

# USET SPF Policy and Legislative Affairs Updates

**USET/USET SPF 2023 Impact Week Meeting**

February 6-7, 2023

*Because there is Strength in Unity*



# New Congress/Remaining Years of Biden Admin: P&L Landscape

*Because there is Strength in Unity*



# 2023 and 118<sup>th</sup> Congress

## Split Chambers

- Oversight
  - GOP Biden Admin Investigations
  - IHS, DOI, COVID programs
- Gridlock
  - Appropriations
    - Maintain IHS advance appropriations
  - Debt Ceiling
  - Ukraine



*Because there is Strength in Unity*



# GOP House Rules

- ‘Cut-Go’: The Cut-As-You-Go (CUT-GO) rule prohibits the House from considering legislation that will increase mandatory spending for the current fiscal and calendar year and the next four or nine fiscal years unless there are comparable cuts to mandatory spending elsewhere in the budget.
- Limiting spending in amendments: Amendments to appropriations bills may not introduce a net increase in the amount of spending in the bill. Amendments that do so are subject to the point of order.
- A point of order affecting long-term spending: The rules package creates a point of order against legislation that generates a net increase of more than \$2.5 billion in direct spending 10 to 50 years in the future.
- A point of order against unauthorized appropriations: A Member may raise a point of order against provisions of a general appropriations bill if it contains funding greater than the last level authorized by law. The Member who raises this point of order must inform the Chair what the last authorization level was. If the Chair sustains the point of order, an amendment reducing the appropriation to the last authorized level is automatically adopted.

*Because there is Strength in Unity*



# House Indian & Insular Affairs Subcommittee Oversight Agenda



- Carcierri/Fee-to-Trust
- IHS and BIA Staffing and Funding
- Natural Resources Management: Energy Development
- Forestry
- IHS IHClA Implementation
- Law Enforcement
- Indian Gaming

*Because there is Strength in Unity*



# Upcoming Reauthorizations

## Farm Bill

- Align agriculture programs with Indian Country and trust obligation
- ISDEAA authority for FDIPR, SNAP, Forestry

## Special Diabetes Program for Indians

- Increase funding and length of reauthorization
- Provide ISDEAA authority

*Both expire on September 30, 2023*

*Because there is Strength in Unity*





# Biden Administration



Preserve and buildout structural gains:

- OMB Tribal Affairs
- Treasury Tribal and Native Affairs
- WCHNAA

Policy Advancements

- 151 Regulations
- Mandatory funding plan for IHS and beyond

*Because there is Strength in Unity*



# Appropriations and Budget

*Because there is Strength in Unity*





# Fiscal Year 2023

- December 29<sup>th</sup>: President signs into law H.R. 2617, the Consolidated Appropriations Act of 2023
  - Govt funded at \$1.7 trillion through September 30, 2023
  - Mental Health and Substance Abuse Package
  - \$42 billion for aid to Ukraine
  - \$27 billion in Disaster Relief

*Because there is Strength in Unity*



# USET SPF Advocacy Around Omnibus

- November 30<sup>th</sup>: Partner org letter to President and Congressional leadership requesting Advance Appropriations for IHS
  - \$5.129B in FY24
- November 29<sup>th</sup>: USET SPF- led Partner Org Letter to Senate HELP re: Native Behavioral Health Provision
  - Authorized, but not appropriated

*Because there is Strength in Unity*



# Advance Appropriations for IHS in FY24

*“The [bill] provides advance appropriations for the Indian Health Services and Indian Health Facilities accounts totaling **\$5,129,000,000** for fiscal year 2024. That amount is equal to the fiscal year 2023 Committee recommendation for those accounts with the exception of funding provided for Electronic Health Records, Sanitation Facilities Construction, and Health Care Facilities Construction which are provided only an annual appropriation in recognition of the project-based nature of those accounts. ...The Committee recognizes that budget uncertainty due to temporary lapses of appropriations and continuing resolutions have an effect on the orderly operations of critical healthcare programs for Native American communities. ...This budgetary change will enable IHS to continue to provide health services without interruption or uncertainty, improving the quality of care and providing peace of mind for patients and medical providers.”*

***Because there is Strength in Unity***



# Advance Appropriations Basics

- Funding that becomes available 1-year or more after appropriations bill in which it is contained—ex. funding level for FY24 identified in FY23, but drawn down in FY24
- Protects funds from delays in appropriations process—i.e. Shutdowns, CRs
- Other entities receiving: VA Health Administration, Corporation for Public Broadcasting, Education Title I grants

*Because there is Strength in Unity*



# FY 2023 Interior Appropriations

Agency	President's Request	FY 2023 Omnibus	Omnibus v. Pres. Request	Omnibus v. FY 2022 Enacted
Indian Health Service	\$9.1 Billion	\$6.9 Billion	-\$2.2 Billion	+\$297 Million
Bureau of Indian Affairs	\$2.8 Billion	\$2.4 Billion	-\$299.4 Million	+\$177 Million
Bureau of Indian Education	\$1.575 Billion	\$1.4 Billion	-\$174 Million	+\$119.5 Million

*Because there is Strength in Unity*



# FY 2023 Appropriations *cont.*

## Indian Health Service

- Provides a total of \$6.9 billion in discretionary funding, +\$297 million, including:
  - \$2.5 billion for **Hospitals & Health Clinics**
  - \$997 million for **Purchased/Referred Care**
  - \$218 million for **Electronic Health Records**
  - \$959 million for **Facilities**
  - Separate, indefinite appropriations for **CSC** (est. \$969M) and **105(I) leases** (est. \$111M)

*Because there is Strength in Unity*





# FY 2023 Appropriations cont.

## Bureau of Indian Affairs

- Provides a total of \$2.4 billion, +\$177 million, including:
  - \$55 million for **Social Services (TPA)**
  - \$17 million for **Natural Resources (TPA)**
  - \$71.8 million for **Tribal Courts (TPA)**
  - \$29 million for **Aid to Tribal Government**
  - \$480,000 for **newly recognized Tribal Nations**
  - \$159 million for **Trust – Real Estate Services (TPA)**
  - \$31.2 million for **Economic Development**
  - \$35 million for **Tribal Climate Resilience**
  - Separate, indefinite funding for **CSC** (est. \$328 million) and **105(I) leases** (est. \$30 million)
  - \$75.2 million for **Resource Management Construction**

## Bureau of Indian Education

- Provides a total of \$1.4 billion, +\$119.5 million, including:
  - \$43.5 million for **Scholarships & Adult Education (TPA)**
  - \$96.3 million for **Education Facilities Improvement and Repair**

*Because there is Strength in Unity*



# FY 2024 President's Budget Request

- Expected release on March 9, 2023
- October 14, 2022: USET SPF comments to OMB on FY 2024 President's Budget Request
  - Regional IHS and BIA priorities
  - IHS Mandatory funding proposal
  - Increased funding for THPOs
  - Funding and permanency for:
    - Treasury Office of Tribal and Native Affairs
    - WHCNA
  - Funding increase and ISDEAA authority for SDPI

*Because there is Strength in Unity*



# Mandatory Funding for IHS

8/12/21: [HHS DTLL](#) initiating consultation on mandatory funding approaches for the Indian Health Service

9/1/21: USET SPF Comments on Mandatory Funding for IHS

- Strongly support full and mandatory funding for all federal Indian programs, including IHS
- IHS should convene a joint federal-Tribal workgroup to:
  - Determine full funding number;
  - Examine appropriate growth patterns; and
  - Recommend appropriate appropriations structure

November 2021: IHS seeks participants for Budget Formulation Sub-Workgroup re: IHS full and mandatory funding

- Workgroup expected to convene during FY25 Budget Formulation in February 2023

*Because there is Strength in Unity*



# Modernizing Nation-to-Nation Relationship

*Because there is Strength in Unity*



# Presidential Memorandum on Uniform Standards for Tribal Consultation

Issued on November 30, 2022 during White House Tribal Nations Summit

- Sets consultation principles
  - Reinforce Tribal consultation as part of the Nation-to-Nation relationship
- Designate agency Tribal consultation point-of-contact
- Determine whether Tribal consultation is appropriate
- Provide proper Tribal consultation notice/details/timelines
- Consultation Conduct
- Record of Consultation
- Required agency training on consultation, Tribal sovereignty, N2N relationship

*Because there is Strength in Unity*



# USET SPF Tribal Consultation Principles

- Evolve consultation to gain our free, prior, and informed consent.
- **Standardize and codify consultation requirements.**
- **Tribal consultation should occur on a Nation-to-Nation, leader-to-leader basis.**
- Invest in establishing a diplomatic relationship, include in annual Presidential budget requests.
- Never delegate federal consultation obligations.
- **Consultation should be early and ongoing, with advance notice and sufficient response timelines.**
- Defer to Tribal Nations and apply the Indian Canons of Construction through all before, during, and following consultation.
- Encourage flexibility for Tribal waivers of statutory and regulatory requirements.
- **Ensure transparency and follow-up in decision-making.**
- **Educate federal employees on Tribal sovereignty and U.S.-Tribal Nation Relations.**

*Because there is Strength in Unity*





# RESPECT Act

H.R. 3587: Requirements, Expectations, and Standard Procedures for Effective Consultation with Tribes (RESPECT) Act

- Codifies consultation with Tribal Nations
- Introduced by House Natural Resources Committee Chairman, Raul Grijalva (D-AZ)

March 2022: Amendment in the Nature of a Substitute Proposed

- Elevates ANCs
- Tribal orgs can only participate in consultation on behalf of Tribal Nation
- No process for Tribal Nation initiation of consultation

March 11<sup>th</sup>: USET SPF letter outlining concerns

September 2<sup>nd</sup>: Partner org letter reiterating concerns and opposing further action until concerns addressed

*Because there is Strength in Unity*



# RESPECT Act *cont.*

- October 2022: Chairman Grijalva DTLL and revised ANS
  - Creates tri-lateral consultation between fed govt, AK Tribal Nations, and ANCs
- December 7, 2022: Joint Tribal org letter to Chairman Grijalva continuing to oppose further action until concerns are properly addressed
- January 2023: HNR Democratic staff says reintroduction on hold pending implementation of Presidential Memorandum

*Because there is Strength in Unity*



# HHS Tribal Consultation Policy

January 27, 2023: USET SPF submits comments to HHS on Revised TCP

- “Should consultation with ANCs be included in this Tribal Consultation Policy or should HHS develop a separate policy to address this congressional mandate?”
- Role of Tribal organizations
  - ‘Authorization’ from member Tribal Nations?
- Acknowledge trust and treaty obligations

*Because there is Strength in Unity*



# Laws of General Applicability

Due to lack of understanding re: federal Indian law and Tribal sovereignty, federal govt attempts to apply 'laws of general applicability' inappropriately in Indian Country

Recent examples:

- Compliance with civil rights law as a condition of receipt for ARPA funds
- Vaccine mandates
- HHS Non-Discrimination Rule

USET SPF letters to WHCNA & WH Domestic Policy Council:

- Fed govt should assume 'laws of general applicability do not apply

DOJ commits to organizing symposium for federal officials during June TNLC meeting

*Because there is Strength in Unity*



# Improving Treasury's Engagement with Tribal Nations

- As Treasury is administering billions of dollars of COVID funding to Indian Country, it is even more clear that it needs education and expertise on Indian Country.
- USET SPF recent advocacy before Treasury has centered on:
  - Establishment of Tribal Affairs Office
  - Elevate and diversify TTAC
  - Fiscal Recovery Fund IFR improvements
  - Compliance
  - Dual tax

*Because there is Strength in Unity*



# Health

*Because there is Strength in Unity*





# Restoring Hope for Mental Health and Well-Being Act of 2022

- Passed along with the omnibus spending bill in late December 2022
- **Native Behavioral Health Provision**
  - Authorizes \$80m/yr FY23-27 for behavioral health formula grants in Indian Country
  - Tribal consultation on formula and reporting requirements
  - Opportunity for ISDEAA contracting and compacting
  - **Need to advocate for funding → forthcoming joint letter to OMB**
- **Peer-Supported Mental Health Services:** Authorizes grants to develop, expand and enhance access to peer-delivered mental health services through workforce development, stigma reduction, expansion of virtual mental health services and other actions.

*Because there is Strength in Unity*



# Restoring Hope for Mental Health and Well-Being Act of 2022 *cont.*

- **Grants for Recovery Housing and Services:** Authorizes HHS to award grants to states, tribes and territories to increase the availability of recovery housing for individuals with SUD.
- **Crisis Care Coordination:** Establishes the Mental Health Crisis Response Partnership Program to award competitive grants to states, localities, territories, tribes and tribal organizations for creating or enhancing mobile crisis response units. These units aim to divert mental health and SUD crisis responses from law enforcement to mental health providers, including licensed counselors, clinical social workers and peer support specialists.

*Because there is Strength in Unity*



# SDPI: Looking Ahead

## Special Diabetes Program for Indians expires in FY 2023

### Reauthorization advocacy:

- Increase in funding to accommodate new grantees and provide inflationary increases for existing grantees
- Need for ISDEAA authority
  - Grants do not uphold trust and treaty obligations
  - Better integrate SDPI into existing programs
  - Reduced reporting
  - Contract Support Costs

*Because there is Strength in Unity*



# COVID-19 Recovery/Infrastructure

*Because there is Strength in Unity*



# Inflation Reduction Act

August 16<sup>th</sup>: President Biden signs into law **H.R. 5376, the Inflation Reduction Act**

- Months of partisan negotiation between Sens. Schumer and Manchin
- \$437 billion in spending on energy and climate, reducing health care costs, increasing corporate minimum tax
- 8/5: USET SPF letter urging increase in total direct funding to Tribal Nations

**Direct Funding to Tribal Nations/Native Hawaiians = \$720M—0.16% of total funding**

- \$235 million for Tribal climate resilience, including fish hatchery operations and maintenance;
- \$225 million for development of Tribal high-efficiency electric home rebate programs;
- \$150 million for Tribal home electrification;
- \$75 million for the Tribal Energy Loan Guarantee Program and \$20 billion in allowable loan guarantees;
- \$25 million for Native Hawaiian climate resilience; and
- \$12.5 million for Tribal emergency drought relief.

*Because there is Strength in Unity*



# COVID-19 Recovery Legislation cont.

## [H.R. 3684](#) – The Infrastructure Investment and Jobs Act (bipartisan)

- \$1.2 trillion in physical infrastructure investments
- Includes \$15 billion in direct funding for Tribal Nations:
  - \$3.5 billion for IHS Facilities Construction
  - \$2 billion for Tribal Broadband Connectivity Grants
  - \$216 million for Climate Change
- \$146 billion in eligibility for Tribal Nations
- Signed into law November 15, 2021

*Because there is Strength in Unity*





# Build America, Buy America Act

## Included in Infrastructure Investment and Jobs Act

- New purchasing preference for American-made products to be utilized in **all** federally funded infrastructure projects
  - Waiver categories:
    - Public interest
    - Nonavailability
    - Unreasonable cost
- USET SPF Comments to WHCNA : Exempt Tribal Nations from BABA requirements
  - Program-based waivers
    - E.g. Treasury waiver for LATCF

*Because there is Strength in Unity*



# GAO Report on COVID Relief Distribution in Indian Country

December 15, 2022: GAO Report GAO-23-105473, *“Lessons Learned Could Improve Future Distribution of Federal Emergency Relief to Tribal Recipients”*

- GAO Recommends: *“Congress should consider enabling agencies to use existing mechanisms and structures, such as self-determination contracts and self-governance compacts, as appropriate, to distribute emergency relief to Tribal recipients.”*
  - *“By enabling agencies to use existing mechanisms to distribute funds, Congress would better ensure that they distribute these funds more quickly and with minimal additional administrative burden on Tribal recipients and agencies. This also allows agencies to maintain accountability in the use of the funds through existing reporting mechanisms.”*

*Because there is Strength in Unity*



# Marshall Plan for Tribal Nations

## USET SPF White Paper

- The U.S. should make a substantial, one-time investment in Tribal Nation governmental infrastructure
- 2023 Activities:
  - Endorsements
    - Presentations to partner organizations
    - Non-tribal partners
  - Website
  - Press/Publicity
  - Meetings with federal officials

*Because there is Strength in Unity*



# Infrastructure Permitting

*Because there is Strength in Unity*



# Concerns about Infrastructure Buildout

- Many issues remain with federal permitting processes and agencies
  - Ex. BOEM, FERC
  - USET SPF continues to raise, including with FPSIC
- Tribal Nations not appropriately resourced for high volume of cultural reviews
  - USET SPF advocacy for additional THPO funding, payment for ITEK

*Because there is Strength in Unity*



# Energy Independence and Security Act of 2022

Drafted by Senator Joe Manchin (D-WV)

- Streamline federal energy permitting processes
  - One record of decision
- Expedite interstate electronic transmission facilities
- Require Tribal Nations to publish water quality standards or default to federal standards
- No Tribal consultation

*Because there is Strength in Unity*



# Tribal Homelands

*Because there is Strength in Unity*





# Carcieri Fix in 117<sup>th</sup> Congress

Legislative action in the 117<sup>th</sup> Congress

- House: Several times this Congress, stand alone and appropriations language
- Senate: Continued barriers, SCIA Chair expression of support

April 11, 2022: USET SPF + 17 partner organizations send letter to SCIA urging Senate action

November 14, 2022: USET SPF + 15 partner organizations send letter to Schumer urging action on Carcieri fix and/or land reaffirmation

**Carcieri Fix:** Any Carcieri fix must (1) reaffirm the status of existing trust lands, and (2) confirm the Secretary's authority to place land into trust for all federally recognized Tribal Nations per the intent of the 1934 Indian Reorganization Act.

*Because there is Strength in Unity*



# Carcieri Fix in 118<sup>th</sup> Congress

House Natural Resources Subcommittee:

*“The Committee will conduct oversight of the Department of the Interior’s fee-to-trust policy. The Supreme Court’s 2009 Carcieri v. Salazar decision significantly impacted judicial actions concerning Indian lands and tribal recognition since 1934. The Department failed to provide information related to which tribes and lands are affected by Carcieri. The Department’s failure obstructed potential bipartisan legislative action to reform and improve the process of acquiring lands for Indians in a **balanced manner that reflects contemporary land use and ownership among tribal and non-Indian communities in 21st century America.**”*

Sen. Jon Tester to reintroduce Carcieri Fix bill shortly.

***Because there is Strength in Unity***



# DOI Consultation on Part 151 Revisions

- March 28<sup>th</sup>: DTLL announces consultation on proposed revisions to Part 151 land-into-trust regulations
  - Codify *Carcier* 2-part test
  - Increase efficiency, certainty
  - Reduce burdens on Tribal Nations
  - Expand purposes for land acquisition
- June 30<sup>th</sup>: USET SPF Comments
  - General support for revisions
  - Additional recommendations:
    - Conclusive evidence: all treaties, exercise of federal jurisdiction over Tribal citizens
    - Addtl timeliness standards
    - Combine within boundaries and contiguous tracks

*Because there is Strength in Unity*



# DOI Consultation on Part 293 Gaming Compact Revisions

- March 28<sup>th</sup>: DTLL announces consultation on proposed revisions to Part 293 Class III Gaming Compact regulations
- USET SPF Comments: Address states acting in bad faith
  - Banking laws that allow the freezing of Tribal assets

*Because there is Strength in Unity*



# Next Steps

- Proposed rules for Parts 151 and 293 published December 5, 2022
  - Comments due March 1, 2023
- ASIA Newland has indicated a desire to move to proposed and then final rule on both 151 and 293 revisions
  - Several remaining opportunities to comment

*Because there is Strength in Unity*



# Tax/Treasury

*Because there is Strength in Unity*



# General Welfare Exclusion Act Implementation

## General Welfare Exclusion Act of 2014 (P.L. 113-168)

- To codify and expand the scope of Internal Revenue Service (IRS) Revenue Procedure 2014-35
  - To establish a Tribal Advisory Committee (TTAC) to advise the Secretary of the Treasury on matters relating to taxation of Indians and training of IRS field agents
  - To suspend IRS audits until agents are trained
- TTAC meets for the first time in 2018
    - GWE subcommittee established (along with Dual Tax & Pensions)
      - Request for comment on GWE Guidance 2020
      - Proposed GWE Regulations 2022
        - USET SPF Comments 1/13/23

*Because there is Strength in Unity*





# Dual Taxation

## TTAC Subcommittee on Dual Taxation

- Report on Dual Taxation 2020
  - Recommendations for Treasury and Interior:

*Because there is Strength in Unity*



# Farm Bill/Nutrition

*Because there is Strength in Unity*



# Tribal Self-Governance in Farm Bill Programs

Current Farm Bill Expires in 2023

## USET SPF Current Priorities:

- Self-governance for the Supplemental Nutrition Assistance Program (SNAP or Food Stamps)
- Self-governance for Forestry programs
- Traditional foods

USET SPF comments/testimony to House Rules Committee and WHCNAA ahead of White House Conference on Hunger and Nutrition

*Because there is Strength in Unity*



# Questions?

Liz Malerba, USET SPF Director of Policy and Legislative Affairs

*Because there is Strength in Unity*

