



USET

SOVEREIGNTY PROTECTION FUND

April 13, 2018

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Transmitted via email to:
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The Honorable Ryan Zinke
Secretary
U.S. Department of the Interior
1849 C Street Northwest
Washington, DC 20240

Re: Department of Interior Reorganization

Dear Secretary Zinke,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) to express our deep concern that the Department of the Interior (DOI) is moving forward with its reorganization in the absence of Tribal consultation and insist that clarity be provided to Indian Country. As we note in our May 2017 initial letter to you, (attached and to which we have not yet received a response) USET SPF member Tribal Nations acknowledge that there may unnecessary levels of bureaucracy and redundancies at the DOI. This belief is consistent with our organizational effort to modernize the trust relationship. However, any eliminations or changes affecting Indian Country must be accomplished in fulfillment of the federal trust responsibility, and with the advice and guidance of Tribal Nations. Current reorganization proposals are not reflective of these requirements, nor has their application to the Bureau of Indian Affairs (BIA) been clarified or discussed with Tribal Nations. We urge the Department to immediately issue a "Dear Tribal Leader" letter initiating consultation with Tribal Nations.

USET SPF is an intertribal organization comprised of twenty-seven 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.

Lack of Tribal Consultation

It has been nearly one year since any formal communication with Indian Country regarding the Department's plan for reorganization, with the only "Dear Tribal Leader" letter (DTLL) issued on May, 16, 2017 and listening sessions concluding in June 2017. Our July 15, 2017 letter (attached) in response to then-Acting Assistant Secretary Michael Black outlined a number of priorities for the reorganization, including the protection of trust obligations and inherent federal functions, the preservation of the BIA

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), 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), 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).

Eastern Region, and the need for extensive Tribal consultation, in accordance with the Department's policy. As we wrote last year,

“Any federal action impacting Tribal Nations must be consulted upon in advance.... Federal agencies must present any proposed changes to Indian Country in a clear and transparent manner, describing specific proposed actions with Tribal implications, in order to facilitate meaningful guidance from Indian Country.”

It is important to recognize that the aforementioned DTLL sought only initial Tribal input regarding Executive Order 13781, *Comprehensive Plan for Reorganizing the Executive Branch*, and provided no specifics to Tribal Nations. Thus, USET SPF was only positioned to offer general thoughts, as the reorganization was, at that point, conceptual in nature. Since then, we have been made aware of numerous proposed regional maps and opportunities for input for federal staff, state governments, and other stakeholders. During a recent national meeting, you stated, “we're going to go into consultation, as we should, and it's really up to the tribes whether they're going to participate or not, and I respect sovereignty.” Yet, Indian Country has not been provided with additional opportunities for input, in spite of the progress that has been made in planning. It remains unclear to us where the process stands and whether Tribal Nation guidance will be sought prior to the approval of the regional map and other reorganization activities.

We are further concerned to see what appears to be additional reorganization activities taking place at the staff level—again without Tribal consultation. A number of Senior Executive Service employees from the BIA and Office of Trust Services seem to have been relocated and reassigned. While we understand that the Department is afforded the latitude to make employment decisions, Tribal Nations should be consulted as senior staff are reassigned—particularly at the regional level.

Fiscal Year (FY) 2019 Budget Request for BIA and Related Cost Concerns

Despite suggestions that participation in the reorganization will be, “up to the tribes,” we note the inclusion of \$900,000 for pre-planning activities pertaining to the reorganization for BIA in the President's FY 2019 Budget Request. Not only is this request inconsistent with requirements to consult prior to any federal action impacting Tribal Nations, this request has been made while nearly every other line item under BIA is proposed to receive deep reductions. Indian Country is left to attempt to determine where these dollars, both those for pre-planning and those for any subsequent implementation, would originate. Would they be taken from BIA programmatic funding or inherent federal functions? Both of these are vastly under-resourced sources. In effect, the President's Budget Request suggests that Indian Country should shoulder the financial burden of a reorganization plan that has not even been consulted upon. This is unacceptable.

In addition, while the \$900,000 is being framed to Tribal representatives as pre-planning monies, we understand that the reorganization, if implemented, would require a significantly higher level of federal funding. In spite of this, Indian Country has not been provided with any type of cost estimate or analysis. If Tribal Nations are to meaningfully provide guidance on the reorganization, any overview of total estimated financial impact on BIA and beyond must be made available. Furthermore, any cost savings realized through reorganization of BIA and other programs serving Indian Country must be dedicated to improved fulfillment of trust obligations, including fiduciary obligations as well as inherent federal functions.

DOI FY 2018—2022 Strategic Plan

Similarly, we note the inclusion of the reorganization as “Strategy #1” in DOI's FY 2018—2022 Strategic Plan, which appears to have been posted to DOI's website on March 5, 2018. This Strategic Plan has also not received sufficient Tribal consultation. While a listening session was scheduled in the Eastern Region for August 2017, it was later canceled and never rescheduled. Nonetheless, the Plan states,

“The DOI intends to establish unified regional boundaries for its bureaus in 2018 and to further develop this approach in 2019. The goal is to improve overall operations, internal communications, customer service, and stakeholder engagement. Aligning geographic areas across the DOI will enhance coordination of resource decisions and policies and will simplify how citizens engage with the DOI.”

Again, the contents of the Strategic Plan appear to be in conflict with your commitment to ensure Indian Country chooses whether to participate in the reorganization, as well as page 11 of the document, which includes, “effectively consulting with Tribal governments.”

Department-Wide Consistency Unnecessary

While it would be premature for USET SPF comment on the proposed regional maps for DOI due to the lack of clarity on which version is actually being considered, we are aware of proposals to carve up the Eastern Region into four or more separate regions based on watersheds and/or state boundaries. In addition, as described above, it is unclear whether DOI has already determined whether to apply these regions to the BIA. However, as we stressed in our July 15th letter, “We are adamantly opposed to any effort to eliminate or consolidate [the Eastern Region] office.” This opposition would naturally extend to efforts that would divide the Tribal Nations of the Eastern Region.

In addition, USET SPF feels it is wholly unnecessary to achieve department-wide consistency, at least where the structure of BIA is concerned. While regional consistency may be appropriate for the other operating divisions of DOI, any regional map reflecting anything other than incorporated guidance from Tribal Nations across the country is inappropriate for the BIA. Other Departments across the Executive Branch, most notably the Department of Health and Human Services (HHS), have recognized the need for variations in regional division between the Department and its operating divisions serving Tribal Nations. While USET SPF Tribal Nations are located in five HHS regions, they are served by one Indian Health Service Area Office.

Trust Modernization

As we note above, USET SPF, along with other Tribal organizations and Nations, is engaged in an effort to modernize the relationship between the federal government and Tribal Nations. The current trust model is broken and based on faulty and antiquated assumptions from the 19th Century that Indian people were incompetent to handle their own affairs and that Tribal Nations were anachronistic and would gradually disappear. It is time for a new model that reflects a truly diplomatic, nation-to-nation relationship between the U.S. and Tribal Nations, and that empowers each Tribal Nation to define its own path. This mission should inform each action taken by this Administration affecting Tribal Nations, including any reorganization of the Department.

Our Trust Modernization Workgroup has identified 5 governing principles with which to engage in modernizing the trust relationship. They are as follows:

1. **Strengthen Trust Standards – Adopt Implementing Laws and Regulations.**
2. **Strengthen Tribal Sovereignty – Empower Each Tribe to Define its Path.**
3. **Strengthen Federal Management – For Trust Assets and Programs Still Subject to Federal Control.**
4. **Strengthen Federal-Tribal Relations – One Table with Two Chairs.**
5. **Strengthen Federal Funding and Improve Its Efficiency – A Pillar of the Trust Responsibility.**

Each of these principles addresses long-standing issues with the current trust model and was developed after the deliberation of Tribal leaders. Our Workgroup has also devised a number of short and long-term

strategies aimed at realizing these principles. We look forward to the opportunity to discuss them with you as they relate to this topic and more broadly.

Conclusion

Mr. Secretary, you are known to say frequently that, "sovereignty should mean something." USET SPF agrees with this statement, and urges you to ensure that the actions of your Department uphold this view. This includes much more than a take-it-or-leave-it approach to the reorganization as it pertains to Indian Country. USET SPF remains hopeful that the Department will take the opportunity to modernize the federal government and execution of the federal trust responsibility in a way that upholds the obligations of our sacred government-to-government relationship and promotes the full exercise of Tribal sovereignty. 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 202-624-3550.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director



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May 30, 2017

The Honorable Ryan Zinke
Secretary
United States Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

Dear Secretary Zinke,

On behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to congratulate you on your appointment as Secretary of the Department of the Interior (DOI). As you stated in testimony before the Senate Committee on Indian Affairs, “regardless of political party, our duty as Americans is to uphold our trust responsibilities and consult and collaborate on a government-to-government basis with Tribes from Maine to Alaska.” We look forward to partnering with you to ensure this obligation is upheld at all levels of the federal government.

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. This includes advocating for the full exercise of inherent Tribal sovereignty.

We would like to accept your recent invitation to Indian Country to begin a conversation regarding the future of the government-to-government relationship, as well as the unique priorities, needs, and vision of USET SPF member Tribal Nations. While all branches, departments, and agencies of the federal government share equally in the trust responsibility to Tribal Nations, Indian Country frequently looks to the Secretary of the Interior to be a leader in promoting and upholding this solemn obligation. With this in mind, we offer the following items for further exploration and discussion, as the Trump Administration continues to develop its relationship with Tribal Nations.

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).

Trust Modernization

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Each of these principles addresses long-standing issues with the current trust model and was developed after the deliberation of Tribal leaders. Our Workgroup has also devised a number of short and long-term strategies aimed at realizing these principles. We look forward to the opportunity to discuss them with you.

Executive Order on U.S.-Tribal Relations

Over the last several decades, every President, regardless of party, has issued executive orders regarding the federal trust responsibility and the federal government's relationship with Tribal Nations. We ask for your assistance in the issuance of an executive order from President Trump that: 1. Reaffirms essential trust responsibilities for all federal agencies; 2. Affirms the "best interests" determination in favor of Tribal Nations in all environmental and administrative determinations; and 3. Outlining the placement of senior level Tribal Liaison positions across the Administration to ensure that every department/agency is executing its trust obligations to the greatest extent. This order should speak to and confirm the unique and special nature our nation-to-nation relationship, its sacred responsibility to fulfill its treaty and trust obligations to Tribal Nations, and recognition, and support for the principles of our inherent sovereign authorities and rights. An executive order of this nature would set the tone for all federal agency conduct and provide certainty in the federal government's approach to decisions affecting Indian Country. Consistency and commitment in the execution of the federal trust responsibility would likely reduce conflict between the federal government and Tribal Nations, as well as the number of trust mismanagement lawsuits facing the federal government.

Executive Branch Reorganization

Exemption of Federal Indian Program Positions from Workforce Reduction. USET SPF recognizes that a major priority of President Trump is a full reorganization and reduction in the workforce of the executive branch. However, we also note that executive orders and memoranda issued do not, with very limited exceptions, exempt positions and agencies charged with delivering on the trust responsibility. As DOI (and other departments and agencies) moves forward with its reorganization, the execution of the federal

government's trust responsibility and obligations must be paramount. These positions and agencies, and all inherent federal functions must be preserved.

Preservation of Eastern Region. In addition, it is important to note that the Tribal Nations of the Eastern Region have consistently advocated for and protected our dedicated regional office of the BIA. This, too, must be preserved. Finally, should the Department consider changes affecting Tribal Nations, at the BIA or beyond, it is DOI's duty to meaningfully consult with and seek consent from Tribal Nations on any proposed changes.

Land into Trust

As a core trust responsibility, and as a matter of justice arising out of the massive land transfer effected to the United States by Tribal Nations under conditions of duress, DOI has, for nearly 85 years, restored Tribal lands through trust acquisitions. These acquisitions enable Tribal Nations to build schools, health clinics, hospitals, housing, and provide other essential services to Tribal citizens. Moreover, because the trust responsibility is so deeply underfunded, many Tribal Nations depend on the economic development conducted on these lands in order to fund essential government services. Despite the views expressed by some outside of Indian Country, a majority of economic development on Tribal homelands does not result in significant revenue generation beyond supporting these services. DOI has approved trust acquisitions for approximately 5 million acres of former Tribal homelands, far short of the more than 100 million acres lost through Federal policies of removal, allotment, and assimilation.

While USET SPF member Tribal Nations ultimately seek full jurisdiction and management over our homelands without federal government interference and oversight, we recognize the critical importance of the restoration of our land bases through the land-into-trust process. We further recognize that the federal government, and not any other unit of government, has a trust responsibility and obligation to Tribal Nations in the establishment and management of trust lands. In your testimony before the Senate Committee on Indian Affairs, you seemed to suggest that the Department may have new ideas in this area; this is of vital importance to us, so we would like to be involved in any discussions you have before decisions are made and minds are set.

USET SPF strongly opposes any effort to diminish, whether intentionally or unintentionally, Tribal Nation reservations and trust lands, to provide for state management of any Tribal ancestral homelands currently managed by the federal government, or to otherwise undermine the DOI land-into-trust process. This includes the elimination of the land-into-trust process in favor of the establishment of Tribal corporations. While we seek innovative approaches to Tribal land base restoration that provide Tribal Nations with more control, establishing corporations will not accomplish this goal. We urge DOI and this Administration through extensive and meaningful consultation, to work hand-in-hand with Tribal Nations to determine what changes, if any, are appropriate for the land-into-trust process.

Infrastructure Permitting Reforms

In the spirit of averting future conflicts, 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, 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.

USET SPF strongly supports infrastructure development. The development of infrastructure on and off 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.

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. Indeed, the relationship between the United States and Tribal Nations began as one of mutual consent to treaty terms and other agreements, even if the Tribal Nations were under duress. That mutual consent principle should continue, though of course applied this time in an honorable fashion. 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 in 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.

DOI Strategic Planning

As USET SPF has consistently articulated, the Executive Branch's trust obligations extend to all agencies and departments therein. It is incumbent upon each of these agencies and departments, both individually and collectively, to address their treaty and trust obligations to Tribal Nations. As such, within the DOI Strategic Plan, each of DOI's bureaus and agencies should speak to their trust responsibilities and obligations in accordance with their designated sections of the Plan, as well as include appropriate goals, strategies, and measures associated with their solemn obligation. Each division of DOI should also demonstrate how it plans to secure the federal funding necessary to carry out its obligations. Agencies and departments across the Administration often look to DOI to set the tone for their relationships with Indian Country and delivery on trust obligations. Therefore, DOI must, through the Plan and its own actions, lead the federal government in upholding trust responsibilities and obligations, recognizing the evolution of the U.S.-Tribal relationship.

Further, the federal government's trust obligations 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. As such, funding for Indian Country programs should not be a discretionary decision, nor should it be subject to the same types of justification as funds distributed to non-profits or other government programs. We remain committed to working with the Executive Branch and

Congress to see that this is realized in federal spending and the strategic planning conducted in support of budget requests.

Budget Issues

Full and Transparent Accounting of Federal Indian Funding. The Office of Management and Budget (OMB) asserts that over \$20 billion in federal dollars is appropriated to Indian Country annually. From the perspective of Tribal advocates, including those who serve on budget formulation committees for federal agencies, this number seems to be an widely inflated, with far less actually reaching Tribal Nations and Tribal citizens. We suspect that OMB arrives at this figure by tallying the amount for which Tribal Nations and entities are eligible, regardless of whether these dollars actually reach Indian Country. The Tribal Interior Budget Council has asked OMB for a full accounting of federal funding distributed to Indian Country. To date, OMB has not responded to this request. USET SPF insists that in the spirit of transparency, the WHCNA/Department of the Interior must ensure that OMB provides the Council, as well as Indian Country with an accurate, detailed inventory of its own federal funding. USET SPF firmly believes that this information is absolutely essential to the success of the WHCNA and the work of Tribal Nations.

BIA Carryover. In addition, through our work the Tribal Interior Budget Council (TIBC), it has come to our attention that BIA carryover funds may be reprogrammed so as to avoid returning dollars to the U.S. Treasury. We support this mechanism wholeheartedly. However, if this is the case, transparency must be offered to Tribal Nations in the destination of reprogrammed dollars. At present, members of the TIBC nor others in Indian Country have been offered an accounting of where these monies are being spent.

TIBC Budget Formulation Methodology. Though the only agency within DOI charged with direct services to people, the Bureau of Indian Affairs (BIA) has, historically, received lower percentage increases than other agencies at DOI. Representatives from USET SPF and USET SPF Member Tribal Nations serve on the TIBC, the body that advises BIA on its budget. For FY 2018, regional TIBC representatives were instructed to spread a projected 8% increase to the agency, as well as identify their top 5 priority programs within the BIA budget. Recognizing that there are over 125 separate BIA line items, across a variety of programmatic functions, this is an impossible task and the process must be corrected to allow this Congress to receive a more complete and comprehensive assessment of its fiduciary trust obligation fulfillment, as well as its shortfalls, within the BIA.

White House Council on Native American Affairs

We urge preservation of the White House Council on Native American Affairs (WHCNA) or the establishment of a similar inter-agency effort to coordinate on federal Indian policy. The Council was established to coordinate federal Indian policy among agencies in an effort to promote and honor the federal trust responsibility, as well as Tribal sovereignty and self-determination. However, while these actions are critical to the federal trust relationship, they cannot be achieved without the advice, consent, and participation of Tribal Nations themselves. USET SPF has consistently advocated for the seating of Tribal leader representatives as full members of the council. However, during the Obama Administration, this was never realized.

Under the Unfunded Mandates Reform Act (UMRA), the President has authority to establish Tribal advisory committees. USET SPF suggests that as one option for Tribal leader involvement with the WHCNA, the President might appoint Tribal government leaders to serve on a Native Nations Council. This Council should be comprised of one Tribal leader representative and one Tribal leader alternate from each of the 12 Bureau of Indian Affairs regions, with each chosen by the Tribal Nations within these regions. The Council

will work in partnership with the WHCNA on the charge and objectives of the body. Establishing the Council under UMRA would preclude application of the Federal Advisory Committee Act (FACA) to an expanded Council that includes Tribal leaders, as such Council meetings would be held exclusively between federal and Tribal officials acting in their official capacities and would be solely for exchanging views, information, and advice relating to the management of federal programs with intergovernmental responsibilities or administration. Id. § 1534(b). Moreover, FACA only applies to temporary committees, per FACA Section 14, whereas the Council should remain a permanent entity.

Tribal Advisor to White House Domestic Policy Council

While we are aware of multiple Tribal advisors working within the White House Office of Intergovernmental Affairs, we have not been informed of any appointee to the White House Domestic Policy Council charged with advising on Tribal issues. This advisor plays a critical role in ensuring the highest reaches of the Executive Branch are informed of the priorities of and their obligations to Indian Country. We request the preservation of this position.

Suspension of DOI Advisory Committees

USET SPF notes that there has been some confusion surrounding the suspension of DOI advisory committees and whether Tribal advisory committees are affected. We ask that you provide clarity on this issue to the Tribal leaders, Nations, and organizations who rely on the work of these advisory committees. Tribal advisory committees are one of the many critical methods by which the Department receives the advice and guidance of Tribal Nations. They are an extension of the federal trust responsibility and obligations to Tribal Nations. We stress their importance and urge their preservation.

Opportunity for Dialogue

We view this communication as the first in what we hope will be a regular and productive dialogue with you and your staff. Each of the issues raised in this letter warrants further discussion and explanation. With this in mind, we propose an in-person meeting between you and the leaders of our member Tribal Nations at your earliest convenience. Coming from Montana it is important to recognize that the interests, needs, and priorities of Tribal Nations from the USET SPF region are often different. We would welcome the opportunity to provide you with an overview of our unique and diverse histories, as well as partner with you in ensuring the diversity of Tribal Nations across the country is recognized and celebrated.

We thank you for your consideration of this request. Again, 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.

Sincerely,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director



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July 15, 2017

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Submitted via: consultation@bia.gov

The Honorable Michael S. Black
Acting Assistant Secretary—Indian Affairs
Bureau of Indian Affairs
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Re: Dear Tribal Leader Letter on Implementation of Executive Order 13871

Dear Acting Assistant Secretary Black,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we are pleased to submit the following comments in response to your May 16, 2017 “Dear Tribal Leader” letter requesting comments on the implementation of Executive Order (EO) 13871, *Comprehensive Plan for Reorganizing the Executive Branch*. USET SPF member Tribal Nations acknowledge that there may unnecessary levels of bureaucracy and redundancies at the Department of the Interior (DOI) and this belief is consistent with our organizational effort to modernize the trust relationship. However, any eliminations or changes must be accomplished with the intent to (1) achieve more timely and seamless execution of federal trust obligations, and (2) promote greater Tribal Nation self-determination.

USET SPF is an intertribal organization comprised of twenty-six federally recognized Tribal Nations, ranging from Maine to Florida to Texas.¹ 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.

Execution of Trust Obligations and Inherent Federal Functions Must be Protected

USET SPF recognizes that a major priority of President Trump is a full reorganization and reduction in the workforce of the executive branch. However, we also note that executive orders and memoranda issued do not, with very limited exceptions, exempt positions and agencies charged with delivering on the trust responsibility. As DOI and the whole federal government moves forward with its reorganization, the execution of the federal government’s trust responsibility and obligations must be paramount. Positions and agencies charged with execution of this obligation, and all inherent federal functions must be preserved. This includes ensuring agencies, departments, and divisions are adequately staffed and resourced to carry out these functions. It is *never* acceptable or appropriate for any of the federal trust obligation to be executed by state or private entities.

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BIA Eastern Region Office Must Be Preserved

Historically, as part of past reorganization/restructuring efforts, USET SPF member Tribal Nations have consistently had to fight to protect the Bureau of Indian Affairs (BIA) Eastern Region Office. We are adamantly opposed to any effort to eliminate or consolidate this office. Previous efforts to fulfill Eastern Region trust obligations through other BIA regional offices have failed and proven that ERO Tribal Nation interests are secondary to the interests of the Tribal Nations within those regions tasked with providing contracted services.

In addition, the Eastern Region has recently undergone a change in leadership and corresponding reorganization. Our member Tribal Nations view this change as positive and productive. The new leadership has spent the last several years cultivating a trustworthy and reliable working relationship with the Tribal Nations it serves. We urge you to allow this progress to proceed by maintaining the current leadership of the Eastern Region Office.

- **Other Regional Offices and Staff**

We note that our region is also served by a number of satellite offices. USET SPF stands with each of our member Tribal Nations receiving this direct outreach and asserts that no changes to these relationships shall be made without their consent. We remind the DOI of its commitment to ensuring that Tribal Nations are provided advance notice and opportunity for consultation when the agency is considering action with Tribal impact.

Need for Extensive Tribal Consultation

As the full reorganization proceeds, greater coordination and clarity is needed from agencies across the federal government to ensure that the trust responsibilities and obligations of the federal government are not intentionally or inadvertently diminished. Any federal action impacting Tribal Nations must be consulted upon in advance. This Administration has already provided verbal indication of its intent to keep a structure in place similar to the White House Council on Native American Affairs. Regardless of the form or name that it takes in this Administration, this would be an appropriate task for this entity to take on.

Indian Country also needs to be better informed in order to respond to requests for consultation. Federal agencies must present any proposed changes to Indian Country in a clear and transparent manner, describing specific proposed actions with Tribal implications, in order to facilitate meaningful guidance from Indian Country.

Conclusion

Recognizing that no formal Tribal consultation has taken place, we expect that this will be the first of many opportunities to provide input as the Trump Administration implements EO 13871. USET SPF welcomes the opportunity to modernize the federal government and execution of the federal trust responsibility in a way that upholds the obligations of our sacred government-to-government relationship and promotes the full exercise of Tribal sovereignty. 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 202-624-3550.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director