



*Because there is Strength in Unity*



*Our Roots Run Deep*





Seminole Council Oak Tree located on the Hollywood Seminole Indian Reservation

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*“It was a cold winter night at Cherokee Tribal fairgrounds when we passed around the peace pipe and promised each other we all would stick together—no matter what.”*

*-Betty Mae Jumper, Seminole Tribe of Florida*



# **UNITED SOUTH AND EASTERN TRIBES HISTORY**



## MISSION

United South and Eastern Tribes, Inc., is dedicated to enhancing the development of federally recognized Tribal Nations, to improving the capabilities of Tribal governments, and assisting the USET Members and their governments in dealing effectively with public policy issues and in serving the broad needs of Indian people.

## STATEMENT OF UNITY

We, the Eastern Band of Cherokee Indians, Chitimacha Tribe of Louisiana, Mississippi Band of Choctaw Indians, Coushatta Tribe of Louisiana, Miccosukee Tribe of Indians of Florida, Saint Regis Mohawk Tribe, Passamaquoddy Tribe – Pleasant Point, Passamaquoddy Tribe – Indian Township, Penobscot Indian Nation, Seminole Tribe of Florida, Seneca Nation of Indians, Houlton Band of Maliseet Indians, Poarch Band of Creek Indians, Tunica-Biloxi Tribe of Louisiana, Narragansett Indian Tribe, Mashantucket Pequot Tribal Nation, Wampanoag Tribe of Gay Head (Aquinnah), Alabama-Coushatta Tribe of Texas, Oneida Indian Nation, Mi'kmaq Nation, Catawba Indian Nation, Jena Band of Choctaw Indians, Mashpee Wampanoag Tribe, Cayuga Nation, Mohegan Tribe, Shinnecock Indian Nation, Pamunkey Indian Tribe, Rappahannock Tribe, Chickahominy Indian Tribe, Chickahominy Indian Tribe – Eastern Division, Upper Mattaponi Indian Tribe, Nansemond Indian Nation, and Monacan Indian Nation, being numbered among the Nations People of the South and Eastern United States, desiring to establish an organization to represent our united interest and promote our common welfare and benefit, do of our own free will in Council assembly, affirm our membership in the organization to be known as United South and Eastern Tribes, Inc., and proclaim the following objectives and declare our purpose to be:

- To promote Indian leadership in order to move forward in the ultimate, desirable goal of complete Indian involvement and responsibility at all levels in Indian affairs;
- To lift the bitter yoke of poverty from our people through cooperative effort;
- To promote better understanding of the issues involving Indian Tribal Nations and other people;
- To advocate for more effective use of existing local, state, federal, and international resources;
- To promote a forum for exchange of ideas;
- To combine our voices so we can be heard clearly by local, state, federal, and international governments;
- To dedicate ourselves to improvement of the quality of life for American Indians through increased health, education, social services and housing opportunities;
- To reaffirm the commitments of our Tribal Nations to the treaties and agreements heretofore entered into with the Federal Government in a government-to-government relationship and to promote the reciprocity of this relationship and those agreements and treaties; and
- To provide protection of Tribal natural resources.

## UNITED SOUTH AND EASTERN TRIBES HISTORY

While the United States had a long history of onerous policies regarding Native Americans, in the 1950s and 60s, there was a resurgence in the practice, as termination of trust relationship became the norm, and many Tribal governments were disbanded.

Particularly onerous was the Indian Relocation Act of 1956, which resulted in thousands of Tribal citizens becoming isolated from their communities and facing racial discrimination and segregation.

The time had come for new solutions.

Under the Economic Opportunity Act of 1964, Community Action Agencies were established across the country. As a result, Community Action Programs (CAP) were started at the Seminole Tribe of Florida, the Mississippi Band of Choctaw Indians, the Eastern Band of Cherokee Indians, and the Miccosukee Tribe of Indians of Florida.

In 1968, the CAP directors at these Tribal Nations began to discuss the need to organize in order to pool their resources, improve their respective programs, and have more influence on the federal government. The CAP directors were Johnson Lee Owle, Cherokee; Dr. J. W. Rehbein, Miccosukee; Phillip Martin, Choctaw; and Horst Grabs, Seminole.

They realized they would need the support of their Tribal Leaders, so they arranged a meeting to be held at the Cherokee Tribal Nation on October 4, 1968. That evening, a Declaration of Unity was signed to establish United Southeastern Tribes by Miccosukee Chairman Buffalo Tiger, Cherokee Principal Chief Walter Jackson, Seminole Chairwoman Betty Mae Jumper, and Choctaw Chairman Emmett York. At a meeting in Nashville the following year, Attorney Bobo Dean presented a draft of the corporation charter, and a decision was made to incorporate the United Southeastern Tribes as a non-profit organization. On May 27, 1969, Articles of Incorporation of United Southeastern Tribes, Inc. were signed by representatives of the four Tribal Nations: Phillip Martin, Mississippi Band of Choctaw Indians; Fred Smith, Seminole Tribe of Florida; Mary Willie, Miccosukee Tribe of Indians of Florida; and Walter Jackson, Eastern Band of Cherokee Indians.

“When we first started, we didn’t know where we were going. No money and no place to meet,” stated former

Seminole Chairwoman Betty Mae Jumper. “After years of battling, we finally lifted the organization, the USET. It was a cold winter night at Cherokee Tribal fair grounds in North Carolina when we passed around the peace pipe and promised each other we all would stick together—no matter what.”

Joe Dan Osceola, Seminole, was the first President of USET; Buffalo Tiger, Miccosukee, was the Vice-President; Fred Smith, Seminole, was the Treasurer; and Johnson Catolster, Cherokee, was the Secretary. The CAP programs were essential because they provided the funds for organizing. Subsequently, grants from the Bureau of Indian Affairs (BIA), Indian Health Service (IHS), and the Department of Health, Education, and Welfare became the major source of funds.

As explained by Tiger, “USET was organized so that Tribal Nations could gain political power and [advocate and educate Congressional members] on issues such as health care. [The Miccosukee] began contracting BIA programs and administering program services and funds ourselves. In 1973, we requested support from USET [Tribal Nations] at a meeting down here. Chairman Emmett York from Choctaw agreed with us that we could do it, and we continued to push the idea. We continued to negotiate with IHS officials.”

Initially USET operated out of Atlanta, but the offices soon moved to Sarasota. One of the big successes early on—an event that put USET “on the map”—was hosting the National Congress of American Indians (NCAI) in Sarasota. In 1972, NCAI didn’t have the money to hold their annual conference. So Osley Saunook, Cherokee, who was Executive Director at the time, asked Commissioner of Indian Affairs Louis R. Bruce for help. Bruce approved “Category 99” funds for the conference, USET was the host, and it was so successful that USET provided the scholarship for the NCAI Princess and gave the profits from the conference to NCAI.

The conference was important because it showed other Tribal organizations that USET could play a key role in influencing federal policy toward American Indians. Another early success was convincing the BIA to establish another region—the Eastern Area Office—to work with the Seminoles, Miccosukees, Choctaws, Cherokees, and a few other eastern Tribal Nations.



Left to right: Jackson Isaac, Mississippi Band of Choctaw Indians; Walter Jackson, Eastern Band of Cherokee Indians; Emmett York, Mississippi Band of Choctaw Indians; Buffalo Tiger, Miccosukee Tribe of Indians of Florida; Joe Dan Osceola, Seminole Tribe of Florida; Johnson Catolster, Eastern Band of Cherokee Indians; Betty Mae Jumper, Seminole Tribe of Florida; and Phillip Martin, Mississippi Band of Choctaw Indians.

In just a few short years, USET had become a model inter-Tribal organization for the rest of Indian country.

Others who contributed to the founding and early success of USET were Cherokee CAP Director Savannah Bigwitch; Cherokee Key Wolfe, an IHS employee in the Sarasota Office; and Ron Canouryer, an IHS employee, an excellent grant writer, and later Executive Director of USET. Particularly helpful in the early years was Congressman James A. Haley of Sarasota, who served as chairman of the Committee on Interior and Insular Affairs from 1973 to 1976.

Osceola described the early days: “We were always running out of money for our health needs. It was primarily the CAP directors of the four southeastern [Tribal Nations] and the Tribal Leaders that were involved in the founding of USET. Key Wolfe worked with IHS in the Sarasota office, he was real helpful in the beginning. He helped us organize and provided some IHS funds. Ron Canouryer was also an IHS employee that helped with administration in the early years, and helped us get grants.”

In 1972, the Seneca Nation became a USET member Tribal Nation, and in 1976, the Saint Regis Mohawk Tribe became a member. As a result, on December 3, 1979, documents were executed to change United Southeastern Tribes to United South and Eastern Tribes, Inc. The original USET office was first located in Emory University, Atlanta, GA, then moved to Sarasota, FL in 1972. Relocation came once more in 1975 with a move to Nashville, TN, where USET continues to exist today.

In October 2014, USET established the USET Sovereignty Protection Fund, a 501c4 nonprofit sister organization that provides advocacy, education, and awareness on behalf of its member Tribal Nations. With a broad policy platform, USET SPF engages on the most important and critical issues facing Indian Country. Supporting its issue-specific advocacy is a foundation built upon the mission of

promoting and protecting the inherent sovereign rights of Tribal Nations, pursuing opportunities that enhance Tribal Nation rebuilding, and working to ensure that the United States upholds its sacred trust and treaty obligations to Indian Country. USET SPF ensures that the voices of USET SPF Tribal Nations are heard through a strong presence in Washington, DC which includes frequent interactions with policymakers and the development of legislation, regulation, and policy positions. As a part of this effort, the USET SPF works with Tribal, national, and state leadership to create a stronger understanding of Indian Country, its rights, and issues.

In 2016, USET established the USET Community Development Financial Institution, Inc. (USET CDFI), a 501c3 nonprofit organization to provide low-interest loans to Tribal businesses that are unable to obtain loans from traditional sources. This allows capital investment and increased economic development in Tribal communities.

USET membership now includes 33 Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico. Working together, USET is enhancing Tribal Nations and providing a strong voice regarding federal policies and programs throughout Indian country.

USET is dedicated to enhancing the development of Tribal Nations, improving the capabilities of Tribal governments, and improving the quality of life for Indian people through a variety of technical and support services. This includes better healthcare, enhanced economic development, cleaner water, and improved wastewater systems, among many others.

The meeting on that cold winter night in 1968 on the ancestral lands of the Cherokee resulted in one of the foremost intertribal organizations in Indian country, providing a better life for Tribal citizens and a strong voice for better federal policies and programs.

# CHRONICLE OF THE GROWTH OF USET

Formation of United Southeastern Tribes Emory University, Atlanta, GA 4 Tribal Nation Members	October 1968	1969 USET	Incorporation of United Southeastern Tribes
Annual budget \$90K 0 Staff 4 Tribal Nation Members	1969	1975 New Location	USET moved from its second location of Sarasota, FL (since 1972) to Nashville, TN
United Southeastern Tribes, Inc. becomes United South and Eastern Tribes, Inc.	1978 Name Change	1982 Calumet	Calumet Development Company TN Incorporated C-Corp
USET moves into the current headquarters in Nashville, TN	1994 New Building	1995 THPS	USET Tribal Health Program Support (THPS) established (originally known as Health Information Office)
Annual budget \$1M 6 Staff 23 Tribal Nation Members	1999	2004 OERM	Office of Environmental Resource Management (OERM) established (originally known as Environmental Liaison Office)
USET Development Department established	2012 Development	2014 USET SPF	USET Sovereignty Protection Fund (SPF) 501c4 established and approved by IRS USET SPF opened office in Washington, DC
USET Office of Economic Development (OED) established	2015 OED	2015 Organizational Litigation Activity	USET/USET SPF formally includes litigation in its overall advocacy strategy
USET Employee Relations and Personnel Management (ERPM) established	2018 ERPM	2022	Annual Budget \$21M 62 Staff 33 Tribal Nation Members

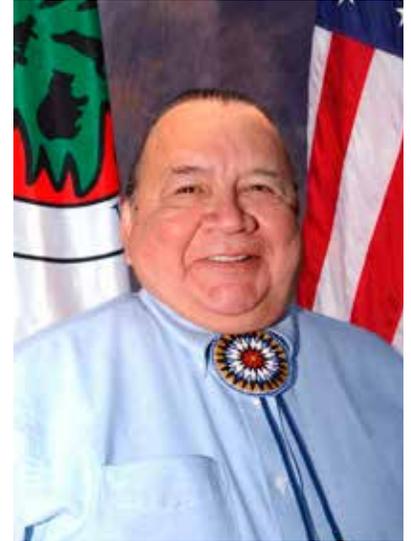
## USET PRESIDENTS PAST AND PRESENT



**Kirk Francis, Sr.**  
Penobscot Indian Nation  
2016-Current



**Brian Patterson**  
Oneida Indian Nation  
2006-2016



**Keller George**  
Oneida Indian Nation  
1994-2006



**Eddie Tullis**  
Poarch Band of Creek Indians  
1990-1994



**Joel Frank, Sr.**  
Seminole Tribe of Florida  
1986-1990



**Leonard Garrow**  
Saint Regis Mohawk Tribe  
1982-1986



**Michael Tiger**  
Seminole Tribe of Florida  
1978-1982



**Jonathan L "Edd" Taylor**  
Eastern Band of Cherokee Indians  
1976-1978



**Howard Tommie**  
Seminole Tribe of Florida  
1973-1976



**Phillip Martin**  
Mississippi Band of Choctaw Indians  
1971-1973



**Emmett York**  
Mississippi Band of Choctaw Indians  
1970-1971



**Joe Dan Osceola**  
Seminole Tribe of Florida  
1969-1970

# EXECUTIVE OFFICERS



**Kirk Francis**  
**President**  
Tribal Chief, Penobscot Indian Nation  
Kirk Francis has served as Chief of the Penobscot Indian Nation since 2006 and holds the distinction of being the Nation's longest-serving Chief since the electoral system began in 1850. Prior to becoming USET/USEP President, he served as Treasurer.

**Sarah Harris**  
**Secretary**  
Vice Chairwoman, Mohegan Tribe  
Sarah Harris has served as Vice Chairwoman of the Mohegan Tribe since October 2019 and is currently in her second term on the Mohegan Tribal Council. She has extensive experience in federal law and policy.

**Crystal Williams**  
**Treasurer**  
Vice Chairwoman, Coushatta Tribe of Louisiana  
Crystal Williams is in her second consecutive term on the Coushatta Tribal Council and is a strong advocate for Tribal sovereignty, cultural preservation, and Tribal youth.

**Robert McGhee**  
**Vice President**  
Vice Chairman, Poarch Band of Creek Indians  
Robert "Robbie" McGhee serves as the Vice Chairman of the Poarch Band of Creek Indians and has been an advocate for Native American issues at all levels of government.



*“The United South and Eastern Tribes, its member Tribal Nations, and the many leaders who have been instrumental over the years in helping with the growth of this vital organization and strengthening our presence in Indian country, have been the forbearers of vision, have been voices of change, and have been instruments of strength for our Native people. As one of the founding members of USET, the Mississippi Band of Choctaw Indians celebrate the collective success, tremendous diversity, and commitment of USET/USET SPF to build brighter futures for our next generation of Native people. It is through our common bonds as America’s first people that we will continue to thrive and persevere as Tribal Nations strengthened by the bond of our unity.”*

*-Chief Cyrus Ben, Mississippi Band of Choctaw Indians*

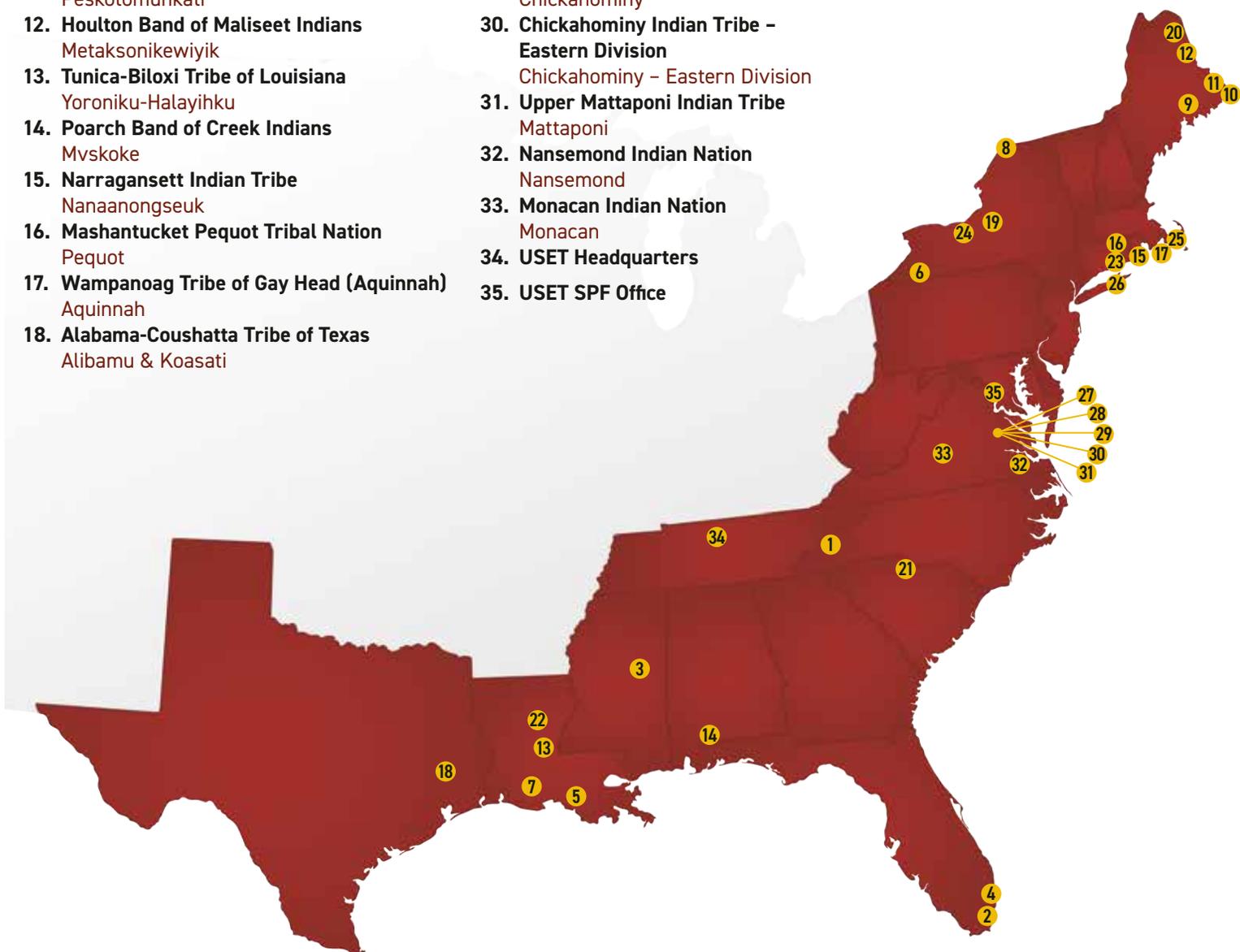


# **MEMBER TRIBAL NATIONS**



## USET/USET SPF TRIBAL NATIONS

1. **Eastern Band of Cherokee Indians**  
Ani'Yunwiya
2. **Miccosukee Tribe of Indians of Florida**  
Mikasuki
3. **Mississippi Band of Choctaw Indians**  
Chahta
4. **Seminole Tribe of Florida**  
I:laponathli
5. **Chitimacha Tribe of Louisiana**  
Sitimaxa
6. **Seneca Nation of Indians**  
Onondowa'ga'
7. **Coushatta Tribe of Louisiana**  
Koasati
8. **Saint Regis Mohawk Tribe**  
Akwesasne
9. **Penobscot Indian Nation**  
Panawahpskek
10. **Passamaquoddy Tribe – Pleasant Point**  
Peskotomuhkati
11. **Passamaquoddy Tribe – Indian Township**  
Peskotomuhkati
12. **Houlton Band of Maliseet Indians**  
Metaksonikewiyik
13. **Tunica-Biloxi Tribe of Louisiana**  
Yoroniku-Halayihku
14. **Poarch Band of Creek Indians**  
Mvskoke
15. **Narragansett Indian Tribe**  
Nanaanongseuk
16. **Mashantucket Pequot Tribal Nation**  
Pequot
17. **Wampanoag Tribe of Gay Head (Aquinnah)**  
Aquinnah
18. **Alabama-Coushatta Tribe of Texas**  
Alibamu & Koasati
19. **Oneida Indian Nation**  
Onyota'a:ká:
20. **Mi'kmaq Nation**  
Mi'kmaq Nation
21. **Catawba Indian Nation**  
Ye Iswah h'reh
22. **Jena Band of Choctaw Indians**  
Chahta
23. **The Mohegan Tribe**  
Maheehkanuwak
24. **Cayuga Nation**  
Gayogoho:no'
25. **Mashpee Wampanoag Tribe**  
Mâseepee Wôpanâak
26. **Shinnecock Indian Nation**  
Shinnecock
27. **Pamunkey Indian Tribe**  
Pamunkey
28. **Rappahannock Tribe**  
Rappahannock
29. **Chickahominy Indian Tribe**  
Chickahominy
30. **Chickahominy Indian Tribe – Eastern Division**  
Chickahominy – Eastern Division
31. **Upper Mattaponi Indian Tribe**  
Mattaponi
32. **Nansemond Indian Nation**  
Nansemond
33. **Monacan Indian Nation**  
Monacan
34. **USET Headquarters**
35. **USET SPF Office**





# EASTERN BAND OF CHEROKEE INDIANS

## ANI'YUNWIYA

**USET founding member October 1968**

### Member Information

- Location: Located within the Qualla Boundary of the Shaconage (Smoky Mountains, North Carolina), the reservation consists of several communities: Snowbird, Cherokee County, Big Cove, Towstring, Yellowhill, Wolfstown, Big Y, Birdtown, 3200 Acre Tract, and Painttown. A small part of the main reservation extends eastward into Haywood County.
- Land Size: More than 56,000 acres
- Population: ~14,000 Tribal Citizens
- Main Industries: Tourism, Recreation, Hospitality, Gaming

The Eastern Band of Cherokee Indians (EBCI) is a sovereign nation with its own laws, elections, government, institutions, and the like. It maintains strong relationships with the United States federal government and the North Carolina state government. The EBCI government consists of an Executive Branch with a Principal Chief and a Vice-Chief, a Legislative Branch made up of a 12-member Tribal Council (two representatives each of six townships), and a Judicial Branch. All government officials are elected using a democratic voting system. The Tribal Nation pays for schools, water, sewer, fire, and

emergency services without assistance from the federal government.

The EBCI were once part of a much larger Cherokee Nation population. In 1838, the desire by the United States for more land provided the excuse to forcefully remove Cherokee in the Southeast to Oklahoma as part of what would become known as the Trail of Tears. More than 16,000 people were forcibly marched to Oklahoma and between 25% and 50% of the Cherokee Tribe died along the way. During this time, the Cherokee Tribe became divided into what is known today as the Cherokee Nation and United Kituwah Band, located in Oklahoma, and the EBCI, made up of those who remained and rebuilt within the Qualla Boundary.

The EBCI are an Iroquoian-speaking people related to those nations in the Iroquois Confederacy and other Iroquoian-speaking groups traditionally occupying territory around the Great Lakes. In 1821, a Cherokee scholar named Sequoyah invented a written Cherokee language. In 1828, just 7 years later, a Cherokee language newspaper began publishing.



Photo credit: Scott McKie



# MICCOSUKEE TRIBE OF INDIANS OF FLORIDA

MIKASUKI

## USET founding member October 1968

### Member Information

- Location: Kahayatle (Everglades)
- Land Size: More than 78,000 acres
- Population: ~600 Tribal Citizens
- Main Industries: Tourism, Recreation, Hospitality, Gaming

The Miccosukee Tribe of Indians of Florida has a long and proud history. The Miccosukee Indians were originally part of the Creek Nation, and then migrated to Kahayatle before it became part of the United States. During the Indian Wars of the 1800s, the Miccosukee fought tirelessly to elude capture and termination and persevered. Most of the Miccosukee were removed to the West, but about 100, mostly Mikasuki-speaking Creeks, never surrendered and hid out in the Everglades. Present Tribal citizens now number over 600 and are direct descendants of those who eluded capture.

To survive in this new environment, the Miccosukee adapted to living in small groups in temporary "hammock style" camps spread throughout the Kahayatle vast river of grass. In this fashion, they stayed to themselves for about 100 years, resisting efforts to become assimilated. Then, after the Tamiami Trail highway was built in 1928, the Tribal Nation began to accept New World concepts.

To ensure that the federal government would formally recognize the Miccosukee Tribe of Indians of Florida, Buffalo Tiger, an esteemed citizen of the Tribal Nation, led a group to Cuba in 1959, where they asked Fidel Castro for, and were granted, international recognition as a sovereign nation within the United States. Following this, on January 11, 1962, the U.S. Secretary

of the Interior approved the Miccosukee Constitution and the Miccosukee were recognized as a sovereign nation solidifying their nation-to-nation, sovereign-to-sovereign diplomatic relationship with the United States government.

On May 4, 1971, officers of the Miccosukee Corporation, acting for the Miccosukee Tribe, signed a contract with the Bureau of Indian Affairs (BIA) authorizing the Corporation to operate all programs and services provided for the Miccosukee Community and formerly administered by the BIA. The Tribal Nation's intent in negotiating this matter was clear; the people wished to decide their own fate and gradually develop total independence.



A General Council including the Chairman, Vice Chairman, Secretary, Lawmaker and Treasurer currently governs the Tribal Nation. The responsibilities of the General Council consist of development and management of resources and the day-to-day business activities of the Tribal Nation including those involving citizenship, government, law and order, education, welfare, recreation and fiscal disbursement.

This group is also known as the Business Council. It is a combination of traditional Tribal government and modern management that form the organizational structure of the present-day Miccosukee Tribal Nation. The Miccosukee Tribe of Indians of Florida operate a Clinic; Police Department; Court System; Day Care Center; Senior Center; Community Action Agency and an Educational System ranging from the Head Start Pre-School Program through Senior High School, Adult, Vocational and Higher Education Programs and other Social Services. These programs incorporate both the traditional Miccosukee Indian ways and non-Indian ways into their system.



# MISSISSIPPI BAND OF CHOCTAW INDIANS

CHAHTA

## USET founding member October 1968

### Member Information

- Location: 10 counties surrounding Chahta, Misiziibi (Choctaw, Mississippi)
- Land size: 35,000 acres
- Population: ~11,000 Tribal Citizens
- Main Industries: Tourism, Recreation, Hospitality, Gaming, Manufacturing

When Europeans began settling America in the 16th century the Choctaw were living in the southeastern United States, largely in the area that was to become Mississippi. The Choctaw lived off both agriculture and hunting/gathering. Their principal sources of food were corn, beans, pumpkins, nuts, fruit, fish, bear and deer. In the wars between the French and the British during the 18th century the Choctaw allied themselves with the French. Consequently, following the defeat of the French in the French and Indian War (1754-63), some of the Choctaw land was taken from them by the British, forcing some to move westwards in search of new land.

Mississippi Choctaws have a strong tradition of doing business. As early as 1700, the Tribal Nation had developed a strong economy based on farming and selling goods and livestock to the Europeans who were beginning to venture into Choctaw territory. Throughout the 18th century, the Choctaws were a prosperous people with large land holdings spread over what is now central Mississippi. As the United States came into

being, however, the expansion of the new nation brought pressures for more land and the federal government turned its attention to land held by American Indians. Like other southeastern Tribal Nations, the Choctaws were placed in the position of negotiating over their lands.

Shortly thereafter, in 1801, the Treaty of Fort Adams was signed in which the Choctaws ceded to the United States 2,641,920 acres of land from the Yazoo River to the thirty-first parallel. That was the first in a series of treaties between the Choctaws and the United States.

More and more Choctaw land was ceded to the federal government with each successive treaty—between 1801 and 1830, the Choctaw ceded more than 23 million acres to the United States. The Treaty of Dancing Rabbit Creek in 1830 marked the final cession of lands and outlined the terms of Choctaw removal to the west. Indeed, the Choctaw Nation was the first American Indian Tribal Nation to be removed by the federal government from its ancestral home to land set aside for them in what is now Oklahoma. When the Treaty of Dancing Rabbit Creek was signed, there were over 19,000 Choctaws in Mississippi. From 1831 to 1833, approximately 13,000 Choctaws were removed to the west. Today, citizens of the Mississippi Band of Choctaw Indians are descendants of the proud Choctaw individuals who refused to be removed—instead, fighting to stay on their ancestral land.

Mississippi Band of Choctaw Indians citizens live in eight communities: Bogue Chitto, Bogue Homa, Conehatta, Crystal Ridge, Pearl River, Red Water, Standing Pine and Tucker. The Tribal government consists of a Tribal Council, including Chief, Vice Chief, Secretary/Treasurer, a Committee Systems Chairperson and 14 council members representing the eight Choctaw communities. The Council is responsible for passing all the laws and regulations on the reservation.





# SEMINOLE TRIBE OF FLORIDA

## I:LAPONATHLI

### USET founding member October 1968

#### Member Information

- Location: Big Cypress, Brighton, Hollywood, Immokalee, Tampa, Fort Pierce, and Coconut Creek (Miami, Florida area)
- Land Size: ~89,000 acres
- Population: ~3,762 Tribal Citizens
- Main Industries: Tourism, Recreation, Hospitality, Gaming, Retail

Ancestors of the Seminoles have lived in what is now the southeastern United States for at least 12,000 years. The 20th century saw the re-emergence of Florida Seminoles who had resisted removal, and survived economically by selling plumes, hides, fish and game at trading posts like Smallwood in Chokoloskee, Brown's Boat Landing in Big Cypress, and Stranahan in Fort Lauderdale. Other Seminoles profited from the early boom in Florida tourism by selling crafts and wrestling alligators.

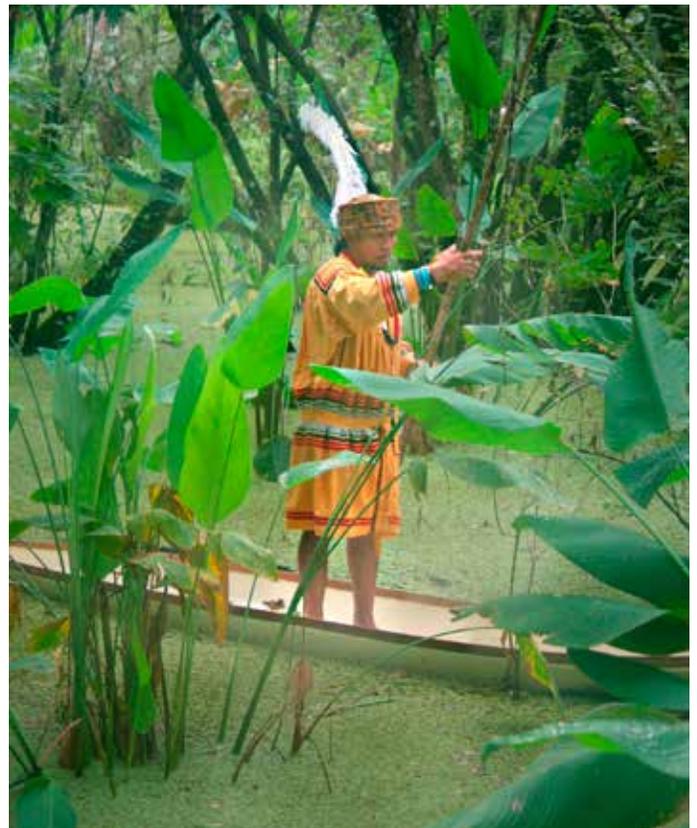
The 1920s closed with two profound events, the completion of the Tamiami Trail, which opened Florida's last frontier, and the deadliest hurricane in history—the 1928 storm, which whipped the waters of Lake Okeechobee into a tidal wave that drowned an estimated 4,000 people.

In the 1930s and 40s, American Indians were treated as orphaned wards by a federal government preoccupied with world conflict. After World War II, a policy of termination and assimilation was pursued by the United States. Again, the Seminoles were among the resisters, demanding a settlement for lands lost, writing their own constitution and receiving federal recognition in 1957.

By 1957, after numerous community meetings, a constitution was forged establishing a two-tiered government (Tribal Council and Board of Directors) with elected representation from each Seminole community. That same year, the U.S. Congress officially recognized the unconquered Seminole Tribe of Florida; the Tribal Nation immediately began wading into the mainstream of the federal Indian system.

The first Seminole government achieved what many felt was impossible, bringing the chaos of a new organization under control and the first monies into the tiny Tribal treasury. Thus began the modern era of the Seminole Tribe of Florida. The wise framers of the Seminole Constitution foresaw an economic prosperity far beyond the small-time tourism ventures—alligator wrestling shows, airboat rides, roadside arts and crafts booths, village tours—that had become the staple of individual and Tribal economy.

Today, the Council administers the Seminole Police Department, the Human Resources programs, the Tribal gaming enterprises, citrus groves, the Billie Swamp Safari, the Ah-Tah-Thi-Ki Museum and the majority of the Tribal Nation's cigarette-related enterprises. The Seminole Tribe of Florida's Legal Services Department administers a public defender's office, Water Resource Management, and the Utilities Department.





# CHITIMACHA TRIBE OF LOUISIANA

## SITIMAXA

**USET member since November 1971**

### Member Information

- Location: Bayou (bayou) country (Charenton, Louisiana)
- Land Size: 445 acres reservation trust land; 562 fee land acres
- Population: ~1,300 Tribal Citizens
- Industries: Tourism, Recreation, Hospitality, Gaming, Services

The Chitimacha Tribe of Louisiana is the only Tribal Nation in Louisiana to still occupy a portion of their aboriginal homeland. The Chitimacha, according to oral history, "have always been here." The Tribe's lands once encompassed the entire Atchafalaya Basin, lands westward toward Lafayette, Louisiana, southward to the Gulf of Mexico and eastward to the New Orleans area. At the time of contact with European explorers and other non-indigenous populations, the Chitimacha were known as one of the most powerful Tribal Nations along the gulf region. As a sovereign nation, the Chitimacha Tribe of Louisiana shares a unique government-to-government relationship with the United States.



Based upon documentary evidence and upon information from Tribal informants, a brief sketch of the Chitimacha Tribe prior to contact with Europeans can be constructed. The Chitimacha were arranged in a class system. This system was more rigid than the famous Natchez system, employing different forms

of address, both polite and common. Clans also existed; wolf, bear, dog, and lion clans were documented in the early 1900s. Clan membership was based on matrilineal descent.

The Chitimacha subsisted on maize, potatoes, and wild game. They preferred deer, alligator, and aquatic species. Hunting and fishing were accomplished with the aid of bone, stone, or garfish scale pointed arrows, or through the use of blow guns and wooden darts, as well as nets and traps for fishing. The Chitimacha were prolific ceramics producers until about 200 years ago when those techniques were lost to history, however the designs are said to have been similar to those employed in basketry.

On September 14, 1970, the Tribal Nation adopted a Constitution and bylaws, and the traditional system of government was replaced with a Tribal Council. The Council consists of five elected officials: Chairman, Vice-Chairman, Secretary/Treasurer, and two Councilmen-at-Large. The Tribal government takes care of Chitimacha citizens with its own Police Department, Fire Department, Health Clinic, Pharmacy, Museum, Cultural/Historic Preservation office, Elderly Assisted Living facility, Housing program, Scholarship program, and many others. They are constantly upgrading social and emergency services to Tribal citizens; and they are leaders in the preservation of cultural resources for future generations.

The crown jewel of the Chitimacha cultural tradition is river cane basketry, both single and double woven. According to Tribal legend, basketry was taught to the Chitimacha by a deity and has been practiced by Tribal families for thousands of years.





# SENECA NATION OF INDIANS

## ONONDOWA'GA'

### USET member since June 1972

#### Member Information

- Location: Finger Lakes Region (Central New York)
- Land Size: Comprised of 31,095 acres in the Allegany Territory; 22,011 acres in the Cattaraugus Territory; one square mile in Cuba, known as the Oil Spring Territory; 30 acres in Niagara Falls, New York, and 9 acres in Buffalo
- Population: More than 8,000 Tribal Citizens
- Main Industries: Tourism, Recreation, Hospitality, Gaming, Energy, Retail, Services

The Seneca are known as the “Keeper of the Western Door,” for the Seneca are the westernmost of the Six Native American Nations which comprised the Iroquois Confederacy, a democratic government that pre-dates the United States Constitution. In the Seneca language they are known as O-non-dowa-gah, (pronounced Oh-n’own-dough-wahgah) or “Great Hill People.”

The historical Seneca occupied territory throughout the Finger Lakes area in Central New York, and in the Genesee Valley in Western New York, living in longhouses on the riversides. The people relied heavily on agriculture for food, growing the Three Sisters: corn, beans, and squash, which were known as Deohako, (pronounced Jo-hay-ko) “the life supporters.” In addition to raising crops, the early Seneca were also subsistence hunters and fishers. The Seneca were also highly skilled at warfare and were considered fierce adversaries. But the Seneca were also renowned for their sophisticated diplomatic and oratory skills and their willingness to unite with the other original five nations to form the Iroquois Confederacy of Nations.

The modern-day Seneca Nation of Indians is a true democracy whose constitution was established in 1848. The Nation’s constitution provides for a multi-branch system of government that is comprised of elected Executive and Legislative branches, and an elected Judicial branch. The Executive Branch leadership includes a president, treasurer and

clerk. The Legislative Branch is led by a 16-member Tribal Council, comprised of an equal number of representatives from the Cattaraugus and Allegany territories. The Judiciary Branch is comprised of three separate divisions, the Peacemaker, Appellate and Surrogate courts. The Peacemakers Court is the court of general jurisdiction and is located on each of the Allegany and Cattaraugus Territories. The Surrogate Court is comprised of one Surrogate for each of the Allegany and Cattaraugus Territories, and exercises jurisdiction over probate matters. The Court of Appeals is comprised of six judges who hear appeals from the Peacemakers and Surrogates Courts. The Council serves as Supreme Court and exercises limited jurisdiction over certain appeals from the Court of Appeals.

The Seneca Nation supports its citizens and benefits surrounding communities with a variety of cultural, educational and economic efforts. Language, song, art, dance, and sports are all vital aspects of Seneca culture. Although the number of fluent Seneca language speakers is diminishing and the language is considered at-risk, there are language programs at the Seneca Nation in place to help protect, preserve and develop a new generation of Seneca language speakers to keep the Seneca language alive. A Faithkeepers’ School supports and ensures the ongoing practice of traditional teachings, arts, knowledge and the living culture of the Longhouse ways.





# COUSHATTA TRIBE OF LOUISIANA

## KOASATI

**USET member since August 1974**

### Member Information

- Location: Bayou (bayou) country (Elton, Louisiana)
- Land Size: ~1,050 acres of Reservation trust land and 5,760 acres fee land
- Population: 900 Tribal Citizens
- Main Industries: Tourism, Recreation, Hospitality, Gaming, Agriculture

The Sovereign Nation of the Coughatta Tribe of Louisiana is a federally recognized Native American Tribal Nation who have called the piney woods of Southwest Louisiana home for more than a century. As the 20th century dawned, Coughatta leaders began to engage the United States government to ensure the well-being of their people. Years of advocacy paid off in 1935, as the federal government extended tuition funding to Coughatta children and, in 1945, offered community members contract medical care. Then, in 1953, the relationship between the Coughatta and the federal government soured, when, despite earlier treaties with the Tribal Nation, the Bureau of Indian Affairs terminated all services to the community without congressional approval or community consent.

Efforts to regain federal recognition began in 1965, as community members organized Coughatta Indians of Allen Parish, Inc. and established a local trading post to sell Coughatta pine needle baskets. In 1970, Coughatta

leaders began petitioning the Indian Health Service to again provide medical care for medical care for Tribal citizens. These efforts were successful in 1972, which was the same year the Louisiana Legislature granted the Coughattas official recognition. Finally, in June of 1973, the Coughatta Tribe of Louisiana, under Tribal Chairman Ernest Sickey, once again received federal recognition from the Secretary of Interior. After regaining federal recognition, the Coughatta Tribe of Louisiana began investing in a variety of enterprises in order to provide revenue for their Tribal government and jobs for community citizens. The Coughatta Tribe has constructed Tribal housing, rice and crawfish farming and development of new business programs, as well as buildings to house the Tribal Government and Tribal Finance Departments; a Tribal Police and Fire Department; and Community, Health and Learning centers. The Tribal Nation also operates a variety of smaller business enterprises, as well as health, educational, social and cultural programs that have economic and social impact on the Tribal and surrounding communities.

Women's roles have always been prominent in Coughatta society. The Coughatta people work hard to preserve their Koasati language, their traditional crafts, such as their longleaf pine needle basketry, and their cultural traditions, including dancing, clothing styles, songs, and foodways. Like many other traditions and practices, the Coughatta family unit continues to flourish and remains the cornerstone of Coughatta life. Today, the Tribal Nation is composed of seven large families known as "clans."

From their earliest days as a proud, hard-working people struggling to maintain long-standing traditions in the face of possible relocation, the Coughatta Indians have endured and overcome every hardship they have faced and have remained on Tribal lands in and around Elton, Louisiana, since the 1800s. Despite serious setbacks and some population dispersal, the Tribal Nation's character and ideals have not only held fast, but have been strengthened. The Coughatta language, Koasati, is still spoken as a first language in the Coughatta community today.





# SAINT REGIS MOHAWK TRIBE

## AKWESASNE

**USET member since August 1976**

### Member Information

- Location: Finger Lakes region (Akwesasne, New York, and Quebec and Ontario, Canada)
- Land Size: ~14,648 acres on U.S. side; ~7,400 acres on Canadian side
- Population: 13,192 Tribal Citizens
- Main Industries: Tourism, Recreation, Hospitality, Gaming, Telecommunications, Private Sector Economy

The Mohawk are traditionally the keepers of the Eastern Door of the Iroquois Confederacy, also known as the Six Nations Confederacy or the Haudenosaunee Confederacy. Their original homeland is the northeastern region of New York State, along the Saint Lawrence River, straddling the international and provincial borders on both banks of the river, extending into southern Canada and Vermont.

Throughout the 19th century the Saint Regis Mohawk Tribal Council Government evolved to a point where the trustees were called Tribal Chiefs, elected by majority vote. The Tribal Council is comprised of three Chiefs, three Sub-Chiefs and a Tribal Clerk. The Saint Regis Mohawk Tribal Council Chiefs are responsible for setting policy and making major decisions on behalf of the Tribal Nation. They oversee the operation of the Saint Regis Mohawk Tribal government and assure that quality programs and services are made available to their Tribal citizens. The Tribal Clerk maintains the official records of Council. New York State and the United States federal government deal with the Saint Regis Mohawk Tribal Council on a government-to-government level.

After the American War of Independence, the Mohawk people found it necessary to deal with the government of the State of New York. In order to protect themselves and their best interests, the Mohawks decided to select representatives to interact with New York. In the 1930s the federal government proposed the Indian Reorganization Act (IRA). Each Tribal Nation was given the opportunity to reject the IRA and the Saint Regis Mohawks did reject the Act of 1935. In 1953, a federal task force arrived at Saint Regis to prepare termination legislation, but the



Chiefs and Saint Regis citizens rejected the termination. Despite this, the Bureau of Indian Affairs proposed bill was presented to Congress where it died in committee without serious consideration. Administrative termination of Tribal Nations continued throughout the 1950s. In the mid-1960s, however, the federal government was reminded that there had been no official termination of the federal relationship with the New York State Iroquois. The acknowledgment of the federal relationship was slow to manifest itself. Following preliminary findings, the leaders of the Iroquois Tribal Nations, including those of the Saint Regis, were invited to Washington to explore the establishment of a viable relationship. The Tribal Council has received federal and state funds for a variety of Tribally administered programs since 1973, all of which primarily employ Tribal citizens. The Saint Regis Mohawk Tribe administers its own environmental, social, policing, economic, health and educational programs, policies, laws and regulations.

The Mohawk people strongly believe in perpetuating their language, songs, dances and special ceremonies in the old way within traditional Longhouses. Failure to keep sacred this tradition would be in violation of the teachings passed on by the Creator. Mohawk people of today have combined centuries-old ways of living into 20th century everyday life. The values of historical culture still remain present in daily life. A distinctive heritage, language, ceremonies and traditional beliefs are still revered and maintained. The code of everyday living, "The Great Law," has been kept alive by verbal teachings and continued practices for hundreds of years. People still honor the traditional system of Chieftainship, Clan Mothers and Faith Keepers.



# PENOBSCOT INDIAN NATION

## PANAWAHPSKEK

**USET member since May 1979**

### Member Information

- Location: Northeastern Woodlands (Indian Island Reservation near Old Town, Maine)
- Land Size: 118,923 acres
- Population: 2,398 Tribal Citizens
- Main Industries: Tourism, Recreation, Retail, Energy, Services

The ancestral home of the Penobscot Nation covered the entire Penobscot River Watershed in eastern Maine. The rich resources of the area amply supplied the early Penobscot people with fish, game and native plants. Culturally, the Penobscots are one of the four Tribal Nations of the original Eastern Abenaki group. The Tribal Nation is a member of the Wabanaki Confederacy, which means "People of the Daybreak," or "Dawn land People" (wabun meaning "light" or "white," aki meaning "earth").

The citizens of Penobscot Indian Nation speak a dialect of the eastern Algonquian language. The Penobscot Nation is one of the oldest continuously operating governments in the world.

The Penobscots did not receive federal recognition until late in the 20th century. The U.S. District Court ruled that the Non-Intercourse Act was applicable to the Penobscot and Passamaquoddy Tribal Nations, despite the previous lack of federal recognition. This ruling established a trust relationship with the United States and in effect ordered the federal government to litigate a Non-Intercourse Act claim against the State of Maine for damages arising from the illegal taking of Indian lands. The decision also made the Maine Tribal Nations eligible for federal benefits such as housing, education, health care, and other social services. In April of 1980, the Maine legislature adopted the Maine Implementing Act, settling the outstanding land claims. Six months later, the U.S. Congress approved the corresponding federal legislation. As a result of this complex settlement, the

Penobscot Nation is recognized as a sovereign, federally recognized Tribal Nation, a municipality under state law, and a business entity.

The Penobscot Nation currently operates many departments and programs, offering Child and Family Services, Elder Services, Child Daycare, Law Enforcement, Forestry, Adult Vocational Training, Health Services, Natural Resources and many others. The Penobscot Nation citizens elect a 12-member Tribal Council as well as a Chief and Vice Chief. Nation citizens also elect a Penobscot Legislative Representative to represent them in the Maine Legislature.





# PASSAMAQUODDY TRIBE – PLEASANT POINT

## PESKOTOMUHKATI

### USET member since May 1979

#### Member Information

- Location: Northeastern Woodlands (rural and coastal Washington County, Maine)
- Land Size: 128,088 acres
- Population: 2,014 Tribal Citizens
- Main Industries: Tourism, Recreation, Agriculture, Retail

The Passamaquoddy have lived and flourished within their homeland at least since the time when the Laurentide Ice Glaciers melted away from northeastern North America, about 10 to 14 thousand years ago. For millennia, the Passamaquoddy way of life was to hunt, fish, trap, and gather food and medicine and to employ the natural resources of the environment to sustain their communities. The Tribal Nation used an elaborate network of rivers, lakes, and portages to trade with other Tribal Nations in New England, the Maritime Provinces of Canada, and beyond. Over the past 400 years the encroachment and degradation of the resources in their homeland forced the Passamaquoddy people to adapt, forcing a shift away from their traditional indigenous economy. The Tribal Nation is a member of the Wabanaki Confederacy, which means “People of the Daybreak,” or “Dawn land People” (wabun meaning “light” or “white,” aki meaning “earth”).

By 1755, the Passamaquoddy Tribe was one of only a few Tribal Nations still residing in Maine, many of the others having been forced to flee into Canada because of their allegiance to the French during the French and Indian wars. Congress, in 1790, passed legislation to curtail exploitation of Indian lands (the Indian Trade and Intercourse Act). Since the United States historically took no action against states for violations of the Act, the legal presumption arose that Maine Indians were not protected by this legislation and that the federal government had no responsibility towards them. By the mid-1830s, the Passamaquoddy had been deprived of almost all its aboriginal territory. Not until two hundred years after

the Revolutionary War did the federal government acknowledge its obligation to the Passamaquoddy.

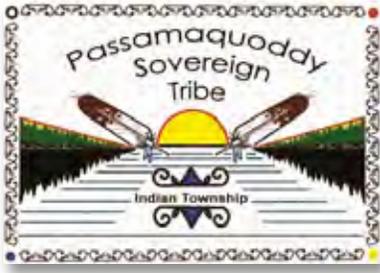
In 1975, a United States District Court ruled that the Non-Intercourse Act applied to Maine’s two Tribal Nations, the Passamaquoddy and the Penobscot (*Passamaquoddy v. Morton*). This ruling established a trust relationship with the United States. The subsequent negotiated settlement of this case, culminating in passage by Congress of the Maine Indian Claims Settlement Act (PL 96-420) in 1980, marked a critical turning point in the history of the Passamaquoddy Tribe.

The land claim settlement, however, created a unique situation for the Passamaquoddy. By virtue of the Act and its accompanying state legislation (the Maine Implementing Act), the Tribal Nation has both the sovereign status of a federally recognized Tribal Nation and a unique status within Maine law.

The Passamaquoddy Joint Tribal Council has met the challenge to establish the basic governmental services, physical infrastructure (roads, sewer, water, housing, and schools), and human and social services the Tribal citizens need. The Passamaquoddy Tribe at Pleasant Point is federally recognized and has its own Tribal Constitution, which was adopted in 1990 and fully describes its sovereign powers. The Tribal Sakom and Vice-Sakom, along with six council members comprise the Pleasant Point Passamaquoddy Tribal Government and governing body.



Photo credit: Pleasant Point Facebook



# PASSAMAQUODDY TRIBE – INDIAN TOWNSHIP

## PESKOTOMUHKATI

### USET member since May 1979

#### Member Information

- Location: Northeastern Woodlands (Washington County, Maine)
- Land Size: ~140,000 acres
- Population: 1,629 Tribal Citizens
- Industries: Tourism, Recreation, Agriculture, Retail

The Passamaquoddy are known as the easternmost Tribal Nation in the United States. The Passamaquoddy are one of several Tribal Nations which formed the Wabanaki Confederacy, which means “People of the Daybreak,” or “Dawn land People” (wabun meaning “light” or “white,” aki meaning “earth”). The ancestral home of the Passamaquoddy Tribe covered the entire St. Croix River watershed in Washington County, Maine, and adjacent New Brunswick, Canada.

The Passamaquoddy were among the first Native Americans to have contact with Europeans. The wide bays along the Maine coast attracted the attention of fishermen and explorers searching for a sea route through the continent as early as the sixteenth century. The Passamaquoddy Tribe supported the Americans in the Revolutionary War based on promises and assurances endorsed by General George Washington. Once the war was won, however, these alliances were forgotten. Congress in 1790 passed legislation to curtail exploitation of Indian lands known frequently as the Non-intercourse

Act. By the mid-1830s, the Passamaquoddy Tribe had been deprived of almost all of its aboriginal territory. State-appointed Indian Agents exercised total control over the dispensing of food, clothing, shelter, health care, and other necessities. For many generations, the Passamaquoddy people lived at a bare subsistence level. A state agent handled Indian affairs in accordance with the Indian laws in the state legal code, and state policy was predicated on the assumption that the Tribal Nations would gradually disintegrate as individuals left their lands. Tribal councils were not recognized, Tribal governors were rarely consulted, and Tribal decisions were thwarted. Additional land was lost as the state legislature reinterpreted treaties or granted long-term leases to non-Indians. Maine was the last state to grant reservation Indians the right to vote (1954).

In 1975, a United States District Court ruled that the Non-Intercourse Act was applicable to Maine’s Passamaquoddy Tribe. The subsequent negotiated settlement of this case marked a critical turning point for the Passamaquoddy Tribe, enabling the Tribal Nation to buy land, develop Tribal businesses, employ Tribal citizens, and provide investment capital to non-Indians. The Passamaquoddy Tribe has also established the basic government services, physical infrastructure and health and social services to care for their citizens. At the same time, the Tribal Nation has struggled to address complex issues of Tribal rights and responsibilities arising from its legally imposed status as a Maine Indian Tribal Nation.



Photo credit: Donald Soctomah



# HOULTON BAND OF MALISEET INDIANS

## METAKSONIKEWIYIK

**USET member since May 1981**

### Member Information

- Location: Along the Meduxnekeag River (northern Maine)
- Land Size: ~1,343 acres
- Population: ~1,700 Tribal Citizens
- Industries: Tourism, Recreation, Agriculture, Retail

Before contact with Europeans, the Maliseets occupied much of what is now considered the eastern border line of the U.S. and Canada in northern New England. After the Jay Treaty in 1794, the Maliseets obtained free border crossing rights between the two countries because their villages spanned both countries.

The Houlton Band of Maliseets are part of the Wabanaki ("People of the Daybreak," or "Dawn land People" (wabun meaning "light" or "white," aki meaning "earth")

Confederacy, which had a comprehensive set of laws designed to insure the political and social cohesiveness of the Wabanaki Tribal Nations. From 1790 through 1870 the Maliseets became more inactive, changing their mobile lifestyle, and stayed together in one place. They believed prior treaties made would protect them and their way of life. Encroaching settlers continued to disrupt their community, yet the Maliseets continued to live and govern their citizens in Maine throughout the early 20th century.

The Houlton Band of Maliseet Indians has been federally recognized by the United States since October of 1980. The governmental structure of the Houlton Band of Maliseet Indian consists of a six-member Tribal Council and the Tribal Nation is led by a chief, all of whom are elected by majority vote. Tribal Council is establishing a 501(c)(3) organization called the Maliseet Community Development Authority. This non-profit organization helps to enhance the well-being of the Houlton Band of Maliseet Indians and its neighboring communities

through initiatives in the following areas: Economic, Education, Culture, Social, Health & Wellness and Natural Resources. Currently, the Tribal Nation has farm and commercial land holdings in Aroostook County. Much of the land borders a significant amount of the Meduxnekeag River, a critical link in preserving Tribal practices, traditions and history.



Photo credit: Clarissa Sabattis



# TUNICA-BILOXI TRIBE OF LOUISIANA

YORONIKU-HALAYIHKU

## USET member since May 1984

### Member Information

- Location: Bayou (bayou) country (Marksville, Louisiana, in the Parish of Avoyelles)
- Land Size: ~1,720 acres
- Population: 1,184 Tribal Citizens
- Main Industries: Tourism, Recreation, Hospitality, Gaming, Entertainment

The Tunica-Biloxi Tribe of Louisiana is one of four federally recognized Native American Tribal Nations in the state of Louisiana. They were the first people encountered by French colonizers Jean-Baptiste Le Moyne de Bienville and Pierre Le Moyne d'Iberville in 1669. After the Louisiana Purchase in 1803, the United States committed itself to a policy of protecting Indian land and rights, but, in reality, disregarded the smaller Louisiana Tribal Nations in order to appease discontent among former French and Spanish colonists. Once afforded respect and protection by Spain as a sovereign nation, the Tunica lost their land to French settlers who registered the land as "unoccupied" so that they could make fraudulent claims to it. John Sibley's 1806 report provided the United States government with questionable data, which dismissed most Louisiana Tribal Nations as insignificant remnants. As a result of the 1844 case *Moreau vs. Valentin, et. al*, the United States government had no involvement in the establishment of a reservation.

As early as 1922, Tribal Leader Eli Barbry started making inquiries to the Department of the Interior concerning ownership of their land. His pan-Tribal efforts to unify the Tunicas with "the Biloxi [Tribal Nation]" (meaning the Indian Creek settlement), the Jena Choctaw, along with the Coushatta of Allen Parish and the Chitimacha of St. Mary Parish were mostly successful. Notarized documents naming Barbry chief of these groups stated that the Tribal Nations were coming together "for the purpose of union of the people of our race, to promote our welfare and to secure for ourselves and our descendant's educational and religious training, to the end of our becoming better

citizens of this American Nation..." All of these documents were signed by the various Tribal Nations except for the Chitimacha, who refused to join the alliance and sought their own aid.

Allotment and forced assimilation continued to be hallmarks of United States Indian Policy until 1934 when President Roosevelt's new Commissioner of Indian Affairs, John Collier, began a comparatively enlightened "Indian New Deal." However, the government maintained their policy of disregard and neglect toward the Tunica-Biloxi. Other Indians faced the same problem as members of unrecognized bands or Tribal Nations were also excluded from the benefits of the Reorganization Act. Pressure from the Tunica-Biloxi and their political constituency in Congress motivated the Bureau of Indian Affairs to at least acknowledge the Tribal Nation's existence and to investigate their claims. Twentieth century documentation of the Tunica-Biloxi was finally updated by the government and provided the first step whereby federal recognition was eventually accomplished.

Since gaining federal recognition in 1981, the Tunica-Biloxi have developed municipal buildings including social and health services, police station, cultural and education center, gymnasium, and pow wow grounds amidst utility resources, paved roads and residential communities. The full motto on the Tunica-Biloxi flag, "Cherishing Our Past, Building For Our Future," both summarizes four-and-a-half centuries of Tribal history and highlights the Tribal Nations' lasting contributions to a keystone Native American belief: the reverence and preservation of ancestral remains.

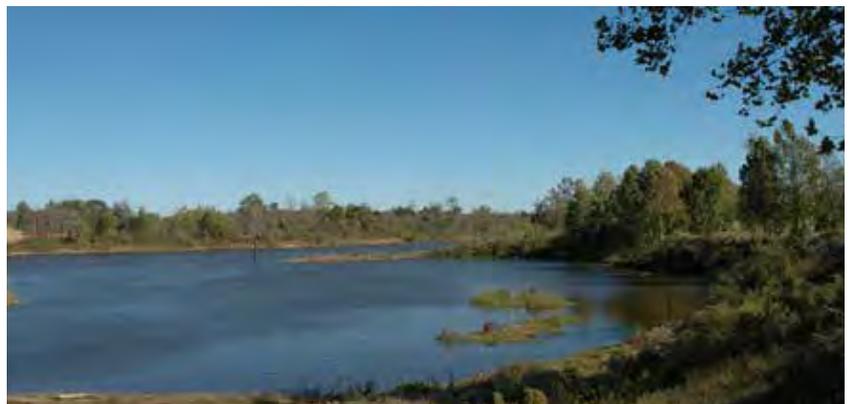


Photo credit: Tunica-Biloxi Language and Culture Revitalization Program



# POARCH BAND OF CREEK INDIANS

## MVSKOKE

**USET member since May 1984**

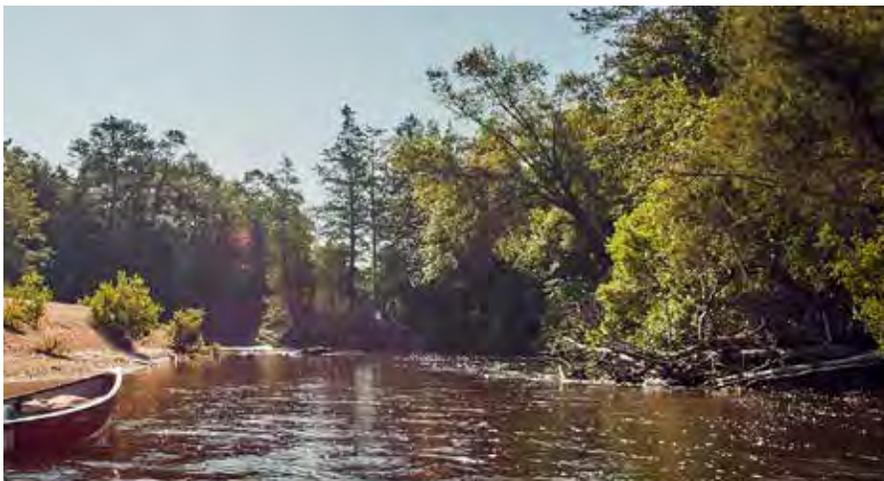
### Member Information

- Location: Southeast Gulf Region (Poarch, Alabama)
- Land Size: 400.756 acres Trust/Reservation land; ~8,000 acres fee land
- Population: ~3,095 Tribal Citizens
- Main Industries: Tourism, Recreation, Hospitality, Gaming, Manufacturing

Descendants of a segment of the original Creek Nation, which once covered almost all of Alabama and Georgia, the Poarch Band of Creek Indians were not removed from their Tribal lands and have lived together for almost 200 years in and around the reservation in Poarch, Alabama. The town of Poarch served as a focal point for the Indian community, and the Poarch Band remained cohesive and kept its identity throughout the years. In the years following the Indian Removal, Poarch Creek ancestors endured severe hardship and discrimination and struggled to provide for their families. Many of the original land grants were lost to swindlers and armed squatters. In some cases, land was sold under duress, the result of pressure and fear tactics, or abandoned out of the need to find work to survive. The turn of the 20th century saw the first truly organized efforts by the Poarch Creeks to improve social and economic conditions for the Tribal Nation and their citizens.

The Poarch Band of Creek Indians is the only federally recognized Tribal Nation in the state of Alabama, existing as a sovereign nation with their own system of government and bylaws. Leadership within the Poarch Creek Tribal Nation was not formalized until 1950, prior to this, leaders rose naturally from the community. The Tribal government consists of three branches: Legislative, Executive and Judicial. The Legislative Branch of Tribal government is governed by a nine-member Tribal Council elected by majority vote. The Executive Branch is responsible for overall management of daily Tribal government activities. The Judicial Branch consists of a full-time law enforcement staff and Tribal court system with a Supreme Court and Court of Appeals. On August 11, 1984, the U.S. formally acknowledged that the Poarch Creek Indians officially exist as an "Indian Tribe;" the Tribal Nation obtained federal recognition on April 12, 1985.

Poarch Creek's determination to maintain both their identity and inherent right to self-govern is evident by their continued efforts to preserve their Tribal culture and improve their community. The Tribal Nation operates a variety of economic enterprises, which employ hundreds of area residents. The Poarch Band of Creek Indians is an active partner in the state of Alabama, contributing to economic, educational, social and cultural projects benefiting both Tribal citizens and residents of the local communities and neighboring towns.





# NARRAGANSETT INDIAN TRIBE

## NANAANONGSEUK

### USET member since May 1984

#### Member Information

- Location: Northeastern Woodlands (Charlestown, Rhode Island)
- Land Size: 1,943.5 acres of Trust land; ~843 acres Tribally owned
- Population: 2,700 Tribal Citizens
- Main Industries: Tourism, Recreation, Natural Resources, Retail

The Narragansett Indians are the descendants of the aboriginal people of the region now known as Rhode Island. Archaeological evidence and the oral history of the Narragansett People establish their existence in this region more than 30,000 years ago. The first documented contact with the people of this region took place in 1524 and they were described as a large Indian population, living by agriculture and hunting, and organized under powerful "kings."

The Tribal Nation and its citizens were considered warriors within the region. The Narragansett customarily offered protection to smaller Tribal Nations in the area. In 1675, the Narragansett allied themselves with King Philip and the Wampanoag Sachem, to support the Wampanoag Tribal Nation's efforts to reclaim land in Massachusetts. In the Great Swamp Massacre, a military force of Puritans massacred a group of Narragansett, mostly women, children, and elderly men living at an Indian winter camp in the Great Swamp. Following the massacre, many of the remaining Narragansett retreated deep into the

forest and swamp lands (much of this area now makes up today's land base). By the end of the 18th century, the Tribal Nation's land base had been reduced to 15,000 acres. Additionally, around 1884 the State of Rhode Island unilaterally and illegally "detrribalized" the Narragansett without federal sanction. Many years later in December 1934, the Narragansett Tribe of Indians was incorporated, and the traditional government comprised of Chief Sachems, Medicine Men and Women, the Tribal Council, Sub-Chiefs, Tribal Prophets, the War Chief, and Clan Mothers persevered.

In 1975, the Tribal Nation filed a land claim suit against the state and several landowners for the return of approximately 3,200 acres of undeveloped lands. The suit was eventually concluded in an out-of-court settlement in 1978. The Narragansett Indian Tribe has been a federally recognized sovereign Tribal Nation in the United States since April 1983. The mission of the Tribal Nation is to continue to promote and develop awareness among Tribal citizens the importance of education, culture, and family life within their own Tribal community. The Tribal Nation has greatly expanded its administrative capability. Policies and procedures have been implemented to protect and preserve its land, water and cultural resources to promote the welfare of Tribal citizens. The education, family circle, traditional ceremonies, and Narragansett language are important aspects of the Narragansett Indian Tribe's culture and daily lives. The Narragansett People have seen many changes in their lands; however, their traditional culture has been passed down from generation to generation and is even stronger today.





# MASHANTUCKET PEQUOT TRIBAL NATION

## PEQUOT

**USET member since May 1984**

### Member Information

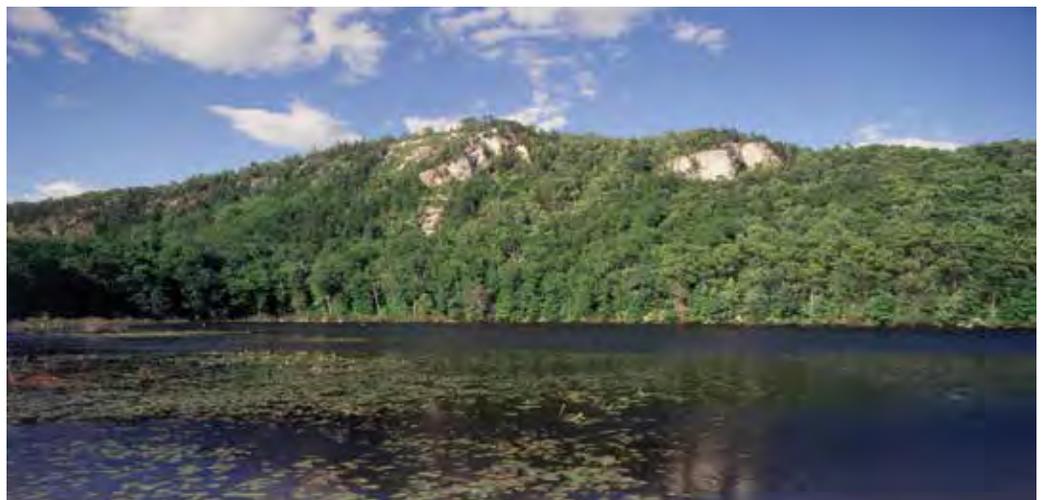
- Location: Mashantucket, Quinnitukqut (Connecticut)
- Land Size: 1,651 acres
- Population: ~911 Tribal Citizens
- Main industries: Tourism, Recreation, Hospitality, Gaming, Services

Native peoples have continuously occupied Mashantucket in southeastern Connecticut for over 10,000 years. The Mashantucket Pequots are a native Algonquin people who endured centuries of conflict. By the early 17th century, just prior to European contact, the Pequots had approximately 8,000 citizens and inhabited 250 square miles. However, the Pequot War (1636-1638)—the first major conflict between colonists and an indigenous New England people—had a devastating impact on the Tribal Nation. When the Pequot War formally ended, many Tribal citizens had been killed and others placed in slavery or under the control of other Tribal Nations. Those placed under the rule of the Mohegans eventually became known as the Mashantucket (Western) Pequots and were given land at Noank in 1651. In 1666, the land at Noank was taken from the Tribal Nation, and it was given back property at Mashantucket. In the ensuing decades, the Pequots battled to keep their land, while at the same time losing Tribal citizens to outside forces.

In the early 1970s, Tribal citizens began moving back to the Mashantucket land. By the mid-1970s, Tribal citizens had embarked on a series of economic ventures, in addition to instituting legal action to recover illegally seized land. With the assistance of the Native American Rights Fund and the Indian Rights Association, the Tribal Nation filed suit in 1976 against neighboring landowners to recover land that had been sold by

the State of Connecticut in 1856. Seven years later the Pequots reached a settlement with the landowners, who agreed that the 1856 sale was illegal, and who joined the Tribal Nation in seeking the state government's support. The state responded, and the Connecticut Legislature unanimously passed legislation to petition the federal government to grant Tribal recognition to the Mashantucket Pequots and settle the claim. With help from the Connecticut delegation, the Mashantucket Pequot Indian Land Claims Settlement Act was enacted by the U.S. Congress and signed by President Reagan on October 18, 1983. It granted the Tribal Nation federal recognition, enabling it to repurchase and place in trust the land covered in the Settlement Act. Pequot history is an unprecedented story of survival, redemption and restoration.

The Mashantucket Pequot Tribal Nation is a sovereign nation with a unique government-to-government relationship with the federal government as well as Connecticut. Tribal citizens are governed by an elected Tribal Chairman, Vice Chairman, Secretary, Treasurer and Tribal Councilors who work together to build and preserve a cultural, social, and economic foundation that can never be undermined or destroyed. The Tribal Nation owns and operates a variety of enterprises. The Mashantucket Pequot Tribal Nation is one of Connecticut's highest taxpayers and largest employers, and provides generous assistance to nonprofit organizations that support the local community.





# WAMPANOAG TRIBE OF GAY HEAD

## AQUINNAH

### USET member since November 1987

#### Member Information

- Location: Aquinnah Noepe (Martha's Vineyard, Massachusetts)
- Land Size: ~485 acres of trust land
- Population: 1,364 Tribal Citizens
- Industries: Tourism, Recreation, Agriculture

The Aquinnah Tribal Nation's ancestral lands have always been on the southwestern end of Noepe (Martha's Vineyard). In 1870, the Town of Gay Head was incorporated. From the Wampanoag point of view, the principal effect of the incorporation of Gay Head was the alienation of Wampanoag Indian District Lands (Tribal land base), which was in violation of the Federal Non-Intercourse Act of 1790. In 1972, however, in response to the growing potentiality for encroachment on Tribal Common Lands, the Wampanoag Tribal Council of Gay Head, Inc. (WTCGH) was formed.

Aquinnah Wampanoag Tribal citizens continued to be very active in town government, with the three town-elected selectmen positions filled by Tribal citizens. In 1987, after two petitions and lengthy documentation, the Tribal Nation obtained federal acknowledgement by an act of the U.S. Congress, creating a government-to-government relationship with the U.S.

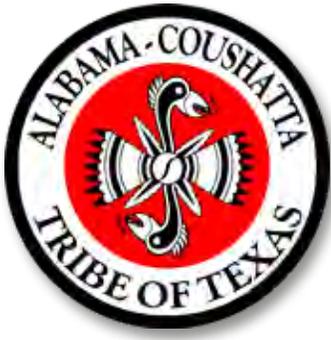
The Wampanoag Tribe of Gay Head (Aquinnah) and the Town of Gay Head entered into agreement in June of 1995 to jointly provide for the health, safety and welfare of persons on Tribal lands by providing for the use of police, fire, and medical personnel and resources in the event of disaster, disorder, fire or other emergencies arising on

Tribal lands. In 1998, the name of the town was officially changed from Gay Head back to its former Wampanoag name of Aquinnah by the state legislature, representing recognition of Wampanoag history in the region.

The Wampanoag Tribe of Gay Head Aquinnah is governed by a Tribal Council, consisting of a Chairperson, Vice Chairperson, Secretary, Treasurer, and seven Council members, all popularly elected. The Chief and Medicine Man are traditional members of the Tribal Council and hold their positions for life.

The Tribal Nation continues to be self-governing and takes great strides toward economic self-sufficiency. Community values are still strong with land and resource management strategies relying on sustainable practices which are shared with other towns and conservation groups on the island. Traditional arts like beadwork, basket making, and pottery continue to be taught. Celebrations like Cranberry Day and The Legends of Moshup Pageant are held annually. The Wampanoag language is taught to Tribal citizens.





# ALABAMA-COUSHATTA TRIBE OF TEXAS

ALIBAMU & KOASATI

**USET member since February 1989**

## Member Information

- Location: Big Thicket/Gulf region (Polk County, Texas)
- Land Size: 10,200 acres
- Population: ~1,200 Tribal Citizens
- Industries: Tourism, Recreation, Hospitality, Transportation

The Alabama-Coushatta Tribe of Texas has the oldest reservation in Texas, located in the Big Thicket of deep east Texas. The Alabama and Coushatta Tribal Nations lived in adjacent areas in what is now the state of Alabama prior to their westward migration that began around 1763. Around 1780, the Alabama and Coushatta Tribal Nations migrated across the Sabine River into Spanish controlled territory of what is now Texas. Although they were two separate Tribal Nations, the Alabamas and Coushattas have been closely associated

throughout their history. Their cultures have some differences, but are for the most part nearly identical. The two separate Tribal Nations eventually became one. For their assistance to Sam Houston's army in 1836 during the Texas War of Independence from Mexico, in 1839 the Republic of Texas recognized the Tribal Nation's equitable claim to lands.

They were federally recognized in 1928 and terminated in 1954, however their trust responsibility was transferred to the State of Texas. After Congress passed the Restoration Act in 1987, the Alabama-Coushatta Tribe of Texas was restored and again federally recognized.

The Tribal Nation is a sovereign government with a full array of health and human services, including law enforcement and emergency services. The Tribal Nation is ruled by both a Principal Chief and a Second Chief who are elected by the people and serve lifetime terms.





# ONEIDA INDIAN NATION

## ONYOTA'A:KÁ:

**USET member since February 1991**

### Member Information

- Location: Finger Lakes Region (Central New York State)
- Land Size: ~18,000 acres
- Population: ~1,000 Tribal Citizens
- Industries: Tourism, Recreation, Hospitality, Gaming, Retail, Services

The word "Oneida" means "People of the Standing Stone." One of the founding members of the Haudenosaunee Confederacy, the Oneida Indian Nation became the first ally to America when they joined the colonists in

their fight for independence during the American Revolutionary War. In 1794, after the victory over the British and many hardships for the Oneidas, George Washington signed the Treaty of Canandaigua recognizing the Oneida Nation as a sovereign entity. Oneida Indian Nation homelands originally

consisted of more than six million acres stretching from the Saint Lawrence River to the Susquehanna River. By the early 1900s, illegal state treaties nearly depleted the Oneida Indian Nation of its homeland. The Oneidas did what they had to do to survive. Some moved, some sold their land. The Oneidas had to fight to recover the last 32

acres granted to them. The federal government filed suit in U.S. District Court in 1919 to help the Oneida Indian Nation reclaim this land.

The Oneida Indian Nation is headed by a federally recognized Representative. Tribal Nation citizens belong to one of three family clans: Turtle, Wolf or Bear. Each clan chooses representatives to the governing body, the Nation Council. Oneidas are a matrilineal society. According to tradition, male Council Members are responsible for daily decisions while Clan Mothers make long-term decisions. Tradition also requires Nation leaders and citizens to consider the impact on the next seven generations when making decisions.



Today, the Oneida Indian Nation has regained more than 18,000 acres of their original homelands—the most they have had recognized sovereignty over since 1824. A slow steady climb and dedicated perseverance has led to a resurgence for the Oneida Indian Nation that today prospers through their

many diverse enterprises. Like any government, Oneida Indian Nation provides many programs and services to its citizens as well as reinvests in their enterprises and community. The Tribal Nation is one of the largest employers in New York state.



# MI'KMAQ NATION

## MI'KMAQ NATION

**USET member since February 1992**

### Member Information

- Location: Northeastern Woodlands (Northern Maine)
- Land Size: ~3,302 acres
- Population: ~1,553 Tribal Citizens
- Main Industries: Tourism, Recreation, Agriculture, Services

From time immemorial, the Mi'kmaq have occupied the lands south and east of the Gulf of Saint Lawrence, the Maritime Provinces and other regions along the Atlantic Seaboard of the northeastern United States. Today the Nation is composed of seven districts with 29 bands and a population of approximately 30,000.

The Mi'kmaq language is an Algonquin one, related to that of the Mi'kmaq's southern neighbors, the Maliseets, Passamaquoddy, Penobscot, and Abenaki. All these northeastern Tribal Nations are culturally and linguistically related. Collectively, this group is called the "Wabanaki," which means "People of the Daybreak," or "Dawn Land People" (wabun meaning "light" or "white," aki meaning "earth").

On November 26, 1991, after complex legal maneuvering and political advocacy, the Nation finally achieved federal recognition with the passage of the Aroostook Band of Micmacs Settlement Act. This act provided the Community with acknowledgment of its Tribal status in the United States. The Micmacs changed their name from Aroostook Micmac Council to the Aroostook Band of Micmacs. The sovereign government of the Tribal Nation provides many services to their citizens including health, housing, social services, and many others. Tribal citizens are governed by an elected Chief, Vice Chief, Secretary, Treasurer and Tribal Councilors.

Like other Tribal Nations of the Northeastern Woodlands, the Mi'kmaq continue to produce a variety of traditional baskets made of splint ash wood, birch bark and split

cedar. The Mi'kmaq are recognized as excellent producers of porcupine quill on birch bark boxes and wooden flowers of strips of maple, cedar and white birch.





# CATAWBA INDIAN NATION

## YE ISWAH H'REH

### USET member since December 1993

#### Member Information

- Location: Along the Catawba River (Rock Hill, South Carolina)
- Land Size: ~1,000 acres
- Population: ~3,000 Tribal Citizens
- Industries: Tourism, Services, Media, Gaming

The Catawba Indians have lived on their ancestral lands along the Catawba River dating back at least 6,000 years. They are the only federally recognized Tribal Nation in South Carolina. Before contact with the Europeans, it is believed that the Nation inhabited most of the Piedmont area of South Carolina, North Carolina, and parts of Virginia. The Tribal people called themselves yeh-is-WAH-h'reh, meaning "people of the river."

Catawba warriors were known as the fiercest in the land. Leaders of the state of South Carolina kept relations with the Nation friendly. The Nation's friendship with the English helped both sides—the colonists received protection and the Nation received supplies that aided in their survival. During the Revolutionary War, the Catawba aligned with the patriots and fought with them against England to help them gain their independence. In 1763, the Catawbas received title to 144,000 acres from the King of England. It was hard for the Nation to protect the land from colonists and eventually they began renting land to settlers. Eventually the settlers who had leased land from the Nation wanted the land for themselves. They put pressure on South Carolina to negotiate with the Nation. This

was during the Removal Period when many Tribal Nations were being moved west. In order to avoid this, the Nation and South Carolina negotiated the Treaty at Nations Ford.

During the Franklin Roosevelt administration the federal government tried to improve conditions for Tribal Nations. Under the Indian Reorganization Act, the Catawba Nation created a constitution in 1944 to help them govern themselves. After their federal status was removed in 1959, the Catawbas reorganized and fought to regain that status for over 20 years before achieving federal recognition on November 20, 1993.

In 1973, the Catawbas filed a petition with Congress for federal recognition. They also updated and adopted their constitution in 1975. The Catawbas had a strong argument in this fight. The Treaty at Nations Ford with South Carolina was illegal because it was not ratified by the federal government. The federal government should have protected the rights of the Nation. It took 20 years, but on November 20, 1993, the land claim settlement with the state of South Carolina and the federal government finally came to an end and the Catawba Indian Nation received federal recognition.



Tribal citizens are governed by an Executive Committee consisting of a Chief, an Assistant Chief, a Secretary-Treasurer, and five Council Members. Tribal government programs include Social Services, Education, Health, Housing, Engineering, Natural Resources, Cultural, and Economic Development.

Photo credit: Catawba Nation



# JENA BAND OF CHOCTAW INDIANS

## CHAHTA (JENA)

**USET member since December 1995**

### Member Information

- Location: Bayuk (Bayou) Country (Jena, Louisiana)
- Land Size: 63 acres in trust and 340 acres in fee simple
- Population: 366 Tribal Citizens
- Industries: Tourism, Recreation, Hospitality, Gaming

The earliest recorded notice of the Choctaw Indians is believed to be about 1540 in the area of southern Mississippi, and in the early 1700s near present-day Mobile, Alabama; Biloxi, Mississippi; and New Orleans, Louisiana. Inland from these settlements there was a large Tribal Nation of Muskogean-speaking people occupying about 60 towns on the streams that formed the headwaters of the Pascagoula and Pearl Rivers.

After the relinquishment of the Louisiana Colony by France, members of the Tribal Nation began to move across the Mississippi River. By the Treaty of Dancing Rabbit Creek in September of 1830 the main body of the Choctaw ceded all their land east of the Mississippi River. The Choctaw began to migrate even further away from their original territory. One band settled in a sizable village near present-day Enterprise, Louisiana, and other groups migrated to the pine-covered hills of what was then Catahoula Parish in Louisiana. Eventually



Photo credit: Bobby Fields

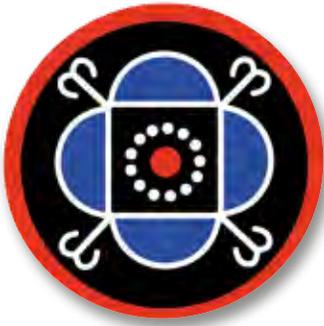
the Choctaw, located between present day Monroe and Natchitoches, Louisiana, joined the group in Catahoula Parish. Principal settlements were established on Trout Creek in LaSalle Parish and Bear Creek in Grant Parish.

In 1910 it was reported that there were only 40 Choctaws located in LaSalle and Catahoula Parishes. The Tribal community had very little to do with outsiders and continued their customs and ways. The local store account books showed that the Indians paid for their goods by skinning and tanning hides as well as day laborers and household help. The Choctaw community maintained a very distinct, social institution with activities that included marriages, burials, and the maintenance of a Tribal cemetery.

The last traditional Chief died in 1968 and in 1974 the first Tribal election of Tribal Chief was held. The Jena Band of Choctaw Indians of Louisiana was incorporated as a state-recognized Tribal Nation on April 20, 1974, with a five-member board of trustees. The Tribal constitution was adopted December 20, 1990, changing the structure of the governing body to a four-member Tribal Council. The Tribal Nation became federally recognized on August 29, 1995.

As a sovereign government, the Tribal Nation strives to improve the well-being of its Tribal citizens and those of future generations. Presently the Tribal Nation provides services to their citizens through their Health Department, Social Services, Cultural Programs, Domestic Violence Programs, Tribal Families in Need of Services Program, Environmental Protection Department, Children's Annual Summer Camp, Homeland Security Department, and numerous family-related activities.





# THE MOHEGAN TRIBE OF CONNECTICUT

## MAHEEHKANUWAK

**USET member since February 1996**

### Member Information

- Location: Uncasville, Quinnitukqut (Connecticut)
- Land Size: ~500 acres
- Population: 2,286 Tribal Citizens
- Industries: Tourism, Recreation, Hospitality, Gaming, Retail, Services, Entertainment

The Mohegan are the Wolf People, children of Mundo, a part of the Tree of Life, ancestors form roots, the living Tribal Nation is the trunk, grandchildren are the buds of the future. Before the arrival of the Europeans, Chief Sachem Uncas brought his people to Shantok and the hills of Mohegan. Uncas believed that cooperation with the English arrivals would ensure his people's survival, and therefore, developed a historic interaction between his Tribal Nation and the settlers.

Just two years after forming the Connecticut Colony, the English formally recognized the sovereignty of the Mohegan Tribal Nation with the Treaty of Hartford in 1638, a recognition that has been maintained through the present day. For over 350 years, treaties and laws have highlighted the Tribal Nation's independent status. At the federal level, the unique rights of Native American

Tribal Nations were further recognized and laid out in the Constitution of the United States.

In 1978, the Mohegans filed for federal recognition. After an intensive review of over 20,000 pages of paperwork documenting the Tribal Nation's history, the federal government formally recognized the Mohegan Nation on March 7, 1994, marking the end of a long battle for federal recognition as a sovereign nation. As a sovereign nation, the Mohegan Tribe of Connecticut independently determines its own fate and governs its own people and affairs, as well as having access to federal programs and federal protection for Tribal lands, including graves. This all means they have the responsibility to provide for their Tribal citizens and to work within their own governmental, legal and cultural systems to preserve their independence. The Mohegan Nation's Tribal Constitution provides that the Tribal Nation shall be governed by a Tribal Council, consisting of nine Tribal citizens, and a Council of Elders, consisting of seven Tribal citizens. All legislative and executive powers of the Tribal Nation not granted to the Council of Elders are vested with the Tribal Council. The Council of Elders oversees judicial matters and the Tribal Nation's cultural integrity. The Council of Elders also exercises legislative powers with respect to Tribal citizenship and enrollment.





# CAYUGA NATION

## GAYOGOHO:NO'

### USET member since June 2000

#### Member Information

- Location: Finger Lakes Region (Seneca Falls, New York)
- Land Size: ~64,000 acres of land (2018 Tribal Source: 824 acres)
- Population: ~500 Tribal Citizens
- Industries: Agriculture, Retail, Tourism, Recreation

The Cayuga Nation is known as “The People of the Great Swamp.” The citizens of the Cayuga Nation have called the land surrounding Cayuga Lake their homeland for hundreds of years. Cayuga land lays between that of the Seneca Nation to the west and the Onondaga Nation to the east. In the 12th century, the Cayuga Nation, along with the Seneca, Onondaga, Oneida and Mohawk Nations united under the Great Law of Peace to form the Haudenosaunee (The People of the Longhouse) Confederacy in order to end inter-tribal fighting and bring a sustainable peace to the land. This structure of government and its constitution influenced the creation of many modern-day constitutions.

Following the Revolutionary War, in 1779, General George Washington commissioned General John Sullivan and James Clinton to destroy the Cayugas and other members of the Haudenosaunee. There was no complete victory over the Haudenosaunee. Although many Tribal citizens and bands of each Tribal Nation were scattered (to Ohio, Canada, and Buffalo Creek) because of this campaign, there remained a few to negotiate a Treaty with General Washington. Cayugas who relocated to Ohio were later moved to a territory now called Oklahoma. Cayugas that relocated to Canada now reside on the Grand River Reservation at Six Nations. The Cayugas who remained negotiated with the first president of the United States of America. The Treaty of Canandaigua was signed on November 11, 1794, between the Sachems of the Confederacy Nations and the United States. This Treaty established peace between the United States and the Six Nations of the Haudenosaunee, but it also provided for the sovereignty for each Haudenosaunee Nation within its lands, affirming the Cayuga Nation’s rightful land base as 64,000 acres of sovereign land. It established

explicit federal powers of the United States over the state of New York. It grandfathered previous treaties made between the state of New York and Haudenosaunee Nations, but also established jurisdiction over the state of New York as it pertained to Indian Affairs and Indian transactions.

This treaty remains in full force today. Unfortunately, the Treaty was ignored by New York. The Cayuga homeland was not returned to its owners. Over a series of illegal land transactions and treaties, New York State took all the lands of the Cayuga Nation. In accordance with the Treaty of Canandaigua and the Constitution of the United States of America, the State of New York neglected to seek federal approval for these land transactions and claimed powers of the state in Indian Affairs, for which they have none. As a result, the State of New York still claims that the Cayuga Nation has no reservation and will not permit the Cayuga Nation free use and enjoyment of a Treaty established land base. The Cayuga Nation continues to fight for its Treaty Rights today and will continue to seek to have these rights upheld by the State of New York and the United States of America.

The Tribal Nation and its citizens are governed by the traditional Council of Chiefs and Clan Mothers. As a sovereign Tribal Nation, the Cayugas own several business ventures and provide many services to their citizens including police, housing, and financial assistance for scholarships.





# MASHPEE WAMPANOAG TRIBE

## MÂSEEPEE WÔPANÂAK

### USET member since October 2007

#### Member Information

- Location: Mashpee, Massaadchuset (Massachusetts)
- Land Size: ~5,000 acres
- Population: ~2,600 Tribal Citizens
- Industries: Tourism, Recreation, Agriculture

The Mashpee Wampanoag Tribe, also known as the People of the First Light, has inhabited present day Massachusetts and Eastern Rhode Island for more than 12,000 years. The Mashpee Wampanoag are one of three surviving Tribal Nations of the original 69 in the Wampanoag Nation. Their history is one of survival and perseverance.

During King Philip's War in 1675, over forty percent of the Wampanoag Tribal population was killed and large number of healthy males were sold off as slaves. Almost 50 years later, the Plymouth Colony instituted a proprietary system of land control in Mashpee, with Tribal citizens known as the collective owners of the land, or proprietors. In 1746, Plymouth Colony appointed three guardians over Mashpee Tribal Nation to limit the Tribal Nation's independence. In answer to this, the Tribal Nation dispatched delegates to meet with the King of England in 1760, where they repeated their complaints so that the King ordered changes in governance and for several years Plymouth Colony complied with the King acknowledging Mashpee as a self-governing Indian district.

In 1834, the Mashpee Wampanoag Tribal Nation protested the authority of non-Indian overseers causing the Massachusetts Legislature to revoke their authority, acknowledging Mashpee as a completely self-governing Indian district. In 1870 the remaining 3,000-5,000 acres of land that were in Tribal ownership were illegally taken by the Massachusetts government and the town of Mashpee

was created, although the federal government did not approve this transaction as required by the 1790 Trade and Intercourse Act. The Mashpee Wampanoag Tribe has maintained a continuous title to and possession of key tracts of land within the historic Mashpee land base and in 1972 the Mashpee Wampanoag Tribal Council was established, providing further leadership, an umbrella for historic and cultural preservation, and advocacy for land recovery. After an arduous process lasting more than three decades, the Mashpee Wampanoag were re-acknowledged as a federally recognized Tribal Nation in 2007.

The Mashpee Wampanoag Tribe exercises its full Tribal sovereignty rights and offers Tribal citizens Education Services, Emergency Management, Health and Human Services, Historic Preservation, Homeland Security, Housing, Natural Resources and many other departments and services. Tribal citizens are governed by an elected Chairman, Vice Chair, Secretary, Treasurer, and a Tribal Council, as well as a Chief and Medicine Man.





# SHINNECOCK INDIAN NATION

## SHINNECOCK

### USET member since February 2011

#### Member Information

- Location: East End Long Island (Suffolk County, New York)
- Land Size: ~1,200 acres
- Population: ~1,495 Tribal Citizens
- Industries: Tourism, Recreation, Retail, Agriculture, Services

The Shinnecock Indian Nation is a federally recognized sovereign Tribal Nation. Shinnecock time has been measured in moons and seasons, and the daily lives of Shinnecock people revolved around the land and the waters surrounding it. Their earliest history was oral, passed down by word of mouth from generation to generation. An Algonquian-speaking people descended from the Native Americans in southern New England, they have lived along the shores of Eastern Long Island since time immemorial.

In the 1700s the Tribal Nation was known for their fine beads and wampum. By 1859, the current borders of 800 acres of Tribal land were established. In 1972 the Shinnecock Native American Cultural Coalition (SNACC) was formed to establish a Native American arts and crafts program. Traditional dancing, beadwork, Native American crafts, and music are studied there. The Cultural Enrichment Program is a sharing and learning process that the community has engaged in to ensure that the ideals and traditions of their ancestors are passed down through the generations. It involves sharing knowledge of food, clothing, arts, crafts, dance, ceremonies, and language.

On October 1, 2010, the Shinnecock Indian Nation became the 556th federally recognized Tribal Nation in the U.S. Tribal citizens are governed by a Chairman, Vice Chair, Secretary Treasurer and Tribal Council. In addition to the Shinnecock Presbyterian Church, Shinnecock Indian Nation infrastructure includes a Tribal Community Center, a Health and Dental center, a Museum, Family Preservation and Education Center, Cultural Center, Playground and Shellfish Hatchery. Every Labor Day Weekend since 1946, the Shinnecock host a powwow, based on ceremonies beginning in 1912. The Shinnecock Powwow is ranked by USA Today as one of the top ten great powwows held in the United States.



Photo credit: Jeremy Dennis





# PAMUNKEY INDIAN TRIBE

## PAMUNKEY

### USET member since October 2017

#### Member Information

- Location: Mid-Atlantic Region, along the Pamunkey River (King William, VA)
- Land Size: ~1,600 acres
- Population: ~430 Tribal Citizens
- Industries: Tourism, Recreation, Agriculture, 8A Federal Contracting

The Pamunkey are part of the larger Algonquian-speaking language family, composed of a number of Tribal Nations who spoke variations of the same language. By 1607, more than 30 Tribal Nations were tributaries of the Algonquian speaking Powhatan Paramount Chiefdom. The Pamunkey comprised the political and geographic center of the Chiefdom as its leaders, most notably the Pamunkey *Mamanatowick* (great chief) Wahunsenacawh, were integral in expanding the Chiefdom's reach across the Tidewater region of Virginia. Known to the English as "Chief Powhatan," Wahunsenacawh is one of the most recognized Tribal chiefs of the Pamunkey. He inherited and led the Powhatan Chiefdom, was father to Matoaka (Pocahontas), and engaged with English colonists when they arrived in *Tsenacomoco* in 1607.

The Pamunkey Indians depended on fishing, hunting, trapping and horticulture for thousands of years for subsistence. One of the main staples of their diet has been fish, specifically shad, sturgeon, and herring. The Pamunkeys also bartered and sold these fish, making

them an integral part of their economy from the colonial period through the 20th century. In the 19th century, the Pamunkey people fought in the Civil War as Union supporters, successfully battled attempts to terminate the Tribe and allot its reservation lands and rallied against the implementation of Jim Crow laws. Chief George Major Cook, a great leader of the Pamunkey, fought to protect Virginia Native Americans as Jim Crow laws and eugenics policies were being adopted. He ultimately lost the fight against Virginia's Racial Integrity Act of 1924 which was not repealed until 1967 with the U.S. Supreme Court case *Loving v. Virginia*.

The Pamunkey Indian Tribe has been recognized since the 17th century. This recognition is due to the Tribe's ability to continually uphold its treaty obligations as first outlined in the 1646 Treaty of Peace negotiated between England and Pamunkey Mamanatowick, Necotowance, who represented the Powhatan Chiefdom and the Nations that comprised it. The 1646 Treaty of Peace was renegotiated with the 1677 Treaty of Middle Plantation that was signed by *Werowansqua* (female chief) Cockoeske, who led a smaller contingent of Nations under the Powhatan Chiefdom at that time. In 1983, while granting recognition to several other Tribal Nations, Virginia officially legislated its acknowledgment of the Pamunkey Indian Tribe. In 2015, following a decades-long effort of pursuing acknowledgement through the Bureau of Indian Affairs' administrative process, the federal government officially recognized the Pamunkey as a sovereign Tribal Nation.

The Tribal Nation has a land base on the Pamunkey

River in King William County and is one of the nation's oldest, dating to 1646. Tribal citizens are governed by an elected Chief, Assistant Chief and Tribal Councilors. The Pamunkey Tribal government works to administer the affairs of the Tribe and to support the implementation of programs and services for its Tribal citizens.





# RAPPAHANNOCK TRIBE

## RAPPAHANNOCK

### USET member since November 2019

#### Member Information

- Location: Mid-Atlantic Region, along the Rappahannock River and York River (Indian Neck, Virginia)
- Land Size: 140.5 acres
- Population: ~500 Tribal Citizens
- Main Industries: Tourism

The Rappahannocks' capital town of Topahanocke sat on the north banks of the Rappahannock River. In December 1607, Captain John Smith was brought there as a prisoner of Powhatan's brother Opechancanough, to establish whether he had murdered their chief and kidnapped some of their people in 1604, which he did not.

By 1640 illegal English settlement had begun in their lands. In 1651, the Rappahannock sold a piece of land but never received full payment. The Rappahannocks were forced to move inland north in late 1660s due to interloping settlers and frontier vigilantes and were later forced to the south side of the river, their ancestral hunting grounds.

Rappahannock Tribal citizens hid with other Tribal Nations in Dragon Swamp during Bacon's rebellion and in 1682 were given almost 3,500 acres to live on. Only a year later, they were forcibly moved and relocated again only to be used as a human shield between the colonizers and other attacking nations. For over 20 years they lived in Portobago Indian Town, until 1705 when neighboring Nanzatico Indians were sold into slavery, and they were once again forced out. They returned to their ancestral homelands downriver where they continue to live today.

The Rappahannocks incorporated in 1921 in an effort to solidify their Tribal government and fight for recognition; Chief George Nelson petitioned the U.S. Congress to recognize Rappahannock civil and sovereign rights. Finally, 62 years later, they were officially recognized by the Commonwealth of Virginia, and not until 2018 did they receive federal recognition.

In 1998, the Rappahannocks elected G. Anne Richardson, the first woman Chief to lead a Tribal Nation in Virginia since Cockcoeske (Queen of the Pamunkey) became ruler of the Powhatan Confederacy in the mid-1600s.

The Rappahannocks' mission is to preserve their culture and social and political structures, while educating the public on the rich contributions that Rappahannocks have made and continue to make to Virginia and the nation. The Rappahannocks host their traditional Harvest Festival and Powwow annually on the second Saturday in October at their Cultural Center in Indian Neck, Virginia. They have a traditional dance group called the Rappahannock Native American Dancers and a drum group called the Maskapow Drum Group, which means "Little Beaver" in the Powhatan language. Both groups perform locally and abroad in their efforts to educate the public on Rappahannock history and tradition. The Rappahannocks are constantly engaged in numerous projects ranging from cultural and educational to social and economic development programs, all geared to strengthen and sustain their community.





# CHICKAHOMINY INDIAN TRIBE

## CHICKAHOMINY

**USET member since November 2019**

### Member Information

- Location: Mid-Atlantic Region (Charles City County, Virginia)
- Land Size: 110 acres
- Population: ~850 Tribal Citizens
- Main Industries: Tourism

Chickahominy are an Algonquin people, one of the largest cultural and linguistic groups on Turtle Island. The Chickahominy are often called Powhatan Indians. However, their villages were always independent—never under the control of Chief Powhatan, known to his people as Wahunsunacock. The Chickahominy Tribe was ruled by a council of elders called the mungai or “great men.”

They originally lived in permanent villages along the Chickahominy River. After the Treaty of 1646 displaced them, the Chickahominy moved around the area repeatedly as they were crowded out by settlers. They migrated gradually to where they now reside, the Chickahominy Ridge, between Richmond and Williamsburg, and only a few miles from an original 1607 village site.

As they were being attacked by those bent on destroying them, Chief William Henry Adkins (Chief 1901-1918) led a movement to establish Tribal rolls to organize the Tribe in 1901 and became the first Chief. Also, in 1901, the Chickahominy Tribe established Samaria Indian Baptist Church, which serves as an important focal point for their community to this day. The 1924 Racial Integrity Act disgracefully championed segregation as well as the destruction of documents and records of Native people—including birth, marriage, census, and death records. According to state policy, Virginia’s Native peoples no longer existed.

Not until 1983 did the Commonwealth of Virginia officially recognize the Chickahominy Indian Tribe and the federal government officially recognized the Tribe on January 29, 2018. Today, the Tribal Council consists of 12 men and women, including a chief and two assistant chiefs, who are elected by Tribal citizen vote.

The Tribe is hopeful as the U.S. comes to terms with issues of sustainable lifestyles, responsible energy usage, and environmental stewardship, their ancient ways will gain a renewed respect and value. The Chickahominy vision of life in harmony with creation offers hope for our nation and our world.





# CHICKAHOMINY INDIAN TRIBE – EASTERN DIVISION

## CHICKAHOMINY

**USET member since November 2019**

### Member Information

- Location: Mid-Atlantic Region, between the James and York Rivers (near Richmond, Virginia)
- Land Size: 41 acres
- Population: ~165 Tribal Citizens
- Main Industries: Tourism

The Chickahominy “Coarse Ground Corn People” were one of 30 Tribal Nations who met the English settlers in 1607. Multiple treaties were signed between 1614 and 1677, all of which were not upheld and by 1702 the Chickahominy lost their land base. Almost 50 years later they began migrating back to an area around the Chickahominy River in New Kent and Charles City Counties.

Before that migration, in 1723, a Chickahominy child was one of the first Indians to attend Brafferton College, a grammar school for Indians established by College of William and Mary in Williamsburg. By 1793 a Baptist missionary named Bradby took refuge with the Chickahominy and took a Chickahominy woman as his wife. Almost 80 years later (1870), a census showed an enclave of Indians in New Kent County which is believed to be the beginning of the Chickahominy Indians Eastern Division. Records were destroyed when the New Kent County courthouse was burned. A State census is the only record from this time.



The Chickahominy formed Samaria Baptist Church in 1901. During the first few decades of the 20th Century, Chickahominy men were assessed a Tribal tax so their children could receive an education. Proceeds from this tax built the first Samaria Indian School, bought supplies, and paid a teacher’s salary. Soon after, a one room school teaching grades 1-8 was started for the Chickahominy



Indians – Eastern Division. By the early 1920s the Chickahominy Indians – Eastern Division began forming their own Tribal government and E.P. Bradby was the first elected Chief. Then in 1925, Chickahominy Indians – Eastern Division (CIED) incorporated. A Tribal Council, which consists of a Chief, Assistant Chief, Secretary, Treasurer, and at least two Councilpeople, governs CIED.

The 1950s and 60s brought the CIED educational adversities with school closings, busing, and losing schools to integration. In 1983, the CIED was granted state recognition along with five other Tribal Nations. Two years later, the Virginia Council on Indians was organized as a State agency and the CIED was appointed a seat on the Council. Then, the United Indians of Virginia were organized in 1988 with a CIED seat on the Board of Directors.

Not until April 2002 did the CIED purchase land, a beautiful 41 acres. Several years later, the Tribal Government Center was constructed. Finally in January 2018, the Chickahominy Indian Tribe – Eastern Division, as well as five other Virginia Tribal Nations, achieved federal recognition in the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017. They continue to move forward asserting their sovereign rights to open the future for their citizens and fellow community. They share their story as a teaching tool and awareness for the general public.





# UPPER MATTAPONI INDIAN TRIBE

## MATTAPONI

**USET member since October 2020**

### Member Information

- Location: Mid-Atlantic Region, along the Mattaponi River (King William County, Virginia)
- Land Size: ~400 acres
- Population: ~580 Tribal Citizens
- Main Industries: Tourism

In 1608, Captain John Smith identified the village of Passaunkack at the location of the present-day Upper Mattaponi. Almost 50 years later, the King and chiefs of the Mattaponi Tribe signed peace treaties with the Court of Rappahannock County and the justices of Old Rappahannock County. Tribal members were to be treated equally as Englishmen in court and civil rights. Again in 1677, under the leadership of Cockacoeske, the Upper Mattaponi were signatories to another treaty, the Treaty of Middle Plantation, which recognized the authority of the colonial government, but also acknowledged property, land use, and hunting rights of the Virginia Indians. The Mattaponi continue to provide the state, the successor to the colony, with the annual tribute payment stipulated by the treaties of 1646 and 1677.

In 1812, the local government tried to take an acre of land from the Mattaponi for a dam, but the effort was defeated. In 1843, the so-called "Gregory Petition" alleged that

the Pamunkey and Mattaponi were no longer Indians. This effort to remove the Mattaponi and Pamunkey from their lands was also defeated. However, the colonial government conceived racist criteria for identifying Indians that they could apply for future land grabs and/or all out termination.

Even as the Mattaponi Tribe had its own Tribal leadership throughout the 19th century, in 1894 the Mattaponi formally separated from the Pamunkey-led Powhatan Chiefdom. The response from the Commonwealth's general assembly was to appoint five trustees to the Mattaponi Tribe. The oldest surviving King William County records dated 1885 identify Mattaponi individuals bearing the surname Adams living in a settlement known as Adamstown. The name most likely originated with James Adams who served as an official interpreter between the British and Indians between 1702 to 1727. The Adamstown band became officially known as the Upper Mattaponi Indian Tribe in 1921.

The Upper Mattaponi have always valued education. The Upper Mattaponi community is centered around The Indian View Baptist Church, built in 1942. Next door to the church is the Sharon Indian School. Originally built in the early 1900s, it was replaced with a more modern structure in the 1950s. The school now serves as the Tribal Center and is the only public Indian school building that still exists in the state of Virginia.



The Tribe was officially recognized by the Commonwealth of Virginia on March 25, 1983, and received federal recognition in 2018 via Public Law 115-121. The Upper Mattaponi are a proud and humble people of strong character and values, with much optimism and hope for the future.



# NANSEMOND INDIAN NATION

## NANSEMOND

### USET member since October 2020

#### Member Information

- Location: Mid-Atlantic Region, Western bank of the Nansemond River (near Suffolk and Norfolk, Virginia)
- Population: ~400 Tribal Citizens
- Main Industries: Tourism

The Nansemond are the people of the Nansemond “fishing point” River, a 20-mile-long tributary of the James River. Part of the Tsenacomoco (or Powhatan paramount chiefdom), a coalition of about 30 Algonquian Indian Tribal Nations surrounding the Chesapeake Bay, Nansemond settled on both sides of the Nansemond River to fish, harvest oysters, hunt, and farm the fertile soil.

When the English arrived in Powhatan territory in the early 1600s, several decades of violent conflict ensued with the Anglo-Powhatan Wars lasting from 1610 to 1646. In this period of time, the English displaced the Nansemond from their ancestral land around the Nansemond River into surrounding areas. Like the other Tribes of Tsenacomoco, the Nansemond had a tense and often hostile relationship with the English settlers. In late 1608, Powhatan directed the Tribes of Tsenacomoco to refuse to trade. In 1609, Captain John Smith sent a group to bargain with the Nansemond for an island. After the disappearance of two English messengers, the group attacked a nearby Nansemond settlement. More than half of the attackers were killed during the attack, an event that helped initiate the First Anglo-Powhatan War (1609-1614), one of three distinct periods of hostility between the Indian and English communities. The Nansemond towns were burned again in retaliation for the coordinated Indian assault (led by the Pamunkey chief Opechancanough) against English settlements on March 22, 1622, marking the start of the Second Anglo-Powhatan War (1622-1632).

The peace treaty that concluded the Third Anglo-Powhatan War (1644-1646) set aside land for the people of Tsenacomoco, including the Nansemond. By 1648, according to the scholar Helen C. Rountree, the Nansemond lived on the northwest and south branches of the Nansemond River. After the turn of the 18th century, a group of Nansemond moved to Norfolk County, near

the Great Dismal Swamp; the current members of the Nansemond Tribe are largely descended from this group. The Tribe had a matrilineal kinship system, in which the children were considered born to the mother’s clan and people.

In 1797, Norfolk County, Virginia, issued a certificate stating that William Bass was of Indian and English descent. As political pressure increased in the lead up to the Civil War, a number of oppressive laws against people of African ancestry also affected people of Indian ancestry. As a result, in 1833 Virginia legislator John Murdaugh developed legislation to provide certificates to “people of mixed blood, who are not negroes or mulattoes” as protection from the increasing restrictions against people of African ancestry. However, Walter Plecker, the first registrar (1912–1946) of the newly created Virginia Bureau of Vital Statistics, changed records of many Virginia-born Tribal members from Indian to “colored” because he decided some families were mixed race and was imposing the one-drop rule in furtherance of his racist actions and beliefs.

In 1984, the Nansemond Indian Tribal Association formally organized with elected officers and applied for and received formal recognition from the Commonwealth of Virginia and federal recognition in 2018. The Tribal Association honored this turning point by returning to the name used by their ancestors—the Nansemond Indian Nation. The Nation is committed to historical and cultural preservation for the benefit of their Tribal citizens and their community at large. They care for Mattanock Town, an authentic Algonquian dispersed village including educational opportunities, nature trails, a Tribal center, burial grounds and more.





# MONACAN INDIAN NATION

## MONACAN

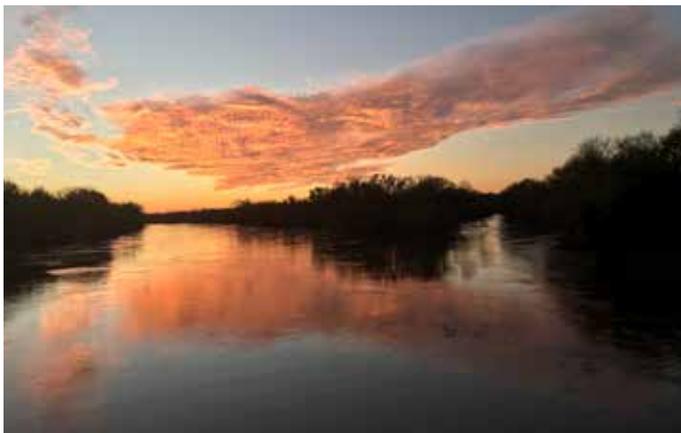
### USET member since October 2020

#### Member Information

- Location: Mid-Atlantic Region (between Roanoke and Richmond, Virginia)
- Land Size: 117.5 acres
- Population: ~2,300 Tribal Citizens
- Main Industries: Tourism

The Monacan people were an agricultural people who grew the “Three Sisters” crops of corn, beans, and squash. They lived in villages with palisaded walls, and their homes were dome-shaped structures of bark and reed mats. They left their villages every year to visit their hunting camps in pursuit of deer, elk, and small game. The Monacans buried their dead in mounds, a tradition that differentiates them from neighboring Indian nations.

Tribal Nations of the mid-Atlantic region were greatly disadvantaged, reduced to a fraction of their numbers by the time colonists landed, as they had been decimated by diseases carried by the Spanish explorers in the 1500s. In the piedmont and mountain regions of this area lived Siouan Indians of the Monacan and Mannahoac Tribes, arranged in a confederation ranging from the Roanoke River Valley to the Potomac River, and from the Fall Line at Richmond and Fredericksburg west through the Blue Ridge Mountains. Here, 13 mounds have been identified and many excavated, yielding interesting information about the lives of these First Americans, whose ancestors inhabited the region for more than 10,000 years.



Between 1607 and 1720, the Monacans gradually moved westward, away from the advancing settlers. Some Monacan stayed in Virginia,



entrenched in their mountainous ancestral home, now known as Amherst County. By 1807, a settlement of Monacan ancestors on Johns Creek had been named “Oronoco,” after a type of dark-leaf tobacco grown in the area. From this settlement at Oronoco grew the modern Monacan Nation.

Virginia’s Racial Integrity Law in 1924 resulted in Monacan citizens’ records being changed by state officials without their knowledge. Many Monacans left the state during this time because they were no longer permitted to marry freely or to register as Indian in any official capacity. During this period and through 1942, Monacans challenged the official classifications of their race, and several Monacans led a legal challenge to the state’s actions. By 1943, further challenges culminated in resolving their incorrect racial classification for the World War II draft.

The Monacan Indian Nation became a state-registered corporation in 1988, and in 1989, was state recognized. In 1993, the first annual Powwow was held; funds from the event established a Tribal scholarship fund and purchased 110 acres of land on Bear Mountain, to be held in trust for future generations of Monacans. In 1997, nearly a century of state-sanctioned racial oppression ended for Monacan people after successfully petitioning the Virginia Council on Indians to enact corrections to birth certificates and other official documentation. Since then, the Monacan Nation has continued to acquire more of their homelands and are among the few American Indian nations that still remain in their ancestral homeland. They are dedicated to the survival of Indian people in Virginia and throughout the hemisphere.

*“As Native people, we are called to not only act on behalf of our people here today, but for those who came before us and those who will come after us—the future of our nations. We must always remember this mission as we work to uphold, advance, and protect our sovereign rights and authorities for generations to come. At a time when our nations are facing great challenges, including existential threats, this charge becomes all the more critical.”*

*—USET SPF President Kirk Francis,  
Testimony before the Senate Committee on Indian Affairs, December 2020*



**TRIBAL NATION-  
UNITED STATES  
DIPLOMATIC RELATIONS**



## A HISTORICAL TO PRESENT DAY SYNOPSIS

**T**ribal Nations are sovereign governments that exist within the borders of the United States. Our governments existed long before the formation of the United States and continue to exist today. We are the rightful stewards of these lands and our creation stories, our traditions, our cultures, our language, and our understanding of the world, humanity, and all life forms are intricately tied to these lands. Tribal Nations possess inherent sovereignty—which means we have autonomous, independent government authority apart from any recognition of such authority by other entities. This sovereign authority includes jurisdiction over our people and lands, form of government, administration of justice, and ultimately, our right to make decisions that are best for our citizenship now and into the future.

The history of the relationship between Tribal Nations and the United States is complicated, shameful, and rarely told truthfully. Woven throughout is a tension between the United States' recognition of our inherent sovereignty and its insistence on controlling or limiting our exercise of that sovereignty. Beginning with first contact, there has been a continual effort to dispossess Tribal Nations of vast tracts of land and natural resources. This includes efforts to assimilate us and terminate our rights and our existence within our own lands.

Early on, before the United States evolved into the strong and wealthy global power that it is today, it sought to establish and maintain strong relations with Tribal Nations. As a reflection of this approach, the United States, in accordance with our sovereign government status, often took action within our lands only after securing our consent through nation-to-nation diplomacy, including through treaty-making. The Second Continental Congress, in adopting the Northwest Ordinance, pledged that our lands and property would not be taken from us without our consent and that our property and rights would not be disturbed. These diplomatic relationships and the understanding that consent was required for federal action were a recognition by the United States of Tribal Nations as sovereign political entities.

When the United States adopted its Constitution, it included provisions specifically directed at Tribal Nations and Native people, recognizing our unique status and giving the federal government power to take actions on our behalf. Soon after, the Supreme Court issued three

opinions—called the Marshall Trilogy—that formally articulated the recognition of Tribal Nations' inherent sovereignty while also citing the Doctrine of Discovery as placing limitations on that sovereign status. The Doctrine of Discovery is rooted in an imperialist edict issued by the Pope in 1493 that said any land not inhabited by Christians was available to be "discovered" and therefore taken into possession, and that the land's inhabitants should be Christianized. Judicial decisions, congressional statutes, and other federal actions have continued to shape the parameters of the relationship between the United States and Tribal Nations over time, based on this doctrine.

Despite the understanding that Tribal Nations possess inherent sovereignty, as reflected in the United States Constitution, Supreme Court decisions, and numerous laws, the United States still did not and does not fully respect our rights and authorities. In the founding and expansion of the United States, acts of genocide were committed against our ancestors to allow others to pursue life, liberty, and happiness in our stolen homelands, while simultaneously depriving us of those same rights and liberties. The United States, and colonizers before it, rationalized its behavior and approach by utilizing the Doctrine of Discovery. The Doctrine of Discovery planted the rotten seed that, although Tribal Nations have inherent sovereignty, the United States need not treat us as full sovereigns because Native people were less human than our colonial counterparts. It also paved the way morally for the physical acts of genocide and the taking of lands committed in the name of colonial expansion.

As the United States became more powerful, as maintaining strong relations with Tribal Nations became less necessary, and as greed took over, it quickly moved away from an approach based on Tribal Nations as inherent sovereigns from which it must obtain consent. Instead, to justify and facilitate its continued theft, it began to view Tribal Nations as subsumed under the United States' powers and subject to its whims—using terms such as "domestic dependent nations" and "wards" to describe us and referring to its "plenary power" over us. Eventually, the federal government moved away from the concept of "rights-ceded" by Tribal Nations to viewing Tribal Nations as possessing only "rights-granted" by the United States. Over time, the United States has woven these concepts into its legal jurisprudence to create a

narrative and understanding based upon legal fiction to justify its actions.

Tribal Nations ceded millions of acres of land and natural resources to the United States, often involuntarily or out of necessity to prevent the killing of our people who sought only to protect our families, our homelands, and our way of life. These ceded lands and natural resources are the very foundation of the wealth and power that the United States and its citizens enjoy to this day. In exchange, the United States made promises that exist in perpetuity to ensure Native people's health, overall well-being, and prosperity. This exchange is the basis for its general trust obligation to Tribal Nations and Native people.

For much of the United States' existence, it took drastic measures to undermine Tribal Nations' governance and assimilate Native people, thereby attempting to terminate Tribal Nations and the trust obligations we are owed. The United States took our homelands and placed us on reservations, often in remote areas with little or no resources or economies, prohibited exercise of our cultural practices, kidnapped our children, and took action to limit the exercise of our inherent sovereign rights and authorities. These assimilation and termination policies, and the accompanying acts of cultural genocide were a failure by all accounts—as Tribal Nations fought hard to maintain our cultural existence and have persevered and thrived despite these obstacles. And yet, ultimately, United States policy toward Tribal Nations remains to this day, at its core, based on two flawed assumptions: (1) that Tribal Nations are incompetent to handle our own affairs, and (2) that our Nations would eventually assimilate out of existence.

The United States' actions towards Tribal Nations and Native people are designed to make our continued existence invisible to mainstream society, since acknowledging our contemporary existence would involve coming to terms with our complicated history together. Instead, the United States seeks to instill in its people a revisionist, incomplete, and often fictional historical understanding that is intended to conceal the truth. Our ongoing existence as sovereign nations is unknown to most; the truth about our long, complex, and complicated nation-to-nation relationship goes untold. Our existence is too often stereotyped, romanticized, and minimized to a mere historical footnote.

For the past 50 years, and in response to the American Indian Movement and other Tribally driven efforts, the United States has begun to take a different approach to its relationship with Tribal Nations, seeking instead to facilitate Tribal Nations' self-determination and self-governance. For example, Congress enacted the Self-Determination and Educational Assistance Act, which authorized Tribal Nations to contract with the federal

government for funding to provide services otherwise provided by the federal government. And multiple presidential executive orders have been issued calling on federal agencies, in recognition of our inherent rights and authorities, to consult with Tribal Nations when it comes to federal decisions that impact our people and our homelands. In addition, while the United States was, unfortunately, the last government to endorse the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2010, declaring it to be aspirational and not binding, its endorsement still offers a foundation which we can further build upon.

However, despite some notable gains over this period, the United States is still far from fulfilling its trust and treaty obligations to Tribal Nations, fully respecting our inherent sovereign rights and authorities, and properly acknowledging and honoring our indigenous existence within these lands. The United States continues to issue federal Indian policy based upon a false premise that contributes, in large part, to the imperfect relationship we have today. Tribal Nations remain unified in our efforts to topple these foundational myths, as our perseverance and the sophistication of our governments reveal these myths to be falsehoods.

The current relationship requires a comprehensive overhaul, including a return to a nation-to-nation relationship rooted in diplomacy. As Indian country envisions its future, we must collectively seek a new model based on:

- fulfillment by the United States of its trust and treaty obligations,
- achieving full recognition of our sovereign governmental status and authorities,
- ensuring that every United States citizen receives a factual and truthful accounting of the complex and complicated history of Tribal Nation-United States relations,
- recognizing the preeminent role of Tribal Nations' own laws as the means through which we define who we are and how we exert our sovereign powers and authorities,
- seeking to force the evolution of federal Indian policy in a manner that is consistent with self-determination and rooted in retained inherent sovereign authority as opposed to an approach that presumes Tribal Nations have been granted our sovereign rights, and
- demanding a reality where we as indigenous people are not marginalized, stereotyped, or discriminated against within our own lands.

### MAJOR EVENTS & ACTIONS SHAPING UNITED STATES' RELATIONSHIP WITH TRIBAL NATIONS AND RELATED TRUST & TREATY OBLIGATIONS

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#### Formative Era: First Contact-1871

**Initial sustained contact between indigenous populations of North America and European subjugators. Tribal Nations used treaties to conduct business internationally with the Crowns (and later with the colonies, followed with the United States).**

**1493** – The Pope issued a Papal Bull stating any land not inhabited by Christians was available to be “discovered.” Under this doctrine of discovery, while indigenous people maintained the right to occupy their land, the discoverer was granted sole authority to acquire the land.

**1778** – The United States entered into the first of many treaties with Tribal Nations, thereby recognizing Tribal Nations as politically sovereign entities with treaty-making authority. A basic principle established by the treaties and the United States’ course of dealings with Tribal Nations was that the United States had a broad responsibility to Tribal Nations and Native people. This responsibility flowed both from the consideration promised in exchange for Tribal Nations’ homelands and agreement of peace—often extracted through unfair tactics and sometimes without consent—and from the fact that stripping away Tribal Nations’ homelands often stripped away the very means necessary for Tribal Nations to provide for their people.

**1787** – The Second Continental Congress adopted the Northwest Ordinance to charter a government for the Northwest Territory and provide that good faith shall be observed toward Indians, that their lands and property shall not be taken from them without their consent, that their property and rights shall not be disturbed absent lawful wars authorized by Congress, and that laws shall be passed to prevent wrongdoing.

**1787** – The United States adopted its Constitution, which gave Congress authority to regulate commerce with Tribal Nations and gave the Executive Branch treaty making authority with ratification by the Senate.

**1790** – Congress enacted the first Nonintercourse Act, requiring authorization by the federal government before Indian lands were purchased.

**1823** – The Supreme Court in *Johnson v. M’Intosh*, the first case in the Marshall Trilogy, found that, under the doctrine of discovery, the federal government had the exclusive right to extinguish Tribal Nations’ aboriginal title to land.

**1824** – The Bureau of Indian Affairs was created within the War Department.

**1830** – Congress enacted the Indian Removal Act, authorizing the President to force southern Tribal Nations’ removal west of the Mississippi. Many Tribal Nations were forcibly removed from their lands during this time.

**1831** – The Supreme Court in *Cherokee Nation v. Georgia*, the second case in the Marshall Trilogy, held Tribal Nations are domestic dependent nations and that the relationship between Tribal Nations and the federal government is like that of a ward to a guardian.

**1832** – The Supreme Court in *Worcester v. Georgia*, the third case in the Marshall Trilogy, recognized that Tribal Nations are sovereign nations with authority of self-government over their people and territories that predates the arrival of colonists, that Tribal Nations have the protection of the federal government, and that the doctrine of discovery gave the federal government the sole right to acquire their land.

**1849** – The Bureau of Indian Affairs was transferred to the Department of the Interior.

**1871** – Treaty making ended, and the United States instead began to carry out its relationship with Tribal Nations through legislation. This action was unilateral, and was carried out by a rider attached to the Indian Appropriations Bill of 1871.

## Allotment and Assimilation Era: 1871-1928

**1879** – Carlisle Indian School, a well-known off-reservation Indian boarding school, was established under the philosophy of “Kill the Indian, save the man.” During this time, the United States established and operated many Indian boarding schools, removing Indian children from their homes, families, and cultures.

**1886** – The Supreme Court in *United States v. Kagama* held Congress has power to legislate with regard to Indians based on the obligations it owes to them.

**1887** – Congress enacted the General Allotment Act (Dawes Act), which broke lands owned by Tribal Nations into parcels that were then provided to individual Indians to facilitate assimilation. Tribal Nations lost more than 90 million acres without compensation as a result of the allotment process.

**1903** – The Supreme Court in *Lone Wolf v. Hitchcock* held Congress is authorized to unilaterally abrogate terms of a treaty.

**1921** – Congress enacted the Snyder Act, which created a more effective funding authorization mechanism for the United States to satisfy its obligations to Indians, including for healthcare.

**1924** – Congress enacted the Indian Citizenship Act, which extended United States citizenship to all American Indians; however, it wasn't until the 1965 Voting Rights Act that states were required to allow American Indians to exercise their voting rights.

## Indian Reorganization Era: 1928-1945

**1928** – The Merriam Report was released, which recommended major changes in federal Indian policy.

**1933** – John Collier, who believed in reinvigoration of Tribal Nations' governments to control their own destinies, was appointed Commissioner of Indian Affairs.

**1934** – Congress enacted the Indian Reorganization Act, which ended allotment, permitted the federal government to acquire lands into trust on behalf of Tribal Nations, and provided Tribal Nations a federally-sanctioned vehicle to adopt governing documents.

**1934** – Congress enacted the Johnson-O'Malley Act, which provided federal funding for certain services administered to Indians by other entities, such as states, and has been used mostly in the context of education.

## Termination Era: 1945-1968

**1953** – Congress stated in House Concurrent Resolution 108 that the official policy of the federal government toward Tribal Nations was termination of federal benefits and recognition. Under this policy, many Tribal Nations' federal recognition was terminated—but most of these Tribal Nations have since been re-recognized.

**1953** – Congress enacted Public Law 280 to cede some federal jurisdiction over Tribal Nations’ lands to certain states.

**1955** – The Facilities Transfer Act transferred Indian health programs from the BIA to the Public Health Service, establishing the Indian Health Service.

**1956** – Congress enacted the California Rancheria Act, which provided for termination of California rancheria lands’ trust status and distribution of assets.

**1956** – Congress enacted the Indian Relocation Act to encourage Indians to relocate to urban areas.

**1965** – Congress enacted Voting Rights Act of 1965. States were required to allow American Indians to exercise the right to vote in state elections.

## Self-Determination Era: 1968-Present

**1968** – President Johnson issued a message to Congress, entitled “The Forgotten American: The President’s Message to the Congress on Goals and Programs for the American Indian.” His message proposed ending termination and promoting self-determination, and he said “[t]he special relationship between Indians and the Federal government is the result of solemn obligations which have been entered into by the United States Government.”

**1968** – In conjunction with his message to Congress, President Johnson issued Executive Order No. 11399, entitled “Establishing the National Council on Indian Opportunity.” The Council included representation from Indian country and the federal government, and it helped to establish the current era of federal Indian policy by formulating President Nixon’s Special Message on Indian Affairs.

**1968** – Congress enacted the Indian Civil Rights Act, which recognized and placed certain constitutional limits on powers of self-government exercised by Tribal Nations and required Tribal Nations’ consent for state assumption of jurisdiction over civil or criminal actions in Indian country.

**1968** – The American Indian Movement (AIM) was established to advocate on behalf of Indian Country. A grassroots organization, AIM organized demonstrations and other acts of protest to raise national awareness around issues related to Tribal sovereignty, self-governance, treaties, and water rights.

**1969** – The United Southeastern Tribes (which would later become United South and Eastern Tribes, Inc.) was established with the shared idea that unity between Tribal Nations was necessary to improve and strengthen their dealings with the federal government.

**1970** – President Nixon issued a message to Congress, entitled “Special Message on Indian Affairs,” in which he advocated self-determination, greater protection of Indian rights, the end of termination, and upholding the trust responsibility regardless of each Tribal Nations’ progress toward self-sufficiency.

**1974** – The Supreme Court in *Morton v. Mancari* held that a hiring preference for Indians did not “constitute ‘racial discrimination’” but said instead the Constitution “singles Indians out as a proper subject for separate legislation” due to “the unique legal status of Indian tribes under federal law and upon the plenary power of Congress [drawn from the Constitution], based on a history of treaties and the assumption of a guardian-ward status.” This seminal holding is one of the cornerstones of federal Indian law and has since been applied in many cases upholding actions carrying out the unique obligations the United States owes to Indians.

**1975** – Congress enacted legislation establishing the American Indian Policy Review Commission for the comprehensive investigation and study of Indian affairs.

**1975** – Congress enacted the Self-Determination and Educational Assistance Act, which authorized Tribal Nations to contract with the federal government for funding to provide services otherwise provided by the federal government.

**1976** – Congress enacts the Indian Health Care Improvement Act, authorizing specific Indian Health Service programs and permitting IHS to bill Medicare and Medicaid.

**1977** – The American Indian Policy Review Commission issued its final report, which recommended that Congress reaffirm and direct all executive agencies to administer the trust responsibility consistent with a set of specific legal principles, called for consultation with Tribal Nations and empowering Tribal Nations’ governments, and made other specific recommendations.

**1978** – The Supreme Court in *United States v. Wheeler* held Tribal Nations’ criminal jurisdiction over Indians arises from their inherent sovereign authorities and is not granted by the United States.

**1978** – The Supreme Court issued a decision in *Oliphant v. Suquamish Indian Tribe*, stating Tribal Nations have no criminal jurisdiction over non-Indians in Indian country without congressional authorization based on its reasoning that an exercise of such powers would be “inconsistent with their status” as “domestic dependent nations.”

**1978** – Department of the Interior Solicitor Krulitz issued a letter to the Department of Justice stating the federal government stands in a fiduciary relationship with Tribal Nations, thereby permitting money damages for trust asset mismanagement, and that the Department of Justice should not take a conflicting position.

**1978** – Congress enacted the Indian Child Welfare Act to stop the practice of removing Native children from their families and Tribal Nations.

**1978** – Congress enacted the American Indian Religious Freedom Act, to eliminate interference with the free exercise of Native American religions, based on the First Amendment of the United States Constitution; and to recognize the civil liberties of Native Americans, Alaska Natives, and Native Hawaiians to practice, protect and preserve their inherent right of freedom to believe, express, and exercise their traditional religious rights, spiritual and cultural practices.

**1979** – Department of Justice Attorney General Bell issued a letter to Secretary of the Interior Andrus setting forth the Department of Justice’s position interpreting the federal government’s fiduciary responsibility to Tribal Nations regarding asset management more narrowly than what Tribal Nations argue for.

**1980** – The Supreme Court in *Washington v. Confederated Tribes of the Colville Indian Reservation* held the state had authority to impose taxes on certain on reservation activities.

**1980 and 1983** – The Supreme Court issued decisions in *United States v. Mitchell*, which, although ruling in favor of the Tribal Nation party, construed the federal government’s compensable fiduciary trust responsibilities to Tribal Nations for asset management more narrowly than what Tribal Nations argue for. The letter from Solicitor Krulitz was filed in the case and cited in the dissent.

**1989** – The Supreme Court issued a decision in *Cotton Petroleum Corporation v. New Mexico*, which applied the Bracker balancing test to weigh state, Tribal, and federal interests in determining whether states can impose tax on non-Tribal entities conducting commercial activities on Tribal land. SCOTUS noted that Congress could offer tax immunity, if it chose to do so.

**1994** – Congress enacted the American Indian Trust Fund Management Reform Act, which reaffirmed and specified federal trust responsibilities, authorized Tribal Nations to manage trust funds, and established the Office of the Special Trustee for American Indians.

**1994** – Congress passed the Federally Recognized Indian Tribe List Act, which directs the Department of the Interior to publish annually a list of federally recognized Tribal Nations and stipulates that federal agencies must treat all federally recognized Tribal Nations equally.

**1997** – Secretary of the Interior Babbitt issued Secretarial Order No. 3206, entitled “American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act,” which clarified responsibilities when actions taken under the Endangered Species Act affect Indian lands, Tribal Nations’ trust resources, or the exercise of Tribal Nations’ rights.

**1998** – The Supreme Court in *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.* refused to find an exception to Tribal Nations’ sovereign immunity for off reservation commercial activities.

**2000** – Secretary of the Interior Babbitt issued Secretarial Order No. 3215, entitled “Principles for the Discharge of the Secretary’s Trust Responsibility,” which provided guidance to employees who carry out the trust responsibility as it pertains to Indian trust assets and reaffirmed the letter from Solicitor Krulitz. The Department of the Interior then codified those principles for managing Indian trust assets in the Departmental Manual.

**2000** – President Clinton issued Executive Order No. 13175, entitled “Consultation and Coordination with Indian Tribal Governments,” which required federal agencies to consult with Tribal Nations for policies that have Tribal implications.

**2003** – The Supreme Court issued a decision in *United States v. Navajo*, which construed the federal government’s compensable fiduciary trust responsibilities to Tribal Nations for asset management more narrowly than what Tribal Nations argue for.

**2003** – The Supreme Court issued a decision in *United States v. White Mountain Apache Tribe*, which found the federal government, when using a Tribal Nation’s trust land or property, owes a duty to maintain that land or property.

**2003** – The United States Commission on Civil Rights issued a report, entitled “A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country.”

**2009** – The Supreme Court issued a decision in *Carciari v. Salazar*, which ruled that the Secretary of the Interior’s authority to acquire land into trust on behalf of Tribal Nations under the Indian Reorganization Act was limited to only those Tribal Nations that were “under federal jurisdiction” in 1934.

**2009** – President Obama held the first White House Tribal Nations Conference, where Tribal Leaders were invited to meet with the President and members of his Cabinet to discuss issues of importance to Indian country. President Obama continued to hold the White House Tribal Nations Conference each year.

**2009** – President Obama issued a Memorandum for the Heads of Executive Departments and Agencies, entitled “Tribal Consultation,” which directed agencies to develop detailed action plans to implement the Tribal Nation consultation policies and directives of Executive Order No. 13175.

**2009** – The United States settled the *Cobell* trust fund mismanagement litigation, and Secretary of the Interior Salazar issued Secretarial Order No. 3292, entitled “Individual Indian Trust Management,” which provided for the establishment of the Secretarial Commission on Indian Trust Administration and Reform to evaluate the Department of the Interior’s management and administration of Indian trust assets.

**2010** – The United States endorsed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), becoming the last nation to sign on, stating the “aspirations [the declaration] affirms, including the respect for the institutions and rich cultures of Native peoples, are one we must always seek to fulfill.”

**2010** – The Indian Health Care Improvement Act is permanently reauthorized as a part of the Patient Protection and Affordable Care Act after a 10-year effort from Tribal Nations and organizations.

**2011** – In *United States v. Jicarilla Apache Nation*, the Department of Justice asserted that the federal government’s legally enforceable trust obligations are limited to the terms of statutes and regulations, questioning the legal effect of the letter from Solicitor Krulitz. The Supreme Court reaffirmed that it looks to common law to determine the scope of federal Indian trust liability. It also stated “[t]he Government, following a humane and self-imposed policy ... has charged itself with moral obligations of the highest responsibility and trust.”

**2013** – President Obama issued Executive Order No. 13647, entitled “Establishing the White House Council on Native American Affairs,” to ensure that the federal government engages in a true and lasting government-to-government relationship with federally recognized Tribal Nations in a more coordinated and effective manner, including by better carrying out its trust responsibilities.

**2013** – The Secretarial Commission on Indian Trust Administration and Reform issued a report that recognized trust duties are not discretionary and recommended that the federal government (1) reaffirm that all federal agencies have a trust responsibility to Indians that demands a high standard of conduct, (2) develop a uniform consultation policy, and (3) restructure and improve the management, oversight, and accountability of federal trust administration.

**2013** – The Supreme Court in *Adoptive Couple v. Baby Girl* interpreted the Indian Child Welfare Act narrowly, with some Justices asserting possible equal protection concerns.

**2013** – President Obama signs the Violence Against Women Act Reauthorization (VAWA) into law. Tribal advocates fought hard to ensure that the law recognized our rights as inherent as opposed to granted. In signing the bill into law, President Obama expressed “Tribal governments have an inherent right to protect their people, and all women deserve the right to live free from fear.”

**2014** – Secretary of the Interior Jewell issued Secretarial Order No. 3335, entitled “Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries,” which reaffirmed the letter from Solicitor Krulitz and set forth guiding principles for bureaus and offices to follow to ensure that the Department of the Interior fulfills its trust responsibility.

**2016** – Standing Rock Protest begins in opposition to the Energy Transfer Partners’ Dakota Access Pipeline project that would cross beneath the Missouri and Mississippi Rivers, as well as part of Lake Oahe near the Standing Rock Indian Reservation. The protest was in direct opposition to the threat the pipeline posed to the region’s clean water and ancient burial grounds.

**2017** – President Trump in his signing statement associated with appropriations legislation implied that some services for Indians are unconstitutionally race based, stating he will treat provisions that allocate benefits on the basis of race, ethnicity, and gender—listing the Native American Housing Block Grant program—in a manner consistent with the equal protection clause of the Constitution. He continued to include such language in appropriations legislation signing statements during his presidency.

**2017** – President Trump signed a presidential memorandum to advance approval of construction of the Dakota Access Pipeline.

**2018** – The Centers for Medicare and Medicaid Services within the Department of Health and Human Services took the position that providing or approving an exemption from Medicaid work requirements for Indians would raise civil rights concerns.

**2018** – The United States Commission on Civil Rights issued a report entitled “Broken Promises: Continuing Federal Funding Shortfall for Native Americans,” which updates its prior 2003 report, entitled “A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country.”

**2018** – The Reclaiming Native Truth: A Project to Dispel America’s Myths and Misconceptions Report issued. It is the largest public opinion research project ever conducted by, for and about Native peoples. The research has been critically important in helping to start important and potentially transformative conversations with leaders in entertainment, media, K-12 education, philanthropy and other sectors. It has helped to validate, through data, the experiences of Native peoples across the country of how invisibility and toxic stereotypes that are perpetuated primarily by media, pop culture and K-12 education fuel bias and racism against Native peoples. It has raised important awareness among non-Natives allies about these systemic issues and the abundance of opportunities to work in partnership with Native peoples to advance narrative change and social justice.

**2019** – On August 9, the Fifth Circuit Court of Appeals affirmed the constitutionality of the Indian Child Welfare Act (the Department of Justice defended the Indian Child Welfare Act’s constitutionality). This decision was a reversal of the 2018 United States District Court for the Northern District of Texas decision in *Brackeen v. Bernhardt* that held the Indian Child Welfare Act violates the Constitution, including the equal protection clause (it further held that ICWA is race based, finding the principles of *Morton v. Mancari* do not extend to cover it).

**2020-2021** – The United States and nations around the world contend with SARS-COV-2, the COVID-19 pandemic. Tribal Nations and Native American people are uniquely impacted by the virus due to the chronic underfunding of trust and treaty obligations, with higher rates of illness and poorer outcomes, as well as greater economic impacts due to lockdowns. The United States responds with several large spending packages designed to provide resources and relief to units of government and individuals throughout the country, including Tribal Nations and our citizens. The American Rescue Plan provides the single largest transfer of federal resources to Tribal Nations ever at \$31.2 billion. However, access to COVID-19 relief funding and other resources is uneven, and many of Indian Country’s priorities are ignored. The United States Commission on Civil Rights attempts to update its Broken Promises report to reflect these failures, but a vote to publish these findings fails along partisan lines.

**2020** – The Trump Administration attempts to disestablish a reservation for the first time since the Termination Era in ordering the homelands of the Mashpee Wampanoag Tribe taken out of trust. The disestablishment was put to a halt when the DC District Court deemed arbitrary and capricious Department of Interior’s 2018 decision that the Mashpee Wampanoag Tribe did not prove it was “under federal jurisdiction” in 1934, and therefore did not meet the first definition of “Indian” under the Indian Reorganization Act—making the Tribal Nation ineligible to acquire land in trust.

**2020** – On July 9, the United States Supreme Court issued its decision in *McGirt v. Oklahoma*, holding that the Muscogee (Creek) Nation’s reservation is intact and remains Indian Country. The Court reaffirmed that reservations remain intact until Congress demonstrates clear congressional intent to disestablish them, such as through an “explicit reference to cession or other language evidencing the present and total surrender of all Tribal interests.” The Court was not persuaded when Oklahoma argued that its wrongful exercise of jurisdiction over the land should affect the reservation disestablishment analysis. Courts have since applied this case to find that other reservations in Oklahoma remain intact. As such, prosecution of crimes by Native Americans on these lands falls into the jurisdiction of the Tribal courts and federal judiciary under the Major Crimes Act, rather than Oklahoma’s courts.

**2021** – Congresswoman Debra Haaland, a citizen of the Laguna Pueblo, is confirmed as the first-ever Native American Secretary of the Interior.

**2021** – For the first time, the Office of Management and Budget, an agency within the Executive Office of the President, takes the position that it has consultative responsibilities to Tribal Nations leading to historic consultations on the President’s Fiscal Year 2022 and 2023 Budget Requests.

**2021** – On April 6, the United States Court of Appeals for the Fifth Circuit issued its en banc decision in *Brackeen v. Haaland*, where plaintiffs challenged the constitutionality of the Indian Child Welfare Act. The court held Congress had authority to enact the Act and that the Act’s “Indian child” classification is not unconstitutionally race-based in violation of the Equal Protection Clause of the United States Constitution. However, the judges were equally divided and thus the District Court’s ruling was affirmed without a precedential opinion that ICWA’s adoptive placement preference for “other Indian families” and foster care placement preference for “Indian foster home[s]” both violate the Equal Protection Clause. Because federal Indian laws are a reflection of the political relationship between the United States and Tribal Nations, they have not been subject to the heightened level of Equal Protection Clause review required for racial classifications, so this decision represents a dangerous precedent and a violation of the government-to-government relationship. In September, petitions for *certiorari* were filed with the United States Supreme Court.

**2021** – On June 25, the United States Supreme Court issued its decision in *Yellen v. Confederated Tribes of the Chehalis Reservation*, holding that Alaska Native Corporations are “Indian tribes” under the Indian Self-Determination and Education Assistance Act and, thus, are “Tribal governments” under the Coronavirus Aid, Relief, and Economic Security Act and eligible to receive Coronavirus Recovery Fund monies. The case placed before the Court questions regarding Tribal identity, Tribal sovereignty, and status as a Tribal Nation for purposes of federal Indian law.

**2022** – On March 28, in its Fiscal Year (FY) 2023 Budget Request, the Biden Administration includes an unprecedented proposal to shift funding for the Indian Health Service (IHS) from the discretionary to the mandatory side of the federal budget, a move that stabilizes the agency and is more representative of perpetual trust and treaty obligations. Further, the proposal includes a 10-year plan to close funding gaps, increasing IHS funding to \$36.7 billion in FY 2032—a 296% increase over this period—and exempting agency funds from sequestration.

**2022** – On June 21, President Biden [announced](#) his intention to appoint Mohegan Chief Mutáwi Mutáhash (Many Hearts), Marilyn “Lynn” Malerba, and USET Sovereignty Protection Fund Secretary, to be the next Treasurer of the United States. She is the first Native person to hold this position and the highest-ranking Native Treasury official in U.S. history. The Treasurer has direct oversight over the U.S. Mint, the Bureau of Engraving and Printing and Fort Knox, and is a key liaison with the Federal Reserve. In addition, the Treasurer serves as a senior advisor to the Secretary in the areas of community development and public engagement. For the very first time, the signature of a Native person, as well as those of two women, Chief Malerba and Treasury Secretary Janet Yellen, will appear on U.S. currency.

**2022** – On June 29, 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.”

**2022** – USET SPF issues a white paper articulating the necessity and our vision for a Marshall Plan for Tribal Nations—a substantial, one-time payment (in addition to existing trust and treaty obligations to provide full and mandatory funding to Tribal Nations) on the U.S.'s debt to Tribal Nations to bring us up to a baseline of economic and social stability. 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.

**2022** – On September 12, 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.

**2022** – The Biden Administration issues a [Presidential Memorandum on Uniform Standards for Tribal Consultation](#), which seeks to establish minimum Tribal consultation standards across all federal agencies and reinforce that consultation is a diplomatic tool between Nations. The Memorandum requires that the Office of Personnel Management, in collaboration with the Department of the Interior, develop training modules for federal employees on Tribal consultation.

**2022** – On December 1, the Department of the Interior includes in its Tribal Consultation Policy the first-ever Consensus-Seeking Mechanism to provide a process for the Department to seek consensus with Tribal Nations when DOI's actions would have an impact on our lands, governments, or citizens. Though greater detail and transparency are required, USET SPF was encouraged by the development of this Model as a first step toward achieving Tribal Nation consent for federal action, for which we have long advocated.

**2022** – On December 29, H.R. 2617, the Consolidated Appropriations Act of 2023 provides \$5.129 billion in advance appropriations for the Indian Health Service (IHS) in Fiscal Year (FY) 2024. This provision is the result of nearly a decade of advocacy from USET SPF and our partner organizations. The Biden Administration joined advocacy efforts, as well, with many top federal officials taking to the halls of Congress in support of this change.

**2023** – On June 15, the Supreme Court issued its [opinion](#) in the case of *Brackeen v. Haaland*, concerning the constitutionality of the Indian Child Welfare Act (ICWA). In a 7-2 decision authored by Justice Amy Coney Barrett, the Court rejected all challenges to ICWA, "some on the merits and others for lack of standing." *Brackeen v. Haaland* challenged the constitutionality of ICWA, which was enacted in 1974 in response to the disgraceful history and practice of separating Native American children from their families during adoption proceedings. The case was filed in federal court in Texas by the state and seven individuals. These individuals included three couples who are not Native American and had tried to foster or adopt children with Native American ancestry, as well as the biological mother of a Native American child whom one of the couples eventually adopted.

**2023** – On June 15, the Supreme Court of the United States (SCOTUS) issued its [opinion](#) in *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*. The question before the Court was whether the U.S. Bankruptcy Code expresses unequivocally Congress' intent to abrogate the sovereign immunity of Tribal Nations. In the majority opinion, SCOTUS held that the Bankruptcy Code "unambiguously abrogates the sovereign immunity of all governments, including federally recognized Indian Tribes." The vote on the case was 8-1, with Justice Neil Gorsuch dissenting. The Court's opinion in this case has the potential to expose Tribal Nations to costly, involuntary lawsuits under the Bankruptcy Code.

*Administration of Joseph R. Biden, Jr., 2021*

**Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships**

*January 26, 2021*

*Memorandum for the Heads of Executive Departments and Agencies*

*Subject: Tribal Consultation and Strengthening Nation-to-Nation Relationships*

American Indian and Alaska Native Tribal Nations are sovereign governments recognized under the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. It is a priority of my Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian policy. The United States has made solemn promises to Tribal Nations for more than two centuries. Honoring those commitments is particularly vital now, as our Nation faces crises related to health, the economy, racial justice, and climate change—all of which disproportionately harm Native Americans. History demonstrates that we best serve Native American people when Tribal governments are empowered to lead their communities, and when Federal officials speak with and listen to Tribal leaders in formulating Federal policy that affects Tribal Nations.

To this end, Executive Order 13175 of November 6, 2000 (Consultation and Coordination With Indian Tribal Governments), charges all executive departments and agencies with engaging in regular, meaningful, and robust consultation with Tribal officials in the development of Federal policies that have Tribal implications. Tribal consultation under this order strengthens the Nation-to-Nation relationship between the United States and Tribal Nations. The Presidential Memorandum of November 5, 2009 (Tribal Consultation), requires each agency to prepare and periodically update a detailed plan of action to implement the policies and directives of Executive Order 13175. This memorandum reaffirms the policy announced in that memorandum.

*Section 1. Consultation.* My Administration is committed to honoring Tribal sovereignty and including Tribal voices in policy deliberation that affects Tribal communities. The Federal Government has much to learn from Tribal Nations and strong communication is fundamental to a constructive relationship. Accordingly, I hereby direct as follows:

(a) The head of each agency shall submit to the Director of the Office of Management and Budget (OMB), within 90 days of the date of this memorandum, a detailed plan of actions the agency will take to implement the policies and directives of Executive Order 13175. The plan shall be developed after consultation by the agency with Tribal Nations and Tribal officials as defined in Executive Order 13175.

(b) Each agency's plan and subsequent reports shall designate an appropriate agency official to coordinate implementation of the plan and preparation of progress reports required by this memorandum. These officials shall submit reports to the Assistant to the President for Domestic Policy (APDP) and the Director of OMB, who will review agency plans and subsequent reports for consistency with the policies and directives of Executive Order 13175.

(c) The head of each agency shall submit to the Director of OMB, within 270 days of the date of this memorandum, and annually thereafter, a progress report on the status of each action included in the agency's plan, together with any proposed updates to its plan.

(d) The Director of OMB, in coordination with the APDP, shall submit to the President, within 1 year from the date of this memorandum, a report on the implementation of Executive

Order 13175 across the executive branch based on the review of agency plans and progress reports. Recommendations for improving the plans and making the Tribal consultation process more effective, if any, should be included in this report.

*Sec. 2. Definitions.* The terms "Tribal officials," "policies that have Tribal implications," and "agency" as used in this memorandum are as defined in Executive Order 13175.

*Sec. 3. General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

*Sec. 4. Publication.* The Director of OMB is authorized and directed to publish this memorandum in the *Federal Register*.

JOSEPH R. BIDEN, JR.

[Filed with the Office of the Federal Register, 8:45 a.m., January 28, 2021]

NOTE: This memorandum was published in the *Federal Register* on January 29.

*Categories:* Communications to Federal Agencies : Tribal consultation and nation-to-nation relationships, strengthening efforts, memorandum.

*Subjects:* American Indians and Alaska Natives : Tribal nations, relations with Federal Government; Management and Budget, Office of.

*DCPD Number:* DCPD202100091.



THE SECRETARY OF THE INTERIOR  
WASHINGTON

ORDER NO. 3335

Subject: Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries

**Sec. 1 Purpose.** In 2009, Secretary's Order No. 3292 established a Secretarial Commission on Indian Trust Administration and Reform (Commission). The Commission issued its Final Report and Recommendations in December 2013, which sets forth its views and recommendations regarding the United States' trust responsibility. In response to the report, this Order sets forth guiding principles that bureaus and offices will follow to ensure that the Department of the Interior (Department) fulfills its trust responsibility.

**Sec. 2 Authority.** This Order is issued pursuant to the U.S. Constitution, treaties, statutes, Executive Orders, and other Federal laws that form the foundation of the Federal-tribal trust relationship and in recognition of the United States' trust responsibility to all federally recognized Indian tribes and individual Indian beneficiaries.

**Sec. 3 Background.** The trust responsibility is a well-established legal principle that has its origins with the formation of the United States Government. In the modern era, Presidents, Congress, and past Secretaries of the Interior have recognized the trust responsibility repeatedly, and have strongly emphasized the importance of honoring the United States' trust responsibility to federally recognized tribes and individual Indian beneficiaries.

a. **Legal Foundation.** The United States' trust responsibility is a well-established legal obligation that originates from the unique, historical relationship between the United States and Indian tribes. The Constitution recognized Indian tribes as entities distinct from states and foreign nations. Dating back as early as 1831, the United States formally recognized the existence of the Federal trust relationship toward Indian tribes. As Chief Justice John Marshall observed, "[t]he condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence ... marked by peculiar and cardinal distinctions which exist nowhere else." *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1831). The trust responsibility consists of the highest moral obligations that the United States must meet to ensure the protection of tribal and individual Indian lands, assets, resources, and treaty and similarly recognized rights. See generally Cohen's Handbook of Federal Indian Law § 5.04[3] (Nell Jessup Newton ed., 2012); *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942).

The U.S. Supreme Court has repeatedly opined on the meaning of the United States' trust responsibility. Most recently, in 2011, in *United States v. Jicarilla*, the Supreme Court recognized the existence of the trust relationship and noted that the "Government, following 'a humane and self-imposed policy . . . has charged itself with moral obligations of the highest responsibility and trust,' obligations 'to the fulfillment of which the national honor has been

committed.” The Court further explained that “Congress has expressed this policy in a series of statutes that have defined and redefined the trust relationship between the United States and the Indian tribes. In some cases, Congress established only a limited trust relationship to serve a narrow purpose. In other cases, we have found that particular ‘statutes and regulations . . . clearly establish fiduciary obligations of the Government’ in some areas. Once federal law imposes such duties, the common law ‘could play a role.’ But the applicable statutes and regulations ‘establish [the] fiduciary relationship and define the contours of the United States’ fiduciary responsibilities.” *United States v. Jicarilla Apache Nation*, 131 S. Ct. 2313, 2324-25 (2011)(internal citations omitted).

While the Court has ruled that the United States’ liability for breach of trust may be limited by Congress, it has also concluded that certain obligations are so fundamental to the role of a trustee that the United States must be held accountable for failing to conduct itself in a manner that meets the standard of a common law trustee. “This is so because elementary trust law, after all, confirms the commonsense assumption that a fiduciary actually administering trust property may not allow it to fall into ruin on his watch. ‘One of the fundamental common-law duties of a trustee is to preserve and maintain trust assets.’” *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 475 (2003)(internal citations omitted).

b. Presidential Commitments to the Trust Responsibility. Since this country’s founding, numerous Presidents have expressed their commitment to upholding the trust responsibility. In the historic Special Message on Indian Affairs that marked the dawn of the self-determination age, President Nixon stated “[t]he special relationship between Indians and the Federal government is the result of solemn obligations which have been entered into by the United States Government . . . [T]he special relationship . . . continues to carry immense moral and legal force. To terminate this relationship would be no more appropriate than to terminate the citizenship rights of any other American.” Public Papers of the President: Richard M. Nixon, Special Message on Indian Affairs (July 8, 1970).

For more than four decades, nearly every administration has recognized the trust responsibility and the unique government-to-government relationship between the United States and Indian tribes. President Obama established a White House Council on Native American Affairs with the Secretary of the Interior serving as the Chair. President Barack Obama, Executive Order No. 13647, Establishing the White House Council on Native American Affairs (June 26, 2013). The Order requires cabinet-level participation and interagency coordination for the purpose of “establish[ing] a national policy to ensure that the Federal Government engages in a true and lasting government-to-government relationship with federally recognized tribes in a more coordinated and effective manner, including by better carrying out its trust responsibilities.” See also President Barack Obama, Memorandum on Tribal Consultation (Nov. 5, 2009); President George W. Bush, Executive Order No. 13336, American Indian and Alaska Native Education (Apr. 30, 2004); President William J. Clinton, Public Papers of the President: Remarks to Indian and Alaska Native Tribal Leaders (Apr. 29, 1994); President George H.W. Bush, Public Papers of the President: Statement Reaffirming the Government-to-Government Relationship Between the Federal Government and Indian Tribal Governments (Jun.14, 1991); President Ronald Reagan, American Indian Policy Statement, 19 Weekly Comp. Pres. Doc. 98 (Jan. 24, 1983); President Gerald L. Ford, Public Papers of the President: Remarks at a Meeting

with American Indian Leaders (July 16, 1976); President Richard M. Nixon, Public Papers of the President: Special Message on Indian Affairs (July 8, 1970); President Lyndon B. Johnson, Public Papers of the President: Special Message to the Congress on the Problems of the American Indian: "The Forgotten American" (March 6, 1968).

c. Congress. Congress has also recognized the United States' unique responsibilities to Indian tribes and individual Indian beneficiaries. Recently, Congress passed a joint resolution recognizing the "special legal and political relationship Indian tribes have with the United States and the solemn covenant with the land we share" and acknowledged the "long history of depredations and ill-conceived policies by the Federal government regarding Indian tribes" and offered "an apology to all Native peoples on behalf of the United States." 111th Cong. 1st Sess., S.J. Res 14 (Apr. 30, 2009). Congress has expressly and repeatedly recognized the trust responsibility in its enactments impacting Indian Affairs. *See, e.g.*, Indian Education and Self-Determination and Assistance Act of 1975; Tribal Self-Governance Amendments of 2000; American Indian Trust Fund Management Reform Act of 1994; Federally Recognized Indian Tribe List Act of 1994; Tribally Controlled Schools Act of 1988 and Indian Education Act of 1972; Indian Child Welfare Act of 1978; Indian Mineral Development Act of 1982; Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act).

d. The Department of the Interior. The Department likewise has recognized its obligations as a trustee towards Indian tribes and individual Indian beneficiaries and has been vested with the authority to perform certain specific trust duties and manage Indian affairs.

The Bureau of Indian Affairs (BIA) was transferred from the War Department to the Department in 1849. Congress delegated authority to the Department for the "management of all Indian affairs and of all matters arising out of Indian relations[.]" 25 U.S.C. § 2 (2014); *see also* 25 U.S.C. § 9 (2014); 43 U.S.C. § 1457. The BIA became the principal actor in the relationship between the Federal Government and Indian Tribes, and later Alaska Native Villages, exercising administrative jurisdiction over tribes, individual Indians, their land and resources.

The BIA has evolved dramatically over the last 185 years from an agency implementing past policies of allotment and assimilation, to a bureau charged with promoting and supporting Indian Self-Determination. In addition, several other bureaus and offices within the Department were created for or have specific duties with respect to fulfilling the trust responsibility, such as the Bureau of Indian Education, Office of the Assistant Secretary – Indian Affairs, Secretary's Indian Water Rights Office, Office of the Special Trustee for American Indians, Land Buy-Back Program for Tribal Nations, Office of Historical Trust Accounting, Office of Natural Resource Revenue, Office of Appraisal Services, and Office of Minerals Evaluations. All of these programs support and assist federally recognized tribes in the development of tribal government programs, building strong tribal economies, and furthering the well-being of Indian people. As instruments of the United States that make policy affecting Indian tribes and individual Indian beneficiaries, the Bureau of Land Management, Bureau of Reclamation, Fish & Wildlife Service, National Park Service, and the Department's other bureaus and offices share the same general Federal trust responsibility toward tribes and their members.

In an extended legal opinion regarding the meaning of the trust responsibility, former Department of the Interior Solicitor Leo M. Krulitz concluded that “[t]he trust responsibility doctrine imposes fiduciary standards on the conduct of the executive. The government has fiduciary duties of care and loyalty, to make trust property income productive, to enforce reasonable claims on behalf of Indians, and to take affirmative action to preserve trust property.” Memorandum from Department of the Interior Solicitor Leo M. Krulitz to Assistant Attorney General James W. Moorman, at 2 (Nov. 21, 1978). This opinion remains in effect today.

In exercising this broad authority, past Secretaries have acknowledged that the Department’s relationship with Indian tribes and individual Indian beneficiaries is guided by the trust responsibility and have expressed a paramount commitment to protect their unique rights and ensure their well-being, while respecting tribal sovereignty. *See e.g.*, Secretary’s Order 3317, Department of the Interior Policy on Consultation with Indian Tribes (Dec. 01, 2011); Secretary’s Order 3175, Departmental Responsibilities for Indian Trust Resources (Nov. 8, 1993); Secretary’s Order 3206, American Indian Tribal Rights, Federal Trust Responsibilities, and the Endangered Species Act (Jun. 5, 1997); Secretary’s Order 3215, Principles for the Discharge of the Secretary’s Trust Responsibility (Apr. 28, 2000); Secretary’s Order 3225, Endangered Species Act and Subsistence Uses in Alaska (Jan. 19, 2001).

The Department has also sought to build a strong government-to-government relationship with Indian tribes. The Department of the Interior Policy on Consultation with Indian Tribes, which was adopted in December 2011, sets forth standards for engaging with Indian tribes on a government-to-government basis to ensure that the decisions of the Department consider the impacts on affected Indian tribes and their members.

**Sec. 4 A New Era of Trust.** During the last few decades, the trust relationship has evolved. In the Era of Tribal Self-Determination, the Federal trust responsibility to tribes is often fulfilled when the Department contracts with tribal governments to provide the Federal services owed under the trust responsibility. Because tribal governments are more directly accountable to the people they represent, more aware of the problems facing Indian communities, and more agile in responding to changes in circumstances, tribal governments can often best meet the needs of Indian people. In sum, the Federal trust responsibility can often be achieved best by empowering tribes, through legislative authorization and adequate funding to provide services that fulfill the goals of the trust responsibility.

In recent decades, the trust relationship has weathered a difficult period in which Indian tribes and individual Indians have resorted to litigation asserting that the Department had failed to fulfill its trust responsibility, mainly with regard to the management and accounting of tribal trust funds and trust assets. In an historic effort to rebuild the trust relationship with Indian tribes, the Department recently settled numerous “breach of trust” lawsuits. This includes *Cobell v. Salazar*, one of the largest class action suits filed against the United States, and more than 80 cases involving Indian tribes. Resolution of these cases marks a new chapter in the Department’s history and reflects a renewed commitment to moving forward in strengthening the government-to-government relationship with Indian tribes and improving the trust relationship with tribes and individual Indian beneficiaries.

As part of the *Cobell* Settlement, the Department established a Secretarial Commission on Indian Trust Administration and Reform in 2009 through Secretary's Order No. 3292. The Commission issued its final report in December 2013. The report highlighted the significance of the Federal trust responsibility and made recommendations to the Department on how to further strengthen the commitment to fulfill the Department's trust obligations. The Commission urged a "renewed emphasis on the United States' fiduciary obligation" and asserted that this "could correct some [issues], especially with respect to ensuring that all federal agencies understand their obligations to abide by and enforce trust duties."

As a response to the Commission's recommendation, this Order hereby sets forth seven guiding principles for honoring the trust responsibility for the benefit of current and future generations.

**Sec. 5 Guiding Principles.** Pursuant to the long-standing trust relationship between the United States, Indian tribes and individual Indian beneficiaries and in furtherance of the United States' obligation to fulfill the trust responsibility, subject to Section 6 below, all bureaus and offices of the Department are directed to abide by the following guiding principles consistent with all applicable laws. Bureaus and offices shall:

Principle 1: Respect tribal sovereignty and self-determination, which includes the right of Indian tribes to make important decisions about their own best interests.

Principle 2: Ensure to the maximum extent possible that trust and restricted fee lands, trust resources, and treaty and similarly recognized rights are protected.

Principle 3: Be responsive and informative in all communications and interactions with Indian tribes and individual Indian beneficiaries.

Principle 4: Work in partnership with Indian tribes on mutually beneficial projects.

Principle 5: Work with Indian tribes and individual Indian beneficiaries to avoid or resolve conflicts to the maximum extent possible in a manner that accommodates and protects trust and restricted fee lands, trust resources, and treaty and similarly recognized rights.

Principle 6: Work collaboratively and in a timely fashion with Indian tribes and individual Indian beneficiaries when evaluating requests to take affirmative action to protect trust and restricted fee lands, trust resources, and treaty and similarly recognized rights.

Principle 7: When circumstances warrant, seek advice from the Office of the Solicitor to ensure that decisions impacting Indian tribes and/or individual Indian beneficiaries are consistent with the trust responsibility.

**Sec. 6 Scope and Limitations.**

a. This Order is for guidance purposes only and is adopted pursuant to all applicable laws and regulations.

b. This Order does not preempt or modify the Department's statutory mission and authorities, position in litigation, applicable privilege, or any professional responsibility obligations of Department employees.

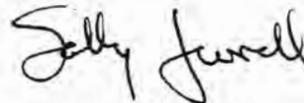
c. Nothing in this Order shall require additional procedural requirements related to Departmental actions, activities, or policy initiatives.

d. Implementation of this Order shall be subject to the availability of resources and the requirements of the Anti-Deficiency Act.

e. Should any Indian tribe(s) and the Department agree that greater efficiency in the implementation of this Order can be achieved, nothing in this Order shall prevent them from implementing strategies to do so.

f. This Order is intended to enhance the Department's management of the United States' trust responsibility. It is not intended to, and does not, create any right to administrative or judicial review or any legal right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies, or instrumentalities, its officers or employees, or any other person.

**Sec. 7 Expiration Date.** This Order is effective immediately and will remain in effect until it is incorporated into the Department Manual, or is amended, suspended, or revoked, whichever occurs first.



Secretary of the Interior

Date: August 20, 2014

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## THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES,\* A QUICK REFERENCE

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The UN Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, was adopted on September 13, 2007 by the United Nations General Assembly, after more than thirty years of work and negotiations. One hundred and forty-three UN Member States voted to adopt the Declaration and four voted against. All four countries that voted “no” have since changed their positions and now support the Declaration.<sup>i</sup>

The Declaration, made up of 26 preambular paragraphs and 46 operative articles, is a monumental statement of individual and collective rights created with the participation of the rights holders themselves – indigenous peoples. Though the Declaration is not legally binding on countries in and of itself, it sets the rules for the treatment of, and obligations of states toward, indigenous peoples and individuals. It can be used as a moral and political tool to guide countries’ laws, policies, and practices toward indigenous peoples and to interpret international human rights laws. In many provisions, the Declaration states customary international law – that is, the practices of countries they believe to be legally required. These elements of the Declaration are binding as customary international law.

The following is a summary of some of the most important rights in the Declaration. It is not an exhaustive list of all the rights of indigenous peoples and individuals contained in the Declaration. The full text of the Declaration is available at: [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf).

**Article 1. Scope.** Indigenous peoples have the right to collective and individual enjoyment of all human rights recognized in international law.

**Article 2. Non-discrimination.** Indigenous peoples are free and equal to all others, and have the right to be free from discrimination.

**Articles 3-5. Self-determination.** Indigenous peoples have the right to self-determination, including their economic, social, and cultural development, and the right to self-government, including the right to maintain and strengthen their own governing institutions.

**Article 6. Nationality.** Indigenous individuals have the right to a nationality.

**Articles 7-10. Life and security.** Indigenous peoples have the right to life, freedom, peace, and security, and to exist as distinct peoples, to belong to an indigenous community or nation, and to be free from forced removal, forced assimilation, or destruction of their cultures. States must act to prevent taking of their lands, forced relocation, and propaganda to incite discrimination.

**Articles 11-13. Culture and language.** Indigenous peoples have the right to practice and preserve their cultural and spiritual traditions and customs, including their histories, languages, oral traditions, philosophies, writing systems and literatures. States must take effective measures to ensure protection of such rights, to ensure indigenous peoples can understand and be understood in certain proceedings, and to enable access to and/or repatriation of ceremonial objects and remains in the possession of States.

**Articles 14-17. Education, public information, and employment.** Indigenous peoples have the right to education, media, and labor protections without discrimination, and to establish and control their own educational and media systems. States must combat discrimination and take measures to ensure accurate media representation of indigenous cultures, and to protect indigenous children from labor exploitation.

\*Endorsed by the United States in 2010.

**Articles 18-19. Consultation and participatory decision-making.** Indigenous peoples have the right to participate in decision-making in matters that will affect their rights. States must consult with indigenous peoples in order to obtain their free, prior, and informed consent before adopting measures that may affect them.

**Articles 20-24. Economic and social rights, and vulnerable populations.** Indigenous peoples have the right to maintain their health practices and to attain the highest standard of health, and to improve their political, social and economic systems, especially those concerning subsistence and development priorities and strategies. States shall take effective and special measures to ensure improvement of their conditions, with particular attention to the rights and special needs of indigenous elders, women, children, and persons with disabilities. States must take measures to ensure women and children are free from violence and discrimination.

**Articles 25-28. Lands, territories, and resources.** Indigenous peoples have the right to own and control the lands they possess, as well as the right to compensation for the taking of their lands. States shall provide legal recognition of their lands through fair and open processes.

**Articles 29-31. Environmental health.** Indigenous peoples have the right to protect their traditional knowledge, conserve and protect their environment, and restore their health, including by restricting hazardous waste or military activities on their lands.

**Article 32. Development.** Indigenous peoples have the right to develop their territories. States must consult with them in order to obtain their free, prior, and informed consent before approval of projects that may affect them, and provide redress and mitigate adverse impacts.

**Articles 33-35. Self-governance.** Indigenous peoples have the right to determine their own membership, to promote their institutional and juridical systems, and to determine the responsibilities of individuals to their communities.

**Articles 36-37. Treaties and international relations.** Indigenous peoples have the right to the recognition and enforcement of international treaties, and to maintain and develop political, economic, and cultural relationships across borders.

**Articles 38-42. Implementation.** The UN system and States should provide the necessary financial and technical assistance, and States must take appropriate measures, including legislative measures, to ensure implementation of this Declaration. Indigenous peoples have the right to dispute resolution mechanisms to address infringements of their rights.

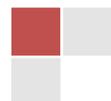
**Articles 43-46. Interpretation.** Rights and freedoms recognized in this Declaration constitute the minimum human rights standards for indigenous peoples, are equally guaranteed to men and women, do not diminish any existing or future rights of indigenous peoples, do not provide a right of secession from States, and shall be interpreted in accordance with the principles of justice, democracy, respect, equality, non-discrimination, good governance, and good faith.

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<sup>i</sup> On April 3, 2009, Australia changed its position and moved to endorse the UN Declaration. Australia was followed by: New Zealand on April 20, 2010; Canada on November 12, 2010; and the United States on December 16, 2010. States abstaining from the vote in 2007 – Samoa, Colombia, and the Ukraine – have also indicated their support.

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# AN INDIAN TRUST FOR THE TWENTY-FIRST CENTURY

*Natural Resources Journal, Vol. 46, p. 317, 2006*



## **Kevin Gover**

*Arizona State University (ASU) - Sandra Day O'Connor College of Law*

The trust responsibility has served as the source of federal authority to wreak all manner of harm on tribal communities. The responsibility that the United States has assumed to protect Indian wellbeing has created the "plenary power" that the United States exercises in Indian affairs. This power has been employed often to the enormous disadvantage of Indians. This power arose from two key assumptions among the three branches of the federal government: (1) Indians were incompetent to deal with the complex political and economic systems of white Americans and required federal protection and (2) Indian Tribes would disappear within one or two generations. These assumptions were understandable at the beginning of the twentieth century because Indians had been deprived entirely of their traditional means of sustenance and had virtually no economic system. Moreover, the purpose of federal policy at the time was the destruction of the Tribes, leavened by a humane belief that individual Indians could be saved through immersion into white culture.

These assumptions shaped the trust responsibility at its beginning, and its effects reside in the current administration of the trust. Legal doctrine governing the trust responsibility and federal plenary power has changed little in the past century, even while Indian communities have undergone profound change. In the past 40 years, Indian Tribes have demanded and gained fundamental changes in the way that the United States relates to and delivers services to them. More importantly, though Indians still lag behind the general population in educational attainment, the gap has closed considerably and new generations of college-educated experts are entering tribal government. Tribes have not disappeared, and they are not incompetent. The assumptions underlying the trust are invalid, and it necessarily follows that the specifics of the trust hold little value in the making of modern Indian policy. The trust responsibility must be modernized to meet the new reality.

The concept of a federal responsibility for Indian property arose in the nineteenth century as a means of protecting Indians from intrusions by outsiders. By the end of that century, it had evolved into an intrusive means of denying Tribes control of their lands through the exercise of an unconstrained federal power to manage Indian property regardless of the desires of the Indians. Congress's exercise of this "plenary power" deprived the Tribes of two-thirds of the lands to which the Tribes held recognized title in less than 50 years. The concept of the trust responsibility and the nature of federal power over Indian lands that was born in this era may still be found in modern administration of the trust.

These devastating losses were followed by inconsistent federal policies that swung wildly from policies supporting tribal selfgovernance and federal protection of tribal resources to policies literally disestablishing tribal governments and forswearing any further federal responsibility for tribal resources. As a result, the problems of trust administration that emerged early in the twentieth century festered into the collapse of the trust administration system at the century's end. Further, this history of traumatic shifts in policy leaves tribes deeply wary of any federal policy initiative to restore tribal resources to tribal control.



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SOLICITOR  
WASHINGTON, D.C. 20240

NOV 21 1978

Honorable James W. Moorman  
Assistant Attorney General  
United States Department of Justice  
Washington, D.C. 20530

Re: United States v. Maine

Dear Mr. Moorman:

By letter of October 20, 1978, to the Attorney General, I requested that Justice not file any pleading designed to advise the federal district court of the government's view of the nature of the trust relationship between the United States and Indian tribes. I hereby reaffirm the views set forth in my October 20 letter. I did suggest in the letter, however, that Justice and Interior continue to work on the legal questions concerning the government's trust responsibility.

Congress has reposed principal authority for "the management of all Indian affairs and of all matters arising out of Indian relations" with this Department. 25 U.S.C. Sec. 2. As you no doubt realize, any legal memorandum filed by the Attorney General on such a broad issue as the trust responsibility would have far reaching policy implications. We have serious reservations about the statement as originally drafted and I am attaching a line by line critique, as promised, as a way to highlight some of the disputed issues. To be of further assistance to you, set forth below is this Department's view of the legal obligations of the United States, as defined by the courts, with respect to Indian property interests.

That the United States stands in a fiduciary relationship to American Indian tribes, is established beyond question. The specific scope and content of the trust responsibility is less clear. Although the law in this area is evolving, meaningful standards have been established by the decided cases and these standards affect the government's administration of Indian policy. Our discussion is confined to the government's responsibilities concerning Indian property interests and should be understood in that context. Our conclusions may be summarized as follows:

1. There is a legally enforceable trust obligation owed by the United States Government to American Indian tribes. This obligation originated in the course of dealings between the government and the Indians and is reflected in the treaties, agreements, and statutes pertaining to Indians.

2. While Congress has broad authority over Indian affairs, its actions on behalf of Indians are subject to Constitutional limitations (such as the Fifth Amendment), and must be "tied rationally" to the government's trust obligation; however, in its exercise of other powers, Congress may act contrary to the Indians' best interests.

3. The trust responsibility doctrine imposes fiduciary standards on the conduct of the executive. The government has fiduciary duties of care and loyalty, to make trust property income productive, to enforce reasonable claims on behalf of Indians, and to take affirmative action to preserve trust property.

4. Executive branch officials have discretion to determine the best means to carry out their responsibilities to the Indians, but only Congress has the power to set policy objectives contrary to the best interests of the Indians.

5. These standards operate to limit the discretion not only of the Secretary of the Interior but also of the Attorney General and other executive branch officials.

#### ORIGIN OF THE DOCTRINE

The origin of the trust relationship lies in the course of dealings between the discovering European nations and (later the original states and the United States) the Native Americans who occupied the continent. The interactions between these peoples resulted in the conclusion by this country of treaties and agreements recognizing the quasi-sovereign status of the Native American tribes.

The Supreme Court has stated that:

In the exercise of the war and treaty powers, the United States overcame the Indians and took possession of their lands, sometimes by force, leaving them an uneducated, helpless and dependent people, needing protection

against the selfishness of others and their own improvidence. Of necessity, the United States assumed the duty of furnishing that protection, and with it the authority to do all that was required to perform that obligation and to prepare the Indians to take their place as independent, qualified members of the modern body politic. Board of County Commissioners v. Seber, 318 U.S. 705, 715 (1943).

Implicitly, the Court recognized the course of history by which the Indian tribes concluded treaties of alliance or—after military conquest—peace and reconciliation with the United States. In virtually all these treaties, the United States promised to extend its protection to the tribes. Consequently, the trust responsibility to Native Americans has its roots for the most part in solemn contracts and agreements with the tribes. The tribes ceded vast acreages of land and concluded conflicts on the basis of the agreement of the United States to protect them from persons who might try to take advantage of their weak position. No comparable duty is owed to other United States citizens.

While the later executive agreements and presidential orders implementing them with tribes are shorter and less explicit than the treaties, a similar guarantee of protection can be implied from them. As the Court stated recently in Morton v. Mancari, 471 U.S. 535 (1974), then, "the unique legal status of Indian tribes under federal law (is) . . . based on a history of treaties and the assumption of a guardian-ward status."

The treaties and agreements represented a kind of land transaction, contract, or bargain. The ensuing special trust relationship was a significant part of the consideration of that bargain offered by the United States. By the treaties and agreements, the Indians commonly reserved part of their aboriginal land base and this reservation was guaranteed to them by the United States. By administrative practice and later by statute, the title to this land was held in trust by the United States for the benefit of the Indians.

From the beginning, the Congress was a full partner in the establishment of the federal trust responsibility to Indians. Article III of the Northwest Ordinance of 1787, which was ratified by the first Congress assembled under the new Constitution in 1789, 1 Stat. 50, 52, declared:

The utmost good faith shall always be observed toward the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights and liberty they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

And in 1790, Congress enacted the Non-Intercourse Act, 1 Stat. 137, 138, now codified as 25 U.S.C. § 177, which itself established a fiduciary obligation on the part of the United States to protect Indian property rights. See Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 528 F. 2d 370 (1st Cir. 1975), and United States v. Southern Pacific Transportation Co., 543 F.2d 676, 677-699 (9th Cir. 1976).

Articulation of the concept of the federal trust responsibility as including more protection than simple federal control over Indian lands evolved judicially. It first appeared in Chief Justice Marshall's decision in Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831). Cherokee Nation was an original action filed by the tribe in the Supreme Court seeking to enjoin enforcement of state laws on lands guaranteed to the tribe by treaties. The Court decided that it lacked original jurisdiction because the tribe, though a "distinct political community" and thus a "state," was neither a State of the United States nor a foreign state and was thus not entitled to bring the suit initially in the Court. Chief Justice Marshall concluded that Indian tribes "may, more correctly, perhaps, be denominated domestic dependent nations. . . in a state of pupilage" and that "their relation to the United States resembles that of a ward to his guardian." Chief Justice Marshall's subsequent decision in Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832), reaffirmed the status of Indian tribes as self-governing entities without, however, elaborating on the nature or meaning of the guardian-ward relationship.

Later in the nineteenth century, the Court used the guardianship concept as a basis for congressional power, separate and distinct from the commerce clause. United States v. Kagama, 118 U.S. 375 (1886), concerned the constitutionality of the Major Crimes Act. Although it concluded that this statute was outside the commerce power, the Court sustained the

validity of the act by reference to the Government's fiduciary responsibility. The Court stated that "[t]hese Indian tribes are the wards of the nation. They are communities dependent on the United States. . . . From their very weakness and helplessness. . . there arises the duty of protection, and with it the power."

A number of cases in the decades on either side of 1900 make express reference to such a power based on the federal guardianship, e.g., LaMotte v. United States, 254 U.S. 570, 575 (1921) (power of Congress to modify statutory restrictions on Indian land is "an incident of guardianship"); Cherokee Nation v. Hitchcock, 187 U.S. 294, 308 (1902) ("The power existing in Congress to administer upon and guard the tribal property"), and the Supreme Court has continued to sustain the constitutionality of Indian statutes as derived from an implicit power to implement the "unique obligation" and "special relationship" of the United States with tribal Indians. Cf. Morton v. Mancari, 417 U.S. 345, 552, 555 (1973).

#### LIMITATIONS ON CONGRESS

Congressional power over Indian affairs is subject to constitutional limitations. While Congress has the power to abrogate Indian treaties, Lone Wolf v. Hitchcock, 187 U.S. 553 (1903), Indian property rights are protected from repeal by the Fifth Amendment, Choate v. Trapp, 224 U.S. 665, 678 (1912). The Supreme Court held in Chippewa Indians v. United States, 301 U.S. 358 (1937), that

\* \* \* Our decisions, while recognizing that the government has power to control and manage the property and affairs of its Indian wards in good faith for their welfare, show that this power is subject to constitutional limitations and does not enable the government to give the lands of one tribe or band to another, or to deal with them as its own. \* \* \* (P. 375-376).

In addition to these constitutional limitations on Congress' power to implement its trust responsibility, the Court has observed that the guardianship "power to control and manage" is also "subject to limitations inhering in a guardianship," United States v. Creek Nation, 295 U.S. 103, 110 (1935), although the cases do not clarify with precision what limitations "inhere in a guardianship" so far as Congress is concerned. Recent cases have, however, considered the United States' trust

obligations as an independent limiting standard, for judging the constitutional validity of an Indian statute, rather than solely a source of power. In Morton v. Mancari, 417 U.S. 535 (1974), the Supreme Court upheld the constitutionality of a statute granting Indians an employment preference in the Bureau of Indian Affairs, stating:

As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indian, such legislative judgments will not be disturbed. Id. at 555.

Delaware Tribal Business Council v. Weeks, 430 U.S. 73 (1977), expressly held that the plenary power of Congress and the separation of powers shield "does not mean that all federal legislation concerning Indians is . . . immune from judicial scrutiny." The Court in Weeks took the significant step of examining on the merits claims by one group of Indians that legislation had denied them due process, and it applied the above-quoted standard from Mancari.

This standard, in practice, does not suggest that a reviewing court will second guess a particular determination by Congress that a statute in fact is an appropriate protection of the Indians' interests. Congressional discretion seems necessarily broad in that respect. But the power of Congress to implement the trust obligation would not seem to authorize enactments which are manifestly contrary to the Indians best interests. This does not mean that Congress could never pass a statute contrary to its determination that the Indians' best interests are served by it. Congress in its exercise of other powers such as eminent domain, war, or commerce, may act in a manner inimical to Indians. However, where Congress is exercising its authority over Indians, rather than some other distinctive power, the trust obligation would appear to require that its statutes must be based on a determination that the protection of the Indians will be served. Otherwise, a statute would not be rationally related to the trusteeship obligation to Indians. Cf., Fort Berthold Reservation v. United States, 390 F.2d 686, 691-693 (Ct. Cl. 1968).

The trust obligations of the United States constrain congressional power in another way. Since it is exercising a trust responsibility in its enactment of Indian statutes, courts presume that Congress' intent toward the Indians is benevolent. Accordingly, courts construe statutes (as well as treaties) affecting Indians as not abrogating prior Indian rights or,

in case of ambiguity, in a manner favorable to the Indians. E.g., United States v. Santa Fe Pacific Ry., 314 U.S. 339 (1941). This presumption is rebuttable in that the courts have also held that Congress can unilaterally alter treaty rights or act in a fashion adverse to the Indians interests—even to the point of terminating the trust obligation. But such an intent must be "clear," "plain" or "manifest" in the language or legislative history of an enactment. Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977).

#### LIMITATION ON ADMINISTRATIVE DISCRETION

In Indian, as in other matters, federal executive officials are limited by the authority conferred on them by statute. In addition, the federal trust responsibility imposes fiduciary standards on the conduct of the executive—unless, of course, Congress has expressly authorized a deviation from those standards. Since the trust obligation is binding on the United States, fiduciary standards of conduct would seem to pertain to all executive departments that may deal with Indians, not just those such as the Departments of Interior and Justice which have special statutory responsibilities for Indian affairs. This principle is implicit in United States v. Winnebago Tribe, 542 F. 2d 1002 (8th Cir. 1976), where the court employed the canon of construction that ambiguous federal statutes should be read to favor Indians to thwart the efforts of the Army Corps of Engineers to take tribal land.

A number of court decisions hold that the federal trust responsibility constitutes a limitation upon executive authority and discretion to administer Indian property and affairs. A leading case is United States v. Creek Nation, 295 U.S. 103 (1935), where the Supreme Court affirmed a portion of a decision by the Court of Claims awarding the tribe money damages against the United States for lands which had been excluded from their reservation and sold to non-Indians pursuant to an incorrect federal survey of reservation boundaries. The Court bottomed its decision on the federal trust doctrine:

The tribe was a dependent Indian community under the guardianship of the United States and therefore its property and affairs were subject to the control and management of that government. But this power to control and manage was not absolute. While extending to all appropriate measures for protecting and advancing the tribe, it was subject to limitations inhering in such a guardianship and to pertinent constitutional restrictions. 295 U.S. at 109-110. (emphasis added)

Creek Nation stands for the proposition that—unless Congress has expressly directed otherwise—the federal executive is held to a strict standard of compliance with fiduciary duties. For example, the executive must exercise due care in its administration of Indian property; it cannot as a result of a negligent survey "give the tribal lands to others, or . . . appropriate them to its own purposes." Other decisions of the Supreme Court reviewing the lawfulness of administrative conduct managing Indian property have held officials of the United States to "obligations of the highest responsibility and trust" and "the most exacting fiduciary standards," and to be bound "by every moral and equitable consideration to discharge its trust with good faith and fairness." Seminole Nation v. United States, 316 U.S. 286, 296-297, (1942); United States v. Payne, 264 U.S. 466, 448 (1924). Decisions of the Court of Claims have also held that the ordinary standards of a private fiduciary must be adhered to by executive officials administering Indian property. E.g., Coast Indian Community v. United States, 213 Ct. Cl. 129, 550 F.2d 639 (1977); Cheyenne-Arapahoe Tribes v. United States, 206 Ct. Cl. 340, 512 F.2d 1390 (1975); Menominee Tribe v. United States, 101 Ct. Cl. 10, 18-19 (1944); Navajo Tribe v. United States, 364 F. 2d. 320, 322-324 (Ct. Cl. 1966).

Creek Nation and the other cited cases were for money damages under special jurisdictional statutes in the Court of Claims. Other decisions have granted declaratory and injunctive relief against executive actions in violation of ordinary fiduciary standards. An important example is Lane v. Pueblo of Santa Rosa, 249 U.S. 110 (1919), where the Supreme Court enjoined the Secretary of the Interior from disposing of tribal lands under the general public land laws. That action, the Court observed, "would not be an exercise of the guardianship, but an act of confiscation." 249 U.S. at 113.

Federal officials as trustees are not insurers. The case of United States v. Mason, 411 U.S. 391 (1973), sustains as reasonable a decision by the Interior Department not to question certain state taxes on trust property. But the case law in recent years generally holds executive action to be reviewable both under the terms of specific statutes and for breach of obligations of an ordinary trustee. A significant recent federal district court decision, Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252 (D.D.C. 1972), enjoins certain diversions of water for a federal reclamation project which adversely affected a downstream lake on an Indian reservation. Although the diversions violated no specific statute or treaty, the court held them in violation of the trust responsibility.

The court held that the Secretary of the Interior--as trustee for the Indians--was obliged to discharge his potentially conflicting duty to administer reclamation statutes in a manner which does not interfere with Indian rights. The court restrained the diversions because the Secretary's activities failed "to demonstrate an adequate recognition of his fiduciary duty to the Tribe." The Department of Justice acquiesced in this decision and chose not to appeal.

If, as we believe, the decisions in such cases as Creek Nation, Pueblo of Santa Rosa, and Pyramid Lake are sound, it follows that executive branch officials are obliged to adhere to fiduciary principles. These cases, in other words, lead to the conclusion that the government is in fact a trustee for the Indians and executive branch officials must act in accordance with trust principles unless Congress specifically directs otherwise.

#### INDEPENDENT EXISTENCE

In addition, the decided cases strongly suggest that the trust obligation of the United States exists apart from specific statutes, treaties or agreements. As previously stated, the Supreme Court in United States v. Kagama, 118 U.S. 375 (1886), sustained the validity of the Major Crimes Act on the basis of the trust relationship, separate and apart from other constitutional powers. And Lane v. Pueblo of Santa Rosa, 249 U.S. 110 (1919), United States v. Creek Nation, 295 U.S. 103 (1935), and Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252 (D.D.C. 1972), apply the trust responsibility to restrain executive action without regard to any specific treaty, statute or agreement.

This view is reinforced by reference to the origins of the trust responsibility doctrine. Originally, Great Britain claimed for itself sovereignty over all Indian lands in the English colonies. In 1763, the King issued a Royal Proclamation, the precursor of the federal Non-Inter-course Act, decreeing that Indian lands were owned by the Crown and that no person or government could acquire such lands without the consent of the Crown. This policy reflected the practical need of the Crown to assert its control over the land and wealth of the colonies and to preserve peace among the colonists and the Indians. Notably, the 1763 Proclamation applied to all Indians without regard to the presence or absence of specific treaties or agreements.

When the United States acquired sovereignty from Great Britain, it succeeded to all the incidents of the prior sovereign's power. The United States not only did not renounce the peculiar power and duty assumed by Great Britain over Indians, but endorsed it by specific reference in Article I of the Constitution.

The recent decision in Delaware Tribal Business Council v. Weeks, 430 U.S. 73 (1977), holds that the trust responsibility is subject to due process limitations. Weeks holds that Congress is not free to legislate with respect to Indians in any manner it chooses; rather, Congressional action with respect to Indians is subject to judicial review and will be sustained only so long as it can be "tied rationally to the fulfillment of Congress' unique obligation toward the Indians."

Other recent Supreme Court opinions shed further light on what is meant by the "unique obligation toward the Indian." In Morton v. Ruiz, 415 U.S. 199 (1974), the Court in holding that the Bureau of Indian Affairs erred in excluding a certain category of Indians from the benefits of its welfare program spoke of the "overriding duty of our Federal Government to deal fairly with Indians." 415 U.S. at 236. This statement appears as part of the procedural rights of Indians, and in this connection the Court cited Seminole Nation v. United States, 316 U.S. 286, 296 (1942), which says governmental action must be judged by the "strictest fiduciary standards." Most recently, in Santa Clara Pueblo v. Martinez, \_\_\_\_\_ U.S. \_\_\_\_\_ (1978), the court reviewed the record of limited Indian participation in the hearings on the Indian Civil Rights Act and said:

It would hardly be consistent with "the overriding duty of our Federal Government to deal fairly with Indians," Morton v. Ruiz, 415 U.S. 199, 236 (1974), lightly to imply a cause of action on which the tribes had no prior opportunity to present their views. \_\_\_\_\_ U.S. \_\_\_\_\_, \_\_\_\_\_ n. 30 (1978).

The "unique obligation" mentioned in Weeks and the "overriding duty" of fairness discussed in Ruiz and Martinez exist apart from any specific statute, treaty or agreement, and they impose substantive constraints on the Congress (Weeks), the Executive (Ruiz) and the Judiciary (Martinez) with respect to Indians. These recent decisions of the Supreme Court lead to the conclusion that the government's trust responsibility to the Indian has an independent legal basis and is not limited to the specific language of the statutes, treaties and agreements.

At the same time, however, the content of the trust obligation - apart from specific statutes and treaties - is limited to dealing fairly, not arbitrarily, with the Indians both with respect to procedural and substantive issues. The standard of fairness is necessarily vague and allows considerable room for discretion. But these independently based duties do not stand alone. They must be read together with the host of statutory and treaty provisions designed to provide protection for Indian interests. Illustrative of such statutes are 25 U.S.C. Sec. 81 (contracts); 25 U.S.C. Sec. 175 (legal representation); 25 U.S.C. Sec. 177 (conveyance of property); 25 U.S.C. Sec. 194 (burden of proof in property cases); 25 U.S.C. Secs. 261-264 (regulation of traders); 25 U.S.C. Sec. 465 (acquisition of land in trust).

The more general notions of the "unique obligations" and "overriding duty" of fairness form a backdrop for the construction and interpretation of the statutes, treaties, and agreements respecting the Indians. This means that provisions for the benefit of Indians must be read to give full effect to their protective purposes and also they must be given a broad construction consistent with the trust relationship between the government and the Indians. General notions of fiduciary duties drawn from private trust law form appropriate guidelines for the conduct of executive branch officials in their discharge of responsibilities toward Indians and are properly utilized to fill any gaps in the statutory framework.

#### SPECIFIC OBLIGATIONS

The decided cases set forth a number of specific obligations of the trusteeship. Navajo Tribe v. United States, 364 F.2d 320 (Ct. Cl. 1966). During the second World War, an oil company had leased tribal land for oil and gas purposes. Upon discovering helium, bearing noncombustible gas which it had no desire to produce, the company assigned the lease to the Federal Bureau of Mines. The Bureau developed and produced the helium under the terms of the assigned lease instead of negotiating a new, more remunerative lease with the tribe. In Navajo, the court analogized these facts to the case of a "fiduciary who learns of an opportunity, prevents the beneficiary from getting it, and seizes it for himself," and held the action unlawful. Pyramid Lake discussed above also involves the fiduciary duty of loyalty.

Manchester Band of Pomo Indian v. United States, 363 F. Supp. 1238 (N.D. Cal., 1973), holds that the government as trustee has a duty to make trust property income productive. The federal district court held, in that case, that officials of this Department had violated their trust obligations by failing to invest tribal funds in nontreasury accounts bearing higher interest than was paid by treasury accounts. Menominee Tribe v. United States, 101 Ct. Cls. 10 (1944), also enforces the fiduciary obligation to make trust property income productive.

Pyramid Lake Paiute Tribe v. Morton, 354 F. Supp. 252 (D.D.C. 1972), imposes on the United States the duty to enforce reasonable claims of the beneficiary. This duty may be seen as related to the duty of loyalty. In Pyramid Lake, the court rejected an accommodation of public interests and trust obligations and held that the Secretary of Interior had a higher obligation to protect Indian property rights than to advance public projects within his charge — again, absent an express direction from Congress. Where there is a dispute between Indians and other government interests, executive branch officials are required to favor the Indian claim so long as it is reasonable.

The Supreme Court has held that executive branch officials are not required to advance or accede to every colorable claim which may be suggested by an Indian tribe. United States v. Mason, 412 U.S. 39; (1973). It appears that the government may properly examine these claims critically and make a dispassionate analysis of their merit, it may consider whether the advancement of a particular claim is in the long term best interests of the Indians, and it may determine the timing and the forum in which a claim is advanced. But executive branch officials may not reject or postpone the assertion of a claim on behalf of Indians on the ground that it would be inimical to some other governmental or private interest or refuse to advance an Indian claim on the ground that it is merely "reasonable" as opposed to clearly "meritorious." Although trust duties are neither rigid nor absolute, the controlling principle is that executive branch officials must act in the best interests of the Indians.

The Supreme Court has held that the United States as trustee has some discretion to exercise reasonable judgment in choosing between alternative courses of action. United States v. Mason, 412 U.S. 391 (1973). In Mason, Indian allottees claimed that Bureau of Indian Affairs officials erred in paying state estate tax assessments on trust properties. Bureau officials relied on a prior decision of the Supreme Court which had sustained the particular taxes in question. With some plausibility, however, the allot-

tees claimed that subsequent Supreme Court decisions had eroded the vitality of the earlier case. The Court determined that in this instance the trustee had acted reasonably by paying the taxes without protest. In Mason, unlike Pyramid Lake, there was no suggestion that any conflicting interests had detracted from the trustee's duty of loyalty to the Indians, and the case stands for the proposition that in the nonconflict situation, the trustee's reasonable judgments will be sustained.

Another principle which follows from this reading of the Indian trust cases is that affirmative action is required by the trustee to preserve trust property, particularly where inaction results in default of trust rights. Cf., Poafybitty v. Skelly Oil Co., 390 U.S. 365, 369 (1968); Edwardsen v. Morton, 369 F. Supp. 1359 (D.D.C. 1973). The water rights area is a prime example. The Indians' rights to water pursuant to cases like Winters v. United States, 207 U.S. 564 (1908), and Arizona v. California, 373 U.S. 546 (1963), is prior to any subsequent appropriations. But failure of the trustee in the past to assert or protect these rights, and to assist in construction of Indian irrigation projects, has led non-Indian ranchers and farmers to invest large sums in land development in reliance on the seeming validity of their appropriations. See Report of the National Water Commission, ch. 14 (1973). The trust obligation would appear to require the trustee both to take vigorous affirmative action to assert or defend these Winters Doctrine claims. See, Pyramid Lake Paiute Tribe v. Morton, supra.

The impact of these principles upon the public administration within the government appears to be surprisingly modest, for present policies are essentially consistent with the dictates of the trust responsibility. In the area of water rights, for example, President Carter has called for the prompt quantification of Indian claims and their determination through negotiation if possible or litigation if necessary, and he has also called for development of Indian water resources projects so that the Indian rights may be put to beneficial use. The President's perception of the government's responsibility in this area appears entirely consistent with the dictates of the trust responsibility doctrine. The obligation of executive branch officials is to implement the President's policy. Similarly, the Departments of Interior and Justice are engaged in the process of enforcing reasonable Indian claims in some instances by negotiation and in others through litigation. The Bureau of Indian Affairs works to make trust property income productive and the present Secretary of the Interior, so far as we are aware, has taken no action inconsistent with his duty of loyalty to the Indians.

Even if the imposition of the trust responsibility doctrine is assumed to be completely consistent with present policy and administrative practice, the doctrine clearly places constraints on the future policy formulation and administrative discretion. Executive branch officials have some discretion in the discharge of the trust, but it is limited. For example, they may make a good faith determination that the compromise of an Indian claim is in the long term best interests of the Indians, but they are not free to abandon Indian interests or to subordinate those interests to competing policy considerations. Flexibility in setting policy objectives rests with Congress which alone is free to direct a taking or subordination of the otherwise paramount Indian interests.

Instances will surely arise where the discharge of trust responsibilities to the Indians raises unmanageable, practical or political difficulties for executive branch officials. It may be that congressional appropriations are inadequate to carry out a perceived duty -- say, the quantification of Indian water entitlements -- or that the enforcement of trust responsibilities results in an extraordinarily intense political backlash against the administration. Under such circumstances, it would seem that the responsibility of executive branch officials would be to seek express direction from the Congress. The existence of this congressional safety valve assures that the legal trust responsibility to American Indians is a viable doctrine not only now but in the future as well.

#### THE DEPARTMENT OF JUSTICE

The remainder of this memorandum will address some of the more specific questions which have been raised by the Attorney General in connection with litigation by the Department of Justice on behalf of Indians. How does Indian litigation differ, if at all, from other litigation handled by the Department of Justice? Do special standards constrain the prosecutorial discretion of the Attorney General?

By statute, the conduct of litigation in which the United States is a party is reserved to the officers of the Department of Justice under the direction of the Attorney General. 28 U.S.C. 516, 519. In addition, the United States Attorneys, under the direction of the Attorney General, are specifically authorized to represent Indians in all suits at law and in equity. 25 U.S.C. 175.

Generally, the Attorney General has broad discretion to determine whether and when to initiate litigation and on what theories. As the chief legal officer of the United States, the Attorney General may consider broad policy consequences of a litigation strategy and may refuse to initiate litigation despite the requests of a particular agency.

The discretion of the Attorney General with respect to the initiation of litigation is not unlimited. First, the exercise of prosecutorial discretion by the Attorney General is subject to judicial review in order to insure that the Attorney General's decision is based on a correct understanding of the law. Joint Tribal Council of the Passamaquoddy Tribe v. Morton, 388 F. Supp. 649, 665-666 (D. Me. 1975), aff'd, 528 F.2d 370 (1st Cir. 1975). Cf. e.g., Nader v. Saxbe, 497 F.2d 676, 679-680 n. 19 (D.C. Cir. 1974). And second, all executive branch officials including the Attorney General can be required by the judiciary to "faithfully execute the laws" which, in some instances, may require the initiation of litigation. E.g., Adams v. Richardson, 351 F. Supp. 636, 641 (D.D.C. 1972), 356 F. Supp. 921 (D.D.C. 1973), mod. and aff'd., 480 F.2d 1159 (D.C. Cir. 1973).

In the case of Indian litigation, the Attorney General's discretion is somewhat more limited than in other areas. As under the principles discussed above, an officer of the executive branch of government the Attorney General acts as a fiduciary and must accord the Indians a duty of loyalty. This means that in the exercise of discretion the Attorney General may not refuse to initiate litigation on the ground that it would be inimical to the welfare of some other governmental or private interest. And the Supreme Court has suggested that the Attorney General has an affirmative obligation to institute litigation on behalf of Indians. Poafybitty v. Skelly Oil, 390 U.S. 365, 369 (1968).

The Attorney General has no obligation to assert every claim or theory advanced by an Indian tribe without regard to its merit. At the same time, the Attorney General may not abandon reasonable Indian claims on any ground other than the best interests of the Indians. Further, in the exercise of discretion, the Attorney General must take care that litigation decisions do not undercut the efforts of the Secretary of Interior or other executive branch officials to discharge their trust responsibilities to the Indians. As the Supreme Court recently stated: "Where the responsibility for rendering a decision is vested in a coordinate branch of Government, the duty of the Department of Justice is to implement that decision and not repudiate it." S & E Contractors, Inc. v. United States, 406 U.S. 1, 13 (1972). Indeed, published opinions of the Attorney General reflect the great deference which has been accorded by the Department of Justice to the decisions of the Secretary of Interior. 25 Op. Atty. Gen. 524, 529 (1905); 20 Op. Atty. Gen. 711, 713 (1894); 17 Op. Atty. Gen. 332, 333 (1882).

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The fulfillment of this nation's trust responsibility to American Indians is one of the major missions of this Department. Both the President and the Vice-President have publicly stated their support of the trust responsibility as a matter of policy.

The definition of the government's trust responsibilities to Native Americans involves both legal and policy issues. The President's P.R.I.M. process is designed to assure development of policy after input from all concerned. It would be unfortunate to preempt this process by filing a memorandum in a court case that was not asked for by the judge and is not necessary to the litigation which will be moot if Congress and the tribes approve. If the Attorney General wants to address the legal issues regarding the trust responsibility, it would be more appropriate to do so through a formal Attorney General's opinion.

Sincerely,

**LEO M. KRULITZ**

SOLICITOR

PRESIDENT NIXON, SPECIAL MESSAGE ON INDIAN AFFAIRS  
JULY 8, 1970

*The new direction of Indian policy which aimed at Indian self-determination was set forth by President Richard Nixon in a special message to Congress in July 1970. Nixon condemned forced termination and proposed recommendations for specific action. His introduction and conclusion are printed here.*

*To the Congress of the United States:*

The first Americans - the Indians - are the most deprived and most isolated minority group in our nation. On virtually every scale of measurement - employment, income, education, health - the condition of the Indian people ranks at the bottom.

This condition is the heritage of centuries of injustice. From the time of their first contact with European settlers, the American Indians have been oppressed and brutalized, deprived of their ancestral lands and denied the opportunity to control their own destiny. Even the Federal programs which are intended to meet their needs have frequently proved to be ineffective and demeaning.

But the story of the Indian in America is something more than the record of the white man's frequent aggression, broken agreements, intermittent remorse and prolonged failure. It is a record also of endurance, of survival, of adaptation and creativity in the face of overwhelming obstacles. It is a record of enormous contributions to this country - to its art and culture, to its strength and spirit, to its sense of history and its sense of purpose.

It is long past time that the Indian policies of the Federal government began to recognize and build upon the capacities and insights of the Indian people. Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have long been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.

SELF-DETERMINATION WITHOUT  
TERMINATION

The first and most basic question that must be answered with respect to Indian policy concerns the history and legal relationship between the Federal government and Indian communities. In the past, this relationship has oscillated between two equally harsh and unacceptable extremes.

On the other hand, it has - at various times

during previous Administrations - been the stated policy objective of both the Executive and Legislative branches of the Federal government eventually to terminate the trusteeship relationship between the Federal government and the Indian people. As recently as August of 1953, in House Concurrent Resolution 108, the Congress declared that termination was the long-range goal of its Indian policies. This would mean that Indian tribes would eventually lose any special standing they had under Federal law: the tax exempt status of their lands would be discontinued; Federal responsibility for their economic and social well-being would be repudiated; and the tribes themselves would be effectively dismantled. Tribal property would be divided among individual members who would then be assimilated into the society at large.

This policy of forced termination is wrong, in my judgment, for a number of reasons. First, the premises on which it rests are wrong. Termination implies that the Federal government has taken on a trusteeship responsibility for Indian communities as an act of generosity toward a disadvantaged people and that it can therefore discontinue this responsibility on a unilateral basis whenever it sees fit. But the unique status of Indian tribes does not rest on any premise such as this. The special relationship between Indians and the Federal government is the result instead of solemn obligations which have been entered into by the United States Government. Down through the years through written treaties and through formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community services such as health, education and public safety, services which would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans.

This goal, of course, has never been achieved. But the special relationship between the Indian tribes and the Federal government which arises from these agreements continues to carry immense moral and legal force. To terminate this relationship would be no more

appropriate than to terminate the citizenship rights of any other American.

The second reason for rejecting forced termination is that the practical results have been clearly harmful in the few instances in which termination actually has been tried. The removal of Federal trusteeship responsibility has produced considerable disorientation among the affected Indians and has left them unable to relate to a myriad of Federal, State and local assistance efforts. Their economic and social condition has often been worse after termination than it was before.

The third argument I would make against forced termination concerns the effect it has had upon the overwhelming majority of tribes which still enjoy a special relationship with the Federal government. The very threat that this relationship may someday be ended has created a great deal of apprehension among Indian groups and this apprehension, in turn, has had a blighting effect on tribal progress. Any step that might result in greater social, economic or political autonomy is regarded with suspicion by many Indians who fear that it will only bring them closer to the day when the Federal government will disavow its responsibility and cut them adrift.

In short, the fear of one extreme policy, forced termination, has often worked to produce the opposite extreme: excessive dependence on the Federal government. In many cases this dependence is so great that the Indian community is almost entirely run by outsiders who are responsible and responsive to Federal officials in Washington, D.C., rather than to the communities they are supposed to be serving. This is the second of the two harsh approaches which have long plagued our Indian policies. Of the Department of Interior/s programs directly serving Indians, for example, only 1.5 percent are presently under Indian control. Only 2.4 percent of HEW's Indian health programs are run by Indians. The result is a burgeoning Federal bureaucracy, programs which are far less effective than they ought to be, and an erosion of Indian initiative and morale.

I believe that both of these policy extremes are wrong. Federal termination errs in one direction, Federal paternalism errs in the other. Only by clearly rejecting both of these extremes can we achieve a policy which truly serves the best interests of the Indian people. Self-determination among the Indian people can and must be encouraged without the threat of

eventual termination. In my view, in fact, that is the only way that self-determination can effectively be fostered.

This, then, must be the goal of any new national policy toward the Indian people to strengthen the Indian's sense of autonomy without threatening this sense of community. We must assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal group. And we must make it clear that Indians can become independent of Federal control without being cut off from Federal concern and Federal support. My specific recommendations to the Congress are designed to carry out this policy....

The recommendations of this administration represent an historic step forward in Indian policy. We are proposing to break sharply with past approaches to Indian problems. In place of a long series of piecemeal reforms, we suggest a new and coherent strategy. In place of policies which simply call for more spending, we suggest policies which call for wiser spending. In place of policies which oscillate between the deadly extremes of forced termination and constant paternalism, we suggest a policy in which the Federal government and the Indian community play complementary roles.

But most importantly, we have turned from the question of *whether* the Federal government has a responsibility to Indians to the question of *how* that responsibility can best be furthered. We have concluded that the Indians will get better programs and that public monies will be more effectively expended if the people who are most affected by these programs are responsible for operating them.

The Indians of America need Federal assistance – this much has long been clear. What has not always been clear, however, is that the Federal government needs Indian energies and Indian leadership if its assistance is to be effective in improving the conditions of Indian life. It is a new and balanced relationship between the United States government and the first Americans that is at the heart of our approach to Indian problems. And that is why we now approach these problems with new confidence that they will successfully be overcome.

[*Public Papers of the Presidents of the United States: Richard Nixon, 1970, pp. 564-567, 576-76.*]

*"We have a sacred responsibility to provide for the overall health and well-being of our respective nations and citizens. This is a responsibility we hold not just to our ancestors, but also to those Tribal citizens we have yet to meet. Utilizing USET's founding mission of Strength in Unity, together we endeavor to rebuild our Tribal Nations and strive to overcome the past unjust policies of the United States. Using the principles of Tribal sovereignty and self-determination, we continue to develop our path to prosperity and stability which will allow our Tribal Nations to thrive now and in the future."*

*-USET/USEP SPF Executive Officers*



# **USET PROGRAMS & SERVICES**



## PROGRAMS & SERVICES

**F**ounded in 1969, United South and Eastern Tribes (USET), a 501c3 inter-Tribal organization, has championed the interests of its membership since its inception. Through its history, USET has provided a platform for Tribal Nations to unify and collectively work to uphold, protect, and advance their inherent sovereign interests and authorities. Improving the quality of life for Tribal Nation citizens across our region—and throughout Indian country—is USET’s central goal. Today, USET serves as the vehicle to provide programmatic services and support to the 33 Tribal Nations that comprise its membership.

USET’s motto of *Because there is Strength in Unity* serves as its core guiding principle, presenting a value proposition that offers strategic advantage to its membership. This advantage manifests in direct service provision, capacity building through training and professional development, and organization development. Today, the organization’s core programmatic competencies are Tribal Health Program Support (THPS), Office of Environmental Resource Management (OERM), and Office of Economic Development (OED). These competencies assist its members by working to uphold, protect, and advance their Tribal Nation sovereignty and Nation rebuilding efforts through capacity building, organization/government development, technical assistance, advocacy, partnership, and resource development that improves the quality of life and overall wellbeing of Indian people.

Three primary service objectives have been defined to advance USET’s current strategic agenda:

**1. Nation Rebuilding:** Support Nation rebuilding that leads to strong Tribal governments, a healthy society, rich cultural practices, an educated populous, abundant natural resources, capital investment, and economic and social sustainability.

**2. Uphold, Protect, and Advance Sovereignty:** Uphold, promote, and advance sovereignty that leads to recognition and parity across governments; upholding trust and treaty obligations; achieving representation that gives Tribal Nations equal voice; and protecting Tribal interests through the development of strong Tribal legal code as dictated by the Constitution, Commerce Clause, Treaties, and other legally binding agreements made with Tribal Nations.

**3. Leadership Development:** Develop strong, competent, and passionate leaders, especially generational leadership, who represent Tribal Nations’ interests as board members, Tribally selected officials, and committee chairpersons to deliver a strong voice and ensure the health, wellbeing, and self-determination of future generations.

*“Vision without action is merely a dream. Action without vision just passes the time. Vision with action can change the world.”*

-Joel Barker

USET’s strategic goals to advance Tribal sovereignty and realize self-determination for its member Tribal Nations, coupled with the purpose of its programs and services, are grounded in Native culture and heritage, and consider the impact to the entire community ecosystem. Culture and heritage, as well as effect on youth and future generations, provide an overarching guide to shaping USET’s programs and services.

As the needs of the organization’s membership have evolved and matured, USET has also evolved and matured in a similar manner to ensure that the level of services and support generated provide “value add” to its membership.

# PROGRAMS AND SERVICES TIMELINE

USET Founded	1969		
		1995	USET Tribal Health Program Support (THPS) established, originally known as the Health Information Office
THPS Tribal Epidemiology Center created	2000		
		2002	THPS Diabetes Program created
USET Office of Environmental Resource Management (OERM) established, originally known as the Environmental Liaison Office	2004		
		2004	OERM Utilities Program created
THPS Dental Support Center created	2005		
		2012	EPA approves USET OERM Water Certification Program
Office of Economic Development (OED) established	2015		
		2017	OERM Climate Resilience Program created
OERM Agriculture Program created	2017		
		2021	USET has 56 program staff and a service portfolio of 31 grants totaling \$20 million

# TRIBAL HEALTH PROGRAM SUPPORT

USET's Tribal Health Program Support (THPS) provides up-to-date public health information, advocacy tools, policy analysis, and health promotion and disease prevention programming. THPS was established in 1995 through an Indian Self Determination Education and Assistance Act (ISDEAA) P.L. 93-638 contract with the Indian Health Service (IHS) for the identified program, functions, services, and activities (PFSA's).

## ISDEAA P.L. 638 Contract

As a contractor with IHS, THPS provides health information to USET member Tribal Nations, including a compilation and review of health data and legislative and policy changes that may affect health service provisions to the service population. Administrative support services and technical assistance are provided by developing new healthcare delivery approaches [Government Performance and Results Act (GPRA), nutrition and diabetes education, etc.], seminars, and workshops related to Tribal public health issues. THPS provides technical assistance in planning, developing, implementing, and evaluating programs. With the support of our member Tribal Nations and IHS, THPS formulates and recommends policies, procedures, and plans to establish and improve resources and services for individual Tribal healthcare delivery systems. Providing the highest level of public health and clinic health support assists our member Tribal Nations in improving health outcomes through self-determination.

## Tribal Epidemiology Center

In 1996, the Indian Health Care Improvement Act (IHCIA) authorized the establishment of Tribal Epidemiology Centers (TECs) to serve each IHS Area. In 2010, the permanent reauthorization of the IHCIA designated TECs Public Health Authority (P.L. 94-437 through the Health Insurance Portability and Accountability Act [HIPAA]), authorizing TECs access to data held by the U.S. Department of Health and Human Services. The reauthorization also defined the seven core functions of TECs:

1. Collect data.
2. Evaluate data and programs.
3. Identify health priorities with Tribal Nations.
4. Make recommendations for health service needs.

5. Make recommendations for improving health care delivery systems.
6. Provide epidemiologic technical assistance to Tribal Nations and Tribal organizations.
7. Provide disease surveillance to Tribal Nations.

Created in 2000, the USET TEC is one of 12 TECs that Congress established to assist Tribal Nations by monitoring and reporting on the health status of Tribal citizens to reduce disease and improve wellness. The TEC strives to enhance the quality of life in Tribal communities by evaluating health data, monitoring health trends, providing technical assistance on data collection, analyzing population health data, and supporting initiatives to promote health.

## Data Improvement

The USET TEC analyzes, identifies, and implements culturally appropriate strategies to improve health data collection, interpretation, and dissemination. Key long standing data improvement projects include Social Determinants of Health (SDOH) in Tribal Communities and the Government Performance and Results Act (GPRA) Pilot Project. The SDOH project partners with member Tribal Nations to create a comprehensive community health assessment and identify and implement culturally appropriate strategies to improve health data collection, interpretation, and dissemination. This project aims to link data across Tribal Nation departments (e.g., social services, law enforcement, education) to better understand how SDOH contribute to Tribal citizens' health outcomes.

The USET GPRA Pilot Project assists USET member Tribal health clinics in meeting annual GPRA goals established by IHS. The Government Performance and Results Act, passed in 1993, requires federal agencies to demonstrate the effective use of funds to fulfill their mission, complete a five-year strategic plan, and submit annual performance plans describing what the agency intends to accomplish toward those goals with their annual budget request. GPRA also assists in our continuous improvement measures, as we analyze these results internally. Every year, IHS reports results for these GPRA performance measures. These measures include clinical care performance measures, such as care for patients with diabetes, cancer screening, immunization, behavioral health screening, and other prevention measures, as

well as non-clinical measures, including rates of hospital accreditation, injury prevention, and infrastructure improvements.

TEC staff provides training and guidance to clinic staff on meeting GPRA goals by properly documenting healthcare visits, increasing clinic workflow efficiency, and utilizing reporting features in the electronic health record. TEC staff also works with state immunization registries to ensure that immunizations provided to Tribal citizens at external clinics get entered into the electronic health record, which assists providers in case management and assists clinics in meeting annual immunization measure targets.

#### Health Promotion and Disease Prevention

Throughout the years, the USET TEC has been awarded grants to establish and maintain projects that strengthen and broaden the reach and impact of effective and sustainable health promotion and disease prevention programs that improve the health of Tribal citizens and communities, and strengthen public health capacity and infrastructure at the local level.

The long-term goals of these projects are to reduce rates of death and disability from commercial tobacco use, diabetes, heart disease, and stroke, and to reduce the prevalence of obesity and other chronic disease risk factors and conditions in member Tribal Nations. The projects focus on strategies to create change in Tribal communities, including obesity prevention, commercial tobacco prevention, type 2 diabetes prevention, and heart disease and stroke prevention. Amid the global COVID-19 pandemic, Tribal Nations have shown incredible resiliency and flexibility in successfully adapting their programming to provide preventative services in an ever-changing society.

#### Substance Abuse and Opioid Prevention

Tribal Nations and their citizens have shown strength and resiliency in the face of trauma and compounding discrimination, racism, and oppression over generations. These historical traumas contribute to long-term distress and substance abuse among Tribal communities. Together, with the help of our member Tribal Nation partners, communities can use cultural customs and traditional practices to balance their communities' overall well-being.

The USET TEC is expanding efforts to build capacity and address behavioral health related to alcohol use in children ages 9 to 20. The two-pronged strategy allows USET member Tribal Nations to show the innovative, culturally relevant protective factors that make their communities resilient. Through this project, the USET TEC creates behavioral health data infrastructure and documentation that can readily identify behavioral health gaps, needs, and priorities in our region. Simultaneously,

the project supports USET member Tribal Nations in improving their capacity to prevent underage alcohol use and substance abuse through evidence-based programs and cultural awareness.

*“Intergenerational trauma is a reality and an unfortunate truth. However, the intergenerational resiliency demonstrated by Indian country is a reflection of our overall strength and it is the answer to our overall health, well-being, and continued long term survival.”*

-Chief Lynn Malerba, Mohegan Tribe of Connecticut

Historic and systemic challenges related to coordination between federal, state, and Tribal public health authorities limit the availability of opioid data available to Tribal Nations. Data at the state or county level often exclude Native peoples and are not inherently applicable to Tribal communities. These problems are compounded by suppressing the often-small Native American population into a monolithic “other” category and documented misclassification of Native Americans into another racial or ethnic group, further confounding data for these populations. USET TEC is working to improve data quality and availability through multiple approaches, including improving data flow, increasing the usefulness of state-level opioid data, and addressing gaps in vital statistics for data collection. These approaches will allow better-informed policies, programs, and practices to address the opioid epidemic.

#### COVID-19 Pandemic Response

The USET TEC has provided technical assistance to Tribal Nations in the Nashville Area since the beginning of the COVID-19 pandemic. Early in the pandemic, the USET TEC developed a surveillance tool for Tribal Nations to conduct case investigations and contact tracing. Since May 2020, the USET TEC has issued Tribal Nation-specific and area aggregate weekly reports so that Tribal Leaders can monitor local conditions related to the pandemic. In addition, the USET TEC has been instrumental in providing various educational opportunities for member Tribal Nations. Regularly scheduled online training sessions allow clinicians, Tribal Leaders, and other interested staff to gain insight into the latest pandemic prevention and control strategies. The TEC provides guidance and recommendation documents that detail public health recommendations and advice tailored to the needs of Tribal communities. The USET TEC consults with many USET member Tribal Nations to offer the latest epidemiologic recommendations regarding infection control, re-opening advice, and public health guidance.



### **Diabetes Program**

In 2003, through support of Area Tribal Nations, USET contracted the Area Diabetes Consultant shares from the IHS Nashville Area to provide programs, functions, services, and activities associated with the IHS Area Diabetes Program. Through this work, USET THPS assists Area Tribal Nations in consultation efforts around diabetes funding methodologies; conducts Tribal site visits to review, assess or assist in the development of Tribal diabetes programs; and oversees 20 Special Diabetes Program for Indians (SDPI) sub-grantees and supports four other SDPI grantees in the Area.

SDPI is a catalyst for positive change in USET member Tribal Nations. The culture, history, and traditions of Tribal Nations are weaved into their SDPI programmatic activities. A distinguishing feature of SDPI is that it allows community members to obtain knowledge and assistance from people with whom they can personally identify. Tribal citizens receive health education in clinics and community-based settings, including lifestyle changes through healthier food choices and preparation behaviors. Tribal citizens often share stories and lessons learned that can empower and motivate others to take control of their diabetes. USET member Tribal Nations implement program activities that foster inclusion and yield greater participation for Tribal citizens. Through innovation, USET member Tribal Nations implement technology such as robots to decrease wait times and provide telehealth services to increase access to clinical and community services.

Tribal Nations continue to improve diabetes and other health outcomes for their citizens by weaving evidence-based and evidence-informed programs and implementing cutting-edge initiatives to deliver practical and culturally relevant care. The SDPI grant program supports Tribal Nations in reversing the effects of colonization, providing prevention and treatment programs to reduce the prevalence of diabetes throughout Indian Country.

### **Dental Support Center**

USET's Dental Support Center (DSC) has provided oral health training and technical assistance to member Tribal Nations since 2005. The DSC's primary goal is to improve oral health outcomes by increasing access to quality clinical and preventive dental services for Tribal citizens. General program support areas include clinical dental services, health promotion and disease prevention activities, resource enhancement, and professional development. The DSC assesses barriers to accessing dental care, examines infrastructure gaps that may impact these barriers, and develops programs to identify and improve access to care. The DSC also offers prevention plan templates, planning guidebooks, and other clinical and educational materials.

# OFFICE OF ENVIRONMENTAL RESOURCE MANAGEMENT

**U**SET created the Office of Environmental Resource Management (OERM) in 2004. Since then, OERM has evolved and expanded to provide technical assistance, training, logistical support, professional certifications, regulatory support, and coordination and communication across program areas including natural resource protection; endangered species; environmental regulatory development; climate adaptation and resilience; risk assessment and solutions modeling; renewable energy; agriculture; community drinking water and wastewater systems; operator training and certification; and cultural resource protection.

OERM advocates for self-determination and greater Tribal control of natural resources, while also promoting conservation, protection, and preservation of Tribal communities and homelands. Working closely with the USET Natural Resources Committee and USET Certification Board, while partnering with Tribal organizations, Tribal colleges and universities, federal agencies, and other entities, OERM supports the protection of Tribal natural resources and improvement of the overall health and well-being of Tribal communities.

## **Drinking Water and Wastewater Technical Assistance and Training**

The Drinking Water and Wastewater Technical Assistance and Training (TAT) program is designed to provide member Tribal Nations' leaders, utility board members, operators, and laboratory analysts with onsite visits and classroom training offered in their respective facilities or in regional settings. OERM technical assistance specialists provide comprehensive training in technical, financial, and managerial aspects of Tribal utilities and through peer reviews and mentoring by other Tribal utility professionals.

OERM is nationally recognized for its drinking water and wastewater certification program, and further for environmental program expertise, especially related to the Safe Drinking Water and Clean Water Acts.

## **USET Certification Program**

The USET Certification Program offers certifications for drinking water, wastewater, laboratory analysts, water distribution, and wastewater collection. Through this program, USET was the first Tribal organization to have a Tribal Drinking Water Certification Program approved by the U.S. Environmental Protection Agency (EPA). USET member Tribal Nations and USET staff have worked together to provide the training and support to carry out the important work that is so vital to Tribal communities. With established, secure infrastructure and well-managed water utilities, Tribal communities are stronger and healthier. When Tribal drinking water and wastewater operators obtain certifications through their own Tribal program, Tribal sovereignty is advanced and upheld. USET has provided more than 65 operators with certifications.

## **Tribal Utility Summit**

OERM has convened an annual Tribal Utility Summit (TUS) since 2010. The TUS is a collaborative partnership with HHS Rural Community Development; EPA Regions 1, 2, and 4; USDA Rural Development; Indian Health Service Nashville Area Office; and Tribal partners including USET member Tribal Nations and the Inter-Tribal Council of Arizona. Since 2010, the TUS has brought together over 1,000 participants at 10 different locations hosted by nine USET member Tribal Nations.

This annual event offers the best information and available training and technical assistance to utility managers, operators, and laboratory analysts to meet their regulatory requirements, but most importantly to assist with providing safe, clean, and adequate water to their respective Tribal communities. The TUS curriculum covers topics that address technical, managerial, and financial aspects of utility systems; and the sessions include program funding and regulatory updates; operations and maintenance; safety; water math; troubleshooting; water reuse options; disaster management; distribution system, and leadership development. The TUS curriculum provides educational opportunities from which CEUs or contact hours can be obtained.

## Tribal Climate Resilience

OERM is actively engaged in supporting member Tribal Nations to assess and adapt to climate change impacts. Successful resilience for member Tribal Nations relies on use of Indigenous Traditional Ecological Knowledge (TEK), an important body of research that contributes to our shared, collective understanding of the world, promoting environmental sustainability through relationships between humans and environmental systems. It is applied to phenomena across biological, physical, cultural and spiritual systems, evolving, as well as extensive observations, lessons, and skills passed from generation to generation

OERM's climate resilience programming is shaped by engagement with member Tribal Nations, TEK integration, and collaboration with Tribal climate scientists, federal agencies, and research institutions. Tribal Nation engagement and Indigenous knowledge is contributing to greater understanding of climate change impacts and strategies for adaptation. USET supports integration of TEK in federal policy decisions and federal commitment to principles of self-determination and proactive efforts to remove institutional barriers that severely limit the ability for Tribal Nation to adapt to climate change impacts. It also requires action from the federal government to fulfill trust and treaty obligations, including long-term support to develop and implement Tribal resiliency plans.

Indigenous peoples' traditional knowledge systems play a role in advancing understanding of climate change and in developing more comprehensive climate adaptation strategies and TEK was incorporated into the Fourth National Climate Assessment (2018). The National Climate Assessment is a Congressionally mandated quadrennial report led by the U.S. Global Change Research Program that summarizes the impacts of climate change on the United States, now and in the future. OERM is joining a team of experts to produce the Fifth National Climate Assessment, which should include findings and specific references to Tribal Nations and Indigenous Peoples.

## Tribal-FERST

The Tribal-Focused Environmental Risk and Sustainability Tool (Tribal-FERST) project is a collaborative research and development partnership involving the Bureau of Indian Affairs, EPA, and USET. This project builds Tribal capacity by addressing Tribal environmental issues and informing decisions to achieve sustainable and healthy communities.

USET customized Tribal-FERST, which was developed by EPA, to create a web-based, geospatial decision tool

that assists Tribal Nations in determining environmental risks and evaluating actions to achieve sustainability for protection of the environment and public health. Tribal users can use this tool to follow Roadmaps and collect data, information, and potential solutions for Tribal community decision making. Tribal-FERST can also be used to view GIS maps, and access tools and resources to gather information and analyze and explore environmental conditions impacting Tribal communities.

USET hosts and maintains the web-based tool. OERM used data collected from several Tribal Nations to develop case studies that are presented through a storytelling methodology for educational purposes. OERM conducts regional training workshops and developed an instructional video and a printed booklet to assist Tribal Nations in adopting and using Tribal-FERST.

*“Our lands and natural resources hold special meaning within our cultures and identities. Not only are they critical to the survival of our nations, they are central to our creation stories, and like our ancestors, we hold an unassailable responsibility to protect and sustain healthy ecosystems as stewards of these lands. As we rebuild our nations, gain greater control of our resources, and advance our sovereignty, we are reaffirming our rightful place across these lands by leading with our traditional knowledge and practices that have sustained us since time immemorial and that will serve us for many generations to come.”*

-Chief Beverly Cook, Saint Regis Mohawk Tribe

## Wetlands Protection

Wetlands are critical habitat and encompass significant cultural, traditional, spiritual, medicinal, sustenance, and subsistence uses for Tribal Nations. OERM delivers comprehensive and diverse training, technical assistance, and site visits to USET member Tribal Nations to develop sustainable Wetland Program Plans, including Clean Water Act provisions, and wetlands assessment and monitoring, resulting in protection, enhancement, and restoration of wetlands on Tribal lands.

All resources and trainings provided work towards the goals of restoration and protection of wetland ecosystems and the critical role that they play in surface water



purification, sediment and flood water retention, climate resiliency, carbon sequestration, biological diversity, and traditional sustenance activities for Tribal citizens.

Technical assistance and trainings provided as a part of this program are also tailored to enhance the capacity for USET Tribal Nations in their wetland programmatic goals. This is accomplished by providing information and resources for Tribal staff to draft Wetland Program Plans, which are then used to outline Tribal goals and objectives.

### **Tribal Agriculture**

Indigenous agriculture encompasses the foods and medicines grown on farms and harvested from the land and water. To support Tribal Nations in their pursuit of protecting and revitalizing agriculture, USET's OERM department also established the Agriculture Program.

Current projects include:

- Propagation and restoration of cultural plants.
- Youth engagement programs.
- Virtual workshops on agricultural and forestry topics.
- Train-the-Trainer programs at six Tribal Nations for Tribal agriculture staff.
- Direct technical assistance to USET member Tribal Nation farms and farmers.

The farms among the USET membership are as diverse as the Tribal Nations themselves, ranging from massive maple syrup operations to small buffalo herds and community gardens.

## OFFICE OF ECONOMIC DEVELOPMENT

A Tribal Nation's ability to exercise and promote its sovereignty and self-determination is tied, in part, to the economic well-being of its people. Many Tribal Nations are rich with assets such as environmental resources, intellectual capital, and cultural cohesion, bringing unique perspectives to defining and attaining economic sustainability. However, they often lack the capacity to convert those assets to scalable economic development. In order to succeed in Tribal Nation rebuilding, we need to work consistently to remove barriers to establish and sustain viable economies that attract capital investment, create quality jobs, and develop strong Native businesses.

"Growing Economies in Indian Country," a 2012 report published by the Board of Governors of the Federal Reserve System, outlined eight issues as fundamental challenges to realizing economic growth in Indian country. USET member Tribal Nations, with a few exceptions, face these same challenges:

1. Insufficient access to capital.
2. Capacity and capital constraints of small business.
3. Insufficient workforce development; financial management training; and business education.
4. Tribal governance constraints.
5. Regulatory constraints on land held in trust and land designated as restricted use.
6. Underdeveloped physical infrastructure.
7. Insufficient research and data.
8. Lack of regional collaboration.

Recognizing USET member Tribal Nations are at varying levels of capacity and development, there are additional overarching challenges that impact economic development. For example, the complexity of the establishment and implementation of tax codes and fees, as well as associated business incentives, present significant barriers for Tribal Nations to fully exercise their sovereignty. Compounding this challenge is the often limited capacity of economic development systems within individual USET member Tribal Nations and the lack of Tribal-level comprehensive economic development strategies, which minimizes capital investment, and hampers the creation of quality jobs that impact cultural, social, and economic conditions necessary to strengthen Tribal sovereignty, realize self-determination, and achieve Tribal Nation rebuilding.

In 2015 the USET Board of Directors charged USET to expand the technical assistance opportunities to new subject areas, which led to the build out of a new economic development core competency. Through support from the Economic Development Administration, a survey of current and future Tribal Nation economic development needs and opportunities led to the creation of a comprehensive economic development strategy (CEDS) that provides a road map to delivery of quality economic development support at a regional level. USET and its partners have established a strong foundation to adopt and develop sound economic development programs and services that will transform the quality of life on Tribal lands, while fully recognizing the unique challenges facing Tribal economies. Economic development activities do not exist in a vacuum—they are impacted by external factors in the community and therefore offer unique opportunities for collaboration, within and between Tribal Nations and applicable business partners. In this spirit, USET's Office of Economic Development takes advantage of opportunities to collaborate with other USET programs, including assisting in vendor sourcing, resource brokering, and business marketing opportunities.

To help Tribal Nations develop healthy and vibrant economies, USET's Office of Economic Development promotes business development, employment, and infrastructure of its 33 member Tribal Nations. USET is striving to create a robust network of partners and collaborators to create a formal regional economic development core competency. USET's Office of Economic Development works with these partners to assist in establishing anticipated resources and services that are needed to begin the process of rebuilding or promoting a Tribal Nation's capacity to richly engage in economic development activities. This work is illustrated through training and technical assistance webinars, resource brokering, and study and assessment.

The lack of accurate, current, and reliable data on USET member Tribal Nations is another factor that affects the ability to access certain federal programs, grants, and services. USET is also working to collect sound sociodemographic data to create community profiles that will not only increase access to federal programs but will also attempt to remove the cloak of invisibility that plagues many Tribal Nations. Fundamental to this work is incorporating data sovereignty methodologies



to ensure that data is being gathered by and for Tribal Nations, therefore strengthening self-determination and sovereignty.

The groundbreaking “Reclaiming Native Truth” project and subsequent report reveals a new understanding of public perceptions and dominant narratives that impact Native peoples within American society. The myths and misconception discovered in the research also extends to economic development opportunities of Tribal Nations in the USET region. As a solution to help combat these economic misconceptions, USET publishes a Tribal Enterprise Directory. The Directory illustrates a broad breadth of economic development opportunities of USET member Tribal Nations across industry sectors. The Directory leads to new business opportunities and to intertribal and nation-to-nation trade through procurement and business partnerships. Building economic opportunities through nation-to-nation trade will encourage the number of times dollars circulate in Tribal communities and allow for strong economies to take root in Tribal communities.

*“Our steadfast determination to strengthen our nation and to improve the lives of our citizens is the motivation that has allowed us to make significant positive economic progress and impact in and around our communities. While we will always work hard to ensure that the United States honors and fulfills its trust and treaty obligations, we recognize that our nation and people will not advance if that is our singular approach. By taking proactive measures, we are building a stronger nation that offers more opportunities and hope to our citizens. When our Tribal Nations fully exert and implement their inherent sovereign rights and authorities over their lands, economy, and future, we will collectively ensure the growth and survival of our people for generations to come.”*

-Chairman Marshall Pierite, Tunica-Biloxi Tribe of Louisiana

*“USET SPF demands accountability for the persistent, chronic failure to uphold legal and moral promises to Tribal Nations. Though these failures have persisted throughout changes in Administration and Congress, it is time that both the legislative and executive branches confront and correct them. At a time when Americans are finally coming to realize the urgent need for our country to reconcile with its past, it should begin by atoning for its original sins against this land’s first peoples.”*

*-USET SPF Testimony before the U.S. Commission on Civil Rights Virtual Public Briefing: Assessing COVID-19 and the Broken Promises to Native Americans, July 2020*



**USET SOVEREIGNTY  
PROTECTION FUND  
POLICY & LEGISLATIVE  
PRIORITIES**



# MARSHALL PLAN FOR TRIBAL NATIONS

FEBRUARY 8, 2022

## SUMMARY OF CONCEPT AND EFFORT

USET SPF is leading an effort to advocate for the United States to make an investment in Tribal Nations similar to the Marshall Plan investment the United States made in Europe after World War II. This includes the preparation of a briefing paper that will make tangible the argument and process for this historic investment.

We assert that a substantial and transformative level of investment, comparable to that provided by the Marshall Plan, should be made by the United States in direct response to its shameful actions over the course of centuries that are directly responsible for much of the current conditions throughout Indian Country today. These actions, coupled with historic failures to fulfill its trust and treaty obligations to Indian Country, have resulted in unacceptable disparities within the domestic borders of the United States, unbeknownst and invisible to most Americans. This type of proactive plan and investment by the United States would be an expression of ownership and accountability, while advancing Tribal Nation rebuilding and development efforts to exercise our sovereignty to the greatest extent.

The briefing paper will also describe the need for the relationship between the United States and Tribal Nations to shift to a model of diplomacy based on mutual respect that would more appropriately reflect our sovereign-to-sovereign and nation-to-nation status. This new diplomacy model must focus on: (1) the United States fully carrying out its trust and treaty obligations, including the provision of full funding to Tribal Nations; (2) the United States no longer hindering Tribal Nations' full exercise of our inherent sovereign governmental authorities, which we use to meet the needs of and care for our citizens; and (3) shifting away from a plenary federal Indian law framework to a Tribal Nation law framework.

USET SPF plans to use this document to generate support among Tribal Nations, Intertribal organizations, and others for this focused investment in rebuilding Tribal Nations akin to the Marshall Plan and to advocate for such an

investment to the Administration and Congress. The following is a summary of the points and arguments the briefing paper will include.

## SUMMARY OF BRIEFING DOCUMENT

### *Introduction*

It is long past time for the United States to honor its promises to its first peoples. While absent from the common narrative about the history of the United States, this country's wealth and ability to transform into the international power it is today is a consequence of the theft and unjust taking of Tribal Nations' lands and resources. These forced sacrifices created a perpetual debt owed by the United States to Tribal Nations—a debt the United States has yet to fulfill at any point throughout its history. This failure has compounded year after year, resulting in the many shameful and unacceptable health, social, and economic disparities that exist for Native peoples. These failures further resulted in infrastructure deficiencies throughout Indian Country that are often only seen in the developing world. Despite the sacred promises made by the United States, these disparities and deficiencies exist within the domestic borders of the most wealthy and powerful nation the world has ever known. The truths of these realities are not only the consequence of centuries of ill-intended federal Indian policy, but they have also intentionally been suppressed and are invisible to the everyday American citizen. The time is long past due for the United States to honor its promises and make an immediate and significant financial investment to Tribal Nations, after years of ignoring its debt. This will provide Tribal Nations with the foundation of economic and social stability to support our collective efforts to rebuild our governments and to grow and prosper.

The United States' investment in European nations after World War II through the Marshall Plan offers a diplomatic example of a time when the United States understood that investment in rebuilding nations (damaged, in part, by its own actions) was favorable to its own interests. While the relationship between Tribal Nations and the United States shares similarities with the relationship between European nations and the United States,

the federal government's unique trust and treaty obligations to Tribal Nations serve as even greater reasons for a significant domestic diplomacy investment now.

### ***Origins and Basics of Tribal Nation/United States Diplomatic Relations***

Tribal Nations are inherently sovereign political entities, as recognized by the United States from its earliest interactions with Tribal Nations. However, over time, the United States has impeded our exercise of sovereignty and taken our land and resources to generate its own land base, wealth, and strength. Through these takings, the United States has assumed a unique trust obligation to Tribal Nations and Native people. However, it has consistently failed to live up to this obligation—both by failing to deliver on the funding it owes to Tribal Nations in exchange for its resource takings, and by restricting Tribal Nations' full exercise of our inherent sovereign governmental authorities. These failures on the part of the United States have caused tremendous harm that remains evident today in all indicators of social, economic, and public well-being.

Federal Indian law, including its current antiquated and paternalistic trust model between the United States and Tribal Nations, is inherently problematic, unfair, and discriminatory. Its main function is to maintain and grow the United States' power to the detriment of Tribal Nations and our communities. Federal Indian law relies on the doctrine of discovery: a legal fiction that purports to provide authority to colonizers to unilaterally take lands and resources from Indigenous peoples based on the faulty and morally corrupt premise that Indigenous peoples are not deserving of true property rights. Even today, federal Indian law continues to permit the United States to unilaterally strip Tribal Nations of our rights—including our inherently sovereign rights and our bargained-for treaty rights—if only Congress strips these rights away clearly enough. The rules Tribal Nations must play by under United States laws are unfair and unjust, and these rules are designed to serve the interests of the United States who has falsely claimed a position of sovereign superiority. It is time for a shift to a new relationship paradigm, a domestic diplomacy model that is based on mutual respect and recognizes the full exercise of Tribal Nations' rights and authorities that inherently belong to us.

We call for a significant upfront financial investment in Tribal Nations akin to the European Marshall

Plan, which would further the United States' trust obligation to Tribal Nations with regard to funding. However, all pieces of the diplomacy model must move forward together for Tribal Nations to achieve full self-governance and for the United States to fully live up to its trust obligation.

### ***Marshall Plan in Europe***

After World War II, European countries faced massive physical and economic destruction. Additionally, the United States faced a potential recession, as its bustling wartime economy slowed and its traditional European trading partners lay beneath rubble. The European Recovery Program, popularly known as the Marshall Plan, proposed an ambitious and mutually beneficial solution to assist in the rebuild of European countries to achieve a stable economy and sustainable peace. It carried forth the idea that later came to be known in the international human rights sphere as the "Responsibility to Rebuild," where a country that has militarily intervened in another country bears a responsibility to provide assistance with recovery, reconstitution, and reconciliation—including commitment of sufficient funds and close cooperation with the local people. It is important to remember that while this was the "right thing to do," it was also mutually beneficial, and one could argue, also contributed to a more collaborative mindset among nations for a time, including the founding of NATO just one year later (1949).

The Marshall Plan obligated the United States to provide financial aid to European nations, where the contours of that aid, its allocation and disbursement, and its uses were determined by a European agency and a United States agency working together. In just the first year of the Marshall Plan, the United States appropriated approximately \$4 billion in aid, which amounted to 13% of U.S. budget expenditures in 1948. The Congressional Research Service places the Marshall Plan's total cost at about \$13.3 billion in FY 1948 dollars. At the time, \$13.3 billion represented about 1–2% of U.S. Gross Domestic Product. This funding number does not include U.S. monies invested in rebuilding European nations immediately prior to or following implementation of the Marshall Plan. Inclusion of these monies would bring the total amount up to \$43 billion in FY 1948 dollars. It is clear that the United States' financial investment in post-World War II Europe was significant.

Though not without its shortfalls, the European Marshall Plan's unprecedented foreign aid investment generated decisive returns. Not least of all, the morale it raised throughout Europe helped to stimulate growth across the continent. In pure numbers, European industrial production rose by 55% over the course of about four years, with agricultural output increasing by nearly 37%. Europe's Gross National Product reached new heights, gaining more than 33%, translating to \$30 billion in 1949 prices. Beyond the benefits for Europe, the United States also reaped rewards with the ability to maintain its own economic stability and increase its status on the world stage. The European Marshall Plan was heralded by contemporaries as "a great recovery" and "a near miracle."

### ***Tribal Nation Marshall Plan***

The United States was willing to make a substantial investment in European nations after the destruction of WWII, yet it has not been willing to make the same kind of investment domestically where it bears a much greater responsibility. The concept of a Marshall Plan-like investment for Tribal Nations draws on the same political, economic, and restorative justice principles that underlay the European Marshall Plan. As with the European Marshall Plan, a Tribal Nation Marshall Plan would not only strengthen Tribal Nations, but it would strengthen the United States as a whole. It is crucial to remember, however, that the rationales and obligations of the European Marshall Plan apply with even greater force to an investment in Tribal Nations due to the current and historical reality we face as a direct result of U.S. actions and policies.

Through a domestic Tribal Nation Marshall Plan, the United States would recognize and take responsibility for the trust obligation arising out of its permanent occupation of Tribal homelands and our massive cession of resources that built the foundation of today's America. The United States owes a perpetual debt to Tribal Nations that has been compounded by our displacement, infringements on our sovereignty, and ongoing conditions that impair and directly harm the welfare of Tribal Nations and our citizens. Beyond generating payments on this debt, a Tribal Nation Marshall Plan would develop mutually beneficial economic growth for both Tribal Nations and the United States—creating stability, improved relations, and shared prosperity. Additionally, it would pave the way for the United States to become an international leader in the Indigenous rights

sphere, providing an opportunity to take actions that exemplify the idea of American exceptionalism.

It is important to reinforce that the Tribal Nation Marshall Plan proposed in this briefing paper would represent a significant one-time payment on the United States' debt to Tribal Nations, but it would in no way put an end to that debt, which stems from the United States' trust obligation that exists in perpetuity. However, this one-time investment is sorely needed. Indeed, in Fiscal Year 2021, the United States appropriated only \$25.2 billion for Tribal Nations. That appropriation amount represents only 0.07% of the value of land taken from Tribal Nations and 0.35% of the total federal budget for Fiscal Year 2021. In fact, each Tribal Nation on average receives only 22% of the amount provided on average to each recipient country in foreign aid assistance—where foreign aid is a discretionary expense, but federal funding to Tribal Nations is a consequence of its trust obligations.

### ***Nation Rebuilding***

Tribal Nations are sovereign governments that must provide for the general welfare of our citizens just like other government units, including the provision of governmental services to our communities. By failing to provide the funding due to us on an annual basis, the United States is not carrying out its trust and treaty obligations, which serves to compound the challenges we experience that have built up over the centuries.

The current United States funding levels for Tribal Nations' governmental services are drastically low, leading to inadequate foundations upon which Tribal Nations must serve our people. These underfunded governmental services include, for example: physical infrastructure, such as roads, homes, and schools; political infrastructure, such as judicial systems; and essential services, such as health, education, environmental remediation and public safety. These funding levels, and the corresponding governmental services that flow from them, are vastly inadequate when compared to surrounding communities and the United States more generally.

A significant investment in Tribal Nations similar to the Marshall Plan has the potential to be transformative, paving the way for true nation rebuilding for Tribal Nations. And it has the potential to allow the United States to stand proudly, knowing that Native people—wo are dual citizens of the United States and our Tribal Nations—are

not experiencing substandard conditions caused by a shirking of the United States' trust obligation. Tribal Nations' success also has a direct impact on surrounding communities, contributing to economic growth and sustainability. Success for Tribal Nations equates to success for the United States.

### ***Fund Delivery Method Based on Tribal Nations' Sovereignty***

The method of delivery and the use requirements attached to the Marshall-Plan-like investment must reflect Tribal Nations' status as sovereign governments and the United States' trust obligation. These factors will play a large role in the effectiveness of the investment.

Funding must flow directly, consistently, and predictably to Tribal Nations. For this reason, funding should not take the form of competitive grants, should be mandatory rather than discretionary, and Tribal Nations should have the option to accept funding directly via a more seamless channel as opposed to through a myriad of federal agencies. It is our position that it is time for the establishment a Department of Tribal Nation Relations to carry out the trust relationship with Tribal Nations—reflecting the diplomatic government-to-government relationship between the United States and Tribal Nations and facilitating across federal agency coordination and to ensure the seamless flow of funds to Tribal Nations and our communities. Further, Tribal Nations must not be prevented from using the funding to best meet the unique needs of our people. There should be no restrictive use limitations or reporting requirements.

### ***Execution of Marshall Plan for Tribal Nations***

Like the original Marshall Plan, the parameters of the Marshall Plan for Tribal Nations should be determined in close consultation and coordination, with Tribal Nation consent as the ultimate goal, with the recipients of the funds: Tribal Nations. For this reason, the federal government should establish a Commission that includes Tribal Nations, the White House Council on Native American Affairs, the Office of Management and Budget, the Government Accountability Office, and others to make funding and allocation decisions through a collaborative assessment of the unfunded trust obligation. The Commission should present to congressional appropriators a reliable funding number and plan for allocation. Rather than studying the problem—as so many reports have already done—the Commission should focus on an action plan to execute the Marshall Plan for Tribal Nations.



## **USET SPF Tribal Consultation Principles** *For Use During Consultations on Presidential Memorandum on Consultation*

On January 26, 2021, President Biden issued a Memorandum for the Heads of Executive Departments and Agencies on, "Tribal Consultation and Strengthening Nation-to-Nation Relationships". This memorandum reaffirms the Administration's commitment to the November 6, 2000 Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (E.O 13175), and the November 5, 2009 Presidential Memorandum requiring federal agencies to prepare and periodically update plans to implement E.O. 13175. President Biden's Memorandum directs the head of each agency to submit within 90 days to the Director of the Office of Management and Budget (OMB) a detailed plan of actions they will take to implement the directives of E.O. 13175. These plans shall be developed through consultation between federal agencies and Tribal Nations and officials as defined in E.O. 13175.

There is value in the spirit of the January 26<sup>th</sup> Executive Memorandum, which is to recommit and refocus federal agencies to engaging in meaningful Tribal consultation. However, these actions alone are not sufficient to address systemic failures in the various consultation processes across the federal government. 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.

### **USET SPF Principles for Consultation Reform**

➤ **Evolve Consultation to Consent**

The U.S. must move beyond a "check the box" method of consultation and instead work to formalize diplomatic relations with and seek the consent of Tribal Nations individually. This directive is reflected in Article 19 of the U.S.-endorsed United Nations Declaration on the Rights of Indigenous Peoples, which states that nations, "shall consult and cooperate in good faith", with the governmental institutions of our Tribal Nations, "in order to obtain [our] free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect [us]."

➤ **Standardize and Codify Consultation Requirements**

For far too long, Tribal Nations have experienced inconsistencies in consultation policies, the violation of consultation policies, and mere notification of federal action as opposed to a solicitation of input. Letters are not consultation. Teleconferences are not consultation. Providing the opportunity for Tribal Nations to offer guidance and then failing to honor that guidance is not consultation. Accountability is required to ensure Tribal consultation is meaningful and results in corresponding federal efforts to honor Tribal input and mitigate any concerns. All federal agencies, including independent federal agencies and the Office of Management and Budget, must be statutorily required to adhere to consultation policies with additional oversight from the White House and Congress. USET SPF strongly

supports the codification of consultation requirements for all federal agencies and departments, including a right of action to seek judicial review of consultation when the federal government has failed to engage, communicate, and consult appropriately. We further urge the Biden-Harris Administration to use its authority, in consultation with Tribal Nations, to create and implement a standard consultation process for use by all agencies.

➤ **Tribal consultation should occur on a Nation-to-Nation, leader-to-leader basis.**

Although consultation can pertain to very specific programmatic issues requiring technical and subject matter expertise, true consultation should occur at a Leader-to-Leader level. Duly elected or appointed Tribal Leaders must be afforded the respect and opportunity to directly voice Tribal Nation concerns to those federal officials with actual decision-making authority. We must further have the opportunity to include and confer with our respective expert staff during every consultation, just as federal officials do.

In addition, because the U.S. is engaged in a diplomatic relationship with each federally recognized Tribal Nation, greater effort must be made to consult with Tribal Nations on an individual basis. Due to the COVID-19 pandemic, virtual and teleconference consultations have had to take the place of in-person, face-to-face, consultations. While this is not a preferred method of consultation, it does offer the federal government another opportunity to engage, communicate, and consult at a Leader-to-Leader level. These methods of consultation provide the federal government with the opportunity to engage and communicate directly with every Tribal Nation.

➤ **Invest in diplomacy.**

The federal government must fully recognize and uphold our Nation-to-Nation diplomatic relationship. This directive extends to ensuring both federal agencies and Tribal Nations have access to resources that support diplomatic activities. True diplomacy, as evidenced by activities conducted by the U.S. Department of State, would involve U.S. ambassadors appointed to liaise with each federally recognized Tribal Nation on behalf of the federal government, rather than facilitating this relationship through national or regional consultations. While we recognize retooling the consultative relationship to allow for a truly diplomatic relationship involves many steps, funding for these activities is certainly one of them. We encourage the Biden Administration to consider how it might include diplomacy in future budget requests. This would include funding for federal agencies to build and sustain diplomatic infrastructure, as well as increased funding for Tribal Nation participation in these processes.

➤ **No delegation of federal consultation obligations.**

The trust relationship exists between the federal government and Tribal Nations exclusively. To this point, the federal government must not delegate its consultation obligation to third party entities, which include non-profit organizations, industries/corporations, hired consultants and contractors, non-Tribal archaeologists and anthropologists, and other units of government. When other entities are party to or involved in federal actions, the federal government must exercise appropriate oversight in ensuring Tribal interests are not adversely impacted. Tribal Nations, and not any other entity, are the final arbiters of whether a federal action impacts our governments, homelands, cultures, public health, or sacred sites.

➤ **Consultation should be early and ongoing, with advance notice and sufficient response timelines.**

One of the guiding principles of E.O. 13175 is to establish regular, meaningful consultation and collaboration with Tribal Nations in developing and implementing federal policies. However, this principle has been exercised using methods that have not always taken into consideration the direct and in-direct implications for Tribal Nations. Under the current consultation framework, federal

departments and agencies often unilaterally conduct their own internal review of proposed policies and actions, which frequently results in a finding of no impact. This fails to recognize and adhere to the federal government's fiduciary trust and treaty obligations to Tribal Nations. Rather, consultation and collaboration must recognize Tribal Nations as equal sovereigns. Tribal Nations must always be engaged at the earliest stages of federal decision-making process. In addition, our authority to initiate consultation in response to federal action (or proposed federal action) must be recognized and honored.

Moreover, Tribal Nations are often expected to review and provide comment on proposed regulations and activities under expedited and shortened timelines. This is further complicated by the lack of standardization across the federal government regarding Tribal Consultation methods, timelines, communications, and decision-making processes. It is the responsibility and obligation of the federal government to provide sufficient and timely advance notice of consultation. The federal government has trust and treaty obligations to inform Tribal Nations prior to any federal action or activity to ensure that any federal actions are not detrimental to Tribal Nations and our citizens. This involves providing enough time for Tribal Nations to evaluate potential impacts and respond.

➤ **Deference to Tribal Nations**

E.O. 13175, Section 3 lays out a set of policymaking criteria that have been implemented unevenly over the last two decades. In particular, this includes directives to extend "maximum administrative discretion" to Tribal Nations by encouraging Tribal Nations to develop our own policies and standards to achieve objectives as well as consult with us on the necessity of any federal standards. USET SPF urges the Biden Administration to consider how this section can be better operationalized and consistently applied throughout the federal government. In addition, the Indian Canons of Construction should always be applied during Tribal consultation, the policymaking process, and beyond. That is, any ambiguities in law or policy should be interpreted in favor of Tribal Nations.

➤ **Flexibility for Tribal Waivers**

Similarly, E.O. 13175, Section 6 encourages the federal government to facilitate and streamline Tribal applications for waivers of statutory and regulatory requirements. With some notable exceptions, this section does not appear to be actively implemented across the federal government. The Biden Administration should also revisit this section and examine what further Executive action is necessary to ensure its widespread operationalization.

➤ **Transparency and Follow-up in Decision-making**

All too often following Tribal consultation, the federal government renders a decision without further explanation as to how that decision was reached. This is particularly true in the case of "check-the-box" consultation, where Tribal Nations provide input and that guidance is ignored completely. Not only does this run counter to the federal government's consultation obligations, it undermines our Nation-to-Nation relationship. In recognition of and out of respect for our governmental status, as well as in the spirit of transparency, each federal agency should be required to publish a summary of all comments received, how that guidance influenced the agency's decision, and why the decision was reached. In addition, federal agencies should follow-up with Tribal Nations following the execution of federal decisions to assess efficacy and better understand associated consequences.

➤ **Educate federal employees on Tribal sovereignty and U.S.-Tribal Nation relations.**

It is critically important that all employees of federal departments and agencies receive comprehensive training on working with and communicating effectively with Tribal Nations. Federal actions impact Tribal Nations and our citizens. Every right-of-way permit, application for land into trust, and

environmental and cultural review document are reviewed by federal employees. However, many of the same federal employees engaging in decision-making that impacts our interests do not fully understand the history of U.S.-Tribal Nation relations and the federal trust obligation. This lack of education and understanding regarding the fiduciary trust and treaty obligations contributes, at least in part, to federal failures to properly consult. USET SPF has long recommended mandatory training on U.S.-Tribal relations and the trust obligation for all federal employees. This training should be designed in consultation with Tribal Nations.



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As Presented to the USET SPF Board of Directors  
November 2020

## USET SPF Principles and Priorities *Selected Policy Positions*

United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of thirty federally recognized Tribal Nations from the Canadian Border to the Everglades and across the Gulf of Mexico.<sup>1</sup> 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.

We advocate for actions that will help us to provide essential government services for our people, increase the exercise of our inherent sovereignty and self-determination, and uphold the government-to-government relationship between the United States and Tribal Nations, as well as deliver upon the unique trust and treaty obligations owed to us by the federal government.

As guided and instructed by our leadership, USET SPF engages in aggressive, assertive diplomacy as it seeks to hold the federal government accountable while promoting and advancing the inherent sovereignty of Tribal Nations. To that end, our advocacy is informed by a series of foundational policy positions and principles the underpinnings of which can be found in USET SPF resolutions, white papers, testimony, and other official statements. These positions are the lens through which we view and evaluate all federal policy and action.

### USET SPF Position Statements by Issue

#### Constitutionality

Increasingly, the political status of Tribal Nations under the Constitution has come under attack, including by the Department of Health and Human Services allowing states to impose Medicaid work requirements, a federal district court's decision striking down the Indian Child Welfare Act (ICWA), and various Executive statements and actions. Undermining the constitutionality of programs, laws, spending, and exemptions

<sup>1</sup> 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), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe – Eastern Division (VA), 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), Rappahannock Tribe (VA), 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).

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specific to Native people 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.

### **Climate Change**

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 on 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 to 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.

### **Cultural and Sacred Sites Protection**

While the practice of spiritual and ceremonial traditions and beliefs varies significantly among USET SPF Tribal Nations, our spirituality is overwhelmingly place-based. From the Mississippi Band of Choctaw Indians' Nanih Waiyah mounds to the ceremonial stone landscapes of New England, each member Tribal Nation has specific places and locations that we consider sacred. These places are often the sites of our origin stories, our places of creation. As such, we believe that we have been in these places since time immemorial. Through these sites, we are inextricably linked to our spirituality, the practice of our religions, and to the foundations of our cultural beliefs and values. Our sacred sites are of greatest importance as they hold the bones and spirit of our ancestors and we must ensure their protection, as that is our sacred duty. As our federal partner in this unique government-to-government relationship, it is also incumbent upon all branches of the U.S. government to ensure the protection of these sites.

### **Economic Development**

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.

### **Taxation**

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. Passage of comprehensive tax reform in 2017 without Tribal provisions was unacceptable. USET SPF continues to press Congress for changes to the U.S. tax code that would provide governmental parity and economic development to Tribal Nations.

## Energy

USET/USET SPF member Tribal Nations, and those respective Tribal lands and energy resources, are located within a large region that presents diverse geographical environments and opportunities for both conventional and renewable energy development. Our member Tribal Nations could benefit from the unlocked potential of those energy resources and realize energy development goals, through appropriate Congressional action and investment in Indian Country; and further actions by the Administration, particularly to promote balanced geographical representation and inclusion of USET SPF member Tribal Nations in energy programs.

### USET SPF Energy Priorities

USET SPF has established its energy priorities, as follows:

- ✓ **Tribal self-determination** and control of natural resources and energy assets, to make conservation and development decisions to preserve Tribal sovereignty, protect Tribal assets, and to achieve economic independence, creation of jobs, and improvement of Tribal members' standard of living.
- ✓ **Tribal capacity building** effort involving multiple federal agencies, universities, and the private sector.
- ✓ **Reform core federal programs**, expertise, and funding to support Tribal energy resource development and market access.
- ✓ **Remove barriers to the deployment of Tribal energy resources**, such as bureaucratic processes, insufficient access to financial incentives, and interconnection and transmission on power grid.

## Environment and Natural Resource

The distinct cultures of Tribal Nations are highly integrated into our environments, with many Tribal cultures and economies heavily dependent on environmental and subsistence resources. Disturbances to these environments, which extend beyond the boundaries of individual reservations, have proven to disrupt the survival of Tribal cultures and subsistence lifestyles.

In fulfillment of the trust obligation, the federal government has a responsibility to ensure the protection of Tribal environments and resources by recognizing and upholding the inherent sovereign status of Tribal Nations. As sovereigns, Tribal Nations must be able to exercise our authority by enacting and administering important regulatory programs over our homelands. These authorities must not be subject to or diminished by state regulatory standards which do not have authority over Tribal lands and could threaten crucial Tribal or federal protections for our environment and resources.

## Federal Funding

We advocate for the fulfillment of the federal trust responsibility and obligations, including full funding for federal Indian programs. 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.

Further, in delivering upon the trust responsibility in a manner reflective of the sacred relationship between Tribal Nations and the federal government, Tribal Nations should have direct access to federal funding. Funding should not be provided through mechanisms that would preclude Tribal Nations from having access to funding at all, such as competitive grants and funneling through the states, as this disregards our sovereign status.

## Health

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 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. As long as the Indian Health Service (IHS) is drastically underfunded, this reality will remain.

### Medicaid

Medicaid third party reimbursements are an extension of the federal trust and treaty obligation to provide health care to Native people and IHS beneficiaries. This sacred responsibility is held only by the federal government and not by non-Tribal and non-federal entities. Over forty years ago, Congress amended the Social Security Act to authorize Medicaid reimbursement for services provided within IHS and Tribally-operated healthcare facilities as part of a package of laws designed to bring additional federal Medicaid resources into the Indian Health System. Since then, Medicaid third party reimbursements have become a critical source of funding for the chronically underfunded Indian Healthcare System. We are opposed to any and all efforts that would restrict access to Medicaid as these are barriers to healthcare for our people.

### SDPI

The Special Diabetes Program for Indians (SDPI) has been making tangible strides in the fight against epidemic levels of diabetes throughout Indian Country since its inception in 1997 by providing grants for diabetes prevention and treatment services to more than 300 IHS, Tribal, and Urban Indian health programs in 35 states. Funding for SDPI is vital to improving the overall health of Native people because of the effective health programs designed to prevent and treat diabetes within Tribal communities.

SDPI must be provided long-term reauthorization and must be provided critical funding increases to ensure the program continues to make progress on the devastatingly high incidence of diabetes in Indian Country. Interruptions in funding often result in a loss of qualified program staffing capacity and thousands of jobs throughout the hundreds of SDPI program sites within Indian Country.

## Public Health Infrastructure

The chronic underfunding of the Indian Health System has played a significant role in preventing the development of a robust Tribal public health infrastructure. While states have cultivated extensive infrastructure, including the establishment of reportable disease and vital statistics reporting mechanisms, outbreak investigation, contact tracing, and data collection, there have been little to no resources available to Tribal Nations for the same purpose. High rates of racial misclassification within state datasets and the deliberate suppression of AI/AN data due to small numbers, leave Tribal Nations without accurate statistics regarding the overall health of our populations. The 1996 reauthorization of the Indian Health Care Improvement Act (IHCA) established 12 Tribal Epidemiology Centers (TECs) across Indian country. In 2010, the permanent reauthorization of IHCA designated TECs as Public Health Authorities and further compelled the Secretary of Health and Human Services (HHS) to share any and all health data with Tribal Nations. However, TECs remain underfunded and continue to face obstacles in accessing the data to which they are entitled. In addition to funding direct health care services to Tribal Nations and Native people, the federal government must make significant investments in TECs and other Tribal public health infrastructure, as well as support parity in Tribal access to public health resources—both in accordance with the trust obligation and to ensure the safety of Tribal communities and beyond.

## Infrastructure

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.

## Land

Tribal land base is a core aspect of Tribal sovereignty, cultural identity, and represents the foundation of our Tribal economies. USET/USSET 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.

### **Public Safety and Justice**

Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples, pre-dating the founding of the Republic. A critical aspect of our inherent sovereignty is jurisdiction over our land and people, including inherent jurisdiction over crimes. Early Supreme Court decisions recognized this broad jurisdictional authority. But the United States has slowly chipped away at Tribal Nations’ jurisdiction and in the 1978 decision of *Oliphant v. Suquamish Indian Tribe*, the Supreme Court struck what may be the biggest and most harmful blow to Tribal Nation criminal jurisdiction.

In that case, it held Tribal Nations lacked criminal jurisdiction over non-Native people, even for crimes committed within Indian Country. It based this harmful decision on the faulty reasoning that—while Supreme Court precedent recognizes that Tribal Nations possess aspects of our inherent sovereignty unless expressly divested—in the case of criminal jurisdiction over non-Native people the exercise of such inherent sovereignty was simply impractical for the United States. Not only is this decision immoral and harmful, it is also illogical, as other units of government, such as states, exercise criminal jurisdiction over non-citizens present in their boundaries as a matter of routine. It is this very exercise of jurisdiction that keeps everyone safe—something that is clearly in the United States’ best interests.

A gap in criminal jurisdiction stems from this failure to recognize our inherent sovereignty. When Tribal Nations are barred from prosecuting offenders and the federal government fails in its obligations, criminals are free to offend with impunity. In order to truly improve public safety in Indian Country, Tribal Nations must have full criminal jurisdiction over our lands, as well as the people who reside on or enter our lands, and this jurisdiction must be restored through a fix to the Supreme Court decision in *Oliphant*.

### **Free, Prior, and Informed Consent**

Broadly, the U.S. must work to reform the Tribal consultation process, as conducted by agencies across the federal government. Tribal Nations continue to experience inconsistencies in consultation policies, the violation of consultation policies, and mere notification of federal action as opposed to a solicitation of input. Letters are not consultation. Teleconferences are not consultation. Providing the opportunity for Tribal Nations to offer guidance and then failing to honor that guidance is not consultation. Meaningful consultation is a minimal standard for evaluating efforts to engage Tribal Nations in decision-making. Ultimately, free, prior, and informed Tribal consent, as described in the U.N. Declaration on the Rights of Indigenous Peoples, is required to fulfill federal treaty and trust responsibilities. The determination of what level of consultation is required should come from Tribal Nations. Meaningful consultation requires that dialogue with Tribal partners occur with a goal of reaching consent.

### **Tribal Self-Governance**

Tribal Nations are distinct, independent, political governments exercising powers of self-government by virtue of our own inherent sovereignty. However, federal policymaking has sought to undermine our sovereignty, instead treating Tribal Nations as incompetent “wards” unable to handle our own affairs exacerbated upon the notion of domestic dependency and plenary authority. As part of the federal trust responsibility and unique relationship with Tribal Nations, the federal government has an obligation to uphold the right to self-government. Tribal self-governance authorities must be reflective our inherent self-determination and rooted in retained sovereign authority—this includes not just the assumption of federal programs and services through an expansion of ISDEAA authorities, but by empowering Tribal Nations with real decision-making authorities in the management of our own affairs.

### **Strengthening Nation-to-Nation Diplomatic Relations**

USET SPF, along with Tribal Nations and organizations, continues to seek a modernized, 21<sup>st</sup> century relationship with the federal government. It is time for a new model that promotes 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. USET SPF is committed to working in partnership with all branches of government to achieve federal Indian policy reflective of the capabilities of 21<sup>st</sup> century Tribal Nations, as well as our inherent sovereignty and status as governments.

### **Truthful Narratives for Indian Country**

It is time for this country to acknowledge the complete and truthful history of Native people and Tribal Nations. Despite our great story of perseverance and strength as well as the invaluable contributions Tribal Nations have made to the U.S., public perception of Tribal Nations and Native people remains biased, inaccurate, and harmful, with a lack of education on our history and contemporary life contributing to the marginalization and stereotyping of Native people and cultures. Because of these deeply held misperceptions, Native experiences and voices are largely invisible or fundamentally misrepresented in public discourse. We remain a forgotten people in our homelands. We must ensure an honest depiction of Native people and Tribal Nations are portrayed and demanded for greater respect, inclusion, and social justice for Native peoples.

*For more information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs at [Lmalerba@usetinc.org](mailto:Lmalerba@usetinc.org).*



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## USET Sovereignty Protection Fund Candidate Position Checklist *Strengthening Tribal Nation-United States Diplomatic Relations*

### Background

United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of thirty federally recognized Tribal Nations from the Canadian Border to the Everglades and across the Gulf of Mexico.<sup>1</sup> 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.

We advocate for actions that will help us to provide essential government services for our people, increase the exercise of our inherent sovereignty and self-determination, and uphold the government-to-government relationship between the United States and Tribal Nations, as well as deliver upon the unique obligations owed to us by the federal government.

It is our expectation that federal partners, including those seeking office, will pledge not only to honor the solemn promises of the government's trust and treaty obligations, but also support an evolved trust model that reflects a true nation-to-nation partnership built upon diplomacy. The following are policy principles and priorities that provide a foundation for the modern-day U.S.-Tribal Nation relations envisioned by our Tribal leadership.

### **USET SPF Policy Principles and Priorities**

#### **Recognize, Promote, and Advance Tribal Sovereign Rights and Authorities**

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.

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<sup>1</sup> 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), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe – Eastern Division (VA), 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), Rappahannock Tribe (VA), 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).

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- ✓ Recognize Tribal criminal jurisdiction by fixing the Supreme Court decision in *Oliphant v. Suquamish Indian Tribe*.
- ✓ Promote Tribal control and autonomy over resources, programs, and funding, including through expansion of Indian Self Determination and Education Assistance Act contracting and compacting to all federal agencies and programs.
- ✓ Appoint Supreme Court justices and federal judges that support, protect, and promote our inherent sovereign rights and authorities.

### **Commitment to Meaningful and Evolved Trust Relationship**

The current trust model is a remnant of an era and mindset that has no place in current Nation-to-Nation relations, as it is based on two deeply flawed and paternalistic assumptions: (1) that Tribal Nations are incompetent to handle our own affairs, and (2) that Tribal Nations would eventually disappear. Indian Country has proven both of these assumptions wrong over and over again. The time is now to revisit and redefine our sacred Nation-to-Nation relationship in order to remove existing barriers that interfere with our ability to implement our inherent sovereign authority to its fullest extent which, in turn, will allow Indian Country to realize its great potential.

- ✓ Endorse and seek to implement Trust Modernization principles and strategies.
- ✓ Evolve, standardize, and enforce federal agency consultation requirements, with a goal of reaching Tribal Nation consent for federal action.
- ✓ Implement, not merely endorse, the mandates of the United Nations Declaration on the Rights of Indigenous Peoples.

### **Uphold and Defend Political Status**

Increasingly, our political status under the Constitution has come under attack, including by the Department of Health and Human Services allowing states to impose Medicaid work requirements, a federal district court's decision striking down the Indian Child Welfare Act (ICWA), and various Executive statements and actions. Undermining the constitutionality of programs, laws, spending, and exemptions specific to Native people 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.

- ✓ Ensure compliance with and defend challenges to existing law, such as ICWA.
- ✓ Provide legal and regulatory exemptions from actions that would undermine trust obligations.

### **Prioritize and Increase Funding for Federal Fiduciary Obligations**

The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal governments and Native peoples. Native peoples experience some of the greatest disparities among all populations in this country—including those in health, economic status, education, and housing. Indeed, in December 2018, the U.S. Commission on Civil Rights issued the "Broken Promises" Report, which found deep failures in the delivery of federal fiduciary trust and treaty obligations. The Commission concluded that the funding of the federal trust responsibility and obligations remains "grossly inadequate" and a "barely perceptible and decreasing percentage of agency budgets."

- ✓ Propose budgets that reflect full funding for all federal Indian agencies and programs.
- ✓ Support making all federal Indian funding mandatory rather than discretionary.

### **Restore Tribal Homelands**

USET SPF 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. And as our partner in the trust relationship, it is incumbent upon the federal government to prioritize the restoration of our land bases. The federal government's objective in the trust responsibility and obligations to our Nations must be to support healthy and sustainable self-determining Tribal governments, which

fundamentally includes the restoration of lands to all federally-recognized Tribal Nations, as well as the legal defense of these land acquisitions.

- ✓ Advocate for a fix to the fundamentally incorrect Supreme Court decision in *Carcieri v. Salazar*.
- ✓ Prioritize and facilitate a robust trust land acquisition program that provides a streamlined and equitable process to establish and increase Tribal land bases.

### **Remove Barriers to Economic Development**

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. Through inequities in the tax code as well as state dual taxation, revenue generated within Indian Country continues to be taken outside its borders or otherwise falls victim to a lack of parity. Moreover, Tribal governments continue to lack many of the same benefits and flexibility offered to other units of government under the tax code.

- ✓ Confirm the exclusive authority of Tribal governments to assess taxes on all economic activities occurring within our borders.
- ✓ Bring parity to the U.S. tax code that reflects the governmental status of Tribal Nations.

### **Invest in and Rebuild Tribal Infrastructure**

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. According to a report released in 2017 by National Congress of American Indians, there exists at least \$50 billion in unmet infrastructure obligations across Indian Country. The United States must commit to rebuilding the sovereign Tribal Nations that exist within its domestic borders while ensuring that any infrastructure build-out, in Indian Country and beyond, does not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.

- ✓ Commit to a Marshall Plan-like investment in Indian Country in recognition of the fact that our current circumstances are directly attributable to shameful U.S. policy.
- ✓ Reform the infrastructure permitting process by requiring Tribal *consent* for projects that significantly impact or threaten Tribal interests.

### **Promote Truthful Narratives About Tribal Nations and Native People**

Despite the invaluable contributions Tribal Nations continue make to the United States and our great story of perseverance and strength, public perception of Tribal Nations and Native people remains biased, inaccurate, and harmful to our progress. Because of these deeply held misperceptions, Native experiences and voices are largely invisible or fundamentally misrepresented in public discourse. We are a forgotten people in our homelands. These misconceptions are rooted in a failure of the United States to confront its own shameful history, including the atrocities committed against our ancestors and the theft of our lands and resources. It is time for this country to acknowledge and reconcile the complete and truthful story of our relationship—starting with our elected leaders.

- ✓ Ensure all official communications offer an honest depiction of Tribal Nations, Native people, and U.S.-Tribal Nation relations.
- ✓ Educate all federal employees on the history of U.S.-Tribal Nation relations and the federal trust obligation.

*For more information regarding USET SPF positions and priorities, please contact  
Liz Malerba, USET SPF Director of Policy and Legislative Affairs at: [LMalerba@usetinc.org](mailto:LMalerba@usetinc.org)*



# USET

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*Transmitted Electronically*

December 18, 2020

Joseph R. Biden Jr.  
President-elect of the United States of America  
1401 Constitution Ave. NW  
Washington, D.C. 20230

Dear President-Elect Biden,

On behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to congratulate you on your election as President of the United States. While we are anxious to turn the page on this year and a disappointing relationship with the previous Administration, we are seeking bold systemic changes and advancements for Indian Country over the policy of past Administrations, as well as to establish a more appropriate and respectful nation-to-nation relationship with the Biden-Harris Administration. As your transition motto states, we cannot not return to the incremental change of the past; rather, we must "build back better." This includes proactive work with Indian Country to identify and reverse the anti-Tribal regulations and policies of the last four years. USET SPF and its member Tribal Nations stand ready to work with your Administration on advancing, protecting, and promoting the inherent sovereign rights and authorities of Tribal Nations. This includes removing barriers to the full management and control of our own affairs and destiny, as well as working to ensure the federal government delivers on its promises to Indian Country.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.<sup>1</sup> USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

### **USET SPF Initial Priorities**

As the Biden-Harris Administration's policies and priorities begin to take shape, USET SPF outlines some broad, early items of interest and opportunities for collaboration. While by no means an exhaustive list of priorities for our member Tribal Nations, we view the below as the foundation for our initial engagement:

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<sup>1</sup> 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), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), 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), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), 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), Rappahannock Tribe (VA), 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), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

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### **COVID-19 Relief and Recovery**

While hope is on the horizon, the earliest days of the Biden Administration must be focused on COVID-19 relief and recovery—both for Indian Country and the whole of the United States. As you are aware, Indian Country continues to face disproportionately high rates of COVID-19 infection, with the mortality rate for Native people 2 times higher than that of non-Hispanic whites. These rates are caused and exacerbated by the chronic underfunding of the federal trust obligation, including for healthcare, education, housing, and critical infrastructure, which leaves Tribal Nations unable to appropriately respond to and mitigate this pandemic.

USET SPF is pleased that the Biden-Harris Administration is prioritizing health equity in its COVID response plans. We note, however, that health equity is just one piece of what is required to honor the federal trust obligation to Tribal Nations amid this pandemic. In the short-term, federal COVID relief, response, and recovery measures must be focused on rapid, equitable deployment to Tribal Nations in a manner that reflects our unique circumstances and the federal trust obligation. The federal government must support and uphold our sovereign right to determine how best to use relief funding and resources to the benefit of our citizens. And it must ensure that funding is delivered via the most expedient mechanisms while providing sufficient opportunity for Tribal Nations to expend these resources.

In the long-term, the United States must confront and correct its ongoing and shameful failures to honor its sacred promises to Tribal Nations, many of which have been outlined in detail by the U.S. Commission on Civil Rights in its 2018 *Broken Promises* report. As the Commission states in *Broken Promises*, “the United States expects all nations to live up to their treaty obligations; it should live up to its own.” The time is long overdue for a comprehensive overhaul of the trust relationship and obligations, one that results in the United States finally keeping the promises made to us as sovereign nations in accordance with our special and unique relationship. This change is urgently needed, as the global pandemic exposes for the whole world to see the extent to which generations of federal neglect and inaction have created the unjust and untenable circumstances facing Tribal Nations in the fight against COVID-19.

### **Recognize, Promote, and Advance Tribal Sovereign Rights and Authorities**

Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples, which pre-dates 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 to 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 recognition of Tribal government authority, so we may exercise full decision-making in the management of our own affairs and governmental services, including jurisdiction over our lands and people.

USET SPF is encouraged that the Biden Administration has already committed to discussions on long-term solutions to the Supreme Court decision in *Oliphant v. Suquamish*. As sovereign governments, Tribal Nations have a duty to protect our citizens, and provide for safe and productive communities. This cannot truly be accomplished without the full restoration of criminal jurisdiction to our governments through a fix to the Supreme Court decision in *Oliphant*. In addition, we draw your attention to the fact that some Tribal Nations, including some USET SPF member Tribal Nations, are living under restrictive settlement acts that further limit the ability to exercise criminal jurisdiction over our lands. These restrictive settlement acts flow from difficult circumstances in which states demanded unfair restrictions on Tribal Nation rights in exchange for recognized rights to our lands or federal recognition. Egregiously, there have been situations where a state has wrongly argued the existence of the restrictive settlement act prohibits application of later-enacted federal statutes that would restore to Tribal Nations aspects of our jurisdictional authority. USET SPF asserts that Congress did not intend these land claim settlements to forever prevent a handful of Tribal

Nations from taking advantage of beneficial laws meant to improve the health, general welfare, and safety of Tribal citizens. We request the opportunity to explore short- and long-term solutions to this problem with the Administration.

In addition, USET SPF has consistently urged that all federal programs and dollars be eligible for inclusion in self-governance 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. To accomplish this requires a new framework and understanding that moves us further away from paternalism.

### **Prioritize and Increase Funding for Federal Fiduciary Obligations**

The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal governments and Native peoples. Native peoples experience some of the greatest disparities among all populations in this country. Indeed, the *Broken Promises* report found deep failures in the delivery of federal fiduciary trust and treaty obligations, concluding that the funding of the federal trust responsibility and obligations remains “grossly inadequate” and a “barely perceptible and decreasing percentage of agency budgets.”

While we unequivocally support budget stabilization mechanisms, such as Advance Appropriations, in the long-term, USET SPF is calling for a comprehensive reexamination of federal funding delivered to Indian Country across the federal government. Because of our history and unique relationship with the United States, the trust obligation of the federal government to Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Payments on debt to Indian Country should not be vulnerable to year to year “discretionary” decisions by appropriators.

We also continue to seek improvements to the federal budget formulation process. This begins with reforms to the Office of Management and Budget (OMB). The federal government needs to do a better job of tracking how well it is meeting the trust obligation. OMB asserts that over \$21 billion in federal dollars is appropriated to Indian Country annually. From our perspective this is an overestimate, with far less actually reaching Tribal Nations and Tribal citizens. We think that OMB is tallying the amount for which Tribal Nations and entities are “eligible”, regardless of whether these dollars actually reach Indian Country. Both USET SPF and the Tribal Interior Budget Council (TIBC) have asked OMB for a full detailed accounting of federal funding distributed to Indian Country. To date, OMB has not responded to this request. USET SPF firmly believes that this information is absolutely essential to the measurement of the federal government’s own success in meeting its obligations. With this in mind, we recommend a dedicated Indian desk be established at the OMB to serve as an advocate for Tribal Nations and coordinate within the agency on the development of policies and budgets impacting Tribal Nation interests.

### **Commitment to Meaningful and Evolved Trust Relationship**

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.

This includes seeking the consent of Tribal Nations for federal actions that impact our sacred sites, lands, cultural resources, public health, or governance. Broadly, the U.S. must work to reform the Tribal consultation process, as conducted by agencies across the federal government. Tribal Nations continue to experience inconsistencies in consultation policies, the violation of consultation policies, and mere notification of federal action as opposed to a solicitation of input. Letters are not consultation. Teleconferences are not consultation. Providing the opportunity for Tribal Nations to offer guidance and then failing to honor that guidance is not consultation. Meaningful consultation is a minimal standard for evaluating efforts to engage Tribal Nations in decision-making. Ultimately, free, prior, and informed Tribal consent, as described in the U.N. Declaration on the Rights of Indigenous Peoples, is required to fulfill federal treaty and trust responsibilities. The determination of what level of consultation is required should come from Tribal Nations. Meaningful consultation requires that dialogue with Tribal partners occur with a goal of reaching consent as a true reflection of a nation-to-nation diplomatic relations framework and understanding.

In addition, while we are pleased to know that the Biden-Harris Administration will continue the White House Council on Native American Affairs (WHCNA) and immediately reinstate the White House Tribal Nations Conference, we note that the great promise of these mechanisms has not been fully realized. The Council was established to coordinate federal Indian policy among agencies in an effort to promote and honor the federal trust responsibility, as well as Tribal sovereignty and self-determination. However, while these actions are critical to the federal trust relationship, they cannot be achieved without the advice, consent, and participation of Tribal Nations themselves. USET SPF has consistently advocated for the seating of Tribal leader representatives as full members of the council. This could include Tribal leader representatives from each of the 12 Bureau of Indian Affairs regions, with each chosen by the Tribal Nations within these regions. We further suggest that the WHCNA work in concert with the White House Office of Intergovernmental Affairs to facilitate dialogue between the American family of governments—federal, Tribal, and state—with a goal of reaching mutual understanding and a better appreciation for Tribal sovereignty. Finally, we urge the appointment of Cabinet and senior-level officials throughout the Administration who are Native and/or have a strong knowledge of and appreciation for the federal trust obligation, as well as a commitment to improving upon its delivery.

### **Uphold and Defend Our Political Status as Reflected In the U.S. Constitution**

Over the course of many Administrations, but particularly during the last, our political status under the Constitution has come under attack, including by the Department of Health and Human Services allowing states to impose Medicaid work requirements, a federal district court's decision striking down the Indian Child Welfare Act (ICWA), and various Executive statements and actions. Undermining the constitutionality of programs, laws, spending, and exemptions specific to Native people 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. We urge that the Biden-Harris Administration work to ensure compliance with and defend challenges to existing law, such as ICWA, as well as provide legal and regulatory exemptions from actions that would undermine trust obligations. We further note and support your commitment to nominating Supreme Court and federal judges that support, protect, and promote our inherent sovereign rights and authorities.

### **Restoration and Protection of Tribal Homelands**

USET SPF 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. And as our partner in the trust relationship, it is incumbent upon the federal government to prioritize the restoration of our land bases. The federal government's objective in the trust responsibility and obligations to our Nations must be to support healthy and sustainable self-determining Tribal governments, which fundamentally includes the restoration of lands to all federally-recognized Tribal Nations, as well as the

legal defense of these land acquisitions. We look forward to the opportunity to work with the Biden Administration on land restoration priorities, such as a fix to the Supreme Court decision in *Carciari v. Salazar*, as well as improvements to the land-into-trust process.

### **Invest in and Rebuild Tribal Infrastructure**

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. According to a report released in 2017 by National Congress of American Indians, there exists at least \$50 billion in unmet infrastructure obligations across Indian Country. The United States must commit to rebuilding the sovereign Tribal Nations that exist within its domestic borders while ensuring that any infrastructure build-out, in Indian Country and beyond, does not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.

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.

### **Removing Barriers to Economic Development and Strengthening Tribal Nation Economies**

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. Through inequities in the tax code as well as state dual taxation, revenue generated within Indian Country continues to be taken outside its borders or otherwise falls victim to a lack of parity. Moreover, Tribal governments continue to lack many of the same benefits and flexibility offered to other units of government under the tax code. 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.

### **Sacred Sites and Cultural Protections**

While the practice of spiritual and ceremonial traditions and beliefs varies significantly among USET SPF Tribal Nations, our spirituality is overwhelmingly place-based. From the Mississippi Band of Choctaw Indians' Nanih Waiyah mounds to the ceremonial stone landscapes of New England, each member Tribal Nation has specific places and locations that we consider sacred. These places are often the sites of our origin stories, our places of creation. As such, we believe that we have been in these places since time immemorial. Through these sites, we are inextricably linked to our spirituality, the practice of our religions, and to the foundations of our cultural beliefs and values. Our sacred sites are of greatest importance as they hold the bones and spirit of our ancestors and we must ensure their protection, as that is our sacred duty. As our federal partner in this unique government-to-government relationship, it is also incumbent upon all branches of the U.S. government to ensure the protection of these sites, including by upholding our own sovereign actions.

### **Responding to the Impacts of Climate Change and Protecting Our Environment**

Because of where we are located, our members 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 many USET SPF member Tribal Nations, are most at risk to 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. In addition, Tribal Nations must be included as full partners in broader plans, dialogue, and legislation in addressing the climate crisis, especially with regard to establishing policies supporting economic development with renewable energy.

### **Promote Truthful Narratives About Tribal Nations and Native People**

Despite the invaluable contributions Tribal Nations continue make to the United States and our great story of perseverance and strength, public perception of Tribal Nations and Native people remains biased, inaccurate, and harmful to our progress. Because of these deeply held misperceptions, Native experiences and voices are largely invisible or fundamentally misrepresented in public discourse. We are a forgotten people in our homelands. These misconceptions are rooted in a failure of the United States to confront its own shameful history, including the atrocities committed against our ancestors and the theft of our lands and resources. It is time for this country to acknowledge and reconcile the complete and truthful story of our relationship—starting with our elected leaders. At a minimum, this includes ensuring all official communications offer an honest depiction of Tribal Nations, Native people, and U.S.-Tribal Nation relations, as well as educating all federal employees on the history of U.S.-Tribal Nation relations and the federal trust obligation. Longer-term, we are seeking the opportunity to explore our history might be better incorporated into the U.S. education system.

### **Conclusion**

We appreciate early opportunities for conversation with the Biden-Harris Administration and its Transition, as well as having a clear and open line of communication as you prepare to take office. With a new year on the horizon and as we look toward recovery from the global pandemic, USET SPF asks that you join us in working toward a legacy of change for Tribal Nations, Native people, and the sacred trust relationship. This includes the enactment of policies that uphold our status as sovereign governments, our right to self-determination and self-governance, and honor the federal trust obligation in full. Should you have any questions or require additional information, please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at (615) 838-5906 or by e-mail at [lmalerba@usetinc.org](mailto:lmalerba@usetinc.org).

Sincerely,



Chief Kirk Francis  
President



Kitcki A. Carroll



# USET

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*Transmitted Electronically*

May 27, 2021

The Honorable Debra Haaland  
Secretary  
Department of the Interior  
1849 C St. NW  
Washington, D.C. 20240

Dear Secretary Haaland,

On behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to extend our appreciation for the reestablishment of the White House Council on Native American Affairs (WHCNA), as well as offer some opportunities for improvement in the body's efficacy and transparency. We are encouraged by the return of the WHCNA as an early act of the Biden Administration, particularly in light of the Trump Administration's long delay and inconsistency in convening the Council. WHCNA has the potential to be of enormous assistance to the Biden-Harris Administration as it seeks to more fully deliver upon trust and treaty obligations, but realizing this potential requires some changes in both structure and support. This includes positioning the body to act in a centralized manner to provide for a more transparent, efficient, and coordinated approach that will support stronger fulfillment of trust and treaty obligations. With this in mind, we offer the following items for further exploration and discussion, as you continue to build out the WHCNA's role and its relationship with Tribal Nations under this Administration.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.<sup>1</sup> USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

### **Seating of Tribal Leaders as Full Members of WHCNA**

The WHCNA was established to coordinate federal Indian policy among agencies in an effort to promote and honor the federal trust obligation, as well as Tribal sovereignty and self-determination. However, while these actions are critical to the federal trust relationship, they cannot be achieved without the advice, consent, and participation of Tribal Nations themselves. USET SPF has consistently advocated for the

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<sup>1</sup> 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), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe-Eastern Division (VA), 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), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), 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), Rappahannock Tribe (VA), 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), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

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seating of Tribal leader representatives as full members of the council. However, this has yet to be realized. And while meetings with Tribal leaders have been held under the auspices of WHCNA, these have not included meaningful Tribal leader involvement or guidance.

Under the Unfunded Mandates Reform Act (UMRA), the President has authority to establish Tribal advisory committees. USET SPF suggests that as one option for Tribal leader involvement with the WHCNA, the President might appoint Tribal government leaders to serve on a Tribal Nations Council. This Council should be comprised of one Tribal leader representative and one Tribal leader alternate from each of the 12 Bureau of Indian Affairs regions, with each chosen by the Tribal Nations within these regions. The Council will work in partnership with the WHCNA on the charge and objectives of the body. Establishing the Council under UMRA would preclude application of the Federal Advisory Committee Act (FACA) to an expanded Council that includes Tribal leaders, as such Council meetings would be held exclusively between federal and Tribal officials acting in their official capacities and would be solely for exchanging views, information, and advice relating to the management of federal programs with intergovernmental responsibilities or administration. *Id.* § 1534(b). Moreover, FACA only applies to temporary committees, per FACA Section 14, whereas the Council should remain a permanent entity.

### **WHCNA's Work Should be Substantive, Tribally-Guided, and Transparent**

The WHCNA's mission includes, "coordinat[ing] development of policy recommendations to support tribal self-governance," making recommendations to the President "concerning policy priorities," and "coordinat[ing] a more effective and efficient process for executive departments, agencies, and offices to honor the United States commitment to Tribal consultation." With this in mind, it is our expectation that WHCNA meetings of all types will involve substantive discussions between Tribal Nations and the Executive Branch with a goal of crafting policy that advances Tribal sovereignty and self-determination. Going forward, Tribal input should be proactively solicited and acted upon in order to guide the Administration's priorities. Finally, all meetings of the WHCNA and its subcommittees should be public, so that Tribal Nations have a full awareness of what is being discussed. To this end, we encourage the WHCNA, in consultation with Tribal Nations, to develop a framework or strategic plan for its work, including measurable outcomes, and Tribal engagement in order to ensure the body is achieving its intended aims.

### **Funding for WHCNA**

Presently, and throughout its short history, WHCNA has operated with virtually no dedicated staffing or financial resources. Traditionally, the work of the Council has been coordinated by an executive director on detail from the Department of the Interior (DOI). And under the Executive Order establishing the Council, DOI "shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations." In practice, this has resulted in a lack of substantive support for the work of the body and the executive director, along with a restricting of the WHCNA's scope and ability to provide meaningful contact between the Cabinet and Indian Country. We note that under the Obama Administration, WHCNA's major focus appeared to be planning and facilitating the White House Tribal Nations Conference, which, while an important development in the Nation-to-Nation relationship, does not necessarily provide Tribal Nations or the Administration with a more intimate understanding of one another.

USET SPF envisions a WHCNA that engages in transformative policymaking and, at a minimum, makes several visits to Tribal homelands annually. This cannot be accomplished without direct and dedicated funding for the WHCNA. Given the potential for WHCNA to play a significant role in advancing the delivery of the federal government's delivery of trust and treaty obligations, as well as our diplomatic relationship, we urge this Administration to designate a dedicated funding stream for WHCNA—through

the President's Budget Request or other means. It is our belief that this will allow the WHCNA's work to be more substantive, productive, and meaningful for our evolving U.S.-Tribal Nation relationship.

### **Improving Coordination and Education Across Federal Agencies**

The WHCNA also presents an opportunity for federal officials to break down silos while improving coordination, as well as knowledge of Indian Country and U.S.-Tribal relations, across the federal government. Currently, federal agencies often fail to operate in coordination with one another in the execution of trust obligation, unless specifically directed, resulting in inefficiency, inconsistency, missed opportunities, and increased burdens for Tribal Nations. The WHCNA should work to increase and, perhaps in concert with the Office of Management and Budget (OMB), oversee the coordination of the broad range of agency activities related to the federal government's trust and treaty obligations. It should further work to compile and oversee the implementation of portions of agency strategic plans concerning Tribal Nations and the execution of the trust obligation.

Finally, it is critically important that all employees of federal departments and agencies receive comprehensive training on working with and communicating effectively with Tribal Nations. Federal actions impact Tribal Nations and our citizens. Every right-of-way permit, application for land into trust, and environmental and cultural review document are reviewed by federal employees. However, many of the same federal employees engaging in decision-making that impacts our interests do not fully understand the history of U.S.-Tribal Nation relations and the origins and basis of the federal trust obligation. This lack of education and understanding regarding the fiduciary trust and treaty obligations contributes, at least in part, to federal failures in executing the trust obligation. USET SPF has long recommended mandatory training on U.S.-Tribal relations and the trust obligation for all federal employees. This training should be designed in consultation with Tribal Nations and overseen by the WHNA and OMB.

### **Full and Transparent Accounting of Federal Indian Funding.**

The OMB asserts that over \$20 billion in federal dollars is appropriated to Indian Country annually. From the perspective of Tribal advocates, including those who serve on budget formulation committees for federal agencies, this number seems to be widely inflated, with far less actually reaching Tribal Nations and Tribal citizens. We suspect that OMB arrives at this figure by tallying the amount for which Tribal Nations and entities are eligible, regardless of whether these dollars actually reach Indian Country. While OMB has provided a high-level crosscut of this funding in the past, both USET SPF and the Tribal Interior Budget Council (TIBC) have asked for a full, detailed accounting of federal funding distributed to Indian Country. To date, OMB has not responded to this request. USET SPF firmly believes that this information is absolutely essential to consultation around federal budget formulation and efforts to determine the cost of fully funding the trust obligation, as well as the measurement of the federal government's own success in meeting its obligations. Understanding this to be a critically necessary tool, the WHCNA should assist with and coordinate the production of a granular crosscut that provides a full accounting of federal funding delivered to Tribal Nations in fulfillment of trust and treaty obligations.

In addition, while we unequivocally support budget stabilization mechanisms, such as Advance Appropriations, in the long-term, USET SPF is calling for a comprehensive reexamination of federal funding delivered to Indian Country across the federal government. Because of our history and unique relationship with the United States, the trust obligation of the federal government to Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Payments on debt to Indian Country should not be vulnerable to year to year "discretionary" decisions by appropriators. In order to properly measure its success or failure to fulfill its trust and treaty obligations, the United States must necessarily identify an evolving full funding figure.

### **Expand and Improve Tribal Self-Governance Authority**

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. To accomplish this requires a new framework and understanding that moves us further away from a paternalistic and antiquated model, including retirement of a grant framework and one that better reflects diplomacy amongst sovereigns.

Because funding for federal Indian affairs is provided in fulfillment of clear legal and historic obligations, those federal dollars should not be subject to a grant-based mentality. USET SPF points out that federal funding directed to foreign aid and other federal programs are not subject to the same scrutiny. Grant funding fails to reflect the unique nature of the federal trust obligation and our sovereignty by treating Tribal Nations as non-profits rather than governments. We reiterate the need for the federal government to treat and respect Tribal Nations as sovereigns as it delivers upon the fiduciary trust obligation, as opposed to grantees.

Further, Congress and the Administration should consider authorizing transfers of funds between agencies so that Tribal Nations may receive any federal funding through ISDEAA contracts and compacts, as well as modifications to reporting requirements under ISDEAA and other methods of funding distribution. The administrative burden of current reporting requirements under ISDEAA including site visits, "means testing," or other standards developed unilaterally by Congress or federal officials are barriers to efficient self-governance and do not reflect our government-to-government relationship. While obtaining data around Tribal programs is critical to measuring how well we as Tribal governments are serving our citizens and how well the federal government is delivering upon its obligations, Tribal Nations find themselves expected to report data in order to justify further investment in Indian Country. This runs counter to the trust obligation, which exists in perpetuity. The data collected by Tribal Nations must be understood as a tool to be utilized in sovereign decision-making, not to validate the federal government's fulfillment of its own promises.

### **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 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. An executive order of this nature would set the tone for all federal agency conduct and provide certainty in the federal government's approach to decisions affecting Indian Country. Consistency and commitment in the execution of the federal trust responsibility would likely reduce conflict between the federal government and Tribal Nations, as well as the number of trust mismanagement lawsuits facing the federal government.

### Facilitate Intergovernmental Dialogue

USET SPF further requests that the WHCNA work in concert with the White House Office of Intergovernmental Affairs to facilitate dialogue between the American family of governments—federal, Tribal, and state—with a goal of reaching mutual understanding and a better appreciation for Tribal sovereignty. Despite the longstanding recognition of our inherent sovereignty—in the U.S. Constitution, numerous Supreme Court decisions, and an array of laws—Tribal Nations face a near constant barrage of ignorance, encroachment, and hostility from other units of government directed at the authorities exercised by our governments. It is our contention that much of this derives from a lack of education on the part of government officials—federal, state, and local alike. In accordance with its obligation to protect and promote Tribal sovereignty, the federal government should seek enhanced recognition of our governmental status and improved relations between all units of government across the country.

### Address the Findings of *Broken Promises* and Beyond

The United States must address ongoing failures to honor its sacred promises to Tribal Nations, many of which have been outlined in detail by the U.S. Commission on Civil Rights in its 2018 *Broken Promises* report, as well as the *Quiet Crisis* report in 2003. As you are well aware, the pandemic has exposed the chronic and ever-widening gap between the trust obligation owed to Tribal Nations and the execution of that obligation. Though these failures have persisted throughout changes in Administration and Congress, it is time that both the legislative and executive branches confront and correct them. As the Commission states in *Broken Promises*, “the United States expects all nations to live up to their treaty obligations; it should live up to its own.”

The time is long overdue for a comprehensive overhaul of the trust relationship and obligations, one that results in the United States finally keeping the promises made to us as sovereign nations in accordance with our special and unique relationship. Deep and chronic failures require bold, systemic changes. Centuries of neglect and dishonorable dealings, as well as a relationship predicated on the demise of our governments, cannot be wiped away by working within the parameters of a system built to work against our interests. While USET SPF endorses and supports many of the recommendations in *Broken Promises*, we are also seeking fundamental and lasting change to U.S.-Tribal Nation relations in order to truly improve the delivery of federal trust and treaty obligations. This includes the removal of existing barriers that interfere with our ability to implement our inherent sovereign authority to its fullest extent which, in turn, will allow Indian Country to realize its great potential. We recognize an effort like this will take significant time and interagency collaboration, as well as outlast this Administration. However, this effort must begin and it should begin with the WHCNA.

### Invest in and Rebuild Tribal Infrastructure

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. According to a report released in 2017 by National Congress of American Indians, there exists at least \$50 billion in unmet infrastructure obligations across Indian Country. As the Biden Administration seeks to “build back better” and works to advance legislative packages aimed at recovery from the COVID-19 pandemic, the United States must commit to rebuilding the sovereign Tribal Nations that exist within its domestic borders. At the same time, any infrastructure build-out, in Indian Country and beyond, does not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.

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 WHCNAA would be the most appropriate body to coordinate and oversee its design and implementation.

### **Conclusion**

We appreciate your attention to and consideration of these requests. The WHCNAA has the potential to create and facilitate necessary, lasting change in federal-Tribal relations. It is our hope that under your leadership, the WHCNAA will work to achieve this goal. Please count USET SPF as a partner in your efforts to deliver upon the federal government's sacred trust responsibility and obligations to Tribal Nations. Should you have any questions or require additional information, please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at (615) 838-5906 or by e-mail at [lmalerba@usetinc.org](mailto:lmalerba@usetinc.org).

Sincerely,



Chief Kirk Francis  
President



Kitcki A. Carroll  
Executive Director

**Testimony of Chief Kirk Francis, President  
United South and Eastern Tribes Sovereignty Protection Fund  
Before the Senate Committee on Indian Affairs  
For the Oversight Hearing, “From Languages to Homelands: Advancing Tribal Self-Governance and  
Cultural Sovereignty for Future Generations.”**

Chairman Hoeven, Vice Chairman Udall, and members of the Senate Committee on Indian Affairs, thank you for this opportunity to provide forward-looking testimony on necessary advancements in the delivery of the federal trust obligation, the promotion of Tribal self-governance, and the recognition of our inherent sovereignty. We appreciate the prospective nature of this hearing, as we continue to seek foundational and systemic change to our relationship with the United States; change that lead to a more appropriate, respectful, honorable, and modern diplomatic relationship for the 21<sup>st</sup> century. I am Kirk Francis, Chief of the Penobscot Indian Nation and President of the United South and Eastern Tribes Sovereignty Protection Fund.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico. USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Before I begin, I would like to acknowledge that this is the final Senate Indian Affairs hearing of Vice Chairman Udall’s distinguished career. Mr. Vice Chairman—you have been a consummate friend and partner to Tribal Nations, committed to justice and progress for our people. Your dedication to upholding and advancing the trust obligation and Tribal sovereignty is evident in your many accomplishments alongside and on behalf of Indian Country over more than two decades of federal service. While we are sad to see you leave Capitol Hill, USET SPF extends our gratitude, support, and well wishes to you as you continue on your journey. On behalf of our USET SPF family of Tribal Nation, and all of Indian Country, we thank you and honor you for your service.

### **Introduction**

As one of the most challenging years this nation has seen in generations draws to a close, Indian Country finds itself at an inflection point in our centuries-long relationship with the United States. 2020 brought extreme challenges, sorrow, and upheaval to Tribal Nations and the whole of America. As COVID-19 tore through our communities, our country engaged in a reckoning with its past and looked toward a more honorable future. USET SPF has consistently called upon the United States to deliver and fulfill its sacred promises to Tribal Nations and to act with honor and honesty in its dealings with Indian Country. But the global pandemic has exposed for the world to see the extent to which generations of federal neglect and inaction have created the unjust and untenable circumstances facing Tribal Nations. The time is long overdue for a comprehensive overhaul of the trust relationship and obligations, one that results in the United States finally keeping the promises made to us as sovereign nations in accordance with our special and unique relationship.

As Native people, we are called to not only act on behalf of our people here today, but for those who came before us and those who will come after us—the future of our nations. We must always remember this mission as we work uphold, advance, and protect our sovereign rights and authorities for generations to come. At a time when our nations are facing great challenges, including existential threats, this charge becomes all the more critical.

While some notable advancements have been made in federal Indian policy over the last several years, the deep and chronic failures facing Indian Country will continue to plague us without bold, systemic changes. Centuries of neglect and dishonorable dealings, as well as a relationship predicated on the demise of our governments and our inability to self-govern, cannot be wiped away by working within the parameters of a system built to work against our interests. It is long past time that we create fundamental and lasting change to U.S.-Tribal Nation relations in order to truly improve the delivery of federal trust and treaty obligations. This includes the removal of existing barriers that interfere with our ability to implement our inherent sovereign authority to its fullest extent, without state and/or federal interference, which, in turn, will position Indian Country to realize its greatest potential.

### **Recognition of Inherent Tribal Sovereignty**

Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples, which pre-dates 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 fully recognize the inherent right of Tribal Nations to fully engage in self-governance, so we may exercise full decision-making in the management of our own affairs and governmental services, including jurisdiction over our lands and people.

However, the full extent of our inherent sovereignty continues to go unacknowledged and, in some cases, is actively restricted by other units of government, including the federal, as well as state and local governments. This serves to undermine the provision of essential services to our people, including such vital services as public safety, as well as the continuity and exercise of our cultures. This has created a crisis in Indian Country, as our people go missing and are murdered, and are denied the opportunity for safe, healthy, vibrant communities and traditions enjoyed by other Americans.

### **Criminal and Civil Jurisdiction over our Homelands**

One important reason for higher rates of crime in Indian Country is the gap in jurisdiction stemming from the United States' failure to recognize our inherent criminal jurisdiction, allowing those who seek to do harm to hide in the darkness away from justice. When Tribal Nations are barred from prosecuting offenders and the federal government fails in the execution of its obligations, criminals are free to offend over and over again.

The United States has slowly chipped away at Tribal Nations' jurisdiction. At first, it found ways to put restrictions on the exercise of our inherent rights and authorities. And eventually, as its power grew, the United States shifted from acknowledging Tribal Nations' inherent rights and authorities to treating these rights and authorizes as grants *from* the United States. With this shift in mindset, recognition of our inherent sovereignty diminished, including our jurisdictional authorities.

For example, in the 1978 decision of *Oliphant v. Suquamish Indian Tribe*, the Supreme Court struck what may be the biggest and most harmful blow to Tribal Nations' criminal jurisdiction. In that case, it held Tribal Nations lacked criminal jurisdiction over non-Native people, even for crimes committed within Indian Country. Without this critical aspect of sovereignty, which is exercised by units of government across the United States, Tribal Nations are unable achieve justice for our communities. While the United States has stripped Tribal Nations of our own jurisdiction and the resources we need to protect our people, it has not invested in the infrastructure necessary to fulfill its obligation to assume this responsibility. As a result, Indian Country currently faces some of the highest rates of crime, with Tribal citizens 2.5 times more likely to become victims of violent crime

and Native women, in particular, subject to higher rates of domestic violence and abuse. Many of the perpetrators of these crimes are non-Native people.

More recently, the federal government failed to recognize a Tribal Nation's sovereign right to protect its community from COVID-19. When it became clear that the state of South Dakota was not going to institute the public health measures necessary to control the spread of COVID-19 within its borders, the Cheyenne River Sioux Tribe (CRST) acted to protect its citizens by installing checkpoints on the highways leading to its homelands. These checkpoints have been immensely successful in identifying COVID and mitigating its spread in CRST's community. However, when the Tribal Nation refused to remove the checkpoints, the governor of South Dakota wrote to the White House and Department of Interior (DOI) to request intervention. Despite its legal obligation to uphold and defend Tribal sovereignty and self-governance, DOI threatened to withdraw CRST's law enforcement funding if it did not comply with the governor's request.

It is important to note that over the last decade, the federal government has made some effort to better recognize Tribal Nation jurisdiction over our own lands. USET SPF is appreciative of the efforts of this body in strengthening and improving public safety across Indian Country. Though many Tribal Nations remain unable to take advantage of its provisions, the 2013 reauthorization of VAWA was a major victory for Tribal jurisdiction, self-determination, and the fight against crime in Indian Country. This law provides crucial opportunities for Tribal Nations to reassume responsibilities for protecting their homelands by restoring criminal jurisdiction over non-Indian individuals in cases of domestic violence against Tribal citizens.

However, Tribal Nations, the Department of Justice, and others are reporting oversights in the drafting of the law that prevent the use of special domestic violence criminal jurisdiction (SDVCJ) and the law from functioning as intended. USET SPF remains strongly supportive of several bills aimed at addressing these gaps, including the Justice for Native Survivors of Sexual Violence Act and the Native Youth and Tribal Officer Protection Act. Though their provisions were incorporated into 2019 VAWA reauthorization proposals, they, along with VAWA, have not been approved by the 116<sup>th</sup> Congress.

As sovereign governments, Tribal Nations have a duty to protect our citizens, and provide for safe and productive communities. This cannot truly be accomplished without the full restoration of criminal jurisdiction to our governments through a fix to the Supreme Court decision in *Oliphant*. While we call upon this and the 117<sup>th</sup> Congress to take up and pass the aforementioned legislation, we strongly urge this Committee to consider how it might take action to fully recognize Tribal criminal jurisdiction over all persons and activities in our homelands for all Tribal Nations. Only then will we have the ability to truly protect our people.

### **Restrictive Settlement Acts**

As we work to ensure that Tribal sovereignty is fully upheld, we again remind this body that some Tribal Nations, including some USET SPF member Tribal Nations, are living under restrictive settlement acts that further limit the ability to exercise criminal jurisdiction over their lands. These restrictive settlement acts flow from difficult circumstances in which states demanded unfair restrictions on Tribal Nations' rights in order for the Tribal Nations to have recognized rights to their lands or federal recognition. When Congress enacted these demands by the states into law, it incorrectly allowed for diminishment of certain sovereign authorities exercised by other Tribal Nations across the United States.

Some restrictive settlement acts purport to limit Tribal Nations' jurisdiction over their land or to give states jurisdiction over Tribal Nations' land, which is itself a problem. But, to make matters worse, there have been situations where a state has wrongly argued the existence of the restrictive settlement act prohibits application of later-enacted federal statutes that would restore to Tribal Nations aspects of our jurisdictional authority, including VAWA and the Tribal Law and Order Act (TLOA). In fact, some USET SPF member Tribal Nations report being threatened with lawsuits should they attempt to implement TLOA's enhanced sentencing provisions. Congress is often unaware of these arguments when enacting new legislation. USET SPF asserts that Congress did not intend these land claim settlements to forever prevent a handful of Tribal Nations from taking advantage of beneficial laws meant to improve the health, general welfare, and safety of Tribal citizens. We continue request the opportunity to explore short- and long-term solutions to this problem with this Committee.

### **Cultural Sovereignty**

While the practice of spiritual and ceremonial traditions and beliefs varies significantly among USET SPF Tribal Nations, our spirituality is overwhelmingly place-based. From the Mississippi Band of Choctaw Indians' Nanih Waiyah mounds to the ceremonial stone landscapes of New England, each member Tribal Nation has specific places and locations that we consider sacred. These places are often the sites of our origin stories, our places of creation. As such, we believe that we have been in these places since time immemorial. Through these sites, we are inextricably linked to our spirituality, the practice of our religions, and to the foundations of our cultural beliefs and values. Our sacred sites are of greatest importance as they hold the bones and spirit of our ancestors and we must ensure their protection, as that is our sacred duty. As our federal partner in this unique government-to-government relationship, it is also incumbent upon all branches of the U.S. government to ensure the protection of these sites, including by upholding our own sovereign action.

This includes seeking the consent of Tribal Nations for federal actions that impact our sacred sites, lands, cultural resources, public health, or governance. Broadly, the U.S. must work to reform the Tribal consultation process, as conducted by agencies across the federal government. Tribal Nations continue to experience inconsistencies in consultation policies, the violation of consultation policies, and mere notification of federal action as opposed to a solicitation of input. Letters are not consultation. Teleconferences are not consultation. Providing the opportunity for Tribal Nations to offer guidance and then failing to honor that guidance is not consultation. Meaningful consultation is a minimal standard for evaluating efforts to engage Tribal Nations in decision-making. Ultimately, free, prior, and informed Tribal consent, as described in the U.N. Declaration on the Rights of Indigenous Peoples, is required to fulfill federal treaty and trust responsibilities. The determination of what level of consultation is required should come from Tribal Nations. Meaningful consultation requires that dialogue with Tribal partners occur with a goal of reaching consent as a true reflection of a nation-to-nation diplomatic relations framework and understanding.

### **Economic Sovereignty**

As it is for any other sovereign, economic sovereignty is essential to Indian Country's ability to be self-determining and self-sufficient. Rebuilding of our Tribal Nations involves the rebuilding of our Tribal economies as a core foundation of healthy and productive communities. We celebrate and acknowledge the recent passage of the Native American Business Incubators Act and the Indian Community Economic Enhancement Act, but there is more work to be done here, as well. 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 stronger Tribal Nations and a stronger America. 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.

Further, 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. Passage of comprehensive tax reform in 2017 without Tribal provisions was unacceptable, and our exclusion was inconsistent with expressed Congressional support to strengthen Tribal Nations. USET SPF continues to press Congress for changes to the U.S. tax code that would provide governmental parity and economic development to Tribal Nations.

### **Restoration of Tribal Homelands**

Possession of a land base is a core aspect of sovereignty, cultural identity, and represents the foundation of a government's economy. That is no different for Tribal Nations. USET SPF 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. And as our partner in the trust relationship, it is incumbent upon the federal government to prioritize the restoration of our land bases. The federal government's objective in the trust responsibility and obligations to our Nations must be to support healthy and sustainable self-determining Tribal governments, which fundamentally includes the restoration of lands to all federally-recognized Tribal Nations, as well as the legal defense of these land acquisitions. With this in mind, USET SPF continues to call for the immediate passage of a fix to the Supreme Court decision in *Carciari v. Salazar*.

### **Expansion and Evolution of Tribal Self-Governance**

Despite the success of Tribal Nations in exercising authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), as well as the recently enacted Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for Indian Tribes Act, the goals of self-governance have not been fully realized. Many opportunities still remain to improve and expand upon its principles. An expansion of Tribal self-governance to all federal programs under ISDEAA would be the next evolutionary step in the federal government's recognition of Tribal sovereignty and reflective of its full commitment to Tribal Nation sovereignty and self-determination. In the case of COVID-19 response, it would provide for a streamlined and expeditious approach to the receipt and expenditures of funding from across the federal government, and ensure these resources can be utilized in ways that reflect the diversity of Tribal governments.

USET SPF, along with many Tribal Nations and organizations, has consistently urged that all federal programs and dollars be eligible for inclusion in self-governance 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. To accomplish this requires a new framework and understanding that moves us further away from paternalism.

Examinations into expanding Tribal self-governance administratively have encountered barriers due to the limiting language under current law, as well as the misperceptions of federal officials. USET SPF stresses to the Committee that if true expansion of self-governance is only possible through legislative action, the Committee and Congress must prioritize legislative action on the comprehensive expansion of Tribal self-governance. This will modernize the federal fiduciary responsibility in a manner that is consistent with our sovereign status and capabilities. As an example, 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, but would require Congressional action. However, despite efforts on the part of Tribal representatives to the SGTFW to attempt to move forward in good faith with consensus positions on expansion legislation, these efforts were stymied by the lack of cooperation by federal representatives. USET SPF urges the Committee and Congress to use its authority to work to legislatively expand Tribal self-governance to all federal programs where Tribal Nations are eligible for funding, in fulfillment of the unique federal trust responsibility to Tribal Nations.

Further, Congress and the Administration should consider modifications to reporting requirements under ISDEAA and other methods of funding distribution. The administrative burden of current reporting requirements under ISDEAA including site visits, “means testing,” or other standards developed unilaterally by Congress or federal officials are barriers to efficient self-governance and do not reflect our government-to-government relationship. While obtaining data around Tribal programs is critical to measuring how well we as Tribal governments are serving our citizens and how well the federal government is delivering upon its obligations, Tribal Nations find themselves expected to report data in order to justify further investment in Indian Country. This runs counter to the trust obligation, which exists in perpetuity. The data collected by Tribal Nations must be understood as a tool to be utilized in sovereign decision-making, not to validate the federal government’s fulfillment of its own promises.

Because funding for Tribal Nations is provided in fulfillment of clear legal and historic obligations, those federal dollars should not be subject to an inappropriate, grant-based mentality that does not properly reflect our diplomatic relationship. USET SPF notes that federal funding directed to foreign aid and other federal programs are not subject to the same scrutiny. Grant funding fails to reflect the unique nature of the federal trust obligation and Tribal Nations’ sovereignty by treating Tribal Nations as non-profits rather than governments. We reiterate the need for the federal government to treat and respect Tribal Nations as sovereigns as it delivers upon the fiduciary trust obligation, as opposed to grantees.

### **Full Funding for Federal Fiduciary Obligations**

The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal governments and Native peoples. Native peoples experience some of the greatest disparities among all populations in this country—including those in health, economic status, education, and housing. Indeed, in December 2018, the U.S. Commission on Civil Rights issued the “Broken Promises” Report, which found deep failures in the delivery of federal fiduciary trust and treaty obligations. The Commission concluded that the funding of the federal trust responsibility and obligations remains “grossly inadequate” and a “barely perceptible and decreasing percentage of agency budgets.”

Above all, the COVID-19 crisis is highlighting the urgent need to provide full and guaranteed federal funding to Tribal Nations in fulfillment of the trust obligation. While we unequivocally support budget stabilization mechanisms, such as Advance Appropriations, in the long-term, USET SPF is calling for a comprehensive reexamination of federal funding delivered to Indian Country across the federal government. Because of our history and unique relationship with the United States, the trust obligation of the federal government to Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Payments on debt to Indian Country should not be vulnerable to year to year “discretionary” decisions by appropriators. Recently, some in Congress have called for mandatory funding for specific agencies serving Indian Country. USET SPF strongly supports this proposal, which is more consistent with the federal trust obligation, and urges that this be realized via an entirely new budget component—one that contains all of the funding dedicated to Indian Country. Not only would this streamline access to these dollars, this mechanism would reflect true prioritization of and reverence for America’s trust obligation to and special relationship with Tribal Nations. While some will quickly dismiss this as unrealistic and untenable, when compared against the value of the land and natural resources the United States gained as part of the exchange, both voluntarily and involuntarily, it becomes evident that it is really only a matter of will and desire.

### **Marshall Plan for Indian Country—Rebuild and Restore Tribal Infrastructure**

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. Now, the nation and world are witnessing the deadly consequences of this neglect, as COVID-19 spreads through Tribal communities that are unable to implement such simple public health measures as frequent hand washing. The United States must commit to supporting 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.

### **Conclusion**

With a new year on the horizon and as we look toward recovery from the global pandemic, USET SPF calls upon Congress, the Administration, and the whole of the federal government to join us in working toward a legacy of change for Tribal Nations, Native people, and the sacred trust relationship. This year has underscored the urgent need for radical transformation in the recognition of our governmental status and the delivery of federal obligations our people. We can no longer accept the status quo of incremental change that continues to feed a broken system. The federal government must enact policies that uphold our status as sovereign governments, our right to self-determination and self-governance, and honor the federal trust obligation in full. We look forward to partnering with this Committee in an effort to advance these policies in the remaining days of this Congress, as well as the next.

**Testimony of the United South and Eastern Tribes Sovereignty Protection Fund  
Before the U.S. Commission on Civil Rights Virtual Public Briefing:  
*Assessing COVID-19 and the Broken Promises to Native Americans***

Chairwoman Lhamon and members of the U.S. Commission on Civil Rights (USCCR), thank you for holding this hearing and for the opportunity to provide testimony on the ways in which the federal government's chronic failure to uphold its fiduciary trust and treaty obligations to Tribal Nations has exacerbated the COVID-19 public health emergency in Indian Country. I am Lynn Malerba, Chief of the Mohegan Tribe and Secretary for the United South and Eastern Tribes Sovereignty Protection Fund Board of Directors. I also serve on numerous federal advisory committees, including as Chair of the Indian Health Service (IHS) Tribal Self-Governance Advisory Committee and on the Department of Justice's Tribal Nations Leadership Council.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of 30 federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico. USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations, and assisting our membership in dealing effectively with public policy issues.

### **Introduction**

As the Commission is well aware, Native peoples have endured many injustices as a result of federal policy, including federal actions that sought to terminate Tribal Nations, assimilate Native people, and to erode Tribal territories, learning, and cultures. This story involves the cession of vast land holdings and natural resources, oftentimes by force, to the United States out of which grew an obligation to provide benefits and services—promises made to Tribal Nations that exist in perpetuity. These resources are the very foundation of this nation and have allowed the United States to become the wealthiest and strongest world power in history. Federal appropriations and services to Tribal Nations and Native people are simply a repayment on this perpetual debt.

At no point, however, has the United States honored these sacred promises; including its historic and ongoing failure to prioritize funding for Indian country. The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal governments and Native peoples. As the United States continues to break its promises to us, despite its own prosperity, Native peoples experience some of the greatest disparities among all populations in this country and have for generations. It is no surprise, then, that the failures of the federal government are coming into horrifyingly sharper focus due to the global pandemic. Decades of broken promises, neglect, underfunding, and inaction on behalf of the federal government have left Indian Country severely under-resourced and at extreme risk during this COVID-19 crisis.

Our existing systems of service delivery and infrastructure are experiencing greater stress than those of other units of government, as we seek to maintain essential services and deliver upon our commitments, as well as dedicate resources to the unique circumstances of COVID-19 response. In addition, many of the business entities that Tribal Nations have established — both in order to determine our own destiny and also out of necessity (due to the chronic underfunding of the federal trust obligation)— are currently shuttered or experiencing steep declines in revenue. This is having a profoundly negative effect on Tribal government operations, as many rely on these non-federal resources to maintain the services that the federal government should be funding in full, in accordance with its trust and treaty obligations derived from the cession of our lands and resources. At the same time, Indian Country is treated as merely another grantee—forced to track, monitor, and apply for numerous streams of federal funding to address the

pandemic and its impacts, some of which is being severely mismanaged. While this would be burdensome under normal circumstances, it is nearly impossible under the reduced capacity caused by COVID-19, and runs counter to the sacred terms of our diplomatic relationship.

In the short-term, federal COVID relief, response, and recovery measures must be focused on rapid, equitable deployment to Tribal Nations in a manner that reflects our unique circumstances and the federal trust obligation. The federal government must support and uphold our sovereign right to determine how best to use relief funding to the benefit of our citizens. And it must ensure that funding is delivered via the most expedient mechanisms while providing sufficient opportunity for Tribal Nations to expend these resources. In addition, Congress must exercise its oversight authority, as the Administration distributes the funding from past and future legislative packages. Moreover, Congress can and should immediately address the lack of governmental parity facing Tribal Nations in access to public health and emergency management tools.

In the long-term, the United States must confront and correct its ongoing and shameful failures to honor its sacred promises to Tribal Nations, many of which have been outlined in detail by the Commission in the *Broken Promises* report. As the Commission states in *Broken Promises*, “the United States expects all nations to live up to their treaty obligations; it should live up to its own.” The time is long overdue for a comprehensive overhaul of the trust relationship and obligations, one that results in the United States finally keeping the promises to made to us as sovereign nations in accordance with our special and unique relationship. This change is urgently needed, as the global pandemic exposes for the whole world to see the extent to which generations of federal neglect and inaction have created the unjust and untenable circumstances facing Tribal Nations in the fight against COVID-19.

### **COVID-19’s Impact on Indian Country and the USET SPF Region**

Indian Country continues to face disproportionately high rates of COVID-19 infection, even as rates are declining for other populations. At the same time, the historically under-resourced Indian Health System is facing steep declines in revenue, increases in COVID-19 response expenses, and is not well-equipped to treat the disease. Our region, the Nashville Area of the Indian Health Service (IHS), for example, is one of the hardest hit. Despite the incomplete picture painted by the partial data available to Tribal Nations and Tribal Epidemiology Centers (TECs), as of July 7<sup>th</sup>, the Nashville Area has the third highest rate of positive cases at over 11%. One USET SPF member Tribal Nation, the Mississippi Band of Choctaw Indians, is currently fighting an outbreak, with one of the highest rates of infection in the entire nation at 960 per 10,000.

### **Chronic Underfunding Results in Catastrophic Deficits in Health Care Infrastructure and Operating Budgets**

While much has been reported upon regarding the American health system’s lack of capacity to handle a surge in infection-related hospitalizations, the Indian Health System, in many cases, does not have the capacity to treat severe, or even moderate, cases of COVID-19 at all. Chronic and extreme underfunding leaves Indian Country without much of the health care infrastructure available to the rest of America. While there are 605 health facilities serving 574 federally recognized Tribal Nations and our citizens across the country, just 46 of those facilities are hospitals, with 13 meeting the criteria to be designated as Critical Access Hospitals. A scant 46 facilities have emergency rooms, while 20 have operating rooms and non offer tertiary care such as open heart surgery or neonatal intensive care. The entire Indian Health System has just 37 ICU beds, 1,257 hospital beds, and 81 ventilators, with few personnel trained in their operation. The Nashville Area has just two Tribal hospitals, with a majority of our citizens served by Tribal health clinics, which lack the capacity to treat all but the most mild COVID-19 cases. Our clinics do not

have emergency rooms; they do not have intensive care units. Many do not have negative pressure isolation rooms, employees and other patients are automatically exposed, should a COVID-19 patient present to the clinic. Some of them do not have a full-time physician on staff. They provide mainly primary care and community health services. Much of the secondary care, and nearly all of the tertiary care needed, must be purchased from non-IHS facilities with limited Purchased/Referred Care (PRC) dollars.

As you know, the PRC program is severely underfunded, with many facilities exhausting these dollars completely by the summer of each Fiscal Year. While this budget line has received a significant infusion of funding through coronavirus relief legislation, even this level of funding is likely to be surpassed by the impacts of COVID-19. Due to the dangers associated with the disease, many USET SPF Tribal Nations report operating health centers with just a 'skeleton crew' and a high number of staff on furlough. This causes a higher number of patients to be referred out for care.

In addition, many Tribal Nations, including USET SPF member Tribal Nations, are reporting steep declines in 3<sup>rd</sup> party reimbursements for care provided to our patients. With our clinics operating at a staffing deficit, along with the cancelation of non-essential procedures and visits, we are unable to bill sources federal and private insurance and receive critical reimbursements for the provision of care. This shortfall represents an existential threat to continuity of operations, given the role that third party billing (especially Medicaid and Medicare) plays in providing further resources in the face of chronic underfunding on the part of the federal government. For some Tribal Nations, 3<sup>rd</sup> party reimbursements comprise 50-60% of total operating budgets. At a recent Congressional hearing, IHS Director, Rear Admiral, Michael Weahkee, stated that third party collections had dropped between 30-80% and that it would take years to recover these losses, which, by Indian Country's estimate, total well over \$1 billion.

#### **Tribal Public Health Entities Denied Access to Surveillance Data**

Our ability to respond to this public health crisis is further stymied by lack of access to quality public health data at the federal and state levels. While the chronic underfunding of the Indian Health System has played a significant role in preventing the development of a robust Tribal public health infrastructure, states have cultivated extensive public health infrastructure. This includes the establishment of reportable disease and vital statistics reporting mechanisms, outbreak investigation, contact tracing, data collection, and quarantine measures for all residents, including AI/AN people. This data is then shared with the Centers for Disease Control and Prevention (CDC) through cooperative agreements with each of the states.

In recognition of this lack of public health infrastructure at the Tribal level, the 1996 reauthorization of the Indian Health Care Improvement Act (IHCIA) established 12 Tribal Epidemiology Centers (TECs) across Indian country, one of which is housed at USET. In 2010, the permanent reauthorization of IHCIA designated TECs as Public Health Authorities and further compelled the Secretary of Health and Human Services (HHS) to share any and all health data with Tribal Nations. However, this directive has not been honored, for the most part, and Tribal Nations and TECs continue to experience frequent challenges in accessing data on both the federal and state level—including vital COVID-19 data—on top of the consistent lack of investment in TECs and Tribal public health capacity. TECs continue to petition both the CDC and state public health departments for this vital information, but have only received state data where there are positive Tribal-state relationships and some extremely limited COVID-19 testing data from CDC. This

hinders the work of TECs and, in turn, COVID-19 response at the Tribal level, as we are without an accurate picture of the reach of the disease into our communities.

### **Federal Government Fails to Provide Adequate PPE and Testing Supplies**

Over the course of the pandemic, Tribal Nations have received expired personal protective equipment (PPE), faulty PPE procured by IHS through a company owned by a former Trump official, and testing machines that have been known to provide a **high rate of false negatives**, impairing the ability to diagnose in a timely manner; continuing the spread of the disease.. While other units of government have access to the Strategic National Stockpile (SNS), this access is not guaranteed for Indian Country and the Federal Emergency Management Agency (FEMA) is forcing the Indian Health System providers to exhaust all other PPE resources before making a request for resources through the SNS. Legislation is pending that would confirm full Indian Health System access. In the meantime, Tribal Nations must access PPE and other supplies through IHS' National Supply Service Center, which experiences issues with volume and delays, or through the private market. USET SPF member Tribal Nations continue to report difficulties with access to PPE and reliable testing supplies.

### **Loss of Government Revenue Threatens Response and Essential Tribal Government Services**

Revenue losses due to the closure of Tribal government economic development entities are also hindering COVID response and mitigation, as well as the provision of governmental services. As the Commission noted in *Broken Promises*, Tribal Nations engage in gaming and other industries in order to generate the revenue that funds essential government services to our people—services that the federal government consistently fails to fund, despite the federal trust obligation. For several months of this year, Tribally-owned business entities closed in order to protect employees and the public, as well as promote public health objectives. At one point, for example, all of the Tribally-owned gaming operations in the USET SPF region were shuttered. Though many have reopened, at least partially, these reopenings were most often out of economic necessity and are tenuous, as outbreaks continue across the country and patronage remains down.

### **Lack of Connectivity Hinders Telehealth, Public Health Measures, Telework, and Distance Learning**

According to a 2018 Federal Communications Commission (FCC) report on broadband deployment in Indian Country, just 46.6% of housing units on rural Tribal lands have access to high speed broadband, a nearly 27-point gap when compared with non-Tribal rural households. The same report also noted differences in mobile 4G LTE coverage between Tribal and non-Tribal communities at 96% versus 99.8%. As our nation becomes ever more dependent upon these tools, both to combat the disease and to maintain our way of life amid lockdowns, the digital divide between Indian Country and other communities throughout America becomes even more stark.

In the case of one USET SPF member Tribal Nation, for example, lack of connectivity is impeding its COVID-19 response. With homelands that comprise multiple communities spread across numerous counties, some of its citizens live in areas with sufficient connectivity and others do not. This acts as a barrier to public health announcements and other urgent communications from Tribal leadership and officials, as well as access to information from other reliable sources regarding COVID-19 prevention measures. It also creates extreme difficulty as the Tribal Nation works to trace the contacts of those who have been infected.

Connectivity issues also impact Indian Country's ability to adapt to the 'new normal' of conducting our daily business in the virtual realm. In the absence of adequate broadband and 4G, many of the adaptive measures that other communities have taken are unavailable to some Tribal communities. This leaves our citizens without access to preventative care and check-ups, the ability to telework, and the opportunity to continue their studies during school closures—compounding the disparities we already face in these areas.

### **Lack of Housing Spreads Disease and Prevents Isolation of COVID Patients**

The federal underinvestment in Indian Country's housing infrastructure, as discussed in *Broken Promises*, is contributing to the spread of COVID-19 in many Tribal Nations. The ongoing lack of affordable housing has led to overcrowded conditions, with multi-family and multi-generational households common. Homelessness is also a problem, with citizens of some USET SPF member Tribal Nations without a permanent address, shuttling between the houses of friends and relatives. Both scenarios facilitate further COVID-19 infection, as those who are positive are unable to isolate themselves from other residents in the case of overcrowded conditions and homeless individuals are potentially infecting multiple households as they seek temporary lodging. Both allow the disease to have a greater reach into Tribal communities than it has in many non-Native communities.

### **Congressional Response to COVID-19 does not Reflect Prioritization of Trust Obligations**

Since March, USET SPF and Tribal Nations and organizations across the country have been focused on ensuring the robust inclusion of Indian Country as Congress takes legislative action in the fight against the pandemic. It should be noted that the Coronavirus Aid, Relief, and Economic Security (CARES) Act represents the largest transfer of resources to Indian Country in a single piece of legislation, at over \$10 billion. However, this sum represents just 0.5% of the approximately \$2 trillion in total funding. And while the CARES Act and the three other legislative measures aimed at providing relief and response to the public health emergency each contain provisions that seek to provide relief and support to Indian Country, many of these do not reflect our unique circumstances and structures. And these provisions and set-asides are spread throughout numerous agencies and programs within the Executive Branch, each with their own mechanisms and requirements, making it burdensome and complicated for Tribal Nations to identify and access critical funding.

### **Indian Country is an Afterthought**

While every member of Congress has an obligation to both their constituents and Tribal Nations, a majority who serve in the legislative branch are unaware of their dual responsibilities as a federal official. As Representative Tom Cole, one of four Tribal citizens serving in the U.S. Congress stated regarding the Congressional oath of office during a 2014 meeting of the House Rules Committee, "when we swear allegiance to the Constitution, you swear allegiance to Indian sovereignty whether you know it or not." Indeed, many in Congress are under-educated regarding the diplomatic relationship between the U.S. and Tribal Nations, and its constitutional underpinnings. This often leads to a failure to fully prioritize the interests of Tribal Nations during Congressional deliberations for all but a handful of members, typically those who have direct relationships with Tribal Nations (usually because of geography) and serve on committees whose jurisdiction includes a primary focus on federal Indian agencies and programs, despite the obligation to do so.

This was certainly true during consideration of COVID-19 relief and response legislation, as the first two packages contained limited funding for Indian Country. And despite the substantial amount of funding dedicated to Tribal Nations in the CARES Act, this is just a small sliver of the total, with a

majority of these resources are allocated through carve outs and set asides in funding aimed at other units of government or non-Tribal interests. While USET SPF and our membership recognizes and supports efforts to include our governments throughout legislation, this shoe-horning in of Indian Country leads to the design and implementation of provisions in ways that are not appropriate for Tribal Nations or reflective of the trust obligation. Many of these provisions are difficult to implement or unworkable for Tribal governments, while others reach some, but not all, in Indian Country.

The nature of the negotiations process for these types of extremely large packages of legislation forces members of Congress to offer a small number of top priorities to be carried forward at the discretion of Congressional leadership. Thus, with the conflicts inherent in representing those who voted you into office and all federally-recognized Tribal Nations concurrently, the priorities of local constituents most often supersede those of Indian Country. Even those who serve on relevant committees of jurisdiction must contend with these competing priorities. Because of this, a very small number of Indian Country's specific priorities, which numbered more than 40, were incorporated into the final CARES Act, with approximately 1/10 of the total funding available to Tribal Nations allocated in provisions crafted specifically for our governments.

This inconsistency in advocating for Indian Country is further compounded by the lobbying process and its transactional nature. Special interest lobbying drives much of the conversation at the Congressional level and although Tribal Nations, as governments to which the federal government has an obligation, should not have to conduct lobbying, many do so because of the influence this representation carries. Despite our unique, diplomatic relationship, many in Congress incorrectly view us as a special interest group. Indian Country should not be forced to expend its already limited resources to encourage the federal government to do its job.

Ultimately, these realities result in an incomplete and administratively complex Congressional response to the COVID-19 pandemic in Indian Country, with some of our priorities included in broad legislation and other attempts to drive resources toward our communities spread throughout federal agencies and programs designed with other units of government in mind. While it is critically important that Tribal Nations be included as sovereign governments throughout legislative efforts the Coronavirus public health emergency, to do so without accounting for the diverse and unique circumstances of Tribal Nations leaves many without the ability to access the relief and resources intended for us.

### **Indian-Specific Policy Change Remains Sidelined**

Although USET SPF continues to advocate for the greater inclusion of Tribal Nations in COVID response legislation, the issues with the legislative process discussed above leave many of Indian Country's specific proposals, particularly those focused only on our interests, still pending with Congress. Notably, two non-controversial proposals seeking to provide parity to Tribal Nations in access to public health resources, which were introduced in March, currently await Congressional action. S. 3486/H.R. 6274, *The CDC Tribal Public Health Security and Preparedness Act* and S. 3514/H.R. 6352, *The Tribal Medical Supplies Stockpile Access Act*, would guarantee Indian Country's access to critical public health tools that state, local, and territorial governments currently enjoy: Public Health Emergency Preparedness funding through the Centers for Disease Control and Prevention, and the Strategic National Stockpile, respectively. That these bills have not already been incorporated into COVID-19 relief legislation is concerning, but what is more disturbing is that Tribal Nations do not already have access to these resources. This points to the

continued lack of investment in Indian Country's public health infrastructure and a failure to recognize our sovereign right to protect our people.

### **Congressional Oversight is Lacking**

As we will discuss further, the Administration's implementation of Congress' directives is at best, inconsistent and slow, and at worst, negligent and in active conflict with Congressional intent and the trust obligation. As federal agencies continue to mishandle COVID-19 response and the implementation of legislation, Tribal Nations have sought Congressional intervention. Though many of our allies in the House and Senate have lodged inquiries with federal agencies and applied pressure where possible, it remains unclear what formal steps will be taken to ensure this is corrected moving forward. Just recently, the Senate Committee on Indian Affairs held its first oversight hearing on COVID-19 response in Indian Country. The only federal witnesses were the Director of IHS and one of the Federal Emergency Management Agency's (FEMA) regional administrators, despite the fact that Indian Country has had dealings with numerous departments and agencies over the course of the pandemic. Congress needs to exercise its oversight authority to understand the Administration's wholly inadequate response to this crisis in Indian Country. With a divided Congress, and during a time when both the executive and legislative branches are feeling increased pressure to achieve agreement on the 4<sup>th</sup> COVID-19 stimulus package prior to recessing for the month of August, it is unclear whether Indian Country will see action to right these wrongs.

The legislative branch, and all branches of the federal government, must work to better understand the diplomatic relationship between Tribal Nations and the United States, and the resulting legal and moral obligations owed to us. All members of Congress should be focused on their obligations to our governments in addition to their responsibilities to their constituents. Despite this lengthy history and our great story of perseverance and strength, public perception of Tribal Nations and Native people remains biased, inaccurate, and harmful to our progress. Because of these deeply held misperceptions, Native experiences and voices are largely invisible or fundamentally misrepresented in public discourse, including at the federal level. We are a forgotten people in our homelands. These misconceptions are rooted in a failure of the United States to confront its own shameful history, including the atrocities committed against our ancestors and the theft of our lands and resources. It is time for this country to acknowledge and reconcile the complete and truthful story of our relationship—starting with our elected leaders.

### **Administration's Failure to Uphold its Obligations to Indian Country during a Global Pandemic**

As the Trump Administration implements COVID-19 response, mitigation, and relief legislation, USET SPF is advocating for the proper administration of new programs and the expeditious release of federal funds to Tribal Nations. Despite the urgency posed by the public health crisis and the federal trust obligation to Tribal Nations, the disbursement of resources intended for Indian Country has not been consistent, expeditious, or equitable throughout the Executive Branch. While some agencies have consulted with Tribal Nations on an expedited basis, implemented Tribal guidance, and quickly distributed resources, many have not. Each Department and Agency is disbursing these critical funds using different, oftentimes complicated, methodologies, including competitive grants, which is causing delays and barriers to receipt of urgently needed resources. At the same time the Administration has utilized the cover provided by the focus on global crisis to take action on political priorities hostile to the interests of Tribal Nations.

### **Treasury has Mismanaged the Coronavirus Relief Fund**

The Department of Treasury is failing to properly administer the \$8 billion Tribal set-aside in the governmental Coronavirus Relief Fund (CRF). Despite extensive Tribal advocacy and guidance shared with Treasury during the implementation of Title V of the CARES Act, the Department has

undercut our interests and the trust obligation at every turn. This has resulted in unreasonable delays and deep inequities in disbursement of this funding.

- Failure to use Tribally-Provided Data

Following the passage of the CARES Act and two consultation sessions with Tribal Nations, the Department required the swift submission of certain Tribal data points—population/enrollment number, number of employees, and total land base—in order to access CRF funds. Tribal Nations were required to attest to the validity of these numbers under penalty of law. Soon afterward, Treasury announced that it would not be utilizing any of the painstakingly prepared Tribal data in its initial distribution of 60% of the CRF Tribal set aside based on population, claiming that there were inaccuracies in the data submitted by Tribal Nations.

Instead, Treasury relied upon a set of data used by the Department of Housing and Urban Development (HUD) to distribute Indian Housing Block Grant funding. This data set is based on the self-report of racial background (American Indian/Alaska Native only or in combination with one or more other races) during the U.S. Census for individuals living within a given ‘formula area.’ While this data set may make sense for the administration of HUD programs, it is extremely ill-suited to the administration of the CRF. First, there is little correlation between this data and Tribal enrollment numbers or citizenship. Tribal Nations count citizens across the United States and not just within a particular service area. Many Tribal Nations provide essential governmental services to their citizens regardless of where they live. This data is based on racial classification instead of the political designation that is citizenship in a federally-recognized Tribal Nation. Tribal citizenship does not change based on an individual’s location.

In addition, due to inaccuracies in Census counts, the restriction to ‘formula area’, and previous Tribal Nation decisions opting not to access HUD programs, several Tribal Nations, including many USET SPF Tribal Nations, had extremely low population numbers in this data set or, egregiously, a recorded population number of zero. It is indefensible to suggest these numbers are in any way representative of actual Tribal enrollment numbers.

Though Tribal Nations have informed Treasury of these shortcomings and Treasury has access to Bureau of Indian Affairs (BIA) Tribal Nation enrollment numbers, which better represent Tribal populations, Treasury has taken no action to right this wrong. As a result, a lawsuit has been lodged against the Department. During the course of litigation, it has been revealed that by Treasury’s own estimate, the utilization of HUD data has resulted in at least \$679 million in underpayments to Tribal Nations.

- *Recommendation:* Treasury should be statutorily required to utilize Tribally-provided (and attested to) data in any future distributions of CRF funding. In addition, those Tribal Nations who received distributions utilizing a population number that does not reflect actual enrollment must receive additional funding to correct this inequity.

- Routing Funds to For-Profit Corporations

Early in its administration of CRF monies and following at least one private Alaska-specific consultation, Treasury announced that it had determined for-profit Alaska Native Corporations (ANCs) meet the definition of “Indian Tribe” under Title V of the CARES Act and were therefore, eligible to be direct recipients of the \$8 Tribal set aside from the CRF,

a fund that is clearly designated for units of government—not for-profit corporations. While ANCs do provide services to Alaska Native Tribal Nations and people, they are not the governments for whom the CRF was intended. Notably, this decision was reached in collaboration with the Department of the Interior's Bureau of Indian Affairs headed by Assistant Secretary for Indian Affairs (ASIA), Tara Mac Lean Sweeney, who is a beneficiary and former employee of an ANC, and whose husband is a registered lobbyist for another. ASIA Sweeney failed to recuse herself from these deliberations, and the matter is currently being jointly investigated by both DOI and Treasury's inspectors general.

- *Recommendation:* The CARES Act should be amended to clarify that the definition of "Indian Tribe" under Title V is consistent with the 1994 Federally Recognized Tribes List Act, as called for in the House-passed Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act.

- Data Breach

On April 17<sup>th</sup>, several hours prior to the scheduled closure of Treasury's online data collection portal, the confidential data Tribal Nations had uploaded in order to qualify for CRF resources was shared publicly. Despite this reckless breach of the trust obligation and calls for action from Tribal Nations, Tribal organizations, and Tribal advisory committees the Department has not issued any statement or information regarding next steps to protect our governments from fraud or investigate the source of the release.

- *Recommendation:* Treasury should be required to conduct a thorough investigation of the source and extent of the data breach, as well as provide credit monitoring and other safeguards to Tribal Nations whose data was exposed.

- Lack of Transparency and Guidance

While Treasury participated in a single, one hour listening session on CRF expenditures at the behest of Indian Country, USET SPF Tribal Nations continue to have several outstanding questions regarding eligible CRF expenditures, documentation, and recoupment procedures. This is compounded by the lack of clear instructions on the process for submitting questions or point of contact to provide answers. The possibility of back-end audits and federal recoupment of resources for unallowable expenditures looms, leaving many Tribal Nations with an untenable position when it comes to determining how to expend CRF resources under a quickly approaching statutory deadline. At the same time, it remains somewhat unclear exactly how each Tribal Nation's individual allocation was calculated under Treasury's methodology. In pursuit of these necessary details, USET SPF has written to Treasury several times to request the opportunity for our own phone call with officials, as well as a FAQ document specific to the circumstances of Tribal Nations.

- *Recommendation:* Treasury should be subject to transparency and reporting requirements, such as those outlined in the HEROES Act. In addition, Treasury should disclose its CRF calculations on an individual basis to each Tribal Nation receiving funds. Finally, Treasury should be required to publish Tribal FAQs, as well as provide a point of contact for questions related to the CRF.

### **HHS Refuses to provide Meaningful Access to Provider Relief Fund**

Tribal Nations have not had sufficient access to the \$175 billion Provider Relief Fund (PRF), funded by the CARES Act and the Paycheck Protection and Health Care Enhancement Act, administered at the discretion of the Department of Health and Human Services (HHS). These

funding authorizations were secured by Congress in order to provide broad relief to the American healthcare system, including the Indian Healthcare System, which has been facing deep economic impacts due to both losses in revenue and additional expenses associated with caring for COVID-19 patients. Though healthcare providers across the country are facing declines in revenue and increases in COVID-19 response expenses, IHS, Tribally-operated healthcare facilities, and Urban Indian Organizations (ITUs) have been disproportionately impacted, and are the only entities to which HHS has a trust obligation. With the unmet obligations of the federal government and the substantial decline in 3<sup>rd</sup> party revenue as a result of the pandemic, Tribal Nations have been operating with greatly diminished resources to address COVID-19. While HHS did increase its Tribal set-aside from \$400 million to \$500 million in response to Tribal advocacy, this represents 0.28% of the total and is insufficient to 3<sup>rd</sup> party shortfalls and rising COVID-related expenses. This sum is just 50% of what IHS estimates (\$1 billion) has been lost by the Indian Health System, and approximately 29% of the Tribal estimate (\$1.7 billion). And although Tribal health care providers have been eligible for other streams of PRF funding, it is unclear whether Indian Country has benefitted or will benefit from additional provider relief dollars in a substantive way. HHS has instituted a host of requirements and rules associated with each funding stream available under the PRF. This includes an after-the-fact restriction on eligibility for a distribution to Medicaid providers if the provider has already received a distribution targeted to Medicare providers. While Tribal Nations do bill both programs, our Medicaid patient population tends to be much greater than that of Medicare.

- *Recommendation:* Given HHS' broad discretionary authority over the PRF, the Department should, at least, triple the set-aside for Tribal Nations. However, based on communications with White House and HHS officials, it is unlikely that this will occur. In the absence of further HHS action and in consultation with Tribal Nations, Congress should include a Tribal Health Care Provider Relief Fund in the upcoming 4<sup>th</sup> COVID relief legislative package.

### **CDC Creates Barriers to Funding and Data Access**

The first coronavirus relief package, the Coronavirus Preparedness and Response Supplemental Appropriations Act, directed that not less than \$40 million in CDC funding for public health activities be reserved for Tribal Nations and organizations. As this directive was implemented, Tribal Nations and organizations urged that these funds be sent to the IHS via interagency transfer in order to remove barriers to expeditious distribution that exist within the CDC, as well as ensure these funds could be received via Indian Self-Determination and Education Assistance Act (ISDEAA) contracts and compacts. While the CDC did act to double the set aside, it claimed that it was legally unable to initiate the transfer. Instead, it acted to unilaterally route a portion of those funds through existing cooperative agreements with Tribal organizations, including USET, with the remainder available directly to Tribal Nations via grant application. This caused major delays in distribution of this critical funding at a time when no other resources were available to Tribal Nations, both because of the deliberations around this decision and because of the grant application process. Now, approximately 4 months later, Tribal Nations are just now receiving notices of award for these dollars. Though CDC did not set a ceiling for these awards and encouraged Tribal Nations to request all that was necessary, some USET SPF member Tribal Nations report that award levels are far less than that for which they applied, while others received the full amount.

More recently, the CDC refused to provide access to TECs and Tribal Nations seeking vital public health data. As noted earlier, state public health agencies report public health data, including data collected from and about Tribal citizens, to the CDC. This data would allow TECs and other Tribal public health authorities to conduct critically important surveillance work around COVID-19 and

other diseases and conditions. Yet, despite eventual agreement from the CDC in the presence of a Congressional committee to provide requested data, TECs are still waiting.

- *Recommendations:* The authority of the executive branch to make interagency transfers at the request of and for the benefit of Tribal Nations must be confirmed, by statute, if necessary. A request for legislative language to achieve this has been included in numerous communications with Congress to no avail.

In addition, the federal and state governments should be statutorily required to share all available public health data with TECs and Tribal Nations. USET SPF and others are proposing that this be made a requirement of state cooperative agreements with CDC.

### **Reservation Disestablishment without a Court Order**

For the first time since the termination era, the Department of the Interior (DOI) has taken action to disestablish a Tribal reservation, ordering the homelands of the Mashpee Wampanoag Tribe taken out of trust on March 27<sup>th</sup>. The order from Secretary David Bernhardt came as the Tribal Nation worked to respond to the COVID-19 public health emergency, during active litigation on the status of the land, and following the rescission of the 2014 Carcieri M-Opinion and the issuance of a new, more burdensome and restrictive 4-part test to meet the definition of “under federal jurisdiction” in the Indian Reorganization Act—which a federal court recently ruled was an attempt to change the rules around the Mashpee lands acquisition. At a time when the whole nation, including Indian Country, was responding to the crisis and uncertainty caused by coronavirus, this Administration acted unilaterally to further destabilize the Mashpee Wampanoag Tribe and all Tribal Nations. Tribal homelands are fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. Since DOI was under no court order to take the land out of trust, the disestablishment of the Mashpee reservation can only be interpreted as a hostile act—one aimed at undermining Tribal governments.

- *Recommendation:* USET SPF has been advocating for a fix to the Supreme Court decision in *Carcieri v. Salazar*, since it was handed down in 2009. *Carcieri* has created a deeply inequitable 2-class system, in which some Tribal Nations have the ability to restore their homelands and others do not. This 2-class system serves to deny these Tribal Nations a critical component of the trust relationship, vital aspects of the exercise of inherent sovereignty, and the opportunity to qualify for several government programs. USET SPF continues to call for the immediate passage of a fix that contains the two features necessary to restore parity to the land-into-trust process: (1) a reaffirmation of the status of current trust lands; and (2) confirmation that the Secretary has authority to take land into trust for all federally recognized Tribal Nations.

### **Education Funds Inordinately Delayed**

While the CARES Act was signed into law on March 27<sup>th</sup>, the Bureau of Indian Education (BIE) only recently disbursed \$69 million critical funding allocated to BIE for schools operated by the agency, Tribally-controlled schools, and Tribal Colleges and Universities, despite the school year having already ended. In mid-April, BIE announced that \$46 million of this total would be allocated to BIE and Tribally-controlled schools to support distance learning and the logistics of school closures. Following a nearly two-month silence, the funds were authorized for release on June 4<sup>th</sup>. However, USET SPF heard reports from member Tribal Nations that the transfer of funds has been unduly burdensome and delayed. Further, there has been no public announcement regarding the methodology for distribution. In addition, the Department of Education was required to set aside \$153.75 million for BIE from the CARES Act’s Education Stabilization Fund. Those dollars were

transferred to BIE on June 15<sup>th</sup> and were just recently disbursed to Tribally-controlled schools with the paternalistic condition that a spending plan be submitted.

- *Recommendation:* Congress should launch an inquiry into why this funding was delayed, as Indian Country still has not been provided with an explanation. In addition, future COVID-19 stimulus legislation should include hard deadlines for distribution. Tribal self-determination should be promoted by reducing or eliminating reporting requirements associated with the funding.

### **Tribal Nations must Cost-share for Federal Disaster Relief**

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) imposes a 25% cost-share imposed upon Tribal governments (and other units of government) as a condition of receiving direct Category B Public Assistance from the Federal Emergency Management Agency under. Additionally, public assistance funds are only provided on a reimbursement basis.

Both the cost-share and the nature of Category B funding distribution are currently serving as barriers to Tribal Nation access to this funding and by extension, the activities and resources it supports, including the purchase of emergency supplies and hiring necessary emergency management personnel. Unlike other units of government, Tribal Nations do not have access to tax revenue from which to draw in order to provide the cost-share and conduct these emergency activities pending reimbursement. And the federal government has unique trust and treaty obligations to Tribal Nations.

Under the Stafford Act, the President has the authority to waive the cost-share, as well as provide up-front funding to Tribal governments during the COVID-19 emergency. On April 20<sup>th</sup>, several Tribal organizations wrote to the President urging these actions. While the Administration has since indicated that CRF funding can be used to cover the cost-share, no further action has been taken on the Tribal requests.

- *Recommendation:* The President should act immediately to waive the cost-share and provide up front resources to Tribal Nations. However, given that this is unlikely and would be limited to the COVID-19 emergency, Congress should amend the Stafford Act to permanently waive the cost-share for Tribal Nations and offer the option to receive resources in advance in recognition of the trust obligation.

### **SBA Initial Refusal to Lend to Tribal Gaming Entities**

The Small Business Administration (SBA) was charged with administering the Paycheck Protection Program (PPP), a CARES Act provision that offers loans to small businesses, many of which are forgivable, in order to keep workers on payroll. In establishing the PPP, Congress sought to ensure that small businesses of all types had the opportunity to support employees during the extreme economic downturn and widespread closures caused by COVID-19. In acknowledgement of the role that our businesses play in supporting economies across the country and the federal trust obligation, Congress explicitly included all Tribal Business Concerns (TBCs) meeting size criteria, without regard for industry, as eligible for these loans. However, in implementing this provision, SBA initially applied its 1953 regulations to the PPP, deeming TBCs that operate in the gaming industry ineligible. This is a failure to recognize the role that TBCs play in the delivery of essential government services to Tribal Nations and the economic health of surrounding communities, and to ensure that federal law benefits Tribal Nations in an equitable manner. Although SBA eventually reversed its guidance, it caused unnecessary delays in the delivery of resources to TBCs and their employees when they were needed most. Every moment that Tribal Nations and organizations

must spend advocating for the federal government to uphold its obligations is a moment taken away from the fight against COVID-19, as well as focus on our own progress and advancement.

- *Recommendation:* Congress must provide greater clarity during the drafting process and oversight during the implementation process to ensure the broad application of laws for Tribal Nations.

### **HRSA Funds Available to 'Rural' Tribal Nations Only**

The Health Resources and Services Administration (HRSA) is subjecting the \$15 million set aside for Tribal Nations it is administering the under CARES Act to the agency's narrow definition of 'rural.' This is an arbitrary and unnecessary barrier, especially during a national crisis, for many Tribal Nations, including many USET SPF members, to whom HRSA has a trust obligation. HRSA has further opted to deliver this funding via grants.

- *Recommendation:* For the duration of the COVID-19 emergency and beyond, all Tribal Nations should be considered rural for the purposes of HRSA funding.

### **Threats to Tribal Nation Protecting Community through Highway Checkpoints**

The federal government failed to coordinate a national response to the COVID-19 crisis, with some in the Administration choosing to politicize the disease and public health measures. This has resulted in many Tribal Nations, including USET SPF Tribal Nations, closing their borders and taking other measures that differ from those of adjacent jurisdictions. For example, when it became clear that the state of South Dakota was not going to institute the public health measures necessary to control the spread of COVID-19 within its borders, the Cheyenne River Sioux Tribe (CRST) acted to protect its citizens by installing checkpoints on the highways leading to its homelands. These checkpoints have been immensely successful in identifying COVID and mitigating its spread in CRST's community. However, when the Tribal Nation refused to remove the checkpoints, the governor of South Dakota wrote to the White House and Department of Interior (DOI) to request intervention. Despite its legal obligation to uphold and defend Tribal sovereignty and self-governance, DOI threatened to withdraw CRST's law enforcement funding if it did not comply with the governor's request.

- *Recommendation:* In recognition of Tribal sovereignty and the trust obligation, the federal government should work with tribal governments to ensure they have the support needed when checkpoints and reservation closures are needed. Statutes, regulations, and guidance should confirm Tribal public health and jurisdictional powers to protect our communities.

### **Failure to Defend IHCIA**

Litigation over the constitutionality of the Affordable Care Act's (ACA) individual mandate to carry health insurance, and by extension, the entire law, has moved to the U.S. Supreme Court. On June 26<sup>th</sup>, the Trump Administration filed a brief reaffirming its position that the entire law must fall, without arguing that the Indian Health Care Improvement Act (IHCIA) or the ACA's Indian-specific provisions are severable. These provisions are clearly unrelated to the insurance reforms of the ACA and the individual mandate in particular. Rather, they were included as a part of the ACA in order to, at long last, ensure permanence for this foundational law and bring the Indian Health System into the 21st century. This is a failure to uphold its obligations to protect the interests of Tribal Nations, and is particularly egregious as Indian Country battles this pandemic, since the IHCIA is the primary, stand-alone statutory framework for the delivery of health care services to Native people. It is of the utmost importance that the Supreme Court's long-established severability rules are applied in this case. Striking down the ACA without severing IHCIA and the AI/AN-specific provisions would have devastating impacts on the health of Tribal Nations and Native people.

- *Recommendation:* The Administration must take seriously its trust obligation to Tribal Nations by defending the severability of these provisions.

## Long-term Solutions

Deep and chronic failures require bold, systemic changes. Centuries of neglect and dishonorable dealings, as well as a relationship predicated on the demise of our governments, cannot be wiped away by working within the parameters of a system built to work against our interests. This reality is intensifying as Tribal Nations are forced to fight COVID-19 from a position of extreme deficiency. USET SPF commends USCCR for its commitment to revealing the results of this flawed relationship and proposing both short- and long-term recommendations designed to ensure the federal government better honors its promises to Tribal Nations in *Broken Promises*. While USET SPF endorses and supports many of USCCR's recommendations, we are also seeking fundamental and lasting change to U.S.-Tribal Nation relations in order to truly improve the delivery of federal trust and treat obligations. This includes the removal of existing barriers that interfere with our ability to implement our inherent sovereign authority to its fullest extent which, in turn, will allow Indian Country to realize its great potential.

### Full and Mandatory Funding for all Federal Indian Programs

Above all, the COVID-19 crisis is highlighting the urgent need to provide full and guaranteed federal funding to Tribal Nations in fulfillment of the trust obligation. In the long-term USET SPF is calling for a comprehensive reexamination of federal funding delivered to Indian Country across the federal government. Because of our history and unique relationship with the United States, the trust obligation of the federal government to Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Payments on debt to Indian Country should not be vulnerable to year to year "discretionary" decisions by appropriators. Recently, some in Congress have called for mandatory funding for specific agencies serving Indian Country. USET SPF strongly supports this proposal, which is more consistent with the federal trust obligation, and urges that this be realized via an entirely new budget component—one that contains all of the funding dedicated to Indian Country. Not only would this streamline access to these dollars, this mechanism would reflect true prioritization of and reverence for America's trust obligation to and special relationship with Tribal Nations.

### Reforming the Office of Management and Budget

The Office of Management and Budget (OMB) asserts that over \$21 billion in federal dollars is appropriated to Indian Country annually. From the perspective of Tribal advocates, including those who serve on budget formulation committees for federal agencies, this number seems to be widely inflated, with far less actually reaching Tribal Nations and Tribal citizens. We suspect that OMB arrives at this figure by tallying the amount for which Tribal Nations and entities are "eligible", regardless of whether these dollars actually reach Indian Country. Regardless, this represents less than 1/10 of 1% of the annual value that the U.S. enjoys from federal lands and the natural resources derived off of these lands, and just 0.45% of the total federal budget for Fiscal Year (FY) 2020. On a recent call with Tribal Nations and other units of government, the White House touted the way in which it was honoring its promises to veterans, as evidenced by its FY 2021 Budget Request, the largest ever at \$243 billion to serve a population of 9.3 million. By contrast, the FY 2021 Budget request contains deep cuts to Indian programs, and even if the \$21 billion figure is accurate, does not similarly reflect the honoring of promises to Tribal Nations and Native people.

Both USET SPF and the Tribal Interior Budget Council (TIBC) have asked OMB for a full accounting of federal funding distributed to Indian Country. To date, OMB has not responded to

this request. USET SPF firmly believes that this information is absolutely essential to the measurement of the federal government's own success in meeting its obligations and the work of Tribal Nations. Congress must hold OMB accountable and require the agency to provide the necessary detail to support its Indian Country funding claim on an annual basis.

As an agency of the U.S. government, OMB must also be required, at a minimum, to meaningfully consult with Tribal Nations as it formulates budget requests and carries out other Executive actions. OMB has taken the position that it does not have the same consultation requirements as other federal agencies because it is an extension of the Executive Branch. This is incorrect as all branches and divisions of the federal government share equally in the federal trust responsibility and obligations. And it is precisely because the OMB holds this important position within the Executive Branch that it has clear consultative responsibilities to Tribal Nations. OMB is entrusted with verifying that the actions of federal agency actions comply with applicable law and policy, including Tribal consultation requirements. OMB must be held to the same standards as those agencies it oversees and seek to obtain consent from Indian Country for its actions.

USET SPF recommends a dedicated Tribal Affairs position be established at OMB to serve as an advocate for Tribal Nations and coordinate within the agency on the development of policies and budgets impacting Tribal Nation interests. Currently, examiners assigned to specific federal agencies or programs and housed in different departments are the only OMB personnel dedicated to Indian Country. USET SPF firmly believes that the creation of a higher-level, more comprehensive position would assist the agency in fulfilling its obligations to Tribal Nations and be more befitting of the sacred duty to our people.

#### **Cabinet Level Department for Tribal Affairs**

Despite centuries of diplomatic relations with the United States, the federal officials charged with the most direct engagement with Indian Country and the administration of a majority of our funding lack the seniority necessary to conduct these relations in a manner reflective of our nation-to-nation relationship. The IHS Director and ASIA each oversee agencies within larger executive departments, and because of this, do not have direct access to the President and are not fully empowered to execute on the government's trust obligations. The time has come for the federal government to acknowledge and respect our nationhood and its promises by elevating our interests to the level of the President's cabinet. Just as foreign nations engage with the United States via the State Department, Tribal Nations should have a Department of Tribal Affairs through which the trust obligation is delivered.

#### **Expansion of Self-Governance Contracting and Compacting**

Despite the success of Tribal Nations in exercising authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), the goals of self-governance have not been fully realized. Many opportunities still remain to improve and expand upon its principles. An expansion of Tribal self-governance to all federal programs under ISDEAA would be the next evolutionary step in the federal government's recognition of Tribal sovereignty and reflective of its full commitment to Tribal Nation sovereignty and self-determination. In the case of COVID-19 response, it would provide for a streamlined and expeditious approach to the receipt and expenditures of funding from across the federal government, and ensure these resources can be utilized in ways that reflect the diversity of Tribal governments.

USET SPF, along with Tribal Nations and organizations, has consistently urged that all federal programs and dollars be eligible for inclusion in self-governance 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.

Further, Congress and the Administration should consider modifications to reporting requirements under ISDEAA and other methods of funding distribution. The administrative burden of current reporting requirements under ISDEAA including site visits, “means testing,” or other standards developed unilaterally by Congress or federal officials are barriers to efficient self-governance and do not reflect our government-to-government relationship. While obtaining data around Tribal programs is critical to measuring how well we as Tribal governments are serving our citizens and how well the federal government is delivering upon its obligations, Tribal Nations find themselves expected to report data in order to justify further investment in Indian Country. This runs counter to the trust obligation, which exists in perpetuity. The data collected by Tribal Nations must be understood as a tool to be utilized in sovereign decision-making, not to validate the federal government’s fulfillment of its own promises.

Because funding for federal Indian affairs is provided in fulfillment of clear legal and historic obligations, those federal dollars should not be subject to a grant-based mentality. USET SPF points out that federal funding directed to foreign aid and other federal programs are not subject to the same scrutiny. Grant funding fails to reflect the unique nature of the federal trust obligation and Tribal Nations’ sovereignty by treating Tribal Nations as non-profits rather than governments. We reiterate the need for the federal government to treat and respect Tribal Nations as sovereigns as it delivers upon the fiduciary trust obligation, as opposed to grantees.

### **Evolve the Consultation Process**

Broadly, the U.S. must work to reform the Tribal consultation process, as conducted by agencies across the federal government. Tribal Nations continue to experience inconsistencies in consultation policies, the violation of consultation policies, and mere notification of federal action as opposed to a solicitation of input. Letters are not consultation. Teleconferences are not consultation. Providing the opportunity for Tribal Nations to offer guidance and then failing to honor that guidance is not consultation. This has happened with great frequency during the COVID-19 pandemic. Meaningful consultation is a minimal standard for evaluating efforts to engage Tribal Nations in decision-making, and in the context of high-stakes infrastructure projects, Tribal consent is required to fulfill the federal treaty and trust responsibilities. The determination of what level of consultation is required should come from Tribal Nations. Meaningful consultation requires that dialogue with Tribal partners occur with a goal of reaching consent.

### **Restore Tribal Homelands**

USET SPF 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. And as our partner in the trust relationship, it is incumbent upon the federal government to prioritize the restoration of our land bases. The federal government’s objective in the trust responsibility and obligations to our Nations must be to support healthy and sustainable self-determining Tribal governments, which fundamentally includes the restoration of lands to all federally-recognized Tribal Nations, as well as the legal defense of these land acquisitions. With this in mind, USET SPF continues to call for the immediate passage of a fix to the Supreme Court

decision in *Carciari v. Salazar*. No Tribal Nation should have to defend the status of its homelands from the illegal and arbitrary acts of the federal government, especially during a public health crisis.

### **Recognize Inherent Tribal Jurisdiction**

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 to 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. This includes a full recognition of our powers to protect our communities during the COVID-19 crisis, as well as Tribal criminal jurisdiction by fixing the Supreme Court decision in *Oliphant v. Suquamish Indian Tribe*.

### **Invest in and Rebuild Tribal Infrastructure**

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. Now, the nation and world are witnessing the deadly consequences of this neglect, as COVID-19 spreads through Tribal communities that are unable to implement such simple public health measures as frequent hand washing. According to a report released in 2017 by National Congress of American Indians, there exists at least \$50 billion in unmet infrastructure obligations across Indian Country. The United States must commit to rebuilding 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.

### **Remove Barriers to Economic Development**

Economic sovereignty is essential to Indian Country's ability to be self-determining and self-sufficient. In the case of COVID-19, economic sovereignty can mean life or death for Tribal Nations. Currently, there is no source of funding available to Tribal Nations that will address the loss of revenue we have experienced due to closures, even as large corporate interests have been provided for in relief legislation. The revenue generated by Tribally-owned entities is typically our sole source of non-federal funding, as many Tribal Nations do not tax economic activity occurring within our borders. Although Tribal Nations have authority to tax noncitizens doing business in Indian Country, when other jurisdictions, namely state and local governments, 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. When other units of government siphon away our revenue through dual taxation, our ability to use this revenue for the benefit of our citizens, through governmental programs and services, is jeopardized. Dual taxation

hinders Tribal Nations from achieving our own revenue generating potential, and in the case of COVID-19, leaves many Tribal Nations without access to a revenue stream that can be utilized in this fight. No other unit of government in the United States is subject to the taxation of an equally sovereign peer.

Rebuilding of our Tribal Nations involves rebuilding of our Tribal economies as a core foundation of healthy and productive communities. The tax treatment of Tribal Nations and our instrumentalities must reflect our governmental status, as well as the trust obligation to support our economies. As a matter of economic fairness, Congress and the Administration must work with Tribal Nations to support and advance initiatives that would bring certainty in tax jurisdiction to Tribal lands by confirming the exclusive authority of Tribal governments to assess taxes on all economic activities occurring within our borders. Further, Treasury should establish an Office of Tribal Affairs for the purpose of conducting ongoing, effective Tribal consultations, to review how pending and new legislation impacts Tribal, and for the establishment of Treasury related policy that honors the trust relationship the federal government has to tribes as set forth in the U.S. Constitution.

### **Conclusion**

We appreciate the Commission's willingness to reexamine and update Broken Promises through the lens of the COVID-19 pandemic and its devastating effect on Tribal Nations. The circumstances that Tribal Nations face during this public health emergency are directly attributable to the federal government's centuries of dishonorable action and inaction in its relationship with us. The United States' shameful and unjust neglect of its duties is coming to the fore as this illness ravages our dangerously under-resourced communities. COVID-19 represents an existential threat to our people, our governments, and our way of life. The pandemic is exposing the ever-widening gap between the trust obligation owed to Tribal Nations and the execution of that obligation. USET SPF demands accountability for the persistent, chronic failure to uphold legal and moral promises to Tribal Nations. Though these failures have persisted throughout changes in Administration and Congress, it is time that both the legislative and executive branches confront and correct them. At a time when Americans finally coming to realize the urgent need for our country to reconcile with its past, it should begin by atoning for its original sins against this land's first peoples. Countless lives are being lost due to historic and modern inaction. To continue to neglect this solemn duty, especially during a worldwide pandemic, will be catastrophic for Indian Country and the nation as a whole.



# USET

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## USET SPF Resolution No. 2020 SPF:005

### CALLING FOR LEGISLATIVE ACTION TO ADDRESS THE FINDINGS OF THE BROKEN PROMISES REPORT

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of thirty (30) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** in December 2018, the United States Commission on Civil Rights (USCCR) issued a report entitled, "Broken Promises: Continuing Federal Funding Shortfall for Native Americans,;" and
- WHEREAS,** the "Broken Promises" report comes after years of advocacy from Tribal Nations and organizations seeking an update to the 2003 "Quiet Crisis" report, which found deep failures in the delivery of federal fiduciary trust and treaty obligations; and
- WHEREAS,** the "Broken Promises" report found that the funding of the federal trust responsibility and obligations remains "grossly inadequate" and a "barely perceptible and decreasing percentage of agency budgets,;" and
- WHEREAS,** though these chronic failures have persisted throughout changes in Administration and Congress, it is time that both the legislative and executive branches confront and correct them; and
- WHEREAS,** much like the U.S. investment in the rebuilding of 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; and
- WHEREAS,** many of USCCR's recommendations in "Broken Promises" represent short-term, partial, or stopgap solutions to the problems outlined in its findings; and
- WHEREAS,** while USET SPF endorses and supports many of USCCR's recommendations, we are seeking bold and systemic change in order to truly improve the delivery of federal trust and treaty obligations; and
- WHEREAS,** one way to immediately begin to deliver upon the recommendations of the Broken Promises report is for the Administration to propose and Congress to demand budgets containing full funding for federal Indian agencies and programs, which would require a full accounting of the federal government's unfunded obligations to Indian Country; and

- WHEREAS,** this would involve reforms to the processes the Office of Management and Budget (OMB) uses to prepare the President's Budget Request and its Native American Crosscut, a document that is intended to outline total federal funding delivered to Indian Country on an annual basis, but currently includes funding for which Tribal Nations are eligible, but effectively cannot access; and
- WHEREAS,** USET SPF is also calling for full funding, as well as fundamental change in funding methodology, including mandatory funding and extending Indian Self-Determination and Education Assistance Act contracting and compacting for all federal Indian programs, as these provisions would be more reflective of trust and treaty obligations, as well as our governmental status; and
- WHEREAS,** in order to truly improve public safety in Indian Country, Tribal Nations must have full criminal jurisdiction over our lands, as well as the people who reside on or enter our lands, and this jurisdiction must be restored through a fix to the Supreme Court decision in *Oliphant v. Suquamish Indian Tribe*; and
- WHEREAS,** because economic development in Indian Country is severely hindered through inequities in the tax code as well as state dual taxation, Congress must ensure Tribal Nations have governmental parity in order to rebuild Tribal economies, including exclusive authority to tax within our borders; and
- WHEREAS,** all Tribal Nations, whatever their historical circumstances, need and deserve a stable land base, sufficient to support robust Tribal self-government, cultural preservation and economic development, and the federal government should ensure every Tribal Nation has the opportunity to restore its homelands, including through a fix to the Supreme Court decision in *Carcieri v. Salazar*; and
- WHEREAS,** legislation containing these provisions would do more to address the findings of the "Broken Promises" report than short-term, incremental changes; and
- WHEREAS,** in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it
- RESOLVED** USET SPF calls upon Congress to introduce and pass legislation containing bold proposals to address the findings of the "Broken Promises" report; and be it further
- RESOLVED** USET SPF calls upon the Executive Branch to enact and implement, through meaningful Tribal consultation, legislation to address the findings of the "Broken Promises" report; and be it further
- RESOLVED** this resolution shall be the policy of USET SPF until it is withdrawn or modified by a subsequent resolution.

*Because there is Strength in Unity*

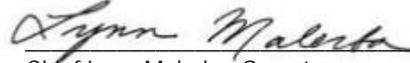


CERTIFICATION

This resolution was duly passed at the USET SPF Annual Meeting held on the Sovereign Territory of the Mississippi Band of Choctaw Indians at which a quorum was present on November 7, 2019.



Chief Kirk E. Francis, Sr., President  
United South and Eastern Tribes  
Sovereignty Protection Fund



Chief Lynn Malerba, Secretary  
United South and Eastern Tribes  
Sovereignty Protection Fund

*Because there is Strength in Unity*



# USET

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## USET SPF Resolution No. 2019 SPF:006

### CALLING FOR TRANSPARENCY IN OFFICE OF MANAGEMENT AND BUDGET CROSSCUT OF FEDERAL INDIAN FUNDING

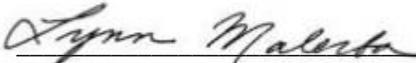
- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of twenty-seven (27) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** Tribal Nations have a unique relationship with the United States that has its underpinnings in the U.S. Constitution, specifically, the Indian Commerce Clause, the Treaty Clause and the Supremacy Clause, in numerous treaties, and through the cession of vast tracts of Tribal lands and resources; and
- WHEREAS,** these resources are the very foundation of this nation, and have allowed the United States to become the wealthiest and strongest world power; and
- WHEREAS,** the federal fiduciary obligation to Tribal Nations, including through the federal appropriations process, is simply a repayment on this debt and the many promises made by the United States; and
- WHEREAS,** despite this abiding obligation, federal Indian programs and agencies are consistently and chronically underfunded, which continues to have disastrous impacts upon Tribal Nation governments and Native peoples; and
- WHEREAS,** a primary reason for this underfunding is inadequate requests made by the Administration to Congress through the annual budget process, failing to reflect a prioritization of trust obligations and the related promises that are at the core of the special and unique relationship with Tribal Nations; and
- WHEREAS,** the Office of Management and Budget (OMB) is responsible for preparation of the President's Budget Request each year, which includes determining requests for federal Indian programs and agencies, and setting funding priorities; and
- WHEREAS,** OMB asserts that Indian Country is funded at over \$21 billion in federal dollars annually, providing a crosscut reflecting this number, but without critical details; and
- WHEREAS,** from the perspective of Tribal advocates, including those who serve on budget formulation committees for federal agencies, \$21 billion is a dramatic over-estimate, with far less funding actually reaching Tribal Nations and Tribal citizens; and

- WHEREAS,** USET SPF suspects that OMB determines this figure by tallying the amount for which Tribal Nations and entities are eligible, regardless of whether these dollars actually reach Indian Country; and
- WHEREAS,** in the absence of greater detail, neither the Executive nor the Legislative branches can determine how well fiduciary trust obligations are being met by the federal government; and
- WHEREAS,** the Tribal Interior Budget Council has asked OMB for a full accounting of federal funding distributed to Indian Country, and to date, OMB has not responded to this request, continuing to take the position that as an extension of the Executive Branch, it does not have the same consultative responsibilities as other federal agencies; and
- WHEREAS,** in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it
- RESOLVED** USET SPF calls upon the Office of Management and Budget to immediately issue a full and transparent accounting of federal funding distributed to Indian Country; and be it further
- RESOLVED** USET SPF urges Congress to direct the Office of Management and Budget to provide a full and transparent accounting of federal funding distributed to Indian Country in upcoming appropriations legislation.

#### CERTIFICATION

This resolution was duly passed at the USET SPF Annual Meeting held on the Sovereign Territory of the Seneca Nation of Indians, at which a quorum was present on October 11, 2018.

  
Chief Kirk E. Francis, Sr., President  
United South and Eastern Tribes  
Sovereignty Protection Fund

  
Chief Lynn Malerba, Secretary  
United South and Eastern Tribes  
Sovereignty Protection Fund

*Because there is Strength in Unity*

USET SPF 2018 Annual Meeting – Sovereign Territory of the Seneca Nation of Indians – October 8-11



# USET

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## USET SPF Resolution No. 2019 SPF:004

### SUPPORT FOR RECLAIMING NATIVE TRUTH

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of twenty-seven (27) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** despite the invaluable contributions to the United States made by Tribal Nations, the continued survival of Tribal culture, and strength of Native people, public perception of Tribal Nations and Native peoples remains biased, inaccurate, and harmful to our progress; and
- WHEREAS,** because of these deeply held misperceptions, Native experiences and voices are largely invisible or fundamentally misrepresented in public discourse; and
- WHEREAS,** the USET SPF 2018 Annual Meeting began on a day that continues to be set aside by the United States where this country shamefully celebrates Christopher Columbus; a man whose legacy includes the destruction of Native peoples and cultures without regard or a sense of humanity; and,
- WHEREAS,** in June 2016, the Reclaiming Native Truth project was launched as a national effort to foster cultural, social, and policy change by empowering Native Americans to counter discrimination, invisibility, and the dominant narratives that limit Native opportunity, access to justice, health, and self-determination; and
- WHEREAS,** Reclaiming Native Truth's goal is to move hearts and minds toward greater respect, inclusion and social justice for Native peoples; and
- WHEREAS,** between 2016 and 2018, Reclaiming Native Truth conducted an unprecedented research campaign designed to increase our understanding of the dominant narrative about Native peoples in the United States; and
- WHEREAS,** this comprehensive research was designed to uncover what different groups of Americans across socioeconomic, racial, geographic, gender, political ideology, and generational cohorts perceive, and what they don't know, about Native Americans and Native issues, as well as to learn what types of messages will begin to shift public perception; and
- WHEREAS,** the project's research methodologies included a combination of literature reviews, social listening, focus groups, online focus groups, national surveys, and in-depth interviews; and

- WHEREAS,** researchers found that deficits in education and limited personal experience with Native people and Tribal Nations contributed to a dominant national narrative that renders our history and contemporary life invisible or stereotyped; and
- WHEREAS,** the research also revealed opportunities to change this narrative through education and increased historical accuracy, as well as framing messages in hopeful tones that appeal to personal values; and
- WHEREAS,** this led to the development of a new narrative based in values, history, and visibility that resulted in significantly higher support for Native issues; and
- WHEREAS,** new narratives alone are not enough. They must connect with grassroots organizing, cross-sectoral partnerships with non-Native allies, and unity, not only within Tribal Nations but also among individual Natives and allies; and
- WHEREAS,** Reclaiming Native Truth has created messaging guides for use by both Indian Country Stakeholders and Reclaiming Native Truth Allies; and
- WHEREAS,** in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it
- RESOLVED** the USET SPF Board of Directors strongly supports and concurs with the conclusions drawn by the research of the Reclaiming Native Truth project, noting this reflects our own experiences; and, be it further
- RESOLVED** the USET SPF Board of Directors will partner with Reclaiming Native Truth to disseminate and amplify the new narrative, and in future efforts designed to promote a positive, accurate portrayal of Native people and Tribal Nations in public discourse.

#### CERTIFICATION

This resolution was duly passed at the USET SPF Annual Meeting held on the Sovereign Territory of the Seneca Nation of Indians, at which a quorum was present on October 11, 2018.

  
 Chief Kirk E. Francis, Sr., President  
 United South and Eastern Tribes  
 Sovereignty Protection Fund

  
 Chief Lynn Malerba, Secretary  
 United South and Eastern Tribes  
 Sovereignty Protection Fund

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## USET SPF Resolution No. 2018 SPF:018

### REFUTING STATEMENTS REGARDING CONSTITUTIONALITY OF FEDERAL INDIAN LAW

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of twenty-seven (27) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** recent statements made by Administration officials and arguments pursued by litigating plaintiffs indicate either a profound misunderstanding of or a desire to reevaluate the constitutionality of United States actions intended to carry out the United States' trust responsibility to American Indians and Tribal Nations, specifically as they relate to the equal protection clause under the Constitution; and
- WHEREAS,** to find that United States actions targeted at American Indians and Tribal Nations violate the Constitution's equal protection clause would have drastic impacts on the United States' ability to carry out its trust responsibilities to Tribal Nations and would be entirely inconsistent with well-settled law; and
- WHEREAS,** Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty they possess as self-governing Nations predating the founding of the United States, and since its founding, the United States has recognized them as such and entered into treaties with them on that basis; and
- WHEREAS,** through treaty-making and its general course of dealings, the United States has taken on a special and unique trust responsibility and obligation to American Indians and Tribal Nations; and
- WHEREAS,** the Constitution recognizes that Tribal Nations have a unique status stemming from their sovereignty and relationship with the United States, and it contains provisions specifically directed at American Indians and Tribal Nations that give the United States the tools necessary to carry out the trust responsibility and obligations; and
- WHEREAS,** in 1974, the Supreme Court in *Morton v. Mancari* affirmed that the United States can lawfully treat American Indians and Tribal Nations differently from other groups in carrying out its trust responsibility and obligations without running afoul of Constitution's equal protection clause; and
- WHEREAS,** the Court explained that such treatment is not directed at a suspect racial classification, but rather, at a unique and non-suspect class recognized and provided for within the Constitution, where such recognition arises from the United States' political relationship with Tribal Nations as separate sovereigns; and

- WHEREAS,** the Court went on to mandate that, as long as the United States' action furthers its "unique obligation toward the Indians," it will survive review under the Constitution's equal protection clause; and
- WHEREAS,** since *Morton v. Mancari*, courts have continuously upheld the principle that United States actions directed at American Indians and Tribal Nations in furtherance of its trust responsibility do not unconstitutionally target a racial classification, including the Supreme Court and every United States Circuit Court of Appeals that has discussed the issue; and
- WHEREAS,** since federal agencies may act to aid in carrying out the United States' trust responsibility, courts have applied the equal protection principles affirmed in *Morton v. Mancari* to uphold as constitutional federal agencies' acts directed at American Indians and Tribal Nations in furtherance of the trust responsibility, and they have not required the agencies to be acting under a specific statute targeted at American Indians or Tribal Nations; and
- WHEREAS,** similarly, since states may act to aid in carrying out the United States' trust responsibility, courts have applied the equal protection principles affirmed in *Morton v. Mancari* to uphold as constitutional states' acts directed at American Indians and Tribal Nations in implementing federally funded programs; and
- WHEREAS,** since statutes that prohibit race-based discrimination, such as the Civil Rights Act, incorporate equal protection jurisprudence regarding suspect classifications, United States actions directed at American Indians and Tribal Nations in furtherance of the trust responsibility do not qualify as statutorily prohibited race-based discrimination; and
- WHEREAS,** in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) whose provisions and principles support and promote the purposes of this resolution; therefore, be it
- RESOLVED** the USET SPF Board of Directors refutes in the strongest possible terms the notion that any federal Indian program implicates the equal protection clause of the United States Constitution and this is a fact upheld in federal law, policy, and caselaw; and, be it further
- RESOLVED** the USET SPF Board of Directors calls upon the Administration and Congress to ensure all policy making, statements, and other federal actions reflect the indisputable constitutionality of United States actions aimed at carrying out the trust responsibility and obligations owed to American Indians and Tribal Nations.

#### CERTIFICATION

This resolution was duly passed at the USET SPF Impact Week Meeting, at which a quorum was present, in Arlington, VA, February 8, 2018.

  
 Chief Kirk E. Francis, Sr., President  
 United South and Eastern Tribes  
 Sovereignty Protection Fund

  
 Chief Lynn Malerba, Secretary  
 United South and Eastern Tribes  
 Sovereignty Protection Fund

*Because there is Strength in Unity*

USET SPF 2018 Impact Week Meeting – Arlington, VA – February 5-8



# USET

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## USET SPF Resolution No. 2018 SPF:007

### SUPPORT FOR THE ASSERTION OF TRIBAL SOVEREIGNTY AND SELF-DETERMINATION IN ECONOMIC DEVELOPMENT MATTERS

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of twenty-seven (27) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** Tribal sovereignty is an inherent authority exercised by all federally-recognized Tribal Nations and has existed continuously since before European contact; and,
- WHEREAS,** the United States (U.S) Constitution, U.S. Supreme Court decisions, and hundreds of treaties, federal statutes, and regulations all recognize that Tribal Nations are distinct governments with inherent rights, powers, privileges, and authorities; and
- WHEREAS,** Tribal Nations have a unique government-to-government and trust relationship with the U.S.; and,
- WHEREAS,** each Tribal Nation that is a member of USET SPF provides essential services to its citizens including education, housing, health care, and public safety, raising Tribal governmental revenue for these services through the operation of enterprises including the provision of goods and services in the marketplace; and
- WHEREAS,** sovereign immunity from suit is the right of all governments in the U.S., including federal, state and Tribal governments. The purpose is to provide protection against loss of assets held in common for many people for the performance of vital government functions. The federal government has a longstanding obligation under the Constitution, treaties, and hundreds of court cases to protect Tribal self-government. Any federal abrogation of Tribal immunity runs sharply counter to this obligation, and would substantially interfere with Tribal self-governance, and place Tribal assets and funds at risk; and
- WHEREAS,** in 2014, the U.S. Supreme Court reaffirmed the validity of the broad and sweeping doctrine of Tribal sovereign immunity from suit [*Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024 (2014)]; and
- WHEREAS,** Tribal Nations also have the inherent right to conduct economic development activities for the purpose of raising revenues for the benefit of the Tribal Nation and their citizens, in order to achieve the dual goals of self-determination and self-governance; and
- WHEREAS,** in furtherance of these goals, USET SPF member Tribal Nation, the Saint Regis Mohawk Tribe (SRMT), recently entered into a transaction pursuant to which SRMT has gained

ownership of certain patents in exchange for a lump sum and annual royalty payments that will be used for essential governmental purposes; and

**WHEREAS,** the SRMT has asserted its sovereign immunity from suit in a pending action regarding the validity of the acquired patents in inter partes review (“IPR”) proceedings before the U.S. Patent Trial and Appeal Board; and

**WHEREAS,** unlike recent successful assertions of sovereign immunity by state entities in the IPR proceedings, there has been considerable press coverage and reaction by members of Congress to SRMT transaction and use of sovereign immunity as a defense to IPR proceedings; including requests for an investigation, scheduling of Congressional hearings, and introduction of legislation that would abrogate Tribal sovereign immunity; and

**WHEREAS,** in December 2010, the U.S. recognized the rights of its First Peoples through its support of the United States Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it

**RESOLVED** the USET SPF Board of Directors strongly opposes any legislative attempt to abrogate Tribal sovereign immunity in any proceeding or forum; and, be it further

**RESOLVED** the USET SPF Board of Directors urges Congress, as part of its review of the America Invents Act, Public Law 112-29, and issues surrounding sovereign immunity from inter partes review or other Patent Trial and Appeal Board proceedings, to preserve Tribal sovereign immunity in parity with state sovereign immunity in any future amendments to America Invents Act; and, be it further

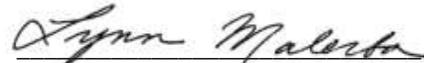
**RESOLVED** the USET SPF Board of Directors will take all steps necessary and appropriate to oppose any legislation or effort to modify or abrogate Tribal sovereign immunity.

#### CERTIFICATION

This resolution was duly passed at the USET SPF Annual Meeting, at which a quorum was present, in Cherokee, NC, October 12, 2017.



Chief Kirk E. Francis, Sr., President  
United South and Eastern Tribes, Inc.



Chief Lynn Malerba, Secretary  
United South and Eastern Tribes, Inc.

*Because there is Strength in Unity*

USET SPF 2017 Annual Meeting – Cherokee, NC – October 9-12



## United South and Eastern Tribes, Inc.

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### USET Resolution No. 2016:004

#### **SUPPORT FOR TRUST MODERNIZATION PRINCIPLES AND STRATEGIES TO BRING TRUST ASSET MANAGEMENT AND THE TRUST RELATIONSHIP INTO THE 21<sup>st</sup> CENTURY**

- WHEREAS,** United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprised of twenty-six (26) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Nations' leadership; and
- WHEREAS,** in return for Indian Tribal Nations ceding millions of acres of land making the United States what it is today, the United States has recognized and must continue to protect the Tribal right to self-government; to exist as distinct peoples on their own lands, as well as protect remaining Indian trust assets; and
- WHEREAS,** the Constitution, treaties, statutes, Executive Orders, and judicial decisions all recognize the United States' fundamental trust relationship with Tribal Nations; and
- WHEREAS,** under the trust relationship, the United States has certain legal trust obligations to Tribal Nations, which govern the federal government's administration of Indian trust property and shape its nation-to-nation relations with Tribal Nations; and
- WHEREAS,** 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; and
- WHEREAS,** the current trust model necessitates a comprehensive overhaul to modernize federal Indian policy in a manner that is consistent with self-determination and rooted in retained inherent sovereign authority; and
- WHEREAS,** a new model must be based on fulfillment by the United States of treaty and trust obligations and the recognition and support of Tribally-driven solutions; and
- WHEREAS,** in 2011, the USET Board of Directors formulated and adopted a vision for a modernized relationship between Tribal Nations and the U.S. government entitled, "Advancing the Trust Responsibility, Bold Concepts for a Fairer and More Prosperous Future for Indian Country."
- WHEREAS,** a collection of national and regional Tribal organizations and Tribal Nations, including USET, working with the support of their respective Tribal leaderships, has assembled a set of principles and corresponding strategies focused on modernizing the trust relationship and trust asset management system stemming from the many previous efforts throughout the past several decades and that were developed with the collective input of Tribal leadership; and

**WHEREAS,** the trust modernization principles are meant to be comprehensive enough to support all short-term and long-term legislative and administrative efforts, as well as respond to the rhythms and vagaries of the legislative and administrative processes, allowing for one or more of the proposals to go forward on their own or as a combined effort ; and

**WHEREAS,** in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it

**RESOLVED** that USET supports the following trust modernization principles:

- 1. Strengthen Trust Standards – Adopt Implementing Laws and Regulations**  
Federal trust standards must be strengthened, consistent with a set of specific legal principles, and applied uniformly among all federal agencies.
- 2. Strengthen Tribal Sovereignty – Empower Each Tribe to Define its Path**  
Tribal governments are best suited to meet the needs of their communities because they are more directly accountable to the people they represent, more aware of the problems their communities face, and more agile in responding to changing circumstances. Each Tribal Nation must be able to decide for itself the specific role that it wants to play in the management of its own trust assets.
- 3. Strengthen Federal Management – For Trust Assets Still Subject to Federal Control**  
The "one size fits all" approach taken by many federal agencies ignores the unique differences between the Tribal Nations and their unique government-to-government relationships. Many temporary solutions to trust management issues, like the establishment of the Office of the Special Trustee (OST) twenty years ago, have become additional bottlenecks on the trust management system.
- 4. Strengthen Federal-Tribal Relations – One Table with Two Chairs**  
Tribal Nations must have a seat at the table during all federal discussions of Indian policy and their opinions should be sought, respected, and listened to in order to have a successful Federal-Tribal trust relationship. This should include regular, coordinated, and meaningful high-level engagement of federal officials with Tribal leaders to properly develop, coordinate, and improve federal policies affecting Tribal Nations.
- 5. Strengthen Federal Funding and Improve Its Efficiency – A Pillar of the Trust Responsibility**  
Congress and the Administration should increase funding for federal Indian programs and services to the level necessary to fulfill the federal government's fiduciary responsibilities to Tribal Nations and their members and should reclassify trust administration, services, and programs as non-discretionary. Finally, since federal Indian affairs funding is provided in fulfillment of clear legal and historic obligations, federal dollars should not be subject to "means testing" or other inapplicable standards.

*“Because there is strength in Unity”*

**CERTIFICATION**

This resolution was duly passed at the USET Annual Meeting, at which a quorum was present, in Choctaw, MS, October 28, 2015.



Brian Patterson, President  
United South and Eastern Tribes, Inc.



Lynn Malerba, Secretary  
United South and Eastern Tribes, Inc.

*“Because there is strength in Unity”*



## United South and Eastern Tribes, Inc.

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### USET Resolution No. 2014:061

#### THE INHERENT SOVEREIGN RIGHT FOR A TRIBE TO HOLD TERRITORY AND TRUST LANDS

- WHEREAS,** United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprised of twenty-six (26) federally recognized Tribes; and
- WHEREAS,** the actions taken by the USET Board of Directors officially represent the intentions of each member Tribe, as the Board of Directors comprises delegates from the member Tribes' leadership; and
- WHEREAS,** Indian Tribes hold a unique status in the United States with the rights of sovereign nations; and
- WHEREAS,** this relationship has its underpinnings in the U.S. Constitution and in numerous treaties, laws and other agreements and understandings between the United States and Indian Tribes; and
- WHEREAS,** Tribal inherent sovereignty pre-dates the establishment of the United States; and
- WHEREAS,** many attributes of sovereignty are inextricably linked to territory; and
- WHEREAS,** Indian Tribes possess an ancient and enduring relationship with their ancestral lands; and
- WHEREAS,** central historic feature of the United States – Tribal relationship has been the theft of Indian lands by the United States, with the accompanying direct erosion of Tribal sovereignty and cultural identity; and
- WHEREAS,** the restoration of Tribal lands is a fundamental trust obligation of the United States and the holding of Tribal lands is essential to the full recognition of Tribal sovereignty, as well as critically important for the prosperity and vitality of Native communities; and
- WHEREAS,** in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it
- RESOLVED** it is the position of the USET Board of Directors affirms that all Tribes have a fundamental right to Tribal territory including trust lands, over which they may exercise sovereignty as an inherent attribute of that sovereignty culture; and
- RESOLVED** the USET Board of Directors recognizes that Tribal territory, including trust lands, is critical to the prosperity and survival of Tribes and Tribal culture; and, be it further
- RESOLVED** that the USET Board of Directors shall advance this right in all appropriate venues including in trust reform initiatives.

#### CERTIFICATION

This resolution was duly passed at the USET Semi-Annual Meeting, at which a quorum was present, in Bar Harbor, ME, June 4, 2014.

Brian Patterson, President  
United South and Eastern Tribes, Inc.

Brenda Lintinger, Secretary  
United South and Eastern Tribes, Inc.



## United South and Eastern Tribes, Inc.

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### USET Resolution No. 2014:037

#### **REQUESTING CONGRESSIONAL ACTION TO ENSURE THAT TAX POLICY SUPPORTS THE PRINCIPLE THAT ECONOMIC ACTIVITY TAKING PLACE IN INDIAN COUNTRY SHOULD GENERATE REVENUE FOR INDIAN COUNTRY**

- WHEREAS,** United South and Eastern Tribes Incorporated (USET) is an intertribal organization comprised of twenty-six (26) federally recognized Tribes; and
- WHEREAS,** the actions taken by the USET Board of Directors officially represent the intentions of each member Tribe, as the Board of Directors comprises delegates from the member Tribes' leadership; and
- WHEREAS,** Indian Tribal governments provide services such as education, transportation infrastructure, housing, and law enforcement to Tribal members and others who reside on Tribal lands and the cost of these services requires that require an adequate stream of revenue to the Tribal government; and
- WHEREAS,** The United States Constitution, treaties and Supreme Court cases acknowledges Indian Tribes as sovereign governments with the power to tax activities occurring within the boundaries of their reservations; and
- WHEREAS,** Indian Tribal governments have established retail sales, business and other taxes to generate revenues that are critical to sustain the delivery of governmental services; and
- WHEREAS,** the Supreme Court has authorized states, under certain conditions, to also impose taxes on non-Indians buying goods or doing business on Indian lands; and
- WHEREAS,** the problem of duplicative, or dual, taxation of economic activity involving non-Indians impedes the ability of Indian Tribes to attract business, expand their Tribal economies, and generate revenues; and
- WHEREAS,** U.S. Congress has the power to regulate commerce and other matters relating to Indian Tribes pursuant to the Indian Commerce Clause of the U.S. Constitution and other doctrines, and could enact legislation exempting certain activities occurring on Tribal lands from state taxation or pass other legislation that would allow Tribes to avoid dual taxation so that they more fully benefit from the economic activities taking place in their territories; and
- WHEREAS,** the USET Board of Directors, in Resolution 2012:024, urged the Bureau of Indian Affairs to conduct a study of the problem of dual taxation in Indian Country that has never been undertaken; and

**WHEREAS,** in December 2010, the United States recognized the rights of its First Peoples through its support of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), whose provisions and principles support and promote the purposes of this resolution; therefore, be it

**RESOLVED** the USET Board of Directors urges the Senate Committee on Indian Affairs and the House Subcommittee on American Indian/Alaska Native Affairs to hold hearings that explore the economic development and revenue generating impacts of dual taxation and, in consultation with Indian Tribes, develop proposed legislation to overcome the negative impacts of dual taxation by considering the creation of Tribally designated tax-free zones on Indian lands, the establishment of Tribally designated tax-credit zones, federal preemption of state taxation on Indian lands, and federal tax credits.

**CERTIFICATION**

This resolution was duly passed at the USET Impact Week Meeting, at which a quorum was present, in Arlington, VA, on Thursday, February 6, 2014.



Brian Patterson, President  
United South and Eastern Tribes, Inc.



Brenda Lintinger, Secretary  
United South and Eastern Tribes, Inc.

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June 2, 2020

For Immediate Release

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## Statement by USET Sovereignty Protection Fund in Response to Unrest in America

America is suffering and her people are hurting, angry, and concerned about our fragility and our collective future as a nation. We have reached a tipping point that has long been bubbling under the surface. For the last several days, we have watched the explosion of centuries-old frustrations and tensions, rooted in injustice, erupt in protest and chaos in communities across this country. Unbelievably, this current crisis is unfolding on top of the months-long stress resulting from a once-in-a-generation worldwide pandemic. This pandemic has challenged us all both personally and professionally, taxed us to the point of physical and mental exhaustion, and has exposed disparities and inequities that have long existed within this country.

As the indigenous people of these lands, we stand in unity alongside our black relatives who have long suffered at the hands of injustice in this country. We understand and relate to your pain and outrage. We stand with you in your just and righteous cause to bring awareness, truth, and long overdue positive change to your American experience. We too seek the same and we understand the importance of standing with one another against injustice.

Injustice in America is not a new reality. In fact, it predates the founding of this nation. It was birthed as its original sin; the sin of greed and superiority that led to the genocide of our indigenous relatives. It is grounded in the arrival of the first explorers who set foot on our shores and quickly embarked upon a centuries long campaign. A campaign to oppress others to achieve gain for themselves. A campaign to secure the rights and privileges of those it believed to be more deserving than others, despite the principles reflected within its Constitution. A campaign that has yet to end. This campaign started with indigenous peoples, and was followed by many other unconscionable, deplorable, and despicable acts for which this nation has yet to hold itself accountable. The impacts and consequences of this original sin continue to be at the root of our challenges to this day, not only within Indian country, but also as a nation.

While we have made minimal progress towards a more enlightened and just society over time, this progress has been impeded by our failure as a society to properly identify, acknowledge, own, and teach these truths. In doing this, we mask the roots of injustice in this country. For those that benefit from this fiction, the result has been unrecognized privilege and entitlement and institutionalized ignorance.

For those oppressed by it, the result has been a pattern and unending cycle of multi-generational trauma, institutionalized racism and discrimination, hate and bigotry, health and social disparities, inequality, inequity, marginalization, disenfranchisement, and invisibility. Until we demand honesty and confront our past and

*Because there is Strength in Unity*

origins as a country, we can never heal from its roots of injustice. The collective citizenry of this country must denounce and move away from the comfort of tacit complicity, willful disregard and blindness, tolerance, and indifference to the many ills that continue to plague our country. We must expect and demand better—from ourselves, our families, our communities.

Despite the truths of our past, and our continued challenges that divide us, we have the gift of opportunity and the power of choice; a choice to be better than we have been, to be better than we are. But that begins with a willingness to take an honest and introspective look in the mirror as a nation. In doing so, we will move closer to a common understanding of who we are, which is necessary to forge ahead with a common cause and a common purpose. While it is important to have respect for that which distinguishes us from one another, it is equally important that we find a way to focus on that which binds us in common as children of the Creator—as fellow human beings, as global citizens, as citizens of this great democratic experiment who are all deserved of human rights, equal opportunity, dignity, and respect. In doing so, we will begin to move beyond the “other” mentality that separates and divides us and remember that we are all related.

We must move beyond the ignorance that resides within narrow mindedness of one’s limited understanding of the world and humanity, as we seek out our truth. We must no longer allow for loving and innocent hearts and minds to be corrupted with hate, greed, and intolerance. We must inspire and encourage empathy and compassion. In doing so, we will discover that we are part of something larger, something greater than ourselves.

Today, we find ourselves at a crossroads in our democratic experiment. This is the moment where the experiment fails and disintegrates, or the moment that we will ultimately forge ahead stronger. As part of our continued evolution as a country, as a people, the time has arrived for an awakening, or reawakening, of consciousness and morality. Until we all see a bit of ourselves in each other, until we share a common understanding of our journey as a nation, until we find common ground in our dreams and aspirations, we will continue to be misled and defined by our fears and selfish interests. We will continue to turn a blind eye to the ills of our society by standing in silence. We will continue to see those not like us as others. And we will continue to justify, rationalize, and participate in that which separates and divides.

The opportunity is now for us all to commit ourselves to be agents of healing and change to ensure that the path we choose at this fork in the road will lead us to greatness, which fundamentally includes true unity and justice for all. We must all take a firmer stand on the ground of righteousness, reverence, respect, and regard for all of humanity. It is up to each and every one of us to prove to the world, to prove to our Creator, that we have not lost our collective soul as a society, that we are not morally bankrupt.

We are better than what we have been and have the potential to be so much better. We must harness this time of challenge and upheaval in our nation to achieve truth and reconciliation with the stains on its character and integrity. Only then can we forge ahead together as a united people by removing the many ills of injustice that continue to impede our ability to achieve the ideals and principles we set forth so many years ago. As stated by the Reverend Martin Luther King, “Justice too long delayed is justice denied.” Now is the time to end the delay and denial. Now is the moment to make the right choice.

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The USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-Tribal organization advocating on behalf of thirty (30) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico. USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

*Because there is strength in Unity*

# DEAR AMERICA

*NativeNewsOnline.net, January 21, 2019*



**Kitcki A. Carroll** (Cheyenne and Arapaho Tribes of Oklahoma) serves as the Executive Director for United South and Eastern Tribes, Inc. (USET) and the USET Sovereignty Protection Fund (USET SPF), an inter-Tribal organization serving 33 federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.

Last night, I watched the NFL AFC Championship game and had to listen and watch 70,000 Kansas City Chiefs fans chanting their “tomahawk chop”. Over the weekend, I became aware of the Nathan Phillips viral video, an Umo<sup>o</sup>ho<sup>o</sup> citizen, and the controversy surrounding the events that unfolded in your Capitol that afternoon. Finally, last week, President Trump once again invoked the name Pocahontas in an inflammatory and derogatory manner as part of his ongoing feud with Senator Elizabeth Warren; only this time, he chose to make reference to Wounded Knee, a massacre where your soldiers brutally massacred hundreds of Lakota and were subsequently awarded Medals of Honor. These are examples only from this past week, but they are a reflection of the experience and persistent challenges we face as indigenous peoples in the land of the free.

These are examples of the persistent and deep seeded ignorance and disrespect towards indigenous peoples that you have allowed to exist. During the weekend when you pause to pay homage to Dr. Martin Luther King, Jr. for advancing race relations, equality, and justice, these despicable and shameful events serve as a stark reminder of the challenges that indigenous peoples continue to face within our own lands; lands that you now claim as your own. It serves as a reminder of how woefully short you have been in ensuring that the indigenous peoples of these lands are afforded the dignity, respect, and honor that we rightfully deserve.

Despite these realities and challenges, we have persevered as a people despite the greatest of odds and we must continue to rise above it all as modern day warriors. We choose to stand strong with courage, conviction, and righteousness in order to ultimately achieve the justice we deserve. Conversely, the examples from this past week stand in representation of all that is wrong today. It would be easy to scapegoat the individuals from the events that transpired over the last week, parents, school systems, but the truth of the matter is that these examples are a consequence of your unwillingness to be truthful about your own existence. These incidents stand in representation of your own failures and I refuse to allow you to brush them off as isolated incidents or to externalize the blame.



For far too long, you have conveniently allowed yourself to justify and rationalize your abhorrent actions perpetrated against indigenous peoples as a necessary means to an end. You have used laws of your own making and created religious doctrine, such as the Doctrine of Discovery which viewed indigenous peoples as sub-human non-Christian heathens, to validate your immoral, inhumane, and unethical behaviors to clear your conscience of any accountability. In our own lands, you denied us the same rights that you were seeking for yourself. You have intentionally suppressed the truth and advanced an incomplete story of your deeds and asked your citizens to follow blindly without question, without challenge, as a reflection of their patriotic duty.

You are quick to point out the misdeeds and shortcomings of others, but excuse away your own and fail to hold yourself accountable. You debate immigration policy, but conveniently fail to recognize that your entire foundation is based on an illegal presence in lands that did not belong to you and which you were not invited. You have allowed for the normalization, social acceptance, and tolerance of the stereotyping, caricaturizing, and romanticizing of indigenous people. You have become the wealthiest and most powerful nation the world has ever known, as a consequence of the lands and natural resources that you took against our will, but you fail to live up to the promises you made that resulted from you asserting your will. You saw us only as an impediment to your aspirations that were rooted in greed, not as equals, as intended by the Creator. You have perpetuated a belief that we are of only historical relevance and value. You

have allowed us to be invisible in our own lands.

America...enough...no more. Your consistent failure to be honest with your past and failure to fulfill trust and treaty promises and obligations is an indelible stain on your character, integrity, and honor and challenges your claim of global exceptionalism. The time is long overdue for you to be honest with the atrocities of your origin in order for you to best emulate the principles you profess to stand for. Citizens of America, the time has come for you to hold America accountable to demand nothing less than truth, justice, and righteousness towards indigenous peoples as a direct beneficiary of her actions.

America, you must be better, you are better. Unfortunately, there exists much divisiveness today. If nothing else, while the media debates the merits of these stories from the past week, there is presently an opportunity to ensure that our indigenous concerns are not marginalized. Will you use this moment as an opportunity to correct the systemic problems that resulted in these events, or will you impugn yourself of responsibility and allow them to exist only as momentary relevance, consequence, and concern? America, it is time to live by the principles, morals, and values you profess to embrace and exemplify; it starts with your relationship with this land's indigenous peoples. As you pause today to honor Dr. King, recall his teachings, "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."





## A MESSAGE FROM KIRK E. FRANCIS, SR. NATIVE AMERICAN HERITAGE MONTH

November 2018



United South and Eastern Tribes, Inc (USET) & United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) President, Penobscot Indian Nation Chief **Kirk E. Francis, Sr.**

Ever since President George H.W. Bush signed the first resolution in 1990, America has set aside the month of November to recognize and celebrate the beauty, richness, diversity, and uniqueness of our collective Native American heritage that is interwoven into the foundation and fabric of America. America's first peoples, America's indigenous peoples, have made significant contributions to the prosperity and success of America, beginning with the Haudenosaunee Six Nations model of a participatory democracy to the billions of dollars in economic activity and hundreds of thousands of jobs that Tribal Nation business enterprises contribute today to America's overall economy.

The reality is that such a month exists because we are largely invisible within our own lands. Further, our existence as domestic sovereigns is unknown to most, the truth about our long, complex, and complicated nation to nation relationship is most often untold, and our existence is too often stereotyped, romanticized, and minimized to a mere historical footnote. The time has come for greater truth about our shared story with America.

As a reflection of our truth and reality, Indian Country is facing several challenges today. Ironically, while we celebrate the 40th anniversary of the passage of the Indian Child Welfare Act (ICWA) this year, legislation enacted with the specific purpose of protecting our children, the federal district court for the Northern District of Texas recently ruled that ICWA is unconstitutional on several grounds, including that

it violates equal protection requirements of the United States constitution. While this is concerning in and of itself, we are also experiencing constitutionality challenges across all three branches of the federal government, in addition to other challenges that interfere with the free exercise of our inherent sovereign authorities and rights.

While the real challenges must be highlighted and addressed, we must also use these moments to highlight our successes, perseverance, and strength. We have a lot to accomplish ahead of us, but I recognize that there is also much to be grateful and appreciative for during this season of giving thanks; including Native American Heritage Month that offers an opportunity for Indian Country to achieve greater visibility, visibility that will allow us to inch forward to the reality of our vision. Ultimately, it is incumbent upon us all to be steadfast in our determination to achieve a new reality; rooted in truth, rooted in exertion of our sovereign authorities and rights, rooted in holding America accountable for honoring and fulfilling its promises, and rooted in our cultural values and principles that reflect our special place and understanding of these sacred lands. Indian Country must use these moments to speak our truth and move beyond the comfortable conversations. We must utilize these moments to promote movement beyond a single month that recognizes and celebrates us to a reality where truth, honor, respect, and fulfillment of trust and treaty promises become America's first priority and obligation.

# A MESSAGE FROM KIRK E. FRANCIS, SR.

## THE CURRENT CRISIS OF DIMINISHING CIVILITY, COMPASSION, AND DECENCY UNFOLDING IN THE UNITED STATES *July 2018*



United South and Eastern Tribes, Inc (USET) & United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) President, Penobscot Indian Nation Chief **Kirk E. Francis, Sr.**

A crisis is unfolding in this country and it is one that jeopardizes the principles on which the United States was founded. In our founding documents, we profess our truths to be self-evident, and that “all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” However, the constant deluge of disheartening news headlines should cause a reasonable person to question whether we, as a nation, are holding ourselves accountable to these truths.

The recent separation of children from their parents resulting from a change in immigration policy, a federal action that Indian Country is far too familiar with, is particularly troubling. It is hard to imagine that anyone would lack the empathy and compassion to understand the pain and anguish that both the children and parents must be experiencing. I recognize that there are varying

opinions on how to address our current immigration situation, but it is unacceptable to allow people to suffer needlessly and to be used for political gain. The resulting pain and suffering, and likely long-term trauma, should have been anticipated and understood, which makes this deliberate and intentional act even more appalling.

Indian Country is particularly sensitive to headlines such as these. Indian Country has a long, complicated, and often conflicted relationship with the United States. We are viewing today’s headlines through different lenses, including genocide and intergenerational trauma. We are saddened as we are reminded of the many injustices that we experienced, together with this nation’s lack of accountability for its moral failings. As the indigenous peoples and sovereign nations that pre-date the United States, we know far too well the limits of these founding self-evident truths.



In fact, the challenges that we had to overcome, and still work to overcome, are the direct result of numerous federal policies and laws that sought to assimilate and terminate -- to destroy not only our cultures and traditions, but our existence. While one might assume that these policies and laws are from a bygone era, the truth is that we are only one generation removed from the horrors and atrocities that were committed.

Disrespect and disregard towards Indian Country continues today. Within the past several weeks, during a commencement speech to the 2018 graduating class of the U.S. Naval Academy, President Trump stated, "Together there is nothing Americans can't do, absolutely nothing. In recent years, and even decades, too many people have forgotten that truth. They've forgotten that our ancestors trounced an empire, tamed a continent, and triumphed over the worst evils in history...America is the greatest fighting force for peace, justice and freedom in the history of the world...We are not going to apologize for America."

These words reveal a dismissal and avoidance of the truth and facts about Tribal Nation-U.S. history which run counter to many of these words and for which America should be ashamed. More recently, despite repeated requests from Indian Country to stop his derogatory use of the name Pocahontas, President Trump once again used the name as an intentional slur during a June 2018 campaign stop in Nevada. These two recent examples serve as present-day reminders that there continues to be a need for greater understanding, education, awareness, truth, and respect.

So when is enough, enough? I fear that too many are becoming desensitized and are normalizing these events and actions that we know in our hearts run counter to our childhood teachings of right versus wrong. The political discourse in this country has moved beyond political differences of opinion and is unlike any we have seen in recent history. It has exposed a truth about who we are; that there are fundamentally different views across this country about human dignity and respect, morals, values,

ethics, and justice which serve to weaken us as a society. The sad truth is that America is suffering, and she has lost her way. If we continue down the current path, the damage caused by the deconstruction of our founding principles, and the values that we profess to be the basis of our exceptionalism, may be too insurmountable to overcome.

However, we have the power to do better as a collective society should we choose not to normalize discord; should we choose common decency over politics; should we find the courage to lead with empathy, compassion, and love; should we find the strength to exemplify our convictions in our daily lives; should we recognize the greater law of universal justice and righteousness; and should we decide to recognize that we are all children of the Creator and that we are all related.

As the United States prepares to celebrate its establishment and its declaration of independence, let us remember our indigenous relations who suffered in the name of progress and manifest destiny. Let us remember the many who made the ultimate sacrifice as a reflection of their deep regard for the aspirational principles set forth in this country's founding documents. Let us reawaken to the truth that we share a common responsibility to one another, that division is diametrically opposite to the vision of America's founding ideals and aspirations, and that there is exponentially more good that comes from unity.

Let us use this time to remind ourselves of our common bonds, to reverse the current crisis that we are experiencing, and to begin the process of healing and reconciliation. Should we choose to do so, America will be stronger, its actions will once again reflect its professed self-evident truths, it will lead by example, and it will once again be the beacon of light, possibilities, and opportunities that the world aspires to emulate.



# AMERICA'S FIRST MORAL VIOLATION A NATIVE AMERICAN PERSPECTIVE IN RESPONSE TO TODAY'S AMERICAN DIVISION

*NativeNewsOnline.net, January 10, 2018*



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For a nation that presents itself to the world as the shining example of an exceptional democracy based upon the foundation of freedom and equality, America has an unacceptable and shameful level of inequality, racism, bigotry and intolerance. Despite our progress toward achieving “a more perfect union”, perfection still eludes us. Perhaps the idea was always intended to be a work in progress. Nonetheless, it should be our priority to move closer towards this idea as expeditiously as possible with steadfast determination.

However, when reflecting on this past year, the unfortunate reality is

that we live in a divided and polarized country which is evidenced by events such as Charlottesville and the resurgence of hate groups such as the KKK, the debate over the NFL anthem protests, the culture war to define America, the disrespect displayed by President Trump towards Native Americans, and the complicit response by so many elected officials, during the honoring of Navajo Code Talkers, and many other examples too numerous to list. Together, they serve as examples of the ignorance and insensitivity that exists within society; ignorance and insensitivity that is directly attributable for much of our current division. These long standing issues of racial, gender, social and economic inequality, racial profiling, extreme political partisanship, judicial injustice, dominant society privilege, and many other issues, reflect the deeply rooted negative beliefs and values that remain today despite our hopes and aspirations for a more just and civil society.

As reflected in our Declaration of Independence, “...all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these

are Life, Liberty, and the Pursuit of Happiness.” However, our current state has sharpened the focus on the truth that these principled beliefs about freedom and equality within our democratic experiment are absent in far too many who call themselves citizens, much less patriots, of the United States.

The irony is that while our founders may have held these beliefs for themselves, they did not apply these beliefs to my Native American ancestors. This inequality of equality dispensation to all people, and the oppression of others’ freedoms and rights in order to pursue one’s own, is part of our nation’s origins. Despite the reflection of inspiring words reflected within our founding documents, our nation began with racism and inequality, and struggles with these first acts of moral violation by leaving them unresolved and unreconciled to this day. We are inextricably linked to our past and the root of today’s challenges are directly attributable to this past. This is true despite great efforts to instill in all of us a revisionist historical understanding that is intended to conceal the truth. Our great nation has fallen woefully short of its moral and ethical responsibility to hold itself accountable for its past. This has prevented our nation from achieving truth and reconciliation with the many oppressed peoples who suffered and lost in the name of manifest destiny and American progress. To fulfill the aspirations of our Constitution, our nation can and must do better. The time has come to interrupt and dismantle this false narrative.

In the founding of America, acts of genocide were committed against my ancestors to allow others to pursue life, liberty, and the pursuit of happiness in our native lands. Absent was a moral compass, but present was an arrogance and belief of divine superiority above all others. These proclaimed “discoverers” and “founders” used the Doctrine of Discovery as the justification for their immoral acts. Nothing, including a moral and ethical conscious, was allowed to impede their efforts to colonize, dominate, and lay claim to that which did not belong to them; nothing impeded their efforts to kill and conquer a people who they viewed as less than human. We were viewed as nothing more than an interference and acceptable casualties in their quest for conquest and domination. These first actions by our nation have left an indelible stain on the character, integrity, and consciousness of this country.



Despite efforts by this country to assimilate, terminate, and marginalize us, Indian Country has persevered. While we have many reasons to be resentful, we have instead chosen truth, love, and reconciliation as the alternative path forward. While we are a forgotten people in our own lands, there is a tremendous opportunity for us as Native Americans to provide stewardship and leadership during these tumultuous times; rooted in our understanding, respect, and reverence for these lands and all its children. These are the lands of our creation story; the lands where the bones and spirits of our ancestors rest. We are connected and invested in these lands in a way that no other people can claim. As such, we are responsible and must hold ourselves accountable for their protection, care, and reverence.

Like so many others, I am troubled by the current state of our union. But unlike others, Native Americans are not surprised by the underlying racism, injustice, and inequality that has recently found itself prominent in the mainstream conversation and national dialogue. Many of today's challenges are not new, but nevertheless, we must all rededicate ourselves to moving forward with steadfast determination to find solutions to these deep rooted challenges; to come together; to make advancements toward a more perfect union. However, in order to best understand our present challenges, every citizen has a moral responsibility to better understand our nation's history, including those actions that do not fit nicely into the narrative of greatness and exceptionalism. In doing so, the negative societal flaws that still plague us today will be better understood.

In times such as these, we must all find our inner strength, our calling, and our purpose. We must not sit

silently on the sidelines and turn a blind eye to the many ills that still plague our country. We must recognize that change only occurs when we accept personal accountability. Our actions today will ensure that our children's children will live in a world where all our relations and the planet is respected. In the end truth, justice, and righteousness will prevail as they stand firmly at the peak of the moral high ground.

The many natural disasters this past year that so negatively impacted the lives of many, regardless of one's race, creed, or color, serve as examples of how people can come together to support one another despite our individual differences. While the actions displayed by so many in response to these disasters did not solve our long-standing challenges as a society, they clearly demonstrate our potential as a people.

Some day we will demonstrate a greater accountability for our actions by telling our complete and truthful story of America; a truth no longer rooted in historical amnesia, but one that dismantles the institutionalized false narrative. In doing so, we will better exemplify exceptionalism as a nation to the rest of the world, but more importantly...to ourselves.

As we embark upon a new year, I pray that we will all choose to see ourselves as relatives who share a common humanity and a common interest in peace and prosperity. I pray that we will finally resolve our division and move our nation forward in greater solidarity. In doing so, we will achieve a future where all the Creator's children are treated with dignity, respect, and love; a future where the founding words and vision for our democratic experiment do not ring hollow.



**Kitcki A. Carroll**



**Liz Malerba**

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# FROM CONSULTATION TO CONSENT

*Tribal Business Journal, December 2016*

**B**eginning with the arrival of the colonists, who asserted a God-given right to dominance, and evolving over time to a position of superior sovereign existence, U.S.-Tribal relations continue to be marred by the deeply false narrative that Tribal Nations are incompetent and unworthy of genuine diplomacy. For centuries, Tribal Nations have been attempting to reverse this false narrative.

In its early formative years, the United States often took action within our lands only after securing our consent, including through treaty-making. As it became more powerful, as maintaining strong relations with us became less necessary, as greed took over and as the courts laid their legal groundwork through the Marshall trilogy, the United States quickly moved from an approach based on consent to an approach based upon the notion of domestic dependency and plenary authority.

The United States progressively moved away from the concept of “rights-ceded” by Tribal Nations (as was the approach during the formative years of this nation) to a model of “rights-granted” by the United States to Tribal Nations. No longer was our consent necessary for the explosion of a capitalistic system. No longer were our rights within our own lands of concern or consequence. No longer were we going to be allowed to interfere with the execution and pursuit of manifest destiny. This is the summation of the deplorable actions taken in the name of progress that is most often missing from U.S. history books, but it is part of our story, which fuels our efforts to persevere and prosper despite the greatest of challenges. Despite all of this, Tribal Nations remain unified in our efforts to topple these foundational myths, as our perseverance and the sophistication of our governments reveal these to be falsehoods.

It wasn't until the passage of the Indian Self-Determination and Education Assistance Act in 1974 that the United States began to move away from its centuries-old practice of setting policy that sought to diminish and eradicate our sovereignty via termination and assimilation.

While the U.S. has not returned to a practice of seeking the consent of Tribal Nations, the developing Tribal consultation process begins to recognize our inherent rights and authorities when it comes to federal decisions that impact our citizens and homelands.

Over the last eight years, federal agencies have been required to develop and implement Tribal consultation policies in collaboration with Tribal Nations. While an improvement over historical practice, it requires constant monitoring and strengthening, and will always fall short as long as it fails to return to a model that requires consent.

Tribal Nations continue to experience inconsistencies in consultation policies, the violation of consultation policies, and mere notification of federal action as opposed to a solicitation of input. Time and again, Tribal Nations have expressed a desire for consultation to be more meaningful. As major failures in the U.S.-Tribal consultation process begin to take the national stage, Tribal Nations are calling for a paradigm shift in the trust relationship, including in the consultation process.

The U.S. must move beyond an approach that merely “checks the box” of consultation. It is time for a Tribal Nation defined 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 a model 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. Ultimately, Indian country recognizes that dual consent results in prosperity for both parties, and that when abandoned and dishonored, one or both nations ultimately lose. The U.S. must join us in this conviction.

As the U.S. continues to issue federal Indian policy based on a false premise, it is more critical than ever for Tribal Nations to assert our inherent sovereign authorities and rights in order to provide for the well-being of our people and our lands. No longer can we accept a false narrative and legal fiction that was specifically created by another sovereign to impose its will upon us. Consultation must evolve and return to consent. The current trust model, which often works against us, must be replaced with a 21st century nation-to-nation relationship model and a genuine commitment to only take action aimed at strengthening this relationship and delivering on the trust responsibility in full.

At the USET/USET SPF Impact Week Meeting in 2019, a new eagle staff was dedicated by the Board of Directors. This eagle staff represents the strength and unity of USET/USET SPF member Tribal Nations. Further, the eagle staff signifies the commitment to represent our united interests to support our common welfare and benefit which now spans fifty years. Eagle staffs are often associated with warrior societies and traditions, and this eagle staff symbolizes the strong, assertive, diplomatic, and passionate approach of our leaders and the organization overall. Elements of this eagle staff have special meaning: the maple staff represents one of the first medicines gathered each year, the dreamcatcher and its sacred hoop instill protections, the otter wrapping reflects the journey of our peoples on this land, the red banner represents the valor and enduring spirit of our people, and the eagle feathers impart sacredness and reflect the spiritual resolve of our purpose and unity.





*Because there is Strength in Unity*





*Approved by the USET/USSET SPF Board of Directors as part of its 50th Anniversary milestone, the logo on the cover now includes a tree at its center. The four roots of the tree are representative of our four founding member Tribal Nations—Eastern Band of Cherokee Indians, Miccosukee Tribe of Indians of Florida, Mississippi Band of Choctaw Indians, and Seminole Tribe of Florida. Without their vision, courage, and dedication to elevate the voice of the Tribal Nations of the south and east, USET/USSET SPF would not exist today. The tree is symbolic of the collective strength of our membership and its commitment to stand together as a unified family of Tribal Nations.*

*The tree used in this representation is the Council Oak, a historic tree on the Hollywood Seminole Indian Reservation. In the 1950s, Tribal leaders held various meetings with federal officials under the tree, culminating in the federal recognition of the Seminole Tribe of Florida on August 21, 1957. The significance of the Council Oak was recognized on December 4, 2012, when the site was added to the National Register of Historic Places.*



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