

United States Senate

WASHINGTON, DC 20510

November 4, 2024

The Honorable Deb Haaland
Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Secretary Haaland:

We write to encourage the Department of the Interior (DOI) to improve opportunities for water use for the Ute Mountain Ute Tribe (“Ute Mountain”) and Southern Ute Indian Tribe (“Southern Ute”), collectively the “Tribes,” through changes to the Tribes’ Animas-La Plata (A-LP) Project repayment contracts.

Even though the A-LP Project’s Lake Nighthorse began filling in 2009, the Tribes remain unable to fully access and use their statutory water allocation. This is due to the extremely high costs of constructing the conveyance infrastructure, as well as key parts of the repayment contracts that prevent the Tribes from benefiting from their water in other important ways. Therefore, while both Tribes have legal rights to a combined annual depletion of over 33,000 acre-feet of water from the A-LP, their water sits at or flows past Lake Nighthorse without ever benefiting the Tribes.

As DOI negotiates Ute Mountain’s repayment contract and begins a renegotiation of Southern Ute’s repayment contract for the A-LP Project, we urge you to ensure that the Tribes have the ability to participate in programs that facilitate effective management of the Colorado River system, such as forbearance or system conservation programs, *without* constituting the “first use” of that water and triggering Operations, Maintenance, and Replacement (OM&R) payments. This would allow the Tribes to participate in forbearance or system conservation agreements necessitated by drought, climate change, and other environmental factors by ensuring water stays in the system for the benefit of the entire Colorado River.

We believe it is crucial to give the Tribes certainty on the determination of first use as they look to opportunities to participate in federal programs for drought response—including those under the *Inflation Reduction Act* (IRA). Ute Mountain was encouraged that during the negotiations for its repayment contract, DOI officials indicated that participation in a voluntary compensated forbearance program to benefit the Colorado River system will not trigger a first use determination and hence will not trigger the OM&R obligation of the Tribes. Ute Mountain shared this good news with Southern Ute at a later date. We applaud this decision and urge DOI to expediently incorporate repayment contract terms that provide equitable compensation for forbearance should an opportunity arise for the Tribes to use their water in that way. We strongly encourage your Department to ensure that federal drought funding—under IRA and other funding sources—includes opportunities for the Tribes to benefit from their as-yet unused settlement allocations.

Furthermore, the Tribes have identified additional provisions they believe could help them benefit from the leasing and long-term use of their water, and we encourage you to continue to explore these matters with them. Specifically, the Tribes wish to examine the current standard in which a water lease would initiate OM&R requirements that would continue on in perpetuity—even after the lease ends—and to determine how that could be addressed through future leasing contracts they may enter. Additionally, the Tribes wish to investigate opportunities to use the Secretary’s authority under the *Colorado Ute Indian Water Rights Settlement Act of 1988* to defer or bear OM&R charges when revenues from use of that water is affected by severe drought conditions, limiting supply and allocations. As you engage with the Tribes on this matter in the context of the A-LP repayment contracts, we encourage you to apply any lessons learned to the Dolores Project water contracts for Ute Mountain as well.

We appreciate your ongoing attention to the needs of the Ute Mountain and Southern Ute and value your partnership in meeting these complex challenges. We look forward to working with you to address the Tribes’ water needs and to enable them to benefit from their full water allocation, as intended both by the creation of their respective Reservations and the *Colorado Ute Indian Water Rights Settlement Act of 1988*.

Sincerely,



John Hickenlooper
United States Senator



Michael F. Bennet
United States Senator