

# 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

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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](mailto: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