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Hon. Ryan M. Zinke  
Secretary  
Department of the Interior  
1849 C Street N.W.  
Washington, D.C. 20240

Re: Standing Rock Sioux Tribe's Comments on reorganization efforts for the  
Department of the Interior

Dear Secretary Zinke,

On May 16, 2017, the Acting Assistant Secretary for Indian Affairs, Michael S. Black, announced a series of "tribal listening sessions" to hear from tribal leaders on "how the Department and the Federal Government as a whole, if appropriate, could be reorganized to help streamline services to tribe and better fulfill the Federal Government's trust and treaty obligations."<sup>1</sup> The Dear Tribal Leader Letter was in response to the President's March 13, 2017, Executive Order requiring all executive agencies to submit a "proposed plan to reorganize the agency, if appropriate, in order to improve the efficiency, effectiveness, and accountability of that agency."<sup>2</sup>

In furtherance of the Executive Order, the Office of Management and Budget ("OMB") has also mandated that all agencies, including Interior, submit "an initial, high-level draft of the Agency Reform Plan" to OMB on June 30, 2017.<sup>3</sup> Final Agency Reform Plans must be submitted to OMB by September 2017. Agency Reform Plans are expected to (1) "eliminate activities that are not core to the agency's primary mission and/or needlessly redundant"; (2) "assess what activities can be restructured, streamlined, and merged" to streamline government; (3) identify opportunities to "[i]mprove organizational efficiency and effectiveness"; and (4)

<sup>1</sup> See Department of the Interior ("Interior" or "Department"), Acting Assistant Secretary Michael S. Black, Dear Tribal Leader Letter at 1 (May 16, 2017).

<sup>2</sup> Executive Order 13781, Comprehensive Plan for Reorganizing the Executive Branch (Mar. 13, 2017).

<sup>3</sup> See M-17-22 Memorandum for Heads of Executive Departments and Agencies, from Mick Mulvaney, Director, Re: Comprehensive Plan for Reforming the Federal Government and Reducing the Federal Civilian Workforce, at 1 (Apr. 12, 2017).

reduce the cost and size of the federal workforce, including improving performance and accountability of employees.<sup>4</sup>

The Dear Tribal Leaders letter does not provide any details with respect to potential or proposed reorganization plans for the Department of the Interior (“Interior”) and during the listening sessions, federal officials for Indian Affairs only noted that they are open to ideas and suggestions from tribes because no plans regarding reorganization have been developed. However, during recent appropriations hearings on Interior’s Fiscal Year 2018 Budget, Secretary Zinke testified that there were at least some draft plans for reorganization of the Department.<sup>5</sup> It is unclear whether these plans have been shared with Indian Affairs staff, but as Secretary Zinke testified, the plans include restructuring Interior based on approximately 13 identified ecosystem regions with a goal of pushing positions and authority out into the field. In addition, Secretary Zinke discussed having agencies report to “Joint Management Areas” rather than having each bureau or agency report to their own separately identified region, and mentioned that Interior is engaged in joint planning discussions with the Department of Agriculture.<sup>6</sup>

Based on currently available information, the Standing Rock Sioux Tribe (“SRST”) submits these comments for consideration and requests that key senior level political appointees and career management immediately initiate and engage in tribal consultation regarding Interior’s Reform Plan.

## **I. Tribal Consultation**

As Interior considers how to reorganize offices or services that impact or affect Indian tribes, it must meaningfully consult with tribes. As part of consultation, Interior must provide adequate notice and sufficiently detailed information to allow tribes to substantively engage in and provide feedback on any proposed reorganization that will be evaluated and considered by the Department.<sup>7</sup> Meaningful consultation means more than counting the number of meetings that were extended to or held with Indian tribes affected by a federal action. Meaningful consultation means that key senior level decision makers from federal agencies must substantively engage Indian tribes early on in the planning process before any significant federal decisions are made regarding reorganization, consolidation or elimination of services and programs benefitting Indian tribes. There must be a real opportunity for tribal input and the ability to impact the outcome of any proposals or plans.

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<sup>4</sup> *Id.* at 7-10.

<sup>5</sup> See Oral Testimony, Ryan Zinke, Secretary, Department of the Interior, House Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies Hearing (Jun. 8, 2017); Oral Testimony, Ryan Zinke, Secretary, Department of the Interior, Senate Committee on Appropriations, Subcommittee on the Department of the Interior, Environment and Related Agencies Hearing (Jun. 21, 2017).

<sup>6</sup> Oral Testimony, Ryan Zinke, Secretary, Department of the Interior, House Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies Hearing (Jun. 8, 2017).

<sup>7</sup> See Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments” (Nov. 6, 2000); President George Bush, Memorandum on Government-to-Government Relationship with Tribal Governments (Sep. 23, 2004); President Barack Obama, “Memorandum for the Heads of Executive Departments and Agencies re Tribal Consultation” (Nov. 5, 2009).

Listening sessions are not equivalent to or a substitute for tribal consultation. While SRST appreciates the opportunity to provide these initial comments regarding reorganization, Interior's listening sessions do not eliminate the need for consultation. And given that Listening Session comments are not due until July 15, 2017, but Interior must submit a "high level draft of the Agency reform plan" to OMB on June 30, 2017, it appears that tribal views will not be taken into account in the initial high-level plan submitted to OMB. Nor have the reorganization plans mentioned by Secretary Zinke during the appropriations hearing been shared with Indian tribes. While it is unlikely, given the timing, that tribal consultation can occur on the high-level plan discussed by Secretary Zinke, at a minimum, Interior must initiate and engage in meaningful tribal consultation before any final Reform Plan is submitted to OMB.

Additionally, it appears that without any tribal consultation, Interior is already beginning to implement plans in furtherance of its Reform Plan. On June 16, 2017, the Washington Post reported that over three dozen members of the Senior Executive Service ("SES") are being reassigned, including senior leadership within Indian Affairs.<sup>8</sup> No explanation for these moves has been provided or publicly shared. Historically, the Bureau of Indian Affairs ("BIA") has consulted, at least locally, whenever hiring or assigning new SES management to a regional office. In this instance, however, no tribal consultation locally or nationally was provided and it is still not clear where key personnel are moving and how these changes will impact services to affected Indian tribes.

Moving forward, transparency and tribal consultation will be crucial to working collaboratively with Indian tribes. As such, as the reorganization process moves forward, tribes must be provided with adequate information to enable them to provide substantive comments and views on the proposed plans. This includes providing specific information on where funding for any reorganization or consolidation of Interior agencies and their regions will come from – i.e., new congressional appropriations requests or existing discretionary appropriations – and how coordination or consolidation with other federal executive branch agencies will impact available funding and services to tribes. If existing funding will be used, tribes must be provided with information on which budget line items will be targeted and how the Department plans to ensure that impacts to tribal programs will be minimized. If plans involve reassigning or eliminating management responsibilities, and/or consolidating or eliminating non-SES employee positions, the Department must explain why it believes that these actions are necessary and how it will ensure that programs and services to Indian tribes will be able to operate efficiently and effectively. If additional plans are underway to reassign or redelegate senior career management, Interior must provide that information to Indian tribes and explain why it believes these personnel changes are necessary or how they will improve tribal programs or services. Without this type of information, tribes cannot adequately or substantively comment on or provide recommendations on Interior's Reform Plan.

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<sup>8</sup> [https://www.washingtonpost.com/politics/zinke-moving-dozens-of-senior-interior-officials-in-shake-up/2017/06/16/11801d3a-5295-11e7-b064-828ba60fbb98\\_story.html?utm\\_term=.3db0fb4bfb5a](https://www.washingtonpost.com/politics/zinke-moving-dozens-of-senior-interior-officials-in-shake-up/2017/06/16/11801d3a-5295-11e7-b064-828ba60fbb98_story.html?utm_term=.3db0fb4bfb5a) (last visited July [], 2017).

There will be issues that the federal government and tribes are not able to agree on, but in many instances, when there is meaningful consultation many tribal concerns can be addressed or accommodated when a real opportunity is provided to effect changes to a particular proposal or plan.

## **II. Reorganization Efforts Must Honor the Trust Responsibility**

Any reorganization impacting Indian programs or services must start from the principle that the United States has fundamental obligations to Indian tribes and Indian people. This relationship is grounded in federal law through treaties, executive orders, statutes and Supreme Court precedent. The Supreme Court has recognized Indian tribes as “domestic dependent nations” and has described the relationship between tribes and the United States as “that of a nation claiming and receiving the protection of one more powerful: not that of individuals abandoning their national character, and submitting as subjects to the laws of a master.”<sup>9</sup> Indeed, Indian tribes are sovereign governments that possess inherent sovereignty that pre-dates European contact and the U.S. Constitution.<sup>10</sup> As part of this unique legal relationship, Congress has a federal responsibility towards Indian tribes and the Constitution vests Congress with plenary authority over Indian affairs.<sup>11</sup> These principles lay the foundation of the federal government’s trust responsibility with and obligations towards Indian tribes.

Reorganizing Interior will directly impact the lives of Indian people, by affecting the law enforcement that protects their communities, the Bureau of Indian Affairs Education schools that educate their children, the social services that serve their elders, and more. Any reorganization, including the elimination or reduction of programs and services that benefit Indians must be balanced with the United States’ trust responsibility. Many of these programs or services may seem duplicative of other federal programs, but federal programs and services offered to the general public are not often available to Indian tribes. In other circumstances, the federal programs and services are crucial to the United States honoring its treaty and statutory obligations to Indian tribes in fulfillment of the trust responsibility.

A successful reorganization would be one that improves the lives of Indian people by promoting and strengthening tribal communities. Reorganization that seeks only to streamline government or reduce costs to balance the budget will significantly increase the hardships faced by Indian people, to the great dishonor of the United States.

## **III. Consolidation of BIA Regional or other Executive Agency Offices**

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<sup>9</sup> *Cherokee Nation v. Georgia*, 31 U.S. (5 Pet.) 1, 17 (1831); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 555 (1832)

<sup>10</sup> *United States v. Wheeler*, 435 U.S. 313, 322-23 (1978).

<sup>11</sup> U.S. Const. art. I, § 8, cl. 3; *Morton v. Mancari*, 417 U.S. 535, 551-52 (citing the Indian commerce clause as among the sources of Congress’ authority to legislate in the field of Indian affairs).

During the June 8, 2017, House Committee on Appropriations, Subcommittee on Interior, Environment, and Related Agencies hearing, Secretary Zinke recommended that all Interior agencies should be co-located within ecosystem zones. Secretary Zinke further testified that he was considering dividing Interior offices based on 13 ecosystem zones. In his testimony, he noted that it is difficult to divide the United States based on ecosystems given that there are a lot of variables, but he stated that Interior has “done a map with about 13 regions.”

It was not entirely clear what Secretary Zinke was referring to at the time. However, some preliminary research on the Environmental Protection Agency’s (“EPA”) website shows that this type of delineation, referred to as “ecoregions”, is based on the similarity of an ecosystem’s “type, quality, and quantity of environmental resources”.<sup>12</sup> Based on information from EPA, there are 12 “Level 1” ecoregions in the continental United States and these can be furthered localized into 967 “Level IV” ecoregions.<sup>13</sup> Irrespective of the level of detail by which ecoregions can be delineated, it appears that even at Level 1, ecoregions flow across state lines or are scattered within various parts of states.

It will be important for tribes to understand how Interior has developed those 13 regions and which tribes, federal agencies and states would be located under each region. Interior must disclose its map showing the proposed 13 ecosystem regions and provide detailed information about which agencies are intended to be co-located within each region and how this new structure will impact current bureau office locations and structures. Currently more information is needed to evaluate a major re-organization of federal agencies based on ecoregions.

Notwithstanding the ecoregion concept, SRST is not necessarily opposed to Interior considering the consolidation of some BIA’s regional offices. Currently, there are 12 BIA Regions nationwide, with a number of smaller “agency” offices that report to each regional office. SRST believes that targeted consolidation of BIA offices could improve services and streamline tribal programs. The number of tribes represented by the 12 BIA Regional Office varies significantly. For example, the Pacific Region serves 104 tribes whereas the Navajo Region serves a single tribe. There may be valid reasons for the vast differences between regions, but there may also be an opportunity to reevaluate how the regions are divided and consolidate certain regions and their respective “agency” offices to improve and equalize the administration of tribal programs and services.

BIA is not the only federal agency that has a trust responsibility to Indian tribes or that provides services or administers programs affecting tribes. And in certain areas, co-locating other Interior or executive branch agencies in the same locale could also help streamline services and minimize existing silos between federal agencies. For example, in some regions, there is a significant interplay between Indian tribes whose reservations have been affected by Army Corps of Engineers (“ACOE”) or Bureau of Reclamation (“BOR”) projects. In these regions, affected tribes and the BIA are often required to engage and interact with ACOE or BOR over issues impacting the particular tribe’s reservation. Where this occurs, co-locating ACOE or BOR

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<sup>12</sup> <https://www.epa.gov/eco-research/ecoregions> (last visited July [], 2017).

<sup>13</sup> *Id.*

offices with the relevant BIA offices could lead to greater government collaboration and efficiencies. Similarly, in areas where there is a high development of mineral development on Indian lands, co-locating certain Bureau of Land Management (“BLM”) and Office of Natural Resource Revenue (ONRR) offices in the same place as BIA could have comparable results. These types of consolidations or changes could positively impact and improve government functions.

Although it is important to note, that even where it is feasible to co-locate various executive agencies, there will still be a need to have an effective elevation process that allows for higher-level decision making or input into issues. This is important because each executive branch agency has different statutory obligations and missions. And even where agencies are able to collaborate effectively at the local level, there will be instances where agency missions conflict with one another or there is a need to balance agency missions with the United States trust responsibility to Indian tribes. Resolution of these conflicts should occur at the D.C. level in order to ensure maximum consistency across all regions with national policies and goals.

At a minimum, any proposed changes to how the BIA and other Interior regions are structured, or where offices and staff are located must be shared with Indian tribes. Once this information is provided to Indian tribes, Interior must give adequate notice and time to engage in meaningful consultation before any final plans are submitted to OMB.

#### **IV. Ensuring Sufficient Federal Employees to Facilitate Programs and Services**

During the Senate Committee on Appropriations, Subcommittee on the Department of the Interior, Environment and Related Agencies Hearing on June 21, 2017, Secretary Zinke testified that he plans to reduce Interior’s workforce by 4,000 employees.<sup>14</sup> Hiring and retaining federal employees is essential to ensuring that the United States trust responsibility is fulfilled through implementation and operation of federal programs and services that benefit Indian tribes. This includes having high-performing SES management as well as ensuring competent mid-level management and front-line staff that works directly with Indian tribes.

SRST is concerned about the proposed workforce reductions. Ensuring that there are sufficient front-line staff to operate programs and services is an important aspect of efficient and effective government. Indian tribes must be provided with information on how Interior plans to reduce the workforce through natural attrition, early retirement or departure incentives. This is important because if Interior has plans not to backfill certain positions that impact tribal programs or services, tribes must be able to weigh in and provide recommendations for ensuring that the important day-to-day activities and functions that those staff were responsible for can still be carried out by existing federal staff.

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<sup>14</sup> <https://www.appropriations.senate.gov/hearings/review-of-the-us-department-of-the-interior-budget-request-for-fy2018> (last accessed July [], 2017). *See also* Statement of Ryan Zinke, Secretary of the Interior, at 5 (Jun. 21, 2017).

Having strong and competent mid and upper level management is also a key component to effective government. Indian tribes generally work well with their local agency and field staff on managing day-to-day operations. There are times, however, when tribes and local agency staff need the assistance of higher level management with more experience to resolve an issue or problem. Indian tribes are often also involved in issues that present unique legal and policy issues or implicate equities involving tribal, state and national interests. These issues are not always well-suited for resolution by local agency programmatic staff who have limited experience outside their specific area of expertise. Indian tribes must have the ability to elevate issues to mid and upper level management officials who have a broader range of expertise and can work with their sister agencies and/or state counterparts to more fully evaluate, address and resolve these issues consistent with the United States trust responsibility. Any reductions to management must be carefully balanced to ensure that there will a fair and transparent process for elevating issues and resolving conflicts.

Here again, Interior must be transparent and provide details on when reductions or reassignments of SES management are made and how those reductions or reassignments will impact programs and services that benefit Indian tribes.

## **V. New Federal Funding for Reorganization**

The cost of any reorganization or relocation of Interior agencies and offices must not occur at the expense of funding programs and services to Indian tribes. Interior must ensure that any such changes have a net zero effect on Indian tribes. The President's FY 2018 Budget already proposes to cut Indian Affairs by \$303.3 million below the FY 2017 CR funding level. The proposed reductions to the Indian Affairs budget will impact Indian tribes and tribal programs. For example, in the Budget Justification for Indian Affairs, Interior notes that reductions in tribal priority allocations will "reduce the amount of tribal staff that oversee many tribal government functions."<sup>15</sup> Similarly, others budget reductions would impact direct services provided to tribes. Cuts to BIA's real estate services program will "result in fewer staff to perform time sensitive trust activities, which includes lease review, lease approval, conveyance document preparation, establishment of ROWs and easements, counseling services to the trust landowners and mineral owners, and the distribution of trust income."<sup>16</sup> These are just a couple examples to illustrate that any further reductions in the Indian Affairs budget to cover the costs of reorganization would have drastic and detrimental impacts on Indian tribes contrary to the United States trust responsibility.

Interior must ensure that new congressional appropriations are sought and obtained by Congress for its reorganization efforts.

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<sup>15</sup> United States Department of the Interior, Budget Justifications and Performance Information, Fiscal Year 2018, Indian Affairs, at IA-TG-2 (FY 2018).

<sup>16</sup> *Id.* at IA-RES-3.

## **VI. Transfer of Indian Programs to States or Local Governments**

SRST opposes transferring any Indian programs or any responsibility for programs or federal functions that affect Indian tribes to states or local governments. As discussed above in Section II, Indian tribes have a special government-to-government relationship with the United States grounded in the trust responsibility. And pursuant to treaties and statutes, Indian tribes have unique rights and interests to lands and natural resources both off and on reservations and trust lands.

Indian tribes do not have the same legal relationship with states and local governments. Rather, congressional plenary authority over Indian affairs combined with the Supremacy clause of the U.S. Constitution, generally limits state jurisdiction over Indian tribes.<sup>17</sup> Delegating to states or local government federal responsibilities towards Indian tribes would violate the trust responsibility and give states and local companies unprecedented authority in the Indian affairs arena that they otherwise do not possess.

To the extent that the goal is to allow governments to take over federal programs, existing law already provides tribes with the opportunity to assume federal programs that are administered for their benefit. Pursuant to the Indian Self-Determination Education and Assistance Act (“ISDEAA”), Indian tribes can voluntarily contract or compact with the BIA and other federal agencies rather than forcing Indian tribes to take over programs that they do not have the capacity or desire to take over. However, ISDEAA could and should be expanded and used more regularly by federal agencies other than BIA and Indian Health Service to allow tribes to take over additional programs that are established for their benefit.

## **VII. Conclusion**

SRST appreciates the opportunity to provide initial comments on Interior’s reorganization efforts and looks forward to tribal consultation and, as part of consultation, receiving detailed information regarding Interior reorganization plans.

Thank you.

Sincerely,



Dave Archambault II  
Chairman

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<sup>17</sup> See e.g., *Williams v. Lee*, 358 U.S. 217 (1959) (prohibiting the application of state law to on-reservation activities and recognizing that the right of Indians to self-govern was a fundamental aspect of tribal sovereignty); *White Mountain Apache v. Bracker*, 448 U.S. 136, 142, 149 (1980) (holding no state taxation given the pervasive federal regulation of timber on the reservation and the underlying tradition of Indian sovereignty over their territory).