



USET

SOVEREIGNTY PROTECTION FUND

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September 21, 2018

Transmitted via consultation@bia.gov

Tara Sweeney
Assistant Secretary—Indian Affairs
Bureau of Indian Affairs
Office of Regulatory Affairs and Collaborative Action
1849 C St NW
MS 3642
Washington, DC 20240

Re: Department of Interior Proposed Reorganization

Dear Assistant Secretary Sweeney,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) in response to the May 17th Dear Tribal Leader Letter (DTLL) initiating Tribal consultation on the Department of the Interior's (DOI) proposed reorganization. As we have expressed in a previous letter, as well as a subsequent in-person consultation, we continue to be concerned that DOI's reorganization proposal has been developed with little clarity or transparency and without meaningful Tribal consultation. With a host of questions remaining, it is not possible for USET SPF to take a position on the merits of the reorganization itself. We are, however, deeply opposed to the manner in which DOI has conducted itself as it pursues reorganization activities. The near-complete lack of information provided to Tribal Nations is unacceptable. Until there is greater clarification from DOI to Indian Country on the impact the reorganization would have on the execution of the federal trust responsibility, the Bureau of Indian Affairs (BIA) must not be included within the reorganization. We continue to urge DOI to provide additional information regarding reorganization logistics, purpose, and effects to Indian Country, and to consult with Tribal Nations on these details, prior to implementation.

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.

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).

Though USET SPF is unable to provide support or opposition for the current DOI reorganization proposal, we would like to underscore a number of outstanding priorities and concerns, as well as questions. DOI must address these and other issues in order for its consultation on the reorganization to be considered meaningful.

Execution of Trust Obligations and Inherent Federal Functions Must be Protected

As DOI 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. This includes ensuring that all DOI operating divisions and agencies are focused on upholding these duties. It is of deep concern that the current reorganization plan appears to be developed with the Department's natural resources-related functions, and not its trust obligations, in mind. According to briefings we have received on the reorganization, the new, unified regions will each be overseen by a regional director whose charge will be the following priorities: conservation, recreation, and permitting. The trust responsibility and obligations are glaringly absent from this list.

In light of this, it remains unclear to USET SPF and others across Indian Country how DOI will prioritize the execution of the trust responsibility under the proposed model. Considering the list of priorities for the new regional directors, how will the reorganization affect the execution of the trust responsibility and obligations? How will each operating division and regional director prioritize the government-to-government relationship? To date, DOI has not provided satisfactory answers to these very basic questions.

Impacts Remain Unclear

In addition to a lack of clarity surrounding DOI's sacred duty to Tribal Nations, the practical effects upon the BIA and other bureaus and functions also remain unclear. While we are being told that it is up to Indian Country whether BIA participates in the reorganization, it is not possible to make this determination in the absence of relevant information. How will the reorganization benefit the BIA and Indian Country? How will BIA operate under the unified regional model? How will service delivery change? How would BIA be impacted if it does not participate in the reorganization? These unknowns do not allow for a position on BIA participation.

Further, DOI has yet to provide Indian Country or Congress with a cost-benefit analysis concerning the reorganization. Yet, DOI requested millions of dollars for the reorganization, including \$900,000 to come from BIA for "pre-planning." As the reorganization moves forward, this number is likely to increase exponentially. It is not possible for Indian Country to understand the full ramifications of the reorganization without a full cost estimate, anticipated savings, and better articulated goals.

Importance of the Eastern Region Office

Historically, as part of past reorganization/restructuring efforts, USET SPF member Tribal Nations have consistently had to fight to protect the BIA Eastern Region Office. We are adamantly opposed to any effort to eliminate this office. Previous efforts to fulfill Eastern Region trust obligations through other BIA regional offices have failed and proven that Eastern Region Tribal Nation interests are secondary to the interests of the Tribal Nations within those regions tasked with providing contracted services. While our most recent discussions with DOI indicate that the Eastern Region Office would be preserved, its ongoing relationship with both DOI headquarters and the new, unified regional offices has not been articulated.

Changes and Restructuring in the Absence of Consultation

We are aware that a number of personnel and programmatic changes have been made without Tribal consultation and, in some cases, over the objections of Tribal Nations. 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.

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.”

Need for Broader Consultation

While this consultation seems to exclusively concern whether BIA will participate in the reorganization, each agency and operating division within DOI shares in the trust responsibility and obligation to Tribal Nations. Indeed, Tribal Nations regularly interact with many of DOI’s other divisions, including the Bureau of Land Management, U.S. Fish and Wildlife, and the National Park Service. With this in mind, Tribal Nations must be consulted on the DOI reorganization as a whole, not merely BIA’s participation.

Any Changes must Promote Improved Execution of Trust Obligations

USET SPF member Tribal Nations acknowledge that there may unnecessary levels of bureaucracy and redundancies at 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.

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.

In addition, any cost-savings must be directed to improved execution of trust obligations. Any potential cost savings derived from the reorganization should be redirected to augment the severely underfunded Tribal programs and trustee services provided by Indian Affairs, as well as other as other Tribal programs and services provided by agencies within DOI.

Conclusion

If DOI truly intends to honor Tribal sovereignty and self-determination, as well as its consultative responsibilities, it will work to provide clarity to Indian Country prior to moving forward with further reorganization efforts. 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,

A handwritten signature in black ink, appearing to read "K. Francis", with a long horizontal stroke extending to the right.

Kirk Francis
President

A handwritten signature in black ink, appearing to read "Kitcki A. Carroll", written in a cursive style.

Kitcki A. Carroll
Executive Director