



USET

SOVEREIGNTY PROTECTION FUND

Washington, DC Office
1730 Rhode Island Ave., NW, Suite 406
Washington, DC 20036

Nashville, TN Office
711 Stewarts Ferry Pike, Suite 100
Nashville, TN 37214
P: 615-872-7900 | F: 615-872-7417

Transmitted Electronically

To Recovery-ICD-PDB@fema.dhs.gov

August 9, 2024

William C. Hagmaier
Assistant Administrator – Recovery Directorate
Office of Response and Recovery
Federal Emergency Management Agency
Department of Homeland Security
500 C St. SW
Washington, DC 20407

Dear Assistant Administrator Hagmaier,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Tribal consultations held by the Federal Emergency Management Agency (FEMA) to update its National Disaster Recovery Framework (NDRF). With the last update to the NDRF in 2016, USET SPF welcomes the opportunity to provide recommendations on how FEMA can provide the necessary planning, resources, and support functions to improve disaster recovery efforts for Tribal Nations. While the current NDRF recognizes the sovereignty of Tribal Nations and the directives of Executive Order 13175, the document still serves as a framework and does not directly require federal, state, and local governments to effectively provide the necessary resources and support functions for Tribal Nations in post-disaster recovery. For these reasons, USET SPF's comments offer direct recommendations to FEMA on how it can improve program and service delivery to Tribal Nations, as well as ensure Tribal Nations have parity with state and local governments in accessing the appropriate and necessary resources to support our pre-planning and post-disaster recovery efforts. These actions are necessary and essential to FEMA to fully deliver upon trust and treaty obligations, as well as achieve the National Preparedness Goal, and this should be reflected in its revised NDRF.

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.

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

Tribal Nations Must Receive Direct Funding Allocations and Parity with State Governments for All DHS Grant Programs

Tribal Nations and Tribal emergency management organizations have consistently had limited access to direct funding from the Department of Homeland Security (DHS) since current funding mechanisms require Tribal Nations and our emergency management organizations to seek these funds through state governments. While USET SPF generally does not support the award and allocation of federal funds through grant-making processes, especially those that are structured under a competitive grant model, the current structure of grant-making at DHS and FEMA must be altered to ensure Tribal Nations receive direct assistance. State and local governments should not be allowed to dictate whether Tribal Nations receive DHS grants, funds, and services for disaster recovery. DHS has solemn moral and legally binding trust and treaty obligations to Tribal Nations to provide for and support Tribal Nation efforts to protect our homelands, sacred sites, cultural, natural, and environmental resources, and the public health and safety of our communities. This is especially important in situations pre-planning and post-disaster recovery to ensure that no further harm is inflicted on the aforementioned areas.

Current emergency management funding mechanisms and grant eligibility guidelines disregard Tribal sovereignty and self-determination and are not consistent with the December 2016 FEMA Tribal Policy, [FP 305-111-1](#), which states that, “Tribal governments are not political subdivisions of states, but are to be recognized by the United States as distinct sovereigns.” There continues to remain glaring funding disparities and eligibility restrictions for Tribal Nations, as compared to states, across an array of DHS grant programs. These include, but not limited to: Hazard Mitigation Assistance Grants, Pre-disaster Mitigation Grants, Preparedness Grants, Assistance to Firefighters Grants and Emergency Management Performance Grants, and the Tribal Homeland Security Grant Program. Further these funding mechanisms and grant eligibility guidelines do not uphold the directives of [Executive Order \(E.O.\) 13175](#), or the recent [E.O. 14112](#). Specifically, Sec. 6 of E.O. 13175 establishes directives for agencies to increase flexibility for Tribal Nations to receive waivers of statutory and regulatory requirements for federal programs. In addition, Sec. 5 of E.O. 14112 requires agencies to increase accessibility, equity, and flexibility, and utility of federal funding and support programs for Tribal Nations.

Coupled with the directives of E.O. 13175 and E.O. 14112, USET SPF strongly urges DHS to effectively standardize practices to regularly consult, identify, and eliminate both procedural and current eligibility impediments by working directly with Tribal governments to facilitate greater access to DHS funds and support programs. These actions are supported by USET SPF’s member Tribal Nations through [USET SPF Resolution No. 2019 SPF:021](#), “Calling Upon Congress and the Department of Homeland Security to Ensure Necessary Funding and Flexibility for Tribal Nations’ Homeland Security and Emergency Management Departments”, and, [USET SPF Resolution No. 2020 SPF:008](#), “Calling on Congress and the Department of Homeland Security to Allow All Federally Recognized Tribes Access to the Tribal Homeland Security Grant.” These directives must be included in the revised NDRF, as well as implemented by DHS to waive program eligibility and matching requirements to ensure Tribal Nations have sufficient resources available to support pre-planning and post-disaster recovery efforts.

DHS must offer a full complement of agency programs to provide greater access and equitable, baseline funding to Tribal Nations across those agency programs. Tribal Nations must receive direct funds to build, sustain, and improve our capabilities to prepare for, protect against, respond to, recover from, and mitigate all hazards and disaster situations. As FEMA seeks to update its NDRF document, it should not suggest that federal, state, and local governments *should* work with Tribal Nations to address these barriers. Instead, the NDRF must *direct* federal, state, and local governments to appropriately coordinate, collaborate, and share resources to support Tribal Nations engaged in post-disaster recovery efforts.

Further, the NDRF must be explicit in stating that the federal government's trust and treaty obligations necessitate FEMA actions to provide program eligibility and matching fund waivers for Tribal Nations.

In addition, the federal government must move beyond the grant- and competitive grant-making models to determine disaster relief awards to Tribal Nations. In addition to competing with state and local governments and other non-governmental entities, these processes and practices unjustly force Tribal Nations to compete with each other for critical disaster response and relief dollars. These actions do not uphold the federal government's moral and legal obligations to Tribal Nations.

Hold State and Local Governments Accountable for Sharing Resources and Coordinating with Tribal Nations

USET SPF recommends that the NDRF include language that promotes and provides education for non-Tribal state and local leaders about our inherent sovereign status as well as the special legal relationship between the federal government and Tribal Nations. This status has been established by the U.S. Constitution, treaties, Executive Orders, statutes, and upheld through legal interpretations by the federal judiciary. Due to our unique status as sovereign governments, it is important for local governments working with Tribal Nations to build and establish trust up front, establish a physical presence in meeting us where our communities are located, and having cultural sensitivity when working with Tribal Nations and communities. Although local recovery and disaster response efforts must include and address the priorities of our communities, we remind DHS that it is important to uphold its trust and treaty obligations by working directly with Tribal Nations to provide disaster relief funds directly to our governments. Tribal governments are the best positioned to determine how to respond to disasters and other emergencies within our communities and DHS must ensure that we receive the appropriate resources and assistance needed when responding to these events.

In addition, DHS and FEMA must ensure that funds being allocated to state and local governments during a disaster or emergency event occurring outside of our jurisdictional boundaries should be equitably shared with Tribal Nations when those events affect the public health and safety of our citizens. While disaster and emergency response efforts may be focused on communities outside of our jurisdictional boundaries, it is critical that state and local governments coordinate with Tribal Nations when we identify large population areas of our citizens residing in neighboring localities outside of our jurisdictional boundaries. This language should be included in the updated NDRF to ensure that state and local governments coordinate and collaborate effectively with Tribal Nations in pre-planning and disaster recovery efforts.

Remove Burdensome Application Requirements and Ensure Uniform Common Practices Across All DHS FEMA Regions

Another barrier to Tribal Nation access to FEMA programs and services are the burdensome application requirements and inconsistent practices within the different FEMA regions. For example, Tribal Nations are required to execute a Public Assistance Administrative Plan prior to receiving FEMA Public Assistance funds, even if we receive a Presidential declaration. While FEMA has spent several years working directly with states to set up those plans, FEMA has not invested the time and resources necessary to provide the same technical assistance to Tribal Nations. In addition, it appears that some FEMA regions have not required the Plan to be completed before sending Tribal Nations funding, while other regions have not been flexible to Tribal Nation funding and service requests during an emergency. This lack of uniform guidance and practice throughout the FEMA regions has created unnecessary constraints on Tribal Nations and has led to the delay of vital funds and services being delivered to Indian Country for emergency response efforts. These activities do not uphold the federal government's trust and treaty obligations to Tribal Nations and create critical delays in responding to emergencies.

In this specific example, USET SPF strongly urges that FEMA invest the necessary resources to appropriately train and provide technical assistance to Tribal Nations to develop these Public Assistance Administrative Plans. Further, in the instance of a real-time disaster or emergency and in the absence of a Tribal Nation having a Public Assistance Administrative Plan, FEMA must ensure that any administrative barriers or hurdles are removed so that Tribal Nations quickly receive Public Assistance funds to respond to these events. These actions align with the directives of E.O. 14112 and FEMA's trust and treaty obligations to provide for the safety and well-being of our communities and citizens, while safeguarding our cultural lifeways, sacred sites, natural and environmental resources, and homelands. USET SPF strongly urges FEMA to, in consultation with Tribal Nations, create uniform procedures for its regions in their engagement and coordination with Tribal Nations and to remove unnecessary, burdensome requirements to access FEMA programs and resources. This directive must be reflected in FEMA's revised NDRF to ensure that the level of operational details would best support Tribal Nation recovery operations and planning.

Conclusion

An essential foundation of federal trust and treaty obligations to Tribal Nations is the duty to ensure that we receive the appropriate resources and assistance when responding to and recovering from a disaster or emergency event. FEMA must hold state and local governments accountable to ensure that disaster and emergency relief funds are appropriately directed to Tribal Nations and our citizens during response and relief efforts. Further, FEMA must ensure Tribal Nations have the necessary funds and support to plan for disasters ahead of time, mitigate those disasters when they occur, and protect our citizens and communities during recovery efforts post-disaster. These actions are in line with FEMA's obligation to the National Preparedness Goal—to ensure that we are all prepared for all types of emergencies and disasters. We look forward to continued dialogue and working with FEMA to ensure that Tribal Nations receive the necessary funds and support to appropriately respond to disasters and safeguard our communities and cultural lifeways. 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,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director