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Congress of the United States
House of Representatives
Washington, DC 20515–2600

April 21, 2015

The Honorable Eric Holder
Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

The Honorable Sally Jewell
Secretary
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Mr. Attorney General and Madame Secretary:

As you are well aware, Indian water rights legislation involving American taxpayer dollars have not moved recently through Congress because of disagreements over the levels of funding, federal liability, and interpretations of earmark rules. Unfortunately, these well-intentioned bills are stalled and often become token legislation. This has created uncertainty for many parties, including some Tribes, affected states, and local citizens.

The House Committee on Natural Resources, led by Chairman Rob Bishop, has offered a practical solution to help this process move forward and bring some Indian water rights matters to a much-needed conclusion. Similar to the process regarding the Administration's approval of U.S. Army Corps of Engineers projects embodied under the "Water Resources Reform and Development Act of 2014" (P.L. 113-121), your Departments have the capacity to certify and approve water rights compacts and settlements, resolve budgetary disputes within those settlements, and negotiate any extenuating legal uncertainties in a manner that benefits Tribes, affected states, and localities and taxpayers. Under this process, your Departments would submit the certifications and final documents prior to introduction and movement of legislation in the House of Representatives. I strongly support this approach as a means to expedite the process, particularly for the Blackfeet Tribe's Water Compact. Our Tribes and Montanans deserve a government that proactively works towards a solution rather than continuing the status quo.

The Montana Legislature approved the Blackfeet Water Compact in 2009 after 20 years of negotiations. Though bipartisan bills have been introduced each Congress since 2010, there has been little movement or signs of real progression. The tribe has waited long enough. I strongly urge both Departments, under your guidance and leadership, to swiftly work with the Blackfeet Tribe to thoroughly examine their proposal, determine federal costs, and negotiate a final

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settlement. The Committee has laid out reasonable expectations in the attached letter to propel this process forward and I encourage you to work expeditiously to reach a resolution. Once a final deal is reached and Chairman Bishop has introduced the legislation, I will fight to see its passage in Congress.

I look forward to working with you to move Montana's settlements forward. Thank you for your assistance and prompt consideration of this request.

Sincerely,

Ryan Zinke
Member of Congress

ROB BISHOP OF UTAH
CHAIRMAN

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

February 26, 2015

The Honorable Eric Holder
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Sally Jewell
Secretary
Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Mr. Attorney General and Madame Secretary:

The House Natural Resources Committee (Committee) has primary authorizing jurisdiction over the legislative resolution of Indian water rights claims within the House of Representatives. Additionally, given the longstanding policy of the United States that disputes regarding Indian water rights should be resolved through negotiated settlement rather than through litigation, both of your Departments play key roles in negotiating and developing settlements regarding these claims before they are ever considered by Congress.

The Committee recognizes that settlements to these matters are generally preferable to protracted litigation, which does little to provide water supply and financial certainty for settling and other parties. Importantly, settlements, if crafted correctly, can also provide relief to the United States from burdensome legal obligations and benefit all American taxpayers. The Committee recognizes that the Executive branch is charged with implementing existing Indian water rights settlement criteria and procedures designed to meet these goals.[1]

[1] Department of the Interior Working Group on Indian Water Settlements for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims, Federal Register, Vol. 55, No. 48, March 12, 1990.

Due to the direct linkage between your efforts in negotiating the proposed resolution of these claims and our responsibility in enacting such proposals both for the benefit of the United States interests and to help Tribal and non-tribal parties, it is important that we work together to facilitate Congressional consideration when you have reached resolution.

Due to growing federal debt and increased budgetary pressures from existing Indian water rights settlements, it is important that the proposed settlements, their proposed legislation and the federal costs associated with them be fiscally responsible and justified in order to protect the American taxpayer and future Tribal needs.

As Chairman of the Committee, I write this letter to inform you of the process that the Committee intends to follow when considering future Indian water rights settlements during this Congress and to inform you of the assistance the Committee will need from you and your designees in order to proceed forward.

Given the role your Departments have in negotiating each proposed settlement, to help expedite the Committee's consideration of proposed legislation enacting such settlement that is fiscally responsible, your departments – in concurrence with the Office of Management and Budget – must also play a significant and initial role in certifying and explaining the Administration's support of the financial aspects of legislation codifying such settlement to the Committee. Put simply, your Departments must convey support for and forward the settlements and the proposed authorizing legislation, specifically including federal spending levels, before any Committee consideration takes place.

To that end:

1. I anticipate each of you will provide a statement to the Committee affirming that each proposed settlement resolution transmitted by your Department adheres to the current criteria and procedures.

2. I ask that your Departments specifically affirm to the Committee that a settlement meets Criteria 4[2] and 5(a) and (b)[3] to ensure that the American taxpayer is deriving benefits from any such settlement prior to Committee consideration. Related to such determination, both Departments will be expected to affirm that a particular settlement represents a net benefit to the American taxpayer as compared to the consequences and costs of not settling litigation, and specifically support the federal financial authorization included in the proposed legislative text.

3. For settlement legislation to be considered, the Attorney General or his/her designee must have conveyed to a court and all settling parties have agreed, in writing, to the settlement pending a legislative resolution before it is forwarded to the Committee for it to be considered.

4. Both Departments and the settling parties must have approved, in writing, the legislative text needed to codify the settlement before it is transmitted to the Committee and have provided that proposed text to the relevant court.

5. Based on precedent[4], the Committee requests that the Department of Justice consent to being available to testify if any legislative text is considered by the Committee related to such proposals.

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[2] Criteria 4, as included in Federal Register, Vol. 55. No. 48, March 12, 1990 states: "The total cost of a settlement to all parties should not exceed the value of the existing claims as calculated by the Federal Government."

[3] Criteria 5(a) and (b), as included in Federal Register, Vol. 55. No. 48, March 12, 1990 state: "Federal contributions to a settlement should not exceed the sum of the following two elements: a. First, calculable legal exposure – litigation costs and judgment obligations if the case is lost; Federal and non-Federal exposure should be calculated on a present value basis taking into account the size of the claim, value of the water, timing of the award, likelihood of loss. b) Second, additional costs related to Federal trust or programmatic responsibilities (assuming the U.S. obligation as trustee can be compared to existing precedence.) – Federal contributions relating to programmatic responsibilities should be justified as to why such contributions cannot be funded through the normal budget process."

[4] Testimony of Mr. Peter Steenland, Appellate Section Chief, Department of Justice, before the Joint Hearing on S.2259 before the Subcommittee on Water and Power of the Senate Committee on Energy and Natural Resources and the Senate Committee on Indian Affairs, S. Hrg. 103-943, Aug. 4, 1994.

6. Both Departments must list the legal claims being settled in any document transmitting legislative text; and

7. Such settlements and proposed legislation shall not include financial authorizations for claims already settled by Congress or claims that have no legal basis.

The actions of your Departments, as outlined above, will play a very critical role in expediting the Committee's consideration of these important settlement efforts. If your Departments follow this process – starting with settlement legislation being proposed and supported by the Administration -- it is my intent to then introduce the settlement legislation at the Administration's request and consider such legislation in the Committee at the appropriate time. In conclusion, it is my intent that your actions prior to Committee consideration will determine whether negotiated settlements proceed in the legislative process.

I look forward to working with you to help achieve fiscally responsible settlements that help federally recognized tribes, other settling parties and the American taxpayer.

Sincerely,

Rob Bishop
Chairman

cc: The Honorable Raul Grijalva