



USET

SOVEREIGNTY PROTECTION FUND

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*Transmitted Electronically
To consultation@bia.gov*

January 17, 2023

Bryan Newland
Assistant Secretary – Indian Affairs
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Assistant Secretary Newland,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to Tribal consultations held on funding received from the Inflation Reduction Act of 2022 (IRA). On November 17, 2022, the IRA was signed into law, which included investments to address our climate crisis, lower costs for working families, and created job opportunities for our communities. The IRA authorized \$6.6 billion in direct funding to the Department of the Interior (DOI) to assist in the transition to a clean energy economy, advance key habitat restoration and land resilience projects, and secure environmental justice for disadvantaged communities. The total funding includes a \$385 million investment for the Bureau of Indian Affairs (BIA) for climate resilience and adaptation, hatchery needs, and a new Tribal Nation electrification program. We appreciate the Department's consideration to equitably distribute IRA funds for the construction of resilient infrastructure to address the increasing threats from climate change. Although USET SPF generally supports the equitable disbursement of these funds, we are concerned regarding the method for allocation of funds, especially through a grant process that includes competition with state and local governments. Furthermore, we recommend that DOI ensure that appropriate and advance notice of Tribal consultation is initiated prior to the construction of renewable energy projects that could potentially harm sacred sites and submerged areas of cultural significance.

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.

Funding Mechanisms and Focus Must Uphold Trust and Treaty Obligations

During the Tribal consultations to solicit input on the allocation of funds authorized under the IRA, DOI has stated that it is exploring methods to disburse funds equitably to applicants. USET SPF supports this effort to ensure that all Tribal Nation applicants receive proper consideration to receive IRA funds to address climate resilience and adaptation, construct climate resilient infrastructure, and support for hatcheries. These priorities align with Tribal Nation efforts to protect our homelands from the increasing threats of climate change as well as ensuring that we are able to promote the public health of our communities. We have coexisted with the lands of the Americas since time immemorial and our existence is inextricably intertwined with our homelands. They are the foundation and heartbeat of who we are as a people and as such, we have tended to them with the utmost respect and reverence. We have lived sustainably in our ancestral homelands for countless generations, relying on our observations, experiences, and lessons derived from living in a sustainable manner with our surrounding, natural environments. Tribal Nations face a myriad of issues related to climate change, which have led to rising waters that are affecting both our inhabited and traditional lands in our coastal areas as well as increased occurrences of severe weather and wildfires in our region. These activities are symptoms of the larger issues we face as Tribal Nations, in particular, and the failure of the U.S. government to live up to the terms of our diplomatic, Nation-to-Nation relationship. We strongly urge BIA to utilize IRA funds to support the implementation of climate adaptation planning to address the increasing threats of natural disasters, severe weather, and receding coastlines.

Tribal Nations are working to become more resilient to the impacts of climate change. There are over 60 Tribal climate change adaptation plans and vulnerability assessments across Indian Country, with many more currently in development. Some of the first Tribal-led climate change adaptation plans within the United States came from Tribal Nations in the USET/USET SPF region. Tribal Nations within the USET/USET SPF region have explored climate change adaptation options and opportunities to fund adaptation activities. Often, departments within Tribal Nations, such as natural resource or cultural preservation departments, take the lead, but not exclusively, as Tribal emergency management or economic development programs have also explored climate change adaptation options. Despite exceptional efforts toward climate change adaptation, there remain significant institutional barriers to Tribal climate change adaptation planning.

The same institutional barriers of limited jurisdiction and access to traditional territory or places of cultural significance remain factors in Tribal climate change adaptation planning. Though there have been significant increases in federal funding toward Tribal climate change resilience, funding for long-term climate change adaptation remains a challenge. Tribal climate change resiliency funding remains very "project-based," and unsustainable for long-term climate change adaptation plan implementation. When it comes to Tribal Nation relocation, it cannot be overstated that such a term is profoundly sensitive for Tribal Nations, as we have had multiple experiences in U.S. history with forced or coerced relocation and removal of access to our homelands. It is understood that sea level rise, riverine erosion, and other climate change impacts, and worst-case scenario projections are going to require the movement of communities and infrastructure in some locations. Tribal Nations must be afforded the dignity and the means to move to places that will continue the health and well-being of our Nations and communities. However, our rights and access to our original homelands, waters, and coasts must be maintained and protected, even if these places become submerged.

Climate change adaptation must also include placing lands into trust to provide communities safety from sea level rise and to provide Tribal Nations access to species of cultural importance whose ranges have shifted due to climate change. Furthermore, despite federal trust and treaty obligations, Tribal Nations continue to be limited to competitive funding for climate change resiliency projects. This makes such funding inaccessible to Tribal Nations with limited grant pursuit staffing capacity, regardless of significant climate change impacts and concerns.

USET SPF does not support the use of a grant or competitive grant-based funding model to allocate IRA funds. As a matter of governmental parity, Tribal Nations must have the authority to engage in Tribal self-governance compacts and contracts to administer federal programs. Indian Self-Determination and Education Assistance Act (P.L. 93-638) contracting and compacting opportunities provide Tribal Nations with the ability to directly administer funds for certain federal programs, which, as of now, include those offered through the Bureau of Indian Affairs and the Indian Health Service. USET SPF has long advocated for an expansion of P.L. 93-638 authority across all federal programs since Tribal Nations know how best to utilize these funds to serve our communities. The practice of grant or competitive grant-based funding consistently and unfairly positions Tribal Nations to compete for funds and does not uphold the federal government's trust and treaty obligations.

Similarly, Tribal Nations should not be forced to compete with state and local governments for IRA funds. While Tribal Nations may have to coordinate with states and localities on climate resilience projects or connecting to energy, broadband, and other utility conduit systems, DOI should enforce states and localities to cooperate with Tribal Nations to ensure these approvals are streamlined and comply with our efforts to address climate change and construct climate resilient infrastructure. DOI must actively work in support of Tribal Nations to ensure that we are not unduly burdened with interference and obstructions from state and local governments to establish our own renewable energy projects or connect to external utility systems located outside of our jurisdictional boundaries, such as the electric grid. Furthermore, DOI must ensure that Tribal Nations are included and consulted in climate adaptation planning with all units of government to ensure that our priorities are included to protect our homelands, natural resources, and communities.

Additionally, DOI has indicated that it intends to implement 'Made-in-America' requirements to bolster United States manufacturing and supply chains. This effort seems to coincide with the Build America, Buy America Act requirements included in the Infrastructure Investment and Jobs Act signed into law on November 15, 2021. While USET SPF supports preference for the purchase of locally sourced, especially Tribally sourced, products, goods, and services, we want to ensure that a waiver process to these requirements is upheld by DOI to address supply chain shortages and issues with inflation. This will ensure that IRA Tribal project proposals are not rejected or delayed due to unforeseen supply chain or product unaffordability issues from locally sourced suppliers. Furthermore, DOI should use this opportunity to implement provisions from the Buy Indian Act to set aside procurement contracts for Indian-owned and controlled businesses and ensure Indian Economic Enterprises are eligible to receive IRA funds for climate adaptation planning and implementation, clean energy projects, and hatchery construction.

Tribal Lands Recognized as Eligible Under the Justice40 Initiative

In the vein of examining methods for equitable disbursements of IRA funds, DOI has determined that it will utilize the Justice40 Initiative to direct IRA fund disbursements to 'disadvantaged communities.' This Initiative was announced by President Biden on January 27, 2021 by Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad" (EO 14008) and directed the Council on Environmental Quality (CEQ) to develop the Climate and Economic Justice Screening Tool (CEJS Tool). The Justice40 Initiative aims to

provide 40 percent of funding from federal services and programs to target areas such as climate change, clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, remediation and reduction of legacy pollution, and the development of critical clean water infrastructure.

As directed by EO 14008, the CEJS Tool provides federal agencies with information on communities eligible to receive federal programs and services from the Justice40 Initiative, which includes Tribal communities. USET SPF was active in CEQ consultations to solicit Tribal Nation input on the beta version of the CEJS Tool and was successful in advocating that all Tribal Lands be recognized as eligible areas to receive federal funding under the Justice40 Initiative. Moving forward, DOI should rely on the CEJS Tool to determine Tribal Lands eligible for IRA funds while also ensuring that Tribal Nations can propose changes to the Tribal Lands recognized by the tool. These actions will ensure that Tribal Nations can designate their areas of interest to address climate adaptation and resilience in our communities and that our representation in the CEJS Tool is up to date when DOI considers the allocation of IRA funds.

Ensure Appropriate and Advanced Notice Tribal Consultations are Conducted Prior to the Construction of Any Renewable Energy Projects

The Biden Administration has been highly focused on supporting the construction of renewable energy projects nationwide. USET SPF supports these efforts, but not at the cost of inappropriately expediting environmental and cultural review processes and potentially causing irreparable harm to our sacred sites. We strongly urge DOI to conduct appropriate and advanced notice Tribal consultations on projects that could affect Tribal natural, cultural, and historic resources. DOI must adhere to the environmental and cultural preservation review processes mandated by the National Environmental Protection Act (NEPA) and Sec. 106 of the National Historic Preservation Act (Sec. 106, NHPA). Environmental assessments and environmental impact statements should not be expedited without full and advance notice of consultation with Tribal Nations to determine issues and concerns with the placement and construction of renewable energy projects, especially on our aboriginal lands located outside of our current jurisdictional boundaries.

This issue has recently been an area of concern for some of USET SPF's member Tribal Nations and the construction of off-shore wind projects and the impacts these projects have on aboriginal submerged lands that have cultural and sacred significance. Many of these projects are being overseen by DOI's Bureau of Ocean Energy Management (BOEM) and some of our member Tribal Nations have expressed concern over the insufficient Tribal consultation processes exercised by BOEM. Specifically, USET SPF has become aware that BOEM is not appropriately considering Tribal Nation concerns regarding potential threats these projects pose to our sacred sites and other areas of cultural significance and that the agency is deferring to project proponents to conduct Tribal consultation and outreach. DOI must uphold its trust and treaty obligations and ensure that consensus on the location and construction of renewable energy projects is in favor of protecting our sacred sites and preserving other submerged areas of cultural significance.

Conclusion

We appreciate the ongoing efforts of DOI to consult with Tribal Nations on the myriad of laws that have been enacted authorizing funding for critical infrastructure and climate resilience and adaptation. DOI must enable Tribal Nations to implement climate adaptation plans to sustain and steward our ecosystems and natural and cultural resources, as well as protect the public health of our communities. As DOI determines how these funds will be allocated to support Tribal Nations and our efforts to pursue climate resilience and adaptation projects, it is important that DOI ensure that appropriate consultation activities are adhered to by its agencies and that project deliverables uphold the priorities and self-determination efforts of our Tribal Nations. Furthermore, it is important that in the pursuit of a cleaner energy economy, Tribal Nations do not

bear the brunt of the potential harmful effects of renewable energy construction on our sacred sites and areas of cultural significance. Allocation of IRA funds must uphold trust and treaty obligations and prioritize Tribal Nation efforts to protect our homelands and communities from the increasing occurrence of natural disasters and destruction of critical infrastructure. We look forward to continuing to work with you to address these concerns and ensure that input from Tribal Nations is seriously considered and our recommendations are implemented in all program initiatives. 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,



Kirk Francis
President



Kitcki A. Carroll
Executive Director