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Testimony of the United South and Eastern Tribes Sovereignty Protection Fund For the Record of the Senate Committee on Indian Affairs Oversight Hearing, “Buy Native American: Federal Support for Native Business Capacity Building and Success”

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Indian Affairs (SCIA) with the following testimony for the record of the March 16, 2022 oversight hearing, “Buy Native American: Federal Support for Native Business Capacity Building and Success.” During the 2022 State of the Union Address, President Biden renewed his Administration’s commitment to the ‘Buy American’ initiative, which was established by the January 2021 Executive Order 14005, “Ensuring the Future is Made in All of America by All of America’s Workers” (EO 14005). EO 14005 was issued to ensure that the federal government would invest taxpayer funds to support American businesses, workers, and manufacturers. However, the ‘Buy American’ initiative has not necessarily recognized and supported the contributions and production of goods and services by Tribal Nations and our businesses. The federal government must support our self-determined and sovereign rights to pursue initiatives for economic development that rebuild Tribal Nation economies.

For the ‘Buy American’ initiative to be successful, federal departments and agencies must remove regulatory barriers that hinder our ability to create economic opportunity for our businesses and entrepreneurs. This can be accomplished by broadening 638 self-determination compacting and contracting opportunities for Tribal Nations and utilizing ‘Buy American’ to purchase goods and services from Tribal Nations and businesses. This will support Tribal Nations and businesses to rebuild our economies and empower our initiatives to rebuild economic development and opportunity for our citizens. Additionally, the federal government must support Tribal economic parity by protecting our businesses from dual taxation, the restoration of Tribal homelands, and provide accessible opportunities for energy production and distribution.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ 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.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), 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), , Mi’kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), 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), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Economic Development in Indian Country and the USET SPF Region

Prior to European contact, Tribal Nations, including our members, had a long history of dynamic economies and governance structures. Robust trade networks connected Tribal Nations and the goods we produced. As with other aspects of Tribal governance and infrastructure, the removal, termination, and assimilation policies of the United States government negatively impacted our traditional economic trade. Over the course of centuries, Tribal Nations ceded millions of acres of land and extensive resources to the U.S.—oftentimes by force—in exchange for which it is legally and morally obligated to provide benefits and services in perpetuity. Because of this historic and ongoing diplomatic relationship, the federal government has trust and treaty obligations to support Tribal self-governance and self-determination, along with rebuilding Tribal Nations and economies. Unfortunately, at no point has the federal government fully delivered upon and upheld these obligations.

In addition to being relegated to fractions of our original homelands, which can be in remote areas, Tribal Nations lack governmental parity in economic development opportunities and treatment under the U.S. tax code. The Federal Reserve Board of Governor's 2012 report, *Growing Economies in Indian Country*, outlined eight issues as fundamental challenges to realizing economic growth in Indian Country. USET SPF's member Tribal Nations, with few exceptions, face these same challenges, such as:

1. Insufficient access to capital;
2. Capacity and capital constraints of small business;
3. Insufficient workforce development, financial management training, and business education;
4. Tribal governance constraints;
5. Regulatory constraints on land held in trust and land designated as restricted use;
6. Underdeveloped physical infrastructure;
7. Insufficient research and data; and
8. Lack of regional collaboration

All Tribal Nations, especially USET SPF member Tribal Nations, vary in levels of economic activity, capacity, and development. Some Tribal Nations have decades of experience and familiarity with economic development initiatives, while some are just starting to pursue these initiatives. This diversity demands that federal policy not adopt a one-size-fits all approach in supporting Tribal Nations and businesses to pursue economic development initiatives to support our communities and engage in nation rebuilding.

Expand 'Buy American' to Include 'Buy Indian' Across the Federal Government

We appreciate SCIA's effort to examine the barriers Tribal Nations and businesses experience in accessing financial capital and marketplaces to produce and distribute Native goods, resources, and services. The 'Buy American' initiative must recognize Tribal Nations and businesses as economic development partners and direct federal agencies to actively purchase products manufactured, harvested, and produced by Native businesses and entrepreneurs. Furthermore, the 'Buy American' initiative should be expanded to include federal government purchasing priorities outlined by the Department of Health and Human Services and Department of the Interior's 'Buy Indian Act' ('Buy Indian') regulations. More effective and expanded implementation of 'Buy Indian' regulations should be included in the 'Buy American' initiative and implemented across the federal government to ensure that all departments and agencies are prioritizing the purchase of goods and services from Tribal Nations and our businesses. This will support President Biden's 'Buy American' initiative and empower Tribal Nations and businesses to pursue economic development opportunities.

In June 2021, the Department of the Interior (DOI) hosted Tribal consultations on proposed revisions to its 'Buy Indian Act' regulations to increase contract preferences for Indian Small Business Economic Enterprises (ISBEEs) and Indian Economic Enterprises (IEEs). Proposed revisions also included updates on subcontracting to ensure consistency with Federal Acquisition Regulations and an update to the process for deviating from the 'Buy Indian Act' to ensure greater preference for IEEs. USET SPF submitted [comments](#) in support of DOI's proposed revisions to fulfill the intent of the law and recommended the expansion of the Act's provisions across the whole of the federal government. We [reiterated](#) these recommendations to the Department of Health and Human Services (HHS) in response to its November 2020 rulemaking to update the department's 'Buy Indian' regulations. In addition to expanding 'Buy Indian' across the federal government, USET SPF also recommended that DOI and HHS increase internal accountability, communication, and compliance protocols to document and report on anticipated, pending, and completed ISBEE and IEE solicitations. Furthermore, we recommended that DOI and HHS develop ongoing evaluation mechanisms for 'Buy Indian' implementation by hosting annual Tribal Listening Sessions to receive feedback on successes and challenges with the Act's implementation. Federal agencies adopting 'Buy Indian' regulations should also include these recommendations to ensure the purpose and intent of the law is meaningfully implemented to support Tribal Nations and our businesses.

Ensure Tribal Nation Economic Parity

With nearly every aspect of economic development regulated by the federal government, economic progress in Indian Country is often stymied with legal and regulatory burdens on Tribal Nations and businesses. These burdens have contributed to a perpetual cycle of social and economic hardships in our communities. Congress and the Administration must work to free Tribal Nations from over-burdensome laws and regulations that impede our social and economic success. This is especially important in an environment of the federal government's failures to uphold trust and treaty obligations to fully fund programs and services for Indian Country. Similar to other governments, Tribal Nations provide vital services to our people, which are funded by revenues generated by our businesses. The federal government, as well as state governments, should recognize and uphold Tribal Nation sovereignty and self-determination to pursue these economic development initiatives. These include efforts to support Native producers.

As it is for any other sovereign, economic sovereignty is essential to our ability to be self-determining and self-sufficient. The rebuilding of our Tribal Nation economies involves the 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. This results in stronger Tribal Nations and a stronger America.

The U.S. government has a responsibility to ensure that federal tax law treats Tribal Nations in a manner consistent with our sovereign 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 our 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. 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.

This includes support for H.R. 4054, the Tribal Tax and Investment Reform Act, introduced by Representative Ron Kind on June 22, 2021. H.R. 4054 would specify the treatment of Tribal Nations as states with respect to bond issuance, modify the treatment of pension and employee benefit plans maintained by a Tribal Government, modify the treatment of Tribal foundations and charities, improve the effectiveness of Tribal child support enforcement agencies, and recognize Tribal governments for purposes of determining whether a child has special needs eligible for the adoption tax credit.

Protect Tribal Nations from Dual Taxation

Dual taxation hinders Tribal Nations from achieving our own revenue generating potential. Although Tribal Nations have authority to tax noncitizens doing business in Indian Country, when other jurisdictions can tax those same noncitizens for the same transactions, Tribal Nations must lower their taxes to keep overall pricing at rates the market can bear or forgo levying a tax at all. The application of an outside government's tax often makes the Tribal tax economically unfeasible.

Dual taxation undercuts the ability of Tribal Nations to offer tax incentives to encourage non-Indian business entities onto our lands to create jobs and stimulate Tribal economies. As long as outside governments tax non-Indian businesses on our lands—even if a Tribal government offers complete Tribal tax immunity to attract a new non-Indian business—that business is subject to the same state tax rate that is applicable outside our jurisdictional boundaries. As a matter of economic fairness, we ask that you work with us to support and advance initiatives that would bring certainty in tax jurisdiction to Tribal Lands by confirming the exclusive, sovereign authority of Tribal governments to assess taxes on all economic activities occurring within our jurisdictional boundaries.

Support Tribal Nation and Business Development in the Energy Sector

USET SPF member Tribal Nations, and our 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 and administrative action and investment in Indian Country, particularly to promote balanced geographical representation and inclusion of USET SPF member Tribal Nations in energy programs. USET SPF has established its energy priorities, as follows:

- Promote Tribal self-determination and control of natural resources and energy assets to make conservation and development decisions that preserve Tribal sovereignty, protect Tribal assets, and achieve economic independence, job creation, and improvement of Tribal members' standard of living;
- Promote Tribal capacity building efforts 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; and
- Remove barriers to the deployment of Tribal energy resources, such as bureaucratic processes, insufficient access to financial incentives, and interconnection to and transmission on the power grid.

Enacting legislation and developing regulations to support these initiatives will advance the energy capabilities of Tribal Nations and translate into beneficial economic and health and wellness outcomes for our communities.

Restoration of Tribal Homelands

Possession of a land base is a core aspect of sovereignty, cultural identity, and represents the foundation of a government's economy. That is no different for Tribal Nations. USET SPF Tribal Nations continue to work to reacquire our homelands, which are fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. And as our partner in the trust relationship, it is incumbent upon the federal government to prioritize the restoration of our land bases. The federal government's objective in the trust responsibility and obligations to our Nations must be to support healthy and sustainable self-determining Tribal governments, which fundamentally includes the restoration of lands to all federally-recognized Tribal Nations, as well as the legal defense of these land acquisitions. With this in mind, USET SPF continues to call for the immediate Senate consideration and passage of a fix to the Supreme Court decision in *Carcieri v. Salazar*.

Support Self-Governance Contracting and Compacting for Tribal Nations

Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples that pre-dates the founding of the United States. The U.S. Constitution, treaties, statutes, Executive Orders, and judicial decisions all recognize that the federal government has a fundamental trust relationship to Tribal Nations, including the obligation uphold the right to self-government. Our federal partners must fully recognize the inherent right of Tribal Nations to fully engage in self-governance, so we may exercise full decision-making in the management of our own affairs and governmental services.

Despite the success of Tribal Nations in exercising authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), as well as the recently enacted Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for Indian Tribes Act, the goals of self-governance have not been fully realized. Many opportunities still remain to improve and expand upon its principles. An expansion of Tribal self-governance to all federal programs under ISDEAA would be the next evolutionary step in the federal government's recognition of Tribal sovereignty and reflective of its full commitment to Tribal Nation sovereignty and self-determination.

As was discussed during the hearing, this includes an expansion of ISDEAA into federal nutrition programs. The 2018 Farm Bill authorized a demonstration project for Tribal Nations to pursue 638 contract and compact opportunities under the Indian Self-Determination and Education Assistance Act (P.L. 93-638) for the U.S. Department of Agriculture's (USDA) Food Distribution Program on Indian Reservations (FDPIR). This 638 authority should be expanded to the Supplemental Nutrition Assistance Program (SNAP) and other vital federally administered nutrition programs. Tribal Nations, like other units of government, are responsible for providing essential services to our citizens, which includes those related to nutrition and health and wellness. Tribal Nations have demonstrated that we have the capacity to fully administer SNAP programs to Tribal citizens, as we have been administering far more complex federal programs for decades. However, and in spite of a 2014 USDA feasibility study, Tribal Nations continue to be excluded from administering SNAP and other nutrition programs under P.L. 93-638 contracting and compacting. USET SPF joins Tribal Nations and organizations across the country in calling upon SCIA and Congress to ensure that Tribal sovereignty and self-determination for federal nutrition programs is made a reality, including as part of the next Farm Bill reauthorization.

In addition, we urge that P.L. 93-638 authority also be extended to forestry programs at USDA. When Tribal Nations manage our own forests, we are able to prioritize traditionally harvested plants and animals that provide vital elements of a healthy Indigenous diet.

Conclusion

Economic insecurity in Indian Country is a symptom of the larger issues we face as Tribal Nations, due, in large part, to the failure of the U.S. government to live up to the terms of our diplomatic, Nation-to-Nation relationship. Development and implementation of policies and programs that recognize and uphold our inherent sovereignty and fulfill trust and treaty obligations are necessary to alleviate economic hardship, rebuild Tribal Nations, and improve the quality of life for our citizens and communities. Congress must continue to support and fully fund federal programs that encourage economic development and the rebuilding of Tribal economies. We welcome the opportunity to collaborate with the Committee on economic policy that better honors federal trust and treaty obligations while upholding our inherent sovereignty.