



# USET

SOVEREIGNTY PROTECTION FUND

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

United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is an intertribal organization comprised of thirty federally recognized Tribal Nations from the Canadian Border to the Everglades and across the Gulf of Mexico.<sup>1</sup> USET SPF is dedicated to enhancing the development of federally recognized Tribal Nations, to improving the capabilities of Tribal governments, and assisting USET SPF Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people.

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

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

### **USET SPF Position Statements by Issue**

#### **Constitutionality**

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

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<sup>1</sup> USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe – Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

specific to Native people and Tribal Nations flies in the face of well-settled law that defines our relationship with the United States as political in nature and not one based on race.

## **Climate Change**

Tribal Nations are uniquely impacted by climate change because of our profound connection to the land. Many Tribal cultures, food sources, ceremonies, and economies are on heavily reliant on the ecosystems for resources such as the use of fish, wildlife, and native plants. Tribal Nations further face unique social, health-related, and environmental challenges which compound the challenges faced by climate change. For instance, additional environmental impacts from dams, mining, and pollution have only made it more difficult for Tribal homelands and ecosystems to be resilient to the impacts of climate change. USET SPF member Tribal Nations are facing an increasing number of climate change-related events, including heavy precipitation leading to subsequent flooding, erosion, and decreases in water quality. In addition, Tribal Nations located in coastal areas, including USET SPF Member Tribal Nations, are most at risk to impacts from sea level rise. In fulfillment of the trust obligation, the federal government has an inherent responsibility to ensure the protection of the environmental and cultural resources that support the health and wellness of Tribal communities, as well as to support Tribal sovereignty and self-determination. Therefore, it is critical that Tribal Nations have access to the necessary resources to address the effects of climate change within our communities.

## **Cultural and Sacred Sites Protection**

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

## **Economic Development**

Economic sovereignty is essential to Indian Country's ability to be self-determining and self-sufficient. Rebuilding of our Tribal Nations involves rebuilding of our Tribal economies as a core foundation of healthy and productive communities. Building strong, vibrant, and mature economies is more than just business development. It requires comprehensive planning to ensure that our economies have the necessary infrastructure, services, and opportunities for our citizens to thrive; thus resulting in strong Tribal Nations. In order to achieve economic success, revenues and profits generated on Tribal lands must stay within Indian Country in order to benefit from the economic multiplier effect, allowing for each dollar to turn over multiple times within a given Tribal economy. It is critical that inequities and the lack of parity in policy and federal funding be addressed for Tribal Nations in order to fully exercise our inherent self-governance to conduct economic development activities for the benefit of our Tribal citizens.

## **Taxation**

The U.S. government has a responsibility to ensure that federal tax law treats Tribal Nations in a manner consistent with our governmental status, as reflected under the U.S. Constitution and numerous federal laws, treaties and federal court decisions. With this in mind, we remain focused on the advancement of

tax reform that would address inequities in the tax code and eliminate state dual taxation. Revenue generated within Indian Country continues to be taken outside its borders or otherwise falls victim to a lack of parity. Similarly, Tribal governments continue to lack many of the same benefits and flexibility offered to other units of government under the tax code. Passage of comprehensive tax reform in 2017 without Tribal provisions was unacceptable. USET SPF continues to press Congress for changes to the U.S. tax code that would provide governmental parity and economic development to Tribal Nations.

## Energy

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

### USET SPF Energy Priorities

USET SPF has established its energy priorities, as follows:

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

## Environment and Natural Resource

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

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

## Federal Funding

We advocate for the fulfillment of the federal trust responsibility and obligations, including full funding for federal Indian programs. Because of our history and unique relationship with the U.S., the trust obligation of the federal government to Tribal Nations and Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Inadequate funding to Indian Country needs to be viewed as unfilled treaty and trust obligations and should not be vulnerable to year to year “discretionary” decisions by appropriators. Federal spending in fulfillment of trust and treaty obligations is not responsible for the federal deficit and must be held harmless as our nation seeks to reduce its debt. USET SPF envisions a future in which federal funding to Tribal Nations is no longer a discretionary choice and all dollars are contractable and compactable.

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

## Health

As Congress and the Administration fail to uphold the trust responsibility to provide health care, USET SPF has continued to advocate for the full funding of IHS and the expansion of self-governance, as well as innovative ways to stabilize and extend funding. Indian Country, including the citizens of USET SPF Tribal Nations, faces lower health status and lower health outcomes than the rest of the United States. As long as the Indian Health Service (IHS) is drastically underfunded, this reality will remain.

### Medicaid

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

### SDPI

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

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

## **Public Health Infrastructure**

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

## **Infrastructure**

For generations, the federal government – despite abiding trust and treaty obligations – has substantially under-invested in Indian Country’s infrastructure. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure, such as running water and passable roads. Indeed, there are hundreds of billions of dollars in unmet infrastructure obligations across Indian Country to include housing, transportation, judicial, health care, and communication, among other forms of infrastructure. The United States must commit to assist in the rebuilding of the sovereign Tribal Nations that exist within its domestic borders. Much like the U.S. investment in the rebuilding European nations following World War II via the Marshall Plan, the legislative and executive branches should commit to the same level of responsibility to assisting in the rebuilding of Tribal Nations, as our current circumstances are, in large part, directly attributable to the shameful acts and policies of the United States. In the same way the Marshall Plan acknowledged America’s debt to European sovereigns and was utilized to strengthen our relationships and security abroad, the United States should make this strategic investment domestically. Strong Tribal Nations will result in a strengthened United States. At the same time, any infrastructure build-out, in Indian Country and beyond, must not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.

## **Land**

Tribal land base is a core aspect of Tribal sovereignty, cultural identity, and represents the foundation of our Tribal economies. USET/USSET member Tribal Nations continue to work to reacquire our homelands, which are fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. As a partner who shares in the trust relationship, it is

incumbent upon the federal government to prioritize and defend the restoration of our land bases. This includes a Congressional “fix” to the Supreme Court’s decision in *Carcieri v. Salazar* which has severely limited the Secretary of the Interior’s ability to take land into trust for Tribal Nations pursuant to the Indian Reorganization Act, by only extending such authority to those Tribal Nations “under federal jurisdiction” in 1934.

Our member Tribal Nations ultimately seek full ownership, jurisdiction, and management over our homelands without federal government interference and oversight. The federal government’s objective in the trust responsibility and obligations must be to support self-determining Tribal governments and facilitate a robust trust land acquisition program that provides a streamlined and equitable process to establish and increase Tribal land bases.

### **Public Safety and Justice**

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

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

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

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

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

## **Tribal Self-Governance**

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

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

USET SPF, along with Tribal Nations and organizations, continues to seek a modernized, 21<sup>st</sup> century relationship with the federal government. It is time for a new model that promotes a truly diplomatic, nation-to-nation relationship between the U.S. and Tribal Nations, and that empowers each Tribal Nation to define its own path. This mission should inform each action taken by this Administration affecting Tribal Nations. USET SPF is committed to working in partnership with all branches of government to achieve federal Indian policy reflective of the capabilities of 21<sup>st</sup> century Tribal Nations, as well as our inherent sovereignty and status as governments.

## **Truthful Narratives for Indian Country**

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

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