



# USET

SOVEREIGNTY PROTECTION FUND

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## USET SPF Resolution No. 2020 SPF:018

### **REQUESTING THAT THE ENVIRONMENTAL PROTECTION AGENCY DEFER TO WATER QUALITY STANDARDS AGREED TO BY TRIBAL NATIONS AND STATES**

- WHEREAS,** United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of thirty (30) federally recognized Tribal Nations; and
- WHEREAS,** the actions taken by the USET SPF Board of Directors officially represent the intentions of each member Tribal Nation, as the Board of Directors comprises delegates from the member Tribal Nations' leadership; and
- WHEREAS,** Tribal Nations are governments that predate the U.S. and, through the Indian Commerce Clause and the Treaty Clause, the Constitution of the U.S. recognizes the status of Tribal Nations as sovereigns; and
- WHEREAS,** Tribal Nations and Native people traditionally relied on a sustenance hunting and fishing lifestyle, and many continue to do so today; and
- WHEREAS,** because many Native people continue to rely on sustenance fishing, contamination of waters within and adjacent to Tribal lands can have significant harmful effects on the health of Native people and jeopardize Tribal cultural survival; and
- WHEREAS,** as trustee, the federal government is obligated to protect the sustenance hunting and fishing rights of Tribal Nations; and
- WHEREAS,** in 1972, Congress passed the Clean Water Act to restore and maintain the integrity of the country's waters; and
- WHEREAS,** the Clean Water Act charges states with setting specific water quality criteria appropriate for their waters and developing pollution control programs to meet them; and
- WHEREAS,** the federal Environmental Protection Agency (EPA) is responsible for ensuring that state water quality standards meet the requirements of the Clean Water Act, and is also obligated to ensure that any state water quality standards recognize and protect the sustenance fishing rights of Tribal Nations; and
- WHEREAS,** in recent years, including 2018, the EPA consulted with the Department of the Interior to determine the sustenance rights of Tribal Nations that may be impacted by the development of state water quality standards under the Clean Water Act, and disapproved portions of various state proposed water quality standards that did not have a sufficient Human Health Criteria that would protect Tribal health and treaty rights to safely consume fish and other aquatic resources; and


- WHEREAS,** in 2015, the EPA disapproved certain state water quality standards developed by the state of Maine because such standards did not contain a Human Health Criteria adequate enough to protect the sustenance fishing rights of the Tribal Nations in Maine; and
- WHEREAS,** the state of Maine initiated litigation against EPA challenging the disapproval of portions of its water quality standards as they related to the sustenance rights of Tribal Nations; and
- WHEREAS,** in 2017, the EPA requested and was granted a voluntary remand from the federal district court to review its prior analysis of the proposed state water quality standards; and
- WHEREAS,** while the matter was on remand, the Tribal Nations in Maine were able to negotiate an agreement with the state about the designated use of sustenance fishing under state law and how to protect such use under the state water quality standards; and
- WHEREAS,** given the agreement reached between the Tribal Nations and state, both parties wish to dismiss the pending litigation without prejudicing their respective legal positions but agreeing that the compromise negotiated between them is best for all parties; and
- WHEREAS,** the EPA has indicated that it will still review and revise its prior position in 2015 regarding the sustenance fishing rights of Tribal Nations and level protection of such rights under the Clean Water Act even though the Tribal Nations and State of Maine prefer that EPA approve the state's revised water quality standards and newly designated use without issuing any legal or policy analysis; and
- WHEREAS,** the Tribal Nations in Maine learned that the EPA unilaterally reversed its position this year with respect to Human Health Criteria water quality standards in at least one other instance where the state (Washington) and Tribal Nations asked EPA to defer to their agreed upon standard, and that EPA ignored the concerns and objections of Tribal Nations in Idaho and Oregon and approved state water quality standards that did not sufficiently protect the sustenance rights of those 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 SPF Board of Directors urges the Environmental Protection Agency to conduct adequate consultation with impacted Tribal Nations prior to making any policy and legal decisions; and, be it further
- RESOLVED** the USET SPF Board of Directors urges the Environmental Protection Agency to defer to instances where a state and Tribal Nations have come to agreement on the Human Health Criteria water quality standards necessary to protect sustenance rights of Tribal Nations; and, be it further


*Because there is Strength in Unity*

**RESOLVED** the USET SPF Board of Directors requests that Congress investigate and hold hearings on this matter to determine why the Environmental Protection Agency would ignore the sustenance rights of Tribal Nations, particularly in those instances where Tribal Nations and the state have come to agreement about water quality standards.

**CERTIFICATION**

This resolution was duly passed at the USET SPF Annual Meeting held on the Sovereign Territory of the Mississippi Band of Choctaw Indians at which a quorum was present on November 7, 2019.

  
Chief Kirk E. Francis, Sr., President  
United South and Eastern Tribes  
Sovereignty Protection Fund

  
Chief Lynn Malerba, Secretary  
United South and Eastern Tribes  
Sovereignty Protection Fund