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IN THE MATTER OF:
INDIAN WATER RIGHTS SETTLEMENTS
TRIBAL CONSULTATION

TRANSCRIPT OF PROCEEDINGS

TUESDAY, JANUARY 10, 2017
9:05 A.M.

JACKSON FEDERAL BUILDING
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915 SECOND AVENUE
SEATTLE, WASHINGTON 98104

INDIAN WATER RIGHTS SETTLEMENTS**TRIBAL CONSULTATION****TUESDAY, JANUARY 10, 2017****9:05 A.M.**

MR. MECHAM: Good morning, everyone. This -- this session is a consultation that the Department of the Interior has arranged to meet with tribal leaders and other tribal representatives to discuss the Department of the Interior's participation in Indian Water Rights settlement negotiations. We really appreciate everyone's attendance.

My name is Duane Mecham, and I will be conducting the session. I will be introducing our other Federal folks in just a minute. I currently am part of what's called the Indian Water Rights Office, the Office of the Secretary at the Department. And I'll explain a little bit more about that office in a few minutes.

And this session -- some of you, I believe, may have been at other sessions where we had initiated a consultation on the Department's participation in the Indian Water Right negotiations. And this is the third of three where

1 we are welcoming and taking comments from tribal
2 leaders and other tribal representatives. And we
3 have folks who are taking a transcript of the
4 session, and taking notes of the session. These
5 will be transcribed and placed on our Indian Water
6 Rights Office website for future reference. So, all
7 of the information and comments are being collected.

8 We are also accepting written comments.
9 We've asked that those be in by the end of this
10 month. If anyone needs more time we'll certainly
11 try to accommodate that.

12 The overall goal will be to have this
13 information from the Tribes developed into a report
14 for the new Administration. And I'll talk a bit
15 more about that in a minute as well. Great.

16 So, let's -- let's make our way to some
17 introductions. And I might have you introduce
18 yourself, Tushar.

19 **MR. KANSAL:** Sure. Hi, all. Good
20 morning. My name's Tushar Kansal. I work for a
21 nonprofit named the Consensus Building Institute.
22 I'm a mediator facilitator, but what I'm doing here
23 today is just taking notes and I'm going to be
24 turning that into a meeting summary, which will be a
25 little bit easier to -- to read and understand and

1 follow exactly kind of what happened in this session
2 than the official transcript which will be, or
3 course, word-for-word.

4 **MR. MECHAM:** I'm going to turn some time
5 over to two other departmental representatives to
6 introduce themselves.

7 **MR. DUCHESNE:** Good morning. I'm Matthew
8 Duchesne, I'm the manager of reclamation -- Bureau
9 of Reclamation's Native American Affairs Program.
10 And I'm here with Rachel Brown, who is sitting in
11 the third row. Our office is responsible for both
12 policy setting for Reclamation's participation in
13 Indian Water Rights Settlements, negotiations and
14 implementations, as well as funding, not funding for
15 the implementation of the settlements in terms of
16 the actual construction, but funding for the teams,
17 technical studies, those types of things flow
18 through our office for Reclamation.

19 I'm glad to be here and looking forward to
20 the conversation this morning.

21 **MR. LOUDERMILK:** Good morning, everyone.
22 My name is Bruce Loudermilk. I'm the Director of
23 the Bureau of Indian Affairs, newly appointed. I've
24 been in the job, this will be my second full week,
25 so I'm getting out and starting to meet you folks.

1 And just wanted to say thank you for having me here.
2 And I do know we have some staff that have come up
3 from Northwest Region, Mike, you're here. And I'm
4 sure we'll probably have folks in the -- in the
5 audience introduce themselves also as we go around,
6 so we'll let them do that at that time. So, thank
7 you all.

8 **MR. MECHAM:** Thank you Bruce and Matthew.
9 And I --- I have a colleague here, I won't make her
10 introduce herself, Jennifer Frozena, she's an
11 attorney based out of our DC Solicitor's office, but
12 somehow was able to arrange to live out -- out West
13 here in Portland, and she works on a lot of the
14 tribal water issues along with myself.

15 When I'm not in DC filling in for this
16 position with the Secretary's office I work also in
17 Portland, Oregon. And I've been fortunate to work on
18 a number of tribal settlements in -- in the
19 negotiations context. And I have noticed Dennis
20 from Salish Kootenai Tribes, I appreciate you all
21 being here. We've been working on that one, as you
22 will -- if you haven't been in the negotiation yet -
23 - learn these can -- these can go on for a few
24 years.

25 Matt Howard is a representative on some of

1 our teams, he's based in Boise, Idaho, with the
2 Bureau of Reclamation. I appreciate your
3 participation. Yullen, thank you for coming.

4 So let me -- oh, and the star of the show
5 got -- we got a plan A, and a plan B, and a plan C
6 worked to get our slide show up. And, Martin Von
7 Gnechten, thank you for doing that. He's in the
8 office of the Secretary of Indian Water Rights
9 Office as well.

10 So, what I would like to do is just take,
11 I don't want to -- this is a meeting, of course, for
12 -- for us to talk to you. We've asked for the
13 tribes to present any information that they believe
14 is relevant for our review of how the Department
15 participates in these Indian water negotiations.

16 I thought it would be helpful to set the
17 stage for -- to -- to walk through as background how
18 the Department participates in these negotiations.
19 I'll try not to take a whole lot of time with that.
20 But it -- because this is a pretty significant
21 program for the Department at any given time there
22 could be 15 to 20 active negotiations around the
23 West with Indian tribes, states, local parties, and
24 also even once the settlement is passed there is
25 extensive work to get that settlement implemented.

1 These are not like your standard court
2 case where the parties reach an agreement and
3 exchange money and go home. There's often and
4 necessarily needed infrastructure, water
5 administration issues, and others that the
6 Department of the Interior is actively involved in
7 through the implementation phase.

8 So, now I will turn to these set of
9 slides. Thanks again, Marty, for -- for getting this
10 pulled together. The main focus of our consultation
11 is on the Criteria and Procedures that were adopted
12 by the Federal Government going back to 1990. In a
13 communication that we sent to tribal leaders we
14 highlighted that they have not been modified since
15 then, but they have -- I'll get some water. I get a
16 little choked up when I talk about criteria. Excuse
17 me. They have provided guidance for the
18 Administration's participation in settlements and
19 include key factors that we consider in trying to
20 reach a full and complete settlement.

21 The information that we sent out to
22 initiate this consultation indicated that we are
23 reviewing how the Federal Government participates
24 and whether these Criteria and Procedures need to be
25 modified. They set up a basic framework for

1 negotiations. We, as the Federal Government, have
2 trust responsibilities towards tribes, including for
3 water resources and water rights.

4 And in a negotiation a key premise is that
5 we -- the tribe should receive equal benefits for
6 any rights that are released as part of the
7 settlement. And tribes should receive value from
8 confirmed water rights. Maybe just to highlight
9 those two points. Over my career, you know, going
10 on well over 25 years at Interior I've had the
11 fortune to work on tribal negotiations. And some of
12 those have actually reached complete settlements,
13 and in those settlements we have been able to
14 provide for significant water resource benefits for
15 tribes based on the tribe's priorities.

16 And we've also been able to realize value
17 for the tribes. For example, the one Tribe I worked
18 a lot with in Idaho, the Nez Perce Tribe, their big
19 focus was fisheries, being a fishing Tribe, and
20 through the negotiations the Tribe and the other
21 parties were able to reach agreement not -- not just
22 on water, but also on managing that water for
23 hatcheries. The Tribes were able to have hatcheries
24 transferred to the Tribes for -- for their
25 management.

1 The Fort Hall Tribes, also of Idaho,
2 southeast Idaho, they were able to negotiate the
3 right to market part of their water, and that's been
4 an important value for -- for them coming out of
5 their settlement.

6 The Federal Government also is insistent
7 that these settlements, to the extent they have
8 costs associated with them, and most of them do,
9 have appropriate costs shared by all parties. And
10 that's embedded, and I'll talk a little more about
11 that, it's embedded in the Criteria and Procedures.

12 For participating the Federal Government,
13 and we don't necessarily take these phases in every
14 negotiation, but they -- they provide the framework
15 for how we get information and how we can develop
16 our own positions on the settlements. We have a
17 fact finding phase that tries to determine how far
18 the parties have been able to develop a -- a sound
19 technical basis of what the tribes are entitled to,
20 the legal foundation for the tribe's rights.

21 Then we turn to an assessment and
22 recommendation phase, where the Federal negotiation
23 team for that particular settlement negotiation
24 develops an assessment of any -- any position that
25 other parties have made, any proposed settlement,

1 and any proposal to resolve other Indian -- or
2 water-related claims from the tribe, like damages
3 claims.

4 These are then developed into briefing and
5 negotiation positions at the highest levels of the
6 Department. The Department has a working group on
7 Indian water negotiations, which consists of all of
8 the assistant secretaries and the Solicitor and they
9 develop positions, and then once developed the
10 Secretary is apprised and usually agrees to that
11 position, and that's the position of the negotiation
12 team.

13 Then, of course, the negotiations. I
14 mentioned fact finding. This is important if your
15 tribes are not quite in a negotiation yet, because
16 the more information that is available about the
17 nature and extent and range of water right claims
18 the more prepared the parties can be to try to
19 resolve those in negotiation. In the assessment, as
20 I mentioned, one thing that the Department does
21 working closely with the Department of Justice is to
22 conduct an assessment of the positions of all the
23 parties. And we take a close look at what
24 litigation would provide for the tribes, and what
25 settlement would provide for all parties.

1 The -- the briefings and negotiations
2 phase of -- of the Federal participation, one of the
3 biggest things that is worked on in this phase is
4 what is the proper Federal contribution for a tribal
5 settlement that could be supported by the --
6 whatever Administration is currently in place.
7 Ultimately for 99 percent of these settlements
8 Congress is the entity that approves the settlement
9 for a lot of legal and other reasons, but more and
10 more the Department -- the -- the Congress looks to
11 the Department for a position on what the Federal
12 contributions to the settlement should be.

13 And I talked about that. Just let me
14 quickly go through the criteria that are embedded in
15 the Criteria and Procedures that were published in
16 1990. They apply to all negotiations involving any
17 water right claims where we, the Federal Government,
18 participate. And one of the primary goals is to
19 resolve all outstanding water claims to achieve a
20 finality, both for the tribes and for the Federal
21 Government on these outstanding claims.

22 Criterion four, the title -- the total
23 cost of the settlement to all parties should not
24 exceed the value of the existing claims, as
25 calculated by the Federal Government. Now, that's --

1 that's not very many words right there, but that's
2 intended to be a complex thing that the Federal
3 Government has taken various means and ways to
4 develop positions about what the value of claims
5 are, and how we calculate those claims. And any
6 information tribes have about what their position --
7 let me first state the Criteria and Procedures don't
8 give a lot of detail on how that's to happen, so
9 that is an important focus of our review, and
10 information tribes can provide would be helpful on
11 that front.

12 Federal contribution, this is similar to
13 the point I just made, they -- we believe the
14 contribution should not be higher than the
15 calculable legal exposure, and that's for all -- all
16 water-related claims, both water rights and water
17 damages. And then programmatic costs that may --
18 may have been incurred anyway for tribal water
19 resource development.

20 I was already mentioning a couple of these
21 points, but I think it's fair to highlight for you,
22 you know, we recognize that these are not well
23 written, as set out in the 1990 Criteria and
24 Procedures. And that the pure legal analysis of
25 what the exposure is, generally, does not account

1 for equitable or historic circumstances that form a
2 tribe's experience.

3 And I know that the -- working closely
4 with the Salish Kootenai Tribes on a live
5 negotiation in the last several years, that's
6 certainly been an important point the Tribes have
7 driven home.

8 The criterion six, this is -- I alluded a
9 little bit to the fact that the Federal Government
10 doesn't cost share. State, local, other parties are
11 expected to bear their fair share, based on the
12 benefits that they receive, and that also can vary
13 extensively from settlement to settlement. This is
14 not always achieved. Ultimately, as I said,
15 Congress has the final say. But it -- it remains a
16 key concern. And I would anticipate will be a key
17 concern for -- for the new Administration.

18 We call these the Bishop factors, and
19 that's not a reference to any particular religion.
20 Let me explain. Chairman Bishop of the House Natural
21 Resources Committee in February 2015, that's the --
22 that's the Committee in the House that has oversight
23 over water resource issues, including Indian water
24 right settlements.

25 And to ensure that they had information

1 that they wanted from the Administration, and to
2 also assess whether these settlements, there is a
3 restriction in the House on having earmarks, so they
4 want to ensure that these settlements are for the
5 National interests and not just for local interests.
6 So, he asked us -- that Committee has requested that
7 for any settlement that's before Congress in
8 legislation we provide to them these -- these --
9 this information. Does the proposed settlement
10 adhere to the current Criteria and Procedures?

11 Does the settlement especially meet
12 Criteria 4 and 5(a), such that the settlement
13 represents a net benefit to the American taxpayer?

14 And does the Administration specifically
15 support the Federal financial authorizations
16 included in whatever legislation is in front of
17 Congress?

18 They also asked for information about the
19 litigation. A lot of these tribal water settlements
20 are driven by litigation.

21 And I'll move on, just to -- to set the
22 stage. Here are the questions that we asked for this
23 particular consultation. Do the Criteria and
24 Procedures need to be reviewed and reconsidered
25 given that they were promulgated in 1990, prior to -

1 - prior to the negotiation of a great majority of
2 the -- of the enacted settlements. In other words,
3 have we learned some lessons since 1990 that could
4 be -- could inform a revision of the Criteria and
5 Procedures.

6 Number two: Have the Criteria and Procedures
7 been useful to achieve Indian water settlements?
8 Have they been applied consistently and fairly.

9 And then if they are to be reconsidered,
10 should both the substantive criteria and the
11 procedures, including processes through various
12 agencies, be reexamined.

13 And, finally, what criteria or procedures
14 should be revised? Why should they be revised?
15 What is the best mechanism to accomplish the
16 revision?

17 As I mentioned, we are accepting written
18 comments and, of course, now we would like to take
19 any comments that the tribal representatives have
20 here today. Marty will have this microphone. This
21 is our one microphone; is that right, Marty?

22 **MR. VON GNECHTEN:** Yes.

23 **MR. MECHAM:** Okay. Good. Again, our main
24 intent is to get your comments, your information.
25 If there is a question we can answer we'll --we'll

1 try to do that. The -- well, again, we're -- we're
2 trying to seek information to be developed into our
3 report on -- on -- on this consultation. We -- I --
4 I would ask, as a courtesy, initially if tribal
5 leaders or representatives who are here on behalf of
6 their tribes, tribal leadership, have the first
7 opportunity to provide comments. I know there
8 aren't a lot of us, so we can take as much time as
9 we want, and but -- but it would be helpful for us
10 if -- if tribal leaders have a first shot at
11 providing their -- their views. And I think with
12 that, unless, I didn't queue anything up, I think
13 are we ready, Marty?

14 **MR. VON GNECHTEN:** We want to ask people
15 to identify themselves, name and also affiliation --

16 **MR. MECHAM:** Thank you very much.

17 **MR. VON GNECHTEN:** -- for appearance in
18 the transcript.

19 **MR. MECHAM:** Yeah. A good reminder to me.
20 If you could identify yourselves and your tribal
21 affiliation, we -- for our -- for our transcript,
22 and if we have questions about spelling or et cetera
23 we'll work with you on that, but it would be helpful
24 to have the identifications. Thank you.

25 **MR. CLAIRMONT:** Thank you for this

1 opportunity to provide a statement. I'm Dennis
2 Clairmont, I'm a councilman from Confederated Salish
3 Kootenai Tribes, Western Montana, and I have a
4 prepared statement.

5 I wish to thank the Interior for holding
6 these consultations. My name is Dennis Clairmont
7 and I'm on the Tribal Council for Confederated
8 Salish Kootenai Tribes of the Flathead Reservation.
9 Indian water settlements are critical to tribal
10 self-sufficiency and economic development. The
11 Tribes have spent the past -- the last 20 years
12 negotiating a compact with the State of Montana to
13 resolve the Tribes' water rights claims.

14 In 2015 the Tribes' compact was approved
15 by the Montana Legislature. The Tribes are now in
16 the process of working with Interior, Justice and
17 OMB on Federal legislation that will ratify the
18 compact and provide much needed Federal funding for
19 infrastructure and rebuilding tribal natural
20 resources that have been decimated by Federal
21 policies and actions.

22 As part of this process, the Tribes have
23 had to work under the framework of 1990 Criteria and
24 Procedures and have repeatedly been told that the
25 Federal cost of our settlement is too high and the

1 non-Indian contribution is not sufficient. No one
2 can explain, however, what constitutes an
3 appropriate Federal contribution or what the
4 threshold is for an acceptable State contribution.
5 Our settlement includes the highest state
6 contribution to date. Moreover, the Federal
7 contribution is comprised in large part of funding
8 to rehabilitate and modernize an irrigation system
9 that belongs to the BIA, and the Tribes are required
10 to provide significant waivers of liability for past
11 failures of the BIA related to the system and all of
12 our water resources.

13 It has been made clear as part of this
14 process that the Criteria and Procedures need to be
15 revised. The Tribes will provide written comments,
16 but we would like to highlight a few changes that
17 must be made. First, the Criteria and Procedures
18 need to be revised to update what the standards are
19 for determining an appropriate Federal contribution.
20 Tribes should receive value for all the claims
21 waived in a settlement, as well as impacts to their
22 water and water-related resources that have been
23 decimated by historical Federal policies and
24 actions.

25 Second, it must be recognized that the

1 state contributions are a result of state policy
2 that neither tribes nor the Federal Government can
3 dictate the outcome of what a state deems is
4 acceptable. In evaluating state contributions there
5 must be a balancing of state policy with the
6 monetary and non-monetary benefits included in a
7 settlement, including attributing value to approval
8 of a water settlement by the state.

9 Third, it must be recognized that the
10 Criteria and Procedures are intended to be flexible
11 and should be applied to tribes in the context of
12 their unique history and the circumstances related
13 to the particular settlement.

14 In closing, I would like to emphasize that
15 it's important that the Department complete the
16 consultation process by revising the Criteria and
17 Procedures. We understand that a new Administration
18 will begin soon, but it is critical that something
19 positive comes out of this process and tribal
20 comments are not just put on a shelf. Thank you.

21 **MR. MECHAM:** Thank you.

22 **MR. JOHNSON:** Good morning, my name is
23 Virgil Johnson, and I'm the Tribal Chairman of the
24 Confederated Tribes of the Goshute Reservation. We
25 are located on the Utah/Nevada border. We are

1 located three miles -- three hours west of Salt Lake
2 City. And we have been on that land since the
3 Creator put us there.

4 And before I go on any further I want to
5 pay some honor and respect to the early people of
6 this area, the Skokomish and the Sugaumish people,
7 and the early beginnings here. And I'm honored to
8 be in their early -- early lands to -- to be here
9 today on this day in January of the new year. So, I
10 pay respects to the early people of this area, Chief
11 Seattle and -- and his people.

12 And I think that's something that, you
13 know, Native -- amongst Native tribes we -- we like
14 to do that. We like to pay honor and respect to the
15 people who -- who were here originally, long before
16 we ever came. So, to pay respect to the people of
17 this area.

18 One of the reasons why we are here, a main
19 reason why we are here today, I'm here with my
20 tribal vice-chairman, Elvira Murphy, on my right.
21 And then our Tribal attorney, Mr. Paul Tsosie, is
22 here today. We are here in wanting to consult with
23 the Federal Government, because the water rights,
24 the issues are very significant, especially if you
25 have aboriginal water on your land, and we have

1 aboriginal water on our reservation on the
2 Utah/Nevada border.

3 And historically our people have -- have
4 traveled in Eastern Nevada, Western Utah, into
5 Northern Idaho, and down into the Las Vegas area.
6 And we have covered a wide range of territory, our
7 people have, aboriginally. And once the Government
8 put us on a Reservation it diminished a lot of our
9 land. But one thing that the Federal Government did
10 historically a long time ago in writing the
11 Constitution of the United States, they -- in
12 Article 1 Section 8 and in Article 2 Section 2
13 Clause 3, and also mentioned in the 14th Amendment,
14 it gives the Native Americans across America, and we
15 included, as the Confederated Tribes of the Goshute
16 Reservation, some rights. We are recognized by the
17 Federal Government.

18 And that's why I believe these
19 consultations are very important for, you know, to
20 let the Federal Government know their trust
21 responsibilities and their fiduciary capacity in
22 dealing with Native Americans. And so we, as a
23 tribe, we'd like to -- in knowing that information
24 we like to hold the people, such as the Department
25 of Interior, their feet to the fire because if -- if

1 we don't, as Native American tribes and nations, we
2 -- we -- we tend to lose and give up some of the
3 things that -- that have been given up historically,
4 and we -- we don't want that. We want to maintain
5 our rights as Native -- Native people.

6 And, so, a part of that, a huge item of
7 that, is water. And so that's why we are here
8 today. We want to protect our water. We are -- our
9 tribe is in a water litigation with Southern Nevada
10 Water Authority. They want to take the water that's
11 available, all the water that's available, under the
12 surface of the earth, as well as the water on the
13 top, to ship the water to Las Vegas. And so they
14 have done some things in place historically, and
15 we're to the point now where due to litigation we
16 want to -- we'd like to bring it to a close, and to
17 have some kind of settlement with the Southern
18 Nevada Water Authority. And so that's why -- also
19 why we're here.

20 And we need the BIA to sit with us at the
21 table on litigation against Southern -- Southern
22 Nevada Water Authority. Because water is precious
23 in the West. You know, we have a saying in the West
24 that says, you know, whiskey's for drinking, water's
25 for fighting. But we're not here to fight, we're

1 here to have a partnership with the -- with the
2 Department of Interior, and specifically the BIA, to
3 come to the table to -- to help us in that -- in
4 that litigation.

5 Historically BIA was onboard at one time
6 with us, but they pulled out and at their protest
7 saying that there was enough adequate monitoring,
8 and -- and so they pulled out. And so we want them
9 to -- want the BIA to get back with the tribe,
10 that's the bottom line of why we're here, you know,
11 together in a partnership would help us with the
12 litigation to take care of what Southern Nevada
13 Water Authority is trying to do.

14 And we -- we want to make sure that those
15 things -- that doesn't happen, because once the
16 water starts flowing southward into Las Vegas you
17 can't stop it. But we can surely do some things
18 previous to that happening. And that's -- and
19 that's -- that's -- that's one of the things that
20 we're -- we want. We want to have a Federal team
21 together, along with our Tribe, to make
22 presentations, so our water is not taken. Water, of
23 course, is, you know, very precious amongst human
24 beings in general.

25 So, for the record, I have some things I'd

1 like to bring to your attention. We are in
2 negotiations with our -- with our State of Nevada,
3 and the State of Utah. Half of our reservation's in
4 Utah, the other half is in the State of Nevada.
5 Utah has been working with us with their Natural
6 Resources Department and their water -- their Water
7 Rights Department.

8 And we have -- we are in the process of
9 quantifying our water with the State of Nevada --
10 State of Utah, and the -- and the governor, we've
11 brought it to the attention of Governor Herbert.
12 And he has given us his recommendation. We even
13 asked him to write a letter to the governor of
14 Nevada. And so Utah people are very -- very
15 supportive of what we -- of what we are doing.

16 So, we're asking the BIA to intervene with
17 us to protect our water rights. And -- and we're
18 basically asking the Federal Government to protect
19 the -- the base -- base water, which is underneath
20 the surface of the earth. We're willing to work
21 with Southern Nevada Water Authority's PE with the
22 surface water, but not the base water, because
23 there's a lot more water, you know, underneath the
24 surface of the earth than there is on the top.

25 And so, we have met with the previous

1 Director, Director Black. And -- and to get the
2 ball rolling again, and we were working on getting a
3 team together. And now with the new Administration
4 coming onboard we would like you to continue to have
5 that partnership with us, as well as the, you know,
6 the office of the Bureau of Indian Affairs and those
7 who are in that office to assist us with our -- with
8 our water.

9 And so that's -- that's basically why
10 we're here. And since you -- you are giving us a
11 listening here, I think that's what these
12 consultations are for. And so we would like to have
13 the BIA to say, you know, we're with you. You know,
14 we -- part of the Constitution of the United States
15 gives the Native American people across America
16 sovereignty rights and self-determination. And we,
17 as a tribe, we are very -- we are very proactive in
18 a lot of things that we do on our reservation.

19 We are a small reservation on the
20 Utah/Nevada border. We have about 615 Tribal
21 members, and a third of those members live on the
22 reservation and the other two-thirds are -- live in
23 the urban setting, but we are still Native
24 Americans. We're a small group of people. And we -
25 - we feel that due to our sovereignty and our self-

1 determination we are a Tribe that is going forward.
2 And -- and part of that going forward is to protect
3 our water.

4 And one of the things that we are very
5 protective of dealing with water is I mentioned
6 earlier, originally, our -- our territory extended
7 into -- into the Salt Lake City area, down into the
8 Las Vegas area and Northern Nevada, those were our -
9 - our aboriginal lands. And because those are our
10 aboriginal lands we have several sacred sites in
11 that -- in that -- in that territory.

12 One of the sacred sites that we have in
13 that area is called Swamp Cedars. And Swamp Cedars
14 is a place aboriginally where our Native people went
15 to do their sacred ceremonials and their prayers and
16 their songs. And so it's a land that is very --
17 very sacred to -- to us as Native Americans.

18 Those who live in Eastern Nevada, the --
19 the Ely Shoshones and some of the Te-Moak in Elko
20 were all Shoshones. And so those lands are very
21 sacred to us. We have a lot of cultural items that
22 are located in those areas because, you know, those
23 were areas where our aboriginal people traveled and
24 mingled with other natives in that area. So, we have
25 a -- we have some several sacred sites there.

1 And the Cedar Swamp area is in an area
2 that is very sacred to us. And -- and it's located
3 in Spring Valley, it's on the Nevada side, toward
4 the north end of the Southern Nevada Pipeline
5 Project. And -- and because of that we feel that
6 that area needs to be protected.

7 As a matter of fact, historically that
8 particular area had three massacres in -- in its
9 history and our people were massacred there. In
10 1859 the calvary came and attacked our people when
11 they were doing their ceremonials; men, women and
12 children were killed at that site. And then two
13 other times the same thing happened; they were
14 attacked early in the morning without any kind of --
15 they were not creating any -- any kind of issue, but
16 the military, through the years, you know, their --
17 their policy, it seems that they attack early in the
18 morning, surprise the people, and many men, women
19 and children were killed at that place.

20 And -- and since it's a swamp area, when
21 the military came there they came there with their
22 horses and some of their horses got bogged down in
23 the swamp but, nevertheless, many of the Natives,
24 practically all the Natives, were -- were killed in
25 that area.

1 And a few of the people who still remember
2 what happened, it's recorded that an individual who
3 watched what happened said this is worst I have ever
4 saw. It lasted two hours, and during that short
5 period of time every Indian squaw, papoose and every
6 dog was killed. And this was by an individual by
7 the name of Elijah Wilson.

8 And then another time when it happened it
9 happened again. This first time it happened from a
10 calvary troop out of Utah. And the next time it
11 happened from a calvary troop out of California.
12 And he's a colonel of the California Volunteers, he
13 ordered to hunt -- troops -- he ordered his troops
14 to hunt down -- down the Newe. Newe, that's the
15 term we used to -- that -- that we are people. So,
16 when we talk amongst each other we call ourselves
17 Anirala, Anirala meaning, you know, you're -- you're
18 my people, you're my person, you're my family.

19 And so this person said that the -- the
20 Colonel ordered the Newe to be killed. And this was
21 his comment, "Leave their bodies thus exposed as an
22 example of what evildoers may expect. You will also
23 destroy every male Indian whom you may encounter.
24 This course may seem harsh and severe, but I desire
25 that the order may be rigidly enforced, as I am

1 satisfied that in the end it will prove most
2 merciful." I don't get it, but that was the
3 attitude that the military had toward Native
4 Americans historically.

5 And then it happened again. Well, you get
6 the picture of what I'm saying, that that -- that
7 particular area is very sacred to us Native people,
8 the Goshutes and the people who live near to that
9 area. And we feel that that -- those areas are
10 sacred. When these people died, a cedar tree grew
11 where -- where they died. So, that's why it's
12 called Cedar -- Swamp Cedar, and -- and so that area
13 is very sacred to us. And that area is an area
14 where this pipeline would go through.

15 We don't want our sacred sites to be
16 desecrated in any way. We want that area to be
17 preserved. Because those spirits are still -- still
18 linger there and we still go there to pray, and we
19 still go there to do our ceremonials. And -- and
20 that place is a very significant place for Native
21 Americans in that area. And we want that area to be
22 protected.

23 And so -- and then we also have other
24 cultural sites that need to be protected, but the
25 Southern Nevada Water Authority they -- they don't

1 see it that way. And, so, that's one of the reasons
2 why we need to be in consultation for -- for trust
3 responsibilities of the Federal Government to
4 protect those sacred sites for us -- us Native
5 Americans. It is important to us.

6 And -- and so that's why we're asking the
7 Bureau of Indian Affairs, the Department Of
8 Interior, to come to the table and sit with us
9 against this water litigation against Southern
10 Nevada Water Authority. So -- and I know we're a
11 small group, and -- and there's some time that we
12 could use. And I want to concede just a little --
13 some of my time to our attorney, Mr. Tsosie, and he
14 can speak just a little bit further on it.

15 **MR. TSOSIE:** Paul Tsosie, I'm the attorney
16 for the Confederated Tribes of the Goshute
17 Reservation. And the Chairman laid out some
18 history, some facts that were going on. And one of
19 the biggest points that we want to bring up was in
20 respect to the -- the standards that are used here.
21 Our -- the standards really do not take into
22 consideration cultural sites. We talk about Federal
23 resources, we talk about how much money it will
24 cost, we talk about that, but we somehow need to
25 leave in there places like the Swamp Cedars that

1 we're fighting for, that we're fighting Southern
2 Nevada Water Authority for, we're asking the Federal
3 Government to help us in that process.

4 But we're also trying to establish a
5 Federal water team. We've met BIA, we've met with
6 Department of Interior. And that's one of the things
7 that really stood out in the meetings was the story
8 of the Swamp Cedars. And somehow there needs to be
9 a criteria drafted that will take that into
10 consideration, because that's what this Tribe and
11 other tribes are -- are fighting for.

12 And other than that I think the Chairman
13 laid out all -- all of the concerns. Thank you.

14 **MR. JOHNSON:** Thank you very much for
15 listening to, you know, my comments, and the reason
16 why we're here. And not only that, but the cultural
17 end of what we hold sacred and dear to our lives is
18 very important. And so -- and then the last thing
19 is the water. Water is so sacred to -- to Native
20 Americans, and -- and you've seen how sacred sites
21 are protected, and what's happening at Standing
22 Rock.

23 And so -- but we would rather work with
24 the BIA, we would rather work so we're working in
25 partnership together that -- that we get our -- our

1 -- our needs met. And -- and we continue to -- to
2 live on this land that was given to us. That's --
3 that's what we would like to see. And I know that
4 we, our Tribe specifically, we -- we haven't made a
5 big issue, a big deal about our rights and the
6 massacres and things like that happened, because,
7 again, I think we're taking the high road. Let me
8 say it that way. And rather than not to get other
9 tribal people across America involved with us. If
10 that happens, then it happens. But we -- we want to
11 work in a partnership situation. To us, that --
12 that's significant. And that's why we're here.
13 Thank you for listening.

14 **MR. MECHAM:** Thank you, Mr. Chairman. Any
15 other tribal leaders or representatives? I guess we
16 can also open it up to any -- any comments from
17 those attending today. We have time. Mary, he said
18 everything --

19 **MS. PAVEL:** Well, no.

20 **MR. MECHAM:** We -- we have time.

21 **MS. PAVEL:** Okay. Mary Pavel, attorney
22 with Sonosky, Chambers, Sachse, Endreson & Perry,
23 working with the Confederated Salish Kootenai Tribes
24 of the Flathead Reservation. I think the
25 Councilman's last -- or one of his points regarding

1 the uniqueness of every situation, whether it's the
2 Goshutes who needs to preserve access to water, to
3 preserve access to sacred sites, and resources, or
4 the Montana construct of having the Montana Water
5 Commission, and doing all of that work with you,
6 Duane. I know that you dedicated hours and hours
7 and hours. And it feels a little bit like you did
8 all of that work at the State level to get it
9 through the State legislature, and now we're having
10 to do more work to get the Federal Dakota included.

11 And I'm -- I'm not -- I'm not sure if that
12 could have been avoided, but you have to have a
13 little bit of adaptability or includability. So
14 that in Montana then we're done in Montana,
15 obviously, but it -- it didn't last. But the Goshute
16 presented another unique situation, saying well,
17 you've got to now get Nevada to the table.

18 So, in Montana we had Montana to the
19 table, and it still -- we still have to go through
20 the process of working now with the Federal Water
21 Rights team and do the review and the assessment
22 and, you know, the process that Duane first
23 outlined. I'm not sure that's very efficient. If
24 we can bring some more efficiencies to it, because
25 it's a -- it's a lot. Right? To -- to listen to

1 the Goshute now say we can't get Nevada to do, we've
2 got a good partner in Utah.

3 And I agree in terms of your efficiencies
4 in wanting to have everybody at the table, Nevada,
5 Utah, you know, all of the stakeholders. But the
6 criteria have to be agile enough where the workers -
7 - the -- the people implementing it, I think, to --
8 to -- to make it work, so that we're not starting at
9 square one again.

10 And it feels -- I mean I know that for us
11 it may be -- it could be we're not incurring
12 institutional knowledge there with the people on the
13 ground that are working towards us and -- and
14 informing us, but that's because we had that Montana
15 process. I'm not sure how we can bring some of that
16 foundational work into -- into the beginning of the
17 process, but I think that's something that's
18 important for the picture to give you.

19 The other thing that -- and I know you
20 guys heard a lot about it in the beginning of this
21 process was the new guidance that OMB brought
22 forward and -- and how that's going to implement the
23 process that you outlined, because you guys talk
24 about -- in that -- in that process you talked about
25 that the team then informs the Secretary. But it

1 seems that the guidance required the team to have --
2 it seemed to require even what benchmarks before you
3 could inform the secretary, and permissions, and I'm
4 just wondering how that -- if -- if -- if we're
5 gonna -- if you are still going to have to be
6 required to be guided by that guidance is that going
7 to be somehow more formalized in the Criteria and
8 Procedures?

9 Obviously, you heard a lot about that.
10 And we think that guidance was a little bit out of
11 bound, and not really consistent with how things are
12 working on the ground, let alone institute a
13 different water team for the tribal negotiations and
14 things. It seems kind of a -- a you know, that's
15 not how the process really worked. But if that is
16 something that is going to guide you we need to know
17 how that works. Because, again, we're running --
18 you know, we're doing a lot of work with the water
19 team and we're -- you know, we're reaching agreement
20 on critical points and critical issues, but if -- if
21 that's not really agreement -- if we haven't -- if
22 we're -- if we're not -- if you've got to go then
23 run the traps on that agreement with another agency
24 that's not in the room and not at the table, again,
25 that -- you know, it just leaves us kind of floating

1 in air, and, you know, negotiating against ourselves
2 a little bit.

3 So, you know, those are two points I want
4 to think about is I don't know how you can bring
5 agility to the criterion process, procedures, but I
6 think we have to do it because each -- each
7 situation is different, each priority is different.

8 Obviously, we have huge infrastructure
9 needs, we have huge fishery protection needs, there
10 are sacred sites, their certainty, you know, depends
11 on what -- what is the value, what is the priority
12 for the Tribal government, maybe even the Fed. You
13 know, that's going to have to inform how you
14 calculate value, how you assess the measure of
15 contribution, how you assess the value of the
16 waivers being given.

17 So, thank you.

18 **MR. TSOSIE:** I just have one question.
19 You said that you're accepting questions. Now,
20 you're going through the whole process of gathering
21 information. Well, Paul Tsosie, attorney for the
22 Confederated Tribes of the Goshute Reservation. You
23 go into this whole consultation process, you're
24 going out to Indian country, gathering all this
25 information.

1 I just want to know in the next four years
2 with this changeover in Administration now what's it
3 going to look like? I mean is this changeover in
4 the Administration going to affect all of this input
5 that you're getting right now? What's your thoughts
6 on that?

7 **MR. MECHAM:** Paul, we will address that
8 question. Just let me confirm if any other folks
9 have any comments to bring up. I don't have a
10 gavel, but actually we have -- we did this schedule
11 until 11:00, so I think we'll keep the record open
12 until 11:00. But if there are no more comments from
13 the folks who are here now, let me go ahead and try
14 to address Paul's question.

15 Obviously, at the cusp of any new
16 Administration, and maybe I'll preface that by
17 saying I certainly don't speak for the new
18 Administration at this stage, because it's, A, not
19 really here for a week or two but, B, we haven't had
20 the occasion to -- to be -- we have just this week
21 and over the next couple of weeks will have
22 opportunities to provide basic background briefings
23 to the transition team. And that, of course, sets
24 up a foundation for the new folks to have an initial
25 understanding that this is one of the many, many

1 programs at Interior and how it fits in with the
2 overall mission.

3 I have had the opportunity to work
4 through, and can prove by the grey here, that a
5 number of Administrations going back -- it's been so
6 long I can't remember how far back. But having
7 lived through a number of transitions to new
8 Administrations, including from one party to
9 another, I -- I can say generally that for -- for
10 both parties, for any new Administration, they --
11 they do get it, they do understand that these
12 issues, A, are -- are -- are very important and, B,
13 have many players that are not just the United
14 States or just the Department of the Interior.

15 And -- and an acknowledgment that in
16 almost every instance these issues as they play out,
17 and we've had two good examples of individual
18 situations here, the Salish Kootenai Tribes, and the
19 Goshute Tribes, how those individual circumstances
20 sort of rise above the partisan issues and they are
21 a local situation, with local parties affected, and
22 the local Tribes affected and the State affected.
23 So, these issues tend to be bipartisan.

24 And we will be keeping, you know, as best
25 as possible, folks apprised about the new

1 Administration's bringing on their -- their -- their
2 -- their new people who will -- who will be the
3 leads for the Indian water issues. If -- if you have
4 a pending or anticipating having a request for an
5 Indian water right negotiation team you can bring
6 that up with us at any time, and we will raise that
7 with -- with the new Administration once they're in
8 place.

9 Beyond that I -- we -- we simply have to
10 wait until the folks are onboard and confirm exactly
11 what their priorities are. And -- and as with
12 respect to wrapping up this -- Mary's comments as
13 well, wrapping up this particular consultation, we
14 will develop a full report recognizing the themes
15 the tribes have raised, the recommendations they've
16 raised, and the -- the concerns they've raised.

17 And we will present that, it will have the
18 discussions going forward within the Administration.
19 Once this issue is engaged with them, and they have
20 folks to engage in, will involve the Department of
21 Justice, the Department of the Interior, and a
22 number of agencies of Interior, BIA, Bureau of
23 Reclamation and others, Solicitor's office, and the
24 Office of Management and Budget.

25 And so beyond that I -- I haven't been

1 given a specific time frame by which we'll -- we
2 will wrap up our -- our report on these issues. But
3 through -- through various opportunities, even just
4 calling us, we will give you updates. And there are
5 various public forums; for example, in the summer
6 the -- there is a joint state/tribal conference on
7 Indian water issues that I believe will happen this
8 summer, cosponsored by the Western States Water
9 Council and Native American Rights Fund, where I
10 believe we will be recommending that Administration
11 folks be at that -- at that conference to provide
12 additional views on -- on these issues.

13 So, a long answer, maybe not a very
14 concise one. But that's -- that's some thoughts on -
15 - on how things have happened and how they will go
16 forward.

17 All right. With that, I appreciate all of
18 the -- we all appreciate the information provided.

19 Virgil, do you --

20 **MR. JOHNSON:** Yeah. Can I make -- may I
21 make a comment?

22 **MR. MECHAM:** Of course.

23 **MR. JOHNSON:** Just a comment that I made
24 at a meeting probably a month ago, month-and-a-half
25 ago, down in Phoenix when I met with the IHS people.

1 And the comment I made at the time is I'm concerned
2 with -- with the new Administration coming onboard,
3 especially with the new anticipated leader of the
4 Department of Interior, Mr. Zinke from Montana.
5 Just some of the things that I have read about him,
6 he kind of flip-flops on -- on some of the issues
7 dealing with land, shelling the land back to the
8 public.

9 I know Secretary Jewell came to Utah last
10 year to a place called Bluff, Utah, way down there
11 in the southeast corner of the State of Utah, in --
12 in support of the Bears Ears Monument that President
13 Obama made available to set that land aside for the
14 Natives in that area. And -- and -- and with the
15 new Department of Interior coming in I -- I'm just
16 a little concerned about, you know, where he will
17 stand when it comes to dealing with Native
18 Americans.

19 And hopefully there -- there will be
20 enough people strong enough who have supported
21 Native Americans in the Department of Interior to
22 give him some good direction as to -- in dealing
23 with Native Americans across Indian country. I know
24 just by listening on things that are happening with
25 the new Administration, I think we're going to take

1 a -- a different turn than how things have been done
2 before.

3 I know there has been a lot of issues with
4 President Obama from the democrats and the
5 republicans, but for Native Americans I -- I think
6 he -- he was very helpful in -- in dealing with some
7 Natives and -- across American in Indian country,
8 and doing what was right for them.

9 And so I just want to go on record to say
10 that I'm -- you know, I'm concerned as a tribal
11 leader for our Tribe. That it's a new Administration
12 coming on, that what has been I think, kind of like
13 an open-door policy for Native Americans, is going
14 to be shut down. So, with the new Department of
15 the Interior Secretary coming onboard, hopefully,
16 he'll, you know, make some good decisions on our
17 behalf and not -- and not be -- you know, flip-flop
18 on what he's doing. I know he had a session, he had
19 a listening session, I believe, in Montana. And he
20 wanted to duck the Antiquities Act.

21 The Antiquities Act is the Act that
22 President Obama was able to use in order to set that
23 land aside in the Bears Ears Monument down in
24 southeastern Utah. That land is now set aside to
25 protect the sacred sites, and the various prayer

1 places, and gathering wood and things like that that
2 the Native of Americans in that area.

3 So, I just want to be on -- go on -- go on
4 record to -- to at least say that I'm concerned.

5 And that people in the right places would speak
6 their piece, and give the opinion of the Native
7 Americans that we are concerned that there -- there
8 would still be support for Native Americans across
9 America.

10 **MR. MECHAM:** Thank you. All right. Well,
11 thank you all, again, for participating. And we
12 will -- the Federal side will just stay here until
13 11:00 in case anybody got lost on the way. I guess
14 I'll wrap up this portion of the session, unless
15 there's any final -- final comments. Is there
16 anything from the Federal side. Last call.

17 **(Whereupon, there was no response.)**

18 **MR. MECHAM:** Thank you very much for
19 attending.

20 **(Whereupon, the meeting was concluded at**
21 **10:15 a.m.)**

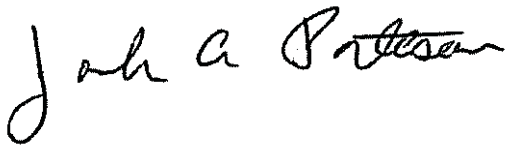
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1 CERTIFICATE

2
3 I, John A. Portesan, do hereby certify that
4 I reported all proceedings adduced in the foregoing matter
5 and that the foregoing transcript pages constitutes a
6 full, true and accurate record of said proceedings to the
7 best of my ability.

8
9 I further certify that I am neither related
10 to counsel or any party to the proceedings nor have any
11 interest in the outcome of the proceedings.

12
13 IN WITNESS HEREOF, I have hereunto set my
14 hand this 16th day of January, 2017.

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CORRECTION SHEET

Transcript of: Meeting Date: 1/10/17

Regarding: Indian Water Rights Settlements

Transcriber: Portesan

Please make all corrections, changes or clarifications to your testimony on this sheet, showing page and line number. If there are no changes, write "none" across the page. Sign this sheet on the line provided.

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DECLARATION

Transcript of: Meeting Date: 1/10/17

Regarding: Indian Water Rights Settlements

Transcriber: Portesan

I declare under penalty of perjury the following to
be true:

I have read the transcript and the same is true and
accurate save and except for any corrections as made
by me on the Correction Page herein.

Signed at _____,

on the _____ day of _____, 2017.

Print Name _____

Signature _____

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