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United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

MAR 4 1986

Mr. John H. Carley
General Counsel
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Carley:

The Department of the Interior concurs in the view that there is a need for an Executive order on the subject of "Management of the Compact of Free Association with the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

We agree that in the interest of good management, a delineation of the authority of the Secretary of State and the Secretary of the Interior under section 105 of the Compact Act is essential. In view of the fact, however, that an Executive order is not immediately required, and will not be until a number of further steps are accomplished, we suggest that the matter be reviewed with care and in detail by all relevant agencies, without the severe time constraint that your covering letter of February 13 imposes.

We believe that the proposed Executive order is in conflict with the Compact of Free Association Act in numerous particulars and would raise the following for your consideration:

-- The fifth recital states that the Compact should "be carried out ... through an interdepartmental organization." The Act does not provide for an organization to carry out the Compact, but instead vests particular powers in the Secretaries of State and Interior. Although the Act does envision an interagency group, it ought to be consistent in function with the statutory scheme.

-- Section 1 of the proposed order vests extensive authority in the Secretary of State, authority that substantially exceeds that placed upon him by section 105(b)(1) or any other provision of the Act. For example, the Secretary is not exclusively responsible for carrying out "the authorities and obligations of the United States," as the last sentence of proposed section 1 implies.

-- Section 2, on the other hand, in stating the authority of the Secretary of the Interior, appears to give insufficient attention to the amount of discretion vested in the Secretary by section 105(b)(3), and to the Secretary's oversight and budgetary authority under section 105(b)(2).



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-- Section 6 of the proposed order provides for the termination of the effectiveness of Executive Order No. 11021. Given the language of section 105(e) of the Compact Act, it will be necessary that some of the authority contained in that Executive Order survive Trusteeship termination.

These are merely illustrative of, and do not exhaust, our concerns about the proposed Executive order. Most could be addressed by using the language of the law, rather than paraphrasing and expanding upon it.

The Department of the Interior has additional concerns. We will be glad to provide an alternative draft proposed order. In any event, we welcome the opportunity to join with you and others in an effort to achieve a meeting of the minds.

Acting Associate Solicitor Tim Elliott and Deputy Assistant Secretary Kittie Baier of the Office of Territorial and International Affairs have been designated as liaison for this project.

Sincerely yours,

Ralph W. Tarr
Solicitor