Mountain Ute Tribe	16,525
(III) Navajo Nation	2,340
(IV) SJWC	10,400
(V) ALPWCD	2,600 [†]
(VI) State of Colorado	5,230
(VII) La Plata (NM) Conservancy District	780

See, Pub. L. No. 106-554 § 302 (a)(1)(A) (ii)(I-VII).

The Engineers understand that Reclamation will perform the accounting of each Project Participant’s average annual depletion under the A-LP Decrees to ensure compliance with the federal allocation limits in the 2000 Amendments and with the Project’s overall average annual depletion limit under the 2000 Amendments. Reclamation has agreed to report the average annual depletion for each Colorado Ute Tribe to the Division Engineer’s Office, for use in its record-keeping under the Tribal Decrees, by November 30 of each year, beginning in 2013.

[†] By separate agreement, the Colorado Water Resource and Power Development Authority purchased the ALPWCD’s Project water allocation.

VI. ACCOUNTING FOR AND PROTECTING A-LP ALLOCATIONS NOT STORED IN RIDGES BASIN RESERVOIR, A.K.A. LAKE NIGHTHORSE

The policy of the A-LP OM&R Assn. is that “Whenever feasible and practical, Project [P]articipants shall take delivery of their portion of the Project water supply by direct A-LP diversions (‘river water’) without putting it in storage.” See Exhibit A to March 4, 2009 IGA at para 4.02. The term “Non-stored Allocations” herein means Project water that is not diverted at the DPP and pumped to Ridges Basin Reservoir through the Ridges Basin Inlet Conduit, but instead is Project water measured at Teft, accounted for at the DPP, and shepherded, if necessary, to a point of delivery lower in the Animas River for use by a Project Participant in Colorado or to the state line, as set forth in Part X, below, for use by a Project Participant in New Mexico.

The Tribal Decrees allow the Colorado Ute Tribes’ Project allocations to be measured in the Animas River at the DPP. The Engineers, therefore, can account for Non-stored Allocations to the Colorado Ute Tribes as if they had been diverted at the DPP and pumped to the Ridges Basin Reservoir, a.k.a. Lake Nighthorse and can protect deliveries of these Non-stored Allocations as if they were deliveries of reservoir releases. This means that water must be physically, legally, and operationally available for pumping at the DPP (hereafter “Storable Flow”) before a Non-stored Allocation for a Ute Tribe may be accounted for under the A-LP Decrees. In the course of changing and amending the Tribal Decrees to conform to the 2000 Amendments, the District Court, Water Division 7, found that “if the bypass flows are maintained by federal law or regulation and ALP is operated consistent with the 2000 FSEIS, there is a reasonable degree of certainty that downstream conditions will be adequate to meet the needs of decreed Colorado water users and conditional water rights holders under the administration of the Division 7 Engineer.” 2006 Decree at ¶ 58, page 19-20. All Non-stored Allocations delivered to a Ute Tribe will be accounted for against the Storable Flow, which may not exceed DPP Capacity. This limitation is based on the Engineers’ interpretation of the Tribal Decrees and the 80CW237 Change Decree.

Each of the Colorado Ute Tribes will need to identify their points of delivery for diversions of Project water downstream of the DPP prior to diverting their Non-stored Allocations within Colorado, just as diversions of reservoir releases are required to be identified but not decreed. Unless Storable Flow is available for diversion at the DPP, the Colorado Ute Tribes’ Non-stored Allocation of Project water cannot be delivered to the Tribes (other than by release from Ridges Basin Reservoir).

The A-LP Project Compact, entered in 1963 between the State of Colorado and the State of New Mexico, provides that “The right to store and divert water in Colorado and New Mexico from the La Plata and Animas River systems . . . for uses in New Mexico under the Animas-La Plata Federal Reclamation Project shall be valid and of equal priority with those rights granted by decree of the Colorado state courts for the uses of water in Colorado for that project. . . .” § 37-64-101, C.R.S. (2011). Non-stored Allocations for the Navajo Nation, the SJWC, and the

LPCD in New Mexico, therefore, may also be accounted for in the Animas River at the DPP instead of being pumped to Ridges Basin Reservoir, a.k.a. Lake Nighthorse.

Reclamation's modeling of the Project in the 2000 A-LP Final Supplemental Environmental Impact Statement ("FSEIS") reflects the equivalent of a 35 cfs delivery of Project water to the Navajo Nation and SJWC as an average continuous flow.[†] Whenever there is Storable Flow at the DPP, Non-stored Allocation for the Navajo Nation, SJWC, and LPCD to satisfy a 35 cfs average continuous flow may be accounted for under the A-LP Decrees. The total "Project Flow Rate" will be capped at the DPP capacity plus the 35 cfs average continuous flow to account for the Navajo Nation, SJWC, and LPCD's Non-stored Allocations. The decision to account for an average of 35 cfs above the Storable Flow under the Change Decree is based on the A-LP Compact and on the 2000 FSEIS.

As plans for the Project Participants' uses of A-LP water continue to develop, the Engineers will consider any remaining questions concerning the administration of Non-stored Allocations parties. In particular, the Engineers recognize a lack of consensus concerning how to best account for Non-stored Allocation water ordered by Navajo Nation, SJWC, and LPCD. In September 2013, the Engineers will begin meeting with SWCD, SJWC, and the State of New Mexico, as well as other interested parties as appropriate to address their express concerns with the use and/or application of a 35 cfs continuous flow rate cap as described above.

All Non-stored Allocations are subject to the Teft Limitations. In order to ensure that deliveries of Non-stored Allocations do not result in injury to other water rights and can be properly accounted for, the administrative process will need to include: (1) Identification by the A-LP OM&R Association of a need for A-LP water, on behalf of one or more Project Participants; (2) Measurement of the water available in priority at Teft; (3) Accounting at the DPP of the amount available in priority at Teft and identified for delivery for direct use within the Storable Flow and Project Flow Rate, and delivered to the point where a Project Participant's allocation will be diverted and placed to beneficial use (or confirmed present at the State line for the Navajo Nation, SJWC, and LPCD, (see Part X below)); and (4) Accounting for the amount diverted for beneficial use under the A-LP Decrees.

The A-LP OM&R Assn. will need to establish an internal process for, *inter alia*, (1) allocating the Storable Flow between pumping to storage and Non-stored Allocations (as well as allocating it among the Project Participants) consistent with the limitations of this Protocol; (2) communicating to the Division Engineer's Office the request for delivery of a Non-stored

[†] An average continuous diversion of 35 cfs for a year provides the full combined average annual supply of Project water for Navajo Nation, SJWC and LPCD. (Assuming 50% return flows on 12,740 af/year of depletions, as contemplated in the FSEIS, the total diversion is assumed to be 25,480. That, divided by 365 days per year equals 69.23 af/day, divided by 1.98 acre feet per cfs equals 35 cfs.) *See e.g.*, FSEIS at pages 2-12, 2-17, and 2-21. Note: The 780 af depletion for LPCD is not included in the average continuous flow computation because LPCD's involvement in delivery of Non-stored Allocations is not intended to increase the 35 cfs average continuous diversion contemplated in the FSEIS modeling.

Allocation, (3) acquiring additional data necessary to determine the transportation loss, if any; (4) reporting to the Division Engineer in advance the points where Project water is to be diverted by all Project Participants in Colorado; and (5) recording and maintaining records of the amount delivered to Project Participants.

The Division Engineer's Office will require that all water accounted for under the A-LP Decrees must be put to beneficial use and that regular and reliable records be kept so that the Division Engineer can account for water use under the A-LP Decrees.

VII. HOW THE DIVISION ENGINEER WILL DETERMINE THE AMOUNT AVAILABLE UNDER THE DIRECT FLOW RIGHTS

A. Measurement

Adequate measuring structures are required at the points of diversion for the Direct Flow Rights before water may be diverted under those rights. The USGS gage on the Animas River at Tall Timbers Resort above Tacoma, Colorado (Id. No. 09359500) (hereafter "Tall Timbers Gaging Station") is close to the Teft point of diversion. There are no gages at the original points of diversion on Falls Creek or Junction Creek. Therefore, this Protocol only discusses measurement "at Teft," and "the Teft Limitations." As discussed above, the amount of flow physically available at Teft limits all uses under the Change Decree, including pumping at the DPP and Non-stored Allocations. The Division Engineer's Office will evaluate the amount physically available at Teft based on the flows at the Tall Timbers Gaging Station.

The amount bypassed at the DPP will be measured using the USGS gage on the "Animas River Below Durango Pumping Plant Near Durango, Colorado" (Id. No. 09362520) (hereafter "DPP Gage") that is approximately 1/8 mile downstream of the DPP.

The amount pumped by the DPP will be determined by the DPP's discharge meters.

The Storable Flow at the DPP will be determined by subtracting the federal Minimum Bypass Flow requirement, defined in Part IX, below, from the flow rate measured at the DPP Gage, then adding the amount being pumped at the DPP. It is also subject to the Teft Limitations.

B. Transportation Loss

When the A-LP OM&R Assn. asks the Division Engineer to identify and measure water at Teft for diversion at the DPP or for a Non-stored Allocation, the quantity may include additional water to cover transportation losses, if any, to the DPP. This will not cause injury to any other water right, will not expand use under the A-LP Decrees, and is not precluded by the A-LP Decrees. Additional transportation losses may be assessed to the Project Participant for deliveries below the DPP.

The Engineers will use best engineering judgment to estimate transportation losses and decide on a case-by-case basis whether more data or a full study are necessary to determine any transit loss.

C. Administrative Water Rights Calls

If a call for water rights under the A-LP Decrees is physically appropriate and legally allowed, the effect of a call will be to curtail juniors above Teft and ensure that water available in priority at the original decreed point(s) is available at the DPP when needed.

VIII. HOW THE DIVISION ENGINEER WILL DETERMINE THE AMOUNT AVAILABLE FOR STORAGE IN RIDGES BASIN RESERVOIR, A.K.A. LAKE NIGHTHORSE UNDER THE STORAGE RIGHTS

A. One Fill and One Refill

Because the Storage Rights are larger than the “as built” capacity of Ridges Basin Reservoir, a.k.a. Lake Nighthorse of 123,541 af, and because the Storage Rights in the A-LP Decrees expressly include refill rights, the Project is authorized for one full fill and one full refill each water year. The initial fill is up to 123,541 af. The second fill (a.k.a. “refill”) is up to 115,075 af. This limit of the second fill to the Live Storage Capacity is premised on the assumption that there will be no regular pumping from the dead pool, and can be reconsidered if the Project starts regularly pumping from the dead pool.

The fill of Ridges Basin Reservoir, a.k.a. Lake Nighthorse, each water year will be calculated by determining the amount of water in storage on 1 October (“Reclamation Year”). The total capacity of the Reservoir minus the amount in storage on that date will constitute the amount of the initial fill for that Reclamation year.

The amount of water stored for a fill and refill will be determined by calculating the volume of water pumped to Ridges Basin Reservoir, a.k.a. Lake Nighthorse from the DPP, plus the volume of the natural inflow into the Reservoir from Basin Creek under the appropriation decreed in Case 08CW81.

B. Paper Fill of the Storage Rights

A paper fill is an accounting mechanism whereby storable inflow is charged against a storage water right even though it is not stored. Paper fill administration will begin for the first Reclamation Year, starting October 1, during which the Animas River is under active administration. Such administration will include a paper *re-fill* if the Ridges Basin Reservoir, a.k.a. Lake Nighthorse has storage capacity available and flows bypassing the DPP are above the Minimum Bypass Flow requirement. For example, if the Ridges Basin Reservoir, a.k.a. Lake Nighthorse has storage capacity available and flows bypassing the DPP are at the same time in excess of the Minimum Bypass Flow requirement at any time during a given administrative

water year, the paper re-fill administration would effectively reduce the *re-fill* right of 115,075 af by the cumulative amount of excess DPP bypass flows for that year. Note, the paper fill rate will be capped at the DPP Capacity.

IX. EFFECT OF THE FEDERALLY REQUIRED MINIMUM BYPASS FLOW AT THE DPP ON ADMINISTRATION OF DIRECT FLOW AND STORAGE RIGHTS

The Project may not pump all water physically available at the DPP as a result of a federally mandated bypass flow requirement (“Minimum Bypass Flow”). The Minimum Bypass Flow, set forth below, is a seasonal flow rate that must be available in the Animas River at the DPP in order for pumping at the DPP to occur:

225 cfs - April 1 to Sept 30
160 cfs - Oct 1 to Nov 30
125 cfs - Dec 1 to March 31

2000 FSEIS at 3-100 - 3-101. This full amount must be bypassed at the DPP even if it will not leave enough water to meet all of the Project’s pumping needs.

Non-stored Allocations taken from the Storable Flow are subject to the Minimum Bypass Flow requirement. This is consistent with the Reclamation modeling for the 2000 FSEIS, referenced in the 2000 Amendments, and with the injury analysis which supported the Tribal Decrees. See 2000 FSEIS, Technical Appendix 2; Engineering Report on Purported Injury to Water Rights from the Animas-La Plata Project, Brown & Caldwell (July 29, 2005). Reclamation has confirmed that, based on the Brown and Caldwell engineering report on purported injury to other water rights, the Project will be operated such that Non-stored Allocations bypassing the DPP will be in addition to the Minimum Bypass Flow requirements.

Non-stored Allocations for the Navajo Nation, SJWC, and LPCD will also be measured in addition to, or on top of, the Minimum Bypass Flows: they will be accounted for under the A-LP Decrees within the larger Project Flow Rate only when the Project is not precluded from pumping at the DPP due to the Minimum Bypass Flow requirement.

The amount of flow available at the DPP for both pumping and Non-stored Allocations will be determined by subtracting the Minimum Bypass Flow requirement from the flow measured at the DPP gage, and adding the amount being pumped at the DPP. It is also subject to the Teft Limitations.

In addition, the Minimum Bypass Flow will not be counted as Storable Flow during paper fill administration. See letter from Hal Simpson to John Porter, President of SWCD, dated May 21, 2007, which stated the following:

Upon review of the decree in Case No. 80CW237, which adjudicated water rights of the Southwestern Water Conservation District in the Animas and La Plata

Rivers, and review of the historic average stream flow records, the physical location of the diversion structure in relation to Ridges Basin Reservoir, the bypass flows, and the stream flow demands of other vested water rights, it is my determination that bypass flows that are required by federal law as a condition of Animas-La Plata Project operations will not be accounted toward the storage rights, or paper fill, of Ridges Basin Reservoir. This determination is based upon the unique circumstance that there is no current or anticipated demand from senior water rights located below the pumping plant diversion from the Animas River downstream to the Colorado-New Mexico state line.

Reclamation is expected to file resume notice prior to making any change in the Minimum Bypass Flows. See Nov. 9, 2006 Order at 33, para. 22. The Division Engineer should monitor the water resumes as appropriate for notice by the United States of any change in the Minimum Bypass Flows that could influence Project operations.

X. SHEPHERDING THE NAVAJO, SJWC, AND LPCD'S ALLOCATIONS OF PROJECT WATER TO THE STATE LINE

The Engineers will protect the New Mexico A-LP allocations from diversion by Colorado users by shepherding those allocations to the state line, minus transportation losses, if they are identified as A-LP water under the A-LP Decrees. This was affirmed in a letter dated March 30, 1988 from the Colorado State Engineer to Mr. S.E. Reynolds, New Mexico Interstate Stream Commission.

Releases from Ridges Basin Reservoir, a.k.a. Lake Nighthorse, of the Navajo Nation, SJWC, and LPCD's allocations will be shepherded down Basin Creek and the Animas River to the state line, as verified at the USGS Animas River Gaging Station Near Cedar Hill, NM (Id. No. 09363500) ("Cedar Hill gage"). "Shepherding" means that no other water rights will be allowed to divert the water, regardless of their priority. Natural transit losses between Ridges Basin Reservoir, a.k.a. Lake Nighthorse and the state line, as verified at the Cedar Hill gage, will be borne by the Project Participant.

Non-stored Allocations for the Navajo Nation, SJWC, and LPCD can be shepherded down the Animas to the state line (as verified at the Cedar Hill gage) if they were measured at the DPP and accounted for under the A-LP Decrees within the Project Flow Rate.

XI. LIMITATION ON RIGHT OF PROJECT PARTICIPANTS TO REUSE PROJECT WATER

The A-LP Decrees and Tribal Decrees are all silent on reuse. Therefore, reuse of Project return flows by Project Participants in the Animas River basin in Colorado is not allowed. See, e.g., Water Supply & Storage Company v. Curtis, 733 P.2d 680, 683 (Colo. 1987). However, if A-LP water is imported into another basin in Colorado from the Animas River basin, the party that imports the water has a special statutory right to reuse it and/or put it to successive uses "to the extent that its volume can be distinguished from the volume of the streams into which it is

introduced." § 37-82-106, C.R.S. (2011). This rule applies was any intent to reuse at the time of the appropriation or of the initial importation. Thornton v. Bijou, 926 P.2d 1, 70 (1996). Therefore, if A-LP water is taken to the La Plata River Basin in Colorado, for example, its reuse may be accounted for under the A-LP Decrees.

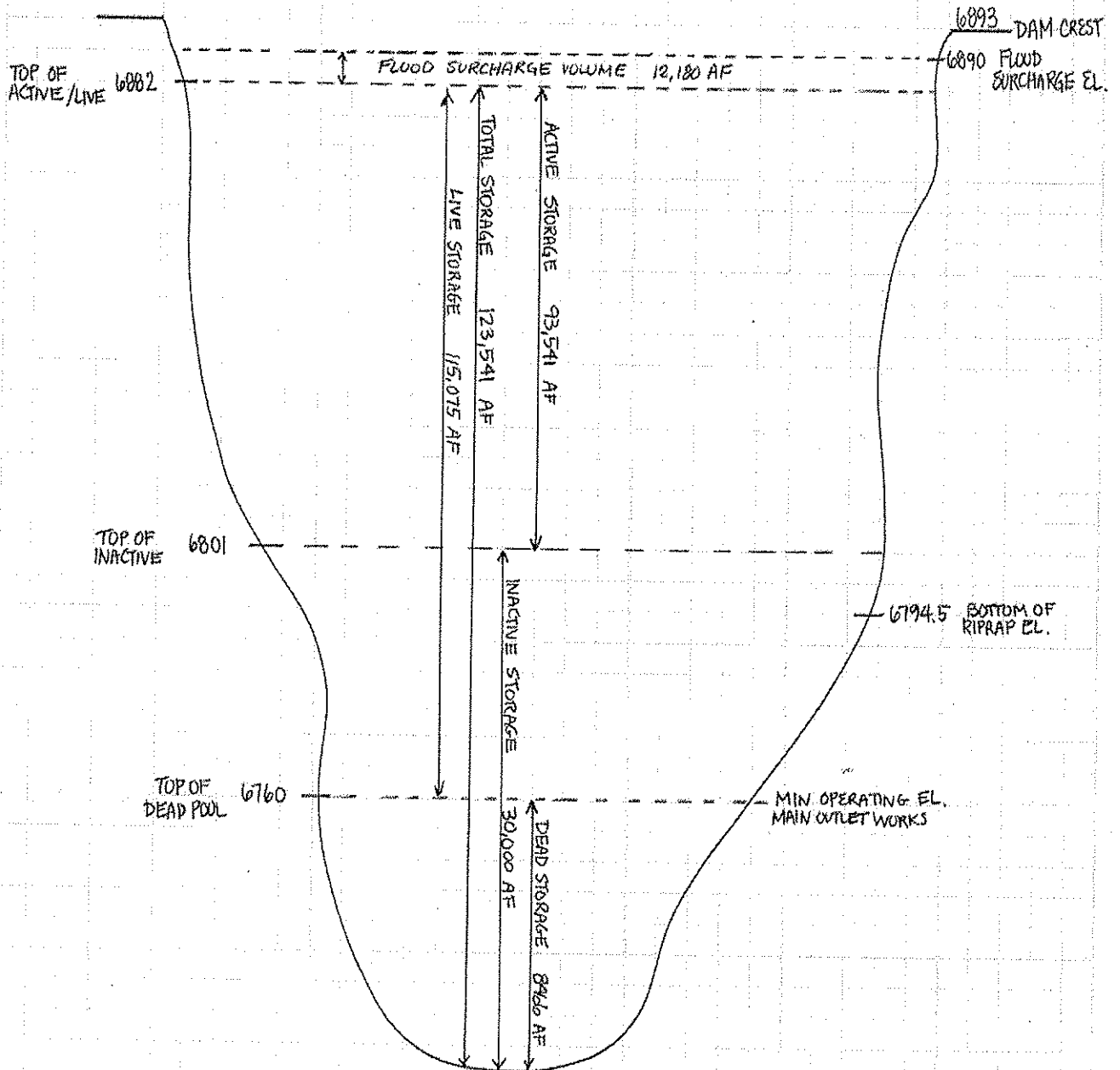
ATTACHMENT A
STATE ENGINEER'S PROTOCOL FOR ADMINISTRATION OF
ANIMAS-LA PLATA PROJECT WATER RIGHTS ("PROTOCOL")

U.S. BUREAU OF RECLAMATION'S DIAGRAM OF ACTUAL STORAGE POOL VOLUMES

Dec. 2012

COMPUTATION SHEET

BY	DATE 12/19/12	PROJECT LAKE NIGHTHORSE	SHEET ____ OF ____
CHKD BY	DATE	FEATURE	
DETAILS			



ATTACHMENT A (TO MARCH 2013
DRAFT PROTOCOL ON A-LP WATER
RIGHTS ADMINISTRATION)

ATTACHMENT B
STATE ENGINEER'S PROTOCOL FOR ADMINISTRATION OF
ANIMAS-LA PLATA PROJECT WATER RIGHTS ("PROTOCOL")

TRIBAL CASES, DECREES & FEDERAL LEGISLATION REFERENCED IN SECTION IV OF PROTOCOL

<i>Federal Reserved Water Rights Cases Filed in Colorado District Court, Water Division 7</i>		
1	Case No. W-1603-76	Claims re: Navajo River
2	Case No. W-1603-76A	Claims re: Blanco River
3	Case No. W-1603-76B	Claims re: San Juan River
4	Case No. W-1603-76C	Claims re: Piedra River
5	Case No. W-1603-76D	Claims re: Pine River
6	Case No. W-1603-76E	Claims re: Florida River
7	Case No. W-1603-76F	Claims re: Animas River
8	Case No. W-1603-76G	Claims re: Mancos River
9	Case No. W-1603-76H	Claims re: Dolores River
10	Case No. W-1603-76I	Claims re: McElmo River
11	Case No. W-1603-76J	Claims re: La Plata River
<i>Water Decrees Entered in Colorado District Court, Water Division 7</i>		
1	Stipulation for a Consent Decree in Case No. W-1603-76F (Animas River) and Case No. W-1603-76J (La Plata River) (Nov. 12, 1991)	1991 Consent Decrees
2	Findings of Fact, Conclusions of Law, and Decree dated November 9, 2006 in Case No. W-1603-76F and 1-1603-76J, 02CW85 and 02CW86 (Nov. 9, 2006)	2006 Tribal Change Decree
3	Order Amending November 9, 2006 Decree (Feb. 8, 2007)	2007 Amendment to Tribal Change Decree
<i>Federal Legislation</i>		
1	Colorado Ute Indian Water Rights Settlement Act of 1988, Pub. L. No. 100-585, 102 Stat. 2973 (1988)	1988 Settlement Act
2	Colorado Ute Settlement Act Amendments of 2000, Pub. L. No. 106-554, 114 Stat. 2763A 258 (2001)	2000 Amendments
<i>Other</i>		
1	Colorado Ute Indian Water Rights Final Settlement Agreement (December 10, 1986)	1986 Settlement Agreement