



February 28, 2020

Re: Tribal Nations' Self-Determination, Sovereign Immunity, and Risk Management

Dear Senators and Representatives:

The undersigned Tribal Nation organizations write to request that you carry out your trust responsibilities and obligations to Tribal Nations by supporting our self-determination and sovereignty through protection of our sovereign immunity from suit, an aspect of sovereignty possessed by federal, state, and Tribal Nation governments. We strongly urge Congress to include a funded directive in the FY 2021 Interior and CJS Appropriations Bills to the Department of the Interior Bureau of Indian Affairs' Office of Indian Energy and Economic Development (IEED) and the Department of Justice's Office of Tribal Justice (OTJ) respectively that would facilitate such protection. We ask that you direct IEED and OTJ to use this funding to develop, in consultation with Tribal Nations, a report on best practices for risk management in order to reduce the likelihood of and resolve potential tort claims under Tribal Nations' laws and thereby preserve Tribal Nations' sovereign immunity in tort cases, including those arising from economic development activity wherever located.

When our Tribal Nations negotiated treaties with the United States, we reserved our sovereign and original rights to self-determination and self-government. Our sovereign rights are recognized by the Constitution, treaties, and laws of the United States. Tribal Nations' rights to exercise self-determination and engage in economic development and Tribal Nations' sovereign immunity from suit are aspects of our sovereign authorities. Under the United States' treaty and trust responsibilities and obligations, Congress should act to uphold our original, inherent rights to self-determination and sovereign immunity.

Sovereign immunity from suit is an aspect of sovereignty possessed by federal, state, and Tribal Nation governments. The purpose is to provide protection against loss of assets held in common for many people for the performance of vital government functions. In Federalist No. 81, in support of the Constitution's ratification, Alexander Hamilton wrote:

It is inherent in the nature of sovereignty not to be amenable to the suit of an individual WITHOUT ITS CONSENT. This is the general sense, and the general

practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union.

The United States has recognized that Tribal Nations possess sovereign immunity from suit as an aspect of our status as sovereign governments, thus recognizing our governmental parity. In *Michigan v. Bay Mills Indian Community*, 572 U.S. 782 (2014), the Supreme Court explained:

Among the core aspects of sovereignty that tribes possess . . . is the “common-law immunity from suit traditionally enjoyed by sovereign powers.” . . . That immunity, we have explained, is “a necessary corollary to Indian sovereignty and self-governance.”

Tribal Nations’ sovereign immunity promotes our rights to exercise self-determination and engage in economic development, and the Supreme Court has repeatedly affirmed its applicability to cases arising from our economic development activity wherever located.

We ask that Congress, the Secretary of the Interior, and the Attorney General, in furtherance of the United States’ trust responsibilities and obligations, work with Tribal Nations to preserve our sovereign immunity. A step towards this preservation is Congress appropriating funds so that the Secretary of the Interior and Attorney General may develop, in consultation with Tribal Nations, best practices that Tribal Nations may employ in continuing to take risk management measures. Through risk management measures, Tribal Nations take proactive steps to reduce the likelihood of injuries that could take place in association with our economic activity. Risk management measures can also ensure that, if an injury occurs, a potential tort plaintiff has recourse available through compensation or, when the Tribal Nation chooses to exercise its sovereign authority to do so, through a limited waiver of the Tribal Nation’s sovereign immunity from suit.

On behalf of Indian Country, we respectfully request in the FY 2021 Interior and CJS Appropriations Bills that Congress direct IEED and OTJ respectively to work with Tribal Nations on sovereign immunity and risk management by including the following language:

FY 2021 CJS Appropriations Request

\$50,000 for the Office of Tribal Justice to consult with Indian tribes in coordination with BIA IEED concerning risk management, loss prevention, resolution of tort claims, economic losses and alternative dispute resolution, and protecting and managing tribal sovereign immunity in the context of economic development and to report back to Congress within 180 days on best practices for tribal risk management;

FY 2021 Interior Appropriations Request

\$50,000 for the BIA IEED to consult with Indian tribes in coordination with OTJ DOJ concerning risk management, loss prevention, resolution of tort claims, economic losses and alternative dispute resolution, and protecting and managing tribal

sovereign immunity in the context of economic development and to report back to Congress within 180 days on best practices for tribal risk management;

The Interior Report should further direct that: “The Secretary, through the Interior Office of Risk Management, shall, in consultation with Indian tribes, provide advice and assistance and develop best practices guidance that Tribal Nations may utilize to reduce the likelihood of and resolve potential tort claims, including arising from economic development activity wherever located, in order to preserve Indian tribes’ sovereign immunity.”

Thank you for your hard work to assist Tribal Nations. We appreciate your leadership on behalf of Indian Country and all Americans. We ask that you appropriate our requested funding in furtherance of your trust responsibilities and obligations to support our sovereign rights and authorities.

Sincerely,

Affiliated Tribes of Northwest Indians

Alaska Federation of Natives

All Pueblo Council of Governors

Association on American Indian Affairs

Great Plains Tribal Chairman’s Association

Inter Tribal Association of Arizona

Midwest Alliance of Sovereign Tribes

Native American Rights Fund

National Congress of American Indians

National Indian Gaming Association

Southern California Tribal Chairmen’s
Association

United South and Eastern Tribes
Sovereignty Protection Fund