



# USET

SOVEREIGNTY PROTECTION FUND

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*Transmitted via email*

March 9, 2022

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

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

Dear Chairman Schatz and Vice Chairman Murkowski,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to you regarding President Joe Biden's March 9<sup>th</sup> nomination for the Director of the Indian Health Service (IHS). If confirmed, the incumbent would serve as IHS Director for the remainder of the Biden Administration's term and would oversee the agency that is responsible for providing healthcare services to American Indians and Alaska Natives (AI/ANs).

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 its membership in dealing effectively with public policy issues.

USET SPF supports the steps being taken by the Administration to fill the position of IHS Director, and we look forward to utilizing the confirmation process to learn more about the candidate and her priorities for the agency. The IHS Director plays a critical role in elevating the voices of Indian Country, as well as delivering upon the federal government's trust and treaty obligations to provide health care to Tribal Nations and our citizens. As Indian Country recovers from COVID-19 and looks toward the future, it is vital that the incoming IHS Director remain a steadfast partner and advocate in promoting Tribal sovereignty and self-governance both within and outside the Administration. With this in mind, USET SPF would like to outline the following professional qualities and policy priorities the incoming IHS Director must have in order to be successful in the position.

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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), 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).

*Because there is Strength in Unity*

### **Commitment to Tribal Self-Governance**

A majority of our member Tribal Nations (and Tribal Nations across the country) engage in self-governance by assuming and compacting or contracting federal government programs to provide essential government services, especially IHS programs. Self-governance provides a fiduciary model that acknowledges the inherent rights and authorities of Tribal Nations to determine our own destinies. Rather than relying upon the paternalistic model of the provision of direct services by the federal government or a non-profit model via grantmaking, Tribal Nations should be the sole decision-makers in the administration of federal programs and funding in our communities.

Because funding for Tribal Nations is provided in fulfillment of clear legal and historic obligations, federal dollars should not be subject to an inappropriate, grant-based mentality that does not properly reflect our diplomatic relationship. The IHS Director should join Tribal Nations in promoting a departure from this model and extend their full, vocal support to Tribal Nations exercising our inherent sovereignty by managing our own healthcare programs. This of particular importance as we seek clarifying amendments to the Indian Self-Determination and Education Assistance Act and the expansion of self-governance authority throughout the Department of Health and Human Services, as well as existing IHS programs.

### **Full and Mandatory Funding for IHS**

The Biden Administration is currently engaged in an historic consultation with Tribal Nations regarding mandatory funding for IHS. USET SPF has long advocated for full and mandatory funding for all federal Indian programs, which is more consistent with perpetual federal trust and treaty obligations. We strongly support full and mandatory funding for IHS as a critical step forward in better delivering upon these obligations. As we look toward recovery from the global pandemic and to “build back better” for Indian Country, now is the time to make systemic change in the delivery of trust and treaty obligations. With the Administration’s support, we are closer than ever to achieving this reality.

The incoming IHS Director will oversee the preparation of this transformational proposal, as well as be a central figure as we advocate for this change before Congress. Change of this nature requires expertise, passion and dedication to honor Tribal guidance and implement a new vision for IHS. The incoming IHS Director should possess the acumen, leadership skills, and tenacity required to deliver upon this long-standing priority.

### **Commitment to Tribal Consultation**

An essential aspect of the federal trust responsibility and obligations to Tribal Nations is the duty to consult on the development of federal policies and actions that have Tribal implications. This requirement is borne out of the sacred relationship between the federal government and Tribal Nations, as well as numerous treaties, court cases, laws, and executive actions. It is a recognition of our inherent sovereignty and self-determination. The incoming IHS Director must commit to robust and ongoing Tribal consultation with all IHS areas and Tribal Nations. This includes fully engaging with Tribal leaders in a proactive and transparent manner to understand and address the unique healthcare issues faced in each Tribal community. It is vital that the incoming IHS Director regularly engage in a continued dialogue with Tribal Nations across the country in recognition of our sovereignty, honoring our expectations and guidance with a goal of reaching consent for federal actions.

### **IHS Must Acknowledge its Trust Obligation**

Historically, IHS has taken the position that it does not have a trust responsibility to Tribal Nations and that the Indian Health Care Improvement Act does not create a trust obligation. During the last Administration, IHS began using the term, “trust relationship,” which does not have the same legal implications. The United States’ trust and treaty responsibilities and obligations have been acknowledged and upheld through

myriad acts of Congress, Executive Orders, treaties, and Supreme Court decisions. This includes the obligation held by IHS to ensure the provision of health care to Tribal Nations and Native people. In January 2020, USET SPF sent a letter urging that the IHS reaffirm its recognition and understanding of its trust and treaty responsibilities/obligations and work with the Office of General Counsel to ensure that its guidance is consistent with this understanding. USET SPF never received a response to this communication. As this Administration seeks to build a better relationship with Tribal Nations, we urge that IHS take the steps to confirm its understanding of its trust obligations to Tribal Nations.

### **Relationship Building**

Given the diplomatic nature of the relationship between Tribal Nations and the United States, as well as the diversity found across Indian Country, it is critical that the incoming IHS Director possess strong interpersonal and communication skills. The incumbent must have the ability to understand, appreciate, and consider various perspectives to support the cultivation of strong working relationships with Tribal Nations, as well as key partners, both federal and non-federal. As the head of an agency concerned exclusively with the execution of trust and treaty obligations, the IHS Director must respect us as equal sovereigns with whom they maintain a collaborative partnership.

### **Advocate for Tribal Nations**

In addition to superior interpersonal and communication skills, it is our expectation that the IHS Director serve as an advocate within the Administration and before Congress. The IHS Director has access and is privy to deliberations within the Administration and Congress that Tribal Nations do not witness. We must be able to trust that, because of the position's necessary commitment to and close relationship with Tribal Nations, that the IHS Director will enthusiastically represent our interests and priorities during these conversations. This is especially important during situations where other federal officials may lack a deep and thorough understanding of the origins and basis of our unique and special relationship with the United States.

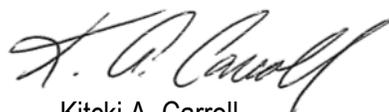
### **Conclusion**

USET SPF thanks you for your time and consideration regarding the nomination for IHS Director. Recent events, including the COVID-19 crisis, have underscored the urgent need for radical transformation in the recognition of our governmental status and the delivery of federal obligations to our people, including through IHS. The federal government must enact policies that uphold our status as sovereign governments, our right to self-determination and self-governance, and honor the federal trust obligation in full. The incoming IHS Director must be a consummate advocate and partner to Tribal Nations, and fully committed to realizing this 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