



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted Electronically
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May 6, 2022

Patricia Currier
Director
Office of Planning and Performance Management
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Director Currier,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to Tribal consultations held by the Department of the Interior (DOI) on development of performance goals and measures for DOI's Fiscal Year 2022 through 2026 (FY 2022-2026) Strategic Plan. These consultations were held in response to recommendations from Tribal Leaders to develop metrics to track the department's progress in meeting the goals and objectives of its Strategic Plan. We appreciate the Department's commitment to develop measures to determine whether it is meeting the goals to of its FY 2022-2026 Strategic Plan. However, these measures should translate into actionable and realized change for the advancement of Tribal Nations. In developing these measures, USET SPF recommends that the Department move towards a model of diplomacy with Tribal Nations, discard competitive grants and grant-based models and measures, and rescind and/or revise regulations that hinder Tribal Nation sovereignty and self-determination.

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), Nansmond 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).

Because there is Strength in Unity

Adopt a Model of Diplomacy with Tribal Nations

Tribal Nations have practiced and engaged in international diplomacy since first contact with European nations. These first interactions recognized the sovereign rights and authorities of Tribal Nations and established a foundation for diplomatic relations on a Nation-to-Nation basis. However, since the formation of the United States, Tribal Nations have experienced constant fluctuations in the federal government's commitment to uphold and support of our sovereign rights and authorities. Supporting a paradigm shift that fosters and reinvigorates the Nation-to-Nation diplomatic relationship that was established during the formative years of the United States would hold the federal government accountable for meeting its trust and treaty obligations to Tribal Nations. In establishing performance goals and measures for its FY 2022-2026 Strategic Plan, the Department must ultimately measure how well it is upholding and its trust and treaty obligations. This includes identifying areas in Departmental policies, procedures, regulations, and funding methodologies that hinder the exercise of our sovereign rights and authorities and/or create barriers to access essential programs and services to support our communities.

Furthermore, DOI must move away from performance measures and goals that reflect grant-based frameworks. These frameworks define granular outcomes, measures, and objectives that do not always take into consideration the circumstances and events outside of a Tribal Nation's control. These practices do not reflect Nation rebuilding metrics. Instead, the use of these metrics often result in the federal government reporting on the amounts or percentages of services provided instead of assessing the real world impacts of how assistance is restoring our governments and economies. Rather than recycle these same metrics and methodologies, the federal government must move toward a model of diplomacy and consent-based interaction and consultation with Tribal Nations. This diplomacy model should be utilized to guide the Department in consulting with Tribal Nations to define and establish the performance measures and goals of its programs and services on an ongoing basis. This directive extends to ensuring that the Department provides Tribal Nations with equitable access to programs and services that support our sovereignty, self-determination, and Nation rebuilding. To achieve these measures, DOI must actively advocate for increased funding to support the building and sustainability of the internal infrastructure needed to effectively promote this diplomatic model between the Department and Tribal Nations.

Additionally, the Department must not set arbitrary goals and measures that do not completely meet the federal government's trust and treaty obligations to Tribal Nations. These actions reinforce a mindset that the Department must only partially commit to provide a certain amount of funding or programmatic services to Tribal Nations. This leads to false claims that the Department has a 100 percent success rate in achieving its trust and treaty obligations to Tribal Nations. USET SPF firmly believes that performance goals, objectives, and other metrics should be set based on the complete fulfillment of trust and treaty obligations to all Tribal Nations. These should measure DOI's commitment to Nation rebuilding, as well as be communicated clearly and in a way that allows DOI and Tribal Nations to hold the Department accountable for its actions.

Discard Competitive Grants and Grant-Based Models, Measures, and Metrics

USET SPF has long opposed the competitive grant model since it arbitrarily positions Tribal Nations to compete for funds that should be equitably available, accessible, and delivered in fulfillment of trust and treaty obligations. Setting Tribal Nations against each other does not reflect or uphold the federal government's trust and treaty obligations and the solemn promises made during the establishment of our Nation-to-Nation relationships. Tribal Nations are sovereigns and should not be viewed through the lens of a 'grant entity'. Therefore, federal funds allocated and distributed to us should not be justified by grant-based models, measures, and metrics. The allocation and distribution of funds and services to Tribal

Nations are payments on debt by the United States for the immense cession of land and resources by Tribal Nations—oftentimes by force.

In addition, Tribal Nations are frequently subjected to programs and services that are based on state-centric models for allocation, implementation, and reporting. USET SPF continues to maintain that due to the sovereign status of Tribal Nations, we should not be subject to the same requirements as state governments. States are subdivisions of the United States, Tribal Nations are not. We exist as Nations with inherent sovereignty and enjoy an established and codified legal relationship with the United States. This relationship has been recognized and is codified by the U.S. Constitution, treaties, statutes, and judicial interpretations and decisions. DOI must reevaluate its current methods for the allocation and distribution of funds for its programs and services. Performance measures and goals must reflect the Department's commitment to advance Tribal sovereignty and self-determination to manage our own affairs. This is especially important and relevant in regard to reporting requirements imposed on Tribal Nations. These are often unduly burdensome and time- and cost-consuming for Tribal Nations, thereby defeating the original programmatic and service objectives the initial funding sought to accomplish.

Rescind and/or Revise Regulations that Hinder Tribal Sovereignty

Since President Biden assumed office in January 2021, Tribal Nations have experienced an influx of consultation and engagement from the Administration and federal departments and agencies. Many of these engagements and consultations have focused on revisiting and reinvigorating departmental and agency Tribal consultation policies and procedures, while others have focused on advancing new initiatives or revising existing rules and regulations to increase opportunity for Tribal Nations. A recent example of the latter was DOI's rulemaking proceeding to revise provisions of its Buy Indian Act regulations. USET SPF was actively engaged in this rulemaking proceeding and supported the Department's efforts to revise its Buy Indian Act regulations to fulfill the intent of the law. A Final Rule revising these regulations was adopted in April 2021 and is set to take effect on May 9, 2022. The adopted revisions expand the scope of federal procurement process under the Buy Indian Act and increases federal procurement opportunities for Tribal businesses. This action is an example of where the Department was proactive in evaluating its current regulations to identify ways to increase opportunity for Tribal Nations.

Another policy area that USET SPF has long advocated for are improvements to is the Department's land-into-trust process. In September 2021, DOI issued a Dear Tribal Leader Letter seeking Tribal Nation priorities in the protection and restoration of Tribal homelands. USET SPF submitted [comments](#) to DOI in November 2021 highlighting several priorities to improve the land-into-trust process and the challenges Tribal Nations experience in this pursuit. We emphasized that the Secretary's ability to acquire land in trust for Tribal Nations is critical for strengthening Tribal Nations and improving the lives of our citizens. We further emphasized that the federal government, and not any other unit of government, has a trust and treaty obligation to Tribal Nations in the establishment and management of trust lands. However, state and local governments have had inappropriate influence over the land-into-trust process for Tribal Nations—a function that rests solely within the well of the federal government's responsibilities and obligations to Tribal Nations. The Department is now in the process of seeking input on proposed revisions to its 25 CFR Part 151, Land Acquisition, regulations.

These are just two examples of recent proactive efforts by the Department to revise existing rules and regulations or solicit input on Tribal Nation priorities to improve Departmental functions. USET SPF strongly recommends that agencies across the Department actively review the rules and regulations governing programs and services to Tribal Nations and our citizens. This review process should involve Tribal consultation to identify barriers to access and other obstacles Tribal Nations experience to obtain vital

programmatic funds and services from the Department. The feedback and recommendations received from Tribal Nations regarding these issues should lead to conversations about appropriate performance measures and goals to determine the extent that the Department is upholding its trust and treaty obligations.

Conclusion

In November 2021, USET SPF submitted [comments](#) to the Department in response to the proposed Framework for its FY 2022-2026 Strategic Plan. Our comments highlighted that there was a lack of reference to the Department's commitment to uphold its trust and treaty obligations to Tribal Nations. We emphasized that the final FY 2022-2026 Strategic Plan should reflect these solemn obligations, as well as a commitment to Nation rebuilding, adoption of measurable goals for the execution of federal functions, and the promotion and advancement of Tribal Nation self-governance and self-determination. USET SPF reiterates these sentiments as the Department develops performance measures and goals to evaluate how it is meeting the goals and objectives of its FY 2022-2026 Strategic Plan. At the core of this evaluation, the Department must consider how it is upholding and being accountable to its trust and treaty obligations to Tribal Nations. DOI must also evaluate how it is increasing accessibility and ensuring the efficient delivery of funds, programs, and services to our Tribal Nations and citizens. The development and implementation of these measures should be done in concert with Tribal Nation consultation to identify barriers and challenges in accessing and utilizing the Department's funds, programs, and services. We look forward to continued engagement and dialogue with DOI on these important issues. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Chief Kirk E. Francis, Sr.
President



Kitcki A. Carroll
Executive Director