

Tribal Consultation

DEPARTMENT OF INTERIOR TRIBAL CONSULTATION

Thursday, November 3, 2016

Bureau of Indian Affairs
2021 4th Avenue North
Medicine Wheel Conference Room
9:00 a.m. - 11:00 a.m.

TRIBAL COMMENTS

Reported by Sharon L. Gaughan, RDR, CRR, CRC

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1 THURSDAY, NOVEMBER 3, 2016

2 MS. WILLIAMS: Good morning, everybody.
3 I am Pam Williams. I'm the Director of the
4 Secretary's Indian Water Rights Office and we're
5 here today to consult with you on the criteria and
6 procedures that have governed -- oh, there's
7 Duane. Duane, you need to come up here, too --
8 the criteria and procedures that govern Indian
9 water rights, so since 1990.

10 And before I get started, I wanted to
11 introduce a couple of people that I have here with
12 me, first. And I'm not going to bore you with
13 anyone's titles --

14 UNIDENTIFIED SPEAKER: Excuse me, ma'am,
15 do you have a sound system?

16 MS. WILLIAMS: Okay. Is this working? I
17 brought some people here with me today from the
18 Federal Government to assist and also to listen
19 and understand what the Tribal views are on the
20 subject.

21 First, I'm going to let them give their
22 titles because I may get their titles wrong.
23 First is Dave Palumbo of the Bureau of
24 Reclamation.

25 MR. PALUMBO: Hi, and welcome, everybody. 2

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1 I'm Dave Palumbo, the Deputy Commissioner for
2 Operations for the Bureau of Reclamation and I'm
3 pleased to be here and listen to your input. And
4 we want to make sure, the Bureau of Reclamation
5 and all the Indian water rights activities that
6 we're involved in, that our decisions and our
7 actions are reflective of Tribal input. So it's
8 great for me to be here today to hear that and
9 work with Pam and Mike and others to make sure we
10 proceed in considering your input.

11 MR. HAWLEY: What was your name again,
12 sir?

13 MR. PALUMBO: David Palumbo, P, as in
14 Paul, A-L-U-M-B-O.

15 MR. BLACK: Good morning, everybody. I'm
16 Mike Black. And as of yesterday, I'm the Senior
17 Advisor to the Director of the Bureau of Indian
18 Affairs.

19 And let me introduce you to the new
20 Bureau Director sitting in the very back row
21 there, Mr. Bruce Loudermilk. He's the guy with
22 the shellshocked look on his face right now. But
23 good to be here and I look forward to hearing your
24 comments as we go through the day. Thank you.

25 MR. HARDER: Good morning. My name is

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1 David Harder. I'm with the U. S. Justice
2 Department. I'm in the Environment Division, the
3 Indian Resource Section. And I manage the Denver
4 field office of our section where we have a half a
5 dozen attorneys who work on all the Indian water
6 right settlements, both advising the Department
7 and representing the Department on behalf of the
8 Tribes in court proceedings throughout the west.

9 I look forward to hearing your comments
10 about this important process that we share as we
11 try to solve various water rights problems
12 throughout the west. Thank you.

13 MS. WILLIAMS: And also, again, I would
14 like to introduce my Deputy Director, Duane
15 Mecham, comes from DC, and I also have Omero and
16 Rachel here, also from DC. And we have the
17 Solicitor's Office, Bryan Wilson with us. So a
18 number of Feds here that can answer questions for
19 you.

20 I forgot. Would anybody like to
21 volunteer to do an opening prayer for us this
22 morning?

23 (No response.)

24 MS. WILLIAMS: No volunteers.

25 (Opening prayer.)

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1 MS. WILLIAMS: Thank you so much for
2 that. And we have a court reporter here today
3 who's going to be transcribing the comments. And
4 we would like all of you to sign in. There's a
5 sign-in sheet at the back. It's important to
6 sign-in so we're able to get your name correctly.
7 And if you're speaking from any prepared remarks,
8 if you could provide those to Omero. And at the
9 end of this thing, we have our comments address,
10 so that way we can provide them to the court
11 reporter and she can get them transcribed
12 appropriately.

13 So what I'm going to do this morning, I'm
14 going to run through, I think fairly quickly the
15 criteria and procedures, because I want to have
16 plenty of time to hear from all of you. And
17 hopefully, many of you are familiar with the
18 criteria and procedures. But as way of
19 background, these are the guidelines that have
20 governed the Administration, each successive
21 Administration, since 1990, as it participates in
22 Indian water rights settlements.

23 All right. Here we go. They're
24 published in the Federal Register. But they are
25 not rules and regulations. They're guidelines or

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1 criteria that the Federal Government follows.
2 Again, they provide guidelines for the
3 Administration's participation. They include
4 factors that are considered in deciding the
5 Federal contribution to a settlement, which is
6 extremely important. And they have been followed
7 by every Administration since 1990, although every
8 Administration has its own interpretation.
9 They're somewhat vague and are flexible enough
10 that you can interpret them in different ways.

11 Again, they're the framework for
12 negotiating settlements. The United States
13 participates in the negotiations consistent with
14 the trust responsibility. And when Mike Connor
15 did this consultation in Phoenix, he said -- and
16 that's one of the areas where you see varying
17 interpretations because various Administrations
18 can have various interpretations about what the
19 trust responsibility means.

20 The criteria provide that Tribes should
21 receive equivalent benefits for rights that are
22 released in the settlement. Tribes should realize
23 value from their confirmed water rights. And the
24 settlement should contain appropriate cost-sharing
25 by all parties who benefit from the settlement.

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1 And that's the State and State parties.

2 They're broken into criteria and
3 procedures. And the procedures that are followed
4 there are four phases: First phase is
5 fact-finding, where the team who's appointed goes
6 out, figures out the facts, you know, what the
7 water rights claims are, who the parties are, the
8 geography, et cetera.

9 Phase II is assessment and
10 recommendations, where the Federal team is
11 supposed to assess the settlement and make
12 recommendations to the working group on Indian
13 water rights in DC.

14 III is briefings and a negotiation
15 position. That's where the working group and the
16 powers that be in DC make a determination on the
17 position that the Administration is going to take.

18 And then Phase IV is negotiations. Now,
19 I can tell you that although this sounds like --
20 you know, this is a great process. It is not
21 usually the case because things -- you know,
22 things are carried out in different ways.
23 Sometimes the Federal Government comes into a
24 settlement after the parties, the State and the
25 Tribes, have already reached a settlement. And so 7

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1 it varies in terms of that process but in theory
2 that's the way it's supposed to work.

3 In fact-finding you develop the necessary
4 information, identify the parties, evaluate the
5 claims, analyze Federal law. It's pretty
6 straightforward.

7 Assessment is the most difficult phase
8 for the Federal team because they have to assess a
9 number of factors that are set forth in the
10 criteria and some of those factors are all of the
11 costs presuming no settlement; all costs presuming
12 settlement; the best, worst, most likely outcome
13 of litigation; and the value of the Tribe's water
14 claim. So that is a fairly time-consuming
15 process.

16 Briefings and negotiation, the working
17 group, which is composed of all of the Assistant
18 Secretaries and the Solicitor, they're the
19 officials in DC who make the final decisions on
20 Indian water rights settlement matters for the
21 Department and they make their recommendations to
22 the Secretary. And in briefings and negotiations,
23 they discuss with the Secretary and among
24 themselves the Federal negotiation position. They
25 decide the Federal contribution, huge issue. They

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1 discuss strategy for funding the Federal
2 contribution, if it can come out of regular
3 departmental budgets, or if it's going to require
4 something else, taking into consideration the
5 legal views of Justice and OMB, and coming up with
6 tentative positions on all of the major issues.

7 Then negotiation is negotiation.

8 The criteria and this is, I think, where
9 the real heart of the matter is. It the criteria
10 that the Federal teams are supposed to follow in
11 negotiating. The first goal is that we are to
12 resolve all outstanding water claims with
13 finality. The idea is to finalize the settlement
14 for all time, end litigation, and have an end to
15 the disputes.

16 The most important criteria, I think --
17 the criteria that are disputed the most and
18 discussed the most are the ones that relate to
19 cost. Federal costs of a settlement. And those
20 are criteria 4, 5, and 6.

21 Criteria 4, requires that the total cost
22 of a settlement to all parties should not exceed
23 the value of existing claims as calculated by the
24 Federal Government. That includes the cost of all
25 pending or potential litigation, including claims

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1 against the United States and claims against
2 non-Federal parties, potential offsets, and the
3 risks to all parties in the absence of a
4 settlement.

5 5. This is my particular favorite.
6 Federal contributions to a settlement should not
7 exceed the sum of the following two elements:
8 Calculable legal exposure, potential liability of
9 the Federal Government and the nonentities.

10 I can tell you that that is most often
11 interpreted by OMB to focus mostly on potential
12 liability of the Federal Government.

13 And in programmatic costs, the second
14 element, such costs as are appropriate for
15 consideration because they are costs that with or
16 without the settlement, the Federal Government
17 would expend.

18 These criteria are challenging for a
19 number of reasons. They are somewhat vague. Hard
20 to understand. They tie Federal funding to
21 Federal exposure, which is problematic because
22 Federal exposure can be interpreted very narrowly
23 and generally is.

24 Legal exposure does not account for
25 equitable or historical circumstances that take

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1 into consideration the Tribe's experience as it
2 relates to water.

3 6 provides that non-Federal cost-sharing
4 should be equal to the benefits received by the
5 non-Federal parties. The idea is that states,
6 local users and others should share in the cost of
7 paying for a settlement. That is a challenging
8 criteria and doesn't usually result in large
9 non-Federal shares.

10 As a matter of fact, there's a slide on
11 that. Of the 26 settlements enacted by Congress,
12 eight have zero cost share; six have cost shares
13 between 0 and 5 percent; and ten have a cost share
14 between 5 and 30 percent. So you see that's a
15 very challenging criteria to have to meet.

16 We, in February, 2015, received --
17 Justice and Interior received a letter from
18 Congressman Rob Bishop, who is the head of the
19 House Natural Resources Committee.

20 And for the first time since 1990,
21 Congress recognized and sort of adopted the
22 criteria and procedures which is, you know,
23 somewhat surprising. And Congressman Bishop, in
24 his letter, said that he would not advance a
25 settlement in the House unless he received letters 11

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1 from Interior and Justice that made certain
2 statements and answered certain questions. He
3 said the first question we had to explain to him
4 is: Does the proposed settlement adhere to the
5 criteria and procedures?

6 So in other words, we have to say, Yeah,
7 meets every criteria.

8 And then he says: Does the settlement,
9 in particular, meet criteria 4 and 5, such that
10 the settlement represents a net benefit to the
11 American taxpayer, as opposed to the consequences
12 of not settling.

13 And as I say, that's the most difficult
14 test to meet is that the settlement is equal to
15 the cost the United States would have borne in
16 absence of the settlement.

17 And does the Administration specifically
18 support the Federal financial authorization?

19 If litigation is pending, has the
20 Attorney General conveyed to a Court and all the
21 settlement parties that a settlement has been
22 reached?

23 Have the settling parties approved in
24 writing proposed legislative text and have they
25 shared it with the Court, which is kind of

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1 unusual.

2 A list of all the claims being settled.

3 And a statement that the settlement and
4 the proposed legislation do not include financial
5 authorizations for claims that have already been
6 settled or claims that have no legal basis. And
7 that's, of course, clearly subject to
8 interpretation.

9 So we are faced with some difficult
10 challenges in the House, in terms of meeting all
11 of those criteria. And without meeting those
12 criteria that the Congressman has set, that pretty
13 much stops you in the House.

14 All but three of the existing 33 Indian
15 water rights settlements were enacted after the
16 publication of the criteria and procedures. The
17 criteria and procedures were written at a time
18 when there were very few settlements and it was
19 sort of an idealistic way of how things should
20 work. And so, you know, the question we have in
21 front of us now is have we learned anything from
22 these settlements that have been enacted since the
23 criteria and procedures? And if so, should we
24 consider changing the criteria?

25 Settlements are getting larger and more

13

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1 complex. They're getting more expensive. And the
2 need for settlement teams is increasing. We see a
3 lot of Tribes coming in wanting to settle their
4 water rights.

5 So the questions that I would like you
6 guys to consider and provide input today on are:
7 Do the criteria and procedures need to be reviewed
8 and reconsidered, given that they were promulgated
9 in 1990 prior to negotiation and completion of a
10 great majority of enacted settlements?

11 Have the criteria been useful to
12 achieving Indian water rights settlements? Have
13 they been applied consistently and fairly?

14 If reconsidered, should both the
15 substantive criteria and the procedures, including
16 the process through various agencies be
17 re-examined?

18 What criteria and procedures should be
19 revised? Why should they be revised? What is the
20 best mechanism to accomplish the revision?

21 And this is our second consultation.
22 Here we are. We're going to have another one in
23 Seattle? When is that? Have we sent the letter
24 out, Omero? We're planning on one in January in
25 Seattle. I'm going to leave this up here. This

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1 is the address for receiving comments. And with
2 that, I would like to turn it over to Tribal
3 Leaders first, and then anyone else who would like
4 to speak. And Omero has got a mic.

5 MR. HAWLEY: Thank you. Hi, my name is
6 John Hawley. I represent the Belknap Tribe for
7 Central Montana.

8 And first of all, I think that Bishop
9 letter needs to be rescinded. And another thing
10 is that, you know, they talked about, you know,
11 they want to take the land out of there. The
12 water and the land go hand in hand. I think the
13 lands need to be put back into these water
14 compacts, these settlements.

15 This is a problem with the Grinnell
16 Agreement, a lot of you folks are familiar with
17 that, some of you are not. But that has left a
18 gaping wound in the hearts of my people that
19 hasn't been healed yet.

20 And they took a lot of water out of
21 there, too, the miners, which needs to be created
22 into perpetuity now. But we lost all of that
23 water that went in for the south end. And I'm
24 from the south end on the reservation.

25 And also, of Bureau of the Rec, you know, 15

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1 that dam they created, how much money did the
2 non-Indian operators receive to increase their
3 yields? And I think that's all been taken out of
4 there. All the wealth that was taken out of the
5 mountains in gold and silver. I happen to know
6 for a fact that they took enough silver out of
7 them mountains to pay for the production and all
8 the gold was gravy. Plus it ruined their water.
9 It took their water there.

10 And I would like to talk about Section 16
11 and 36. It's in the exterior boundaries of the
12 reservation. They took those lands. Talking
13 about educating our people but they didn't. The
14 mission schools educated our people. And the
15 State has control of those. And we pay lease on
16 our own land. That's a pretty hard pill to
17 swallow for us. That's all I have for right now.
18 Thank you.

19 MR. ARCHAMBAULT: Thank you. My name is
20 Donovan Archambault, Ft. Belknap Indian
21 Reservation, Tribal Council, Assiniboine
22 Representative. And you know, I have been on
23 about -- elected four or five times to the Tribal
24 Government. And each time this compact has been
25 hashed over. And each time the rules change a

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1 little bit. And they've changed again with this
2 Bishop modification. And he wants to protect the
3 taxpayers of the country.

4 They didn't think about that when they
5 dammed up the Colorado River, the Missouri River,
6 and all the damage they did. If you look at the
7 Missouri River, every dam that's been built has
8 been built on Indian land, Indian reservation.
9 And there's no concern about the taxpayers' money
10 then.

11 And I agree with John. When you talk
12 about that land that's in our compact, we never
13 even suggested that in the beginning. That was a
14 suggestion by the Federal team and the State team
15 is that in lieu of reducing the claims of the
16 junior water users, that they would compensate us,
17 either monetarily or with land. And so they put
18 it in there. And we come to a later meeting here
19 earlier this year and they want us to take it out.
20 They put it in.

21 But we have been getting double talk on
22 this whole issue forever. And we have been
23 negotiating this thing since the early '80s. And
24 I think it's time to get back to where we started
25 and go by those rules. Every time we come to a

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1 meeting like this, we get a different definition
2 of negotiation.

3 But it all boils down to two things, you
4 know. Negotiation means, oh, we can't do that;
5 or, it costs too much; or, no. Negotiation means,
6 no, we can't do that.

7 And so I think we need to look at the
8 process that we've had to follow. And when we
9 started out, the United States was on our side.
10 Now, it seems like they're on the other side
11 telling us, No, we can't do this.

12 We need to have you guys sit on our side
13 again, because you are our trustee. And I was in
14 a meeting yesterday, and we talked about Tribal
15 negotiations. And it's the same thing. It goes
16 back to, you know, What are you going to give us?
17 We're always giving.

18 You know, junior water users. We told
19 them in 1976 that you're going to have to cut
20 these junior water users out because they're using
21 our water. Well, today they're saying -- and
22 that's why they give us the compensation. They
23 said, Well, we'll give you additional land for the
24 reservation. Well, now, they're saying, We can't
25 do that. Take the thing out and we'll push your

18

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1 compact for you.

2 So when are the rules going to be
3 consistent? You know, we could sit here and
4 change all these things again, but next week some
5 Congressman -- maybe they should be here. Is
6 anybody here from our Congressional delegation?
7 You know, they should be here. They're supposed
8 to be representing us.

9 You talked about protecting the
10 taxpayers. We have been paying taxes our whole
11 life. We paid with our land. We're paying with
12 our water now. They gave away the Winters
13 Doctrine with that McCarran Agreement. They said,
14 You may take your water claims to State courts.

15 Rules changed again. I would like to see
16 the rules change sometime, you know, toward our
17 benefit, but it never does. It's like the old
18 treaties of the old John Wayne movies, you know,
19 Chief, go home and tell your people, we can't do
20 this. We're the messengers to the bad decisions
21 that the Government makes on our behalf, our
22 trustee.

23 I told the last group of people we talked
24 to that if they were trustees in a bank, they
25 would all be serving life sentences in prison

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1 because of the inadequacy that they do to us and
2 the damages that they do to us, as Tribes.

3 And I'm very bitter. I'm a 77-year-old
4 man that's been sitting in these negotiations for
5 five different councils. And, you know, this is
6 like baseball. I was watching the World Series
7 last night. A guy got a record for hitting 16
8 hits in the series. And I have been to, I don't
9 know, 499 negotiations. Maybe I should get some
10 kind of award. But this isn't baseball.

11 But anyway, I think we need to finally
12 decide what kind of rules that we need to go by
13 and then go by them. We have a compact that's
14 approved by the State. Senator Tester said he
15 wouldn't push it because it was only approved by a
16 margin of one vote. Well, there's some compacts
17 that were pushed that were two votes. I'm sorry,
18 ours was approved by a margin of two votes. And
19 there's been some compacts that were pushed that
20 was the margin of vote was only one.

21 But we own 95 percent of our land. We
22 don't have any -- or very few non-Indian water
23 users. But we're hearing that the rest of the
24 reservations, they only own about half of it. And
25 those white fellows are using all that water and

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1 that land, and that's what the Congressional
2 people appear to me to be protecting. They're not
3 looking out for us. They're looking out for them
4 white guys that are using our land over there and
5 benefitting from it. And I hate to say that it's
6 discrimination, but it sure looks like it to me.
7 And I have been around long enough to recognize
8 that. But that's all I have to say right now.
9 And I want to thank you.

10 MS. FOX: Good morning. My name is
11 Kristal Fox. I'm the Administrator for the Water
12 Rights Office. I have a letter here from our
13 Chairman, Mr. Mark Azure. And I would like to
14 read that to you.

15 It says, I'm proud to say that it was the
16 United States who helped our Tribe to go to court
17 in 1908 to fight for our irrigation water that was
18 being used up by the settlers on the Milk River.

19 The United States Supreme Court created
20 the Winters Doctrine that gives us enough water to
21 satisfy the purpose for the creation of our
22 reservation.

23 Then in the late 1980's, our Tribe
24 decided to settle the rest of our water rights
25 instead of going to court and litigating them.

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1 After about a decade of negotiation, our water
2 rights with the State and Federal Government
3 achieved a water compact in 2001. But we still
4 have not settled all of our water rights. We are
5 now trying to negotiate and complete a Water
6 Rights Settlement Act to get Congressional
7 approval for the funds we need to develop our
8 water rights.

9 Senator Tester has twice submitted our
10 Bill in Congress but no hearing was held on these
11 Water Settlement Bills. Now, we are told that
12 there's a new hurdle that we have to jump over in
13 order to get our Water Right Settlement Bill
14 introduced in the House. Somewhere in this long
15 settlement process the focus on the value of the
16 settlement got lost.

17 We do not agree with Representative Rob
18 Bishop's new emphasis on criteria 4, and 5(a) and
19 (b) of the Department's criteria and procedures
20 that is evaluating the cost of the Indian water
21 settlements almost solely on its value to the
22 taxpayers.

23 In fact, Representative Bishop even
24 stated in a recent letter to the Department that a
25 water settlement must represent a net benefit to

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1 the American taxpayer.

2 We have valid claims against the
3 United States for its failure to manage our
4 resources, as their duty as our trustee, but the
5 precision and the calculations and cost benefit of
6 Indian water settlements that
7 Representative Bishop is requiring is entirely
8 misplaced.

9 We have been working on a water
10 settlement for over 25 years. This has taken a
11 lot of time and money. We chose settlement over
12 litigation because it recognized an opportunity
13 for a cooperative relationship between us and
14 non-Indian water users. It represents hard-fought
15 negotiations, some give and take between the
16 parties, and a workable solution to the management
17 of our waters. In other words, the water
18 settlement process has always been viewed as
19 beneficial, not just to us, but to the non-Indians
20 and to the State.

21 After having made concessions during the
22 negotiation process that led to our water compact,
23 which includes cooperative management solutions
24 for water that affects both Indians and
25 non-Indians, this must now be taken into account

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1 when evaluating the costs of our Congressional
2 water rights settlement.

3 An overemphasis of criteria 4 and 5(a)
4 and (b), as Representative Bishop now requires
5 completely ignores the 25 years of sitting at the
6 table to negotiate a workable solution at the
7 local level that resulted in a win/win outcome.
8 After all these years, we cannot accept a final
9 hurdle that places blinders on the negotiation
10 process and looks only or primarily at a cost
11 benefit analysis of a settlement outcome in the
12 light of a litigation outcome.

13 President Carter adopted the preferred
14 policy of the United States to settle water rights
15 claims and the U. S. policy of not litigating
16 water rights claims with every Tribe was a smart
17 policy and has been adopted by every President
18 since at least 1990.

19 We are not naive to the fact that
20 Congressional funding to develop our water rights
21 must be reasonable in the light of claims that we
22 could assert against the United States, but
23 settlement is not litigation.

24 There has been an expectation at the end
25 of this long settlement process that we will

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1 receive Congressional funding to develop our water
2 rights. The new review process that Tribes must
3 now endure with the Office of Management & Budget
4 is ominous and time-consuming.

5 After over 25 years at the table
6 negotiating with Federal representatives, the rule
7 of settlement has changed. Just when we start to
8 see the light at the end of the tunnel, we must
9 now endure scrutiny from the Office of Management
10 & Budget. They are too late to the game and
11 likely have no appreciation for what the
12 negotiating parties have conceded at the
13 bargaining table. How fair is this to the Tribes?

14 Finally, it seems it is very naive to
15 look at the cost or value of the Federal Trust or
16 programmatic responsibilities as coming from the
17 normal budget process as criteria 5 states. It is
18 well-documented that the Bureau of Indian Affairs
19 have been shrunken programmatic budgets over many
20 decades which have resulted in decay and
21 dilapidation of the Indian irrigation projects.
22 It is no different from our project at
23 Ft. Belknap.

24 The Federal Government's responsibility
25 to Indian irrigation projects begins to get lost

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1 in the political -- to keep costs down at all
2 cost. We do not like and resent that we are
3 competing with and against other Tribal water
4 settlements for an inefficient pool of funds.

5 We do not support an emphasis on the
6 standard cost benefit analysis of Tribal
7 infrastructure projects, which is applied by the
8 Bureau of Reclamation, especially for our
9 irrigation projects. The standard analysis does
10 not fairly account for what we require today to
11 develop our homelands, part of the United States'
12 trust obligation to us.

13 We need the Federal Government to be our
14 partner as we move our Settlement Bill through
15 Congress. A very important area of support is
16 related to the funding level in our Settlement
17 Bill that will be used to develop our water.

18 We have done a very careful analysis of
19 the damages we have against the United States, but
20 in working with our Federal negotiating team and
21 getting feedback from the Indian Water Rights
22 Office, it feels like the government is more an
23 adversary than a trustee on the issue of how much
24 we should receive to settle our water rights.

25 Long-term, stable, and sufficient levels

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1 of funding for Indian water rights settlements are
2 absolutely critical to protect, secure, and
3 finalize our Tribal water rights. We want our
4 water settlement to provide wet water and there
5 has to be a realistic level of funding to support
6 that. We have been waiting a long, long time to
7 settle our water rights and we have identified
8 what is needed to develop our water and improve
9 the economic conditions of our people.

10 Finally, I would like to say that we must
11 close this gap in time between securing a compact
12 agreement with the State and Federal Governments
13 and securing funds to settle our claims with the
14 Federal Government so that the settlement can be
15 implemented. We have waited too long to reach a
16 settlement for our water claims.

17 Just as Congress has contributed millions
18 of dollars to the development of the West for
19 non-Indian projects during the last century and
20 often to the detriment of Tribes, Congress must
21 now support the development of Indian waters and
22 lands that may require cost benefit ratios
23 different than those applied to today's non-Indian
24 projects. Projects that had the benefit of over a
25 century of significant Government support to reach 27

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1 the profitability they now enjoy.

2 And on behalf of Mark Azure, thank you
3 for allowing us to be here today.

4 MR. McANALLY: Good morning. My name is
5 Robert McAnally, and I'm an Assiniboine member of
6 the Ft. Peck Assiniboine and Sioux Tribes. I'm
7 currently on the Tribal Water Commission, which
8 we're building our water plan. And I'm also an
9 attorney for the Ft. Peck Tribe.

10 And when I got out of law school in 1988,
11 one of my first jobs was in-house counsel for
12 Ft. Peck. And my very first job was to begin
13 developing and codifying the Tribal Water Rights
14 Code, which was right after the water rights
15 settlement that we had, the compact we had with
16 the State of Montana.

17 In those days we were very aware, in that
18 we were the first Tribe to have a settlement with
19 the State of Montana. And it was a large
20 settlement. It was the largest settlement of any
21 Indian Tribes in the United States at that point.
22 It was a settlement of 1,050,000 feet per annum
23 for various purposes.

24 But as I began working on the Code, and
25 as a brand-new lawyer full of theory, but not

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1 common sense, but more theory than practice, I was
2 pretty naive about what we were going to be able
3 to do with this and very hopeful. But as I
4 learned in law school, and then in life,
5 everything kind of comes down to economics. And
6 that's what we're talking about.

7 I want to put on record that we on the
8 Water Commission in the Ft. Peck Tribe stand in
9 solidarity with all the other Tribes that are in
10 their positions now and hope that they can get the
11 rights and justice that they deserve.

12 But I have a question, too, and I know
13 you're not here to answer questions, but as you
14 can see that the rub today is lying in those
15 words, "net benefit to the U. S. taxpayers." I
16 would like to know if that statement has any
17 tie-in whatsoever with the Department of
18 Interior's trust responsibility towards Indian
19 resources? And what weight or value that might
20 mean in terms of trust responsibility.

21 Also, I would also like to know, do any
22 of the settlement negotiations, or any of the
23 talks, take into account, as Mr. Kirn mentioned in
24 his opening prayer, the sacredness of our water?

25 Water is not just economics to us. Water 29

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1 is spiritual and cultural. I taught at the
2 college level for 26 years, Federal Indian law and
3 Tribal law. And every time I taught, I would tell
4 my students, Water is going to be the next war in
5 the west. And now it's all over the world. So I
6 was wrong about that. So this water is sacred to
7 us. We know it comes from the Creator.

8 So do the negotiators take into account
9 the cultural or spiritual significance or aspects
10 of Tribal water rights? I mean, is there a way to
11 take that into account rather than just economics?

12 I learned, as a very naive young
13 attorney, and I learned quickly that the world is
14 not the same as it is in law school or the law
15 books. It is very different. And to my
16 disappointment, I learned that the world is all
17 economics. Every decision almost that we make is
18 economically-based. But that's the reality of it.
19 But we have other viewpoints of our water. And I
20 would just hope -- I probably, you know, hope
21 against hope -- that the negotiators, both the
22 Tribal negotiators and the United States
23 negotiators and the State negotiators would take
24 into account how much that water means to us, to
25 our spirits, to our ancestors, and to our culture. 30

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1 So that's my comment and my questions and thank
2 you for giving me time today.

3 MR. KIRN: Good morning. My name is Rick
4 Kirn. I'm a Tribal member for the Ft. Peck
5 Assiniboine and Sioux Tribe. At this particular
6 time I'm not actually a representative of the
7 Ft. Peck Sioux Tribe, although I have served on
8 the Tribal Council for over 16 years. Presently,
9 I'm a member of the Water Commission for the rural
10 water project for Ft. Peck, Assiniboine and Sioux
11 Rural Water Supply System.

12 I have been very fortunate over my
13 lifespan to be able to wear many hats when it
14 comes to water rights. As a representative of the
15 Ft. Peck Tribes, I sat on the Council and we
16 helped negotiate the Ft. Peck/State Water Compact.

17 And, also, as an appointment of the
18 Governor, I still sit on the Montana Reserve Water
19 Rights Compact Commission as a citizen. At first
20 it seemed very difficult for me, because I was on
21 there representing the Tribe, but also negotiating
22 compacts with the Indian Tribes across Montana.

23 And as it stands right now, we've already
24 negotiated all the compacts for the seven Indian
25 Tribes in Montana, and actually, have 18 contracts 31

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1 that we have negotiated with the Federal
2 Government and the State of Montana, including the
3 National Parks, Forest, Wildlife Refugees and
4 Federally-designated wild and scenic rivers.
5 We've negotiated all of them, so I'm not sure what
6 this meeting is about, since we've already
7 negotiated with the State of Montana.

8 But as a Tribal member of the Ft. Peck
9 Assiniboine and Sioux Tribe, our negotiating
10 compact with the State of Montana and the Federal
11 Government were void in our compact of marketing
12 our water.

13 You know, we did receive a tremendous
14 amount of quantification of the Missouri River and
15 we were very happy with that settlement. But part
16 of our negotiated settlement was a piece in there
17 with regards to marketing the water. But the
18 lower states below us on the Missouri River
19 negotiated or was basically opposed to our
20 marketing portion of our compact and we're yet to
21 negotiate that with the Federal Government.

22 You know, and during my negotiations as a
23 representative of the State and the Tribes and as
24 citizens of Montana, Native Americans are also
25 citizens of Montana, so we have individual water

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1 rights that have to be protected, also, not only
2 from the State and Federal Government, but from
3 our own Tribes. So that was one of the things I
4 really found interesting and I learned as a member
5 of the Montana State Water Right Compact
6 Commission was individual rights of water.

7 So I think that component needs to be put
8 into the negotiations, also. The Tribal citizens'
9 rights of the water when it comes from compact
10 with the Tribes. I know there are public
11 hearings. And I have been to many, many public
12 hearings with State individuals and Tribal
13 individuals and Tribal Leaders and government
14 officials. But sometimes I was just really taken
15 aback because of the representation that was
16 there, when it comes to Congressional delegates.
17 You know, I mean, they're all voted in there by
18 all of us. We belong to a state where you don't
19 have very much support from the Federal Government
20 or from the State Government, it's not fair to the
21 citizens of what happens. It's all politics.
22 They say it's not, but it is politics.

23 So I think you need to take into
24 consideration some of the rights of the citizens,
25 also, when it comes to the negotiation of

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1 compacts.

2 And I guess I'm just here mostly to
3 listen to what other Tribes have to say. But our
4 all our compacts have basically been negotiated,
5 so I don't know what this actually does, except
6 for a situation where we need -- the Federal
7 Government hasn't signed a compact or haven't
8 agreed with it because of that marketing piece
9 into it, so thank you.

10 MR. PEREZ: Thank you. My comment isn't
11 based on a Tribal leadership. My name is Franklin
12 Perez. My wife here is Diane Perez. But my
13 comments here are individual comments. I have
14 been working on a Ft. Belknap water compact for --
15 well, that's finalized, but the Federal
16 Legislation since about 1990, I guess.

17 The question I have goes to the criteria.
18 You know, like the bulletin says. You know, this
19 has been in place since 1999, and it's about 26
20 years old. So anything kind of old kind of wears
21 out. So I guess to answer that first question,
22 that it probably should be revised and figured out
23 what would be the best criteria for development of
24 Federal Legislation.

25 One point I would like to make is that a 34

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1 lot of reservations, the individuals, they get
2 confused with a water compact versus Federal
3 Legislation. And they're not one and the same.
4 That is one issue that we had to deal with.

5 The other criteria, you know, that's
6 there that's to be utilized for determination of a
7 Federal Legislation, I'm not, you know, sure if
8 it's a real good thing. You only had, you know, a
9 few compacts or a few legislation for a long
10 period of time.

11 Montana is in adjudication. Our systems
12 are adjudicated in the state of general
13 adjudication versus South Dakota, North Dakota.
14 You know, they're not in that kind of session. So
15 Montana, we have to either litigate or negotiate.
16 So we're basically in both categories. Litigation
17 and we're also in negotiation to try to come up
18 with a Federal Legislation.

19 You know, each respective Tribe has their
20 own concerns. As you mentioned here, the Ft. Peck
21 and Ft. Belknap Assiniboine -- or Ft. Peck and
22 Ft. Belknap, they have expressed their concerns,
23 based on the compact and the Federal Legislation.

24 But I think that criteria should be open
25 enough that each respective reservation is dealt

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1 with individually, not grouped into, you know,
2 like three Tribes. Of course, we have
3 Ft. Belknap, Blackfeet, and Salish Kootenai both
4 have compacts that are going to be negotiated for
5 the Federal Legislation part.

6 One point that I want to make is that, as
7 an individual, my wife and myself both own
8 irrigation land on the reservation. And one thing
9 is that individuals don't say anything. You know,
10 they're always, like, follow the Tribe.

11 So I think, you know, I'm -- since I
12 don't work -- I mean, I separate myself from them
13 and look as a personal thing. And, you know, I
14 like to have my water right personally protected.
15 I think all the reservations in Montana, and I'm
16 not sure, except for the Cree Tribe, Chippewa Cree
17 Tribe, we're all allotted. So we've all been
18 given individual allotments. I live on my
19 mother's allotment. In our case it's 40 acres.
20 And I have more of a value than being allotted as
21 nonirrigated. My mother had irrigated the 40
22 acres. She got a 320-acre allotment and a 40-acre
23 allotment. If people didn't have an irrigation
24 allotment, they got like 520 acres of rangeland.

25 Therefore, what I'm saying is that the

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1 irrigation was designated as more valuable. And I
2 think the value, as an individual Indian, we
3 should receive that value somehow in the process.
4 And I don't know if a section in Federal
5 Legislation would verify that we do have that
6 right and that it can't be taken from us by a
7 Tribe or anything, that the Federal Government
8 would protect us, just like a marriage, I guess.
9 And that's one of my real feelings about the
10 process, that I request that you take that into
11 consideration.

12 And I realize that this is based on just
13 the comments on the criteria that was in 1990, and
14 I just feel that way and I think that the
15 reservations -- and I'm going to get back to the
16 reservations -- is that a lot of the compacts
17 were, especially in Montana, you know, all of the
18 non-Indians were satisfied before the reservations
19 were satisfied. In our location it was the same
20 thing is that the non-Indian was satisfied, and
21 then there was no fight between the State and the
22 Tribe.

23 And some people gave up their senior
24 rights, not all of them, but some people, each
25 reservation respective about that. But in order

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1 to get a compact, you did have to negotiate and it
2 wasn't litigation, so....

3 So I think, in my sense, is that the
4 Tribe have given up and they've given up a lot. I
5 talked to an attorney, yes, we did give up a lot.
6 We give up senior rights. We have damage claims
7 in the mining areas, damage claims of land that
8 has been taken from us. We have all kinds of
9 claims that have harmed the reservation. And, of
10 course, we're trying to get them resolved and this
11 is one of the avenues, but I realize that's not
12 the area that probably should be done but some of
13 them are vastly -- some of them are really related
14 to the water rights.

15 You know, I think just to say to take a
16 piece of land, we want that. That isn't right.
17 It probably isn't correct. But if the land was
18 affected because of water rights, I think that the
19 Tribe should have an opportunity to rectify that.

20 I'll just take an example, on our
21 reservation -- I can go through a lot of them, but
22 they have a Bureau of Reclamation project there.
23 And they took about 2600 acres, 18, 19 something.
24 What they did is they carved that out, and there's
25 maps that says that's not on the reservation

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1 anymore, even though it was included in 1888
2 agreements. The Tribe made a claim for it. But
3 what happened is that the Federal Government and
4 Bureau of Reclamation, BIA and Bureau of
5 Reclamation made an agreement to take that
6 property out of the system and give it to the
7 other system, the BIA from the -- but what they
8 forgot to do is transfer deeds. There's no deeds
9 ever was given to the Bureau of Reclamation. So
10 I'm just using this for example.

11 So there's a real problem there between
12 our water rights attached to it, that this land
13 should stay with the Tribe; but, you know, it
14 should be resolved is what I'm trying to say. And
15 that's, you know, one of the -- and there's all
16 kind of criteria. I'm just using that as an
17 example, because all reservations have their
18 respective questions and desires of whatever their
19 settlement process is going to be.

20 But I just want to thank you for allowing
21 me to speak. I know Pam. I have been in her
22 office and stuff. You know, I have been doing
23 this for about 26 years, I guess. Thank you,
24 guys.

25 MR. CLAIRMONT: Good morning. My name is 39

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1 Dennis Clairmont. I'm a Tribal Councilman for the
2 Salish and Kootenai Tribes, and I have a prepared
3 statement.

4 We appreciate Interior and Justice have
5 undertaken Tribal consultation to examine the
6 water settlement process and determine whether
7 changes need to be made. However, we have
8 significant concerns that OMB is not involved in
9 these consultations. Their recent memo changes
10 the water settlement process, including the role
11 of OMB, without Tribal consultation and it must be
12 withdrawn.

13 In addition, this process must result in
14 revision of the criteria and procedures. Contrary
15 to some of the statements made at the last
16 consultation by the Federal representatives, the
17 criteria and procedures have not been a successful
18 guide for evaluating Indian water rights
19 settlements. Despite Obama Administration's
20 recent support of the Blackfeet and Pechanga water
21 settlements, more often than not, this and past
22 Administrations have testified that they cannot
23 support a proposed Indian water settlement because
24 of the significant and uneven focus that is placed
25 on the cost of a water settlement and the exposure 40

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1 of the U. S. to litigation.

2 In effect, the criteria and procedures
3 have been relegated to focusing on U. S. cost and
4 liability. But absent from the Government's
5 consideration is any recognition of the historical
6 realities that have plagued Indian Country as a
7 direct result of Federal policies and actions
8 against Indian Tribes.

9 Nor is any recognition given to the fact
10 that the United States has and still subsidizes
11 water infrastructure for non-Indians through
12 grants and other noncompetitive programs, yet
13 Indian Tribes are subject to a different standard
14 despite the underlying trust responsibility that
15 the U. S. has towards Indian Tribes.

16 In addition, many of the criteria are
17 outdated and need to be revised to reflect the
18 political realities of the water settlement
19 process, differences between State policy that
20 Indian Tribes have no control over, significant
21 waivers Tribes are required to give, and various
22 model provisions Tribes must include in its water
23 settlement at the insistence of the Federal
24 Government.

25 It is a fiction to say that the criteria 41

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1 and procedures have worked and have allowed most
2 of the modern settlements to move forward. Most
3 of those settlements, again, with the exception of
4 recent settlements, have been enacted because
5 Congress chose to push them forward over
6 Administration objectives to cost and liability
7 concerns.

8 Given the recent OMB Memo and the Bishop
9 criteria, now is a time to revise the criteria and
10 procedures to make them workable guidelines that
11 help move water settlements forward and not make
12 them harder. The Tribes will also be submitting
13 written comments with specific suggestions as to
14 how the criteria should be revised. Thank you for
15 this opportunity to comment.

16 MR. BAKER: Good morning. Harlan Baker
17 with Chippewa Cree Tribe. Thank you, folks, for
18 putting us together here this morning. And I have
19 no prepared statement, but we seen the
20 consultation and thought we'd come down and be a
21 part of the discussions and hear what's going on
22 with the other Tribes. We're like what this
23 gentleman had stated earlier, our compacts are all
24 signed.

25 And we have some concerns, some

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1 questions, but maybe perhaps at another time we
2 can kind of ask those, but I wanted to thank you
3 folks for putting this together. Anytime we see
4 the word "consultation," you know, we hope that,
5 in the true sense of that word, and I think you
6 guys are doing that. You have different areas set
7 up, so there's true consultation with the Tribes
8 and input on different issues and all Federal
9 agencies, I guess, I hope would follow that.
10 Anyway, I was just thanking you for your time.

11 MR. WHITE: My name is Dustin White. I'm
12 the Tribal Water Resource Director for the
13 Chippewa Cree Tribe on the Rocky Boy Reservation.

14 As Mr. Baker says, hopefully --
15 Chairman Baker, we negotiated our water compact
16 back in 1997. It was approved by the State of
17 Montana and the Tribes. In 1999 Public Law
18 106-163 was passed in Congress establishing our
19 water rights. In that it states that all of our
20 projects would be completed in ten years. In your
21 criteria No. 7, it says settlements should be
22 structured to promote economic efficiency on
23 reservations and Tribal.

24 Ten years has gone by. We're at 17
25 years. And we've only got a portion of our water 43

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1 pipeline in the ground. We have to pipe water 52
2 miles from Lake Elwell to our reservation. It's
3 called the Rocky Boy's North Central Regional
4 Water Project for the State of Montana. And it's
5 covering nonreservation communities from Brady,
6 Cut Bank, Shelby, Chester, Havre, down to Loma,
7 Big Sandy.

8 At current funding rate, we're still
9 another 20 years out till we get this thing built.
10 Our compact and water rights and Public Law 107
11 that was passed in 2002 allocated a certain dollar
12 amount for construction of these projects. We've
13 reached that almost now because of indexing, cost
14 of inflation, because it's drawn out an additional
15 seven years. How do we get the funding
16 appropriated to the Tribe to get these projects
17 completed? Because now one of the things on that
18 Bishop letter was stated that, What's the benefit
19 to the taxpayers? Well, right now it was supposed
20 to be a 270 million dollar project, and we're
21 looking at over 400 million now. So there's no
22 benefit to the taxpayer, because of the way the
23 lack of funding comes.

24 And I think that needs to be addressed in
25 these criteria and procedures is holding the

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1 Federal Government to these funds in a timely
2 manner. Because had we had the money, we could
3 have built it. If we got the 300 million needed
4 right now, we would have this project built in
5 four years and we would be providing to
6 non-enrolls and to our reservation, which is in
7 dire need of it. We have about six or seven
8 communities on the outside of the reservations
9 that are under water restrictions, can't drink
10 their water.

11 And once we get our water plant up and
12 running, the Rocky Boy Reservation, the question
13 was we at a public meeting last week, one of the
14 questions was by our community members, Who's
15 going to drink the first cup of water out of our
16 water treatment plan? And it's not the Rocky Boy
17 Reservation. It's not the Chippewa Cree people.
18 It's the nonenrolled who are going to receive the
19 first cup of water. We are at the end of the
20 pipeline. And that's a hard pill to swallow for a
21 lot of our community members.

22 So we need to look at the funding and get
23 the funding ramped up. And, you know, these
24 consultations and stuff, we appreciate this, but
25 if we can work on that in these criteria and

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1 procedures from what we've learned after our
2 negotiations have been signed for other Tribes
3 like Flathead and some of these other ones that
4 are looking at trying to get theirs negotiated, if
5 we could get those time constraints in there.
6 Thank you.

7 MR. MORIN: Hello. I'm Warren Morin.
8 I'm a Mountain Grove Representative, Ft. Belknap
9 Tribes. The people I represent are at the south
10 end of the reservation. And I just want to thank
11 you for this opportunity for showing that the
12 Federal Government is showing some respect for
13 Indian Natives nationwide. And we signed the
14 solidarity with everyone else with their
15 settlements and this issue over in North Dakota.
16 I wore my "no DAPL" shirt. If you guys aren't
17 aware of what's going on over there, what happened
18 yesterday. They're macing the people over there.
19 Why is this stuff not in the mainstream media just
20 shows how much this country respects Native
21 Americans. And if you look at the term
22 "consultation" in the dictionary, it talks about
23 if someone has a problem or needs to solve an
24 issue, they come to an expert. I guess if someone
25 is looking at us or solving with us, we are the

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1 experts of water, which it should be, and the
2 land.

3 And I don't think they -- like one
4 gentleman said, everything is economic, everything
5 is based on the dollar. You know, we Natives, we
6 don't look at it that way. We grow up poor. We
7 grew up with nothing. All we have is water and
8 land and mountains, you know. So my definition
9 for that is water is a living thing. That's the
10 way I was raised. Mountains are like people. You
11 don't go tear them down or whatever. And, also,
12 land is who we are. We are a product of the land.

13 And like Randy's worked on our settlement
14 for a lot of years. There hasn't been any respect
15 by the Government's half of it as to what we're
16 asking, what we want. We want our mountains back,
17 you know. The south end where I represent it was
18 taken for gold, for money. And they turned it
19 into a toxic waste dump, poisoned our water. They
20 took most of the volume of the water and it's
21 going down the other side of the mountain away
22 from the reservation.

23 But we, you know, so it all comes back to
24 respecting Natives, you know. And if you're going
25 to do that, you talk about this natural resource,

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1 maybe put together by Bishop in his committee
2 there, I honestly believe that if this country's
3 going to start respecting Natives, they need to
4 put some Natives on that committee to look at
5 these issues.

6 Then that benefit for the taxpayer.
7 Well, the taxpayers, they got all their land, you
8 know. Those treaties were only good -- the 1855
9 treaty that my Tribe was on was only good for a
10 hundred years. What happens after a hundred years
11 is over, 1955? We granted the United States
12 permission to use that land. That land comes back
13 to us. Everyone is squatting on our land, you
14 know. So with that, put a dollar value on that.
15 What we're asking in our settlement is nowhere
16 near what the value of what we gave up. Nowhere
17 near.

18 And it doesn't even mention much about
19 the Missouri River. You know, we're battling over
20 the Milk River. But we have strong ties to that.
21 That river's part of me, who I am, I grew up, you
22 know. Like my church, you know. My rope gets in
23 a knot, that's where I go and I untie it.

24 And they never had consultations when
25 they created this Upper Missouri National Park or

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1 whatever it is anyway. We should have been a part
2 of the talks on that consultation, because it's
3 something, I believe, we have an interest in
4 there. And we still claim that we should be given
5 an area, you know, a two-mile stretch of that
6 river for our purposes, culturally, spiritually.
7 It should be governed by us. But that was never a
8 part of that discussion, nor was we part of a plan
9 of that mine when they opened that open-creek mine
10 and exposed us to acid runoff and sulfuric acid
11 into our water. We weren't consulted on any of
12 that.

13 But to get back to, you know, all these
14 water settlements that are calculated by the
15 Federal Government, that's not fair either. They
16 need to be calculated by the Indian people that
17 own the land. We should be the ones that dictate
18 to you what the value of that is worth. You know
19 if the government has a trust responsibility to
20 the Indians here. They should be looking at us
21 and standing up for us, just like Donovan said, if
22 it was a bank, you know, everyone would be in
23 jail.

24 But I just think the fairness of this
25 whole thing is wrong. This consultation, full

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1 consultation meaning means that we respect each
2 other. You know, we are a nation for thousands of
3 years. This young whippersnapper USA country come
4 along. You know, I think you need to look at
5 that, really take a look at that. We have been
6 here a long time and we're not going away. Dug
7 our heels in and we're in the battle for the long
8 haul.

9 This country's investing more in
10 Afghanistan and Iraq and the people over there,
11 them countries, Syria, you're investing way more
12 money in them people. You talk about spending
13 money. What are you doing spending money over
14 there? You need to be spending it on the first
15 nations here. In our homelands here right in the
16 United States. You're wasting money, billions of
17 dollars.

18 You know, you look at these water
19 settlements, these are amped up to us, money to
20 transfer to us to finally make it in the world,
21 put us out the middle of nowhere. We need to make
22 a living just like anyone else. If you look at
23 the map, you'll see we're out in the middle of
24 nowhere. We need this water settlement. We need
25 this handout from the Government. It's time. The 50

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1 Government needs to have a hearing and be fair
2 about it instead of screwing us over time and time
3 again, but thank you.

4 MR. BEARSHIELD: Good morning. My name
5 is William Bearshield from the Rosebud Sioux
6 Tribe. I sit on our Tribal Council there, as well
7 as I'm the Chairman of our Tribe's Land and
8 Natural Resource Committee. We'll be submitting a
9 written testimony here. I just wanted to touch
10 base a little bit on some of the points of our
11 testimony.

12 The Great Plains Inter-Tribal Water
13 Rights Coalition consists of the Oglala Sioux
14 Tribe, Rosebud Sioux Tribe, Standing Rock and
15 Flandreau Sioux Tribes working together to address
16 common issues affecting our treaty-based reserved
17 water rights. We submit the following in response
18 to the Department of the Interior Water Rights
19 Coalition.

20 The Coalition expresses three primary
21 concerns: One, the Secretary should rescind the
22 moratorium on the approval of the Tribal Water
23 Codes and fully support Tribal water management.

24 Two, the Department of Interior criteria
25 for the participation of the Tribal Government in

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1 negotiations for Indian water settlements and the
2 OMB memorandum on the review process for Indian
3 water settlements must be rescinded.

4 And three, the Secretary should fulfil
5 her treaty and trust responsibility to the Indian
6 Tribes of the Missouri River Basin and object to
7 the Army Corps of Engineers' surplus water reports
8 and water storage policies.

9 First of all, the Secretary should
10 rescind the moratorium on the approval of the
11 Tribal Water Codes and fully support Tribal water
12 management. The regulation of our reservation
13 water is an extremely important governmental
14 function. Our Tribes have enacted water codes and
15 are implementing the codes for the protection and
16 management of our water resources. There are
17 significant legal and administrative obstacles,
18 including non-Indian water diversions on fee lands
19 in checkerboarded areas and the lack of Federal
20 support for Tribal water management embodied in
21 the Secretarial moratorium on approval of Tribal
22 Water Codes.

23 The Office of Management & Budget
24 memorandum to the Department of Justice and the
25 Interior dated June 23rd, 2016, similarly must be

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1 rescinded. The memorandum essentially prohibits
2 any employee of the Departments of Justice and
3 Interior from recommending a negotiating position
4 to the Secretary without first going through OMB.
5 The memorandum also purports to interject OMB
6 policy and review authority over Indian water
7 rights discussions and settlements.

8 The OMB memorandum is a significant step
9 in the wrong direction. The additional procedural
10 requirements undermined the longstanding Federal
11 policy favoring negotiated settlements. This will
12 exacerbate the difficulty for Tribes to obtain
13 timely and meaningful assistance from the
14 Department of Interior and Department of Justice
15 to address water rights claims. Legitimate claims
16 whose resolution is long overdue shall be further
17 delayed and adequate funding threatened.

18 Ultimately, Indian people will suffer due to the
19 delays in supplying safe and healthy drinking
20 water to reservation communities.

21 Thirdly, the Secretary should fulfill her
22 trust and treaty responsibility to the Indian
23 Tribes of the Missouri River Basin. The
24 Secretary's Indian water rights working group has
25 ignored the Missouri River Basin. Indian water

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1 rights funding is provided to other regions at
2 much higher levels than in the Great Plains. The
3 Great Plains Tribes have been shortchanged, making
4 it more difficult to address the significant
5 challenges posed by upstream diversions and
6 groundwater pumping, as well as the threat posed
7 to our Missouri River water rights by the Corps of
8 Engineers surplus water reports.

9 The Army Corps of Engineers' proposed
10 management changes on the Missouri River main stem
11 jeopardizes future Tribal water supplies for
12 municipal, industrial and agricultural uses. The
13 Secretary of the Interior has failed to fulfill
14 her trust responsibility to protect the
15 treaty-protected waters the Missouri River from
16 infringement by the Army Corps of Engineers.

17 The proliferation of hydraulic fracturing
18 upstream from Standing Rock presents new demands
19 on the Missouri River. In response, Corps of
20 Engineers has released surplus water reports for
21 each of the six main stem reservoirs. These
22 reports identify limits to future municipal and
23 industrial water uses and propose storage fees for
24 the Missouri River main stem reservoirs. These
25 reservoirs are generally located on Indian

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1 reservations and are the source for points of
2 diversion for Tribal water users.

3 The Tribes of the Great Plains Water
4 Alliance possess reserved water rights to the
5 Missouri River, for all present and future
6 beneficial uses, including the municipal and
7 industrial.

8 So I'll be submitting this on behalf of
9 the Great Plains Tribal Water Alliance. Thank
10 you.

11 MS. RUSSELL: Good morning. Thank you
12 and good to see all of you here. Obviously, the
13 criteria and procedures have been a long-debated
14 issue, these Indian water settlements -- I guess,
15 I should introduce myself. I'm Majel Russel. I'm
16 a member of the Crow Tribe, and I'm an attorney
17 here in Billings and I've worked on Indian water
18 settlements for various Tribes for lots of years.
19 And I also was with the Department of Interior for
20 a short time and participated in the Indian water
21 rights settlement team.

22 I guess, looking at the questions that
23 you posed for today, Do the criteria and
24 procedures need to be reviewed and reconsidered?
25 Given that they were promulgated in 1990, I think, 55

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1 yes, definitely. They do need to be reviewed.
2 They need to be reconsidered. And I think that,
3 as Pam Williams stated, they were developed at a
4 time when Indian water settlements were very few
5 and far between. I think she said only three of
6 them had been settled by the time these criteria
7 and procedures had been developed, so I think that
8 they are outdated and I think that they should be
9 reviewed.

10 Secondly, Have the criteria and
11 procedures been useful? I think that they
12 provided a very idealistic set of parameters. I
13 think they talk about identifying water,
14 quantifying the resource. You know, a lot of
15 material that actually Tribes had a very difficult
16 time gathering. So in one sense, I think the
17 criteria and procedures actually resulted in a lot
18 of delay and scared a lot of Tribes from entering
19 into the whole arena of trying to settle water
20 rights, because they were so cumbersome and they
21 were so full of requirements and tasks.

22 Have they been applied fairly and
23 consistently? No, I don't think they have. I
24 think you could go through the 26 settlements that
25 have been ratified by Congress and I don't know if

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1 you could find one of those settlements that
2 satisfied every one of those criteria and
3 procedures.

4 I know on water settlements that I worked
5 on, the process seemed so daunting and expensive
6 and timely, time-consuming and cumbersome that we
7 just jumped and went to Congress. And I think a
8 lot of Tribes have done that. They have just
9 circumvented this process and jumped to Congress,
10 which then, of course, creates its own problems
11 because then you have the Department trying to
12 play catch-up to what the Tribe has submitted
13 without working directly with the Administration.

14 So I guess there is a real issue with
15 consistency and fairness. And I do know that the
16 position of the Administration changes, of course,
17 when we get new leadership. And so that's also
18 part of that problem.

19 If reconsidered, should both the
20 substantive criteria and the procedures, including
21 process through various Federal agencies be
22 re-examined? Yes, I think one of the complexities
23 is you're working through a lot of different
24 agencies. First of all, in Montana, because of
25 the framework that we have in Montana, where we

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1 have to go to the Reserved Water Rights Compact
2 Commission, get that negotiation done, and then
3 finish that and then we go up to the Federal
4 Government to resolve the claims we have against
5 the United States, the process becomes very
6 cumbersome. You're working with DOJ. Oftentimes,
7 DOJ and DOI don't agree. And then you have to
8 bring in BOR, who's going to be the agency that
9 implements the settlement oftentimes. And so when
10 you have to work with so many different entities,
11 I think that's difficult for Tribes.

12 I think there's been a real popular theme
13 in many other areas of Tribal and Federal
14 relationships of one-stop shopping. I don't know
15 if there's something like that we can talk about
16 that would simplify this process for Tribes, but
17 when you have to negotiate with all these
18 different Federal agencies, I think that
19 complicates the matter.

20 And then, What criteria or procedures
21 should be revised? I think the Tribal Leaders
22 have made lots of very profound statements about
23 the problems with these procedures. The problems
24 that I see, number one, is the whole issue with
25 determining Federal exposure. I think that it's

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1 so unfair to an Indian Tribe to have to,
2 basically, have all of their water claims, which
3 are so significant marginalized by the exposure to
4 the United States. And, you know, I think that
5 that that's a very insulting process to Tribes.
6 And I think that that part of it definitely should
7 be reconsidered. And I think that raises a real
8 fairness question in the treatment of Tribes.

9 The other part of the criteria that
10 strikes me as being difficult is the contribution
11 from the other parties to the settlement, like,
12 for example, the State, the Counties, the Cities.
13 I know, and I think somebody mentioned, that the
14 United States has supported those settlements that
15 have significant cost shares, and that's true, but
16 a Tribe should not be held to a hostile State not
17 willing to contribute. That shouldn't matter. I
18 mean the Tribe still has its claim and still has
19 very important reasons to settle and it should not
20 hinge on the friendliness of the State.

21 I think when you get to South Dakota and
22 you get probably even into North Dakota, you're
23 not going to have friendly States, and so the
24 Tribes shouldn't be held hostage in settlements to
25 the friendliness the State or the County to do a

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1 contribution.

2 Secondly, that No. 4 also says, What is
3 the best mechanism to accomplish a revision of
4 these criteria and procedures? Definitely not
5 negotiated rulemaking. If we use negotiated
6 rulemaking, we're going to be bringing all these
7 states and all of these other parties to the
8 table, and every time that that happens in Indian
9 Country, it seems that the Tribes end up with the
10 short end of the stick on the regulations. So I
11 would say definitely not negotiated rulemaking.

12 I think if you're looking at maybe
13 developing a Tribal/Federal work group that would
14 have regular consultations on drafts, some sort of
15 mechanism in that arena which would be much more
16 friendly.

17 Finally, I just wanted to mention I do
18 today represent the Assiniboine and Sioux of the
19 Ft. Peck. I also represent Tesuque's Pueblo down
20 south in the Aamodt settlement. And both of those
21 clients of mine, they do have Congressional
22 Legislation approving their settlements for water.

23 However, we struggle constantly with
24 trying to get sufficient funding, as was mentioned
25 by the Chippewa Cree, to implement the settlement. 60

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1 We're also even very concerned that we
2 continue to have funding available for litigation
3 and negotiation for attorneys through that
4 implementation process. It seems that once we got
5 the settlements done and achieve that major
6 hurdle, the work really began. The work began
7 negotiating all the agreements to implement the
8 settlement, and we consistently, every year, go
9 and have to fight for the funding.

10 Again, some settlements had mandatory
11 money. A lot of them don't. I know there's not
12 fairness there either. I think that that needs to
13 be cleaned up. I don't think it's fair when some
14 Tribes have to work so hard every single year.
15 Other Tribes had a huge mandatory contribution.

16 And the other part of that, I guess I
17 want to mention real quick on the implementation.
18 I heard someone talk about indexing. That becomes
19 a real problem. When we do these settlements, we
20 do them at present day values. I think that's
21 included, present day cost estimates. By the time
22 you actually get to the point of building and
23 implementing the project, I mean your money, from
24 that present day that you settled to the time
25 you're building in the future is a very different

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1 amount. And so we need to have some consistency
2 on that indexing of the money from the time that,
3 you know, the settlement is achieved to the time
4 that we're actually building.

5 Finally, on the implementation, I'm very
6 concerned about the Bishop letter. I'm wondering
7 if the Bishop letter is going to create a whole
8 'nother hurdle for all of the Tribes that are
9 trying to implement, let alone those Tribes that
10 are still trying to work towards settlement. Are
11 we going to have to go now and satisfy OMB? And
12 I'm concerned, frankly, I feel like this Bishop
13 letter maybe promulgated these consultations. I
14 think that there must be considerable attention by
15 the Administration to the Bishop letter and that
16 is actually why we've moved forward at this 11th
17 hour of this Administration to have these
18 consultations. So I just have to put that out on
19 the table. I am hoping that with whatever happens
20 with the new election this Bishop letter can
21 promptly go away. So I think I have probably a
22 whole lot more to say, but I'll stop with that.
23 Thank you very much.

24 MR. WHITE: Again, my name is Dustin
25 White with the Chippewa Cree Tribe. I wanted to

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1 clarify my one statement about not benefitting the
2 taxpayers. I was referring to the cost. You
3 know, when you go from 258 million dollars in our
4 settlement to over 400 million, the cost
5 difference is not a benefit to the taxpayers. We
6 Indians, we do pay taxes. We are a taxpayer. The
7 benefit is, when I walk around Country View, one
8 of our villages on the Rocky Boy Reservation, and
9 I see kids playing on their front yard that looks
10 like this carpet, when I get this water treatment
11 plant running and when I can see kids running
12 through the sprinkler and having fun, that's a
13 cost benefit.

14 When I can go down to Big Sandy, off
15 reservation, and watch people water their yards
16 instead of once a week or twice a week, they can
17 actually have a garden, and you can see grandpa
18 and grandma out there working the garden, that's a
19 cost benefit to the taxpayer.

20 When I can go to Brady and have people
21 get off the boil order and drink a cup of water
22 off the tap, off reservation, that's a benefit to
23 the taxpayer. There is a huge a taxpayer benefit
24 in every one of these settlements. That line in
25 the Bishop letter should be deleted. When I can

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1 go out and catch a nine-pound walleye out of
2 Bonneau Lake in my boat, that's a benefit to the
3 taxpayer.

4 So I don't even know where that statement
5 came from in the Bishop letter. How can you
6 justify what a benefit is? How can you put a cost
7 on that? Thank you.

8 MR. ARCHAMBAULT: Yeah, my name is
9 Donovan Archambault again. And I have a question,
10 I think, and then a comment. But my question is
11 this: The State approved our compact in 2001.
12 And here we are in 2016. And some guy from Utah,
13 or wherever he's from, of the Legislature says,
14 Oh, it's a taxpayers' concern. Well, doesn't the
15 taxpayers elect the Governor of Montana and the
16 Legislature? That's who we have negotiated with
17 and believe, because they have approved our
18 compact. And that was 15 years ago. And I don't
19 know why this guy from out wherever he's from has
20 a concern about the taxpayers here in Montana. I
21 guess he's a head of OMB or something and they
22 control all the money. But still if we satisfy
23 the -- if this concerns the taxpayers, we
24 satisfied that, because they approved ours.

25 And I guess the other comment that I

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1 would like to make before I leave is that -- go
2 back to what these negotiations were based on
3 originally. You know, it was with the Federal
4 Government, or the Federal team, OMB -- or not --
5 Justice and BOR and BIA. Well, now we got
6 everybody involved in it. Like Majel said,
7 We're -- we have MACo -- what is that
8 organization? Montana County Commissioner
9 Organization or something. We're negotiating with
10 them. We're negotiating with City Government.
11 And that was never in the rules. When did them
12 rules change?

13 So now we got some outsider from outside
14 of Montana telling us how we need to please the
15 taxpayers. And to me, I think we've already done
16 that.

17 And the benefit that we're going to
18 receive from this thing, I hope, is just like the
19 gentleman from Rocky Boy said, our children out
20 there playing on the lawn instead of playing on a
21 gravel pit outside the house here on the
22 reservation. So the benefits are going to be
23 maybe not totally monetarily, but I would like to
24 see everybody have a garden again. But I think
25 you got to look further than just what the

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1 monetary value of something is. And like every
2 Tribe here talked about the spiritual and cultural
3 aspect of what that water means to us. When you
4 look at what's happening at Standing Rock, you
5 know, the Army is sitting out here in the river
6 and the others, the county sheriff is pushing the
7 Indians into the river. There's your water, you
8 know. I think that's ludicrous and I think that
9 you, as our negotiators, our trustee, and, you
10 know, when Justice comes up and says, Well, you
11 got to cut your claim in half. The only reason we
12 have to cut our claim in half is because we don't
13 have any water users on Ft. Belknap that are
14 white. And I think maybe we do have to go back to
15 Keepseagle and the other lawsuits on
16 discrimination, because that's what it is. Thank
17 you.

18 MS. FOX: I would just like to ask, are
19 all these comments going to be available to look
20 at? I know you said that they would be available
21 on their site, and I haven't seen anything yet.

22 MS. WILLIAMS: I will answer that
23 question. We have court reporters at each
24 session. We also are compiling notes internally.
25 At the end of the process, we intend to put all

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1 the transcripts on the website. And I guess sort
2 of like what Majel said, this is the end of the
3 Obama Administration. However, what we are
4 attempting to do is have these three
5 consultations, assemble the record, and assemble a
6 report that can be handed over to the next
7 Administration for them to consider what action
8 they want to take based on these consultations.
9 So we will have them all up there once we complete
10 the three consultations. I think we've just now
11 got the transcript from the Phoenix consultation.
12 And if the feeling is we should put the
13 transcripts up as soon as we get them, we could do
14 that, too.

15 MS. FOX: I guess I would like to see
16 that so that, you know, maybe if we missed
17 something in our final comments --

18 MS. WILLIAMS: I think that's fine.
19 Matter of fact, Omero, my right-hand man there, we
20 will post them on the website. We just now got
21 them.

22 MS. FOX: Okay. Thank you.

23 MR. CAPOSSELA: My name is Peter
24 Capossela. I'm a lawyer out of Eugene, Oregon. I
25 have been involved in a couple of water settlement 67

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1 negotiations. With respect to the criteria, I
2 think that economic feasibility requirements for
3 new Tribal projects are too strict and our
4 requirements are above and beyond reclamation
5 beneficiaries, any projects that non-Indian
6 irrigators have had to face. And I think that
7 presents a real challenge and suppresses the
8 amount of water that's made available to Tribes
9 under settlement.

10 So I do think the criteria needs to be
11 changed and the economic feasibility requirements
12 for Tribal water projects need to be diminished.
13 They're too strict.

14 I'm involved in a situation in
15 North Dakota where the Tribe requested the
16 appointment of a Federal team, and the appointment
17 of a Federal team was denied. And I think the
18 Tribe could live with that were it not for a lack
19 of transparency in the process. So I think the
20 Indian water rights working group should be more
21 transparent in its decision-making and its
22 appointment -- everybody understands there's
23 limited federal resources, but that's no reason
24 for the process to lack transparency in the manner
25 that it does.

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1 With respect to the role of the
2 Department of Justice, I understand that's not one
3 of the questions that was proposed for the
4 consultation, but over 40 years ago the American
5 Indian Policy Review Commission made findings
6 relating to conflict of interest in the Department
7 of Justice with the different hats that it wears
8 and the Indian water settlement process. And that
9 conflict of interest has never been resolved. And
10 I think we see it today at Standing Rock where the
11 Department of Justice is fighting the Tribe in
12 court and yet is trying to work with the Tribe and
13 the other agencies on the conflict of interest --
14 it happened here yesterday and I saw them going
15 with the three agencies. So the role of the
16 Department of Justice, institutionally, there's a
17 conflict of interest, that there have been
18 concerns amongst Tribal Leaders for decades and
19 that conflict of interest has never been resolved.
20 And one of the ways that it manifests itself in
21 water settlements is the disclaimer and waiver
22 language. The strict language that Justice tends
23 to require in the settlement documents, waivers of
24 future claims on disclaimers of liability, and,
25 you know, in defending the liability of the

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1 United States at the same time as purporting to be
2 the trustee for the Tribes.

3 And so a lot of the settlements include
4 language that was insisted upon by Justice, which
5 is not in the best interest of the Tribes. And it
6 relates to the conflict of interest and it comes
7 out and it ends up in the settlements in waiver
8 language where Tribes are waiving future rights in
9 some cases that are not strictly related to the
10 water claims at all and are unnecessarily broad
11 and unnecessarily restrict the Tribes moving
12 forward. And then that creates a lot of problems
13 at home on the reservations, as well, in terms of
14 Tribes working with Tribal members in their
15 communities to get everybody to buy in to a
16 settlement after years of difficult negotiations.

17 So those are just a couple of comments
18 that I wanted to make, based on my experience and
19 the need for reform. And I appreciate your
20 conducting the consultation. And in some
21 respects, tacitly acknowledging that there's a
22 need to reform. The OMB memorandum, I think, is a
23 significant step in the wrong direction, as has
24 been stated, and it would be good if the
25 Administration, prior to the end of the

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1 Administration, would keep OMB in their cubicle,
2 in their box. And they play a role, obviously,
3 with the settlements that are ongoing and the
4 settlements that have been enacted by Congress,
5 but this takes long enough, I think, as you've
6 heard already, and injecting OMB as an overseer in
7 our negotiating teams isn't going to streamline
8 anything. It's just going to make it more
9 difficult.

10 Obviously, Tribes for many years has
11 asked the Government to one-stop shopping and
12 streamline the bureaucracy and injecting OMB in
13 the process is just a major step in the wrong
14 direction. Thank you very much.

15 MS. RUSSELL: I just want to make one
16 comment I meant to make. One of the reasons why I
17 think water settlements have been so difficult,
18 and so when we get into determining the exposure
19 of the United States, we get into some of those
20 difficult, I guess, debates. I think the kingpin
21 of a lot of that is that we're in this precedent
22 where it seems a paramount component of any Indian
23 water settlement is to protect the non-Indian
24 water user. And it seems that every single
25 settlement, if you go through them, we're always

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1 having to make sure that we protect that
2 non-Indian water user, and that seems to be the
3 crux of what we're looking at when we're
4 determining United States exposure. How important
5 is that non-Indian water right? I mean, if you
6 look at the Crow settlement, we protect all the
7 non-Indian water users in the Crow settlement. If
8 you look at the Blackfeet settlement language,
9 there's some protection there. So it seems a lot
10 of these Indian water settlements, we've gotten
11 right into that mode where we continually have to
12 work with Tribes taking a subordinating right, I
13 hate to say that, and some settlements don't, in
14 the black and white say that, but the way that
15 they're operated and implemented and drafted,
16 we're actually looking at very strong language
17 that protect that non-Indian water user.

18 And I know that's a very difficult issue,
19 but it seems that we have gotten ingrained into
20 one of the first considerations, when we're
21 negotiating, is how do we deal with these
22 non-Indians and how do we protect that use. And I
23 think that that's a precedent that it would be
24 incredible to change. We only have 26 water
25 settlements, and you've got all these other Tribes 72

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1 standing in line looking at settling.

2 And that's the other thing. I heard
3 someone say they got denied a Federal team. It
4 seems you have to file litigation in order to get
5 your Federal team. And that's hard. It's hard
6 for a Tribe to actually have to get into that
7 posture of filing litigation in order to move
8 forward with getting a team and doing active
9 negotiation. So, I guess, that's a second point.
10 Thank you.

11 MR. HUQ: Thank you. My name is Syed
12 Huq. I'm the Director of Water Resources for the
13 Rosebud Sioux Tribe. Many of the things that I
14 wanted to say have already been spoken, but I just
15 mention a few things that I, as the Manager and
16 the Director of Water Resources face this problem
17 on Rosebud Reservation in managing the water
18 resources.

19 You know, we got this Ogallala Aquifer,
20 which run from Texas in the south to South Dakota
21 in the north, and the northern tip of the umbrella
22 is on the Rosebud Reservation and we manage that.

23 Now, in order to manage this, we need to
24 know what our resource looks like, what the
25 quantities and qualities are. But, you know what, 73

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1 when the State of South Dakota issues permits
2 within the exterior boundaries of the reservation
3 without our knowledge, without consent from the
4 Rosebud Sioux Tribe, how do you expect the Water
5 Resources Manager and Director to take care of the
6 resource that I don't know who is taking away our
7 resource?

8 Now, BIA -- I know our Council
9 Representative mentioned that if it lifted the
10 moratorium on the Indian Water Code, we have
11 developed a Water Code and we have submitted that
12 to the State of South Dakota. You know what?
13 They don't want to pay much attention to that.
14 And then we got McCarran Amendment hanging over
15 us, you know there is a litigation, there is a
16 legal problem, and we have to go to the State
17 court to settle our issue, how do you expect the
18 Tribe to make a case in the State against the
19 State? So these are things that BIA needs to reel
20 in and the Department of Interior needs to take
21 into consideration to resolve, so that we can
22 manage a resource that belongs to the
23 United States of America, that belongs to the
24 State of South Dakota, that belongs to the Rosebud
25 Sioux Tribe in a way that is, you know, working

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1 for us. As the hydrologist, as a scientist, it is
2 difficult.

3 Then the other thing, you know, when I'm
4 a member of MRRIC. I don't know if you guys have
5 heard about it. Missouri River Recovery
6 Implementation Committee. The Corps of Engineers
7 have all kinds of, you know, presentations and
8 hearings. They talk about human consideration.
9 The main stem dams, the six main stem dams, their
10 impact on human beings. They're talking about two
11 birds and one fish. But when we bring up the
12 human consideration, the impact of the dams on the
13 Indian reservations, how they've inundated Tribal
14 Land, including Rosebud, they want to just ignore
15 it. They say, Well, human consideration, we're
16 meaning, you know, what impacts these reservoirs
17 have presently. But what impact they created for
18 Indian economic development and even just for
19 living? It is such a devastation they don't want
20 to recognize it. So this is, again, an area where
21 BIA and the Department of the Interior can play a
22 role. That they need to take this into
23 consideration. When you talk about human
24 consideration, these are the things that the Tribe
25 have to say. And we at Rosebud Sioux Tribe,

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1 Oglala Sioux Tribe, Standing Rock Sioux Tribe, and
2 Lower Brule Sioux Tribe, we presented in writing
3 to the Army Corps of Engineers about human
4 consideration, about the impacts of these main
5 stem dams on Tribal land and Tribal population.
6 Thank you.

7 MR. STAFNE: Good afternoon. I guess,
8 it's afternoon now. I'm A.T. Stafne. I'm from
9 the Ft. Peck Tribes. I'm a private citizen. I
10 previously served many years on the Tribal
11 Government, but I do serve on the Assiniboine
12 Sioux Rural Water Supply System. They told me we
13 were having a meeting in Billings and I need to
14 come down here to ask for money for our water
15 project, our Assiniboine and Sioux rural water
16 system.

17 Ft. Peck Tribes is using some of their
18 water that was bona fide as Tribe water to serve
19 the people of Northeast Montana, not only the
20 Ft. Peck Reservation, but from the Ft. Peck
21 Reservation all the way to the North Dakota
22 border, which is about 200 miles from the west
23 edge of the reservation to the North Dakota
24 border, to the Canadian border.

25 This Assiniboine Sioux water will be

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1 flowing through pipeline servicing the whole
2 population of that Northeast Montana. To do that,
3 we are required, because we do not get enough
4 funding, we have to go out to BIA, BOR, and
5 anybody that has any money, to construct this
6 enormous pipeline system. So that's the reason
7 why I thought we were coming to Billings.

8 But in this way, I guess, this is asking
9 for money, too, for our project. So I'm happy to
10 be here. And I hear all the problems from all of
11 the other reservations, and I just like to say, we
12 also have these problems. It seems like the heart
13 of the project is right there on the
14 Missouri River and on the reservation at
15 Wolf Point, Montana. But this water is flowing
16 right past by Indian housing and going to the big
17 cities, bigger towns. They are getting the
18 service before Tribal members are. Now, not all
19 the Tribal members are being passed. There are
20 some areas. But still, this water is already to
21 the North Dakota border and is certainly on its
22 way to Canada. And yet, there's Indian families
23 on the reservation, and I hear the people say they
24 have to boil the water. We are still doing that,
25 while the water, the purified water is flowing

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1 past us, because we don't have money. So that's
2 the reason why I'm here today to let people know.
3 Although we are using our water to, you know, give
4 our -- I guess that's the word, "give" is
5 appropriate, I think -- we're allowing them to
6 flow past us and let the citizens who are not
7 Tribal members somehow getting water before us.

8 But this is not the reason I'm here to
9 say that. I'm just here to say that we do need
10 funding. So if there's any agency here that we
11 come to visit, we have to travel to DC many times
12 and to act as beggars and go to these Departments
13 saying we need money, we need finances. And so
14 that's very hard on the Tribes, but we do it. So
15 that's my message today. Thank you.

16 MS. WILLIAMS: Anyone else have remarks?

17 (No response.)

18 MS. WILLIAMS: Okay. I'm reminded by the
19 court reporter that if you have written materials,
20 if you could please submit them to Omero and we'll
21 submit them to you. So you can do that either if
22 you have written product today, an extra copy, or
23 send it by e-mail so we can make sure that those
24 written remarks get accurately included in the
25 transcript.

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1 We will be having another consultation
2 session in Seattle in January. I think we're
3 still trying to settle on a date. And so if you
4 want to come to Seattle and once again give us
5 your views, you're more than welcome. If you have
6 friends or relatives in that area that want to
7 come and give us their views, it's very much
8 appreciated. The idea of this consultation is to
9 compile a record that could then be presented to
10 the decision-makers in the Department of the
11 Interior to make a determination on what they want
12 to do with Indian water rights settlements and
13 these criteria and procedures going forward.
14 There's a lot of need out there. There are
15 settlements on the hill right now. There are
16 settlements that are hoping to get on the hill
17 right now. And I think we all need to try to
18 improve the process as much as we can.

19 So thank you all for coming and thank you
20 all for your comments. We very much appreciate
21 your attendance and your thoughtful comments.

22 (Whereupon, the proceedings duly ended.)
23
24
25

Tribal Consultation

CERTIFICATE

STATE OF MONTANA)
 : ss.
County of YELLOWSTONE)

I, Sharon L. Gaughan, RDR, CRR, CRC,
Court Reporter for the State of Montana, residing
in Billings, Montana, do hereby certify:

That I was duly authorized to and did
report the proceedings in the above-entitled
cause;

I further certify that the foregoing 79
pages of this transcript represent a true and
accurate transcription of my stenotype notes.

DATED this, the day of ,
2016.

/s/ Sharon L. Gaughan
Sharon L. Gaughan, RDR, CRR, CRC

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