

**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.

Statement for the Record
Bureau of Land Management
Department of the Interior
House Committee on Natural Resources
Subcommittee on Indian and Alaska Native Affairs
H.R. 4668, Point Spencer Coast Guard and Public-Private Sector Infrastructure
Development Facilitation and Land Conveyance Act
September 10, 2014

The Department of the Interior appreciates the opportunity to submit a Statement for the Record on H.R. 4668, the Point Spencer Coast Guard and Public-Private Sector Infrastructure Development Facilitation and Land Conveyance Act. This bill provides for the disposition of certain federal lands currently withdrawn for use by the United States Coast Guard (USCG) on Point Spencer, AK. The bill specifically designates certain lands that are to be: 1) retained as withdrawn lands by USCG; 2) conveyed to the State of Alaska; and 3) conveyed to the Bering Straits Native Corporation (BSNC).

The Department supports the goals of completing conveyances for Alaska Native and state entitlements under the Alaska Native Claims Settlement Act (ANCSA) and Alaska Statehood Act so that Alaska Native corporations and the state may each have the full economic benefits of completed land entitlements. The Department of the Interior appreciates the work of the sponsor to address this complex issue, and generally supports the disposition of the parcels as provided under the bill. The Department also defers to the Department of Homeland Security on matters pertaining to lands retained in Federal ownership for use by, and under the jurisdiction of, the USCG.

Background

Spencer Point is located on the Seward Peninsula approximately 100 miles northwest of Nome, Alaska. In April 1962, 2,648 acres of Federal lands on Spencer Point were withdrawn from appropriation under the public land laws by Public Land Order 2650 (PLO 2650). These lands were reserved for use of the USCG to aid navigation. PLO 2650 authorized the USCG to issue permits for authorized uses of the lands but authority to change the use or grant rights to others to use the land was reserved to the Secretary of Interior with concurrence of the USCG.

The ANCSA established the framework to resolve aboriginal land claims in Alaska. The Bureau of Land Management (BLM) is responsible for expediting the conveyance of Federal lands to Native corporations under the ANCSA, and to the State of Alaska under the Alaska Statehood Act of 1958. When these land conveyances are completed, about 150 million acres, or approximately 42 percent of the land area of Alaska, will have been transferred from Federal to state and private (Native) ownership.

BSNC is one of 12 regional corporations established pursuant to ANCSA. The Corporation selected the Point Spencer parcel in the 1970s, anticipating the possible future lifting of the withdrawal. The BSNC's remaining land entitlement under Sec. 14(h)(8) of ANCSA is approximately 23,826 acres. The State of Alaska has also filed a selection known as a top-filing for some of the withdrawn lands at Point Spencer pursuant to Sec. 906(e) of the Alaska National

Interest Lands Conservation Act. The state has sufficient remaining land entitlement acreage for the lands identified in the bill.

H.R. 4668

H.R. 4668 provides for the disposition of certain federal lands currently withdrawn for use by the USCG on Point Spencer, AK. First, the bill provides for the retention and future use of three parcels of withdrawn lands comprising a total of 138 acres on Point Spencer to continue to support the mission and duties of the USCG. It further provides a mechanism for conveyance of the retained lands to BSNC if they are deemed by the Coast Guard to be no longer necessary for their mission and are remediated to meet the standards of the Alaska Department of Environmental Conservation. The Department of the Interior defers to the Department of Homeland Security with respect to sections of the bill pertaining only to the USCG.

Second, the bill provides for the release and conveyance of other withdrawn lands to the state (up to 179 acres) and the BSNC (2,381 or 2,560 acres, depending on state conveyance). Under the bill, all lands conveyed to the BSNC and the state would be charged against their remaining entitlements under ANCSA or the Alaska Statehood Act. The bill also allows the state to choose whether to receive two parcels (Tracts 2 and 6, currently used as an airstrip) via conveyance or to allow the parcels to be conveyed to BSNC with a no-cost lease to the state for use of the parcels. Additionally, the bill requires the Secretary of the Interior to provide a road right-of-way (ROW) to the state, upon request and at no cost, from the runway to the southern tip of the parcel depicted on the Point Spencer map, with the location of the ROW to be determined by the state according to the Joint Management Plan required under the bill. The legislation provides that lands conveyed to the BSNC be remediated of any contamination unless the BSNC provides a resolution to the Secretary that the lands will be accepted as-is at the time of conveyance. H.R. 4668 further provides that the Secretary shall retain authority and responsibility for archeological and cultural resources that are identified by the BSNC on certain lands transferred to the Corporation. Finally, the bill provides that remediation of hazardous materials on any tract be completed and that any known contamination that does not pose an immediate or long-term health risk be monitored.

The Department supports the goal of completing additional ANCSA and state of Alaska conveyances and charging those conveyed acres against the respective entitlements, and generally supports the disposition of the parcels as provided under the bill. We would like to work with the sponsor on a number of technical amendments to ensure consistency with other Federal law and to provide for the efficient management of resources. Specifically, we propose that a provision be included in the bill for the BLM to approve legal descriptions and correct technical discrepancies in acreage prior to conveying the lands. The Department is prepared to grant a ROW to the state at the time of conveyance of lands to the BSNC and consistent with existing ROW authorities, but proposes to transfer the ROW and its administration to the BSNC upon conveyance of those lands to the Corporation.

The Department also prefers that lands conveyed to the BSNC or the state be remediated of hazardous materials or other contamination. If, however, any of these lands are requested to be transferred as-is and without remediation, the United States government should be indemnified from any future liabilities arising from contamination of these lands. Additionally, the

Department requests that the bill clearly state that any required clean-up and remediation of hazardous materials or contamination be the sole responsibility of the USCG. Finally, the Department cannot support the provision requiring the Department of the Interior to retain authority or responsibility for archeological and cultural resources on any lands conveyed to the BSNC, because the protection of such resources on non-Federal land is not managed by the Department.

Conclusion

Thank you for the opportunity to provide this Statement for the Record on H.R. 4668. We support the goal of this bill which furthers the intent of the Alaska Land Transfer Acceleration Act of 2004 (PL 108-452), expediting the transfer of title to Federal lands to Native corporations and to the State of Alaska. We look forward to continuing to work with all of the Alaska Native corporations, the State of Alaska, and other agencies and interests to fulfill the ANCSA and state entitlements, and we look forward to working with the sponsor on provisions to ensure the conveyances provided under the bill can be completed accurately and in a manner consistent with other conveyances.