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USET SPF Tribal Leader Talking Points 2022 White House Tribal Nations Summit

The 2022 White House Tribal Nations Summit (WHTNS) will occur on November 30th and December 1st, 2022 at the Department of the Interior in Washington, D.C. The Summit will feature new Administration announcements and efforts to implement key policy initiatives supporting Tribal communities. USET SPF provides the following talking points for Tribal leader use during dialogue with both Administration officials and Members of Congress over the course of the WHTNS and related events. While these talking points do not represent an exhaustive list of organizational priorities, they are some of the most pressing issues as 2022 and the 117th Congress come to a close. In addition, we include suggested questions for the discussion portion of each federal panel. For the most up-to-date information concerning the Summit and related events, please visit our [WHTNS webpage](#). The Summit can be livestreamed [here](#).

Budget

Summary

Because of our history and unique relationship with the U.S., the trust obligation of the federal government to Tribal Nations and Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Inadequate funding to Indian Country needs to be viewed as unfilled treaty and trust obligations and should not be vulnerable to year to year “discretionary” decisions by appropriators. Federal spending in fulfillment of trust and treaty obligations is not responsible for the federal deficit and must be held harmless as our nation seeks to reduce its debt. USET SPF envisions a future in which federal funding to Tribal Nations is no longer a discretionary choice and all dollars are contractable and compactable.

Tribal Nations must be treated in a manner befitting our government status, not as grant funded entities or special interest groups. Far too many dollars are only accessible via competitive grants. Forcing Tribal Nations to compete for grants utilizes a process that does not respect the sacred and unique diplomatic relationship that exists between Tribal Nations and the United States.

Recently, the White House [announced](#) the creation of the first-ever Tribal Advisor position within the Office of Management and Budget (OMB). This position will report directly to OMB Director Shalanda Young and will be responsible for coordinating Tribal Nation priorities across OMB’s budgetary, management, and regulatory functions. The Tribal Advisor will also be responsible for coordinating with leaders in the White House and across the Administration and serve as a key point of contact for Tribal Nations. [Elizabeth Carr](#), a citizen of the Sault Ste. Marie Tribe of Chippewa Indians and formerly a Senior Advisor to the Director of the Indian Health Service, has been chosen as the inaugural Tribal Advisor to the Director of OMB.

USET SPF has consistently advocated for the establishment of a Tribal presence at OMB. In USET SPF comments submitted to OMB in [April 2021](#), [July 2021](#), and [May 2022](#) we stressed the importance of establishing a dedicated Tribal Affairs Department within the Director’s Office as well as the establishment of an OMB Tribal Advisory Committee. With this in mind, we applaud this historic decision and look forward to working with Ms. Carr on improving the federal government’s delivery of trust and treaty obligations, including through the federal budget.

Because there is Strength in Unity

Talking Points/ Questions

- We commend the Biden Administration for the creation of the Tribal Affairs Advisor position within OMB and the appointment of Ms. Carr. It is critically important that action is taken to ensure this position becomes permanent and that it receives the appropriate resources. With two years remaining in the Administration, Ms. Carr's work must be promoted and supported to the greatest extent possible in order to make the most amount of progress. Tribal Nations and organizations have articulated a long list of priorities for an improved federal budget process, improvements in the delivery and oversight of federal funds, and improved relations with OMB. What are the short and longer-term priorities for this position? And how can we best support its work?
- The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal Nations and our citizens. Native Americans experience some of the greatest disparities among all populations in this country. As the primary agency in the federal budgeting process, OMB must work with Indian Country to address these chronic shortfalls. In the remaining two years of the Administration, what efforts will OMB undertake to ensure federal Indian agencies and programs are fully funded? Relatedly, USET SPF has recently issued a white paper laying out the concept of a Marshall Plan for Tribal Nations. We would like to have further conversations with Administration officials on this issue and will be seeking your support.

Background Documents

- [Marshall Plan for Tribal Nations White Paper](#)
- [USET SPF Comments to OMB re: FY 2024 Budget Request](#) – 10/14/22
- [USET SPF Talking Points for first OMB Consultation](#) – 3/30/21
- [USET SPF Letter to Congress re: Tribal Nation Inclusion in the Inflation Reduction Act](#) – 8/5/22

Climate Change

Summary

Tribal Nations are uniquely impacted by climate change because of our profound connection to the land. Many Tribal cultures, food sources, ceremonies, and economies are heavily reliant on the ecosystems for resources such as the use of fish, wildlife, and native plants. Tribal Nations further face unique social, health-related, and environmental challenges which compound the challenges faced by climate change. For instance, additional environmental impacts from dams, mining, and pollution have only made it more difficult for Tribal homelands and ecosystems to be resilient to the impacts of climate change. USET SPF member Tribal Nations are facing an increasing number of climate change-related events, including heavy precipitation leading to subsequent flooding, erosion, and decreases in water quality. In addition, Tribal Nations located in coastal areas, including USET SPF Member Tribal Nations, are most at risk for impacts from sea level rise. In fulfillment of the trust obligation, the federal government has an inherent responsibility to ensure the protection of the environmental and cultural resources that support the health and wellness of Tribal communities, as well as to support Tribal sovereignty and self-determination. Therefore, it is critical that Tribal Nations have access to the necessary resources to address the effects of climate change within our communities and as sovereign governments, to be full partners in climate change adaptation and planning efforts.

Successful adaptation for USET member Tribal Nations will rely on use of Indigenous knowledge, resilient and robust social systems and protocols, and a commitment to principles of self-determination. However, it will also require additional action from the federal government to address the institutional barriers USET

member Tribal Nations face today in adapting to Climate Change. Ultimately, it will be important for the United States to meet its trust and treaty obligations to Tribal Nations through ensuring accessible, flexible long-term funding for Tribal Climate Change adaptation.

Talking Points/Questions

- How will the Administration address the inequity issues related to funding and support for Tribal Nations to adapt to climate change? Currently, Tribal Nations must compete with one another for Tribal Climate Resilience funding, placing a disadvantage on Tribal Nations with limited grant development support staff.
- How will the Administration ensure Tribal Nations have our rightful ‘seat at the table,’ as the federal government works with other units of government to address and mitigate the effects of Climate Change?
- How will the Administration ensure that Tribal Nations are properly consulted on renewable energy projects that are proposed on Tribal homelands and especially over Tribal ocean spaces (e.g. offshore wind development)? We have significant concerns with the overall lack of consultation occurring on current offshore wind projects in the Northeast.

Background Documents

- [USET SPF Comments to the White House on Indigenous Knowledge Guidance](#) – 10/11/22
- [USET Testimony Before House Select Committee on the Climate Crisis](#) – 11/18/21

Constitutionality/Nation-to-Nation Relationship

Summary

USET SPF has consistently advocated around the issue of constitutionality with all branches of government. Undermining the constitutionality of programs, laws, spending, and exemptions specific to AI/AN and Tribal Nations flies in the face of well-settled law that defines our relationship with the United States as political in nature and not one based on race. Indian Country must remain vigilant and continue to challenge and oppose any efforts within the federal government—executive, legislative, and judicial—that seek to undermine the constitutionality of our relationship.

This fundamentally flawed narrative, if allowed to go unchallenged, has the potential to erode the very foundation of Tribal Nation-U.S., government-to-government, sovereign-to-sovereign relations. It is critically important that all of Indian Country recognize and appreciate the magnitude of this current challenge and its potentially broader implications. USET SPF continues to partner with other Tribal organizations, both national and regional, in order to ensure a strong, coordinated message from Indian Country, both for the short and long term. Together, we are working to ensure that the strong legal basis of our relationship with the United States is the focus of our argument.

An essential aspect of the federal trust responsibility and obligations to Tribal Nations is the duty to consult on the development of federal policies and actions that have Tribal implications. This requirement is borne out of the sacred relationship between the federal government and Tribal Nations, as well as numerous treaties, court cases, laws, and executive actions. It is a recognition of our inherent sovereignty and self-determination.

However, the duty to consult, despite existing policies and agreements, including Executive Order (E.O.) 13175, is not consistently undertaken or applied, nor is it codified in law. The Nation-to-Nation relationship,

including the right of government-to-government consultation, is rooted in the inherent sovereignty of Tribal Nations and our diplomatic relationship with the United States.

On September 2nd, a [joint Tribal organization letter](#), to which USET SPF is a signatory, was transmitted to House Natural Resources Committee Chairman, Raul Grijalva (D-AZ), in opposition to an [Amendment in the Nature of a Substitute](#) (ANS) to [H.R. 3587](#), the Requirements, Expectations, and Standard Procedures for Effective Consultation with Tribes (RESPECT) Act. The RESPECT Act would codify Tribal consultation requirements for all federal agencies, including independent agencies. As we have previously indicated, USET SPF strongly supports the spirit and intent of the RESPECT Act, including its application to independent agencies. However, we continue to believe that the bill requires additional refinement before it can receive further consideration.

In particular, we are concerned with the inappropriate status the revised bill would confer upon Alaska Native Corporations (ANCs). While the bill does take steps to reinforce that for-profit ANCs are not Tribal governments, it also places them on equal footing during the consultation process. While we do not dispute that ANCs play a critical role that is also complimentary to Tribal Nations that reside within the borders of Alaska, we feel as though this direct inclusion undermines the government-to-government relationship between Tribal Nations and the United States and dilutes consultation as a diplomatic tool.

In addition, on June 29, 2022, the Supreme Court issued its [decision](#) in Oklahoma v. Castro-Huerta, holding that states have concurrent criminal jurisdiction over non-Indian crimes against Indians in Indian country under federal law. In a 5–4 vote, the Court reversed the decision of the Oklahoma Court of Criminal Appeals, which held that the state of Oklahoma did not have jurisdiction over crimes committed by a non-Indian against an Indian within Indian country. Importantly, while the case centered on Tribal criminal jurisdiction in Oklahoma, the decision is likely to have implications across Indian Country because it undermines centuries-old legal precedent that state law does not apply on our lands without congressional authorization. The majority opinion reflects a belief and position that “Indian Country is part of the State, not separate from the State.” USET SPF is alarmed by the flawed, inaccurate, paternalistic, and regressive nature of the decision and its potential to impinge upon the full exercise of our criminal and civil jurisdiction.

Talking Points/Questions

- Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples, which pre-dated the founding of the Republic. The Constitution, treaties, statutes, Executive Orders, and judicial decisions all recognize that the federal government has a fundamental trust relationship to Tribal Nations, including the obligation uphold the right to self-government. Our federal partners must recognize the inherent right of Tribal Nations to fully engage in self-governance and expand the authority of Tribal governments, so we may exercise full decision-making in the management of our own affairs and governmental services, including jurisdiction over our lands and people.
- **The Nation-to-Nation relationship, including the right of government-to-government consultation, is rooted in the inherent sovereignty of Tribal Nations and our diplomatic relationship with the United States. As such, consultation is a tool of diplomacy that exists exclusively between these two parties.**
- Broadly, the U.S. must work to reform the Tribal consultation process as conducted by agencies across the federal government. There must be a reconciliation to provide certainty, consistency, and accountability in Tribal consultation. The federal government must work to standardize and provide a uniform foundation to its Tribal Consultation methods.

- It is time for a Tribal Nation-defined consultation model, with dual consent as the basis for strong and respectful diplomatic relations between two equally sovereign nations. In the short term, we must move beyond the requirement for Tribal consultation via Executive Order to a strengthened model achieved via statute. In the long term, we must return to the achievement of Tribal Nation consent for federal action as a recognition of sovereign equality and as set out by the principles of the United Nations Declaration on the Rights of Indigenous Peoples.

Background Documents

- [Joint Tribal Organization Letter on RESPECT Act](#) – 9/2/22
- [USET SPF Tribal Consultation Principles](#) – March 2021
- [USET SPF Letter to WHCNA re: Laws of General Applicability](#) - 1/26/22
- [USET SPF Alert on Castro-Huerta Decision](#) – 7/6/22
- [USET SPF Alert on Brackeen v. Haaland](#) – 11/17/22

Economic Development/Treasury

Summary

Economic sovereignty is essential to Indian Country's ability to be self-determining and self-sufficient. Rebuilding of our Tribal Nations involves rebuilding of our Tribal economies as a core foundation of healthy and productive communities. Building strong, vibrant, and mature economies is more than just business development. It requires comprehensive planning to ensure that our economies have the necessary infrastructure, services, and opportunities for our citizens to thrive; thus resulting in strong Tribal Nations. In order to achieve economic success, revenues and profits generated on Tribal lands must stay within Indian Country in order to benefit from the economic multiplier effect, allowing for each dollar to turn over multiple times within a given Tribal economy. It is critical that inequities and the lack of parity in policy and federal funding be addressed for Tribal Nations in order to fully exercise our inherent self-governance to conduct economic development activities for the benefit of our Tribal citizens.

The U.S. government has a responsibility to ensure that federal tax law treats Tribal Nations in a manner consistent with our governmental status, as reflected under the U.S. Constitution and numerous federal laws, treaties and federal court decisions. With this in mind, we remain focused on the advancement of tax reform that would address inequities in the tax code and eliminate state dual taxation. Revenue generated within Indian Country continues to be taken outside its borders or otherwise falls victim to a lack of parity. Similarly, Tribal governments continue to lack many of the same benefits and flexibility offered to other units of government under the tax code.

Talking Points/Questions

- We applaud the Administration's commitment to the creation of an Office of Tribal and Native Affairs within the Department of Treasury. Can you provide a status update on the buildout of that office? What efforts are being undertaken to ensure permanency for the office beyond this Administration?
- We understand that the Department of Treasury continues to seek the authority to reprogram CARES Act funding in order to continue to provide technical assistance on Recovery programs, as well as an extension of Emergency Rental Assistance funding. Can you provide an update on the status of these requests?

- Access to capital remains a problem for many Tribal enterprises and Native entrepreneurs, especially given the reluctance and undereducation major financial institutions have around Tribal Nations. What is the administration doing to reduce the barriers in access to capital?
- Dual taxation hinders Tribal Nations from achieving our own revenue generating potential. Although Tribal Nations have authority to tax noncitizens doing business in Indian Country, when other jurisdictions can tax those same noncitizens for the same transactions, Tribal Nations must lower their taxes to keep overall pricing at rates the market can bear or forgo levying a tax at all. The application of an outside government's tax often makes the Tribal tax economically infeasible. How will the Biden Administration assist Tribal Nations in addressing the problem of dual taxation?

Background Documents

- [Joint Tribal Organization letter to Congress on Treasury Funding Anomalies](#) – 9/16/22
- [USET SPF Comments to Treasury re: FY22-26 Strategic Plan](#) – 11/30/21
- [USET SPF Tax Platform](#)

Health

Summary

As Congress and the Administration fail to uphold the trust responsibility to provide health care, USET SPF has continued to advocate for the full funding of the Indian Health Service (IHS) and the expansion of self-governance, as well as innovative ways to stabilize and extend funding. Indian Country, including the citizens of USET SPF Tribal Nations, faces lower health status and lower health outcomes than the rest of the United States. The COVID-19 crisis has underscored the urgent need to stabilize funding for and fully fund IHS.

Advance appropriations for IHS (and all federal Indian agencies and programs), and the certainty it would bring, is long overdue. Importantly, the Senate bill for Fiscal Year (FY) 2023 appropriations includes an advance appropriation of \$5.577 billion for the IHS in FY 2024. This amount is equal to the FY 2023 amount, with the exception of the funding provided for Electronic Health Record modernization, Sanitation Facilities Construction, and Health Care facilities construction. According to the Senate Interior Appropriations Subcommittee, these accounts are exempt from the advance appropriation because of their project-based nature.

This is the second time that advance appropriations for IHS have been included in a Senate Interior Appropriations mark. For FY 2022, the Senate Appropriations Committee had included a proposal for IHS to begin receiving Advance Appropriations in FY 2023, which was ultimately not adopted as a part of final FY 2022 appropriations legislation. As you are aware, USET SPF has consistently supported Advance Appropriations for IHS (and all federal Indian agencies and programs) as a critical mechanism to provide certainty in the short-term. In the long-term, we continue to advocate for mandatory funding for IHS and all federal Indian agencies and programs.

In addition, USET SPF has consistently urged that all federal programs and dollars be eligible for inclusion in Indian Self-Determination and Education Assistance Act (ISDEAA) contracts and compacts. We must move beyond piecemeal approaches directed at specific functions or programs and start ensuring Tribal Nations have real decision-making in the management of our own affairs and assets. It is imperative that Tribal Nations have the expanded authority to redesign additional federal programs to serve best our

communities, as well as have the authority to redistribute funds to administer services among different programs as necessary.

We continue to support efforts to expand ISDEAA to various agencies throughout the Department of Health and Human Services (HHS). In 2013, the Self-Governance Tribal Federal Workgroup (SGTFW), established within HHS, completed a study exploring the feasibility of expanding Tribal self-governance into HHS programs beyond those of IHS and concluded that the expansion of self-governance to non-IHS programs was feasible, but would require Congressional action. However, Congressional action will require support from the Administration. In a recent letter from HHS Secretary Becerra to the IHS Tribal Self-Governance Advisory Committee, the Secretary expressed cost-related concerns with a proposal to expand self-governance within HHS under a demonstration project model.

Talking Points/ Questions

- We greatly appreciate the Administration's efforts in advocating for advance appropriations for the Indian Health Service in the short-term and working toward a proposal for full and mandatory funding for IHS in the long-term. In the remaining days of this Congress and as negotiations proceed on full year funding for Fiscal Year (FY) 2023, we urge the continued advocacy of high-level Biden Administration officials, including the President himself, to see that Congress enacts appropriations for IHS once and for all.
- President Biden has also promised to work with Tribal Nations to expand Indian Self-Determination and Education Assistance Act (ISDEAA) contracting and compacting. Expansion of ISDEAA throughout HHS has long been a priority of Indian Country. In 2013, the Self-Governance Tribal Federal Workgroup (SGTFW), established within the Department of Health and Human Services (HHS), completed a study exploring the feasibility of expanding Tribal self-governance into HHS programs beyond those of IHS and concluded that the expansion of self-governance to non-IHS programs was feasible. A recent letter from Secretary Becerra to the IHS Self Governance Advisory Committee expresses concern related to a proposal to expand self-governance within HHS under a demonstration project model. Is the Administration willing to work with Indian Country to address these concerns, so that the President's objective of self-governance expansion can be achieved during the remaining years of his term?

Background Documents

- [USET SPF Letter to Director Tso re: Initial Priorities – 10/7/22](#)
- [USET SPF Testimony Before House Natural Resources on the Indian Health Service Advance Appropriations Act – 7/26/22](#)
- [USET SPF Resolution 2021:SPF 002 Supporting Legislation to Expand Tribal Self-Governance in the Department of Health and Human Services](#)

Infrastructure Development and Permitting

Summary

For generations, the federal government – despite abiding trust and treaty obligations – has substantially under-invested in Indian Country's infrastructure. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure, such as running water and passable roads. Indeed, there are hundreds of billions of dollars in unmet infrastructure obligations across Indian Country to include housing, transportation, judicial, health care, and communication, among other forms of infrastructure. The United States must commit to assist in the rebuilding of the sovereign Tribal

Nations that exist within its domestic borders. 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. At the same time, any infrastructure build-out, in Indian Country and beyond, must not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.

In addition, the Bi-Partisan Infrastructure bill included a provision called the Build America, Buy America (BABA) Act that established a new purchasing preference for American-made products to be utilized in all federally funded infrastructure projects. We are concerned that Tribal Nations and our long overdue infrastructure projects will be disproportionately impacted by these requirements.

Talking Points/Questions

- With infrastructure development expected to increase exponentially, the costs associated with reviewing permit applications, environmental assessments and impact statements, Section 106 reviews under the National Historic Preservation Act, and other activities associated with federal actions and undertakings for infrastructure projects can be extremely high. These costs often exceed the annual congressional appropriations to federal programs that provide vital funds, technical assistance, and other services to Tribal Nations to conduct these reviews. How will the Administration ensure that Tribal Nations have the resources we need to conduct required reviews and protect our sacred and cultural sites?
- Tribal Nations are particularly concerned with the rapid development of offshore wind and its potential environmental impacts and impacts to submerged sacred sites and offshore cultural resources. Tribal Nations in the Northeast are reporting that proper Tribal consultation is not occurring on these projects and as a result, we are concerned that our cultural resources are in danger. How will the Administration ensure that we can continue to protect our sacred sites as off-shore wind is deployed? Are there opportunities for Tribal co-management of off-shore wind sites?

Background Documents

- [USET SPF Comments to WCHNAA re: BABA – 10/20/22](#)
- [USET SPF Opposition to Manchin Permitting Reform Bill – 9/26/22](#)
- [USET SPF Comments to DOI re: Implementation of IJA – 2/4/22](#)

Tribal Homelands

Summary

Tribal land base is a core aspect of Tribal sovereignty, cultural identity, and represents the foundation of our Tribal economies. USET/USSET SPF member Tribal Nations continue to work to reacquire our homelands, which are fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. As a partner who shares in the trust relationship, it is incumbent upon the federal government to prioritize and defend the restoration of our land bases. This includes a Congressional "fix" to the Supreme Court's decision in *Carcieri v. Salazar* which has severely limited the Secretary of the Interior's ability to take land into trust for Tribal Nations pursuant to the Indian

Reorganization Act, by only extending such authority to those Tribal Nations “under federal jurisdiction” in 1934.

Our member Tribal Nations ultimately seek full ownership, jurisdiction, and management over our homelands without federal government interference and oversight. The federal government’s objective in the trust responsibility and obligations must be to support self-determining Tribal governments and facilitate a robust trust land acquisition program that provides a streamlined and equitable process to establish and increase Tribal land bases.

On June 30th, USET SPF submitted [comments](#) in response to the Department of the Interior’s (DOI) draft revisions to [25 C.F.R. Part 151](#) (Land Acquisition). In general, USET SPF strongly supports DOI’s proposed revisions to 25 C.F.R. Part 151. We agree that what DOI has proposed is likely to lead to a more efficient, less cumbersome, and less expensive fee-to-trust process. In particular, we extend our appreciation to DOI and to Assistant Secretary Newland for the codification of procedures for determining whether a Tribal Nation was ‘under federal jurisdiction’ in 1934.

Talking Points/Questions

- We appreciate DOI’s renewed DOI and Assistant Secretary Newland for this renewed focus on the protection and restoration of Tribal homelands, including the revisions to part 151. How will the DOI continue to promote lands restoration in the remaining years of the Biden Administration? Will you continue to join us in advocating for a fix to the decision in *Carcieri v. Salazar*?
- No Tribal Nation should remain landless. All Tribal Nations, whatever their historical circumstances, need and deserve a stable, sufficient land base – a homeland – to support robust Tribal self-government, cultural preservation and economic development. DOI should ensure every Tribal Nation has the opportunity to restore its homelands. We applaud the inclusion of funding for lands acquisition newly recognized and landless Tribal Nations in President’s Budget Request. How will DOI and the Biden Administration support newly recognized Tribal Nations going forward?

Background Documents

- [Joint Tribal Organization Letter Urging Senate Action on Carcieri/Land Reaffirmation](#) – 11/14/22
- [USET SPF Comments to DOI on Part 151 Revisions](#) – 6/30/22

Additional Background Items

- [July – September 2022 Issue of *The Beat*](#)
- [USET SPF Policy Principles and Priorities – 2021](#)

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