



# USET

SOVEREIGNTY PROTECTION FUND

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July 4, 2023

The Honorable Brian Newland  
Assistant Secretary – Indian Affairs  
U.S. Department of the Interior  
1849 C Street, N.W.  
Washington, DC 20240

Dear Assistant Secretary Newland,

On behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to extend our appreciation to you and your staff for meeting with USET SPF member Tribal Nation Leadership and staff on February 8, 2023, regarding the Restrictive Settlement Acts (RSAs) that serve as barriers to our full exercise of our inherent sovereign rights and authorities. In addition, the RSA issue was raised during the recent inaugural DOI STAC Meeting and NCAI Mid-Year Conference.

Many Tribal Nations across the country, including several USET SPF members, are subject to RSAs and the threats they pose to Tribal sovereignty, self-determination, self-governance, and the implementation of recently enacted statutes restoring our jurisdiction over lands and people. USET SPF continues to be encouraged by the DOI's focus on assisting in the interpretation and full application of laws developed for the equal benefit of all Tribal Nations. We call upon the Department to extend this focus to our members, as well as other Tribal Nations, who are subject to inequitable treatment under the law due to RSAs.

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

As you are aware, our relationship with the United States (U.S.) government involves a lengthier history of destruction, destabilization, termination, and assimilation than the Tribal Nations of many other regions throughout the country. Our region served as a 'testing ground' for some of the most horrific and shameful policies imposed upon Tribal Nations and Native American people. While all Tribal Nations are working to rebuild in the wake of these destructive policies and actions, including the additional challenges posed by

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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*

RSAs, many USET SPF members are doing so from positions of greater and more extensive loss and injustice.

The U.S. has a stated policy of self-determination—equally applicable to all federally recognized Tribal Nations—that recognizes Tribal sovereignty and upholds Tribal self-governance. But RSAs often stand in the way of implementing these critical policy goals and federal obligations equally with Tribal Nations due to anti-sovereignty interpretations of these agreements.

Self-determination is also inextricably entwined with economic development. In fact, one of the Indian Reorganization Act's (IRA) main objectives was "to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism." H.R. Rep. No. 1804, at 6 (1934). Yet, RSA Tribal Nations have been severely limited in our ability to engage in economic development activities. Any further adverse interpretation of the scope of RSAs may move self-determination and economic development opportunities beyond our reach.

In general, USET SPF appreciates the current DOI leadership's willingness to engage in discussion around resolving the unjust ramifications of the RSAs that some of our membership experience. We agree that relationship building and constant education on intent are imperative to addressing this issue. In addition, we maintain that the DOI has an obligation to assist us in the full exercise of our sovereignty. As a result of our discussions over the years and from the February 8<sup>th</sup> meeting, we ask that DOI takes affirmative steps to address RSAs through the following actions:

1. A primary concern for RSA Tribal Nations is rooted in the states' aggressive interpretation of the land claim settlement acts<sup>2</sup>.

*The provisions of any Federal law enacted after October 10, 1980, for the benefit of Indians, ... which would affect or preempt the application of the laws of the State, including application of the laws of the State to lands owned by or held in trust for Indians, ... shall not apply within the State, unless such provision of such subsequently enacted Federal law is specifically made applicable within the State.*

The Department's trust and treaty responsibilities and obligations to honor and protect Tribal sovereignty require that it prevent adverse interpretation of RSAs, wherever possible. We respectfully request that the DOI affirm, via an M-Opinion, a statutory interpretation that supports providing RSA Tribal Nations with the benefit of all federal laws that are generally applicable throughout Indian country. M-Opinions carry substantial weight in how DOI applies and enforces the various laws under its purview.

2. In conjunction with the request above, we call for the DOI's commitment and support in working with Tribal Nations and the Administration by providing guidance in the development of a proposed Executive Order (EO). Included in the EO should be a declaration that RSAs are not the policy position of the U.S., with an explicit repudiation of that era, and an affirmative statement that all federally recognized Tribal Nations are equal. RSA Tribal Nations continuously face the common misunderstanding that we are somehow "less sovereign" or entitled to fewer federal benefits than other federally recognized Tribal Nations. Clear guidance from the Administration will help refute these ideas.

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<sup>2</sup> 25 U.S.C. § 1735(b).

3. DOI's trust and treaty obligations to protect and promote our sovereign rights and authorities supersede obligations to other entities, such as states. We ask that DOI more affirmatively challenge or take punitive action when states utilize RSAs to undermine the exercise of our sovereignty. This could include affirmative litigation on behalf of Tribal Nations or the withholding of federal funds when states fail to recognize our sovereignty and rights under the law. It must further include active support for legislation that would address, amend, or overturn RSAs.
4. As discussed during our February 8<sup>th</sup> meeting, DOI should also utilize all regulatory opportunities at its disposal to avoid the application of RSAs. This includes its pending revisions to the 25 C.F.R. Part 151 Land Acquisition regulations. As described in our February 28<sup>th</sup> comments, we call on the Department to examine ways in Part 151 to address the negative impacts of RSAs and allow for a more even and equitable application of the IRA and Part 151. The Department should publicly acknowledge in the Part 151 final rule, or at least in the preamble thereto, that RSA Tribal Nations should not be excluded from the benefits of the IRA and other federal laws, nor should they be prevented from participating in or benefiting from federal programs implemented to benefit Native Americans. We also ask the Department to make clear that land acquired in trust for RSA Tribal Nations under the IRA and Part 151 is presumed to be free from any RSA restraints, including those related to jurisdiction and the applicability of federal statutes. Additionally, we ask the Department to include a similar presumption against interpreting RSAs to limit the nature or extent of future trust acquisitions under the IRA and Part 151.

We look forward to the day when RSA Tribal Nations can celebrate the next "big legislative win for Indian country," knowing with absolute certainty that the federal law in question will apply to our Nations, Tribal citizens, and on our ancestral homelands.

### **Conclusion**

USET SPF extends its appreciation to you and your staff for participating in this continued dialogue focused on addressing the difficult challenges that our Tribal Nations face due to the restrictive interpretations of our RSAs. In accordance with this Administration's commitment to upholding Tribal sovereignty and self-determination, we hope to see some meaningful action in this space and look forward to your response. Should you have questions or require additional information please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at (615) 838-5906 or by email at [lmalerba@usetinc.org](mailto:lmalerba@usetinc.org).

Sincerely,



Kirk Francis  
President



Kitcki A. Carroll  
Executive Director

Enclosures: [USET Restrictive Settlement Act Initiative Summary Handout](#)

[USET Restrictive Settlement Act Initiative 10 Bullet Points for DOI Consideration](#)