

55-17
Navajo Settlement**John Whipple**

From: scone
Sent: Monday, September 08, 2003 9:03 PM
To: Michael.Schoessler
Cc: JohnRCawley; BParry; spollack; ecoriz; jwhipple; John Dantonio; ncordova; fort; frankdayishjr; dirdnr
Subject: FOIA request

ATTENTION: FREEDOM OF INFORMATION ACT [FOIA] REQUEST
(submitted electronically)

8 September 2003

Michael Schoessler, Team Leader
Navajo-San Juan River Federal Indian Water Rights Negotiation Team
U.S. Department of the Interior
Office of the Solicitor
505 Marquette Avenue, NW
Suite 1800
Albuquerque, NM 87102

Dear Mr. Schoessler:

This is a formal request submitted under the aegis of the Freedom of Information Act ["FOIA"] regarding documents presumably generated by the Navajo-San Juan River Federal Indian Water Rights Negotiation Team ["Team"], a Team which you have led for nearly a year.

During the past twelve months your Team has enforced absolute secrecy while conducting a series of closed-door meetings with The Navajo Nation, the State of New Mexico and **other interested parties** in the Navajo-San Juan River Federal Indian Water Rights Negotiation ["Negotiation"] (emphasis added). As a result, many legitimate stakeholders, the Public and the press have been arbitrarily excluded -- barred from proceedings which may ultimately involve the expenditure of hundreds of millions of state and federal dollars and, the so-called dreaded unintended effect.

Of particular concern in the Negotiation, is the Department of the Interior's ("DOI") binding Departmental Policy regarding Indian water settlement negotiations, as prescribed in a formal executive "Policy Statement" noticed in the Federal Register, Vol.55, No.48, 9223 et seq, [55FR9223], March 12, 1990, "Working Group in Indian Water Settlements; Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims" ["Policy"]. This DOI Policy has been in force and preserved intact for some fourteen years -- not the subject of amendment, modification, supercession or revocation. Unfortunately, DOI has a bleak history of haphazard and selective enforcement of the Policy, resulting in egregious abuses of the public trust.

Needless to say, we were heartened by your promise late last year that the Team would strictly adhere to the Policy as established in the "Criteria & Procedures" throughout the Negotiation. A faithful execution of the Policy by your Team in the Negotiation, as you pledged, would have produced extensive documentation over the past year.

9/15/2003

This FOIA request centers on CPA's interest in viewing specific documentation of the Negotiation, presumably generated through the work of your Team in compliance with the Policy.

SPECIFIC REQUEST:

The "Procedures" set forth in "Phase I -- Fact Finding" of the Policy include:

"2. The Department will consult with the Department of Justice (Justice) concerning the legal considerations in forming a negotiating team. If Department decides to establish a team, the Office of Management and Budget (OMB) and Justice shall be notified, in writing. Justice should generally be a member of any negotiating team.

a. The Department's notification should include the rationale for potential negotiations, i.e., pending litigation and other background information about the claim already available, makeup of the team (reason that Justice is not a member of a team, if applicable), and non-Federal participants in the settlement process."

CPA requests access to view documentation of the required written notification of OMB and DOJ, including all pertinent associated reference materials as outlined above. In addition, CPA requests access to view documentation pertinent to the identification of the "other interested parties" participating with the Team, The Navajo Nation and the State of New Mexico in the Negotiation.

The "Procedures" set forth in "Phase I -- Fact-Finding" of the Policy also include:

"3. Not later than nine months after notification , a fact-finding report outlining the current status of litigation and other pertinent matters will be submitted by the team to the Department, OMB, and Justice. The fact-finding report should contain information that profiles the claim and potential negotiations. The report should include:

a. A list of all involved parties and their positions.

b. The legal history, if any, of the claim, including such relevant matters as prior or potential litigation or court decisions, or rulings by the Indian Claims Commission.

c. A summary and evaluation of the claims asserted for the Indians.

d. Relevant information on the non-Federal parties and their positions to the claim.

e. A geographical description of the reservation and drainage basin involved, including maps and diagrams.

f. A review and analysis of pertinent existing contracts, statutes, regulations, and legal precedent that may have an impact on the settlement.

g. A description and analysis of the history of the United States' trust activities on the Indian reservation."

CPA requests access to view in detail, as outlined above, the Team's "fact-finding report" as submitted to DOI, OMB and DOJ.

The "Procedures" set forth in the "Phase II--Assessment and Recommendations" of the Policy include:

"1. As soon as possible, the negotiating team, in concert with Justice, will conduct and present to the Department an assessment of the positions of all parties and a recommended negotiating position. The purpose of the assessment is to (1) measure all costs presuming no settlement, and, (2) measure

complete settlement costs to all the parties. The assessment should include:

- a. Costs presuming no settlement-- Estimates for quantifying costs associated with all pending or potential litigation in question, including claims against the United States and claims against other non-Federal parties together with an assessment of the risk to all parties from any aspect of the claim and all pending litigation without a settlement. A best/worst/most likely probability analysis of the litigation outcome should be developed.
- b. An analysis of the value of the water claim for the Indians.
- c. Costs Presuming Settlement-- quantification of alternative settlement costs to all parties. This includes an analysis showing how contributions, other than those strictly associated with litigation, could lead to settlement (e.g., facilities to use water, alternative uses of water, and alternative financial considerations)."

CPA requests access to view the "assessment" outlined above, as presented to the DOI, together with all of the documentation and analyses accompanying and supporting the "assessment".

The "Procedures" set forth in "Phase III--Briefings and Negotiating Position" include:

"1. The Working Group on Indian Water Settlements will present to the Secretary a recommended negotiating position. It should contain:

- a. The recommended negotiating position and contribution by the Federal Government.
- b. A strategy for funding the Federal contribution to the settlement.
- c. Any legal or financial views of Justice or OMB.
- d. Tentative position on major issues expected to arise."

CPA requests access to view the "recommended negotiating position" as presented to the Secretary of the Interior, including the various required associated supporting documents.

If your determination is that a portion or portions of one or more of these documents is/are exempt from disclosure, please understand that you are obligated by the FOIA to **redact** or remove that part of the record, and **release** the remainder to be viewed. CPA, therefore, fully expect access to be granted to view all segregable non-exempt portions even if other parts of the record are deemed exempt from disclosure and deleted.

Thank you for your attention to this request. If you have any questions about the description of the requested documents or the specific terms of the Policy itself, please do not hesitate to contact me by phone or email [scone@infoway.lib.nm.us]. I look forward to hearing from you within twenty days, as prescribed by the FOIA.

Sincerely,

Steve Cone
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Citizens' Progressive Alliance
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