



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted Electronically
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May 24, 2024

Heather Dawn Thompson
Director
Office of Tribal Relations
U.S. Department of Agriculture
1400 Independence Ave, SW
Washington, DC 20250

Dear Director Thompson,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the series of Tribal consultations and listening sessions held from April 22nd through April 26th on Tribal barriers to accessing programs and services at the U.S. Department of Agriculture (USDA). USET SPF appreciates that USDA has continued to hold its annual Tribal consultation and listening sessions to solicit input and feedback from Tribal Nations on these issues. The April consultations and listening sessions covered a broad range of topics such as education and research; forests and public lands management; farming, ranching, and conservation; economic development; and food, safety, and trade. While we recognize what USDA has done to remove Tribal specific barriers to accessing USDA programs and services as outlined in its annual report, there are still several outstanding issues that USDA must address. USET SPF's comments focus on those specific issues and our comments are in response to issues raised during the Tribal consultations and listening sessions held throughout the week of April 22nd.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), , Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

Expand P.L. 93-638 Contracting and Compacting Across All 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 a fundamental trust relationship to Tribal Nations, including the obligation uphold the right to self-government. Our federal partners, including USDA, must fully recognize the inherent right of Tribal Nations to fully engage in self-determination and self-governance, so we may exercise full decision-making in the management of our own affairs and governmental services. While Tribal Nations have experienced great success in exercising 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, especially beyond the current demonstration projects that USDA is currently managing. Expanding P.L. 93-638 authorities at USDA beyond forestry and the Food Distribution Program on Indian Reservations will not only empower us to better serve our citizens and communities, but it will also enhance our ability to administer USDA programs in co-management, stewardship, and agriculture; the deployment and maintenance of critical infrastructure; and pursuit of economic development on our lands. USDA must also support permanency and program expansion (into compacting, as well as opening eligibility) for its existing self-determination demonstration programs.

Although there has been some hesitation for USDA to support the expansion of P.L. 93-638 contracting and compacting authority for Tribal Nations across all USDA programs via legislation, we remind USDA that its support for the expansion of 638 contracting and compacting would uphold the directives of President Biden's recent [Executive Order 14112](#), "Reforming Federal Funding and Support for Tribal Nations to Better Embrace our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination." This Executive Order was issued to support our inherent sovereignty and self-determination to advance economic growth, pursue Nation rebuilding, and directly address the economic, social, and public health priorities of our citizens. Many current models of federal funding allocation, administration, and oversight remain reflective of a paternalistic, pre-self-determination era. This continues to stifle the proper management and use of federal resources by Tribal Nations, along with our efforts at genuine Nation rebuilding after centuries of hostile federal policies. In order to usher in a new era of Tribal self-determination, USDA regulations must be rescinded or revised to truly advance our sovereign efforts to pursue Nation rebuilding for the improved economic, social, and public health of our communities.

USET SPF Recommendations for Forests and Public Lands

During the Tribal consultation and listening session on, "Forests and Public Lands", several issues were raised regarding USDA Forest Service (FS) personnel and the high rate of turnover with employees. Unfortunately, due to the lack of FS personnel familiar with working with Tribal Nations, we have encountered issues where FS personnel do not recognize or understand the inherent sovereignty of Tribal Nations or the federal government's trust and treaty obligations to support us. Further, during this Tribal consultation and listening session it was mentioned that USDA must support expansion of P.L. 93-638 contracting and compacting across all USDA programs to support Tribal Nations in accessing USDA funds and services to protect our homelands, both within and outside of our jurisdictional boundaries—including for forestry programs.

USET SPF supports the recommendations offered during the Tribal consultation and listening session on Forests and Public Lands and we offer the following additional recommendations to USDA FS—

- **Tribal Nations and our citizens harvesting on USDA FS lands is restricted by costly research to prove a lack of negative impact on cultural resources, these actions do not uphold Tribal sovereignty and self-determination.** USDA FS policy places the burden of funding

Environmental Assessments on Tribal Nations, which costs approximately \$68,000/plant species. Instead of burdening Tribal Nations and our citizens from accessing USDA FS lands for harvesting purposes, USDA FS, and the Department overall, must support Tribal Nations and our citizens to access these areas for harvesting and gathering purposes by awarding funds directly to Tribal Nations. Further, Tribal harvesting and gathering is prohibited in areas where there are endangered or threatened species, therefore, USDA FS personnel must work with Tribal Nations to ensure we have the appropriate access to harvest and gather in these areas, especially when accessing cultural and medicinal resources.

- **Tribal treaty rights are analogous to Tribal reserved rights, and USDA must recognize and acknowledge this.** Regardless of whether a Tribal Nation has a treaty with the U.S., all Tribal Nations have inherent reserved rights. Both Tribal treaty and reserved rights must be respected and honored by USDA and its employees must be educated on U.S.-Tribal Nation relations. This includes recognizing and acknowledging that the federal government, through its dealings with Tribal Nations, is obligated to engage and consult with all federally recognized Tribal Nations equally.
- **Protect sensitive Tribal information and Indigenous Knowledge from FOIA requests and do not allow interagency sharing of this information and knowledge without Tribal consent.** Tribal Nations are best positioned to identify what types of our Indigenous Knowledge sets are sensitive or sacred and should be protected from public dissemination. Prior to the sharing of Indigenous Knowledge, there must be an established and respected high level of trust between the federal government and Tribal Leaders and our recognized cultural/spiritual leaders. This trust has been broken in the past and its restoration will require federal agencies to actively adopt, implement, and adhere to policies that provide the utmost protections for Tribal Nations sharing sensitive Indigenous Knowledge.

We urge USDA to work with our Tribal Leaders and our recognized cultural/spiritual leaders to ensure sensitive Indigenous Knowledge is never shared with the public. Furthermore, when USDA receives Indigenous Knowledge from Tribal Nations it should not share this information with other federal agencies in the absence of express Tribal Nation consent. When USDA receives inquiries or requests for the sharing of Indigenous Knowledge from other federal agencies, then it must also inform the respective Tribal Nation regarding these requests. We should be the sole determiners regarding whether this information should be shared or withheld. Furthermore, during Tribal consultation sessions, USDA must inform Tribal Nations of the federal government's legal obligations for the release of information to the public under FOIA requests. USDA staff must work with Tribal Leaders to ensure that the recording, taking of notes, or direct transcription of a consultation by machine or other methods does not create a record of sensitive Indigenous Knowledge and cultural information that could potentially be disseminated to or accessed by the public. During consultation sessions we should be notified of any recording and transcription methods being used. Additionally, USDA must adhere to any objections of the recording or transcription of any Indigenous Knowledge or cultural information divulged during consultation. Furthermore, requests for the redaction of sensitive Indigenous Knowledge and cultural information should be allowed to be stated verbally during consultation sessions and in any follow-up written materials submitted to USDA.

Recommendations for Farming, Ranching, and Conservation

USET SPF notes that there is a high percentage of USDA staff turnover in Tribally serving positions, in particular Tribal Liaison positions within the USDA Natural Resources Conservation Service (NRCS). This makes it difficult for Tribal Nations to coordinate with USDA staff when conducting conservation activities within and outside of our current jurisdictional boundaries. USET SPF recommends that USDA create

specific career paths for Tribally serving positions or enter into P.L. 93-638 contracts and compacts with Tribal Nations to hire Tribal personnel for these positions. For USDA to be successful in coordinating with our efforts to properly engage in conservation efforts, we must have the appropriate personnel.

Further, more personnel must be hired as Conservation Outreach Specialists, which are funded in part by NRCS and in part by Tribal Nations. While USDA has made some progress in providing direct services to Tribal Nation citizens, USDA personnel have not been provided the necessary broadband connectivity to conduct these activities. Since some USDA personnel aren't educated on U.S.-Tribal Nation relations, we've experienced issues where USDA NRCS and USDA Farm Service Agency records aren't available to Tribal Nations and our citizens upon request. Since this information is restricted to county offices that have limited open door hours, it makes it difficult for Tribal Nations to seek technical assistance. Therefore, USET SPF strongly recommends that any staff hired through Contribution/Partnership Agreements should have full access to USDA data to provide timely service to Tribal citizens. This would assist in prompt service to Tribal Nations. We further recommend that USDA must also provide funding for Tribal Nations to develop Agriculture Resource Management Plans as we continue to pursue sensible agricultural development on Tribal Lands.

Recommendations for Economic Development

As we continue to pursue efforts in Nation rebuilding, USDA must improve Tribal Nation access to USDA economic development financing. Currently, the eligibility requirements and certifications are too lengthy for Tribal Nations to access financing programs adequately and appropriately. Additionally, these financing programs often require population and other demographic statistics to qualify for funding. USET SPF strongly recommends that Tribally certified data take precedence over U.S. Census data that USDA currently relies on. On USDA funding applications, Tribal Nations should always have the option of providing Tribally certified population data, if U.S. Census data does not accurately capture our demographics. Tribal Nations have consistently stated that U.S. Census data does not accurately recognize or portray our demographic information.

Conclusion

USDA has made strides in working with Tribal Nations over the past year. However, due to the ongoing issues Tribal Nations are experiencing with accessing or qualifying for certain USDA programs and services, more work must be done. We strongly encourage USDA to take all actions necessary to improve Tribal Nation access to USDA programs and services, which includes USDA expansion of P.L. 93-638 contracting and compacting for Tribal Nations to all USDA programs and services. We understand that USDA will be hosting several upcoming Tribal consultations on this topic. In accordance with its trust and treaty obligations as an agency of the federal government, we remind USDA that it must support our inherent sovereignty and self-determination and provide the necessary services for our citizens. We look forward to continuing to work with USDA to address Tribal Nation barriers to access USDA programs and services and anticipate further action from USDA to improve its programs and service delivery for Tribal Nations. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director