

Exhibit 1

PUBLIC LAW 98-290—MAY 21, 1984

98 STAT. 201

Public Law 98-290
98th Congress

An Act

To confirm the boundaries of the Southern Ute Indian Reservation in the State of Colorado and to define jurisdiction within such reservation.

May 21, 1984
[H.R. 4176]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

CONGRESSIONAL PURPOSE

SECTION 1. The purposes of this Act are—

25 USC 668 note.

- (1) to resolve uncertainty over the boundaries of the Southern Ute Indian Reservation and the status of unrestricted land on such reservation, and
- (2) to avoid long and costly litigation over issues dependent on reservation or Indian country status.

INDIAN TRUST LAND DEFINED

SEC. 2. For purposes of this Act, the term "Indian trust land" means any land within the boundaries of the Southern Ute Indian Reservation which—

25 USC 668 note.

- (1) is held by the United States in trust for the benefit of the Southern Ute Indian Tribe or individual Indians, or
- (2) is owned by the United States and reserved for use or actually used in the administration of Indian affairs.

Any right-of-way bounded on both sides by Indian trust land shall be Indian trust land. Any other right-of-way shall not be Indian trust land.

BOUNDARIES OF THE SOUTHERN UTE INDIAN RESERVATION DEFINED

SEC. 3. The Southern Ute Indian Reservation in the State of Colorado is declared to have the following boundaries:

25 USC 668 note.

- (1) Bounded on the north by the southern boundary of the lands—

(A) ceded to the United States by certain bands of Ute Indians under the Articles of Convention entered into on September 13, 1873, and ratified by the Act approved April 29, 1874 (18 Stat. 36), and

(B) described in article I of such Articles of Convention.

- (2) Bounded on the south by the boundary line between the States of Colorado and New Mexico as described in article II of the treaty between the United States and the Ute Indians concluded March 2, 1868, and proclaimed November 6, 1868 (15 Stat. 619).

(3) Bounded on the west by the eastern boundary of the Ute Mountain Ute Indian Reservation.

- (4) Bounded on the east by the southernmost 15 miles of the eastern boundary of the lands reserved to the Ute Indians by article II of the treaty between the United States and the Ute

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Indians concluded March 2, 1868, and proclaimed November 6, 1868 (15 Stat. 619), except that the lands east of such boundary in township 32 north, range 1 west, New Mexico principal meridian, that are held by the United States in trust for the benefit of the Southern Ute Indian Tribe are part of the Southern Ute Indian Reservation.

JURISDICTION OVER RESERVATION

25 USC 668 note.

SEC. 4. (a) Such territorial jurisdiction as the Southern Ute Indian Tribe has over persons other than Indians and the property of such persons shall be limited to Indian trust lands within the reservation.

(b) Any person who is not an Indian and the property of any such person shall be subject to the jurisdiction of the United States under section 1152 of title 18, United States Code, only on Indian trust land.

Alcohol and alcoholic beverages.

(c) Any law of the United States related to the sale, possession, introduction, or manufacture of alcoholic beverages or to trading with Indians within Indian country, or within the Indian reservation, shall apply, with respect to the Southern Ute Indian Reservation, only on Indian trust land.

JURISDICTION OVER INCORPORATED MUNICIPALITIES WITHIN THE RESERVATION

25 USC 668 note.

SEC. 5. The State of Colorado shall exercise criminal and civil jurisdiction within the boundaries of the town of Ignacio, Colorado, and any other municipality which may be incorporated under the laws of Colorado within the Southern Ute Indian Reservation, as if such State had assumed jurisdiction pursuant to the Act of August 15, 1953 (67 Stat. 588), as amended by the Act of April 11, 1968 (82 Stat. 79).

Approved May 21, 1984.

LEGISLATIVE HISTORY—H.R. 4176 (S. 1979):

HOUSE REPORT No. 98-716 (Comm. on Interior and Insular Affairs).
SENATE REPORT No. 98-404 accompanying S. 1979 (Comm. on Indian Affairs).
CONGRESSIONAL RECORD, Vol. 130 (1984):
Apr. 30, considered and passed House.
May 3, considered and passed Senate.

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INTERGOVERNMENTAL AGREEMENT BETWEEN THE SOUTHERN UTE INDIAN TRIBE AND THE STATE OF COLORADO CONCERNING AIR QUALITY CONTROL ON THE SOUTHERN UTE INDIAN RESERVATION

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into by and between the SOUTHERN UTE INDIAN TRIBE ("Tribe") and the STATE OF COLORADO ("State").

I. PURPOSE AND SUMMARY OF THE AGREEMENT.

The purpose of this Agreement is to establish a single air quality program applicable to all lands within the exterior boundaries of the Southern Ute Indian Reservation ("the Reservation Air Program"). The Southern Ute Indian Tribe/State of Colorado Environmental Commission ("Commission") established under this Agreement shall promulgate rules and regulations for the Reservation Air Program and shall conduct review of appealable administrative actions, pursuant to laws enacted by both parties. Any United States Environmental Protection Agency ("EPA") delegation to the Tribe as contemplated in this Agreement shall be contingent upon and shall last only so long as this Agreement is in effect and shall be exercised pursuant to this Agreement. The Commission shall be the air quality policy making and the administrative review entity for the Reservation Air Program. When all conditions and terms of this Agreement are fully in effect, the Tribe and the State intend that the Reservation Air Program shall be implemented and administered by the Tribe, pursuant to a delegation from the EPA, through the use of the staff of the Tribe's Environmental Programs Division ("EPD"), with the participation of the State's Air Pollution Control Division as outlined in this Agreement.

II. BACKGROUND.

The Southern Ute Indian Reservation ("Reservation") is located in southwest Colorado in the southern portions of La Plata and Archuleta Counties. Congress confirmed the boundaries of the Reservation in the Act of May 21, 1984, Pub. L. No. 98-290, 98 Stat. 201, 202 (found at "Other Provisions" note to 25 U.S.C.S. § 668) ("P.L. 98-290"). The Reservation encompasses approximately 681,000 acres, of which approximately 308,000 surface acres are held in trust by the United States for the benefit of the Tribe. Additionally, the Tribe owns the mineral estate underlying a majority of Reservation lands. As the result of the historical allotment, homesteading, and restoration of undisposed of lands to tribal ownership, the Reservation is a checkerboard of land ownerships, including: lands held in trust by the United States for the Tribe's benefit; lands held in trust by the United States for the benefit of individual tribal members; lands owned in fee by members of the Tribe; lands owned in fee by non-Indians; and National Forest lands.

The Clean Air Act directs EPA to promulgate regulations specifying those Clean Air Act provisions for which Indian tribes may be treated in the same manner as states for the purposes of primacy in the development and implementation of air quality programs. 42 U.S.C. § 7601 (d). EPA promulgated such regulations on February 12, 1998. 63 Fed. Reg. 7253. Pursuant to the Clean Air Act and EPA regulations, tribes have the flexibility to assume responsibility for administering some,

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but not necessarily all, Clean Air Act programs and preserving that flexibility is important to the Tribe.

In July, 1998, the Tribe submitted an application for treatment as a state (“TAS application”). In its application, the Tribe requested it be treated as a state with respect to the administration of Clean Air Act programs over all land located within the exterior boundaries of the Reservation. The specific purposes of the TAS application were to receive grant funding under section 105 of the Clean Air Act and recognition as an “affected State” to comment on draft operating permits. The Tribe asserted in its TAS application that it has jurisdiction to regulate all sources of air pollution located within the Reservation's exterior boundaries under the Clean Air Act, including non-Indian owned sources located on fee lands.

In its comments on the Tribe's TAS application, the State has objected insofar as the application requests tribal Clean Air Act authority over non-Indian owned sources located on fee land within the exterior boundaries of the Reservation. The State asserts that P.L. 98-290 establishes its jurisdiction to regulate non-Indian owned sources located on fee lands within the Reservation boundaries. There is no dispute as to the Tribe's jurisdictional authority to regulate sources of air pollution located on trust lands within the Reservation and Indian-owned sources located on fee land within the Reservation.

The purpose of P.L. 98-290 was to avoid long and costly litigation over issues dependent on reservation or Indian country status by confirming the boundaries of the Southern Ute Indian Reservation and defining jurisdiction within such reservation. Despite the enactment of P.L. 98-290, the Tribe and the State do not agree as to territorial and regulatory jurisdiction concerning the administration of Clean Air Act programs relative to non-Indian air pollution sources on fee land within the boundaries of the Reservation. Notwithstanding the Tribe's and the State's conflicting jurisdictional assertions regarding the regulation of non-Indian sources of air pollution located on fee lands within the boundaries of the Reservation, the Tribe and the State wish to work cooperatively to develop a comprehensive air quality program applicable to all lands within the boundaries of the Reservation to improve and protect the air quality on the Reservation. It is agreed that the air quality program to be developed pursuant to this Agreement should reflect the particular interests of the Tribe, yet remain compatible with State air quality goals. The State and the Tribe, as governments that share contiguous physical boundaries, recognize that it is in the interest of the environment and all residents of the Reservation and the State of Colorado to work together to ensure consistent and comprehensive air quality regulation on the Reservation without threat of expensive and lengthy jurisdictional litigation.

The Tribe and State agree that the establishment of a single collaborative authority for all lands within the exterior boundaries of the Reservation best advances rational, sound, air quality management and will minimize duplicative efforts and expenditures of monetary and program resources by the Tribe and the State. The State and the Tribe also agree that the establishment of such an air program would create the most readily defined regulatory environment for sources on the Reservation. Therefore, this Agreement encompasses the regulation of all air pollution sources on the Reservation.

III. AUTHORITIES.

The Tribe is a federally recognized Indian tribe that is organized under a constitution, approved by the Secretary of the Interior, pursuant to the Indian Reorganization Act of 1934, ch. 576, 48 Stat. 984 (codified as amended at 25 U.S.C. §§ 461, et seq.). The Tribal Council of the Southern Ute Indian Tribe is authorized to act for the Tribe by the Constitution adopted by the Southern Ute Indian Tribe and approved by the Secretary of the Interior on November 4, 1936, and approved as amended on October 1, 1975.

Colorado is a state admitted to the United States of America on an equal footing, pursuant to Art. IV, § 3 of the Constitution of the United States of America. The State of Colorado was duly formed in 1876 under its Constitution and Enabling Act. The Governor of the State of Colorado is empowered to act on behalf of the State pursuant to Art. IV of the Colorado Constitution and other authorities.

In the Clean Air Act, Congress encourages cooperative activities and agreements between adjoining governments for the prevention and control of air pollution. 42 U.S.C. § 7402. Moreover, EPA strongly encourages tribal and State cooperation in the development of air programs. 64 Fed. Reg. 8253.

IV. PRESERVATION OF JURISDICTION AND SOVEREIGN IMMUNITY.

Nothing in this Intergovernmental Agreement shall affect the respective jurisdictions of the Tribe and the State as set forth in P.L. 98-290, until and unless changed by federal legislation. By entering into this Agreement, neither the State nor the Tribe concedes or waives any legal arguments concerning the authority to regulate non-Indian air pollution sources located on fee lands within the boundaries of the Reservation. Upon termination of this Agreement, the parties acknowledge, understand and agree that this Agreement shall not operate as a bar, waiver of any rights of the parties, or in any respect affect the ability of any party to this Agreement to assert its arguments in support of its authority to regulate non-Indian air pollution sources located on fee lands within the boundaries of the Reservation.

Nothing in this Agreement shall be construed as constituting a waiver of any immunity by either the Tribe or State for any purpose whatsoever.

V. PROCESS FOR ESTABLISHING THE RESERVATION AIR PROGRAM.

The Tribe and the State agree that establishing the Reservation Air Program will take many steps and occur in phases. The parties set forth the phases here to serve as a context for the remainder of the terms of this Agreement. A description of the phases also clarifies the particular aspects of this Agreement that are operative at any given time.

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A. Formation Phase. The Formation Phase is the time between execution of this Agreement and the enactment of tribal and State legislation that approves of this Agreement and creates the Commission as provided in Sections VII and VIII. In the Formation Phase, the Tribe and the State will seek the enabling legislation. If EPA grants the portion of the Tribe's TAS application seeking grant authority only for the limited purpose of determining that the Tribe is eligible to receive grant funding under section 105 of the Clean Air Act, the State will not contest this limited EPA finding. To implement the terms and conditions of this Agreement, the EPA will also have to find that the Tribe has authority to and is eligible to implement a regulatory program under the Clean Air Act. The Tribe will incorporate this Agreement and the Commission's role under this Agreement in any amended TAS application or request for EPA delegation to the Tribe of Clean Air Act programs. The Tribe and the State agree that they will cooperate to obtain this further finding and approval from EPA as is necessary for and subject to the performance of this Agreement. The parties will also seek federal legislation as set forth in this Agreement. During the Formation Phase, the Tribe and the State will work cooperatively to administer and enforce an air quality program for the Reservation, as provided in Section IX.

B. Development Phase. The Development Phase is the time period after enactment of the tribal and State legislation creating the Commission and its authority and before adoption of federal legislation and delegation by the EPA of any Clean Air Act programs. In the Development Phase, the Commission will determine which parts of the Clean Air Act or other air programs to incorporate into the Reservation Air Program, based on State or other regulations as modified by the Commission to address the particular local circumstances of the Reservation. The Tribe will then apply for delegation of those programs from EPA, such delegation being conditioned upon compliance with this Agreement, including the Commission's authority to participate under this Agreement in the administration of the Reservation Air Program. The Commission will also adopt procedural rules and regulations for the Reservation Air Program. The Commission will work cooperatively with the Tribe's EPD staff in the administration and implementation of the Reservation Air Program, as set forth in Sections VII and VIII. The parties shall also diligently seek federal legislation during the development phase.

C. Program Phase. The program phase is that time period after enactment of federal legislation and after actual delegation of Clean Air Act Programs by the EPA. At that point all components of this Agreement will be in effect.

VI. CONDITIONS.

A. Legislative Ratification. As a condition to implementation of this Agreement, the parties agree that this Agreement must be approved by the Colorado General Assembly.

B. State Statutory Enactment. As an additional condition, the parties agree that the state legislation needed to implement the terms of this Agreement, including authorization for creation of a joint Southern Ute Indian Tribe/State of Colorado Environmental Control Commission,

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shall be enacted by the Colorado General Assembly during the Second Regular Session of the Sixty-Second General Assembly.

C. Tribal Enactment. As an additional condition, the parties agree that the Tribe, through its Tribal Council, shall enact such resolutions or ordinances approving and permitting the implementation of this Agreement, including authorization for creation of a joint Southern Ute Indian Tribe/State of Colorado Environmental Control Commission, no later than January 26, 2000.

D. Agreement for Federal Enactment. The parties agree to support and to seek the passage of federal legislation, as provided in Section XI. The parties agree to seek and support passage of such federal legislation during the Congressional session held during the year 2000. As an additional condition, if such federal legislation is not enacted within two years of the effective date of this Agreement, this Agreement shall become null and void.

VII. THE STATE/TRIBE ENVIRONMENTAL COMMISSION.

The Tribe and the State shall establish a joint Southern Ute Indian Tribe/State of Colorado Environmental Control Commission ("Commission"), by the enactment of legislation by each party. The Commission is not an agency of the State of Colorado nor the Southern Ute Indian Tribe, but is a separate entity.

The Commission shall consist of six members, three of whom shall be appointed by the Tribal Council of the Tribe and three of whom shall be appointed by the Governor. Commission members shall serve for the terms and under the conditions specified in the enabling legislation. The Commission shall annually elect a person to preside as chair. The chair shall alternate annually between a tribal and State member. During their term of service, a member may be removed with or without cause only by the authority that appointed that member.

The Commission shall only act by a majority vote of all of its members.

The purpose of the Commission is to establish the rules and regulations applicable to the Reservation Air Program and conduct review of appealable administrative actions. Both the Tribe and the State may advocate any particular interest or viewpoint to the Commission, but the Commission is empowered to make rules and regulations for the Reservation Air Program and to review appealable administrative actions taken by the Tribe. While this Agreement is in effect, the Tribe and the State shall recognize and abide by the Commission's decisions, and its rules and regulations.

To carry out its functions, the Commission may call upon the employees of the Tribe's Environmental Programs Division and the State's Air Pollution Control Division, as more fully set forth in Section VIII of this Agreement.

The duties of the Commission shall include the responsibility to:

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- (a) determine the specific programs under the Clean Air Act, or other air programs, that should apply to the Reservation, by taking into account the specific environmental, economic, geographic and cultural needs of the Reservation;
- (b) promulgate rules and regulations that are necessary for the proper implementation and administration of those programs, including determining which administrative actions are appealable to the Commission;
- (c) establish procedures the Commission will follow in promulgating rules and regulations, and for review of appealable administrative actions taken by the Tribe;
- (d) review and approve of a long-term plan, initially prepared by the Tribe, for improving and maintaining air quality within the Reservation, which also takes into account regional planning in the La Plata and Archuleta County region;
- (e) monitor the relationships among the State and tribal environmental protection agencies to facilitate information sharing, technical assistance and training;
- (f) review administrative actions according to the Commission's adopted administrative procedures;
- (g) approve and adopt fees for permits and other regulatory services conducted by the Tribe or the State, after considering a proposed fee schedule prepared by the Tribe, and direct payment of fees by air pollution sources to the Tribe;
- (h) ensure consistency and adherence to applicable standards and resolve disputes involving third parties;
- (i) review emission inventories as developed by the Tribe and State;
- (j) conduct public hearings pertaining to the adoption of rules and regulations, or relating to review of appealable administrative actions, and issue orders resulting from those proceedings;
- (k) request tribal staff to perform any administrative or clerical functions necessary to issue orders and conduct Commission business, or the Commission at its option may appoint a technical secretary to perform such duties, except that no authority shall be delegated to adopt, promulgate, amend or repeal standards or regulations, or to make determinations, or to issue or countermand orders of the Commission;
- (l) any other duties necessary to accomplish the purposes of this Agreement, and as authorized by the State and tribal enabling legislation.

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VIII. ADMINISTRATION OF THE RESERVATION AIR PROGRAM .

The Commission is the policy making and administrative review authority for the Reservation Air Program. The Commission may call upon either tribal or State staff for assistance in carrying out its responsibilities pursuant to this Agreement. The Tribe and the State agree that during the Development and Program Phases, tribal employees shall assume the primary role for day-to-day administration and enforcement.

A. Duties of Tribe. The State and Tribe agree that the day-to-day administration and enforcement of the Reservation Air Program shall be the responsibility of the Tribe. The Tribe agrees that it shall administer and enforce the standards, rules and regulations adopted by the Commission for the Reservation Air Program. The Tribe may also promulgate rules and regulations that are consistent with the rules and regulations adopted by the Commission and necessary for the Tribe to maintain its delegations from EPA obtained to perform this Agreement.

In addition to other responsibilities that the parties may agree are necessary for the effective implementation of this Agreement, it is agreed that the administrative and enforcement responsibilities of the Tribe shall include the responsibility to:

- (a) prepare initial drafts of rules and regulations for the Reservation Air Program for review by the State and, ultimately, for consideration by the Commission;
- (b) administer all activities related to permits including, for example, permit application review, permit issuance, permit modification procedures, and conduct all permit processing;
- (c) collect data, by means of field studies and air monitoring conducted by the Tribe or by individual stationary sources and mobile air pollution sources, and determine the nature and quality of existing ambient air throughout the Reservation;
- (d) conduct inspections of any property, premises, or place within the Reservation with respect to any actual, suspected, or potential source of air pollution or for ascertaining compliance or noncompliance with any applicable requirements;
- (e) furnish technical advice and services relating to air pollution problems and control techniques;
- (f) initiate enforcement actions when the results of atmospheric tests conducted establish that the ambient air or source of emission of smoke or air pollution fails to meet the applicable standards;
- (g) develop a long-term plan, for approval by the Commission, for improving and maintaining air quality within the Reservation, which also takes into account regional planning in the La Plata and Archuleta County region;

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- (h) prepare a fee schedule for approval by the Commission, and to collect said fees as are necessary for the administration of the Reservation Air Program and the Commission expenses, consistent with sub-section B below;
- (i) expend and account for funds, either collected from air pollution sources or granted to the Tribe by the EPA to administer the Reservation Air Program, for reasonable and necessary expenses to administer the Reservation Air Program;
- (j) establish emission inventories;
- (k) issue permits and enforce the terms and conditions of permits;
- (l) gather information from sources of air pollution;
- (m) issue cease and desist orders, and take other emergency actions as may be necessary to protect the public health, welfare and the environment;
- (n) issue notices of violation as may be required;
- (o) require any air pollution source to furnish information related to source emissions or to any investigation authorized by law or regulation, and to obtain from a court of appropriate jurisdiction a subpoena to compel the production of necessary documents to obtain such information;
- (p) prepare applications for delegation of programs from EPA, in furtherance of this Agreement.

The Tribe shall afford the State, through its Air Quality Control Division and Air Quality Control Commission, the opportunity to participate in the carrying out of such responsibilities by the Tribe, through appropriate notice, comment and consultation.

B. Funding for Commission and Program Costs. Once the Commission is established and during the Program Phase of this Agreement, it is the intent of the Tribe and the State that funding for administration of the Reservation Air Program and the Commission's expenses shall come from fees and grants. Pursuant to Section VII, the Commission shall establish fees for air pollution sources and direct payment of those fees to the Tribe. The Tribe shall apply for and may receive grants from EPA for administration of the Reservation Air Program. From these revenues (i.e., fees and grants), the Tribe shall fund the staff and program costs necessary to perform the Tribe's duties under this Agreement. The Tribe shall pay the State for the personal services costs, at a rate of compensation determined by contract, of any State employee who participates in the administration of the Reservation Air Program pursuant to this Section VIII. It is the intent of the Tribe and the State that fees shall also be sufficient to cover the Commission's necessary expenses. The parties agree that they may also jointly seek funding from EPA for the necessary expenses of the Commission to perform its duties. To the extent such EPA funding is not obtained or if funding from fees is not allowed by the Clean Air Act, the State and the Tribe each will be responsible for

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funding associated with the participation of their representatives on the Commission. However, State funding for its expenses is conditioned upon appropriation or the availability of other state-only funds that the State could use for this purpose.

IX. TRIBAL AND STATE COOPERATION DURING THE FORMATION AND DEVELOPMENT PHASES OF THE RESERVATION AIR PROGRAM.

The parties recognize that the fulfillment of the purposes of this Agreement will require communication, collaboration and cooperation among the State, Tribe, and federal governments, State agencies such as the Department of Public Health and Environment and the Air Pollution Control Division, the Tribe's Environmental Programs Division, EPA, and the Commission. Such cooperation is especially needed during the formation and development phases of this Agreement.

A. Air Program During the Formation and Development Phases.

During the Formation and Development Phases, the Tribe will work cooperatively with EPA to allow direct EPA implementation of Clean Air Act requirements for sources located on trust lands and Indian sources located on fee lands within the Reservation. With regard to Fee Lands, the Tribe will not jurisdictionally challenge the State's administration of such programs with respect to non-Indian owned air pollution sources located on fee lands within the Reservation. During the formation and development phases, for regulation of non-Indian air pollution sources on fee lands, the State and the Tribe shall participate together in regulatory activities. In its administration of permits for non-Indian air pollution sources on fee lands, the State shall:

- (a) notify the Tribe upon receipt of permit applications and afford the Tribe an opportunity to participate in the review of permit applications;
- (b) afford the Tribe the opportunity to review and comment, within thirty (30) days, on draft notices of violation, draft consent orders, draft compliance orders, and draft air pollution source permits prepared by the APCD;
- (c) afford the Tribe the opportunity to participate in source inspections and in surveillance activities;
- (d) notify the Tribe and provide for tribal participation in decisions concerning potential enforcement actions, including penalties to be assessed, and participation in all notice of violation conferences.

1. Funding during the Formation and Development Phases. During the Formation Phase, the State will continue to assess and collect fees as provided by Colorado statute and will expend such funds to administer the State program for non-Indian sources on fee lands. The Tribe will use its own funds or may apply for EPA grants to fund its activities. During the Development Phase, permitting fees and any other fees for non-Indian owned sources located on fee lands will be divided between the Tribe and State in a manner that is commensurate with the

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responsibilities, costs incurred, and time spent by each party with respect to such permits and such division of fees shall be authorized pursuant to the State and tribal legislation contemplated herein. The parties shall endeavor to reach agreement on the appropriate division of fees prior to the conduct of any work related to such permits.

B. Other Cooperation during the Formation and Development Phases.

During the time period that the Commission is being created by State and tribal legislation, and prior to the time that EPA delegates specific programs to the Tribe, the Tribe and the State agree to cooperate as follows:

1. **Technical Assistance.** The State, by and through the APCD, will advise the Tribe about the kinds of technical assistance that it can provide. The Tribe, with the assistance of the APCD, will develop technical assistance priorities. The APCD will make available technical expertise from all APCD program areas to assist the Tribe in the development and management of the Reservation Air Program and to assist the Tribe in developing its own technical expertise in air resource management. The Tribe and the APCD agree to exchange technical expertise regarding matters of mutual interest. Unless otherwise required by state or federal law, the APCD shall not share or release to any other governmental or private agency or person, without the written consent of the Tribe, any information obtained by the APCD from the Tribe or information generated by the APCD through technical assistance to the Tribe; provided, however, this confidentiality requirement shall not apply to information which has already been disclosed to the public by the Tribal Council or its representatives and information that the Tribe specifically approves for distribution to the public. If the APCD receives a request under the state Open Records Act to disclose confidential information, the APCD shall notify the Tribe of the request within a time sufficient to enable the Tribe to assert its claim to confidentiality prior to the APCD producing any requested documents.

2. **Training.** Upon request, the Tribe will help APCD employees improve their understanding of Southern Ute traditional values and practices, natural resource values, treaty and other federally reserved rights, and relevant law enforcement policy issues. The APCD will provide the Tribe with access to APCD training programs. To facilitate the attendance of tribal personnel at APCD training programs, the APCD shall notify the Tribe in advance of such programs.

3. **Funding.** During the Program Phase, the Reservation Air Program shall be funded as set forth in Section VIII above.

X. ENFORCEMENT AND JUDICIAL REVIEW.

A. During Formation and Development Phase.

Prior to the formation of the Commission and the adoption of the federal legislation and actual EPA delegation of Clean Air Act programs, the parties agree that the State may exercise civil and criminal enforcement jurisdiction over non-Indians on fee lands within Reservation boundaries for violations of applicable air quality regulations. Appeals of State air enforcement action and

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other air quality related decisions may be brought in State court consistent with State law and regulation. Pursuant to P.L. 98-290, the Tribe may exercise jurisdiction over Indians on all lands within the boundaries of the Reservation, and over non-Indians on trust land, for violations of applicable tribal air quality regulations. Nothing herein is intended as restricting, diminishing or defining the jurisdiction of EPA.

B. During the Program Phase.

1. Civil Enforcement Action. Following the adoption of the federal legislation and EPA delegation of Clean Air Act programs contemplated by this agreement, the Tribe will exercise civil enforcement jurisdiction over any persons on all lands within Reservation boundaries for violations of the Reservation air quality program, subject to administrative review by the Commission. Consistent with the federal legislation contemplated by this Agreement, final decisions of the Commission will be subject to review in federal district court in accord with the provisions of the federal Administrative Procedure Act.

2. Criminal Enforcement Action. Following the formation of the Commission and the adoption of the federal legislation contemplated by this agreement, it is the intent of the parties that EPA will exercise criminal enforcement jurisdiction over any persons on all lands with Reservation boundaries for violations of the Reservation Air Program.

XI. FEDERAL LEGISLATION.

The State and Tribe agree to seek cooperatively federal legislation to confirm the eligibility of the Tribe to receive a delegation of authority to administer programs under the Clean Air Act for all lands within the boundaries of the Reservation, contingent upon the continued existence of this Agreement. The purpose of the federal legislation will be to facilitate the delegation of authority to the Tribe pursuant to the terms and conditions of this Agreement and to provide an effective mechanism for the enforcement of program requirements and for administrative and judicial review. It is agreed that the parties will seek legislation whereby, notwithstanding any limitation contained in P.L. 98-290 or any other limitation contained in federal law, the Tribe will be authorized to be Treated as a State for Clean Air Act purposes for all lands within the Reservation and recognized as eligible to receive a delegation of authority from EPA to administer programs pursuant to the Clean Air Act, provided that this Agreement and the joint Southern Ute Indian Tribe/State of Colorado Environmental Control Commission, established pursuant to State and tribal law as provided herein, remains in effect.

XII. TRIBAL TREATMENT AS A STATE APPLICATIONS AND REQUESTS FOR PROGRAM APPROVAL.

During the Development Phase, the Tribe shall apply to EPA for approval of Clean Air Act programs and delegation to the Tribe of the authority to administer such programs with respect to all lands within the Reservation, as determined by the Commission and subject to the terms of this Agreement. The State agrees that it will not jurisdictionally challenge the Tribe's requests to EPA

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for approval of these programs or delegation to the Tribe of the authority to administer Clean Air Act programs with respect to the Reservation, including non-Indian facilities located or non-Indian activities conducted on fee lands within the boundaries of the Reservation, provided such requests are pursuant to the determination of the Commission and subject to the terms of this Agreement.

For Indian tribes establishing eligibility pursuant to 40 C.F.R. § 35.220 (a), EPA may provide financial assistance in an amount up to 95 percent (95%) of the approved costs of planning, developing, establishing, or approving an air pollution control program, and up to 95 percent (95%) of the approved costs of maintaining that program. 40 C.F.R. § 35.205.

The Tribe and the State agree to cooperate in seeking from EPA any recognition of or delegation to the Tribe necessary to carry out the terms and conditions of this Agreement. The State agrees that it will support an amended or additional TAS application or request for program delegation by the Tribe which incorporates the terms of this Agreement. The Tribe agrees that it will not submit a request for approval of a Clean Air Act program or for approval of partial elements of a Clean Air Act program unless asked to do so by the Commission and in accordance with the requirements contained in this Agreement.

XIII. MISCELLANEOUS.

A. Effective Date. This Agreement shall begin and become effective when executed by both parties.

B. Amendment. The parties may amend this Agreement from time to time in writing, provided that such amendment must bear the signature of an authorized representative of each party. This provision for amendment is not intended to grant to any party individually or to the parties collectively any legislative authority to change State or Tribal law without the concurrence of the appropriate legislative body.

C. Termination. This Agreement shall continue in effect until terminated by joint agreement of the parties, provided, however, that either party may terminate the agreement contained herein by giving advance written notice of one year to the other party. Any termination of this Agreement shall serve to end the delegation from EPA to the Tribe to administer any Clean Air Act programs delegated pursuant to this Agreement. The termination of this Agreement shall also operate as an automatic repeal of the State and tribal legislation enacted pursuant to Section VI of this Agreement.

D. Notices. Notices hereunder shall be in writing and shall be given by personal delivery or by deposit in the United States mail by certified mail, return receipt requested, postage prepaid and addressed to the Tribe and the State at the addresses set forth below, or such other place as is provided to the other parties by written notice:

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Southern Ute Indian Tribe
Attention: Tribal Chairman
P.O. Box 737
Ignacio, CO 81137

with a copy to:

Southern Ute Indian Tribe
Environmental Programs Division
Attention: Director
P.O. Box 737
Ignacio, CO 81137

State of Colorado
Office of the Governor
136 State Capitol
Denver, CO 80203-1792

with a copy to:

Executive Director
Colorado Department of Public
Health and Environment
4300 Cherry Creek Drive South,
Building A, First Floor
Denver, CO 80246-1530

Attorney General
1525 Sherman Street, 7th Floor
Denver, CO 80203

Notice shall be effective as of the date of receipt.

E. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Tribe and the State, and is not intended to create any benefit, obligation, or cause of action, whether direct or indirect, for any party not a signatory to this Agreement.

F. Severability. If any provisions of this Agreement are determined to be prohibited by or invalid under applicable laws, those provisions shall be ineffective only to the extent of such prohibition or invalidity, without affecting the validity or enforceability of the remaining provisions of this Agreement. The Tribe and the State agree to meet and negotiate in good faith to amend this Agreement in the event any provisions are determined to be prohibited by or invalid under applicable laws.

G. Complete Understanding. This Agreement is intended as the complete integration of all understandings between the parties concerning the Reservation Air Program. No prior or contemporaneous addition, deletion, or other amendment to this Agreement shall have any force or effect whatsoever, unless embodied in this Agreement.

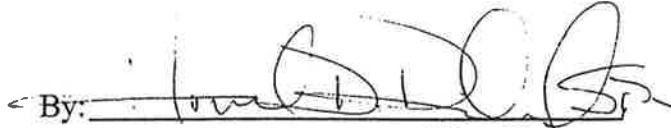
H. Periodic Review. On the anniversary date of this Agreement or on some other mutually agreed upon date, but in no event less than every three years, the parties to this Agreement agree to meet and confer to discuss compliance, progress in implementation, whether amendments are necessary, and other issues related to this Agreement.

Exhibit 2

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed.

SOUTHERN UTE INDIAN TRIBE

STATE OF COLORADO

By: 
Howard D. Richards, Sr., Vice-Chairman
Southern Ute Indian Tribal Council

By: Bill Owens 12/13/99
Bill Owens, Governor Date

Date: DECEMBER 13, 1999

Ken Salazar 12/13/99
Ken Salazar, Attorney General Date

**RESOLUTION
OF THE
COUNCIL OF THE SOUTHERN UTE INDIAN TRIBE
January 18, 2000**

WHEREAS, authority is vested in the Southern Ute Tribal Council by the Constitution adopted by the Southern Ute Indian Tribe and approved November 4, 1936, and amended October 1, 1975, to act for the Southern Ute Indian Tribe; and

WHEREAS, the Southern Ute Indian Tribe and the State of Colorado have entered into an Intergovernmental Agreement Concerning Air Quality Control on the Southern Ute Indian Reservation dated December 13, 1999 (hereinafter referred to as the "IGA"), a copy of which is attached hereto and made a part hereof; and

WHEREAS, pursuant to the IGA, the Tribe and the State have agreed to create a tribal/state environmental control commission with the authority to promulgate rules and regulations for one air quality program for all lands, all persons and all air pollution sources within the exterior boundaries of the Southern Ute Indian Reservation (hereinafter referred to as the "Reservation Air Program"); and

WHEREAS, pursuant to Section VI. C. of the IGA, as a condition to implementation of the IGA, the Tribal Council must "enact such resolutions or ordinances approving and permitting the implementation of this Agreement, including authorization for creation of a joint Southern Ute Indian Tribe/State of Colorado Environmental Control Commission, no later than January 26, 2000"; and

WHEREAS, it is the intent of the Tribal Council, pursuant to this Resolution, to satisfy said condition by ratifying the IGA and enacting tribal authority for implementation of the IGA, including creation of the Southern Ute Indian Tribe/State of Colorado Environmental Control Commission.

NOW, THEREFORE, BE IT RESOLVED that the Tribal Council hereby ratifies the IGA.

BE IT FURTHER RESOLVED, that:

(1) There is hereby created the Southern Ute Indian Tribe/ State of Colorado Environmental Control Commission (hereinafter referred to as the "Commission"). The Commission is not an agency of the Tribe, but is an authority created pursuant to the IGA. The Commission actions shall be subject to procedural rules adopted by the Commission.

(2) The Commission shall have authority to adopt air quality standards, promulgate rules and regulations, and review appealable administrative actions pertaining to the Reservation Air Program.

(3) The Commission shall consist of three members appointed by the Tribal Council and three members appointed by the governor. The initial members appointed by the Tribal Council shall serve terms as follows, one member until July 1, 2001, one member until July 1, 2002, and one member until July 1, 2003. All subsequent appointments by the Tribal Council shall be for terms of three years.

Exhibit 3

Resolution No. 00-09

Page 2

(4) The Tribal Council may remove any member appointed by the Tribal Council at any time. The Tribal Council may not remove any member appointed by the governor of the State.

(5) Commission members may be reimbursed for necessary travel and other reasonable expenses incurred in the performance of their official duties out of funds collected or received by the Tribe.

(6) Each member shall have a vote. The affirmative vote of a majority of all members of the Commission on any matter within its powers and duties shall be required for any final determination made by the Commission.

(7) The Commission shall annually elect a member to preside as chair. The chair shall alternate annually between a Tribe and State member.

BE IT FURTHER RESOLVED, that the Commission shall be the air quality policy making and the administrative review entity for the Reservation Air Program and shall have the powers and duties that are set forth for the Commission in the IGA.

BE IT FURTHER RESOLVED, that the air quality standards, rules and regulations adopted by the Commission shall be effective against all persons located within the Reservation over whom the Tribe would otherwise have jurisdiction as provided by tribal or federal law.

BE IT FURTHER RESOLVED, that the Tribe's Environmental Programs Division is hereby designated and authorized to serve as the Tribe's representative in implementing the IGA and ensuring performance of the Tribe's obligations pursuant to the IGA.

BE IT FURTHER RESOLVED, that this Resolution shall be repealed on the occurrence of any one of the following events:

- (a) Termination of the IGA by either the Tribe or the State;
- (b) Enactment of an explicit repeal by the Tribal Council; or
- (c) The failure of Congress to enact federal legislation by December 13, 2001 as called for in the IGA.

BE IT FURTHER RESOLVED, that the Chairman of the Southern Ute Indian Tribal Council is hereby delegated the authority to execute all documents necessary to carry out the intentions of this resolution.

This resolution was duly adopted on 18th day of January, 2000.

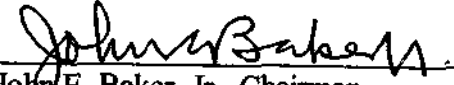

John E. Baker, Jr., Chairman
Southern Ute Indian Tribal Council

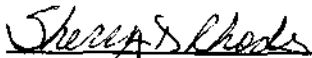
Exhibit 3

Resolution No. 00-09

Page 3

CERTIFICATION

This is to certify that there were (6) of the regularly elected Southern Ute Indian Tribal Council members present at the above meeting at which (5) voted for, and (0) against, it being a quorum and the above resolution was passed, the Chairman not being permitted to vote in this instance due to a Constitutional provision.



Sherry D. Rhodes, Recording Secretary
Southern Ute Indian Tribal Council

Exhibit 4

§ 24-62-101. Intergovernmental agreement between the..., CO ST § 24-62-101

West's Colorado Revised Statutes Annotated Title 24. Government--State Interstate Compacts and Agreements
Article 62. Intergovernmental Agreement Between the Southern Ute Indian Tribe and the State of Colorado
Concerning Air Quality Control on the Southern Ute Indian Reservation (Refs & Annos)

C.R.S.A. § 24-62-101

§ 24-62-101. Intergovernmental agreement between the Southern Ute Indian tribe and the state of Colorado concerning air quality control on the Southern Ute Indian reservation

Currentness

The general assembly hereby approves the intergovernmental agreement between the Southern Ute Indian tribe and the state of Colorado, referred to in this section as the "Agreement", dated December 13, 1999, and signed by Bill Owens, governor of Colorado; Howard D. Richards, Sr., vice-chairman of the Southern Ute Indian tribal council; and Ken Salazar, attorney general of Colorado. Said compact is as follows:

INTERGOVERNMENTAL AGREEMENT
between
THE SOUTHERN UTE INDIAN TRIBE and
THE STATE OF COLORADO
CONCERNING AIR QUALITY CONTROL ON THE
SOUTHERN UTE INDIAN RESERVATION

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into by and between the SOUTHERN UTE INDIAN TRIBE ("Tribe") and the STATE OF COLORADO ("State").

Article I

Purpose and Summary of the Agreement.

The purpose of this Agreement is to establish a single air quality program applicable to all lands within the exterior boundaries of the Southern Ute Indian Reservation ("the Reservation Air Program"). The Southern Ute Indian Tribe/State of Colorado Environmental Commission ("Commission") established under this Agreement shall promulgate rules and regulations for the Reservation Air Program and shall conduct review of appealable administrative actions, pursuant to laws enacted by both parties. Any United States Environmental Protection Agency ("EPA") delegation to the Tribe as contemplated in this Agreement shall be contingent upon and shall last only so long as this Agreement is in effect and shall be exercised pursuant to this Agreement. The Commission shall be the air quality policy making and the administrative review entity for the Reservation Air Program. When all conditions and terms of this Agreement are fully in effect, the Tribe and the State intend that the Reservation Air Program shall be implemented and administered by the Tribe, pursuant to a delegation from the EPA, through the use of the staff of the Tribe's Environmental Programs Division ("EPD"), with the participation of the State's Air Pollution Control Division as outlined in this Agreement.

Article II

Background.

Exhibit 4

The Southern Ute Indian Reservation (“Reservation”) is located in southwest Colorado in the southern portions of La Plata and Archuleta Counties. Congress confirmed the boundaries of the Reservation in the Act of May 21, 1984, [Pub. L. No. 98-290, 98 Stat. 201, 202](#) (found at “Other Provisions” note to [25 U.S.C.S. § 668](#))(“[P.L. 98-290](#)”). The Reservation encompasses approximately 681,000 acres, of which approximately 308,000 surface acres are held in trust by the United States for the benefit of the Tribe. Additionally, the Tribe owns the mineral estate underlying a majority of Reservation lands. As the result of the historical allotment, homesteading, and restoration of undisposed of lands to tribal ownership, the Reservation is a checkerboard of land ownerships, including: lands held in trust by the United States for the Tribe's benefit; lands held in trust by the United States for the benefit of individual tribal members; lands owned in fee by members of the Tribe; lands owned in fee by non-Indians; and National Forest lands.

The Clean Air Act directs EPA to promulgate regulations specifying those Clean Air Act provisions for which Indian tribes may be treated in the same manner as states for the purposes of primacy in the development and implementation of air quality programs, [42 U.S.C. § 7601\(d\)](#). EPA promulgated such regulations on February 12, 1998, 63 Fed. Reg. 7253. Pursuant to the Clean Air Act and EPA regulations, tribes have the flexibility to assume responsibility for administering some, but not necessarily all, Clean Air Act programs and preserving that flexibility is important to the Tribe.

In July, 1998, the Tribe submitted an application for treatment as a state (“TAS application”). In its application, the Tribe requested it be treated as a state with respect to the administration of Clean Air Act programs over all land located within the exterior boundaries of the Reservation. The specific purposes of the TAS application were to receive grant funding under section 105 of the Clean Air Act and recognition as an “affected State” to comment on draft operating permits. The Tribe asserted in its TAS application that it has jurisdiction to regulate all sources of air pollution located within the Reservation's exterior boundaries under the Clean Air Act, including non-Indian owned sources located on fee lands.

In its comments on the Tribe's TAS application, the State has objected insofar as the application requests tribal Clean Air Act authority over non-Indian owned sources located on fee land within the exterior boundaries of the Reservation. The State asserts that [P.L. 98-290](#) establishes its jurisdiction to regulate non-Indian owned sources located on fee lands within the Reservation boundaries. There is no dispute as to the Tribe's jurisdictional authority to regulate sources of air pollution located on trust lands within the Reservation and Indian-owned sources located on fee land within the Reservation.

The purpose of [P.L. 98-290](#) was to avoid long and costly litigation over issues dependent on reservation or Indian country status by confirming the boundaries of the Southern Ute Indian Reservation and defining jurisdiction within such reservation. Despite the enactment of [P.L. 98-290](#), the Tribe and the State do not agree as to territorial and regulatory jurisdiction concerning the administration of Clean Air Act programs relative to non-Indian air pollution sources on fee land within the boundaries of the Reservation. Notwithstanding the Tribe's and the State's conflicting jurisdictional assertions regarding the regulation of non-Indian sources of air pollution located on fee lands within the boundaries of the Reservation, the Tribe and the State wish to work cooperatively to develop a comprehensive air quality program applicable to all lands within the boundaries of the Reservation to improve and protect the air quality on the Reservation. It is agreed that the air quality program to be developed pursuant to this Agreement should reflect the particular interests of the Tribe, yet remain compatible with State air quality goals. The State and the Tribe, as governments that share contiguous physical boundaries, recognize that it is in the interest of the environment and all residents of the Reservation and the State of Colorado to work together to ensure consistent and comprehensive air quality regulation on the Reservation without threat of expensive and lengthy jurisdictional litigation.

The Tribe and State agree that the establishment of a single collaborative authority for all lands within the exterior boundaries of the Reservation best advances rational, sound, air quality management and will minimize duplicative efforts and expenditures of monetary and program resources by the Tribe and the State. The State and the Tribe also agree that the establishment of such an air program would create the most readily defined regulatory environment for sources on the Reservation. Therefore, this Agreement encompasses the regulation of all air pollution sources on the Reservation.

Exhibit 4

Article III

Authorities.

The Tribe is a federally recognized Indian tribe that is organized under a constitution, approved by the Secretary of the Interior, pursuant to the Indian Reorganization Act of 1934, ch. 576, 48 Stat. 984 (codified as amended at [25 U.S.C. §§ 461, et seq.](#)). The Tribal Council of the Southern Ute Indian Tribe is authorized to act for the Tribe by the Constitution adopted by the Southern Ute Indian Tribe and approved by the Secretary of the Interior on November 4, 1936, and approved as amended on October 1, 1975.

Colorado is a state admitted to the United States of America on an equal footing, pursuant to Art. IV, § 3 of the Constitution of the United States of America. The State of Colorado was duly formed in 1876 under its Constitution and Enabling Act. The Governor of the State of Colorado is empowered to act on behalf of the State pursuant to Art. IV of the Colorado Constitution and other authorities.

In the Clean Air Act, Congress encourages cooperative activities and agreements between adjoining governments for the prevention and control of air pollution, [42 U.S.C. § 7402](#). Moreover, EPA strongly encourages tribal and State cooperation in the development of air programs, 64 Fed. Reg. 8253.

Article IV

Preservation of Jurisdiction and Sovereign Immunity.

Nothing in this Intergovernmental Agreement shall affect the respective jurisdictions of the Tribe and the State as set forth in [P.L. 98-290](#), until and unless changed by federal legislation. By entering into this Agreement, neither the State nor the Tribe concedes or waives any legal arguments concerning the authority to regulate non-Indian air pollution sources located on fee lands within the boundaries of the Reservation. Upon termination of this Agreement, the parties acknowledge, understand and agree that this Agreement shall not operate as a bar, waiver of any rights of the parties, or in any respect affect the ability of any party to this Agreement to assert its arguments in support of its authority to regulate non-Indian air pollution sources located on fee lands within the boundaries of the Reservation.

Nothing in this Agreement shall be construed as constituting a waiver of any immunity by either the Tribe or State for any purpose whatsoever.

Article V

Process for Establishing the Reservation Air Program.

The Tribe and the State agree that establishing the Reservation Air Program will take many steps and occur in phases. The parties set forth the phases here to serve as a context for the remainder of the terms of this Agreement. A description of the phases also clarifies the particular aspects of this Agreement that are operative at any given time.

A. Formation Phase. The Formation Phase is the time between execution of this Agreement and the enactment of tribal and State legislation that approves of this Agreement and creates the Commission as provided in Articles VII and VIII. In the Formation Phase, the Tribe and the State will seek the enabling legislation. If EPA grants the portion of the Tribe's TAS application seeking grant authority only for the limited purpose of determining that the Tribe is eligible to receive grant funding under section 105 of the Clean Air Act, the State will not contest this limited EPA finding. To implement the terms and conditions of this Agreement, the EPA will also have to find that the Tribe has authority to and is eligible to implement a regulatory program under the Clean Air Act. The Tribe will incorporate this Agreement and the Commission's role under this Agreement in any amended TAS application or request for EPA delegation to the Tribe of Clean Air Act programs. The Tribe and the State agree

Exhibit 4

that they will cooperate to obtain this further finding and approval from EPA as is necessary for and subject to the performance of this Agreement. The parties will also seek federal legislation as set forth in this Agreement. During the Formation Phase, the Tribe and the State will work cooperatively to administer and enforce an air quality program for the Reservation, as provided in Article IX.

B. Development Phase. The Development Phase is the time period after enactment of the tribal and State legislation creating the Commission and its authority and before adoption of federal legislation and delegation by the EPA of any Clean Air Act programs. In the Development Phase, the Commission will determine which parts of the Clean Air Act or other air programs to incorporate into the Reservation Air Program, based on State or other regulations as modified by the Commission to address the particular local circumstances of the Reservation. The Tribe will then apply for delegation of those programs from EPA, such delegation being conditioned upon compliance with this Agreement, including the Commission's authority to participate under this Agreement in the administration of the Reservation Air Program. The Commission will also adopt procedural rules and regulations for the Reservation Air Program. The Commission will work cooperatively with the Tribe's EPD staff in the administration and implementation of the Reservation Air Program, as set forth in Articles VII and VIII. The parties shall also diligently seek federal legislation during the development phase.

C. Program Phase. The program phase is that time period after enactment of federal legislation and after actual delegation of Clean Air Act Programs by the EPA. At that point all components of this Agreement will be in effect.

Article VI

Conditions.

A. Legislative Ratification. As a condition to implementation of this Agreement, the parties agree that this Agreement must be approved by the Colorado General Assembly.

B. State Statutory Enactment. As an additional condition, the parties agree that the state legislation needed to implement the terms of this Agreement, including authorization for creation of a joint Southern Ute Indian Tribe/State of Colorado Environmental Control Commission, shall be enacted by the Colorado General Assembly during the Second Regular Session of the Sixty-Second General Assembly.

C. Tribal Enactment. As an additional condition, the parties agree that the Tribe, through its Tribal Council, shall enact such resolutions or ordinances approving and permitting the implementation of this Agreement, including authorization for creation of a joint Southern Ute Indian Tribe/State of Colorado Environmental Control Commission, no later than January 26, 2000.

D. Agreement for Federal Enactment. The parties agree to support and to seek the passage of federal legislation, as provided in Article XI. The parties agree to seek and support passage of such federal legislation during the Congressional session held during the years 2000, 2001, and 2002. As an additional condition, if such federal legislation is not enacted within three years of the effective date of this Agreement, this Agreement shall become null and void.

Article VII

The State/Tribe Environmental Commission.

The Tribe and the State shall establish a joint Southern Ute Indian Tribe/State of Colorado Environmental Control Commission ("Commission"), by the enactment of legislation by each party. The Commission is not an agency of the State of Colorado nor the Southern Ute Indian Tribe, but is a separate entity.

Exhibit 4

The Commission shall consist of six members, three of whom shall be appointed by the Tribal Council of the Tribe and three of whom shall be appointed by the Governor. Commission members shall serve for the terms and under the conditions specified in the enabling legislation. The Commission shall annually elect a person to preside as chair. The chair shall alternate annually between a tribal and State member. During their term of service, a member may be removed with or without cause only by the authority that appointed that member.

The Commission shall only act by a majority vote of all of its members.

The purpose of the Commission is to establish the rules and regulations applicable to the Reservation Air Program and conduct review of appealable administrative actions. Both the Tribe and the State may advocate any particular interest or viewpoint to the Commission, but the Commission is empowered to make rules and regulations for the Reservation Air Program and to review appealable administrative actions taken by the Tribe. While this Agreement is in effect, the Tribe and the State shall recognize and abide by the Commission's decisions, and its rules and regulations.

To carry out its functions, the Commission may call upon the employees of the Tribe's Environmental Programs Division and the State's Air Pollution Control Division, as more fully set forth in Article VIII of this Agreement.

The duties of the Commission shall include the responsibility to:

- (a) Determine the specific programs under the Clean Air Act, or other air programs, that should apply to the Reservation, by taking into account the specific environmental, economic, geographic, and cultural needs of the Reservation;
- (b) Promulgate rules and regulations that are necessary for the proper implementation and administration of those programs, including determining which administrative actions are appealable to the Commission;
- (c) Establish procedures the Commission will follow in promulgating rules and regulations, and for review of appealable administrative actions taken by the Tribe;
- (d) Review and approve of a long-term plan, initially prepared by the Tribe, for improving and maintaining air quality within the Reservation, which also takes into account regional planning in the La Plata and Archuleta County region;
- (e) Monitor the relationships among the State and tribal environmental protection agencies to facilitate information sharing, technical assistance and training;
- (f) Review administrative actions according to the Commission's adopted administrative procedures;
- (g) Approve and adopt fees for permits and other regulatory services conducted by the Tribe or the State, after considering a proposed fee schedule prepared by the Tribe, and direct payment of fees by air pollution sources to the Tribe;
- (h) Ensure consistency and adherence to applicable standards and resolve disputes involving third parties;
- (i) Review emission inventories as developed by the Tribe and State;
- (j) Conduct public hearings pertaining to the adoption of rules and regulations, or relating to review of appealable administrative actions, and issue orders resulting from those proceedings;
- (k) Request tribal staff to perform any administrative or clerical functions necessary to issue orders and conduct Commission business, or the Commission at its option may appoint a technical secretary to perform such duties, except that no authority

Exhibit 4

shall be delegated to adopt, promulgate, amend or repeal standards or regulations, or to make determinations, or to issue or countermand orders of the Commission;

(l) Any other duties necessary to accomplish the purposes of this Agreement, and as authorized by the State and tribal enabling legislation.

Article VIII

Administration of the Reservation Air Program.

The Commission is the policy making and administrative review authority for the Reservation Air Program. The Commission may call upon either tribal or State staff for assistance in carrying out its responsibilities pursuant to this Agreement. The Tribe and the State agree that during the Development and Program Phases, tribal employees shall assume the primary role for day-to-day administration and enforcement.

A. Duties of Tribe. The State and Tribe agree that the day-to-day administration and enforcement of the Reservation Air Program shall be the responsibility of the Tribe. The Tribe agrees that it shall administer and enforce the standards, rules and regulations adopted by the Commission for the Reservation Air Program. The Tribe may also promulgate rules and regulations that are consistent with the rules and regulations adopted by the Commission and necessary for the Tribe to maintain its delegations from EPA obtained to perform this Agreement.

In addition to other responsibilities that the parties may agree are necessary for the effective implementation of this Agreement, it is agreed that the administrative and enforcement responsibilities of the Tribe shall include the responsibility to:

(a) Prepare initial drafts of rules and regulations for the Reservation Air Program for review by the State and, ultimately, for consideration by the Commission;

(b) Administer all activities related to permits including, for example, permit application review, permit issuance, permit modification procedures, and conduct all permit processing;

(c) Collect data, by means of field studies and air monitoring conducted by the Tribe or by individual stationary sources and mobile air pollution sources, and determine the nature and quality of existing ambient air throughout the Reservation;

(d) Conduct inspections of any property, premises, or place within the Reservation with respect to any actual, suspected, or potential source of air pollution or for ascertaining compliance or noncompliance with any applicable requirements;

(e) Furnish technical advice and services relating to air pollution problems and control techniques;

(f) Initiate enforcement actions when the results of atmospheric tests conducted establish that the ambient air or source of emission of smoke or air pollution fails to meet the applicable standards;

(g) Develop a long-term plan, for approval by the Commission, for improving and maintaining air quality within the Reservation, which also takes into account regional planning in the La Plata and Archuleta County region;

(h) Prepare a fee schedule for approval by the Commission, and to collect said fees as are necessary for the administration of the Reservation Air Program and the Commission expenses, consistent with sub-section (B) of this article VIII;

(i) Expend and account for funds, either collected from air pollution sources or granted to the Tribe by the EPA to administer the Reservation Air Program, for reasonable and necessary expenses to administer the Reservation Air Program;

Exhibit 4

- (j) Establish emission inventories;
- (k) Issue permits and enforce the terms and conditions of permits;
- (l) Gather information from sources of air pollution;
- (m) Issue cease and desist orders, and take other emergency actions as may be necessary to protect the public health, welfare, and the environment;
- (n) Issue notices of violation as may be required;
- (o) Require any air pollution source to furnish information related to source emissions or to any investigation authorized by law or regulation, and to obtain from a court of appropriate jurisdiction a subpoena to compel the production of necessary documents to obtain such information;
- (p) Prepare applications for delegation of programs from EPA, in furtherance of this Agreement.

The Tribe shall afford the State, through its Air Quality Control Division and Air Quality Control Commission, the opportunity to participate in the carrying out of such responsibilities by the Tribe, through appropriate notice, comment, and consultation.

B. Funding for Commission and Program Costs. Once the Commission is established and during the Program Phase of this Agreement, it is the intent of the Tribe and the State that funding for administration of the Reservation Air Program and the Commission's expenses shall come from fees and grants. Pursuant to Article VII, the Commission shall establish fees for air pollution sources and direct payment of those fees to the Tribe. The Tribe shall apply for and may receive grants from EPA for administration of the Reservation Air Program. From these revenues (i.e., fees and grants), the Tribe shall fund the staff and program costs necessary to perform the Tribe's duties under this Agreement. The Tribe shall pay the State for the personal services costs, at a rate of compensation determined by contract, of any State employee who participates in the administration of the Reservation Air Program pursuant to this Article VIII. It is the intent of the Tribe and the State that fees shall also be sufficient to cover the Commission's necessary expenses. The parties agree that they may also jointly seek funding from EPA for the necessary expenses of the Commission to perform its duties. To the extent such EPA funding is not obtained or if funding from fees is not allowed by the Clean Air Act, the State and the Tribe each will be responsible for funding associated with the participation of their representatives on the Commission. However, State funding for its expenses is conditioned upon appropriation or the availability of other state-only funds that the State could use for this purpose.

Article IX

Tribal and State Cooperation During the Formation and Development Phases of the Reservation Air Program.

The parties recognize that the fulfillment of the purposes of this Agreement will require communication, collaboration, and cooperation among the State, Tribe, and federal governments, State agencies such as the Department of Public Health and Environment and the Air Pollution Control Division, the Tribe's Environmental Programs Division, EPA, and the Commission. Such cooperation is especially needed during the formation and development phases of this Agreement.

A. Air Program During the Formation and Development Phases. During the Formation and Development Phases, the Tribe will work cooperatively with EPA to allow direct EPA implementation of Clean Air Act requirements for sources located on trust lands and Indian sources located on fee lands within the Reservation. With regard to Fee Lands, the Tribe will not jurisdictionally

Exhibit 4

challenge the State's administration of such programs with respect to non-Indian owned air pollution sources located on fee lands within the Reservation. During the formation and development phases, for regulation of non-Indian air pollution sources on fee lands, the State and the Tribe shall participate together in regulatory activities. In its administration of permits for non-Indian air pollution sources on fee lands, the State shall:

- (a) Notify the Tribe upon receipt of permit applications and afford the Tribe an opportunity to participate in the review of permit applications;
- (b) Afford the Tribe the opportunity to review and comment, within thirty (30) days, on draft notices of violation, draft consent orders, draft compliance orders, and draft air pollution source permits prepared by the APCD;
- (c) Afford the Tribe the opportunity to participate in source inspections and in surveillance activities;
- (d) Notify the Tribe and provide for tribal participation in decisions concerning potential enforcement actions, including penalties to be assessed, and participation in all notice of violation conferences.

1. Funding during the Formation and Development Phases. During the Formation Phase, the State will continue to assess and collect fees as provided by Colorado statute and will expend such funds to administer the State program for non-Indian sources on fee lands. The Tribe will use its own funds or may apply for EPA grants to fund its activities. During the Development Phase, permitting fees and any other fees for non-Indian owned sources located on fee lands will be divided between the Tribe and State in a manner that is commensurate with the responsibilities, costs incurred, and time spent by each party with respect to such permits and such division of fees shall be authorized pursuant to the State and tribal legislation contemplated herein. The parties shall endeavor to reach agreement on the appropriate division of fees prior to the conduct of any work related to such permits.

B. Other Cooperation during the Formation and Development Phases. During the time period that the Commission is being created by State and tribal legislation, and prior to the time that EPA delegates specific programs to the Tribe, the Tribe and the State agree to cooperate as follows:

1. Technical Assistance. The State, by and through the APCD, will advise the Tribe about the kinds of technical assistance that it can provide. The Tribe, with the assistance of the APCD, will develop technical assistance priorities. The APCD will make available technical expertise from all APCD program areas to assist the Tribe in the development and management of the Reservation Air Program and to assist the Tribe in developing its own technical expertise in air resource management. The Tribe and the APCD agree to exchange technical expertise regarding matters of mutual interest. Unless otherwise required by state or federal law, the APCD shall not share or release to any other governmental or private agency or person, without the written consent of the Tribe, any information obtained by the APCD from the Tribe or information generated by the APCD through technical assistance to the Tribe; provided, however, this confidentiality requirement shall not apply to information which has already been disclosed to the public by the Tribal Council or its representatives and information that the Tribe specifically approves for distribution to the public. If the APCD receives a request under the state Open Records Act to disclose confidential information, the APCD shall notify the Tribe of the request within a time sufficient to enable the Tribe to assert its claim to confidentiality prior to the APCD producing any requested documents.

2. Training. Upon request, the Tribe will help APCD employees improve their understanding of Southern Ute traditional values and practices, natural resource values, treaty and other federally reserved rights, and relevant law enforcement policy issues. The APCD will provide the Tribe with access to APCD training programs. To facilitate the attendance of tribal personnel at APCD training programs, the APCD shall notify the Tribe in advance of such programs.

3. Funding. During the Program Phase, the Reservation Air Program shall be funded as set forth in Article VIII.

Article X

Enforcement and Judicial Review.

A. During Formation and Development Phase. Prior to the formation of the Commission and the adoption of the federal legislation and actual EPA delegation of Clean Air Act programs, the parties agree that the State may exercise civil and criminal enforcement jurisdiction over non-Indians on fee lands within Reservation boundaries for violations of applicable air quality regulations. Appeals of State air enforcement action and other air quality related decisions may be brought in State court consistent with State law and regulation. Pursuant to [P.L. 98-290](#), the Tribe may exercise jurisdiction over Indians on all lands within the boundaries of the Reservation, and over non-Indians on trust land, for violations of applicable tribal air quality regulations. Nothing herein is intended as restricting, diminishing or defining the jurisdiction of EPA.

B. During the Program Phase.

1. Civil Enforcement Action. Following the adoption of the federal legislation and EPA delegation of Clean Air Act programs contemplated by this agreement, the Tribe will exercise civil enforcement jurisdiction over any persons on all lands within Reservation boundaries for violations of the Reservation air quality program, subject to administrative review by the Commission. Consistent with the federal legislation contemplated by this Agreement, final decisions of the Commission will be subject to review in federal district court in accord with the provisions of the federal Administrative Procedure Act.

2. Criminal Enforcement Action. Following the formation of the Commission and the adoption of the federal legislation contemplated by this agreement, it is the intent of the parties that EPA will exercise criminal enforcement jurisdiction over any persons on all lands with Reservation boundaries for violations of the Reservation Air Program.

Article XI

Federal Legislation.

The State and Tribe agree to seek cooperatively federal legislation to confirm the eligibility of the Tribe to receive a delegation of authority to administer programs under the Clean Air Act for all lands within the boundaries of the Reservation, contingent upon the continued existence of this Agreement. The purpose of the federal legislation will be to facilitate the delegation of authority to the Tribe pursuant to the terms and conditions of this Agreement and to provide an effective mechanism for the enforcement of program requirements and for administrative and judicial review. It is agreed that the parties will seek legislation whereby, notwithstanding any limitation contained in [P.L. 98-290](#) or any other limitation contained in federal law, the Tribe will be authorized to be treated as a State for Clean Air Act purposes for all lands within the Reservation and recognized as eligible to receive a delegation of authority from EPA to administer programs pursuant to the Clean Air Act, provided that this Agreement and the joint Southern Ute Indian Tribe/State of Colorado Environmental Control Commission, established pursuant to State and tribal law as provided herein, remains in effect.

Article XII

**Tribal Treatment as a State Applications
and Requests for Program Approval.**

During the Development Phase, the Tribe shall apply to EPA for approval of Clean Air Act programs and delegation to the Tribe of the authority to administer such programs with respect to all lands within the Reservation, as determined by the Commission and subject to the terms of this Agreement. The State agrees that it will not jurisdictionally challenge the Tribe's requests to EPA for approval of these programs or delegation to the Tribe of the authority to administer Clean Air Act programs with respect to the Reservation, including non-Indian facilities located or non-Indian activities conducted on fee lands within the

Exhibit 4

boundaries of the Reservation, provided such requests are pursuant to the determination of the Commission and subject to the terms of this Agreement.

For Indian tribes establishing eligibility pursuant to 40 C.F.R. § 35.220(a), EPA may provide financial assistance in an amount up to 95 percent (95%) of the approved costs of planning, developing, establishing, or approving an air pollution control program, and up to 95 percent (95%) of the approved costs of maintaining that program, 40 C.F.R. § 35.205.

The Tribe and the State agree to cooperate in seeking from EPA any recognition of or delegation to the Tribe necessary to carry out the terms and conditions of this Agreement. The State agrees that it will support an amended or additional TAS application or request for program delegation by the Tribe which incorporates the terms of this Agreement. The Tribe agrees that it will not submit a request for approval of a Clean Air Act program or for approval of partial elements of a Clean Air Act program unless asked to do so by the Commission and in accordance with the requirements contained in this Agreement.

Article XIII

Miscellaneous.

A. Effective Date. This Agreement shall begin and become effective when executed by both parties.

B. Amendment. The parties may amend this Agreement from time to time in writing, provided that such amendment must bear the signature of an authorized representative of each party. This provision for amendment is not intended to grant to any party individually or to the parties collectively any legislative authority to change State or Tribal law without the concurrence of the appropriate legislative body.

C. Termination. This Agreement shall continue in effect until terminated by joint agreement of the parties, provided, however, that either party may terminate the agreement contained herein by giving advance written notice of one year to the other party. Any termination of this Agreement shall serve to end the delegation from EPA to the Tribe to administer any Clean Air Act programs delegated pursuant to this Agreement. The termination of this Agreement shall also operate as an automatic repeal of the State and tribal legislation enacted pursuant to Article VI of this Agreement.

D. Notices. Notices hereunder shall be in writing and shall be given by personal delivery or by deposit in the United States mail by certified mail, return receipt requested, postage prepaid and addressed to the Tribe and the State at the addresses set forth below, or such other place as is provided to the other parties by written notice:

Southern Ute Indian Tribe

Attention: Tribal Chairman

P.O. Box 737

Ignacio, CO 81137

with a copy to:

Southern Ute Indian Tribe

Environmental Programs Division

Attention: Director

Exhibit 4

§ 24-62-101. Intergovernmental agreement between the..., CO ST § 24-62-101

P.O. Box 737

Ignacio, CO 81137

State of Colorado

Office of the Governor

136 State Capitol

Denver, CO 80203-1792

with a copy to:

Executive Director

Colorado Department of Public Health and Environment

4300 Cherry Creek Drive South,

Building A, First Floor

Denver, CO 80246-1530

Attorney General

1525 Sherman Street, 7th Floor

Denver, CO 80203

Notice shall be effective as of the date of receipt.

E. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Tribe and the State, and is not intended to create any benefit, obligation, or cause of action, whether direct or indirect, for any party not a signatory to this Agreement.

F. Severability. If any provisions of this Intergovernmental Agreement are determined to be prohibited by or invalid under applicable laws, those provisions shall be ineffective only to the extent of such prohibition or invalidity, without affecting the validity or enforceability of the remaining provisions of this Intergovernmental Agreement. The Tribe and the State agree to meet and negotiate in good faith to amend this Intergovernmental Agreement in the event any provisions are determined to be prohibited by or invalid under applicable laws.

G. Complete Understanding. This Agreement is intended as the complete integration of all understandings between the parties concerning the Reservation Air Program. No prior or contemporaneous addition, deletion, or other amendment to this Agreement shall have any force or effect whatsoever, unless embodied in this Agreement.

Exhibit 4

§ 24-62-101. Intergovernmental agreement between the..., CO ST § 24-62-101

H. Periodic Review. On the anniversary date of this Agreement or on some other mutually agreed upon date, but in no event less than every three years, the parties to this Agreement agree to meet and confer to discuss compliance, progress in implementation, whether amendments are necessary, and other issues related to this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed:

SOUTHERN UTE INDIAN TRIBE

Howard D. Richards, Sr.,

Vice-chairman

Southern Ute Indian Tribal Council

STATE OF COLORADO

Bill Owens,

Governor

Ken Salazar,

Attorney General

Credits

Added by [Laws 2000, Ch. 33, § 1, eff. March 15, 2000](#). Amended by [Laws 2002, Ch. 280, § 4, eff. June 1, 2002](#).

C. R. S. A. § 24-62-101, CO ST § 24-62-101

Current through the end of the 2019 Regular Session.

End of Document

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118 STAT. 1354

PUBLIC LAW 108–336—OCT. 18, 2004

Public Law 108–336
108th Congress

An Act

Oct. 18, 2004
[S. 551]

Southern Ute
and Colorado
Inter-
governmental
Agreement
Implementation
Act of 2004.

To provide for the implementation of air quality programs developed in accordance with an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2004”.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress, after review and in recognition of the purposes and uniqueness of the Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado, finds that—

(1) the Intergovernmental Agreement is consistent with the special legal relationship between Federal Government and the Tribe; and

(2) air quality programs developed in accordance with the Intergovernmental Agreement and submitted by the Tribe for approval by the Administrator may be implemented in a manner that is consistent with the Clean Air Act (42 U.S.C. 7401 et seq.).

(b) PURPOSE.—The purpose of this Act is to provide for the implementation and enforcement of air quality control programs under the Clean Air Act (42 U.S.C. 7401 et seq.) and other air quality programs developed in accordance with the Intergovernmental Agreement that provide for—

(1) the regulation of air quality within the exterior boundaries of the Reservation; and

(2) the establishment of a Southern Ute Indian Tribe/State of Colorado Environmental Commission.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) COMMISSION.—The term “Commission” means the Southern Ute Indian Tribe/State of Colorado Environmental Commission established by the State and the Tribe in accordance with the Intergovernmental Agreement.

(3) INTERGOVERNMENTAL AGREEMENT.—The term “Intergovernmental Agreement” means the agreement entered into by the Tribe and the State on December 13, 1999.

(4) RESERVATION.—The term “Reservation” means the Southern Ute Indian Reservation.

(5) STATE.—The term “State” means the State of Colorado.

(6) TRIBE.—The term “Tribe” means the Southern Ute Indian Tribe.

SEC. 4. TRIBAL AUTHORITY.

(a) AIR PROGRAM APPLICATIONS.—

(1) IN GENERAL.—The Administrator is authorized to treat the Tribe as a State for the purpose of any air program applications submitted to the Administrator by the Tribe under section 301(d) of the Clean Air Act (42 U.S.C. 7601(d)) to carry out, in a manner consistent with the Clean Air Act (42 U.S.C. 7401 et seq.), the Intergovernmental Agreement.

(2) APPLICABILITY.—If the Administrator approves an air program application of the Tribe, the approved program shall be applicable to all air resources within the exterior boundaries of the Reservation.

(b) TERMINATION.—If the Tribe or the State terminates the Intergovernmental Agreement, the Administrator shall promptly take appropriate administrative action to withdraw treatment of the Tribe as a State for the purpose described in subsection (a)(1).

SEC. 5. CIVIL ENFORCEMENT.

(a) IN GENERAL.—If any person fails to comply with a final civil order of the Tribe or the Commission made in accordance with the Clean Air Act (42 U.S.C. 7401 et seq.) or any other air quality program established under the Intergovernmental Agreement, the Tribe or the Commission, as appropriate, may bring a civil action for declaratory or injunctive relief, or for other orders in aid of enforcement, in the United States District Court for the District of Colorado.

(b) NO EFFECT ON RIGHTS OR AUTHORITY.—Nothing in this Act alters, amends, or modifies any right or authority of any person (as defined in section 302(e) of the Clean Air Act (42 U.S.C. 7601(e)) to bring a civil action under section 304 of the Clean Air Act (42 U.S.C. 7603).

SEC. 6. JUDICIAL REVIEW.

Any decision by the Commission that would be subject to appellate review if it were made by the Administrator—

(1) shall be subject to appellate review by the United States Court of Appeals for the Tenth Circuit; and

(2) may be reviewed by the Court of Appeals applying the same standard that would be applicable to a decision of the Administrator.

SEC. 7. DISCLAIMER.

Nothing in this Act—

(1) modifies any provision of—

(A) the Clean Air Act (42 U.S.C. 7401 et seq.);

(B) Public Law 98-290 (25 U.S.C. 668 note); or

(C) any lawful administrative rule promulgated in accordance with those statutes; or

Exhibit 5

118 STAT. 1356

PUBLIC LAW 108-336—OCT. 18, 2004

(2) affects or influences in any manner any past or prospective judicial interpretation or application of those statutes by the United States, the Tribe, the State, or any Federal, tribal, or State court.

Approved October 18, 2004.

LEGISLATIVE HISTORY—S. 551:

HOUSE REPORTS: No. 108-712, Pt. 1 (Comm. on Resources) and Pt. 2 (Comm. on Energy and Commerce).

SENATE REPORTS: No. 108-201 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD:

Vol. 149 (2003): Nov. 21, considered and passed Senate.

Vol. 150 (2004): Oct. 4, considered and passed House.

Exhibit 6

RESOLUTION NO. 2019-01

RESOLUTION OF THE SOUTHERN UTE INDIAN TRIBE/STATE OF COLORADO ENVIRONMENTAL COMMISSION

April 24, 2019

WHEREAS, authority is vested in the Southern Ute Indian Tribe/State of Colorado Environmental Commission to promulgate rules and regulations for a single air quality program applicable to all lands within the exterior boundaries of the Southern Ute Indian Reservation and to review appealable administrative actions by the *Intergovernmental Agreement Between the Southern Ute Indian Tribe and the State of Colorado Concerning Air Quality Control on the Southern Ute Indian Reservation* dated December 13, 1999, by tribal law (Resolution of the Council of the Southern Ute Indian Tribe # 00-09), by State law (C.R.S. § 24-62-101), and as recognized in federal law (Act of October 18, 2004, Pub. L. No. 108-336, 118 Stat.1354); and

WHEREAS, under sections VII (a) and (b) of the *Intergovernmental Agreement*, it is the responsibility of the Commission to “determine the specific programs under the Clean Air Act, or other air programs, that should apply to the [Southern Ute Indian] Reservation, by taking into account the specific environmental, economic, geographic and cultural needs of the Reservation” and to “promulgate rules and regulations that are necessary for the proper implementation and administration of those programs”; and

WHEREAS, in 2011, the U.S. Environmental Protection Agency adopted a tribal minor new source review permit program applicable in Indian country, including on the Southern Ute Indian Reservation (“Reservation”), under which, beginning in 2014, owners and operators of new or modified minor sources must obtain a minor source permit; and

WHEREAS, since 2016, EPA’s minor source program has included a federal implementation plan for oil and natural gas true minor sources (in the nature of a permit by rule program) under which new or modified true minor sources must comply with certain emission limitations and other requirements from federal emission standards for coverage under the rule; and

WHEREAS, because the Reservation is near non-attainment for the National Ambient Air Quality Standard for ozone, because of the number of minor sources of air pollution on the Reservation, and because of the Reservation’s minor sources’ emission contributions to ozone precursors, the Commission asked the Southern Ute Indian Tribe’s Air Quality Program to identify and explore options for regulating minor sources on the Reservation; and

WHEREAS, in response to the Commission’s request, the Tribe’s Air Quality Program has identified three options for the regulation of minor sources on the Reservation (Option #1 – Continued EPA implementation of EPA’s federal minor source programs; Option #2 – At the Commission’s request, the Tribe applies for an administrative delegation to assist EPA in the administration of the federal minor source programs; and Option #3 – The Commission and Tribe develop a Reservation-specific minor source program and, at the Commission’s request, the Tribe submits the program to EPA for approval as a tribal implementation plan); and

Exhibit 6

WHEREAS, at the Commission's request, the Southern Ute Indian Tribe's Air Quality Program has conducted a stakeholder process regarding the options for regulating minor sources on the Reservation, including consulting with the State of Colorado's liaisons to the Commission, consulting with La Plata and Archuleta counties, consulting with EPA Region 8, soliciting written input from stakeholders, and soliciting input at a June 13, 2018 stakeholders meeting; and

WHEREAS, after considering stakeholder feedback, the Tribe has recommended the Commission consider option 2 – asking the Tribe to apply for an administrative delegation to assist EPA in the administration of the federal minor source programs; and

WHEREAS, the Commission has considered (1) the advantages and disadvantages of the three options identified by the Tribe, (2) the stakeholders' comments and input regarding the options, (3) the State of Colorado's comments, (4) La Plata and Archuleta counties' comments, (5) EPA Region 8's comments, and (6) the Tribe's recommendation and rationale for its recommendation, and determined that it is in the best interest of the Reservation Air Program for the Southern Ute Indian Tribe to apply for an administrative delegation to assist EPA in the administration of the federal minor source programs on the Southern Ute Indian Reservation; and

WHEREAS, the Commission views its request for the Tribe to apply for an administrative delegation to assist EPA in the administration of the federal minor source programs as a non-controversial action and anticipates no adverse comments and, therefore, determines that good cause exists to make the request to the Tribe through the Commission's direct final action procedure.

NOW, THEREFORE, BE IT RESOLVED that, provided no adverse comment is received in response to the notice of direct final action, the Commission requests the Tribe to apply for an administrative delegation to assist EPA in the administration of the federal minor source programs on the Reservation.

BE IT FURTHER RESOLVED that the Tribe's Air Quality Program Manager is directed to ensure that a notice of direct final action and request for comments on the Commission's request to the Tribe is published in accordance with the Commission's Procedural Rules.

BE IT FURTHER RESOLVED that, if no adverse comments are received, the Tribe's Air Quality Program Manager is authorized to publish a confirmation notice of direct final action confirming no adverse comments were received and confirming that the Commission has asked the Tribe to apply for an administrative delegation to assist EPA in the administration of the federal minor source programs on the Reservation.

BE IT FURTHER RESOLVED that, if no adverse comments regarding the Commission's request are received in response to the notice of direct final action, the Commission respectfully requests the Tribe to apply for an administrative delegation to assist EPA in the administration of the federal minor source programs on the Reservation.

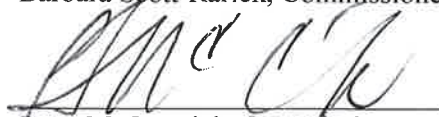
Exhibit 6

Dated this 24th day of April, 2019.


Demi Morishige, Chairman


Peter Butler, Commissioner


Barbara Scott-Rarick, Commissioner


Peter McCormick, Commissioner


Dan Jefferson, Commissioner


Rolfe Spiegel, Commissioner

CERTIFICATION

This certifies that the above-identified members of the Southern Ute Indian Tribe/State of Colorado Environmental Commission were present at the above meeting at which (6) voted for and (0) against, it being a majority of the Commission, and the above resolution was passed.


Danny Powers, Air Quality Program Manager
Southern Ute Indian Tribe

Exhibit 7

RESOLUTION NO. 2020-052

**RESOLUTION
OF THE
COUNCIL OF THE SOUTHERN UTE INDIAN TRIBE
April 28, 2020**

WHEREAS, authority is vested in the Southern Ute Indian Tribal Council by the Constitution adopted by the Southern Ute Indian Tribe, and approved November 4, 1936, and amended October 1, 1975, and August 27, 1991, to act for the Southern Ute Indian Tribe; and

WHEREAS, the Tribal Council is empowered under Article VII, Section 1(e) of the Tribal Constitution to protect the health and general welfare of the members of the Tribe and pursuant to Article VII, Section 1(n) of the Constitution, the Tribal Council has the power to “protect and preserve the property, wildlife and natural resources of the tribe”; and

WHEREAS, in 2011, the U.S. Environmental Protection Agency adopted a tribal minor new source review permit program applicable in Indian country, including on the Southern Ute Indian Reservation, under which, beginning in 2014, owners and operators of new or modified minor sources must obtain a minor source permit; and

WHEREAS, since 2016, EPA’s minor source program has included a federal implementation plan for oil and natural gas true minor sources (in the nature of a permit by rule program) under which new or modified true minor sources must comply with certain emission limitations and other requirements from federal emission standards for coverage under the rule; and

WHEREAS, because the Reservation is near non-attainment for the National Ambient Air Quality Standard for ozone, because of the number of minor sources of air pollution on the Reservation, and because of the Reservation’s minor sources’ emission contributions to ozone precursors, the Southern Ute Indian Tribe/State of Colorado Environmental Commission (Commission) asked the Southern Ute Indian Tribe’s Air Quality Program to identify and explore options for regulating minor sources on the Reservation; and

WHEREAS, in response to the Commission’s request, the Tribe’s Air Quality Program identified three options for the regulation of minor sources on the Reservation (Option #1 – Continued EPA implementation of EPA’s federal minor source programs; Option #2 – At the Commission’s request, the Tribe applies for an administrative delegation to assist EPA in the administration of the federal minor source programs; and Option #3 – The Commission and Tribe develop a Reservation-specific minor source program and, at the Commission’s request, the Tribe submits the program to EPA for approval as a tribal implementation plan); and

WHEREAS, at the Commission’s request, the Southern Ute Indian Tribe’s Air Quality Program conducted a stakeholder process regarding the options for regulating minor sources on the Reservation, including consulting with the State of Colorado’s liaisons to the Commission,

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RESOLUTION NO. 2020-052

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April 28, 2020

consulting with La Plata and Archuleta counties, consulting with EPA Region 8, soliciting written input from stakeholders, and soliciting input at a June 13, 2018 stakeholders meeting; and

WHEREAS, after considering stakeholder feedback, the Tribe recommended the Commission consider option 2 – asking the Tribe to apply for an administrative delegation to assist EPA in the administration of the federal minor source programs; and

WHEREAS, after considering (1) the advantages and disadvantages of the three options identified by the Tribe, (2) the stakeholders' comments and input regarding the options, (3) the State of Colorado's comments, (4) La Plata and Archuleta counties' comments, (5) EPA Region 8's comments, and (6) the Tribe's recommendation and rationale for its recommendation, the Commission determined that it was in the best interest of the Reservation Air Program for the Southern Ute Indian Tribe to apply for an administrative delegation to assist EPA in the administration of the federal minor source programs on the Southern Ute Indian Reservation; and

WHEREAS, the Commission has asked the Tribe to apply for an administrative delegation to assist EPA in the administration of the federal minor source programs; and

WHEREAS, in response to the Commission's request, the Tribe's Air Quality Program, with the Tribe's legal counsel's assistance, has prepared and recommended a Conditional Request, Pursuant to 40 C.F.R. § 49.161 and 40 C.F.R. § 49.103, for Administrative Delegation, with Signature Authority, of the: (1) Federal Minor New Source Review Program in Indian Country and (2) Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector (Application); and

WHEREAS, based on its consideration of the Commission's request and the Air Quality Program's recommendation, the Tribal Council has determined that it is in the best interest of the Reservation Air Program and the Tribe for the Tribe to apply for an administrative delegation to assist EPA in the administration of the federal minor source programs on the Southern Ute Indian Reservation.

NOW, THEREFORE, BE IT RESOLVED, that the Tribal Council approves the Application and authorizes its submittal to the U.S. Environmental Protection Agency.

BE IT FURTHER RESOLVED, that the Chairman of the Southern Ute Indian Tribal Council or, in her absence, the Vice Chairman, or, in the absence of both the Chairman and the Vice Chairman, a duly appointed Acting Chairman is hereby authorized to sign the necessary documents and take all necessary actions to carry out the intent of this resolution.

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RESOLUTION NO. 2020-052

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April 28, 2020

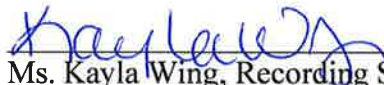
This resolution was duly adopted on the 28th day of April, 2020.



Ms. Christine Sage, Chairman
Southern Ute Indian Tribal Council

C E R T I F I C A T I O N

This is to certify that there were (6) of the regularly elected Southern Ute Indian Tribal Council members present at the above meeting, at which (5) voted for, and (0) against, it being a quorum and the above resolution was passed, the Chairman not being permitted to vote in this instance due to a Constitutional provision.



Ms. Kayla Wing, Recording Secretary
Southern Ute Indian Tribal Council

108TH CONGRESS }
2d Session } HOUSE OF REPRESENTATIVES { REPT. 108-712
Part 1

SOUTHERN UTE AND COLORADO INTERGOVERNMENTAL
AGREEMENT IMPLEMENTATION ACT OF 2003

SEPTEMBER 30, 2004.—Ordered to be printed

Mr. POMBO, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany S. 551]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (S. 551) to provide for the implementation of air quality programs developed in accordance with an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 551 is to provide for the implementation of air quality programs developed in accordance with an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

S. 551, the “Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003,” authorizes the Environmental Protection Agency (EPA) to treat the Southern Ute Tribe as a state for the purpose of carrying out Clean Air Act programs on the Tribe’s reservation, pursuant to an intergovernmental agreement entered into by the Tribe and the State of Colorado. The Tribe will be able to administer federal air quality programs within the exterior boundaries of its reservation according to standards set by a joint tribal-state commission.

Exhibit 8

The Southern Ute Reservation is located in the southwest corner of Colorado and contains a checkerboard land ownership pattern of tribal trust and non-tribal fee lands. For more than ten years, the State of Colorado, the Southern Ute Tribe, and the EPA have disagreed over the eligibility of the tribe and the State to be delegated authority to administer the Clean Air Act concerning the air resources within the boundaries of the tribe's reservation.

In 1999 the Tribe and the State entered into an intergovernmental agreement to resolve this dispute. Under the agreement, a joint tribal-state commission will set air quality standards in the reservation. The Tribe will then apply to the EPA for a delegation of authority to administer Clean Air Act programs according to such standards.

S. 551 authorizes the EPA to treat the Southern Ute Tribe as a state for the purpose of carrying out this intergovernmental agreement. The bill allows the tribe to pursue a civil action in the U.S. District Court for the District of Colorado to enforce the air quality programs managed by the tribe.

Under S. 551, the Tribe or the State may terminate the intergovernmental agreement. If the agreement is terminated, the EPA shall withdraw treatment of the tribe as a state for the purpose administering the Clean Air Act pursuant to the agreement.

COMMITTEE ACTION

S. 551 was introduced on March 6, 2003, by Senator Ben Nighthorse Campbell (R-CO). On November 21, 2003, the bill passed the Senate with an amendment by unanimous consent. The bill was then referred to the Committee on Energy and Commerce, and in addition to the Committee on Resources. On September 15, 2004, the Full Resources Committee met to consider the bill. No amendments were offered to S. 551, and the bill was then ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

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2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

S. 551—Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003

S. 551 would authorize the Environmental Protection Agency (EPA) to treat the Southern Ute Indian Tribe as a state under section 301(d) of the Clean Air Act. The bill would allow the tribe to accept delegation of EPA's authority under the Clean Air Act in the same manner as states. Enacting S. 551 would provide that, if the tribe submits an application under section 301(d) and if the application is approved, the resulting program would apply to all lands within the Southern Ute Reservation, including lands owned by non-Indians. The bill also would give jurisdiction for enforcement of those delegated powers to the U.S. District Court for the District of Colorado. According to EPA, enacting this legislation would not change the Southern Ute Indian Tribe's eligibility for federal grants in any manner. Thus, CBO estimates that enacting this legislation would not have a significant effect on the federal budget.

S. 551 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. This legislation would implement an agreement entered into voluntarily by the state of Colorado and the Southern Ute Indian Tribe, and any costs incurred by either the state or the tribe would stem from their acceptance of that agreement.

On August 15, 2003, CBO transmitted a cost estimate for S. 551 as ordered reported by the Senate Committee on Environment and Public Works on July 30, 2003. The two versions of the legislation are very similar, and our cost estimates are the same.

The CBO staff contacts for this estimate are Susanne S. Mehlman (for federal costs), and Marjorie Miller (for the state, local, and tribal impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

Exhibit 8

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CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

○

Exhibit 8

108TH CONGRESS }
2d Session } HOUSE OF REPRESENTATIVES { REPT. 108-712
Part 2

SOUTHERN UTE AND COLORADO INTERGOVERNMENTAL AGREEMENT IMPLEMENTATION ACT OF 2003

OCTOBER 4, 2004.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BARTON of Texas, from the Committee on Energy and
Commerce, submitted the following

R E P O R T

[To accompany S. 551]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (S. 551) to provide for the implementation of air quality programs developed in accordance with an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

S. 551 is a bill to implement an Intergovernmental Agreement between the Southern Ute Indian Tribe (the “Tribe”) and the State of Colorado (the “State”), concerning administration of the Clean Air Act on the Southern Ute Reservation. The bill authorizes the United States Environmental Protection Agency (EPA) to treat the Tribe as a state for the purpose of any air program application submitted by the Tribe to the EPA under section 301(d) of the Clean Air Act. It also provides that the Tribe is allowed to enforce an approved air program on all lands within the outer boundaries of its reservation. The Tribe and the State can terminate the Intergovernmental Agreement, and if the Agreement is terminated, then the EPA will withdraw treatment of the Tribe as a state. The Tribe and the Commission both are empowered to enforce the terms of any approved air program and bring suit in Federal District Court to enforce their orders. In addition, nothing in the bill is intended to alter, amend or modify any right or authority of any person to bring a civil action under section 304 of the Clean Air Act. The bill also provides for judicial review of decisions of the Commission.

BACKGROUND AND NEED FOR LEGISLATION

The Tribe, the State, and the EPA disagreed for over a decade on the eligibility of the Tribe and the State to receive a delegation of authority to administer programs under the Clean Air Act on the Southern Ute Indian Reservation. In order to resolve these jurisdictional disputes, on December 13, 1999, the Tribe and the State entered into an Intergovernmental Agreement that permits the Tribe to develop a comprehensive air quality program that is applicable to all land within the outer boundaries of the Tribe’s Reservation. The Intergovernmental Agreement also establishes a Southern Ute Indian Tribe/State of Colorado Environmental Commission (the Commission).

S. 551 is needed to allow the Tribe, the State and EPA to implement the Intergovernmental Agreement.

HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On Thursday, September 30, 2004, the Full Committee met in open markup session and ordered S. 551 favorably reported to the House, without amendment, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering S. 551 reported. A motion by Mr. Bilirakis to order S. 551 reported to the House, without amendment, was agreed to by a voice vote.

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COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of the bill is to implement an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado that allows the Tribe to administer air quality programs within the exterior boundaries of its reservation.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that S. 551, the Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 4, 2004.

Hon. JOE BARTON,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 551, the Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

ROBERT A. SUNSHINE
(For Douglas Holtz-Eakin, Director).

Enclosure.

S. 551—Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003

S. 551 would authorize the Environmental Protection Agency (EPA) to treat the Southern Ute Indian Tribe as a state under section 301(d) of the Clean Air Act. S. 551 would allow the tribe to accept delegation of EPA's authority under the Clean Air Act in the

Exhibit 8

same manner as states. Enacting S. 551 would provide that, if the tribe submits an application under section 301(d) and if the application is approved, the resulting program would apply to all lands within the Southern Ute Reservation, including lands owned by non-Indians. The act also would give jurisdiction for enforcement of those delegated powers to the U.S. District Court for the District of Colorado. According to EPA, enacting this legislation would not change the Southern Ute Indian Tribe's eligibility for federal grants in any manner. Thus, CBO estimates that enacting this legislation would not have a significant effect on the federal budget.

S. 551 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. This legislation would implement an agreement entered into voluntarily by the state of Colorado and the Southern Ute Indian Tribe, and any costs incurred by either the state or the tribe would stem from their acceptance of that agreement.

On August 15, 2003, CBO transmitted a cost estimate for S. 551 as ordered reported by the Senate Committee on Environment and Public Works on July 30, 2003. In addition, on September 16, 2004, CBO transmitted a cost estimate for S. 551 as ordered reported by the House Committee on Energy and Commerce on September 15, 2004. The three versions of the legislation are very similar, and our cost estimates are the same.

The CBO staff contacts for this estimate are Susanne S. Mehlman (for federal costs) and Marjorie Miller (for the state, local, and tribal impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

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SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 establishes the short title of the bill, the “Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003.”

Section 2. Findings and purpose

Section 2 states that Congress finds that the Intergovernmental Agreement is consistent with existing law. This section also lists the purpose of the bill as to implement and enforce clean air programs on the Southern Ute Indian Reservation and establish the Commission.

Section 3. Definitions

Section 3 defines the terms specific to the bill.

Section 4. Tribal authority

This section authorizes the Administrator of the EPA to treat the Tribe as a state for purposes of air program applications under section 301(d) of the Clean Air Act. It also authorizes that any air program is applicable to all lands within the exterior boundaries of the Reservation. If the Intergovernmental Agreement is terminated, then the EPA will withdraw its recognition of the Tribe as a state.

Section 5. Civil enforcement

Section 5 authorizes the Tribe or the Commission to bring a civil suit in Federal District Court for the District of Colorado to enforce any orders that they may issue. The right of a person to bring civil actions under section 304 of the Clean Air Act is preserved.

Section 6. Judicial review

Section 6 provides that any decision of the Committee that would be subject to appellate review if made by the Administrator of the EPA, is subject to appellate review in the United States Court of Appeals for the Tenth Circuit.

Section 7. Disclaimer

Section 7 provides that nothing in the bill is intended to modify or affect the Clean Air Act or the Act to Confirm the Boundaries of the Southern Ute Reservation in Colorado, or any administrative or case law relating to them.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

Calendar No. 401

108TH CONGRESS } <i>1st Session</i>	SENATE	{ REPORT 108-201
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SOUTHERN UTE AND COLORADO INTERGOVERNMENTAL
AGREEMENT IMPLEMENTATION ACT OF 2003

NOVEMBER 19, 2003.—Ordered to be printed

Mr. INHOFE, from the Committee on Environment and Public
Works, submitted the following

REPORT

[to accompany S. 551]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 551) to provide for the implementation of air quality programs developed in accordance with an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

For over 10 years, the State, Tribe and United States Environmental Protection Agency (EPA) have disagreed over tribal and State eligibility to receive delegations of authority to administer programs under the Clean Air Act on the Southern Ute Indian Reservation. Pursuant to the 1984 law which confirmed the boundaries of the Reservation, the Tribe relinquished territorial jurisdiction over non-Indians conducting activities on non-Indian land. Amendments to the Clean Air Act in 1990, however, authorized EPA to delegate primacy to tribes with respect to administration of various programs under that statute and arguably restored tribal jurisdictional authority Reservation-wide for air programs. Notwithstanding the Tribe's and the State's conflicting jurisdictional assertions, the Tribe and the State have decided to work cooperatively

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to develop a comprehensive air quality program applicable to all lands within the boundaries of the Reservation.

OBJECTIVES OF THE LEGISLATION

This legislation authorizes the Administrator to treat the Southern Ute tribe as a State for the purpose of any air program applications submitted to the Administrator by the Tribe under section 301(d) of the Clean Air Act (42 U.S.C. 7601(d) to carry out an Intergovernmental Agreement entered into by the Tribe and the State on December 13, 1999. The agreement provides for the regulation of air quality within the exterior boundaries of the Southern Ute Indian Reservation, as well as the establishment of a Southern Ute Indian Tribe/State of Colorado Environmental Commission.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title

“Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003.”

Sec. 2. Findings and Purpose

Congress finds that the Agreement between the Southern Ute Indian Tribe and the State of Utah is consistent with existing law. The purpose of the legislation is to provide for improved air quality within the boundaries of the Reservation and to authorize the creation of the Southern Ute Indian Tribe/State of Colorado Environmental Commission.

Sec. 3. Definitions

The terms specific to the legislation are defined.

Sec. 4. Tribal Authority

This section authorizes the Administrator to treat the Southern Ute tribe as a State for the purpose of any air program applications submitted to the Administrator by the Tribe under section 301(d) of the Clean Air Act (42 U.S.C. 7601(d) to carry out an Intergovernmental Agreement entered into by the Tribe and the State on December 13, 1999. If the Administrator approves an air program application of the Tribe, the approved program shall be applicable to all air resources within the exterior boundaries of the Reservation. The Tribe and State each retain authority to terminate the Agreement. If the Agreement is terminated, the Administrator will withdraw treatment of the Tribe as a State.

Sec. 5. Civil Enforcement

The legislation authorizes the Tribe or Commission to bring civil action in Federal court to assure compliance with provisions of the Clean Air Act. The legislation creating the Commission also protects the rights of citizens to bring suit separately under the provisions of the Clean Air Act.

Sec. 6. Judicial Review

Decisions by the Southern Ute Indian Tribe/State of Colorado Environmental Commission, as established by the Agreement, that would have been subject to appellate review if made by the U.S.

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Environmental Protection Agency will be subject to review by the U.S. Court of Appeals for the Tenth Circuit. This provision is intended to expedite the resolution of any conflicts that might develop in implementation by clarifying the judicial venue for dispute resolution.

Sec. 7. Disclaimer

This section provides a savings clause to ensure that the Clean Air Act, the Act to Confirm the Boundaries of the Southern Ute Indian Reservation in Colorado, and any administrative or case law relating to these Acts, are not affected by the legislation.

LEGISLATIVE HISTORY

S. 551, the “Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003,” was introduced on March 6, 2003 by Senator Campbell and referred to the Senate Committee on Environment and Public Works. No hearings were held on the bill. A similar bill, S. 2065, was considered and reported to the Senate by the committee in the 107th Congress.

ROLLCALL VOTES

On July 30, 2003, the Committee on Environment and Public Works met to consider S. 551. The committee agreed to a technical amendment offered by Senator Inhofe and voted to favorably report the bill, as amended, by voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 551 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that S. 551 would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 15, 2003.

Hon. JAMES M. INHOFE, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 551, the “Southern Ute and

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Colorado Intergovernmental Agreement Implementation Act of 2003.”

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff is Susanne S. Mehlman, who can be reached at 226–2860.

Sincerely,

DOUGLAS HOLTZ-EAKIN

S. 551, Southern Ute and Colorado Intergovernmental Agreement Implementation Act of 2003, as ordered reported by the Senate Committee on Environment and Public Works on July 30, 2003

S. 551 would authorize the Environmental Protection Agency (EPA) to treat the Southern Ute Indian Tribe as a State under section 301(d) of the Clean Air Act. The bill would allow the tribe to accept delegation of EPA’s authority under the Clean Air Act in the same manner as States. Enacting S. 551 would provide that, if the tribe submits an application under section 301(d) and if the application is approved, the resulting program would apply to all lands within the Southern Ute Reservation, including lands owned by non-Indians. The bill also would give jurisdiction for enforcement of those delegated powers to the U.S. District Court for the District of Colorado. According to EPA, enacting this legislation would not change the Southern Ute Indian Tribe’s eligibility for Federal grants in any manner. Thus, CBO estimates that enacting this legislation would not have a significant effect on the Federal budget.

S. 551 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on State, local, or tribal governments. This legislation would implement an agreement entered into voluntarily by the State of Colorado and the Southern Ute Indian Tribe, and any costs incurred by either the State or the tribe would stem from their acceptance of that agreement.

The CBO staff contacts for this estimate are Susanne S. Mehlman (for Federal costs), and Marjorie Miller (for the State, local, and tribal impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate requires the committee to publish changes in existing law made by the bill as reported. Passage of this bill will make no changes to existing law.

○



SOUTHERN UTE INDIAN TRIBE

April 28, 2020

Gregory Sopkin, Regional Administrator
U.S. Environmental Protection Agency – Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Re: Southern Ute Indian Tribe's Application for Administrative Delegation of the Federal Minor Source Programs

Dear Regional Administrator Sopkin:

For your review and approval, I am enclosing the Southern Ute Indian Tribe's *Conditional Request, Pursuant to 40 C.F.R. § 49.161 and 40 C.F.R. § 49.103, for Administrative Delegation, with Signature Authority, of the: (1) Federal Minor New Source Review Program in Indian Country and (2) Federal Implementation Plan for Managing Air Emissions from True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector.*

If you or your staff has questions, please contact Danny Powers (Air Quality Program Manager) at 970.563.2265 or dpowers@southernute-nsn.gov or Julianne Begay (Tribal Attorney) at 970.563.2144 or jbegay@southernute-nsn.gov.

Sincerely,


Christine Sage, Chairman
Southern Ute Indian Tribe

**CONSTITUTION OF THE
SOUTHERN UTE INDIAN TRIBE
OF THE
SOUTHERN UTE INDIAN
RESERVATION
COLORADO**

Exhibit 11

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CONSTITUTION OF THE SOUTHERN UTE INDIAN TRIBE of the Southern Ute Indian Reservation, Colorado

PREAMBLE

We, the members of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation in Colorado, in order to exercise our inherent rights of self government as confirmed by the constitution and bylaws approved November 4, 1936 to administer our tribal affairs, to preserve and increase our tribal resources, do ordain and establish this constitution.

ARTICLE I -- JURISDICTION

The jurisdiction of the Southern Ute Indian Tribe through its general council, its tribal council and courts, shall extend to all the territory within the exterior boundaries of the reservation, and to such other lands as may be added thereto by purchase, gift, Act of Congress or otherwise.

ARTICLE II -- MEMBERSHIP

Section 1. The membership of the Southern Ute Indian Tribe shall consist of the following:

(a) All persons duly enrolled on the 1970 tribal census roll dated August 31, 1971, approved by the Albuquerque Area Director on February 1, 1972.

(b) All children of enrolled members born subsequent to July 14, 1965, and prior to the effective date of this revision, if such children possess at least one-fourth (1/4) degree of Southern Ute Indian blood; and have not been enrolled as a member of any other Indian tribe.

(c) All children of enrolled members born subsequent to the effective date of this revision, if such children shall be one-fourth (1/4) or more degree of Southern Ute Indian blood and PROVIDED that such person shall not be included on the membership roll of any other Indian tribe and is approved for adoption by the tribal council.

Section 2. The tribal council shall have the power to enact ordinances consistent with this constitution, to govern future membership, loss of membership and the adoption of persons into the Southern Ute Tribe. Such ordinances shall be subject to approval by the Secretary of the Interior or his authorized representative.

Section 3. The tribal council shall have the power to prescribe rules governing the compilation, maintenance and correction of a tribal membership roll. Such rules, insofar as the correction of blood degree is concerned, shall be subject to approval by the Secretary of Interior or his authorized representative.

Section 4. The tribal council shall have the sole authority and original jurisdiction to determine eligibility for enrollment. No decree of any non-tribal court purporting to determine membership in the tribe, paternity, or degree of Indian blood, shall be recognized for membership purposes.

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ARTICLE III -- GOVERNING BODY

Section 1. Name. The governing body of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation shall be known as the Southern Ute Indian Tribal Council.

Section 2. Composition of the Council. The council shall be composed of seven (7) members (chairman and six (6) councilmen), all of whom shall be elected on an at-large basis for three (3) year staggered terms or until their successors are duly elected and installed. The chairman shall be elected from among candidates who specifically file for that office. Following his installation, the chairman shall appoint from within the council membership a vice-chairman to serve in that capacity at the pleasure of the chairman provided such appointment shall not extend the vice-chairman's normal three (3) year term on the council.

Section 3. The tribal council and tribal officials incumbent on the effective date of this constitution shall remain in office and shall be entitled to exercise all powers granted by this constitution to the tribal council and tribal officials until such time as their successors are duly elected and installed pursuant to the provisions of this governing document.

ARTICLE IV -- NOMINATIONS AND ELECTIONS

Section 1. The First Election. The first election under this constitution shall be held on the first Friday in November (November 7, 1975) and shall be supervised and conducted in accordance with an election ordinance enacted by the council then in office pursuant to Section 7 of this article. The position of tribal council chairman and the two (2) vacancies on the council which would occur in November, 1975 under the original constitution, shall be filled for three (3) year terms at the November 7, 1975 election. Those incumbents in the two (2) above mentioned council positions shall continue to serve until December 2, 1975 unless earlier removed from office, or until their successors are duly elected and installed.

Successful candidates for the three (3) vacant council positions (chairman and two (2) council members) and the person appointed by the chairman to serve as vice-chairman, shall be installed in office on the first Tuesday of December (December 2, 1975). **Thereafter** there shall be annual elections on the first Friday in November to fill for three (3) year terms, the two (2) vacancies occurring each year so as to continue the system of staggered terms of office. Every third year there shall also be elected a tribal council chairman for a three (3) year term. No person shall hold the office of Tribal Council Chairman consecutively for more than three terms.

Section 2. Terms of Office. The terms of office of the tribal council chairman and the members of the tribal council shall be three (3) years, **PROVIDED**, that upon adoption and approval of this constitution the unexpired terms of the council members elected under the previous constitution shall continue until their terms expire at the end of three (3) years from the date of their installation or until their successors are duly elected and installed.

Section 3. Assumption of Office. Newly-elected members of the tribal council shall be installed in office on the first Tuesday of December after their election. Persons who are elected or appointed to fill any unexpired term on the council shall take office immediately following certification of their election or appointment.

Section 4. Voter Qualifications. Any enrolled member of the Southern Ute Indian Tribe, male or female, eighteen (18) years of age or over, shall be entitled to vote at any tribal election **PROVIDED** such person is duly registered.

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Section 5. Qualification of Candidates. Candidates for membership on the tribal council shall be at least twenty-five (25) years of age at the time of election or appointment, and shall have physically resided within the present exterior boundaries of the Southern Ute Indian Reservation for at least ninety (90) days immediately preceding their appointment or the election at which they are candidates for tribal office. No person who has been convicted of a felony shall qualify as a candidate or hold membership on the tribal council.

Section 6. Election Board. An election board, appointed by the tribal council, shall maintain a register of qualified voters, rule on the eligibility of the candidates for tribal office, settle all election disputes and supervise and administer all tribal elections in accordance with established tribal ordinances and in conformity with this constitution PROVIDED, that no member of the election board shall be at the same time a member of the tribal council or a candidate for tribal office. Persons appointed to the election board may be removed by the tribal council chairman with the concurrence of the tribal council. The election board shall choose its own chairman, vice-chairman and secretary from within its membership.

Section 7. Election Ordinance. Rules and procedures governing the elections under this constitution shall be prescribed by ordinance of the tribal council. Such ordinance shall include provisions for notice of election, secret ballots, absentee voting, registration of voters, special elections and a procedure for settling election disputes. Further, it shall contain provisions to govern the filling of unexpired terms of office pursuant to Section 5 (b) of Article V and the conduct of referendum elections as set forth in Section 3 of Article VI.

ARTICLE V -- VACANCIES, REMOVAL AND RECALL

Section 1. Removal. Any member of the tribal council or other elected official of the Southern Ute Indian Tribe who, during his term of office, is convicted of a felony in any court, shall thereupon forfeit his term of office. Any member of the tribal council or elected official of the tribe may be removed from office by the affirmative vote of not less than four (4) members of the tribal council for gross neglect of duty, misfeasance in office or for misconduct reflecting on the dignity and integrity of the Southern Ute Indian Tribe, PROVIDED, that first, the accused person shall be given a written statement of the charges made against him at least ten (10) days before the meeting of the tribal council at which he is to appear, and he shall be given an opportunity to answer such charges. The decision of the tribal council shall be final.

Section 2. Recall. Any member of the tribal council or other elected official of the Southern Ute Indian Tribe shall be subject to recall from office at a special election to be called and held at the direction of the tribal council within thirty (30) days following receipt of a petition signed by at least thirty percent (30%) of the registered voters of the Southern Ute Indian Tribe, PROVIDED, that a majority of the registered voters of the Southern Ute Indian Tribe shall vote in such election. Once a recall attempt has been concluded for any given member, it shall not be considered again until twelve (12) months have passed. No recall shall be initiated until the official has completed at least six (6) months of his term.

Section 3. Procedures. Procedures and regulations governing the conduct of recall elections and removal proceedings shall be established by ordinance of the tribal council.

Section 4. Resignation. The chairman of the Southern Ute Indian Tribe or any member of the tribal council may, at any time, resign from the office to which he was elected by submitting a written resignation to the tribal council.

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Section 5. Filling vacancies. Any vacancy in the membership of the tribal council, resulting from any cause, shall be filled:

(a) By a tribal member who meets the qualifications for that office, appointed by the chairman of the Southern Ute Indian Tribe and confirmed by a vote of not less than four (4) council members if the term of the vacant office is due to expire within six (6) months following the date upon which it becomes vacant; or

(b) At a special election to be called and held at the direction of the tribal council within sixty (60) days following the date upon which it becomes vacant if the term of the vacant office has longer than six (6) months to run. Procedures and regulations to govern such special election shall be embodied in the election ordinance.

ARTICLE VI -- REFERENDUM

Section 1. Upon the receipt of a petition signed by at least twenty percent (20%) of the registered voters of the Southern Ute Indian Tribe, or upon the adoption of a resolution of the tribal council supported by no less than four (4) members thereof, the tribal council shall direct the election board to call and hold a special election at which the registered voters of the Southern Ute Indian Tribe may vote upon any enacted or proposed ordinance or resolution of the tribal council. Such election shall be held within thirty (30) days following receipt of said petition or adoption of the foregoing resolution by the tribal council. The decision of the tribal electorate shall be final, PROVIDED, that not less than fifty percent (50%) of the registered voters of the Southern Ute Indian Tribe vote in such referendum.

Section 2. Limits of Referendum. No referendum shall serve to abrogate, modify or amend any properly approved contract or agreement to which the tribal council is a party. Once a referendum has been voted upon and fails, that issue shall not be considered again until twelve (12) months have passed.

Section 3. Procedures. Special elections for referendum purposes shall be held in conformity with procedures established in the election ordinance of the Southern Ute Indian Tribe.

ARTICLE VII -- POWERS OF THE COUNCIL

Section 1. The inherent powers of the Southern Ute Indian Tribe, including those set forth in Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended, shall be exercised by the Southern Ute Indian Tribal Council, subject only to limitations imposed by the Constitution and Statutes of the United States, by the regulations of the Department of the Interior and by this constitution. The tribal council shall be empowered to:

(a) Regulate its own procedures by appropriate ordinance. In addition, the council may appoint subordinate boards, commissions, committees, tribal officials and employees not otherwise provided for in this constitution, and may prescribe their salaries, tenure and duties.

(b) Authorize and regulate tribal associations, corporations and subordinate organizations for economic and other purposes, with the approval of the Secretary of the Interior or his authorized representative whenever required by law, and may transfer tribal assets thereto for management and control;

(c) Any encumbrance, sale, lease, permit, assignment, or management of any portion of the reservation, or the grant of any rights to use of lands or other assets, or the grant or

Exhibit 11

relinquishment of any water or mineral rights or other natural or fiscal assets of the Southern Ute Indian Tribe, are hereby reserved to the tribal council.

(d) Advise the Secretary of the Interior and heads of other Federal Agencies with regard to all appropriation estimates or Federal projects for the benefit of the Southern Ute Indians of the Southern Ute Indian Reservation.

(e) Subject to approval by the Secretary of the Interior, or his authorized representative, the tribal council may enact ordinances and codes to protect the peace, safety, property, health and general welfare of the members of the Southern Ute Indian Tribe and to govern the administration of justice through the tribal courts, prescribe the powers, rules and procedures of the tribal courts in the adjudication of cases involving criminal offenses, domestic relations, civil actions and the inheritance and probate of trust, real and personal property of tribal members within the reservation.

(f) Provide by ordinances for the appointment of guardians for minors and mental incompetents.

(g) Provide by ordinance, subject to the approval of the Secretary of the Interior, or his authorized representative, for the removal or exclusion from the reservation of any nonmembers whose presence may be found by the tribal council to be injurious to members of the tribe.

(h) The tribal council shall manage all funds within the control of the tribe, and may appropriate available tribal money for public, business, governmental or investment purposes with approval of the Secretary of the Interior, or his authorized representative, whenever required by Federal law.

1. All appropriations of tribal funds shall be expended in conformity with annual budgets subject to approval by the Secretary of the Interior, or his authorized representative;

2. Provisions shall be made for adequate accounting of all tribal financial transactions, including a comprehensive annual audit. An annual summary audit report showing income and expenses for the fiscal year ended, reflecting the financial condition of the tribe, shall be available to tribal members upon request. All tribal officials and employees who are directly responsible for the receipt, disbursement and custody of tribal funds shall be adequately bonded. The cost of such bond shall be paid from tribal funds.

(i) The tribal council may authorize the deposit of any tribal funds under its control, to the credit of the Southern Ute Indian Tribe, without limitations on the amount carried in any account, in any bank whose deposits are insured by any agency of the Federal Government.

(j) The tribal council shall have the power to borrow money for business and economic development purposes from the Federal Government or other lending agencies.

(k) The tribal council may levy and collect taxes and fees on tribal members, and may enact ordinances, subject to approval by the Secretary of the Interior, or his authorized representative, to impose taxes and fees on nonmembers of the tribe doing business on the reservation.

(l) The tribal council may administer charity.

(m) The tribal council may adopt ordinances to authorize the loan of tribal funds to tribal members or tribal organizations.

(n) To protect and preserve the property, wildlife and natural resources of the tribe, and to regulate the conduct of trade and the use and disposition of tribal property upon the reservation.

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(o) To employ legal counsel for the protection and advancement of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, the choice of counsel and the fixing of fees to be subject to the approval of the Secretary of the Interior, or his authorized representative, so long as such approval is required by Federal law.

(p) To enact ordinances, covering the activities of voluntary associations consisting of members of the tribe organized for the purposes of cooperation or for other purposes, and to enforce the observance of such ordinance.

(q) To establish housing and such other authorities to conduct the business of the tribe.

Section 2. Acting Chairman. In the absence of the chairman and vice-chairman, the tribal council shall by proper resolution appoint from within its membership an acting chairman, who will be given all authority of the regular chairman.

Section 3. Further Powers. The tribal council may exercise such further powers as may be delegated to or conferred upon the Southern Ute Indian Tribe by the Congress of the United States, the Secretary of the Interior or other competent authority.

Section 4. Reserve Powers and Rights. Any rights and powers heretofore vested in the Southern Ute Indian Tribe of the Southern Ute Indian Reservation but not expressly referred to in this constitution shall not be abridged by this article, but may be exercised by the members of the Southern Ute Indian Tribe through the adoption of appropriate amendments to this constitution.

Section 5. Approval of Council Enactments. Every resolution or ordinance passed by the tribal council shall, before it becomes effective, be presented to the chairman for approval within five (5) days following the date of its passage. If he approves, he shall sign it within ten (10) days following its receipt by him and take such further action as may be necessary. If he does not sign an enactment of the tribal council, it shall not become effective and he shall, at the next regular meeting of the tribal council following its submittal to him for signature, return it to the council with a statement of his objections. It shall, thereafter, not become effective unless it is again approved by five (5) of the six (6) tribal council members.

ARTICLE VIII -- LAND

The reservation land now unallotted shall remain tribal property and shall not be allotted to individuals in severalty, but assignment of land for private use may be made by the tribal council in conformity with ordinances which may be adopted on this subject, PROVIDED, the vested rights of members of the tribe are not violated.

ARTICLE IX -- MEETING OF THE TRIBAL COUNCIL

Section 1. First Meeting. At the first meeting following installation of newly-elected council members, the carry-over members shall see that new members have a correct and clear understanding of the constitution, the management of tribal and reservation affairs and the rules governing the conduct of the council.

Section 2. Regular Meeting. The regular meetings of the council shall be held on a date decided on at a previous meeting of the council, but meetings shall be held every two (2) weeks.

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Section 3. Special Meetings. The chairman shall call a special meeting of the council whenever necessary or at the request of four (4) or more councilmen. Notice of such special meeting shall be given to every member of the tribal council as promptly as possible.

Section 4. Agenda and Quorum. Matters of business before the tribal council shall be decided by majority vote of a quorum present. Any four (4) of the seven (7) council members shall constitute a quorum. In the absence of the chairman and the vice-chairman, the remaining members of the tribal council may appoint an acting chairman as provided in Article VII, Section 2.

ARTICLE X -- DUTIES OF OFFICERS

Section 1. The chairman shall preside over meetings of the Southern Ute Indian Tribal Council and shall perform all duties of a chairman and exercise any authority given him by the tribal council. He shall vote only in case of a tie.

(a) The chairman shall appoint all non-elective officials and employees of the executive department of the tribal government and shall direct them in their work, subject only to applicable restrictions embodied in this constitution or in enactments of the tribal council establishing personnel policies or governing personnel management.

(b) The chairman, subject to the approval of the tribal council, may establish such boards, committees or subcommittees as the business of the tribal council may require and may serve as an ex-officio member of all such committees and boards.

(c) The chairman shall serve as contracting officer for the Southern Ute Indian Tribe executing all contracts and agreements to which the Southern Ute Indian Tribe is a party following approval by the tribal council.

(d) The chairman shall have power to veto all enactments of the council as provided in Section 5 of Article VII of the constitution.

(e) The chairman shall direct the preparation of the annual budget of the tribe and its presentation to the tribal council.

(f) The chairman may represent the tribe in negotiations with non-tribal organizations, agencies and branches of government.

(g) The chairman shall direct the tribal police to assure the enforcement of ordinances of the tribal council.

Section 2. Vice-Chairman. In the absence of the chairman, the vice-chairman shall preside and shall have all powers, privileges, duties and responsibilities of the chairman.

(a) The vice-chairman shall function as chairman of the tribal council in the absence or at the direction of the chairman.

(b) The vice-chairman shall perform such other duties as directed by the chairman.

Section 3. Treasurer. The treasurer and assistant treasurer of the Southern Ute Indian Tribe shall be appointed by the tribal council. The treasurer and assistant treasurer may be removed by the chairman with the consent of the majority of the total membership of the tribal council.

(a) The treasurer shall accept, receipt for, keep and safeguard all funds under the exclusive control of the tribe by depositing them in a bank insured by an agency of the Federal Government, or in an individual Indian Money account as directed by the Southern Ute Indian Tribal Council, and shall keep an accurate record of such funds. The treasurer shall make or authorize disbursement from funds under his control only as authorized in the approved annual

Exhibit 11

budget of the tribe or by special action of the tribal council. He shall report on all receipts and expenditures and upon the amount and nature of all funds in his custody to the tribal council at regular meetings and at such other times as requested by the tribal council.

(b) All checks shall be signed by the treasurer or assistant treasurer. Vouchers shall be approved for payment in accordance with a resolution to be adopted by the tribal council.

(c) The treasurer and assistant treasurer shall be bonded as provided in Section 1(h) 2 of Article VII of the constitution.

ARTICLE XI - RESTRICTION ON VOTING OF COUNCILMEN

In cases where a conflict of interest exists for a given council member, on any question before the council, that person shall not vote on such matters without the consent of all the remaining council members.

ARTICLE XII -- CONSTITUTIONAL AMENDMENTS

Section 1. This constitution may be amended at an election authorized by the Secretary of the Interior:

(a) Whenever, by favorable vote of at least four (4) members of the tribal council, the governing body of the tribe shall authorize the submission of a proposed amendment to the electorate of the tribe, or

(b) Whenever a minimum of twenty percent (20%) of the registered voters of the tribe, by signed petition, shall request such amendment.

Section 2. If, at such election, the amendment is adopted by majority vote of the registered voters of the tribe voting therein, and if the number of ballots cast represents not less than thirty percent (30%) of the registered voters, such amendment shall be submitted to the Secretary of the Interior and, if approved by him, it shall thereupon take effect.

ARTICLE XIII -- SAVING CLAUSE

All ordinances and resolutions heretofore enacted by the tribal council of the Southern Ute Indian Tribe shall remain in full force and effect to the extent that they are consistent with the constitution.

ARTICLE XIV -- GENDER

Whenever necessary, words used in this constitution in the masculine gender shall whenever appropriate be construed to read in the feminine gender.

ARTICLE XV -- ADOPTION OF CONSTITUTION

This constitution when adopted by a majority vote of the qualified voters of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, voting at a special election authorized by the Secretary of the Interior, in which at least thirty percent (30%) of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval and shall be in force from the date of such approval.

Exhibit 11

APPROVAL

I, Morris Thompson, Commissioner of Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me 230 DM 1.1, do hereby approve the Constitution of the Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado.

Morris Thompson
Commissioner of Indian Affairs

Washington, D.C.
Date: October 1, 1975

Ignacio, Colorado
September 26, 1975

Commissioner
Bureau of Indian Affairs
U.S. Department of the Interior
1951 Constitution Avenue, N.W.
Washington, D.C.

Certificate of results of election pursuant to an election authorized by the Secretary of Interior on August 13, 1975 was submitted to the qualified voters of the tribe and was on September 26, 1975 duly adopted by a vote of 92 for and 55 against in which at least 30 percent of the 268 members entitled to vote cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the act of June 15, 1935 (49 Stat. 378).

Raymond J. deKay, Superintendent
Chairman, Election Board
Southern Ute Agency
Ignacio, Colorado

Exhibit 11

AMENDMENT TO THE CONSTITUTION

In those cases in which a child's parents are an enrolled member of the Southern Ute Indian Tribe and a non-member, only the Southern Ute Blood of the enrolled Southern Ute parent may be considered in determining the child's Southern Ute Blood Quantum.

August 27, 1991

CERTIFICATE OF APPROVAL

I, Sidney Mills, Area Director, Albuquerque Area Office, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984) as amended, and delegated to me by 230 D.M. 3.1, do hereby approve amendment of Article II, Section 1(c) to the tribal Constitution of the Southern Ute Tribe, PROVIDED, that nothing contained in this approval shall be construed as authorizing any action under the Constitution that would be contrary to federal law.

Sidney L. Mills
Area Director

Exhibit 11

August 16, 1991
U.S. Department of the Interior
Bureau of Indian Affairs

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to a Secretarial Election authorized by the Area Director on May 23, 1991, under the authority delegated, the attached Constitutional Amendment of the Southern Ute Indian Tribe was submitted to the qualified voters of the Southern Ute Tribe and on August 16, 1991, was duly PASSED by a vote of 142 for and 95 against and 3 cast ballots found spoiled or mutilated in an election in which at least 30 percent of the 671 members entitled to vote, cast their ballot in accordance with 25 U.S.C. Sec. 476.

Eileen Candelaria, Chairman
Secretarial Election Board
Southern Ute Agency
Ignacio, Colorado

Patricia Rael, Member
Anna Marie Scott, Member
Marjorie D. Barry, Member
Susan Williams, Member
Theatis Williams, Member
Tina Duran-Edmo, Member

Exhibit 12

Mark Hutson

Environmental Programs Division Head – Southern Ute Indian Tribe

Mr. Hutson serves as the Division Head for the Southern Ute Indian Tribe's Environmental Programs Division. He began working with the Tribe to develop their Air Quality Program resources in 2013. The Southern Ute Indian Tribe is a leader in air quality program development within Indian Country and the only Tribe to have full delegation of a Part 70 Title V Operating Permit Program. Mr. Hutson helped lead the permitting team of the Air Quality Program in the transition of 37 Title V permits from the EPA over to Tribal jurisdiction and went on to develop the compliance, enforcement, and financial resource aspects of the program. The Tribe has assumed full permitting, compliance and enforcement responsibility for Title V sources located within the exterior boundaries of the Reservation. The Tribe also operates a robust ambient monitoring program with two continuous monitoring stations reporting ambient air quality information to the EPA's Air Quality System.

Mr. Hutson has over twenty-nine years of experience as an Environmental Scientist specializing in the field of air quality. After serving in the United States Marine Corps through Desert Storm in 1991, Mr. Hutson went to work with Radian Corporation as a Process and Atmospheric Chemist, providing technical support for source sampling events at hazardous waste incinerators, cement kilns, oil refineries, coal gasification units, and synthetic organic chemical manufacturing plants. He continued his career with the Texas Commission on Environmental Quality (TCEQ) as an Engineering Specialist, first working to develop air quality regulations for the state's mobile source emissions reduction program, then moving to work with TCEQ Region 5. As a Senior Air Quality Inspector at Region 5, Mr. Hutson conducted detailed air quality compliance investigations at major industrial sources, and he coordinated the excess emission event program. In 2003, Mr. Hutson initiated an air quality investigation at Tyler Pipe, a division of McWane Corporation, resulting in a US Department of Justice criminal case against the company that was resolved in 2005. He served as team leader for the leak detection and repair (LDAR) monitoring program and as an Environmental Scientist specializing in the field of air quality. In 2005, Mr. Hutson started work as an environmental consultant as an Air Permitting Specialist, preparing Title V Operating Permit, New Source Review, and Prevention of Significant Deterioration permit applications for a wide variety of industrial sources. In this role he also provided technical and management support for remediation projects such as spills and site decontamination.

Exhibit 12

Danny Powers

Air Quality Program Manager – Southern Ute Indian Tribe

Mr. Powers graduated from Fort Lewis College in 2010 with a Bachelor of Science in Environmental Geology and is currently working with the Southern Ute Indian Tribe Air Quality Program as the Air Quality Program Manager. Mr. Powers has nearly 8 years of experience working in the air quality profession with previous experience working in the geology vocation.

Mr. Powers has a broad knowledge of various aspects of Clean Air Act programs, including air quality planning and regulatory permitting. Mr. Powers has applied experience with all aspects of federal Title V operating permit programs, including program administrative functions, permitting, compliance and enforcement. Mr. Powers has been the lead manager in compiling two, Tribal first, accurate and comprehensive Environmental Protection Agency (EPA) Level II emission inventories for the Southern Ute Indian Reservation. These inventories were submitted to the National Emission Inventory database and shared with Western Regional Air Partnership. Mr. Powers has been the primary author of tribal comments on federal Clean Air Act rulemakings and has assisted with representing the Tribe in a global Clean Air Act enforcement and settlement action against a regulated source with the Department of Justice and the EPA. Mr. Powers has expanded ability in air quality monitoring, serving as the program manager for two State and Local Air Monitoring Station (SLAMS). He has ensured that data captured from these stations meet strict quality assurance requirements and are accurately reported to the EPA Air Quality System.

Currently, Mr. Powers is responsible for the daily oversight and management of the regulatory and ambient air quality monitoring sections of the Tribe's Air Quality Program. He has provided direction and guidance on numerous air quality projects involving complex technical and legal issues relating to Clean Air Act permitting, environmental enforcement actions, federal rulemakings, emission inventory development and interagency coordination between the air program and the Southern Ute Indian Tribe and State of Colorado Environmental Commission, Tribal Council, EPA, the State of Colorado, local governments, affected programs, regulated industry and the public. In addition, Mr. Powers is responsible for development and management of operating budgets, including obtaining and complying with federal Clean Air Act grants, including work plan development, progress reports, and budget tracking. Mr. Powers directly manages nine Air Quality Program personnel.

Exhibit 12

Oakley Hayes **Air Quality Technical Manager - Southern Ute Indian Tribe**

Mr. Hayes graduated from Fort Lewis College in 2013 with a bachelor's degree in Environmental Studies. Mr. Hayes is currently working with the Southern Ute Indian Tribe's Air Quality Program as the Air Quality Technical Manager. Mr. Hayes has over 6 years working in the air quality field with direct experience in reviewing and preparing Title V and New Source Review permits, emissions inventories, and calculating emissions from various sources.

Mr. Hayes began his career as the Air Quality Analyst for the Southern Ute Indian Tribe's Minor Source Program. During this time, Mr. Hayes analyzed reports submitted by operators of minor sources operating on the Reservation, familiarized himself with the regulations applicable to the oil and gas industry, and drafted Title V operating permits. Mr. Hayes left the Southern Ute Indian Tribe to pursue an opportunity with a midstream oil and gas company which allowed him to conduct air quality compliance work for numerous oil and gas sources of varying sizes in the states of Alabama, Mississippi, Louisiana, and Texas. The air quality responsibilities in this position included emission calculations for emissions inventory purposes, preparation of New Source Review, Permit by Rule and General Permit applications to ensure proper air permit authorization, and conducting facility inspections/audits to ensure company-wide air quality compliance. Mr. Hayes returned to the Southern Ute Indian Tribe as the Air Quality Scientist. As the Air Quality Scientist, Mr. Hayes served as the lead permit writer for the Title V Operating Permit Program, developed tools to track permitting actions, and reviewed changes to federal air quality regulations to determine the impact the changes would have on Reservation emissions. After accepting the Air Quality Technical Manager position, Mr. Hayes managed the oil and gas section of the Tribe's comprehensive emission inventory for the Southern Ute Indian Reservation. Mr. Hayes developed an emission calculation tool and combined it with an information collection request, which allowed the Air Quality Program to quantify emissions from all oil and gas sources located within the Reservation boundaries. This resulted in the most accurate emissions inventory ever completed for the Reservation. Data from the inventory has been utilized by the Colorado Department of Public Health and Environment and the Western Regional Air Partnership for multiple purposes.

Mr. Hayes has advanced skills in several computer programs, including, but not limited to, Microsoft Word, PowerPoint, and Excel. He is considered an expert level user of Microsoft Excel and has used his skills to develop electronic reporting forms utilized by the regulated community and to head development of an in-house database utilized by the Tribe's Air Quality Program. In addition, Mr. Hayes has experience with Caterpillar Gas Engine Rating Pro (GERP), GRI-GLYCalc, E&P Tanks, and Tanks 4.0.9d.

Exhibit 12

Amrish Sharma

Air Quality Analyst (Minor Source Program) - Southern Ute Indian Tribe

Mr. Sharma received his Bachelor of Technology degree in Electronics and Communications Engineering from Punjab Technical University, India in 2011. He graduated with a Master of Science in Atmospheric and Oceanic Science from the University of Maryland, College Park in 2017, and received a second Master of Science degree in Earth and Atmospheric Sciences from the University of Nebraska-Lincoln in 2019. He is currently working as an Air Quality Analyst for the Southern Ute Indian Tribe's Air Quality Program (AQP). Mr. Sharma has over 5 years of research experience in the fields of air quality, tropospheric chemistry and meteorology.

Mr. Sharma has steered several projects related to air quality as a graduate student, such as, evaluation of modeled data using satellite and aircraft data for improved simulation of criteria pollutants in Eastern United States, detection of gas flares in remote regions using satellite remote sensing techniques, and multi-sensor characterization of atmospheric parameters during severe drought conditions in Midwest United States. Mr. Sharma has experience in operating multiple modeling platforms designed for distinct applications e.g., radiative transfer calculations, plume dispersion modeling and air quality simulations. He is particularly skilled in running the Comprehensive Air Quality Model with Extensions (CAMx), a 3-D Eulerian photochemical grid model routinely used by EPA and state air quality agencies for regulatory analyses and policy impact assessment. Mr. Sharma is proficient in a suite of programming languages such as Interactive Data Language (IDL), MATLAB, Python and Fortran and is experienced in operating in High Performance Computing environment on supercomputers/multi-core clusters. Mr. Sharma possesses strong analytical skills and has performed statistical and geospatial analyses on large volumes of data from ground based, suborbital, modeling and satellite-based platforms.

Mr. Sharma has published research results in peer reviewed journals and has presented them in various professional conferences and workshops. In his current position as an Air Quality Analyst, Mr. Sharma is working on establishing a photochemical modeling framework for the Tribe's Air Quality Program, compiling 2018 Emission Inventory for Title V and Synthetic minor sources operating on the reservation for submission to EPA's National Emission Inventory (NEI), and undergoing training to develop a comprehensive understanding of air quality regulations pertinent to Tribe's AQP, including (but not confined to) 40 Code of Federal Regulations Part 49, Part 52.21 Prevention of Significant Deterioration, Part 60 New Source Performance Standards and Tribal Minor New Source Review Program.

Exhibit 12

Matt Wampler **Air Quality Scientist - Southern Ute Indian Tribe**

Mr. Wampler graduated from Fort Lewis College in 2014 with a Bachelor of Science with a Major in Environmental and Organismic Biology and he is currently working with the Southern Ute Indian Tribe's Air Quality Program as an Air Quality Scientist. Mr. Wampler has over 4 years working in the air quality field with direct experience in emissions inventories, reviewing, preparing and public commenting Clean Air Act Title V Federal Operating Permits, and drafting CAA enforcement related documents such as Notices of Violation, Settlement Agreements, and enforcement worksheets.

Mr. Wampler has compiled and submitted four emission inventories to EPA's National Emissions Inventory (NEI), including two Title V and Synthetic minor inventories and two comprehensive emissions inventories. The comprehensive emission inventories included point and nonpoint sources, mobile sources, and specific event sources such as wildfires. He has developed a Tribal database of all oil and gas emission sources on the Reservation. In addition to this work, Mr. Wampler has worked with the Tribe's Title V Federal Operating Permit Program. He reviews initial, renewal and revision applications and prepares draft permits based on applicable federal requirements for each site as outlined in 40 Code of Federal Regulations Part 49, Tribal Minor New Sour Review Program, Part 52.21 Prevention of Significant Deterioration, Part 60 New Source Performance Standards, and Parts 61 and 63 National Emission Standards for Hazardous Air Pollutants. Mr. Wampler, in conjunction with his CAA enforcement work, has specific expertise entering compliance and enforcement related documents into the Environmental Protection Agency's Integrated Compliance and Information System (ICIS).

Mr. Wampler has advanced skills in several computer programs. He has created various maps with different attributes and functions using ArcGIS and created various documents, presentations, and spreadsheets using Microsoft, Word, PowerPoint, and Excel. He is proficient is using the Tribal Emission Inventory Software Solution (TEISS) program, Motor Vehicle Emission Simulator (MOVES), and BlueSky Playground – AirFire Tools to develop emission inventories for the Tribe. He is also familiar with Gas Engine Rating Pro (GERP), GRI-GLYCalc, and Tanks 4.0.9d which he uses in his permitting tasks.

Exhibit 12

Crystal Kelly **Air Enforcement Coordinator – Southern Ute Indian Tribe**

Ms. Crystal Kelly holds a master's degree in Climate Science and a bachelor's degree in Environmental Studies. Ms. Kelly is currently the Air Enforcement Coordinator for the Southern Ute Indian Tribe's Air Quality Program. Ms. Kelly has over 3 years of experience in air quality. Ms. Kelly has direct experience in air quality in preparing enforcement documents and coordinating enforcement procedures and meetings.

Ms. Kelly began her career in air quality as an Air Quality Compliance Specialist for the Southern Ute Indian Tribe's Air Quality Program. In this position, Ms. Kelly inspected Title V facilities near the Southern Ute Indian Reservation while documenting each facility's compliance. To gain more experience in the air quality profession, Ms. Kelly transitioned to the Air Quality Program's Air Enforcement Coordinator position. In this position, Ms. Kelly is the main contact for air quality enforcement proceedings, creates enforcement documents, templates, worksheets, calculates enforcement penalties, and determines which pathway, formal or informal, the Air Quality Program will take when initiating enforcement. Ms. Kelly also regularly updates the Air Quality Program's Enforcement Procedures and Penalty Policy and enforcement templates. Finally, Ms. Kelly reports enforcement proceedings to EPA's Integrated Compliance Information System.

In addition to enforcement work, Ms. Kelly created, planned, and coordinated a summer youth program for Native American students on environmental science, including air and water quality. This endeavor introduced Native American students to the Southern Ute Indian Tribe's Environmental Programs Division while encouraging these students to apply for future jobs and internships at the Southern Ute Indian Tribe's Air Quality Program.

Ms. Kelly is proficient in MS Word, Excel, Publisher, and Adobe Acrobat software. She is also skilled in planning and coordinating outreach events.

Exhibit 12

David Heermance **Sr. Air Quality Compliance Specialist- Southern Ute Indian Tribe**

Mr. Heermance graduated from Fort Lewis College in 2015 with a Bachelor of Science with a Major in Engineering and an emphasis in thermal fluid systems. Mr. Heermance is currently working with the Southern Ute Indian Tribe's Air Quality Program (AQP) as the Senior Air Quality Compliance Specialist. Mr. Heermance has over 4 years working in the air quality field with direct experience in evaluating compliance with Clean Air Act (CAA) applicable regulations contained in Title V Operating Permits, and reviewing, preparing and public commenting Clean Air Act Title V Federal Operating Permits.

Mr. Heermance has completed several EPA approved Compliance Monitoring Strategies (CMS) since 2015 that establish the Air Quality Program's schedule for assessing the compliance of thirty-six (36) Title V permitted facilities located within the Reservation boundaries. He evaluates regulations that include, but are not limited to, regulations outlined in 40 Code of Federal Regulations Part 49, Tribal Minor New Sour Review Program, Part 52.21 Prevention of Significant Deterioration, Part 60 New Source Performance Standards, Part 63 National Emission Standards for Hazardous Air Pollutants, and Part 64 Compliance Assurance Monitoring. Mr. Heermance is responsible for maintaining the MAX.gov EPA database with final inspection reports. In addition, Mr. Heermance works with the Tribe's Title V permitting staff to assist in the development of enhanced monitoring, recordkeeping, and reporting requirements to address compliance assurance deficiencies identified through the inspection process.

Mr. Heermance has utilized his thermodynamic and fluid mechanics engineering skills to assist with identifying compliance issues relating to a control device for an EPA and Department of Justice Global Settlement case against a Reservation operator. Mr. Heermance has used his advanced knowledge of Microsoft Excel to create complex air quality compliance evaluation spreadsheets. Through evaluating compliance at the Title V facilities, Mr. Heermance has gained advanced knowledge of several air quality-specific computer programs such as GRI-GLYCalc™, ArcGIS, FLIR Tools, Caterpillar Gas Engine Rating Pro, and has multiple years of experience with programming languages and computer aided design programs including MATLAB®, Autodesk® Inventor®, Solid Edge, and C++.

Exhibit 12

Andrew Switzer

Air Quality Compliance Specialist- Southern Ute Indian Tribe

Mr. Switzer graduated from Fort Lewis College in 2012 with a Degree in Environmental Studies. Mr. Switzer has been working for the Southern Ute Indian Tribe's Air Quality Program for 6 years, with experience in both ambient air quality monitoring and Clean Air Act Title V operating permits and inspections.

Mr. Switzer is currently holding the position of Environmental Compliance Specialist for the Southern Ute Indian Tribe's Title V operating permit program. He is responsible for inspecting and assessing compliance for thirty-six (36) Title V permitted facilities located within the Reservation boundaries. Routine job duties include onsite facility inspections, analysis of compliance demonstration records, producing and reviewing full compliance evaluation reports, analysis of environmental regulations, and reviewing operating permits.

Mr. Switzer's technical skills include, ability to read, interpret, and apply complex federal, state and tribal air regulations such as the Code of Federal Regulations, Colorado Revised Statutes, and Reservation Air Code. Mr. Switzer has advanced ability to use air quality specific software such as GRI-GLYCalc™ emissions estimator, FLIR Tools, and Caterpillar Gas Engine Rating Pro. In addition, Mr. Switzer has advanced ability to create and evaluate complex mathematical calculations and data using tools such as Microsoft Excel and prepare technical air quality compliance reports presenting these data.

Exhibit 12

Marlene Scott-Jewett Air Quality Analyst I - Southern Ute Indian Tribe

Ms. Marlene Scott-Jewett graduated from Pueblo Community College in 2005 with an Associate of General Studies degree. Ms. Scott-Jewett has worked in the Environmental Programs Division's Air Quality Program for 14 years, beginning in 2005, first as the Air Quality Program Administrative Assistant, then as the Environmental Programs Division Administrative Assistant. Ms. Scott-Jewett is currently the Air Quality Analyst 1 with the Southern Ute Indian Tribe's Air Quality Program, beginning in February 2016.

Ms. Scott-Jewett has been performing the clerical and administrative duties of the Southern Ute Indian Tribe/State of Colorado Environmental Commission (Commission) for the entirety of her time with the Air Quality Program. Ms. Scott-Jewett has extensive knowledge of Microsoft products, including, Word, Outlook, Publisher, Excel, Project and Adobe Acrobat. Ms. Scott-Jewett is an expert in coordinating meetings and performs all meeting scheduling and coordination for the Commission. Ms. Scott-Jewett provides the air quality staff, commissioners, state representatives and tribal legal representatives with the all necessary documents for the official commission binders and all meeting materials. Ms. Scott-Jewett is well versed in and adheres to Robert's Rules of Order, Commission Procedural Rules, and Tribal Policies and Procedures for conducting commission duties.

Ms. Scott-Jewett has an effective working relationship with the Commissioners, State, County, Tribal Council and industry attendees to Commission meetings. Ms. Scott-Jewett helps facilitate organized, productive and efficient Commission meetings through ensuring all Commission members are familiar with Roberts Rules of Order and the Commission Procedural Rules.

Ms. Scott-Jewett is well organized and manages all public notices, notices to interested parties, transcribes minutes and tribal-appointed commissioner call for applicants, and maintains detailed commission records (e.g., resolutions, minutes, commission terms, chairman terms, and meeting records). Ms. Scott-Jewett has created Standard Operating Procedures (SOP's) for the Commission (e.g., Agenda Planning Meeting, Commission Meetings, Tribal-appointed Commissioner Call for Applicants and Stipend for Tribal-appointed Commissioner).

Ms. Scott-Jewett attends trainings that advance her professionally and that in return advance the Commission. Ms. Scott-Jewett attends the annual Colorado Association of Parliamentarians Summer Institute trainings and the New Mexico State Association of Parliamentarians SMART meetings to further her parliamentary knowledge and to stay current in effective meeting management. Ms. Scott-Jewett is working on obtaining her Professional Registered Parliamentarian (PRP) certificate, in order to join the National Association of Registered Parliamentarians (NAP).

Exhibit 12

Christopher Franco Air Quality Analyst - Southern Ute Indian Tribe

Mr. Franco graduated from New Mexico State University in 2012 with a bachelor's degree in Geography with a focus in Geographic Information Systems Technology. Mr. Franco is currently working with the Southern Ute Indian Tribe's Air Quality Program as the Air Quality Analyst. Mr. Franco has over 5 years working in the air quality profession with previous experience in operations and remote sensing technology.

Mr. Franco has thorough experience with industrial air emissions compliance testing as it relates to the Clean Air Act and local governments. With his experience as a project manager performing industrial emissions testing, Mr. Franco has become knowledgeable of the diverse federal, state, local, and tribal air regulations. Mr. Franco has previously developed the FTIR spectroscopy program for a performance testing firm. This included engineering and constructing a mobile laboratory with a GasMet DX4000 FTIR permanently installed and the testing protocol based upon the ASTM D6348-03 methodology. In prior and current roles, Mr. Franco has been involved in heavy QA/QC on instrumental analyzers; he has also become well versed in compiling and analyzing data gathered through data acquisition systems and relational databases. During his time as an Operations Analyst for the US Army Research Laboratory's Survivability/Lethality Analysis Directorate, Mr. Franco has successfully proactively and continuously monitored secure traffic to identify critical action items and authored SOPs and MOIs to US Department of Defense standards. Currently within his role with the Southern Ute Indian Tribe, he has worked diligently to rectify and improve instrumentation and technological processes and development of enhanced recordkeeping with the Ambient Air Monitoring Program's two State and Local Air Monitoring Station (SLAMS). He has also begun work on designing and implementing a low-cost air sensor network to provide new internal air quality research and public outreach.

Mr. Franco has advanced knowledge of computer systems and programs. He is a professional user of GIS tools, including ESRI ArcGIS, QGIS, and ERDAS Imagine, which has led to published scientific research for the National Park Service. He also has strong skills with the Microsoft Office Suite, including Excel in which he has developed workbooks still in use for FTIR emissions testing with QA automatic calculations directly from the ASTM D6348-03. He is also familiar with the C, R, and Python programming languages, command-line system operation, and ladder logic as used with Campbell Scientific PLCs and other SCADA systems. Other skills include Linux and Unix familiarity, wireless communications and networking, remote sensing technology and photogrammetry, and instrumentation troubleshooting and repair.

Exhibit 12

Naomi Begay Air Quality Technician - Southern Ute Indian Tribe

Ms. Begay graduated from Dine College with an Associated Degree in Liberal Arts. After completing her associates, she moved onto getting her bachelor's degree in Sociology with a minor in Environmental Policy at Fort Lewis College. Her passion has always been with Tribal Environment Justice. During her time at Fort Lewis College she interned with the Southern Ute Indian Tribe Environmental Programs Division. During her time there she worked with both Air and Water Quality staff.

In early 2018, Ms. Begay accepted the Air Quality Technician position in Air Monitoring Program. Ms. Begay is tasked with maintaining the Tribe's three State and Local air quality monitoring stations located on the Reservation. Ms. Begay's daily task include review of daily ambient air monitoring data, quality assurance and quality control evaluations and weekly and monthly data reviews. Ms. Begay is proficient as all on-site maintenance activities associated with the continued operation of air quality and meteorological instruments. Ms. Begay is also proficient and responsible for the submittal of all air quality monitoring data to the EPA Air Quality Systems database and EPA AirNow AQI index health forecast website. She also develops and continuously updates the air quality programs standard operating procedures and assists with the annual evaluation and approval of the EPA approved quality assurance project plan.

Since Ms. Begay has joined the Air Quality Program she continues to grow her technical and scientific knowledge and attends trainings and seminars hosted by the the Institute for Tribal Environmental Professionals and EPA.