

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UTE MOUNTAIN UTE TRIBE AND THE STATE OF COLORADO
CONCERNING
WILDLIFE MANAGEMENT AND ENFORCEMENT IN THE BRUNOT AREA**

The Memorandum of Understanding is executed by the UTE MOUNTAIN UTE TRIBE (“Tribe”) and the STATE OF COLORADO, by and through the COLORADO DIVISION OF PARKS AND WILDLIFE and COLORADO PARKS AND WILDLIFE COMMISSION (“State”).

RECITALS

1. In 1874, Congress approved an agreement between the United States and the Ute Indians in Colorado, known as the Brunot Agreement, pursuant to which the Utes ceded certain land to the United States and reserved a right to hunt on the land for “so long as the game lasts and the Indians are at peace with white people.” 18 Stat. 36, 37 (1874).

2. Since 1978, pursuant to a Consent Decree in the United States District Court for the District of Colorado (*Ute Mountain Tribe of Indians v. The State of Colorado Department of Natural Resources, et al.*, 78-C-0220), the Tribe has exercised certain hunting rights within the Brunot Area, which is not within the exterior boundaries of the Tribe’s reservation.

3. The Tribe wishes to more fully exercise the hunting rights of its members within the Brunot Area, and to protect Tribal members who chose to exercise their lawful rights under the Brunot Agreement from interference by the State or any persons acting or purporting to act under color or authority of State law.

4. Federal Indian law canons of construction, when applied to the Brunot Agreement, require that the Agreement be construed in favor of the Utes, to give effect to the terms as they would have understood them, and any ambiguities be resolved in the Indians’ favor. *See Tulee v. Washington*, 315 U.S. 681 (1942). Based on historical evidence and testimonials from Ute elders, the term “hunt” used in the Agreement should be read broadly to mean hunting and other activities, including trapping, fishing, and gathering, by which the Ute supported themselves in the region for centuries.

5. In exercising off-reservation treaty rights to hunt, fish, and gather within the Brunot Area, the Tribe is subject only to those state regulations necessary to ensure propagation of a species. This is commonly known as the “conservation necessity” exception to the general rule of no state regulation of Indian treaty hunting, fishing, and gathering rights. *See e.g., Puyallup Tribe v. Dep’t of Game*, 391 U.S. 392, 398 (1968); *Dept. of Game of the State of Washington v. Puyallup Tribe*, 414 U.S. 44, 48-49 (1973);

United States v. Michigan, 653 F.2d 277, 279 (6th Cir. 1981); *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin*, 740 F.Supp. 1400, 1421-22 (W.D. Wis. 1990).

6. The purpose of the MOU is to (a) promote cooperation and communication in the management and use of the Brunot Area wildlife resources so that those resources and the Brunot Area habitat are preserved and protected for tribal and non-tribal purposes; (b) avoid confrontation related to the exercise of enforcement jurisdiction by the Tribe and the State; (c) provide a process to avoid and resolve conflicts; (d) facilitate exercise of the Tribe's Brunot Agreement rights in a manner that is respectful of the interests of the Tribe, the Southern Ute Indian Tribe, and the State in the shared wildlife resources of the Brunot Area.

7. The Tribal Council of the Tribe is authorized to act for the Tribe by the Constitution and By-Laws adopted by the Tribe and approved by the Secretary of the Interior on June 6, 1940, as amended. U.M.U.T. Constitution, Art. V.

8. The Colorado Parks and Wildlife Commission is the state agency responsible for wildlife management in Colorado pursuant to §33-9-102, C.R.S., and is authorized to enter into cooperative wildlife management agreements for the development and promotion of its wildlife programs. The Director of the Colorado Division of Parks and Wildlife has general supervisory control of and authority over all activities, functions, and employees of the Division and shall exercise all the powers and perform all the functions of the Board in the interim between its meetings pursuant to §33-9-103, C.R.S.

9. The Tribe and the State are committed to operating on a basis of government-to-government relationship.

TERMS

The understanding of the Tribe and the State regarding wildlife management and enforcement in the Brunot Area is as follows:

I. Definitions

A. "Brunot Agreement" means the Agreement of September 13, 1873, ratified by Act of April 29, 1874, ch. 136, 18 Stat. 36 (1874).

B. "Brunot Area" means the land relinquished and conveyed by the confederated bands of the Ute Nation to the United States in the Brunot Agreement and upon which the United States agreed to permit the Ute Indians to hunt "so long as game lasts and the Indians are at peace with the white people." The Brunot Area is shown on the map attached hereto as Exhibit A.

C. "Game Species" means those species of wildlife listed on the attached Exhibit B.

D. "Reservation" means the Ute Mountain Ute Tribe Reservation as established by numerous federal treaties and statutes.

E. "Tribal Council" means the Ute Mountain Ute Tribe's Tribal Council as defined in the Tribe's Constitution, Art. I and III.

F. "Tribal member" means duly enrolled members of the Ute Mountain Ute Tribe. Conversely, "Non-Tribal member" means any person who is not an enrolled member of the Ute Mountain Ute Tribe.

II. Wildlife Management within the Brunot Area

A. **Management Principles.**

The Tribe and the State each have a vested interest in and a shared responsibility for the well being and perpetuation of the wildlife resources and habitat in the Brunot Area. The parties recognize that sound management of these resources is best achieved in a collaborative manner, through communication and cooperation on an ongoing basis. The parties, therefore, commit to maintaining a strong and cooperative dialog on wildlife, especially related to the harvest of game species, and wildlife habitat management within the Brunot Area.

The parties further recognize the need to manage wildlife populations based upon the best available science. When such biological information is lacking or insufficient, the most prudent management is one designed to err in favor of the wildlife resource. Such prudent management, however, shall not be evidence of the existence or non-existence of a conservation necessity.

Finally, the parties recognize the importance of habitat in sustaining viable wildlife populations and agree to consult and work cooperatively together and with private and public landowners and land-use regulations regarding the protection, restoration, and enhancement of wildlife habitat in the Brunot Area.

B. **Hunting Management and Regulation Guidelines.**

(1) **Regulations.** The parties agree to develop, adopt, and enforce basic regulations which may include: specific opening and closure dates by species, designated hunting units, bag and possession limits, firearms requirements, equipment requirements for archery, angling, and trapping, tagging requirements, hunter safety, hunter identification, and other general requirements deemed necessary for the management and harvest of game species. The parties agree to meet on a periodic basis to discuss the setting of regulations and any differences that may arise. The parties agree to provide each other with approved harvest regulations.

The Tribe acknowledges that the State has developed and implements a regulatory program within the Brunot Area that addresses the issues listed above and is based on the shared management principles described above. Without any limitation on its sovereign right to determine and regulate the circumstances under which tribal members may hunt, fish, or trap in the Brunot Area, the Tribe will develop and implement a regulatory program that also is based on the parties' shared management principles and, therefore, will likely be similar to the State's regulatory program in the Brunot Area. To the extent that the Tribe's current Ute Mountain Tribal Hunting Code for the Brunot Agreement Area is inconsistent with this provision, it will be amended accordingly.

(2) ***Non-Hunting Areas.*** The parties agree to meet and discuss areas currently incompatible with hunting for any or all species of wildlife.

(3) ***Ceremonial Hunts.*** The Tribe may authorize hunts through the issuance of a specific license for ceremonial needs, outside the regularly scheduled seasons at any time of the year. "Ceremonial hunts" include hunts for subsistence and religious purposes. The Tribe will make a reasonable attempt to notify the Colorado Division of Wildlife in advance, or as soon as practicable, and indicate the general location, number of hunters, species to be hunted, and number of animals authorized for harvest. Such ceremonial hunts shall take into account the biological impacts on sensitive populations and all ceremonial harvests will be included in the Tribe's annual harvest reports.

C. Game Species.

The game species inhabiting the Brunot Area are numerous and diverse and subject to harvest by tribal and state hunters alike. For the purposes of managing the harvest of these animals, the Tribe and the State agree to recognize five broad categories of species as follows: (1) Big game animals, (2) Small game animals, (3) Waterfowl, (4) Upland game birds, and (5) Fisheries. The species composition of these categories is detailed in Exhibit B to this MOU and may be revised periodically through mutual agreement of the parties without a need for a formal amendment to this MOU. In managing the harvest of game species, the parties agree to apply the management principles and guidelines described above.

The harvest of common game species by Tribal members within the Brunot Area shall be managed through the annual allocation of permits by the Tribe per the Tribe's established seasons. Permit availability will be limited by an established maximum number of permits overall and by individual hunter, depending on the game species. The eligibility of Tribal members to obtain hunting permits for the Brunot Area shall be determined by the Tribe.

D. Rare Game Species.

The Tribe and the State recognize that certain game species exist in highly limited numbers within the Brunot Area and require special management to ensure their persistence over time. Foremost is the need to substantially limit annual hunter harvest of

each of these species to that population viability is maintained. The total sustainable harvest should be determined annually for each rare game species within the Brunot Area to meet the goal of population viability. This is an estimate of the total number of animals that can sustainably be removed from the population through hunting based upon biological information. In addition to limiting the overall number of animals to be harvested, harvest may also be restricted to animals of a certain sex or age class.

Therefore, the parties agree to coordinate on an annual basis:

- (1) Identification of rare game species within the Brunot Area that require an analysis of a sustainable harvest. These species are expected to include, but not be limited to, Rocky Mountain big horn sheep, mountain goat, and moose;
- (2) Determination of the total sustainable harvest by *all* hunters, including any restrictions on animal sex and age class, for each of the species identified under (1) above for the subsequent hunting seasons; and
- (3) Division between themselves of the portion of the total sustainable harvest for each rare game species in a fair and equitable manner, taking into consideration such factors as hunter population size, demand for the species, special tribal cultural needs, and the needs of other jurisdictional entities partaking in the legal harvest of rare game animals from the Brunot Area. The Tribe's annual portion of total sustainable harvest for rare game species will be no less than 5% for each species and, if the Tribe's portion of the total sustainable harvest calculation for a species amounts to less than one, the Tribe may permit the harvest of one animal of that species.

E. Other Wildlife.

For a variety of reasons, numerous wildlife species within the Brunot Area are not pursued as game animals by the public (i.e., non-game wildlife). The primary reason for this is a variety of Federal and State species protection laws explicitly restricting the taking of many species in order that they not be brought to extinction or extirpated from large portions of their ranges. Other reasons for not pursuing some wildlife species may include poor edibility, pack of sport hunting qualities, lack of commercial values, or combinations of all of the above.

The Ute Indians historically subsisted on all species of wildlife that were available to them, including species that today may be considered by the public and the States as "non-game wildlife". The Tribe maintains that its hunting rights reserved under the Brunot Agreement are broad-based subsistence rights that are not limited by modern species protection laws (unless specifically abrogated through Congressional act).

If either party wishes in the future to pursue species other than those identified in Exhibit B, or currently allowed by applicable law or regulation, they will consult with each other and with any appropriate federal agencies on harvest feasibility and, if

determined feasible, develop and implement the conservation measures that would be needed to ensure persistence of the species under a harvest management program.

F. Information Sharing.

The parties recognize that regular and effective sharing of wildlife management information is critical to the successful implementation of this MOU. The parties agree to share information regarding biological data of the Brunot Area wildlife, such as, population status and trends, annual permitting and harvest within the Brunot Area, planning information for seasons and regulations within the Brunot Area, wildlife habitat status and management activities, population management goals for game species, and any other pertinent information to assist each other with wildlife management. The sharing of information shall be done by any means available to the parties, including telephone, facsimile, electronic, face-to-face meetings, or written correspondence.

G. Research and Cooperative Studies.

The parties recognize that it may be mutually beneficial to develop cooperative studies of wildlife.

III. Law Enforcement.

A. Law Enforcement Principles.

The Tribe and the State recognize that violation of wildlife laws interferes with the conservation of wildlife resources and may endanger the safety of persons and property. The Tribe and the State agree to recognize and respect the jurisdiction of each other and to work cooperatively in the conduct of law enforcement operations of mutual interest.

B. Regulation.

The Tribe will exercise civil and criminal jurisdiction over the exercise of Brunot Agreement rights by its members and the State will exercise civil and criminal jurisdiction over the hunting, fishing, and trapping activities of non-Tribal members in the Brunot Area pursuant to applicable law. The Tribe will regulate the exercise of Brunot Agreement rights by its members in accordance with the Tribe's Ute Mountain Tribal Hunting Code for the Brunot Agreement Area, and the State will regulate hunting, fishing, and trapping activities of non-Tribal members in the Brunot Area pursuant to State law. Regulations enforced by both parties will include but not necessarily be limited to those regulations listed in §II.B.(1) above.

C. Cooperative Enforcement Activities.

Given the size of the Brunot Area and the fiscal and other limitations of the parties' law enforcement capabilities, the Tribe and the State agree that cooperation

between parties' law enforcement personnel is important for ensuring compliance with each party's wildlife laws. In that regard, the Tribe and the State agree to consider establishing law enforcement assistance programs including, but not necessarily limited to, (1) a notification by the law enforcement officers of one party to the law enforcement officers of the other party of suspected violations and any available evidence and information that may aid in prosecution, and (2) a cross-deputation program, pursuant to a cross deputation agreement, whereby the law enforcement officers of one party may be authorized to issue citations to individuals subject to the jurisdiction of the other party. In order to assist each others' court systems in the effective and efficient disposition of wildlife violations, the Tribe and the State agree to make every reasonable effort to make their respective wildlife enforcement officers available upon request to serve as witnesses.

The parties recognize that there may be circumstances in which the Tribe and the State may possess concurrent authority to prosecute tribal members for conduct occurring within the Brunot Area. In those circumstances, the parties agree to consult regarding the exercise of appropriate jurisdiction. It is the Tribe's desire to provide effective regulation of members' Brunot Agreement activities and thereby preclude concurrent State regulation.

D. Exchange of Information and Consultation Regarding Officers.

The Tribe and the State desire to promote mutual trust relating to Brunot Area wildlife law enforcement by regularly sharing information, which must include, but not necessarily be limited to, numbers of violations, locations and times of violations, types of violations, and disposition of violations. Additionally, the parties agree that mutual trust and understanding can be promoted by regular communications regarding the expectations and performance of officers and officials who have responsibilities for law enforcement within the Brunot Area.

E. Tribal Member Good Faith Immunity.

The Tribe will make every reasonable effort to ensure that no permit issued by the Tribe authorizing hunting within the Brunot Area is issued in violation of this MOU. However, if a permit is issued in violation of this MOU, the Tribe and the State acknowledge that a Tribal member holding the permit who acts in good faith reliance upon the authority granted to him by the permit should be able to assert the affirmative defenses to criminal prosecution that would be available to persons within the state acting under a grant of authority issued by any state sanctioned administrative entity. Therefore, consistent with state laws providing an affirmative defense similar to that set forth in C.R.S. 18-1-504, the State agrees not to prosecute under any state law any Tribal member who hunts within the Brunot Area who would be able to assert an affirmative defense set forth in C.R.S. 18-1-504 if the permit at issue were issued by a state administrative entity with authority to issue similar permits.

IV. Technical Assistance, Education, Training, and Outreach.

A. Data and Technical Assistance.

The parties agree to advise each other about the kinds of data and technical assistance that each can share. The parties will provide data to assist each other in regulating the taking of wildlife in the Brunot Area and to assist each other in developing expertise in wildlife management and law enforcement. The Tribe and the State agree to exchange data regarding matters of mutual interest.

B. Training and Education.

Upon request, the Tribe will help the State improve its understanding of Ute Mountain Ute history and sovereignty, Ute Mountain Ute traditional values and practices, including but not necessarily limited to, ceremonial harvesting, natural resource values, treaty and other federally reserved rights, and other relevant legal issues.

The Tribe and the State agree that well-trained wildlife law enforcement officers are essential to ensuring the protection and conservation of wildlife in the Brunot Area. The Tribe and the State also share a desire to train their enforcement officers to ensure that they have the knowledge and skills to apply sound wildlife law enforcement principles. In that regard, the Tribe and the State agree to share and collaboratively develop training opportunities for enforcement officers.

The parties agree to work cooperatively with respect to education and outreach to the public and other interested parties regarding the Tribe's Brunot Agreement rights, the shared resources in the Brunot Area, and this MOU.

V. Dispute Resolution.

The parties will attempt to promptly and in good faith resolve any dispute arising out of or relating to the matters addressed in this MOU. If the parties are unable to mutually resolve any such dispute, this MOU may be terminated, as set forth herein. No dispute under this MOU or termination of this MOU may alter the nature, scope, or boundaries of the Tribe's rights under the Brunot Agreement or have any effect on those rights whatsoever.

VI. Preservation of Jurisdiction and Sovereign Immunity.

Nothing in this MOU, or any actions taken pursuant to this MOU, or inaction, may affect the respective jurisdiction of the Tribe and the State to manage and regulate the taking of wildlife in the Brunot Area and within the exterior boundaries of the Ute Mountain Ute Reservation. By entering into this MOU, neither the Tribe nor the State concedes nor waives any legal arguments concerning such authority. Upon termination of this MOU, the parties acknowledge, understand, and agree that this MOU does not operate as a bar, constitute a waiver of any rights of the parties, including but not limited

to the civil and criminal jurisdiction of the Tribe, whether arising inherently or under federal law, or in any respect affect the ability of either party to assert its arguments concerning the authority to manage and regulate the taking of wildlife in the Brunot Area or within the exterior boundaries of the Ute Mountain Ute Reservation.

Nothing in this MOU constitutes a waiver of any immunity by either the Tribe or the State for any purpose whatsoever.

VII. Protection of Pre-Existing Rights.

Nothing in this MOU alters the nature, scope, or boundaries of the Tribe's rights under the Brunot Agreement. Nothing in this MOU, or any self-imposed limitation on the exercise of the Tribe's Brunot Agreement rights, or other management arrangement or the accommodation made pursuant to this MOU may operate as an admission, concession, or waiver by either the Tribe or the State of any legal right, claim, or obligation with respect to the Tribe's Brunot Agreement rights nor may anything in this MOU be a bar to either party to seek any legal remedy available to it.

VIII. Effect on Prior Agreements.

This MOU supersedes the prior agreement between the parties entered into as a resolution of Civil Action 78-C-0220 (United States District Court for the District of Colorado) and the parties agree that this MOU is enforceable as a matter of law in the United States District Court for the District of Colorado.

IX. Miscellaneous.

A. Effective Date and Duration.

This MOU begins once it is signed by both parties, and will remain in effect until and unless otherwise terminated as set forth in this MOU.

B. Amendment.

The parties may amend this MOU at any time in writing, provided that such amendment must bear the signature of an authorized representative of each party. This provision 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 MOU may be terminated by either party upon 30 days written notice to the other party. Termination of this MOU has no effect on the continued validity of the Brunot Agreement and the Tribe's right to exercise its rights under the Brunot Agreement in the absence of this MOU.

D. No Third Party Beneficiaries.

This MOU 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 MOU.

E. Severability.

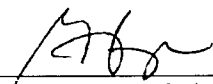
If any provision of this MOU is determined to be prohibited by or invalid under any applicable law, such provision will become ineffective only to the extent of such prohibition or invalidity, without affecting the validity or enforceability of the remaining provisions. The Tribe and the State agree to meet and negotiate in good faith to amend this MOU if any provision is determined to be prohibited by or invalid under any applicable law.

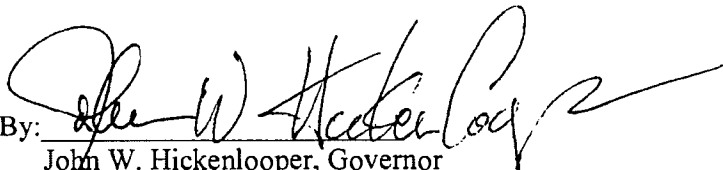
F. Counterparts.

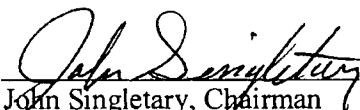
This MOU may be executed in one or more counterparts, each of which is deemed an original, but all of which together constitutes one and the same instrument.

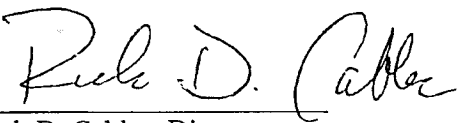
Executed this 10th day of Jan, 2013.

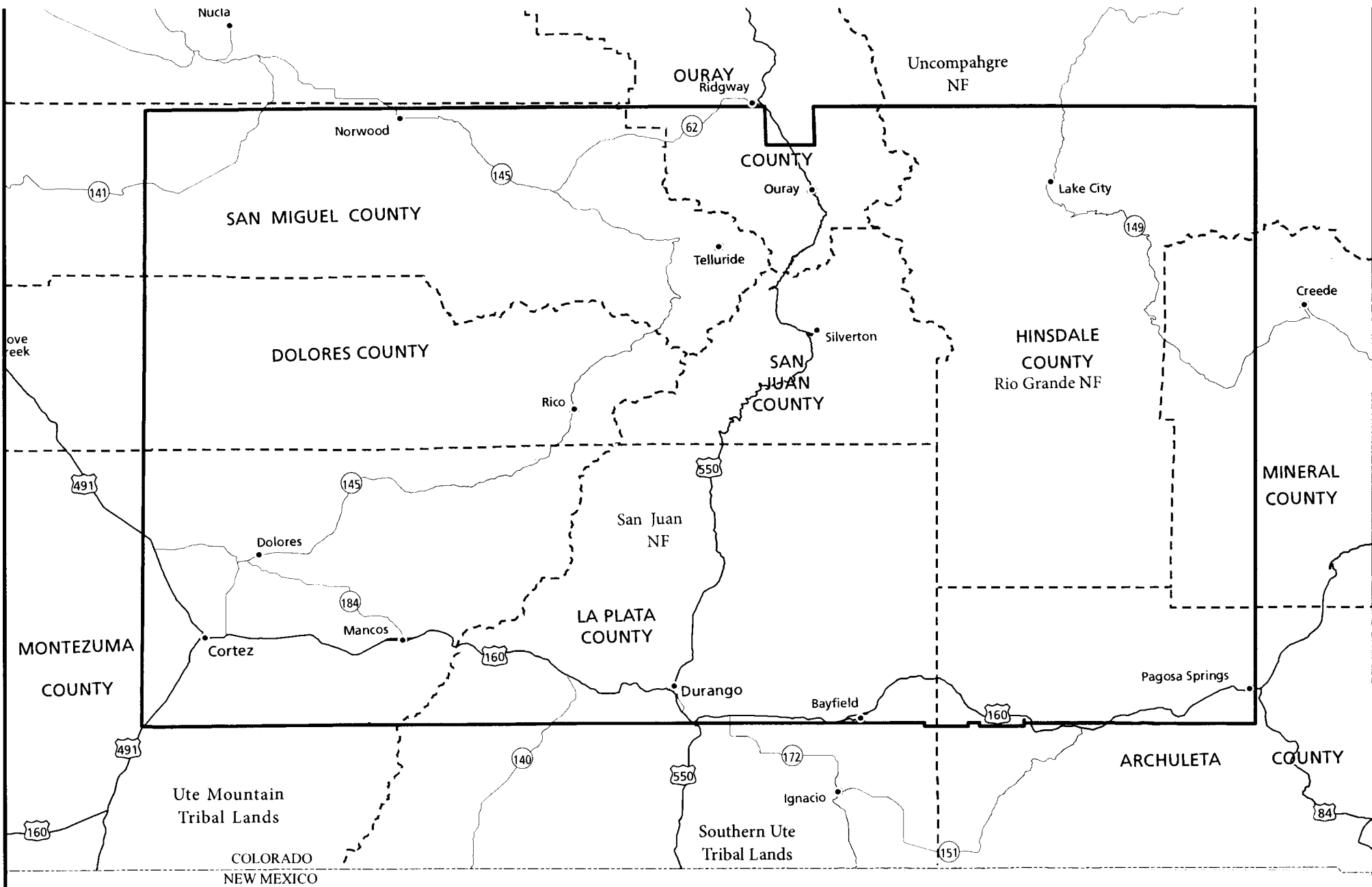
UTE MOUNTAIN UTE TRIBE STATE OF COLORADO

By: 
Gary Hayes, Chairman
Ute Mountain Ute Tribe

By: 
John W. Hickenlooper, Governor
State of Colorado

By: 
John Singletary, Chairman
Colorado Parks and Wildlife Commission

By: 
Rick D. Cables, Director
Colorado Division of Parks and Wildlife



Brunot Agreement Area

Map Legend

Brunot Boundary	National Forest Land
BLM	GMUG NF
Tribal Lands	Rio Grande NF
Southern Ute	San Juan NF
Ute Mountain	

0 5 10 15 20 25

EXHIBIT B – Brunot Area Game Species

The following species are subject to being taken by hunters properly authorized by the Ute Mountain Ute Tribe. Any species not listed which later becomes approved for taking by subsequent state legislation or regulation is deemed included in this list.

Big Game

Mule Deer	<i>Odocoileus hemionus</i>
Rocky Mountain Elk	<i>Cervus elaphus</i>
Mountain Lion	<i>Felis concolor</i>
Big Horn Sheep	<i>Ovis canadensis</i>
Mountain Goat	<i>Oreamnos americanus</i>
Moose	<i>Alces acles</i>
Black Bear	<i>Ursus americanus</i>

Small Game

Rabbits, Hares, and Pikas:

Cottontail Rabbit	<i>Sylvilagus nuttallii/audubonii</i>
Snowshoe Hare	<i>Lepus americanus</i>
Black-tailed Jackrabbit	<i>Lepus californicus</i>
White-tailed jackrabbit	<i>Lepus townsendii</i>
Pika	<i>Ochotona princeps</i>

Squirrel:

Albert's Squirrel	<i>Scturus aberti</i>
Pine Squirrel	<i>Tamiasciurus hudsonicus</i>
Gunnison Prairie Dog	<i>Cynomys gunnisoni</i>
Yellow-bellied Marmot	<i>Marmota flaviventris</i>

Water Rodents:

Beaver	<i>Castor canadensis</i>
Muskrat	<i>Ondatra zibethicus</i>

Dogs and Foxes:

Coyote	<i>Canis latrans</i>
Red Fox	<i>Vulpes vulpes</i>
Grey Fox	<i>Urocyon cinereoargenteus</i>

Cats:

Bobcat *Lynx rufus*

Raccoons and Ringtails:

Raccoon *Procyon lotor*
Ringtail *Bassariscus astutus*

Weasels:

Striped Skunk *Mephitis mephitis*
Western Spotted Skunk *Spilogale gracilis*
Pine Marten *Martes americana*
Mink *Mustela vison*
Badger *Taxidea taxus*
Long-tailed Weasel *Mustela frenata*
Short-tailed Weasel (ermine) *Mustela erminea*

Upland Game Birds

Dusky Grouse *Dendragapus obsurus*
Gambel's Quail *Callipepla gambelii*
White-tailed Ptarmigan *Lagopus leucurus*
Ring-necked Pheasant *Phasianus colchicus*
Chukar Partridge *Alectoris chukar*
Mourning Dove *Zenaida macroura*
Merriam's Turkey *Meleagris gallopavo*

Waterfowl

Ducks Genus: *Aix, Anas, Aythya, Bucephala, Lophodytes, Mergus, Oxyura*
Geese Genus: *Branta, Chen*
Rails and Coots Family Ralidae
Wilson's Snipe *Gallinago delicate*

Fisheries

Trout, Salmon, Char Family Salmonidae
Bass, Sunfish Family Centrarchidae
Perch Family Percidae
Catfish, Bullhead Family Ictaluridae
Northern Pike, Muskellunge Family Esocidae
Suckers Family Catostomidae
Carp, Minnows Family Cyprinidae