



# USET

SOVEREIGNTY PROTECTION FUND

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August 3, 2018

The Honorable Tara Sweeney  
Assistant Secretary – Indian Affairs  
U.S. Department of the Interior  
1849 C Street N.W.  
MS-4660-MIB  
Washington, D.C. 20240

Dear Assistant Secretary Sweeney,

On behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to congratulate you on your appointment as Assistant Secretary for Indian Affairs (ASIA). USET SPF echoes your commitment to Tribal self-determination and the promotion of Indian Country's priorities throughout the federal government. As you stated during your confirmation hearing, it is critical that you act as a voice for Tribal Nations both within and outside the Administration.

USET SPF is a non-profit, inter-tribal organization representing 27 federally recognized Tribal Nations from Texas across to Florida and up to Maine<sup>1</sup>. USET SPF is dedicated to enhancing the development of federally recognized Tribal Nations, to improving the capabilities of Tribal governments, and assisting USET SPF Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people. This includes advocating for the full exercise of inherent Tribal sovereignty.

As you begin to settle into your new role, USET SPF would like to take the opportunity to begin a conversation regarding the future of our government-to-government diplomatic relationship, as well as the unique priorities, needs, and vision of USET SPF member Tribal Nations. As ASIA, you play a critical role in elevating the voices of Indian Country, as well as delivering upon the federal government's trust responsibility and obligations. As the current Administration has yet to fully articulate its approach to Tribal Nations, it is vital you exercise leadership immediately to articulate a clear and comprehensive strategy for this Administration's efforts to fulfill its obligations in partnership with Tribal Nations. With this in mind, we offer the following items for further exploration and discussion, as DOI and the Trump Administration continues to develop their relationship with Tribal Nations.

### **Commitment to Tribal Consultation**

USET SPF supports your commitment to meaningful Tribal consultation, and urges you to ensure robust and ongoing Tribal consultation with all Bureau of Indian Affairs (BIA) Regions and Tribal Nations. This includes fully engaging with Tribal governments, including Tribal leaders, in a proactive and transparent

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<sup>1</sup> USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

manner to receive advice and guidance from Tribal Nations prior to federal action. USET SPF notes that Tribal Nations are just now being consulted upon the proposed reorganization of the Department of the Interior, yet the Department continues its implementation of this plan despite its lack of overall specific information. With an ASIA finally seated, USET SPF hopes that the Administration will redouble its efforts to meaningfully engage in Tribal consultation. Tribal consultation is essential to the sacred government to government relationship between Tribal Nations and the United States, and is critical to ensuring the federal government fulfills its trust responsibilities and obligations. It is vital that you regularly engage in a continued dialogue with Tribal Nations across the country, as well as honor our expectations and guidance with a goal of reaching consent for federal actions. Thinking longer term, as a true reflection of diplomacy between sovereigns, we wish to work together with you on evolving consultation to consent.

### **Land into Trust**

As a core trust responsibility, and as a matter of justice arising out of the massive land transfer to the United States by Tribal Nations under conditions of duress, the Department of the Interior (DOI) has, for nearly 85 years, restored Tribal lands through trust acquisitions. These acquisitions enable Tribal Nations to build schools, health clinics, hospitals, housing, and provide other essential services to Tribal citizens. Moreover, because the trust responsibility is so deeply underfunded, many Tribal Nations depend on the economic development conducted on these lands in order to subsidize federal budget obligation deficiencies to fund essential government services. Despite the views expressed by some outside of Indian Country, a majority of economic development on Tribal homelands does not result in significant revenue generation beyond supporting these services. DOI has approved trust acquisitions for approximately 5 million acres of former Tribal homelands, far short of the more than 100 million acres lost through Federal policies of removal, allotment, and assimilation.

The Tribal Nations located in the eastern part of what is now the United States have a lengthier history when it comes to the systematic dispossession of our lands as a result of hundreds of years of federal (and before that, colonial) policies. In the wake of these policies, a majority of USET SPF Tribal Nations hold only a fraction of their homelands and some remain landless. Therefore, any changes to the current land-into-trust process will have particularly significant impacts in the east. We continue to work to reacquire our homelands, which are a fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. And as our partner in the trust relationship, it is incumbent upon the federal government, especially the ASIA, to prioritize the restoration of our land bases.

This includes supporting parity for all federally recognized Tribal Nations within the land-into-trust process through a fix to the Supreme Court's 2009 decision in *Carcieri v. Salazar*. We call upon you to work with Congress to draft and pass legislation that: (1) reaffirms the status of current trust lands; and (2) confirms that the Secretary has authority to take land into trust for all federally recognized Tribal Nations. Until that occurs, DOI must follow existing authorities and guidance, including the DOI Solicitor's March 12, 2014 M-Opinion to continue processing fee-to-trust applications.

As the BIA considers revisions to the Part 151 regulations, which are integral to Tribal Nation rebuilding, you must work in partnership with Tribal Nations to ensure this process promotes the restoration of Tribal homelands and does not give undue weight or influence to outside interests. USET SPF is encouraged by your plan to conduct a listening tour throughout Indian Country on this and other issues, and has urged BIA to extend its comment period to accommodate this dialogue.

### **DOI Reorganization**

USET SPF is deeply concerned that, despite the recent initiation of consultation with Tribal Nations, the reorganization of the Department of the Interior is moving forward in the absence of Tribal consultation. The Secretary has yet to significantly consult with or provide much detail to Tribal Nations on the reorganization

of the Department, although we are aware of meetings held with federal employees and other units of government. Yet, we note that new DOI regions have been proposed and there is \$900,000 set aside in the BIA Budget Request for its share of initial pre-planning responsibilities (with the knowledge that this figure will increase significantly in the out years).

We are further concerned to see what appears to be additional reorganization activities taking place at the staff level—again, without Tribal consultation. A number of Senior Executive Service employees from the BIA and Office of Trust Services seem to have been relocated and reassigned. While we understand that the Department is afforded the latitude to make employment decisions, Tribal Nations should be consulted as senior staff are reassigned—particularly at the regional level.

While USET SPF Tribal Nations acknowledge that there may unnecessary levels of bureaucracy and redundancies at the DOI, any eliminations or changes affecting Indian Country must be accomplished in fulfillment of the federal trust responsibility, and with the advice and guidance of Tribal Nations. With your appointment, we remain hopeful that the Department will take the opportunity to modernize the federal government and execution of the federal trust responsibility in a way that upholds the obligations of our sacred government-to-government relationship and promotes the full exercise of Tribal sovereignty. We urge you to ensure that consultation on the reorganization proceeds in a transparent manner that respects and accounts for DOI's system-wide obligation to Tribal Nations.

### **Commitment to Protecting and Increasing BIA Resources**

Because of our history and unique relationship with the United States, the trust obligation of the federal government to Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending. Inadequate funding to Indian Country needs to be viewed as unfilled treaty and trust obligations. However, for Fiscal Years (FY) 2018 and 2019, the Administration has requested deep reductions to nearly every line item within the BIA budget. We further note the long-lasting effects of continued underfunding for federal Indian programs. The FY 2019 Budget Request fails to reflect a prioritization of trust obligations and the related promises that are at the core of our special and unique relationship.

In reducing, eliminating, and calling into question the constitutionality of federal Indian programs, this Administration is ignoring and undermining its trust responsibility to Tribal Nations. Moreover, the message that this sends to all American citizens is one of disregard and dishonor, further exacerbating the challenges we face in educating the nation on our history, sovereignty, and the continued obligation to Tribal Nations. We are hopeful that under your leadership, future Budget Requests for BIA will be more reflective of a commitment to honor its obligations and promises to Indian Country.

- *Full and Transparent Accounting of Federal Indian Funding*. The Office of Management and Budget (OMB) asserts that over \$20 billion in federal dollars is appropriated to 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 widely inflated, 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 (TIBC) 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, you work to 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 measurement of the DOI's own success in meeting its obligations and the work of Tribal Nations.

- TIBC Budget Formulation Methodology. Though the only agency within DOI charged with direct services to people, the Bureau of Indian Affairs (BIA) has, historically, received lower percentage increases than other agencies at DOI. Representatives from USET SPF and USET SPF Member Tribal Nations serve on the TIBC, the body that advises BIA on its budget. For FY 2019, regional TIBC representatives were instructed to spread a projected 8% increase to the agency, as well as identify their top 5 priority programs within the BIA budget. Recognizing that there are over 125 separate BIA line items, across a variety of programmatic functions, this is an impossible task and the process must be corrected to allow this Congress to receive a more complete and comprehensive assessment of its fiduciary trust obligation fulfillment, as well as its shortfalls, within the BIA.
- Reporting on Unfunded Obligations. During a March 22nd meeting of the TIBC, the Associate Deputy Secretary of the Interior, James Cason said of the BIA's recent efforts to work with Tribal Nations to compile the Department's unfunded obligations to Indian Country, "I will...kill it because that's not a proper purview for the agency to do." For two years, BIA staff members have been working with Tribal Nations, gathering data and refining the collection process. Understanding the true level of unfunded obligations in Indian Country will generate an informed and justified budget request from TIBC, as well as, allow the Administration and Congress to understand where they are falling short in their fiduciary obligations to Indian Country. In response to Mr. Cason's unilateral decision to end this critical data collection activity, TIBC and the DOI Self Governance Advisory Committee (SGAC) have sent letters to the Department requesting that this activity be immediately reinstated.

### **DOI Strategic Planning**

On March 5th, the Department of Interior (DOI) released its Fiscal Year (FY) 2018—2022 Strategic Plan. This Strategic Plan has not received sufficient Tribal consultation. While a listening session was scheduled in the Eastern Region for August 2017, it was later canceled and never rescheduled.

Moreover, the Plan contains some disturbing language related to the trust responsibility and obligations. It appears to frame Tribal Nations as federal government dependents, saying in part, "Securing unsubsidized employment reduces dependency on Federal subsidized programs such as childcare assistance, food stamps, and welfare." In contrast, the Plan uses nation rebuilding-type language when describing the government's obligation to its insular territories, speaking to the need to provide health care and create economic opportunity. USET SPF is concerned about the vast difference in rhetoric and the lack of consultation prior to finalization of the Plan.

In addition, we seek clarity on the Plan's stated goal with regard to the Fee to Trust process. The Plan states that as a key performance indicator in the management of trust assets, BIA will, "increase...the percentage of submitted land-into-trust applications with determinations (Fee to Trust)," by 40%. While we note that many simple, straight-forward requests for acquisition of trust lands often linger for months, if not years, well beyond the period of time that seems necessary for the BIA to thoroughly review and issue an application decision, we are curious as to how such an enormous increase in determinations is to be accomplished.

As USET SPF has consistently articulated, the Executive Branch's trust obligations extend to all agencies and departments therein. It is incumbent upon each of these agencies and departments, both individually and collectively, to address their treaty and trust obligations to Tribal Nations. As such, within the DOI Strategic Plan, each of DOI's bureaus and agencies should speak to their trust responsibilities and obligations in accordance with their designated sections of the Plan, as well as include appropriate goals,

strategies, and measures associated with their solemn obligation. Each division of DOI should also demonstrate how it plans to secure the federal funding necessary to carry out its obligations. Agencies and departments across the Administration often look to DOI to set the tone for their relationships with Indian Country and delivery on trust obligations. Therefore, DOI must, through the Plan and its own actions, lead the federal government in upholding trust responsibilities and obligations, recognizing the evolution of the U.S.-Tribal relationship.

Further, the federal government's trust obligations are the result of the millions of acres of land and extensive resources ceded to the U.S., in exchange for which it is legally and morally obligated to provide benefits and services in perpetuity. As such, funding for Indian Country programs should not be a discretionary decision, nor should it be subject to the same types of justification as funds distributed to non-profits or other government programs. We remain committed to working with the Executive Branch and Congress to see that this is realized in federal spending and the strategic planning conducted in support of budget requests.

### **Trust Modernization**

USET SPF, along with other Tribal organizations and Nations, is engaged in an effort to modernize the relationship between the federal government and Tribal Nations. The current trust model is broken and based on faulty and antiquated assumptions from the 19th Century that Indian people were incompetent to handle their own affairs and that Tribal Nations were anachronistic and would gradually disappear. It is time for a new model that reflects a truly diplomatic, nation-to-nation relationship between the U.S. and Tribal Nations, and that empowers each Tribal Nation to define its own path. This mission should inform each action taken by this Administration affecting Tribal Nations.

Our Trust Modernization Workgroup has identified 5 governing principles with which to engage in modernizing the trust relationship. They are as follows:

1. **Strengthen Trust Standards – Adopt Implementing Laws and Regulations.**
2. **Strengthen Tribal Sovereignty – Empower Each Tribe to Define its Path.**
3. **Strengthen Federal Management – For Trust Assets and Programs Still Subject to Federal Control.**
4. **Strengthen Federal-Tribal Relations – One Table with Two Chairs.**
5. **Strengthen Federal Funding and Improve Its Efficiency – A Pillar of the Trust Responsibility.**

Each of these principles addresses long-standing issues with the current trust model and was developed after the deliberation of Tribal leaders. Our Workgroup has also devised a number of short and long-term strategies aimed at realizing these principles. We look forward to the opportunity to discuss them with you.

### **Executive Order on U.S.-Tribal Relations**

Over the last several decades, every President, regardless of party, has issued executive orders regarding the federal trust responsibility and the federal government's relationship with Tribal Nations. We ask for your assistance in the issuance of an executive order from President Trump that: 1. Reaffirms essential trust responsibilities and obligations for all federal agencies; 2. Affirms the "best interests" determination in favor of Tribal Nations in all environmental and administrative determinations; and 3. Outlining the placement of senior level Tribal Liaison positions across the Administration to ensure that every department/agency is executing its trust obligations to the greatest extent. This order should speak to and confirm the unique and special nature our diplomatic nation-to-nation relationship, its sacred responsibility to fulfill its treaty and trust obligations to Tribal Nations, and recognition, and support for the principles of our inherent sovereign authorities and rights. An executive order of this nature would set the tone for all federal agency conduct and provide certainty in the federal government's approach to decisions affecting

Indian Country. Consistency and commitment in the execution of the federal trust responsibility would likely reduce conflict between the federal government and Tribal Nations, as well as the number of trust mismanagement lawsuits facing the federal government.

**Opportunity for Dialogue**

We view this communication as the first in what we hope will be a regular and productive dialogue with you and your staff. Each of the issues raised in this letter warrants further discussion and explanation. With this in mind, we propose an in-person meeting between you and the President of USET SPF, Chief Kirk Francis, at your earliest convenience. Coming from Alaska, it is important to recognize that the interests, needs, and priorities of Tribal Nations from the USET SPF region are often different. We would welcome the opportunity to provide you with an overview of our unique and diverse histories, as well as partner with you in ensuring the diversity of Tribal Nations across the country is recognized and celebrated.

We thank you for your consideration of this request. Again, please count USET SPF as a partner in your efforts to deliver upon the federal government's sacred trust responsibility and obligations to Tribal Nations. Should you have any questions or require additional information, please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at (202) 624-3550 or by e-mail at [lmalerba@usetinc.org](mailto:lmalerba@usetinc.org).

Sincerely,



Kirk Francis  
President



Kitcki A. Carroll  
Executive Director