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USET SPF PRESS RELEASE

USET SPF Celebrates U.S. Department of Interior's Withdrawal of Appeal in *Mashpee v. Bernhardt*

In a truly significant reversal of course, on February 19, 2021, the U.S. Court of Appeals granted the United States Department of Interior's (DOI) motion for voluntary dismissal in the case of *Mashpee v. Bernhardt*. This effectively puts an end to the efforts of the previous Administration to disestablish a Tribal reservation for the first time since the termination era by seeking to take the Mashpee Wampanoag Tribe's homelands out of trust. In withdrawing its appeal to the June 5, 2020 D.C. District Court decision that ruled in favor of Mashpee, DOI will now accept the Court's remand requiring it to reevaluate the evidence presented by Mashpee and issue a new determination in keeping with its 2014 M-Opinion.

"It has been a tumultuous and painful road for our Mashpee friends and relatives, but all of Indian Country should celebrate this case dismissal," said USET SPF President, Kirk Francis. "With this action, justice was not only achieved for Mashpee, but for all Tribal Nations in recognition of our common and shared goal to protect and rebuild our Tribal homelands."

The D.C. District Court's ruling on June 5, 2020 deemed arbitrary and capricious DOI's 2018 decision that the Mashpee Wampanoag Tribe did not prove it was "under federal jurisdiction" in 1934, and therefore did not meet the first definition of "Indian" under the IRA— making the Tribal Nation ineligible to acquire land in trust. It remanded the decision to DOI with clear direction to issue a decision consistent with the 2014 M-Opinion's standard and the evidence permitted therein, as well as DOI's prior decisions applying the 2014 M-Opinion test. The Court further directed DOI to properly address each piece of evidence, give a reasoned analysis as to whether it is probative, explain any departure from past DOI precedent, and view all probative evidence in concert rather than in isolation. And importantly, the Court's decision also mandates that DOI maintain the land in trust pending DOI's new determination and prevents DOI from applying a 4-part test developed without Tribal consultation by the Trump Administration in this case.

DOI, under the Trump Administration, had appealed this decision on July 31, 2020, continuing to press forward with its attempts to remove Mashpee's homelands from trust status. The motion for voluntary dismissal by the new Administration closes a shameful chapter of action by the DOI and paves the way for the Mashpee to move forward with its efforts to rebuild its land-base.

"Today is sakôhsuwôk, a triumph, not only for our Wampanoag Homelands, it is also a triumph for the citizens of the Mashpee Wampanoag Tribe and our Ancestors who have fought and died to ensure our Land and sovereign rights are respected," stated Mashpee Wampanoag Tribe Vice-Chairwoman Jessie Little Doe Baird. "We look forward to being able to close the book on this painful chapter in our history. The decision not to pursue the appeal allows us to continue fulfilling our commitment to being good stewards and protecting our Land and the future of our young ones and providing for our citizens."

USET SPF is committed to the protection and promotion of Tribal sovereignty and the restoration of Tribal homelands. In light of this commitment, we have been advocating for a fix to the Supreme Court decision in *Carcieri v. Salazar* since it was handed down in 2009. *Carcieri* has created a deeply inequitable 2-class system, in which some Tribal Nations have the ability to restore their homelands and others do not. This 2-class system serves to deny these Tribal Nations a critical component of the trust relationship, vital aspects of the exercise of inherent sovereignty, and the opportunity to qualify for several government programs.

We continue to call for the immediate passage of a fix that contains the two features necessary to restore parity to the land-into-trust process:

- (1) A reaffirmation of the status of current trust lands; and
- (2) Confirmation that the Secretary has authority to take land into trust for all federally recognized Tribal Nations.

While DOI's decision to end its appeal in this case is an important step toward righting centuries of wrong against the Mashpee Wampanoag Tribe, our collective work is not finished. We will continue to fight for the restoration of Tribal homelands and the full delivery of trust and treaty obligations. We call upon DOI to recommit itself to the restoration of homelands, the trust obligation, and Tribal sovereignty.

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United South and Eastern Tribes (USET)

Established in 1969, the United South and Eastern Tribes, Inc. (USET) is a non-profit, inter-Tribal organization serving 33 federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico. USET is dedicated to enhancing the development of Tribal Nations, improving the capabilities of Tribal governments, and improving the quality of life for Indian people through a variety of technical and supportive programmatic services.

USET Sovereignty Protection Fund (USET SPF)

Established in 2014, the USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-Tribal organization advocating on behalf of 33 federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico. USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.
