

DEPARTMENT OF THE INTERIOR
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

AGENCY: Department of the Interior.

ACTION: Policy Statement.

SUMMARY: It is the policy of this Administration, as set forth by President Bush on June 21, 1989, in his statement signing into law H.R. 932, the 1989 Puyallup Tribe of Indians Settlement Act, that disputes regarding Indian water rights should be resolved through negotiated settlements rather than litigation. Accordingly, the Department of the Interior adopts the following criteria and procedures to establish the basis for negotiation and settlement of claims concerning Indian water resources.

EFFECTIVE DATE: March 12, 1990.

ADDRESSES: Comments may be addressed to: Mr. Tim Glidden, Department of the Interior, MS 6217-MIB, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Glidden, Chairman, Working Group on Indian, Water Settlements, 202-343-7351.

SUPPLEMENTARY INFORMATION: These criteria and procedures were developed by the Working Group on Indian Water Settlements from the Department of the Interior.

These criteria and procedures supersede all prior Departmental policy regarding Indian water settlement negotiations. The criteria provide a framework for negotiating settlements so that (1) The United States will be able to participate in water settlements consistent with the Federal Government's responsibilities as trustee to Indians; (2) Indians receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; (3) Indians obtain the ability as part of each settlement to realize value from confirmed water rights resulting from settlement; and (4) The settlement contains appropriate cost-sharing by all parties benefiting from the settlement.

Dated: March 6, 1990.

Timothy Glidden,

Chairman, Working Group on Indian Water Settlements.

Criteria and Procedures for Indian Water
Rights Settlements

Preamble

Indian water rights are vested property rights for which the United States has a trust responsibility, with the United States holding legal title to such water in trust for the benefit of the Indians.

It is the policy of this Administration, as set forth by President Bush on June 21, 1989, in his statement signing into law H.R. 932, the 1989 Puyallup Tribe of Indians Settlement Act, that disputes regarding Indian water rights should be resolved through negotiated settlements rather than litigation.

Accordingly, the Department of the Interior adopts the following criteria and procedures to establish the basis for negotiation and settlements of claims concerning Indian water resources. These criteria and procedures supersede all prior Departmental policy regarding Indian water settlement negotiations. The criteria provide a framework for negotiating settlements so that (1) The United States will be able to participate in water settlements consistent with the Federal Government's responsibilities as trustee to Indians; (2) Indians receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; (3) Indians obtain the ability as part of each settlement to realize value from confirmed water rights resulting from settlement; and (4) The settlement contains appropriate cost-sharing by all parties benefiting from the settlement.

Criteria

1. These criteria are applicable to all negotiations involving Indian water rights claims settlements in which the Federal Government participates. Claims to be settled through negotiation may include, but are not limited to, claims:

(a) By tribes and U.S. Government to quantify reserved Indian water rights.

(b) By tribes against the U.S. Government.

(c) By tribes and the U.S. Government against third parties.

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

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

4. The total cost of a settlement to all parties should not exceed the value of

the existing claims as calculated by the Federal Government.

5. Federal contributions to a settlement should not exceed the sum of the following two elements:

a. First, calculable legal exposure—litigation cost and judgment obligations if the case is lost; Federal and non-Federal exposure should be calculated on a present value basis taking into account the size of the claim, value of the water, timing of the award, likelihood of loss.

b. Second, additional costs related to Federal trust or programmatic responsibilities (assuming the U.S. obligation as trustee can be compared to existing precedence.)—Federal contributions relating to programmatic responsibilities should be justified as to why such contributions cannot be funded through the normal budget process.

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

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

8. Operating capabilities and various resources of the Federal and non-Federal parties to the claims negotiations should be considered in structuring a settlement (e.g. operating criteria and water conservation in Federal and non-Federal projects).

9. If Federal cash contributions are part of a settlement and once such contributions are certified as deposited in the appropriate tribal treasury, the U.S. shall not bear any obligation or liability regarding the investment, management, or use of such funds.

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 States and tribes in their respective jurisdictions.

11. Settlements should generally not include:

a. Local contributions derived from issuing bonds backed by or guaranteed by the Federal Government.

b. Crediting to the non-Federal share normal project revenues that would be received in absence of a cost share agreement.

c. Crediting non-Federal operation, maintenance, and rehabilitation (OM&R) payments to non-Federal construction cost obligations.

d. Imposition by the Federal Government of fees or charges requiring

authorization in order to finance the non-Federal share.

e. Federal subsidy of OM&R costs of Indian and non-Indian parties.

f. U.S. participation in an economically unjustified irrigation investment; however investments for delivery of water for households, gardens, or domestic livestock may be exempted from this criterion.

g. Per-Capita distribution of trust funds.

h. Crediting to the Federal share existing annual program funding to tribes.

i. Penalties for failure to meet a construction schedule. Interest should not accrue unless the settlement does not get budgeted for as specified in item 15 below.

j. Exemptions from Reclamation law.

12. All tangible and intangible costs to the Federal Government and to non-Federal parties, including the forgiveness of non-Federal reimbursement requirements to the Federal Government and items contributed per item 8 above, should be included in calculating their respective contributions to the settlement.

13. All financial calculations shall use a discount rate equivalent to the current water resources planning discount rate as published annually in the **Federal Register**.

14. All contractual and statutory responsibilities of the Secretary that affect or could be affected by a specific negotiation will be reviewed.

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 (e.g., for a settlement enacted into law in August 1990, funding to implement it would normally be contained in the FY 1992 Budget request and, if appropriated, be available for obligation on October 1, 1991).

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.

Procedures

Phase I—Fact Finding

1. The Department of the Interior (Department) will consider initiation of formal claims settlement negotiations when the Indian tribe and non-Federal parties involved have formally requested negotiations of the Secretary of the Interior (Secretary).

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.

b. The date of the notification marks the beginning of the fact-finding period.

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 listing 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.

4. During Phases I, II, and III, the Government (through the negotiating team or otherwise) will not concede or make representatives on likely U.S. positions or considerations.

Phase II—Assessment and Recommendations

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 of 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).

2. All analysis in the assessment should be presented in present value terms using the planning rate used for evaluating Federal water resource projects.

Phase III—Briefings and Negotiating Position

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.

2. Following the Secretary's approval of the Government's negotiating position, Justice and OMB will be notified before negotiations commence.

Phase IV—Negotiations Towards Settlement

1. OMB and Justice will be updated periodically on the status of negotiations.

2. If the proposed cost to the U.S. of settlement increases beyond the amount decided in Phase III, if the negotiations are going to exceed the estimated time (or break down), or if Interior proposes to make significant changes in the Government negotiating position or in the U.S. contribution to the settlement, the original recommendation and negotiating position will be revised using the procedures identified above.

3. Briefings may be given to the Congressional delegations and the Committees consistent with the Government's negotiating position.

[FR Doc. 90-5532 Filed 3-9-90; 8:45 am]

BILLING CODE 4910-RP-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31600]

Paducah & Louisville Railway, Inc.— Trackage Rights Exemption—Pyro Equipment Co.; Exemption

Pyro Equipment Company has agreed to grant overhead and local trackage rights to Paducah & Louisville Railway, Inc., between milepost 62.26 near Blackford, KY and milepost 97.25 near Princeton, KY, a distance of 34.99 miles. The trackage rights will be effective on or about March 1, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Jill M. Hawken, Weiner, McCaffrey, Brodsky, Kaplan & Levin, P.C., 1350 New York Avenue, NW., Suite 800, Washington, DC 20005-4797 and Catherine Behrins, Pyro Equipment Company, P.O. Box 367, Sturgis, KY 42459.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1098).

Dated: February 28, 1990.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-5319 Filed 3-9-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-33 (Sub-No. 56)]

Union Pacific Railroad Company— Abandonment in Fremont and Teton Counties, ID; Findings

The Commission has found that the public convenience and necessity permit Union Pacific Railroad Company to abandon its approximately 30.80-mile line of railroad between milepost 0.0 at Ashton and milepost 30.80 near Tetonia, ID.

A certificate will be issued authorizing abandonment unless within

15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than March 22, 1990. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: February 22, 1990.

By the Commission, Chairman Gradison, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett. Vice Chairman Phillips commented with a separate expression. Commissioners Simmons and Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 90-5569 Filed 3-9-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31562]

Union Pacific Railroad Co. and Missouri Pacific Railroad Co.— Trackage Rights Over Lines of Chicago and North Western Transportation Co. Between Fremont, NE/Council Bluffs, IA, and Chicago, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision No. 3.

SUMMARY: The Commission is accepting for consideration the application filed February 7, 1990, by Union Pacific Railroad Company (UPRR), Missouri Pacific Railroad Company (MPRR), and Chicago and North Western Transportation Company (CNW) for UPRR and MPRR, collectively referred to as UP, to acquire trackage rights over the lines of CNW between Fremont, NE/Council Bluffs, IA, and Chicago, IL. The applicants also seek a declaratory order that: (1) UP's corporate parent, Union Pacific Corporation, and its affiliates will not gain control of CNW as a result of exercise of the trackage rights and certain additional contingent rights for which they contracted, in connection

with the Blackstone-CNW transaction;¹ and (2) the additional contingent rights do not require prior Commission approval or exemption before they may become effective.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than April 9, 1990. Comment from the Secretary of Transportation and the Attorney General of the United States must be filed by April 24, 1990. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of the service list. Responsive and inconsistent applications must be filed no later than May 9, 1990.

ADDRESSES: An original and 10 copies of all documents must refer to Finance Docket No. 31562 and be sent to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31562, Interstate Commerce Commission, Washington, DC 20423.

One copy of all documents filed must be sent concurrently to:

Docket Clerk, Office of Chief Counsel,
Federal Railroad Administration,
Room 5101, 400 Seventh Street, SW,
Washington, DC 20590.

Attorney General of the United States,
Washington, DC 20530.

In addition one copy of all documents must be sent to each of applicants' representatives:

James P. Daley, Chicago and North
Western Transportation Company,
One North Western Center, Chicago,
IL 60606.

James V. Dolan, Union Pacific Railroad
Company, Missouri Pacific Railroad
Company, 1416 Dodge Street, Omaha,
NE 68179.

Arvid E. Roach II, Covington & Burling,
P.O. Box 7566, 1201 Pennsylvania
Avenue, NW., Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar or Beryl Gordon,
(202) 275-7245.

or

Julia Farr, (202) 275-1713.

[TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: The application, exhibits, and one copy of materials filed with the SEC in connection with the transactions at issue in *Blackstone, supra*, are available for inspection in the Public Docket Room at the offices of the Interstate Commerce Commission in Washington, DC.

¹ *Blackstone Cap. Partners—Cont. Exempt.—CNW Corp. et al.*, 5 I.C.C.2d 1015 (1989) (*Blackstone*).