



711 Stewarts Ferry Pike  
Suite 100  
Nashville, TN 37214  
P: (615) 872-7900  
F: (615) 872-7417  
[www.usetinc.org](http://www.usetinc.org)

Transmitted Electronically  
to regulations.gov

July 21, 2021

Deanne Criswell  
Administrator  
Federal Emergency Management Agency  
U.S. Department of Homeland Security  
500 C St SW,  
Washington, DC 20472

Dear Administrator Criswell,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Federal Emergency Management Agency's (FEMA) Request for Information on FEMA programs, regulations, and policies for the agency to consider modifying, streamlining, expanding, or repealing in light of President Biden's Executive Orders 13985, 13990, and 14008.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.<sup>1</sup> USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting our membership in dealing effectively with public policy issues.

### Tribal Nations and Climate Change

Tribal Nations have faced centuries of threats to our respective homeland security such as disease, war or threats of violence, environmental contamination of our homelands, and anthropogenic climate change, which now threatens the remaining homelands of our Tribal Nations and communities. Tribal Nations have nevertheless shown resilience and furthermore have responded as allies and partners over the centuries to

<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), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), 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), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), 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), Rappahannock Tribe (VA), 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), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

address threats to homeland security of the United States such as war, global pandemics, and climate change.

Climate Change impacts the ecosystems, waters, infrastructure, and public safety over the homelands and within the communities of Tribal Nations across the United States. Tribal Nations are uniquely impacted by Climate Change in that our communities are in locations for which we are the First Nations of that place, and that our cultures, health, and well-being are intrinsically tied to that place. The climates and ecosystems that have evolved over these places are intrinsically linked to our cultures and sense of place. Massive land cessations by the United States government and ensuing policies have created a situation where Tribal homelands are fixed. Culturally significant species that are adapted to certain climates may migrate with a changing climate, but to regions beyond reach of the Tribal Nations for which they are connected.

Over the past 120 years, the average annual temperature in the United States has increased by 1.8° degrees Fahrenheit. However, the increase is closer to 3.0° degrees Fahrenheit in northern areas in the USET SPF region. If the rate of greenhouse gas emissions continues as “business as usual,” temperature increases will range from 6–12°F by the year 2100 over our region.

A warmer atmosphere holds more moisture, which leads to a greater occurrence of extreme precipitation events and flooding on the homelands and communities of Tribal Nations. To prevent damage to infrastructure and environmental contamination from flooding, many Tribal Nations must redesign and rebuild infrastructure such as homes, buildings, roads, water utilities and wastewater treatment facilities to withstand heavier precipitation and extreme weather events.

Although the occurrence of heavier precipitation events has increased, drought also remains an occurrence in between periods of high precipitation. The onset of drought occurs at slower rates than extreme precipitation and flooding. However, it is also an extreme event that impacts Tribal Nations, especially in the areas of agriculture and locations of cultural use and significance. Higher temperatures increase the loss of surface water and soil moisture thus droughts will be exacerbated with climate change.

Over the past 100 years, the global sea level has risen 8-9 inches. However, with sinking land in coastal areas (subsidence) and damage to coastal wetlands from dredging and manmade canals, some areas in the USET SPF region, especially in the Gulf, have observed a sea level rise of 2 feet or more. Future projections, as outlined in the Fourth National Climate Assessment, indicate that sea level will likely rise another 1-4 feet by 2100, with the range largely dependent on the curbing of global greenhouse gas emissions. An 8 to 11-foot sea level rise is also within the realm of possibility by 2100, should greenhouse gas emissions remain on their current track. The communities of several USET SPF Tribal Nations are coastal and are at or near sea level. Several Tribal Nation communities have already experienced the impact of sea level rise, flooding (high tide “nuisance” flooding and storm surge flooding), and coastal erosion. Tribal Nations in the USET SPF region face a different situation than other American communities in that millions of acres of Tribal lands were taken by European colonies in the 17<sup>th</sup> and 18<sup>th</sup> centuries and by the United States in 18<sup>th</sup> through 20<sup>th</sup> century. As a result, many of USET SPF member Tribal Nations have a fraction of our original homelands, and now many of these lands are threatened or may be uninhabitable in the future due to sea level rise and other climate change impacts.

### **Executive Orders 13985, 13990, and 14008**

Executive Orders 13985, 13990, and 14008 acknowledge the climate crisis has exposed and exacerbated inequities within communities of “people of color and others who have been historically underserved,

marginalized, and adversely affected by persistent poverty and inequality." The Executive Orders include Native American communities, which do face systematic barriers and limited access to opportunities and benefits. Some Native American communities also do experience extreme and lingering poverty. However, the Executive Orders address Native American communities as an underserved population within the United States and not as sovereign Tribal Nations for which the United States and its agencies have a Trust and Treaty Obligation. For Tribal Nations, being underserved is the result of a failure of the federal government to meet its trust and treaty obligations. The systematic barriers, limited access, and lingering poverty that Native American communities face are the direct result of actions taken by the federal government such as cessation of Tribal homelands and forced removal of entire Tribal Nations including Tribal citizens to lands beyond our communities and homelands. The United States federal government also made attempts to disperse Tribal Nations through forced assimilation policies and systematic termination of the Trust and Treaty Obligation, which undermined Tribal Nation governments, Tribal self-determination, and directly contributed to disenfranchisement to Tribal Nations.

The trust and treaty obligation is a debt to Tribal Nations for the massive cessation of millions of acres of Tribal lands and resources to the federal government to create what is now the United States. In exchange, the United States federal government has the responsibility to serve as a trustee to resources, uphold, and facilitate Tribal Nation sovereignty and self-governance, including the ability to respond to threats such as climate change and extreme weather events. The trust and treaty obligation exists in perpetuity regardless of economic conditions in communities of Tribal Nations. The acknowledgement of inequities regarding Native American communities often fails to recognize that these inequalities persist due to a lack of understanding and the fulfillment the United States trust and treaty obligation to Tribal Nations.

### **General Recommendations to FEMA**

USET SPF recognizes that the FEMA Tribal Policy (Rev. 2) FEMA Policy #305-111-1 (December 18, 2020) acknowledges and outlines a commitment of the agency to enhance its "nation-to-nation" relationship with Tribal Nations and to ensure FEMA works with Tribal Nation governments to build, sustain, and improve our capacity to prevent, protect against, mitigate, respond to, and recover from all hazards.

USET SPF also recognizes the FEMA Tribal Policy Principles as acknowledging:

- The inherent sovereignty of Tribal Nations, the trust responsibility of the federal government, and the nation-to-nation relationship between the U.S. Government and Tribal Nations as established by the U.S. Constitution, statutes, treaties, regulations, court decisions, and executive orders.
- The unique status of sovereign Tribal Nations.
- The uniqueness (and diversity) of Tribal Nations, cultures, and communities.
- And the necessity of applying core values of compassion, fairness, integrity, and respect when working with Tribal Nations and communities.

USET SPF recommends all FEMA employees receive training on the United States Trust and Treaty Obligation to Tribal Nations, the Tribal Nations within the region of their service area and on policies and procedures that support the implementation of FEMA's Tribal Policy.

USET SPF recommends FEMA build its capacity to provide support to Tribal Nations responding to the climate crisis and extreme weather events impacting our communities. All too often, resources and support go to state governments and population centers first as there is more agency staff capacity to ensure this while resources and support for Tribal Nations are managed through a single or small number of Tribal

liaisons. In the United States there are 50 states and 5 territories, however, there are also 574 federally recognized Tribal Nations that require support to address climate change and hazardous weather events.

USET SPF recommends FEMA create its funding opportunities as accessible as possible for Tribal Nation governments, departments, and agency personnel. Many Tribal Nations have emergency management departments, but with a limited number of fulltime staff, and often without a grant writer. Tribal Nation program managers must often balance limited time between planning and delivering services and applying for funding to support these services. Also, competitive funding opportunities undermine the Trust and Treaty Obligation and exasperate limited access and inequities because Tribal Nations must compete with one another placing the advantage of access on Tribal Nations with greater staff capacity to respond to funding opportunities.

### **Necessary Changes in Administration of Stafford Act**

Recognizing the frequency of extreme weather events with the potential for great destruction is likely to grow exponentially in the coming years due to Climate Change, USET SPF contends that FEMA must modify its administration of Tribal Nation emergency declaration requests under the Stafford Act in order to comply with the Executive Orders. While the Stafford Act does not require an automatic non-federal match and allows FEMA the discretion to waive the non-federal match up to 25 percent, FEMA consistently applies the maximum 25 percent non-federal match to every Tribal emergency or major disaster declaration. This match requirement flies in the face of trust and treaty obligation, and precludes many Tribal Nations from seeking the federal assistance to which we are entitled because we simply do not have the resources. In addition, when a Tribal Nation submits a request for a major disaster or emergency declaration, FEMA often takes an inordinate amount of time to send the request and recommendation to the President, costing valuable time to seek waivers or relief from Congress. Finally, the FEMA review process for major disaster or emergency declaration requests is not transparent, which makes it almost impossible for Tribal Nations to successfully appeal the decision if their request is denied.

FEMA's continued failure to uphold its obligations to Tribal Nations as it administers the Stafford Act will only deepen the inequities faced by Tribal Nations and our people as a result of our changing climate. With this in mind, we urge FEMA to immediately eliminate any agency-imposed non-federal match requirement for Tribal Nations to receive federal assistance, which includes any existing or proposed regulations, policies, grant applications, or other guiding documents. And in the spirit of a transparent Nation-to-Nation relationship, we further urge FEMA to immediately establish a policy to forward any and all Tribal emergency or major disaster declaration requests without cumbersome administrative requirements or any other complex application processes imposed, and to submit these requests to the President with a recommendation of the FEMA Administrator within 10-working days and forward a copy of the recommendation to the submitting Tribal Nation.

### **Conclusion**

USET SPF acknowledges the Administration's effort to address the exposed and exacerbated inequities within communities who have been historically underserved, marginalized, and adversely affected by persistent poverty as exposed by the climate crisis. The impacts of the climate crisis on Tribal Nation homelands and communities are unique in that our communities are in locations for which we are the First Nations of that place, and that our cultures, health, and well-being are intrinsically tied to that place. USET SPF seeks for the Administration and agencies of the federal government to uphold to the highest degree the Trust and Treaty Obligation and actions and policies that perpetuate compassion, fairness, integrity, and respect. USET SPF seeks FEMA to ensure its agency has the capacity to uphold its trust and treaty obligation and to implement policies to work with Tribal Nation governments to build, sustain, and improve

our capacity to prevent, protect against, mitigate, respond to, and recover from all hazards. This includes making all necessary changes in the administration of the Stafford Act to comply with the Executive Orders an eliminate the inequities and systematic barriers Tribal Nations face in building resilience to the impacts from Climate Change. 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](mailto:LMalerba@usetinc.org) or 615-838-5906.

Sincerely,



Kirk Francis  
President



Kitcki A. Carroll  
Executive Director