



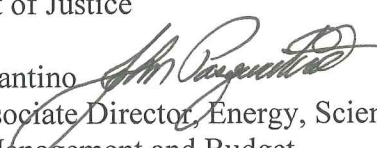
EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

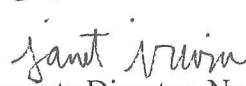
June 23, 2016

MEMORANDUM

TO: Letty Belin
Senior Counselor to the Deputy Secretary
Department of the Interior

Sam Hirsch
Principal Deputy Assistant Attorney General (PDAAG)
Department of Justice

FROM: John Pasquantino 
Deputy Associate Director, Energy, Science, and Water Division
Office of Management and Budget

Janet Irwin 
Deputy Associate Director, Natural Resources Division
Office of Management and Budget

THROUGH: Ali Zaidi
Associate Director, Natural Resources, Energy, and Science
Office of Management and Budget

SUBJECT: Review Process for Proposed Water Rights Settlements

It has been the policy of this and previous Administrations that disputes regarding Indian water rights should be resolved through negotiated settlements rather than litigation. Accordingly, in 1990 the Department of the Interior (DOI) adopted the *Criteria and Procedures for Indian Water Rights Settlements* to establish the basis for negotiation and settlement of claims concerning Indian water resources.¹ These *Criteria and Procedures* were developed by the DOI's Working Group on Indian Water Settlements, and have historically guided Administration analysis of settlements.

The review of recent settlements has underscored the necessity to improve the process that guides negotiation and review of Indian Water Settlements. For example there remains uncertainty over the definition of programmatic and trust responsibilities and the estimates used to determine the value of claims. Specifically, programmatic and trust responsibilities should be differentiated and clearly delineated in the analysis provided by DOI and DOJ. Further, pursuant to the *Criteria and*

¹ Criteria and Procedures for the Participation of the Federal Government In Negotiations for the Settlement of Indian Water Rights Claims, (Federal Register / Vol. 55, No. 4B / Monday, March 12, 1990 / Notices 9223)

Procedures, the analysis should include a justification as to why Federal contributions relating to programmatic responsibilities cannot be funded through the normal budget process.

The *Criteria and Procedures* provide a framework for negotiating settlements. They also provide the Administration with a basis to assess the adequacy of proposed settlements. In order to facilitate a thorough review of proposed settlements, OMB has, and will continue to, work closely with DOI and DOJ to acquire the information and analysis necessary to assess the degree to which settlements meet the *Criteria and Procedures*.

OMB expects that DOI and DOJ will implement the following steps to enable adequate and timely review of future proposed settlements:

1. DOI, DOJ, and OMB will establish a regular process for detailed discussions on individual proposed settlements as they are being discussed or negotiated, including written analysis of how proposed terms and conditions are consistent with the *Criteria and Procedures*, to allow opportunities for preliminary review, and to incorporate OMB feedback in the negotiations. For example, and in accordance with the *Criteria and Procedures*:
 - a. If DOI decides to establish a negotiating team, OMB shall be notified, in writing.
 - b. For all pending settlements, as specified in the *Criteria and Procedures* (Phase I, part 3), a fact-finding report outlining the current status of litigation and other pertinent matters will be submitted by the negotiating team to OMB, including quantification, to the extent possible, of each of the elements listed in the *Criteria and Procedures*.
 - c. Any recommendation to the Secretary on a negotiating position should contain views of OMB.
 - d. OMB should be notified of Secretarial approval of a negotiating position before negotiations commence.
 - e. DOI and DOJ will provide individual quarterly written status updates on each settlement under negotiation and document how the proposed terms being negotiated are consistent with each element of the *Criteria and Procedures*.
2. Prior to submission of a letter of Administration position on a proposed settlement for OMB clearance, DOI and DOJ will provide a detailed description of the proposed settlement, including a list of all of the *Criteria and Procedures* with specific descriptions of how the settlement meets each of those requirements, including, to the extent possible, quantification of costs and benefits associated with the settlement.
3. Final submission of a letter of Administration position on a proposed settlement for OMB clearance should clearly indicate DOI and DOJ concurrence and provide adequate and reasonable time for review by OMB and discussions among OMB, DOI, and DOJ.

We look forward to working with both Departments to review proposed settlements in a thorough and timely manner.