

# 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

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NEZ PERCE TRIBE, *et al.*

Plaintiffs,

V.

KENNETH L. SALAZAR,  
Secretary of the Interior, *et al.*

Defendants.

No. 06-cv-2239-TFH

Judge Thomas F. Hogan

**JOINT STIPULATION OF SETTLEMENT BETWEEN DEFENDANTS AND PLAINTIFF KICKAPOO TRIBE OF KANSAS, AND [PROPOSED] ORDER**

WHEREAS, on December 4, 2008, the Kickapoo Tribe of Kansas, also known as the Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas (“Plaintiff” or “Tribe”), was added as a Plaintiff to this case, which was originally filed on December 28, 2006, by the Complaint in Intervention seeking declaratory and injunctive relief against Dirk Kempthorne, Secretary of the Interior, and Henry M. Paulson, Secretary of the Treasury;

WHEREAS, Kenneth Salazar is currently the Secretary of the Interior; Michele F. Singer, the Acting Principal Deputy Special Trustee for American Indians; and Timothy F. Geithner, the Secretary of the Treasury (collectively, "Defendants");

WHEREAS, Plaintiff is seeking an accounting and reconciliation of its trust fund accounts and non-monetary trust assets or resources in this case;

WHEREAS, Plaintiff claims that an accounting will provide an additional basis for its claims for monetary damages relating to Defendants' management of Plaintiff's trust funds and non-monetary trust assets or resources;

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,<sup>1</sup> 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

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<sup>1</sup> 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,