



THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3408

Subject: Rescission of Secretary's Order 3368

Sec. 1 Purpose. The Department of the Interior (Department) is committed to fair, transparent, and efficient resolution of all claims brought against it. To help fulfill these commitments, this Order rescinds Secretary's Order (SO) 3368 entitled, "Promoting Transparency and Accountability in Consent Decrees and Settlement Agreements," and revokes all directives and actions taken pursuant to it. This Order thereby eliminates the unnecessary and inefficient practices required by SO 3368, which fails to enhance transparency and imposes burdensome requirements that are inconsistent with the Department's legal obligations.

Sec. 2 Authority. This Order is issued under the authority of section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262) as amended, and other relevant statutes.

Sec. 3 Background. The Department carries out a broad range of programs that protect endangered and threatened species, manage public lands and other natural resources, and safeguard the rights of American Indian tribes. In many of these areas, Congress has enacted statutes that, together with the Administrative Procedure Act, authorize members of the public to take legal action against the Department. When appropriate and consistent with its legal obligations, the Department enters into settlements to avoid expensive and time-intensive litigation. Settlements can preserve the resources of the parties and the courts and are often the fairest, most efficient, and economical way to resolve disputes. For decades, the Department has used settlement as an appropriate means to respond to claims brought by individuals, States, Tribes, organizations, and others. There are, however, constraints on the Department's ability to enter into settlements. These include Department of Justice (DOJ) policies that discourage converting discretionary duties into mandatory ones in the context of regulatory action, absent approval by an associate or deputy attorney general, and Solicitor's Office policies against settlement terms that make excessive commitments of time or resources.

On September 11, 2018, SO 3368 imposed new procedural and substantive requirements on the Office of the Solicitor and the Office of the Chief Information Officer regarding consent decrees and settlement agreements. SO 3368's requirements, which are not found in laws or regulations, include: (1) a Solicitor's office webpage with summaries of complex litigation information; (2) notifications to non-party governments with "substantial" interests in matters asserted against the Department; (3) Federal Register publication requirements for proposed agreements affecting budgetary matters; (4) limitations on agreements to exercise discretionary regulatory revisions; (5) limits on payment of attorney fees absent certain findings; and (6) preclusion of confidentiality in certain settlements. Taken together, these limitations are burdensome, duplicative, and hinder the effective resolution of complex litigation matters.

Transparency and accountability are paramount values for the Department. SO 3368 is inconsistent with and operates contrary to those values. SO 3368 creates unnecessary reporting requirements and imposes vague notice provisions that are difficult to implement and risk inconsistency with court orders. The substantive limitations on consent decrees in SO 3368 are either redundant to the basic principles adhered to by DOJ and the Solicitor's Office described above, or restrictive in ways that could interfere with the Department's ability to protect its interests. The information-sharing requirements, such as the establishment of a new Department Litigation web page, duplicate information and databases readily available to the public on-line, including reports accompanying the Department's annual budget justification, <https://www.doi.gov/budget/appropriations/2023>, and the Treasury Department's searchable site for all Judgment Fund payments, <https://jfund.fiscal.treasury.gov/jfradSearchWeb/JFPymtSearchAction.do>. In short, SO 3368 does nothing to advance the Department's commitment to transparency, accountability, and justice, and risks interfering with the Department's ability to meet its legal obligations to the public.

This Order seeks to ensure the Department remains a leader regarding transparency, accountability, and fiscal integrity by rescinding SO 3368 and all directives and actions taken pursuant to SO 3368.

Sec. 4 Directive. SO 3368 is hereby revoked.

Sec. 5 Implementation. Consistent with governing laws and regulations, I direct the following actions:

- a. The Solicitor shall remove the litigation web page.
- b. The Department shall discontinue all practices required by SO 3368 that are not otherwise required by laws, regulations, or Department policy.

Sec. 6 Effect of this Order. This Order is intended to improve the internal management of the Department. This Order does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person. To the extent there is any inconsistency between the provisions of this Order and any Federal laws or regulations, the laws or regulations will control.

Sec. 7 Effective Date. This Order is effective immediately.



Secretary of the Interior

Date: **JUNE 17 2022**