

**TESTIMONY OF
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BEFORE THE
SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
COMMITTEE ON HOUSE NATURAL RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES
ON
H.R. 1600, THE REQUIREMENTS, EXPECTATIONS, AND STANDARD
PROCEDURES FOR EXECUTIVE CONSULTATION WITH TRIBES ACT
(RESPECT ACT)**

September 10, 2014

Good afternoon, Chairman Young, Ranking Member Hanabusa, and Members of the Subcommittee. Thank you for the opportunity to appear before you today to discuss H.R. 1600, the Requirements, Expectations, and Standard Procedures for Executive Consultation with Tribes Act (RESPECT Act). This legislation would prescribe detailed procedures for consultation between Federal agencies and federally recognized Indian tribes. This testimony presents the views of the Department of the Interior. However, because H.R. 1600 would affect every "agency" within the meaning of 44 U.S.C. § 3502(1), other agencies should be afforded an opportunity to review and comment on the bill.

Consultation that respects the sovereignty of tribal governments and the right of tribal nations to govern themselves is a critical ingredient for a sound, productive Federal-tribal relationship. Thus, regular and meaningful consultation and collaboration with tribal officials is a touchstone of this Administration's policy with respect to Indian tribal governments. The Department testified on an identical bill, H.R. 5023, in the 111th Congress. The Department still has the same concerns identified for H.R. 1600 and will not repeat those here. That being said, the Department strongly supports tribal consultation. Many of the best ideas come from Indian country and meaningful consultation with tribal leaders is critical to ensuring that the United States upholds its trust and treaty responsibilities.

Tribal Consultation

Executive Order (E.O.) 13175, entitled *Consultation and Coordination With Indian Tribal Governments*, was signed on November 6, 2000. It directed each agency to have "an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The phrase "policies that have tribal implications" refers to "regulations, legislative comments or proposed legislation, and other

policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." Section 10 of E.O. 13175 makes absolutely clear that the Executive Order is intended "only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person."

To further the purposes of E.O. 13175, and because this Administration agrees that tribal nations do better when they make their own decisions, since November 5, 2009, President Barack Obama has invited leaders from all federally recognized tribes to the annual White House Tribal Nations Conference (Conference). At the first Conference in 2009, the President signed a memorandum directing Federal agencies to submit detailed plans of action for how they would secure regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, as defined by E.O. 13175. The Administration is pleased to announce that all the Federal agencies have submitted plans of action for their agency to secure regular and meaningful consultation and collaboration with Tribes.

In November 2013, President Obama hosted the latest and fifth annual White House Tribal Nations Conference. The event included thirteen Cabinet members and dozens of senior Administration officials who met with representatives from the 566 federally recognized Tribes on a wide range of issues including advancing the government-to-government relationship, economic development, housing, excellence in education, energy, infrastructure, law enforcement, cultural protection, natural resources, and Native American youth.

Additionally, every fiscal year the funding priorities for the President's Budget Request for Indian Affairs within the Department are guided, in part, by careful coordination with Tribes through a regional-to-national planning process through the Tribal Interior Budget Council. In addition, input from tribal leaders gained since the first White House Tribal Nations Conference has helped guide the Administration's priorities and decision making processes. These and other sources of tribal input have informed legislative and programmatic initiatives and funding priorities in the fiscal year 2015 budget, including full funding for contract support costs.

Since 2012, the Department has hosted over 40 formal tribal consultation sessions on everything ranging from the Department's IT Transformation initiative, the "477" data collection forms, the Labor Force Report, several draft and proposed rules, such as the revisions to leasing regulations and Buy Indian Act regulations, and the Land Buy-Back program.

In the past three months alone, the Department has hosted over 20 tribal consultation sessions, including sessions on proposed rules regarding contract support costs, land-into-trust in Alaska, Federal acknowledgment rules, rights-of-way rules, and a potential rulemaking on Native

Hawaiians. In addition, the Department has hosted many "listening sessions" to informally obtain tribal leaders' input on a path forward with regard to a number of issues, including sacred sites, implementation of the Indian Child Welfare Act , the Trust Commission Report, and Indian education.

The goals of H.R. 1600 are laudable. Many of the goals are being met by this Administration's on-going initiative to insure that the consultation policies of each Federal agency comply with E.O. 13175. This Administration's initiative resulted in each Federal agency having an accountable consultation policy that meets the requirements of E.O. 13175. The agencies' policies have the necessary flexibility to accommodate the various circumstances in which the United States and tribes must carry out government-to-government consultation. Thus, the Executive Branch is committed to accomplishing the primary goal of H.R. 1600, even though it cannot support H.R. 1600 itself.