

# The Beat in DC



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## **Biden Administration**

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### **USET SPF Celebrates Historic Appointment of Chief Lynn Malerba as First Native U.S. Treasurer**

On June 21<sup>st</sup>, President Biden [announced](#) his intention to appoint Mohegan Chief Mutáwi Mutáhash (Many Hearts), Marilynn “Lynn” Malerba, and USET Sovereignty Protection Fund Secretary, to be the next Treasurer of the United States. She is the first Native person to hold this position and the highest-ranking Native Treasury official in U.S. history. The Treasurer has direct oversight over the U.S. Mint, the Bureau of Engraving and Printing and Fort Knox and is a key liaison with the Federal Reserve. In addition, the Treasurer serves as a senior advisor to the Secretary in the areas of community development and public engagement. For the very first time, the signature of a Native person, as well as those of two women, Chief Malerba and Treasury Secretary Janet Yellen, will appear on U.S. currency.

Her appointment continues to advance the Biden Administration’s commitment to ensuring it represents the country it serves better than ever before, including a reflection of our diverse citizenship. In addition, this is yet another historic moment for Indian Country under this Administration, representing the President’s continued commitment to the evolution of our nation-to-nation relationship with the United States. Specifically, Tribal Nations have been calling for the establishment of a high-level office of Tribal Affairs at Treasury, and the Administration has responded with the appointment of Chief Malerba to lead its formation, an exceptional leader who is held in high esteem across Indian Country and beyond. As Treasurer, Chief Malerba will take full advantage of the opportunity to ensure that Tribal Nations have a strong voice at Treasury, as it seeks to craft policy that reflects our unique circumstances and relationship with the United States.

“Chief Malerba embodies the highest ideals of leadership,” said USET SPF President, Chief Kirk Francis. “She leads with compassion, tact, love, integrity, professionalism, and respect for all people, while fervently advocating for the advancement of Tribal sovereignty and the delivery of trust obligations. For nearly 20 years, our Board of Directors has looked to Chief Malerba for her reasoned guidance and expertise amid some of Indian Country’s most complex issues, including those related to Tribal self-governance, the federal budget, taxation, and economic development. She has dedicated herself to the service of our Tribal communities, our people, and the next generations. Without a doubt, she will bring this same care and dedication to her role as Treasurer, while carrying all of Indian Country in her heart. On behalf of the USET SPF family, we greet this appointment with joy and pride. We send Chief Malerba our prayers and good thoughts as she embarks upon this next journey, and extend our appreciation to President Biden and Secretary Yellen for ensuring that Indian Country is represented at the Department of Treasury.”

“The Mohegan Tribe and its citizens have benefited tremendously from the leadership of Chief Lynn Malerba, and we are thrilled that she will now bring her expertise, energy, and compassion to the role of Treasurer of the United States,” said James Gessner Jr., Chairman of the Mohegan Tribe. “This appointment is an honor for her and for our Tribe, and it is well-deserved. Lynn has been a trailblazer in the Mohegan community as the first female Chief in our modern history. Prior to that, she served on the Tribal Council including as Chairwoman. She also led our Health and Human Services agency and had a distinguished career as both a healthcare professional and hospital administrator. Her

appointment is another positive step by the Biden administration to show inclusiveness with Native Americans and ensure we have a seat at the table of federal government. We congratulate Lynn on this incredible appointment. The Nation will be stronger with her serving in the Administration.”

Chief Malerba holds diverse and varied expertise, the result of a career spanning nearly six decades, including significant experience in community economic development at the Tribal, local, state, and national levels. Following lengthy service as a registered nurse and hospital administrator, she served as Chairwoman of the Mohegan Tribal Council and in Tribal Government as its first Executive Director of Health and Human Services. In 2010, she became the Mohegan Tribe’s 18th Chief, the first in its modern history. She earned a Doctor of Nursing Practice at Yale University, named a Jonas Scholar. She was awarded an honorary Doctoral degree in Science from Eastern Connecticut State University and an honorary Doctoral Degree in Humane Letters from the University of St. Joseph in West Hartford, CT. She earned a master’s degree in Public Administration from the University of Connecticut and a Bachelor of Science in Nursing from the College of St. Joseph.

In addition to USET SPF Secretary, she currently serves as Chairwoman of the Indian Health Service Tribal Self-Governance Advisory Committee, a member of the Justice Department’s Tribal Nations Leadership Council, a member of the Tribal Advisory Committee for the National Institutes of Health, and a member of the Treasury Tribal Advisory Committee. Locally, she serves as a Trustee for Chelsea Groton Bank, Chairwoman of the Board for the Community Foundation of Eastern Connecticut, and on the Provost’s Advisory Committee Member for the Harvard University Native American Program.

“Chief Malerba is a strong and exceptionally seasoned leader, whose depth of experience in building community, consensus, and economies make her uniquely qualified for this position,” added USET SPF Executive Director, Kitcki Carroll. “While her appointment represents significant progress and advancement opportunities for Tribal Nations and the trust obligation, we know that her wealth of diverse experience, coupled with her indigenous grounding and perspective, will also be transformative for communities across the United States. In addition to playing a critical role in this Administration’s efforts to ensure that our economy works for all Americans, this high-level appointment also represents an opportunity for Indian Country to achieve greater visibility and for all Americans to experience firsthand the tremendous talents, knowledge, and experience of this country’s original inhabitants.”

Chief Malerba will be an asset to the Department of the Treasury as part of its efforts to build stronger communities across the United States, in addition to supporting improvements and strengthening the Nation-to-Nation diplomatic relationship with Indian Country. She holds a full appreciation for our history and relationship with the United States and brings an indigenous sensibility of stewardship and responsibility to all that she does. It is this perspective that will allow Treasury and this Administration to better implement its vision for a renewed America that empowers all of its citizens. USET SPF is confident that Chief Malerba’s service will bring significant progress for Indian Country and the United States as a whole. We applaud her appointment and stand ready to offer our guidance and partnership as her work begins.

## **USET SPF Lauds Nomination of Patrice Kunesh for ANA Commissioner**

On June 22<sup>nd</sup>, President Biden [announced](#) his intent to nominate Patrice Kunesh to be the next Commissioner of the Administration for Native Americans (ANA) within the Administration on



Children and Families at the Department of Health and Human Services. The mission of ANA is to promote the goal of self-sufficiency and cultural preservation by providing social and economic development opportunities through financial assistance, training, and technical assistance to Tribal Nations. Importantly, the ANA is currently working to support Native language preservation and revitalization in the wake of the COVID-19 pandemic under the American Rescue Plan Act.

A descendant of the Standing Rock Sioux, Ms. Kunesh has dedicated her career to the development of Tribal economies and advancement of sovereignty. Previously, she established and led the Center for Indian Country Development at the Federal Reserve Bank of Minneapolis, an economic policy research center dedicated to Indian Country issues. She also has held appointments as the Deputy Under Secretary for Rural Development at the US Department of Agriculture and as the Deputy Solicitor for Indian Affairs at the US Department of the Interior. In addition, she served as in-house counsel to USET SPF member, the Mashantucket Pequot Tribal Nation, and on the faculty at the University of South Dakota School of Law. This depth of experience makes Ms. Kunesh exceptionally prepared to serve as the next ANA Commissioner and to do so in a way that puts Tribal Nations in the drivers' seat. USET SPF celebrates this nomination as another indication of this Administration's commitment to better delivering upon trust and treaty obligations, and enhancing our diplomatic, nation-to-nation relationship.

"Patrice is a well-known advocate for the rebuilding of Tribal Nations and our economies," said USET SPF President, Chief Kirk Francis. "From her establishment of the Center for Indian Country Development to her service as Deputy Solicitor, to her extensive legal career, she has worked tirelessly to advance Tribal self-governance and economic development in Indian Country. As we work to recover from the economic, social, and cultural impacts of the COVID-19 pandemic, the role of ANA will be critical to 'building back better' for Indian Country. As ANA Commissioner, we know that Patrice's focus will be on the promotion and restoration of healthy, resilient Tribal Nation communities that provide opportunities to our citizens for generations to come. On behalf of the USET/USET SPF family, I extend our congratulations and full support for her nomination."

If confirmed, Ms. Kunesh's strong background in federal and Tribal service will allow her to immediately begin making substantive contributions to the ANA's mission. Her well-established commitment to self-determination will ensure that ANA is honoring Tribal guidance and promoting Tribal sovereignty as it delivers upon its obligations to Indian Country. USET SPF strongly supports Ms. Kunesh's nomination for ANA Commissioner. We call upon the United States Senate to act swiftly on her confirmation in accordance with its responsibility to honor its obligations to Tribal Nations.

## **Budget**

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### **USET SPF Testifies Before House Interior Appropriations Subcommittee re: FY 2023 Appropriations**

On April 6<sup>th</sup>, USET SPF President, Chief Kirk Francis, [testified](#) before the House Appropriations Subcommittee on Interior, Environment, and Related Agencies regarding our regional priorities for Fiscal Year (FY) 2023 appropriations. As in the past, our [testimony](#) elevates regional FY 2023 funding priorities identified through the budget formulation process, along with advocating for systemic



change in federal funding delivered in fulfillment of trust and treaty obligations to Tribal Nations. For the very first time, an Administration has issued a Budget Request that calls for mandatory, as well as substantially increased and predictable, funding for an agency charged with fulfilling sacred promises to Tribal Nations. In response, USET SPF issued a [statement](#) strongly supporting these changes, and USET/USET SPF Executive Director, Kitcki Carroll, advocated for their enactment during an [interview](#) with Bloomberg.

For the Indian Health Service (IHS), our testimony included strong support for the President’s proposal to move the agency’s funding from discretionary to mandatory, as well as the following Nashville Area funding priorities:

1. Hospitals & Health Clinics
2. Purchased/Referred Care
3. Alcohol & Substance Abuse
4. Mental Health
5. Electronic Health Record System
6. Dental Health
7. Community Health Representatives
8. Maintenance & Improvement
9. Health Education
10. Self-governance

In addition to doing so as a part of the IHS proposal, the President’s Budget Request also proposes mandatory funding for Contract Support Costs and 105(l) leases—binding obligations—at Bureau of Indian Affairs (BIA) and the Bureau of Indian Education. While we contend that all federal Indian agencies and programs should be subject to mandatory funding, in recognition of perpetual trust and treaty obligations, our testimony supports the immediate transfer of these lines to the mandatory side of the federal budget. This will ensure that funding increases are able to be allocated to service delivery, as opposed to the federal government’s legal obligations.

As with IHS, our testimony elevates the funding priorities of BIA’s Eastern Region as identified through the budget formulation process:

1. Strengthening Tribal Communities: Social Services (TPA)
2. Trust-Natural Resources Management: Natural Resources (TPA)
3. Trust-Land & Water Rights Management: Real Estate Services Program (TPA)
4. Public Safety & Justice: Tribal Courts (TPA)
5. Economic Development: Economic Development (TPA)
6. Education: Scholarships & Adult Education (TPA)
7. Construction: Education Facilities Improvement and Repair
8. Resource Management Construction: Federal Power Compliance [FERC]

We are fully committed to working with the Administration and our allies on Capitol Hill to make the President’s historic proposals a reality. We will continue to monitor the FY 2023 appropriations process and provide further updates as they develop.

For more information on USET SPF’s Advocacy for Full and Mandatory Funding:

- [USET SPF Comments to OMB on FY 2023 Budget Request](#)
- [USET SPF Comments on Mandatory Funding Approaches for the Indian Health Service](#)
- [USET SPF Letter to Biden Administration re: Initial Priorities](#)
- [USET SPF Testimony before the Senate Committee on Indian Affairs](#)
- [USET SPF Testimony Before the U.S. Commission on Civil Rights](#)
- [USET SPF Testimony Before House Committee on Natural Resources](#)
- [USET SPF Resolution 2020 SPF:005](#)



- [USET SPF Resolution 2016:031](#)
- [USET SPF Resolution 2016:004](#)
- [USET SPF Resolution 2014:011](#)

## House Appropriations Committee Releases FY 2023 Mark

On June 29<sup>th</sup>, the House Appropriations Committee approved its [version](#) of the Interior, Environment, and Related Agencies appropriations bill for Fiscal Year (FY) 2023. This bill contains funding for the Bureaus of Indian Affairs (BIA) and Indian Education (BIE), as well as the Indian Health Service (IHS).

For BIA, the bill would provide a total of \$2.75 billion, which is an increase of \$489.6 million over FY 2022 enacted and \$12.6 million above the President's request. This includes \$2.15 billion for the Operation of Indian Programs (an increase of \$329 million over FY 2022 and \$67.3 million over the President's Request) and \$181 million for Construction (an increase of \$34 million, but \$24.7 million below the Request).

Funding under the Operation of Indian Programs account includes the following Eastern Region Priorities:

- Social Services (TPA): \$62.2 million, \$9 million above FY 2022 enacted and \$17.9 million below the Request;
- Natural Resources (TPA): \$22.9 million, \$8.6 million above FY 2022 and \$327,000 below the Request, including \$2 million for land acquisition for newly recognized and landless Tribal Nations;
- Tribal Courts (TPA): \$82.1 million, \$39 million above FY 2022 and \$29.5 million above the Request;
- This account also includes \$374.4 million for the Tribal Government line, an increase of \$19 million over FY 2022 enacted and \$19.5 million below the President's Request. Within this sum, \$28 million is reserved for Aid to Tribal Government (\$198,000 above FY 2022 and (\$973,000 more than the President's Request), with \$480,000 allocated to newly recognized Tribal Nations (in line with both the FY 2022 enacted level and the Request);
- Trust – Real Estate Services (TPA): \$159.3 million, \$9.1 million above FY 2022 enacted and \$13.7 million below the Request;
- Economic Development: \$10.8 million, including an additional \$2,500,000 for business incubators and an additional \$3,000,000 for broadband grants as requested, an increase of \$7.5 million over FY 2022 enacted and \$28.6 million below the Request;
- Finally, the bill allocates \$59.8 million for Tribal Climate Resilience, \$27.9 million above FY 2022 enacted and \$1.13 million below the President's Request.

Contract Support Costs (CSC) and 105(l) Leases would continue to be funded via a separate, indefinite appropriation at an estimated \$328 million (a \$88 million increase over FY 2022) and \$30 million (a \$6.6 million decrease), respectively.

Further, regarding CSC and 105(l) leases, the bill's report contains the following language:



*“...Because contract support costs and payments for Tribal leases are addressed through discretionary spending, all other programs funded under the Interior, Environment, and Related Agencies appropriations bill are impacted. The costs are growing exponentially, necessitating a long-term funding strategy to address them. The Committee notes the Administration’s proposal to reclassify these costs for the Bureau of Indian Affairs as an appropriated entitlement in fiscal year 2023 and a mandatory entitlement for the Indian Health Service. The Department of the Interior and the Department of Health and Human Services are directed to continue working with the House and Senate committees of jurisdiction, the Office of Management and Budget, and the Committees on Appropriations to formulate long-term accounting, budget, and legislative strategies to address this situation, including discussions reclassifying these funds as an appropriated entitlement.”*

For BIE, the bill provides a total of \$1.58 billion, an increase of \$295 million over FY 2022 enacted and \$2 million above the President’s Budget Request. This includes \$45.6 million for Eastern Region priority Scholarships & Adult Education (TPA), which is \$5 million above FY 2022 and \$534,000 above the President’s Request. In addition, the Committee provides \$108 million for Education Facilities improvement and repair, which is an increase of \$12.7 million over FY 2022 enacted and in line with the President’s Request.

Notably, the bill does contain funding for IHS, although it would not, if the agency were funded on the mandatory side of the budget. During the House Appropriations Subcommittee on Interior, Environment, and Related Agencies mark-up of the bill, Chairwoman Chellie Pingree indicated that the Subcommittee was including funding for IHS while proposals to shift the accounts to mandatory made their way through the legislative process. We note that IHS has yet to convene a promised sub-workgroup of its Budget Formulation Workgroup to discuss mandatory funding options, as well as determine a full funding number for the agency.

The bill would IHS at a total of \$8.1 billion. This number is \$1.5 above the FY 2022 enacted level, but \$1 billion below the President’s Request. Of this, \$5.7 billion would be allocated for the Indian Health Services Account and \$1.3 billion for the Indian Health Facilities Account.

Funding under the Indian Health Services account includes the following Nashville Area priorities:

- Hospitals and Health Clinics: \$2.8 billion (a \$377 million increase over FY 2022 enacted);
- Purchased/Referred Care: \$1.1 billion (a \$112 million increase);
- Electronic Health Records: \$284.5 million (a \$139.5 million increase);
- Dental Health: \$307.9 million (a \$72 million increase);
- Mental Health: \$130 million (an \$8 million increase); and
- Alcohol and Substance Abuse: \$264 million (a \$5.6 million increase).

As for 105(l) leases and CSC the bill maintains the separate, indefinite appropriations for both lines, at an estimated level of \$111 million and \$969 million, respectively, with the report language regarding the reclassification of these lines applying to the IHS, as well.

Finally, the bill would continue a directive, “prohibiting IHS from obligating or expending funds to select or implement a new IT infrastructure system unless IHS notifies the Committee at least 90 days before such funds are obligated or expended.” This language further stresses the need to choose a system that is interoperable with commercial-off-the-shelf systems, as well as the system housed at the Department of Veterans Affairs.

Although this bill has been approved by the full House Appropriations Committee, it has not yet seen further action in the House. At press time, a vote on the House floor is expected the week of July 18<sup>th</sup>. Both chambers of Congress will need to approve FY 2023 appropriations legislation before it can be signed by the President. The Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies has not yet begun its work. We will continue to monitor the FY 2023 appropriations process and will provide further updates as they develop.

## **USET SPF Submits Comments to OMB re: FY 2023 President's Budget Request**

On May 18<sup>th</sup>, USET SPF submitted [comments](#) to the Office of Management and Budget (OMB) in response to its April 25, 2022 “Dear Tribal Leader” letter initiating consultation on the President’s Fiscal Year (FY) 2023 Budget Request. As we have noted in response to other recent OMB consultations, the agency’s consultations with Tribal Nations on the federal budget are a long-awaited and welcome development. With the release of the President’s FY 2023 Request and its historic proposals for the Indian Health Service and binding obligations, we are seeing the voices and guidance of Tribal Nations raised to new heights within the Administration’s priorities. We celebrate this achievement and attribute it, in large part, to OMB’s commitment to meaningful dialogue with Indian Country.

These proposals represent a dramatic shift in federal Indian policy and the delivery of trust and treaty obligations—for which USET SPF has consistently and passionately advocated. Never before has an Administration issued a Budget Request that calls for mandatory funding, as well as a plan to substantially increase funding for an agency charged with fulfilling sacred promises to Tribal Nations. We now call upon the Administration to fulfill its responsibilities and work with Tribal Nations and Congress to ensure that these proposals are enacted this Congress. This includes working with Tribal Nations and IHS to draft legislation that reflects our guidance for implementing these changes.

We view the President’s Budget Request as a statement on each Administration’s regard for its trust and treaty obligations to Tribal Nations. USET SPF lauds the historic proposals found FY 2023 President’s Budget Request as a meaningful first step in ensuring federal funding to Tribal Nations honors and fulfills the sacred promises made as part of our diplomatic relationship with the United States. We are fully committed to working with the Administration and our allies on Capitol Hill to make this a reality and call upon OMB to assist in this legislative effort. We further urge support for the inclusion of proposals that uphold our status as sovereign governments, recognize our right to self-determination and self-governance, and honor the federal trust obligation in full in FY 2023 appropriations and beyond.

## **COVID-19**

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### **USET SPF Opposes COVID Supplemental that Would Cut Tribal Recovery Funds**

In early April, a [proposed bipartisan agreement](#) on \$10 billion in COVID-19 supplemental funding for vaccines, therapeutics, and testing included a proposal to [offset](#) its costs with remaining unspent COVID relief funds -- including funding for Tribal Nations. This is completely unacceptable, given



the chronically unmet federal obligations to Tribal Nations and the devastating impact of COVID-19 on our communities.

The proposed language would rescind \$887 million from the Local Assistance and Tribal Consistency Fund, which provides a total of \$500 million in flexible funding to eligible Tribal Nations during FY 2022 and 2023. Under the proposed amendment, Tribal Nations would receive \$221.75 million less than previously allocated – a reduction of nearly 45 percent.

The proposed legislation also intends to rescind or strike more than \$2.5 billion from the State Small Business Credit Initiative (SSBCI). Tribal Nations first gained access to the SSBCI under the American Rescue Plan Act in 2021, and the deadline for Tribal Nations applying to the program is still three months away. The reduction in SSBCI funding, therefore, has the potential to impact Indian Country, particularly given that technical assistance funding is being cut and, as first-time participants in the SSBCI, Tribal Nations are more likely to require technical assistance than other parties.

While some funds remain unspent, it is certainly not because they are unnecessary. Tribal Nations have encountered many barriers to accessing these and other relief dollars, including onerous reporting, matching, and other requirements that don't reflect our unique circumstances and relationship with the U.S. government, inflexibility in funding uses, delays in funding distribution, and lack of capacity to apply for numerous funding streams.

On April 5th, USET SPF sent a [letter](#) to Congressional Leadership urging them to reconsider any cuts to the funding identified for Tribal Nations and instead fight to ensure we are meaningfully included in any final agreement. While the COVID-19 supplemental funding bill has stalled indefinitely over immigration issues, we remain concerned by any effort to reprogram funding designated for Tribal Nations. We will continue to oppose this strategy to supplement COVID-19 funding going forward.

## **USET SPF Submits Comments to Treasury on Small Business Credit Initiative Technical Assistance Program**

On May 13, 2022, USET SPF submitted [comments](#) to the U.S. Department of the Treasury (Treasury) on the allocation of the Small Business Credit Initiative (SBCI) Technical Assistance Program (TA Program). The American Rescue Plan Act (ARPA) authorized \$500 million for the SBCI TA Program, but the law did not mandate how these funds would be allocated among eligible governments. On April 28, 2022, Treasury published the SBCI TA Program Guidelines, which allocated \$200 million of TA Program funds to directly support very small businesses (VSBs) and businesses owned and controlled by socially and economically disadvantaged individuals (SEDI-owned businesses). However, of the \$200 million allocation for the TA Program, Treasury decided to allocate just \$14.73 million (7.37 percent of the total allocation) for use by eligible Tribal governments to support Tribal VSBs and SEDI-owned businesses. Due to the limited amount of TA Program funds available, USET SPF recommended that funds be allocated and distributed equitably to eligible Tribal governments. Further, we recommended that Tribal governments applying for TA Program funds to support our VSBs and SEDI-owned businesses should be prioritized with access to the remaining \$300 million of the ARPA authorized TA Program funds if their application is unfulfilled due to program oversubscription.

In addition, USET SPF recommended that Treasury revise its SBCI TA Program Guidelines to minimize application and reporting requirements. We asserted that the application requirements



outlined in the SBCI TA Program Guidelines were onerous and cost prohibitive for Tribal governments and that fulfilling the application requirements could well exceed the actual amount and benefits for a Tribal government receiving a TA Program award. USET SPF recommended that Treasury automatically assume that eligible Tribal governments applying for the TA Program have an urgent demand for these dollars and should not be required to develop and submit a TA Plan to qualify for a program award. Similarly, we recommended that reporting requirements for Tribal governments should be minimal and streamlined to account for the unique circumstances that Tribal governments and businesses experience that contribute to delays in economic development and business project completion. USET SPF will continue to monitor the allocation of SBCI TA Program funds and urge Treasury to allocate the remaining \$300 million TA Program funds authorized under ARPA. The current application deadline for the SBCI Program as well as the SBCI TA Program are September 1, 2022. For more information, please visit Treasury's [website](#).

## **Culture & Heritage**

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### **USET SPF Submits Comments to White House OSTP and CEQ on Developing Guidance for Federal Agencies Integrating ITEK**

On May 5, 2022, USET SPF submitted [comments](#) to the White House's Office of Science and Technology Policy (OSTP) and Council on Environmental Quality (CEQ) on developing guidance for federal agencies integrating Indigenous Traditional Ecological Knowledge (ITEK). This initiative was announced through a [Memorandum](#) issued by OSTP and CEQ during the November 2021 White House Tribal Nations Summit, which recognized the Administration's commitment to elevate the role of ITEK in federal scientific and policy processes. USET SPF has generally supported this initiative as long as the guidance developed honors Tribal Nation guidance and input, is integrated and used respectfully by federal agencies, and is kept confidential and protected from public dissemination. USET SPF has also extended its support to this initiative via an [op-ed](#) from President, Chief Kirk Francis, Sr. published in Indian Country Today on December 13, 2021.

In response to the Administration's ITEK initiative, our comments focused on the importance of federal employees to receive education on trust and treaty obligations as a foundation for integrating ITEK into federal decision-making, protecting sensitive Tribal cultural knowledge, increase funding for Tribal historic, cultural, and natural resource officers, and adopting a holistic definition of ITEK throughout the federal government. USET SPF also stressed the importance of respecting and acknowledging ITEK as the proprietary knowledge of Tribal Nations and that federal agencies must defer to Tribal Leaders and our identified spiritual and cultural leaders on how this information and is collected, used, and protected from dissemination.

USET SPF also urged OSTP and CEQ to work with the Office of Management and Budget to develop guidance for federal agencies on how Freedom of Information Act (FOIA) requests should be handled regarding ITEK. Specifically, we recommended that federal agencies must inform Tribal governments when FOIA requests are made to access our information and let us determine whether such requests should be withheld or redacted. Furthermore, USET SPF urged OSTP and CEQ to direct federal

agencies to work with Tribal Nations to ensure that the definition and use of ITEK is holistic and recognize ecological/environmental, natural, cultural, spiritual, and lived experience/observation knowledge sets. USET SPF also recommended the establishment of a standing, permanent Tribal Advisory Committee on ITEK comprised of regional representation of Tribal Leaders, our identified spiritual/cultural leaders, and other individuals we may nominate to represent our Tribal Nations (e.g., Tribal cultural/natural resource managers). USET SPF will continue to monitor the work of the White House OSTP and CEQ in developing this guidance for federal agencies implementing ITEK into federal decision-making processes and advocate for the protection of proprietary Tribal Nation cultural knowledge.

### **USET SPF Submits Comments to ACHP on Draft Exemption for Historic Preservation Review for Electric Vehicle Supply Equipment**

On June 3, 2022, USET SPF submitted [comments](#) to the Advisory Council on Historic Preservation (ACHP) on its Draft Exemption for Historic Preservation Review for electric vehicle supply equipment (EVSE). The [ACHP Draft Exemption for EVSE](#) was published in the Federal Register on May 5, 2022 and proposed to allow all federal agencies to forego the Historic Preservation Review process required under Section 106 of the National Historic Preservation Act (Sec. 106 NHPA) when installing EVSE. This proposal was developed by ACHP to support the Biden Administration's effort to expedite the nationwide installation of EVSE infrastructure for the federal fleet. Although the Draft Exemption would not apply to Tribal Lands, USET SPF expressed concern with the potential harmful effects of federal undertakings for EVSE deployment on properties of historic and cultural significance located on lands outside of current Tribal Nation jurisdictional boundaries.

Following submission of these comments to ACHP, USET SPF was informed by the agency that a communication was shared with Tribal Leaders and Tribal Historic Preservation Officers regarding the Draft Exemption and that Tribal consultations were scheduled for June 1, and 9, 2022. USET SPF sent out an Alert on the June 9, 2022 scheduled Tribal consultation to our Tribal Nation members and participated in the consultation. During the consultation we learned that the Draft Exemption would only apply to EVSE installations in existing structures located outside Tribal Nation jurisdictional boundaries (e.g., existing parking garages and parking lots) and, therefore, would not impact any grounds previously undisturbed. However, USET SPF is still concerned regarding the Draft Exemption because it does not consider how EVSE installation and/or modification will impact disturbed grounds that may have not gone through proper environmental, historic, and cultural preservation reviews to begin with. We will continue to monitor its implementation and advocate for increased funding for Tribal Historic Preservation Officers to assist with review processes associated with EVSE installation.

## Environment & Natural Resources

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### USET SPF Submits Comments to CEQ on Beta Version of the Climate and Economic Justice Screening Tool

On May 25, 2022, USET SPF submitted [comments](#) to the Council on Environmental Quality (CEQ) in response to Tribal consultations held on the [beta version of its Climate and Economic Justice Screening Tool](#) (CEJS Tool). These consultations were held to receive recommendations on how to improve the beta version of the CEJS Tool to appropriately reflect the environmental and climate challenges of Tribal Nations. President Biden issued [Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad”](#) on January 27, 2021, which directed CEQ to develop the CEJS Tool to support the [Justice40 Initiative](#). The Justice40 Initiative aims to provide 40 percent of all federal programs and services to ‘disadvantaged’ communities and the CEJS Tool is meant to assist federal agencies in identifying communities to receive support from this Initiative.

USET SPF reminded CEQ that terms such as ‘disadvantaged’ should not be used to reference Tribal Nations and that all Tribal Nations must be eligible for the Justice40 Initiative due to the federal government’s trust and treaty obligations. We also recommended that all Tribal Nations must be eligible for the programs and services of the Justice40 Initiative due to the federal government’s unmet obligations to uphold trust and treaty rights. This recognition would acknowledge the federal government’s obligations to all Tribal Nations to protect, sustain, and revitalize our lands and communities, especially those that have been affected by the detrimental effects of climate change and resource extraction and production. Further, we recommended the CEQ that Tribal Nations should self-identify Tribal Lands eligible for the Justice40 Initiative and whether those lands are viewable on the CEJS Tool. USET SPF will continue to work with CEQ as it updates the current beta version of its CEJS Tool and remind CEQ that terms such as ‘disadvantaged’ or ‘unserved/underserved’ should not be used to reference Tribal Nations.

## Health

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### IHS Director Nominee Receives Hearing at SCIA

On May 25<sup>th</sup>, the Senate Committee on Indian Affairs (SCIA) held a [hearing](#) to consider the nomination of Ms. Roselyn Tso for Director of the Indian Health Service (IHS). The hearing lasted a brief 40 minutes and did not provide much information concerning Ms. Tso’s commitment to working in partnership with Tribal Nations to deliver upon federal trust and treaty obligations. Notably, as SCIA Chairman, Brian Schatz, indicated, Ms. Tso’s questionnaire submitted to the Committee contained no mention of Tribal sovereignty or self-governance. Further, her priorities for the IHS, as outlined in her [testimony](#), are as follows: 1. Strengthening and streamlining IHS’ business operations; 2. Developing systems to improve accountability, transparency, and patient safety; and 3. Addressing the workforce needs and challenges to provide quality and safe care.

As shared previously, USET SPF [submitted a letter](#) to SCIA in response to Ms. Tso’s nomination outlining required qualifications and priorities for any IHS Director. We intend to continue to elevate these directives as Ms. Tso’s nomination proceeds and if she is confirmed. SCIA approved Ms. Tso’s



nomination by voice vote on July 13<sup>th</sup>. Her nomination will now proceed to a vote by the full Senate before she can be installed as Director. USET SPF will continue to monitor developments as the confirmation process proceeds, and provide updates and further advocacy, as appropriate.

## **IHS Initiates Consultation on SDPI in FY 2023, USET SPF Submits Comments**

On April 15, 2022, the Indian Health Service (IHS) [initiated consultation](#) with Tribal Nations regarding a new 5-year grant cycle for the Special Diabetes Program for Indians (SDPI) beginning in Fiscal Year (FY) 2023. The Tribal Leaders Diabetes Committee (TLDC) recommended that Tribal consultation on the SDPI for FY 2023 be conducted in all 12 IHS Areas. While the TLDC met in June to review the input and make final national recommendations, IHS has yet to issue a “Dear Tribal Leader” letter outlining how and whether the agency will incorporate these recommendations.

Despite the continued necessity of this program and ever diminishing purchasing power, funding for SDPI has not increased since 2004. Most recently, Congress authorized funding for the SDPI as part of a 3-year authorization ending on September 30, 2023, with flat funding of \$150 million per fiscal year. Due to mandatory sequestration, there is a 2 percent reduction in SDPI funding annually for FY 2022 and FY 2023, reducing the annual amount to \$147 million.

FY 2023 will be the beginning of a 5-year grant cycle for SDPI. Accordingly, the IHS will publish a new notice of funding opportunity (NOFO) and grant application process. USET SPF is aware that IHS has been directed to make the upcoming NOFO open to all federally recognized Tribal Nations on a ‘fully competitive’ vs. ‘limited competition’ basis, in accordance with the recent [Executive Order on Promoting Competition in the American Economy](#). Though we have been informed that IHS has requested a waiver from this Executive Order, our understanding is that it has been denied. While we support access to SDPI for all federally recognized Tribal Nations, it is our long-standing position that this cannot come at the expense of existing grantees.

In addition, about a year ago, IHS headquarters started questioning the longstanding USET SDPI grant structure (USET the primary application, 20 members as subrecipients). At that time, IHS gave indication that it had interest in making our subrecipients direct applicants. In June, we were informed that our current grant structure will not be the same for the upcoming 2023 SDPI process. USET will no longer be able to serve as the primary grantee and our existing Tribal Nation sub-grantees will be eligible and responsible for directly pursuing SDPI grant funding during the 2023 open competitive process. Additionally, IHS has determined that USET would be afforded an opportunity to apply for support funds through an open compete cooperative agreement separate from the 2023 SDPI grant process.

Although a cooperative agreement isn’t ideal, we appreciate IHS seeing the value in the relationship USET shares with its member Tribal Nations. USET has a significant role in supporting member Tribal Nations in implementing curative measures throughout the Nashville Area since funding for SDPI was first dispersed in 1998.

USET SPF will continue to advocate for additional funding and policy change for SDPI, so that the program is administered in a way that better honors Tribal sovereignty and reflects trust and treaty obligations. Additional support and outreach will be provided to USET’s existing subgrantees as the FY 2023 grant process moves forward.

## **HHS Conducts Annual Regional Budget Consultations, USET SPF Provides Talking Points**

In support of USET SPF member Tribal Nations attending regional U.S. Department of Health and Human Services (HHS) 2022 Annual Tribal Budget Consultations, we continue to provide [talking points](#) to help guide discussions with federal partners. Our talking points focus on regional priorities for the Fiscal Year (FY) 2023 budget, as well as policy issues for HHS and its operating divisions, including:

- The expansion of Indian Self-Determination and Education Assistance Act authorities throughout HHS;
- Mandatory funding for the Indian Health Service (IHS);
- Increasing Access to CDC Surveillance Data for Tribal Public Health Entities;
- CMS COVID-19 Flexibilities Unwinding
- CDC’s Good Health and Wellness in Indian Country;
- NIH Research Initiatives in Indian Country; and
- IHS Health IT Modernization.

As USET SPF and our member Tribal Nations seek the federal government’s delivery of its trust obligations in full, we will continue to provide this type of support during these and similar consultations.

## **USET SPF Submits Comments on HIT Modernization**

On April 8<sup>th</sup>, USET SPF submitted [comments](#) in response to the Indian Health Service’s (IHS) March 10th [consultation](#) on Health Information Technology (HIT) Modernization. Though presented as a consultation/confer session, the March 10th meeting amounted to little more than an update for Tribal Nations on the unilateral decisions IHS is making around HIT modernization. The question-and-answer session at the end of the presentation cannot be considered consultation. While we appreciate the addition of focus groups, these also do not represent consultation. Throughout the HIT modernization process thus far, IHS has engaged in a decision-making process that fails to meaningfully include and implement the guidance of Tribal Nations. Our comments urge that IHS increase its transparency as decisions are made, as well as redouble its efforts to ensure Tribal consultation guides this work and the diverse HIT circumstances throughout Indian Country are included in these efforts.

USET SPF asserts that the federal government has fallen short of its trust obligation to Indian Country by under-resourcing our health IT. In partnership with Tribal Nations, IHS must work to ensure that the entire Indian Health System is brought into the 21st century. This includes transparent and direct Nation-to-Nation dialogue as this process proceeds, as well as working to address the diverse circumstances of Tribally operated facilities, as well as those operated by IHS.

## Infrastructure

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### USET SPF Submits Comments to Federal Permitting Improvement Steering Council on Draft Recommended Best Practices for Early Tribal Engagement

On May 13, 2022, USET SPF submitted [comments](#) to the Federal Permitting Improvement Steering Council (FPISC) on its, “Fiscal Year (FY) 2022 Draft Recommended Best Practices on Enhancing Early Tribal Engagement” (Best Practices). FPISC was established in December 2015 by Title 41 of the Fixing America’s Surface Transportation Act (FAST-41) and is charged with facilitating coordinated federal environmental reviews and authorizations for FAST-41 covered infrastructure projects. These projects include those pertaining to renewable and conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, mining, and carbon capture (collectively known as “Fast-41 projects”). USET SPF generally supported the Best Practices draft and offered additional recommendations for FPISC agency members to assist Tribal Nations with review processes of Fast-41 permit applications and projects.

USET SPF recommended that FPISC federal employees and its member agencies receive education and training on Tribal sovereignty and U.S.-Tribal Nation relations to understand critical trust and treaty obligations to guide decision-making processes in review of FAST-41 projects. We also urged FPISC and its member agencies to provide funds and staff support for technical assistance to Tribal Nations to review FAST-41 project proposals and permit applications. This recommendation included identifying additional resources for environmental, historic, and cultural reviews, and funding for Tribal Historic Preservation Officers (THPOs), to assist Tribal Nations in reviewing FAST-41 projects and permit applications. USET SPF also urged FPISC to recognize unique instances where member agencies are initiating Tribal consultation on potential FAST-41 covered infrastructure projects prior to current FAST-41 requirements for FPISC participation. We recommended that FPISC tailor its early engagement and consultation directives to coincide with agency project-specific consultation efforts. USET SPF will continue to work with FPISC to ensure that Tribal Nations are appropriately and consistently consulted by federal agencies engaged in proposing and reviewing FAST-41 projects. We will also continue to advocate for increased funding for THPOs and technical assistance required for Tribal Nations to effectively review FAST-41 projects.

### USET SPF Issues White Paper Advocating for Tribal Nations Marshall Plan

For several years now, USET SPF had included in its budget and infrastructure advocacy support for a Marshall Plan for Tribal Nations. 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. Following insufficient levels of funding for Tribal Nations in the Infrastructure Investment and Jobs Act, the United States must commit to supporting the rebuilding and restoration 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.

In an effort to intensify our advocacy around a Marshall Plan for Tribal Nations, as well as spur Congressional action to make this proposal a reality, USET SPF has drafted a white paper articulating the necessity and our vision for this investment. The paper's executive summary has been published in 2<sup>nd</sup> edition of our [Organizational Education Book](#). The full paper is currently under review by the USET/USET SPF Board of Directors and we will be seeking its approval at our USET/USET SPF Semi-Annual Meeting on July 19<sup>th</sup>. Following Board approval, USET SPF will be pursuing endorsements from partner organizations, as well as conducting outreach and education with Congress and the Administration. We will provide updates and opportunities to elevate this concept as they become available.

## Interior

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### DOI Announces Tribal Leader Appointments to First-Ever STAC

On June 15, 2022, the Department of the Interior (DOI) issued a [Press Release](#) announcing the first-ever members to its Secretary's Tribal Advisory Committee (STAC or Committee). The creation of the DOI STAC was [announced](#) during the 2021 White House Tribal Nations Summit to provide an avenue for Tribal Leaders to engage in routine and robust dialogue with Secretary Deb Haaland on important DOI programs and funding issues affecting Tribal Nations. The Committee's membership is comprised of 24 Tribal Leaders—two for each of the 12 Bureau of Indian Affairs (BIA) Regions.

The Primary and Alternate Tribal Leader Members of the STAC for the BIA Eastern Region announced by DOI are as follows—

- Primary Tribal Leader Member: Councilwoman Kelly Dennis, Shinnecock Indian Nation
- Alternate Tribal Leader Member: Chairwoman Stephanie Bryan, Poarch Band of Creek Indians

To view the complete list of Tribal Leaders appointed to the DOI STAC, please [click here](#). The DOI STAC Tribal Leader Members will serve on a staggered term for up to two years and the Secretary, in consultation with the Assistant Secretary for Indian Affairs, will designate one STAC member to serve as chairperson.

On May 2, 2022, USET SPF sent a [letter of support](#) to Secretary Deb Haaland for the nomination of Tribal Leaders from USET SPF's 33-member Tribal Nations that submitted applications to serve on the DOI STAC. In addition to expressing our support for the DOI STAC Tribal Leader nominees from USET SPF's member Tribal Nations, we also provided recommendations to DOI on the STAC selection criteria and agenda. We look forward to working with DOI and DOI STAC Tribal Leaders to ensure that the voices of Tribal Nations are elevated to the highest levels of the Department and improve upon the execution of federal trust and treaty obligations.

## **USET SPF Submits Comments to DOI on Small Tribes Supplement Tribal Priority Allocation**

On June 30, 2022, USET SPF submitted [comments](#) to the Department of the Interior (DOI) on the funding methodology for the Small Tribes Supplement Tribal Priority Allocation (Small Tribes Supplement TPA). Included in President Biden's Fiscal Year (FY) 2023 Budget Request was an increase of \$18 million above the FY 2022 Small Tribes Supplement TPA enacted level. This increase proposed to raise the minimum base threshold funding from \$200,000 in Alaska and \$160,000 in the contiguous 48 states to \$300,000 for all eligible Tribal Nations. DOI proposed the increase since it determined that the current base amounts established in 1994 for the Small Tribes Supplement TPA are no longer sufficient for Tribal Nations with populations equal to or less than 1,700 to operate and sustain vital Tribal government operations.

USET SPF expressed support for President Biden and DOI's proposal to increase the Small Tribes Supplement TPA from \$160,000 to \$300,000 for all eligible Tribal Nations. However, we also encouraged the Administration to view this action as an initial step on the path to fully funding the Small Tribes Supplement TPA to support vital governmental operations of Tribal Nations and uphold the federal government's trust and treaty obligations. We also urged DOI to not allow decades to pass before revising the threshold again and recommended DOI fulfill the Tribal-Interior Budget Council's (TIBC) FY 2024 Tribal Budget Submission, which requested an increase of \$4.627 million for the Small Tribes Supplement TPA to raise the base threshold to \$700,000 for all eligible Tribal Nations. USET SPF will continue to work with DOI to increase the Small Tribes Supplement TPA annually in order to achieve full funding for Tribal Nations and work with TIBC to determine the full extent of unfulfilled trust and treaty obligations.

## **USET SPF Submits Follow-Up Comments to DOI on its Fiscal Year 2022-2026 Strategic Plan**

On May 6, 2022, USET SPF submitted [follow-up comments](#) to the Department of the Interior (DOI) on development of performance goals and measures for its Fiscal Year 2022 through 2026 (FY 2022-2026) Strategic Plan. These were submitted as follow-up to USET SPF [comments](#) submitted to DOI in November 2021, which provided recommendations on DOI's proposed Framework for its FY 2022-2026 Strategic Plan. DOI initiated a second round of consultations and requests for comment 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.

USET SPF stated that any measures adopted by DOI should translate into actionable and realized change for the advancement of Tribal Nations. Further, in developing these measures, we recommended that the Department move towards a model of diplomacy with Tribal Nations, discard competitive grants and grant-based models, measures, and metrics, and rescind and/or revise regulations that hinder Tribal Nation sovereignty and self-determination. We emphasized that the final FY 2022-2026 Strategic Plan should reflect solemn trust and treaty obligations, as well as a commitment to Tribal 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 will continue to reiterate these priorities for the advancement of Tribal Nations in all DOI programmatic and funding proceedings.

# Land

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## USET SPF Submits Comments on Proposed 151 and 293 Revisions

On June 30<sup>th</sup>, USET SPF submitted [comments](#) in response to the Department of the Interior's (DOI) draft revisions to [25 C.F.R. Part 151](#) (Land Acquisition) and [25 C.F.R. Part 293](#) (Class III Tribal State Gaming Compact Process). USET SPF continues to be encouraged by DOI's focus on Tribal homelands restoration, including its proposed revisions to 25 C.F.R. Part 151. Tribal land base is a core aspect of Tribal sovereignty, cultural identity, and represents the foundation of our Tribal economies. And 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, including sacred and cultural sites. Despite the vital importance of this charge, DOI's current processes for lands protection and restoration do not fully honor or uphold Tribal sovereignty and its trust and treaty obligations. We are pleased to see, then, DOI commit to improvements that will better facilitate the swift return of our homelands and their unqualified protection, as well as increased Tribal ownership and control.

In general, USET SPF strongly supports DOI's proposed revisions to 25 C.F.R. Part 151. We agree that what DOI has proposed is likely to lead to a more efficient, less cumbersome, and less expensive fee-to-trust process. In particular, we extend our appreciation to DOI and to Assistant Secretary Newland for the codification of procedures for determining whether a Tribal Nation was 'under federal jurisdiction' in 1934. In the wake of the previous Administration's unconscionable attempts to remove USET SPF member, the Mashpee Wampanoag Tribe's, ancestral homelands from trust following its withdrawal of M-37029, it has become increasingly important that DOI take steps to ensure Tribal homelands remain in trust. While we continue to advocate for a legislative fix to the disastrous Supreme Court decision in *Carcieri v. Salazar*, the codification of these procedures will offer a level of certainty that did not previously exist. We applaud DOI's efforts and urge the continued inclusion of these procedures, with additional suggested edits, as the rulemaking process proceeds.

While USET SPF did not provide specific comments on the 25 C.F.R. Part 293 Revisions, we underscore a related issue that bears further examination and commitment to action on the part of DOI. Currently, it appears as though state governments may have the opportunity to utilize the banking system to inappropriately restrict Tribal government operations as a method of extortion during disagreements. During a recent dispute over revenue sharing payments, a state took steps to freeze the assets of a USET SPF member Tribal Nation. This state overreach and attack on Tribal sovereignty caused near catastrophic disruption in governmental functions for our member Tribal Nation. It is alarming to know that states, through state-chartered banking systems, have the ability to control and disrupt the finances of another sovereign. In fulfillment of trust and treaty obligations, our comments urge DOI and the Biden Administration to ensure that Tribal Nations are protected from this affront to our sovereignty.

USET SPF extends its appreciation to DOI and Assistant Secretary Newland for this renewed focus on the protection and restoration of Tribal homelands, and efforts to ensure that the land-into-trust process better serves these aims. We plan to provide additional comments as the rulemaking process unfolds. USET SPF remains focused on restoring and protecting the homelands of our member Tribal Nations and those across the country. We will continue to [advocate](#) for a *Carcieri* fix and other policy and legislative change aimed at this goal, and provide updates as they develop.

## Litigation

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### Tribal Nations Victorious in Supreme Court Ruling in *Ysleta del Sur Pueblo et al. v. Texas*

On June 15, 2022, the Supreme Court [issued](#) a ruling in favor of the Ysleta del Sur Pueblo in the case *Ysleta del Sur Pueblo et al. v. Texas*. Justice Gorsuch delivered the opinion of the Court, joined by Justices Breyer, Sotomayor, Kagan, and Barrett. The issue before the Court was whether the Ysleta del Sur Pueblo and Alabama-Coushatta Indian Tribes of Texas Restoration Act (Restoration Act) prohibits as a matter of federal law all gaming activities on Tribal Lands, "which are prohibited by the laws of the State of Texas," extended to gaming activities regulated but not prohibited by Texas (such as bingo).

Shortly after enactment of the Restoration Act, Congress adopted the Indian Gaming Regulatory Act (IGRA), which established rules for separate classes of gaming activities. Following the passage of IGRA, the Ysleta del Sur Pueblo sought to negotiate a compact with Texas to offer Class III games, but the state refused arguing that the Restoration Act displaced IGRA and required the Tribal Nation to follow all the state's gaming laws on its own Tribal Lands. In the litigation that followed, the District Court held that Texas violated IGRA by failing to negotiate in good faith. In *Ysleta del Sur Pueblo v. Texas*, 36 F.3d 1325 (5th Cir. 1994) (*Ysleta I*), the Fifth Circuit Court of Appeals reversed, holding that the Restoration Act's directions superseded IGRA's and guaranteed that the entirety of Texas' gaming laws and regulations would operate as surrogate federal law to limit gaming activities on the Tribal Nation's reservation.

In 2016, the Ysleta del Sur Pueblo began to offer bingo, including electronic bingo machines, on the view that IGRA treats bingo as a Class II game, which does not require state permission as long as the state permits the game to be played on some terms by some persons. However, the state of Texas then sought to shut down all the Tribal Nation's bingo operations based on the Fifth Circuit Court of Appeals' decision in *Ysleta I*. In its decision, the Supreme Court concluded that the Fifth Circuit Court of Appeals misinterpreted the gaming prohibitions under the Restoration Act in *Ysleta I*. Further, it held that the Restoration Act bans, as a matter of federal law on Tribal Lands, only those gaming activities also banned in Texas. The case has been remanded back to the Fifth Circuit for reconsideration in light of the Supreme Court's decision.

USET SPF has consistently supported the right of our member Tribal Nation, the Alabama-Coushatta Tribe, to conduct gaming on its Tribal Lands without state interference. USET SPF has participated in the submission of a joint [Amicus Brief](#) to the Supreme Court as well as [previous amici efforts](#), including those in a [similar case](#) brought by the Alabama-Coushatta. Because the two Tribal Nations are both subject to the Restoration Act, this ruling in *Ysleta del Sur Pueblo et al. v. State of Texas* is likely to assist Alabama-Coushatta in its gaming efforts. USET SPF congratulates both Tribal Nations on this monumental victory at the Supreme Court and celebrates the decision as a victory for all Tribal Nations dealing with the unjust ramifications of restrictive settlement acts.

### SCOTUS Undermines Tribal Sovereignty, Jurisdiction in *OK v. Castro-Huerta*

On June 29, 2022, the Supreme Court issued its [decision](#) in *Oklahoma v. Castro-Huerta*, holding that states have concurrent criminal jurisdiction over non-Indian crimes against Indians in Indian country under federal law. In a 5–4 vote, the Court reversed the decision of the Oklahoma Court of Criminal



Appeals, which held that the state of Oklahoma did not have jurisdiction over crimes committed by a non-Indian against an Indian within Indian country. Importantly, while the case centered on Tribal criminal jurisdiction in Oklahoma, the decision is likely to have implications across Indian Country because it undermines centuries-old legal precedent that state law does not apply on our lands without congressional authorization. The majority opinion reflects a belief and position that “Indian Country is part of the State, not separate from the State.” USET SPF is alarmed by the flawed, inaccurate, paternalistic, and regressive nature of the decision and its potential to impinge upon the full exercise of our criminal and civil jurisdiction.

“The Supreme Court has erred in its decision in *Castro-Huerta*. The United States was founded on a recognition of our inherent Tribal sovereignty and nearly 200 years of Supreme Court precedent underpins that recognition. With this decision, our sovereign right to jurisdiction over crimes committed against our people is further restricted. Under no other scenario is a sovereign government given jurisdiction over crimes committed on the lands of another--regardless of the defendant’s citizenship,” said USET SPF President, Kirk Francis. “Indian Country should be highly alarmed and concerned by this decision, as it serves as yet another example of calculated efforts to dismantle our sovereign authorities, rights, and existence. Indian Country must now demonstrate strategic precision as we call upon Congress and the Administration to not only support an immediate fix to *Castro-Huerta* in recognition of trust and treaty obligations to Tribal Nations, but to move the United States to a place where it consistently honors and respects our sovereign existence.”

In an emotional dissent, Justice Neil Gorsuch, joined by Justices Breyer, Kagan, and Sotomayor, expressed frustration with the majority opinion, saying, “Today the Court rules for Oklahoma. In doing so, the Court announces that, when it comes to crimes by non-Indians against tribal members within tribal reservations, Oklahoma may “exercise jurisdiction.” Ante, at 4. But this declaration comes as if by oracle, without any sense of the history recounted above and unattached to any colorable legal authority. Truly, a more ahistorical and mistaken statement of Indian law would be hard to fathom.”

USET SPF will continue to analyze *Oklahoma v. Castro-Huerta* and provide further information to our membership as it becomes available. In addition, we will seek opportunities to address its impacts via the legislative and/or regulatory process. For more information and additional legal analysis, we enclose a [summary](#) from Hobbs Straus Dean & Walker.

## **Federal Court Rules in Favor of Saginaw Chippewa, BCBS Denied Rehearing, in Case Concerning Medicare-Like Rates**

On April 26<sup>th</sup>, the [Sixth Circuit overturned a 2020 decision](#) by the United States District Court for the Eastern District of Michigan, which held that Medicare Like Rates (MLR) are only available for Purchased/Referred Care (PRC) services that are paid for with IHS dollars. The three-judge panel held that the Medicare Like Rate regulations at 42 C.F.R. § 136.30 allow Tribal Nations to use either their IHS dollars or their own funds through a Tribal Self-Insured Plan to pay for PRC services so long as the Tribal PRC program authorized the service.

Notably, the court favorably cited an [amicus curiae brief](#) filed on behalf of 47 Tribal Nations and organizations, including USET SPF, and it confirms the right of Tribal Nations to coordinate benefits between their PRC programs and their Tribal Self-Insured Plans.

In response, Blue Cross Blue Shield filed a request for a rehearing en banc, which the Court denied on June 7<sup>th</sup>. This decision represents complete vindication of the Tribal position that Medicare-Like Rates are available for all validly authorized PRC services, regardless of the source of funds used to pay for the service. For more information, please see a recent [Hobbs Straus Dean & Walker memo](#).

## Other

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### USET/USET SPF Issues 2<sup>nd</sup> Edition of Organizational Education Book

USET/USET SPF has recently published the second edition of our [organizational education book](#). It provides an overview of USET and USET SPF's priorities and initiatives, as well as our history and membership. We plan to utilize it in our Washington, DC outreach and education efforts, and beyond. Hard copies of the book have been mailed to each member Tribal Nation. To request additional copies, please email Brandy Venuti at [bvenuti@usetinc.org](mailto:bvenuti@usetinc.org).

## Trust Modernization

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### USET SPF Expresses Continued Opposition to RESPECT Act Revisions that Undermine Tribal Sovereignty

On March 11th, USET SPF [wrote](#) to House Natural Resources Committee Chairman, Rep. Raul Grijalva (D-AZ) in response to a March 7th Tribal briefing regarding revisions to H.R. 3587, the Requirements, Expectations, and Standard Procedures for Effective Consultation with Tribes (RESPECT) Act. The RESPECT Act would codify Tribal consultation requirements for all federal agencies, including independent agencies. As we have previously indicated, USET SPF strongly supports the spirit and intent of the RESPECT Act, including its application to independent agencies. However, we continue to believe that the bill requires additional refinement before it can receive further consideration.

In particular, we are concerned with the inappropriate status the revised bill would confer upon Alaska Native Corporations (ANCs). While the bill does take steps to reinforce that for-profit ANCs are not Tribal governments, it also places them on equal footing during the consultation process. While we do not dispute that ANC's play a critical role that is also complimentary to Tribal

Nations that reside within the borders of Alaska, we feel as though this direct inclusion undermines the government-to-government relationship between Tribal Nations and the United States and dilutes consultation as a diplomatic tool.

At the same time, we do not believe the critical role of Tribal organizations is appropriately reflected in the most recent version of the RESPECT Act. Tribal organizations do play a unique, valuable, and complimentary role in Tribal consultation in support of our membership, including advocating the



consensus positions of Tribal Nations from a particular region or across the country. The amended version of the bill would only permit Tribal organization participation in consultation if a Tribal Nation asks for organization participation on its behalf. This would inappropriately place Tribal organizations in a 'lobbying' space.

Finally, as currently written, the RESPECT Act provides Tribal Nations with the opportunity to seek judicial review when federal agencies fail to properly consult on actions affecting Tribal interests. However, legal action may only be possible after the agency action has already taken place. By this time, in the case of cultural resources in particular, irreparable damage may already be done. While legal action would certainly be appropriate, it cannot ever replace damaged or destroyed cultural resources. In order to avoid adverse impacts following an agency finding of no impact, there must be an opportunity for Tribal Nations to appeal a finding of no Tribal impact or intervene prior to agency action.

USET SPF maintains that these concerns must be addressed prior to a full Committee mark-up of the bill or any further consideration by Congress. We have to continued to raise these concerns, including through discussions with partner organizations, resulting in the postponement of two attempted mark-ups. Although we have long called for the codification of Tribal consultation requirements, this cannot come at the expense of Tribal sovereignty and our sacred, Nation-to-Nation, diplomatic relationship with the United States. We stand opposed to any legislative or regulatory effort that fails to honor these fundamental principles.