



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted via electronic mail

Beth Burchard
K. Blair Budd
Office of the Chief Financial Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue 2710A
Washington, DC 20460

Dear Ms. Burchard and Ms. Budd,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) to provide comment to the Environmental Protection Agency (EPA) on its draft Fiscal Year (FY) 2018-2019 National Program Manager (NPM) Guidances that would provide the national framework for operations used by the regions, states, and Tribal Nations to implement its programmatic activities for FY 2018-2019.

USET SPF is an intertribal organization comprised of twenty-six federally recognized Tribal Nations, ranging from Maine to Florida to Texas¹. USET SPF is dedicated to enhancing the development of federally recognized 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.

As EPA moves to finalize employee guidance concerning Tribal programs and providing direction to the Agency on programmatic priorities for FY 2018-2019 consistent with the FY 2018 President's Budget, the Agency must acknowledge the deep impacts that proposed cuts to vital programs would have on Indian Country. The federal trust responsibility to Tribal Nations includes ensuring all federal agencies are equipped to execute on the federal trust responsibility, financially and otherwise. USET SPF views the President's Budget Request for FY 2018, and the deep cuts, it contains as a violation of the trust responsibility. This is particularly true for the EPA.

While we understand that the Agency must produce guidance implementing the President's Budget Request, we urge the Agency to ensure to the greatest extent practicable that the trust responsibility is upheld and Tribal programs continue. At the very least, EPA must continue to acknowledge its trust responsibility by consulting with federally recognized Tribal Nations on the impact of deep cuts to EPA's Indian programs. In addition, EPA must continue to utilize the longstanding principles articulated in the

¹ 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).

1984 EPA Indian Policy for ensuring the Agency and Tribal Nations work together to protect the health of environment of Tribal communities.

OITA NPM

USET SPF is encouraged that the draft Office of International and Tribal Affairs (OITA) NPM Guidance directs EPA to continue to work directly with Tribal Nations to implement federal environmental programs through a variety of authorities, including but not limited to direct EPA direct implementation, Tribal implementation or Direct Implementation Tribal Cooperative Agreements. We also appreciate the inclusion of language that would direct EPA to continue to work with individual Tribal Nations to develop and implement EPA Tribal Environmental Plans (ETEP), that would allow the EPA and individual Tribal Nations to continue to work together to protect human health and the environment on Tribal lands within the context of EPA programs.

It is of the utmost importance EPA continue to utilize the longstanding principles outlined in the 1984 EPA Indian Policy. These principles directing EPA to work with Tribal Nations on a government-to-government basis, as well as upholding the principle of Tribal self-governance are central to the federal government's trust responsibility. These principles have been upheld by previous Administrations since their inception. USET SPF expects and requests that EPA Administrator Scott Pruitt and EPA officially recommit to uphold these principles when engaging with Tribal Nations.

USET SPF underscores that previous NPM Guidances, particularly the OITA FY 2016-2017 NPM Guidance, directed the Agency toward a more robust Tribal engagement process that would implement three national focus areas including:

- Implementation of Federal Environmental Programs in Indian Country;
- Implementation of the Indian Environmental General Assistance Program (GAP);
- Implementation of Tribal Consultation.

Unfortunately, this level of engagement is not included in the OITA FY 2018-2019 Guidance, and does not encourage consultation beyond tribal treaty rights and treaty-covered resources. This represents a dramatic shift from previous EPA NPM commitments to consultation and is of deep concern to USET SPF member Tribal Nations. We strongly encourage EPA to revisit this section to ensure its language more comprehensively reflects its obligation to consult with Tribal Nations.

Other NPMs

As stated in EPA's Overview of the FY 2018-2019 NPM Guidances, due to the proposed FY 2018 President's Budget, the Guidances will focus on key programmatic activities Agency-wide to provide a national operational framework. We are concerned that the proposed overall cuts to EPA within the President's proposed budget would have an immeasurable and long-lasting impact on programs in Indian Country. These programs are vital to Tribal Nations who utilize them to protect the health and safety of their environment and homelands.

The proposed cuts would eliminate 46 programs within EPA totaling \$983 million and reduces funding to states and Tribal Nations in the State and Tribal Assistance Grants (STAG) funding by \$678 million. The proposal to cut funding for vital environmental programs would undo years of progress made by EPA and Tribal Nations, and would threaten the safety and health of the Tribal Nations they serve. Specifically, the proposed budget would eliminate the Tribal 319 Grant program, as stated in the National Water Program Guidance description, which provides grants and technical assistance to support Tribal environmental programs in managing their nonpoint source pollution problems. Funding from this grant has previously

been utilized by USET SPF member Tribal Nations, including by the Penobscot Indian Nation to improve and protect water quality in the Penobscot River and Little Mattamiscontis Lake.

As stated previously, cuts to Indian programs within the proposed FY 2018 President's budget undermine the federal trust responsibility. In addition to providing sufficient funding, the federal government has an obligation to consult with Tribal Nations when taking actions that will affect them and their resources. As an Agency of the federal government, EPA must seek the advice and guidance of Tribal Nations before taking any action impacting Indian Country. We urge EPA to remain steadfast in its fulfillment of the trust responsibility to federally recognized Tribal Nations which includes the duty to ensure the protection of the environment and health of Tribal communities, as well as ensure meaningful consultation with Tribal Nations.

Conclusion

In conclusion, we thank you for the opportunity to provide comments on draft FY 2018-2019 National Program Manager (NPM) Guidances. Regardless of the President's Budget Request, the EPA must continue to uphold its trust responsibility to federally recognized Tribal Nations to ensure a healthy and safe environment for Tribal communities. Should you have questions or require further information, please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs at: LMalerba@usetinc.org or 202-624-3550.

Sincerely,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director

CC: NPM Guidance Contacts