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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

IN REPLY REFER TO:
7202.4-OS-2017-00787

October 29, 2018

Via email

On July 5, 2017, you filed a Freedom of Information Act (FOIA) request seeking the following:

> A copy of each Department of the Interior Views (or Views Letters), which are statements of the Department's (or component's) position, thoughts and comments on specific issues or legislation being considered by Congress. You may limit this request to Views produced during the time period Fiscal Years 2015, 2016 and 2017 to date.

We are writing today to respond to your request on behalf of the Office of the Secretary. Please find attached one document consisting of 32 pages being released in full.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c). This response is limited to records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

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Sincerely,

CLARICE JULKA Digitally signed by CLARICE JULKA
Date: 2018.10.29 08:35:16 -04'00'

Clarice Julka
Office of the Secretary
FOIA Officer

Electronic Enclosure

THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

JAN 2 2 2015

The Honorable Mitch McConnell
Senate Majority Leader
Washington, D.C. 20510

Dear Senator McConnell:

This letter presents the Department of the Interior's (Department) views on a number of amendments of concern that have been proposed to S. 1, a bill to approve the Keystone XL Pipeline, which is under consideration in the Senate this week. While we are continuing to review the language of amendments to S. 1 as they become available, as discussed in more detail below, the Department opposes the following amendments.

Senate Amendment 18 (Limits on the Designation of New Federally Protected Land):

Senate Amendment 18 would require the Secretary of the Interior (Secretary) to publish findings in the Federal Register – prior to designating land for the purpose of conserving historic, cultural, environmental, scenic, recreational, developmental, or biological resources – stating that addition of the newly protected Federal land would not negatively impact the administration of existing protected lands and that sufficient resources are available to manage those existing protected lands.

The Department opposes this amendment. It would significantly interfere with the ability of land management bureaus to effectively manage Federal lands and resources under their jurisdiction and meet statutory requirements related to those management responsibilities. The requirements of this amendment would complicate the implementation of congressional wilderness designations and authorizations of new national parks, wildlife refuges, historic sites, and other public lands. The amendment would unnecessarily hinder the President's long-standing authority under the Antiquities Act to safeguard special places and to ensure the public has access to them and that they are preserved for future generations. The Antiquities Act in its present form has been used by 16 Presidents on a bipartisan basis to recognize and preserve areas of incredible importance to our natural and historical heritage, such as the Grand Canyon and Statue of Liberty.

Senate Amendment 46 (State Authority for Hydraulic Fracturing Regulation):

In general, the amendment would prohibit the enforcement of any Federal regulations, guidance, or permit requirements regarding hydraulic fracturing on lands in a state that regulates hydraulic fracturing and requires the Secretary to defer to such State authority.

The Department opposes this amendment. As steward of the public lands and as the regulator for oil and gas leases on Indian lands, the Secretary is charged with carrying out oil and gas development of those lands and minerals in a responsible and environmentally sustainable manner. The standards and practices contained in the Bureau of Land Management's proposed hydraulic fracturing rule, for example, are designed to ensure the protection of public health and environmental responsibility for hydraulic fracturing on the public lands. The amendment would allow for implementation of lesser standards, and would undermine the Secretary's trust responsibility to Indian country.

Senate Amendment 66 (Limiting the Authority of the Secretary of the Interior to issue Regulations):

Senate Amendment 66 would limit the Secretary's ability to issue or approve regulations to implement the Surface Mining Control and Reclamation Act (SMCRA), and would impact the Secretary's ability to propose or to finalize regulations under SMCRA that are critical to the mission of the Office of Surface Mining, Reclamation and Enforcement (OSMRE), including the protection of communities and resources impacted by coal mining activity. The Department opposes this amendment, which would impact any proposed Stream Protection Rule, a rule to govern the placement of coal combustion residues and coal ash at coal mines, or a rule to finalize the OSMRE's proposed Cost Recovery Rule. This amendment would also disadvantage communities in proximity to coal mines from access to clean water and healthy environments.

Senate Amendment 71 (Applications for Permits to Drill Reform and Process):

Senate Amendment 71 would require the processing of an Application for Permit to Drill (APD) within 30 days of receipt by the agency, with an option for no more than two 15-day extensions on processing time. The amendment provides for deemed approvals of pending APDs if no action is taken by the Secretary within certain prescribed timeframes. The Department opposes this amendment. The timeframe is unreasonably short and in many instances would not allow the Bureau of Land Management the ability to issue APDs based on important reviews and clearances that are necessary to protect the public interest. As a practical matter, the language could result in permit denials made in order to avoid triggering the automatic approvals provision in cases where the short prescribed timeframe proves inadequate to carry out the proper analysis.

Senate Amendment 73 (Delisting of Lesser Prairie-Chicken):

Senate Amendment 73 would reverse the Department's listing of the lesser prairie-chicken as a threatened species under the Endangered Species Act. The Department opposes this amendment. The U.S. Fish and Wildlife Service carried out its responsibilities under the Act by making a science-based listing determination in accordance with the Act for a species that lost 50 percent of its population in the last 2 years after many previous years of decline. Yet the final listing determination for the lesser prairie-chicken as a threatened species was also done in a way that lets five states manage the species under their own plan, using a 4(d) rule so that landowners and businesses enrolled and participating in the Range-Wide Conservation Plan are not subject to

further regulation under the Act. A congressional override of this lawful and proper listing determination would severely undermine effective, science-based implementation of the Act.

Senate Amendment 80 (Providing for the Distribution of Revenues from Certain Areas on the Outer Continental Shelf):

The Administration is committed to ensuring that American taxpayers receive a fair return from the sale of public resources. The Department opposes this amendment, which would reverse Administration oil and gas leasing reforms that have established orderly, open, efficient, and environmentally sound processes for energy development. Specifically, this bill would favor an arbitrary standard for leasing in open areas over leasing on the basis of greatest resource potential; limit the public's opportunity to engage in decisions about the use of these areas; raise the potential for costly litigation, protests, and delays; and strip the ability of the Department to issue permits to drill based on important environmental reviews, clearances, and tribal consultation. The amendment would also remove the environmental safeguards that ensure sound Federal leasing decisionmaking by eliminating appropriate reviews under the National Environmental Policy Act. We need a balanced energy strategy for the country, and this amendment tips the scales in an unsustainable direction.

The revenue sharing provisions of the amendment would ultimately reduce the net return to taxpayers from the development of offshore energy resources owned by all Americans; would have significant and long term costs to the Federal treasury; and would increase the Federal deficit. In addition, the amendment does not appear to be targeted to achieve clear conservation or energy policy outcomes.

Sincerely,

Michael E. Connor

THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

JAN 2 6 2015

The Honorable Harry Reid
Senate Minority Leader
Washington, D.C. 20510

Dear Senator Reid:

This letter presents the Department of the Interior's (Department) views on additional amendments of concern that have been proposed to S. 1, a bill to approve the Keystone XL Pipeline, which is being considered by the Senate. As previously indicated, we are continuing to review the language of amendments to S. 1 as they become available.

Senate Amendment 91 (Review of certain Federal Register Designations):

Senate Amendment 91 would deem approval of and require state offices of the Bureau of Land Management (BLM) to submit draft notices to the Federal Register for publication if review of a draft notice has not been completed by the Washington, D.C., office within 45 days. The Department opposes this amendment. The timeframe is unreasonably short and in many instances would not provide adequate time for the important review of draft proposed notices within the larger context of national programs administered by the BLM and the Department. As a practical matter, the language could result in denial of approval of draft notices in order to avoid triggering the automatic publication provision.

Senate Amendment 102 and Senate Amendment 127 (Related to Oil and Gas Development on the Outer Continental Shelf):

Senate Amendments 102 and 127 would require the Department to open a number of new areas in the Outer Continental Shelf (OCS) to oil and gas leasing, undermining the targeted, science-based, and regionally-tailored strategy that the American public and the states helped develop. The Department opposes these amendments. The Administration has taken a balanced approach to the use and development of our Nation's shared natural resources that is designed to account for the distinct needs of the regions across the OCS. These amendments would remove the Secretary's discretion to determine whether those areas are appropriate for leasing based on a range of factors, including current and developing information about resource potential in those areas, the status of resource development and emergency response infrastructure, and recognition of regional interest and concerns. In addition, Senate Amendment 102 fails to provide for adequate review under the National Environmental Policy Act and does not address military use conflicts.

The Administration is also committed to ensuring that the American taxpayers receive a fair return from the sale of public resources. While both of these amendments would provide funds to the General Fund of the Treasury, the revenue sharing provisions of these amendments would ultimately reduce the net return to taxpayers from the development of offshore energy resources owned by all Americans and, thus, would have significant and long term costs to the United States Treasury.

Senate Amendment 132 (Sense of the Congress on the Designation of National Monuments):

Senate Amendment 132 would express the sense of Congress that the designation of national monuments should be subject to consultation with local governments and the approval of the relevant Governor and state legislature. The Department opposes this amendment.

The Antiquities Act (Act) has been used by 16 Presidents on a bipartisan basis to recognize and preserve areas of great importance to our natural and historical heritage, including the Grand Canyon and Statue of Liberty. It is important that the flexibility provided the President under the Act not be weakened. During this Administration, the Department has engaged in robust consultation with national, state, local, and tribal stakeholders prior to the designation of each monument by President Obama.

A similar letter was sent to Senator McConnell.

Sincerely,

Michael L. Connor

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAR 11 2015

The Honorable Raùl Grijalva
Ranking Member, Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Representative Grijalva:

Thank you for your letter dated February 23, 2015, regarding H.R. 308, "The Keep the Promise Act of 2015," and its Senate companion. Secretary Jewell asked that I respond to your letter on her behalf.

As you indicate, the Department of the Interior (Department) testified on this legislation in the 113th Congress (H.R. 1410 and S. 2670). During my testimony before the Senate Committee on Indian Affairs on September 17, 2014, I outlined the Department's concerns that S. 2670 would undermine a commitment made by the United States to the Tohono O'odham Nation in legislation in 1986, which would add tribe-specific and area-specific limitations to the Indian Gaming Regulatory Act, and would unilaterally amend Arizona's tribal gaming compacts without the mutual consent of the Tribes and the State. For all of these reasons, the Department opposes the legislation.

The land at issue in the legislation was taken into trust by the Department in July 2014. The land is now held in trust by the United States on behalf of the Tohono O'odham Nation, and the proposed legislation could affect the Tribe's economic development options for the property. The Department believes this could subject the United States to a lawsuit alleging that H.R. 308 effectuated a partial taking of the Tribe's property rights for the land at issue.

The Department welcomes the opportunity to work with the Congressional Budget Office to determine the potential effect of H.R. 308.

Sincerely,

Kevin K. Washburn
Assistant Secretary – Indian Affairs

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 15 2015

The Honorable James M. Inhofe
Chairman, Committee on Environment and Public Works
U.S. Senate
Washington, D.C. 20510

This letter provides the views of the Department of the Interior on S. 659, the Bipartisan Sportsmen's Act of 2015. This legislation provides significant support for wildlife-dependent activities and the Administration supports most of its provisions. However, we oppose section 5 related to the baiting of migratory birds in its current form, and believe there are additional provisions that should be considered for inclusion in S. 659. We welcome the opportunity to work with Committee to provide additional information and assistance as you continue consideration of S. 659 and related legislation.

Section 3. Target practice and marksmanship

The Administration supports section 3, which will provide a more favorable cost share requirement under Pittman-Robertson for the construction and maintenance of shooting ranges by states. The Department previously testified in support of this provision on July 25, 2013, testimony before the former House Natural Resources Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs.

Section 4. Permits for importation of polar bear trophies taken in sport hunts in Canada

As the Department has testified in the 113th Congress, the Administration supports this provision and thanks Senator Sullivan for incorporating the Service's technical comments into this version of the legislation. Section 4 would allow those hunters who both applied for a permit and completed their legal hunt of a polar bear from an approved population prior to the ESA listing of the polar bear to import their polar bear trophies, provided that the hunter is required to submit proof that the bear was legally harvested in Canada from an approved population prior to the effective date of the ESA listing. The Administration does not support any broader changes to the MMPA that would allow additional sport-hunted polar bear trophies to be imported beyond those where hunters submitted their import permit application and completed their hunt prior to the ESA listing.

Section 5. Baiting of migratory game birds

In working with the four flyways and our state partners to establish hunting seasons and bag limits for migratory game birds and in enforcing the provisions of the Migratory Bird Treaty Act,

we take to heart both the agency's mandate to ensure sustainable populations of wild birds and our commitment to ensuring the perpetuation of hunting and other recreation associated with this resource. In this effort, we endeavor to create policy from statutory mandates for enforcement that can be fairly applied and can ensure that the intended conservation purpose behind the policy is met.

In 1997, Congress amended the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-712) (MBTA) to describe and prohibit baiting and to make it a criminal violation with a "known or reasonably should have known" prosecutorial standard. The Service's challenge in implementing this statutory provision is to ensure that implementing regulations can clarify what is "prohibited," so that hunters and farmers can know whether or not certain actions are prohibited and certain fields are off limits for hunting. The "known or reasonably should have known" standard requires the Service demonstrate state of mind when pursuing cases under the current provision.

We strongly oppose Section 5 of S. 659 because, although it preserves the MBTA prohibition on baiting, it greatly confuses enforcement of the baiting provision. The language in this section would require the Service to enforce such cases with the "known or reasonably should have known" standard when the determination about whether or not a field is "baited" would be unclear. Under Section 5, whether an area is considered "baited" can turn on determinations about agricultural practices made by the Service, Cooperative Extension, the States, or a crop insurer. Under this scenario, it may be difficult if not impossible for hunters to know whether an area is off limits or not—and could thus make enforcement of the statutory prohibition on baiting largely moot. The Department stands ready to assist in crafting language that can be enforceable and that can meet the Committee's purposes for this proposed amendment.

Section 7. North American Wetlands Conservation Act

The Administration strongly supports section 7, which would reauthorize North American Wetlands Conservation Act (NAWCA) through FY 2020. The Department previously testified in support of NAWCA reauthorization on August 2, 2013 before former House Natural Resources Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs.

NAWCA was originally passed by Congress in 1989 to support partnership efforts to protect and restore habitats for wetland-associated migratory birds. NAWCA provides matching grants to organizations, agencies, and individuals to carry out wetlands conservation projects in the United States, Canada, and Mexico. Since its inception, this program has been among the most successful leveraged funding mechanisms for the conservation of wetland habitats that benefit waterfowl and other birds, as well as other wildlife species.

Over the past 23 years we have witnessed remarkable achievements in conservation through this landmark legislation. Partnerships applying NAWCA funds to wetland conservation projects include nationally recognized conservation organizations, State fish and wildlife agencies, local governments, grass-roots organizations, and private landowners. These partnerships have supported thousands of cooperative projects across North America, leveraging billions of partner dollars and affecting more than 27 million acres of bird habitats.

Section 8. Multinational Species Conservation Funds Reauthorization

The Administration strongly supports section 8, which reauthorizes and makes certain amendments to the Multinational Species Conservation Funds (MSCFs). The Service has a long history of proactively addressing international wildlife species conservation. We work with private citizens, local communities, state and federal agencies, foreign governments, native peoples, and nongovernmental organizations to promote coordinated domestic and international strategies to protect, restore, and enhance wildlife and habitats. The Service is the agency charged with implementing the United States' obligations under several international conservation treaties, including the Convention on Wetlands of International Importance, the Convention on Nature Protection and Wild Life Preservation in the Western Hemisphere, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Technical expertise and an on-the-ground presence through international agreements and other programs give the Service a unique role in conserving species and habitats around the world.

The MSCFs support the conservation of the African elephant and Asian elephant, rhinoceros, tigers, great apes, and marine turtles. The MSCFs have formed the foundation for hundreds of projects around the world to address the needs of these highly endangered species. The grant programs provide technical and cost-sharing grant assistance to range countries. The MSCFs provide opportunity for projects that otherwise would not get off the ground, encouraging other donors to support innovative and effective conservation efforts. They achieve significant leveraging of funds from a growing list of outside partners, which has greatly increased the impact of these grant programs. The MSCFs' leveraging achieved a $1.60 match for every $1.00 spent from 2006 through 2010.

With a modest investment, the MSCFs are able to promote unprecedented achievements in the conservation of elephants, rhinos, tigers, great apes, and marine turtles. The funds help secure the interest and commitment of governments and communities around the world. We firmly believe that the MSCFs are the most effective instrument in existence to provide immediate and long-term benefits for the conservation of these species.

The funds are of particular importance for African elephants and rhinoceros, which are being illegally killed at unprecedented rates and trafficked through criminal networks across the globe. The pace of the killing is staggering and if it is not slowed it will lead to the elimination of these species in the wild.

Section 9. Interest on obligations held in the wildlife restoration fund

As detailed in the Administration's FY2016 budget proposal, the Administration strongly supports extending an important provision in the NAWCA which requires interest on Pittman-Robertson funds to be allocated to finance waterfowl conservation projects funded through the NAWCA. This provision that is scheduled to expire at the end of FY 2015.

Section 7 of the NAWCA of 1989 (16 U.S.C. 4401-4412) amended the Pittman-Robertson Act (16 USC 669b) (P-R) to provide the Secretary of the Treasury the authority to invest P-R funds

in interest-bearing obligations of the United States. The interest, according to the statute, is available for allocation by the Secretary of the Interior for the purposes of NAWCA, which means the interest provides additional funding for NAWCA projects. P-R was amended in 2005 (P.L. 109-75), to extend authorization for this provision through FY 2015. Through this provision, an additional $7 – $23 million per year is contributed to NAWCA. This substantial contribution to NAWCA projects should be extended before this fiscal year ends on September 30, 2015.

Provisions not included

There are a number of legislative provisions that would improve S. 659 and have a substantial positive effect on the conservation of the wildlife resources enjoyed by sportsmen and women. We would like to highlight three of these legislative provisions and welcome the opportunity to discuss these and other sportsmen's related provisions not contained in S. 659 with the Committee.

The United States Fish and Wildlife Service Resource Protection Act

On July 16, 2014, the Department provided testimony to the Committee on S. 2560, "The United States Fish and Wildlife Service Resource Protection Act," a bill introduced in the 113th Congress. The Department recommends that this legislation, which is legislative proposal included in the Administration's FY16 budget request, be included within the Bipartisan Sportsmen's Act.

The legislation would provide authority, similar to that of the National Park Service and the National Oceanic and Atmospheric Administration, to seek compensation from responsible parties who injure or destroy National Wildlife Refuge System, National Fish Hatchery System, or other Service resources. Today, when Refuge System resources, for example, are injured or destroyed, the costs of repair and restoration falls upon our appropriated budget for the affected refuge, often at the expense of other refuge programs. By way of example, in 2013, refuges reported seven cases of arson and 2,300 vandalism offenses. Monetary losses from these cases totaled $1.1 million dollars.

Duck Stamp Price Stability

Another legislative proposal included in the Administration's FY16 budget request, which is contained in the Service's FY 2016 budget request, would provide stability to the purchasing power of the Federal Duck Stamp. The proposal would give clearly defined and limited authority to the Secretary of the Interior, with the unanimous approval of the Migratory Bird Conservation Commission, to periodically increase the price of the Federal Duck Stamp to keep pace with inflation. We appreciate Congressional approval last year of the first increase to the cost of a Duck Stamp in many years and we look forward to discussing this proposal with the Committee to ensure the funds generated by the stamp keep up with inflation.

National Fish and Wildlife Foundation Reauthorization

The Department recommends legislation be included in S. 659 to reauthorize the National Fish and Wildlife Foundation and recognize the Foundation as an appropriate recipient of funds that the United States receives as restitution from criminals who harm or take federal wildlife. On April 24, 2012, the Departments testified in support of such a bill, S. 1494. The Foundation plays an important role in funding on-the-ground conservation projects and managing and leveraging taxpayers' funds with private contributions. Its efforts to increase the public fund investment in the conservation of fish and wildlife resources have yielded an average 3-to-1 ratio in private matching funds, although its statutory requirement is only a 1-to-1 match.

The Administration strongly supports most of the provisions in S. 659 and would welcome the opportunity to work with the Committee to address concerns outlined in this testimony.

Sincerely,

Dan Ashe
Director
U.S. Fish and Wildlife Service

cc: The Honorable Barbara Boxer, Ranking Member

THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

JUL 0 7 2015

The Honorable Rob Bishop
Chairman, Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Chairman Bishop:

The Department of the Interior (Department) opposes H.R. 2898. It fails to equitably address critical elements of California's complex water challenges and will, if enacted, have the unintended consequence of impeding an effective and timely response to the continuing drought while providing no additional water to hard hit communities.

We acknowledge and appreciate the desire of the authors to provide relief to the working families in the agricultural community who are impacted by this historic drought. The Department shares in this concern, and over the past few years, Federal and State agencies have taken unprecedented actions to collaboratively manage the Central Valley Project (CVP) and the State Water Project (SWP) on a real-time basis. This allows maximized water delivery while also ensuring health and human safety standards are met, salinity controls are achieved, and the minimum conditions necessary for survival of endangered and threatened fish and wildlife are attained. The result has been a significant savings of water, approximately 400,000 acre-feet this year through the end of May, significantly increasing the amount of water available for municipal and agricultural uses compared to that which would have otherwise been available.

In light of our operational experiences, we have reviewed H.R. 2898 and are of the view that this bill will not provide additional meaningful relief to those most affected by the drought. It will, however, negatively impact our ability to protect Delta fish and wildlife in the long-term; particularly those species listed under Federal and State endangered species laws.

Instead of increasing water supplies, H.R. 2898 dictates operational decisions and imposes an additional new legal standard. Instead of saving water, this could actually limit water supplies by creating new and confusing conflicts with existing laws, thereby adding an unnecessary layer of complexity to Federal and State project operations. As a result of this additional standard, we believe H.R. 2898 will slow decision-making, generate significant litigation, and limit the real-time operational flexibility that is so critical to maximizing water delivery. It also contains internal conflicts by stating its consistency with the Endangered Species Act (ESA) while directing specific operations that appear inconsistent with the ESA, thereby resulting in conditions that could be detrimental to listed species.

Much of the bill also contains provisions that have little connection to the on-going drought. The bill includes language constraining the Administration's ability to protect the commercial and tribal fishery on the Trinity and Klamath Rivers, which will have impacts not just in California

but throughout the west coast. Another problematic section of the bill elevates and prioritizes certain water rights holders within the California water rights system, thereby creating different classes of water users, which further limits operational flexibility, and intrudes upon State administration of water rights. The bill also repeals the San Joaquin River Restoration Settlement Act, including a troubling provision that expressly preempts State water law. In addition, the repeal will further complicate operations on the San Joaquin River by increasing the likelihood of further litigation and undermining the improvements that are important to achieve a critical balance between water development and the environment. Such provisions are not related to ameliorating the impacts of drought but instead create conflict among Californians, raise issues in neighboring states, and ultimately detract from our ability to provide meaningful support during this difficult crisis.

In addition to these problematic sections, the Department has concerns with several provisions that affect the use of tax-payer provided funds. The bill seeks to penalize the Bureau of Reclamation for failure to finalize certain reports without recognizing there are external factors contributing to these delays. These financial penalty provisions could potentially limit Reclamation's ability to address resources issues in other western states. There are also several provisions that perpetuate the historical Federal subsidies available for financing water storage projects through the Bureau of Reclamation. These financing terms are no longer appropriate given limited budgets and other available financing mechanisms.

The Department is of the view that the drought must be addressed through a multi-pronged approach that considers impacts in the short-term as well as providing long-term drought resiliency. In addition to the unprecedented use of operational flexibility and real-time management of the CVP and SWP, the Federal and State governments are continuing very aggressive and tightly coordinated efforts to assist those most affected by drought. The U.S. Department of Agriculture has directed millions of dollars in food, conservation, and emergency water assistance to tens of thousands of residents in areas hardest hit by drought. The Bureau of Reclamation has provided cost-share assistance for nine water reuse projects in the State as well as millions of dollars in grants to promote conservation efforts and long-term resiliency to drought. We must also move beyond the traditional water storage construction paradigm with more emphasis on Federal participation in state and locally driven projects, especially in those states like California, that have made substantial funding available for such projects.

Although the Department opposes H.R. 2898, there are a number of provisions in the bill that could provide a framework for further discussions. These include provisions intended to build upon the agencies' current actions to improve data gathering, monitoring, and scientific methodologies in a manner that benefits real-time operations. Continued progress in the areas of conservation, habitat restoration, and infrastructure improvements can also provide the basis for cooperative efforts. These strategies have been enhanced in recent years as a result of funding increases provided by the Administration and Congress. Progress in this area, however, will be seriously undermined by the sequestration levels of funding currently being contemplated by Congress. Cutting budgets while calling for more investments in science, equipment, and infrastructure is not a workable strategy.

As a final matter, it should be noted that without a hearing or meaningful opportunity for the Administration, the State of California, or the public to review and provide detailed comments on the bill, it will be very hard to engage constructively on key concepts that merit further discussion. One of my takeaways from time spent in California, meeting with those most affected by the drought, is the strong desire that exists for the Administration, Congress, and the State to work collaboratively to find meaningful relief from its devastating effects. The Department stands ready to work with the Congress and the State of California to further strengthen our comprehensive response to the continuing drought.

Sincerely,

Michael L. Connor

cc. The Honorable Raúl M. Grijalva
Ranking Member, Committee on Natural Resources

THE SECRETARY OF THE INTERIOR
WASHINGTON

JUL 10 2015

The Honorable William M. "Mac" Thornberry
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

The Honorable John McCain
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Adam Smith
Ranking Member
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Jack Reed
Ranking Member
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairmen and Ranking Members:

As you begin the conference on the National Defense Authorization Act for Fiscal Year 2016 (NDAA), I would like to call to your attention several provisions that affect the Department of the Interior and our core missions and values. These provisions were all enumerated in the House NDAA Statement of Administration Position the President issued on May 15, 2015, and remain issues of critical concern for the Department and the Administration. The Department works collaboratively and efficiently with the Department of Defense and all the service branches to ensure military readiness. The provisions described in more detail below are not necessary, undercut core environmental laws, and do not promote military readiness. I hope you will consider the significant and unprecedented harm these provisions would have on the Department and its mission if included in the bill.

Public Lands and Resources: The Department of the Interior is committed to responsibly managing our Nation's natural resources while maintaining the highest level of military preparedness. Unfortunately, a number of the provisions included in the House bill distract from DOD and the Department's mission and the Department objects to their inclusion.

- *Greater Sage Grouse and other species.* The Administration strongly objects to House sections 2862, 2865, and 2866. Section 2862 would mandate a delay until 2025 in listing or deciding not to list the Greater Sage-Grouse under the Endangered Species Act and would effectively override longstanding principles of major Federal land management statues, including the Federal Land Policy and Management Act and the National Forest Management Act. Such unprecedented delays undermine science-based decisionmaking, are unnecessary for military readiness, and are ill-advised for purposes of public land management. Such delays create uncertainty for landowners and businesses, and effectively suspend unprecedented collaborative conservation efforts that have been developed with extensive public input. Additional provisions would divest stewardship of Federal land from Federal agencies, requiring these lands to be managed consistent with state-approved management plans. Moreover, existing law already allows the Secretary of Defense to obtain an exemption of any action from the requirements of the Endangered Species Act for reasons of national security.

Section 2865 and 2866 would override science-based decisionmaking by statutorily repealing protections for the American Burying Beetle and the Lesser Prairie Chicken. This unprecedented removal of species from the Endangered Species List undermine science-based decisionmaking, is unnecessary for military readiness, and undermines cooperative public resource management and species conservation efforts.

Military Land Transfers. The Administration has concerns with House section 2841, 2842, and 2835 relating to military land withdrawals, transfers, and conveyances with respect to various military installations. Provisions 2841 and 2842 permanently withdraw an expansion of Naval Air Weapons Station China Lake (CA) comprising over 1 million acres of public lands, and permanently withdraw and explicitly require a mandatory authorization that the Secretary of the Interior transfer full administrative jurisdiction over millions of acres of public lands at: Nellis Air Force Base (NV); Naval Air Station Fallon (NV); Fort Greeley (AK); Fort Wainwright (AK); and McGregor Range of Fort Bliss (NM). This would remove these lands from the public domain and BLM's jurisdiction with no compensation or public process. Such an outcome would end the current process of comprehensive, periodic review for these major withdrawals, and remove the Department from any cooperative role in the management of the lands while they are under the exclusive jurisdiction of the military. The Administration is not prepared to support transfers of such lands without a process that provides careful consideration of the evolving needs, interests, and any supporting legislative provisions. The Administration stands ready to consider measures and approaches to make the use of public lands for military needs more efficient.

Section 2842 also has serious effects on the management of the Desert National Wildlife Refuge, which contains over 1.3 million acres of proposed Wilderness and is home to hundreds of wildlife species including endangered species and the iconic desert bighorn sheep. Provision 2842 would give the Air Force authority to conduct any defense related activity in a majority of the refuge's 1.6 million acres. The Air Force's use of the air and land in the Joint Use areas of the refuge should continue to be managed in accordance with current law and the required Memorandum of Understanding.

Section 2835 contains a number of technical issues. We believe the technical edits we have supplied would resolve those issues.

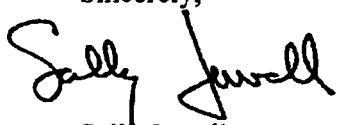
- *Amendments to the National Historic Preservation Act.* The Administration objects to section 2853, which would amend the National Historic Preservation Act to allow Federal agencies to object to a designation of Federal properties for reasons of national security. Listing a property on the National Register of Historic Places, or designating it as a National Historic Landmark, does not limit any Federal agency's decisionmaking authority. Decisions on how to manage the property, informed by the evaluation of its significance and integrity, remain the responsibility of the agency with jurisdiction over that property. The Administration is not aware of any specific instance where such a designation has adversely affected national security. Enactment of this section could lead

to a fundamental weakening of highly successful and widely admired programs that Congress intended to help recognize and protect our shared heritage.

- *Antiquities Act.* The Administration strongly objects to Section 2863 as the overly broad language of the amendment would authorize DoD operations on National Monuments in a manner that is wholly inconsistent with the purposes of national monument designation. The current site-specific approach to DoD activities on national monuments already facilitates the reasonable accommodation of DoD needs in cooperation with base leadership to develop narrowly-tailored special provisions for activities on national monuments. This approach allows for appropriate accommodation of military operations without undermining the protection of conservation values in national monuments. The one-size-fits-all approach in the amendment would undermine the protective conservation purposes of the Antiquities Act in a manner that is neither necessary nor productive.

Thank you for your consideration.

Sincerely,



Sally Jewell

THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

FEB 2 9 2016

The Honorable Harry Reid
Senate Minority Leader
Washington, DC 20510

Dear Senator Reid:

The Administration is deeply committed to respecting tribal sovereignty and the fiduciary trust relationship the Federal Government owes to Native American tribes. It is because of this important fiduciary responsibility that we oppose H.R. 812 and S. 383 as they are written. As written, they undermine a management framework that provides clarity and certainty to the Federal Government, tribes, and individual American Indians.

Specifically, Title III of the legislation would, among other things, restructure the Bureau of Indian Affairs, the Office of the Assistant Secretary – Indian Affairs, and the Office of the Special Trustee (OST) and create an Under Secretary for Indian Affairs within the Department of the Interior (Department). As drafted, the bill mandates that OST submit a report to Congress that outlines how OST will be dissolved and its functions absorbed by other bureaus and offices. H.R. 812 requires the Under Secretary to constitute some new structure or entity that would assume OST's functions. The bill provides for the Under Secretary to bring functions performed and personnel employed by OST into some new unspecified structure.

The OST's value comes not from its position within a particular office at the Department, but rather from its singular focus and discrete duties. As affirmed by the courts numerous times in *Cobell,* OST is meeting those fiduciary responsibilities through a high level of care. Fiduciary duties related to accounting for individual and tribal trust assets deserve the singular focus that OST provides. For the foreseeable future, OST will need to remain as an integral part of the Indian trust system.

The Department views more favorably Title II of the bill, the Indian Trust Asset Management Demonstration Project Act. The Department strongly supports tribes' right to self-determination and self-governance and is supportive of program authority, similar to that found in the HEARTH Act, which would provide tribes with flexibility to manage their resources.

In our view, H.R. 812 and S. 383, as written, lack sufficient detail to ensure that individual beneficiaries and tribes will retain the level of care they currently receive under the Department's trust management structure.

Finally, before engaging in any restructuring, whether initiated by Congress or directed from within, the Department will need to conduct extensive tribal consultations, pursuant to Executive Order 13175, as restructuring would clearly have a significant direct effect on tribes.

Sincerely,

Michael L. Connor

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

APR 1 4 2016

The Honorable Rob Bishop
Chairman, Committee on Natural Resources
U.S. House
Washington, D.C. 20540

This letter provides the Administration's views on section 405 of H.R. 4900, the Puerto Rico Oversight Management, and Economic Stability Act. Section 405 would authorize the transfer of 3,100 acres of land within the Vieques National Wildlife Refuge (Refuge) from the Department to Puerto Rico without consideration. The Administration strongly opposes this section of the bill.

The purpose of H.R. 4900 is to address the escalating economic and fiscal crisis in Puerto Rico and create a path to recovery. The Administration is strongly committed to supporting legislation that provides Puerto Rico with the tools to resolve this crisis and establish a foundation for recovery. Section 405 does not advance these goals and does not belong in this bill. Instead, section 405 undermines our nation's resource protection laws and sets an unacceptable precedent of transferring federal lands out of the ownership of all Americans that would compromise the management and stewardship of our nation's public lands.

Congress created Vieques National Wildlife Refuge from former Navy managed lands through Public Law 106-398 in 2000. In this legislation, Congress directed the Secretary of the Interior to manage these lands "to protect and preserve the natural resources of the lands in perpetuity." The Service upheld that charge and has developed a Comprehensive Conservation Plan (CCP) to guide long term management of the Refuge and has invested approximately $15 million in conservation management and visitors services over the last 15 years.

Specifically, the CCP has addressed cleanup of large tracts of the Refuge and its surrounding waters were designated as a superfund site by the U.S. Environmental Protection Agency (EPA), with the U.S. Navy the Principal Responsible Party (PRP) for the cleanup of these lands. Since the time of legislated transfer, the U.S. Fish and Wildlife Service (Service), as the land manager, has worked, and continues to work, closely and cooperatively with the Navy, the EPA, the Commonwealth of Puerto Rico, Municipality of Vieques and the community to ensure expedited and appropriate cleanup of the Refuge lands within the site. Significant progress has been made.

Today, the Refuge is the largest land National Wildlife Refuge in the Caribbean and is considered one of the most ecologically diverse wildlife refuges in the Caribbean. The Refuge, and the adjacent waters, provide habitat for 190 bird species, both migratory and resident; 22 species of amphibians and reptiles including the leatherback, green sea turtle, hawksbill, and the

loggerhead sea turtle; a number of marine mammals including the Antillean manatee, the blue whale, fin whale, humpback whale; and 9 species of bats.

The Refuge is also integral to the economy of Vieques, providing wildlife-dependent recreational opportunities to visitors and economic benefits to local businesses and communities. Since the creation of the Refuge, visitation has increased dramatically. In 2004, the refuge received just over 20,000 visits per year. Last year the refuge received more than 300,000 visitors as a result of the investments the FWS made in conserving these lands. The direct economic impact of the Refuge, based on FY 2015 visitation data, is estimated to be almost $13 million. These direct expenditures result in associated employment of 300 jobs with annual income of more than $8 million.

The Vieques National Wildlife Refuge is a vital piece of the National Wildlife Refuge System and the patchwork of protected conservation lands in Puerto Rico, the Virgin Islands, and across the Caribbean and should continue, as Congress intended, to be managed by the Service, to protect and preserve the natural resources of these special lands in perpetuity.

We welcome the opportunity to work with the Committee to provide additional information on this provision and assistance as you continue consideration of H.R. 4900.

Sincerely,

Michael J Bean

Michael Bean
Principal Deputy Assistant Secretary for
Fish and Wildlife and Parks

cc: The Honorable Raúl Grijalva, Ranking Member
cc: The Honorable Paul Ryan, Speaker of the House
cc: The Honorable Nancy Pelosi, Minority Leader
cc: The Honorable Pedro Pierluisi
cc: The Honorable Luis V. Gutiérrez
cc: The Honorable Nydia M. Velázquez
cc: The Honorable José E. Serrano

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 1 1 2016

The Honorable John Barrasso
Chairman
Senate Committee on Indian Affairs
Washington, DC 20510

Dear Chairman Barrasso:

Thank you for the opportunity to provide your Committee with the Department's views on S. 2739, the "Spokane Tribe of Indians of the Spokane Reservation Equitable Compensation Act." The Administration supports equitably compensating the Spokane Tribe for the losses it sustained as a result of the federal development of hydropower at Grand Coulee Dam.

S. 2739 will provide a measure of justice for a historical wrong by providing equitable compensation to the Spokane Tribe for water power values from riverbed and upstream lands taken by the United States as part of the Grand Coulee Dam development in the 1930s and 1940s. The Tribe's claim is an equitable one because the Tribe missed its opportunity to make a legal claim with the Indian Claims Commission. In 1994, Congress remedied similar claims by the Confederated Tribes of the Colville Reservation which had been pending before the Indian Claims Commission.

S. 2739 will use a compensatory framework like the one used in the Colville settlement, in an attempt to compensate the Spokane Tribe for the same type of damages for which the Colville were compensated. The Administration has previously supported a similar bill in the 113th Congress and supports this bill in the 114th Congress.

Thank you for the opportunity to provide the Committee with the Administration's views on S. 2739.

Sincerely,

Lawrence Roberts
Acting Assistant Secretary-Indian Affairs

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 2 0 2016

The Honorable Raul M. Grijalva
Committee on Natural Resources
U.S. House of Representatives
Washington, D.C. 20510

Dear Ranking Member Grijalva,

Thank you for your March 17, 2016, letter requesting the Department of the Interior's assessment of the impacts of H.R. 4751, the "Local Enforcement for Local Lands Act of 2016". H.R. 4751 would undermine the Department's ability to protect and manage public lands for the benefit of all Americans. Accordingly, the Department strongly opposes the bill.

H.R. 4751 would direct both the Department of the Interior and the U.S. Department of Agriculture to cease using Federal employees to perform law enforcement functions on lands managed by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS), and to instead authorize State or local governments to perform these law enforcement functions. H.R. 4751 would require the Secretary of the Interior to provide appropriated Federal funding to States and local governments to carry out these law enforcement functions, and for the Federal government to indemnify the State and local governments from all claims by third parties related to their performance of these functions.

By transferring BLM law enforcement functions to the State or local governments, H.R. 4751 fails to consider several critical issues. First, States currently have the ability, under Section 303(c)(1) of the Federal Land Policy Management Act (FLPMA), to enter into contracts with land management agencies to enforce Federal laws on public lands. As such, this bill is redundant with current existing authority. The bill also assumes any State or local law enforcement entities are willing to perform Federal law enforcement functions; we note that historically States have been uninterested and unwilling to perform these functions. Furthermore, the Department of Justice advises that if the bill is meant to compel state and local law enforcement entities to perform these federal functions, it would be unconstitutional.

This legislation also ignores the inherent differences that can exist between Federal and State resource management priorities. The BLM is guided by a congressionally mandated multiple-use and sustained yield mission designed to manage and protect public lands for the benefit of all Americans. In accordance with this mission, BLM law enforcement officers establish consistent enforcement measures and practices across all of the many communities, States and landscapes where they work. In contrast, sheriffs and the leaders of other local law enforcement teams are usually elected officials who prioritize the issues that are of greatest concern for their constituencies. If H.R. 4751 were to become law, this difference in priority setting has the

potential to create glaring inconsistencies in the ways that Federal laws are enforced and Federal priorities are pursued.

Furthermore, the bill fails to recognize the specialized training and skillsets that Federal law enforcement officers need in order to successfully conduct resource-management based law enforcement on public lands. In addition to core law enforcement training, BLM law enforcement officers are specifically (and uniquely) trained to enforce a vast array of Federal laws and regulations designed to protect public lands and resources (e.g., Native Americans Grave Protection and Repatriation Act; the Wild Free Roaming Horse & Burro Act; the Taylor Grazing Act; the Mineral Leasing Act; the Archaeological Resources Protection Act; the Paleontological Resources Protection Act; the Federal Oil and Gas Royalty Management Act; the Endangered Species Act). H.R. 4751 does not mandate any training or performance expectations for State and local law enforcement officers. These officers will be required to enforce Federal laws, make Federal arrests, execute Federal warrants, and conduct Federal investigations on public lands under this legislation, without training.

Finally, H.R. 4751 will lead to unquantifiable Federal liability, as the legislation requires the Federal government assume all liability for the actions taken by State and local officers on public lands. With Federal grant funding and a lack of appropriate training or performance standards, State and local law enforcement will have limitless authority on public lands, and the American taxpayer will bear the fiscal consequences.

The Department supports the BLM's agency-wide multiple-use and sustained yield mission to manage public lands for the benefit of all Americans, including its unique resource-management based law enforcement functions. For the reasons provided above, the Department strongly opposes this bill which would terminate these law enforcement functions and significantly hinder effective management of our public lands.

Sincerely,

Harry L. Humbert
Deputy Assistant Secretary for Public Safety,
Resource Protection, and Emergency Services

THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON
JUL 15 2016

The Honorable John McCain
Chairman, Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As you begin the conference on the National Defense Authorization Act (NDAA) for Fiscal Year 2017, the Department of the Interior (DOI) would like to call to your attention several provisions that impact the DOI's core missions.

Several of these provisions were addressed in the Statement of Administration Policy on H.R. 4909 issued on May 16, 2016, and they remain issues of critical concern for DOI and the Administration. We appreciate the opportunity to present these comments, and it is our hope that you will consider these comments and concerns during the conference on the two bills.

Identical letters are being sent to Ranking Member Reed, as well as Chairman Thornberry and Ranking Member Smith of the House Armed Services Committee.

Impairment of Endangered Species Act (ESA)

The Administration strongly objects to sections 2864, 2865, and 2866 of H.R. 4909. These provisions undermine state and Federal cooperative efforts to protect the greater sage-grouse and the lesser prairie chicken, and remove the American burying beetle from the Endangered Species List. These provisions are also non-germane to the NDAA, would impair the protection afforded by the Endangered Species Act, would override the principles of major Federal land management statutes, and would undermine years of collaborative conservation work with private landowners, 11 states, and other stakeholders that prevented the need to list the greater sage-grouse while promoting sustainable economic development. These provisions would also undermine the science-based decisionmaking at the core of the ESA and are unnecessary for military readiness. There are no similar provisions in S. 2943, and DOI recommends that these provisions not be included in any final legislative language.

National Historic Preservation Act Amendments

The Administration objects to section 2855 of H.R. 4909, which would amend the National Historic Preservation Act to allow Federal agencies to object to a designation of Federal properties for reasons of national security. Listing a property on the National Register of Historic Places or designating it as a National Historic Landmark does not limit any Federal agency's decisionmaking authority; decisions on how to manage the property remain the responsibility of that agency. The Administration is not aware of any specific instance where such a designation has adversely affected national security. Enactment of this section could lead to a fundamental weakening of highly successful and widely admired programs that Congress

intended to help recognize and protect our shared heritage. There are no similar provisions in S. 2943, and DOI recommends that these provisions not be included in any final legislative language.

Military Land Withdrawals

The Administration objects to sections 2841 and 2842 of H.R. 4909, relating to military land withdrawals. The Administration does not support transfer of these lands without a process that provides careful consideration of the evolving needs, interests, and any supporting legislative provisions. Moreover, the Administration opposes provisions that alter the current use and management structure of the Desert National Wildlife Refuge. The Administration stands ready to consider measures and approaches to make the use of public lands for military needs more efficient and will continue to coordinate to ensure the responsible use of public lands to support military readiness, training, and testing. There are no similar provisions in S. 2943. In place of sections 2841 and 2842, we recommend that the conferees adopt the Administration's proposal to standardize various land withdrawal termination dates, which can be found in section 2806 of the First Package of Legislative Proposals Sent to Congress for Inclusion in the National Defense Authorization Act for Fiscal Year 2017, transmitted to Congress by the Department of Defense on March 10, 2016.

The Administration also objects to section 2839B of H.R. 4909, which would prohibit the transfer of administrative jurisdiction over approximately 2,050 acres of public lands from the Secretary of Defense to the Secretary of the Interior. Part of an area known as Fillmore Canyon, these lands had previously been withdrawn and reserved for the Army's use and are adjacent on two sides to the Bureau of Land Management's Organ Mountains Area of Critical Environmental Concern. Near the community of Las Cruces, New Mexico, it includes hunting opportunities, scenic lands popular for hiking, endangered wildlife species, and cultural sites. The Administration has supported legislation in previous Congresses to return these lands to full management by DOI as part of a cohesive boundary solution at White Sands Missile Range and Fort Bliss. There are no similar provisions in S. 2943, and DOI recommends that these provisions not be included in any final legislative language.

Utah Test and Training Range

The Administration objects to the provisions in Title XXX of H.R. 4909. These include sections 3001-3015, which would prevent the effective management of Federal lands through provisions proposed for temporary use and closure; provisions in section 3023 that facilitate exchanges of Federal land without adequate consideration to the Federal taxpayer or without appropriate analysis under the National Environmental Policy Act; and provisions in section 3031 that would recognize the existence and validity of unsubstantiated and disputed claims of road rights-of-way across Federal lands. The DOI supports the appropriate and responsible use of public lands for military purposes and recommends that the conferees adopt the provisions authorizing temporary closure of certain lands adjacent to the Utah Test and Training Range and land exchanges between DOI and the State of Utah contained in sections 2831-2844 of S. 2943.

Return of Certain Lands at Fort Wingate

The DOI generally objects to the creation of perpetual rights-of-way on property to be held in trust and objects to such language in section 7005 of H.R. 4909. The Administration strongly supports the principles of tribal self-determination and self-governance. While DOI supports taking the subject lands into trust for the benefit of the Zuni Tribe and Navajo Nation, consistent with our support for self-determination and self-governance, we believe that Indian tribal governments should be the primary negotiators of rights-of-way through and over their lands. Further, DOI's trust responsibility is undermined if the ability to periodically review right-of-way grants to identify and, if necessary, address any changed circumstances is eliminated. There is no similar provision in S. 2943, and DOI recommends that these provisions not be included in any final legislative language.

Battleship Preservation Grants Program

The DOI objects to section 2857 of H.R. 4909, which would establish within the Department a grant program for the preservation of certain historic battleships. The definition of "most historic battleship" in the section is written in such a way that only one battleship, the USS Texas, would be eligible for funding. The provision thus authorizes pass-through funding to a single entity. The DOI has not had an opportunity to consider the establishment of such a program, and if funded, this program would detract from the limited funding available for other DOI grant programs. There is no similar provision in S. 2943, and the DOI recommends that this provision not be included in any final legislative language.

Ballast Water

The Administration objects to Title XXXVI of H.R. 4909, which undermines the ability to fight the spread of invasive species in our Nation's waters because it, in part would: lack critical civil and criminal enforcement mechanisms present in the existing statutory and regulatory regime, the absence of which would irreparably hinder the successful prosecution of unlawful discharges; effectively discard the existing body of domestic environmental laws as those laws apply to vessel discharges; jettison well-established statutory and regulatory regimes that implement U.S. international legal obligations; and fail to preserve expressly the authorities of the Secretary of Commerce and the Secretary of the Interior to exercise administrative control over waters under each Secretary's jurisdiction. There is no similar provision in S. 2943, and the DOI recommends that this provision not be included in any final legislative language.

Commitment to Republic of Palau

Section 1277 of S. 2943 expresses the Sense of Congress that the United States is committed to its continuing relationship with the Republic of Palau. On February 22, 2016, the Secretary of the Interior, along with the Departments of State and Defense, re-transmitted draft legislation to Congress to implement the 15-year Compact of Free Association Review Agreement between the United States and the Republic of Palau, including by providing $149 million, the remaining funding required to bring the Review Agreement into force. Approving the Review Agreement is important for the national security of the United States, our bilateral relationship with Palau,

and stability in the Western Pacific region. The Administration continues to support the approval of the Review Agreement and strongly recommends replacing the Sense of Congress language with S. 2610, which approves the Review Agreement, in any final legislative language.

Guam War Claims

Title LXXIII (sections 7301-7307) of H.R. 4909 contains provisions authorizing a program of payments from a special fund to compensate Guam victims and compensable survivors of deceased victims of the Japanese military occupation of Guam during World War II. Guam is vital to the protection of American interests in Asia and the Western Pacific. The Administration has strongly supported enactment of nearly identical legislation in past Congresses, as it would restore dignity to and heal the wounds of those who survived. There is no similar provision in S. 2943, and the DOI recommends that the conferees include this Title in any final legislative language.

The DOI is committed to responsibly managing our Nation's natural resources while ensuring that the Department of Defense is able to maintain the highest level of military preparedness. We look forward to continued collaboration with the Department of Defense and its service branches into the future.

Thank you for your consideration of these issues.

Sincerely,

Michael L. Connor

NOV 2 9 2016

The Honorable Rob Bishop
Chairman, Committee on Natural Resources
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

We write to provide our views on Section 8002 of S. 2848, the Choctaw Nation of Oklahoma and the Chickasaw Nation Water Settlement, which would approve 1) a settlement agreement among the Choctaw Nation of Oklahoma and the Chickasaw Nation (collectively Nations), State of Oklahoma (State), City of Oklahoma City (City), and the United States, and 2) a collateral agreement between the State, City, and Oklahoma City Water Utility Trust. The Administration supports the consensus legislative language reached between the Administration and the local parties. This consensus language is identified in a revised version of Section 8002, enclosed hereto (hereinafter the Settlement).

The Settlement resolves the water rights claims of the Nations and their members, ensures that water remains in the various basins, and provides a mechanism for tribal input in future water management. The Settlement will bring to successful conclusion years of conflict and uncertainty over water rights in southeastern Oklahoma and years of negotiations among the parties. The Settlement resolves the Nations' water rights claims, recognizes the Nations' existing water uses, provides procedures for expanded water use by the Nations in the future, and protects and provides certainty to the City, the State, and all water users in southeastern Oklahoma.

The Administration supports this Settlement because it fulfills important Federal trust obligations, promotes tribal self-sufficiency, supports stability for all interested parties, and provides economic benefits to the State, the City, Nations, and all the people living in the affected area by encouraging cooperative and efficient water management. The Settlement adheres to the 1990 *Criteria and Procedures*, including Criteria 4 and 5, and represents a net benefit to the American taxpayer as compared to the costs of not settling the underlying litigation, described in more detail below.

Background

The Nations are federally recognized Indian tribes whose historic treaty territories are located in southeastern Oklahoma. Because of their unique histories, the Nations do not have reservations like other Indian tribes. Nevertheless, the Nations still own a significant amount of land, some of which the United States now holds in trust for the Nations.

This Settlement resolves litigation in two related cases: 1) a lawsuit the Nations brought in Federal district court in 2011 claiming ownership and regulatory authority over all waters within their historic treaty territory,[1] and 2) a water rights adjudication the State initiated in the Oklahoma Supreme Court in response to the Nations' suit.[2] The United States removed the State's lawsuit to Federal district court, and both cases have been stayed since 2012 to facilitate settlement negotiations among the parties.

The Nations, State, and City negotiated for approximately three and a half years, and reached an agreement in principle before inviting the United States to join the negotiations. Since 2015, the Department of Justice, Department of the Interior, and the United States Army Corps of Engineers (Army Corps) have worked with the other parties to further refine the Settlement.

Unlike most Indian water rights settlement contexts, in which water resources are typically scarce, this Settlement concerns a part of the country that is relatively wet. The Nations' claims in their 2011 lawsuit are estimated to encompass in excess of 61 million acre-feet (af) of water per year. Under this Settlement, the Nations relinquish their claims to this water in exchange for various assurances including the guarantee that sufficient water will remain in Sardis Reservoir in southeastern Oklahoma to protect important recreation and fish and wildlife resources that are vital to the economies of the Nations and southeastern Oklahomans.

If this Settlement is not authorized and approved through legislation, the United States, Nations, State, and City would resume the currently-stayed litigation addressing a number of divisive, conflicting, and expensive claims, including the Nations' claim of ownership of and regulatory authority over all surface water in southeastern Oklahoma.

Consistency with the Criteria and Procedures, including Criteria 4 and 5(a) and (b).

The Settlement is consistent with the United States trust responsibilities and will secure to the Nations the right to use and benefit from water resources within their historic treaty territories. It will also secure water rights to tribal allottees. Our evaluation of the settlements also adheres to the general principles set forth in the Criteria & Procedures.

The Settlement provides benefits to the United States, both fiscal and otherwise, by securing a final resolution of this controversy, including the waiver of claims. The Federal contribution to this Settlement consists of the forgiveness of a $51 million repayment obligation associated with the Future Use Pool in Sardis Reservoir that, under current law, would eventually be owed to the Army Corps if and when the Future Use Pool would be first drawn upon.[3] This repayment obligation is not yet due – and might never come due. Moreover, the maximum Future Use storage at Sardis Reservoir that could legally be used by the City under the Settlement would be a small amount – less than 9 percent of the pool (12,824 af of the 155,500 af pool). The Army

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[1] *Nations v. Fallin*, 5:11-cv-000927-W (W.D. Okla.) (seeking to enjoin the export of Sardis Lake water outside the Nations' historic treaty territories).

[2] *OWRB v. US*, Civ. 12-275-W (W.D. Okla.)

[3] Subsection (d)(5) provides for forgiveness of any repayment obligations (including interest) relating to the Future Use Pool in Sardis Reservoir effective on January 1, 2050, provided that the City does not make use of the Future Use Pool before that date.

Corps, owner of Sardis Reservoir, was closely involved in negotiating the portions of the Settlement relating to Sardis Reservoir operations.

In addition, this Settlement includes non-Federal cost-sharing that is proportionate to the benefits received by the non-Federal parties. The City and Nations will be funding a $10 million Atoka and Sardis Conservation Projects Fund. This cost share ratio is favorable when compared to other enacted settlements.

Entering into this Settlement would save the Federal Government, other Settlement parties, and affected individuals a substantial amount of money by avoiding the costly and complex litigation necessary to confirm and quantify the Nations' water rights, other Federal reserved water rights including those for the Chickasaw National Recreation Area and the Ouachita National Forest, and other related issues. This Settlement will resolve the two major Federal lawsuits discussed above. Most pertinent to the United States, it will resolve the litigation filed by the State that named the United States as a defendant and sought to initiate an adjudication of water rights claimed by or potentially affected by the Nations. Adjudication proceedings to determine the Nations' water rights would cover all or portions of 30 hydrological basins and 22 counties in Oklahoma and include hundreds or possibly thousands of landowners and water users who would be expected to participate in the adjudication. Because of the broad geographic scope, time to prepare and litigate claims, and the questions of first impression regarding potentially applicable legal theories we expect that such legal proceedings would take many years and would cost Federal taxpayers millions of dollars.

In addition to the costs avoided through settlement of the pending litigation, approval of this Settlement could avoid other potential expenses related to the Endangered Species Act (ESA). The U.S. Fish and Wildlife Service previously determined that an earlier proposal to reduce Sardis Reservoir releases and resulting flows in the Kiamichi River would have potentially affected endangered mussel species and therefore required formal consultation under Section 7 of the ESA. By locking in specified Reservoir levels and environmentally beneficial flow levels below the Reservoir, this Settlement could avoid the costs associated with formal ESA consultation, potential litigation over preservation of ESA-protected species, and the costs and impediments that arise when a species is listed under the ESA.

Finally, and as noted above, the Settlement will resolve any and all claims of the Nations against the United States regarding water rights, regulatory authority, or ownership.

Approval in Writing of Settlement Agreement and Draft Legislation

The local parties have agreed to the Settlement and will execute the settlement agreement before the Settlement is enacted. The Settlement provides for a post-enactment signing by the United States. All potential settlement signatories have agreed to the enclosed legislative text.

Conveyance to Court of Settlement.

The local parties notified the court of the Settlement Agreement.

List of claims being settled.

- Claims to the ownership of water in Oklahoma;
- Claims to water rights and rights to use water diverted or taken from a location within Oklahoma;
- Claims to authority over the allocation and management of water and administration of water rights, including authority over third-party ownership of or rights to use water diverted or taken from a location within Oklahoma;
- Claims that the State lacks authority over the allocation and management of water and administration of water rights, including authority over the ownership of or rights to use water diverted or taken from a location within the State;
- Any other claim related to the ownership of water, regulation of water, or authorized diversion, storage, or use of water diverted or taken from within Oklahoma, which claims are based on the "Five Tribes Theory";
- Claims for damages, losses, or injuries to water rights or water, or claims of interference with, diversion, storage, taking, or use of water (including claims for injury to land resulting from the damages, losses, injuries, interference with, diversion, storage, taking, or use of water) attributable to any action by the State, Oklahoma Water Resources Board, or any water user authorized pursuant to State law to take or use water in the State, including the City, the accrued during the period ending on the enforceability date;
- All claims and objections relating to the amended permit applications and the City permit;
- All claims and objections relating to the approval by the Secretary of the Army of the assignment of the 1974 storage contract pursuant to the amended storage contract;
- All claims relating to the United States' litigation, prior to the Enforceability Date, of the Nations' water rights in the State of Oklahoma; and
- All claims relating to the negotiation, execution, or adoption of the Settlement Agreement (including exhibits) or this Act.

The settlement and proposed legislation do not include financial authorization for claims already settled by Congress or claims that have no legal basis.

The claims that will be settled as part of this settlement have a legal basis, have not previously been settled by Congress, and were not settled in prior cases against the United States.

Sincerely,

Alletta D. Belin
Senior Counselor to the Deputy Secretary
Department of the Interior

Peter Kadzik
Assistant Attorney General
Office of Legislative Affairs
Department of Justice

cc: The Honorable Tom Cole
House of Representatives

The Honorable Markwayne Mullin
House of Representatives