



Testimony of Dr. Ned Norris, Jr.
Chairman of the Tohono O'odham Nation
Before the Committee on Natural Resources
United States House of Representatives
Legislative Hearing on H.R. 5023:
The Requirements, Expectations, and Standard Procedures for
Executive Consultation with Tribes Act, RESPECT Act
July 28, 2010

**Testimony of Dr. Ned Norris, Jr.,
Chairman of the Tohono O'odham Nation
In Support of H.R. 5023, the RESPECT Act**

Good morning Chairman Rahall and Members of the Committee. I appreciate the invitation to testify today regarding tribal consultation and the RESPECT Act. My name is Ned Norris, Jr. and I am the Chairman of the Tohono O'odham Nation. The Tohono O'odham Nation is a federally recognized tribe located in southwestern Arizona.

This legislation has a direct impact on the Nation and other Indian tribes across the country as tribes regularly request timely and meaningful government-to-government consultation. The Act in many ways reflects the purposes and mandates for tribal consultation as established on November 6, 2000 by President Clinton's Executive Order 13175, and recently reaffirmed by President Obama's Memorandum of November 5, 2009. The RESPECT Act recognizes the federal government's responsibility to consult with tribes when federal activities impact tribal lands and interests, and the Act further establishes a flexible and accountable process for timely and meaningful consultation.

Of particular importance to the Nation is the provision of the Act that provides for consultation to begin early in the planning and development process. The Nation has experienced more than one instance where a federal agency has drafted proposed regulations directly affecting the Nation's interests, yet never consulted with the Nation during the process. Instead, the agencies scheduled meetings with the Nation after the regulations were published. Tribal consultation in these instances occurred as an afterthought, rather than as an integral part of the process and severely limited the Nation's ability to have meaningful input. The RESPECT Act addresses this issue by requiring that consultation be completed early in the planning and decision process.

The Act also requires agencies to draft a Planning Document early in their planning process. The agency is required to send its Planning Document to tribal government leaders. Notice to tribal leaders is a fundamental element of tribal consultation. Recently, the Nation experienced one agency's concept of government-to-government consultation, which consisted of a general notice to the public of a planned activity and the hosting of public hearings. The Act's requirement for actual notice to tribal leaders will alleviate this problem.

The agency's Planning Document that will be provided to tribal leaders describes the geographic areas that might be affected by the activity and any anticipated tribal impacts. The Planning Document is critical because it will help the Nation to determine whether consultation is desired and, if so, to what extent and in what format. As a practical matter, tribes are generally the primary source of knowledge and information concerning how a proposed federal action may affect tribal rights. In fact, tribes are sometimes the only source of such information in circumstances involving confidential sacred sites or details of cultural or religious practices. The Act provides a mechanism for protecting sensitive tribal information which will facilitate more open communication about sensitive matters. With open communication, the anticipated result is that the agency is better aware of potential impacts on tribal rights, resources and interests, and therefore is better equipped to avoid or seek to mitigate those impacts. Communication, awareness, and understanding are fundamental elements of consultation and

collaboration. The earlier they occur in the process, the more likely the parties will be able to come to an Agreement as anticipated by the Act.

Unique to the RESPECT Act is the provision for Judicial Review. As the Committee is aware, both the Executive Order and Presidential Memorandum on Tribal Consultation make clear that they do not create any enforceable substantive or procedural rights. However, express authorization to bring an action to restrain an agency from further damaging a jaguar habitat, a burial site, an archaeological site or other cultural resources until the agency complies with its consultation obligations is a big step in the right direction and demonstrates, with more than just words, the government's commitment to timely and meaningful tribal consultation. Judicial review makes agencies accountable for their consultation actions, or lack thereof. In government matters, in particular, accountability is a good thing.

In conclusion, Chairman Rahall and Members of the Committee, for the reasons I have stated here today, the Nation supports H.R. 5023, the RESPECT Act. Thank you.