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BUDGET

Fiscal Year 2017 Appropriations

- The USET SPF supports a congressional commitment to regular order in the Fiscal Year (FY) 2017 appropriations process. We urge the 114th Congress to ensure each of the twelve appropriations bills is considered on the floor by each chamber and passed on time. A timely appropriations process would benefit Tribal Nations, as it provides for more accurate funding levels, allows for more efficient spending, and preserves jobs in Indian Country, as Tribal Nations are able to develop consistent funding allocation plans for the entire year.

- USET SPF also urges this Congress to honor or increase the spending levels committed to for FY 2017 in the 2-year budget deal passed last October. These levels have the potential to provide small, but sorely needed, increases to federal Indian programs. Due to sequestration and spending caps, many federal Indian programs are effectively operating at lower levels than in past years due to inflation and population growth. Any increase in spending on obligations to Tribal Nations puts the federal government a step closer to fully delivering on its trust responsibility.

- USET SPF was thrilled when Congressional appropriators included in the FY 2016 omnibus bill a separate line item and indefinite appropriation for Contact Support Costs (CSC) at both the Indian Health Service (IHS) and the Bureau of Indian Affairs (BIA). By ensuring funding for CSC is available on an indefinite basis, CSC shortfalls are avoided, agency program funding is protected, and funding for CSC more accurately represents the government's obligation to Tribal Nations. In the wake of the Supreme Court decision in Salazar v. Ramah Navajo Chapter, which held that the U.S. must pay Contract Support Costs (CSC) to Tribal Nations in full, the USET SPF insists that appropriators continue this new designation for CSC in FY 2017 and future appropriations bills. USET SPF continues to support proposals that would designate CSC as mandatory funding rather than discretionary.

- The permanent reauthorization of the Indian Health Care Improvement Act in 2010 contained the authorizations for a number of new, but sorely needed, programs and services for provision by the IHS and Tribal Nations, including the ability to provide dialysis, behavioral health services, and prescription drug monitoring. A majority of these new programs and activities, while authorized, remain unfunded by Congress. USET SPF urges Congressional appropriators to work to fund these crucial new programs.

General Talking Points

- DOI Secretarial Order 3335: "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 (183·1). **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 Newton ed., 2012); *Seminole Nation v. United States,* 316 U.S. 286,296-97 (1942)."

- Inadequate funding to Indian Country needs to be viewed as unfilled treaty and trust obligations and not vulnerable to year to year "discretionary" decisions by Appropriations.

- U.S. Commission on Civil Rights/"A Quiet Crisis: Federal Funding & Unmet Need in Indian Country, 2003": This study reveals that federal funding directed to Native Americans through programs at these agencies has not been sufficient to address the basic and very urgent needs of indigenous peoples. Among the myriad unfulfilled obligations are: health care, education, public safety, housing, and rural development. The Commission finds that significant disparities in federal funding exist between Native Americans and other groups in our nation, as well as the general population. Among immediate requirements for increased funding are: infrastructure development, without which tribal governments cannot properly deliver services; Tribal courts, which preserve order in Tribal communities, provide for restitution of wrongs, and lend strength and validity to other Tribal institutions; and Tribal priority allocations, which permit Tribes to pursue their own priorities and allow Tribal governments to respond to the needs of their citizens.

  Currently, the Commission is working to update its 13-year old "Quiet Crisis" report, which was meant to galvanize action on the part of Congress and the Executive Branch to correct the deep disparities in funding the federal trust responsibility. While we expect the new report to highlight some modest advances made in federal Indian policy, we don't expect the new report to show much progress in closing the funding gap between Indian Country and the rest of the nation. Congress should examine the new report and commit to fully funding Indian programs.

- The vast majority of funding for Indian programs appears on the discretionary side of the budget. Because of this, funding for Indian programs constantly falls victim to

partisan battles and continue to be impacted by the pursuit of deficit reduction. At less than one percent of federal discretionary spending (and an even smaller percentage of total spending), Indian programs are not driving the deficit.

- Outside of IHS and BIA, much of the federal funding across Indian Country is delivered through the competitive grant process (and often through the states). Not only is this an abrogation of the federal trust responsibility to force Tribes to compete for federal dollars, the competitive grant process often precludes Tribes from having access to those dollars at all. Competitive grants are not an execution of the federal fiduciary obligation. Contracting and Compacting should be an available option across the federal system.

Sequestration

The Budget Control Act of 2011 established a "Supercommittee" of members of Congress tasked with creating a plan to reduce the federal deficit by $1.2 trillion. When the Supercommittee failed to agree on a way forward, Sequestration was initiated. In 2013, this meant mandated across-the-board cuts of $85.3 billion (formerly $109.3 billion, but reduced by a subsequent act of Congress) split evenly between defense and non-defense programs. From 2014 to 2021 spending caps are enforced in order to cut $109.3 billion annually from the federal budget (if the spending caps are breached, sequestration will take place). For FY 2014 and 2015, OMB determined there would be no sequestration, as spending levels were within the cap.

A majority of commitments the federal government has made to its citizens, including Social Security Veterans benefits, low income programs (CHIP, Medicaid, SNAP) and certain Tribal trust accounts, are completely exempt from Sequestration. Other programs are subject to special rules; Medicare is subject to no more than a 2% cut. A previous law that lays out the Sequestration process subjects IHS to the same 2% limit. However, in 2013 OMB ruled that IHS would be subject to the full 5.2% across-the-board cut faced by non-exempt programs.

The U.S. government has made a commitment to Tribes and yet, Indian programs are vulnerable to Sequestration. In order to begin to deliver on the federal trust responsibility, all Indian programs must be fully exempt from Sequestration.

Proposals to Reform

<u>Advance appropriations:</u> On January 14, 2015 Representative Don Young (R-AK) introduced H.R.395, *the Indian Health Service Advance Appropriations Act*, legislation that would provide for Advance Appropriations for the Indian Health Service (IHS). Advance appropriations is funding that becomes available one or more years after Congress passes the appropriations bill in which it is contained. Because the spending level is set a year in advance, it is not dependent upon the regular appropriations process and therefore, is not impacted by a failure of Congress to enact traditional appropriations. Accounts that currently receive advance appropriations include: the Veterans Health Administration, the

Corporation for Public Broadcasting (PBS), Education Title I Grants, Special Education Grants, Training and Employment Services and Tenant Based Rental Assistance. This mechanism is budget neutral. Advance appropriations is different from forward funding, as forward funding actually provides the funds in advance.

Exemption from Sequestration: On June 30, 2015 Senator Jon Tester (D-MT) introduced S. 1497, legislation that would exempt the Indian Health Service (IHS), the Bureau of Indian Affairs (BIA), and programs under the Native American Housing Assistance and Self-Determination Act from any sequestration cuts. Similarly, on July 14, 2015, Representative Don Young (R-AK) introduced H.R. 3063, *the Honoring Our Trust Relationships (HOT-R) Act*, which would exempt from sequestration all federal programs that primarily serve American Indians, including those within IHS, BIA, the Department of Justice, and the Department of Education.

I

114TH CONGRESS
1ST SESSION

H. R. 395

To amend the Indian Health Care Improvement Act to authorize advance appropriations for the Indian Health Service by providing 2-fiscal-year budget authority, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 2015

Mr. YOUNG of Alaska (for himself and Mr. BEN RAY LUJÁN of New Mexico) introduced the following bill; which was referred to the Committee on the Budget, and in addition to the Committees on Natural Resources and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend the Indian Health Care Improvement Act to authorize advance appropriations for the Indian Health Service by providing 2-fiscal-year budget authority, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Indian Health Service Advance Appropriations Act of 2015''.

SEC. 2. ADVANCE APPROPRIATIONS FOR CERTAIN INDIAN HEALTH SERVICE ACCOUNTS.

(a) IN GENERAL.—Section 825 of the Indian Health Care Improvement Act (25 U.S.C. 1680o) is amended—

(1) by inserting ''(a)'' before ''There are authorized''; and

(2) by adding at the end the following:

''(b) For each fiscal year, beginning with the first fiscal year that starts during the year after the year in which this subsection is enacted, discretionary new budget authority provided for the Indian Health Services and Indian Health Facilities accounts of the Indian Health Service shall include advance discretionary new budget authority that first becomes available for the first fiscal year after the budget year.

''(c) The Secretary shall include in documents submitted to Congress in support of the President's budget submitted pursuant to section 1105 of title 31, United States Code, for each fiscal year to which subsection (b) applies detailed estimates of the funds necessary for the Indian Health Services and Indian Health Facilities accounts of the Indian Health Service for the fiscal year following the fiscal year for which the budget is submitted.''.

(b) SUBMISSION OF BUDGET REQUEST.—Section 1105(a) of title 31, United States Code, is amended—

(1) by striking ''(37) the list'' and inserting ''(39) the list''; and

(2) by adding at the end the following new paragraph:

''(40) information on estimates of appropriations for the fiscal year following the fiscal year for which the budget is submitted for the following accounts of the Indian Health Service:

''(A) Indian Health Services.

''(B) Indian Health Facilities.''.

○

United South and Eastern Tribes, Inc.

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USET Resolution No. 2013:046

SUPPORT FOR ALTERNATIVE FUNDING OPTIONS FOR THE INDIAN HEALTH SERVICE

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, since the formation of the Union, the United States (U.S.) has recognized Indian Tribes as sovereign nations; and

WHEREAS, a unique government-to-government relationship exists between Indian Tribes and the Federal Government and is grounded in the U.S. Constitution, numerous treaties, statutes, Federal case law, regulations and executive orders that establish and define a trust relationship with Indian Tribes; and

WHEREAS, although the trust relationship requires the federal government to provide for the health and welfare of Tribal nations, the Indian Health Service (IHS) remains chronically underfunded, and American Indians and Alaska Natives suffer from among the lowest health status nationally; and

WHEREAS, since Fiscal Year 1998, appropriated funds for the provision of health care to American Indians and Alaska Natives through IHS and Tribal providers have been released after the beginning of the new fiscal year; and

WHEREAS, the delay in receipt of funds has most often been caused by a Congressional failure to enact prompt appropriations legislation; and

WHEREAS, late funding has severely hindered Tribal and IHS health care providers' budgeting, recruitment, retention, provision of services, facility maintenance, and construction efforts; and

WHEREAS, identified budgetary solutions to this failure to uphold the federal trust responsibility include a two-year funding cycle, advance appropriations, and forward funding for the IHS; and

WHEREAS, Congress has recognized the difficulties inherent in the provision of direct health care that relies on the appropriations process and traditional funding cycle through enactment of the *Veterans Health Care Budget Reform and Transparency Act of 2009 (PL 111-81),* which authorized advance appropriations for Veterans Administration (VA) medical care programs; and

WHEREAS, Congress has, pursuant to the authorization in the Veterans Health Care Budget Reform and Transparency Act, appropriated beginning with FY 2010, advance appropriations for the VA medical care accounts; and

WHEREAS, as the only other federally funded provider of direct health care, IHS should be afforded the same budgetary certainty and protections extended to the VA; 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 calls upon the U.S. Congress to bring certainty and stability to the Indian Health Service budget by authorizing and appropriating funding for a two-year funding cycle, advance appropriations, or forward funding for the Indian Health Service.

CERTIFICATION

This resolution was duly passed at the USET Semi-Annual Meeting, at which a quorum was present, in Niagara Falls, NY, on Friday, May 17, 2013.

Brian Patterson, President
United South and Eastern Tribes, Inc.

Brenda Lintinger, Secretary
United South and Eastern Tribes, Inc.

"Because there is strength in Unity"

114TH CONGRESS
1ST SESSION

H. R. 511

IN THE SENATE OF THE UNITED STATES

NOVEMBER 18, 2015
Received

AN ACT

To clarify the rights of Indians and Indian tribes on Indian lands under the National Labor Relations Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Tribal Labor Sovereignty Act of 2015''.

SEC. 2. DEFINITION OF EMPLOYER.

Section 2 of the National Labor Relations Act (29 U.S.C. 152) is amended—

(1) in paragraph (2), by inserting ''or any Indian tribe, or any enterprise or institution owned and operated by an Indian tribe and located on its Indian lands,'' after ''subdivision thereof,''; and

(2) by adding at the end the following:

''(15) The term 'Indian tribe' means any Indian tribe, band, nation, pueblo, or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

''(16) The term 'Indian' means any individual who is a member of an Indian tribe.

''(17) The term 'Indian lands' means—

''(A) all lands within the limits of any Indian reservation;

''(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation; and

''(C) any lands in the State of Oklahoma that are within the boundaries of a former reservation (as defined by the Secretary of the Interior) of a federally recognized Indian tribe.''.

Passed the House of Representatives November 17, 2015.

Attest: KAREN L. HAAS,

Clerk.

Calendar No. 220

114TH CONGRESS
1ST SESSION

S. 248

[Report No. 114–140]

To clarify the rights of Indians and Indian tribes on Indian lands under the National Labor Relations Act.

IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2015

Mr. MORAN (for himself, Mr. HOEVEN, Mrs. FISCHER, Mr. LANKFORD, Mr. INHOFE, Mr. THUNE, Mr. CRAPO, Mr. DAINES, Mr. RISCH, Mr. ROUNDS, Mr. GARDNER, and Mr. MCCAIN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

SEPTEMBER 10, 2015

Reported by Mr. BARRASSO, without amendment

A BILL

To clarify the rights of Indians and Indian tribes on Indian lands under the National Labor Relations Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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SEC. 2. DEFINITION OF EMPLOYER.

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''(16) The term 'Indian' means any individual who is a member of an Indian tribe.

''(17) The term 'Indian lands' means—

''(A) all lands within the limits of any Indian reservation;

''(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation; and

''(C) any lands in the State of Oklahoma that are within the boundaries of a former res-

ervation (as defined by the Secretary of the Interior) of a federally recognized Indian tribe.''.

Calendar No. 220

114TH CONGRESS
1ST SESSION

S. 248

[Report No. 114–140]

A BILL

To clarify the rights of Indians and Indian tribes on Indian lands under the National Labor Relations Act.

SEPTEMBER 10, 2015

Reported without amendment

United South and Eastern Tribes, Inc.

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USET Resolution No. 2015:019

SUPPORT FOR FEDERAL LEGISLATION THAT RESTORES RESPECT FOR THE TRIBAL LABOR SOVEREIGNTY OF TRIBAL GOVERNMENTS IN THE NATIONAL LABOR RELATIONS ACT

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, Tribal sovereignty is an inherent authority exercised by all federally-recognized Indian Tribal governments and has existed continuously since before European contact; and,

WHEREAS, the United States Constitution, U.S. Supreme Court decisions, and hundreds of treaties, federal statutes, and regulations all recognize that Indian Tribes are distinct governments with inherent rights, powers, privileges, and authorities; and

WHEREAS, Indian Tribes have a unique government-to-government and trust relationship with the United States; and,

WHEREAS, the Indian Tribes who are members of USET are recognized by the United States Government as sovereign Tribal governments; and,

WHEREAS, each Indian Tribe who is a member of USET provides essential services to its citizens including education, housing, health care, and public safety, and raises governmental revenue, much as do state governments, through the operation of enterprises and the provision of goods and services in the marketplace; and,

WHEREAS, the National Labor Relations Act (NLRA) generally exempts state, local, and territorial governments from its application; and

WHEREAS, the National Labor Relations Board (NLRB) in 2004 reversed over 60 years of its own precedent and established "a new standard for determining the circumstances under which the Board will assert jurisdiction over Indian owned and operated enterprises." *San Manuel Indian Bingo*, 341 NLRB No. 138 (May 28, 2004); and

WHEREAS, the NLRB ruled that Tribal governments are subject to the NLRA when acting more "commercially" than "governmentally," a distinction and classification which the NLRB has never applied to state and local governments operating enterprises, liquor stores, lotteries, and providing other goods and services in the marketplace; and

WHEREAS, a number of Tribal governments are engaged in ongoing litigation with the NLRB to protect their Tribal labor sovereignty rights against unconstitutional intrusion by the NLRA; and

WHEREAS, the NLRB decisions against Tribal labor sovereignty are an arbitrary and discriminatory legal interpretation of the NLRA that treats Tribal governments inequitably in comparison to all other governments, which are allowed to develop their own labor policies regulating labor-related activities on their lands; 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 hereby supports federal legislation that would amend the National Labor Relations Act to clarify that its provisions do not apply to any enterprise or institution owned and operated by an Indian Tribal government and further that Tribal governments have parity with state, local, and territorial governments with respect to the National Labor Relations Act.

CERTIFICATION

This resolution was duly passed at the USET Impact Week Meeting, at which a quorum was present, in Arlington, VA, February 12, 2015.

Brian Patterson, President
United South and Eastern Tribes, Inc.

Brenda Lintinger, Secretary
United South and Eastern Tribes, Inc.

"Because there is strength in Unity"

United South and Eastern Tribes, Inc.

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December 16, 2015

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
United States House of Representatives
1102 Longworth HOB
Washington D.C. 20515

The Honorable Sander Levin
Ranking Member
Committee on Ways and Means
United States House of Representatives
1102 Longworth HOB
Washington D.C. 20515

Re: Establishing the Tribal Advisory Committee under the Tribal General Welfare Exclusion Act

Dear Chairman Brady and Ranking Member Levin:

We write on behalf of the United South and Eastern Tribes, Inc. (USET) to request your assistance in promoting the immediate formation of the Tribal Advisory Committee established under Section 3 of the Tribal General Welfare Exclusion Act (Pub. L. No. 113-168). USET is a non-profit, inter-tribal organization representing 26 federally recognized Tribal Nations from Texas across to Florida and up to Maine[1]. This vital legislation to foster Tribal self-government and clarify the tax treatment of general welfare benefits provided by Tribal Nations was signed into law more than a year ago. Congress assigned important interpretation and implementation responsibilities to the Tribal Advisory Committee, yet the Committee members of this Committee have still not even been announced.

The Tribal Advisory Committee plays an integral and essential role in the implementation of P.L. 113-168. Section 3 of the Act directs the Department of the Treasury to establish a Tribal Advisory Committee that will "advise the Secretary on matters related to the taxation of Indians" and work with the Secretary to establish training and education for IRS field agents. In Section 2, the Committee is charged to work with the Secretary in "developing guidelines for what constitutes lavish or extravagant benefits with respect to Indian tribal government programs." Section 4 of the Act suspends IRS audits and examinations of Indian Tribal governments until the training and education of IRS agents prescribed by Section 3 has been completed.

As set forth in Section 3 of the Act, the Tribal Advisory Committee is made up of seven members. Three of these are to be appointed by the Secretary of the Treasury, while the Chairmen and Ranking Members of the House Committee on Ways and Means and Senate Committee on Finance each appoint one member.

[1] USET member Tribes 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), 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).

USET expected that the establishment of the Tribal Advisory Committee would be the first action that Treasury and the IRS would take in the implementation of PL 113-168 and that Tribal Nations would be consulted during each step of this process. We based these expectations on the Representative Devin Nunes' statement for the record as the House considered the Tribal General Welfare Exclusion Act, Senator Wyden's comments in the Senator Colloquy on the legislation and statements and actions of the Treasury Department.

Representative Devin Nunes, original sponsor of the Tribal General Welfare Exclusion Act, emphasized the critical role of the Tribal Advisory Committee in carrying out the congressional intent of this legislation. His statement for the record pointed out that,

> "Concerns linger that the IRS may not fully understand the role that general welfare programs play in maintaining tribal culture and tradition…. It is intended that the Tribal Advisory Committee address these concerns and work with tribes on a government-to-government basis. This would be accomplished by appointing qualified tribal leaders and in the alternative, qualified tribal financial officers to the Tribal Advisory Committee. Such qualified individuals would have intimate knowledge of federal Indian law and policy, as well as the financial and community needs of Indian tribes. These qualifications would enhance the Department's administration of federal tax policies affecting tribal governments while ensuring that treaty rights and principles of tribal self-governance are properly balanced with federal tax policy."

Congressman Devin Nunes, Statement for the Record – Tribal General Welfare Exclusion Act (Sept. 15, 2014).

Senator Wyden's statement in the Senate Colloquy underscored the Tribal Advisory Committee's role in improving government-to-government dialogue so that Treasury and the IRS are better positioned to administer tax policy in Indian Country. He stated:

> "… the IRS issued regulations clarifying the application of the exclusion, and the regulations were a good step in the right direction, clearing up some questions and reflecting an improved dialogue between the IRS and tribes. However, a regulation is not a congressional statute; we need to lock these improvements into statutory law, as well as expand on them such as by ***establishing a Tribal Advisory Committee to help the Treasury Department and the IRS understand about how best to address tax issues affecting Indian Country***."

Senator Wyden, Congressional Record (S. 5687, Sept. 17, 2014) (emphasis added).

When the Treasury Department requested nominations for the Tribal Advisory Committee in February of 2015, it set the application deadline of April 28, 2015. In April, USET provided Treasury with detailed comments regarding the selection process, appropriate qualifications of members and even identified several Tribal leaders in the USET region who met each of those qualifications. We understand that by the middle of September 2015, Treasury had selected its three nominees. To date, however, Treasury has still not publicly announced those nominees or convened the TAC because of delays in obtaining the nominees' background check clearances from the FBI.

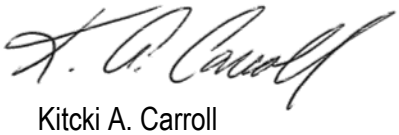
Given the pivotal responsibilities Congress assigned to the Tribal Advisory Committee for the implementation of P.L. 113-168 and in the administration of internal revenue laws with respect to Tribal Nations, we ask for your assistance at this time. First, we ask that you confirm that your respective nominees to the Tribal Advisory Committee have been named, vetted and are committed to begin work immediately. Second, we urge you to communicate with Treasury and the appropriate official at the FBI to ensure that the background clearance process advances efficiently and effectively and without further delays.

The application of federal tax rules to Tribal Nation government benefit programs impacts Tribal sovereignty at a fundamental level: a Tribal Nation's determination as to how best to provide for the wellbeing of its citizens and the Tribal community. In this respect, the Tribal General Welfare Exclusion Act represents a core element in aligning federal tax law with the policy of Indian Self-determination. This alignment is vital for Tribal nation-building and to foster the wellbeing of tribal communities in all regions of the United States. USET is fully committed to work with you to ensure the effective implementation of PL 113-168.

Should you have any questions or require additional information, please do not hesitate to contact Ms. Liz Malerba, USET Director of Policy and Legislative Affairs, at (202) 624-3550 or by e-mail at lmalerba@usetinc.org.

Sincerely,

Brian Patterson
President



Kitcki A. Carroll
Executive Director

CC: USET member Tribes
Wanda James, USET Deputy Director

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December 16, 2015

The Honorable Orrin Hatch
Chairman
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510-6200

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, DC 20510-6200

Re: Establishing the Tribal Advisory Committee under the Tribal General Welfare Exclusion Act

Dear Chairman Hatch and Ranking Member Wyden,

We write on behalf of the United South and Eastern Tribes, Inc. (USET) to request your assistance in promoting the immediate formation of the Tribal Advisory Committee established under Section 3 of the Tribal General Welfare Exclusion Act (Pub. L. No. 113-168). USET is a non-profit, inter-tribal organization representing 26 federally recognized Tribal Nations from Texas across to Florida and up to Maine[1]. This vital legislation to foster Tribal self-government and clarify the tax treatment of general welfare benefits provided by Tribal Nations was signed into law more than a year ago. Congress assigned important interpretation and implementation responsibilities to the Tribal Advisory Committee, yet the Committee members of this Committee have still not even been announced.

The Tribal Advisory Committee plays an integral and essential role in the implementation of P.L. 113-168. Section 3 of the Act directs the Department of the Treasury to establish a Tribal Advisory Committee that will "advise the Secretary on matters related to the taxation of Indians" and work with the Secretary to establish training and education for IRS field agents. In Section 2, the Committee is charged to work with the Secretary in "developing guidelines for what constitutes lavish or extravagant benefits with respect to Indian tribal government programs." Section 4 of the Act suspends IRS audits and examinations of Indian Tribal governments until the training and education of IRS agents prescribed by Section 3 has been completed.

As set forth in Section 3 of the Act, the Tribal Advisory Committee is made up of seven members. Three of these are to be appointed by the Secretary of the Treasury, while the Chairmen and Ranking Members of the House Committee on Ways and Means and Senate Committee on Finance each appoint one member.

[1] USET member Tribes 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), 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).

USET expected that the establishment of the Tribal Advisory Committee would be the first action that Treasury and the IRS would take in the implementation of PL 113-168 and that Tribal Nations would be consulted during each step of this process. We based these expectations on the Representative Devin Nunes' statement for the record as the House considered the Tribal General Welfare Exclusion Act, Senator Wyden's comments in the Senator Colloquy on the legislation and statements and actions of the Treasury Department.

Representative Devin Nunes, original sponsor of the Tribal General Welfare Exclusion Act, emphasized the critical role of the Tribal Advisory Committee in carrying out the congressional intent of this legislation. His statement for the record pointed out that,

> "Concerns linger that the IRS may not fully understand the role that general welfare programs play in maintaining tribal culture and tradition…. It is intended that the Tribal Advisory Committee address these concerns and work with tribes on a government-to-government basis. This would be accomplished by appointing qualified tribal leaders and in the alternative, qualified tribal financial officers to the Tribal Advisory Committee. Such qualified individuals would have intimate knowledge of federal Indian law and policy, as well as the financial and community needs of Indian tribes. These qualifications would enhance the Department's administration of federal tax policies affecting tribal governments while ensuring that treaty rights and principles of tribal self-governance are properly balanced with federal tax policy."

Congressman Devin Nunes, Statement for the Record – Tribal General Welfare Exclusion Act (Sept. 15, 2014).

Senator Wyden's statement in the Senate Colloquy underscored the Tribal Advisory Committee's role in improving government-to-government dialogue so that Treasury and the IRS are better positioned to administer tax policy in Indian Country. He stated:

> "… the IRS issued regulations clarifying the application of the exclusion, and the regulations were a good step in the right direction, clearing up some questions and reflecting an improved dialogue between the IRS and tribes. However, a regulation is not a congressional statute; we need to lock these improvements into statutory law, as well as expand on them such as by ***establishing a Tribal Advisory Committee to help the Treasury Department and the IRS understand about how best to address tax issues affecting Indian Country***."

Senator Wyden, Congressional Record (S. 5687, Sept. 17, 2014) (emphasis added).

When the Treasury Department requested nominations for the Tribal Advisory Committee in February of 2015, it set the application deadline of April 28, 2015. In April, USET provided Treasury with detailed comments regarding the selection process, appropriate qualifications of members and even identified several Tribal leaders in the USET region who met each of those qualifications. We understand that by the middle of September 2015, Treasury had selected its three nominees. To date, however, Treasury has still not publicly announced those nominees or convened the TAC because of delays in obtaining the nominees' background check clearances from the FBI.

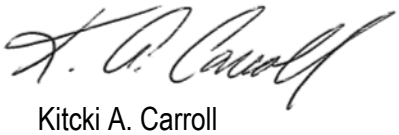
Given the pivotal responsibilities Congress assigned to the Tribal Advisory Committee for the implementation of P.L. 113-168 and in the administration of internal revenue laws with respect to Tribal Nations, we ask for your assistance at this time. First, we ask that you confirm that your respective nominees to the Tribal Advisory Committee have been named, vetted and are committed to begin work immediately. Second, we urge you to communicate with Treasury and the appropriate official at the FBI to ensure that the background clearance process advances efficiently and effectively and without further delays.

The application of federal tax rules to Tribal Nation government benefit programs impacts Tribal sovereignty at a fundamental level: a Tribal Nation's determination as to how best to provide for the wellbeing of its citizens and the Tribal community. In this respect, the Tribal General Welfare Exclusion Act represents a core element in aligning federal tax law with the policy of Indian Self-determination. This alignment is vital for Tribal nation-building and to foster the wellbeing of tribal communities in all regions of the United States. USET is fully committed to work with you to ensure the effective implementation of PL 113-168.

Should you have any questions or require additional information, please do not hesitate to contact Ms. Liz Malerba, USET Director of Policy and Legislative Affairs, at (202) 624-3550 or by e-mail at lmalerba@usetinc.org.

Sincerely,

Brian Patterson
President



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"Because there is strength in Unity"

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USET Proposals for Tribal Tax Reform

I. Introduction

The United South and Eastern Tribes, Inc. (USET) calls upon the United States Congress to amend the Internal Revenue Code to ensure that federal tax law treats Indian Tribes in a manner consistent with their governmental status, as reflected under the U.S. Constitution and numerous federal laws, treaties and federal court decisions. Indian Tribes have a governmental structure, and have the power and responsibility to enact civil and criminal laws regulating the conduct and affairs of their members and reservations. They operate and fund courts of law, police forces and fire departments. They provide a broad range of governmental services to their citizens, including education, transportation, public utilities, health, economic assistance, and domestic and social programs. Like states and local governments, Tribes--as political bodies--are not subject to income tax under the Code.

The non-taxable status of Tribal governments should be maintained in any version of federal tax reform considered by the Congress as a matter of governmental fairness and parity. Improvements in the Tax Code are also vitally needed to **align federal tax policy with the critical federal policy objectives of Tribal self-determination, Tribal economic growth and self-sufficiency and the promotion of strong Tribal governments on equal footing with other sovereigns within the federal system**. USET's tax policy proposals advance these objectives in a manner that will promote economic growth, foster Tax Code fairness by eliminating additional burdens on Tribal governments and further important federal policy interests.

Tax policy fairness toward Tribal governments and the promotion of economic growth are of central importance in Indian Country. While tribal governments have full sovereign rights and authority to tax economic activity within their territories, many tribes generate revenues through the operation of their own enterprises and economic development activities where profits provide a source of revenue to meet and supplement vital programs and services. Yet, under Supreme Court jurisprudence, both Tribes and states may tax non-Tribal members doing business in Indian country. Such double taxation has stifled economic development on Indian reservations. Tribes often refrain from levying the Tribal tax in order to attract and retain non-Indian businesses for its employment benefits. The tax revenues generated from these on-reservation business activities, however, are transferred out of Indian Country and into state and local government coffers where they are used to serve other non-Indian populations.

Congress must create reliable and effective federal tax policy to firmly support Tribal governance while protecting the ability of Tribes to generate and retain the full use of Tribal revenue to stimulate economic development and deliver services within Indian Country.

Tribal governments also have responsibilities that are distinct from those of other sovereigns. Tribes and their elected representatives have the added responsibility of ensuring they have the revenue needed to fulfill responsibilities to maintain Tribal language, culture, and ceremonies. Preservation and restoration of Tribal culture remains a significant federal policy objective that seeks to reverse damage caused by the former federal policy of Indian Assimilation, which forbade the practice of Native ceremonies and use of Native languages.

USET's tax reform proposals, as set forth below, are guided by these important policy objectives. USET calls on the Congressional tax writing committees to incorporate these proposals into tax reform or other tax legislation in order to develop a Tax Code that:

- encourages private investment and stimulates business activities in Indian Country;
- provides Tribes with full access to government financing tools;
- ensures that revenues generated within tribal territories are retained by tribes for tribal economy building and are not subject to taxation by state and local jurisdictions
- respects elected leader decision-making with regard to determining the well-being of tribal citizens, including advancing and protecting social, cultural and ceremonial practices;
- advances the ability of Tribes to build an economic base and create employment opportunities;
- promotes certainty of jurisdiction, certainty to the capital markets, and certainty in tax policy to sustain economic growth and foster economic partnerships.

II. USET's Tax Reform Proposals

A. ADVANCE IMPORTANT FEDERAL POLICY

1. Respect and Promote Tribal Self-Determination through application of the General Welfare Exclusion for Tribal Government-Provided General Welfare Benefits

Current Law: Both the IRS and the courts have defined income broadly, limiting exclusions to those specified in the Tax Code. Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 acknowledges more than three dozen types of benefits/payments as "items specifically excluded from gross income." Until 2014, the Tax Code was silent on the issue of whether the programs and services that Tribal governments provide to Tribal citizens are subject to federal income tax. In that context, the IRS has employed an administrative practice, known as the General Welfare Exclusion ("GWE"), which excludes benefits and payments to individuals from federal income taxation when those benefits and payments are made pursuant to a governmental program serving the general welfare.

On June 3, 2014, the IRS issued Revenue Procedure 2014-35. The Revenue Procedure affirms that the GWE "applies to payments by Indian tribal governments no less favorably than it applies to payments

by federal, state, local, or foreign governments," while also acknowledging that because of the unique legal status of tribes, the general welfare exclusion applies differently to tribal government programs than to the general welfare programs of other governments. Under this established IRS doctrine, the payments made by governments for the general welfare are not taxable if they are: (1) made pursuant to a governmental program; (2) for the promotion of the general welfare (based on individual or family need); and (3) not compensation for services. Revenue Procedure 2014-35 also establishes two sets of "safe harbor" rules under which the IRS will (1) "conclusively presume" that the need criterion under the GWE is met for payments made pursuant to certain tribal government programs; and (2) "conclusively presume" that certain payments (related to cultural program services) are not taxable as compensation for services.

On September 26, 2014, President Obama signed HR 3043, the Tribal General Welfare Exclusion Act, into law as PL 113-168. The terms of the Act reflect criteria similar to Revenue Procedure 2014-35 and statements in the Senate Colloquy made clear that when applying the Act, the IRS is to treat tribal government programs for the promotion of the general welfare in a manner that is at least as favorable as the safe harbor approach provided for in Revenue Procedure 2014–35. Additionally, the law codifies the Indian canon of treaty and statutory construction, providing "[a]mbiguities in [the new law] shall be resolved in favor of Indian tribal governments and deference shall be given to Indian tribal governments for the programs administered and authorized by the tribe to benefit the general welfare of the tribal community." PL 113-168 also requires the Secretary of the Treasury to establish a Tribal Advisory Committee (TAC) to advise the Secretary on matters relating to the taxation of Indians and to assist the Secretary in developing education and training for IRS field agents. The Act also suspends the audits and examinations of Indian tribal governments and members of Indian tribes related to the provision or receipt of general welfare benefits until IRS field agents complete the training and education developed by the Secretary as advised by the TAC.

Tribal advocacy and congressional oversight have critical roles to play in the interpretation and implementation of the Tribal General Welfare Exclusion Act that has already begun and that will continue into 2015.

2. Establish a Tribal Advisory Committee (TAC) within Treasury to advise the Secretary on matters of Indian taxation

Current law: Until the enactment of the Tribal General Welfare Exclusion Act on September 26, 2014, there had not been a formal Tribal advisory committee within Treasury or the IRS regarding matters of Indian taxation.

Reasons for creating a new Advisory Committee: In recent years, Indian Tribal governments and the Internal Revenue Service have disagreed on several issues concerning when tax liability attaches to Tribal payments, or benefits, provided to their citizens. A Tribal tax policy advisory body would assist Treasury and IRS in ensuring that treaty rights and principles of self-determination and self-governance are properly balanced with the IRS' internal policies and to provide orientation for the conduct of consultation with Indian Tribes in accordance with Executive Order 13175.

Proposal: USET has recommended the creation of a Tribal advisory committee made up of Tribal leaders with the support of a Tribal technical work group to address a broad range of Tribal taxation matters that would complement, but not substitute for Tribal consultation. The TAC created by the Tribal General Welfare Exclusion Act is charged with a broad mandate to advise Treasury and IRS on not only GWE implementation but also other tribal taxation matters. It will be vital to ensure that TAC members are tribal leaders and tribal representatives as the nomination and selection process moves forward.

B. HELP GROW THE ECONOMY

The following Tax Code modifications and extensions will enhance economic development and foster nation-rebuilding in Indian Country by establishing a more even playing field for investment in Indian Country and by ensuring that Tribes retain and may use the revenues they generate in their territories.

1. Eliminate Double (State-Tribal) Taxation

Current law: Indian Tribal governments are service providers that must generate revenue to sustain government operations and deliver needed services. Yet, under Supreme Court jurisprudence, both Tribes and states may tax non-Tribal members doing business in Indian country. The Department of the Interior has recently issued regulations governing the leasing of Indian lands (25 CFR 162.017) that have initially been interpreted by a federal court to preempt state and local government taxation of activities under a lease conducted on the leased premises. The regulation is still new and has not been fully tested and implemented. Also it is subject to federal court interpretation that may result in inconsistent application in Indian Country. Moreover, the state and local taxation provisions only apply to leased land.

Change is needed to promote economic growth: The double taxation scenario stifles economic development on Indian reservations. In order to avoid this chilling effect of dual taxation, Tribes often refrain from levying the Tribal tax in order to attract and retain non-Indian businesses for its employment benefits. The tax revenues generated from these on-reservation business activities, however, are transferred out of Indian Country and into state and local government coffers where they are used to serve other non-Indian populations.

Proposal: Congress should restore tax fairness between states and Tribes by assuring that Tribes are able to collect tax revenues attributable to economic development activity taking place within Tribal jurisdictions. This could be achieved through a statutory preemption of state and local government taxation on Indian lands. This statutory clarification would provide certainty of jurisdiction that would facilitate greater investment by non-members in businesses within Indian Country. This would also restore tax equity by prohibiting the anomaly of extraterritorial taxation by state and local governments of activities on Indians lands where states and local governments provide no services. The change would also provide Tribes with the ability to diversify their revenue base.

Congress has enacted terms to preempt state and local taxation of on reservation activities in the context of Indian gaming. Under the Indian Gaming Regulatory Act (IGRA), states and local

governments may not impose taxes or fees on a tribe's Indian gaming activities. To accommodate state and local government interests in receiving compensation for actual services they provide, reimbursement of such costs is permitted in the compacting process. The Coalition of Large Tribes (COLT) has proposed preemption of state and local taxes on energy development activities modeled on the IGRA approach. USET supports the COLT proposal, however, USET also urges Congress to statutorily preempt state and local government taxation not only with respect to energy development activities but also to preempt state and local government taxation with respect to a broad array of economic development activities taking place in Indian Country. Tribal tax codes and tribal tax compacts with states and local governments are the legal mechanism that should establish the taxation authorities, taxable activities and revenue-sharing between tribes and state and local governments, not interest-balancing tests or dual taxation schemes that have been permitted under Supreme Court precedent.

USET also proposes that the Market Fairness Act or other federal legislation governing the ability of states to impose sales taxes on internet and other remote sales should clearly authorize that tribes may collect taxes on internet sales in their territories and that where a tribal tax applies, the state sales tax does not. Such terms are necessary to prevent dual taxation of remote sales in Indian Country.

2. Immunize Tribe-to-Tribe Commerce and Investment from Taxation

Current law: Historically, Indian nations and Tribes engaged in inter-tribal trade relations that were not subject to taxation. Now that Indian territories are surrounded by state jurisdictions, states have recently begun to levy their taxes and impose their regulations on commerce taking place exclusively between two locations in Indian Country.

Change will enhance economic growth: Indian people have numerous opportunities to work together to create jobs and investment opportunities. Some Tribes have lands and natural resources to develop, but lack capital and expertise. Other Tribes have capital and expertise but limited lands and resources.

Proposal: Congress can stimulate job creation and development in Indian Country by prohibiting state taxation and regulation of Tribe-to-Tribe commerce and investment where the economic activity takes place on Indian lands.

3. Adopt the Indian Country Economic Revitalization Act (H.R. 4699)

Current Law: Federal agencies have been directed by Congress to promote economic development in Indian Country. Unfortunately, many federal agency programs have been of limited impact due to such factors as the short-term timeframes for implementation, complex eligibility requirements, and the predominance of one-size-fits-all strategies. The Native American Business Development, Trade, Promotion and Tourism Act is among the programs that has been underutilized even though it contains provisions intended to revitalize economically and physically distressed Native American Economies and promote private investment in Indian Country economies. 25 U.S.C. §§ 4301-4307 (Title 25, Chapter 44, U.S. Code). Although its objectives are to stimulate job creation and foster economic self-

sufficiency and political self-determination, due to insufficient agency resources and coordination, little is known about this Act in Indian Country.

Change will bring new levels of inter-agency coordination and analysis to assess and implement more pragmatic, effective and dynamic programs for economic development in Indian Country. Rep. Delbene introduced the "Indian Country Economic Revitalization Act of 2014" (H.R. 4699) to amend the Native American Business Development, Trade Promotion, and Tourism Act of 2000. The legislation would require the Secretary of Commerce to prepare a report and recommendations to Congress to promote the sustained economic development of Indian tribes and Indian lands. The terms of the bill require the report to analyze the impact of court decisions allowing taxation of economic activity on Indian reservations; the effect of existing and proposed tax credits and incentives for economic development on Indian lands; as well as Indian Country's access to infrastructure, energy resources, educational opportunities and investment capital. The tools provided by this legislation will allow for long-term, practical approaches to stimulate economic investment incentives on Tribal lands and ensure that federal programs supporting economic development are coordinated with tribal governments and enterprises in order to maximize impact.

4. Establish Tribal Empowerment Zones in Indian Country

Current Law: For many years, annual legislation ("tax extenders") has included provisions intended to promote investment on Indian lands (such as the Accelerated Depreciation and the Indian Employment Tax Credits). These "extenders" were intended as a mechanism to enhance economic development and nation-rebuilding in Indian Country by offsetting the adverse impacts of state and local taxation on Indian lands. For example, the problem of dual taxation in Indian Country that allows both tribes and states to impose taxes on non-Indian activities in Indian Country, and pursuant to which the state tax has generally precluded the tribal tax. The "extenders" were intended to make investment in Indian Country more even handed through various tax credits to non-Indians that locate businesses on-reservation, but these have been underutilized due to complex qualification rules, their short-term duration and their modest economic benefit. Additionally, in the past Congress has legislated tax credits for business investment and hiring in low-income, distressed communities known as "Empowerment Zones" tax credits. Today, the White House has launched its "Promise Zones" initiative for revitalizing communities (by increasing economic activity, creating jobs, improving education, enhancing access to housing and reducing crime). Pursuant to this Promise Zones initiative, the President has proposed cutting taxes on hiring and investment based the previously existing program of "Empowerment Zones" tax credits.

Change will enhance economic growth: Existing Code provisions to incentivize investment in Indian Country have had limited effectiveness. These provisions have been temporary or short-term measures that were never made permanent and the procedures to utilize them have been complex enough as to require significant upfront investment by Tribes, such as retaining outside attorneys, accountants and consultants). A more straightforward, long-term and practical approach is needed to stimulate new economic investment incentives on Tribal lands. Additionally, the White House Promise Zone initiative involves only a few selected communities and its incentives are not targeted to the specific obstacles faced in tribal communities. While Promise Zones provide a degree of

federal tax immunity, tribes are burdened by state taxation that siphons revenues from tribal economic development activity on reservation lands.

Proposal: Congress should restore the treaty-recognized status of Tribal lands as being immune from all federal and state taxation. To initiate this approach, Congress should establish a Tribal Empowerment Zone Demonstration Project including the following elements:

- 50 Tribal Empowerment Zones established throughout Indian Country
    - Select 25 of the most economically challenged Tribes
    - Select 25 of the most successful entrepreneurial Tribes
- Prohibit federal or state taxes of any kind within the zone
- Establish a ten-year demonstration project period

5. Create Tax Credits for Federal Income Tax Paid

Current law: Indian Tribal governments are service providers that must generate revenue to sustain government operations and deliver needed services. Unlike other governments, Indian Tribes have no tax base to rely upon for that revenue. As a result, Tribes rely heavily upon federal grants and economic development programs to finance governmental activities. With the federal budget out of balance, Tribes risk further cutbacks of federal funds. Meanwhile, individual members of Indian Tribes are subject to the federal income tax.

Change will enhance economic growth: In the face of federal budget cuts, Tribes need a reliable revenue stream to provide adequate health care, law enforcement, infrastructure improvement, and other governmental services. In addition to the creation of Tribal government jobs, the enhancement of Tribal governance capacity and effective service delivery are prerequisites to attracting business and investment to Indian Country. Although Tribes provide many fundamental services, such as health care, to their members as well as to non-Indians residing within or near reservation boundaries, Tribal capacity to serve all residents of our territories depends upon Tribal ability to generate the revenues needed to complement limited federal program funding.

Proposal: Congress should develop Tax Code provisions allowing for the federal income taxes generated by Tribal citizens to be credited back to the Tribal government. This could be achieved by crediting taxes paid to the Tribal government or by authorizing deductions for donations made to a Tribal government. This proposal would preserve wealth generated on Tribal lands and provide for reinvestment of those dollars to support Tribal government operations and create an infrastructure and services platform for economic development.

6. Improve the Effectiveness of the "Tax Extenders" Intended to Benefit Indian Country

a. The Simplified Indian Employment Tax Credit.

Current law: The Indian Employment Tax Credit (Section 45A) provides a 20 percent credit against income tax liability to employers for up to $20,000 of qualified wages and qualified employee health insurance costs paid or incurred by the employer for services performed by qualified employees. A "qualified employee" is an employee who is an enrolled member (or the spouse of an enrolled

member) of an Indian Tribe, who performs substantially all of the services within an Indian reservation, and whose principal place of abode while performing such services is on or near the reservation in which the services are performed. The credit is due to expire for taxable years beginning after December 31, 2013.

Change will help grow the economy: The current provision has not been utilized to its full potential due to the uncertainty associated with the short-term and limited nature of the provision. By making the credit permanent, businesses and industry can build the credit into its planning processes and see longer-term advantage to employing Tribal members in Indian Country.

Proposal: Permanently extend the Indian employment credit and modify the base year from 1993 to the average of qualified wages and health insurance costs for the two tax years prior to the current year. This proposal is consistent with the legislative changes proposed in the Obama Administration's Fiscal Year 2014 budget. See *General Explanation of the Administration's Fiscal Year 2014 Revenue Proposals*, p. 14 (available at http://www.treasury.gov/resource-center/tax-policy/Documents/General- Explanations-FY2014.pdf). In addition, consider making the credit available to nonprofit and governmental employers by allowing the credit to offset employers' on-reservation payroll tax liabilities.

b. Permanently Extend the New Markets Tax Credit with a Tribal Set Aside.

Current law: The New Markets Tax Credit (NMTC) is a 39-percent credit for equity investments in a qualified community development entity (CDE) held for a period of seven years. A qualified CDE is any domestic corporation or partnership: (1) whose primary mission is serving or providing investment capital for low-income communities or low-income persons; (2) that maintains accountability to residents of low-income communities by their representation on governing or advisory boards to the CDE; and (3) that is certified by the Treasury as being a qualified CDE. Treasury is authorized to designate targeted populations, including members of an Indian Tribe, as low-income communities even if they do not meet the statistical tests that generally apply if they lack adequate access to loans or equity investments. The NMTC was extended by the American Taxpayer Relief Act of 2012 through 2013.

Reason change will promote economic growth: The current provision has not been utilized to its full potential due to the uncertainty associated with the short-term and limited nature of the provision.

Proposal: Permanently extend the NMTC, would increase the annual credit allocation amount to $5 billion a year; in addition, provide that 3 percent or $150 million of each year's allocation be set aside for Indian Tribes, Tribal entities and organizations established to primarily benefit Indian reservation communities.

c. Extend Energy Production Grants, plus Clean Renewable Energy Bonds.

Current law: The Tax Code provides production tax credits (PTCs) for renewable energy facilities constructed before the end of 2013. Section 45 of the IRC provides PTCs for wind, biomass, geothermal, landfill gas, trash, qualified hydropower, and marine and hydrokinetic projects that

generate electricity. Current law also provides an investment tax credit for energy property, which includes (1) property that is part of a facility that, but for the election to claim an investment tax credit, would qualify for a production tax credit; and (2) certain other listed property (including solar energy property). In addition, current law also provides grants for certain energy property on which construction began in 2009, 2010, or 2011.

Reasons for Change: Currently the tax credits are unusable because Tribal governments do not pay taxes. As a result, renewable energy projects do not occur on Indian lands.

Proposal: Permanently extend the PTC for renewable energy property and make it refundable in a way that Tribal governments can utilize the credit even though they have no income tax liability to offset. In addition, explore extending the expired provisions for Clean Renewable Energy Bonds, with a Tribal government set-aside.

d. Extend the Indian Country Coal Production Tax Credit

Current law: Under the 2005 Energy Policy Act, coal produced on land owned by an Indian Tribe qualifies for a production tax credit equivalent to $2 per ton through 2012. The American Taxpayer Relief Act extended the tax credit through 2013.

Change will promote economic growth: Production of coal on Indian lands is a long-term endeavor. Absent a longer-term period for the realization of the tax credit, private industry will be reluctant to partner with Tribes for the development of coal.

Proposal: Extend the coal production tax credit at least through 2020.

C. PROMOTE TAX FAIRNESS

1. Eliminate Special Restrictions on Tribal Government Debt

Current law: Indian Tribal governments are generally permitted to issue tax-exempt bonds only to finance facilities that serve an "essential governmental function." Such a requirement is not imposed on municipal debt. In addition, Tribes (unlike states) are generally prohibited from issuing private activity bonds.

Change will promote tax fairness: Under the current provisions, Tribal governments are limited to using tax-exempt financing only for certain government functions, such as roads, schools and sewage systems, while state and local government may use bonds to finance a much wider variety of government-sponsored job-creating projects (*e.g.*, convention centers, tourist accommodations and public recreational facilities including golf courses, energy production and distribution facilities, parking structures and transportation projects). Both Congress and the Administration have recognized that current law is unfair, unworkable and in need of correction.

Proposal. Repeal the essential government function test and the general prohibition on Tribal private activity bonds. (*See* Section 3 of H.R. 3030, "Tribal Tax and Investment Reform Act"). With regard

to the private activity bonds, develop a customized formula to determine the volume cap on private activity bonds issued by Indian Tribal governments. A national Tribal bond volume cap could be based on the greater of either: the minimum state volume cap, or the total population of all Tribes. The national bond cap could then be allocated among all Tribal issuers planning to issue private activity bonds in a given year under procedures developed and administered by Treasury. Other than the special calculation of volume cap, private activity bonds issued by Tribal governments would be subject to the same restrictions that apply to private activity bonds issued by other governments (*e.g.*, the prohibition on using such bonds to finance skyboxes, airplanes, gambling facilities, health club facilities and liquor stores). Similarly, governmental bonds issued by Tribes would be subject to the same restrictions and rules applicable to other governmental bond.

2. Provide Parity in Treatment of Tribal Government Pensions

Current law: Tribal government benefits plans are not treated the same as state and local pension plans. Tribal plans are not treated as "governmental plans" unless all of the employees in the plan are substantially engaged in "essential governmental" functions, and not commercial activities.

Change promotes tax fairness: The current law's limitation to "essential governmental" functions is an unfair and unworkable standard. Tribal governments are unable to utilize the cost efficiencies intended in the law and, indeed, based on IRS interpretations, have largely avoided utilizing governmental plans because of the increased administrative burdens and costs.

Proposal: Equalize the treatment of Tribal pension plans to that of state and local plans. Equal treatment could be achieved by amending the Internal Revenue Code in the following ways: (1) delete the special limitations applicable to Tribal plans that are not imposed on state and local governmental plans (e.g., that all employees be engaged in "essential governmental functions"); (2) add the same distributions rights for Tribal public safety employees that are available to state and local public safety employees; (3) confirm that pension plans may honor Tribal court domestic relations orders that meet the same standards as state court orders; (4) grandfather Tribal "457" plans that otherwise comply with the Code and were established before [2006], and (5) adopt the same employment tax rules for Tribal deferred compensation plans that apply to state and local plans. These Code amendments would provide government fairness between Indian Tribal plans and other government plans. Section 4 of HR 3030 would achieve these objectives.

3. Ensure Social Security Eligibility for Tribal Council Members

Current law: The IRS does not consider payment to Tribal council members as wages. As a result Tribes are exempt from making FICA payments for Tribal council members. Yet, unlike other government benefit programs exempt from mandatory participation in FICA, Tribal council members are not permitted to opt-in by making payments for FICA provisions.

Change is needed to promote fairness: In the past Tribal council service constituted part-time duties that may have generate modest stipends. Today, Tribal council members serve on a full-time basis, which precludes them from undertaking other employment. Yet, they have been denied the right to participate in the social security program in a manner consistent with that of other government legislators.

Proposal: A Code provision should establish that Tribes may opt to pay into the social security system in order for Tribal council members to secure this level of protection for themselves and their families.

4. Provide for Equitable Application of the Adoption Tax Credit

Current law: Taxpayers that adopt children with special needs are eligible for an increased tax credit for qualified adoption expenses. However, if a Tribal court -- instead of a state court -- makes the "special needs determination," the prospective adoptive parents cannot access the tax credit.

Proposal: Place Tribal court determinations as to the "special needs" of children on equal footing with similar determinations made in state court for purposes of the Code Section 23 adoption tax credit. This proposal is consistent with the legislative changes proposed in the Obama Administration's Fiscal Year 2014 budget. See *General Explanation of the Administration's Fiscal Year 2014 Revenue Proposals*, p. 214 (available at http://www.treasury.gov/resource-center/tax-policy/Documents/General-Explanations-FY2014.pdf). Recognizing Tribal court determinations also would align IRS tax policy with the policies codified in the Indian Child Welfare Act. *See* HR 2332.

5. Equip Tribal Child Support Enforcement Agencies with the Same Policy Tools and Incentives that Are Available to State-run Entities

Current law: The Social Security Act allows Indian Tribal governments to establish Child Support Enforcement Agencies. Currently, there are more than 50 of these agencies throughout Indian Country. However, Tribal Child Support Enforcement Agencies do not have all the powers of similar State-run organizations.

Change would promote fairness and program effectiveness: Tribal Child Support Enforcement Agencies do not have (1) access to parent locator databases, or (2) the authority under the Code to withhold past-due child support payments from the federal income tax returns of parents with past-due obligations. These two enforcement mechanisms are critical to improving the services provided by Tribal child support enforcement agencies.

Proposal: Amend the Social Security Act and the Internal Revenue Code to permit child support enforcement agencies to offset tax refunds for past-due payments and to access the same parent locator database available to State child support agencies. Legislative terms have been drafted in Section 6 of HR 3030.

6. Promote Parity in the Health Care Professionals Loan Repayment Exclusion

Current law: Loan amounts forgiven or repaid on an individual's behalf generally are considered taxable income. However, certain forgiven or cancelled student loan debt is excluded from income, including debt repaid under the National Health Service Corp ("NHSC") Loan Repayment Program. The Indian Health Service ("IHS") Health Professions Loan Forgiveness Program is very similar to the NHSC Loan Repayment Program. Under both programs, dentists, physicians, and nurses provide health care services to underserved populations in exchange for loan repayment assistance. However,

the IHS Health Professions Loan Forgiveness Program does not enjoy the same preferential tax treatment as the NHSC program.

Proposal: Amend the Internal Revenue Code to provide health care professionals who receive student loan repayments from IHS the same tax-free status enjoyed by those who receive NHSC loan repayments. The legislative terms for this proposal are provided in HR 3391, "The Indian Health Service Health Professions Tax Fairness Act". This proposal is also consistent with the legislative changes proposed in the Obama Administration's Fiscal Year 2014 budget. See *General Explanation of the Administration's Fiscal Year 2014 Revenue Proposals*, p. 132 (available at http://www.treasury.gov/resource-center/tax- policy/Documents/General-Explanations-FY2014.pdf).

7. Eliminate Excessive Bureaucracy in Medicaid Electronic Health Record (EHR) Incentive Payments that are Assigned to the Tribal Health Care Facilities

Current law: The Indian Health Service (IHS) has provided written guidance to the Internal Revenue Service clarifying that payments made to IHS health care professionals under the Medicaid Electronic Health Record (EHR) Incentive Payment Program should not be considered taxable income to them because they are required by their employment to assign such payments to the IHS. Yet, when health care professionals serving in Tribal health care facilities pursuant to Indian Self-Determination Act agreements with agreements with the IHS receive EHR incentive payments and assign those payments to the Tribal health facility, the Tribal health care professional is issued a 1099 form and then must issue a 1099 to the Tribal health facility to report the assignment of the payment to the health facility.

Proposal: Congress should require IRS to confirm that where a health care professional is required by law to assign the payment to IHS, or required by contract to assign the payment to a Tribal health facility, they are in fact acting as an agent and conduit of another and are unable to keep the payment, thereby making the payment non-taxable to them. IRS should also confirm that in the event of such assignments, there is no need for the health care professionals to issue a 1099 to the health care facility.

8. Exempt Tribal Government Distributions from the Kiddie Tax

Current law: Unearned income in excess of $1,900 of children under age 19, or of young adults age 19-24 who are full-time students, is taxed at the parent's marginal rate, if that rate is higher than what the child would otherwise pay. The purpose of this "kiddie tax" is to address instances of intergenerational income shifting, where a family would historically save large amounts of money by transferring highly appreciated investments to their children who enjoy a lower tax bracket.

Reason for Change: Unfortunately, however, the kiddie tax, as codified in Code Section 1(g), burdens many Tribal minors and young adults with a higher tax rate on Tribal distributions, including minors' trust distributions. The kiddie tax also may create a disincentive for some young Tribal members with respect to the pursuit of higher education.

Proposal: Amend Code Section 1(g) to exempt Tribal government distributions (whether derived from gaming or other Tribal revenue sources) from the kiddie tax.

ENERGY & ENVIRONMENT

- The peoples, lands, and resources of indigenous communities in the United States…face an array of climate change impacts and vulnerabilities that threaten many Native communities. The consequences of observed and projects climate change have and will undermine indigenous ways of life that have persisted for thousands of years. (Third National Climate Assessment Highlights)

- The DOI Tribal Climate Resilience Program was announced by Secretary Jewell in July 2014, and this relatively new program has received substantial funding in each of the years since FY2014. The BIA is charged with implementing the Tribal Cooperative Landscape Conservation program to help Tribal nations prepare for climate change through adaptation and mitigation measures.

- The DOI Tribal Climate Resilience Program was launched without meaningful Tribal consultation; and the funding increases, while much needed, occurred outside the Tribal Interior Budget Council (TIBC) process. Similarly, the BIA Tribal Cooperative Landscape Conservation Program was launched without Tribal consultation; placed emphasis on training, workshops, and travel; instituted a competitive grant process with arbitrary funding caps; and declined to consider initiatives from Tribal nations who have existing adaptation or mitigation plans to obtain funding to implement plans to reduce or prevent effects of climate change.

- DOI and the BIA must be more transparent and timely in communications with Tribal leaders about elements of the Climate Resilience Program, and provide specifics about the strategic goals, implementation benchmarks, and outcomes that are intended to address climate change impacts in Tribal communities.

- BIA must work closely with Tribal Nations and Tribal organizations in the placement of Tribal Liaisons at the Climate Science Centers, to ensure that the Tribal Liaisons engage and conduct outreach with Tribal Nations and promote integration of Tribal priorities and traditional knowledges into research projects, science based information tools, and resource management modeling.

- DOI should communicate with Tribal leaders and consult about the strategy the DOI and the U.S. Environmental Protection Agency will use to establish an interagency subgroup on climate change under the White House Council on Native American Affairs.

Climate Change Impacts

- Tribes are disproportionately impacted by rapidly changing climates, experienced in ecological shifts and extreme weather events, as compared to the general population.

- Climate change impacts on many of the 567 federally recognized Tribes … are projected to be especially severe, since these impacts are compounded by a number of persistent social and economic problems.
    - ✓ The Third U.S. National Climate Assessment provides findings, and predictions of climate trends and regional impacts over this century and beyond.
    - ✓ Key vulnerabilities include the loss of traditional knowledge in the face of rapidly changing ecological conditions, increased food insecurity due to reduced availability of traditional foods, changing water availability, Arctic sea ice loss, permafrost thaw, and relocation from historic homelands."

Energy Development

- The USET member Tribes, and their respective lands and energy resources, are located within a large region that presents diverse geographical environments and opportunities for both conventional and renewable energy development. USET member Tribes could benefit from the unlocked potential of their energy resources, and realize their 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 United South and Eastern Tribes in energy programs.

- Congress should pass an Indian Energy bill containing provisions that would:

    - ✓ Provide Indian Tribes with technical assistance in developing energy plans, including plans for electrification, oil and gas permitting, renewable energy permitting, energy efficiency, electricity generation, transmission planning, water planning, other planning related to energy issues; and plans for development of energy resources and to ensure the protection of natural, historic, and cultural resources;

    - ✓ Make intertribal organizations eligible for Department of Energy (DOE) Indian energy education planning and management assistance program grants, and allows such grants to be used to increase Tribal capacity to manage energy development and efficiency programs;

    - ✓ Require the Secretary to make scientific and technical information and expertise available to Tribal energy development organizations (in addition to Indian Tribes) for use in regulating, developing, and managing Indian energy resources;

    - ✓ Allow leases and business agreements that pool, unitize, or communitize a Tribe's energy resources with other energy resources;

- ✓ Authorize Indian Tribes to enter into energy-related leases, business agreements, or rights-of-way without Secretarial approval under certain conditions;

- ✓ Establish a funding mechanism for Indian Tribes to receive financial support for tribal energy resource agreements; and

- ✓ Ensure that an Indian Energy bill would apply to all Federally Recognized Tribes, including those that are subject to settlement acts or any other applicable law or agreement that restricts federal laws from applying without explicit authorizing language.

- USET encourages the BIA Division of Energy and Minerals Development Division (DEMD) to assist USET member Tribes in energy development projects.

- USET encourages BIA DEMD to collaborate with the Department of Energy Office of Indian Energy to coordinate and leverage expertise and funding to support Tribal energy resource development.

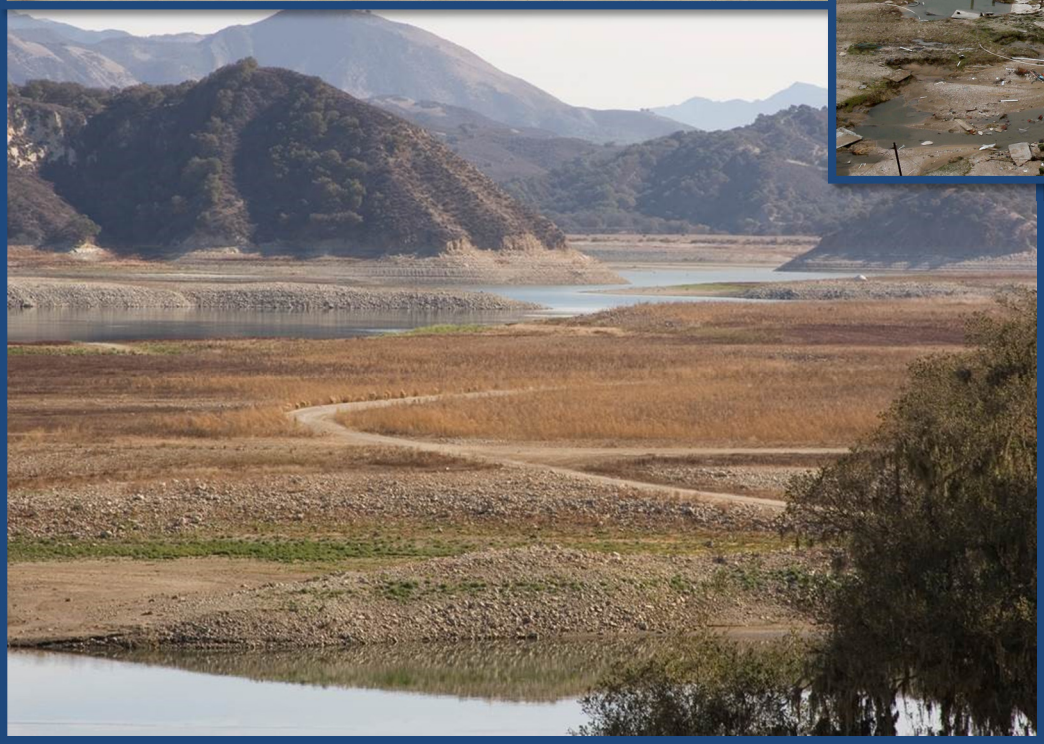
- There are significant legal and policy challenges to Tribal energy resource development. The majority of large-scale energy projects on Indian lands, even those which have passed through the maze of federal bureaucratic processes, linger in the pre-development phase due primarily to:
  - ✓ Lack of Tribal capacity to develop and manage energy resource development;
  - ✓ Inadequate financing incentives which promote Tribal ownership options;
  - ✓ Lack of transmission infrastructure and institutional markets for energy produced on Indian lands;
  - ✓ Unclear tax regimes which have encouraged State and local taxation of energy facilities on Indian lands that threaten the viability of a project and siphon off revenue that should be going directly to Tribal governments.

- USET 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.

Affirm Tribal taxing authority over energy development activities on Indian lands.

PRESIDENT'S STATE, LOCAL, AND TRIBAL LEADERS TASK FORCE ON CLIMATE PREPAREDNESS AND RESILIENCE

Recommendations to the President



November 2014

About the State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience

The State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience (Task Force) was established by Executive Order 13653[1], *Preparing the United States for the Impacts of Climate Change,* on November 1, 2013. The President charged the Task Force with providing recommendations on how the Federal Government can respond to the needs of communities nationwide that are dealing with the impacts of climate change by removing barriers to resilient investments, modernizing Federal grant and loan programs to better support local efforts, and developing the information and tools they need to prepare, among other measures.

Co-chaired by the Chair of the White House Council on Environmental Quality (CEQ) and the Director of the White House Office of Intergovernmental Affairs (IGA), the Task Force consists of 26 governors, mayors, county officials, and tribal leaders from across the United States. Members brought first-hand experiences in building climate preparedness and resilience in their communities and conducted broad outreach to thousands of government agencies, trade associations, planning agencies, academic institutions, and other stakeholders, to inform their recommendations to the Administration.

The Task Force met in person on four occasions between December 2013 and July 2014 in Washington DC, Los Angeles, and Des Moines, to develop and refine their recommendations. Recognizing that climate change will affect virtually all aspects of the Nation's future, the Task Force focused on opportunities to build climate preparedness and resilience in key domains, including disaster recovery, infrastructure investment, natural resource management, human health, community development, and agriculture.

For more information about the State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience, please see: www.whitehouse.gov/administration/eop/ceq/initiatives/resilience/taskforce.

Cover Photos: Top Left: Vermonters celebrate the re-building of a historic covered bridge washed away by Tropical Storm Irene (2011). Photo Credit: *Bill Caswell, President, National Society for the Preservation of Covered Bridges.* Top Right: A home is left standing among debris from Hurricane Ike (2008) in Galveston County, Texas. Floodwaters from Hurricane Ike were as high as eight feet in some areas causing widespread damage across the coast of Texas. Photo Credit: *David J. Phillip-Pool/Getty Images.* Bottom Left: Lake Cachuma, in California, at 30% capacity under drought conditions. Photo Credit: *Lael Wageneck, County of Santa Barbara.* Bottom Right: Children in Philadelphia enhance local green stormwater infrastructure with spring plantings. Photo Credit: *Philadelphia Water Department.*

[1] See "Executive Order 13653: Preparing the United States for the Impacts of Climate Change", http://www.whitehouse.gov/the-press-office/2013/11/01/executive-order-preparing-united-states-impacts-climate-change

Executive Summary

As the Third National Climate Assessment makes clear, climate change is already affecting communities in every region of the country as well as key sectors of the economy. Recent events like Hurricane Sandy in the Northeast, flooding throughout the Midwest, and severe drought in the West have highlighted the vulnerability of many communities to the impacts of climate change. In 2012 alone, the cost of weather disasters exceeded $110 billion in the United States, and climate change will only increase the frequency and intensity of these events. That is why, even as efforts to reduce greenhouse gas emissions continue, communities must prepare for the impacts of climate change that can no longer be avoided.

At state, local, tribal, and territorial levels, leaders are making bold decisions on ways to invest in more resilient infrastructure, revise land use, update building codes, and adjust natural resource management and other practices to improve the resilience of their communities to climate impacts. The Federal Government has a critical role to play in supporting these efforts by ensuring that Federal policies and programs incorporate climate change, incentivize and remove barriers to community resilience, and provide the information and assistance communities need to understand and prepare for climate risks. The Federal Government also has a responsibility to protect its own investments, such as military installations and space launch facilities, and ensure that the lands and resources it holds in the public trust are managed for a changing climate.

In order to better support communities across the country as they prepare for the impacts of climate change, the Task Force proposes that the Administration advance actions across the Federal Government that align with the following overarching principles:

- Require consideration of climate-related risks and vulnerabilities in the design, revision, and implementation of all Federal policies, practices, investments, regulations, and other programs.
- Maximize opportunities to take actions that have dual-benefits of increasing community resilience and reducing greenhouse gas emissions.
- Strengthen coordination and partnerships among Federal agencies, and across Federal, state, local, tribal, and territorial jurisdictions as well as economic sectors.
- Provide actionable data and information on climate change impacts and related tools and assistance to support decision-making at all levels.
- Consult and cooperate with Tribes and indigenous communities on all aspects of Federal climate preparedness and resilience efforts, and encourage states and local communities to do the same.

The diverse challenges posed by climate change will require a wide range of actions to ensure that communities across the country, large and small, are prepared. With coordination, thoughtful planning, and decisive action, Federal, State, and local governments, Tribes, and territories can ensure a safe and prosperous future.

Summary of Recommendations

1. Building Resilient Communities: Climate change will impact communities for years to come, and long-term efforts to build resilience will help communities thrive in the 21st century and beyond. By incorporating climate change considerations into its programs, the Federal Government can support communities as they rethink traditional approaches to land use and land management, building and infrastructure siting and design, and community planning.

2. Improving Resilience in the Nation's Infrastructure: Climate change poses a significant threat to the safety and reliability of critical infrastructure systems. Whether related to energy, transportation, freshwater management, coastal protection, or ecosystems, Federal action can improve the way climate impacts and greenhouse gas emissions are incorporated into public and private infrastructure investments, policies, and practices.

3. Ensuring Resilience of Natural Resources: Climate change puts America's vital natural resources and ecosystems at risk. By helping communities better protect and conserve the Nation's natural resources, the Federal Government can improve human and community resilience in cost-effective ways.

4. Preserving Human Health & Supporting Resilient Populations: Climate change presents a significant public health threat to individuals and communities, exacerbating illness and increasing the frequency and severity of dangerous extreme weather events. The Federal Government can support State, local, tribal, and territorial efforts to address the needs of populations most vulnerable to climate impacts, protect public health, and improve disaster preparedness.

5. Supporting Climate-Smart Hazard Mitigation and Disaster Preparedness and Recovery: Climate change will increase the frequency and severity of extreme weather events, which are often devastating to communities. Through more holistic hazard mitigation planning, improved data collection and mapping, partnership development, and program modernization, the Federal Government can improve efforts to prevent and mitigate the effects of extreme weather and other climate-related hazards.

6. Understanding and Acting on the Economics of Resilience: Climate change poses significant economic risk to all sectors and communities. Advancing measures to encourage more prudent investments in long-term resilience can better ensure a vibrant economic future as the climate continues to change.

7. Building Capacity for Resilience: To successfully prepare for climate change, communities must have the capacity to recognize, understand, and assess relevant climate-related hazards, risks, and impacts. The Federal Government can help communities build this capacity by continuing to shape or reshape programs, policies, information sources, and other forms of assistance that enable state, local, tribal, and territorial jurisdictions to prepare for climate change.

Additionally, the Federal Government should establish a process for tracking and reporting on progress made in the implementation of the recommendations, as well as specific benchmarks.

Task Force Recommendations

The Task Force has developed the following recommendations on key actions the Federal Government can take to better support state, local, tribal, and territorial leaders working to prepare their communities for the impacts of climate change. These recommendations focus on opportunities to remove barriers to resilient investments, modernize Federal grant and loan programs to better support and encourage local efforts, and develop the information and tools that decision makers need to understand and prepare for the impacts of climate change. Recommendations are organized across seven themes: Building resilient communities; improving resilience in the Nation's infrastructure; ensuring resilience of natural resources; preserving human health and resilient populations, supporting climate-smart hazard mitigation and disaster preparedness and recovery, understanding and acting on the economics of resilience, and building capacity for resilience.

Overarching Principles

The following overarching principles represent common threads in the Task Force discussions and recommendations, and provide high–level guidance for efforts to build National climate preparedness:

1. Require consideration of climate-related risks and vulnerabilities as part of all Federal policies, practices, investments, and regulatory and other programs.
Current Federal programs, policies, investments, and assistance mechanisms do not fully account for climate vulnerabilities and risks, resulting in Federal investments in Federal, state, local, tribal, and territorial projects that may not be appropriately designed to withstand or address potential climate-related impacts. Taxpayer dollars spent on projects that do not consider these impacts in design or execution could be wasted.

Federal programs can drive more resilient community choices by:

- Prioritizing Federal investments toward more resilient projects and disallowing Federal investments that would increase risk or vulnerability;
- Ensuring that all disaster recovery projects funded with Federal dollars are cost-effective and designed and built to avoid and withstand future climate impacts;
- Ensuring that all infrastructure and other long-lived investments made with Federal dollars are designed to be effective, accessible, and operational under future climate conditions;
- Encouraging innovative approaches that leverage private capital and existing assets; and
- Providing technical assistance to States, territories, Tribes, and communities that lack capacity to adapt to climate change.

Learning from Hurricane Sandy Resilient Rebuilding

The work of the Hurricane Sandy Rebuilding Task Force and of the many Federal agencies that provided assistance for recovery and rebuilding in the region affected by the storm demonstrate early advances in revamping Federal programming to consider resilience. For example, the Department of Housing and Urban Development (HUD) required that all of its grantees assess their vulnerabilities to current and future risks and show how they would address those risks, while the Department of Transportation (DOT) provided $3.6 billion for projects designed to increase the resilience of the transportation systems in the affected region.[10] These and other such practices can ensure responsible use of Federal dollars—a smart policy in any case, but especially important in an era of constrained resources.

[10] "Notice of Funding Availability for Resilience Projects in Response to Hurricane Sandy" *U.S. Department of Transportation,* FTA-2013-006-TPM. Federal Register, 78(248). 26 December 2013. http://www.fta.dot.gov/grants/13077_15783.html

2. Maximize opportunities to take actions that have dual-benefits of increasing community resilience and reducing greenhouse gas emissions.
Reducing greenhouse gas emissions will ultimately limit the impacts of climate change on communities. As communities develop strategies to prepare and withstand the impacts of climate change, these solutions should, where possible, utilize actions that complement or directly support efforts to reduce greenhouse gas emissions. Particular emphasis should be placed on opportunities presented by planning decisions and investments in areas including:

- The nexus between increasing demand for water for energy production and the extraordinary energy demand associated with the treatment and movement of water;
- The climate resilience and energy efficiency of transportation systems that support sustainable development and also reduce carbon emissions and related pollutants;
- Energy systems that are cleaner and more efficient, in addition to more climate-resilient; and
- The health of natural systems that provide resilience services like buffering of coastal and riverine flooding and stormwater management, while also providing mitigation benefits, including carbon sequestration and storage.

3. Strengthen coordination and partnerships among Federal agencies, and across Federal, state, local, and tribal jurisdictions and economic sectors.
The challenges posed by a changing climate cross the traditional boundaries of government agencies, economic sectors, politics, and geography. So-called "silos" among and within Federal agencies must be removed to ensure alignment of policies, practices, and resources for climate resilient planning and projects, and local voices should be at the table during development of locally relevant initiatives to ensure they have the intended effect. The Federal Government can also play an important role in promoting cooperation across jurisdictions, regions, and at multiple levels of government in order to ensure an integrated approach. As governments cannot solve these problems alone, private sector and other stakeholder involvement should be encouraged.

4. Provide actionable data and information on climate change impacts and related tools and assistance to support decision-making.
To make climate-smart planning and investment decisions at a regional, state, tribal, territorial, and local level, decision-makers need access to the best available information about climate impacts in a user-friendly and accessible format. Building on successful efforts like the National Oceanic and Atmospheric Administration's (NOAA) Regional and Integrated Sciences and Assessments program, more can be done to provide authoritative, consistent, and relevant information and tools to help inform planning and decision making at all levels.

Western Water Assessment
Salt Lake City, Utah

The Western Water Assessment (WWA)[11], based at the University of Colorado Boulder, is a program of NOAA serving Colorado, Utah, and Wyoming with climate data and research partnerships. In 2009, WWA placed a liaison in Salt Lake City, and has since partnered with Salt Lake City Municipal and universities in Utah and Wyoming to develop climate models and conduct vulnerability assessments to help the City identify climate change scenarios on a much needed local and community scale. The work is made available, through synthesis and real-time climate information interfaces, to other communities as well, allowing for dissemination of decision-relevant information.

[11] See http://wwa.colorado.edu/

5. Consult and cooperate with Tribes and indigenous communities on all aspects of Federal climate preparedness and resilience efforts, and encourage States and local communities to do the same. Through targeted and widespread engagement with Tribal, Alaska Native, and Pacific Island indigenous communities by Task Force members and Federal agency partners, consensus emerged around recommendations to support tribal and indigenous communities in preparing for the unique impacts they face as a result of climate change. The Federal Government must fully incorporate its government-to-government relationship with Tribes and Alaska Native communities into existing programs and activities that relate to climate change by enhancing self-governance capacity, promoting engagement of State and local governments with tribal communities, and recognizing the role of traditional ecological knowledge in understanding the changing climate.

"Responding to climate change must be a shared responsibility that shouldn't be constrained by our respective political boundaries, geographical locations or cultures. Minnesota experienced torrential rains and heavy flooding in 2012, and the Fond du Lac Reservation was heavily impacted. The Tribe learned the hard way that the many jurisdictions involved had not sufficiently coordinated their emergency planning. As roads were damaged and neighborhoods were isolated, we had to figure out on our own how to evacuate and house displaced residents. We have since learned that our response could have been faster and more efficient with the assistance that other agencies could have provided. Similarly, we learned that the Tribe's emergency response assets would have been helpful to others. We know now that we need to work harder to engage in multi-jurisdictional planning to best serve all our citizens."

- **Karen Diver, Chairwoman, Fond Du Lac Band of Lake Superior Chippewa**

Informed by the overarching principles above, the Task Force offers the following specific recommendations across seven themes.

Conclusion

Task Force members share a commitment to continue collaborating with the Administration as these recommendations are implemented. The Administration has already made progress by acting upon good ideas that have emerged through this process over the past year. For example, at the Task Force meeting in Washington DC on July 16, 2014, President Obama announced a series of new actions[42] responding to the Task Force's input. There is considerable work ahead that will require deliberate coordination across all levels of government and with community leaders. Moving forward, the Administration should develop a transparent and structured process for implementing the recommendations of this Task Force and should continue to engage State and local governments, Tribes, and territories in dialogue throughout the development of responsive polices and initiatives. Additionally, the Administration should:

- **Designate a senior Administration official to coordinate across Federal agencies on the implementation of the Task Force's recommendations.**

- **Establish implementation benchmarks and a process for reporting on progress.** The Administration's implementation strategy should include mechanisms to track actions and establish accountability going forward. Task Force members stand ready to support these activities and should continue to receive regular report-outs on implementation actions. Opportunities to provide feedback on progress through a convening meeting or other information-sharing forum should also be created within one year's time.

[42] See "Fact Sheet: Taking Action to Support State, Local, and Tribal leaders as They Prepare Communities for the Impacts of Climate Change," http://www.whitehouse.gov/the-press-office/2014/07/16/fact-sheet-taking-action-support-state-local-and-tribal-leaders-they-pre

HEALTH

Affordable Care Act (ACA) Employer Mandate

- The Patient Protection and Affordable Care Act's (ACA) large Employer Mandate, as currently applied to Indian Country, is inconsistent with the federal trust responsibility and Indian-specific provisions of the ACA.

- Under the Mandate, "large" employers (50 or more full-time employees) are required to provide affordable health insurance to all full-time employees or face a penalty of $2,000/per employee. The Mandate does not distinguish between Indian Health Service (IHS)-eligible employees (to whom many Tribes have historically not provided insurance) and non-Native employees. Penalties are scheduled to be assessed for the 2015 plan year in 2016.

- A majority of large Tribal employers currently provide health insurance to non-IHS eligible employees and will continue to do so. However, Tribal Nations are seeking relief from the Employer Mandate as it applies to IHS-eligible employees.

- Tribes and Tribal Organizations are urging the Obama Administration and Congress to provide relief from the Employer Mandate to Tribes and Tribal enterprises because:

    - Forcing Tribes to pay for health insurance for individuals otherwise eligible for IHS is inconsistent with the federal trust responsibility to provide care at no charge to American Indians and Alaska Natives (AI/AN).

    - The Employer Mandate conflicts with other benefits and exemptions for AI/AN in the ACA:

        - AI/AN are exempt from the ACA's "Individual Mandate" to carry health insurance or pay a penalty.

        - AI/AN are eligible for special zero and limited cost-sharing plans on the health insurance marketplaces, as well as tax credits to reduce the cost of health insurance premiums. An offer of coverage from an employer renders individuals ineligible for the tax credits, thereby making the Indian-specific plans unaffordable.

        - When faced with providing health insurance or paying the penalty, many Tribes would have no other choice but to spend a significant portion of IHS dollars to absorb this cost, diminishing services to IHS beneficiaries.

- The USET SPF maintains that the Obama Administration, namely, the Internal Revenue Service (IRS), has the authority to provide Tribal relief from the improper application of the Employer Mandate. We request that IRS guidance be issued that eliminates the penalties assessed for not providing insurance to IHS-eligible employees while also allowing these employees to access tax credits through the Marketplace.

- On July 15th, Rep. Kristi Noem (R-SD) and Sen. Steve Daines (R-MT) introduced legislation that would provide relief to Tribal employers from the Employer Mandate. The Tribal Employment and Jobs Protection Act (H.R. 3080 and S. 1771) would exempt Tribal employers, including Tribal governments and Tribal organizations, from the mandate to provide health coverage to any employee.

Special Diabetes Program for Indians (SDPI) Reauthorization

- The Federal Government has a trust responsibility to provide for the health and welfare of AI/ANs, and must continue to address major health disparities in Indian Country. Reauthorization of the SDPI will help the Indian Health System continue to build a strong foundation for a diabetes-free future for AI/ANs.

- Strong results from the SDPI programs offer hope for prevention as a method of combating the diabetes epidemic within Tribal communities. Loss of funding would be devastating and even more costly because all of the gains made through the program will be lost.

- As Tribal Nations continue to make progress in the fight against diabetes, AI/ANs in general have the highest age-adjusted prevalence of diabetes among all U.S. racial and ethnic groups, with 11.6% afflicted nationally and 22.6% in the Nashville IHS Area alone compared to 6.4% for the U.S. all races.

- Like other Indian Health programs, SDPI is underfunded. Congress has not increased funding for the program since 2002. In order to continue the long-term fight against diabetes in Indian Country, Tribal Nations are requesting a permanent reauthorization of SPDI or, if this cannot be accomplished, a multi-year reauthorization with an increase in funding.

- SDPI must be reauthorized before its expiration on September 30, 2017 in order to avoid the loss of these vital programs. Any lapse in reauthorization will cause costs of diabetes and its complications to increase again for Tribal communities, and many precious jobs created by this program will be eliminated.

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October 21, 2015

Tribal Relief from the ACA's Employer Mandate

In Brief: The Patient Protection and Affordable Care Act's (ACA) large Employer Mandate, as currently applied to Indian Country, is inconsistent with the federal trust responsibility and Indian-specific provisions of the ACA.

Issue Summary: The Employer Mandate is a costly provision of the ACA that requires "large" employers (50 or more full-time employees) to provide affordable health insurance to all full-time employees or face a penalty of $2,000/per employee. The Mandate does not distinguish between Indian Health Service (IHS)-eligible employees (to whom many Tribes have historically not provided insurance) and non-Native employees. Penalties are scheduled to be assessed for the 2015 plan year in April 2016.

Tribes and Tribal Organizations are urging the Obama Administration and Congress to provide relief from the Employer Mandate to Tribes and Tribal enterprises because:

- Forcing Tribes to pay for health insurance for individuals otherwise eligible for IHS is inconsistent with the federal trust responsibility to provide care at no charge to American Indians and Alaska Natives (AI/AN).

- The Employer Mandate conflicts with other benefits and exemptions for AI/AN in the ACA:
  - AI/AN are exempt from the ACA's "Individual Mandate" to carry health insurance or pay a penalty.
  - AI/AN are eligible for special zero and limited cost-sharing[1] plans on the health insurance marketplaces, as well as tax credits to reduce the cost of health insurance premiums. An offer of coverage from an employer renders individuals ineligible for the tax credits, thereby making the Indian-specific plans unaffordable.

- When faced with providing health insurance or paying the penalty, many Tribes would have no other choice but to spend a significant portion of IHS dollars to absorb this cost, diminishing services to IHS beneficiaries.

Proposed Administrative Solution: In the short-term, USET, along with partner organizations, is working with Treasury on an administrative delay in the enforcement of the Employer Mandate for Tribes for an additional year or longer. This will allow the Administration to consult with Tribes on the effect of the Mandate in Indian Country and consider potential solutions. Long-term, USET is advocating for a fix that would eliminate the penalties assessed for not providing insurance to IHS-eligible employees while also allowing these employees to access tax credits through the Marketplace.

Current Legislation: On July 15th, Rep. Kristi Noem (R-SD) and Sen. Steve Daines (R-MT) introduced legislation that would provide relief to Tribal employers from the Employer Mandate. The *Tribal Employment and Jobs Protection Act* (H.R. 3080 and S. 1771) would exempt Tribal employers, including Tribal governments and Tribal organizations, from the mandate to provide health coverage to any employee.

"Because there is strength in Unity"

[1] Cost-sharing is defined as co-pays, deductibles, and co-insurance.

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February 2016

Long-term Reauthorization of the Special Diabetes Program for Indians

Background on the Special Diabetes Program for Indians (SDPI)

- In response to the disproportionately high rate of type 2 diabetes in American Indian and Alaska Native (AI/AN) communities, Congress created the SDPI through the 1997 Balanced Budget Act, establishing a grant program for the prevention and treatment of diabetes in Indian Country.

- Since Fiscal Year 2013, SDPI has been extended in one year increments. However, the most recent extension as a part of the Medicare Access & CHIP Reauthorization Act of 2015 (MACRA) legislation in June of 2015, authorized two additional years at $150 million annually through September 30, 2017.

- Funding for SDPI has been flat since 2002, despite inflation and rising medical costs. Tribal Nations and Congress have made significant investments in preventing and managing the disease in Indian Country, but additional funding is sorely needed. An increase in funding will allow Tribes to continue to make strides against diabetes and help reduce the more costly complications of the disease long-term.

Diabetes Fast Facts:

Type 2 Diabetes is a serious problem in AI/ANs

- AI/ANs in general have the highest age-adjusted prevalence of diabetes among all U.S. racial and ethnic groups. The rate is 23.0% in the Nashville Area of the Indian Health Service, which is 3.5 times higher than the rate for all races in the U.S.
- AI/AN mortality from diabetes is 1.6 times higher than the U.S. general population.

SDPI has made real progress in the prevention and management of type 2 diabetes

- Between 2003 and 2014, SDPI programs in the Nashville Area:
  - Increased the number of patients with a blood sugar (a1C) level of <8 (in control) by 20%;
  - Improved control of LDL ("bad") cholesterol by 47%

SDPI is a good investment

- In 2012, the total estimated cost of diabetes in the U.S. was $245 billion. The cost of treatment for those with diabetes is 2.3 times more than care for those without. Prevention and management of type 2 diabetes translates to major savings in federal dollars.

Congressional Request:

- In order for Tribes to continue to make strides against diabetes, we are urging Congress to pass a multi-year reauthorization of SDPI with an increase to $200 million annually.

How you can help: This upcoming summer, USET will be gearing up to advocate for a long-term reauthorization of SDPI. Please invite your members of Congress to your reservation to show them how you've utilized your SDPI funds. Continue to tell stories about the successful implementation of those dollars and the benefits of SDPI to your Tribal Nations community health and wellness. Contact Hilary Andrews, USET Health Policy Analyst, handrews@usetinc.org for more information or to provide testimonials about the importance of this funding and the impact it's made for your people.

LAND

- The U.S. Supreme Court's 2009 decision in *Carcieri v. Salazar* reversed the long-standing federal process of placing land into trust for Indian Tribes, by sharply limiting the Department of Interior's authority to take land into trust only for Tribes "under federal jurisdiction" in 1934, an undefined status that is generating a wave of costly litigation. Since 1934, Republican and Democratic administrations alike have interpreted the Indian Reorganization Act (IRA) to authorize the Department of Interior (DOI) to place land into trust for all federally recognized Tribes.

- For 75 years, DOI has restored Tribal lands through trust acquisitions to enable Tribes to build schools, health clinics, hospitals, housing, and provide other essential services to Tribal members. DOI has approved trust acquisitions for approximately 5 million acres of former Tribal homelands, far short of the more than 100 million acres lost through Federal policies of removal, allotment, and assimilation.

- *Carcieri* is causing economic chaos in Indian country. The Tribal land base is a core aspect of Tribal sovereignty and represents the foundation of Tribal economies. Legal challenges to Indian land holdings acquired under the IRA threaten Tribal businesses, reservation contracts and loans, and discourage businesses from investing in Tribal economies and essential Tribal government infrastructure projects, including housing projects and schools.

- *Carcieri* has created two classes of Tribes. Those that can take land into trust and those that cannot. This has caused unequal treatment of federally recognized Tribes, which is contrary to federal law.

- The *Carcieri* decision raises significant concerns and questions about public safety and criminal jurisdiction on Indian reservations, opening the door for challenging hundreds of federal court convictions that were based on the fact that the crime occurred on Indian lands.

- Because taking land into trust for gaming purposes is subject to the provisions of the Indian Gaming Regulatory Act, the *Carcieri* Fix legislation, which amends the Indian Reorganization Act by restoring the Secretary of the Interior's authority to take land into trust for any federally recognized Tribe, would have no impact on those acquisitions.

- The confusion created by the *Carcieri* decision has spawned a growing number of legal disputes over proposed and existing trust acquisitions in which the United States, at taxpayer expense, is a defendant. More than 15 such federal lawsuits already exist. Addressing *Carcieri* through legislative action comes at NO COST to taxpayers and promotes economic development and self-sufficiency in Indian Country.

- Big Lagoon Rancheria v. State of California – Another Staggering Blow to the Stability of Indian Trust Lands: On January 21, 2014, a split panel of the Ninth Circuit, relying on the Supreme Court's decision in *Carcieri v. Salazar*, held that the State of California was under no obligation to enter into negotiations for a compact with the Big Lagoon Rancheria (the "Tribe"). The Circuit Court based this holding on the ground that the land upon which the Tribe proposed to conduct gaming was unlawfully taken into trust in 1994, nearly twenty years ago, because the Tribe was not "under federal jurisdiction" in 1934. Typically, a party would have no more than six years to challenge a land into trust acquisition. This decision, which changed the test for determining the statute of limitations, is already being used in other cases around the country to attack Tribal land holdings, raising the possibility that many Tribal lands that have been held in trust for decades could be taken out of trust status. This would dramatically magnify the economic, jurisdictional and other issues already described above.

- In the case of one Tribe, the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (Gun Lake), Congress recognized the importance of restoring certainty to current Tribal trust land holdings by passing legislation reaffirming the status of that Tribe's lands.

- With a goal of putting an end to the mushrooming litigation against lands currently held in trust, USET is supportive of legislation that would reaffirm current trust lands for all federally recognized Indian Tribes.

- For nearly 7 years, USET has actively pursued a *Carcieri* fix in the U.S. Congress but these efforts have not yet been successful due to opposition from interests that wish to leverage this basic issue of justice to advance unrelated agendas.

- In this period of time, numerous bills have been introduced to achieve this fix. USET remains committed to the advancement of legislation that:

    - Includes the two components of a *Carcieri* fix, which are (1) restoration of the Secretary's authority to take land into trust for all federally recognized Tribal Nations and (2) reaffirmation of current trust lands for all federally recognized Tribal Nations.
    - Does not include carveouts of individual Tribal Nations, gaming provisions or the establishment of a county veto power over land into trust acquisitions.

- USET calls upon both chambers of the 114th Congress to consider and pass legislation reflective of these priorities that fixes the decision in Carcieri v. Salazar, returning Indian Country and the federal government to a status quo of 75 years of prior practice—restoring the Secretary of the Interior's authority to take land into trust and reaffirming existing trust lands.

114TH CONGRESS
1ST SESSION

S. 1879

To improve processes in the Department of the Interior, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28, 2015

Mr. BARRASSO introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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A BILL

To improve processes in the Department of the Interior, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Interior Improvement Act''.

SEC. 2. DEFINITIONS.

(a) IN GENERAL.—The first sentence of section 19 of the Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act'') (25 U.S.C. 479), is amended—

(1) by striking ''The term'' and inserting ''Effective beginning on June 18, 1934, the term''; and

(2) by striking ''any recognized Indian tribe now under Federal jurisdiction'' and inserting ''any federally recognized Indian tribe''.

(b) RETROACTIVE PROTECTION.—To the extent a trust acquisition by the Secretary of the Interior pursuant to the Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act'') (25 U.S.C. 461 et seq.), is subjected to a challenge based on whether an Indian tribe was federally recognized or under Federal jurisdiction on June 18, 1934, that acquisition is ratified and confirmed.

SEC. 3. LAND ACQUISITION APPLICATIONS.

The Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act''), is amended by inserting after section 5 (25 U.S.C. 465) the following:

''SEC. 5A. LAND ACQUISITION APPLICATIONS.

''(a) DEFINITIONS.—In this section:

''(1) APPLICANT.—The term 'applicant' means an Indian tribe or individual Indian (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) who submits an application under subsection (b).

''(2) APPLICATION.—The term 'application' means an application submitted to the Department

by an Indian tribe or individual Indian under subsection (b).

''(3) CONTIGUOUS.—The term 'contiguous'—

''(A) means 2 parcels of land having a common boundary, notwithstanding the existence of non-navigable waters or a public road or right-of-way; and

''(B) includes parcels that touch at a point.

''(4) CONTIGUOUS JURISDICTION.—The term 'contiguous jurisdiction' means any county, county equivalent, or Indian tribe with authority and control over the land contiguous to the land under consideration in an application.

''(5) COUNTY AND COUNTY EQUIVALENT.—The terms 'county' and 'county equivalent' mean the largest territorial division for local government within a State with the authority to enter into enforceable cooperative agreements with Indian tribes or individual Indians, as appropriate.

''(6) DEPARTMENT.—The term 'Department' means the Department of the Interior.

''(7) ECONOMIC IMPACT.—The term 'economic impact' means any anticipated costs associated with the development of or activity on the land under consideration in an application, including associated

costs to a contiguous jurisdiction for utilities, public works, public safety, roads, maintenance, and other public service costs.

''(8) FINAL DECISION.—The term 'final decision' means a decision that is final for the Department, as determined or defined by the Secretary.

''(9) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

''(10) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(b) APPLICATIONS.—

''(1) IN GENERAL.—An Indian tribe or individual Indian seeking to have off-reservation fee or restricted land taken into trust for the benefit of that Indian tribe or individual Indian shall submit an application to the Secretary at such time, in such manner, and containing such information as this section and the Secretary require.

''(2) REQUIREMENTS.—The Secretary may approve complete applications described in paragraph (1) on a discretionary basis, subject to the condition that the application includes—

"(A) a written request for approval of a trust acquisition by the United States for the benefit of the applicant;

"(B) the legal name of the applicant, including, in the case of an applicant that is an Indian tribe, the tribal name of the applicant as the name appears in the list of recognized Indian tribes published by the Secretary in the Federal Register pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1);

"(C) a legal description of the land to be acquired;

"(D) a description of the need for the proposed acquisition of the property;

"(E) a description of the purpose for which the property is to be used;

"(F) a legal instrument to verify current ownership, such as a deed;

"(G) statutory authority for the proposed acquisition of the property;

"(H) a business plan for management of the land to be acquired, if the application is for business purposes;

''(I) the location of the land to be acquired relative to State and reservation boundaries; and

''(J) a copy of any cooperative agreement between the applicant and a contiguous jurisdiction.

''(3) FINAL DECISION.—After considering an application described in this subsection and in accordance with subsection (c) and any other applicable Federal law or regulation, a final decision to approve or deny the completed application shall be issued.

''(c) STATUTORY NOTICE AND COMMENT REQUIREMENTS.—

''(1) NOTICE AND COMMENT REQUIREMENTS FOR INITIAL APPLICATIONS.—

''(A) NOTICE.—

''(i) IN GENERAL.—Not later than 30 days after the date on which the Secretary receives an initial application, the Secretary shall make that application, whether complete or incomplete, available to the public on the website of the Department, subject to applicable Federal privacy laws.

"(ii) ADDITIONAL NOTICE REQUIREMENT.—Not later than 30 days after the date on which the Secretary receives an initial application, the Secretary shall provide by certified mail notice of the application to contiguous jurisdictions.

"(B) COMMENT.—Each contiguous jurisdiction notified under subparagraph (A)(ii) shall have not fewer than 30 days, beginning on the date that the contiguous jurisdiction receives the notice, to comment on that initial application.

"(2) NOTICE REQUIREMENT FOR ANY APPLICATION UPDATE, MODIFICATION, OR WITHDRAWAL.—

"(A) IN GENERAL.—If at any time an application is updated, modified, or withdrawn, not later than 5 days after the date on which the Secretary receives notice of that update, modification, or withdrawal, the Secretary shall make that information available to the public on the website of the Department, subject to any applicable Federal privacy laws.

"(B) INCLUSION.—If an application has been updated or modified in any way, the notice described in subparagraph (A) shall include a

description of the changes made and the updated or modified application, whether complete or incomplete, available on the website of the Department, subject to any applicable Federal privacy laws.

"(3) NOTICE AND COMMENT REQUIREMENTS FOR COMPLETED APPLICATIONS.—

"(A) NOTICE.—

"(i) IN GENERAL.—Not later than 30 days after the date on which the Secretary receives a completed application, the Secretary shall make that application available to the public on the website of the Department, subject to any applicable Federal privacy laws.

"(ii) ADDITIONAL NOTICE REQUIREMENTS.—Not later than 30 days after the date on which the Secretary receives a completed application, the Secretary shall provide by certified mail notice of the application to contiguous jurisdictions.

"(iii) PUBLICATION IN FEDERAL REGISTER.—Not later than 5 days after the date on which the Secretary receives a completed application, the Secretary shall

publish in the Federal Register notice of the completed application.

''(B) COMMENT.—Contiguous jurisdictions shall have not fewer than 30 days, beginning on the date on which the contiguous jurisdiction receives notice under subparagraph (A)(ii), to comment on that completed application.

''(4) NOTICE OF DECISION.—

''(A) IN GENERAL.—Not later than 5 days after a final decision to approve or deny an application is issued, the Secretary shall issue a notice of decision and make the notice of decision available to the public on the website of the Department.

''(B) PUBLICATION IN FEDERAL REGISTER.—Not later than 5 days after a final decision to approve or deny an application is issued, the Secretary shall publish in the Federal Register the notice of decision described in subparagraph (A).

''(d) ENCOURAGING LOCAL COOPERATION.—

''(1) IN GENERAL.—The Secretary shall encourage, but may not require, applicants to enter into cooperative agreements with contiguous jurisdictions.

''(2) COOPERATIVE AGREEMENTS.—

"(A) IN GENERAL.—The Secretary shall give weight and preference to an application with a cooperative agreement described in paragraph (1).

"(B) TERMS OF AGREEMENT.—A cooperative agreement described in paragraph (1) may include terms relating to mitigation, changes in land use, dispute resolution, fees, and other terms determined by the parties to be appropriate.

"(C) SUBMISSION OF COOPERATIVE AGREEMENT.—

"(i) IN GENERAL.—If an applicant submits to the Secretary a cooperative agreement or multiple cooperative agreements executed between the applicant and contiguous jurisdictions, the Secretary shall issue a final decision to approve or deny a complete application not later than—

"(I) 60 days after the date of completion of the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) described in clause (ii); or

"(II) if that review process is not applicable, 30 days after the date on which a complete application is received by the Secretary.

"(ii) TIMELINE.—Completion of the review process under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) described in clause (i) may refer to—

"(I) the issuance of a categorical exclusion determination in accordance with section 6.204 of title 40, Code of Federal Regulations (or successor regulations);

"(II) an environmental assessment finding of no significant impact in accordance with section 6.206 of title 40, Code of Federal Regulations (or successor regulations); or

"(III) the issuance of a record of decision in accordance with section 6.208 of title 40, Code of Federal Regulations (or successor regulations).

"(iii) EFFECT OF FAILURE TO ISSUE TIMELY FINAL DECISION.—If the Secretary

fails to issue a final decision by the date described in clause (i), the application shall be—

"(I) deemed approved on an automatic basis; and

"(II) treated as a final decision.

"(D) COOPERATIVE AGREEMENT NOT SUBMITTED.—

"(i) IN GENERAL.—If an applicant does not submit to the Secretary a cooperative agreement executed between the applicant and contiguous jurisdictions, the Secretary shall issue a written determination of mitigation by the date that is not later than 30 days after a complete application is received by the Secretary, which shall—

"(I) describe whether any economic impacts on contiguous jurisdictions have been mitigated to the extent practicable; and

"(II) explain the basis of that determination.

"(ii) DETERMINATION OF MITIGATION.—The Secretary shall consider a de-

termination of mitigation in making a final decision to approve or deny an application, but that determination shall not halt or unduly delay the regular processing of an application.

''(iii) CONSIDERATIONS.—In making a determination of mitigation described in clause (i), the Secretary shall take into consideration—

''(I) the anticipated economic impact of approving an application on contiguous jurisdictions; and

''(II) whether the absence of a cooperative agreement is attributable to the failure of any contiguous jurisdiction to work in good faith to reach an agreement with the applicant.

''(iv) NOTICE.—The Secretary shall provide by certified mail a copy of the determination of mitigation described in clause (i) to the applicant and contiguous jurisdictions not less than 5 days after a determination of mitigation is issued.

''(v) GOOD FAITH PROTECTION.—Failure to submit a cooperative agreement

shall not prejudice an application if the Secretary determines that the failure to submit is attributable to the failure of any contiguous jurisdiction to work in good faith to reach an agreement.

''(3) RECIPROCAL NOTICE AND COMMENT.—The Secretary shall also encourage contiguous jurisdictions to engage in local cooperation through reciprocal notice and comment procedures, particularly with regard to changes in land use.

''(e) IMPLEMENTATION.—

''(1) CONSULTATION.—Not later than 60 days after the date of enactment of this section, the Secretary shall initiate consultation with Indian tribes regarding the implementation of this section.

''(2) SUMMARY.—Not later than 180 days after the date on which the consultation described in paragraph (1) is initiated, the Secretary shall issue a summary of the consultation and the summary shall be published in the Federal Register.

''(3) RULEMAKING.—Not later than 60 days after the date on which the summary described in paragraph (2) is published in the Federal Register, the Secretary shall, through a rulemaking under section 553 of title 5, United States Code, modify exist-

ing regulations, guidance, rules, and policy statements, as necessary to carry out this section.

''(f) JUDICIAL REVIEW.—

''(1) IN GENERAL.—An applicant or contiguous jurisdiction may seek review of a final decision.

''(2) ADMINISTRATIVE REVIEW.—An applicant or contiguous jurisdiction may seek review in a United States district court only after exhausting all available administrative remedies.''.

SEC. 4. EFFECT.

(a) OTHER LAND DETERMINATIONS.—Nothing in this Act (or an amendment made by this Act) impacts any other Federal Indian land determination.

(b) EFFECT ON OTHER LAWS.—Nothing in this Act (or the amendments made by this Act) affects—

(1) the application or effect of any Federal law other than the Act of June 18, 1934 (25 U.S.C. 461 et seq.); or

(2) any limitation on the authority of the Secretary of the Interior under any Federal law or regulation other than the Act of June 18, 1934 (25 U.S.C. 461 et seq.).

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114TH CONGRESS
1ST SESSION

S. 1931

To reaffirm that certain land has been taken into trust for the benefit of certain Indian tribes.

IN THE SENATE OF THE UNITED STATES

AUGUST 4, 2015

Mr. MORAN (for himself and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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A BILL

To reaffirm that certain land has been taken into trust for the benefit of certain Indian tribes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RATIFICATION OF EXISTING TRUST LAND.

(a) IN GENERAL.—Any land taken into trust by the United States prior to the date of enactment of this Act for an Indian tribe that was federally recognized on the date the land was taken into trust is reaffirmed as trust land, and any action of the Secretary of the Interior in acquiring and taking into trust land under the Act of June 18, 1934 (commonly known as the ''Indian Reorganization

Act'') (25 U.S.C. 461 et seq.), is ratified and confirmed as fully and to all intents and purposes as if the action had, by prior Act of Congress, been specifically authorized and directed.

(b) INDIAN COUNTRY.—Any land taken into trust that has been ratified and confirmed by this Act shall remain Indian country in accordance with section 1151 of title 18, United States Code.

(c) ADDITIONAL LAND.—Nothing in this Act alters or diminishes the right of any federally recognized Indian tribe or the authority of the Secretary of the Interior with respect to taking additional land into trust for the benefit of the Indian tribe.

(d) APPLICATION.—This Act shall apply to all claims, including claims challenging the validity of title or the effectiveness of any action of the Secretary of the Interior acquiring and taking into trust land, that are—

(1) pending on the date of enactment of this Act; or

(2) filed on or after that date.

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114TH CONGRESS
1ST SESSION

H. R. 3137

To reaffirm the trust status of land taken into trust by the United States pursuant to the Act of June 18, 1934, for the benefit of an Indian tribe that was federally recognized on the date that the land was taken into trust, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 21, 2015

Mr. COLE (for himself, Ms. MCCOLLUM, Ms. WASSERMAN SCHULTZ, Mr. SESSIONS, Mr. BYRNE, Mr. BEN RAY LUJÁN of New Mexico, Mr. CÁRDENAS, Mr. GALLEGO, Mr. MURPHY of Florida, Ms. MICHELLE LUJAN GRISHAM of New Mexico, Mr. GRIJALVA, Ms. MOORE, Mr. RUIZ, Mr. TAKAI, Mr. BENISHEK, Mr. MULLIN, Mr. KILMER, and Mr. SIMPSON) introduced the following bill; which was referred to the Committee on Natural Resources

---

A BILL

To reaffirm the trust status of land taken into trust by the United States pursuant to the Act of June 18, 1934, for the benefit of an Indian tribe that was federally recognized on the date that the land was taken into trust, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAFFIRMATION OF STATUS AND ACTIONS.

(a) REAFFIRMATION OF TRUST STATUS.—Land taken into trust by the United States pursuant to the Act

of June 18, 1934 (25 U.S.C. 465), before the date of enactment of this Act for the benefit of an Indian tribe that was federally recognized on the date that the land was taken into trust is reaffirmed as trust land.

(b) RATIFICATION OF ACTIONS OF THE SECRETARY.—Any action taken by the Secretary of the Interior for the purpose of acquiring and taking land into trust under the Act of June 18, 1934 (25 U.S.C. 465), is hereby ratified and confirmed as fully and for all intents and purposes as if that action had been taken under a Federal law specifically authorizing or directing that action.

(c) APPLICATION.—This Act shall apply to all claims (including claims challenging the validity of title or the effectiveness of any action of the Secretary acquiring and taking land into trust) pending on the date of the enactment of this Act or filed on or after the date of the enactment of this Act.

(d) INDIAN COUNTRY.—Any land taken into trust that has been ratified and confirmed pursuant to this Act shall remain Indian country pursuant to section 1151 of title 18, United States Code.

(e) ADDITIONAL LAND.—Nothing in this Act shall alter or diminish the right of any federally recognized Indian tribe or the authority of the Secretary with respect to land taken into trust after the date of the enactment

of this Act for the benefit of a federally recognized Indian tribe.

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114TH CONGRESS
1ST SESSION

H. R. 249

To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 9, 2015

Mr. COLE introduced the following bill; which was referred to the Committee on Natural Resources

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A BILL

To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORITY REAFFIRMED.

(a) REAFFIRMATION.—Section 19 of the Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act''; 25 U.S.C. 479), is amended—

(1) in the first sentence—

(A) by striking ''The term'' and inserting ''Effective beginning on June 18, 1934, the term''; and

(B) by striking ''any recognized Indian tribe now under Federal jurisdiction'' and inserting ''any federally recognized Indian tribe''; and

(2) by striking the third sentence and inserting the following: ''In said sections, the term 'Indian tribe' means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act''; 25 U.S.C. 479), on the date of enactment of that Act.

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114TH CONGRESS
1ST SESSION

H. R. 407

To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 20, 2015

Ms. MCCOLLUM (for herself and Mr. COLE) introduced the following bill; which was referred to the Committee on Natural Resources

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A BILL

To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REAFFIRMATION OF AUTHORITY.

(a) MODIFICATION.—

(1) IN GENERAL.—The first sentence of section 19 of the Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act''; 25 U.S.C. 479), is amended—

(A) by striking ''The term'' and inserting ''Effective beginning on June 18, 1934, the term''; and

(B) by striking ''any recognized Indian tribe now under Federal jurisdiction'' and inserting ''any federally recognized Indian tribe''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect as if included in the Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act''; 25 U.S.C. 479), on the date of the enactment of that Act.

(b) RATIFICATION AND CONFIRMATION OF ACTIONS.—Any action taken by the Secretary of the Interior pursuant to the Act of June 18, 1934 (commonly known as the ''Indian Reorganization Act''; 25 U.S.C. 461 et seq.), for any Indian tribe that was federally recognized on that date of the action is ratified and confirmed, to the extent such action is subjected to challenge based on whether the Indian tribe was federally recognized or under Federal jurisdiction on June 18, 1934, ratified and confirmed as fully to all intents and purposes as if the action had, by prior Act of Congress, been specifically authorized and directed.

(c) EFFECT ON OTHER LAWS.—

(1) IN GENERAL.—Nothing in this section or the amendments made by this section shall affect—

(A) the application or effect of any Federal law other than the Act of June 18, 1934 (25 U.S.C. 461 et seq.), as amended by subsection (a) of this section; or

(B) any limitation on the authority of the Secretary of the Interior under any Federal law or regulation other than the Act of June 18, 1934 (25 U.S.C. 461 et seq.), as so amended.

(2) REFERENCES IN OTHER LAWS.—An express reference to the Act of June 18, 1934 (25 U.S.C. 461 et seq.), contained in any other Federal law shall be considered to be a reference to that Act as amended by subsection (a) of this Act.

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USET Resolution No. 2016:002

RESOLUTION URGING CONGRESS TO ENACT H.R. 3137 AND S. 1931
FEDERAL LEGISLATION TO REAFFIRM TRIBAL GOVERNMENT TRUST LANDS

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 Nations, as the Board of Directors comprises delegates from the member Nations' leadership; and

WHEREAS, Tribal Nations are sovereigns that pre-date the United States (U.S.), with prior and treaty protected rights to self-government and to our Indian lands; and

WHEREAS, the Constitution of the U.S., through the Treaty, Commerce, and Apportionment Clauses and the 14th Amendment, recognizes the sovereign status of Tribal Nations established prior to the U.S.; and

WHEREAS, before the formation of the U.S., Tribal Nations were independent sovereigns with complete authority over our lands and our citizens; and

WHEREAS, it is the policy of the U.S. to support self-determination, self-governance, and self-sufficiency as set forth in the Indian Self-Determination and Education Act of 1975 as amended, the Tribal Self-Governance Act, and other federal laws; and

WHEREAS, from the colonial era, private persons were not permitted to acquire Indian lands without the consent of the sovereign, and the U.S. adopted this legal doctrine in the Indian Non-Intercourse Act when the American Republic was founded, and

WHEREAS, in 2012, the U.S. Supreme Court handed down the Match-E-Be-Nash-She-Wish Band of Pottawatomi (Gun Lake) v. Patchak decision, which allows individuals to retroactively challenge the status of Indian lands placed into trust for the benefit of Tribal Nations; and

WHEREAS, an en banc panel of the U.S. Court of Appeals for the Ninth Circuit in Big Lagoon Rancheria v. California overturned the 3-judge panel but this question has been litigated and is being litigated in other courts, including the 11th Circuit Court of Appeals; and

WHEREAS, these decisions challenging lands taken into trust violate 240 years of federal law and policy to protect the quiet title to Indian lands; and

WHEREAS, Congress recognized the importance of restoring certainty to current Tribal trust land holdings by passing the Gun Lake Trust Land Reaffirmation Act, P.L. 113-179; and

WHEREAS, piecemeal legislation to protect the existing trust lands of individual Tribal Nations will bring about unnecessary expense to Tribal Nations and U.S. taxpayer resources, and result in the inconsistent protection of Tribal trust lands; and

WHEREAS, without legislation protecting all Tribal Nation trust lands, further mushrooming litigation in the federal and state courts will continue to threaten existing Tribal trust lands throughout Indian Country and could result in additional U.S. Supreme Court precedent adversely impacting Indian lands and Tribal sovereignty; 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 calls upon the United States Congress to enact H.R. 3137 and/or S. 1931 to protect and reaffirm current trust lands for all federally recognized Tribal Nations in fulfillment of Congress' intent through enactment of the Indian Reorganization Act.

CERTIFICATION

This resolution was duly passed at the USET Annual Meeting, at which a quorum was present, in Choctaw, MS, on 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. 2016:013

SUPPORT FOR CARCIERI FIX LEGISLATION

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 Tribal Nation's leadership; and

WHEREAS, it has been six years since the devastating United States (U.S.) Supreme Court decision in *Carcieri v. Salazar* (*Carcieri*) which limits the Secretary of the Interior's authority to place land into trust to only those Tribal Nations that were "under federal jurisdiction" as of 1934; and

WHEREAS, this ruling jeopardizes the ability of all federally recognized Tribal Nations to rebuild their homelands, provide essential government services, and secure economic development; and

WHEREAS, in the years since the *Carcieri* decision, Tribal Nations and the federal government have faced an increasing number of highly destructive legal challenges to lands currently held in trust; and

WHEREAS, advocacy and litigation on *Carcieri*, and its resulting legal challenges, have diverted precious time and resources from other worthy needs within Tribal Nations; and

WHEREAS, for more than six years, USET has actively pursued a *Carcieri* fix in the U.S. Congress but these efforts have not yet been successful due to opposition from interests that wish to leverage this basic issue of justice to advance unrelated agendas; and

WHEREAS, Senator John Barrasso, Chairman of the Senate Committee on Indian Affairs, after extensive discussions with a range of interests both inside and outside Indian Country, has introduced S. 1879, the *Interior Improvement Act* (IIA); and

WHEREAS, the IIA addresses two USET priorities, which are (1) restoration of the Secretary's authority to take land into trust for all federally recognized Tribal Nations and (2) reaffirmation of current trust lands for all federally recognized Tribal Nations; and

WHEREAS, the IIA does not include such objectionable provisions as a carve out of individual Tribal Nations, gaming provisions or the establishment of a county veto power over land into trust acquisitions; and

WHEREAS, the IIA reflects concerns that have been advocated by the counties, including encouraging, cooperative agreements between Tribal Nations and counties, but in response to Tribal Nation concerns it does not mandate those agreements; and

WHEREAS, the Assistant Secretary of Indian Affairs has stated that the IIA only codifies current Department of the Interior regulation and practice; and

WHEREAS, USET is waiting for Chairman Barrasso to offer his manager's amendment to the bill; 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 is appreciative of the efforts by Chairman Barrasso and his staff in developing a solution that addresses USET's principle goals for a Carcieri fix, and the USET Board looks forward to reviewing Chairman Barrasso's amendment.

CERTIFICATION

This resolution was duly passed at the USET Annual Meeting, at which a quorum was present, in Choctaw, MS, on 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"

TRUST MODERNIZATION

- 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 to establish a trust model that reflects a true nation-to-nation partnership built upon diplomacy that will strengthen federal trust administration, enhance federal-Tribal relations, and promote and protect Tribal sovereignty, all with the goal of building and sustaining prosperous Tribal communities.

- The U.S. government must fully recognize Tribes as nations and fully deliver upon legal obligations to Tribes, if Tribes are to exercise sovereignty without interference and/or challenge to its fullest extent. This means:

    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 Tribe must be able to decide for itself the specific role that it wants to play in the management of its own trust assets. The United States must incorporate the mandates of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) for federal actions affecting Tribes, not merely endorse UNDRIP's principles.

    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 Tribes 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**
       Indian Tribes 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 Indian Tribes 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.

- The USET SPF, along with numerous partner organizations and Tribal Nations, has developed a comprehensive trust modernization initiative based on these principles that includes both short and long term strategies in the form of legislation and administrative action.

- The USET SPF looks forward to the opportunity to collaborate with the 114th Congress and the Obama Administration on the advancement of the trust modernization initiative principles, both broadly and through action on short-term proposals. We urge Congress and the Administration to commit to this effort.

- In the long-term, the USET SPF is seeking systemic change to the trust relationship and will continue to work toward achieving this change over the coming years.

October 2015

MODERNIZING THE TRUST: REDEFINING THE UNITED STATES-TRIBAL GOVERNMENT-TO-GOVERNMENT RELATIONSHIP AND ADVANCING TRUST ASSET REFORM

KEY PRINCIPLES OF INDIAN TRUST MODERNIZATION

Defining the Federal Trust Responsibility for the 21st Century – 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 Indian Tribes were anachronistic and would gradually disappear. As a result, the current trust model requires a comprehensive overhaul to modernize 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 that Tribes have been granted their sovereign rights. A new model must be based on fulfillment by the United States of treaty obligations and the recognition and support of tribally-driven solutions. No branch of the Federal Government should be permitted to unilaterally decide whether to comply with treaties and other legally-binding agreements.

This new paradigm should follow the spirit of the Indian Reorganization Act and President Johnson's and President Nixon's Special Messages to Congress on Indian Affairs. It is time to establish a trust model that reflects a true nation-to-nation partnership **built** upon diplomacy that will strengthen federal trust administration, enhance federal-tribal relations, and promote and protect tribal sovereignty, all with the goal of building and sustaining prosperous tribal communities. These key elements of Indian trust modernization should guide legislative reform and simultaneous administrative improvements.

In return for Indian Tribes ceding millions of acres of land that make the United States what it is today, the United States has recognized and must protect the tribal right to self-government, the right to exist as distinct peoples on their own lands, as well as remaining Indian trust assets. The Constitution, treaties, statutes, Executive Orders, and judicial decisions all recognize the United States' fundamental trust relationship with tribal nations. Under this relationship, the United States has certain legal trust obligations to Tribes, which govern the federal government's administration of Indian trust property and shape its nation-to-nation relations with Tribes.

The United States' legal obligations for the administration, management, and accounting of Indian trust property have been the subject of significant litigation and many executive branch policy statements. The United States administers on behalf of Indians a wide array of trust property, including land, natural resources, and funds. The Department of the Interior's Secretarial Commission on Indian Trust Administration and Reform in 2013 urged a renewed emphasis on fiduciary obligations for this trust administration.

The United States' trust obligations also shape its special nation-to-nation relations with Indian Tribes. The United States carries out many functions on behalf of Tribes, including involvement in water rights disputes, appraisals and probate, congressional funding, and government contracting and compacting. Trust obligations should affect the outcome when there is a dispute between tribal interests and other interests. The trust obligation includes supporting inherent tribal

sovereignty. As governments, Tribes must deliver a wide range of critical services, such as education, workforce development, public safety, infrastructure, and healthcare to their citizens. Tribes have the capability as governments to oversee their own affairs and serve their citizens. As such, they should be in parity with states and local governments.

This paper lays out basic principles for trust modernization.

I. Strengthen Trust Standards – Adopt Implementing Laws and Regulations. As President Nixon recognized 45 years ago, the United States government acts as a legal trustee for the land and water rights of Indian Tribes and their members, and these rights are of critical economic importance to Indian Tribes. Moreover, the second recommendation of Congress's own American Indian Policy Review Commission in 1977 was that Congress should reaffirm and direct all executive agencies to administer the trust responsibility consistent with a set of specific legal principles. More recently, Secretary of the Interior Bruce Babbitt issued a Secretarial Order that outlined principles for the proper discharge of these trust responsibilities, and those principles were later codified in the Department of the Interior Manual. Also, in 2013, after a two-year review, the Department of the Interior's Secretarial Commission on Indian Trust Administration and Reform as its first recommendation urged that the United States government clarify that: (1) all federal agencies have a trust responsibility to Indians; (2) this trust responsibility demands a high standard of conduct; and (3) each agency is to place Indian interests before those of the agency and outside parties.

Since then, Secretary of the Interior Sally Jewell has issued a Secretarial Order that outlines additional guiding principles for honoring the trust responsibility. The Secretary should finalize these regulations after full consultation with Indian country, even as the Obama Administration and Congress develop and enact legislation to codify these trust standards in statute. The next logical step is to comply with federal consultation requirements to develop and promulgate regulations to ensure that all future administrations (including all departments, offices, bureaus, and agencies) fulfill their trust responsibilities.

II. Strengthen Tribal Sovereignty – Empower Each Tribe to Define its Path. Since 1968, every Congress and President has recognized that tribal governments are the entities best suited to meet the needs of their communities. This is 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. Empirical research also has confirmed that empowering tribal governments through a meaningful recognition of tribal sovereignty is the best way to increase economic development in Indian country. This does not just mean authorizing Tribes to administer federal programs under 638 contracts or self-governance compacts, even though that remains valuable. We must move beyond helpful but piecemeal approaches directed at specific functions or programs and start providing Indian Tribes with real decision-making in the management of their own affairs and assets. This should include, but not be limited to, allowing each tribe to decide for itself the specific role that it wants to play in the management of its own trust assets. One tribe may want to manage some or all of its assets itself with no federal interference. Another may wish to continue to have those assets managed by a federal system. Tribes have different capabilities, goals, and concerns and all of those should be respected by the federal government and its federal policies and systems.

III. Strengthen Federal Management – For Trust Assets and Programs Still Subject to Federal Control. Today, a number of federal agencies continue to institute policies that affect all Indian Tribes and allottees. This "one size fits all" approach ignores the unique differences between the individual Tribes and the unique government-to-government relationship each Tribe has with the United States under its own treaties and other agreements. Too often federal agencies apply federal regulations and environmental laws of general application to tribal assets or to public lands, with potential effects upon tribal assets, according to the best interests of the federal government, when the determination should defer to the best interests of the tribe and its tribal citizens. Such determinations should be made and implemented in collaboration with tribes.

Unfortunately, many solutions imposed by federal agencies or Congress never get changed or abolished, even when the Tribes and a federal Commission point out their shortcomings and recommend improvements. For example, Congress established the Office of Special Trustee to provide *temporary* oversight to improve federal trust management. Now, more than twenty years later, OST has become a separate bureaucracy which remains despite its apparent completion of its purpose and repeated calls to reintegrate Indian trust asset management to be more efficient, effective, and accountable. This is a significant drag on critical tribal and allottee resource use and development. Also, while the United States has settled *Cobell* and most tribal trust cases, and actively sought to reduce its trust fund management through those settlements, OST still employs hundreds of people and as of fiscal year 2015 has a budget of approximately $139 million.

IV. Strengthen Federal-Tribal Relations – One Table with Two Chairs. Like the National Council on Indian Opportunity that President Johnson established and President Nixon expanded, the new White House Council on Native American Affairs provides an invaluable opportunity for candid and frank discussions of ways to improve the lives of Native people in America. However, as was recognized by two Presidents and Congress decades ago, Indian Tribes must have a seat at the table if this entity and its efforts are to be successful. Indian Tribes' own leaders understand their communities, their needs, and their obstacles. They are therefore in the best position to make recommendations on how to address their problems, and to help develop federal approaches which will achieve the best results, in the shortest time possible, without wasting federal resources. Regardless of the role Tribes choose to play in the management of their own assets, their opinions should be sought, respected, and listened to. For all these reasons, regular, coordinated, and meaningful high-level engagement is essential if the federal government is going to properly develop, coordinate, and improve federal policies affecting tribal nations.

V. Strengthen Federal Funding and Improve Its Efficiency – A Pillar of the Trust Responsibility. None of the above proposals can succeed without sufficient and effective federal funding, which for far too long has been lacking in Indian programs and services. Federal funding is disturbingly deficient for trust administration, services, infrastructure, and contract support costs, all of which are required by treaties, statutes, and federal trust duties. Continuing these funding policies will exacerbate Indian needs, stifle tribal economies, increase federal costs, and set the stage for the next generation of *Cobell* and tribal trust mismanagement claims. Moreover, as the Department of the Interior's Secretarial Commission on Indian Trust Administration and Reform and the Department of Justice's Advisory Committee on American Indian and Alaska Native Children Exposed to Violence have both recently recognized, treaties and the trust responsibility are not discretionary. Accordingly, 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 Indian Tribes and their members and reclassify trust administration, services, and programs as non-discretionary. Finally, because federal Indian affairs funding is provided in fulfillment of clear legal and historic obligations, those federal dollars should not be subject to "means testing" or other inapplicable standards developed unilaterally by Congress or federal officials.

Intent of this Document. This document is largely comprehensive in the sense of identifying many, if not most, of the challenges and principles relative to the nature and evolution of the federal-tribal trust relationship. As a practical matter and given the rhythms and vagaries of the legislative process, it is also true that at any given time, legislation may be pending in Congress or initiatives pursued in federal agencies that address one or more—but not all—of the challenges and principles outlined above. In these cases, this document should be not understood to mean that all of the principles must be included in such legislation or administrative initiatives. Instead, this document assumes that, depending on the circumstances, any one, some, or all of the principles outlined above may be pursued as appropriate opportunities present themselves, whether administrative or legislative.

October 2015

MODERNIZING THE TRUST: REDEFINING THE UNITED STATES-TRIBAL GOVERNMENT-TO-GOVERNMENT RELATIONSHIP AND ADVANCING TRUST ASSET REFORM

KEY STRATEGIES OF INDIAN TRUST MODERNIZATION

I. Strengthen Trust Standards – Adopt Implementing Laws and Regulations

Administrative Actions:

- The President should issue a special message and a related Executive Order on Federal trust functions and responsibilities.
- DOI should develop trust responsibility regulations after full consultation with Tribes.
- The DOI Solicitor should issue an M-Opinion based on the 1978 Krulitz letter that the trust responsibility applies to all federal agencies and that sets certain implementation standards.

Legislative Actions:

- **Trust Modernization Legislation.** Congress should enact legislation that reaffirms and directs all federal agencies to comply with clear and specific federal trust responsibilities regarding actions that affect Indian interests and trust assets.
- **Tribal Tax Reform Legislation.** Congress should enact legislation that re-establishes the tribal tax base by retaining for Tribes taxes paid by residents and businesses in tribal communities.

II. Strengthen Tribal Sovereignty – Empower Each Tribe to Define its Path

Administrative Actions:

- DOI should expedite and approve trust-land acquisitions, leases, rights-of-way, and timber sales.
- DOI should encourage more Tribes to adopt tribal leasing regulations under the HEARTH Act.
- The President should issue an Executive Order on Tribal environmental regulation and jurisdiction based on Secretarial Orders 3206 and 3225 that affirms a tribal best interests determination in all environmental laws and regulations, requires federal agencies to collaborate with Tribes requesting tribal co-management of public lands, and encourages tribal ISDEAA contracts or compacts of eligible federal programs, functions, services or activities.
- Federal agencies should improve the flexibility of their programs and provide more technical assistance to accommodate the varying circumstances of Tribes.
- Federal agencies should expand support for tribal legal infrastructure development through funding, trainings, and resource workshops.

Legislative Actions:

- **Trust Modernization Legislation.** Allow Tribes to manage any or all of their own trust assets.
- **Establish Tribal Jurisdictional Authority Equivalent with Other Sovereigns.** Within their boundaries, Tribes should have authority comparable to states and the Federal government. This means jurisdiction for legislation, taxation, financial transactions, regulation, and civil and criminal court proceedings to the extent that Tribes are able to take on that authority and responsibility.
- **Exclude State and Local Jurisdiction at the Reservation Boundary.** There should be no state taxation of tribal activities on tribal lands. Also, amend the Indian Financing Act to provide that the tribal political subdivisions are nontaxable for any federal, state or local tax liability.
- **Tribal Tax Reform**. Legislation should authorize carry-back to tribes of tax revenue paid by residents and businesses in tribal communities, authorize Tribes' eligibility to monetize all tax credits, establish a revolving fund for low cost loans and tax exempt bonds, and dedicate to tribes allocations of tax credits to improve the access to credit for all Tribes.
- **Assure Tribal Control over Education of Tribal Students**. Tribes should be able to assume full control over the public and federal education systems on their lands and play a major role in the curriculum for other schools on or near their lands serving Native students.
- **Provide that All Federal Programs are Contractible or Compactible.** Indian Country has prospered when and where the federal government has authorized 638 contracting and "self-governance" compacting. These programs should be expanded to all federal programs that affect Indian country.
- **Provide for Tribal Co-Management of Subsistence Resources.** Federal agencies involved in management of subsistence resources should collaborate with Tribes to establish co-management of associated public lands, resources, and law enforcement activities.
- **Expand Protection of Off-Reservation Resources.** Tribal resources found off Tribal lands, such as sacred places, should be accorded protections consistent with Tribal values.
- **Implement the United Nations Declaration on the Rights of Indigenous Peoples.** The United States must incorporate the mandates of the UNDRIP for federal actions affecting Tribes, not merely endorse UNDRIP's principles.
- **Enact a Clean *Carcieri*-Fix**. Congress should approve a clean *Carcieri*-fix for all Tribes, that ensures all Tribes equal rights to trust acquisitions in accordance with the Tribal List Act of 1994 without exception, and does not diminish or further burden the trust acquisition process.
- **Protect Civil and Voting Rights.** Allow tribes the same right to establish polling places and to regulate voting as that of other governments.
- **Access to Capital**. Improve opportunities for on-reservation economic development by eliminating restrictions for tribal tax-exempt bonds, increasing Tribal Economic Development bonds and federal guaranteed loan programs, expanding tribal access to renewable energy grants and New Market Tax Credits, and codifying and augmenting funding for Tribal Community Development Corporations and Community Development Financial Institutions.

III. Strengthen Federal Management – For Trust Assets and Programs Still Subject to Federal Control

Administrative Actions:

- **Probate and Appraisals.** DOI should eliminate unnecessary appraisals and permit tribes to rely on independent certified appraisals, and expedite probate of allotments.
- **Conflict-of-Interest Issues.** DOI should better address and avoid potential conflicts of interest regarding implementation of federal trust responsibilities.

Legislative Actions:

- **Trust Modernization Legislation.** DOI should sunset the Office of Special Trustee and reintegrate its responsibilities to provide clear and unified supervisory authority within DOI for Indian trust management, and also should improve lease compliance and trespass enforcement.

IV. Strengthen Federal-Tribal Relations – One Table with Two Chairs

Administrative Action:

- President Obama should restructure the White House Council on Native American Affairs to provide for direct Tribal representation selected by Tribes themselves.
- Federal agencies should assess and revise the metrics used to evaluate federal programs for Tribes and tribal enterprises.
- Federal agencies should expand outreach to Tribes to increase awareness and knowledge of federal programs, policies, and funding opportunities, including creation of a one-stop shop clearinghouse for information.

Legislative Actions:

- **Trust Modernization Legislation.** Congress should establish a council or commission based on the White House Council on Native American Affairs, but including direct Tribal representation selected by Tribes themselves, like the Tribal/Interior Budget Council.
- **Fulfill Treaty Obligations for Tribal Members of Congress.** Several treaties provide for a tribal representative in Congress, though there is not one. Such a representative should have a status no less than that enjoyed by delegates from Puerto Rico and the District of Columbia. Having a congressional delegate should not diminish the representative obligations of members of Congress with Indian constituents and should not undermine the ability of the Indian Affairs committees to do their work.
- **Establish a Cabinet-Level Position.** The position of Assistant Secretary of Indian Affairs should be elevated to a Cabinet-level position within the Administration, with the authority to report directly to the President. Ambassadorial status should be accorded to federal representatives to Indian Country and Indian Country representatives to the federal government.

- **Monitor the Implementation of UNDRIP in the United States.** Establish a mechanism to monitor the implementation of UNDRIP in the United States. Support the full participation of Indigenous governments at the United Nations through regular and permanent status. Recognize the right of tribes under UNDRIP to free, prior, informed consent (FPIC) for federal actions affecting Tribes.

V. Strengthen Federal Funding and Improve Its Efficiency – A Pillar of the Trust Responsibility

Administrative Actions:

- Federal agencies should review and improve existing studies, data, and analyses regarding tribal programs and circumstances to augment federal budget justifications.
- Federal agencies should propose budgets that fully fund the trust responsibility.
- The President's budget should fully fund the trust responsibility.
- Indian budgets should be handled through the mandatory component of the federal budget.

Legislative Actions:

- Congress should enact appropriations bills that fully fund the trust responsibility.
- Congress should enact legislation that amends the Indian Financing Act to provide to tribal governments federal income tax revenues of tribal citizens and otherwise modernize that Act to foster economic activity on reservations.

Intent of this Document. This document is largely comprehensive in the sense of identifying many, if not most, of the challenges and principles relative to the nature and evolution of the federal-tribal trust relationship. As a practical matter and given the rhythms and vagaries of the legislative process, it is also true that at any given time, legislation may be pending in Congress or initiatives pursued in federal agencies that address one or more—but not all—of the challenges and principles outlined above. In these cases, this document should be not understood to mean that all of the principles must be included in such legislation or administrative initiatives. Instead, this document assumes that, depending on the circumstances, any one, some, or all of the principles outlined above may be pursued as appropriate opportunities present themselves, whether administrative or legislative.

January 2016

INDIAN TRUST MODERNIZATION PRINCIPLES AND SHORT-TERM ADMINISTRATIVE PROPOSALS

I. Strengthen Trust Standards

- Essential trust responsibilities for all federal agencies must be reaffirmed based on foundational history and clear and specific legal principles.

- After proper consultation with Indians, the DOI Solicitor should issue a new M-Opinion to update the 1978 letter by DOI Solicitor Krulitz on the nature and scope of federal trust responsibilities, and the Secretary of the Interior should promulgate regulations to implement recommendations of the AIPRC and the SCITAR and to codify 303 DM 2 and Secretarial Orders 3175, 3215, and 3335.

- President Obama should issue a corresponding Executive Order that affirms federal trust responsibility obligations for all federal agencies and that affirms the best interests determination in favor of tribes in all environmental and administrative determinations.

II. Strengthen Tribal Sovereignty

- Indian tribes should be empowered to comprehensively manage their own trust assets and affairs in order to remove bureaucratic hurdles and better develop their economies, jobs, and resources based on the needs and priorities of their citizens and communities.

- The BIA should expedite trust-land acquisitions, leases, rights-of-way, and timber sales, encourage more tribal self-governance compacts with bureaus of DOI and other Departments such as HHS, expand the 477 program to HHS and improve its implementation, continue to facilitate tribal HEARTH Act regulations, and encourage collaboration with tribes in negotiating co-management for public lands and environmental laws impacting tribes.

- DOI should promulgate regulations based on Secretarial Orders 3206 and 3225 beyond ESA to recognize that Indian tribes are the appropriate governments to manage their lands and resources, which are not subject to federal public lands laws.

- DOI should promulgate regulations based on Indian trader laws to preempt dual taxation.

- Federal agencies should improve program flexibility and technical assistance for Tribes.

- The DOI Solicitor should rescind or reverse the decades-old opinion holding that Indians are taxpayers because of the Citizens Act.

III. Strengthen Federal Management

- Ongoing federal management of Indian trust assets should be more efficient and effective and should respect and defer to tribes' jurisdiction and authority over tribal lands and resources, as well as tribes' and individual Indians' decisions regarding use of their lands and resources.

- DOI should expedite probates and appraisals, including allowing independent certified appraisals.

- The Office of the Special Trustee for American Indians should report to Congress on the projected completion of required reforms and then be reintegrated into a single Indian Affairs organization in fulfillment of the 1994 Trust Reform Act and in accordance with the recommendation of the Secretarial Commission on Indian Trust Administration and Reform.

- Federal agencies should better address and avoid potential conflicts of interest regarding implementation of federal trust responsibilities, including the duties to act solely in the interest of the beneficiary and to protect Indian trust resources and make them productive.

IV. Strengthen Federal-Tribal Relations

- Regular, high-level federal-tribal consultation is needed to properly develop, coordinate, and improve Indian policies across all federal agencies, as previously recognized by Presidents Johnson and Nixon and Congress.

- President Obama should issue an Executive Order to reestablish and improve the National Council on Indian Opportunity by including regionally representative, tribally nominated, and presidentially appointed tribal leaders as full members of the White House Council on Native American Affairs.

- President Obama should issue a Presidential special message on federal trust responsibilities similar to President Lyndon Johnson's Special Message to the Congress on the Problems of the American Indian dated March 6, 1968 and President Nixon's Special Message to the Congress on Indian Affairs dated July 8, 1970.

- President Obama should fully adopt and endorse the U.N. Declaration on the Rights of Indigenous Peoples and call on Congress for oversight for its implementation, and support the full participation of Indigenous governments at the United Nations through regular and permanent status.

- Federal agencies should assess and revise the metrics used to evaluate federal programs for Tribes and tribal enterprises.

V. Strengthen Federal Funding

- Federal agencies should review and improve existing studies, data, and analyses regarding tribal programs and circumstances to augment federal budget justifications.

- Federal funding for trust administration, services, infrastructure, and contract support costs all should be reclassified as non-discretionary, increased to levels necessary to fulfill the federal trust duties, and not be subject to means testing.

- President Obama and all federal agencies should propose budgets that fully fund all aspects of the federal trust responsibility, and to classify those functions as mandatory components of the federal budget.

- The U.S. Commission on Civil Rights should issue a follow up report on its 2003 Quiet Crisis Report on Federal Funding and Unmet Needs in Indian Country, and President Obama should develop an action plan to address and respond to that report.

- The Office of Management and Budget should provide additional information to tribal leaders on all proposed federal expenditures that affect Indians.

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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 21st 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.

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"

Advancing the Trust Responsibility
Bold Concepts for a Fairer and More Prosperous Future
For Indian Country

Introduction. In response to widespread dissatisfaction in Indian Country with the Federal government's implementation of the trust responsibility and the resulting impact on Tribal sovereignty, USET has been exploring the idea of a fundamental review of the Federal trust responsibility, as well as its impact on Tribal sovereignty, with the intent of building a new framework for Tribal-Federal relations that provides Tribes with an equal say in the defining of that relationship, instead of it almost entirely being defined by the Federal government. This analysis starts from the conclusion that the defects in the trust responsibility are systematic in nature and therefore must be addressed at the systematic level.

In a prior document, USET staff presented to the USET Board key questions that need to be addressed to advance a new framework for the trust responsibility and Tribal sovereignty. That document proposed some conceptual answers to those questions. In this document, those answers are made more specific.

It should be noted that any attempt to define the actual, real-world scope of tribal sovereignty and the trust responsibility faces the dilemma that once defined in such a precise way, it would be difficult to expand those definitions. On the other hand, the fact that the scope of these two doctrines remains ambiguous is one of the reasons why the Federal government is able to provide far less support for tribal sovereignty and for fulfillment of the trust responsibility than Indian Country believes these doctrines require.

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1. **What should Tribal sovereignty look like?** Among Tribal Nations there is a wide range of sovereign authority, with some Tribes exercising substantial (although not total) sovereign powers over their lands and peoples, while others operate with an authority that is more like a municipal government, subject to substantial state control and dominance. Even for those Tribes that exercise the maximum amount of Tribal sovereignty, that sovereignty is limited compared to the authority of other sovereigns, such as the federal and state governments. For example, Tribes have very limited jurisdiction over non-Indians that come onto Tribal lands, even though the federal government, states and even cities exercise virtually full jurisdiction when non-citizens come within their territorial limits.

    - **Self-Governance – More Than Just Control of Federal Dollars.** In Indian law, "self-governance" is principally used to refer to those Tribes that have chosen to assume control of, and the authority to, reallocate certain Federal program dollars.

However, true self-governance, like true sovereignty, is running one's own affairs, free of unwarranted state and federal interference.

- **Jurisdictional Authority – Equivalency with Other Sovereigns.** Within their boundaries, tribes should have jurisdictional authority comparable to what the states enjoy, and even the Federal government. This means both legislative jurisdiction (lawmaking) and adjudicative jurisdiction (jurisdiction of the tribal court system over criminal and civil matters). To the extent that not every tribe has the funding or the developed governmental entities to implement a mature jurisdictional system, than some accommodation should be made for a rational transition as tribes are able and interested in assuming these powers.

- **Exclusion of Other Sovereign Authority - State and Local Jurisdiction Stops at the Reservation Boundary.** So, for example, there should be no state taxation of tribally related activities on tribal lands. Just as one state cannot generally tax activities in another state, no state should be able to tax activities, including non-Indian activities, within Tribal boundaries. The federal government's authority should also be curtailed within Tribal boundaries, meaning that the federal government's power is not necessarily "plenary," but to the extent it is not, the remaining power is with the Tribe and not with the state.

- **Control over Education of Tribal Students**. Tribes should be able to assume, at their option, complete control over the public and federal education systems that operate on their lands and play a major role in the curriculum for other schools on or near their lands serving Native students. Tribes should have greater control over the education of their students with Federal support for a stronger emphasis on Tribal culture and language.

2. **What should the trust responsibility look like?** One of the paradoxes of Indian law and policy is that the trust responsibility is the source of much Federal authority to act in Indian affairs, even to the detriment of Tribal sovereignty. Despite this paradox, the trust responsibility is a key component of Federal Indian law and an important safeguard in warding off intrusions by state governments. At a minimum the trust responsibility should provide that the Federal government has a *tribally enforceable* obligation to ensure that reservations are habitable by today's standards, including that they have decent schools, hospitals, public safety and infrastructure and that Tribal governments are empowered to create an environment hospitable to economic development.

    - **Federal Funding for Indian Programs Should Meet Actual Need.** Federal funding levels should support decent schools, hospitals, public safety, social services, housing, roads and other infrastructure. For example, the IHS is funded at 60% of need; it should be funded at 100% of need.

    - **Federal funding of Indian programs Should be Treated as Entitlement, not Discretionary, Funding.** Indian program funding should not be subject to the

arbitrariness of the regular appropriations process but, rather, should reflect that it is the fulfillment of a federal legal obligation. Such funding should also go directly to Indian Country and not pass through the States;

- **All Federal programs should be contractible or compactible.** Indian Country has prospered when the federal government has stopped its paternal practices, such as through 638 contracting and "self-governance" compacting. These programs should be expanded to all federal Indian programs.

- **Trust responsibility should be based on Federal legal obligations and not dependent on the economic status of a tribe (i.e., no means testing), although tribes, at their own option, could opt out of Federal programs.** The trust responsibility should not vary depending on whether a Tribe is doing better or worse. It is not an economic indicator, but rather a fundamental obligation of the United States. However, the trust responsibility should support Tribal empowerment and self-sufficiency so that Tribe's may achieve economic sustainability.

- **Each Tribe should be empowered to negotiate the details of the application of the trust responsibility with the Federal government as best meets the need of that tribe.** There is wide variability among Tribes and what they seek out of the government-to-government relationship with the United States. Each Tribe should be able to negotiate the details of the application of the trust responsibility to it.

- **Tribal Congressional Delegate.** Several treaties provide for a tribal representative in the Congress, though there is not one. Such a representative should have a status no less than that enjoyed by delegates from Puerto Rico and the District of Columbia. Having a congressional delegate should not diminish the representative obligations of members of Congress with Indian constituents and should not undermine the ability of the Indian Affairs committees to do their work.

- **Land Reform.** There are a wide range of improvements that could be made to the status of Indian lands. For example, there should be a strong presumption in favor of land going back into trust at the request of a Tribe, especially given that Indian land was effectively stolen and the current process takes years, with the states and counties seeking veto power. In general, tribal land rights and control should be strongly enhanced, including tribal ability to move land into restricted fee status. See generally, the recommendations of the Indian Land Tenure Foundation. Land reform includes, along with jurisdiction, the authority of Tribes to protect their natural resources.

- **Implementation of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples.** Although the United States claims that it already has implemented the provisions of UNDRIP, most Tribal leaders would disagree.

- **Limitation of state involvement in Federal and Tribal actions to a right of consultation not a veto power.** State governments constantly seek a veto power over Indian affairs. Rather than a veto power, state governments should be provided a right of consultation, and no more.

- **Cabinet-Level Position.** The position of Assistant Secretary of Indian Affairs should be elevated to a Cabinet-level position within the Administration, with the authority to report directly to the President. Ambassadorial status should be accorded to federal representatives to Indian Country and Indian Country representatives to the federal government.

- **Tribes Should not Just have Consultation Rights, but Approval Rights over Federal Actions Impacting Tribes.** In addressing Federal actions that affect Tribes, Tribes should not only be consulted, but in many cases have the right to approve or disapprove those actions.

- **Expanded Protection of Off-Reservation Resources.** Tribal resources found off Tribal lands, such as sacred places, should be accorded protections consistent with Tribal values.

3. **How we get there – Tribal Excellence in Government.** Many of these goals would be difficult to achieve in the current environment. As Tribes seek recognition of their sovereign rights, others resist, deeming Tribal sovereignty a threat to their own power or sovereignty. Therefore, it is important to demonstrate that stronger and more effective Tribal governments are not only good for Tribes, but also good for surrounding communities, the states within which the Tribes reside, and the United States, as a whole. There is already substantial evidence, assembled by such entities as the Harvard Project on American Indian Economic Development, that empowering Tribal governments leads to economic success, providing many benefits to surrounding communities. In some cases, especially where Tribes have assumed an important governmental or social function (e.g., creating jobs, providing fire, police and emergency services, etc.), this has been recognized by the impacted non-Indian communities.

    - **Formation of a Joint Tribal-Federal Commission.** Historically, major changes in Indian law and policy have often been guided by a Federal report assessing the status of Native communities and making proposals that laid out a blueprint for future action. For example, the Merriam Report of 1928 led directly to passage of the Indian Reorganization Act of 1934, and American Indian Policy Review Commission report, submitted to Congress in 1977, laid the groundwork for much legislation that followed. A new era for Indian Tribes should begin with the establishment of a joint Federal-Tribal commission to define a new Tribal sovereignty and trust framework. In support of such a joint commission, Indian country needs to do further intellectual work, through consultation with leading scholars, development of a "think tank", and engagement with Congress through

hearings and roundtables with key Congressional committees on the three questions set forth above.

- **Issuance of a Report.** The Commission would be tasked with the issuance of a Tribal-Federal report on the future of the trust responsibility and Tribal sovereignty that would serve as a framework for legislative and policy changes in the coming years.

Conclusion. USET seeks to define a path for advancing Tribal sovereignty and the trust responsibility in the 21st Century through the articulation of a clear and rational vision of what they should look like and in a form that can be broadly supported across the political spectrum. USET welcomes the further comments of its Board and supporters in achieving this end.

United Nations Declaration on the Rights of Indigenous Peoples

Resolution adopted by the General Assembly

[*without reference to a Main Committee (A/61/L.67 and Add.1)*]

61/295. United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006,[1] by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006, by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

107th plenary meeting
13 September 2007

Annex

United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

[1] See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 53* (A/61/53), part one, chap. II, sect. A.

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social

progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights[2] and the International Covenant on Civil and Political Rights,[2] as well as the Vienna Declaration and Programme of Action,[3] affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

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[2] See resolution 2200 A (XXI), annex.

[3] A/CONF.157/24 (Part I), chap. III.

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights[4] and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to

[4] Resolution 217 A (III).

their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(*a*) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(*b*) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(*c*) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(*d*) Any form of forced assimilation or integration;

(*e*) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources

equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law

and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

FUNDAMENTALS OF INDIAN LAW

H.R. 3764: The Tribal Recognition Act

- On October 20, 2015, Representative Rob Bishop (R-UT), Chairman of the House Natural Resources Committee, introduced H.R. 3764, the *Tribal Recognition Act*. This legislation would eliminate executive branch's well-established authority to recognize Native Nations, placing the responsibility solely in the hands of Congress.

- The USET SPF continues to express its strong opposition to the *Tribal Recognition Act*, which would force Tribal Nations to petition Congress for federal recognition. We are deeply concerned that placing sole authority for recognition in the hands of Congress will inject unrelated political considerations into a process that is at the heart of the federal trust responsibility.

- The USET SPF has no position on revisions to the executive recognition process, known as Part 83, the Part 83 Federal Acknowledgement Process, as administered by the Bureau of Indian Affairs. While there may be differences of opinion regarding the appropriate standards of review in the revised Part 83 Process, there is overwhelming agreement within Indian Country that the Secretary is well-positioned to recognize Tribes on behalf of the United States.

- The government-to-government relationship between Tribal Nations and the United States begins at the point where each recognizes the sovereignty of the other. For this reason it is important that the federal government have in place a credible, non-politicized process for determining which Tribal Nations it recognizes. Executive recognition provides an orderly process, administered by experts, such as ethno-historians, genealogists, anthropologists, and other technical staff, that is insulated from political considerations unrelated to the historic legitimacy of a Tribal Nation.

- The United States Congress and numerous courts have repeatedly acknowledged the Secretary of the Interior's authority to extend recognition to Tribal Nations. This spring, USET, along with eight other Tribal Nations and Tribal Nation organizations, submitted testimony for the record of the hearing of April 22nd to this Subcommittee providing legal validation and support for the Secretary's authority to acknowledge Tribal Nations.

- Although Congress has properly delegated authority to the Executive Branch to make a determination regarding the federal recognition of Tribal Nations, the Executive Branch also has independent recognition authority granted by the Constitution. The Constitution grants the Executive Branch authority to undertake diplomatic and administrative actions consistent with federal recognition. This authority is most clearly granted through the Constitution's Treaty Clause.

- The USET SPF urges Members of the 114th Congress to oppose H.R. 3764 and encourage Chairman Bishop to work directly with Tribal Nations to address any changes that Congress might appropriately adopt to improve this important process. USET believes strongly that no one branch of the government holds sole plenary authority and that all branches share equally in the federal trust responsibility, opposing any effort that fails to fully recognize the obligations and authorities of each.

- In accordance with its charge, we encourage the House Natural Resources Subcommittee on Indian, Insular, and Alaska Native Affairs to look to the priorities of Indian Country and hear the voices of our Tribal leaders, as it sets its agenda for the second session of the 114th Congress.

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USET Resolution No. 2016:001

OPPOSITION TO ALL CONGRESSIONAL EFFORTS TO ERODE THE SECRETARY OF THE INTERIOR'S AUTHORITY TO RECOGNIZE TRIBAL NATIONS

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 Tribal Nation's leadership; and

WHEREAS, the government-to-government relationship between Tribal Nations and the United States begins at the point where each recognizes the sovereignty of the other and for this reason it is important that the federal government have in place a credible, non-politicized process for determining which Tribal Nations it recognizes; and

WHEREAS, USET has passed several resolutions supporting administrative recognition over legislative recognition, because administrative recognition provides an orderly process, administered by experts, such as ethno-historians, genealogists, anthropologists, and other technical staff, that is insulated from political considerations unrelated to the historic legitimacy of a Tribal Nation; and

WHEREAS, on April 22, 2015, the House Natural Resources Committee held an oversight hearing, entitled, "The Obama Administration's Part 83 Revisions and How They May Allow the Interior Department to Create Tribes, not Recognize Them"; and

WHEREAS, the preparatory hearing memorandum and the testimony of one hearing witness erroneously claimed that the Department of the Interior has been illegally recognizing Tribal Nations through the Part 83 Federal Acknowledgment Process since 1978 and only Congress has the authority to recognize Tribal Nations; and

WHEREAS, in passing this resolution USET is not commenting in any fashion on the merits of the revisions to the Part 83 process, for which USET has no position; and

WHEREAS, Congress has repeatedly acknowledged the Secretary of the Interior's authority to extend recognition to Tribal Nations, including through the Part 83 Process; and

WHEREAS, the courts have repeatedly affirmed that the Secretary of the Interior has properly exercised an Executive function or acted pursuant to delegated Congressional authority in promulgating regulations governing federal recognition; and

WHEREAS, the Executive Branch has long exercised authority to extend federal recognition to Tribal Nations through various means, and the Secretary's federal recognition regulations are not ultra vires or unconstitutional; and

WHEREAS, on October 20, 2015, Representative Rob Bishop, Chairman of the House Natural Resources Committee, introduced H.R. 3764, the Tribal Recognition Act of 2015; and

WHEREAS, H.R. 3764 would terminate the Secretary's well-established authority to recognize Tribal Nations and forces Tribal Nations to petition Congress for federal recognition; and

WHEREAS, H.R. 3764 would have the effect of injecting unrelated political considerations into the federal acknowledgment process and subjecting acknowledgement decisions to the unpredictability of the legislative process; and

WHEREAS, on May 6, 2015, USET, along with eight other Tribal Nations and organizations, submitted comments to the House Natural Resources Committee providing legal validation and support for the Secretary's authority to acknowledge Tribal Nations; 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 strongly opposes all legislative attempts to erode the Secretary of the Interior's well-established legal authority to recognize Tribal Nations.

CERTIFICATION

This resolution was duly passed at the USET Annual Meeting, at which a quorum was present, in Choctaw, MS, on October 27, 2015.

Brian Patterson, President
United South and Eastern Tribes, Inc.

Lynn Malerba, Secretary
United South and Eastern Tribes, Inc.

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Testimony of Brian Patterson, President, United South and Eastern Tribes, Inc.
Before the House Natural Resources
Subcommittee on Indian, Insular and Alaska Native Affairs

For the hearing of December 8, 2015 on H.R. 3764, The Tribal Recognition Act

Chairman Bishop, Ranking Member Grijalva, Chairman Young, Ranking Member Ruiz, members of the Subcommittee: thank you for providing me with the opportunity to testify on H.R. 3764, the Tribal Recognition Act. My name is Brian Patterson. In addition to serving as Bear Clan Representative to the Oneida Nation Men's Council, I am serving in my fifth term as President of United South and Eastern Tribes, a non-profit, inter-tribal organization representing 26 federally recognized Tribal Nations from Texas to Florida and up to Maine. USET is dedicated to enhancing the development of its Member Tribal Nations, to improving the capabilities of these governments, and assisting USET Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people. This includes ensuring each branch of the federal government works to fulfill solemn obligations to Tribal Nations.

As USET and others have previously noted, the Part 83 Federal Acknowledgement Process, as administered by the Bureau of Indian Affairs, is vital to fulfillment of the trust responsibility, as well as authorized and upheld by Congress, the judicial branch, and the Constitution. While there may be differences of opinion regarding the appropriate standards of review in the revised Part 83 Process, there is overwhelming agreement within Indian Country that the Secretary is well-positioned to recognize Tribes on behalf of the United States. As such, we urge this Subcommittee to consider whether the unique and sacred diplomatic relationship between our respective sovereign Nations is best served by the proposed wholesale elimination of Executive branch recognition via H.R. 3764.

I would like to note that many of USET's Member Tribal Nations' diplomatic relations with the United States were achieved through executive processes, including the Part 83 process. For those Tribes who have gone through executive processes, there is no doubt that they were "lawfully" recognized as a matter of constitutional and statutory authority; just as importantly, the process in USET's experience assured that those that were recognized were justifiably recognized as a matter of history and moral right.

The government-to-government relationship between Tribal Nations and the United States begins at the point where each recognizes the sovereignty of the other. For this reason it is important that the federal government have in place a credible, non-politicized process for determining which Tribal Nations it recognizes. Executive recognition provides an orderly process, administered by experts, such as ethno-historians, genealogists, anthropologists, and other technical staff, that is insulated from political considerations unrelated to the historic legitimacy of a Tribal Nation. USET is deeply concerned that placing sole authority for recognition in the hands of Congress will unduly inject unrelated political considerations into a process that is at the heart of the federal trust responsibility.

While federal recognition via Act of Congress is one way the federal government acknowledges Tribal Nations, it should not be the only way. As this body well knows, critical pieces of legislation, including those of a non-controversial nature, are sidelined or stymied, with increasing frequency, due to the mercurial nature of the political process. A common criticism of Part 83 is the length of time associated with receiving a decision. While H.R. 3764 does include deadlines for recommendations from the Secretary of the Interior, it places no deadline on

the introduction of corresponding legislation, should Congress agree with the Secretary's positive determination. Moreover, even if the legislation were to prescribe a timeline, there is virtually no way to assure that a federal recognition bill would not languish in Congress for months, years, or even indefinitely for reasons unrelated to the merits of a Tribe's request for federal recognition.

In addition to concerns related to the political process, it is essential to recognize that the United States Congress and numerous courts have repeatedly acknowledged the Secretary of the Interior's authority to extend recognition to Tribal Nations. This spring, USET, along with eight other Tribal Nations and Tribal Nation organizations, submitted testimony for the record of the hearing of April 22nd to this Subcommittee providing legal validation and support for the Secretary's authority to acknowledge Tribal Nations. As the testimony notes, Congress has properly delegated authority to the Executive Branch to recognize Tribal Nations through 25 U.S.C. § 2, 25 U.S.C. § 9, and 43 U.S.C. § 1457. Like Congress's constitutional grant of recognition authority through the Indian Commerce Clause, the statutes delegating recognition authority to the Executive Branch do so in broad terms. Many courts have recognized Congress's proper delegation of recognition authority through these broad statutes. Congress, when it enacted the 1994 Federally Recognized Indian Tribe List Act, reiterated its past delegation of recognition authority to the Executive Branch.

There are currently 566 federally recognized Tribal Nations included on the list the Department of the Interior maintains at the direction of Congress. Congress has authority to initiate a government-to-government relationship, but most Tribal Nations did not receive federal recognition in this manner. Instead, many Tribal Nations received federal recognition via the Executive Branch. The standards the Executive Branch uses for determining whether an entity possesses sovereign Tribal government status for purposes of federal law grew out of case law, drawing from cases that articulate where Tribal Nations' inherent sovereignty originated, how they maintained that sovereignty over time, and what their political governing structure must entail.

Although Congress has properly delegated authority to the Executive Branch to make a determination regarding the federal recognition of Tribal Nations, the Executive Branch also has independent recognition authority granted by the Constitution. The Constitution grants the Executive Branch authority to undertake diplomatic and administrative actions consistent with federal recognition. This authority is most clearly granted through the Constitution's Treaty Clause. The Constitution also grants the Executive Branch the authority to receive and provide ambassadors.

The Executive Branch has exercised its constitutionally-granted recognition authority in various ways. Long before Congress delegated recognition authority to the Executive Branch, the Executive Branch engaged in treaty negotiations with Tribal Nations. President George Washington entered into and then worked with the Senate to ratify the first treaties in 1789, thereby establishing that treaties with Tribal Nations would utilize the same process treaties with foreign nations must go through. Before the treaty-making era ended in 1871, most Tribal Nations had entered into a treaty with the United States. Although the Senate was involved in ratifying these treaties, the Executive Branch utilized its constitutional treaty-making authority and was therefore the governmental branch responsible for treaty-making with Tribal Nations.

Courts have found that the Executive Branch's treaty negotiations with Tribal Nations constitute federal recognition. The Department of the Interior in making determinations regarding whether a Tribal Nation is federally recognized has also treated treaty negotiations as indicative of federal recognition. Also evidencing federal recognition, and often resulting from treaties, is a federal reservation created for a Tribal Nation. In fact, in defining "tribe" in the Indian Reorganization Act, Congress acknowledged that "Indians residing on one reservation" possess sovereign Tribal government status.

Since the treaty-making era ended, the Executive Branch has legally federally recognized Tribal Nations through other means. For example, the Executive Branch replaced treaties with executive orders immediately after treaty-making ended. When Congress enacted the Indian Reorganization Act in 1934, the Department of the Interior conducted sovereign Tribal government status examinations to determine which Tribal entities were eligible for benefits under the Act, thus resulting in their recognition. In 1978, the Department of the Interior promulgated the federal recognition regulations in order to create a more consistent process for federal recognition, and it published its first comprehensive list of federally recognized Tribal Nations in 1979.

As USET has discussed in testimony submitted for the record of the October 28th hearing, if Congress now attempts to restrict the Executive Branch's recognition authority through H.R. 3764, that legislation would likely be deemed unconstitutional. We urge that you reconsider H.R. 3764 and instead work directly with Tribal Nations to address any changes that Congress might appropriately adopt to improve this important process. USET believes strongly that all branches of government share equally in the federal trust responsibility and opposes any effort that fails to fully recognize the obligations and authorities of each. We welcome the opportunity for Tribal Nations and Tribal Nation Organizations to work with this Subcommittee and Chairman Bishop to address and improve the Federal Acknowledgement Process so that it better reflects our country's commitment to a government-to-government relationship with Tribal Nations, including as they are recognized.

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October 28, 2015

Representative Rob Bishop
Chairman
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Bishop,

On behalf of United South and Eastern Tribes we write in strong opposition to the proposed elimination of the Secretary of Interior's well-established legal authority to recognize American Indian groups via the federal acknowledgement process, thereby forcing Tribes to petition Congress for federal recognition. We are deeply concerned that placing sole authority for recognition in the hands of Congress will unduly inject unrelated political considerations into a process that is at the heart of the Federal trust responsibility.

The government to government relationship between Tribal Nations and the United States begins at the point where each recognizes the sovereignty of the other. For this reason it is important that the Federal government have in place a credible, non-politicized process for determining which Tribes it recognizes. Administrative recognition provides an orderly process, administered by experts, such as ethno-historians, genealogists, anthropologists, and other technical staff, that is insulated from political considerations unrelated to the historic legitimacy of a Tribe.

The United States Congress and numerous courts have repeatedly acknowledged the Secretary of the Interior's authority to extend recognition to Indian Tribes. United South and Eastern Tribes, along with eight other Tribes and Tribal organizations, submitted comments for the record of the hearing of April 22nd to the House Natural Resources Committee providing legal validation and support for the Secretary's authority to acknowledge Tribes. While there may be differences of opinion regarding the revised Part 83 federal recognition process, there is overwhelming agreement within Indian Country that the Secretary is well-positioned to recognize Tribes.

We urge that you reconsider this proposed legislation and instead work directly with Tribes to address any changes that Congress might appropriately adopt to improve this important process. USET believes strongly that all branches of government share equally in the federal trust responsibility and opposes any effort that fails to fully recognize the obligations and authorities of each. We look forward to working with you to ensure that this is upheld.

Respectfully,

Brian Patterson
President

Kitcki Carroll
USET Executive Director

Enclosures

"Because there is strength in Unity"