THE UNIVERSITY OF CHICAGO

Follow the Water: Colorado Ute's History in Water Allocation and Dispossession

By

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June 2024

A paper submitted in partial fulfillment of the requirements for the Master of Arts degree in the Master of Arts Program in the Social Sciences

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Abstract

This thesis explores sovereignty, settler-colonialism, and water rights in Indigenous spaces, focusing on the experience of the Colorado Ute tribes in southwestern Colorado. Drawing on historical analysis and contemporary scholarship, this study examines how the lack of water allocation until 1988 has impacted the sovereignty of the Southern Ute Indian Tribe ("SUIT") and Ute Mountain Ute Tribe ("UMUT"). It argues that the dispossession of water rights has served as a tool to undermine Indigenous sovereignty and perpetuating settler-colonial structures and policies. The research delves into nineteenth to twenty-first century water laws, settler-composed compacts, and regulations revealing how the legacy of dispossession continues to affect SUIT and UMUT. Through an exploration of legal documents, court cases, and scholarly perspectives, this thesis highlights the marginalized voices of Indigenous peoples in water governance and law while acknowledging and rectifying past injustices by advocating for water for the Colorado Ute tribes. By centering Indigenous sovereignty and challenging settler-colonial narratives, this thesis aims to contribute to broader discussions on Indigenous rights, water governance, and decolonial efforts in Colorado.

Introduction: More than a Resource

The notion of sovereignty in Indigenous spaces is a precarious term for its settler-colonial connotations. Lenape American Studies scholar, Joanne Barker, describes sovereignty as the instance in which "the nation would be characterized by rights to 'exclusive jurisdiction, territorial integrity, and nonintervention in domestic affairs,'" at the highest point of their civilization.[1] This suggests that the body of people or government occupying said territory can practice governance and look after occupants through infrastructure, education, career opportunities, and growth. However, in Indigenous spaces, sovereignty is exercised differently.

Scholars of Indigenous origin view sovereignty through the lens of "nested" or "politics of recognition," which recognizes the relationship with another entity from or against which they are claiming sovereignty.[2] Therefore, the Indigenous people must practice a settler-colonial framework to be recognized as a sovereign. This makes leveraging a sovereignty claim challenging, to say the least. Indigenous communities cannot act with the sovereignty defined by Barker because they were, and are, forcibly dependent on the support of their settler-colonial counterparts. This complication is the primary struggle for the Colorado Ute tribes and their access to water.

Water is an essential resource for all life. In the southwestern United States, the Colorado River flows from the tributaries in Wyoming and Colorado to the Gulf of California, and along its winding journey, its downstream tributaries support life in challenging desert conditions.[3] The

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[1] Joanne Barker, "For Whom Sovereignty Matters," in *Sovereignty Matters* (Lincoln, Nebraska: University of Nebraska Press, 2005), 1–31.
[2] Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Durham, North Carolina: Duke University Press, 2014). Glen S. Coulthard, "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada," *Contemporary Political Theory* 6 (2007): 437–60.
[3] John C. Schmidt, Charles B. Yackulic, and Eric Kuhn, "The Colorado River Water Crisis: Its Origin and the Future," *WIREs Water* 10, no. 6 (May 12, 2023): 1–11, https://doi.org/10.1002/wat2.1672.

Colorado River Basin ("Basin") provides 40 million people with water today, and yet, it has endured irreparable damage since the arrival of American settlers through the creation of major dam projects, expansive agricultural development, and the current drought in the present century.[4] Present day governance surrounding the Basin was dictated by the settler-Indigenous history. In the early 1800s, explorers from the eastern United States interests overtook the environment and Indigenous communities throughout the Basin. In the case of the Southern Ute Indian Tribe ("SUIT") and Ute Mountain Ute Tribe ("UMUT") in southwestern Colorado, which is part of the Upper Basin of the Colorado River ("Upper Basin"), water is an essential aspect of their culture which they have been dispossessed of for over a century. Their presence and authority over the essential resource was, and remains, a struggle to obtain as they have been excluded from multiple agreements and compacts written by United States federal and interstate governments with minimal influence from other Indigenous communities in the southwest. Water has flowed or been stored near or on their reservations since the 1950s, but they were not "given" an allocation of it—despite federal government records stating otherwise with the concept of "reserved rights"—until 1988 with the signing of the Colorado Ute Indian Water Rights Settlement Act ("1988 Settlement Act").[5] How did the lack of water allocation until 1988 impact

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[4] Paul A. Formisano, *Tributary Voices: Literary and Rhetorical Explorations of the Colorado River* (Reno; Las Vegas, Nevada: University of Nevada Press, 2022).

[5] Winters v. United States, 207 United States 564 (United States Supreme Court 1908). The *Winters* case established that an Indigenous reservation also reserves water rights to meet the needs of the reservation. See https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/native-american-issues/supreme-court-and-tribal-water-rights/#:~:text=Winters%20thus%20established%20that%20the,arising%20state%20law%20water%20rights for more information. Michael Elizabeth Sakas, "Historically Excluded from Colorado River Policy, Tribes Want a Say in How the Dwindling Resource Is Used. Access to Clean Water Is a Start.," *Colorado Public Radio,* December 7, 2021, https://www.cpr.org/2021/12/07/tribes-historically-excluded-colorado-river-policy-use-want-say-clean-water-access/. 100th Congress, "H.R. 2642: Colorado Utes Indian Water Rights Settlement Act of 1988," Pub. L. No. 100–585, 102 (1988).

the sovereignty of SUIT and UMUT within the state of Colorado? How does the legacy of dispossession of their water affect the reservations in the present?

I investigate these queries through a historiographical examination of nineteenth through twenty-first century water laws, settler-Indigenous compacts and regulations, and the concepts of sovereignty and settler-colonialism. I argue that the lack of water allocation for SUIT and UMUT reservations was and is an effective method of dispossession, which undermines their ability to claim and leverage full sovereignty because their access to water was, and continues to be, dictated by settler-colonial policies and structures.[6] This thesis further clarifies the exploitation and extraction of water that threatens Indigenous sovereignty today through the maintenance of settler-colonial practices historically embedded into relations between Indigenous, interstate, and federal governments.

This argument draws on United States federal and the state of Colorado governments legal documents and court cases involving state water rights and Indigenous relations to evaluate the approaches of the settler-colonial entities to obtain and assert their power over non-American people. I also leverage Indigenous and non-Indigenous scholarship that focuses on sovereignty, the Colorado River Compact ("The Compact"), other water rights agreements and court cases, and the experiences of the Colorado Ute tribes written from secondary perspectives. The Compact is the first legal doctrine that apportioned an interstate river to meet the needs of the arid western United States which set the foundation for this examination.[7] The use of archival

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[6] "Settler-colonialism" is defined as a "system of oppression based on genocide and colonialism, that aims to displace a population of a nation (often times indigenous people) and replace it with a new settler population. "Settler Colonialism," LII / Legal Information Institute, accessed April 10, 2024, https://www.law.cornell.edu/wex/settler_colonialism.

[7] Lawrence J. MacDonnell, "The 1922 Colorado River Compact at 100," *Western Legal History: The Journal of the Ninth Judicial Circuit Historical Society* 33, no. 1–2 (n.d.): 131

sources such as treaties, court cases, and surveys alongside contemporary examinations of sovereignty and water governance expose some of the struggles Colorado Ute tribes experience in trying to obtain water for their reservations and act as sovereign nations. However, archival sources are limited in their exploration because they were written and published by American settlers, from a governance perspective or from a public point of view, such as newspapers. This means that Indigenous perspectives and experiences were not captured as effectively as if the Indigenous communities themselves were the authors of the treaties or agreements. Moreover, much of the contemporary material does not frame the Colorado Ute tribes as primary subjects of dispossession. Rather, their experiences as a people group are tied to the conflict of the Upper Colorado River Basin and the on-going conversations surrounding water allocation for the states. The lack of acknowledgement of the Colorado Ute tribes was, and remains, hindered by the prioritization of colonial concerns over water allocation in the west.

This historical examination underscores the undermined power of Indigenous voices in the state of Colorado and their experiences surrounding the importance of water by reckoning with settler atrocities at a state and federal level. Scholars in water governance and law address the legal history and structure regarding the creation of compacts, agreements, their outcomes, and the amenability of legal acts toward emphasizing settler-colonial contribution and control over the land. Legal scholars such as Rick L. Gold or Lawrence MacDonnell often read agreements, negotiations, or court cases as an action that *is* implemented when, in reality, they have not been acted upon or are accomplished in a way that historically and presently harms Indigenous communities.[8] These scholars acknowledge Indigenous presence in the creation of

[8] Rick L. Gold, "Dividing the Pie - Dealing with Surplus and Drought: Examining the Colorado River Compact of 1922," *Journal of Land, Resource, & Environmental Law* 28, no. 1 (2008): 71–82. Lawrence J. MacDonnell and Anne J. Castle, "The Colorado River Compact and Apportionment of Basin Water Uses," in *Cornerstone at the*

agreements and their involvement in litigations, but also describe their concerns as implied with the signing of treaties or agreements.[9] In opposition, Indigenous scholars and Indigenous allies in the fields of law, anthropology, and history, such as Dr. Andrew Curley and Dr. Erika Bsumek, emphasize the process of dispossession created by the legal agreements and disputes beginning in the nineteenth century, and the inaction surrounding the settler-colonial governance of reparation.

The Colorado River and its tributaries' essentialness to the west has only grown increasingly important to protect even more so for dispossessed Indigenous communities throughout the region. The Colorado Ute tribes are no exception. I seek to support the Indigenous sovereignty of the Colorado Ute tribes through the reclamation of water that is rightfully theirs based on their historic presence in the southwest.

Literature Review

Scholarship surrounding the settler governance, Indigenous communities, and water is vast and diverse, often intertwining with sovereignty, settler-colonialism, and settler-Indigenous relations surrounding resources like land and water. These entanglements are conveyed through court cases, agreements, negotiations, compacts, or treaties the case of Indigenous people, self-determination and sovereign governance, and first-hand experiences. Each component lends an essential angle to understanding the complexity of encounters with multiple entities, the outcomes of such meetings, and their legacies.

Confluence: Navigating the Colorado River Compact's Next Century (Tucson, Arizona: University of Arizona Press, 2022), 16–41.

[9] Gregory J. Hobbs Jr., "Colorado River Compact Entitlements, Clearing up Misconceptions," *Journal of Land, Resources & Environmental Law* 28, no. 1 (2008): 83–104.

The notion of sovereignty is examined through many lenses provided by Indigenous and non-Indigenous scholars alike. Sovereignty is a settler-colonial term that is meant to allow dispossessed people to reclaim identity, culture, and governance that they were stripped of because the term in European contexts is "the power arbitrary nature of the deity by peoples...."[10] By claiming sovereignty, a nation is born through the unification of citizens upon a balance of rights and obligations between individuals and the state that have been agreed to as a collective.[11]

The role of settler-colonialism practices and policies in the present-day United States played a significant role in the expansion of European settlers out west. Settler-colonialism in these circumstances is best defined by Australian anthropologist Patrick Wolfe as a logic of elimination.[12] The Indigenous people of North America lost access and authority to land which brought up notions of racial classification to eliminate them as the owners of the land.[13] Justifications for racial elimination arrived on the coattails of religion, through which lens settlers determined that non-Christians were uncivilized, which diminished Indigenous rights and authority in the eyes of the settler.[14] Settlers' religious principles and racializing logic justified expansion and demand for Indigenous assimilation. These principles eventually made their way into politics and governance—and were used to legitimize settler-state actions taken against the Indigenous people.

Legal historians often examine and argue through the lens of the settler and the historically established settler-colonial policies. Historical context aids their scholarship but

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[10] Barker, 1-2
[11] Barker, 2
[12] Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 6, no. 4 (2006): 387–409.
[13] Wolfe, 388
[14] Wolfe, 390-1

primarily focus on contemporary debates. For example, Justice Gregory J. Hobbs in his examination of the Compact, argues that the Compact in contemporary interstate governance needs compromise between all actors involved to ratify the agreement.[15] Historically, the Compact was an effective piece of legislation for colonial governance because it calmed the fears of drought in the west.[16] Justice Hobbs points out that the Compact did not account for Indigenous water use but was, in fact, allocated through prior legislature elsewhere.[17] Moreover, according to Justice Hobbs, the Compact has been misinterpreted and needs to be clarified. [18] Rick L. Gold argues that the Compact supports contemporary legislature surrounding the Colorado River because it is considered applicable and relevant to current negotiations and decisions surrounding the water.[19] Gold indicates that the Indigenous communities' dependence on the Colorado River is "no different than anywhere else as pioneers and developers followed the river ways."[20] These investigations of settler-colonial governance are not exclusive because both historic and contemporary knowledge views the impact of suppression on Indigenous nations throughout the southwest. However, the analysis of negotiations and agreements made by prior settlers that captured and divided land and water to create agricultural spaces demonstrates the settler's authority over the New World.[21]

Non-Indigenous scholars who choose to empathize with the dispossession of the Indigenous communities support the Indigenous revival of authority and reclamation of their land and identities. They examine settler-colonial policies regarding critique, results, and

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[15] Hobbs Jr., 102
[16] Hobbs Jr., 83
[17] Hobbs Jr., 97
[18] Hobbs Jr., 83
[19] Gold, 71
[20] Gold, 73
[21] Laura A. Bray, "Settler Colonialism and Rural Environmental Injustice: Water Inequality on the Navajo Nation," *Rural Sociology* 86, no. 3 (December 18, 2020): 586–610, https://doi.org/10.1111/ruso.12366.

legacies of Indigenous denial of sovereignty. Gregory Coyne Thompson discusses nineteenth century relations between the Utes in both Colorado and Utah with the federal and state governments, acknowledging that the forced removal of Indigenous peoples from the land allowed for settler invasion and ruined the potential for a civil settler-Indigenous relationship, which only emphasized Indigenous dispossession. Scott B. McElroy acknowledges that treaties and federal statutes were "unequivocal promises" to Indigenous people and these consequences continue to affect them today.[22] Robert W. Adler also recognizes that the Compact and other water rights negotiations failed Indigenous communities through exclusion and "racial bigotry," and argues that their presence in contemporary negotiations is necessary, especially because the Compact needs to be amended to fulfill the needs of all users.[23] These scholars identify and observe Indigenous communities as a vital body of people who hold capacity for mutually-beneficial sovereignty previously overlooked by settler-colonialist lens of scholarship.

Contemporary Indigenous scholars have first-hand experience and observations of their communities—trapped by dispossessive agendas that linger despite increasing assertions, however minimal, of sovereignty. Diné (Navajo Nation) geographer, Dr. Andrew Curley, examines the Navajo Nation through water settlements and the implementation of colonial infrastructures instigated by the adoption of colonialism practices.[24] He contends that colonialism has encroached upon Indigenous lands over time which exacerbates their struggle to survive whether by choosing resistance or by embracing the settler's practices as demonstrated

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[22] Scott B. McElroy, "History Repeats Itself - A Response to the Opponents of the Colorado Ute Indian Water Rights Settlement Act of 1988," *University of Denver Water Law Review* 2, no. 2 (Spring 1999): 244–66.
[23] Robert W. Adler, "Revisiting the Colorado River Compact: Time for a Change?" *Journal of Land, Resource, & Environmental Law* 28, no. 1 (2008): 19–48.
[24] Dr. Curley uses to the term, Diné, when referring to the Navajo people because "Navajo" is a colonial term deployed by the Spanish. See "Our Winters' Rights': Challenging Colonial Water Laws" for further explanation. Andrew Curley, "Infrastructures as Colonial Beachheads: The Central Arizona Project and the Taking of Navajo Resources," *EPD: Society and Space* 39, no. 3 (2021): 387–404.

throughout his research. Daryl Vigil of the Jicarilla Apache Nation lends generational knowledge through his examination of Apache history. He claims that the infiltration of settler-colonialism maintained dispossession in historical and contemporary contexts despite the community's attempts to overcome poverty, which included failed attempts at implementing of the settlers' federal government's promises, mismanagement of funding, and settler diseases that reduced the Indigenous population by thirty percent at the turn of the twentieth century.[25] Indigenous critiques of settler-colonial governance, values, and practices like emphasizes the discrepancies in settler-Indigenous relations that maintained Indigenous dispossession since the arrival of European settlers in the sixteenth century. It is these observations and experiences by Indigenous scholars that emphasize the importance of the Colorado River and its tributaries to the tribes of the southwest, including SUIT and UMUT.

In this examination, the notions of sovereign interdependency and entanglement will be deployed to recognize and understand the similarities and differences between the concepts and how they affect SUIT and UMUT, in particular, Jessica Cattelino coined the phrase, "sovereign interdependency," defining it as a method for asserting sovereignty while also "building productive relationships with other sovereigns, relations characterized by negotiation, obligation,…" and dependence on one another to coexist and recognize commonalities despite the inherent differences in perspectives.[26] In the cases of SUIT and UMUT, this can be considered the goal of the reservations, to work with the federal and state governments in an equal effort towards allocating water that is sustainable and supports both settlers and Indigenous

[25] Matthew McKinney, Jay Weiner, and Daryl Vigil, "First in Time: The Place of Tribes in Governing the Colorado River System," in *Cornerstone at the Confluence: Navigating the Colorado River Compact's Next Century* (Tucson, Arizona: University of Arizona Press, 2022), 170–99.
[26] Jessica R. Cattelino, "Chapter 5: Sovereign Interdependencies," in *High Stakes: Florida Seminole Gaming and Sovereignty* (Durham, North Carolina: Duke University Press, 2008).

populations. However, the notion of entanglement, as Jean Dennison proposes, is also influential in understanding SUIT and UMUT's relationship with settler-colonial opposites. Dennison argues that "entanglement allows us to differentiate between sovereignty and autonomy, where the former signals a way of maintaining authority through increased interactions and the latter, freedom from external control" within the case of the Osage Nation.[27] This describes the colonial processes that persist which were created through unequal power in the intersections between settler-Indigenous relations.[28] Combining historical and contemporary knowledge of SUIT and UMUT's hardships instigated by settler-colonial frameworks displays their long-term challenging relationship with settlers regarding water governance. The notions of sovereign interdependency and entanglement, viewed through the lenses of water rights historically and contemporarily, demonstrate that collaboration in settler-Indigenous spaces is necessary if SUIT and UMUT are to be recognized and act as sovereign entities.

Beginnings: Early Settler Encounters and Nineteenth Century Dispossession

First documented encounters in 1598 between the Spanish and the Utes when the northern province of New Spain was declared colonized.[29] The Utes, nomadic hunter-gatherers inhabiting the Rocky Mountains throughout the territories of Utah, Colorado, and New Mexico, traveled on foot and were made up of small clans mostly consisting of family members.[30] They often stayed to themselves, only meeting up with other clans when there were large harvests available.[31]

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[27] Jean Dennison, "Entangled Sovereignties: The Osage Nation's Interconnections with Governmental and Corporate Authorities," *American Ethnologist* 44, no. 4 (2017): 684–96.
[28] Dennison, 685
[29] Virginia McConnell Simmons. *The Ute Indians of Utah, Colorado, and New Mexico*. Boulder, Colorado: University of Colorado Press, 2000: 12.
McConnell Simmons, 12
[30] McConnell Simmons, 14
[31] McConnell Simmons, 14

In Spring 1776, Spanish explorers Vélez de Escalante and Fray Francisco Atansio Domínguez decided to go west to explore more of the Spanish territory in what is now known as Colorado and Utah. This was the first official European exploration of the territory, though it had been occupied and known by various Indigenous peoples in the region.[32] This exploration marked the beginning of more settler-colonial encounters beyond the Spanish. The first clan they encountered on their journey northwest were the "Pahvants" or "Barbones," then followed the "Moanunts," "tule people," and later, the "Lagunas" and "Come Pescado" to name a few clans.[33] These groups became known as the Northern Utes by the United States when the decision was made to consolidate the Utes based on their geographical locations and interactions with other clans based on previous observations through settler-colonial expeditions in the following century.

The other Utes in southeastern Utah and southwest Colorado were the "Weeminuche," "Capotes," and the "Muaches."[34] Their territories stretched into northern New Mexico and overlapped with other Indigenous communities such as the Navajos and Southern Paiutes who were the most often in conflict with one another. These clans, however, became known as the Southern Utes to the United States federal government.

For the Spanish, their relationships with the clans varied. Some Utes supported the Domínguez-Escalante Expedition and the development of the Spanish-claimed territory through trading and guidance over the land.[35] Nonetheless, not all encounters between the Indigenous people and the Spanish colonizers were positive. The first documented conflicts between the Spanish and Utes began in 1637, leading to the Spanish under the leadership of Luis de Rosas,

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[32] David Lavendar, *Colorado River Country* (Albuquerque, New Mexico: University of New Mexico Press, 1988).
[33] McConnell Simmons, 14-16
[34] McConnell Simmons, 18
[35] McConnell Simmons, 18

capturing eighty Utes and enslaving them in Santa Fe.[36] It was not until 1670 that a peace treaty between the Southern Ute populations and the Spanish was signed.[37] This peace treaty, however, failed; raids and conflicts between the two bodies of people continued until after the Domínguez-Escalante Expedition concluded.

From the sixteenth century to the nineteenth century, Spanish and Mexican leaders sought to integrate Indigenous people into their empire.[38] After Spain ended their occupation in 1821, Mexico extended citizenship to Indigenous people which ultimately expanded Mexico's territory to the north and assimilated Indigenous people through more colonizing practices such as land parceling.[39]

In 1806, United States Lieutenant Zebulon Pike and his men arrived in Ute territory in southwestern Colorado, escorted by two Utes through the Rockies.[40] With the arrival of Americans, conflict and trade rose as they began colonizing the West in earnest. Soon, the Church of the Latter-Day Saints ("LDS") settlers began migrating West after being expelled from the east for their unorthodox religious practices.[41] Most LDS pioneers decided to settle in present-day Utah, but because they were unfamiliar with the region, they needed help from Indigenous communities to survive. Historian Erika Bsumek wrote, "Young and his fellow LDS pioneers understood exactly how their settlement practices intensified the vulnerability and fragmentation of the Indigenous communities of the region," and the LDS extended these practices all the way to Hawai'i and their interactions with the Kānaka Maoli, which emphasizes

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[36] Southern Ute Indian Tribe, "Southern Ute Indian Tribe Chronology," https://www.southernute-nsn.gov/history/chronology/, n.d.
[37] Ibid, Chronology
[38] McKinney, et. al, 173
[39] McKinney, et. al, 174
[40] "Southern Ute Indian Tribe Chronology"
[41] Erika Marie Bsumek, *The Foundations of Glen Canyon Dam: Infrastructures of Dispossession on the Colorado Plateau* (Austin, TX: University of Texas Press, 2023).

their influences in the West.[42] LDS settlers played a dual role in their relationship with the Utes. On one hand, relations were productive through trading. On the other, LDS wanted some protection by the United States if their relations with the Utes disintegrated despite their migration to the West for being unconventional in religious practices.[43] The convoluted and violent relationship between LDS and the Utes, despite their mutually beneficial sharing and trading of goods and knowledge early on, ultimately led to the dispossession of the Utes from their native territories as LDS settlers took over.

In 1848, the United States federal government and Mexico signed the Treaty of Guadalupe-Hidalgo, transferring the northwestern territories of Mexico to the United States following the Mexican-American War.[44] The discovery of gold only a year later in California, and a decade later in Colorado, led to mass migration to the West in 1849 by more than just members of the LDS church. The colonization of the West led to increased demands for land and rise of conflict between the Indigenous communities and settlers. The Calhoun Treaty was drafted and presented to the Utes in 1850, for the purposes of calming tensions between the settlers and the Utes by bringing the territory of the Utes under the jurisdiction of the United States in return for protection from settlers in the West.[45] This treaty allowed the United States to consolidate the Utes into two groups rather than the many clans they once identified as chipping away at their original territories, which became "ultimate dominion."[46] Plans for a more formal relocation and settlement of the Utes began in 1863 under President Abraham Lincoln. Most Utes of all tribes within the territory refused to sign the treaty—a few bands even refused to send

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[42] Bsumek, 29
[43] Bsumek, 35
[44] Gregory Coyne Thompson, "Southern Ute Lands, 1846-1899: The Creation of a Reservation" (University of Utah, 1971), https://collections.lib.utah.edu/details?id=192446.
[45] Thompson, 5-6
[46] Wolfe, 391

representatives to the headquarters of the federal government in the San Juan Mountains.[47] However, a few members from the Tabeguache clan in the north agreed to the terms in 1864, near the end of the Civil War, and signed away a significant portion of their territory despite the resounding unwillingness from other bands of Utes.[48] The self-serving nature of the U.S. federal government displayed its authority through this exchange, the signatures of a few "representatives" were all that mattered—the unwilling masses of Utes were ignored. The signing of the treaty was only the beginning of the process of formal dispossession for Southern Utes.

Under President Andrew Johnson in the following years, the Utes of southern Colorado and northern Utah signed another treaty that ratified the creation of formal reservations in 1868.[49] These parcels of land consolidated the bands of Indigenous peoples to protect them from the invasion of settlers while also advocating for their assimilation into settler-colonial practices such as the development of schoolhouses and agriculture.[50] The creation of the Ute reservations signified the end of Indigenous self-determination in addition to political and cultural agency as the Utes were forced to assimilate into the United States' sphere of interest through the process of replacement.[51] Forcing the Southern Utes to implement American practices including formal education and the cultivation of land after being nomadic hunters and gatherers for hundreds of years throughout the western territory of present-day Colorado, controlled and civilized Indigenous people in the United States of America. In so doing, the United States claimed

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[47] Thompson, 8
[48] Thompson, 8
[49] United States of America, "Treaty with the Ute Indians, March 2, 1868" (Washington, D.C., March 2, 1868).
[50] Ibid, 620-621
[51] Wolfe, 388. "Self-determination" when all peoples can "freely determine their political status and freely pursue their economic, social and cultural development…" See United Nations General Assembly, "United Nations Declaration of the Rights of Indigenous Peoples" (New York, New York and Geneva, Switzerland, September 13, 2007).

legitimacy as a settler-colonial statehood by successfully asserting dominance over the territory claimed, and the Indigenous people were absorbed. Compared to the Spanish and Mexican predecessors, United States governance remained committed to the induction of Indigenous assimilation into American society.[52]

However, problems with the implementation of the first reservation only increased, forcing another agreement between the settler-colonial state and the Utes. On April 29, 1874, commissioner Felix R. Brunot created the Brunot Agreement, stating that all Utes were to relinquish their reservations to the United States, making them even smaller than previously stated in the 1868 Treaty, and the lands were to be used to meet the needs of the Ute people.[53] The Southern Ute Agency was created by this agreement which acted as the governing body overseeing the development of the reservation.[54] A forever trust fund to support the development of the reservation and compensation for ceded land was also created.[55] In return, no foreign persons with the exception of authorized persons, were permitted to enter the reserved land.[56] However, the Brunot Agreement of 1874 was not enacted effectively.[57] As a result, the Southern Ute Agency in Ignacio, Colorado created a new reservation option with 1,894,400 acres of land and receive compensation to the Utes who refused to move.[58] Unfortunately, the agreement failed in Congress and the creation of the Southern Ute reservation became stagnant. This event frustrated both Southern Utes and settlers alike because they were both unsure of their safety and

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[52] McKinney, et. al, 174. Self-determination is the "free choice of one's own acts or states without external compulsion," or, "determination by the people of a territorial unit of their own future political status." "Definition of SELF-DETERMINATION," April 5, 2024, https://www.merriam-webster.com/dictionary/self-determination.
[53] Felix R. Brunot, "Brunot Agreement, 1873," Tribal Treaties Database, accessed March 8, 2024, https://treaties.okstate.edu/treaties/brunot-agreement-1873-22218.
[54] Thompson, 21
[55] Brunot Agreement, Article III
[56] Brunot Agreement, Article V
[57] Thompson, 16
[58] Thompson, 38

ability to live near one another. Furthermore, mining operations wanted the land that the Utes called their home and the Utes refused to move to a new reservation that lacked the necessary abundant resources to live.[59] The actions of the federal and state governments demonstrate a conformation to the generalized Lokean notions of property and resources by removing Indigenous peoples from territory that settlers could develop.[60]

In 1880, after another two years of negotiations with the federal government and the territory of Colorado, the Utes "agreed to move to a new reservation or to lands in severalty without first having the lands chosen and inspected for them."[61] The federal government chose land near the La Plata River on the condition that the land was effective for agricultural purposes, and if the land was not suitable, they could move to New Mexico.[62] This Act was the first in history in which negotiations with the Southern Utes resulted in their demand to move to a new reservation without having the lands chosen for them.[63] However, this Act was not successfully implemented by the United States because despite signing the agreement, the Southern Utes were left without land and money that they had been promised as outlined in the agreement and the federal government obtained more land.[64] It took nearly a year, another round of negotiations and ratification of an amended agreement, for payment to the Southern Utes for their land cessions to the United States.[65] This situation, despite its agreeable nature to the federal government, led to increased conflicts between settlers and the Utes, and led to an argument raised by Colorado

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[59] Teresa Montoya, "Yellow Water: Rupture and Return One Year after the Gold King Mine Spill," *Anthropology Now* 9, no. 3 (September 2, 2017): 91–115, https://doi.org/10.1080/19428200.2017.1390724.
[60] Andrew Curley, "Unsettling Indian Water Settlements: The Little Colorado River, the San Juan River, and Colonial Enclosures," *Antipode* 0, no. 0 (2019): 1–19.
[61] Thompson, 52
[62] Thompson, 52-3
[63] Thompson, 52
[64] Thompson, 53
[65] Thompson, 61

settlers that the removal of the Utes from the territory would be in the best interests of the settler-colonial structure of expansion west.[66]

Despite the many Colorado residents were against the Indigenous communities living close to settler spaces, the Indian Rights Association ("IRA"), an organization created in 1882 for the purposes of protecting and advancing Native American heritage and practices as well as educating settlers about past atrocities, sided with SUIT and UMUT.[67] Notably, the IRA argued against the Brunot agreement-proposed reservation for SUIT and UMUT because it did not have enough water to support the communities.[68] Even though the reservation system was created in 1868 with the signing of the reservation treaty, Colorado settlers were not satisfied. They wanted the Ute tribes out of the Colorado territory. The IRA spoke out against this vendetta, stating that, "during the last few days, your correspondent [of the New York Tribune] has met residents of all portions of Colorado, and in every instance they desired the Indians removed—out of feelings of malice and the usual race prejudice."[69] The IRA's argument was that the Southern Utes were assimilated peoples and already dispossessed by the settler state, suggesting that the Southern Utes belonged within the state of Colorado given their historical occupation of the territory given that they were physically distanced from the settlers. It is unclear that the IRA's argument was effective in convincing the settlers of Colorado of such information. However, the IRA's investigation of the Colorado settler's desire for the complete removal of the Ute population supports the conclusion that they experienced a great loss of authority over land, resource, and ability to live within the Indigenous community—and therefore, sovereignty.

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[66] Thompson, 100
[67] Thompson, 101
[68] Thompson, 102-104
[69] Indian Rights Association, "The Ute Indians; Why People in Colorado Want Them to Be Removed," *New York Tribune*, April 4, 1890.

On February 7, 1887, United States Congress passed the Dawes Act or the General Allotment Act after the frustrations of treaties, forced removals, and conflict became too much for the settler state to maintain.[70] The Act was to "provide for the Allotment of Lands in Severalty to Indians on the Various Reservations," which was another way to protect settler-colonial interests from Indigenous practices and infiltration.[71] "The new policy focused specifically on breaking up reservations and tribal lands by granting land allotments to individual Native Americans and encouraging them to take up agriculture."[72] In return, the federal government agreed to pay the Indigenous members who enrolled with Office of Indian Affairs, later renamed the Bureau of Indian Affairs ("BIA"), for the land allotment.[73] However, like many treaties and agreements before the Dawes Act, many tribes including SUIT and UMUT went unpaid which caused the allotments to go to non-Indigenous peoples.[74] These actions, or lack thereof, led to the loss of a total of ninety million acres of land which were sold to non-Indigenous settlers.[75]

Uniquely, the Dawes Act did not apply to the Southern Utes due to the Colorado settler's desire to remove the Southern Utes from the territory.[76] Despite the best efforts of the Colorado settlers and their request of the federal government to execute on a plan for removal, Congress failed to pass any legislation regarding the Southern Utes.[77] The advocation for the Southern Utes' removal from the state of Colorado demonstrates there was more than a simple dislike of

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[70] Senator Henry Dawes, "Dawes Act (1887)," National Archives, September 9, 2021, https://www.archives.gov/milestone-documents/dawes-act.
[71] Dawes, Dawes Act (1887), National Archives
[72] Dawes, Dawes Act (1887), National Archives
[73] Dawes, Dawes Act (1887), National Archives
[74] Dawes, Dawes Act (1887), National Archives
[75] Cynthia N. Pina, "Indigenous Water Rights: Navigating Sovereign Waters," *Master's Projects and Capstones* 1598 (2023).
[76] Pina, 6. Encyclopedia Staff, "Dawes Act (General Allotment Act)," Colorado Encyclopedia, accessed March 12, 2024, https://coloradoencyclopedia.org/article/dawes-act-general-allotment-act.
[77] Dawes Act, Colorado Encyclopedia

Indigenous peoples, it rather offers unsettling insight into the discriminatory settler-Indigenous relations. The Colorado settlers had the endurance to drive out and compartmentalize the Southern Utes with great influence, making space for themselves and capturing land on behalf of the belief in manifest destiny, and in the process devastate Indigenous authority.[78] The settler-colonial legacy established by the Dawes Act disrupted the lives of thousands of Indigenous communities throughout the United States, and placed the Southern Utes into a position of true vulnerability despite their previous supremacy over southwestern lands prior to the arrival of the settler.

The lack of legislation regarding the Southern Ute's removal or for land allotment following the Dawes Act of 1887 led to United States Congress passing the Hunter Act of 1895, which integrated the Southern Utes into the Dawes Act.[79] However, the Hunter Act operated slightly different; it offered the Southern Utes an option to reject their allotment of land and the opportunity to live in a separate part of the reservation.[80] The federal government opened the Southern Ute reservation encompassing all Southern Utes on May 4, 1899.[81] This action was made after a series of surveys of the land in southern Colorado based on the needs and preferences of the settler state and the sporadic conflicts between the Indigenous peoples and settlers. The Weeminuche Utes, after refusing to agree to the surveyed allotment in 1895 and staying with Muache and Capote Utes, decided to opt for moving further west on the reservation

[78] Livia Gershon, "The Myth of Manifest Destiny," JSTOR Daily, May 5, 2021, https://daily.jstor.org/the-myth-of-manifest-destiny/.
[79] Colorado River Basin Ten Tribes Partnership, "Chapter 5.2 - Assessment of Current Tribal Water Use and Projected Future Water Development: Southern Ute Tribe" (Ten Tribes Partnership, December 2018), https://tentribespartnership.org/wp-content/uploads/2020/01/Ch.-5.2-SUIT-Current-Future-Water-Use-12-13-2018.pdf.
[80] Dawes Act, Colorado Encyclopedia
[81] Thompson, 126

to avoid the subjugation to allotment.[82] They eventually received recognition as a separate reservation from the other Southern Utes in the early twentieth-century.[83] These consolidations were concessions to the Utes who were now formally dispossessed as declared by the IRA who were now formally dispossessed as declared by the federal and state governments and their needs as a settler-colonial state of capturing land and putting it to use.[84] This narrative echoed in the minds of the settler state throughout the nineteenth century. By spatially placing the Utes outside of settler spaces based on racial and cultural differences and the violence perpetrated by settlers and Native Americans alike, the settler's presence in the west was firmly established.

It is pertinent to note that the settler state deemed the Muache and Capote Utes (who had agreed to the allotments) were often deemed "incompetent" by the settler state because they did not develop the allotted land or otherwise use it in ways familiar to the settlers.[85] This led to further loss of Ute lands en masse to non-Indigenous settlers who agreed to develop the land according to the settler-colonial frameworks. It was also understood in 1895 that the desert lands set aside for Southern Utes were unsuitable for agricultural development given their lack of access to water.

> "The Mancos is a poor apology for a river, which runs dry when most needed. The whole [Southern Ute] reservation lies in the arid belt, where artificial irrigation is necessary to any kind of agriculture...The few local springs which the Weeminuches use for their family supplies and for watering their ponies are insignificant measured by the standard of any greater requirement."[86]

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[82] James M. Potter, "Ute Mountain Ute Tribe Cultural Resources Management Plan" (Denver, Colorado: PaleoWest Archaeology, April 10, 2014), https://www.utemountainutetribe.com/images/THPO%20information/UMTU%20CRMP.pdf.
[83] Potter, 15
[84] Indian Rights Association, "The Ute Indians…"
[85] Dawes Act, Colorado Encyclopedia
[86] Francis E. Leupp, "The Latest Phase of the Southern Ute Question" (Washington, D.C.: Indian Rights Association, September 30, 1895), https://tile.loc.gov/storage-services/public/gdcmassbookdig/latestphaseofsou00leup/latestphaseofsou00leup.pdf.

Water in the desert was already challenging to come by in the desert, and even more so where Southern Utes were forced to reside. Commissioner Leupp stated in his documentation of the land.[87] Where there was no water, there was no life. The Southern Utes could not act upon the agreements made in the 1868 Treaty and the Hunter Act because they could not develop the land without water. "[S]ettler colonial water governance is rooted in Modern water – a concept used to describe frameworks that view water as a solely material substance or commodity, something quantifiable, manageable and ultimately available for unsustainable human use."[88] To be successful in the desert, the Southern Utes needed sovereign water governance which they were refused by the US federal government. Water, as a resource, was a federal afterthought demonstrated through the forced migration of the Southern Utes to a plot of land which was, in comparison to their previous territory, not conducive in supporting the required development of the land, according to settler practices—making it into a commodity and exploiting its inherent value on behalf of capital gains. These actions of treaty-making, agreements, and the metaphorical wrangling of Indigenous people throughout the West ultimately created a legacy of water insecurity and denial of prosperity. Even though there was legislation regarding the Southern Ute's access to resource and land to meet their needs, the dispossession from water specifically demonstrates the elimination of authority and power over their historic homelands.

The forced consolidation of Southern Utes onto federally created reservations signified the end of their sovereignty, and therefore, their ability to exercise authority in politics, land, and resources. Their land no longer belonged to them in the settler-colonial notions of property and ownership.[89] Indigenous people were seen as racially inferior, their cultural and spiritual

[87] Leupp, 29-30
[88] Wilson, et. al, 3
[89] Curley, 4

practices considered immoral by Christian standards of living.[90] To make matters worse, the Southern Ute, on their allotted reservation, lacked the very resource needed to survive and thrive in the arid territory: water. It was, according to geographer Dr. Curley, "part of the maintenance and reproduction of the conditions of capitalism in the United States that forever limits and eliminates Indigenous relationships with water in service of the development and expansion of non-Native settler-colonial communities."[91] The act of forcing the Southern Utes onto small parcels of land in their original territories demonstrates the legacy of dispossession by federal and state governments. Wilson et. al sums up the effects succinctly.

> "In failing to acknowledge Indigenous sovereignty, water insecurity frameworks risk insinuating a relationship with the State that is paternalistic and colonial. Here, States are considered to have a fiduciary and legal responsibility to secure water for Indigenous peoples – one that it never fulfills."[92]

Entanglement: Early Twentieth-Century Western Water Governance

Water in the western United States was of tremendous importance and more challenging to come by due to the arid climate. It was a necessary resource to grow crops, water cattle, and survive in the heat. By controlling the access, allotment, and use of water through the settler-colonial method of claiming it, dispossessed people would become dependent on the federal and state governments and other interested entities.[93] The Southern Utes ("SUIT") and the Weeminuche, who will now be referenced to as the Ute Mountain Ute Tribe ("UMUT"), were dispossessed from water when they were forcefully moved onto their reservation in southwestern Colorado. As demonstrated by Commissioner Leupp in his survey of the southwestern Colorado

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[90] Pierce, 19-20
[91] Curley, 4
[92] Wilson, et. al., 4
[93] Karen Crass, "Eroding the Winters Right: Non-Indian Water Users' Attempt to Limit the Scope of the Indian Superior Entitlement to Western Water to Prevent Tribes from Water Brokering," *University of Denver Water Law Review* 1, no. 1 (Fall 1997): 109–26.

region for the reservation, access to water for SUIT and UMUT was poor at best and could not fulfill the values of the settler-colonial state. The lack of access to water signified a greater deprivation from living through the processes of colonial occupation, where spatial and social relations were configured to mean that sovereignty belonged to the occupier.[94] In this case, the settler owned and controlled the land—and subsequently, the water—of SUIT and UMUT.

In the state of Colorado, water law was determined in the 1860s through the Colorado Doctrine which was integrated into the state constitution.[95] It operates on four rules, the first stating that the state's surface and groundwater was a public resource for all entities.[96] The second rule is "a water right is a right to use a portion of the public's water supply.[97] The third rule says that owners of water rights can build facilities on the land of others to "divert, extract, or move water" to where it can be used.[98] The last rule declares that all water rights owners can use stream or aquifers to transport and store water.[99] These rules were applied to the 1872 case, *Coffin v. The Left Hand Ditch Company*, [100] where Mr. Rueben Coffin claimed ownership over a section of the south fork of the St. Vrain River, just north of present-day Boulder, Colorado. Local farmers Samuel Arbuthnot, Joe Jamison, the Hinman brothers, and Lorenzo Dwight—owner of the Left Hand Ditch Company—noticed damage to a dam they had inserted that diverted water from the St. Vrain into James Creek that fed their lands.[101] There were several scuffles between the settlers as they tried to assert ownership over the water. Eventually, Coffin

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[94] Achille Mbembe, "Necropolitics," trans. Libby Meintjes, *Public Culture* 15, no. 1 (2023): 11–40.
[95] "Water Rights | Colorado Water Knowledge | Colorado State University," accessed March 13, 2024, https://waterknowledge.colostate.edu/water-management-administration/water-rights/.
[96] Water Rights, Colorado State University
[97] Water Rights, Colorado State University
[98] Water Rights, Colorado State University
[99] Water Rights, Colorado State University
[100] Coffin v. The Left Hand Ditch Co., 6 Colorado 443 (Supreme Court of Colorado 1882).
[101] Karmen Lee Franklin, "Coffin's Shore: The Battle That Wrought Colorado's Water Law" (Boulder, Colorado, University of Colorado Boulder, 2011), https://www.colorado.edu/center/west/sites/default/files/attached-files/firstundergraduatenonfictionfranklin.pdf.

took the Left Hand Ditch Company to court. After much deliberation and argument from both parties, the Supreme Court of Colorado found that Coffin owned the land but not the water because the farmers, specifically the Left Hand Ditch Company, got to the patent office before Coffin, therefore the damage to the dam was trespassing.[102] In short, Coffin lost the court case, and the legacy "first in time, first in right," became pertinent to the creation of future interstate water laws.[103] *Coffin v. Left Hand Ditch Company (1882)* established Colorado's angle towards water laws and policies, thereby also establishing the frameworks that even further impoverished SUIT and UMUT of water when they were moved to the southwestern Colorado reservation in 1899. SUIT and UMUT had rights to the land on the dispensation of the United States federal government, but they did not have rights to the water.

Colorado's water laws were underscored when Kansas took Colorado to the Supreme Court of the United States over the Arkansas River first in 1902 and later in 1907.[104] The state of Kansas claimed that Colorado was taking too much of Kansas's water, arguing that the land was becoming impoverished which made Kansas's land worth less. There was no clear outcome, because the Federal Supreme Court stated that they appreciated the parties' arguments but were unable to fulfill the requests of either entity given the nature of the litigation by Kansas.[105] In other words, there was not enough evidence or historical presence for the Supreme Court to do anything. This decision by the Supreme Court began a legacy of conflict between the two states over water access that has not concluded even in present day despite the implementation of a

[102] Franklin, 7
[103] Franklin, 7. "First in time, first in right" is a concept used in the Prior Appropriation System, which is when an individual takes water from a stream or underground aquifer and puts the water to use, and the first person to use and apply the water has first rights to it. See "Water Rights | Division of Water Resources," accessed April 22, 2024, https://dwr.colorado.gov/services/water-administration/water-rights for more information.
[104] Kansas v. Colorado, 206 U.S. 46 (1907).
[105] Kansas v. Colorado, 206

compact in 1948.[106] Even though this litigation does not involve SUIT or UMUT directly, the case demonstrates the importance of water to the state of Colorado and how allocation for itself alongside other states was and is handled. In the state of Colorado, water allocation for SUIT and UMUT was undefined given the 1860s Colorado Doctrine that made water a public resource.[107] Water is of utmost importance to the settler-colonial structures of land development to legitimize property, and given the desert conditions, it was vital to support agriculture systems and life itself. However, Indigenous communities were disregarded in these negotiations and their access was, and remains, limited.

A year following the *Kansas v. Colorado* case, in 1908, the ruling of *Winters v. United States* saw to it that Indigenous communities throughout the United States received "reserved water rights."[108] The case was between settlers in the state of Montana who denied Nakoda and Aaniih—Indigenous communities on the Fort Belknap reservation—of surface water.[109] The plaintiff argued that the Fort Belknap reservation lost their rights to the surface water, specifically the Milk River water, when they signed treaties with the United States, which therefore placed them within the US federal government's jurisdiction.[110] The Federal Supreme Court ultimately rejected the argument, ruling that the reservation—referring to all Indigenous reservations—came with rights to water, which, at the time, satisfied the needs of the Indigenous community in question.[111] The ruling of *Winters v. United States* laid the foundation for other

[106] Department of Agriculture, "Kansas-Colorado Arkansas River Compact," Kansas Department of Agriculture, accessed March 13, 2024, https://agriculture.ks.gov/divisions-programs/dwr/interstate-rivers-and-compacts/kansas-colorado-arkansas-river-compact.
[107] Water Rights, Colorado State University
[108] Winters v. United States, 207
[109] Andrew Curley, "'Our Winters' Rights': Challenging Colonial Water Laws," *Global Environmental Politics* 19, no. 3 (n.d.): 57–76.
[110] Curley, 63
[111] McKinney, et. al, 176

Indigenous communities to further their claims and obtain their water rights. There was a caveat, however, in which the outcome of *Winters v. United States* disrupted the western water's allocation practices of "first in time, first in right," as established by *Coffin v. The Left Hand Ditch Company.*[112] There was no clear interpretation of water allocation for the Indigenous people despite having the "reserved right" to it because the ruling did not quantify their water. The non-specific language of the court case was vague that differing governing bodies could interpret it in such a way that it could serve their own interests. The Winters Doctrine ultimately left the Indigenous communities in a state of entanglement that impacted their sovereign rights and access to water.

One river determined much of the southwestern United States' prosperity and the survival of all Indigenous communities, the Colorado River—or what some have referred to as the American Nile.[113] In the early months of 1922, the Colorado River Commission ("CRC") was created in Washington D.C. and was composed of representatives from each of the seven states the Colorado River flowed through, including Wyoming, Colorado, New Mexico, Utah, Arizona, Nevada, and California, plus the United States' Secretary of Commerce, Herbert Hoover.[114] Congress wanted the Colorado River's water allocated to create a sustainable water supply for the future and placed trust in interstate governance to decide how the river was to be divided. Congress gave the CRC a year to come to an agreement on how "equitable division and apportionment" was determined between the states.[115] All that was seemingly understood by Congress was that western United States water governance had to operate differently than in the

[112] Crass, 114
[113] Schmidt, et. al, 2
[114] MacDonnell, 98
[115] MacDonnell, 98

east.[116] However, each delegate, influenced by their individual political states, had interests and objectives which conflicted with the other states' interests; some opinions were more assertive than others. For the state of Colorado, lead attorney Delphus Emory Carpenter had prior experience in navigating water allocation legislation with *Wyoming v. Colorado (1922).*[117] The outcome of the case, determined on June 5, 1922, was that the "rule of priority" would regulate rights to the uses of water from interstate rivers.[118] This decision caused great concern for Carpenter at first but he was reassured shortly thereafter by the CRC that Colorado could use as much or as little water as it wanted.[119] Carpenter, after receiving the approval for Colorado, felt that "a compact on the Colorado River was necessary because the federal government was persisting in its claim to the unappropriated waters of non-navigable streams in the western states…A compact…would encourage unanimity of support for federal reclamation by the states and would 'promote the recognition of the sovereignty of each state'…."[120] Despite the contentions between each state, the goal was to establish enough water storage to fully irrigate the lands in the West, effectively.[121]

After seven months of stagnation, the seven commissioners and Secretary Hoover convened on November 9, 1922, at Bishop's Lodge in Santa Fe, New Mexico.[122] All eight CRC members understood that they could not apportion Colorado River and its tributaries' water to individual states and another solution was needed quickly with the January 1, 1923, deadline

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[116] Brian O'Neil et al., "Laws of the River: Conflict and Cooperation on the Colorado River," in *Water Bankruptcy in the Land of Plenty*, 1st ed. (CRC Press, 2016), 45–64.
[117] Wyoming v. Colorado, No. 259 (United States June 5, 1922).
[118] MacDonnell, 105
[119] MacDonnell, 104-5
[120] Daniel Tyler, "Delphus Emory Carpenter and the Colorado River Compact of 1922," *University of Denver Law Review* 1, no. 2 (1998): 228–74.
[121] MacDonnell, 101
[122] MacDonnell, 106

rapidly approaching.[123] Finally, after utilizing compiled river measurement data from the Colorado River since 1902, the Colorado River Compact ("The Compact") was signed on November 24.[124] Article I stated, "[t]he major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River system."[125] The Compact split the Colorado River into two basins, an Upper and Lower Basin, at Lee's Ferry, Arizona.[126] Each basin received 7.5 million acre-feet of water per year ("MAF").[127] The Compact ultimately established the "Law of the River," which affirmed future water law and development through "Federal and State statutes, inter-State compacts, court decisions and decrees, contracts with the United States, an international treating, operating criteria and administrative decisions."[128]

Nonetheless, like previous impactful cases, Indigenous people were not invited to or included in the negotiations of the Compact. They are only mentioned in Article VII, which states, "[n]othing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes."[129] The vague language of the article addressing the thirty Indigenous communities that required the Colorado River and its tributaries to survive mirrored the language of previous water allocation rights discussions with the settler-colonial governance. Even though this Compact was meant to address interstate water governance in the early twentieth-century, Indigenous populations were turned over to the federal government as their

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[123] MacDonnell, Ibid.
[124] MacDonnell, 118
[125] Herbert Hoover, et. al, "Colorado River Compact. Signed at Santa Fe, New Mexico, November 24, 1922" (Washington D.C., 1923), https://hdl.handle.net/2027/uc1.c025909116.
[126] Hoover, et. al, 2
[127] Hoover et. al, 3
[128] Milton N. Nathanson, "Chapter 1: Summary of 'The Law of the River,'" in *Updating The Hoover Dam Documents* (Denver, Colorado: United States Department of Interior, Bureau of Reclamation, 80)): 1-28. http://www.riversimulator.org/Resources/LawOfTheRiver/HooverDamDocs/UpdatingHoover1978.pdf.
[129] Hoover, et. al, 6

quandary to manage and completely removed from negotiations involving their lands and water. These decisions emphasize that the dispossession of Indigenous communities throughout the southwestern United States caused by settler-colonial governance; it was the source of generalized, and intentional, colonial control.[130]

As previously established, communities like SUIT and UMUT signed treaties and agreements to establish a semblance of interdependence with the federal government. In turn, they faced dispossession through loss of access to resources like water while also the loss of their culture. These losses thereby aided settlers in the assimilation of Indigenous people into settler-colonial structures which included agriculture, formal education, or simply living in houses. The exclusion of Indigenous nations from interstate governance demonstrates the lack of consideration by settlers over a shared resource while also negating their "reserved rights."

[130] Curley, "Unsettling Indian Water Settlements…," 3

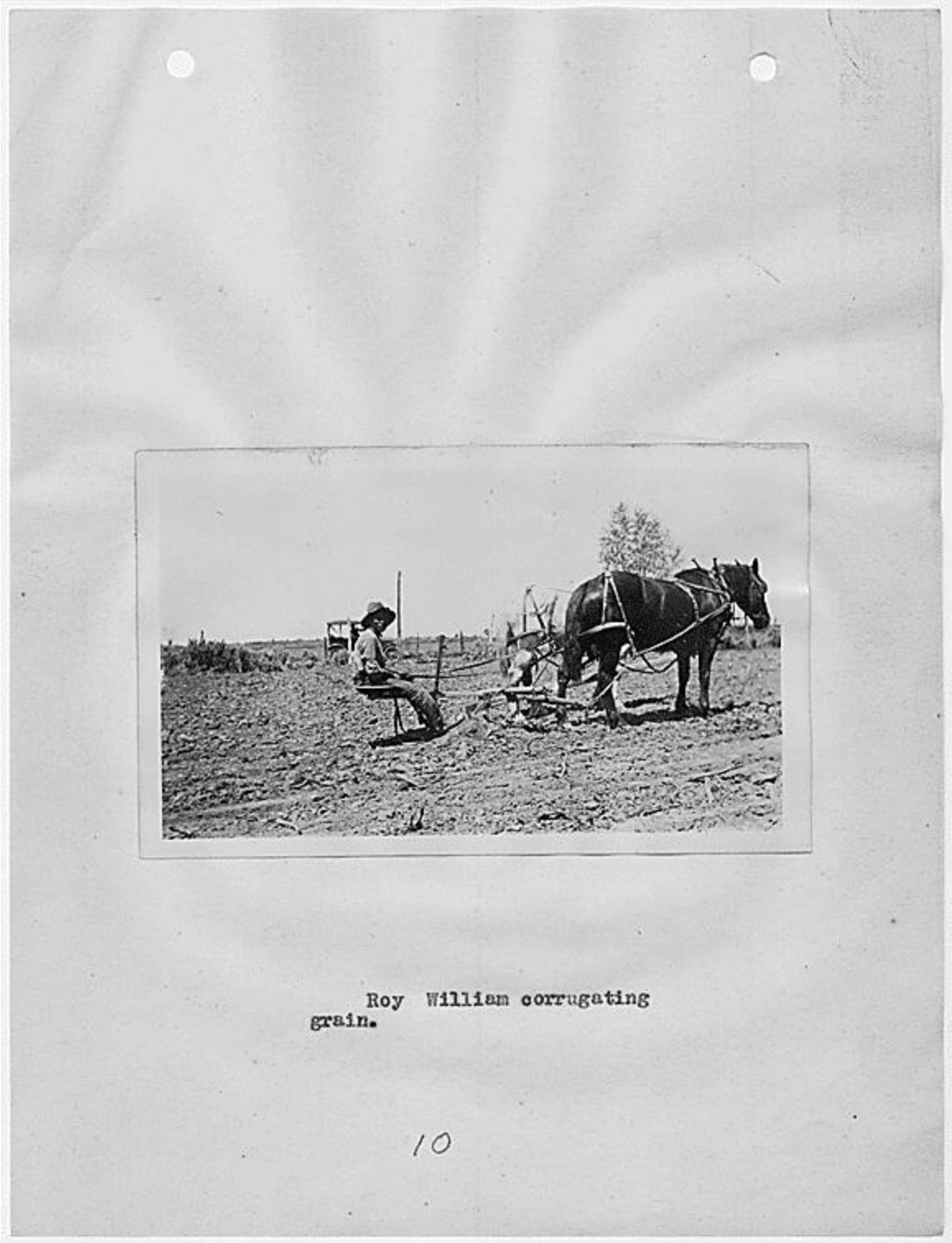

Figure 1. Photograph of Southern Ute, Roy William, planting grain. McKean, E.E., *Roy William Corrugating grain,* 1922, Photograph on Paper, United States National Archives, Washington D.C., https://catalog.archives.gov/id/293138.

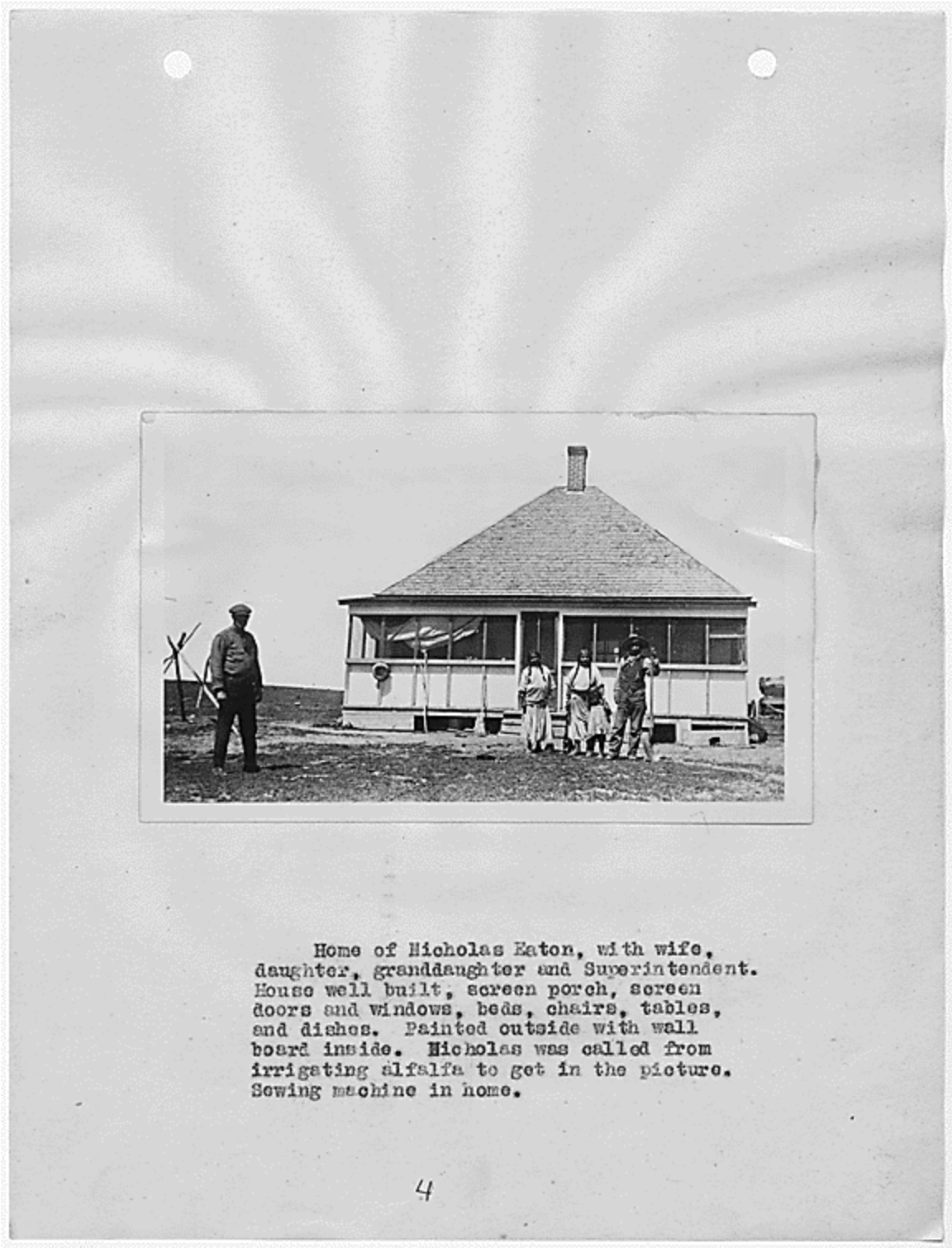

Figure 2. Photograph of the home of Nicholas Eaton, wife, daughter, granddaughter, and Superintendent at the Eaton home. McKean, E.E., *Home of Nicholas Eaton and Family,* 1922, Photograph on Paper, United States National Archives, Washington D.C., https://catalog.archives.gov/id/293138?objectPage=4.

The photographs surveying the Southern Ute twenty-three years after the creation of their reservation demonstrates the attempt of forced assimilation to the American settler lifestyle of developing the land for profitable commodity as well as establishment of permanent housing which moved them away from their seasonal migration practices. The descriptions regarding the crop type the Southern Ute were planting and the aspects of the house like windows, a porch, and a bed highlight what the American settler valued. These images are visual demonstrations of dispossession from Southern Ute culture and identity, emphasizing their assimilation into the American way of life.

Despite the Compact in 1922, the fact that all Indigenous peoples were non-citizens of the United States (until they were formally inducted as citizens on June 2, 1924, under the Indian Citizenship Act) compounded the problem of entanglement.[131] Indigenous people, even with this courtesy to integrate them as American citizens, were still under the regulations and management of the US federal government.[132] By making them part of the general public, the Indigenous community's opinions and needs were further disregarded because they were now both citizens of the United States and sovereigns without full authority over their land and way of life.

The Compact also authorized settler-colonial manipulation of the Colorado River upon its signing due to the river's unpredictability regarding its flow rate throughout the seasons. Flooding in the 1920s brought attention to the need to harness the water so it would not devastate farmlands and could be turned into electricity in the coming years.[133] This need led to the Boulder Canyon Project Act of 1928 which authorized two projects, the Boulder—or Black—

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[131] 68th Congress, "H.R. 6355: The Indian Citizenship Act of 1924," Pub. L. No. 68–175, 299828 (1924), https://catalog.archives.gov/id/299828.
[132] Curley, "Unsettling Indian Water Settlements…", 10
[133] United States Congress, "H.R. 5773: Boulder Canyon Project Act (1928)," Pub. L. No. 642 (1928), https://www.archives.gov/milestone-documents/boulder-canyon-project-act.

Canyon dam and the All-American Canal, built to connect the Colorado River in the Imperial and Coachella Valleys in California which would help divide the water in the Lower Basin.[134] The Boulder Canyon Project Act went into effect on June 25, 1929, and the project took six years to finish.[135] This project was significant because it was the first settler-colonial project on the Colorado River that led to the development of the waterways and tributaries which ultimately supported Indigenous communities throughout the southwest develop their water. For SUIT and UMUT, specifically, the Boulder Canyon Project Act laid the foundation for their ability to capture water in the future.

On November 4, 1936, SUIT had their Constitution approved by the Office of Indian Affairs, and they claimed jurisdiction and a right to self-determination.[136] The ability to create a Constitution followed the approval and signing of the Indian Reorganization Act of 1934 which ended the allotment policies, granted the reservation the ability to protect the remaining Indigenous lands, and to implement self-governing practices.[137] As with many treaties in the past, the Indian Reorganization Act was another method of colonial-forced assimilation.[138] Stated in the preamble, the Indian Reorganization Act established the rights to self-govern, administer tribal affairs, preserve and develop resources, and establish a Constitution.[139] SUIT's ability to formally declare sovereignty through the creation of their Constitution was essential in their progress towards *acting* as a sovereign entity. They were recognized as a separate body—albeit

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[134] United States Congress, H.R. 5773
[135] United States Congress, H.R. 5773
[136] United States Department of Interior, Bureau of Indian Affairs, and Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, "Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado" (Washington, D.C., November 4, 1936), https://tile.loc.gov/storage-services/service/ll/llscd/37026046/37026046.pdf.
[137] McKinney, et. al, 177
[138] Daniel McCool, "Searching for Equity, Sovereignty, and Homeland," in *Cornerstone at the Confluence*, ed. Jason Anthony Robison (Tucson, Arizona: University of Arizona Press, 2022), 143–66. McCool, 151.
[139] SUIT Constitution, 1

within the United States given the entangled histories between their people and the United States federal and interstate government. However, the execution of their constitution was accompanied by an agreement that SUIT would work alongside the Secretary of the Interior to accomplish self-determining interests on the reservation.[140] They agreed to the existing law as determined by the United States under Article V, Section 1A to or lease nor grant tribal land, including water, to a non-member.[141] This reference to water is the only one in the 1936 SUIT Constitution, even though water was essential for their survival and progression as a sovereign nation and they still lacked formal ownership or any recognize abundance of land and resource.

UMUT followed SUIT in their creation of a constitution unique to their reservation, which was approved by the Office of Indian Affairs on June 6, 1940.[142] The Constitution of UMUT emulates SUIT's Constitution with similar wording and their declaration of operations with some minor changes to meet the individual needs of the different reservations. However, water was not mentioned in this constitution. Under Article V, Section 1B, tribal assets are mentioned but not specified, and declares that they could not be sold, deposited, leased, or burdened without consent of UMUT.[143] The absence of definition regarding tribal assets signifies that, despite progress towards separating from settler assimilation and dispossession, there was still great entanglement—in which UMUT could declare sovereignty but could not act as a fully sovereign entity because of this need for approval by the US federal government regarding reservation decisions. Dr. Dennison states, "It [was] an insistence on one's authority without the

[140] SUIT Constitution, 3
[141] SUIT Constitution, 3
[142] United States Department of Interior, Office of Indian Affairs, and Ute Mountain Ute Tribe of the Ute Mountain Ute Reservation, Colorado, "Constitution and By-Laws of the Ute Mountain Tribe of the Ute Mountain Reservation: Colorado, New Mexico, Utah" (Washington, D.C., June 6, 1940), https://www.loc.gov/item/41050289/.
[143] UMUT Constitution, 2

illusion of full control, a mess of negotiations and interruptions, which almost always [led] to further entanglements."[144]

The Colorado River and its tributaries faced further development agreements written by the US federal government in the subsequent decade following the approval of the UMUT Constitution. The Upper Basin states of the CRC including Arizona, Colorado, New Mexico, Utah, and Wyoming felt that they needed to allocate their water between the states which led to the creation of the Upper Colorado River Compact of 1948 ("Upper Basin Compact").[145] Following in a similar trajectory of the CRC, the Upper Basin Compact equitably apportioned Colorado River water above Lee's Ferry, Arizona.[146] The state of Colorado received 51.75 percent of the Colorado River water.[147] And again, like the Compact, Indigenous users of the Colorado River water and its tributaries were not invited to the meeting of the Upper Colorado River Commission nor were there any changes made their reserved rights in the compact.[148] However, the Upper Basin Compact also addressed other compacts made between states, such as the La Plata River Compact negotiated between Colorado under Commissioner Carpenter and New Mexico's state engineer, Stephen B. Davis, in which this compact would not affect the La Plata River Compact.[149] The La Plata River was, and remains, an essential river for SUIT and they were also excluded from the La Plata River Compact approved in 1922.[150] The Upper Basin

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[144] Dennison, 685
[145] Charles A. Carson et al., *Upper Colorado River Basin Compact of 1948*, (Washington D.C., 1948), https://www.usbr.gov/lc/region/pao/pdfiles/ucbsnact.pdf.
[146] Upper Colorado River Basin Compact of 1948, 1
[147] Upper Colorado River Basin Compact of 1948, 4
[148] Upper Colorado River Basin Compact of 1948, 26-7
[149] Upper Colorado River Basin Compact of 1948, 17
[150] Delph E. Carpenter and Stephen B. Davis, "La Plata River Compact" (State of New Mexico, November 27, 1922), https://api.realfile.rtsclients.com/PublicFiles/5f809ddfc9864dad89f9d03375144a14/fe36204a-9d33-49b7-b113-9851f2349e0f/La_Plata_River_Compact.pdf.

Compact also addressed the San Juan River water and its apportionment for Colorado and New Mexico, another Colorado River tributary that flowed through SUIT's reservation.[151]

The consistent exclusion of SUIT and UMUT regarding water allocation and access undermined their abilities to assert sovereignty even though they were sovereigns because they were forced to depend on the federal and state governments for water despite their reserved rights to it. Even though the 1934 Indian Reclamation Act was the federal government's way to offer the potentiality of interdependency for Indigenous nations to operate as sovereigns, the implementation and practices were still enforced on the terms of the settler-colonial governments rather than the Indigenous councils. SUIT and UMUT were not able to act with authority over their lands (and water) because they constantly had to be in relation with the Secretary of the Interior who made the legal approvals for SUIT and UMUT councils regarding their reservation. For the first half of the twentieth century, SUIT and UMUT reservations were entangled because of the hierarchical interests with settler interests maintaining Indigenous dispossession without a clear direction out of such enclosures.[152] Nonetheless, SUIT and UMUT were not alone in these sentiments, and change was on the horizon for Indigenous communities in the southwest.

Beginning in Section Two of the Colorado River Storage Project of 1956, enacted by United States Congress, the Secretary of the Upper Colorado River Basin was given approval to execute water storage projects throughout the Upper Basin.[153] This meant the states, with the support of federal aid, could build dams and create reservoirs for future use of the water. This authorization included rivers flowing through SUIT and UMUT reservations, the San Juan-

[151] Upper Colorado River Basin Compact of 1948, 23-5
[152] Curley, "Unsettling Indian Water Settlements…", 11
[153] Colorado River Storage Project, "Colorado River Storage Project-Authority to Construct, Operate and Maintain," Pub. L. No. 485, 203 Chapter (1956).

Chama, the Dolores, and the Animas-La Plata.[154] In short, the ratification of this Project Act laid the foundations for SUIT and UMUT to obtain water rights; the rivers flowed through their lands, which the federal government needed to navigate if and when the projects began, thus they needed tribal cooperation. This signified a turn towards the notion of interdependence.

The first sign of change for Indigenous communities in the southwest regarding water allocation was through the court case, *Arizona v. California (1963).* The state of Arizona was never satisfied with the Compact and did not ratify it until 1944 after concerns over the Upper Basin harboring water and California obtaining too much were addressed.[155] This outcome led to litigation on multiple occasions, the most significant one taking place in 1963. However, the case led to a few of the reservations receiving quantified water allocation rights on the premise that they held senior rights based on a history which claimed that, "the ancient Hohokam tribe built and maintained irrigation canals near what is now Phoenix, Arizona, and that American Indians were practicing irrigation in that region at the time white men first explored it."[156] The federal government recognized that in the past, the United States had no intention of reserving water for the Indigenous reservations and that the water should be measured for their needs going forward.[157] This recognition by the US federal government of past failures regarding Indigenous water rights enabled reservations in Arizona to receive allocated water to become prosperous based on the number of individuals on the reservation rather than the irrigable land.[158] The case opened up doors for other reservations to obtain water rights and ownership like SUIT and UMUT on their reservations that were measurable rather than simply relying on a vague

[154] Colorado River Storage Project, 1
[155] Philip L. Fradkin, *A River No More: The Colorado River and the West* (New York, New York: Knopf, 1981): 190.
[156] Arizona v. California, 373 United States 546 (United States Supreme Court 1963).
[157] Ibid, 373 U.S. 596
[158] Ibid, 373 U.S. 546, 600-01

"reserved right" as in past situations. The ability to quantify water provided authority to the settler-colonial governance, which provided the Indigenous communities like SUIT and UMUT with more agency to function as a sovereign in the future.[159]

Transitions: Late Twentieth Century Quantifiable Water Rights

Anthropologist Jessica Cattelino quotes anthropologist David Mosse on how, "[w]ater mirrors the complexity of land" in so far that it is "a medium of meaning and material relations, while adding movement and the dimension of time."[160] Cattelino concludes that, "Water respects neither property lines nor political borders."[161] Water is essential for all living beings. It has been fought over, muddied by waste and pollutants, and faces drought conditions while climate change brings less and less water to the West over the years.[162] Environmental geographer Jeremy J. Schmidt infers that to manage water is "to manage the bridge between life and non-life, and thereby, to shape the course of planetary evolution and social development."[163] SUIT and UMUT, despite their efforts to obtain lands from their original territories and assert their sovereign nature using American governance and modernization, were in a dispossessed position because of the settler-colonial governance that kept Indigenous communities below the interests of colonizers like industrial agriculture or mineral extraction.[164] However, change was inevitable for SUIT and UMUT. *Arizona v. California* demonstrated a shift towards an acknowledgment of past decisions that hurt Indigenous people and limited their exercise of self-determination and

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[159] Theodora Dryer, "Settler Computing: Water Algorithms and the Equitable Apportionment Doctrine on the Colorado River, 1950-1990," *Osiris* 38, no. 1 (2023): 265–85.
[160] Jessica R. Cattelino, "Sovereign Interdependencies," in *Sovereignty Unhinged: An Illustrated Primer for the Study of Present Intensities, Disavowals, and Temporal Derangements* (Durham, North Carolina: Duke University Press, 2023): 153.
[161] Cattelino, 153.
[162] Schmidt, et. al, 6
[163] Jeremy J. Schmidt, *Water: Abundance, Scarcity, and Security in the Age of Humanity* (New York, New York: New York University Press, 2017).
[164] Andrew Curley, "Infrastructures as Colonial Beachheads: The Central Arizona Project and the Taking of Navajo Resources," *EPD: Society and Space* 39, no. 3 (2021): 387–404.

sovereignty. Water was of utmost importance for the exertion of power regarding governance concerning the Colorado River and the tributaries, hence the consistent disregard by US federal and state governance of Indigenous communities at the convening of representatives negotiating water supply to states. The Indigenous tribes who received quantifiable water through the outcome of *Arizona v. California* demonstrated a slow trajectory towards regaining more authority over their resources. The impact of this outcome led to more Indigenous communities, including SUIT and UMUT, taking their grievances regarding water allocation to the US federal government in the following years.

In 1985, SUIT and UMUT began their journey towards obtaining similar access to local tributaries of the Upper Basin. SUIT and UMUT negotiated with the state of Colorado, the United States, and other water users such as the conservancies and cities in the region which led to the *Colorado Ute Indian Water Rights Final Settlement Agreement* ("1986 Agreement").[165] The settlement was created to determine all water rights for SUIT and UMUT, to settle disputes, controversies, and claims from the 7th Water Division for the State of Colorado as stated by Colorado Water Right Determination and Administration Act of 1969, title 37, article 92, C.R.S 1973, and finally, to enhance SUIT's and UMUT's economies.[166] The settlement was federally carried out by the development of two major watershed projects, the Dolores River Project ("Dolores Project") and the Animas-La Plata Project ("ALP"), to serve the needs for the local communities and for the reservations.

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[165] McElroy, 249

[166] Fairfield Communities, Inc. et al., "Colorado Ute Indian Water Rights Final Settlement Agreement of Dec. 19, 1986," *Native American Water Rights Settlement Project*, December 10, 1986, https://digitalrepository.unm.edu/nawrs/9.

It is important to note that these projects as outlined in the 1986 Agreement were not just for SUIT or UMUT; however, they, in fact, supported non-Indigenous users more effectively. This is because SUIT and UMUT communities were eventually displaced as they would need to look for other water sources which would therefore displace non-Indigenous communities in the region.[167] The Dolores Project and the ALP, as outlined by the 1986 Agreement, secured the futures of non-Indigenous users of the regional water supply in addition to ensuring that SUIT and UMUT also received adjacent benefit, but SUIT and UMUT were not the priority receivers for the allocation of water.

This prioritization of the settler-colonial communities by negotiating with SUIT and UMUT demonstrates the United States' reluctance to support Indigenous communities without finding a way to maintain the hierarchy enhanced by dispossession. Diné geographer, Andrew Curley, describes water governance as a source of colonial control because "[it] follows the logic of land acquisition, alienating and quantifying natural systems into 'scientific' forms of management."[168] The 1986 Agreement appears as an interdependent practice of relationship between the many interested individuals involved in storing and supporting infrastructure surrounding water, and especially in the addressing the desires of SUIT and UMUT. However, the notion of entanglement is a more effective description of the 1986 Agreement because of the hierarchical power dynamics at play.[169] SUIT and UMUT were recognized sovereigns by the federal government. However, their ability to uphold their sovereignty is challenged due to their dependency on the federal government. The United States, Colorado, and the non-Indigenous

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[167] Lois G. Witte, "Negotiating an Indian Water Rights Settlement: The Colorado Ute Indian Experience" (Innovation in Western Water Law and management, Summer Conference, June 5-7: Natural Resource Law Center, University of Colorado School of Law, 1991), 25.
[168] Curley, "Unsettling Indian Water Settlements…," 3
[169] Dennison, "Entangled Sovereignties…," 685

users interested in the water from the local tributaries of southwest Colorado leverage influence from financial and administrative positions that benefit one another while SUIT and UMUT interests remain outliers. The needs of the Indigenous communities revolve around continuing to modernize and build a community after many years of dispossession and suppression. However, as long as they are dispossessed, they can never become true economic or political competitors because they are constantly 'catching up' to these other entities. Therefore, in United States governance, the Indigenous position is still functionally "less than" despite the similar goals of all interested parties—building infrastructure to support the persistence and security of Colorado River and the future of its water.

The 1986 Agreement was taken to the Supreme Court and would not become an Act for another year. The 1988 Settlement Act became a law in November 1988, endorsing the 1986 Agreement with some minor adjustments.[170] The 1988 Settlement Act agreed to a total of 225,448 acre feet per year ("AFY") in diversions and 125,399 AFY in depletions between the two reservations.[171] "[O]ne of the critical elements renegotiated in Congress was off-reservation use of tribal waters,"[172] which blocked the sale or lease of any water from the Dolores Project or ALP to any of the Lower Basin states under section 5B: "Restriction on Disposal of Waters into Lower Colorado River Basin."[173] However, authorization to begin the development of the Dolores Project and the ALP was granted with the signing of the 1988 Settlement Act even though both projects had been authorized by the Colorado River Basin Project of 1968.[174] It took

[170] Witte, 11
[171] Colorado River Research Group, "Tribes and Water in the Colorado River Basin," Books, Reports, and Studies (Boulder, Colorado: University of Colorado Law School, June 2016), https://scholar.law.colorado.edu/cgi/viewcontent.cgi?article=1177&context=books_reports_studies.
[172] Witte, 11
[173] 100th Congress, "H.R. 2642: Colorado Utes Indian Water Rights Settlement Act of 1988," 3
[174] Bureau of Reclamation and Department of the Interior, "Animas-La Plata Project | UC Region | Bureau of Reclamation," Bureau of Reclamation, November 8, 2022, https://www.usbr.gov/uc/progact/animas/index.html.

twenty years for the settler-colonial entities to execute on water storage planning in the state of Colorado. Large dam proposals like the Dolores Project and the ALP were put on the "Carter hit list," in 1977.[175] This list consisted of Western water development projects that President Jimmy Carter wanted to rescind.[176] The delay of the execution of the projects in the Upper Basin demonstrates the discrepancy of priorities between the federal government, state governments, and Indigenous interests. However, it also reveals the assertion of rights for SUIT and UMUT, and when they could obtain their supply of the water; the 1988 Settlement Act was thought successful because tribal nations had new quantifiable data that could support the development of their reservations by means of agriculture, housing development, and municipal purposes.

The 1988 Settlement Act represented settler-colonial entities and Indigenous communities moving towards a beneficial relationship by addressing a mutual common goal related to water.[177] SUIT and UMUT leaders, Chris A. Baker of SUIT and Ernest House, Sr. of UMUT, who signed on the 1988 Settlement Act understood the impact of the settlement for future generations which made the decision easy to agree to because the negotiations included their tribes.[178] However, SUIT and UMUT were still entities without full, sovereign authority—demonstrated by the fact that the 1988 Settlement Act was written using the terms proposed by the federal government. Water rights were still quantified and based on the permission of the colonizer. SUIT and UMUT communities, despite living on their reservations' land and the surrounding territories for hundreds of years, were still in a position in which they needed to

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[175] Gail Binkly, "Ute Water," *Water Education Colorado* (blog), accessed April 11, 2024, https://www.watereducationcolorado.org/publications-and-radio/headwaters-magazine/summer-2012-coming-together-in-southwestern-colorado/ute-water/.
[176] Binkly, "Ute Water."
[177] Cattelino, 177
[178] Staff Report, "Southern Ute Tribal Water Rights: A Long but Successful Effort – The Southern Ute Drum," *Southern Ute Drum*, March 17, 2017, https://www.sudrum.com/top-stories/2017/03/17/southern-ute-tribal-water-rights-a-long-but-successful-effort/.

sacrifice part of their autonomy, and therefore sovereignty, as they did in 1868 to obtain a small allotment of water to support their communities. The notion of interdependency is effective in this specific case if SUIT and UMUT because they were more autonomous as a sovereign.[179] However, given the size of their population and their governmental influence on the settler-colonial governments at both a federal and state level, they had very little to reciprocate. Ultimately, the 1988 Settlement Act was a Public Law that initiated the development of water storage projects within spheres of interest that prioritized the settler-colonial bodies, even though it also supported some SUIT and UMUT interests.

Once the interests of all parties in the 1988 Settlement Act were defined, the building of water supply infrastructure began. Outlined in Section Six of the 1988 Settlement Act, SUIT and UMUT's involvement in the construction of the water allocation from the Dolores Project and ALP was clearly indicated by declaring that the building of reservoirs and irrigation systems that moved water from the Dolores River the Animas-La Plata tributary was to be met with authorization.[180] The Dolores Project was authorized, and completed by 1998 which took over twenty years to build, and resulted in the McPhee Reservoir and Dam.[181] However, the 1988 Settlement Act's ALP raised concerns within other federal departments.

The Fish and Wildlife Service ("FWS") proposed the Endangered Species Act in 1979 which extended protections to at-risk animal species.[182] Even with the authorization of the Dolores Project and the ALP, the FWS concluded that the Colorado River squawfish on the San

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[179] Cattelino, 179
[180] 100th Congress, "H.R. 2642: Colorado Utes Indian Water Rights Settlement Act of 1988," 3
[181] Harris Water Engineering, Inc, "2014 Water Management and Conservation Plan" (Dolores Water Conservancy District, 2014), https://nmwca.org/wp-content/uploads/2019/04/Dolores-Water-Conservancy-District_Water-Conservation-Plan.pdf.
[182] McElory, 251

Juan River—now called the Pike minnow—needed protection from potentially harmful interactions with humans, and the construction of the ALP specifically jeopardized the reinvigoration of the species. This declaration halted the ALP and project supporters, including SUIT and UMUT, and spent the subsequent two years in tense negotiations once again.[183] It was not until 1996 that the Bureau of Reclamation decided, without the involvement of SUIT, UMUT, or other interested parties in the ALP, that the FWS had succeeded in their protection of the Pike minnow. This decision forced the ALP to shrink to the agreed upon allocations for all interested parties while also increasing the costs for protecting the fish. The FWS required a seven-year study "to determine factors limiting the endangered fish" and a decision regarding the management of infrastructure of the ALP was created.[184] This delay imposed by the FWS, despite its importance to the protection of water ways for endangered species, also eroded SUIT and UMUT's access to water, which the Indigenous communities could not circumvent. Federal government policies were prioritized over SUIT and UMUT's exigences sustained their dispossession for another seven years.

The discourse regarding water allocation for SUIT and UMUT was a question of who or what mattered. It was clear that, based on the intervention by the FWS, that the 1988 Settlement Act regarding the ALP was threatened. SUIT and UMUT had spent almost another decade attempting to regain their access to water. Frustration was on the rise for SUIT and UMUT because they had done significant amounts of negotiation and agreement-making to compromise with the federal government to obtain access to tributary water and help develop their reservations after being disposed for over a hundred years from it, all to have their concessions

[183] McElroy, 251
[184] McElroy, 252

reversed.[185] SUIT and UMUT's claim to sovereignty was more in question now than before because their inputs and needs were silenced by the needs of a federal government agency.[186] This decision to prioritize the FWS's claims demonstrated entanglement due to "uneven power dynamics" in the negotiations between the settler state and the Indigenous communities because SUIT and UMUT's relationship to the federal government had a tumultuous history.[187] The needs of SUIT and UMUT were pushed aside even though their ability to take care of the San Juan River Basin in the ALP was possible, because of the FWS' "concern" regarding the Pike Minnow. The self-serving agendas of federal agencies hindered SUIT and UMUT's right to water and right to claim sovereignty even though 1986 and 1988 water settlement negotiations dictated otherwise.

The intervention of FWS into the execution of the ALP was not the end of SUIT's and UMUT's struggle to obtain their water. Secretary of the Interior Bruce Babbitt announced a proposal to address the problems with the 1988 Settlement Act in 1998.

> "The Administration's proposal was premised on building a storage facility to provide the 57,100 acre feet of annual depletion previously approved by the FWS. Its chief features were: (1) over 19,000 acre feet of depletion for each Tribe; (2) a waiver of tribal construction costs; (3) a tribal water acquisition fund of $40 million to acquire additional water rights; (4) a reservoir with a storage capacity of 90,000 acre feet; (5) full environmental compliance including an alternatives analysis, to be undertaken before construction; (6) no benefits at all for irrigation; and (7) deauthorization of those project features not required for the tribal settlement."[188]

Secretary Babbitt recognized FWS's observations of the ALP outlined in the 1988 Settlement Act while also acknowledging the needs of SUIT and UMUT. As a result, the project Secretary Babbit outlined would provide "nearly two-thirds of its water to the Ute Tribes" at the cost of no

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[185] Witte, 14
[186] Ute Eickelkamp, "Water's Ethical Time: The Art of Deindustrialising Human-Water Relationships," *Oceania* 93, no. 3 (2023): 321–34, https://doi.org/10.1002/ocea.5384.
[187] Dennison, 686
[188] McElory, 255

support or reward for irrigation in compliance with FWS's goal to protect the San Juan River Basin and the ALP.[189] This was less water than originally allocated in the 1988 Settlement Act. Compromise seemed within the realm of possibility given the challenge to meet the needs of the FWS and the few options available to Indigenous communities, to execute obtaining quantified water rights. However, because SUIT and UMUT had a beneficial allotment, which should have been seen as a success in terms of obtaining more legitimacy to bolster their sovereign status, they then faced criticism by non-Indigenous entities for obtaining the most water. This was not the end of the struggle to even begin the development of the Dolores Project or the ALP; it took another two years for the 1988 Settlement Act to be amended—again.

Congressman Scott McInnis of Colorado wrote a testimony on May 11, 2000, to Congress stating a call to action for SUIT and UMUT to pass the amended 1988 Settlement Act. He made it transparent that he sympathized with and supported SUIT and UMUT obtaining water right and building a storage facility to support the communities of both Indigenous and non-Indigenous populations.[190] Congressman McInnis was not the only individual advocating for action to be taken toward the construction of the ALP. Members from the Department of the Interior, Southern Ute Indian Tribe, Ute Mountain Ute Tribe, Animas-La Planta Water Conservancy District, the Office of the State Engineer of New Mexico, San Juan River Commission, Southwestern Water Conservation District, and Taxpayers for the Animas River all supported the passing of the amended version of the 1988 Settlement Act as proposed by the Secretary Babbitt. The Act included addressing the environment, deauthorization of the original project, repayment under Reclamation Law, water permits, and tribal resource funds. The many

[189] McElroy, 255
[190] "H.R. 3112: To Amend the Colorado Ute Indian Water Rights Settlement Act to Provide for a Final Settlement of the Claims of the Colorado Ute Indian Tribes, and For Other Purposes" (Washington, D.C., May 11, 2000), https://babel.hathitrust.org/cgi/pt?id=pst.000047040106&seq=1.

entities called on Congress and the bill was passed on October 25, 2000—guaranteeing the building of infrastructure systems to allocate water for SUIT, UMUT, and other regional purposes.[191] The Amended and Reinstated Agreement as established in 1986 was finally enacted on November 9, 2001.[192]

Bill H.R. 3112 granted permission to develop ALP and guaranteed its completion. Approval of the storage project was granted in October 2001 and construction began six months later.[193] The ALP began storing water in 2009 and was completed by June 2011, establishing Lake Nighthorse.

The impact of obtaining and implementing quantified water rights for SUIT and UMUT was historic. It restored rights lost in 1968 and deployed the intentions of the *Winters v. United States (1908)* case, the Colorado River Compact of 1922, and the Upper Colorado River Compact of 1948, which all together delineated that the allocation of water for Indigenous communities would no longer be obstructed. By quantifying the water, Bill H.R. 3112 created legitimacy and accessibility for SUIT and UMUT to develop their lands using water which in turn created a more prosperous and comfortable life for SUIT and UMUT. The request and advocacy made by allies to SUIT and UMUT like Congressman McInnis demonstrated the importance of the Indigenous communities to the state of Colorado and surrounding territories. By following through on the project that the Colorado River Storage Project ("CRSP") of 1956 and intentionally allocating water for the Colorado Indigenous communities, a conveyance of

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[191] H.R. 3112, 1. Scott McInnis, "To Amend the Colorado Ute Indian Water Rights Settlement Act to Provide for a Final Settlement of the Claims of the Colorado Ute Indian Tribes, and for Other Purposes," Pub. L. No. H.R. 3112, 1001 106 (2000), https://www.congress.gov/106/bills/hr3112/BILLS-106hr3112rh.pdf.
[192] Katherine Ott Verburg, "Colorado River Documents: Chapter 10," *United States Department of Interior, Bureau of Reclamation, Lower Colorado Region*, 2008.
[193] Bureau of Reclamation and Department of the Interior, "Animas-La Plata Project."

"nondomination and good relations"[194] is integrated into the relationship between SUIT, UMUT, and their non-Indigenous counterparts.

The passage of the amended Colorado Ute Indian Water Rights Settlement Act after fourteen years of negotiation, and several decades of water dispossession, marked a significant milestone in the on-going journey for SUIT and UMUT reservations declaring sovereign status more effectively through resource access. The creation of quantified water allocation for their people represents a shift in settler perspectives that recognize SUIT and UMUT are communities with interests that coincide with the federal and state governments and non-governmental organizations ("NGOs"). It was SUIT and UMUT's voices and advocacy for years that led to the creation of two Colorado River storage projects which are only growing more important in modern times given the increasing drought conditions in the Southwest. Their ability to remain resilient when the FWS became involved demonstrates a willingness to work interdependently with their settler-colonial counterparts towards the common goal of executing on projects surrounding infrastructure. The success of SUIT and UMUT obtaining water right for their reservations over one hundred years after they were defined in their treaty with the federal government in 1868 and the interstate members without running water to their homes.[195] SUIT and UMUT now have allocated access to water, but their current concerns revolve around capturing the water, and coping with the ever-decreasing amount of water flowing through the Upper Colorado River tributaries and being stored in the reservoirs.

Interdependency? Early Twenty-First Century Outcomes and Legacies

[194] Cattelino, "Sovereign Interdependencies," 159
[195] Sakas, "Historically Excluded…"

The allocated water for SUIT and UMUT reservations in southwestern Colorado has supported the development of their sovereignty. "Water management is a bricolage of ideas, norms, strategies, and techniques."[196] The reservation's ability to have water that is recognized as legitimate through allocation, or in measurable numbers, demonstrates a recognition by the federal and state governments that there is potential for equitability concerning the resource. To view this intersection of relationship is to recognize the theory of interdependence, in which "Indigenous nations enjoy a nation-to-nation relationship to the United States as fellow sovereigns."[197] Water can assemble individuals and groups of different backgrounds and interests as a collective due to its dual nature as both a resource and life provider to the arid land and its inhabitants. A part of the 1988 Settlement Act reflects this approach because southwestern Colorado is desert and water is scarce. For Congressman McInnis in the early 2000s, the obtaining of allocated water for SUIT and UMUT was a success for the state of Colorado just as much as for the Indigenous communities.

Even though the legislation around the Settlement Act was successful, more complications have arisen since Lake Nighthorse was completed. As documented by Colorado Public Radio in 2021, fifteen percent of SUIT citizens did not have running water to their homes, a higher rate than other Indigenous communities in the region.[198] Some citizens have wells on their land, but those wells are not producing as much as they once did.[199] This has forced SUIT to rely on a hauled water program for those who live outside of their capital, Ignacio.[200] Hauled water is unreliable for the long term because if a truck breaks down or the weather is bad, houses

[196] Schmidt, *Water,* 2
[197] Cattelino, "Sovereign Interdependencies," 148
[198] Sakas, "Historically excluded…"
[199] Sakas, "Historically excluded…"
[200] Sakas, "Historically excluded…"

can go days without water, making the inhabitants' ability to survive, much less thrive, that much more challenging for households.[201] Even then, some families and households do not have the funds to have water delivered and must haul for themselves.[202] The need for water with a solidified infrastructure has grown along with the population within the region, not just SUIT. However, most of the water that SUIT has access to is for agricultural purposes with a focus on hay production and irrigation for livestock on land that used to be for grain and fruiting trees.[203] Only 7,500 acres of the 22,000 acres of land that is for agriculture were being used in 2018 due to the lack of infrastructure, whether it was neglected or non-existent.[204] This discrepancy in water allocation and infrastructure are playing a pivotal role in SUIT's development and maintenance as a reservation by demonstrating how water settlements, which are deeply rooted in settler-colonialism, continue to reproduce insecurity and dispossession of the Indigenous people occupying reservations.[205]

The lack of infrastructure used to deliver water to the reservation for its citizens, agriculture, livestock, commercialism, and tourism in the present moment forces SUIT to remain dependent on other organizations in the forms of settler-colonial governing bodies and NGOs that often have similar interests and reasoning for obtaining access to water. Moreover, securing paper rights to water does not equate to the promise of equitable delivery of water because the concerns for faulty infrastructure and contamination from resource extraction remains unaddressed. This demonstrates that the imposed limitations on tribal sovereignty remain

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[201] Sakas, "Historically Excluded…"
[202] Sakas, "Historically Excluded…"
[203] Colorado River Basin Ten Tribes Partnership, "Chapter 5.2 - Assessment of Current Tribal Water Use and Projected Future Water Development: Southern Ute Tribe" (Ten Tribes Partnership, December 2018), https://tentribespartnership.org/wp-content/uploads/2020/01/Ch.-5.2-SUIT-Current-Future-Water-Use-12-13-2018.pdf.
[204] Colorado River Basin Ten Tribes Partnership, "Chapter 5.2…," 13
[205] Wilson, et. al, 2

enforced. SUIT reservation does not have the funds to develop pipes and treatment facilities or to build reservoirs much like other reservations along the Colorado River.[206] The lack of infrastructure contributes to SUIT having the inability to capture the allocated water, which means they watch their water go downstream and watch their water go to other users instead.[207]

No funding and infrastructure have become an aside for SUIT and UMUT due to the twenty-first century, or Millennium Drought, that continues to persist.[208] The Colorado River is down thirteen percent of its annual natural flow between 1930 and 1999 and thirty percent from 1906 and 1929 as measured at Lee's Ferry, Arizona.[209] The lack of flowing water has put the Colorado River into a state of crisis and has placed pressures on Indigenous communities throughout the southwest and interstate governance to come up with a solution. All seven of the CRC states need to have a new agreement regarding the Colorado River's management by 2026.[210] It is speculated that the Indigenous communities will be invited to and included in the negotiations, but community leaders want a legal right at the table.[211] Climate change is directly contributing to the infrastructure challenges SUIT and UMUT are facing because there is less water to build infrastructure around, which then deprives them use of the water allocated, The water allocated for the Indigenous communities will not exist in their entirety unless or until the people are involved in the negotiations around the Colorado River's future. In the current estimates, the Colorado River will not be able sustain itself or its users given the water levels of

[206] Sakas, "Historically Excluded…"
[207] Clark Adomaitis, "The Southern Ute and Ute Mountain Ute Tribes Ask the State of Colorado to Compensate Them for Unused Water Rights," *Four Corners Public Radio*, December 17, 2023, https://www.ksut.org/news/2023-12-17/the-southern-ute-and-ute-mountain-ute-tribes-ask-the-state-of-colorado-to-compensate-them-for-unused-water-rights.
[208] Schmidt, et. al, 3
[209] Schmidt, et. al, 3
[210] Sakas, "Historically Excluded…"
[211] Sakas, "Historically Excluded…"

Lake Powell and Lake Mead as indicators of the ever-increasing length of the Millennium Drought,[212] and SUIT and UMUT will be victims to the deprivation in more drastic ways than their settler-colonial counterparts because of their struggle for funding and infrastructure.

Back in 2021, UMUT experienced severe drought conditions in the southwest and proposed the selling of leases for farm irrigation water to support McPhee's reservoir's levels and to support the reconstruction, operation, and maintenance of the established infrastructure for the reservation.[213] The biggest issue UMUT is facing is that their cast iron and clay pipes that were installed in the 1950s are full of sediment and tree roots which have damaged their infrastructure significantly and require funding for repairs.[214] The lack of water supply and the frail infrastructure has contributed to cuts in farming revenue and UMUT is only receiving ten percent of its allocated water.[215] This culmination of issues accentuates the lingering dispossession in the Indigenous space even though the legislation around water allocation dictates otherwise. The neglect of these components to the allocation of water disrupts the notion of interdependence considerably because the Indigenous communities are forced to rely on settler-colonial governance and NGO support due to their lack of financial ability. However, UMUT will not be able to support their community or interests without the water allocated to them.

UMUT has found ways to increase their chances of survival and growth despite the lack of water. They have a casino on their land and an established construction company that have

[212] Schmidt, et. al, 7
[213] Sakas, "Historically Excluded…"
[214] Sakas, "Historically Excluded…"
[215] Sakas, "Historically Excluded…"

supported the development of their economy.[216] This expansion has given them the finances to create a school that educates their next generations on their culture instead of having to send them to the settler-colonial town of Cortez.[217] This contributes to their ability to more effectively practice self-determination.[218] However, they still face challenges such as enduring a food desert, a common problem on reservations because there is little running water to support agriculture.[219] They have managed to overcome in some regard demonstrated by a fresh food market, but with the persistent Millennium Drought, despite 2023 being a wetter year, they continue to face a lack of quality food because they cannot grow it.[220] In sum, UMUT, even with their successful economic growth and a shift in opportunities to live and thrive on the reservation, continue to struggle due to historical and contemporary circumstances that converges with settler-colonial practices in both harmonizing and conflicting methods meanwhile 16,525 AFY in Lake Nighthorse sits untouched.[221]

The circular circumstances that continue to haunt both UMUT and SUIT limit their ability to act and be recognized as sovereign entities. They have been forced to live in the desert, where water is hard enough to capture and retain, a regional problem for all individuals living in the southwest, without all of the legal and political interference. However, SUIT and UMUT face the greater challenges of the inequality despite their ability to persist as Indigenous communities. They have allocated water equal to their settler-colonial neighbors, and yet they have not been

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[216] Amorina Lee-Martinez, et. al, How access to water affects Indigenous communities in the Colorado River Basin, interview by Rachel Estabrook and Ryan Warner, June 29, 2023, https://www.cpr.org/2023/06/29/water-access-indigenous-communities-colorado-river-basin/.
[217] Lee-Martinez, et. al, How access to water affects…
[218] Lee-Martinez, et. al, How access to water affects…
[219] Lee-Martinez, et. al, How access to water affects…
[220] Lee-Martinez, et. al, How access to water affects…
[221] Rebecca Glenn, "Unrealized Federal Indian Rights on the Colorado River: An Opportunity for Equity and Conservation," *University of Denver Water Law Review* 25, no. 2 (Spring 2022): 287–306.

able to capture it all. Even if they could harness their water seamlessly, their infrastructure would not support it all due to its neglect and already-present operational and maintenance challenges. It is evident that the contemporary agreements made between settler-colonial entities and Indigenous communities reproduce "structures of domination and unilateral extensions of jurisdictions within the idiom of legal discourse."[222] The maintaining of water insecurity for UMUT and SUIT represent the federal and state government and NGO's self-serving interests taking priority over the interests of the people who have lived in the region for hundreds of years. The extraction of water as a resource that has been manipulated and over-utilized by some, and under-utilized by others, has been established by the discrepancies between settler-colonial interests and Indigenous survival that continues to today.[223] This situation demonstrates water's scarcity in southwestern Colorado that is only becoming more impactful as drought continues to persist, which only creates greater conflict between all people interested in it.

SUIT and UMUT reservations in southwestern Colorado continue to face great challenges ahead as they deal with settler-colonial governance undermining their authority over a resource that has supported their communities for hundreds of years. The possibility of being in a more mutually beneficial, interdependent relationship with their settler-colonial opposites through the practice of interdependency continues to be a challenge to cultivate because of the preservation of dispossession as well as the lack of funding and neglected infrastructure today. The way forward for SUIT and UMUT requires their legal presence and involvement surrounding Colorado River negotiations, so that they can assert their authority and responsibility regarding water. It is an indispensable source of life for all people; a lack of it

[222] Curley, "Unsettling Indian Water Settlements...", 5
[223] Wilson, et. al, 7

means a slow death, SUIT and UMUT remain vulnerable as they struggle to survive in small sections of their original territories with no guaranteed resolution in sight.

Conclusion: Hope for a Downstream Wind

The history of SUIT and UMUT is a common narrative surrounding settler-Indigenous relations in the United States since the land's discovery and claim. It began with encounters, learning one another's cultural ways of living and being with their respective environments and populations. When differences in the color of one's skin, religious or spiritual practices, governance and leadership, and survival became prominent, the need to assimilate Indigenous populations into their more "civilized" society became the priority of the colonizer.

Sovereignty is a rather precarious term in Indigeneity because it is defined generally as an autonomous state or freedom from external control but it is practiced as "nested," "overlapping," "territory," or "politics of recognition."[224] In the case of SUIT and UMUT, the terms interdependency and entanglement are appropriate given the relationships surrounding water as an essential survival resource to survive; it unifies settlers and Indigenous people through need, but pits them against each other in the same breath.[225] The historical lack of quantified water allocation until 1988 infringed on the sovereignty of SUIT and UMUT through the sustainment of dispossession of land, legal cases, and the invasion of settlers. SUIT and UMUT were considered nuisances to settlers and their government, leading to their forced removal from territories they claimed and migrated through for hundreds of years. They lost access to rivers

[224] "Definition of SOVEREIGNTY." Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Durham, North Carolina: Duke University Press, 2014). Thomas Biolsi, "Imagined Geographies: Sovereignty, Indigenous Space, and American Indian Struggle," *American Ethnologist* 32, no. 2 (May 2005): 239–59. Susan M. Hill, *The Clay We Are Made Of: Haudenosaunee Land Tenure on the Grand River* (Manitoba, Canada: University of Manitoba Press, 2017). Coulthard, "Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada," *Contemporary Political Theory* 6 (2007): 437–60.
[225] Cattelino, "Chapter 5: Sovereign Interdependence," 175. Dennison, 685.

and lakes or face punishment or death from the federal or state governments. The policies written by the state of Colorado in the 1860s made water a public resource, making it easier for settlers to extract and utilize for their expansion of agricultural spaces and mineral exploitation in the mountains. These methods of dispossession shaped the struggles of SUIT and UMUT to survive.

When the reservations received allocated water in 2000 (because the 1988 Settlement Act needed amending on behalf of the FWS's concerns), the belief that SUIT and UMUT's authority over a resource they had been deprived of increased with the support of the federal and state governments and NGOs, creating an interdependent relationship between the four interested parties involved in the negotiations surrounding water in southwestern Colorado. However, sovereignty through allocated water has been undermined by their historical roots in dispossession, leaving them in a place of financial struggle with failing infrastructure, and no legal place in the negotiations today. Vice chairman of SUIT, Lorelei Cloud, acknowledges that the reservation has not been able to develop their water through the means of infrastructure and capture while being forced to receive less water due to the state of Colorado's decision to cut the state's water amid the drought.[226] Cloud, partnering with other tribal representatives of the Upper Basin are "fighting tirelessly" to ensure future generations have their allocated water and compensation for their underdeveloped water today.[227] This on-going situation demonstrates an entangled power dynamic that leaves Indigenous communities with the "short end of the stick," and settler individuals with greater ability to capture and allocate water upstream.[228] In

[226] Rachel Estabrook and Joe Wertz, "Colorado River States Remain Divided on Sharing Water, and Some Tribes Say Their Needs Are Still Being Ignored," Colorado Public Radio, March 15, 2024, https://www.cpr.org/2024/03/15/colorado-river-states-divided-sharing-water-tribes-say-needs-being-ignored/.
[227] Shannon Mullane, "Colorado River Basin Tribes Take Harder Stance on Negotiations about the River's Future," The Colorado Sun, March 28, 2024, http://coloradosun.com/2024/03/28/colorado-river-tribes-harder-stance-negotations-river-future/.
[228] Lee-Martinez, et. al, How access to water…

conclusion, SUIT and UMUT continue to persist by fighting for a downstream wind in water allocation negotiations and to be fully capable sovereigns supporting their populations fully and abundantly.

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