



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted via email

June 4, 2018

The Honorable John Hoeven
Chairman
U.S. Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20515

The Honorable Tom Udall
Vice-Chairman
U.S. Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20515

Dear Chairman Hoeven and Vice-Chairman Udall,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to support President Donald Trump's nomination of Tara Mac Lean Sweeney as the Department of Interior's Assistant Secretary for Indian Affairs (ASIA). The first Alaska Native woman to be nominated, USET SPF echoes her commitment to Tribal self-determination and the promotion of Indian Country's priorities throughout the federal government. As she stated during her confirmation hearing, it is critical that she 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 Maine¹. Both individually, as well as collectively through USET SPF, our member Tribal Nations work to improve health care services for American Indians. Our member Tribal Nations operate in the Nashville Area of the Indian Health Service, which contains 36 IHS and Tribal health care facilities. Our citizens receive health care services both directly at IHS facilities, as well as in Tribally-operated facilities under contracts with IHS pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638.

As the Senate Committee on Indian Affairs considers Ms. Sweeney's nomination, USET SPF would like to take the opportunity to focus on policy priorities for the incoming ASIA. The ASIA plays 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 that the incoming ASIA 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, USET SPF would like to outline an approach the incoming ASIA must have to promote success in the position and for Indian Country.

¹ 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).

Commitment to Tribal Consultation

The incoming ASIA must commit to 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 manner to receive advice and guidance from Tribal Nations prior to federal action. USET SPF notes that Tribal Nations are just now being invited to consult upon the proposed reorganization of the Department of the Interior, despite the Department's continued implementation of this plan and an overall lack of 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 the incoming ASIA 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.

Land into Trust

As a core trust responsibility, and as a matter of justice arising out of the massive land transfer effected to the United States by Tribal Nations under conditions of duress, 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 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 incoming ASIA, to prioritize the restoration of our land bases.

As the BIA considers revisions to the Part 151 regulations, which are integral to Tribal Nation rebuilding, the ASIA 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 Ms. Sweeney's plan to conduct a listening tour throughout Indian Country on this and other issues, and plans to urge 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 the appointment of the ASIA, 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.

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 Ms. Sweeney's leadership, future Budget Requests for BIA will be more reflective of a commitment to honor its obligations and promises to Indian Country.

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 the incoming ASIA.

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 urge the incoming ASIA to assist in the issuance of an executive order from President Trump that: 1. Reaffirms essential trust responsibilities 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 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.

Conclusion

USET SPF thanks you for your time and consideration regarding the nomination for ASIA. USET SPF supports Ms. Tara Mac Lean Sweeney for this critical leadership role. We welcome her experience, commitment to self-governance, and dedication to the trust responsibility, as the Administration seeks to articulate a formal policy in relation to Tribal Nations and Tribal sovereignty. We urge her swift confirmation, so that she may begin her work without delay. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 202-624-3550.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director