



# USET

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## **Testimony of the United South and Eastern Tribes Sovereignty Protection Fund For the Record of the Senate Committee on Indian Affairs Roundtable on “Native Priorities for the 2023 Farm Bill Reauthorization”**

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Indian Affairs (SCIA) with the following testimony for the record of the March 22, 2023 Roundtable on, "Native Priorities for the 2023 Farm Bill Reauthorization." We appreciate SCIA's focus on hearing directly from Tribal Nations as the Committee considers providing its input to the Senate Committee on Agriculture, Nutrition & Forestry on the formulation of the 2023 Farm Bill Reauthorization. Moving forward, we look to the SCIA and its membership to advocate for Tribal priorities and solutions to be included in the 2023 Farm Bill.

The 2018 Farm Bill (P.L. 115-334) had an unprecedented inclusion of Indian Country with 63 positive, Tribal-specific provisions included in the final legislation. P.L. 115-334 is set to expire on September 30, 2023 and Indian Country is poised to build upon the momentum accomplished in the 2018 Farm Bill to further support and increase opportunities for Tribal Nations, as well as our Native farmers and producers. USET SPF continues to seek foundational and systemic change in Farm Bill programs to empower our Native farmers and producers to harvest and serve traditional and culturally appropriate foods that support the health and well-being of our communities. We also support removing barriers and increasing opportunities for our Native farmers and producers to participate and sell products in the national and international markets. While USET SPF's testimony for the record emphasizes certain recommendations and support for changes to be included in the 2023 Farm Bill, we defer to and recommend that SCIA and the Senate Committee on Agriculture, Nutrition & Forestry review materials developed by the Native Farm Bill Coalition (NFBC), of which USET SPF is a member. The NFBC, comprised of Tribal Nations and Tribal organizations, has developed recommendations for each title of the Farm Bill to improve and strengthen Indian Country access to and participation in Farm Bill programs.

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.<sup>1</sup> USET SPF is dedicated to promoting, protecting, and

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<sup>(1)</sup> 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.

### **Expand Self-Governance Throughout USDA Programs**

Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples that pre-dates the founding of the United States. The U.S. Constitution, treaties, statutes, Executive Orders, and judicial decisions all recognize that the federal government has fundamental trust and treaty obligations to Tribal Nations, including the obligations uphold the right to self-government and pursue self-determination. Tribal Nations, like other units of government, are responsible for providing essential services to our citizens that reside both within and outside of our current jurisdictional boundaries. A mechanism that has proven vitally successful for Tribal Nations and contributed to the improvement of the health and well-being of our citizens is the Indian Self-Determination and Education Assistance Act (P.L. 93-638) contracting and compacting process. Under P.L. 93-638, Tribal Nations have assumed the responsibility of managing certain federal programs and dollars under the Departments of the Interior, Health and Human Services, and Transportation to better serve our citizens and communities.

In the 2018 Farm Bill, a provision was enacted to establish a Demonstration Project for the Food Distribution Program on Indian Reservations (FDPIR) with expanded 638 contracting authority. Tribal Nations and organizations participating in the Demonstration Project would be able to select one or more foods to procure for inclusion in a FDPIR package, identify foods in the package to supplant with Tribally procured foods, establish contracts with a vender to procure the selected foods, and distribute the foods alongside other USDA-provided foods in FDPIR packages distributed to our citizens. Initially, the USDA Food and Nutrition Service (FNS) capped the number of 638 contracts that could be awarded under the Demonstration Project to five Tribal organizations established by Tribal Nations. However, following Tribal consultations held in July 2020, USDA FNS revised its decision to award 638 contracts to at least two eligible Tribal organizations. Since enactment of the 2018 Farm Bill, seven Tribal organizations have participated in the Round 1 award cycle of the Demonstration Project and USDA FNS is currently reviewing applications for Round 2 with an expected award timeline of summer 2023. Unfortunately, the Demonstration Project for 638 authority in FDPIR is not permanent and only received an appropriation of \$5 million, which USDA FNS has decided to allocate in two rounds of awards. Additionally, USDA FNS was slow to implement this provision of the 2018 Farm Bill and initiated Round 1 awards in October 2021 for periods between six to 36 months. The solicitation for proposals to participate in Round 2 of the Demonstration Project did not occur until October 2022. Since the Demonstration Project for 638 authority in FDPIR is not permanent and operating with limited funds, Tribal Nations cannot appropriately plan to utilize 638 authority to manage FDPIR for their communities. Therefore, Congress must move past the Demonstration Project focus and expand and make permanent 638 authority for FDPIR for all Tribal Nations.

Despite the success of Tribal Nations in exercising contracting and compacting authority under P.L. 93-638 the goals of self-governance have not been fully realized. Many opportunities remain to improve and expand upon the principles of self-governance and self-determination in USDA program offerings. An expansion of P.L. 93-638 authorities to all USDA programs would be the next evolutionary step in the federal government's recognition of Tribal sovereignty and reflect its full commitment to Tribal Nation sovereignty and self-determination. The expansion of self-governance contracting and compacting will not only empower us to better serve our citizens and communities through USDA food and nutrition programs, but it will enhance our abilities to manage our lands, develop our businesses and other economic development ventures, and deploy critical infrastructures. USDA has programmatic and funding

opportunities focused on each of the key aforementioned areas, from food and nutrition programs to infrastructure and business development activities. While USET SPF supports expansion of 638 contracting and compacting opportunities throughout all USDA programs, below are specific recommendations we have regarding USDA programmatic and funding opportunities that must receive 638 authority.

- **Establish and Fund Tribal Self-Governance Officer Positions within USDA's Office of Tribal Relations.** In order to fully realize and implement Tribal self-governance 638 contracting and compacting opportunities for Tribal Nations throughout all USDA programs, there should be established and fully funded positions for self-governance officers within the USDA Office of Tribal Relations. These officers would provide assistance to Tribal Nations and Tribal organizations in utilizing the 638 process for USDA programs as well as inform and educate USDA's agencies and offices on how to work with Tribal Nations and Tribal organizations to apply for and implement a 638 compact or contract. These positions should be made permanent and fully funded to ensure USDA agencies and offices, as well as Tribal Nations, have reliable and knowledgeable subject matter experts to facilitate the 638 compacting and contracting process, especially in the areas of procurement, for USDA programs.
- **Expand and Make Permanent 638 Contracting Opportunities in the FDPIR Program.** The FDPIR Demonstration Project authorized under the 2018 Farm Bill is not a permanent authorization. Rather, the FDPIR Demonstration Project was established by Congress to provide USDA with the opportunity to see how Tribal procurement under a 638 process would work in FDPIR. Since this Demonstration Project is not permanent, it makes it difficult for Tribal Nations and Tribal organizations to plan for long term participation. Additionally, Tribal organizations are subject to a competitive process to participate in the Demonstration Project since it is not a permanent program and has limited funding. This runs counter to the federal government's trust and treaty obligations to support Tribal sovereignty and self-determination. USET SPF firmly believes it is time to expand and make permanent 638 contracting opportunities to the entire FDPIR program. Congress must also authorize and fully appropriate the necessary funds to ensure 638 opportunities are available for Tribal Nations and Tribal organizations to participate in FDPIR for years to come.
- **Make Permanent 638 Contracting in the Supplemental Nutrition Assistance Program (SNAP).** Tribal Nations continue to be excluded from administering SNAP and other nutrition programs under P.L. 93-638 contracting and compacting. USET SPF Tribal Nations have demonstrated we have the capacity to fully administer SNAP programs to Tribal citizens, as we have been administering far more complex federal programs under P.L. 93-638 authority for years, including twenty-two Tribally operated healthcare facilities. Tribal control over SNAP administration would result in improved food assistance for Tribal citizens, as Tribal self-determination has proven to be an efficient, effective approach that recognizes our inherent sovereignty and produces results for our people. USET SPF strongly urges Congress to expand 638 authority and support Tribal self-governance in the 2023 Farm Bill so that Tribal Nations can assume full management of their own nutrition programs under SNAP.
- **Make Permanent 638 Opportunities in USDA Forestry Programs.** The USDA Forest Service plays a major role in managing federal forests and provides financial and technical assistance to entities as well as sponsors and conducts research on forest management practices. According to the Native Farm Bill Coalition, of which USET SPF is a member, "Native forests and woodlands comprise 18.6 million acres, or one third, of the total 57 million acres of Native land held and managed in trust by the federal government." USET SPF supports the expansion of 638 authority

in the USDA Forest Service by empowering Tribal Nations to increase participation in Tribal Forest Protection Act (TFPA) projects on USDA Forest Service or Department of the Interior, Bureau of Land Management (BLM) lands. The 2018 Farm Bill authorized the Secretaries of Agriculture and the Interior to establish a Demonstration Project for Tribal Nations or Tribal organizations to perform administrative, management, and other functions of TFPA programs under 638 contracts. To date, only a handful of Tribal Nations and Tribal organizations have been able to participate in the Demonstration Project due to the lengthy implementation process by USDA of this provision of the 2018 Farm Bill. USET SPF recommends additional funding and expanded 638 authorities for Tribal Nations and Tribal organizations to manage TFPA programs. We also recommend that 638 authorities for TFPA programs be made permanent in the 2023 Farm Bill Reauthorization.

### **Promote and Fund Greater Tribal Participation in the Environmental Quality Incentives Program**

The USDA Natural Resources Conservation Service (NRCS) manages the Environmental Quality Incentives Program (EQIP) but the federal contract templates for the program are not entirely accessible to Tribal Nations making it difficult for us to adequately participate in the program. USET SPF recommends that Congress direct NRCS to develop a Tribal EQIP contract template through consultation with Tribal Nations and engagement with Tribal and Regional Conservation Advisory Councils. We also recommend that priority consideration in EQIP program activities be given to Tribal governments, Tribal entities, and individual Tribal landowners and operators. The years in production requirement to be eligible to participate in the EQIP program should also be reduced for Tribal producers to promote greater Tribal participation.

Furthermore, supporting Indigenous systems of food production, including agroforestry, aquaculture, permaculture, and maintaining a diversity of seed varieties should be considered eligible conservation practices within EQIP. Building soil health and organic matter improves water retention and sequesters carbon into the soil, which can be a useful method for addressing climate change activities occurring on Tribal lands. Additionally, seed diversity is a climate adaptation strategy because it increases the likelihood of resilience to changes in the climate. With the appropriate funding authorized by Congress, USDA and other federal partners can assist by protecting Indigenous seed varieties from biopiracy and other threats from the commercial seed market by implementing recommendations from the Indigenous Seed Keepers Network. Furthermore, Congress should direct NRCS and other USDA agencies to engage in ongoing dialogue and consultation with Tribal Nations on developing solutions to integrate and protect Indigenous Knowledge (also known as Indigenous Traditional Ecological Knowledge) and other Tribal specific practices into USDA's program offerings.

### **Permanently Expand SUTA Across All USDA Rural Development Programs**

The Substantially Underserved Trust Areas (SUTA) was a program established by the 2008 Farm Bill. Applicants of certain USDA Rural Development utility programs that qualify under the SUTA program can access interest rates as low as two percent, waivers of non-duplication requirements and matching or credit support requirements, extended loan repayment terms, and priority funding. While the Native Farm Bill Coalition and its members advocated for the expansion of the SUTA provision to extend to all Rural Development programs in the 2018 Farm Bill, a provision to expand this authority failed to make it into the final legislation. Rather, Congress noted in the Manager's language that an existing Rural Development loan could be refinanced using the SUTA program when it was determined appropriate by the Secretary of Agriculture. USET SPF recommends that the SUTA program be permanently expanded across all Rural Development Programs in the 2023 Farm Bill. This will ensure that Tribal Nations receive priority in all Rural Development programs and funds if they are SUTA eligible. This will support Tribal governments, businesses, and Native food producers in accessing infrastructure and loan and grant opportunities to rebuild Tribal Nation economies. This will also play a critical role in supporting Tribal Nation efforts to

access funds from programs recently authorized in the Infrastructure and Investment Jobs Act and the Bipartisan Infrastructure Law.

### **Conclusion**

USET SPF calls upon SCIA to continue advocating for maximum Tribal Nation inclusion in the 2023 Farm Bill Reauthorization. The federal government must enact policies that uphold our status as sovereign governments, our right to self-determination and self-governance, and honor the federal trust and treaty obligation in full. A primary mechanism to support and empower Tribal Nation efforts to better serve our citizens and communities is enacting full 638 contracting and compacting authority throughout all USDA programs. Inclusion of this in the 2023 Farm Bill will empower Tribal Nations to administer USDA programs to better align with our priorities in food sovereignty, nutrition, forest management, business development, and critical infrastructure deployment and maintenance. All of these areas contribute to the overall goals of Tribal Nation rebuilding as we continue to recover from the disastrous and harmful effects of the COVID-19 pandemic. We look forward to continuing to work with SCIA and the Senate Committee on Agriculture, Nutrition & Forestry in an effort to advance these policies in the upcoming 2023 Farm Bill Reauthorization.