



United South and Eastern Tribes, Inc.

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Transmitted via email to:
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May 31, 2016

The Honorable Sally Jewell
Secretary
United States Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Secretary Jewell,

We write in response to your request for Tribal Nation input regarding engagement with the White House Council on Native American Affairs (WHCNAA) during your April 25th teleconference. The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) has consistently asserted that far greater engagement is necessary for the WHCNAA to be truly effective. We are pleased that the Administration is seeking guidance from Indian Country, and would like to take this opportunity to provide a variety of recommendations to the WHCNAA.

Seating of Tribal Leaders as Full Members of the WHCNAA

At the request of Tribal Nations, President Obama established the WHCNAA in 2013 to coordinate federal Indian policy among agencies in an effort to promote and honor the federal trust responsibility, as well as Tribal sovereignty and self-determination. While these actions are critical to the federal trust relationship, they cannot be achieved without the advice and consent of Tribal Nations themselves. As the Executive Order states, "recent history demonstrates that Tribal self-determination -- the ability of Tribal governments to determine how to build and sustain their own communities -- is necessary for successful and prospering communities." Since the WHCNAA was established, Tribal governments have urged the Obama Administration to include their Tribal leader representatives as full members of the council. However, to date, only federal agencies have been represented on the WHCNAA and Tribal Nation interaction has been limited to teleconference reports given by the Department of the Interior.

Under the Unfunded Mandates Reform Act (UMRA), the President has authority to appoint Tribal government leaders to serve on a Native Nations Council. This Council should be comprised of one Tribal leader representative and one Tribal leader alternate from each of the 12 Bureau of Indian Affairs regions, with each chosen by the Tribal Nations within these regions. The Council will work in partnership with the WHCNAA on the charge and objectives of the body. Establishing the Council under UMRA would preclude application of the Federal Advisory Committee Act (FACA) to an expanded Council that includes Tribal leaders, as such Council meetings would be held exclusively between federal and Tribal officials acting in their official capacities and would be solely for exchanging views, information, and advice relating to the management of federal programs with intergovernmental responsibilities or administration. Id. § 1534(b). Moreover, FACA only applies to temporary committees, per FACA Section 14, whereas the Council should remain a permanent entity.

In 2014, the USET SPF Board of Directors approved a resolution (attached) containing recommendations for effective establishment of the body. Many of these recommendations have been implemented, including the hiring of an executive director and the establishment of some WHCNAA subcommittees. As the end of the Obama Administration

nears, we urge you to complete and sustain the WHCNAA with the seating of Tribal leader members through the issuance of an Executive Order establishing a Native Nations Council.

Full and Transparent Accounting of Federal Indian Funding

One of the charges of the WHCNAA, according to the Executive Order, is, “improving the effectiveness of Federal investments in Native American communities, where appropriate, to increase the impact of Federal resources and create greater opportunities to help improve the quality of life for Native Americans.” At present, we are not confident this is possible.

The Office of Management and Budget (OMB) asserts that over \$20 billion in federal dollars funds Indian Country annually. From the perspective of Tribal advocates, including those who serve on budget formulation committees for federal agencies, this number seems to be an over-estimate, with far less actually reaching Tribal Nations and Tribal citizens. We suspect that OMB arrives at this figure by tallying the amount for which Tribal Nations and entities are eligible, regardless of whether these dollars actually reach Indian Country. The Tribal Interior Budget Council has asked OMB for a full accounting of federal funding distributed to Indian Country. To date, OMB has not responded to this request. USET SPF insists that in the spirit of transparency, the WHCNAA must ensure that OMB provides the Council, as well as Indian Country with an accurate, detailed inventory of its own federal funding. USET SPF firmly believes that this information is absolutely essential to the success of the WHCNAA and the work of Tribal Nations.

Creation of a WHCNAA Public Safety and Justice Subcommittee

As noted above, we appreciate the establishment of issue-specific subcommittees within the WHCNAA. However, we note the absence of a subcommittee focused on addressing the unique criminal and jurisdictional challenges facing Tribal Nations. As Tribal Nations make jurisdictional gains via legislation and through the courts, and continue to grapple with increasing rates of crime in Indian Country, it is crucial that our federal partners work with us to ensure that our homelands and people are protected. We ask that the WHCNAA establish a Public Safety and Justice Subcommittee.

Trust Modernization

As you may be aware, USET SPF is engaged in an effort to comprehensively overhaul and modernize the trust relationship between the United States and Tribal Nations. Our current relationship, while evolving, is predicated on outdated and incorrect notions related to Tribal Nations and their capabilities. We recognize that our vision for our future relationship will likely take decades to fulfill. However, the WHCNAA, both in this administration and in future administrations, is uniquely positioned to assist in the systemic reform of our relationship. In the waning months of the Obama Administration, we expect that the WHCNAA will focus on the President’s legacy in Indian Country. As a capstone to his many advances on behalf of Tribal Nations, the President has the opportunity to lay the groundwork for a transition into a renewed nation-to-nation relationship built upon equal footing. Once again, USET SPF urges the WHCNAA to implement our short-term trust modernization proposals before the end of this administration.

Generation Indigenus

An example of one of the many advances made by this administration on behalf of Tribal Nations is the Generation Indigenus (Gen-I) initiative. Indian Country’s greatest resource is our children and USET SPF agrees that we must invest in their future. However, we have concerns about Gen-I’s ability to outlast this administration. While targeted funding to discrete programs allows us to begin to address the most pressing issues, investment in recurring base funding will have a more sustained and stable impact on the lives of our youth. USET SPF encourages the WHCNAA to look for opportunities to shore up existing base funding in areas like health, housing, and education rather than pursue new Gen-I initiatives. Although these investments may not be youth-specific, they will make enormous strides in

the improvement and stabilization of Native communities, which, in turn, will provide our youth with a stronger foundation, paying dividends throughout their lives.

Native One-Stop

Through participation on the Tribal Interior Budget Council, USET SPF has supported the creation of Native One-Stop as a way to increase transparency in and access to federal funding for Tribal Nations. The WHCNAA and the Department of the Interior promote the use of Native One-Stop. However, we note that the website is not yet complete. Additional work on the site must be done, including ensuring it is truly reflective of the federal government in its entirety, in order to make it more comprehensive. USET SPF requests that the WHCNAA focuses on the completeness of Native One-Stop, rather than its premature promotion.

Quiet Crisis

As you are aware, the U.S. Commission on Civil Rights (USCCR) is currently working to update its 13-year old "Quiet Crisis" report, which revealed deep disparities in funding the federal trust responsibility, and was meant to galvanize action on the part of Congress and the Executive Branch. While we expect the new report to highlight some advances made in federal Indian policy, we anticipate that the findings of the new report will be similar to those in 2003. Indian Country cannot continue to receive information without action. With an eye toward solutions, the WHCNAA must issue a formal response to the release of the updated report. As you note in Secretarial Order (SO) 3335, "the trust responsibility consists of the highest moral obligations that the United States must meet to ensure the protection of tribal and individual Indian lands, assets, resources, and treaty and similarly recognized rights." Full funding of Indian programs is the bedrock of these obligations and essential to the execution of SO 3335. If the USCCR and this administration continue to term the state of federal Indian funding a "crisis," then this crisis must be averted.

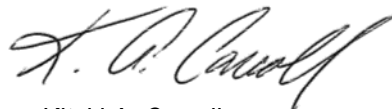
Conclusion

USET SPF appreciates the opportunity to provide guidance on the composition of the WHCNAA, its priorities, and its future. We agree that the future of the Council depends on the involvement and advocacy of Tribal Nations. We hope that you will ensure its survival and efficacy through the seating of Tribal leader representatives, as well as the implementation of the above recommendations. USET SPF looks forward to collaboration on this and other advancements in the trust relationship. Should you have any questions or require additional information, please do not hesitate to contact Ms. Liz Malerba, USET Director of Policy and Legislative Affairs, at (202) 624-3550 or by e-mail at lmalerba@usetinc.org.

Sincerely,



Brian Patterson
President



Kitcki A. Carroll
Executive Director

Enclosure

"Because there is strength in Unity"



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USET Resolution No. 2014:054

FULFILLING THE OBJECTIVES OF THE WHITE HOUSE COUNCIL ON NATIVE AMERICAN AFFAIRS AND SUPPORTING ESTABLISHMENT OF A NATIVE NATIONS COUNCIL

- WHEREAS,** United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprised of twenty-six (26) federally recognized Tribes; and
- WHEREAS,** the actions taken by the USET Board of Directors officially represent the intentions of each member Tribe, as the Board of Directors comprises delegates from the member Tribes' leadership; and
- WHEREAS,** Indian Tribes are sovereigns that pre-date the United States, with prior and treaty protected rights to self-government and to our Indian lands, and
- WHEREAS,** the Constitution of the United States, through the Treaty, Commerce, and Apportionment Clauses and the 14th Amendment, recognizes the sovereign status of Indian Tribes as Native nations established prior to the United States; and
- WHEREAS,** in the 1803 Louisiana Purchase Treaty with France, the United States promised to abide by existing Indian treaties between Indian nations and Spain, until the United States "by mutual consent" entered its own treaties with Indian nations; and
- WHEREAS,** Presidents, Congress, and the Supreme Court have repeatedly recognized Indian nations and Tribes, as original American sovereigns, with inherent sovereign authority over our citizens and territory; and
- WHEREAS,** the United States entered into more than 370 Indian treaties with Indian nations and Tribes, enacted numerous statutory agreements with Indian nations and Tribes, and issued numerous Executive Orders establishing Indian reservations and reserving Indian lands as "permanent homes" for Indian nations and Tribes; and
- WHEREAS,** Indian nations and Tribes reserved our original, inherent sovereignty and right to self-government through treaties and agreements with the United States; and
- WHEREAS,** in 1868, after 90 years of treaty-making with Indian nations and Tribes, the United States ratified the 14th Amendment, which repeated the Constitution's original reference to "Indians not taxed" and acknowledged the original jurisdiction of Indian nations and Tribes over our tribal citizens; and
- WHEREAS,** Indian nations and Tribes have recognized authority to govern our citizens, develop, manage, preserve and protect our lands and natural resources, regulate reservation commerce, impose taxes, and administer justice; and

- WHEREAS,** it is the policy of the United States to promote Indian Self-Determination; and
- WHEREAS,** the United Nations has ratified the U.N. Declaration on the Rights of Indigenous Peoples, acknowledging the right of Native peoples to autonomy and self-government within our lands and territories; and
- WHEREAS,** Indian nations and Tribes, USET, Midwest Alliance of Sovereign Tribes and other regional and national Indian organizations, including National Congress of American Indians and National Indian Gaming Association, called upon President Obama to issue a new Executive Order to establish a White House Council on Native Nations; and
- WHEREAS,** President Obama answered the call of Tribal Nations by issuing a new Executive Order establishing the White House Council on Native American Affairs on June 26, 2013; and
- WHEREAS,** the White House Council on Native American Affairs was established to coordinate policy among the federal government, with the goals and objectives of honoring Indian treaty rights and Indian sovereignty, promoting prosperous, sustainable, and resilient Tribal communities; supporting Indian education, Tribal youth, health care, and Tribal justice systems; protecting and preserving Indian lands, natural resources and the environment; and promoting sustainable economic development, including energy development, and Tribal job creation; and
- WHEREAS,** to ensure that the White House Council on Native American Affairs can achieve its objectives, it needs three essential ingredients in addition to the plan that the President outlined in the Executive Order:
- Tribal Leader Participation: Under the Unfunded Mandates Act, the President has authority to appoint Tribal government leaders to serve on a Native Nations Council, Tribal leader participation is essential to the success of the White House Council; accordingly, the President should call upon our Indian nations and Tribes through our 12 Bureau of Indian Affairs (BIA) Regions to nominate one Tribal leader to serve as a representative and one Tribal leader as an alternate to serve on a Native Nations Council that will work in partnership with the White House Council on Native American Affairs on intergovernmental issues; to educate the public about Indian treaties, agreements, laws, and executive orders, Indian sovereignty, and Tribal self-government; and to work directly with Tribal governments nationwide to be constantly informed of the priorities and needs of Indian country; and
 - Executive Director and Staff: Under Presidents Johnson and Nixon, the National Council on Indian Opportunity made great strides in Indian Policy because the policy initiatives of the National Council were followed through, substantiated, and made to happen through an Executive Director and staff. The President and the Secretary of the Interior should appoint an Executive Director, two deputy directors, and administrative support employees to staff the White House Council on Native American Affairs and those appointed should have substantial experience working with Tribal governments; and
 - White House Council on Native American Affairs Subcommittees: To address cross-cutting Indian policy issues that impact the jurisdiction of more than one federal department or agency, the White House Council on Native American Affairs should have several subcommittees to carry on the work of the Council in between its quarterly sessions, including the following:

“Because there is strength in Unity”

- Native Children, Youth, Families, Education and Housing; and
- Health Care, Mental Health Care and Suicide Prevention; and
- Indian Lands, Environment, and Natural Resources; and
- Energy, Economic Development, and Jobs; and
- Law Enforcement, Tribal Justice Systems, and Jurisdiction; and

WHEREAS, in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it

RESOLVED the USET Board of Directors calls upon President Obama to issue a new Executive Order on Native Nations and a special message to Congress to recognize, acknowledge, and affirm the following:

- **NATIVE NATIONS:** The status of Indian Tribes as Native Nations endowed with inherent sovereign authority over our citizens and our territory;
- **THE CONSTITUTION:** the Constitution of the United States, through the Treaty, Commerce, and Apportionment Clauses and the 14th Amendment, recognizes the sovereign status of Indian Tribes as Native Nations established prior to the United States, with inherent sovereign authority over our members and our territory and the bi-lateral government-to-government relationship between the United States and Native Nations;
- **TREATIES, SOVEREIGNTY, MUTUAL CONSENT:** A policy direction to all Departments and Agencies to respect and adhere to Indian treaties; to respect and defer to Indian; and to deal with Indian tribes based upon mutual respect and mutual consent to the greatest extent practicable and permitted by Federal law, and to charge the Native Nations Council with the duty to serve as an alternative dispute resolution system for Indian nations, so that Federal court cases may be deferred and referred to the Native Nations Council to find resolutions based upon mutual consent, whenever possible, in cases between the United States and Indian nations; and
- **U.N. DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES:** An Executive Order policy direction to all Departments and Agencies to adhere to the fundamental principles of respect for indigenous rights set forth in the U.N. Declaration on the Rights of Indigenous Peoples; and, be it further

RESOLVED the USET Board of Directors calls upon President Obama and Secretary Jewell as Chair of the White House Council on Native American Affairs to provide for Tribal Leader Participation in the White House Council through the Native Nations Council, to appoint an Executive Director, two deputy directors, and staff members, and to establish subcommittees of the White House Council on Native American Affairs; and, be it further

RESOLVED that recognizing the tradition of the National Council on Indian Opportunity, the Vice President should attend meetings of the White House Council on Native American Affairs as an ex officio member; and, be it further

RESOLVED the USET Board of Directors calls upon President Obama to issue a special message to Congress and implementing legislation to enshrine the Native Nations policy in legislation; and be it finally

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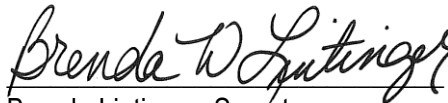
RESOLVED the USET Board of Directors calls upon our National Congress of American Indians, National Indian Gaming Association, sister National and Regional Organizations to support a new Obama Native Nations Policy and to promote Tribal Leader Participation, Executive Director and staff, for the White House Council on Native American Affairs.

CERTIFICATION

This resolution was duly passed at the USET Semi-Annual Meeting, at which a quorum was present, in Bar Harbor, ME, June 4, 2014.



Brian Patterson, President
United South and Eastern Tribes, Inc.



Brenda Lintinger, Secretary
United South and Eastern Tribes, Inc.

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