



USET

SOVEREIGNTY PROTECTION FUND

Nashville TN Office
711 Stewarts Ferry Pike, Ste. 100
Nashville TN 37214
P: (615) 872-7900
F: (615) 872-7417

Washington DC Office
400 North Capitol St., Ste. 585
Washington DC 20001
P: (202) 624-3550
F: (202) 393-5218

**Testimony of the United South and Eastern Tribes Sovereignty Protection Fund
Submitted to the House Committee on Oversight and Government Reform
Subcommittee on Interior, Energy, and Environment
For the Record of the February 15, 2017 Hearing Entitled,
“Examining Federal Programs that Serve Tribes and their Members”**

February 22, 2017

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the House Oversight and Government Reform Committee Subcommittee on Interior, Energy, and Environment with the following testimony for the record of its February 15, 2017 hearing entitled, “Examining Federal Programs that Serve Tribes and their Members.” This hearing follows the release of the annual Government Accountability Office (GAO) “High Risk” Report, which for the first time includes the Indian Health Service, the Bureau of Indian Education, and the Office of Indian Energy. USET SPF agrees that in many respects, the provision of services to American Indians and Alaska Natives (AI/AN), and the efficiency and timeliness with which services are provided, by federal agencies must be improved. And we appreciate the Subcommittee’s interest in improving upon the execution of the federal trust responsibility. However, as we explain below, the GAO report fails to acknowledge the unique circumstances associated with executing the federal trust responsibility and obligations to AI/AN, as well as successes related to Tribal assumption of government programs via the self-governance.

USET SPF is a non-profit, inter-tribal organization representing 26 federally recognized Tribal Nations from Texas across to Florida and up to Maine¹. 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.

The Federal Trust Responsibility to Tribal Nations

A unique government-to-government relationship exists between Tribal Nations and the federal government, a relationship that is grounded in the U.S. Constitution, numerous treaties, statutes, federal case law, regulations and executive orders. The federal government’s trust obligations associated with this relationship are the result of the millions of acres of land and extensive resources ceded to the U.S., in exchange for which it is legally and morally obligated to provide benefits and services in perpetuity. This sacred trust relationship extends across all branches of the federal government. As such, funding for Indian Country programs should not be a discretionary decision, nor should it be subject to the same types of

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).

justification as funds distributed to non-profits or other government programs. With this in mind, it is important to note that the programs examined by GAO and the Subcommittee in this hearing are unique from every other program appearing in the High Risk Report, as they represent the direct delivery of the federal trust responsibility. As such, they must be considered separately from programs like the 2020 Census, weather satellites, surface transportation, and the measures associated with their management must be reflective of the federal government's trust obligation, as opposed to more granular details.

In addition, as the Subcommittee and Congress approach solutions to failures within the agencies, the federal trust obligation and relationship must be a governing principle. During the hearing, there were suggestions that perhaps states should assume the management of some of the functions the Bureau of Indian Affairs (BIA). States do not have a trust responsibility to Tribal Nations, nor do they generally have an understanding of the complex historic, jurisdictional, and legal challenges they face. Further, through the aforementioned legal underpinning, Tribal Nations are sovereign governments and in general, are not subject to state law. It would be wholly inappropriate for states to manage the affairs of Tribal Nations.

However, there is much success to be found in Tribal management of federal programs via the Indian Self-Determination and Education Assistance Act (P.L. 93-638). Since 1968, every Congress and President has recognized that Tribal governments are the entities best suited to meet the needs of their communities. This is because they are more directly accountable to the people they represent, more aware of the problems their communities face, and more agile in responding to changing circumstances. While the High Risk Report does reveal failures in the federal government's administration of programs, empirical evidence shows that when Tribal Nations are empowered to manage their own affairs—including federal programs, success follows. USET SPF urges the Subcommittee and this Congress to consider the expansion of Tribal self-governance as seeks solutions to the issues raised in the High Risk Report.

The Chronic Underfunding of Federal Indian Programs

While the High Risk Report describes weaknesses in the management of federal Indian programs, absent in large part from GAO's findings is the long-standing chronic underfunding of these programs. It should be noted that the IHS and BIA have been underfunded for decades. While both agencies have enjoyed recent appropriations increases, current funding levels continue to fall short and fail to keep pace with inflation and population growth. USET SPF contends that many of the weaknesses described in the High Risk Report can be attributed, at least in part, to the persistent and chronic underfunding of these agencies. As long as they remain so dramatically underfunded, they will never overcome these challenges and Congress' fiduciary trust responsibility to Tribal Nations will go unfulfilled. USET SPF strongly urges this Subcommittee to ensure the underfunding of these agencies is recognized during discussion of the High Risk Report.

The Importance of Tribal Consultation

USET SPF recognizes the February 15th hearing to be the beginning of a more extensive conversation surrounding the improved management of federal Indian programs. With this in mind, we would like to underscore the importance of ensuring the voices of Tribal Nations from across Indian Country are heard in this dialogue. Federal Indian policy, no matter its origin, must be formulated in on-going consultation with Tribal Nations. No one is better positioned to describe how well federal programs are functioning than the recipients of those programs—Tribal Nations and their citizens. Similarly, Tribal Nations, considering their extensive experience with these programs, are uniquely positioned to provide recommendations on improvements. On-going, meaningful Tribal consultation is essential to mitigating current challenges and devising creative and lasting solutions to the mismanagement of federal Indian

programs. As the Subcommittee explores these issues further, USET SPF recommends it consider holding an open listening session and soliciting additional comments from Tribal Nations across the country. In the long term, the Subcommittee and this Congress should demonstrate full recognition of our sovereign equality by working to secure Tribal Nation consent for all federal actions that impact our Nations and citizens.

Conclusion

The issues raised in GAO's High Risk Report and previous reports are chronic and complex. USET SPF shares the Subcommittee's interest in seeing that they are addressed. We thank the Subcommittee for the opportunity to provide comments on this issue and look forward to partnering on a solutions that reflect both the federal trust responsibility and a commitment to Tribal self-governance.