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White House Council on Native American Affairs Tribal Leader Engagement on Infrastructure and Public Safety *USET SPF Tribal Leader Talking Points*

Summary

On January 18th, the White House Council on Native American Affairs (WHCNA) announced that it would host its first-ever Tribal leader engagement session to inform Biden-Harris Administration action in two areas: 1. Implementation of the [Infrastructure Investment and Jobs Act](#) (IIJA) and 2. [Executive Order on Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing and Murdered Indigenous People](#) (MMIP). The engagement session will bring together high-level officials from the Presidential Cabinet to hear directly the concerns and priorities of Tribal leaders in these areas.

Following this inaugural session, WHCNA-Tribal leader engagement sessions will occur three times a year, in addition to the Tribal Nations Summit. The goal of the Tribal leader engagement sessions is for Tribal leaders to have meaningful input on the policies and deliverables of the WHCNA. USET SPF is encouraged by this development, as we have long called for direct Tribal leader involvement and guidance, as well as greater transparency, in the work of the WHCNA. We continue to advocate for the seating of Tribal leaders on the WHCNA and see these Tribal leader engagement sessions as an important step toward that goal.

Talking Points

General

- **WHCNA's engagement with Tribal Nations is welcome development.** USET SPF has long called for WHCNA to have direct engagement with Tribal leaders. We celebrate this engagement as an important step toward the seating of Tribal leaders as full members of the WHCNA and are hopeful that it leads to improved inter-agency coordination in the execution of trust and treaty obligations across the Executive Branch.
- **We encourage WHCNA to formalize Tribal engagement.** The WHCNA's discussions with Tribal leaders should evolve to include a formalized procedure for engagement. This should involve proper notice procedures, such as through a "Dear Tribal Leader" letter, including advance notice of these opportunities. Ultimately, we suggest that, as a federal body, the WHCNA endeavor to engage in Tribal consultation to inform its work.
- **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 the WHCNA's assistance in the issuance of an executive order from President Biden that: 1. Reaffirms essential trust responsibilities for all federal agencies; 2. Affirms the "best interests" determination in favor of

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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 trust and treaty obligations to Tribal Nations, as well as recognize and support our inherent sovereign authorities and rights.

Infrastructure Investment and Jobs Act Implementation

- **Any infrastructure buildout, in Indian Country and beyond, must not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.** As IIJA spurs an exponential increase in infrastructure development nationwide, Tribal Nations must be consulted with a goal of reaching consent for federal action whenever this development impacts our people, lands, governance, or sacred sites—regardless of whether it occurs on or off Tribal homelands. The federal government must further ensure that the proper cultural, historic, and environmental reviews are being conducted, including National Historic Preservation Act (NHPA) Section 106 cultural reviews, apart from situations in which a Tribal Nation has determined a project is categorically excluded.
- **Prioritize additional funding and support for Tribal Historic Preservation Offices to provide cultural reviews.** Due to chronic underfunding, many Tribal Historic Preservation Offices (THPOs) are currently operating without the necessary personnel to conduct NHPA Section 106 reviews. The explosion in infrastructure development that will be funded by IIJA is likely to overwhelm THPOs without additional funding and other resources. While we recognize an increase THPO funding is proposed under FY 2022 appropriations bills and the Build Back Better Act, we urge the WHCNA to provide and support additional resources for THPOs, so that we may protect our cultural and sacred sites.
- **Direct funding for Tribal Nations should be distributed promptly, on an equitable basis, and in a way that upholds Tribal sovereignty.** It is critical that the federal government ensure that all 574 Tribal Nations have access to infrastructure funding in a prompt, expeditious, and equitable manner. This should be accomplished using existing funding mechanisms, including Indian Self-Determination and Education Assistance Act (ISDEAA) contracts and compacts. Additionally, we continue to urge the federal government to avoid competitive mechanisms for this funding. Forcing Tribal Nations to compete—with each other or other entities—for federal dollars is an abrogation of the federal trust responsibility. Finally, to the extent possible, we urge you to ensure that Tribal Nations are direct recipients of funding, as opposed to passing dollars through states and other entities.
- **Waive or ease matching and non-duplication requirements.** While matching funds and non-duplication requirements may be appropriate for other units of government seeking federal funding, they run sharply counter to federal trust and treaty obligations. Federal funds are delivered to Tribal Nations in fulfillment of these obligations and therefore, must not require the expenditure of limited Tribal resources as a condition of receipt. Non-duplication requirements will only serve as a barrier to infrastructure development in Indian Country. Recognizing that funding for Tribal Nations is limited, the federal government should instead be promoting the creative use of federal dollars to achieve our infrastructure goals.

- **Provide maximum flexibility in use of funds and streamline reporting requirements.** Broadly, Tribal Nations must have maximum flexibility in the use of all funding allocated under the IIJA in fulfillment of trust and treaty obligations. This includes ensuring Tribal Nations have broad authority in allowable costs and activities, unless expressly prohibited by law. Flexibility in use of funds will ensure Tribal Nations have the ability to utilize infrastructure funds in manner that best suits our individual circumstances and communities. Further, Tribal Nations must not be subject to burdensome administrative requirements for use of these funds. This includes application, reporting, audit, or other types of compliance requirements. Any reporting requirements mandated by law must be streamlined and only the minimum required that Tribal Nations may focus on nation rebuilding.
- **Funds must not be contingent upon compliance with laws that do not apply to Tribal Nations.** While we understand and appreciate this Administration's focus on racial equity and justice, we underscore that the relationship between Tribal Nations and the United States is not race-based, but rather a political, diplomatic relationship. Compliance with certain laws of general applicability, including non-discrimination laws, that have never been applied to Tribal Nations due to our unique sovereign, political status, as a condition of receipt of IIJA funds is completely inappropriate. USET SPF encourages WHCNA A to ensure that all federal department and agency actions are consistent with the President's expectation that Tribal sovereignty is respected to the fullest extent. We call on the Biden Administration to begin its consideration of whether to apply any laws and other requirements that are generally applicable to the public to Tribal Nations by first assuming they do not and should not apply to Tribal Nations.
- **Given the chronic underfunding of infrastructure in Indian Country, the federal government should not only focus on funding 'shovel-ready' projects.** We understand the desire to address as many shovel-ready projects as possible in the early years of this funding but want to be sure that those Tribal Nations without shovel-ready projects receive equitable access to funding and support.
- **Marshall Plan for Indian Country.** As the Biden Administration seeks to "build back better", the United States must commit to rebuilding the sovereign Tribal Nations that exist within its domestic borders. While the amount of funding allocated to Indian Country in recent legislative packages, including IIJA, is historic, it will not address the centuries of federal policies focused on terminating and assimilating Tribal Nations or the chronic failures in the delivery of federal trust and treaty obligations. With this in mind, USET SPF continues to call for a comprehensive plan to address unmet infrastructure obligations in Indian Country.

Much like the U.S. investment in the rebuilding European nations following World War II via the Marshall Plan, the legislative and executive branches should commit to the same level of responsibility to assisting in the rebuilding of Tribal Nations, as our current circumstances are, in large part, directly attributable to the shameful acts and policies of the United States. In the same way the Marshall Plan acknowledged America's debt to European sovereigns and was utilized to strengthen our relationships and security abroad, the United States should make this strategic investment domestically. Strong Tribal Nations will result in a strengthened United States. Recognizing the expansiveness and complexity of such a plan, the WHCNA A would be the most appropriate body to coordinate and oversee its design and implementation.

MMIP and Public Safety

- **We support and appreciate this Administration's more complete and comprehensive focus on missing and murdered indigenous people.** We agree with the Executive Order's assertion that, "previous executive action has not achieved changes sufficient to reverse the epidemic of missing or murdered indigenous people and violence against Native Americans." The public safety crisis in Indian Country is directly attributable, at least in part, to U.S. policies of colonialism, termination, and assimilation, as well as the chronic failure to deliver upon the trust responsibility and obligations. While we ultimately seek the restoration of full criminal jurisdiction over our lands, it is our expectation that this Administration's efforts will result in tangible change in Tribal Nation access to law enforcement tools, further restoration of our criminal jurisdiction, and increased attention to our missing and murdered relatives.
- **Ensure laws intended for all Tribal Nations are applied equally.** Several USET SPF member Tribal Nations face unique circumstances in which land claim settlement acts with their respective states are being radically misinterpreted. These land claim settlement acts were primarily intended to provide certainty to landowners concerning disputed title to claimed lands. Unfortunately, top officials in some of these states assert that these settlement acts prevent the execution of any federal law passed afterward for the benefit of Tribal Nations unless Nations with restrictive settlement acts are explicitly identified in statute. In practice, these Tribal Nations are currently restricted from accessing any legislative gains made in recent years for Indian Country, including the restoration of sovereign authorities under the Tribal Law and Order Act and the Violence Against Women Act. These Tribal Nations face a constant threat that their ability to exercise a true and full measure of self-determination may be narrowed even further, at any time. For RSA Tribal Nations, the goal must be parity with other federally recognized Tribal Nations under general federal Indian law and policy.

