



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