

**TESTIMONY OF LESTER RANDALL, CHAIRMAN,
KICKAPOO TRIBE IN KANSAS, IN SUPPORT OF S. 2154,
THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS
SETTLEMENT AGREEMENT ACT**

**COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
JULY 18, 2018**

Introduction

Good afternoon, Chairman Hoeven, Senator Moran, and other members of the Committee. I'm Lester Randall, Chairman of the Kickapoo Tribe in Kansas. I'm here today to testify on behalf of my Tribal Council and Tribal members, in support of S. 2154, a bill to approve our Water Settlement Agreement, enacted in September 2016 with the State of Kansas. That Agreement accomplishes a number of critical steps in the Tribe's decade's long effort to achieve water security. I'll provide an overview of those steps for you in a moment.

First, I wanted to express the Tribe's appreciation to the State of Kansas and the leadership and technical staff in its Department of Agriculture and Division of Water Resources. A meaningful, respectful partnership was created between the Tribe and the State on water management in the Delaware River basin that we believe will have lasting value to both sovereigns. Thanks also to former Governor Sam Brownback and current Governor Jeff Colyer, and also to Attorney General Derek Schmidt.

I also want to express the Tribe's appreciation to Senator Moran and his staff, for their commitment and leadership on this vital matter to the Tribe. And also, on the House side, to Congresswoman Jenkins and her staff for all of their support and assistance.

Attached as Exhibit 1 are copies of Federal and State of Kansas letters relevant to S. 2154.

Attached as Exhibit 2 are examples of copies of key local supporters of S. 2154.

Every Indian water settlement that comes to Congress is born of its own unique circumstances. The Kickapoo Water Settlement bill is no different. What makes this legislation, and the underlying Agreement between the Tribe and the State, unique is that we are asking the Congress to approve a water agreement evolving from a project the Congress blessed 20 years ago through the Department of Agriculture's Small Watershed Program.

The Kickapoo Tribe in Kansas has lived in northeast Kansas since it entered into the 1832 Treaty of Castor Hill with the United States. In a later treaty in 1854 the Tribe ceded over 600,000 acres of land to the United States, retaining approximately 150,000 acres for our Reservation. An additional cession of land took place in 1862, which the Tribe opposed, opening our Reservation to allotment and homesteading.

The Kickapoo Tribe was the first of three other Indian tribes in northeast Kansas to compact with the state for their gaming operations called the “Golden Eagle Casino”, the largest employer in Brown County. Economic development is the top priority for the Kickapoo Tribe, to meet the growing needs of its community and to maximize its economic resources for the benefit of tribal members. The Kickapoo Tribe has a diverse workforce made up of over 130 professionals and technical staff members. The day-to-day operations include issues with environmental, health, road maintenance, compliance, financial, legal, gaming, and planning community growth.

Drought is no stranger to our Reservation in northeast Kansas, which is east of the 100th Meridian, often thought of as a dividing line between the drier western United States and the wetter Midwest. Governor Colyer issued a state-wide drought declaration in March of this year, which is still in effect. And the Division of Water Resources has notified water users in the Delaware River basin, where our Reservation sits, of impending cutbacks.

Water, while being sacred to the Kickapoo, is an essential cornerstone to a vibrant homeland. A dependable water supply is essential for us to meet our present and future housing, economic development, fire protection, and agricultural pursuits at the Tribal farming enterprise. By virtue of its 1832 Treaty with the United States, the Tribe possesses senior water rights under the *Winters* doctrine, which implicitly reserved sufficient water from the Delaware River and its tributaries to make the Reservation a viable, permanent homeland for the Kickapoo people.¹

The Tribal community’s drinking water needs are critical. The Reservation sits on a rock formation blocking access to groundwater. The only current water supply is the Delaware River, a modest sized river and its tributaries that flow through the Reservation. We’ve relied on a small dam and water treatment plant on the river, one that we built with a small grant from the United States government in the 1970’s. Over the years the dam and treatment plant have been repeatedly repaired, but both structures are old and inadequate for the current needs.

After construction of the small dam, pump house and treatment system, in the mid-1970s, the Tribe wanted to embark on a larger scale water development project. The Tribe sought the assistance of the Bureau of Indian Affairs in the early 1980s, who sent us to the Soil Conservation Service (“SCS”), which is now the Natural Resources Conservation Service (“NRCS”). Under the SCS Small Watershed Program, also known as the PL 83-566 Program, the Tribe in conjunction with a local watershed district, four local conservation districts, the State of Kansas, and SCS/NRCS, began in 1983 a decade long effort to design, plan and seek congressional approval of a water storage project known as the Upper Delaware and Tributaries Project. The centerpiece of the Project was a multi-purpose storage project to be built on Plum Creek.

Plum Creek is a tributary to the Upper Delaware River. A federal Watershed Agreement was executed by all the parties in 1994, following a full NEPA Environmental Impact Statement review, and a final Record of Decision issued by NRCS. Congressional authorization was secured

¹ The *Winters* doctrine is aptly named after the seminal reserved water case *Winters v. United States*, 207 U.S. 564 (1908), reaffirmed in subsequent Supreme Court decisions and followed by numerous lower federal and state courts over the past century. *See, generally*, Cohen, Felix, HANDBOOK OF FEDERAL INDIAN LAW (2012 Ed.), § 19.03 at 1210-1227.

for the Plum Creek Project in 1996 by the Senate, and in 1998 by the House. We have been told by NRCS' legal counsel that the USDA considers the congressional authorization of the Project to still be valid. See Exhibit 3.

As a project sponsor, it is the Tribe's responsibility under the PL-566 Program to secure two things – first, the land rights for the Project, and, second, the water rights.

As for the land rights, the Tribe over the past decade has purchased about 250 acres of land in the Plum Creek drainage – with its own money – where the Project would be located. It will continue those efforts, offering fair market value or land exchanges where possible. Depending on the final size of the Project, the Tribe already owns over half of the needed land.

As for the water rights, in September of 2016, after several years of technical negotiations, the Tribe and the State of Kansas' Department of Agriculture and Attorney General entered into the Agreement that quantifies the Tribe's water right, and how that water right is to be administered by the State on the Delaware River and its tributaries. The U.S. Departments of Interior, Justice and Agriculture were involved in the negotiation of the Settlement Agreement.

An important next step is to have Congress approve the Tribal-State Settlement Agreement. By enacting S. 2154, and approving the Settlement Agreement, the Congress:

- Approves the water right of 4,705 acre feet per year as a federal reserved water right;
- Directs the federal Interior Department to execute the Settlement Agreement and to carry out the terms of the Agreement consistent with this Act;
- Establishes the storage, seepage and evaporation components of the Tribal water right;
- Establishes the administration of the right by the State as the senior water right in the river basin;
- Establishes the Tribe's monitoring and reporting requirements for water consumption on the Reservation;
- Directs the Tribe to enact a water code that recognizes and protects the interests of Kickapoo Tribal members who own interests in allotted land on the Reservation, and who have an interest in the water right;
- Directs NRCS, in consultation with the Interior Department, to commence a study of and make recommendations for alterations to the Plum Creek Project to effectuate, in part, the Tribe's water right;
- Splits the waiver of claims by the Tribe against the United States, consistent with the fact that S.2154 does not authorize the appropriations of funding to construct water storage at the Plum Creek Project or anywhere else on the Reservation, and consistent with a settlement agreement between the Tribe and the United States in a tribal trust lawsuit

resolved in April of 2012;

- As set out in more detail below, the Settlement Agreement and S. 2154 are in compliance with the Interior Department's 1990 Criteria and Procedures, to the extent relevant, given the unique nature of the Settlement Agreement;
- S. 2154 does not authorize the appropriation of, or appropriate funds, for a water storage project for the Tribe at the Plum Creek Project site or elsewhere. Once reviewed by NRCS, the Tribe contemplates the parties will come back to Congress with recommendations for water storage and the costs associated therewith;
- Though not relevant on the Senate side, the Tribe has been cognizant of the "Bishop" process on the House side, and has worked with Congresswoman Jenkins' office to engage the House Natural Resources Committee staff on the unique, phased nature of this settlement.

The Tribe, Its Membership and Its Reservation, and the Consequences to the Tribal Community from a Lack of Access to a Dependable Water Supply

The Tribe has an enrolled membership of 1,600, about 400 of whom live on or near its 30 square mile Reservation in northeast Kansas. The Tribe is organized under the Indian Reorganization Act of 1934, and its government operates under a constitution approved by the Secretary of the Interior in 1937. The Tribe was moved in the 19th century several times by the United States government – from the Fox River Valley in Wisconsin to multiple locations in Illinois, Missouri and Kansas – pursuant to nine treaties spanning a fifty-year period between 1809 and 1862.² See Exhibit 4. The Tribe has lived in its present territory in Kansas since 1832, twenty-nine years prior to Kansas Statehood in 1861. See Exhibit 5.

The Tribe presently holds equitable title to 4,859 acres, and fee title to another 2,189 acres, of land within its Reservation boundaries located within Brown County, Kansas. Tribal members own equitable title to another 2,861 acres of allotted land. See Exhibit 6. Under Federal law the underlying legal title to this land is held in trust for the Tribe and its members by the United States.

The Tribe created the Kickapoo Housing Authority in 1966-67. The federal Housing and Urban Development HUD awarded the Tribe and its Housing Authority a grant to construct tribal homes in 1967-68. Prior to that, our homes on the Reservation – about 20 in number – were served through individual shallow wells at each home. These homes were scattered throughout the Reservation on individual allotment lands.

The first housing project was developed on tribal lands, homes were closer together and required a larger water supply. That first housing project involved the construction of 40 homes. Second and third housing projects followed in the next few years. Because the Tribe did not have its own water source, it had to create a means to hook up to the City of Horton's water supply, a

² See 7 Stat. 117 (1809); 7 Stat. 130 (1815); 7 Stat. 145 (1816); 7 Stat. 200 (1819); 7 Stat. 202 (1819); 7 Stat. 208 (1820); 7 Stat. 391 (1832); 10 Stat. 1078 (1854); 12 Stat. 1249 (1862).

distance of 5 miles from the housing projects. This was a very expensive alternative, and was only viewed as a stop-gap measure. It was the only viable alternative, since HUD would not provide funding for housing without an assurance of water availability.

The current Kickapoo Water Treatment Plant currently supplies water to both Indian members and non-Indians – about 60 persons – who live within Reservation boundaries. The Tribe operates its own Tribal School – grades K through 12 – and would like to supply water to this facility, but is unable to supply the school with water from its own system.

The Tribe also provides basic fire protection to all Reservation residents, both Kickapoo tribal members and non-Indians alike, under mutual aid agreements executed with neighboring jurisdictions. The Tribe's ability to do so, however, is limited by an unreliable water supply. Reservation residents and numerous Tribal structures are in constant danger. In March of 2005, an arsonist set a large fire on Kickapoo lands, destroying 1,500 acres. Without the aid of neighboring communities, a larger land area, including homes and other structures, would likely have been destroyed due to the shortage of water.

Several housing and economic development opportunities for the Kickapoo people have been lost over time because the Kickapoo Tribe could not ensure that the Tribe's water works could meet their water needs. Several years ago the Kickapoo Tribe was granted, but had to reject, a 25-unit housing project awarded by the State of Kansas Housing Resources Corporation due to the lack of a stable water source. And a constrained water supply restricts economic development opportunities on the Reservation, which in turn restricts the prosperity of the Tribe and the Kickapoo people.

The Hydrology of the Kickapoo Reservation, and the Crippling Effects of Drought and Drought Sensitivity

East of the 100th Meridian, the Delaware River in northeast Kansas traverses the Kickapoo Reservation and benefits from more than 35 inches of precipitation annually, with a total average runoff for the entire river of about 200,000 acre feet, about 60,000 acre feet of which is annually available to the Reservation, about 8,750 acre feet from the Plum Creek drainage alone. Unfortunately, despite its location, drought and water shortage are not an unknown or unexpected part of living in northeast Kansas. The Reservation faces off-again-on-again drought conditions resulting in a continual challenge in obtaining an adequate and reliable water source to meet the basic health and sanitary needs of its residents. Indeed, northeast Kansas including our Reservation has been identified by the Kansas Water Office as a “drought sensitive” area of the State.

In 2003, for instance, the Delaware River and its tributaries were completely without flow for over 60 days due to the severe drought conditions in the Midwest. The Tribe was forced to severely ration water and truck over 7,000,000 gallons of drinking water to the Reservation. The Bureau of Indian Affairs provided the Tribe \$186,000 for water-hauling assistance. The Tribe's commercial operations, as well families and non-Indian residents, were forced to cut water consumption by almost 60%. Droughts since 2003 continue to beset the Tribe and its members.

In times of natural drought, such as that experienced in the summer of 2003, the combined effect of the drought and the man-made impoundments and other land treatment actions in the watershed have caused the Upper Delaware River to run dry for long periods of time. A generation ago and earlier the watershed was far more reliable for meeting the Tribe's needs. Now the water shortages come with increasing frequency, and are not just connected to drought events. Developments upriver have altered the hydrology.

On a year-in and year-out basis, the Tribal Council has to issue periodic notices to the customers served by its water company that the system is in a shortage situation, and voluntary restrictions go into effect. In the most challenging conditions the cutbacks are mandatory. Indeed, in March of this year the Kansas Water Office announced that the water rights above the Muscotah gage on the Delaware River were put under State administration due to drought conditions in the watershed. See https://kwo.ks.gov/docs/default-source/drought/rpt_09_midjune2018_drought_061218_dk.pdf?sfvrsn=0 Governor Colyer also issued a statewide drought declaration at the same time, which is still in effect. See <https://kwo.ks.gov/docs/default-source/drought/exec-order-18-11-final.pdf?sfvrsn=2>

The Kickapoo Tribe's Forty-Five Year Effort to Develop a Water Supply under Federal Law

Water security is an essential element of tribal sovereignty, and for more than 45 years the Tribe has been on a quest to achieve water security and stability. Despite best efforts, the Tribe's long-term goal of water security for itself and all Reservation residents has to date fallen short.

In the mid-1970s the Tribe constructed its own rudimentary water diversion, treatment and supply system with financial assistance from the Federal government. In 1976-77, the Tribe was awarded a grant from what was then called the Economic Development Administration, or EDA, of the U.S. Department of Commerce. The grant, in the amount of \$1.3 million, was for the construction of a low water impoundment dam on the Delaware River, an intake and raw water pump station, water treatment plant, distribution system, and sewage treatment plant. It supplies water to both Indians and non-Indians alike who live within the Reservation boundaries and within the reach of the delivery system. See Exhibit 7.

The low water impoundment dam was developed as a temporary supply measure to serve the Tribe until a larger, permanent reservoir could be developed on the Reservation. A 1970s 25-year comprehensive plan for Reservation growth and development, funded by a grant from the Administration for Native Americans (ANA), of the U.S. Department of Health and Human Services, revealed that the small project funded by EDA would only be the first of several steps taken by the Tribe to secure water for long-term needs. It also found that without impoundment the surface water from the Delaware River system would not meet *long term* water needs, and that the groundwater sources within our Reservation boundaries were insufficient.³

³ The Indian Health Service and the BIA funded exploratory investigations for groundwater at about that same time, which found that there were no reliable sources of groundwater within the

Construction began on the EDA-funded dam and water treatment facility in 1977, with completion in 1978. Then-Kansas Governor Bob Bennett attended the ribbon-cutting ceremony. Given our *Winters* rights to water, the Tribe appreciated that the State of Kansas never challenged our diversion of water from the Delaware River into our fledgling treatment plant and water delivery system.

At the same time, in 1978, the local watershed district – the Nemaha Brown Joint Watershed District #7 – submitted to the SCS a General Plan for the development of the Upper Delaware River and Tributaries Watershed for the development of various water storage, flood control, soil erosion and land treatment activities. Kansas law required Nemaha Brown to prepare their General Plan, in order to be eligible to secure funding for water and soil conservation programs from the Kansas State Conservation Commission. SCS also required the watershed district to have an approved General Plan. See Exhibit 8.

The General Plan expressly mentioned the Tribe's fervent intent to develop a municipal, commercial, industrial and fire protection water supply for its Reservation. The Plan identified 5 possible sites within the reservation for the development of a reservoir storage project. One of those sites was on Plum Creek, a tributary to the Delaware; the other four were on other Delaware tributaries. *Id.*

In the early 1980s the Tribe first learned of the federal PL-566 Small Watershed Program, funded and administered by SCS. The PL-566 Program law was amended by Congress in 1981 to enable Indian tribes for the first time to become local sponsors of watershed development plans, and to be eligible for funding from SCS for those purposes. Early on the Tribe wrote SCS and inquired whether it could become a local project sponsor under the PL-566 program. The Tribe was told it could not be an exclusive sponsor, because it did not have jurisdiction over the entire Delaware River watershed. Under Kansas law Nemaha Brown shared responsibility for the watershed with the Tribe. Neither the Tribe nor Nemaha Brown would have exclusive authority to operate federal flood and soil erosion control programs in the Delaware River watershed. Officials from the Tribe and Nemaha Brown then traveled to Washington, D.C. together in February of 1983 to work out more of the details of a joint sponsorship with SCS officials.

This led to the Tribe and Nemaha Brown formally creating a Joint Watershed Board in 1983. Exhibit 9. The Agreement states that "[i]t is the understanding of the District and the Tribe that the goal of the two local agencies is the ultimate construction of all needed structures within the watershed." The Plum Creek project was one of the key water storage projects contemplated by the parties to the Joint Agreement. Both the SCS and the Kansas State Conservation Commission officially endorsed the joint co-sponsorship agreement, as did then Senator Nancy Landon Kassenbaum.

Reservation boundaries. A similar study was conducted by the Kansas Geological Survey in subsequent years, producing the same results. http://www.kgs.ku.edu/Hydro/Publications/OFR00_31/index.html Consequently, the Tribe has to rely exclusively on surface water for tribal domestic and commercial needs.

The Tribe was then able to secure \$156,000 from the Bureau of Indian Affairs to retain a Topeka engineering firm to conduct the preliminary engineering analysis to initiate the PL 566 application process. This was a highly unusual step for the BIA, to expend Indian trust funds for the technical services of an engineering firm to be used not only to benefit Indian reservation lands but also off-Reservation, non-Indian interests. Ultimately, it enabled the Kickapoo-Namaha Brown PL-566 application to receive priority ranking in the 1990s by SCS.

Between 1983 and 1994, the Tribe, the Namaha Brown and SCS analyzed and selected viable sites for flood retention dams and related land treatment activities to be part of the final Watershed Plan. Public meetings sponsored jointly by the Kickapoo Tribe and Nemaha Brown were held in 1990 and 1991 to explain the nature and scope of the project to interested individuals and communities in Brown County. Those meetings kicked off the formal EIS process under the National Environmental Policy Act (“NEPA”).

In June of 1994, the Kickapoo Tribe entered into the Watershed Agreement with the watershed district, four local conservation districts, the State of Kansas Department of Agriculture, and the SCS to jointly develop the Watershed Plan. The Agreement allowed cost-sharing of flood control and water supply projects under the PL-566 Program. It set forth an express plan to control erosion, provide drinking water and reduce flooding for the entire watershed, through the construction of 20 small flood retention dams and one large, multi-purpose water storage project, the Plum Creek dam and reservoir, designed to provide a reliable long-term water supply for the Kickapoo reservation. The Plum Creek Project was designed to be a 400 acre water surface area and 1200 acre land area, multi-use reservoir that will provide for sufficient water to meet the present and future needs of the Kickapoo Reservation and its Indian and non-Indian residents. See Exhibit 10.

A notice of publication of the final EIS was published in the Federal Register on May 13, 1994. See Exhibit 11. NRCS issued a Record of Decision in 1994, approving the project’s compliance with NEPA, and recommending authorization by the Office of Management and Budget and the Congress. See Exhibit 12. On June 30, 1994, the United States Army Corps of Engineers (“ACE”) issued a § 404 Clean Water Act permit – Permit # DA-199401028 – for the Plum Creek project to Nemaha Brown. Revised special conditions for the permit to Nemaha Brown were issued by the Corps of Engineers on October 16, 2002.

In 1998, the parties to the 1994 Watershed Agreement obtained final Congressional authorization for the development of the Project, including Plum Creek, under the Federal PL-566 program. See Exhibits 13 and 14.

The Plum Creek storage project is the largest storage site on the Reservation. It was designed in 1994 by NRCS to hold about 10,500 acre feet of storage capacity, about 3,500 acre feet of which is for flood control, and about 7,000 feet of which is for storage of water for consumptive uses. The Plum Creek sub-drainage provides sufficient water to fill a project of that capacity. On average, over the past 35-year period of record, about 8,570 acre feet of water per year flows out of Plum Creek into the Delaware River. In most years this will provide the Tribe with a reliable source of water. Extended drought cycles may make complete annual refill impossible year in and year out, and so the project’s storage will have to be managed with that in

mind. There are smaller storage project sites on the Reservation, and those also will be kept in mind in future water planning efforts. But the Tribe does not own as much of the land area at those smaller alternative sites.

Overview of the September 2016 Kickapoo Tribe Water Rights Settlement Agreement

The Water Right Settlement Agreement establishes the nature, extent and characteristics of the Tribal Water Right and the respective rights, duties and obligations of other parties to the agreement. Under the Agreement, the Tribe may divert or redivert, as available, up to 4,705 acre-feet of water per year with a priority date of October 24, 1832 for any direct use for the Tribe. Domestic use by members and allottees does not count against the Tribal Water Right. Kansas domestic water rights are exempt from administration to protect the Tribal Water Right. The Tribe may store in one or more reservoirs, for the purpose of subsequent direct use, up to a combined volume of 18,520 acre-feet. The combined volume may be increased if seepage characteristics of the reservoir or reservoirs requires. Direct use and storage allowances of the agreement were determined based on municipal build-out concept, using methods consistent with the Kansas law for Kansas water users. See Exhibit 15.

The Settlement Agreement includes an attached Memorandum of Agreement which establishes clear and transparent procedures for communication, monitoring and protection of the Tribal Water Right. The MOA provides for a process of annual reviews by the State and Tribe to insure it remains current, especially as the Tribe develops storage.

Under the Settlement Agreement, the Kansas Department of Agriculture - Division of Water Resources and the Chief Engineer have the following responsibilities:

- Agree to recognize the Tribal Water Right with a priority date of October 24, 1832.
- Review applications of Kansas water rights to ensure prevention of injury to the Tribal Water Right and to provide notice of applications to the Tribe.
- Monitor the basin as prescribed in the attached Memorandum of Agreement.
- Respond to notices of impairment through evaluation and administration, as needed.
- Review annually, with the Tribe, the Memorandum of Agreement to insure it remains appropriate as the Tribe develops its demand and constructs storage.

Under the Settlement Agreement, the Kickapoo Tribe of Kansas has the following responsibilities:

- Construct and maintain dams and other water structures.
- Provide the Chief Engineer copies of inspection reports and notice of signification changes in construction and operation, any structural problems of dams or reservoirs and proposed remedies, and any serious problems such as dam failure.
- Enact a Tribal Water Code.
- Meter all diversion and annually report water use.

- Provide additional data required by the Chief Engineer to administer water rights to protect the Tribal Water Right.
- Review annually, with KDA-DWR, the Memorandum of Agreement.

It is generally believed that the Delaware River Basin has sufficient water supplies to satisfy the rights of the Kickapoo Tribe without reducing the established water rights of Kansas water right holders.

Key Provisions of S. 2154, Kickapoo Water Rights Settlement Legislation

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

SECTION 2. PURPOSES. – to approve and authorize the Kickapoo Tribe Water Rights Settlement Agreement between the Tribe and the State. Direct Interior and Agriculture Departments to execute the provisions of the Agreement and the Act.

SECTION 3. DEFINITIONS.

SECTION 4. – authorizes, ratifies and confirms the Settlement Agreement. Secretary of the Department of the Interior directed to execute the Agreement. Key provisions of the Agreement affecting the Department and the U.S. include:

- approval of tribal water code [Article 6],
- monitor State administration of state water law in the Delaware River Basin [Article 7],
- publish findings in the Federal Register when all conditions necessary for completion of the Agreement have been fulfilled [Article 10],
- waivers and release of claims [Article 12],
- Compliance with all federal laws, no exceptions of waivers.

SECTION 5. KICKAPOO TRIBE WATER RIGHTS. – tribal water rights confirmed and held in trust, allottee due process protections, tribal water code to allocate and administer tribal water rights to allottees and members, Secretarial approval of tribal water code.

SECTION 6. EFFECT OF KICKAPOO TRIBE WATER RIGHTS SETTLEMENT AGREEMENT AND ACT . – does not affect the State’s administration of state water rights, does not affect the ability of the U.S. to enforce federal law, does not affect ability of U.S. to fulfill obligations as trustee to other tribes or allottees, does not confer jurisdiction on state courts, enforceability date.

SECTION 7. WATER FACILITIES. – NRCS PL-566 Small Watershed Program and Upper Delaware River Watershed Plan. Congressional approval in 1996 and 1998, authorizing a water storage project for the Tribe. Study and make recommendations to Congress to possibly alter plan to effectuate, in part, the Tribal water rights.

SECTION 8. WAIVER AND RELEASE OF CLAIMS; RETENTION OF CLAIMS.

– Tribe and the U.S. waive claims to water rights, Tribe waives claims against U.S. for failure to establish water rights, but not damages resulting from failure to establish, quantify, acquire, develop, enforce or protect such water rights. See Exhibit 16.

SECTION 9. JUDICIAL PROCEEDINGS. – on enactment of Act, proceedings to bind all water rights in the Delaware River Basin to the Agreement and the Tribe’s water rights, so that Kickapoo water rights become enforceable.

SECTION 10. – MISCELLANEOUS PROVISIONS. – limited waiver of immunity, other tribes not affected, limitation on claims for reimbursement, nothing affects current law, no use of condemnation or eminent domain.

Compliance with the Federal Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims

The Kickapoo Settlement is consistent with the United States’ responsibility as trustee to Indians, and will secure to the Tribe the right to use and obtain benefits from Reservation water resources, thus ensuring that the Tribe will receive equivalent benefits for claims it will waive as part of the settlement. The settlement resolves all outstanding Kickapoo water right claims, quantifies a tribal right to 4,705 acre-feet for all present and future needs on the reservation, and does so while creating a mechanism for administering the tribal water right vis-à-vis the established water rights of Kansas water right holders, thereby creating a framework that will encourage long-term cooperation among local water interests, the State, the Tribe and the United States. The settlement includes a process that will specify who may use the tribal water right, where, and under what conditions. Finally, this settlement is a crucial and long-awaited step towards achieving a permanent tribal homeland promised to the Kickapoo Tribe in the treaties and agreements ratified by Congress in the 19th century that serve as the foundation of the relationship between the Tribe and the United States.

The Tribe doesn’t disagree that as a general proposition the Federal Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims, 55 FR 9223-01 (“C&Ps”) provide important guidance to the Department in settling Indian reserved water rights, which involve claims by the Tribe and third parties, and necessarily involve the Department as trustee. And the Tribe doesn’t disagree that the C&Ps have a role to play in the implementation of S.2154, once enacted. But, as in all things, context matters. Behind S. 2154, and the Settlement Agreement it approves, is an extraordinarily long history of struggle by the Tribe to attain water security and equity in the Delaware River watershed, with the knowledge of the Interior Department and the Bureau of Indian Affairs, but without the trustee’s involvement, until very recent years. This struggle included the resolution of legal claims in an expensive federal court lawsuit brought by the Tribe to which the United States was a party. Key representatives of the Interior, Agriculture and Justice Departments, as well as water engineering

consultants, played an integral role in the resolution of the litigation and the negotiation of the Settlement Agreement.

By letter dated April 6, 2018, the Interior Secretary's Indian Water Rights Settlement Office notified the Tribe of its appointment of a federal negotiation team under the C&Ps. See Exhibit 17. The team's formal appointment (though the members of the team have not all been identified as of the date of the writing of this testimony) at this point in the settlement process represents another unique aspect of this Settlement. S. 2154 is a settlement of the Tribe's water right and the myriad details concerning administration of the right in the Delaware River watershed. It was negotiated and signed by the Tribe and the State in September of 2016. The Tribe does not see the utility of a federal negotiation team in relation to the Settlement Agreement that S. 2154 approves, with one exception. As noted below in relation to criteria #4, however, Section 7 of S. 2154 contains a key direction to the Natural Resources Conservation Service to study and make recommendations to Congress for changes and improvements to the previous watershed plan authorized by Congress in 1998 that included a multi-purpose storage project on Plum Creek, a tributary to the Delaware River. The federal negotiation team will most certainly play an instrumental role in that process, and it should include as a team member an official from the Kansas office of the NRCS.

Notably, the settlement does not include a Federal financial contribution. Instead, it is focused on the Federal government's programmatic responsibilities, including assistance by the Bureau of Indian Affairs (BIA) to work with the SCS/NRCS to fulfill storage needs promised in the early 1990s. The Settlement and this Act resolve some but not all of the Tribe's damages claims against the Federal government, as explained earlier. Importantly, the Settlement provides resolution to a primary tribal claim against the federal government, that of the failure to secure and protect the federal reserved water rights of the tribe in a basin that has seen considerable federal investment on private lands (but not on the Tribe's trust lands).

An important component of the settlement involves progress towards development of storage. The SCS now NRCS completed a study in the mid-1990s of a proposed storage project on Plum Creek that was found to be economically feasible and consistent with federal guidelines at the time. S. 2154 directs NRCS, the Tribe and the Interior Department to revisit the 1994 Plan and make recommendations to Congress for further action.

The following is a description of how the process employed to settle the Tribe's water rights complies with the Criteria and Procedures.

1. The Criteria and Procedures are applicable to all negotiations involving Indian water rights claims settlements.

The Criteria and Procedures are applicable as the Tribe and the United States government seek to quantify reserved Indian water rights through a negotiated framework.

2. The Department of the Interior will support legislation authorizing those agreements to which it is a signatory party.

The Department of Interior is not yet a signatory party to the Kickapoo Global Settlement Agreement ("Agreement"). However, it has participated actively through the negotiations that have been an outgrowth of the Tribe's lawsuit. The Department cannot become a party to the settlement agreement until authorized to do so by Congress via ratifying legislation.

3. Settlements should be completed in such a way that all outstanding water claims are resolved and finality is achieved.

The Agreement will resolve all the outstanding Kickapoo water claims on the Delaware River and its tributaries that flow through the Kickapoo Reservation. The Settlement Agreement secures the water rights of all the water users in the Delaware River Basin vis-à-vis the Kickapoo rights, and creates a mechanism for administration of all federal and state water rights.

The Agreement outlines the Tribe's allocation, use, timing and potential locations of use.

Finality respecting the Tribal Water Right is achieved through the Agreement. In doing so each party thereby agrees to abide by its terms. The Tribe has agreed to waive all claims against state law based water users and the United States Government relating to the water rights the Agreement recognizes, in exchange for federal legislation approving the Agreement and directing the Secretaries of Interior and Agriculture to effectuate the terms of the Agreement.

4. The total cost of the settlement to all parties should not exceed the value of the existing claims as calculated by the Federal Government.

The Settlement Agreement does not authorize appropriations and therefore this C&P element is not relevant at this stage. As explained earlier in this testimony, Congress in 1996 and 1998 authorized the Delaware River Project, subject to the availability of appropriations, under the authority of the PL-566 Small Watershed Program. Following receipt of recommendations from the Natural Resources Conservation Service per Section 7 of S. 2154, the Tribe will ask Congress to take up the funding authority and mechanism at that time. It is possible that the appropriations process may proceed through the agriculture committees of the House and Senate, as would occur under the PL-566 program.

5. Federal contributions to a settlement should not exceed the sum of the following two elements, (1) United States liability if the claims were litigated and if the case is lost; federal and non-federal exposure in present value based on the size of the claims, value of the water, timing of the award, and likelihood of loss and (2) additional costs related to federal trust or programmatic responsibilities (justification for why such contributions cannot be funded through the normal budget process)

See #4, above. This criteria is not relevant to S. 2154 and the Settlement Agreement.

6. Settlements should include non-Federal cost-sharing proportionate to the benefits received by the non-federal parties.

See #4, above. This criteria is not relevant to S. 2154 and the Settlement Agreement.

7. Settlements should be structured to promote economic efficiency on reservations and tribal self-sufficiency.

The Tribe, the State of Kansas and the United States have negotiated a unique settlement that works to promote efficient use of the water resources of the Delaware River in northeast Kansas, and thereby promoting economic development on the Kickapoo Reservation, tribal self-sufficiency, and the economy of northeast Kansas.

For over 40 years the Tribe has been working to secure an adequate and clean water supply. During this time the Tribe has conducted various studies regarding economic development projects, housing developments, public safety requirements and community development projects. The studies consistently demonstrate a need for a reliable water supply to be successful.

Currently, the Tribe has a need for increased housing on the Reservation. However, the Tribe has been limited in its ability to build homes, in part because it does not have an adequate water supply necessary for housing developments. The Agreement will provide for sufficient water for the Tribe to build homes for members. The same holds true for economic development enterprises on the Reservation.

In addition, the water supply will increase public safety on the Reservation. The Reservation has been subjected to fires, which have threatened Tribal member's homes and the Reservation's natural resources. An adequate water supply will assist the Tribe in achieving its fire safety goals.

8. Operating capabilities and various resources of the Federal and non-Federal parties to the claim negotiations should be considered in structuring a settlement.

Throughout the multi-year process of negotiations the parties – Tribal, State and Federal – have built strong relationships with one another that have fostered a willingness to achieve a positive settlement. Each party has contributed its unique resources to the Agreement. During the negotiation process the parties' strengths and weakness were considered and each party contributed to the Agreement in a complimentary manner. The final Agreement is a manifestation of each party's contribution to the Agreement.

9. The U.S. shall not bear any obligations or liability regarding the investment, management or use of such funds.

See #4, above. This criteria is not relevant to S. 2154 and the Settlement Agreement.

10. Federal participation in Indian water rights negotiations should be conducive to long-term harmony and cooperation among all interested parties through respect for the sovereignty of the of the States and tribes in their respective jurisdictions.

The Tribe appreciates the relationships it established with the other negotiating parties through this process. In particular, the Tribe appreciates the closer ties it's developed with the State Department of Agriculture, Attorney General, and Congressional delegation on water related matters. These closer ties build stronger channels of communication on other substantive topics.

Moreover, the terms of the Agreement facilitate long-term harmony among all the signatories through providing stability by securing the parties water rights. The Agreement also provides detailed processes for implementing the provisions of the Agreement. Through the process of agreeing to the rules, all the parties carefully considered their obligations in the Agreement. As a result, all the parties are aware of their obligations and have willingly accepted such obligations. This provides for long term harmony and stability among the water users on the Delaware River.

11. Settlements should not include a list of provisions, subparagraphs a-j.

See #4, above. These criteria are not relevant to S. 2154 and the Settlement Agreement.

12-14. Specific cost/financial considerations.

See #4, above. These criteria are not relevant to S. 2154 and the Settlement Agreement.

15. Settlement agreements should include the following standard language: Federal Financial contributions to a settlement will normally be budgeted for, subject to the availability of funds, by October 1 of the year following the year of enactment of the authorizing legislation.

See #4, above. This criteria is not relevant to S. 2154 and the Settlement Agreement.

16. Settlements requiring the payment of a substantial Federal contribution should include standard language providing for the costs to be spread-out over more than one year.

See #4, above. This criteria is not relevant to S. 2154 and the Settlement Agreement.

The Settlement and proposed legislation do not include financial authorizations for claims already settled by Congress. The claims that will be settled have a legal basis, have not been previously resolved by Congress, and were not settled in prior cases against the United States. The Settlement carries over damages claims not waived in an earlier, 2012 Settlement Agreement between the Tribe and the United States. See Exhibit 16. The Settlement does not resolve additional claims against the United States brought by the Tribe; the legal assessment, and potential financial contribution of the United States to their resolution, are forthcoming and not included as part of this Settlement.

Conclusion

Thank you again for convening this hearing on S. 2154. It is a unique piece of legislation driven by unique circumstances. It is important that Congress act now to approve the Kickapoo Water Right Settlement Agreement through the enactment of this Act, to enable these sovereign entities, with assistance from the United States, to continue to build on the momentum gained in the Agreement and the Act. Indian water settlements typically are built in increments, and this is no different in that respect.

INDEX OF EXHIBITS*

<u>Exhibit No.</u>	<u>Description</u>
1	Federal and State of Kansas letters relevant to S. 2154
2	Examples of key local supporters of S. 2154
3	April 8, 2016 Letter from Deputy Regional Attorney of USDA to Steven Moore Regarding authorization of the Watershed Plan
4	Map of Former and Present Kickapoo Lands
5	1832 Treaty with the Kickapoos
6	Current Map of Tribal and Allotted Land Tracts
7	Small Tribal Dam, Delaware River and Water Treatment Facility Photos
8	General Plan, Upper Delaware and Tributaries, Nemaha –Brown Watershed Joint District, July 1978
9	Nemaha- Brown-Kickapoo Joint Watershed Board Agreement
10	Jan. 1994 Watershed Plan and Environmental Impact Statement (EIS) for Upper Delaware and Tributaries Watershed (Atchison, Brown, Jackson, and Nemaha Counties, Kansas)
11	Notice of Publication of Final EIS in Federal Register, May 13, 1994
12	1994 Record of Decision: Upper Delaware and Tributaries Watershed (Atchison, Brown, Jackson, and Nemaha Counties, Kansas)
13	1996 Final Senate approval for the development of the Project, including Plum Creek, under the Federal PL-566
14	1998 Final House approval for the development of the Project, including Plum Creek, under the Federal PL-566
15	Sept. 2016 Final Settlement Agreement between Kickapoo Tribe and State
16	Joint Stipulation of Settlement between Defendants (Salazar, Secretary of the US Interior) and Kickapoo Tribe of Kansas (Apr. 11, 2012)
17	April 6, 2018 Letter from Interior Secretary to Kickapoo Tribe notifying Tribe of its appointment of a federal negotiation team under the C&Ps

* A full set of these Exhibits is available at
https://www.narf.org/nill/documents/20180711_kickapoo_testimony_s2154.html

Exhibit 1

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018

1320 Research Park Drive
Manhattan, Kansas 66502
(785) 564-6700



900 SW Jackson, Room 456
Topeka, Kansas 66612
(785) 296-3556

Jackie McClaskey, Secretary

Governor Sam Brownback

March 9, 2016

The Honorable Jerry Moran, Chair
Senate Appropriations Subcommittee on Agriculture
Dirksen Senate Office Building, Room 521
Washington, DC 20510

Chairman Moran:

On behalf of the state of Kansas, we, the undersigned, express our support for the enclosed Kickapoo Tribe Water Rights Settlement Agreement (Agreement) and the associated Memorandum of Agreement (MOA), and the terms and conditions described therein.

Final resolution of the lawsuit and implementation of this Agreement requires ratification by an Act of the United States Congress and approval by the United States District Court. We hope you accept this letter of support and assist the state in securing an expeditious and favorable review by Congress and implementation of the Agreement.

The purpose of the Agreement is to resolve all claims asserted by the Kickapoo Tribe in Kansas (Tribe) in the litigation initiated by the Tribe in June 2006, seeking a declaration of the existence and priority date of its Tribal Water Right in the Delaware River and its tributaries. In August 2007, the parties to the lawsuit agreed to suspend active litigation and to attempt to negotiate a resolution of the disputed issues. In 2007, the Court granted a stay of the litigation for that purpose. Since that time, the parties have worked cooperatively and in good faith toward that end.

The objectives of the Agreement are to establish the characteristics of the Tribal Water Right; remove causes of future controversy concerning water rights in the Delaware River Basin; permanently resolve certain damage claims and all water right claims; and establish the respective rights, duties and obligations of the Agreement parties.

The Agreement, reflecting nearly ten years of thoughtful discussion and rigorous technical evaluations, quantifies the Tribal Water Right, describes the standard procedures which the state shall take to protect the Tribal Water Right, and outlines a general procedure for the protection of water to be stored by reservoirs which the Tribe intends to build in the future.

This single, comprehensive Agreement is a favorable alternative for all parties involved, recognizing that the resolution of the lawsuit in the absence of this Agreement would entail great expense over many years, prolong the uncertainty of water availability to the region, and threaten the long-term economic well-being of the Tribe and its neighboring communities.

All Kansans benefit when we can avoid the high cost and uncertainty of litigation, and arrive at a negotiated settlement. We appreciate the opportunity to share our support and look forward to your favorable review and guidance as we seek to shepherd this Agreement through the requisite federal processes.

Sincerely,

Jackie McClaskey
Kansas Secretary of Agriculture



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

February 10, 2017

Ms. Alletta Belin
Senior Counselor to the Deputy Secretary
United States Department of the Interior
Office of the Secretary
Washington, DC 20240

Re: Kickapoo Tribe Water Right Claims

Dear Ms. Belin:

Tribal Council Vice Chairman Fred Thomas of the Kickapoo Tribe in Kansas has forwarded to me your letter of January 3, 2017, in which you request a letter from the State of Kansas endorsing the appointment of a Federal Negotiation Team pursuant to the Department of the Interior's 1990 Criteria and Procedures for Indian Water Rights Settlements, 55 Fed. Reg. 9223 (March 12, 1990), to assist the Tribe and the State in negotiating a water rights settlement agreement. As your letter acknowledges, the State and the Tribe, with the active involvement of the United States, have achieved a negotiated water rights agreement. Work remains, however, to complete the approval of the water rights agreement and the associated components of a full settlement that is approved by both the Congress and the federal court.

To assist the Department of Interior in being able to take a position as a matter of law and policy on a final comprehensive settlement, the State of Kansas supports the appointment of a Federal Negotiation Team. The Tribe and the State have developed a solid basis over the past few years for working together on the Tribe's reserved water rights, and it is our expectation that a Federal team will facilitate the speedy completion of that task as we move forward into the federal legislative approval phase.

Sincerely,

Derek Schmidt
Kansas Attorney General

Congress of the United States
Washington, DC 20515

October 19, 2017

Alan Mikkelsen, Chair
Working Group on Indian Water Settlements
Pamela Williams, Director
Secretary's Indian Water Rights Settlement Office
United States Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Re: Congressional Approval of Kickapoo Tribe Indian Water Settlement

Mr. Mikkelsen and Ms. Williams:

On September 8, 2016, the State of Kansas (the State) and the Kickapoo Tribe of Kansas (the Tribe) entered into a formal agreement approving a water right for the Tribe and associated details for the administration of the water right. The water right has an 1832 priority date, the most senior water right on the Delaware River and its tributaries that flow through the Kickapoo Reservation. Pursuant to the agreement, the Kansas Department of Agriculture will administer the right on that basis. The agreement includes consumptive, storage, and related seepage and evaporation water right components. Copies of the settlement agreement and summary information are available on the Kansas Department of Agriculture's website.¹ As you continue your review of the settlement agreement, we write to request your technical assistance and recommendations for consideration of the matter by Congress.

The settlement agreement has a long and complicated history. The Tribe worked extensively with the U.S. Department of Agriculture since the 1970s to plan, design, and conduct a full environmental review pursuant to the National Environmental Policy Act of a water storage project under the Natural Resources Conservation Service PL 83-566 Small Watershed Program. That project received Office of Management and Budget approval and congressional authorization in 1998, yet it stalled due to the inability of the Tribe to secure the necessary land rights. It is our understanding that since that time, the Tribe has been acquiring land for a storage project in the Delaware River basin at its own expense. Additionally, the Tribe, the State, and the United States worked cooperatively to reach a settlement agreement on the water right, a vital component to someday bringing a project to fruition. However, the draft legislation under your


¹ <http://www.agriculture.ks.gov/divisions-programs/dwr/interstate-rivers-and-compacts/kickapoo-indian-reservation>


review currently neither authorizes appropriations nor appropriates funding for a storage project, but it does set in motion a process to reevaluate the project that was approved in 1998, and to within two years of enactment bring recommendations back to Congress.

It is further our understanding that the State and the Tribe negotiated the agreement with the active involvement of attorneys from the Departments of Interior and Justice, and, accordingly, execution of provisions of the agreement that require federal involvement and responsibility depend on and will be directed by Congress as it considers approval of the settlement.

Therefore, we understand that it may be necessary to make changes to the terms of the draft legislation as it proceeds through introduction and referral to the committees of jurisdiction as well as garners additional input from legislative hearings in those committees. We look forward to working with you and your staff as the Department of the Interior reviews the draft settlement legislation and thank you for your timely consideration of this issue.

Sincerely,


Lynn Jenkins, CPA
Member of Congress


Jerry Moran
U.S. Senator



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

FEB 07 2018

The Honorable Lynn Jenkins
U.S. House of Representatives
Washington, DC 20510

Dear Representative Jenkins:

Thank you for your letter dated October 19, 2017 regarding the Kickapoo Tribe (Tribe) water rights settlement. The Department of the Interior has been engaged with the Tribe and others regarding the appointment of a Negotiation Team for some time. The Tribe has submitted documentation to support the establishment of a team, and the Department's Working Group on Indian Water Settlements will be considering the request during its next meeting on February 14, 2018.

As a general matter, the Department supports the policy that negotiated Indian water rights settlements are preferable to protracted and divisive litigation. Indian water rights settlements have the potential to resolve long-standing claims to water, provide certainty to water users, foster cooperation among water users within a watershed, allow for the development of water infrastructure, promote tribal sovereignty and self-sufficiency, and improve environmental and health conditions on reservations.

We appreciate your outreach and will keep you apprised of the decision once made. If you have further questions, please do not hesitate to reach out.

Sincerely,

Alan Mikkelsen, Chairman
Working Group on Indian Water Settlements

Exhibit 2

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018



Horton National Bank

(Branch GNB)

110 East 8th St.

P.O. BOX 189

Horton, KS 66439-0189

March 21, 2017

Senator Jerry Moran/Congresswoman Lynn Jenkins

Re: Support of Kickapoo Tribe in Kansas' Water Right

Dear Senator Moran/Congresswoman Jenkins:

Horton National Bank, branch GNB has had a long and mutually respectful working relationship with the Kickapoo Tribe on a number of issues. For several decades the Tribe has been attempting to develop a water storage project on its reservation to provide badly needed water security against drought, and to have a water supply for future housing and economic development. These purposes, once achieved, will be a benefit to all of the residents of Brown County and northeast Kansas.

We understand that in September the Tribe and the State of Kansas entered into an agreement that sets out the Tribe's water right and how that water is to be administered by the State of Kansas on the Delaware River and its tributaries. That water right agreement is a critical step in the effort to develop water storage on the reservation. An important next step is to have the Congress of the United States approve the water right, and we understand the Tribe is working with you to develop a bill to accomplish that purpose.

We support the efforts of your office, the State of Kansas, and the Tribe to move forward on this legislation. We also appreciate that the Tribe has been acquiring land from willing sellers in the area of the proposed project, and will continue with these efforts in the coming years.

If you should have any questions or need additional information, please do not hesitate to call me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Kidwell', written over a horizontal line.

Thomas L. Kidwell, Branch President
Horton National Bank, branch GNB

TLK:mg

March 20, 2017

Senator Jerry Moran/Congresswoman Lynn Jenkins

RE: Support of Kickapoo Tribe in Kansas' Water Right

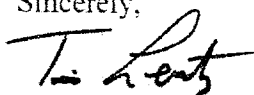
Dear Senator Moran/Congresswoman Jenkins:

The City of Horton, Kansas has had a long and mutually respectful working relationship with the Kickapoo Tribe on a number of issues. For several decades the Tribe has been attempting to develop a water storage project on its reservation to provide badly needed water security against drought, and to have a water supply for future housing and economic development. These purposes, once achieved, will be a benefit to all of the residents of Horton and Northeast Kansas.

We understand that in September the Tribe and the State of Kansas entered into an agreement that sets out the Tribe's water right and how that water right is to be administered by the State of Kansas on the Delaware River and its tributaries. An important next step is to have the Congress of the United States approve the water right, and we understand the Tribe is working with you to develop a bill to accomplish that purpose.

We support the efforts of your office, the State of Kansas, and the Tribe to move forward on this legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Lentz", with a stylized flourish at the end.

Mayor Tim Lentz

Exhibit 3

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018



United States
Department of
Agriculture

Office of the
General Counsel

STOP 1401, P.O. Box 419205
Kansas City, MO 64141-6205
(816) 823-4646
FAX (816) 823-4688
E-Mail: usda-ogc-kc@ogc.usda.gov

April 8, 2016

VIA E-MAIL

Ms. Steven C. Moore
Senior Staff Attorney
Native American Rights Fund
1506 Broadway
Boulder, CO 80302-6296

Dear Mr. Moore:

Subject: Kickapoo Tribe of Indians v. Knight et. al.
District of Kansas Case No. 06-2248
OGC Ref: DWS

Thank you for your inquiry to our office. You have inquired as to whether the Upper Delaware and Tributaries ("UDT") Watershed Plan, a watershed plan created pursuant to PL 83-566, is still considered "authorized." Our research indicates that the UDT Watershed Plan would indeed still be considered authorized.

The only statute discussing authorization of PL-566 watershed plans is 16 U.S.C. § 1002. That statute provides, *inter alia*, that plans which contain a single structure that will contain more than 4000 acre feet must be approved by the House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee. Those approvals were provided on June 25, 1998, and July 24, 1996. These authorizations contained no language limiting their effectiveness. Our research can find no action by either committee to deauthorize the UDT watershed plan. Further, PL-566 contains no language which provides for the deauthorization of a watershed plan. Given the open ended nature of the authorization, the lack of any statutory trigger for deauthorization, and the lack of any action by the Congressional committees or NRCS to deauthorize the UDT Watershed Plan, it is our opinion that the Plan can still be considered authorized.

The above opinion conforms with NRCS practice in this case. Kansas NRCS has kept available a small appropriation for planning, which would not be necessary if the UDT Watershed Plan were not authorized.

Please note that this opinion is based on the 1994 UDT Watershed Plan and Environmental Impact Statement. We express no opinion on whether the UDT Watershed Plan would remain "authorized" if it were significantly amended or altered. Likewise, we offer no opinion on the availability of further appropriations or required approvals or permits by other federal, state and local agencies.

If you have any questions or concerns, please feel free to contact Dave Schaaf at (816) 823-4677, or at david.schaaf@ogc.usda.gov.

Sincerely,

JOHN VOS
Regional Attorney

By: 

David W. Schaaf,
Deputy Regional Attorney

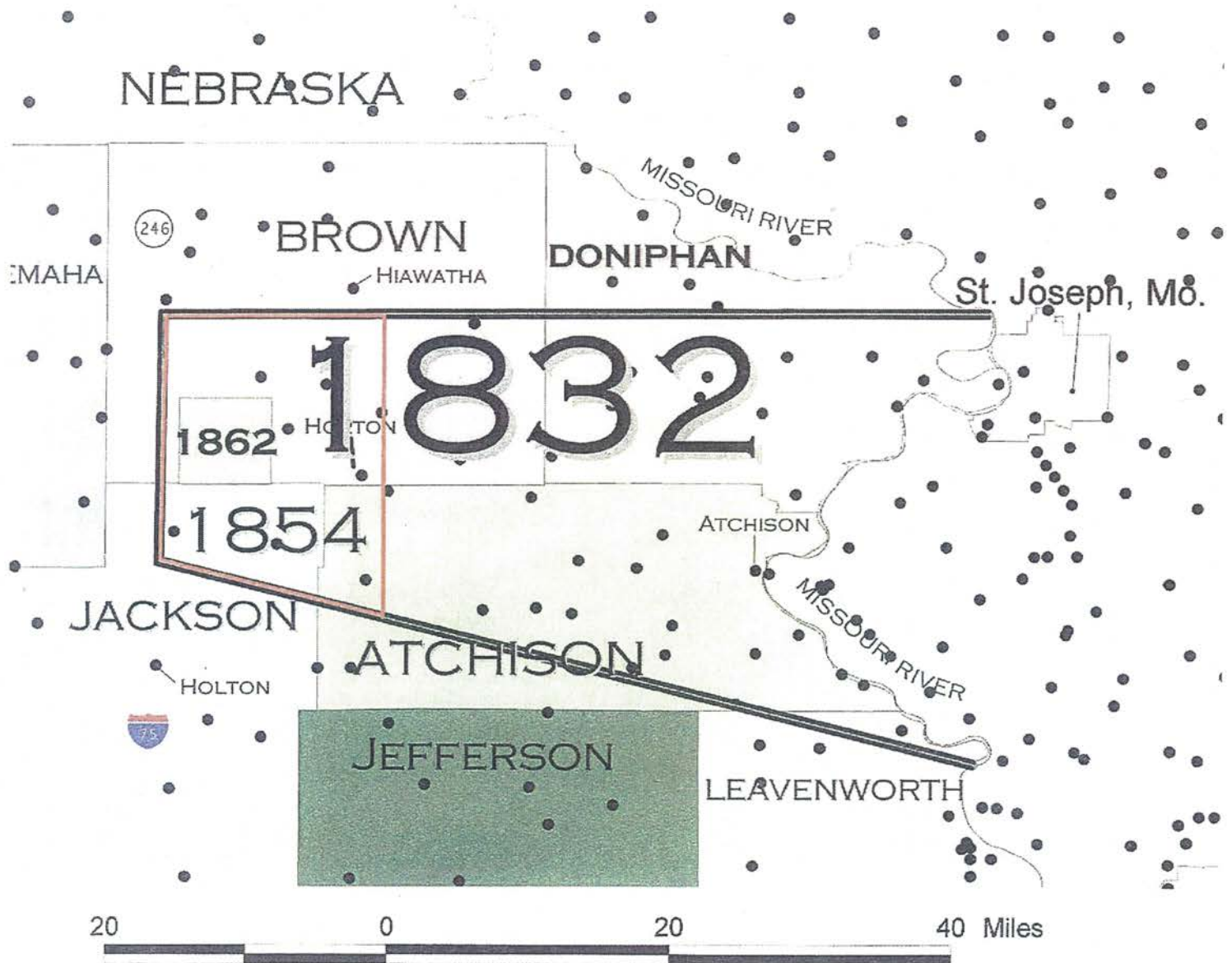
cc: Ms. Barbara M.R. Marvin, Department of Justice

Exhibit 4

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018

KICKAPOO TERRITORY: 1832-F



PREPARED BY:
KICKAPOO TRIBE IN KS.
NAGPRA PROGRAM
CURTIS SIMON, DIRECTOR

**STATE & INTER-STATE HIGHWAYS
WITHIN FORMER AND PRESENT
KICKAPOO LANDS**

Exhibit 5

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018

TREATY WITH THE KICKAPOO, 1832.

Articles of a treaty made and entered into at Castor Hill, in the county of St. Louis, in the State of Missouri, this twenty-fourth day of October one thousand eight hundred and thirty-two, between William Clark, Frank J. Allen, and Nathan Kouns, Commissioners on the part of the United States, of the one part, and the Chiefs, Warriors, and Counsellors of the Kickapoo tribe of Indians, on behalf of said tribe, on the other part.

Oct. 24, 1832.

7 Stat., 391.
Proclamation, Feb. 13, 1833.

ARTICLE I. The Kickapoo tribe of Indians, in consideration of the stipulations hereinafter made, do hereby cede to the United States, the lands assigned to them by the treaty of Edwardsville, and concluded at St. Louis, the nineteenth day of July eighteen hundred and twenty [two] and all other claims to lands within the State of Missouri.

Cession of lands to
United States.

ARTICLE II. The United States will provide for the Kickapoo tribe, a country to reside in, southwest of the Missouri river, as their permanent place of residence as long as they remain a tribe. And whereas, the said Kickapoo tribe are now willing to remove on the following conditions, from the country ceded on Osage river, in the State of Missouri, to the country selected on the Missouri river, north of lands which have been assigned to the Delawares; it is hereby agreed that the country within the following boundaries shall be assigned, conveyed, and forever secured, and is hereby so assigned, conveyed, and secured by the United States to the said Kickapoo tribe, as their permanent residence, viz: Beginning on the Delaware line, six miles westwardly of Fort Leavenworth, thence with the Delaware line westwardly sixty miles, thence north twenty miles, thence in a direct line to the west bank of the Missouri, at a point twenty-six miles north of Fort Leavenworth, thence down the west bank of the Missouri river, to a point six miles nearly northwest of Fort Leavenworth, and thence to the beginning.

Cession by United
States.

ARTICLE III. In consideration of the cession contained in the first article, the United States agree to pay to the Kickapoo tribe, within one year after the ratification of this treaty an annuity for one year of eighteen thousand dollars; twelve thousand dollars of which, at the urgent request of said Indians, shall be placed in the hands of the superintendent of Indian affairs at St. Louis, and be by him applied to the payment of the debts of the said tribe, agreeably to a schedule to be furnished by them to the said superintendent, stating as far as practicable, for what contracted, and to whom due; and the said superintendent shall, as soon as possible, after the said money comes into his hands, pay it over in a just apportionment, agreeably to their respective claims, to the creditors of the said tribe, as specified in the schedule furnished him. And should any balance remain in his hands after said apportionment and payment, it shall be by him paid over to the said Kickapoo tribe, for their use and benefit.

Annuity and pay-
ment of debts.

ARTICLE IV The United States further agree to pay to the Kickapoo tribe, an annuity of five thousand dollars per annum, in merchandise, at its cost in St. Louis, or in money, at their option, for nineteen successive years, commencing with the second year after the ratification of this treaty

Annuity.

ARTICLE V The United States will pay one thousand dollars annually for five successive years, for the support of a blacksmith and strikers; purchase of iron, steel, tools, &c. for the benefit of said tribe, on the lands hereby assigned them.

Blacksmith, etc.

ARTICLE VI. The United States agree to pay thirty-seven hundred dollars, for the erection of a mill and a church, for the use of said tribe, on the aforesaid lands.

Mill and church.

School.	ARTICLE VII. The United States will pay five hundred dollars per annum, for ten successive years, for the support of a school, purchase of books, &c. for the benefit of said Kickapoo tribe on the lands herein ceded to them.			
Farming utensils.	ARTICLE VIII. The United States agree to pay three thousand dollars for farming utensils, when such utensils may be required by said tribe, on their land.			
Labor and improvements.	ARTICLE IX. The United States will pay four thousand dollars for labour and improvements on the lands herein ceded said Kickapoos.			
Cattle.	ARTICLE X. The United States agree to pay four thousand dollars in cattle, hogs, and such other stock as may be required by the said tribe; to be also delivered on their land.			
Payment in merchandise, etc.	ARTICLE XI. There shall be paid in merchandise and cash, to the Kickapoos now present, for the use and benefit of their tribe, six thousand dollars, the receipt of which is hereby acknowledged; which amount, together with the several stipulations contained in the preceding articles, shall be considered as a full compensation for the cession herein made by said Kickapoo tribe. The United States will furnish said Indians with some assistance when removing to the lands hereby assigned them, and supply them with one year's provisions after their arrival on said lands.			
Boundary to be run.	ARTICLE XII. The United States agree to run and mark out the boundary lines of the lands hereby ceded to the said tribe, within three years from the date of the ratification of this treaty			
Removal of Indians.	ARTICLE XIII. The said Indians agree to remove with as little delay as possible, to the land hereby ceded to them.			
Exploring party.	ARTICLE XIV. The United States agree, at the particular request of the Kickapoos, that a deputation of their tribe shall be sent, with one or two of the commissioners, to view the lands hereby ceded to them, which deputation and commissioners jointly agreeing, shall have power to alter the boundary lines so as to make a selection of a body of land not exceeding twelve hundred square miles, adjoining to, and lying between the Big Nemaha river and the Delaware lands, and of changing the lines of the land hereby ceded in the second article of this treaty not exceeding half the front on the Missouri between the mouth of Big Nemaha and Fort Leavenworth, so as to include a suitable site for a mill seat, should it be desired by said tribe and appear necessary to the commissioners. And it is understood, that if the commissioners, on viewing the land ceded in the second article of this treaty shall find it of good quality and sufficient for said tribe, then the aforesaid second article to be as binding on the contracting parties, as if this article had not been inserted.			
Treaty binding when ratified.	ARTICLE XV. This treaty to be binding when ratified by the President and Senate of the United States.			
	In testimony whereof, the commissioners aforesaid, and the undersigned chiefs, warriors and counsellors aforesaid, have hereunto subscribed their hands and affixed their seals, this twenty-fourth day of October, in the year of our Lord eighteen hundred and thirty-two, and of the independence of the United States, the fifty-seventh.			
	Wm. Clark,	[L. s.]	Ma-she-nah, elk, his x mark,	[L. s.]
	Frank J. Allen,	[L. s.]	Ma-cuta-we-she-kah, black fisher,	[L. s.]
	Nathan Kouns,	[L. s.]	his x mark,	[L. s.]
	Pa-sha-cha-hah, jumping fish, his x mark,	[L. s.]	Wah-co-haw, grey fox, his x mark,	[L. s.]
	Ka-ana-kuck, the prophet, his x mark,	[L. s.]	Pah-ta-kah-quoi, striking woman, his x mark,	[L. s.]
	Pemo-quoi-ga, rolling thunder, his x mark,	[L. s.]	Kitch-e-mah-quoi, big bear, his x mark,	[L. s.]
	Pa-ana-wah-ha, elk shedding his hair, his x mark,	[L. s.]	Ata-noi-tucka, goblin turkey, his x mark,	[L. s.]
	Kick-a-poo-hor, Kickapoo, his x mark,	[L. s.]	Kish-coe, guardian to Indians, his x mark,	[L. s.]
		[L. s.]	Ka-te-wah, bald eagle, his x mark,	[L. s.]

Na-poi-teck, son of prophet, his x mark,	[L. S.]	Ah-nuck-quet-ta, the cloud, or black thunder, his x mark,	[L. S.]
Na-na-co-wah, the bear, his x mark,	[L. S.]	Note-ta-noi, wind, his x mark,	[L. S.]
Pe-sha-ka-nah, the bear, his x mark,	[L. S.]	Ma-cutta-mah-qui, black loon, his x mark,	[L. S.]

Signed in presence of—

James Kemmly, secretary,
 Meriwether Lewis Clark, lieutenant,
 Sixth Infantry,
 Geo. Maguire, Indian Department,

A. Shane, United States interpreter,
 William Marshall,
 Jacques Mette, United States interpreter,
 Pierre Cadue, interpreter, his x mark.

Supplemental article to the treaty with the Kickapoo tribe of Indians, of the twenty-fourth October, one thousand eight hundred and thirty-two.

Nov. 26, 1832.

7 Stat., 393.

The undersigned, commissioners, on the part of the United States, and a deputation of Kickapoos, on the part of the Kickapoo tribe of Indians, having visited the lands assigned to the said tribe by the second article of a treaty with the said tribe, concluded at Castor Hill, in the county of Saint Louis, and State of Missouri, on the twenty-fourth day of October, one thousand eight hundred and thirty-two, and by authority of the powers vested in the said commissioners, and the said deputation, by the fourteenth article of the aforesaid treaty have agreed that the boundary lines of the lands assigned to the Kickapoos, shall begin on the Delaware line, where said line crosses the left branch of Salt creek, thence down said creek to the Missouri river, thence up the Missouri river thirty miles when measured on a straight line, thence westwardly to a point twenty miles from the Delaware line, so as to include in the lands assigned the Kickapoos, at least twelve hundred square miles.

Boundary as fixed
 by commissioners and
 deputation.

Done at fort Leavenworth, this twenty-sixth day of November, one thousand eight hundred and thirty-two.

Nathan Kouns,	[L. S.]
Frank J. Allen,	[L. S.]
Nam-a-co-wa-ha, the bear, his x mark,	[L. S.]
Pe-sha-ka-nah, the bear, his x mark,	[L. S.]
Na-poi-haw the man asleep, his x mark,	[L. S.]
Pam-a-saw, or walker, his x mark.	[L. S.]

Signed and sealed in presence of—

James Kemmly secretary
 Wm. N. Wickliffe, Captain Sixth Infantry
 J. Freeman, Lieutenant Sixth Infantry
 Winslow Turner,
 And. L. Hughes, United States Indian agent.

TREATY WITH THE POTAWATOMI, 1832.

Articles of a treaty made and concluded on Tippecanoe River in the State of Indiana, between Jonathan Jennings, John W. Davis and Marks Crume, Commissioners on the part of the United States, and the Chiefs, Headmen and Warriors, of the Pottawatimie Indians, this twenty-sixth day of October, in the year eighteen hundred and thirty-two.

Oct. 26, 1832.

7 Stat., 394.
 Proclamation, Jan.
 21, 1833.

ARTICLE I. The Chiefs, Headmen and Warriors, aforesaid, agree to cede to the United States their title and interest to lands in the State of Indiana, (to wit:) beginning at a point on Lake Michigan, where the line dividing the States of Indiana and Illinois intersects the same; thence with the margin of said Lake, to the intersection of the southern

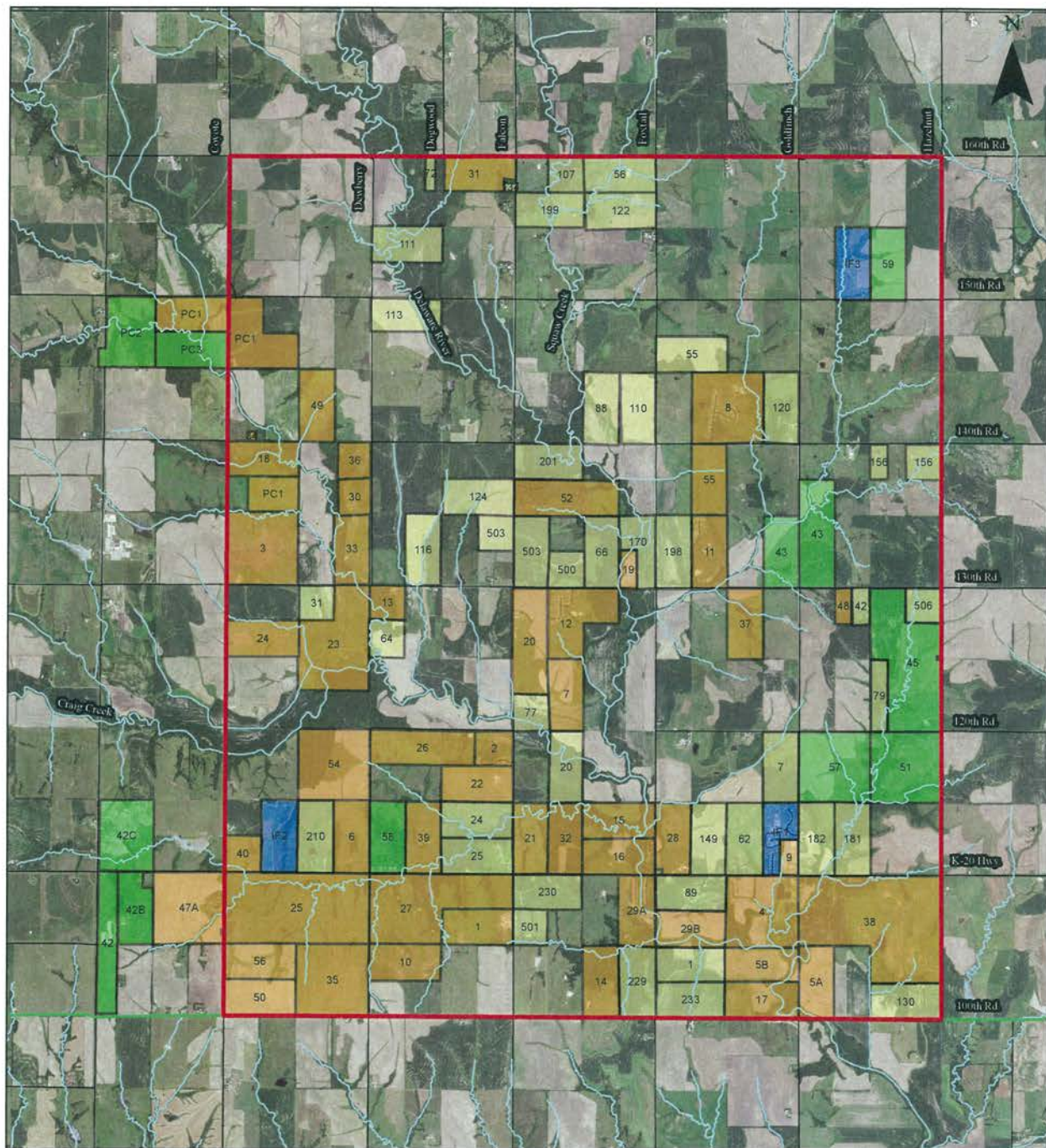
Cession to the
 United States.

Exhibit 6

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018

Kickapoo Tribe in Kansas Tribal Tracts



Legend

- Kickapoo Reservation
- County Lines
- Allotment Trust
- Individual Fee
- Tribal Fee
- Tribal Trust
- Kansas Roads

This map was created by the Kickapoo Tribe in Kansas and the data contained herein is for informational use only. The Tribe makes no express or implied warranties with respect to the character, function, or capabilities of the map or the suitability of the map for any particular purpose. The tribe is not liable for any direct or indirect damages suffered related to the use of this map including, but not limited to, physical injury, death, property damage, economic

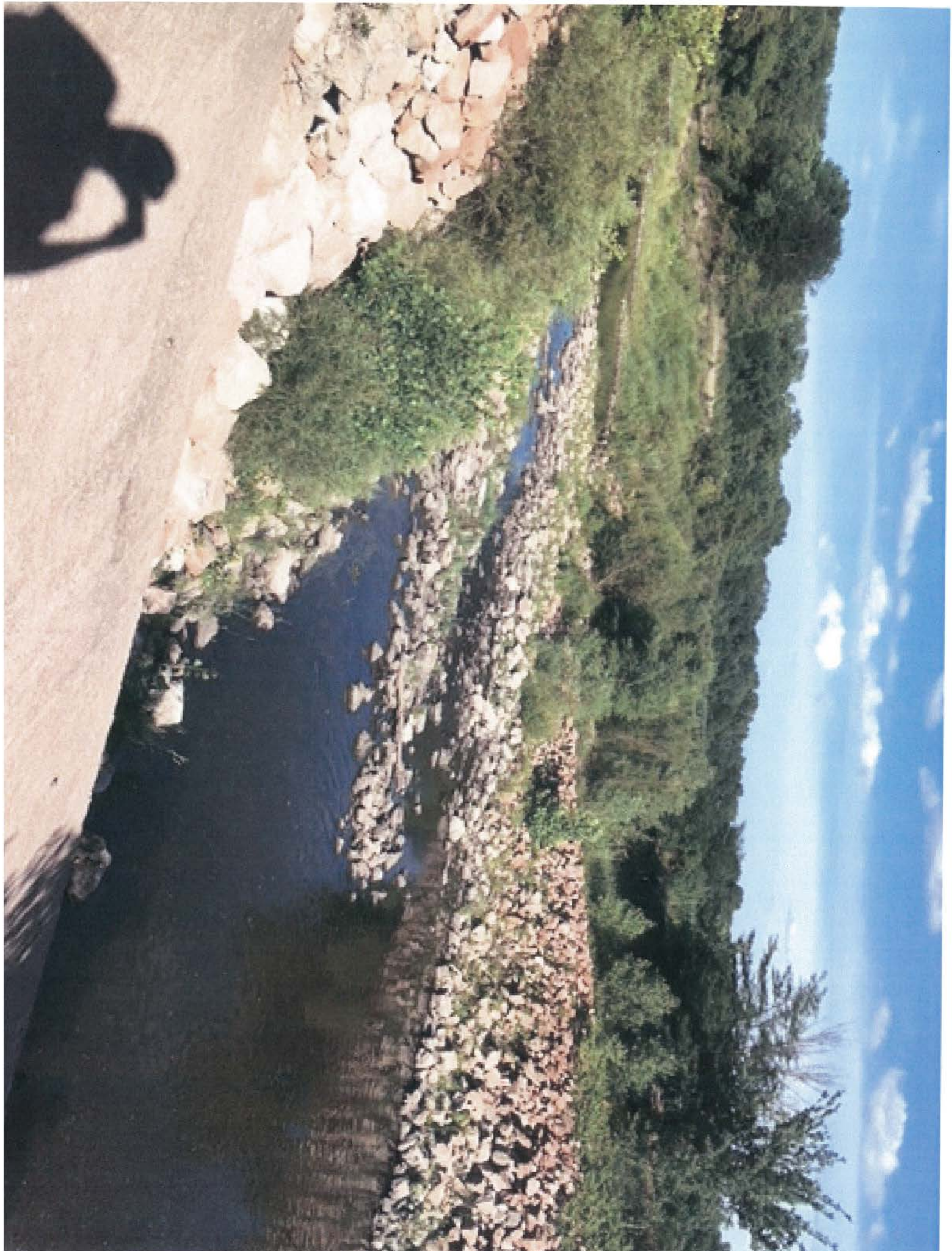


Exhibit 7

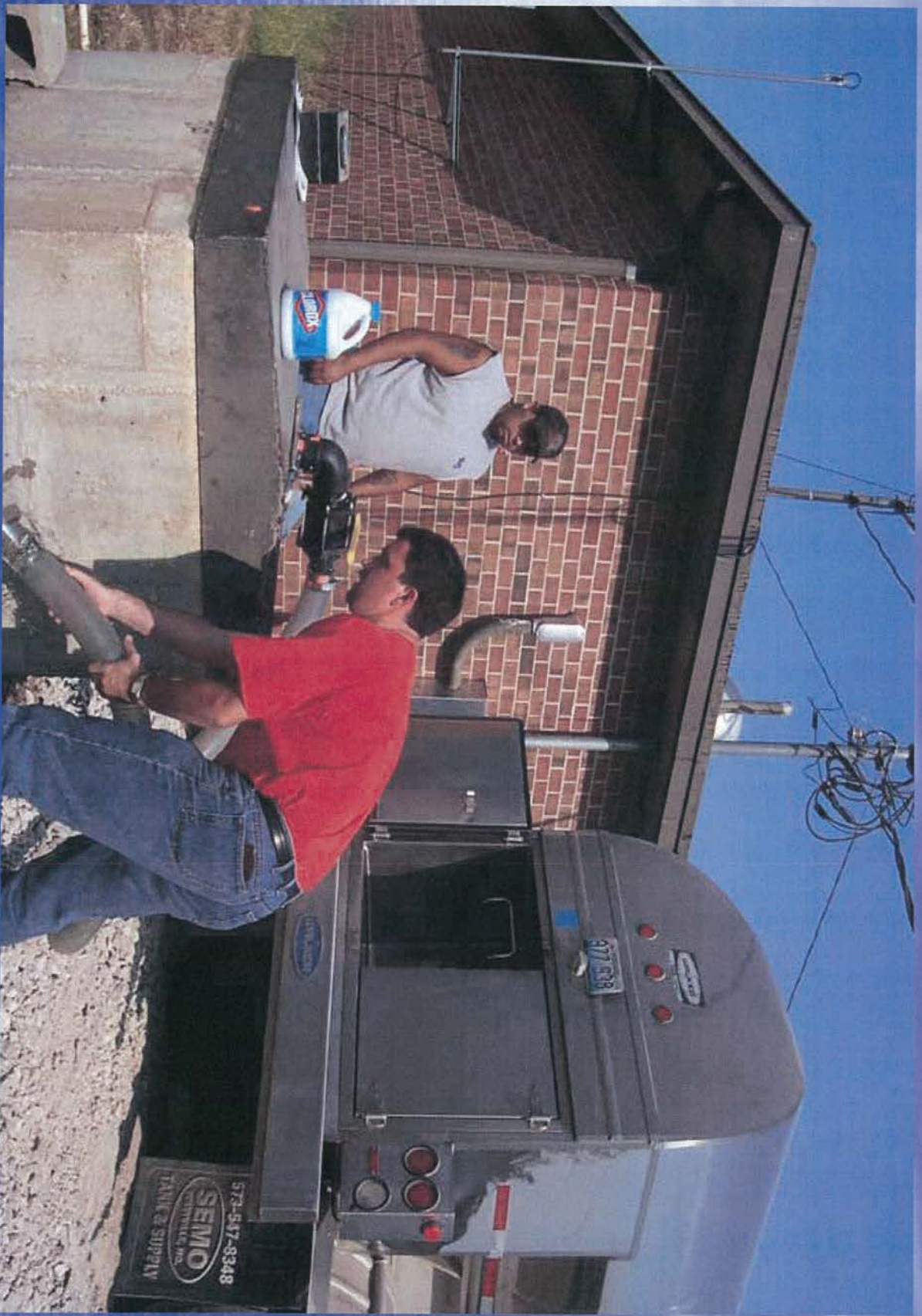
TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018









Kickapoo Water Plant - August 27, 2003



Kickapoo Water Plant – August 27, 2003

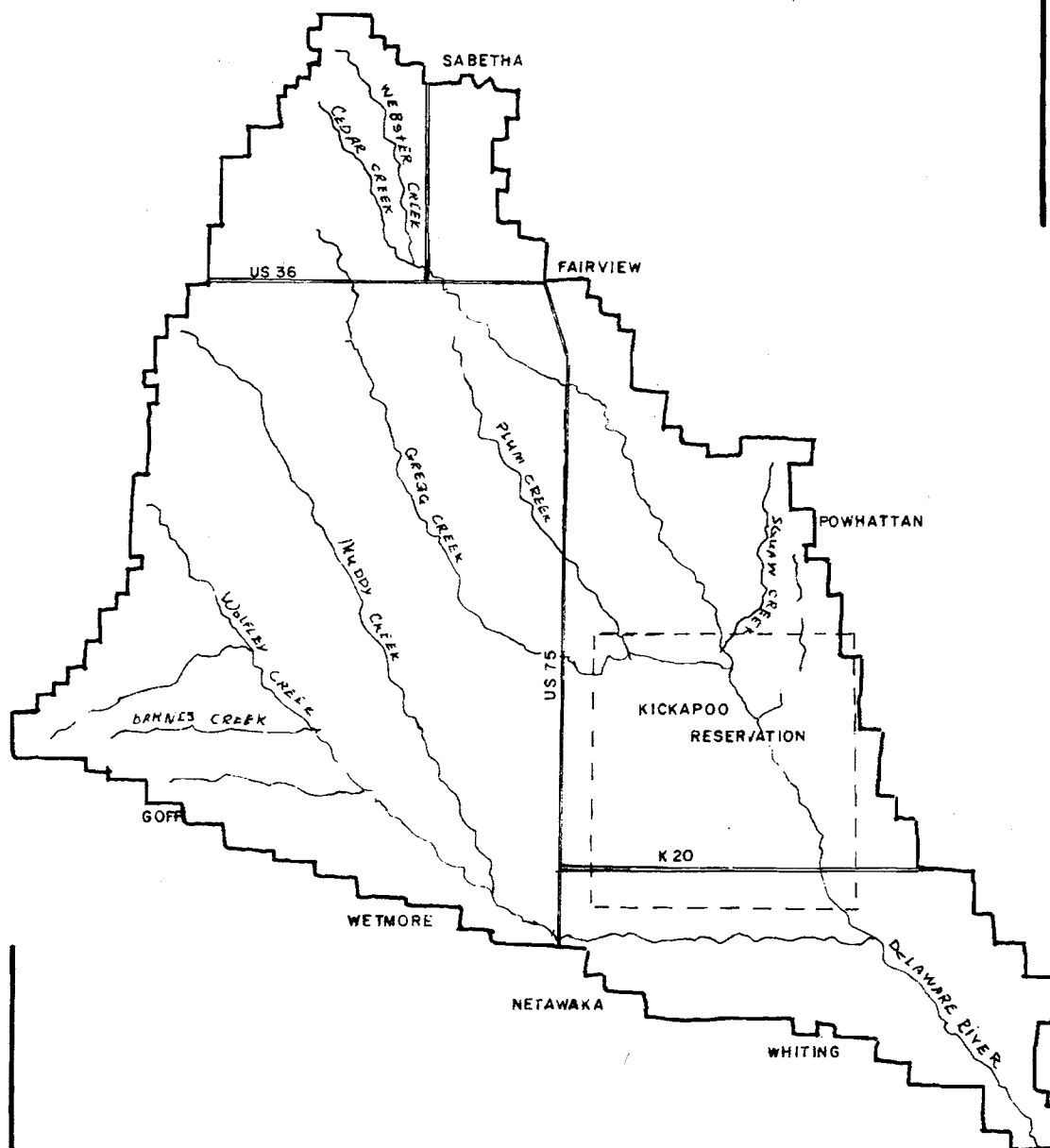
Exhibit 8

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018

GENERAL PLAN

UPPER DELAWARE and TRIBUTARIES



NEMAHA - BROWN WATERSHED JOINT DISTRICT NO.7, KANSAS

JULY 1978

NBJWD02950

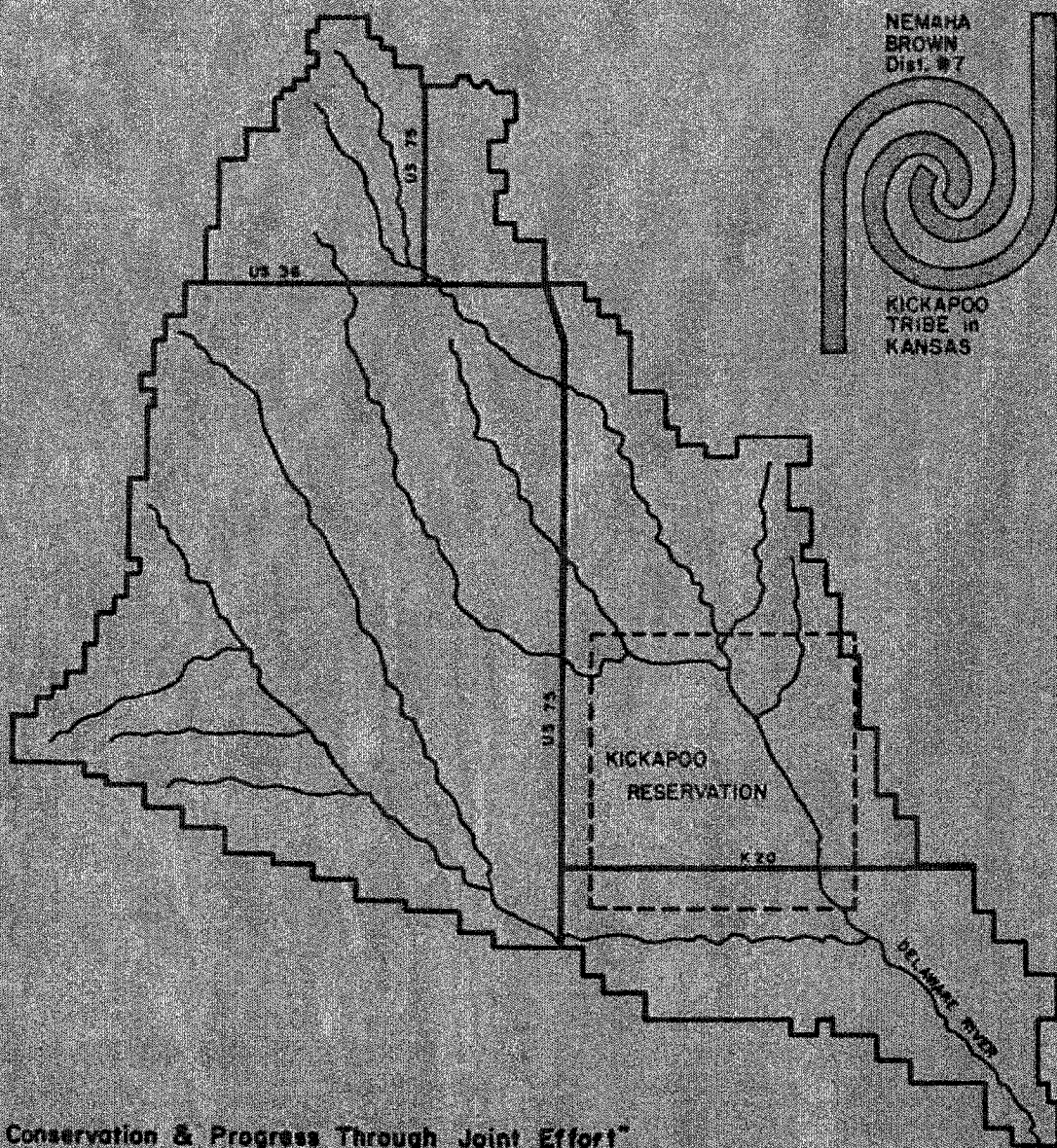
Exhibit 9

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018

NEMAHA-BROWN-KICKAPOO

Joint Watershed Board



"Conservation & Progress Through Joint Effort"

Exhibit 10

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018

KLO Signed
COPY

WATERSHED PLAN
and
ENVIRONMENTAL IMPACT STATEMENT

**UPPER DELAWARE AND
TRIBUTARIES WATERSHED**

**ATCHISON, BROWN, JACKSON,
AND NEMAHA COUNTIES, KANSAS**

JANUARY 1994

Exhibit 11

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018

Federal Register dated April 8, 1994 (59 FR 16807).

Draft EISs

ERP No. D-AFS-J65215-MT Rating EC2, Elk Creek Land Exchange and Granting an Easement to Plum Creek, Implementation, Flathead National Forest, Swan Lake Ranger District, MT.

Summary: EPA expressed environmental concerns about adverse impacts which may occur on the Forest Service land to be given to the Plum Creek Timber Company (i.e., wildlife habitat, old growth, visual, fisheries impacts). EPA also expressed concerns about the uncertainty of future activities (i.e., subdivision development, oil and gas leasing, and mining) on the exchanged parcels. EPA recommended that the Forest Service require a conservation easement prohibiting future subdivision development on the Forest Service land to be given to Plum Creek Timber Company.

ERP No. D-AFS-J65216-UT Rating LO1, Pacer Timber Harvest and Timber Sale, Implementation, Dixie National Forest, Escalante Ranger District, Garfield County, UT.

Summary: EPA had no objections to the proposed action.

ERP No. D-BIA-J39020-SD Rating EC1, Crow Creek Dam Project, Crow Creek Dam and Reservoir (Lake Bedashosha) Improvements, Crow Creek Indian Reservation, near Fort Thompson, Buffalo County, SD.

Summary: EPA expressed environmental concerns with sediment impacts which should be avoided to fully protect the environment and which may require changes to alternatives or mitigation measures.

ERP No. D-BLM-J02029-WY Rating EC2, Enron Burly Field Oil and Gas Leasing, Permit to Drill, Temporary Use Permits, COE Section 404 Permit and Right-of-Way, Grants, Pinedale Resource Area, Sublette County, WY.

Summary: EPA had environmental concerns based on potential impacts to groundwater quality, which should be avoided in order to fully protect its high quality.

ERP No. D-BLM-L60100-ID Rating EC2, Twin Falls County Solid Waste Landfill Facility Construction and Operation, Land Acquisition, Twin Falls County, ID.

Summary: EPA had environmental concerns that BLM had not demonstrated that the land transfer and subsequent solid waste facility will result in no adverse consequences to ground water, surface water, and air quality. EPA requested additional information about how hazardous waste in the waste stream will be handled,

how leachate and surface runoff will be disposed, the liner system and how it will be installed, the landfill gas collection and disposal system, and future implementation and operation of the facility.

Final EISs

ERP No. F-AFS-J65205-MT, Upper Sunday Timber Sales, Harvest Timber, Implementation, Kootenai National Forest, Fortine Ranger District, Flathead County, MT.

Summary: EPA had no concerns but recommended that the sediment regime model be tested.

Regulations

ERP No. R-NRC-A09818-00, 10 CFR part 71, Petition for Regulations Governing Packaging and Transportation of Radioactive Materials, Docket No. PRM-71-11, FR 59.8143.

Summary: Review of the Regulation has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

Dated: May 9, 1994.

Marshall Cain,
Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94-11603 Filed 5-12-94; 8:45 am]

BILLING CODE 6560-60-U

[ER-FRL-4711-2]

Environmental Impact Statements; Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260-5076 or (202) 260-5075. Weekly receipt of Environmental Impact Statements Filed May 2, 1994 through May 6, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940166, FINAL EIS, SCS, KS, Upper Delaware River and Tributaries Watershed Plan, Flood Prevention and Watershed Protection, Funding, COE Section 404 and NPDES Permits, Atchison, Brown, Jackson and Nemaha Counties, KS, Due: June 13, 1994, Contact: James N. Habiger (913) 823-4565.

EIS No. 940167, FINAL EIS, AFS, AK, Main Bay Salmon Hatchery Expansion, Implementation, Special-Use-Permit and COE Section 404 Permit, Prince William Sound, Chugach National Forest, Glacier Ranger District, AK, Due: June 13, 1994, Contact: Ken Rice (907) 271-2751.

EIS No. 940168, FINAL EIS, SFW, WY, ID, MT, Gray Wolves (Canis Lupus) Reintroduction into the Yellowstone National Park and Central Idaho,

Implementation, MT, WY and ID, Due: June 13, 1994, Contact: Ed Bangs (406) 449-5202.

EIS No. 940169, DRAFT EIS, MMS, TX, AL, LA, MS, 1995 Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales 152 (April 1995) and 155 (August 1995), Lease Offering, Offshore Marine Environment and coastal counties, AL, MS, LA and TX, Due: June 27, 1994, Contact: Richard H. Miller (703) 787-1665.

EIS No. 940170, FINAL EIS, FHW, WA, WA-522 Transportation Improvements, WA-9 near Woodinville to WA-2 in Monroe, Funding, U.S. CGD Permit and Section 10 and 404 Permits, Snohomish River Bridge, Snohomish County, WA, Due: June 13, 1994, Contact: Barry F. Morehead (206) 753-2120.

EIS No. 940171, FINAL EIS, FHW, WI, WI-TH-29 Improvement, from Chippewa Falls to Abbotsford and Marathon City in Martin Lane, Funding and Possible COE 404 Permit, Clark and Marathon Counties, WI, Due: June 13, 1994, Contact: Thomas J. Fudaly (608) 264-5940.

EIS No. 940172, DRAFT EIS, COE, CO, Central City Water Development Project, Implementation, North Clear Creek Basin, COE Section 404 Permit, Right-of-Way Grant and Special-Use-Permit, CO, Due: June 30, 1994, Contact: Richard Gorton (402) 221-4598.

EIS No. 940173, DRAFT EIS, BLM, Rangeland Reform 1994 Program, Implementation, Land Acquisition and Permits Approval, Due: August 11, 1994, Contact: Jim Fox (202) 452-7740.

Dated: May 9, 1994.

Marshall Cain,
Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 94-11605 Filed 5-12-94; 8:45 am]

BILLING CODE 6560-60-U

[FRL-4884-5]

M.A. Norden Company Site, AL; Request for Amendment to June 15, 1984, Clean Water Act section 404(c) Final Determination

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of request for amendment of Section 404(c) final determination and request for comment.

SUMMARY: Notice is hereby given that M.A. Norden Company has petitioned the Environmental Protection Agency

motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural and Florida Gas to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 94-11622 Filed 5-12-94; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

Acid Rain Division

[FRL-4884-7]

Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has prepared guidance to help determine if the Acid Rain Program SO₂ requirements apply to specific steam and electric generating units. This guidance is of particular use to owners and operators of electric generating units who are unsure as to whether their units are affected by the Acid Rain Program SO₂ requirements.

ADDRESSES: Copies of the guidance, entitled "Do the Acid Rain SO₂ Regulations Apply to You?", are available upon request by calling the Acid Rain Hotline at (202) 233-9620 or by writing to:

U.S. Environmental Protection Agency,
Acid Rain Division 6204J, Attn:
Applicability Guidance, 401 M Street,
SW., Washington, DC 20460

The following groups have copies available to their members: American Public Power Association, contact Larry

Mansueti; American Forest Products, contact Rob Kaufmann; Council of Industrial Boiler Owners, contact Bill Marx; Chemical Manufacturers Association, contact Nancy Cookson; Edison Electric Institute, contact John Kinsman; Electric Consumers Resource Council, contact John Hughes; Electric Generation Association, contact Julie Blankenship; Large Public Power Council, contact Stephen Fotis; National Coal Association, contact Jerry Karaganis; National Independent Energy Producers, contact Janet Besser; National Rural Electric Cooperative Assoc., contact Ray Cronmiller.

FOR FURTHER INFORMATION CONTACT: Kathy Barylski, Acid Rain Division, at the above address; telephone (202) 233-9074.

SUPPLEMENTARY INFORMATION: EPA's Acid Rain Program was established by Title IV of the Clean Air Act Amendments of 1990 (CAAA) to reduce acid rain in the continental United States. The Acid Rain Program will achieve a 50 percent reduction in sulfur dioxide (SO₂) emissions from utility units. The SO₂ reduction program is a flexible market-based approach to environmental management. As part of this approach, EPA allocates "allowances" to affected utility units. Each allowance is a limited authorization to emit up to one ton of SO₂. At the end of each calendar year, each unit must hold allowances in an amount equal to or greater than its SO₂ emissions for the year. Allowances may be bought, sold, or transferred between utilities and other interested parties. Those utility units whose annual emissions are likely to exceed their allocation of allowances may either install pollution control technologies or switch to cleaner fuels to reduce SO₂ emissions, or buy additional allowances.

The Acid Rain Program SO₂ requirements potentially affect any device that combusts fossil fuel and supplies electricity for sale or serves an electrical generating device that supplies electricity for sale. Thus, units owned or operated by industrial or commercial entities may be affected. To ensure adequate notice to all potentially affected units, EPA has chosen to provide this notice of availability of the Acid Rain applicability guidance.

The guidance, "Do the Acid Rain SO₂ Regulations Apply to You?", provides information regarding what makes a unit potentially affected, what types of units may be exempted from Acid Rain Program requirements, and what types of units are not affected by the Acid Rain Program requirements. The

document also outlines how the owner or operator of a unit may request a determination of applicability from EPA. If a unit is affected by the Acid Rain Program SO₂ requirements, the document outlines the requirements and compliance dates. The document does not address the Acid Rain Program (Title IV) NO_x requirements or NO_x or SO₂ control requirements under other State or Federal programs.

Dated: May 6, 1994.

Brian J. McLean, Director,
Acid Rain Division.

[FR Doc. 94-11693 Filed 5-12-94; 8:45 am]
BILLING CODE 6560-50-P

[FRL-4884-3]

Acid Rain Program: Notice of Final Retired Unit Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final retired unit exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing five-year retired unit exemptions, according to the Acid Rain Program regulations (40 CFR part 72), to the following 11 utility units in Ohio: Acme units 9, 11, 13, 14, 15, 91, and 92; Avon Lake unit 11; and Poston units 1, 2, and 3.

FOR FURTHER INFORMATION CONTACT: Allan Batka at (312) 886-9653. EPA Region 5 (A-18J), Ralph H. Metcalfe Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Dated: May 4, 1994.

Brian McLean,
Director, Acid Rain Division, Office of
Atmospheric Programs, Office of Air and
Radiation.

[FR Doc. 94-11694 Filed 5-12-94; 8:45 am]
BILLING CODE 6560-50-F

[ER-FRL-4711-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 25, 1994 through April 29, 1994 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the

motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural and Florida Gas to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94-11622 Filed 5-12-94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

Acid Rain Division

[FRL-4884-7]

Acid Rain Provisions

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has prepared guidance to help determine if the Acid Rain Program SO₂ requirements apply to specific steam and electric generating units. This guidance is of particular use to owners and operators of electric generating units who are unsure as to whether their units are affected by the Acid Rain Program SO₂ requirements.

ADDRESSES: Copies of the guidance, entitled "Do the Acid Rain SO₂ Regulations Apply to You?," are available upon request by calling the Acid Rain Hotline at (202) 233-9620 or by writing to:

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Dated: May 6, 1994.

Brian J. McLean, Director,
Acid Rain Division.

[FR Doc. 94-11693 Filed 5-12-94; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4884-3]

Acid Rain Program: Notice of Final Retired Unit Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final retired unit exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing five-year retired unit exemptions, according to the Acid Rain Program regulations (40 CFR part 72), to the following 11 utility units in Ohio: Acme units 9, 11, 13, 14, 15, 91, and 92; Avon Lake unit 11; and Poston units 1, 2, and 3.

FOR FURTHER INFORMATION CONTACT: Allan Batka at (312) 886-9653. EPA Region 5 (A-18J), Ralph H. Metcalfe Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Dated: May 4, 1994.

Brian McLean,
Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94-11694 Filed 5-12-94; 8:45 am]

BILLING CODE 6560-50-F

[ER-FRL-4711-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

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An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the

Exhibit 12

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018

1994 SCS/NRCS Record of Decision

RECORD OF DECISION
Upper Delaware and Tributaries Watershed
Atchison, Brown, Jackson, and Nemaha Counties, Kansas

PURPOSE

As state conservationist for the Soil Conservation Service, I am the Responsible Federal Official (RFO) for all Soil Conservation Service projects in Kansas.

The recommended plan for Upper Delaware and Tributaries Watershed involves works of improvement to be installed under authorities administered by the Soil Conservation Service. This project includes the installation of 20 floodwater retarding dams, 1 multi-purpose structure with water supply and recreational facilities, 11,000 acres of conservation land treatment, 1,000 acres of riparian and other woodland enhancement areas, 200 acres of riparian easements, and 16 livestock waste management systems.

The Upper Delaware and Tributaries Watershed Plan and Environmental Impact Statement was prepared under the authority of the Watershed Protection and Flood Prevention Act (Public Law 566, 83rd Congress, 68 Stat. 666, as amended) by the Nemaha-Brown Watershed Joint District No. 7, Kickapoo Tribe of Kansas, Atchison County Conservation District, Brown County Conservation District, Jackson County Conservation District, Nemaha County Conservation District, and the Kansas Department of Wildlife and Parks.

Throughout the planning process, sponsors, the public, and concerned agencies were asked to identify significant water resource and problem considerations in the watershed area. The Soil Conservation Service (SCS), U.S. Department of Agriculture (USDA), the lead agency, was assisted by the Forest Service-USDA and the Fish and Wildlife Service-USDI as cooperating agencies. State agencies assisting included the Kansas Department of Wildlife and Parks, Kansas Department of Health and Environment, and Kansas State and Extension Forestry.

MEASURES TAKEN TO COMPLY WITH NATIONAL ENVIRONMENTAL POLICIES

The Upper Delaware and Tributaries project has been planned in accordance with existing federal legislation concerned with the preservation of environmental values. The following actions were taken to ensure that the Upper Delaware and Tributaries Watershed Plan is consistent with national goals and policies.

Relative impacts of alternatives on environmental, economic, and social factors were analyzed early in planning to determine the significance to decision making and to design the environmental evaluation. As the RFO, I directed that a draft environmental impact statement (EIS) be prepared for this project.

The U.S. Fish and Wildlife Service identified the watershed's threatened and endangered species. The Kansas Department of Wildlife and Parks provided the state's threatened and endangered species list. The Kansas State Historic Preservation Officer reviewed the National Register of Historic Places to determine whether any items of historic significance would be affected by the project.

An interagency team was established for water quality evaluation in the project. Represented on the team were the Environmental Protection Agency, Kansas Department of Health and Environment, Kansas Department of Wildlife and Parks, and Soil Conservation

Service with support provided by the Cooperative Extension Service, Kansas Water Office, Kansas Biological Survey, Kansas Geological Survey, and United States Geological Survey. A public water quality information meeting was held to review water quality conditions, nonpoint source pollutant reduction goals, benefits of improved water quality, and methods of treatment. A consultant for the Kickapoo Tribe prepared a report, "Kickapoo Tribe Water Resources-Cultural and Social Significance."

In June 1989 the watershed district and Kickapoo Tribal Council were asked to update watershed resource and problem considerations as outlined in the watershed district's 1978 general plan. After receiving planning authorization, the scoping process was continued with requests to all sponsors, Bureau of Indian Affairs, Indian Health Service, Kansas Department of Wildlife and Parks, Kansas Water Office, and Kansas Department of Health and Environment. Each was asked to review and rate the problems and concerns in the watershed area and to consider the likely effects of the alternative. They were also asked to list any additional concerns of a significant nature. Other agencies were also notified of planning assistance and were asked for their input in scoping the economic and environmental studies. Each water resource concern was rated as to the degree of impact and significance to decision making completing the scoping process in June 1991. Recommendations from the evaluation were included in the EIS.

An interagency team of U.S. Fish and Wildlife Service, Kansas Department of Wildlife and Parks, and the Soil Conservation Service representatives conducted a wildlife assessment of each of the proposed dams and estimated the type and number of habitat units that would be affected by the dams. This team recommended the habitat value of woodland areas destroyed by the construction of planned floodwater retarding dams or the multipurpose dam be mitigated 100 percent. The value of the herbaceous habitat lost will be partially mitigated. Mitigation will be accomplished by enhancement of existing woodland areas, establishment of new woodland areas, establishment of the dam and spillway areas to mixed native grasses and forbs, and fencing of all dams and spillways to allow for managed grazing.

The following were major problems addressed in the scoping process and analyzed in the Upper Delaware and Tributaries Watershed plan:

- a. Flooding causes damages to local residences and businesses and reduces agricultural income.
- b. Erosion reduces agricultural income.
- c. Gullies void cropland for production, hinder conservation practices, and threaten public transportation system.
- d. The Kickapoo Tribe of Kansas and adjacent areas need dependable water supply and additional recreational opportunities.
- e. Sediment affects Delaware River aquatic species diversity, fills road ditches and farm ponds, and displaces Perry Lake beneficial storage.
- f. Terrestrial wildlife and fisheries habitats are degraded.
- g. Surface and ground water quality standards are impaired.

A draft environmental impact statement was prepared in June 1993 and made available for public review. Recommendations obtained from public participation during planning were considered in the preparation of the statement. Projects of other agencies were included only when they related to the Public Law 566 project, and they were not evaluated with regard to their individual merit.

Approximately 110 copies of the draft environmental impact statement were distributed to agencies, conservation groups, organizations, and individuals for comment. The draft environmental impact statement was filed with the Environmental Protection Agency on June 4, 1993.

All existing data and information pertaining to the project's probable environmental consequences were obtained with assistance from appropriate technical specialists. Documentary information as well as the views of interested federal, state, and local agencies and concerned individuals and organizations having special knowledge of, competence over, or interest in the project's environmental impact were sought. This process continued until it was felt that all the information necessary for a comprehensive, reliable assessment had been gathered.

A complete picture of the project's current and probable future environmental setting was assembled to determine the proposed project's impact and identify unavoidable adverse environmental impacts that might be produced. During these phases of evaluation, it became apparent that there are legitimate conflicts of scientific theory and conclusions leading to differing views of the project's environmental impact. In such cases, after consulting with persons qualified in the appropriate disciplines, those theories and conclusions appearing to be the most reasonable and having scientific acceptance were adopted.

The consequences of a full range of reasonable and viable alternatives to specific project features were considered, studied, and analyzed. In reviewing these alternatives, all courses of action that could reasonably accomplish the project purposes were considered. Attempts were made to identify the economic, social, and environmental values affected by each alternative. Both structural and non-structural alternatives for the project were considered.

The alternatives considered reasonable to accomplish the project's objectives were: (1) no-project action but continue the on-going conservation program; (2) 14 floodwater retarding dams, 1 multipurpose dam, and land treatment; (3) the National Economic Development Plan, on-going land treatment program, 21 dams (including 1 multipurpose), waste management system treatment of 16 confined livestock areas, and riparian woodland enhancement measures, and (4) Alternatives 2 and 3 with 10 additional small floodwater retarding dams. Two other resource protection alternatives were suggested and evaluated that would accomplish part of the objectives of the planned project. The full range of effects was set forth in the alternatives section of the EIS. Individual flood plain management strategies, actions, and programs that would meet some of the project's goals were considered.

CONCLUSIONS

The following conclusions were reached after carefully reviewing the proposed Upper Delaware and Tributaries Watershed project in light of all national goals and policies, particularly those expressed in the National Environmental Policy Act, and after evaluating the overall merit of possible alternatives to the project:

- a. The Upper Delaware and Tributaries Watershed project will employ reasonable and practicable means that are consistent with the National Environmental Policy Act while permitting the application of other national policies and interests. These means include, but are not limited to, a project planned and designed to minimize adverse effects on the natural environment while accomplishing authorized project purposes. Project features designed to preserve existing environmental values for future generations include:
 - (1) establish wildlife habitat compensation areas adjacent to floodwater retarding structures;
 - (2) equip each principal spillway with a valve that allows for releases from the sediment pool for downstream water users during drought or low stream flow;
 - (3) implement fish and wildlife management plans for the reservoirs and natural area cooperatively developed by the sponsors and the Kansas Department of Wildlife and Parks, U.S. Fish and Wildlife Service, and Soil Conservation Service;
 - (4) establish grasses and legumes on dams and borrow areas to protect them from erosion and provide food for wildlife;
 - (5) preserve and enhance riparian areas in the watershed;
 - (6) improve the quality of the water in the Delaware River and Perry Lake;
 - (7) enhance the ecological diversity of the watershed area;
 - (8) accelerate conservation land treatment; and
 - (9) protect ground water resource.
- b. The Upper Delaware and Tributaries Watershed project was planned using a systematic interdisciplinary approach involving integrated uses of the natural and social sciences and environmental concepts. All conclusions concerning the environmental impact of the project and overall merit of existing plans were based on a review of data and information that would be reasonably expected to reveal significant environmental consequences of the proposed project. These data included additional studies prepared specifically for the project and comments and views of all interested federal, state, and local agencies and individuals. The results of this review constitutes the basis for the conclusions and recommendations. The project will not affect any cultural resources eligible for inclusion in the National Register of Historic Places. Nor will the project affect any species of fish, wildlife, or plant or their habitats that have been designated as endangered or threatened.
- c. In studying and evaluating the environmental impact of the Upper Delaware and Tributaries Watershed project, every effort was made to express all environmental values quantitatively and to identify and give appropriate weight and consideration of nonquantifiable environmental values.
- d. Wherever legitimate conflicts of scientific theory and conclusions existed and conclusions led to different views, persons qualified in the appropriate disciplines were consulted. Theories and conclusions appearing to be most reasonable scientifically acceptable, or both, were adopted.
- e. Every possible effort has been made to identify those adverse environmental effects which cannot be avoided if the project is constructed.
- f. The long-term and short-term resource uses, long-term productivity, and the irreversible and irretrievable commitment of resources are described in the final environmental impact statement.


- g. All reasonable and viable alternatives to project features and to the project itself were studied and analyzed with reference to national policies and goals, especially those expressed in the National Environmental Policy Act and the federal water resource development legislation under which the project was planned. Each possible course of action was evaluated as to its possible economic technical, social, and overall environmental consequences to determine the tradeoffs necessary to accommodate all national policies and interests. Some alternatives may tend to protect more of the present and tangible environmental amenities than the proposed project will preserve. However, no alternative or combination of alternatives will afford greater protection of the environmental values while accomplishing the other project goals and objectives.

I conclude, therefore, that the proposed project will be the most effective means of meeting national, state, and local goals and is consistent in serving the public interest by including provisions to protect and enhance the environment. I also conclude that the recommended plan is the environmentally preferable plan.

RECOMMENDATIONS

Having concluded that the proposed Upper Delaware and Tributaries Watershed project uses all practicable means, consistent with other essential considerations of the national policy, to meet the goals established in the National Environmental Policy Act, that the project will thus serve the overall public interest, that the final environmental impact statement has been prepared, reviewed, and accepted in accordance with the provisions of the National Environmental Policy Act as implemented by Departmental regulations for the preparation of environmental impact statements, and that the project meets the needs of the project's local sponsoring organizations, I propose to implement the Upper Delaware and Tributaries Watershed project.

By:


State Conservationist
Soil Conservation Service
U.S. Department of Agriculture

Date:

6/13/94



DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250390-11-5
Upper Del. Tribe

AUG 21 1995

Honorable Alice M. Rivlin
Director
Office of Management and Budget
Old Executive Office Building
17th and Pennsylvania, N.W.
Washington, D.C. 20503

File Code: 390-11

Dear Alice:

We are forwarding for transmittal to Congress, consonant with Section 5 of the Watershed Protection and Flood Prevention Act (68 Stat. 666), as amended, and Executive Order 10654 of January 20, 1956, a watershed plan-environmental impact statement (plan-EIS) for the Upper Delaware and Tributaries Watershed, Kansas.

The Upper Delaware and Tributaries Watershed plan-EIS was prepared by the following sponsoring local organizations with technical assistance from the Department of Agriculture Natural Resources Conservation Service (NRCS), formerly the Soil Conservation Service:

Nemaha-Brown Watershed Joint District No. 7
Kickapoo Tribe of Kansas
Atchison County Conservation District
Brown County Conservation District
Jackson County Conservation District
Nemaha County Conservation District

Assistance for the preparation of the plan-EIS was authorized by the Chief of NRCS on May 31, 1991.

The plan-EIS was submitted to the Governor of Kansas and interested Federal agencies for a 60-day review period. Comments have been received from the interested Federal agencies and others. Summaries of the comments and responses are appended to the final plan-EIS. No comments were received on the final plan-EIS. Enclosed are the Record of Decision and fact sheet.

The National Economic Development Plan was selected and consists of the following: (1) 20 floodwater retarding dams, (2) one multi-purpose dam with recreational facilities, (3) 11,000 acres of conservation land treatment, (4) 1,000 acres of riparian and other woodland practices, (5) 200 acres of riparian easements, and (6) 16 livestock waste management systems. Installation of these measures will reduce average annual flood damages in the watershed by \$246,500 (51 percent) and downstream by \$60,600 (20 percent).

Honorable Alice M. Rivlin

2

The floodwater retarding dams, land treatment measures, and animal waste systems will significantly reduce nonpoint source pollutants. These pollutants include sediment, nitrates, phosphorus, and fecal bacteria. This plan has been formulated to meet the Kansas water quality standards and has a moderately high probability of success. The floodwater retarding dams and land treatment will also provide flood protection. The multi-purpose dam will provide flood protection, a much needed water supply for the Kickapoo Indian Tribe, and water-based recreation for the Tribe and the surrounding communities.

Ninety-four percent of the benefits of this project are directly related to agriculture. The total storage of two of the structures in the project will exceed 4,000 acre-feet. Therefore, in accordance with Section 2 of Public Law 83-566, copies of this document should be transmitted to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representatives for their consideration.

One copy of the plan-EIS is enclosed for transmittal to the President of the Senate, and another copy is for transmittal to the Speaker of the House of Representatives.

Sincerely,

signed

DAN GLICKMAN
Secretary

Enclosures

Jeffrey R. Vonk, Regional Conservationist, Northern Plains, NRCS, Lincoln, Nebraska
James N. Habiger, State Conservationist, NRCS, Salina, Kansas
P. Scott Shearer, Acting Assistant Secretary, Office of Congressional Relations,
Washington, D.C.

Exhibit 13

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018

JOHN H. CHAFEE, RHODE ISLAND, CHAIRMAN

JOHN W. WARNER, VIRGINIA
ROBERT SMITH, NEW HAMPSHIRE
LAUCH FAIRCLOTH, NORTH CAROLINA
DIRK KEMPTHORNE, IDAHO
JAMES M. INHOFE, OKLAHOMA
CRAIG THOMAS, WYOMING
MITCH MCCONNELL, KENTUCKY
CHRISTOPHER S. BOND, MISSOURI
ROBERT F. BENNETT, UTAH

MAX BAUCUS, MONTANA
DANIEL PATRICK MOYNIHAN, NEW YORK
FRANK R. LAUTENBERG, NEW JERSEY
HARRY REID, NEVADA
BOB GRAHAM, FLORIDA
JOSEPH I. LIEBERMAN, CONNECTICUT
BARBARA BOXER, CALIFORNIA
RON WYDEN, OREGON

STEVEN J. SHIMBERG, STAFF DIRECTOR AND CHIEF COUNSEL
J. THOMAS SUTER, MINORITY STAFF DIRECTOR

1996 JUL 29 10 10 AM
RECORDED
United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

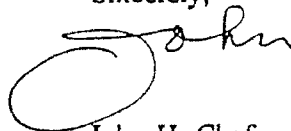
July 24, 1996

The Honorable Trent Lott
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Trent:

Pursuant to the provisions of 16 U.S.C., section 1002, I am transmitting herewith the resolutions approved today by the Committee on Environment and Public Works.

Sincerely,

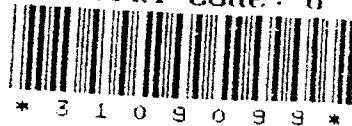


John H. Chafee
Chairman

Enclosure

cc: The Honorable Thomas A. Daschle (w/enc)
The Honorable Pete V. Domenici (w/enc)
The Honorable Mark O. Hatfield (w/enc)
The Honorable Bud Shuster (w/enc)
The Honorable Dan Glickman ✓
Secretary of Agriculture (w/enc)

Action Office: nrcs
Referral Code: 6



104th Congress

2nd Session

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

COMMITTEE RESOLUTION

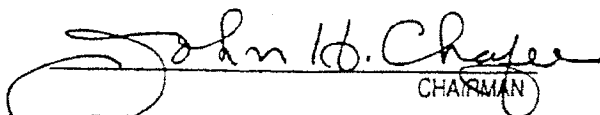
RESOLVED BY THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS OF THE UNITED STATES SENATE:

Committee on Environment and Public Works
United States Senate
Washington, D.C.

RESOLUTION

Resolved by the Committee on Environment and Public Works of the United States Senate, That pursuant to the provisions of Section 2 of Public Law 566, Eighty-third Congress, as amended, the following project for Flood Prevention, Water Quality, Soil Conservation and other purposes is hereby approved in accordance with the report on such project dated January 19, 1996, and transmitted to Congress by the Director, Office of Management and Budget, by letter dated May 6, 1996, and said report is made a part of this approval.

Name of Project: Upper Delaware Watershed, Kansas


CHAIRMAN

Adopted: July 24, 1996


RANKING MINORITY MEMBER

Exhibit 14

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018



Committee on Transportation and Infrastructure

Congress of the United States

**House of Representatives
Washington, DC 20515**

**Bud Shuster
Chairman**

**James L. Oberstar
Ranking Democratic Member**

Jack Schenendorf, Chief of Staff
Michael Strachn, Deputy Chief of Staff

David Heymsfeld, Democratic Chief of Staff

RESOLUTION

Resolved by the Committee on Transportation and Infrastructure of the United States House of Representatives, That pursuant to the provisions of Section 2 of Public Law 566, Eighty-third Congress, as amended, the following project for Watershed Protection and Flood Prevention, and other purposes is hereby approved in accordance with the report on such project dated June 13, 1994, and transmitted to Congress by the Director, Office of Management and Budget, by letter dated May 6, 1996, and said report is made a part of this approval.

Name of Project: Upper Delaware and Tributaries Watershed, Kansas

Adopted: June 25, 1998

ATTEST:

**BUD SHUSTER
CHAIRMAN**

Exhibit 15

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018

KICKAPOO TRIBE WATER RIGHTS SETTLEMENT AGREEMENT

KICKAPOO TRIBE WATER RIGHTS SETTLEMENT AGREEMENT

BETWEEN

THE KICKAPOO TRIBE IN KANSAS

AND

THE STATE OF KANSAS*

*The United States Departments of Interior and Justice participated in the negotiation of this Agreement but will sign upon the approval by and at the direction of the United States Congress.

Exhibit 16

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018

WHEREAS, Plaintiff and Defendants ("the Parties") have conducted settlement negotiations to address globally the trust accounting claims and the trust mismanagement claims that Plaintiff has brought in this case;

WHEREAS, the Parties have discussed and agreed to a settlement of Plaintiff's existing claims and issues relating to (1) Defendants' alleged failure to provide an accounting of Plaintiff's trust funds and non-monetary trust assets or resources; (2) Defendants' alleged mismanagement of Plaintiff's non-monetary trust assets or resources; and (3) Defendants' alleged mismanagement of Plaintiff's trust funds; and

WHEREAS, the Parties believe that it is in their best interests to enter into this Joint Stipulation of Settlement, which resolves and settles the above-mentioned trust accounting and trust mismanagement claims;

NOW, THEREFORE, THE PARTIES HEREBY JOINTLY STIPULATE TO THE FOLLOWING:

1. **Settlement Without Admission of Liability or Wrongdoing.** This Joint Stipulation of Settlement is the result of compromise and settlement between the Parties. It shall not constitute or be construed as an admission of liability or wrongdoing by any Party, and it shall not be utilized or admissible as precedent, evidence, or argument in any other proceeding, except as may be necessary to ensure compliance with or to carry out its terms and conditions.

2. **Amount of Settlement.** In consideration for (a) the dismissal of Plaintiff's claims with prejudice, pursuant to Paragraph 3 below; (b) the waiver, release, and covenant not to sue that are set forth in Paragraph 4 below, and (c) any other commitments and covenants

made by Plaintiff in this Joint Stipulation of Settlement, Defendants will pay to Plaintiff the sum of \$700,000.00, in full, complete, and final settlement.

3. **Dismissal with Prejudice.** In consideration for the payment required by Paragraph 2 above, the parties shall file a joint motion to dismiss Plaintiff's claims with prejudice in accordance with the requirements of Paragraph 17 below.

4. **Full Settlement, Waiver, Release, and Covenant Not to Sue.** In consideration of the payment required by Paragraph 2 above, Plaintiff hereby waives, releases, and covenants not to sue in any administrative or judicial forum on any and all claims, causes of action, obligations, and/or liabilities of any kind or nature whatsoever, known or unknown, regardless of legal theory, for any damages or any equitable or specific relief, that are based on harms or violations occurring before the date of this Court's entry of this Joint Stipulation of Settlement as an Order and that relate to Defendants' management or accounting of Plaintiff's trust funds or Plaintiff's non-monetary trust assets or resources. The claims being settled include, but are not limited to, the following:

a. Defendants' alleged obligation to provide a historical accounting or reconciliation of Plaintiff's trust funds and non-monetary trust assets or resources, and Defendants' fulfillment of any such obligation;

b. Defendants' alleged mismanagement of Plaintiff's non-monetary trust assets or resources, including but not limited to any claim or allegation that:

(1) Defendants failed to make Plaintiff's non-monetary trust assets or resources productive;

(2) Defendants failed to obtain an appropriate return on, or appropriate consideration for, Plaintiff's non-monetary trust assets or resources;

(3) Defendants failed to record or collect, fully or timely, or at all, rents, fees, or royalties, or other payments for the transfer, sale, encumbrance, or use of Plaintiff's non-monetary trust assets or resources;

(4) Defendants failed to preserve, protect, safeguard, or maintain Plaintiff's non-monetary trust assets or resources;

(5) Defendants permitted the misuse or overuse of Plaintiff's non-monetary trust assets or resources;

(6) Defendants failed to manage Plaintiff's non-monetary trust assets or resources appropriately, including through the approval of agreements for the use and extraction of natural resources which are or were located in or on Plaintiff's trust property, leases of Plaintiff's trust lands, easements across Plaintiff's trust lands, and other grants to third parties of authority to use Plaintiff's trust lands or natural resources;

(7) Defendants failed to enforce the terms of any permits, leases, or contracts for the transfer, sale, encumbrance, or use of Plaintiff's non-monetary trust assets or resources;

(8) Defendants failed to prevent trespass on Plaintiff's non-monetary trust assets or resources;

(9) Defendants failed to report, provide information about their actions or decisions relating to, or prepare an accounting of Plaintiff's non-monetary trust assets or resources;

d. Defendants' alleged failure to perform trust duties related to the management of trust funds and non-monetary trust assets or resources, as set out in the complaint filed in this case, and in this Joint Stipulation of Settlement, that were alleged to be owed to Plaintiff at any time, up to the date of the Court's entry of this Joint Stipulation of Settlement as an Order.

5. **Plaintiff's Release, Waiver, and Covenant Not to Sue Unaffected by Tolling Provisions.** Nothing in any of the appropriation acts for the Interior Department, which address the application of the statute of limitations to claims concerning losses to or mismanagement of trust funds (*see, e.g.*, Department of the Interior Appropriations Act of 2009, Pub. L. No. 111-88, 123 Stat. 2904, 2922 (2009), and similar provisions in other Interior Department appropriations acts enacted before or after the date of the entry of this Joint Stipulation of Settlement as an Order), shall affect in any way Plaintiff's foregoing release, waiver, and covenant not to sue.

6. **Exceptions to Plaintiff's Release, Waiver, and Covenant Not to Sue.** Notwithstanding the provisions of Paragraph 4 above, nothing in this Joint Stipulation of Settlement shall diminish or otherwise affect in any way:

a. Plaintiff's ability, subject to the provisions of Paragraph 13 below, to assert a claim for harms or damages allegedly caused by Defendants after the Court's entry of this Joint Stipulation of Settlement as an Order;

b. Plaintiff's water rights, whether adjudicated or unadjudicated; Plaintiff's authority to use and protect such water rights; and Plaintiff's claims for damages for loss of water resources allegedly caused by Defendants' failure to establish, acquire, enforce or protect such water rights;

(10) Defendants improperly or inappropriately transferred, sold, encumbered, allotted, managed, or used Plaintiff's non-monetary trust assets or resources; and

(11) Defendants failed to manage Plaintiff's non-monetary trust assets or resources appropriately by failing to undertake prudent transactions for the sale, lease, use, or disposal of Plaintiff's non-monetary trust assets or resources.

c. Defendants' alleged mismanagement of Plaintiff's trust funds,¹ including but not limited to any claim or allegation that:

(1) Defendants failed to invest tribal income in a timely manner;

(2) Defendants failed to obtain an appropriate return on invested funds;

(3) Defendants failed to deposit monies into trust funds or disburse monies from trust funds in a proper and timely manner;

(4) Defendants disbursed monies without proper authorization, including that of Plaintiff;

(5) Defendants failed to report or provide information about their actions or decisions relating to Plaintiff's trust fund accounts; and

¹ For purposes of this Joint Stipulation of Settlement, Plaintiff's trust funds include but are not limited to any monies that have been received by Plaintiff in compensation for or as a result of the settlement of Plaintiff's pre-1946 claims brought before the Indian Claims Commission ("ICC"); the monies in any Tribal-related accounts; any proceeds-of-labor accounts; any Tribal-Individual Indian Money ("Tribal-related IIM") or special deposit accounts; any Indian Money-Proceeds of Labor ("IMPL") accounts; any Treasury accounts; any legislative settlement or award accounts; and any judgment accounts, regardless of whether the above-described accounts are principal or interest accounts, whether they were established pursuant to Federal legislation, and whether they are or were maintained, managed, invested, or controlled by either the Department of the Interior ("Interior") or the Department of the Treasury ("Treasury").

c. Plaintiff's federal law hunting, fishing, trapping and gathering rights, including federally reserved and aboriginal rights, whether adjudicated or unadjudicated, and Plaintiff's authority to use and protect such rights;

d. Plaintiff's rights and remedies under federal laws of general application for the protection of the environment (and regulations arising under such laws), including but not limited to (1) the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (2) the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; (3) the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; (4) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (5) the Nuclear Waste Policy Act, 42 U.S.C. § 10101 *et seq.*; (6) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*; (7) the Oil Pollution Act, 33 U.S.C. § 2701 *et seq.*; (8) the Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*; (9) the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; (10) the Indian Lands Open Dump Cleanup Act of 1994, 25 U.S.C. § 3901 *et seq.*; (11) the Endangered Species Act of 1973, 16 U.S.C. § 1531 *et seq.*; (12) the Atomic Energy Act of 1954, 42 U.S.C. § 2011 *et seq.*; and (13) the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. § 2201 *et seq.*;

e. Plaintiff's or Defendants' claims, including but not limited to claims arising prior to July 19, 1966, that were identified by or submitted to Defendants, pursuant to the Indian Claims Limitation Act of 1982, Pub. L. 97-394, 96 Stat. 1966, which extended the statute of limitations contained in 28 U.S.C. § 2415 (such claims being commonly referred to as "Section 2415 claims"), against third parties. The parties to this Joint Stipulation of Settlement intend there to be no third-party beneficiaries to this Joint Stipulation;

f. Plaintiff's ability to assert any claims not otherwise waived herein; and

g. Any defenses that Defendants have or may have regarding any claims that Plaintiff may assert in subsequent litigation or administrative proceedings.

7. **Plaintiff's Attestation Regarding Its Trust Account Balances, as Stated by the Office of the Special Trustee for American Indians.** In consideration of the payment required by Paragraph 2 above and upon the Court's entry of this Joint Stipulation of Settlement as an Order, Plaintiff, as a matter of settlement and compromise, accepts as accurate the balances of all of Plaintiff's trust fund accounts, as those balances are stated in the most recent periodic Statements of Performance issued by the Office of the Special Trustee for American Indians ("OST") (attached hereto as Exhibit 1 and dated January 31, 2012).

8. **Plaintiff's Acceptance of Periodic Statements of Performance Provided by OST.** Plaintiff accepts, as a matter of settlement and compromise, the most recent Statements of Performance issued by OST (attached hereto as Exhibit 1 and dated January 31, 2012), as accurate, full, true, and correct statements of all of Plaintiff's trust fund accounts as of the date of the Statements. Further, Plaintiff accepts, as a matter of settlement and compromise, the Statements of Performance (Exhibit 1, dated January 31, 2012) in fulfillment of any accounting of Plaintiff's trust fund accounts that is required by law as of the date of the Court's entry of this Joint Stipulation of Settlement as an Order.

9. **Plaintiff's Acceptance of Defendants' Compliance with Applicable Law as Satisfaction of Any Duty and Responsibility to Account for and Report to Plaintiff Regarding Plaintiff's Trust Funds.** Plaintiff accepts that Defendants satisfy any duty and responsibility to account for and report to Plaintiff regarding Plaintiff's trust funds, through Defendants' compliance with applicable provisions of the United States Constitution, treaties,

Exhibit 17

TESTIMONY OF LESTER RANDALL, CHAIRMAN, KICKAPOO TRIBE IN KANSAS, IN
SUPPORT OF S. 2154, THE KICKAPOO TRIBE IN KANSAS WATER RIGHTS SETTLEMENT
AGREEMENT ACT

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE
JULY 18, 2018



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 06 2018

The Honorable Lester Randall
Chairman
Kickapoo Tribe
824 111th Drive
Horton, Kansas 66439

Dear Chairman Randall:

The Department of the Interior's Working Group on Indian Water Settlements (Working Group) met on February 14, 2018, to consider the Kickapoo Tribe's (Tribe) request for the appointment of a Federal negotiation team. The Working Group, after carefully considering the request and the level of information currently available, decided to appoint a Federal Indian Water Rights Negotiation Team to negotiate a comprehensive settlement of the Tribe's water rights claims.

We are currently working with the bureaus and agencies that will be represented on the team and we are pleased to announce that Scott Bergstrom, Office of the Solicitor, has been appointed as the Chairman of the team. We will notify you when we are completed with the appointment process.

The Department of the Interior, through the Federal team, looks forward to working with the Tribe, the State of Kansas, and other local parties in moving towards a negotiated settlement that will resolve the Tribe's water rights claims in Kansas.

If you have any questions, please feel free to email me at Pamela_Williams@ios.doi.gov or by phone at (202) 262-0291.

Sincerely,

Pamela Williams, Director
Secretary's Indian Water Rights Office