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October 1, 2025

Testimony of the United South and Eastern Tribes Sovereignty Protection Fund
For the Record of the Senate Committee on Indian Affairs Hearing on
"Indian Self-Determination and Education Assistance Act Successes and Opportunities at the
Department of the Interior and the Indian Health Service"

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Indian Affairs with the following testimony for the record of the September 17, 2025 hearing on "Indian Self-Determination and Education Assistance Act Successes and Opportunities at the Department of the Interior and the Indian Health Service." In 1975, Congress enacted the Indian Self-Determination and Education Assistance Act (ISDEAA) to authorize Tribal Nations to enter into agreements with the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) to receive federal funds and manage federal programs. Since enactment of ISDEAA, a more appropriate sovereignty era of federal Indian law and policy was ushered in to support Tribal self-determination and self-governance. It cannot be overstated how critical ISDEAA has been for advancing towards more appropriate Tribal-federal diplomatic relations and supporting our efforts in Nation building and rebuilding through self-determination and self-governance. ISDEAA has been instrumental in supporting the goals and priorities of exercising our inherent sovereignty through control of natural and energy resources, protection of Tribal assets, achieving economic independence while supporting job creation, and the improvement of the standard of living for Tribal citizens and our communities.

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 Turtle Island.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.

As we celebrate 50 years of implementation of ISDEAA and its beneficial governance, social, and economic impacts for Tribal Nations, USET SPF emphasizes to the Committee that Tribal Nations have a proven track record of directly managing BIA, IHS, and Department of Transportation self-determination and self-governance funding agreements. There is demonstrated history and documented success that

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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 Tribe (VA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Tribal Nations utilize these federal dollars in a way that best serves our citizens and communities. The success of Tribal Nations participating in ISDEAA self-determination and self-governance agreements has shown that not only does it support our inherent sovereignty, but it also has significant beneficial socio-economic effects for our neighboring non-Native communities as well as regional and national impacts. Further, we emphasize that the implementation of ISDEAA is a critical component of upholding federal trust and treaty obligations to support the inherent sovereignty and self-determination of Tribal Nations. The purpose and intent for enacting ISDEAA was to reverse the disastrous federal Indian policy era of termination, which inappropriately abrogated federal trust and treaty obligations and our inherent sovereignty to manage our own affairs.

The time is long overdue to expand the Tribal self-determination and self-governance model to all departmental programs across the federal government, as well as provide the necessary full appropriations for these programs in fulfillment of the United States' unique trust and treaty obligations to Tribal Nations, Tribal citizens, and Tribal communities. We remind Congress that in order for Tribal self-determination and self-governance to be successful, ISDEAA eligible programs must receive full and stable appropriations so that Tribal Nations can efficiently administer these programs for the benefit of our citizens. The purpose and intent of ISDEAA is to support the exercise of our inherent sovereignty, which pre-dates the United States but is recognized in the U.S. Constitution, by the U.S. Supreme Court, in treaties and legislation, and via other legal proclamations. The U.S. Constitution singles out Tribal Nations and Native people as unique, and the U.S. Supreme Court has time and again affirmed the principle that United States actions that deliver on trust and treaty obligations to Tribal Nations, Tribal citizens, and Tribal communities do not run afoul of the U.S. Constitution's equal protection requirements.

Support for the Expansion and Evolution of Tribal Self-Governance

Since 1975, Congress has acted to refine and expand upon ISDEAA. In December 2015, through the Fixing America's Surface Transportation Act (P.L. 114-94), the ISDEAA self-determination and self-governance model was expanded to include the Tribal Transportation Self-Governance Program at the Department of Transportation (DOT). The last Congressional action taken to update ISDEAA was October 2021 with the enactment of the PROGRESS for Indian Tribes Act (P.L. 116-180), which sought to expand upon and improve the principles of self-governance and self-determination for Tribal Nations by streamlining and enhancing the Department of the Interior's (DOI) Tribal Self-Governance Program. For years, USET SPF advocated for legislative amendments to Title IV of ISDEAA, which is reflected by USET Resolution No. 2014:047, "Support Legislative Amendments to Titles I and IV of the Indian Self-Determination and Education Assistance Act." The PROGRESS for Indian Tribes Act was the direct result of Congress acknowledging the need to overhaul Title IV of ISDEAA and correct bureaucratic processes and procedures the Tribal Self-Governance Program imposed that either discouraged or hindered negotiations between Tribal Nations and DOI for compacts or funding agreements.

Despite the success of Tribal Nations in exercising authority under ISDEAA, as well as the enactment of ISDEAA updates such as the PROGRESS for Indian Tribes Act, there remains opportunity to support additional goals of self-governance to further improve and expand upon its principles. An expansion of the Tribal self-determination and self-governance model to all federal agencies and programs that serve Tribal Nations, Tribal citizens, or Tribal communities would be the next evolutionary step in the federal government's recognition of our inherent Tribal sovereignty and to reflect its full commitment to improving Tribal-federal diplomatic relations. Expansion of Tribal self-governance under ISDEAA would provide for a streamlined and expeditious approach to the receipt and expenditures of funds from across the federal

government, which will ensure these resources can be utilized in ways that reflect the uniqueness of Tribal governments and our communities.

USET SPF, along with many Tribal Nations and partner organizations, has consistently urged that all federal programs and dollars be eligible for inclusion in self-governance funding agreements. We must move beyond piecemeal approaches directed at specific functions or programs and start ensuring Tribal Nations have real decision-making in the management of our own affairs and assets. It is imperative that Tribal Nations have the expanded authority to redesign additional federal programs to best serve our communities, as well as have the authority to redistribute funds to administer services among different programs as we deem necessary. In addition, the federal government must uphold its trust and treaty obligations to Tribal Nations and provide full funding for Tribal programs—which it has consistently failed to do so—and these programs and funds must be moved to the mandatory funding side of the federal budget to align with and better reflect our unique diplomatic, Nation-to-Nation relationship.

To fully accomplish the principles of true self-governance, Tribal Nations require a new, refined framework and understanding that moves us further away from the principles of federal paternalism, which is something that has proven difficult for federal departments and agencies to accept. Examinations into expanding Tribal self-governance administratively have encountered barriers due to the limiting language under current law, as well as the misperceptions of federal officials. The most recent evidence of this has occurred in negotiations to expand ISDEAA contracting and compacting to U.S. Department of Agriculture (USDA) programs for the 2016 Farm Bill reauthorization. USDA officials resisted this change while also recognizing that they didn't have the necessary personnel experienced with implementing ISDEAA. However, this legislative change has yet to be enacted through a Farm Bill reauthorization.

USET SPF stresses to the Committee that if expansion of self-governance is only possible through legislative action, then the Committee and Congress must prioritize legislative action on the comprehensive expansion of Tribal self-governance. This will modernize federal trust and treaty obligations to Tribal Nations in a manner that is consistent with our inherent sovereign status and capabilities. As an example, in 2003 the Department of Health and Human Services (HHS) completed a feasibility study in 2003 to explore the possibility of expanding Tribal self-governance into HHS programs beyond those of IHS. The study concluded that the expansion of self-governance to non-IHS programs was feasible but would require Congressional action. Later, HHS established the Self-Governance Tribal Federal Workgroup (SGTFW) to develop recommendations on this matter. However, despite efforts on the part of Tribal representatives of the SGTFW to attempt to move forward in good faith with consensus positions on expansion legislation, these efforts were hindered by the lack of cooperation by federal representatives. In the years since, the SGTFW has worked with HHS officials to develop draft legislation that would expand Tribal self-governance authorities to several HHS programs, mostly within the Administration for Children and Families (ACF). Tribal self-governance expansion to these programs aligns clearly with this Administration's goals of increasing local control over programs and services, and Tribal Nations have a long track record of improving program efficacy and efficiency through self-governance. Tribal Nations are now seeking sponsors and support for the bill. USET SPF strongly urges members of the Committee to take up this draft legislation and work with Tribal Nations and HHS to finally achieve Tribal self-governance expansion within HHS.

Further, Congress, as well as the Administration, should consider modifications to reporting requirements under ISDEAA and other methods of funding distribution. The administrative burden of current reporting requirements under ISDEAA including site visits, "means testing," or other standards developed unilaterally

by Congress or federal officials are barriers to efficient self-governance and do not reflect our diplomatic, Nation-to-Nation relationship. While obtaining data around Tribal programs is critical to measuring how well we as Tribal governments are serving our citizens and how well the federal government is delivering upon its obligations, Tribal Nations find themselves expected to report data in order to justify further investment in Indian Country.

This runs counter to the trust obligation, which exists in perpetuity and is based on the underlying recognition of the exchange of land and natural resources by Tribal Nations. The data collected by Tribal Nations must be understood as a tool to be utilized in sovereign decision-making, not to validate the federal government's fulfillment of its own promises. Because funding for Tribal Nations is provided in fulfillment of clear legal and historic trust obligations, those federal dollars should not be subject to an inappropriate, grant-based mentality that does not properly reflect our diplomatic relationship. Grant funding fails to acknowledge the unique nature of the federal trust obligation and Tribal Nations' sovereignty by treating Tribal Nations as non-profits rather than sovereign governments. We reiterate the need for the federal government to treat and respect Tribal Nations as inherent sovereigns as it delivers upon its trust and treaty obligations, as opposed to treating or viewing us as grantee entities. Beyond HHS, USET SPF urges the Committee and Congress to use its authority to legislatively expand Tribal self-governance to all federal programs serving Tribal Nations, Tribal citizens, and Tribal communities—in fulfillment of its trust and treaty obligations.

DOI Must Support Self-Governance for Tribal Law Enforcement

Congress has consistently introduced and reintroduced legislation to increase self-governance activities in Tribal law enforcement. For instance, in the 118th Congress, <u>S. 465</u>, the "BADGES for Native Communities Act" was introduced to address inefficiencies in federal criminal databases, increase Tribal Nations' access to those databases, and improve public data on crimes and staffing. This legislation was also meant to promote more efficient recruitment and retention of BIA law enforcement personnel, provide resources to Tribal Nations for improved coordination with other law enforcement agencies, and mitigate federal law enforcement mishandling of evidence. Enactment of these provisions would have support Tribal self-governance and self-determination in law enforcement activities.

In addition, in the 118th Congress, S. <u>2695</u>, the "Parity for Tribal Law Enforcement Act" was introduced to ensure that Tribal law enforcement officers operating under ISDEAA contracts or compacts have access to training and certification to ensure they are able to enforce federal law on Tribal lands. The bill would have further provided these officers access to federal injury, death, retirement, and pension benefits.

USET SPF supported these legislative efforts, as both bills would have expanded the recognition the authority of Tribal law enforcement and ensure the federal government is better delivering upon its obligations to Tribal Nations exercising our right to contract or compact law enforcement services. These are but two additional examples of how the Committee could support the expansion of self-governance and self-determination for Tribal Nations, and we recommend that the Committee continue to support these efforts until these bills are enacted.

Expansion of P.L. 477 Should be Pursued Alongside Expansion of ISDEAA and Should Not be Viewed as Supplanting ISDEAA

A more efficient funding mechanism already exists for certain Tribal programs under Public Law 102-477 (P.L. 477 Program), which is designed to remove bureaucratic red tape, increase federal funding efficiency, and return control to local communities, all while funds continue to flow via underlying ISDEAA agreements.

The highly successful 477 Program—expanded and made permanent by President Trump in 2017—enables Tribal Nations and inter-Tribal consortia to merge federal funds from across 12 federal agencies and various funding streams into a single, Tribally designed, comprehensive, and streamlined program designed to support the self-sufficiency of individual Tribal community members. Under the P.L. 477 Program, Tribal Nations and Tribal organizations can consolidate funding streams, reallocate funding across the functions and services integrated into the Tribally designed P.L. 477 plan to meet current community needs, obtain waivers of statutory or regulatory barriers that prevent streamlining, produce a single comprehensive federal report, and more. This is what putting decision-making into local government hands to help community citizens become self-sufficient looks like in action.

The P.L. 477 Program has produced remarkable outcomes, especially when paired with related programs like Section 166 of the Workforce Innovation and Opportunity Act (WIOA). For example, participants in Tribally designed 477 plans report a total gain of \$9.45 per hour in unsubsidized employment, and 94% of them complete the training and employment goals identified in their P.L. 477-based Individual Self-Sufficiency Plans. These outcomes are particularly significant given the unique challenges facing Tribal communities, including geographic isolation, limited local employment opportunities, and historical underinvestment in education and infrastructure.

Layering expanded 477 Program authority on top of expanded ISDEAA authority would improve ISDEAA's implementation by streamlining the methods and requirements for delivering, using, and reporting on federal funds. This model could be expanded more broadly, which would align with the Administration's goals of promoting government efficiency and fiscal responsibility and putting power in the hands of local government.

Any Policy or Programmatic Changes Proposed by BIA or IHS Must be Developed in Consultation with Tribal Nations

In exercising oversight over DOI and HHS agencies, the Committee must direct these agencies to engage in prior and informed consultation activities when developing and proposing policy or programmatic changes that may impact the delivery of funds and services to Tribal Nations. For instance, it recently came to our attention that the BIA has issued a new Section 105(I) Facility Lease Guide requiring appraisers to compare Tribal facilities with "a minimum of three similar properties" when conducting a Fair Market Rental Analysis. Previously, under Chapter 1(a) of the 2022 Section 105(I) Facility Lease Guide, it stated, "If a Tribe seeks lease compensation based upon fair market rental, they must provide a Fair Market Rental Analysis (FMRA) for their area, compare the costs for similar properties, describe how the costs were developed, and other supporting documents as needed." USET SPF is concerned that the new guidance was updated and issued absent prior and informed Tribal consultation.

For this important reason, we share the concerns raised in the written testimony provided to the Committee by the Self-Governance Communication and Education Tribal Consortium (SGCETC) for the September 17, 2025 hearing. In SGCETC's written testimony there is valid concern that the revised guidance is ambiguous about what constitutes a "similar" property and ignores the unique economics of 105(/) leases, which benefit from guaranteed federal occupancy. Like the concerns raised by SGCETC, many USET SPF member Tribal Nations exist in rural and remote areas where comparable facilities may not exist, which place appraisers in precarious positions to justify the execution of a 105(/) lease agreement. This can force appraisers to use irrelevant data, inflate costs, and ultimately undervalue Tribal properties that violate the ISDEAA requirements for fair compensation.

In addition, IHS has taken unilateral actions that have raised concerns from Tribal Nations, including revising its Intergovernmental Personnel Act (IPA) agreements and memorandums of agreement (MOAs). These agreements are intended to allow federal employees to serve in Tribal health programs while maintaining federal employment status, but several Tribal Nations are concerned that recent changes will result in IHS using them to shift costs onto Tribal governments. More troubling, IHS has adopted a position requiring Tribal Nations to reimburse the agency for up to a year of severance pay when an IPA term ends or when a Tribal Nation hires the employee directly, a practice that contradicts decades of precedent and may violate statutory prohibitions under 25 U.S.C. §§ 5325(b)(4) and 5388(d)(1)(C)(iv). These examples highlight a troubling pattern of federal agencies making unilateral policy or operational changes that will undermine Tribal self-governance authority.

<u>DOI Must Improve Reporting Software Capabilities to Support Implementation of Tribal Self-Governance</u>

We wanted to raise to the Committee's attention that many of the tracking and reporting software systems utilized by DOI and its agencies are outdated and lack transparency, which directly impacts the successful and efficient implementation of Tribal self-governance agreements. Ensuring that the necessary, updated software and programs to process payments are in place within DOI would support consistency and oversight to ensure every dollar goes where it's intended. In addition, DOI must have the appropriate personnel in place to provide support to Tribal Nations should we have trouble in accessing these systems or drawing down funds. Further, requiring Tribal Nations to seek approval for and report on use of federal funding is repetitive, and those approval processes take too long and are too costly. Members of the Committee must work with their colleagues in Congress to ensure that agencies receive full appropriations for staffing, training, and retaining personnel critical to implementation of self-governance agreements.

In addition, Tribal Nations have been burdened with recent "justification requirements" introduced within the Automated Standard Application for Payments (ASAP) system. The ISDEAA already ensures accountability through application of Single Audit Act requirements which incorporate core federal audit standards that provide structured financial oversight. Consistent with the ISDEAA, and Tribal Nations' ISDEAA agreements that require an advance lump sum payment at the start of the year, we believe the continued use of the ASAP system imposes unnecessary administrative burdens on both Tribal Nations and DOI. While we appreciate the ongoing efforts by DOI and the Department of the Treasury (Treasury) to address the concerns raised by Tribal Leaders regarding the use of ASAP for ISDEAA fund transfers—as was raised during the September 17, 2025 hearing—more must be done to appropriately address this issue. One action DOI can take is to immediately clarify that ISDEAA self-determination and self-governance funds are exempt from recently established ASAP requirements for drawdown justifications. Further, DOI should modernize the Financial Business and Management System and the Self-Governance Database to ensure oversight of timely delivery of funds throughout the process and provide Tribal Nations with easy access to information on the source of funds transferred to us.

USET SPF urges DOI to continue working with Treasury to ensure all federal funds flowing to Indian Country are exempt from any payment portal payment justification requirements, as all such funds are delivered in furtherance of trust and treaty obligations. Further, payment platforms should be consistent, easy to use, easy to access, and allow Tribal Nations to track every dollar we are owed and where payments are in real time. The Committee should remind DOI that the Secretary of the Interior has the authority to waive regulations and should do so to reduce the burden on Tribal Nations administering programs under ISDEAA agreements. The Committee should also urge DOI to adopt a direct wire transfer process—which has been successfully utilized by the IHS and the Department of Transportation—as a

more efficient, compliant, and streamlined mechanism for disbursing ISDEAA funds. Finally, the Committee should direct DOI to implement an online payment platform that allows for approvals by awarding officials with the click of a button and allows Tribal Nations to track this process.

Concern with the pursuit of RIFs on DOI and HHS Agency Personnel Essential to Indian Country
The federal government has consistently failed to uphold its trust and treaty obligations to Tribal Nations, and this is no more evident than in the persistent understaffing and under resourcing of BIA, IHS, and related agencies that administer Tribal-serving programs. As Tribal Nations continue to contend with these issues, USET SPF strongly opposes indiscriminate and further reductions in force (RIFs) of DOI and HHS personnel as this would further exacerbate disparities, have significant negative impacts on Tribal Nations and economies and health care, and impact surrounding communities that benefit from the services and economic and health care opportunities we provide.

Further, we are concerned that any further RIFs of DOI and HHS agency personnel that provide services to Tribal Nations and/or citizens, will inevitably result in the loss of critical institutional knowledge. We are concerned that there appears to be no plan currently in place or being developed to respond to the diminished capacity, and the federal government needs adequate and knowledgeable people in order to deliver upon its trust and treaty obligations to Indian Country. Entire program staff are being eliminated through these workplace initiatives throughout the federal government without a plan for how to continue providing Tribal services, including the processing of vital funds. Our concerns are further exacerbated due the threat of government shutdowns and recent reports that the Office of Management and Budget (OMB) is directing federal agencies to commence RIFs during these times for "non-essential" personnel, including those personnel that operate in agencies that may not have funds to retain these employees. Therefore, USET SPF urges the Committee to work with the Administration to ensure that all staff that work on Tribal-serving programs at IHS, BIA, and all other relevant federal agencies are exempt from RIFs and other policies that reduce the federal workforce.

In addition to our concerns regarding potential future RIFs, USET SPF remains concerned about the loss of DOI and HHS personnel who have, or will accept, voluntary early retirement or deferred resignation options. Personnel critical to the delivery of Tribal programs and services at DOI and HHS agencies that opt to participate in these programs must be immediately replaced. USET SPF strongly urges the Committee to direct DOI and HHS to develop short- and long-term plans to ensure that this will not result in further delays for the delivery of BIA, IHS, or other relevant agency services or funds to Tribal Nations and Tribal citizens. This must include focusing on the replacement and rehiring of personnel necessary to fulfill these obligations.

Moving forward, DOI and HHS must pursue the hiring of personnel to fill vacant Tribal-serving positions that result from RIFs, voluntary early retirement, and deferred resignation, as well as those vacancies that have existed before these actions. This is especially important for the DOI Office of Self-Governance, which is just one example of an agency that has been consistently and woefully understaffed, despite its critical charge. Additionally, it is critical that the hiring freeze at IHS be lifted for all employee types and levels. While it has been helpful for physician-level providers to be exempt from the freeze, lower-level care providers, billing and administrative staff, and all other positions at IHS are critical to the delivery of healthcare services. Considering IHS already has a staff vacancy rate of over 30%, IHS must be allowed to replace lost staff and fill other vacancies. Overall, DOI and HHS must immediately prepare for and pursue a level of regulatory and structural creativity and flexibility that serves our goals and priorities to improve existing processes and avoid further complications. Further, until self-governance funds are automatically

processed, DOI and IHS must ensure it has sufficiently staffed self-governance awarding official positions to quickly push money out to Tribal Nations and engage in swift decision-making to efficiently and effectively deliver these funds and fulfill trust and treaty obligations. For instance, in the case of DOI, rather than telling Tribal Nations it takes two years to get an awarding official certified, it must have a contingency plan in place now to ensure funds are uninterrupted in the award process, especially when there is no statutory limitation.

Conclusion

USET SPF is working toward the next era of federal Indian law and policy that advances Tribal Nation self-determination and is based on diplomatic respect for Tribal Nations' inherent sovereign rights and authorities. In this new policy era, all federal dollars would be delivered in fulfillment of trust and treaty obligations and eligible to be contracted or compacted under ISDEAA. Until this new policy era is realized, we urge the Committee and Congress to ensure all federal funding for Tribal-serving programs and services can be transferred between federal agencies, so that it may be received by Tribal Nations through contracts and compacts. USET SPF calls upon the Committee and Congress to join us in working toward a legacy of change for Tribal Nations, Tribal citizens, and the sacred trust relationship. There is a need for radical transformation in the recognition of our governmental status and the delivery of federal obligations for our people, which can be accomplished by expanding ISDEAA to all federal programs currently administered by the federal government on behalf of Tribal Nations.

We can no longer accept the status quo of incremental change that continues to feed a broken system and does not allow us to utilize federal dollars in a manner that best serves our people and communities. The federal government must enact policies that uphold our status as inherent sovereign governments, our right to self-determination and self-governance, and honor the federal trust and treaty obligations in full. Further, in instances where federal personnel are critical to the delivery to Tribal programs and services in fulfillment of self-governance agreements, we urge the Committee to remind DOI and HHS to retain and hire the necessary staff required to fulfill these obligations. Moving forward, we look forward to partnering with the Committee and Congress to advance these policies during the 119th Congress and we hope to make substantial progress in expanding ISDEAA to finally reach its full potential and benefit for Tribal Nations. This will ultimately lead us into the next era of Tribal Nation-United States relations that is rooted in true recognition of our shared history and our diplomatic relationship.