



# USET

SOVEREIGNTY PROTECTION FUND

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August 4, 2017

President Donald J. Trump  
The White House  
1600 Pennsylvania Ave, N.W.  
Washington, D.C. 20500

Dear President Trump,

On behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write in response to Executive Order 13805, *Establishing a Presidential Advisory Council on Infrastructure*. USET SPF strongly supports infrastructure development. We share your goal of advancing, “infrastructure projects that create high-quality jobs for American workers, enhance productivity, improve quality of life, protect the environment, and strengthen economic growth.” Tribal Nations across the country are working to provide these kinds of opportunities to their citizens and their communities, as well, all while preserving our sacred sites, sovereignty, and public health. At the same time, the federal government has failed to address its infrastructure obligations in Indian Country. It is with this in mind that we urge you to include Tribal government representation as part of the Council, as well as provide additional recommendations and considerations for inclusion in any dialogue on our nation’s infrastructure.

USET SPF is an intertribal organization comprised of twenty-six federally recognized Tribal Nations, ranging from Maine to Florida to Texas<sup>1</sup>. USET SPF is dedicated to enhancing the development of Tribal Nations, to improving the capabilities of Tribal governments, and assisting member Tribal governments in dealing effectively with public policy issues and in serving the broad needs of Indian people.

### **Tribal Governments must be Included on the Council**

According to a report released earlier this year by National Congress of American Indians, there exists at least \$50 billion in unmet infrastructure obligations across Indian Country. Decades of chronic underfunding of the federal government’s trust obligations has resulted both in a dangerous lack of infrastructure, as well as infrastructure that is severely degraded.

If this Administration intends to modernize and repair infrastructure throughout the country, the deep infrastructure needs of Indian Country must be addressed and they must be addressed in partnership with Tribal Nations. This approach is imperative to the success of its broader infrastructure goals, both because

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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).

of the federal trust responsibility and because the strength of Tribal Nations has critical implications for our nation as a whole. While other units of government likely have interest in serving on the Council, as well, Tribal governments are the only units of government engaged in a trust relationship with the United States. It is the federal government's solemn obligation to ensure that Tribal Nations are meaningfully consulted on federal actions affecting their interests. Similarly, the federal government has an obligation, due to its treaty and trust responsibilities, to address infrastructure needs in Indian Country. Neither of these obligations can be fulfilled without the direct guidance of Tribal Nations. Thus, it is vital that Tribal Nations be represented on the Council. As you consider your appointments to the Council, we urge you to name at least one Tribal leader.

### **Need for Direct Funding to Indian Country**

In addition to ensuring the voices of Tribal Nations are represented on the Council, we urge the inclusion of direct funding for Indian Country in any proposal developed. 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. 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 or competing with another entity in order to be in receipt of infrastructure dollars. Additionally, in support of Tribal self-determination, these dollars should be eligible for inclusion in Self-governance contracts and compacts.

Further, 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.

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

In the spirit of averting future conflicts, we also underscore that Tribal governments must be consulted in any infrastructure project planning or permitting on ancestral lands. This must be taken into account by the Council and your Administration. Though the crisis at Standing Rock is bringing failures in the consultation process associated with federal infrastructure projects to the national stage, there is a potential for similar conflicts in the South and East, where our member Tribal Nations experience similar failures in the consultation process. 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. Any infrastructure build-out in Indian Country and beyond must not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.

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.

### **Conclusion**

Again, we strongly urge the appointment of at least one Tribal leader to the Presidential Advisory Council on Infrastructure, as well as a plan that includes direct funding for Tribal Nations and infrastructure permitting reform. Please count USET SPF as a partner in your efforts to deliver upon the federal government's sacred trust responsibility and obligations to Tribal Nations. Should you have any questions

or require additional information, please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at (202) 624-3550 or by e-mail at [lmalerba@usetinc.org](mailto:lmalerba@usetinc.org).

Sincerely,



Chief Kirk Francis  
President



Kitcki A. Carroll  
Executive Director

CC: The Honorable Wilbur Ross, Secretary of Commerce  
William Kirkland, White House Office of Intergovernmental Affairs  
Benjamin Keel, White House Council on Native American Affairs