



USET

SOVEREIGNTY PROTECTION FUND

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USET SPF Resolution No. 2019 SPF:016

PROTECTING TRIBAL SOVEREIGN IMMUNITY BY COMMITTING TO RISK MANAGEMENT SOLUTIONS FOR TORT VICTIMS

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of twenty-seven (27) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** Tribal sovereignty is an inherent authority exercised by all federally-recognized Tribal Nations and has been duly recognized by the United States' treaties, executive orders, statutes, and court decisions; and
- WHEREAS,** each Tribal Nation that is a member of USET SPF provides essential governmental services to its citizens, including education, housing, health care, public safety, and public infrastructure for water, transportation, communications, and economic development; and
- WHEREAS,** Tribal Nations have the inherent right to conduct economic development activities for the purpose of raising revenues for the benefit of the Tribal Nation and its citizens, in order to achieve the dual goals of self-determination and self-governance; and
- WHEREAS,** in furtherance of these goals, some Tribal Nations have exercised their sovereignty by enacting Tribal codes to address potential tort claims as a safeguard to protecting their Tribal government revenue and providing a remedy and/or forum for potential tort victims; and
- WHEREAS,** other Tribal Nations require funding or technical assistance to assess risks and identify potential solutions for addressing tort claims arising from Tribal government-owned and operated enterprises; and
- WHEREAS,** the U.S. Supreme Court has repeatedly acknowledged that Tribal sovereign immunity is a "core aspect of" and a "necessary corollary to" Tribal sovereignty and self-governance, but in recent years some justices have raised questions about whether it should be limited for tort claims, see, e.g., *Lewis v. Clarke*, 582 U.S. __ (2017); *Michigan v. Bay Mills*, 572 U.S. 782, 799 n.8 (2014); *id.* at 814-18 (Thomas, J., dissenting); and
- WHEREAS,** lower federal courts and the states' highest courts continue to entertain tort-based lawsuits against Tribal Nations and their government-owned entities, further jeopardizing Tribal sovereign immunity, see, e.g., *Wilkes v. PCI Gaming*, No. 1151312, 2017 WL 4385738 (Ala. Sept. 29, 2017); and
- WHEREAS,** Tribal Nations strongly oppose any abrogation of Tribal sovereign immunity by the courts and therefore, 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 SPF Board of Directors urges Congress to reaffirm Tribal sovereign immunity and work with Tribal Nations to identify a fair and reasonable process for resolving potential tort claims arising from Tribal government-owned and operated enterprises; and, be it further

RESOLVED the USET SPF Board of Directors urges the Administration to provide risk management training and technical assistance to Tribal Nations to conduct risk assessments, apply for insurance coverage, develop risk management programs, and establish other methods for mitigating losses.

CERTIFICATION

This resolution was duly passed at the USET SPF Impact Week Meeting, at which a quorum was present, in Arlington, VA, March 7, 2019.


Chief Kirk E. Francis, Sr., President
United South and Eastern Tribes
Sovereignty Protection Fund


Chief Lynn Malerba, Secretary
United South and Eastern Tribes
Sovereignty Protection Fund