

CHAPTER 33

GOVERNMENT - STATE

HOUSE BILL 00-1324

BY REPRESENTATIVES Larson, Alexander, Allen, Berry, Chavez, Coleman, Dean, Fairbank, Gagliardi, George, Gotlieb, Hefley, Hoppe, Kaufman, Kester, Mace, May, McKay, McPherson, Miller, Mitchell, Ragsdale, Scott, Spradley, Stengel, Tapia, Tate, Taylor, and T. Williams;
also SENATORS Dyer, Anderson, Arnold, Blickensderfer, Congrove, Epps, Feeley, Hernandez, Musgrave, Perlmutter, Reeves, Rupert, Tebedo, Teck, and Wham.

AN ACT

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

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

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

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. 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**

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

**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.**

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.

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 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 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.

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.

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 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;

(1) 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;

(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 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 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
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.

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

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 15, 2000