



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted Electronically

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The Honorable Roselyn Tso
Director
Indian Health Service
5600 Fishers Ln
Rockville, MD 20857

Dear Director Tso,

On behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to congratulate you on your confirmation as Director of the Indian Health Service (IHS). 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 you, as the incoming IHS Director, remain a steadfast partner and advocate in promoting Tribal sovereignty and self-governance both within and outside the Administration.

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.¹ 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.

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, circumstances, expectations, and vision of USET SPF member Tribal Nations. While by no means an exhaustive list, we offer the following items for further exploration and discussion, as you work to develop your approach and focus in this position. We feel as though any IHS Director must have these priorities, qualities, and views in order to be successful. While we appreciate the timeliness of your recent "Dear Tribal Leader" letter outlining your initial priorities, we feel as though this list focuses merely on bureaucratic, as opposed to diplomatic, priorities. We urge you to also dedicate yourself to improved

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), 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), Mi'kmaq Nation (ME), 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

diplomatic relations with Tribal Nations, including improvements in the promotion of our inherent sovereignty and the delivery of trust and treaty obligations.

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 is 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, such as the Special Diabetes Program for Indians (SDPI).

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.

We urge you to commit to working collaboratively with Tribal Nations as you 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. In the short-term, we ask that you dedicate yourself to working with Tribal Nations, the White House, members of Congress, and others to achieve Advance Appropriations for IHS. This will provide urgently needed certainty to IHS funding as we seek our long-term goal of mandatory funding.

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. As IHS Director, you 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 you 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 you focus on cultivating strong interpersonal and communication skills. We note and appreciate that you have included open and meaningful communication with Tribal Nations. You 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 you 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. As IHS Director, you have access and are 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 you 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

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. We look forward to engaging with you at our upcoming Annual Meeting and would welcome the opportunity for further discussion at a later date. Please count USET SPF as a partner in your efforts to deliver upon the federal government’s sacred trust and treaty obligations to Tribal Nations. 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 615-838-5906.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director