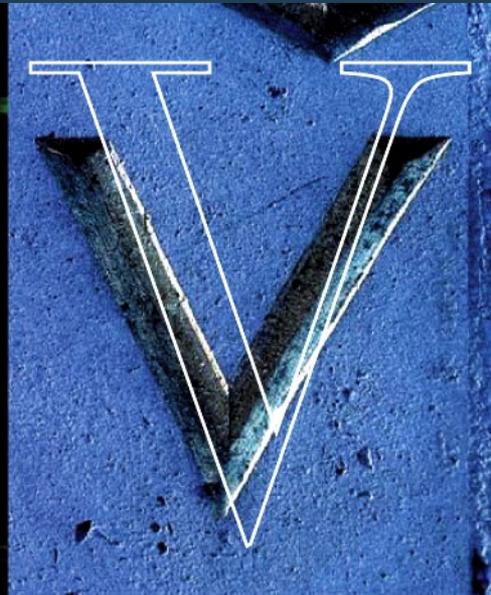
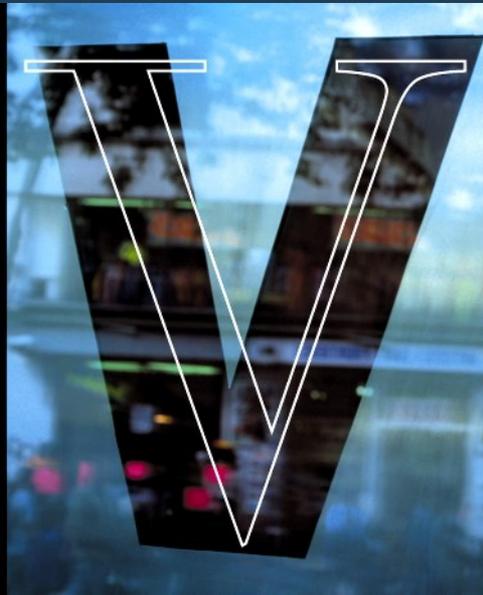
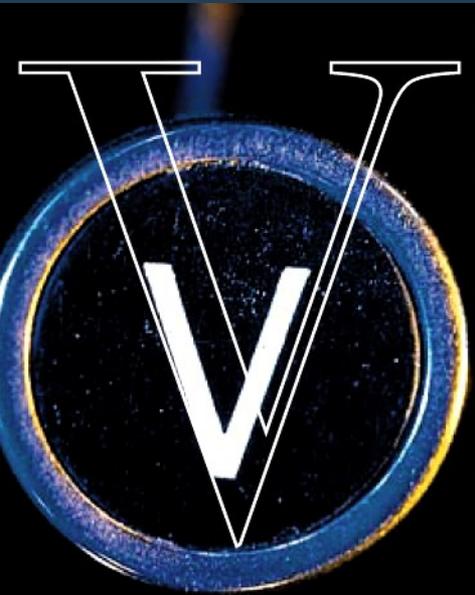




# Indian Water Settlements And The Earmark Ban



# Indian Water Settlements And The Earmark Ban

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# House Rules Regarding Earmarks

- Rule XXI (“Restrictions on Certain Bills”), Clause 9
- Rule XXIII (“Code of Official Conduct”), Clauses 16 and 17



# House Rules Regarding Earmarks

Rule XXI, Clause 9(a)(1):

“It shall not be in order to consider—

(1) A bill or joint resolution reported by a committee *unless the report includes a list of congressional earmarks...* in the bill or in the report (and the name of any Member, Delegate, or Resident Commissioner who submitted a request to the committee for each respective item included in such list) or a statement that the proposition contains no congressional earmarks... .”

[Emphasis added.]



# House Rules Regarding Earmarks

Rule XXI, Clause 9(e):

“For purposes of this clause, the term “congressional earmark” means *a provision or report language included primarily at the request of a Member*, Delegate, Resident Commissioner, or Senator providing, *authorizing or recommending a specific amount of discretionary budget authority*, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority *or other expenditure* with or *to an entity, or targeted to a specific state, locality, or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.*” [Emphasis added.]



# House Rules Regarding Earmarks

Rule XXIII, Clause 17:

Member requesting an earmark must provide written statement to the Chairman and Ranking Member of the committee of jurisdiction—

· Name of Member

· Address of earmark recipient or location of activity

· Purpose of the earmark

· Certification that the Member has no financial interest in the earmark

Committee must make these statements available for public inspection.



The Earmark Ban in the Rules of the House Republican  
Conference  
For the 114th Congress

Earmark Moratorium

It is the policy of the House Republican Conference that no Member shall request a congressional earmark, limited tax benefit, or limited tariff benefit, as such terms have been described in the Rules of the House.

(See last page of Conference Rules: <http://www.gop.gov/app/uploads/2014/11/114-Conference-Rules-113-Comp-Print1.pdf>)



## Senate Rule XLIV, Clause 5(a)

“[T]he term ‘congressionally directed spending item’ means ***a provision or report language*** included ***primarily at the request of a Senator*** providing, ***authorizing, or recommending a specific amount of discretionary budget authority***, credit authority, or ***other spending authority*** for a contract, loan, loan guarantee, grant, loan authority, or other expenditure ***with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process...***” [Emphasis added.]



# Republican Senate Conference Earmark Ban (114th Congress):

"Resolved, that it is the policy of the Republican Conference that no Member shall request a congressionally directed spending item, limited tax benefit, or limited tariff benefit, as such items are used in Rule XLIV of the Standing Rules of the Senate for the 114th Congress."



# February 26, 2015 Letter

Chairman Rob Bishop  
House Committee on Natural Resources  
To  
Attorney General Eric Holder and  
Interior Secretary Sally Jewell



# Excerpts From Chairman's Letter

“[G]iven the longstanding policy of the United States that *disputes regarding Indian water rights should be resolved through negotiated settlement rather than through litigation*, both of your Departments play key roles in negotiating and developing settlements regarding these claims *before they are ever considered by Congress.*”

[Emphasis added.]

“The Committee recognizes that settlements to these matters are generally preferable to protracted litigation... .”

“Importantly, *settlements, if crafted correctly, can provide relief to the United States from burdensome legal obligations and benefit all American taxpayers.* The Committee recognizes that the Executive branch is charged with implementing existing Indian water rights settlement criteria and procedures designed to meet these goals.” [Emphasis added.]

Paragraph above cites *Department of the Interior Working Group on Indian Water Settlements for the Participation of the Federal Government for the Settlement of Indian Water Rights Claims*, Federal Register Vol. 55, No. 48, March 12, 1990.]



# February 26, 2015 Letter

- “As Chairman of the Committee, I write this letter to inform you of the process that the Committee intends to follow when considering future Indian water rights settlements during this Congress and to inform you of the assistance the Committee will need from you and your designees in order to proceed forward.”
- “Put simply, your Departments must convey support for and forward the settlements and the proposed authorizing legislation, specifically including federal spending levels, *before any Committee consideration takes place.*” [Emphasis added.]



# February 26, 2015 Letter

## Seven Requirements:

- **Req. #1:** Both Departments must provide a statement to the Committee affirming that each proposed settlement resolution adhere to the current criteria and procedures.
- **Req. #2:** Both Departments “specifically affirm” that a settlement meets Criteria 4 and 5(a) and (b).



# February 26, 2015 Letter

## **1990 Criteria 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.”

## **1990 Criteria 5(a) and (b):**

“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, the 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.”



# February 26, 2015 Letter

- **Req. #3:** The Attorney General or his/her designee must have conveyed to a court and all settling parties have agreed in writing to the settlement pending a legislative resolution before it is forwarded to the Committee.
- **Req. #4:** Both Departments and the settling parties have approved the legislative text “and have provided that proposed text to the relevant court.”
- **Req. #5:** Committee requests that DOJ make a witness available to testify.
- **Req. #6:** Both Departments must list in the document transmitting the legislative text the legal claims being settled.
- **Req. #7:** The settlement and proposed legislation cannot include financial authorizations for claims that have already been settled by Congress or that have no legal basis.



# February 26, 2015 Letter

▫ If the Departments follow the process set forth in the letter, “...it is my [the Chairman’s] intent to then introduce the settlement legislation at the Administration’s request and consider such legislation in the Committee at the appropriate time. In conclusion, it is my intent that your actions prior to Committee consideration will determine whether negotiated settlements proceed in the legislative process.”



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