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July 1, 2016

The Honorable Loretta Lynch
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 Ms. Attorney General and Madame Secretary:

In a February 26, 2015, correspondence (Letter) to Secretary Sally Jewell and former Attorney General Eric Holder, I outlined a number of items that needed to be sent to Congress prior to consideration of any proposed Indian water rights settlement. As I indicated, these types of settlements are generally preferable to prolonged litigation and, when crafted correctly, can also benefit the American taxpayer through the relief of liabilities associated with legal obligations.

In the Letter, I asked that the Justice and Interior Departments (Departments) "specifically affirm Criteria 4 and 5(a) and (b) published in a 1990 Federal Register notice[1] to ensure that the American taxpayer is deriving benefits from any such settlement"[2] and I requested that both Departments "affirm that a particular settlement represents a net benefit to the American taxpayer as compared to the consequences and costs of not settling litigation".[3]

[1] Federal Register, Vol. 55, No. 48, March 12, 1990
[2] Bishop February 26, 2015 Letter to former Attorney General Holder and Interior Secretary Jewell, p. 3
[3] Id.

The Natural Resources Committee recently considered two traditional Indian Water Rights settlements under the protocol outlined in the Letter.[4] Specifically, the Committee held hearings in good faith on the proposed Blackfeet and Pechanga water rights settlements even though the Departments sent letters on both settlements indicating that the Office of Management and Budget was "...still assessing and evaluating the information necessary for it to definitively conclude whether the proposed settlement meets all of the *Criteria and Procedures.*"[5] Subsequent to those letters, an Interior Department official testified at a Water, Power and Oceans Subcommittee Legislative Hearing that "both the Pechanga settlement and the Blackfeet settlement, adhere to the Criteria and Procedures."[6]

During that hearing, there were a number of questions related to the attached tables (Tables 1 and 2) provided by the Pechanga Tribal Chairman that outlined his net benefits and costs of the proposed Pechanga Settlement.[7] These constructive tables were similar to another attached table (Table 3) provided by the Department of the Interior related to another federal, water-related settlement.[8] Upon questioning at the June 23, 2016 hearing on the Pechanga settlement, the Interior Department witness could not specify whether Tables 1 and 2 were identical to the Administration's calculations on the Pechanga settlement. Furthermore, the witness did not specifically affirm that the settlement represented a net benefit to the American taxpayer as compared to the consequences and costs of not settling litigation.

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[4] The Water, Power and Oceans Subcommittee held a May 24, 2016 hearing on a Discussion Draft entitled the "*Blackfeet Water Rights Settlement Act of 2016*" and a June 23, 2016 hearing on a Discussion Draft entitled the "*Pechanga Band of Luiseño Mission Indians Water Rights Settlement Act*"

[5] Letter from the Department of the Interior and the Department of Justice to Chairman Rob Bishop in regards to the "*Pechanga Band of Luiseño Mission Indians Water Rights Settlement Act*" dated May 17, 2016, p. 1 and Letter from the Department of the Interior and the Department of Justice to Chairman Rob Bishop in regards to the "*Blackfeet Water Rights Settlement Act of 2016*" dated May 16, 2016, p. 1.

[6] Statement of Dionne Thompson, Deputy Commissioner for External and Intergovernmental Affairs, Bureau of Reclamation, before the Water, Power and Oceans Subcommittee on the Discussion Draft of HR___, "*The Pechanga Band of Luiseño Indians Water Rights Settlement Act*", June 23, 2016, p. 1

[7] Written Testimony of the Honorable Mark Macarro, Chairman, Pechanga Band of Luiseño Indians before the Water, Power and Oceans Subcommittee Legislative Hearing on the Discussion Draft of HR___, "*The Pechanga Band of Luiseño Indians Water Rights Settlement Act*", June 23, 2016, pages 13 and 20

[8] Letter from the Department of the Interior to Representative David Valadao in regards to the Drainage Settlement between the Westlands Water District and the United States dated April 21, 2016, p. 7.

These definitive answers are central to moving forward on these proposed water rights settlements. While I appreciate that the Administration has worked cooperatively with the Committee to advance legislation involving certain settlements, I request more specificity on whether the proposed Blackfeet and Pechanga settlements represent a net benefit to the American taxpayer. Given that there is precedent (Table 3) for the Administration in providing such information, I request that the Administration provide similar tables to indicate the Administration's opinion that there is a net benefit and net cost savings to the federal government on these settlements or concur that the Administration's calculations and cost-benefit analyses arrive at the same conclusion, as each tribe has calculated, that each individual settlement is a net benefit for and provides net cost savings to the United States and American taxpayer. If you choose the latter, please provide justification on the concurrence.

I look forward to your response so that we can consider advancing these settlements and bring certainty and resolution to tribes and the American taxpayer.

Sincerely,

Rob Bishop
Chairman

cc: The Honorable Raul Grijalva, Ranking Member, Committee on Natural Resources
The Honorable Shaun Donovan, Director, Office of Management and Budget
The Honorable Ken Calvert, Member of Congress
The Honorable Ryan Zinke, Member of Congress

Attachment 1

Tables 1 and 2: Pechanga Settlement Costs and Benefits, as provided to the Natural Resources Committee by The Honorable Mark Macarro on June 23, 2016

Programmatic Responsibility Comparison

Type of cost	Federal savings resulting from settlement	Federal contribution to settlement	Potential net savings to federal government
Programmatic federal costs			
• Infrastructure	$23,500,000	$17,900,000	$5,600,000
• Acquisition of water rights or lease	$57,800,000 to $289,400,000	$11,600,000	$46,280,000 to $277,800,000
TOTALS	$81,380,000 to $312,900,000	$28,500,000	$51,880,000 to $283,400,000

Litigation Comparison

Type of cost	Federal savings resulting from settlement	Federal contribution to settlement	Potential net savings to federal government
Estimated federal damages			
• Future replacement water	$57,880,000 to $289,400,000		
• Accounting for water resources lost to tribe in past	$79,500,000		
Litigation costs	$18,500,000		
TOTALS	$155,880,000 to $387,400,000	$28,500,000	$127,380,000 to $358,900,000

Attachment 2

Table 3: San Luis Drain settlement, as provided by the Department of the Interior in a April 21, 2016 letter to Representative David Valadao in regards to the Drainage Settlement between the Westlands Water District and the United States.

U.S. Bureau of Reclamation's Assessment of Costs and Benefits to Federal Government of Westlands' Drainage Settlement (Presented in Present (2015) Net Worth)

Benefits to Federal Government	Costs to Federal Government
$1.3 billion saved[1] *$2.5 billion (estimated cost of drainage for Westlands)* *minus* *$1.2 billion (present value of Westlands construction repayment)*	**$295 million in 2015 dollars**[3] *(Westlands repayment of CVP capitalized construction obligations of $375 million, discounted to value in 2015)*
$0 to $2 billion saved[2] *(Takings claims)*	**$13.6 million San Luis Drain Feature Re-Evaluation (SLDFRE)**[4] *(Westlands repayment of SLDFRE capitalized construction costs of $23.6 million, discounted to value in 2015)*
	$2.6 million Grasslands Bypass[5] *(Westlands O&M obligation for Grasslands Bypass)*
	Total of $19.9 million over next 15 years[6] *(Reclamation Reform Act Relief)*
Total Savings: $1.3 to $3.3 billion	**Total Costs: $331.1 million**

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