

# The Beat in DC



A Publication of the USET Sovereignty Protection Fund

October – December 2023

## Contents

<b>Biden Administration</b> .....	<b>2</b>
Biden Administration Unveils Executive Order 14112, on <i>Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination</i> .....	2
USET SPF Submits Recommendations to Biden Administration on 2023 White House Tribal Nations Summit.....	3
<b>Budget</b> .....	<b>4</b>
Government Continues to Operate under CRs, Path to Full-Year FY 2024 Appropriations Remains Unclear .....	4
<b>Culture &amp; Heritage</b> .....	<b>5</b>
USET SPF Submits Comments to DHS on Draft Sec. 106 Nationwide Programmatic Agreement .....	5
USET SPF Submits Letter to Senate Majority Leader Requesting Tribal Appointment to the U.S. Semiquincentennial Commission .....	6
<b>Economic Development</b> .....	<b>7</b>
USET SPF and Partners Issue Economic Policy Briefs .....	7
<b>Health</b> .....	<b>7</b>
USET SPF Submits Testimony for the Record of SCIA Hearing on Fentanyl Crisis.....	7
SDPI Receives Multiple Temporary Extensions, Timeline for full Reauthorization Unclear.....	8
USET SPF Submits Comments to SAMHSA on Tribal Opioid Response Grant Methodology .....	9
USET SPF Provides Comments to IHS on Health IT Modernization .....	10
USET SPF Submits Comments to CDC/ASTDR on Environmental Justice Index Tool.....	11
USET SPF Submits Comments to NIH on the “All of Us” Research Program .....	12
<b>Homeland Security and Emergency Services</b> .....	<b>13</b>
USET SPF Submits Comments to FEMA on Revising the 2017 Mitigation Guide .....	13
USET SPF Submits Comments on Simplifying FEMA Preparedness Grants .....	14
<b>Infrastructure</b> .....	<b>15</b>
USET SPF Submits Testimony for the Record of Senate Hearing on “Offshore Energy Strategy and Policies” .....	15
USET SPF Submits Comments to FCC on Tribal Nation Access to Spectrum Licenses .....	16
<b>Land</b> .....	<b>16</b>
DOI Finalizes Revisions to Part 151 Land-into-Trust Regulations .....	16
USET SPF Submits Comments to DOI on Establishment of Tribal Land and Water Conservation Fund.....	17
<b>Litigation</b> .....	<b>18</b>
Supreme Court Agrees to Hear Dispute over IHS CSC Payments .....	18
USET/ USET SPF Hires First-Ever General Counsel .....	18
<b>Natural Resources</b> .....	<b>19</b>
USET SPF Submits Comments to BSEE on Environmental Justice Action Plan .....	19
<b>Treasury</b> .....	<b>20</b>
USET SPF Provides Comments to Treasury on 2023 Interim Final Rule for Fiscal Recovery Fund .....	20



## **Biden Administration**

---

### **Biden Administration Unveils Executive Order 14112, on *Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination***

On December 6, 2023, President Biden issued [Executive Order \(EO\) 14112 on Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination](#). The wide-ranging EO directs federal agencies to: 1. Assess their unmet financial obligations to Tribal Nations; and 2. Remove existing barriers to the accessibility, equity, flexibility, and utility of federal funding and support programs for Tribal Nations. We appreciate the ambitious nature and scope of this EO, as it seeks to do more to address the federal government's chronically unmet obligations to Tribal Nations and to advance many of Indian Country's longstanding priority reforms for increasing our exercise of sovereignty in our use of federal funding. USET SPF celebrates the EO as a step forward in our Nation-to-Nation diplomatic relationship with the United States and is working toward its proper implementation.

In order for this EO to make the meaningful change that it promises, appropriate research and consultation must be undertaken. To that end, substantial and adequate federal resources must accompany this effort. The Administration should work across federal departments, including utilization of federal staff who have relevant subject matter expertise, in order to come to reasonable assumptions and defensible estimation methodologies around funding shortfalls. It must also enlist appropriate experts, such as actuaries and economists, to arrive at well-informed figures, in addition to existing Tribal-Federal efforts working to identify full funding data. The White House Council on Native American Affairs and Indian affairs staff in each federal agency must also receive funding for the Administration to succeed in its mandate.

Additionally, it is important to note that some of the funding delivery and flexibility changes sought in the EO can be implemented without cost through both regulatory and legislative changes. This includes the expansion of the Tribal 477 Program and new programs designed based on its principles, expansion of Tribal self-governance, and direct funding to Tribal Nations across the federal government, as well as deference to Tribal decision-making in use of funds and program administration. The Office of Management and Budget will need to issue appropriate guidance and circulars in order to strengthen agency-level policy surrounding funding flexibility, waivers, and deference to Tribal Nations.

The goals and objectives of the EO have some overlap with USET SPF's Marshall Plan for Tribal Nations proposal. We continue to meet with federal officials to discuss opportunities to implement some of the changes we propose as a part of this effort. However, it is important to emphasize that fully funded annual appropriations do not represent the significant one-time investment advocated for under our Marshall Plan. The United States must make a significant investment in Tribal Nations so that we may rebuild our governments and infrastructure and arrive at an acceptable baseline.

Further, the financial deliverables of this EO represent only a piece of the 'next era' of the U.S.-Tribal Nation relationship. While the delivery of full funding and deference to Tribal sovereignty in the administration of that funding is vitally important, equally important is a fuller modernization of the current trust model and removing antiquated and paternalistic barriers to the full exercise of our

inherent sovereignty, including through exclusive civil and criminal jurisdiction. The federal government should make this distinction clearer as it implements the EO. It is time for the next era of federal Indian law and policy—one based in diplomatic respect for Tribal Nations' inherent sovereign rights and authorities, which the United States must recognize it cannot unilaterally limit.

## **USET SPF Submits Recommendations to Biden Administration on 2023 White House Tribal Nations Summit**

On November 2<sup>nd</sup>, USET SPF [wrote](#) to the Biden Administration to share our views and recommendations for the 2023 White House Tribal Nations Summit. As our letter noted, the Administration's continued commitment to hosting the WHTNS represents an essential step toward realizing the principles of our diplomatic Nation-to-Nation, sovereign-to-sovereign relationship, but there are additional opportunities to design an event that conveys to Indian Country, the nation, and the world your recognition of our governmental status. With this in mind, we offered additional items for consideration and discussion as the Administration worked to shape the 2023 WHTNS.

These included urging that consideration be given to how the Summit could better incorporate some of the protocols, symbols, and traditions of U.S. diplomacy—domestic and foreign. For example, we suggest that the President host a state dinner (or dinners) for the heads of Tribal Nations – in much the same way he would host the head of government at the White House. We further pressed for a combined agenda – one that involved both opportunities for Cabinet and other officials to share the Administration's progress on delivering upon trust and treaty obligations, as well as less formal roundtable discussions that delve into a variety of issues and Tribal leader questions/comments.

Additionally, in pursuit of dialogue with the President that is more reflective of the unique circumstances and traditions across Indian Country, our letter recommended that a small Tribal leader meeting be reinstated, but that the number of Tribal leaders invited to this meeting be increased from one from each region to 3-4 from each region and that those selected vary each year. This would offer the President and the Administration a better sense of the rich diversity across regions and between Tribal Nations, as well as provide a more equitable approach to elevating the voices of each individual Tribal Nation.

The WHTNS has the potential to assist in the creation and facilitation of necessary, lasting change in U.S.-Tribal relations—including in this country's approach to diplomatic relations with Tribal Nations. It is our hope the WHTNS will evolve to better undergird and reinforce the respect that Indian Country deserves as sovereign nations that pre-date the United States.

The Administration ultimately hosted the WHTNS on December 6-7, 2023. During the event, the Biden Administration provided updates and announcements related to its [2023 Progress Report for Tribal Nations](#). A summary of these actions can be found [here](#).

In preparation for the WHTNS, USET SPF joined over a dozen partner organizations in preparing a [Briefing Book for Tribal Leaders](#). This includes the following one-pagers:

- [Marshall Plan for Tribal Nations](#)
- [Laws of General Applicability](#)
- [Tax Status of Tribally Chartered Corporations](#)
- [Tribal Infrastructure Development](#)
- [Preserving Biden Administration Gains](#)



- [Offshore Wind](#)
- [Payment in Lieu of Taxes for Tribal Trust Land Acquisition](#)

## Budget

---

### Government Continues to Operate under CRs, Path to Full-Year FY 2024 Appropriations Remains Unclear

Despite being over four months into fiscal year (FY) 2024, Congress continues to fund the federal government on a temporary basis. Coming into 2024, Congress had passed two continuing resolutions (CR) to fund the government temporarily as the House and Senate struggled to come to an agreement on overall spending levels for FY 2024. The [second CR](#) had placed two deadlines for funding different portions of the government– one on January 19th and another on February 2nd. However, it became clear that Congress would again fail to complete its appropriations work by those deadlines. On January 18th, Congress passed a [third CR](#) shifting those deadlines to March 1st and March 8th, 2024.

As before, the first deadline (now March 1st) covers 4 appropriations bills that have historically been less controversial, such as funding for the Departments of Agriculture, Energy, Transportation and Veterans Affairs. The second deadline, now March 8th, covers funding for the Departments of Commerce, Justice, State, Defense, Homeland Security, Labor, Education, Interior, and Health and Human Services. This also includes Indian Health Service (IHS) programs that are not covered by advance appropriations, such as Electronic Health Records (EHR), the Indian Health Care Improvement Fund, Health Care Facilities Construction, Sanitation Facilities Construction, Contract Support Costs, and payments for Section 105(l) leases. As stated in previous updates, IHS advance appropriations are insulating the agency and most of its programs and services from disruption due to disagreements over federal appropriations.

Prior to last month, Congress’s inability to pass full-year appropriations hinged on their disagreement over overall spending figures for FY 2024. In early January, Congressional leadership announced a long-awaited agreement on a top line spending figure of \$1.59 trillion, which according to House Speaker Mike Johnson includes \$886 billion for defense, and \$706 billion for non-defense spending, including a \$69 billion “side deal” of adjustments that will supplement non-defense spending. The \$1.59 trillion figure is largely in line with the deal reached in summer 2023 that set FY 2024 spending levels at \$1.59 trillion, along with raising the debt limit to avoid U.S. debt default. As part of the new deal, Democrats conceded some additional spending cuts, including a \$6.1 billion rescission of unspent COVID-19 response funds, as well as a \$10 billion cut for the Internal Revenue Service (IRS).

Until now, the House and the Senate have been unable to pass the 12 appropriations bills required to fund the government due to this disagreement over the topline spending figure. Now that a topline deal has been reached, Congress can work to reconcile the differences between the appropriations bills prepared by each chamber. However, disagreement over spending cuts may continue to impede negotiations. Some hardline Republicans in the House are threatening to continue to block spending legislation unless actions are taken to restrict the flow of immigrants at the southern border, and others continue to view the proposed spending cuts as insufficient, despite the new topline spending figure deal falling in line with the deal made over the debt limit.

While Congressional leadership is encouraged by the topline figure deal, an uphill battle remains as Speaker Mike Johnson works to wrangle his very thin majority in the House. Majority Leader Schumer has indicated that the Senate will not accept any “poison pill” policy riders in appropriations bills from the House, which is intended to forestall efforts to tie appropriations bill passage to border security and other Freedom Caucus priorities that have so far handicapped efforts to secure full FY funding. An important consideration at this time is the provision within the Fiscal Responsibility Act (FRA) – the bill that primarily serves to avoid the U.S. defaulting on its debts – that would reduce the overall discretionary spending level for the government by 1% across the board if Congress fails to come to an agreement on full-year appropriations.

While the deadline to pass full year appropriations was technically January 1st, 2024, the cuts are not implemented until April 2024. At this time, it is unclear whether the 1% reduction will be triggered given the various options Congress is considering and recent turmoil within the body, but Congress still has the time and potential to avoid these cuts.

Although they have given themselves a slightly longer runway with these updated deadlines, Congress still has a significant amount of work to do to avoid a partial or full government shutdown as little progress has been made over the past several weeks. Along with its consideration of domestic spending priorities, Congress is contending with supplemental funding requests from President Biden. The supplemental requests ask for additional funding for Ukraine and Israel, as well as funding for some domestic priorities like the border and the opioid epidemic. Notably, the supplemental request includes a \$250 million transfer to the IHS for opioid response. However, the additional funding has also been delayed largely due to partisan disagreement over the southern border and foreign aid. It is unclear at this time when or if Congress will consider the supplemental requests, although political pressure for the U.S to provide foreign aid to its allies is growing amongst both parties. If Congress does take up the supplemental, it is also unclear whether any domestic spending beyond that for the southern border would be included.

The uncertainty caused by political division and delays in the appropriations process represent an example of why USET SPF continues to advocate for full and mandatory funding for all federal Indian agencies and programs. The federal government’s payment on debt to Indian Country should look more like entitlement funding and be insulated from political infighting. We continue to urge both the legislative and executive branches to work with Tribal Nations to advance legislation that would achieve these aims. Simultaneously, we remain dedicated to ensuring the appropriations process results in the highest possible increases for our funding. We will continue to monitor FY 2024 appropriations and provide further information as it develops.

## **Culture & Heritage**

---

### **USET SPF Submits Comments to DHS on Draft Sec. 106 Nationwide Programmatic Agreement**

On October 20, 2023, USET SPF submitted [comments](#) to the Department of Homeland Security’s (DHS) on its draft Sec. 106 National Historic Preservation Act Nationwide Programmatic Agreement (Draft Sec. 106 NHPA NPA) for maintenance, repair, and upgrades to enhance existing DHS-owned facilities for climate resiliency and sustainability. While we recognized that this Draft Sec. 106 NHPA NPA does not apply to Tribal Lands, we expressed appreciation that DHS acknowledged that its



facilities operate on ancestral Tribal homelands existing outside of our current jurisdictional boundaries. USET SPF expressed general support for the Draft Sec. 106 NHPA NPA and supported upgrading federal facilities to reduce greenhouse gas emissions and energy and water usage. However, we raised several concerns that required additional in the NPA.

Specifically, our comments sought clarification to language in the Draft Sec. 106 NHPA NPA on how DHS will determine when Tribal consultation must occur for the maintenance, repair, or upgrade of facilities for climate resiliency and sustainability. USET SPF recommended DHS clarify the Sec. 106 exclusion for basic climate resiliency and sustainability (CRS) undertakings that have the potential to disturb previously disturbed grounds that may have affected cultural and historical resources of Tribal Nation(s) previously residing in those areas. We also recommended that the DHS Qualified Professional responsible for CRS undertakings at DHS-owned facilities must be knowledgeable about Tribal Nations and contact Tribal Nation personnel, such as Tribal Historic Preservation Officers or Tribal cultural/natural resource managers, when reviewing CRS undertakings. USET SPF also recommended clarification of language in the Draft Sec. 106 NHPA NPA to ensure the protection of sensitive Indigenous Knowledge shared by Tribal Nations and our recognized spiritual, cultural, and religious leaders.

DHS has recently released a [summary](#) of comments received on the Draft Sec. 106 NHPA NPA in December 2023. It has also issued a [Dear Tribal Leader Letter](#) announcing Tribal consultations on a revised Draft Sec. 106 NHPA NPA as well as a [redlined](#) copy of proposed changes to the Draft based on feedback received. USET SPF is planning to attend the upcoming Tribal consultations in February 2024 and review the proposed changes to the updated Draft Sec. 106 NHPA NPA.

## **USET SPF Submits Letter to Senate Majority Leader Requesting Tribal Appointment to the U.S. Semiquincentennial Commission**

As a part of our efforts to ensure a true, candid, and accurate story is told about the founding of the United States and its history with Tribal Nations, USET SPF [wrote](#) to Senate Majority Leader, Chuck Schumer on November 16<sup>th</sup> request that he fill the vacant U.S. Semiquincentennial Commissioner seat with an individual representing the unique perspective of Tribal governments, the sovereigns who pre-date the establishment of the United States.

[The U.S. Semiquincentennial Commission](#) was established by Congress in 2016 to plan and orchestrate the 250th anniversary of the founding of the United States. Appointed by the House and Senate leadership of both parties, the nonpartisan Commission is composed of 16 private citizens, 4 U.S. Representatives and 4 Senators, as well as 12 ex-officio members from all three branches of the federal government and its independent agencies.

Today's America only exists because of the contributions and sacrifices of America's First People—our ancestral homelands that became the foundation of America and the vast natural resources that are part of America's economic power. A Tribal Nations representative to the Commission would join existing federal representatives who are also Tribal citizens to help ensure that our contributions to the story of America are interwoven into this project in an appropriate, accurate, and respectful manner.

USET SPF will continue to monitor the status of our request and provide updates as they develop.

## Economic Development

---

### USET SPF Joins Partners to Issue Economic Policy Briefs

USET SPF has joined 11 partner organizations in endorsing a series of Tribal economic development policy recommendations in two documents aimed at the [Administration](#) and [Congress](#), respectively. The products of joint recommendations from the endorsing organizations, the policy briefs provide key requests in the areas of access to capital and credit, enhancing marketplace competitiveness, tax fairness, land and energy development, infrastructure and workforce development, growing Native food economies, small business development, and fostering international Native commerce. The policy briefs were formally launched in November and have been distributed across Indian Country to support advocacy in urging the federal government to better deliver upon its trust and treaty obligations to support and restore Tribal Nation economies.

## Health

---

### USET SPF Submits Testimony for the Record of SCIA Hearing on Fentanyl Crisis

On November 21, 2023, USET SPF provided the Senate Committee on Indian Affairs (SCIA) with [testimony for the record](#) of the oversight hearing “Fentanyl in Native Communities: Native Perspectives on Addressing the Growing Crisis.” Our testimony focused on the fact that despite the disproportionate impact opioid use has had in Indian Country, Tribal Nations continue to lack access to sufficient, critical resources to address the damaging effects of opioid use in our communities. USET SPF’s testimony reiterated the importance of increased opioid use data collection and access, more direct funding for the Indian Health System, telehealth flexibilities, increased law enforcement resources, and culturally competent treatment and services.

Available statistics show that American Indian and Alaskan Native (AI/AN) people experienced the highest rates of drug related deaths in recent years, along with the highest likelihood of having an illicit drug use disorder. However, persistent challenges in collecting and accessing opioid use data have impeded Tribal Nation prevention and treatment efforts, as well as efforts to secure increased federal funding. To remedy this, USET SPF urged Congress to provide direct funding to Tribal Nations and Tribal Epidemiology Centers (TECs) in order to improve opioid data collection. Additionally, USET SPF requested Congress to address challenges Tribal Nations and Tribal Epidemiology Centers (TECs) have experienced in gaining access to data sets to which they are legally entitled. Our testimony asked Congress to compel agencies like the Centers for Disease Control and Prevention (CDC) and state entities to share all relevant data sets with Tribal Nations and TECs.

Access to funding for federal opioid grant programs is also important for Tribal Nations and communities. USET SPF urged Congress to increase funding for the Tribal Opioid Response (TOR) Grant program at the Substance Use and Mental Health Services Administration (SAMHSA), as well as appropriate dedicated funding for the \$80 million Behavioral Health and Substance Use Disorder Program for Native Americans authorized (but not funded) at SAMHSA last year. In addition, USET SPF continues to support and urge the immediate passage of The Native Behavioral Health Access Improvement Act, legislation authored by Senator Tina Smith that would establish and provide substantial funding for a Special Behavioral Health Program for Indians, with dollars eligible for



receipt through self-governance compacting and self-determination contracting. Our testimony also offered support for adoption of the President's supplemental funding request to combat the opioid epidemic, which includes a \$250 million transfer to the IHS via the State Opioid Response (SOR) grant program. To further ensure that Tribal Nations are able to access federal funds fully and meaningfully in the future, USET SPF urged the delivery of all federal dollars, including opioid funding, to Tribal Nations via self-governance contracting and compacting in recognition of Tribal sovereignty and self-determination.

During the height of the COVID-19 pandemic, the federal government implemented flexibilities that allowed practitioners to prescribe medication-assisted treatments like buprenorphine remotely to new patients via telehealth. USET SPF's testimony requested that temporary authorities and flexibility in prescribing medication-assisted treatment for opioid use disorder be made permanent so that expanded access to these services might be maintained. USET SPF also encouraged Congress to invest in telehealth infrastructure and bandwidth in Indian Country.

USET SPF's testimony also urged Congress to provide additional resources and funding for Tribal law enforcement activities in order to combat the flow of illicit drugs into our communities. Further, we encouraged the exploration of and investment in culturally competent treatment and services. Even though culturally competent care has been successful across Indian Country, treatment options that incorporate cultural healing aspects are oftentimes not available within or near Tribal communities due to a lack of resources. USET SPF encouraged the Committee to explore how it might expand these services through legislative action and provide direct funding to support the best practices that have already been implemented.

USET SPF's testimony strongly encouraged the Committee to prioritize Tribal Nation access to all resources necessary to address the opioid crisis in Indian Country as it considers legislative action on the issue, as well as Fiscal Year 2024 federal funding.

## **SDPI Receives Multiple Temporary Extensions, Timeline for full Reauthorization Unclear**

As part of this third continuing resolution (CR) passed by Congress to avert a government shutdown, the Special Diabetes Program for Indians (SDPI) was given yet another short-term reauthorization, this time through March 8<sup>th</sup>, 2024. The SDPI was originally slated to expire at the end of fiscal year (FY) 2023 on September 30, 2023 but was then extended through November 17<sup>th</sup>, 2023 through the first CR, and then extended a second time through January 19<sup>th</sup>, 2024. The SDPI will now expire on March 8, 2024, at which point Congress will need to act again to either fully reauthorize the program with full-year funding or pass another short-term extension. Earlier this year, USET SPF joined numerous Tribal Nations and organizations in sending a [letter to Congressional leadership urging reauthorization of the Special Diabetes Program for Indians](#) (SDPI) before the program's previous expiration date of September 30, 2023.

Since 2004, the SDPI has been flat funded at \$150 million annually (\$147 million after sequestration), and in that time program costs have greatly increased and the number of SDPI grantees has grown significantly. Congressional efforts over the past few months have proposed a short reauthorization of the SDPI at \$170 million over two fiscal years. This would represent the first funding increase for the SDPI since 2004. The \$170 million/two-year proposal has appeared in multiple pieces of legislation in both the House and Senate but has not yet been fully passed. Most recently, a two-year, \$170 million SDPI reauthorization passed the full House in a broadly-supported, bipartisan piece of



legislation called the [Lower Costs, More Transparency Act](#). The bill renews several federal health programs, requires increased reporting requirements for insurers, and amends Medicare reimbursement policies, among other things. As of now, the Senate has not yet taken up the bill, and will likely not take it up in its current form, but the continued inclusion of a funding increase for the SDPI is a good sign that the program will eventually be fully reauthorized with a funding increase. USET SPF will continue to advocate for increased resources and full renewal for the SDPI.

USET SPF and others have also consistently supported the expansion of Indian Self-Determination and Education Assistance Act (ISDEAA) authorities to the program and intend to continue to focus on this critical change. Additionally, USET SPF has consistently advocated for the SDPI to be permanently authorized. We will continue to advocate for a reauthorized, strengthened SDPI and will alert our members to any opportunities for advocacy, providing updates when relevant.

### **USET SPF Submits Comments to SAMHSA on Tribal Opioid Response Grant Methodology**

On November 21, 2023, USET SPF submitted [comments](#) to the Substance Use and Mental Health Services Administration (SAMHSA) regarding its request for comment on the Tribal Opioid Response (TOR) grant program funding methodology. While the TOR grant program has sometimes been a valuable tool for Indian Country in the battle against the opioid epidemic, USET SPF offered recommendations we believe could greatly improve the efficacy of the program.

In response to SAMHSA's request for input on changing the funding methodology for the TOR grant program, USET SPF maintained that any methodology or formula must result in meaningful levels of funding for all Tribal Nations, particularly Tribal Nations with smaller populations. To achieve this and fulfill its trust and treaty obligations to provide meaningful resources to Tribal Nations, USET SPF supported SAMHSA maintaining the current, simple formula methodology. The minimum award amount ensures that each Tribal Nation receives a meaningful amount of funding on which to base a TOR program. We also offered general support for the continued use of the IHS user population data as the basis of the formula, but indicated that we would support other data sources such as self-attested population numbers from Tribal Nations, or the IHS active Indian registrants data. Overall, USET SPF supported non-competitive, formula-based funding methodologies and urged SAMHSA to maintain this in future grant cycles.

Our comments also encouraged SAMSHA to avoid relying on or requiring specific data in TOR program reporting, as there are no specific types of data around opioid misuse or death that would not be flawed or underestimate the issue in some way, especially in the USET SPF region. USET SPF urged SAMHSA to stay true to the formula-based design of the program. Further, our comments stated that Tribal Nations should not be subject to burdensome administrative and reporting requirements for the use of TOR funds. Given the challenges and shortfalls around data collection in Indian Country, we believe SAMHSA should move away from focusing on data collection as a program requirement.

Lastly, USET SPF reiterated that the provision of federal dollars through grants like the TOR program fails to honor Tribal sovereignty and the unique nature of the federal trust obligation. USET SPF maintains our position that all federal programs and dollars be eligible for inclusion in self-governance contracts and compacts.

Overall, USET SPF urged SAMHSA to remember the federal trust obligation and make the recommended changes that will allow Tribal Nations to utilize TOR grant resources more meaningfully and efficiently.

## **USET SPF Provides Comments to IHS on Health IT Modernization**

On December 8, 2023, USET SPF [provided comment](#) to the Indian Health Service (IHS) regarding the Health Information Technology (HIT) Modernization Project, following the announcement of the enterprise Electronic Health Record (EHR) vendor. In our comments, we reminded the IHS of its trust and treaty obligations to provide for the health of Tribal Nations and our communities, which stands to be either greatly aided by or harmed by this EHR rollout. We affirmed the importance of replacing the outdated Resources and Patient Management System (RPMS) but warned that an implementation as inefficient and problematic as the ongoing Department of Veterans Affairs (VA) EHR rollout stands to exacerbate the issues that already exist within the Indian Health System. We urged the IHS to properly consider each facet of the rollout to ensure that the concerns, requirements, and priorities of the Tribal Nations and communities that depend on this system are addressed.

In particular, our comments reminded the IHS that significant resources will be required to properly implement the new EHR system. USET SPF suggested that IHS conduct Tribal consultation regarding the level of technical assistance that IHS and Tribally operated facilities might require during implementation and beyond. For example, smaller facilities with limited staff capacity might require on-the-ground technical assistance during implementation. USET SPF comments also urged IHS to provide funding for Tribal programs who already transitioned to a commercial-off-the-shelf (COTS) EHR system at their own expense. Importantly, we stressed that funding for the EHR rollout must not come at the expense of other critical IHS programs and services. As the IHS budget is already woefully insufficient for the programs and services that presently exist, this project must not result in funding cuts elsewhere within the budget.

USET SPF also urged IHS to learn from the VA's EHR rollout. The VA has struggled to properly implement the rollout of their new enterprise EHR system, which aims to replace a system roughly as old as the RPMS. The VA's rollout has attracted the frustration of Congress and has been paused while the agency addresses challenges and significant cost overruns. Our comments encouraged IHS to consider its full budgetary requirements for the implementation, including technical assistance capacity requirements and facility IHT infrastructure capacity. We also urged the IHS to learn from the VA's challenges and negotiations with the vendor Oracle Cerner, which IHS has also contracted for its project, and consider ways it can hold the vendor accountable throughout the transition.

USET SPF's comments also provided recommendations regarding the configuration of the new EHR system. We asserted that all historical data within RPMS must be accessible through the new EHR system, or in combination with the Four Directions Warehouse (4DW). We also requested additional information regarding operationality and access within the data storage systems. USET SPF requested that IHS share additional information regarding how the agency will allow data sharing amongst entities that require bilateral data exchanges, while also ensuring that data within the 4DW and proprietary Tribal data are protected. Additionally, our comments spoke to the need for increased interoperability with national and state public health data reporting systems, as Tribal Nations and Tribal Epidemiology Centers (TECs) require access to critical data within those systems in order to effectively identify and respond to health priorities in our communities.

While the selection of an EHR vendor is a significant step towards the goal of HIT modernization, the more important steps of configuration and implementation remain. The IHS and the federal government must work in partnership with Tribal Nations to ensure that the Indian Health System is brought into the 21st century and without undue consequences. USET SPF urged the IHS to continue to work in close consultation with Tribal Nations and facilities as it develops and rolls out the new EHR system in a way that addresses the diverse circumstances of Tribally-operated facilities, as well as those operated by the IHS.

## **USET SPF Submits Comments to CDC/ASTDR on Environmental Justice Index Tool**

On December 1, 2023, USET SPF submitted [comments](#) in response to the Centers for Disease Control and Prevention/Agency for Toxic Substances and Disease Registry (CDC/ATSDR) request for comments on its Environmental Justice Index (EJI) tool. Announced in August 2022, the CDC/ATSDR EJI tool was intended to build off existing environmental justice indexes to provide a single environmental justice score for local communities across the United States (U.S.) so public health officials could identify and map areas most at risk for the health impacts of environmental burden. USET SPF expressed several concerns and issues with the current functionalities of the EJI tool as it pertains to Tribal Nations. We noted that it was evidently apparent that this tool was developed with state and local governments in mind, as it currently does not capture and display Tribal Nation data appropriately.

Our comments expanded upon these concerns and issues and provided certain recommendations to CDC/ATSDR on how to develop an EJI tool that accurately and appropriately displays data for Tribal Nations in a manner that recognizes our sovereign authority. For instance, USET SPF discerned that among the data sources used to populate the EJI tool Census tract data, CDC/ATSDR was relying on Census demographic and socioeconomic data for “minority” populations from the American Community Survey for the years 2015 through 2019. We emphasized that, since the jurisdictional boundaries of Tribal Nations do not conform to Census tracts, it would be difficult for Tribal Nations, among others, to conduct analyses of environmental threats to our public health and natural ecosystems without requiring complicated extraction of data from the state and county level datasets. One recommendation USET SPF offered is that the CDC/ATSDR carve out these Census tracts to reflect the actual jurisdictional boundaries of sovereign Tribal Nations. We also strongly recommended that once these Census tracts were carved out to conform to Tribal Nation jurisdictional boundaries, then these areas should automatically receive priority to federal funds identified as eligible under the EJI Tool.

USET SPF recommended a comprehensive overhaul of the EJI Tool to include Tribal Nations and reflect our environmental and public health concerns. We recommended further discussion and consultation on revamping the EJI Tool to address Tribal-specific environmental and public health concerns. These included examples such as invasive species migration threatening cultural and subsistence resources and the adoption of Tribal Nation-specific indicators being added to the EJI tool, such as including lead in drinking water in the indicator of Toxic Site. As of this publication, USET SPF has not received any follow-up from CDC/ATSDR regarding our recommendations. However, we will continue to advocate for data measurements that appropriately capture Tribal Nation-specific environmental and public health risks as well as secure the funding necessary to address these issues.

## USET SPF Submits Comments to NIH on the “All of Us” Research Program

On October 20, 2023, USET SPF submitted [comments](#) to the National Institutes of Health (NIH) regarding its Tribal consultation on the All of Us Research Program. USET SPF has submitted comments to NIH regarding this program in the past and maintains that NIH continues to demonstrate a lack of understanding of Tribal Nations, our communities, and our priorities. Our most recent comments asserted that the consultation questions posed by NIH are inappropriate, as NIH has yet to fully address issues related to community protections and Tribal sovereignty that have been raised in prior consultations, despite committing to many protective actions in the “All of Us Research Program Tribal Consultation Final Report.” USET SPF appreciates that NIH acted on several requests from Tribal Nations in the original consultation period, such as prohibiting recruitment and engagement on Tribal lands and not including American Indian and Alaskan Native (AI/AN) in available program datasets while developing a Tribal engagement plan. However, there are outstanding issues with NIH’s current policies and philosophies regarding engagement with Tribal Nations and communities.

One of the most prominent issues is that NIH continues to focus almost exclusively on individual protections in the program rather than Tribal sovereignty and community protection. While it is unquestionable that individual protection is important, NIH continues to largely ignore the need for community informed consent in the All of Us Program. Regardless of whether research occurs on or off Tribal land or if an individual AI/AN participant has given their consent, if the research involves our citizens, it has the potential to impact our Tribal Nations. Despite stating in the “All of Us Research Program Tribal Consultation Final Report” that it “emphatically agrees with the need to protect communities as well as individuals,” NIH states that it will not implement our previous recommendation to require AI/AN participants to actively choose to continue participating in the program (“opt in”) in the program and does not offer any other actionable policies to address our concerns. Our comments maintain that in order to mitigate potential harms to Tribal communities and uphold its obligations to Tribal Nations, NIH must implement stronger informed consent requirements for continued AI/AN participation in the program.

Our comments also reminded NIH that Tribal Nations and our people have an inherent political status and should not be viewed as a racial or ethnic group for these purposes. As such, we state that NIH should view its engagement with Tribal Nations for research purposes through the lenses of diplomacy and the Nation-to-Nation relationship. What protections and policies would govern NIH’s engagement with citizens of another sovereign? Tribal Nations must have the ability to authorize and regulate research done on Tribal Nations, our citizens, and our communities, and USET SPF maintains that NIH has an obligation to facilitate and uphold this sovereign right.

USET SPF’s comments stated that a practical oversight measure NIH must pursue is the establishment of Tribal-designated Institutional Review Board (IRB) review, or approval through local Tribal IRBs if a significant number of AI/AN individuals are within the research pool for a particular area. Tribal-designated IRB review should be a required step before research commences in any Tribal community, unless expressly waived by a Tribal Nation. This review process must include informed-consent procedures that outline publication permissions, as well as community informed consent procedures and potential impacts on Tribal Nations.

In response to NIH's questions about engagement and outreach on Tribal lands, USET SPF asserted that any engagement on Tribal lands, including materials sent to individuals, must be created and approved in consultation with each individual Tribal Nation. There is a long history of predatory and exploitative research practices involving Tribal Nations and communities, and this necessitates both a higher level of care and a thorough understanding of the federal government's obligations to protect our people and communities. While developing agreements with individual Tribal Nations would undoubtedly create more work for NIH and may potentially slow or delay All of Us deployment in areas that overlap with Tribal communities, these are necessary efforts.

Further, USET SPF urged NIH, as we have in previous comments, to move forward with the creation of a task force that would review all research proposals focused on AI/AN data and other considerations within the All of Us program. We also urged NIH to conduct further Tribal consultation on several program features, such as the educational materials provided by the program and the required training for researchers.

Overall, while USET SPF acknowledged this consultation as a step forward in some respects, we strongly urged NIH to engage in further Tribal consultation and work to implement the commitments it made to Tribal sovereignty and engagement in its previous program reports. We continue to engage with NIH in pursuit of these directives.

## **Homeland Security and Emergency Services**

---

### **USET SPF Submits Comments to FEMA on Revising the 2017 Mitigation Guide**

On November 30, 2023, USET SPF submitted [comments](#) in response to the Federal Emergency Management Agency's (FEMA) proposal to update its 2017 Tribal Mitigation Plan Review Guide (Tribal Mitigation Guide). We expressed appreciation for FEMA's efforts to revisit and update its 2017 Tribal Mitigation Guide, recognizing that since it was last updated, Congress has authorized new grant programs and updated strategies, such as the FEMA Strategic Plan and the FEMA National Tribal Strategy. Throughout 2023, USET SPF submitted several comments to FEMA on its undertakings to update various guidance documents the agency uses to educate its personnel and inform Tribal Nations on emergency preparedness and response undertakings. In recognition of these efforts, and as FEMA proceeds with revising and finalizing these various guidance documents, we urged FEMA to ensure that any finalized revisions of these guidance documents complement, rather than conflict, with each other, as well as uphold the agency's trust and treaty obligations to Tribal Nations. USET SPF's comments recommended that FEMA provide the necessary funding and technical assistance for Tribal Nations to develop a Tribal Mitigation Plan as well as exercise deference to Tribal Nations when reviewing Tribal Mitigation Plans.

Specifically, USET SPF urged FEMA to provide resources to assist Tribal Nations in developing Tribal Mitigation Plans since Tribal Nations continue to experience the greatest disparity in federal funding and technical assistance when compared to state and local governments. We emphasized that this is the direct result of the federal government's chronic failure to uphold its trust and treaty obligations to fully fund programs and services for Tribal Nations, including in the areas of critical infrastructure.

We recognized that the dilapidated status of our infrastructure continues to make these systems more vulnerable and prone to either contributing to the emergency response following a natural disaster or are the direct asset(s) that triggers an emergency response event. USET SPF also recommended that FEMA defer to Tribal Nations when reviewing Tribal Mitigation Plans and remove barriers for Tribal Nations to develop enhanced Tribal Mitigation Plans. USET SPF will continue to advocate for the removal of funding and programmatic barriers that hinder Tribal Nations from pursuing these efforts and accessing vital DHS programs and services.

## **USET SPF Submits Comments on Simplifying FEMA Preparedness Grants**

On November 7, 2023, USET SPF submitted [comments](#) in response to the Department of Homeland Security (DHS), Federal Emergency Management Agency's (FEMA) Notice and Request for Information (RFI) on simplifying and streamlining its preparedness grant process. This RFI was initiated in response to the release of the DHS Secretary's 2023 department-wide priorities on January 25, 2023, which included a priority to improve management and administration of grant programs by simplifying application processes, improving customer service, and ensuring greater accessibility and equity for under resourced populations. USET SPF expressed that Tribal Nations are not simply an 'under resourced population,' but that we appreciated FEMA's effort to consult with Tribal Nations on this RFI since the process of applying for, administering, and reporting on awarded DHS preparedness grants has remained a complex and burdensome process.

USET SPF continued to advocate for direct funding to Tribal Nations with no cost-matching requirements for all DHS programs. We emphasized that the current emergency management funding mechanisms and grant eligibility guidelines disregard Tribal sovereignty and self-determination and are not consistent with certain FEMA Tribal Policy Directives. While we recognized that DHS, and FEMA in particular, has increasingly consulted with Tribal Nations to update and revise guidance documents and programmatic regulations to eliminate barriers for Tribal Nation access to critical DHS funds. Moving forward, we urged DHS to effectively standardize these practices and regularly consult, identify, and eliminate both procedural and current eligibility impediments by working directly with Tribal governments to facilitate greater access to Homeland Security grant programs. We also reemphasized that federal cost-matching requirements for FEMA programs do not uphold DHS's trust and treaty obligations to Tribal Nations. We emphasized the fact that the COVID-19 pandemic further highlighted the undeniable truths that Tribal Nations remain the furthest behind among the U.S. family of governments in response and recovery to disaster efforts due to the lack of support in developing levels of preparedness, as well as burdensome and unnecessary requirements to identify a Tribal disaster.

In recognition of the federal funding shortfalls for Tribal emergency management programs, USET SPF recommended the establishment of a Tribal Resiliency Program. USET SPF reiterated our stance under [USET SPF Resolution No. 2023 SPF:011](#), which urges Congress to appropriate a minimum of \$206.64 million to establish a Tribal Resiliency Continuity Program that is non-competitive, has no federal cost share, and has a streamlined award process to empower all Tribal Nations to build core homeland security and emergency services capacities and capabilities. USET SPF will continue to advocate for the creation of this program and urge DHS and FEMA to join us in supporting these efforts to appropriately prepare Tribal Nations for future emergency and disaster response scenarios.

## Infrastructure

---

### USET SPF Submits Testimony for the Record of Senate Hearing on “Offshore Energy Strategy and Policies”

On November 9<sup>th</sup>, USET SPF submitted [testimony](#) to the Senate Energy and Natural Resources Committee for the record of the hearing to “Examine Federal Offshore Energy Strategy and Policies.” Our testimony notes that the deployment, upgrade, and maintenance of infrastructure on Tribal Lands remains a critical component of efforts in our pursuit of Nation rebuilding. However, the deployment of new infrastructure projects, particularly those located outside of our jurisdictional boundaries, including energy infrastructure, and the streamlining of federal permitting processes remain a major concern for USET SPF because of the potential impacts to Tribal sovereignty, cultural and sacred sites, and the public health and lifeways of our communities. We have serious concerns with the ongoing authorization of offshore wind leases absent early and appropriate Tribal consultation, as well as the lack of funding and planning for avoidance and mitigation measures and impact aid to Tribal Nations.

Tribal Nations are contending with the impacts of the deployment of offshore wind energy projects due to the failure of the Bureau of Ocean Energy Management (BOEM) to conduct appropriate consultation and engagement with Tribal Nations prior to the approval of permits for these projects and throughout their construction. Though these issues have the potential to impact Tribal Nations across the United States, several of these projects are currently under construction and affected USET SPF member Tribal Nations have been engaged with BOEM to avoid adverse impacts. However, BOEM has failed to properly consult with our member Tribal Nations and has not provided adequate plans for avoidance or mitigation.

BOEM is currently considering additional offshore wind project proposals and several Tribal Nations, both within and outside the USET SPF region, continue to raise concerns about potential threats to submerged sites of cultural significance, natural and environmental resources, and aquatic life. The development of these projects is moving forward without necessary avoidance and mitigation measures or impact aid to Tribal Nations. In recognition of these concerns, USET SPF adopted [USET SPF Resolution No. 2023 SPF:013](#), which urges a temporary moratorium on BOEM’s offshore wind scoping and permitting processes until a Nationwide Programmatic Agreement (NPA) is developed and agreed upon with Tribal Nations. Subsequently, we have also adopted resolutions [seeking standardization of BOEM’s mitigation procedure](#) and [reemphasizing the need for an offshore wind development moratorium in the absence of power purchase agreements](#).

USET SPF has been engaged with BOEM and the other agencies within DOI regarding ongoing concerns with offshore wind development absent Tribal consultation. Any type of offshore development that is outside of Tribal Nations’ jurisdictional boundaries must require Tribal engagement and consultation prior to the issuance of any new offshore leases. We understand that the Biden Administration has a goal of deploying 30 gigawatts of offshore wind electricity generation by 2030. However, this development, as well as the continued development of oil and gas on the Outer Continental Shelf, must not occur at the expense of destroying our sacred sites, cultural, natural, and environmental resources, and aquatic wildlife. Consistent with the Administration’s commitment to Indian Country and “the whole of government” approach, the process must provide full mitigation through the completion of comprehensive and transparent procedures to appropriately protect Tribal Nation religious, cultural, environmental, and sovereign interests. We



believe that the Administration's goals of developing clean energy and increasing Tribal co-management opportunities can and must be harmonized. Indeed, Tribal Nations have extensive experience in navigating the deployment of federal infrastructure in a way where multiple interests are satisfied and our cultural heritage is preserved. We are committed to exploring solutions with our federal partners that will benefit both Tribal Nations and the Administration's offshore wind deployment goals.

## **USET SPF Submits Comments to FCC on Tribal Nation Access to Spectrum Licenses**

On November 30, 2023, USET SPF submitted [comments](#) in response to the Federal Communications Commission's (FCC) Public Notice seeking comment on Tribal Nation access to spectrum licenses. While USET SPF's comments did not go into specific detail about the spectrum licensing practices of the FCC, we offered recommendations to the FCC to increase Tribal Nation opportunities and access to these valuable and critically important spectrum licenses. In this proceeding the FCC recognized the impact of the 2.5 GHz Rural Tribal Priority Window proceeding held in 2019 and, while this was a momentous opportunity for Tribal Nations to obtain spectrum licenses outside the FCC's auction process, USET SPF stressed that more must be done by the FCC to increase these licensing opportunities.

Specifically, USET SPF recommended that the FCC establish a Tribal Priority window to all high-speed, broadband capable spectrum licenses prior to an FCC auction proceeding since the current competitive bidding process does not uphold trust and treaty obligations. Further, we recommended that the FCC partition spectrum licenses or develop enforcement mechanisms on non-Tribal entities to enable secondary/shared use of spectrum over our lands. USET SPF emphasized these recommendations as the primary regulatory changes the FCC must pursue to expand access to spectrum licenses for Tribal Nations. USET SPF will continue to monitor this proceeding and advocate for ongoing Tribal consultation efforts to develop a Tribal Priority to commercial wireless spectrum licenses over Tribal Lands.

## **Land**

---

### **DOI Finalizes Revisions to Part 151 Land-into-Trust Regulations**

On December 6<sup>th</sup>, the Department of the Interior (DOI) issued its [final rule revising the 25 C.F.R. Part 151 Fee-to-Trust regulations](#). According to the DOI, "this final rule will make this process simpler, more efficient, and less expensive."

Importantly, the final rule codifies procedures for determining whether a Tribal Nation was 'under federal jurisdiction' in 1934. In the wake of the previous Administration's unconscionable attempts to remove USET SPF member, the Mashpee Wampanoag Tribe's, ancestral homelands from trust following its withdrawal of M-37029, it has become increasingly important that DOI take steps to ensure Tribal homelands remain in trust. While we continue to advocate for a legislative fix to the disastrous Supreme Court decision in *Carciere v. Salazar*, the codification of these procedures will offer a level of certainty that did not previously exist.



In addition, DOI will affirmatively favor trust land acquisition for Tribal Nations in these regulations and approach fee-to-trust applications from this perspective. Further, departmental deadlines for notification and decision-making following receipt of a completed application have long been sought by Tribal Nations. We are particularly appreciative of the Department incorporating our recommendation that DOI be required to issue notice of completed application within 30 days, in addition to the previously proposed requirement that it issue a decision within 120 days. And finally, we support the streamlining of the various processes for DOI's for forms of acquisition, underscoring our strong support for the inclusion and intention behind "Initial Indian Acquisitions."

USET SPF provided comments to the Department in [2021](#), [2022](#), and [2023](#) as these regulations were developed, and continues to be encouraged by DOI's focus on Tribal homelands restoration. Tribal land base is a core aspect of Tribal sovereignty, cultural identity, and represents the foundation of our Tribal economies. And as a partner who shares in the trust relationship, it is incumbent upon the federal government to prioritize and defend the restoration of our land bases, including sacred and cultural sites.

## **USET SPF Submits Comments to DOI on Establishment of Tribal Land and Water Conservation Fund**

On October 4, 2023, USET SPF submitted [comments](#) in response to consultations held by the Department of the Interior, Bureau of Indian Affairs (BIA) on Tribal Land acquisition funding through the Land and Water Conservation Fund (LWCF). These consultations resulted from a Fiscal Year 2024 (FY24) BIA request of \$12 million in discretionary unobligated LWCF funds to create a new Tribal LWCF land acquisition program. USET SPF expressed support for BIA's efforts to establish a Tribal LWCF land acquisition program and many of the proposed BIA criteria for Tribal Land acquisition.

Currently, Congress allocates LWCF funding to the Bureau of Land Management (BLM), the National Park Service (NPS), the Fish and Wildlife Service (FWS), the U.S. Forest Service and state and local governments. BIA's FY24 request would support the acquisition of lands, waters, and interests therein for the purpose of protecting and conserving natural resource areas that may also be of cultural importance to Tribal Nations or have recreational benefits for Tribal Nations. The BLM, NPS, and FWS currently use LWCF funding to support federal land acquisition from willing sellers and each agency has a defined project selection process and criteria. The BIA is proposing to develop its own process and criteria for allocation of Tribal LWCF land acquisition funding.

While expressed support for the conservation priorities of the LWCF, we recommended that BIA's proposed criteria for Tribal Land acquisition must support Tribal sovereignty and self-determination to restore our homelands and use/develop those lands as we see appropriate. To that end, USET SPF strongly urged BIA to facilitate the restoration of as much Tribal Land as possible, to ensure the protection of Tribal homelands, and to maximize the exercise of Tribal sovereignty in the management of our homelands. Moving forward, USET SPF recommended that BIA should include in its annual budget requests to Congress the necessary funding required to fully operate the Tribal LWCF land acquisition program. USET SPF will continue to monitor this proposal by BIA and advocate for its inclusion in BIA's annual budget requests to Congress. We will continue to extend our strong support for efforts that aim to increase and sustain funding for Tribal Land acquisition and the restoration of Tribal Homelands.

# Litigation

---

## Supreme Court Agrees to Hear Dispute over IHS CSC Payments

On November 20, 2023, the Supreme Court of the United States agreed to take up two federal government petitions that seek to overturn orders that the Indian Health Service (IHS) reimburse millions of dollars of Contract Support Costs (CSC) to Tribal Nations to provide insurer-funded services to their patients.

The federal government petitioned the Supreme Court following decisions in two litigation cases involving reimbursements to Tribal Nations that the government claims could potentially cost \$2 billion a year to support. In November 2022, the Ninth Circuit ordered the IHS in the case [Becerra v. San Carlos Apache Tribe](#), to refund administrative costs tied to three years of Tribal-run services funded through insurance revenues. In March 2023, in [Becerra v. Northern Arapaho Tribe](#), the Tenth Circuit ordered the IHS to reimburse \$1.5 million in administrative costs for the Tribal Nation. USET SPF was a signatory to a Tribal Nations and organizations [amicus brief](#) in the *San Carlos* case.

A U.S. Circuit Judge held that certain ambiguous sections of the Indian Self-Determination and Education Assistance Act (ISDEAA) should be read as requiring the IHS to reimburse Tribal Nations for all types of contract support costs, including funds that Tribal Nations receive from third-party insurers such as Medicare, Medicaid and private insurance companies.

This case is significant for several reasons, including the fact that if the current decisions are upheld and applied nationally, the ruling could result in between \$800 million and \$2 billion a year being returned to Tribal Nations for CSC. The ruling may also be applied retroactively, and we have [alerted our members in the past to an opportunity to file retroactive claims against the IHS for these costs.](#)

The Supreme Court has consolidated the two cases together and granted one hour of oral argument. USET SPF will continue to monitor this issue and provide additional information when appropriate.

## USET/USET SPF Hires First-Ever General Counsel

In late September, USET/USET SPF officially announced the hiring of Katie Klass as our first-ever in-house USET/USET SPF General Counsel. The addition of the General Counsel position and the hiring of Katie Klass are critical to the organization's maturation as we seek to provide advocacy that is comprehensive and robust. Katie is an enrolled citizen of the Wyandotte Nation with proven, extensive experience fighting to protect the inherent sovereign rights and authorities of Tribal Nations and holding the United States accountable for its trust, treaty, and statutory obligations.

Currently, Katie is a partner with Hobbs, Straus, Dean, and Walker (HSDW) in their Washington DC office and was previously part of the Obama Administration's Department of the Interior, Office of the Solicitor's Honors Attorney Program. In this role, she rotated throughout the Solicitor's Office before permanently joining the Division of Indian Affairs. Katie received her Juris Doctor in 2011 from the University of Arizona. While there, she gained a certification from the Indigenous Peoples Law and Policy Program, worked for the U.N. Special Rapporteur on the Rights of Indigenous Peoples, and participated in the Indigenous Peoples' Law Clinic. Mentoring young attorneys is important to Katie, and she received the Native American Bar Association of DC's Excellence in Mentoring Award in 2018 and its Significant Contribution's Award in 2021.

*“In addition to a deep understanding of the foundations of Tribal Nation-U.S. diplomacy, including the increasing need to defend the constitutionality of Federal Indian Law, Katie is a visionary and assertive advocate. She comes to us with a strong appreciation for the need to balance navigating the often paternalistic and outdated current trust model, with, more importantly, challenging those constructs in a manner that promotes Tribal Law and the inherent sovereign rights and authorities of Tribal Nations,”* said USET/USEP Executive Director, Kitcki A. Carroll.

Katie began serving in her new role on November 27, 2023.

## **Natural Resources**

---

### **USET USEP Submits Comments to BSEE on Environmental Justice Action Plan**

On November 16, 2023, USET USEP submitted [comments](#) in response to the Tribal consultation held October 31, 2023 on development of the Bureau of Safety and Environmental Enforcement’s (BSEE) Environmental Justice Strategy and Action Plan (EJ Strategy and Action Plan). USET USEP recognized this as a timely, important initiative since—as it relates to BSEE’s jurisdiction—several USET USEP member Tribal Nations have long been contending with the Biden Administration’s streamlined development and approval of offshore wind projects. We reminded BSEE that the activities executed by the federal government to streamline construction of these projects are impacting our submerged sacred sites and ancestral burial grounds, as well as our cultural lifeways.

While USET USEP expressed appreciation for BSEE’s pursuit to develop its first-ever EJ Strategy and Action Plan, we recognized that the four Pillars identified by BSEE for use in drafting this Plan utilized a “communities” approach and were not Tribal-specific. We emphasized that while the four Pillars can certainly be relevant to the inclusion of Tribal Nations, we expressed opposition to our inclusion under the umbrella term of “communities” due to our Nation-to-Nation diplomatic relationship with the federal government and our sovereign status. USET USEP recommended that BSEE develop a Tribal Nation-specific EJ Strategy and Action Plan (Tribal EJ Strategy and Action Plan, or Tribal Plan) and our comments provided several recommendations on how this process could be initiated in a meaningful and appropriate manner.

Among these recommendations included requiring BSEE employees and contractors to receive education and training on Tribal sovereignty and U.S.-Tribal Nation relations; ensure protections for sensitive Tribal information and Indigenous Knowledge from Freedom of Information Act requests; prioritize all necessary resources and technical assistance funding to Tribal Nations to protect our sacred sites and cultural, environmental, and natural resources; and enhance compliance and enforcement actions, appropriately fund mitigation activities, and enforce moratoriums on projects for Tribal Nations with environmental justice concerns. As of this publication, BSEE has not released a draft Tribal EJ Strategy and Action Plan or announced formal consultation to develop such a strategy and action plan. USET USEP will continue to monitor the development of this EJ Strategy and Action Plan and advocate for the creation of a Tribal-specific strategy and action plan.

### USET SPF Provides Comments to Treasury on 2023 Interim Final Rule for Fiscal Recovery Fund

On October 13, 2023, USET SPF submitted [comments](#) in response to Treasury's Tribal consultation held on the 2023 Interim Final Rule (2023 IFR) of the Coronavirus Fiscal Recovery Fund (FRF). In response to enactment of the Consolidated Appropriations Act of 2023, Treasury proposed the 2023 IFR for the FRF to provide rules on the three additional eligible use categories authorized by the law. These additional eligible use categories include use of FRF funds for emergency relief from natural disasters, Surface Transportation projects, and Title 1 projects. USET SPF acknowledged that the adoption of the 2023 IFR does not change the Final Rule from 2022 for the eligible uses of FRF funds, but rather added these three additional areas for eligible uses. However, USET SPF expressed certain concerns and provided additional recommendations for the added 2023 IFR additional eligible uses.

Specifically, our comments provided additional recommendations for Tribal Nation use of FRF funds for emergency relief from natural disasters to support protection of Tribal sacred sites. Although USET SPF expressed general support for the use of FRF funds for emergency relief from natural disasters that have occurred or are expected to occur imminently, we expressed disappointment that there is a non-duplication restriction preventing use of FRF funds to aid with losses resulting from a natural disaster that is the subject of a Stafford Act declaration. We acknowledged that this is a result of language in the Stafford Act under 5 USC 5155(a) and urged Treasury to work with Congress on removing this language from the Act, especially as our lands are increasingly being affected by the disastrous effects of climate change. However, until this amendment to the Stafford Act occurs, we recommended that Treasury examine how it can waive this statutory requirement. One possible mechanism we recommended is that Treasury exercise its authority under Section 6 of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Under Section 6, the federal government is encouraged to facilitate and streamline Tribal applications for waivers of statutory and regulatory requirements, which could be applied to waivers the non-duplication restrictions under the Stafford Act.

Finally, we also expressed concern with Treasury's decision to authorize the Department of Transportation (DOT) to manage and consult with Tribal Nations on Surface Transportation projects utilizing FRF funds. While we asserted that authorizing DOT to manage these funds may make sense, since it has the technical expertise and personnel required to do so for its programs, we expressed disagreement with DOT having sole consultative authority with Tribal Nations when managing FRF funds. For instance, we recommended that if DOT is not properly consulting with Tribal Nations, or withholding or creating a difficult award process, Treasury should intervene when these instances occur to support Tribal consultation efforts. USET SPF will continue to monitor the award and implementation of FRF funds and advocate for increased flexibility for Tribal Nations to utilize these funds to support Tribal self-determination and Nation rebuilding efforts. We will also continue to advocate for solutions to address certain statutory limitations on Tribal Nations to appropriately utilize these funds and others authorized by the recent infrastructure laws.