



USET

SOVEREIGNTY PROTECTION FUND

711 Stewarts Ferry Pike
Suite 100
Nashville, TN 37214
P: (615) 872-7900
F: (615) 872-7417
www.usetinc.org

*Transmitted Electronically
to ITEK@ostp.eop.gov*

October 11, 2022

Alondra Nelson
Deputy Assistant to the President
Deputy Director for Science and Society
Office of Science and Technology Policy
Eisenhower Executive Office Building
1650 Pennsylvania Ave
Washington, DC 20504

Brenda Mallory
Chair
Council on Environmental Quality
730 Jackson PI NW
Washington, DC 20506

Dear Deputy Director Nelson and Chair Mallory,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Tribal consultation held on September 22, 2022 by the White House's Office of Science and Technology Policy (OSTP) and Council on Environmental Quality (CEQ). This consultation was held to provide an update on Guidance being developed for federal agencies on integrating Indigenous Knowledge (formerly addressed as Indigenous Traditional Ecological Knowledge) into federal decision-making. USET SPF previously submitted comments to OSTP and CEQ in May 2022 to provide recommendations on how federal agencies should respectfully integrate Indigenous Knowledge into decision-making and we appreciate the thorough draft Guidance that has been developed thus far. However, we offer additional recommendations to the draft Guidance that focus on the importance of federal employees receiving education on the federal trust and treaty obligation as a foundation for integrating Indigenous Knowledge into federal decision-making, protecting sensitive Tribal cultural knowledge, increased funding for Tribal Historic Preservation Officers, and establishing a standing, permanent Tribal Advisory Committee on Indigenous Knowledge.

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

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).

Because there is Strength in Unity

advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Educate Federal Employees on Tribal Sovereignty and U.S.-Tribal Nation Relations as a Foundation for Integrating Indigenous Knowledge

The draft Guidance provides background information regarding the historical and intergenerational trauma experienced by Tribal Nations and the importance of federal agencies understanding this context when working with us to build and maintain positive relationships. However, before the federal government can effectively implement Indigenous Knowledge into its science and policy decision-making processes, federal employees must receive comprehensive training on working with and communicating effectively with Tribal Nations. While the draft Guidance provides historical information regarding past injustices committed against our people and calls upon the federal government to acknowledge this history, there should still be a section dedicated to requiring federal employees to be educated on Tribal sovereignty and U.S.-Tribal Nation relations. Effective and transparent communication and understanding of the federal government's trust and treaty obligations to Tribal Nations are essential, core components to implementing Indigenous Knowledge effectively and respectfully into federal decision-making. Federal employees must understand that federal actions have direct and indirect impacts and consequences on Tribal Nations and our citizens. Federal employees are responsible for the review of every federal undertaking that involves right-of-way permits, land appraisal activities, and environmental and cultural assessments and impact statements on Tribal Lands and our traditional homelands. However, many of the same federal employees engaging in decision-making that impacts our historic, cultural, and natural resources do not fully understand the history of U.S.-Tribal Nation relations and the federal trust obligation. It is essential and the duty of all federal employees to understand that Tribal Nations are modern governments, and that these trust and treaty obligations are perpetual.

The lack of education and understanding regarding trust and treaty obligations contributes, at least in part, to federal failures to properly consult. USET SPF has long recommended mandatory training on U.S.-Tribal relations and the trust obligation for all federal employees. This will ensure that federal employees are knowledgeable of the federal government's obligations to promote Tribal sovereignty and self-determination, regardless of the level their position has in direct interaction with Tribal Nations. This training should be designed in consultation with Tribal Nations, especially as the federal government plans to integrate Indigenous Knowledge into federal decision-making processes. Ongoing coordination and consultation with Tribal Leaders will ensure that Indigenous Knowledge Guidance developed, implemented, and, when appropriate, revised, is respectfully and appropriately integrating our proprietary knowledge into federal decision-making processes.

Require Federal Agencies to Protect Sensitive Tribal Cultural Information and Knowledge

In comments submitted in May 2022, USET SPF recommended that the federal government should actively protect sensitive Indigenous Knowledge and cultural information from being accessed through mechanisms such as Freedom of Information Act (FOIA) requests or from being shared on publicly available maps, guides, and other online tools/databases. We emphasized that this is especially important in protecting our sensitive information and Indigenous Knowledge from being accessed by entities such as academic institutions, local and state governments, and industry.

The draft Guidance has included language that directs federal agencies to develop Indigenous Knowledge Plans when a decision-making process or research project may include Indigenous Knowledge input. Further, the draft Guidance states that agencies should be aware that Tribal Nations and Tribal Leaders are

best positioned to identify what types of our Indigenous Knowledge sets are sensitive or sacred and should be protected from public dissemination. Therefore, the draft Guidance instructs federal agencies that during development of an Indigenous Knowledge Plan a federal agency should consult with its legal counsel regarding legal obligations under FOIA, other public disclosure laws, and legal authorities that may apply to consideration of Indigenous Knowledge. While this is a step in the right direction, USET SPF strongly urges that this language be expanded upon. Prior to the sharing of Indigenous Knowledge, there must be an established and respected high level of trust between the federal government and Tribal Leaders. This trust has been broken in the past and its restoration will require federal agencies to actively adopt, implement, and adhere to policies that provide the utmost protections for Tribal Nations sharing sensitive Indigenous Knowledge. Federal agencies must work with Tribal governments and our Tribal Leaders to ensure sensitive Indigenous Knowledge is never shared with the public. Furthermore, federal agencies receiving Indigenous Knowledge from Tribal Nations should not share this information with other federal agencies in the absence of express Tribal Nation consent. Federal agencies that receive inquiries or requests for the sharing of Indigenous Knowledge from other federal agencies should also inform the respective Tribal Nation regarding these requests. We should be the sole determiners regarding whether this information should be shared or withheld.

We reiterate our recommendation from our May 2022 comments that OSTP and CEQ must work with the Office of Management and Budget to develop guidance for federal agencies on how FOIA requests on our information should be handled regarding Indigenous Knowledge. First and foremost, during the exchange of Indigenous Knowledge and other sensitive Tribal cultural information, federal agencies should actively work with Tribal Leaders to determine what information should be redacted from public dissemination and protected from FOIA requests. Furthermore, 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. Similarly, federal agencies must inform Tribal governments when the agency receives these requests, what entity is requesting information, and the information being requested. Tribal Leaders, Tribal Historic Preservation Officers, and other individuals we expressly identify, should be recognized as authorities to claim what Indigenous Knowledge and cultural information should be withheld or redacted from public dissemination. Additionally, we should also be the sole and final arbiters in identifying what constitutes Indigenous Knowledge—not the federal government.

Furthermore, during Tribal consultation sessions, federal agencies should inform Tribal Nations of the federal government's legal obligations for the release of information to the public under FOIA requests. Federal agency staff must work with Tribal Leaders to ensure that the recording, taking of notes, or direct transcription of a consultation by machine or other methods does not create a record of sensitive Indigenous Knowledge and cultural information that could potentially be disseminated to or accessed by the public. During consultation sessions we should be notified of any recording and transcription methods being used. Additionally, federal agencies must adhere to any objections of the recording or transcription of any Indigenous Knowledge or cultural information divulged during consultation. Furthermore, requests for the redaction of sensitive Indigenous Knowledge and cultural information should be allowed to be stated verbally during consultation sessions and in any follow-up written materials submitted to federal agencies.

Provide and Expand Funding for Tribal Historic, Cultural, and Natural Resource Officers and Managers

The costs associated with reviewing permit applications, environmental assessments and impact statements, Section 106 reviews under the National Historic Preservation Act, and other activities associated with federal actions and undertakings can be extremely high. Additionally, not all Tribal Nations

have Tribal Historic Preservation Officers (THPOs) due to funding limitations and may rely on a Tribal cultural or natural resource department to review these activities. In the instances that Tribal Nations have a dedicated THPO and/or cultural or natural resource departments, oftentimes these individuals and departments are inundated with multiple project permits, applications, and environmental, historic, and cultural reviews that exceed the capacity and resources needed to examine and address each project proposal and activity. Review of these proposals can also be lengthy because they are often broken into multiple, segmented reviews of a single project and span across multiple agency jurisdictions and oversight. Furthermore, these individuals and departmental staff may fulfill multiple roles within Tribal government due to funding limitations. It is not uncommon that a cultural resource manager may also fulfill the role of a natural resource manager or serve in an emergency management role.

Federal agencies must actively identify and advocate for upfront funding to support Tribal government staff in the review of project proposals and applications since these will often include the use and sharing of Indigenous Knowledge. Appropriate compensation must also be provided to Tribal departmental staff and spiritual and cultural elders expressly identified and recognized by Tribal Leaders since they participate and serve in critical roles in the sharing of Indigenous Knowledge. Just as western scientists and technical experts are compensated for their work and participation in the sharing and contribution of information, our Tribal government staff, technical experts, and identified spiritual and cultural elders should also receive just compensation and support from federal agencies. Federal agencies should provide funding and support for these activities in all areas of federal policy and decision-making, which includes areas such as infrastructure construction, forest management, stewardship/co-stewardship, and management of other natural, environmental, agricultural, and wildlife resources.

Establish A Standing, Permanent Tribal Advisory Committee on ITEK

The OSTP and CEQ November 2021 Memorandum stating the Administration's commitment to elevate and integrate Indigenous Knowledge into federal decision-making processes also established an Interagency Working Group on Indigenous Knowledge (Working Group). This Working Group was created to inform the development of guidance on ITEK integration into federal decision-making and is comprised of representatives from agencies across the federal government. While we appreciate this effort to enhance interagency collaboration and coordination and the directive to draw upon agency experiences on the use and integration of Indigenous Knowledge in federal decision-making, the White House should establish a standing, permanent Indigenous Knowledge Advisory Committee (Advisory Committee). This Advisory Committee should be comprised of Tribal Leaders, our expressly identified and recognized spiritual/cultural leaders, and other individuals Tribal Leaders may nominate to represent our Tribal Nations (e.g., Tribal cultural/natural resource managers). The Advisory Committee should be comprised of Tribal Nation representatives from every region of the nation to ensure that regional priorities and unique circumstances and environments regarding Indigenous Knowledge are equitably represented. Moving forward, the Administration should host Tribal consultations to receive additional recommendations from Tribal Nations on structuring the Advisory Committee.

Conclusion

The use of Indigenous Knowledge has been practiced and passed down by Tribal Nations and our expressly recognized and identified cultural and spiritual leaders since time immemorial. It is based on our cultural, spiritual, and religious beliefs as well as the observed experiences of our natural, surrounding environments. These beliefs and observations have both influenced and directed our individual and communal actions and activities to ensure balance with and respect to our environments, which can include but are not limited to local vegetation and wildlife, waterways, forests, and seascapes. It is important that

federal agencies work with Tribal Nations and our identified cultural and spiritual leaders to accurately define Indigenous Knowledge to incorporate holistic beliefs and practices respective to each Tribal Nation. The use and application of Indigenous Knowledge in federal decision-making processes must also reflect this ideology and federal agencies must respect our willingness or unwillingness to share Indigenous Knowledge and cultural information. We appreciate the Administration's commitment to recognizing the importance of Indigenous Knowledge and elevating its applicability and use in federal science, policy, and decision-making processes. USET SPF looks forward to continued engagement and collaboration with the OSTP and CEQ as it further refines its draft Guidance for federal agencies to integrate Indigenous Knowledge into agency decision-making processes. 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,

A handwritten signature in black ink, appearing to read "K. E. Francis, Sr.", with a long horizontal flourish extending to the right.

Chief Kirk E. Francis, Sr.
President

A handwritten signature in black ink, appearing to read "Kitcki A. Carroll", with a long horizontal flourish extending to the right.

Kitcki A. Carroll
Executive Director