TESTIMONY
OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
TO THE SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING ON
H.R. 3764
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Good afternoon Chairman Young, Ranking Member Ruiz, and Members of the Subcommittee. My name is Kevin Washburn, and I am a member of the Chickasaw Nation of Oklahoma, and currently serve as the Assistant Secretary – Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to provide the Administration's view on Chairman Bishop's bill, H.R. 3764, a bill to provide that an Indian group may receive Federal acknowledgment as an Indian tribe only by an Act of Congress, and for other purposes. The Administration strongly opposes H.R. 3764.

H.R. 3764

As introduced last week by Chairman Bishop, H.R. 3764 appears to codify in large part regulations promulgated more than 20 years ago that were widely criticized as having resulted in a "broken" recognition process that took decades to complete. H.R. 3764 would further slow that broken process by delaying a decision on recognition until Congress acts on a report received by the Department. As H.R. 3764 was only introduced a week ago, the Department has not had time to do a complete analysis of the Bill. This statement reflects our larger overarching concerns with H.R. 3764.

A significant concern is that H.R. 3764 casts doubt on the status of tribes that have already been recognized by the Federal government. The Department's current regulatory process draws a bright line – it does not apply to tribes "already acknowledged as Indian tribes by the Department." H.R. 3764, by contrast, states only that it does not apply to those tribes "that have been lawfully acknowledged to be federally recognized Indian tribes." Use of the term "lawfully" seems to imply that some tribes have been "unlawfully" federally acknowledged. This past spring the Subcommittee held a hearing in which doubts were raised about the lawfulness of recognition by the Department of the Interior. The bill seems to embrace such misguided thinking and places tribes at risk for litigation as to their lawful recognition. The Administration strongly opposes legislation that purports to terminate or call into question the status of any of the existing federally recognized tribes.

The Department's Efforts to Reform the Part 83 Process.

As the Subcommittee is aware, on April 22, I provided an overview of the Department's efforts to improve the Department's Federal acknowledgment process. These efforts began in 2009 when Secretary Salazar and others in the Administration testified before the Senate Committee on Indian Affairs on our work to reform the process. I began working on this issue almost as

soon as I undertook my position as Assistant Secretary. In March of 2013, I testified before this Committee on the progress the Department had made to identify guiding principles of improvement: transparency, timeliness, efficiency, and flexibility. We also shared our path forward – issuance of a discussion draft of potential changes in the spring of 2013, consultation and public input on the discussion draft, and then preparation of a proposed rule, followed by another round of consultation and public input on the proposed rule.

The Department released a discussion draft on June 21, 2013, and announced public meetings and tribal consultation sessions. Throughout July and August 2013, the Department hosted tribal consultation sessions for representatives of federally recognized Indian tribes and separate public hearing sessions for interested individuals or entities at five locations across the country.

During these sessions, serious efforts were undertaken to capture meaningful comments on our discussion draft and other suggestions for reform. A professional court reporter transcribed each session. The Department made the transcripts available on its website and posted each written comment it received also on its website. At the request of States, Indian tribes, and others, the original comment deadline of August 16, 2013, was extended to September 30, 2013, to allow additional time to provide input. Tribal and public engagement at this stage of the reform initiative was incredibly robust. Commenters submitted more than 200 unique written comment submissions but, in total, more than 4,000 commenters provided input through form letters and signed petitions.

When the comment period on the discussion draft closed, the Department's internal workgroup began reviewing each written and oral comment on the discussion draft. During this review process, which also involved regular team meetings, our workgroup began to formulate a draft proposed rule. Prior to publication, the draft proposed rule was reviewed by OMB and Federal agencies.

On May 29, 2014, the Department published the proposed rule in the *Federal Register*. The publication also announced that the Department would be hosting additional tribal consultation sessions and public meetings at six locations across the country in July 2014. In response to requests for extension, the Department extended the original comment deadline of August 1, 2014, to September 30, 2014. In response to requests for additional meetings at additional locations, the Department announced the addition of two more tribal consultation sessions and two more public hearings to be held by teleconference in August and early September of 2014. The Department again made transcripts of all sessions available on its website and made all written comments available on www.regulations.gov. Tribal and public engagement was again robust. Commenters provided more than 300 unique comment submissions on the proposed rule, and more than 3,000 commenters provided input through signatures on form letters or petitions.

Once the comment period on the proposed rule closed on September 30, 2014, the Department's internal workgroup reviewed each of the written and transcribed comments on the proposed rule and drafted the final rule. The internal workgroup included representatives of the Office of the Assistant Secretary – Indian Affairs, OFA, the Office of the Solicitor, the Office of Hearings and Appeals, and the U.S. Department of Justice. The comments provided were extraordinarily helpful to the Department as it drafted a final rule. Just as the proposed rule was the product of extensive comments on the discussion draft, the final rule reflects additional changes following comments on the proposed rule. As I previously testified, the work of this Committee and the

Senate Committee on Indian Affairs in previous Congresses was extraordinarily helpful to inform our thinking as we moved forward with the final rule. The final rule that was ultimately published, and that became effective July 31, 2015, reflects years of intensive input from thousands of commenters and makes significant improvements to transparency, timeliness, efficiency, and flexibility.

In summary, our efforts to obtain tribal and public input have been more robust than our process for any other rulemaking in the last six years. We have held 22 meetings (11 tribal consultations and 11 public meetings) and 4 nationwide teleconferences. Over the past two years, we have received thousands of comments on this regulatory initiative, including comments from States and local governments, federally recognized Indian tribes, inter-tribal organizations, non-federally recognized tribes, and members of the public. H.R. 3764 ignores the public comment on our rulemaking and embraces the process that has been widely perceived as "broken."

Improvements to the Part 83 Process

The current rules implement significant improvements to the process, none of which are included in H.R. 3764. For example, the regulations provide for greater transparency by increasing public access to petitions and by increasing notice of petitions. The current rules promote timeliness and efficiency by providing for expedited decisions and a uniform evaluation start date of 1900. The rule also promotes fairness and objectivity by ensuring a consistent baseline of the criteria based on previous determinations. The current rule also promotes due process, transparency and integrity by providing for a hearing process before an Administrative Law Judge before a final decision is issued. H.R. 3764 does not implement these reforms or any reforms to promote fairness, flexibility, efficiency or to improve the transparency of the "broken" process.

Conclusion

I would like to thank you for the opportunity to provide the Administration's views on H.R. 3764. I will be happy to answer any questions the Subcommittee may have.