

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

June 7, 2017

The Honorable Ryan Zinke
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Secretary Zinke:

The Committee on Natural Resources' Subcommittee on Oversight and Investigations is conducting oversight of settlements negotiated in lawsuits against the Department of the Interior (DOI) and its subagencies.

The quantity of suits settled and the financial burden settlement awards, including attorney's fees, place upon the taxpayers is staggering. These payments are made from an agency's appropriations or from the Judgment Fund at the Department of the Treasury.¹ According to the Department of the Treasury, the Judgment Fund paid a total of \$1,521,809,918.90 in litigative payments in calendar year 2016 for cases in which DOI or one of its subagencies was a defendant.² Under the Department of the Treasury's categorization, "litigative payments" include "payments resulting from a settlement with the claimant before or during litigation as well as those resulting from a judge's order."³ Previously, the Subcommittee specifically expressed concerns about the Obama Administration's settlement of claims in excess of \$3.3 billion with more than 100 Indian tribes that alleged federal mismanagement of tribal in-trust assets.⁴ A plaintiff's ability to collect attorney's fees and costs in certain lawsuits against the government under the Equal Access to Justice Act and other fee-shifting statutes imposes additional costs on the federal government.⁵

The decision to enter into a settlement with potentially serious ramifications requires careful consideration. It is critical to note that the Department of Justice settled an unusually large number of cases with numerous companies that involved \$20 billion in payments and fines against those entities

¹ 31 U.S.C. § 1304 (2015). *See also* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-650, ENVIRONMENTAL LITIGATION: CASES AGAINST EPA AND ASSOCIATED COSTS OVER TIME 2 (2011).

² U.S. Dep't of the Treasury, Judgment Fund Payment Search: Jan. 1, 2016 to Dec. 31, 2016, U.S. Dep't of the Interior, <https://jfund.fms.treas.gov/jfradSearchWeb/JFPymtSearchAction.do> (last visited June 7, 2017).

³ U.S. Dep't of the Treasury, Judgement Fund: Congressional Report, <https://www.fiscal.treasury.gov/fsservices/gov/pmt/jdgFund/congress-reports.htm> (last visited June 7, 2017).

⁴ Letter from Rep. Louie Gohmert, Chairman, Subcomm. on Oversight and Investigations of the H. Comm. on Natural Res., to Sally Jewell, U.S. Sec'y of the Interior (Dec. 7, 2016) (on file with author). *See also* Press Release, U.S. Dep't of the Interior, Att'y Gen. Loretta E. Lynch and Secretary of the Interior Sally Jewell to Announce Settlements of Tribal Trust Accounting and Management Lawsuits (Sept. 26, 2016), *available at* <https://www.doi.gov/pressreleases/attorney-general-loretta-e-lynch-and-secretary-interior-sally-jewell-announce>.

⁵ 28 U.S.C. § 2412 (2015).

during the final week of the Obama Administration.⁶ Settlements and cases completed in a rush manner based on the timeline of an outgoing administration raise concerns and deserve close scrutiny.

Settlements have a profound impact upon agency policymaking and the legislative process. The Subcommittee is concerned about the practice of ideologically-driven organizations utilizing litigation to advance their agendas, and thereby their ability to shape policy and drive agency decision-making. For example, in 2011, as part of 13 federal court settlements with two environmental groups, the Center for Biological Diversity and WildEarth Guardians, the U.S. Fish and Wildlife Service agreed to review over 250 species, and actions that impact as many as 1,053 species for potential listing under the Endangered Species Act.⁷ These settlements played a role in driving the agency to focus overwhelmingly on listing species in order to comply with those agreements rather than gathering stronger data and working productively with states, localities, and landowners to avoid listing species.⁸ Agencies often cite deadlines imposed by large settlements as an excuse for neglecting to engage with the public, affected states or landowners or review emerging scientific information.⁹

Settlements utilize taxpayer dollars and federal resources, and their terms impact our economy, our communities, and our policy making. Although necessary at times, settlements lack transparency and don't allow for assurance that the law is being executed as intended or that taxpayers' funds are being spent appropriately. Therefore, in order to assist the Subcommittee's oversight efforts, please produce the following documents and information as soon as possible, but no later than 5:00 p.m. on June 21, 2017:

1. A sortable document that is sufficient to identify all settlements and consent decrees entered into from January 1, 2016 through January 19, 2017 regarding litigation or notices of intent to bring suit in which the Department of the Interior, including any of its subagencies, bureaus, or employees or officials in their official capacity, was a defendant, which includes separate columns identifying:
 - a. The captioned name and case number of the legal action the settlement or consent decree addresses, if the suit was filed;
 - b. The name of all parties to the settlement or consent decree;
 - c. The statute or cause of action under which the action was brought or document giving notice of intent to sue was issued;
 - d. The date on which notice of intent to bring suit was issued;

⁶ See Aruna Wiswanatha, *Obama Administration Races to Finish Probes, Wring Payouts from Firms*, WALL ST. J. (Jan. 18, 2017), <https://www.wsj.com/articles/obama-administration-races-to-finish-probes-wring-payouts-from-firms-1484792587> (noting an "unusually high" volume of settlements occurring before the end of the presidency).

⁷ See ENDANGERED SPECIES ACT CONG. WORKING GROUP, 113TH CONG., REPORTS, FINDINGS AND RECOMMENDATIONS 7-8 (2014), available at

http://naturalresources.house.gov/uploadedfiles/esa_working_group_final_report_and_recommendations_02_04_14.pdf.

⁸ See *id.* at 13.

⁹ See *id.* at 35.

The Honorable Ryan Zinke

June 7, 2017

Page 3

- e. The date on which the suit was filed, if the suit was filed;
 - f. The date on which the settlement or consent decree was entered into;
 - g. Any monetary award(s) to parties to the case, or to parties' attorneys, including: (1) the amount of the award, (2) the nature of the award (i.e. attorney's fees, expert witness costs, court costs, etc.), and (3) the source of the award (i.e. whether it was paid from the Judgment Fund or from the agency's appropriations);
 - h. Any monetary award(s) that had restrictions or stipulations attached regarding the use or purpose; and
 - i. The content, including terms and conditions agreed to, of the settlement or consent decree.
2. The total number of all settlements and consent decrees entered into from January 1, 2012 through December 31, 2015 regarding litigation or notices of intent to bring suit in which the Department of the Interior, including any of its subagencies, bureaus, or employees or officials in their official capacity, was a defendant, and the total monetary amounts awarded by the settlements and consent decrees.

Please deliver your response to room 1324 of the Longworth House Office Building. The Committee prefers, if possible, to receive your response in electronic format. An attachment contains additional instructions for responding to the Committee's request.

Please contact Christen Harsha of the Oversight and Investigations Subcommittee staff at (202) 225-7107 with any questions about this request. Thank you for your attention to this matter.

Sincerely,



Raúl R. Labrador
Chairman
Subcommittee on Oversight and Investigations

Enclosure

cc: The Hon. A. Donald McEachin, Ranking Member, Subcommittee on Oversight and Investigations