



# USET

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## **USET SPF Comments on the Senate Committee on Indian Affairs Roundtable, "Building Native America Together: Infrastructure Innovation and Improvements for the New Administration and Indian Country."**

**March 29, 2017**

United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Indian Affairs (SCIA) with the following comments in response to its March 15<sup>th</sup> roundtable, "Building Native America Together: Infrastructure Innovation and Improvements for the New Administration and Indian Country." USET SPF recognizes that a major priority of President Trump is the infusion of federal dollars into our failing federal infrastructure. We thank the SCIA for recognizing its responsibility to ensure that the infrastructure priorities of Indian Country are included in the dialogue as Congress contemplates this broad, wide-reaching package, and look forward to further discussion as deliberations move forward.

USET SPF is a non-profit, inter-tribal organization representing 26 federally recognized Tribal Nations from Texas across to Florida and up to Maine.<sup>1</sup> USET SPF is dedicated to enhancing the development of federally recognized Indian Tribal Nations, to improving the capabilities of Tribal governments, and assisting USET SPF Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people. This includes advocating for the full exercise of inherent Tribal sovereignty.

### **Congress and this Administration Must Prioritize Indian Country**

For generations, the federal government – despite abiding trust and treaty obligations – has substantially under-invested in Indian Country's infrastructure, evident in the breadth and severity of its unmet infrastructure needs as compared to the rest of the nation. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure, such as running water and passable roads. If this Congress and Administration intend to modernize and repair infrastructure throughout the country, the deep infrastructure needs of Indian Country must be addressed. With a renewed focus on domestic issues and putting America first, this focus must also include a commitment to rebuilding the sovereign Tribal Nations that exist within the domestic borders of the United States. Much like the U.S. investment in the rebuilding European nations following World War II via the Marshall Plan, this Congress and Administration should commit to the same level of responsibility to assisting in the rebuilding of Tribal Nations.

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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), 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), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), 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), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

For its part, USET SPF is currently surveying its member Tribal Nations with a goal of providing a regional snapshot of infrastructure needs and shovel-ready projects to Congress in the near future. In the meantime, We would like to focus our comments on the question posed by Chairman Hoeven at the roundtable: “What is the best way to ensure that Indian Country is included in the infrastructure package?”

### **Importance of a Tribal Set-Aside**

During the roundtable, it was suggested that public-private and state-Tribal partnerships would be the best way to ensure infrastructure spending reaches Indian Country. Respectfully, USET SPF disagrees strongly with this assertion. The federal trust responsibility and Tribal self-determination must always be governing principles during the development of federal law and policy affecting Tribal Nations. With this in mind, it is critical that Tribal Nations have direct access to any funding available via an infrastructure package. They must not be restricted to partnering with another entity in order to be in receipt of infrastructure dollars.

Similarly, forcing Tribal Nations to compete with states, private companies, and even each other for funding runs counter to the federal trust responsibility. It also hinders Tribal Nations with very deep needs (who likely cannot retain a full-time grant writer) from accessing any funding at all. For these two reasons, we urge SCIA and others involved in the development of any infrastructure package to support a set-aside for Tribal Nations. In addition, set-aside funding should be distributed in a non-competitive manner, as well as being contractable and compactable. This is the best way to ensure infrastructure funding reaches Indian Country.

### **Infrastructure Permitting Reform—the Need for Tribal Consent**

In addition to including a set-aside for Indian Country in infrastructure spending, Tribal governments must be consulted in any infrastructure project planning or permitting on ancestral lands. Though the crisis at Standing Rock is bringing failures in the consultation process associated with federal infrastructure projects to the national stage, USET SPF member Tribal Nations continue to experience the same types of failures here in the east. Whether an Army Corps highway project in the everglades or the expansion of natural gas pipelines in southern New England, USET SPF Tribal Nations find that our cultural, spiritual, and natural resources are often impacted in spite of requirements to consult.

Meaningful consultation is a minimal standard for evaluating efforts to engage Tribal Nations in decision-making, and in the context of high-stakes infrastructure projects, Tribal consent is required to fulfill the federal treaty and trust responsibilities. The determination of what level of consultation is required should come from Tribal Nations. Meaningful consultation requires that dialogue with Tribal partners occur with a goal of reaching consent.

Consultation must include Tribal *consent* for projects that significantly impact or threaten Tribal interests. This point should be strengthened in the law, and not just in regulations. In the short term, we must move beyond the requirement for Tribal consultation via Executive Order to a strengthened model achieved via statute. In the long term, we must return to the achievement of Tribal Nation consent for federal action as a recognition of sovereign equality.

Further, only the representatives of Tribal Nations, including Tribal leaders and Tribal Historic Preservation Officers (THPOs), can determine whether a place or item has Tribal cultural, historic, or spiritual significance. Tribal Nation representatives must have the unhindered opportunity to assess and evaluate all crossings or sites of any potential infrastructure projects. Tribal knowledge and tradition must supersede all other assessments and opinions. Permit applicants and their representatives should never be allowed to make key determinations regarding Tribal interests.

## **Conclusion**

USET SPF appreciates the opportunity to provide comments following the SCIA roundtable. As we conclude our survey of member Tribal Nations, we will provide further comments offering an accounting of regional infrastructure priorities. The development of infrastructure on Tribal lands has the potential to be a catalyst to fuel economic development, job creation for both native and non-native residents, and help increase Tribal self-determination. However, any infrastructure build-out in Indian Country and beyond must not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health. USET SPF strongly urges Congress to ensure these fundamental obligations are protected as an infrastructure package is developed.