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Testimony of the United South and Eastern Tribes Sovereignty Protection Fund For the Record of the House Natural Resources Subcommittee on Indigenous Peoples of the United States Legislative Hearing on, “H.R. 375, H.R. 312, and the RESPECT Act”

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the House Natural Resources Subcommittee on Indigenous Peoples of the United States with the following testimony for the record of its legislative hearing on, “H.R. 375, H.R. 312, and the Requirements, Expectations, and Standard Procedures 3 for Executive Consultation with Tribes (RESPECT) Act.” USET SPF appreciates the Subcommittee’s willingness to begin its work in the 116th Congress with two issues of great import to USET SPF and across Indian Country: the restoration of Tribal homelands and the strengthening of Tribal consultation requirements.

USET SPF is a non-profit, inter-tribal organization representing 27 federally recognized Tribal Nations from Texas across to Florida and up to Maine.¹ 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. This includes advocating for the full exercise of inherent Tribal sovereignty.

Restoration of Tribal Homelands

The Tribal Nations located in the eastern part of what is now the United States have a lengthier history when it comes to the systematic dispossession of our lands as a result of hundreds of years of federal (and before that, colonial) policies. In the wake of these policies, a majority of USET SPF Tribal Nations hold only a fraction of their homelands and some remain landless.

In response to federal policies that stripped us of our land base, the Department of the Interior (DOI) has, for nearly 85 years, restored Tribal lands through trust acquisitions to enable Tribal Nations to build schools, health clinics, hospitals, housing, and provide other essential services to Tribal citizens. Over this period, DOI has approved trust acquisitions for approximately 5 million acres of former Tribal homelands, which represents only a small fraction of the more than 100 million acres lost through Federal policies of removal, allotment, and assimilation.

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

¹ 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), 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), 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).

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.

No Tribal Nation should remain landless. All Tribal Nations, whatever their historical circumstances, need and deserve a stable, sufficient land base – a homeland – to support robust Tribal self-government, cultural preservation and economic development. The federal government should ensure every Tribal Nation has the opportunity to restore its homelands, regardless of the concerns of other units of government, private citizens, or other interests. This is a necessary function of the U.S. government in delivering upon the trust responsibility and obligations to Tribal Nations. Regaining a land base is essential to the exercise of Tribal self-government. When the federal government holds land in trust for a Tribal Nation, the Tribal Nation is able to exercise jurisdiction over the land, including over individuals' actions and over taxation. This jurisdiction allows the Tribal Nation to protect its people and to generate economic growth, which in turn encourages the flourishing of the Tribal Nation's cultural practices. Jurisdiction over territory is a bedrock principle of sovereignty, and Tribal Nations must exercise such jurisdiction in order to fully implement the inherent sovereignty they possess. Just as states exercise jurisdiction over their land, Tribal Nations must also exercise jurisdiction, thereby promoting government fairness and parity between state governments and Tribal Nation governments.

While USET SPF member Tribal Nations ultimately seek full jurisdiction and management over our homelands without federal government interference and oversight, we recognize the critical importance of the restoration of our land bases through the land-into-trust process. We further recognize that the federal government has a trust responsibility and obligation to Tribal Nations in the restoration and management of trust lands. With this in mind, it is vital that the land-into-trust process be available to and applied equally to all federally-recognized Tribal Nations. This parity is central to the federal government's legal and moral obligations to all of Indian Country.

The fundamentally incorrect 2009 decision in *Carcieri v. Salazar* has created a deeply inequitable 2-class system, in which some Tribal Nations have the ability to restore the homelands stolen from them 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. To add insult to injury, in the years following the decision, the rhetoric surrounding the need to correct this grave injustice has been perverted by those who seek to undermine the acquisition of trust lands for Tribal Nations. This has led to widespread misunderstanding about the purpose and effects of a fix.

As Congress (and other branches of the federal government) approaches the restoration of Tribal homelands, USET SPF continues to repeat that this basic correction is simply that. It returns us to the status quo prior to 2009—a rigorous process for the acquisition of trust land for **ALL** federally-recognized Tribal Nations. This long overdue fix does not confer any additional benefits or supersede any existing law, nor is it about anything other than the rightful restoration of Tribal homelands.

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. USET SPF extends its gratitude to Rep. Tom Cole for his continued introduction of bi-partisan legislation that would right this wrong.

RESPECT Act

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

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

Indeed, the relationship between the United States and Tribal Nations began as one of mutual consent to treaty terms and other agreements, even if the Tribal Nations were under duress. That mutual consent principle should continue, though of course applied this time in an honorable fashion. 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 in recognition of sovereign equality.

It is time that the U.S. work to reform the Tribal consultation process, as conducted by agencies across the federal government. USET SPF strongly supports the codification of consultation requirements for all federal agencies and departments. This is consistent with our efforts to modernize the federal trust relationship, including ensuring that Tribal Nations are full and equal participants in the shaping of federal Indian policy.

With this in mind, USET SPF supports the spirit and intent of the discussion draft of the Requirements, Expectations, and Standard Procedures for Executive Consultation with Tribes (RESPECT) Act. We commend Chairman Grijalva for beginning an important dialogue on how to strengthen consultation requirements. USET SPF is especially pleased to see that the RESPECT Act would apply to all federal agencies and departments, including independent agencies, as each of these entities shares equally in the federal trust responsibility and obligations.

We are also pleased that the Chairman has released the RESPECT Act as a discussion draft. We believe there are opportunities to further refine and strengthen this draft legislation, including addressing issues related to the achievement of Tribal Nation consent, as well as supporting inter-agency coordination and training, and the creation of an Indian desk at the Office of Management and Budget. In addition, we share some concern about the unintentionally narrow scope of the Act. We look forward to the opportunity to work with Chairman to sharpen the legislative language and ensure the RESPECT Act is appropriately comprehensive.