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Testimony of the United South and Eastern Tribes Sovereignty Protection Fund For the Record of the House Subcommittee on Indian and Insular Affairs Oversight Hearing, “Unlocking Indian Country’s Economic Potential”

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the House Subcommittee on Indian and Insular Affairs (SIIA) with the following testimony for the record of the March 1, 2023 oversight hearing, “Unlocking Indian Country’s Economic Potential.” The inaugural hearing of SIIA in the 118th Congress focused on the challenges Indian Country faces in pursuing economic opportunities due to the complex status and restrictions imposed on Tribal Lands. However, this is just one example of the barriers that exist as a direct result of shameful federal policies that sought to terminate Tribal Nations, assimilate Native people, and to erode Tribal territories, learning, cultures, and economies. Today, many federal programs’ management and funding systems operate under an archaic model of paternalism that does not support Tribal Nation sovereignty and self-determination.

In addition to addressing land use and restrictions, USET SPF offers several additional priorities that must also receive the same consideration from Congress and the Subcommittee to empower Tribal Nations to pursue efforts in Nation rebuilding. These include support for the restoration of Tribal homelands, tax parity, and the expansion of self-governance contracting and compacting across the federal government.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.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.

Economic Development in Indian Country and the USET SPF Region

Prior to European contact, Tribal Nations, including USET SPF members, had a long history of dynamic economies and governance structures. Robust trade networks connected Tribal Nations and the goods we produced. As with other aspects of Tribal governance and infrastructure, the removal, termination, and assimilation policies of the United States government negatively impacted our traditional economic trade. Over the course of centuries, Tribal Nations ceded millions of acres of land and extensive resources to the U.S.—oftentimes by force—in exchange for which it is legally and morally obligated to provide benefits and

^[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).

services in perpetuity. Because of this historic and ongoing diplomatic relationship, the federal government has trust and treaty obligations to support Tribal self-governance and self-determination, along with rebuilding Tribal Nations and economies. Unfortunately, at no point has the federal government fully delivered upon and upheld these obligations.

In addition to being relegated to fractions of our original homelands, which can be in remote areas, Tribal Nations lack governmental parity in economic development opportunities and treatment under the U.S. tax code. All Tribal Nations, especially USET SPF member Tribal Nations, vary in levels of economic activity, capacity, and development. Some Tribal Nations have decades of experience and familiarity with economic development initiatives, while some are just starting to pursue these initiatives. This diversity demands that federal policy not adopt a one-size-fits all approach in supporting Tribal Nations and businesses to pursue economic development initiatives to support our communities and engage in Nation rebuilding. With nearly every aspect of economic development regulated by the federal government, economic progress in Indian Country is often stymied by burdens on Tribal Nations and businesses. These burdens have contributed to a perpetual cycle of social and economic hardship in our communities, and are a remnant of paternalism that continues to exist today, despite an evolution away from past policies of termination and assimilation toward greater Tribal self-determination and self-governance.

In 2012, the Federal Reserve Board of Governors issued a report on, *Growing Economies in Indian Country*, that outlined eight issues as fundamental challenges to realizing economic growth in Indian Country. USET SPF's member Tribal Nations, with few exceptions, still disproportionately contend with these same challenges, such as:

1. Insufficient access to capital;
2. Capacity and capital constraints of small business;
3. Insufficient workforce development, financial management training, and business education;
4. Tribal governance constraints;
5. Regulatory constraints on land held in trust and land designated as restricted use;
6. Underdeveloped physical infrastructure;
7. Insufficient research and data; and
8. Lack of regional collaboration.

Though this report is over a decade old, its relevancy today on the current state of economic challenges in Indian Country highlights the failures of the federal government in upholding its trust and treaty obligations to Tribal Nations. Congress and the Administration must work to free Tribal Nations from over-burdensome laws and regulations that impede our social and economic success. This is especially important in an environment of the federal government's failures to uphold trust and treaty obligations to fully fund programs and services for Indian Country. Similar to other governments, Tribal Nations provide vital economic, social, health, and public safety services to our people. As it is for any other sovereign, economic sovereignty is essential to our ability to be self-determining and self-sufficient. While economic success in no way diminishes the United States' moral and legal obligations to Tribal Nations, it remains critical to our continued nation rebuilding. Building strong, vibrant, and mature economies is more than just business development. It requires comprehensive planning to ensure that our economies have the necessary infrastructure, services, and opportunities for our citizens to thrive. And when Tribal Nations and our citizens have economic success, surrounding communities and their citizens share in the benefits. This results in stronger Tribal Nations and a stronger America.

Ensure Tribal Nation Economic Parity

The federal government has a responsibility to ensure that federal tax law treats Tribal Nations in a manner consistent with our sovereign governmental status, as reflected under the U.S. Constitution and numerous federal laws, treaties, and federal court decisions. With this in mind, we remain focused on the advancement of tax reform that would address inequities in the tax code and eliminate state dual taxation. Revenue generated within Indian Country continues to be taken outside our borders or otherwise falls victim to a lack of parity. Similarly, Tribal governments continue to lack many of the same benefits and flexibility offered to other units of government under the tax code. This largely prevents Tribal Nations from achieving an economic multiplier effect, allowing for each dollar to turn over multiple times within a given Tribal economy. The failure of the federal government to recognize Tribal Nations in a manner consistent with our sovereign governmental status has hindered our efforts to rebuild and grow our economies.

USET SPF continues to press Congress for changes to the U.S. tax code that would provide governmental parity and economic development to Tribal Nations. These efforts included support in previous Congresses for the Tribal Tax and Investment Reform Act. This bill specified the treatment of Tribal Nations as states with respect to bond issuance and modified the treatment of pension and employee benefit plans maintained by a Tribal Government. It also aimed to modify the treatment of Tribal foundations and charities, improve the effectiveness of Tribal child support enforcement agencies, and recognize Tribal governments for purposes of determining whether a child has special needs eligible for the adoption tax credit. USET SPF urges the Subcommittee to support similar legislative efforts in the 118th Congress to increase Tribal Nation economic parity.

Address Dual Taxation in Indian Country

Dual taxation hinders Tribal Nations from achieving our own revenue generating potential. Although Tribal Nations have authority to tax noncitizens doing business in Indian Country, when other jurisdictions can tax those same noncitizens for the same transactions, Tribal Nations must lower their taxes to keep overall pricing at rates the market can bear or forgo levying a tax at all. The application of an outside government's tax often makes the Tribal tax economically unfeasible.

Dual taxation undercuts the ability of Tribal Nations to offer tax incentives to encourage non-Indian business entities onto our lands to create jobs and stimulate Tribal economies. As long as outside governments tax non-Indian businesses on our lands—even if a Tribal government offers complete Tribal tax immunity to attract a new non-Indian business—that business is subject to the same state tax rate that is applicable outside our jurisdictional boundaries. As a matter of economic fairness, we ask SIIA to work with us to support and advance initiatives that would bring certainty in tax jurisdiction to Tribal Lands by confirming the exclusive, sovereign authority of Tribal governments to assess taxes on all economic activities occurring within our jurisdictional boundaries.

Support Responsible Development in the Energy Sector

USET SPF member Tribal Nations, and our respective Tribal Lands and energy resources, are located within a large region that presents diverse geographical environments and opportunities for both conventional and renewable energy development. Our member Tribal Nations could benefit from the unlocked potential of those energy resources and realize energy development goals, through appropriate Congressional action and investment in Indian Country; and further actions by the Administration, particularly to promote balanced geographical representation and inclusion of USET SPF member Tribal Nations in energy programs.

USET SPF has established its energy priorities, as follows:

- ✓ **Tribal self-determination** and control of natural resources and energy assets, to make conservation and development decisions to preserve Tribal sovereignty, protect Tribal assets, and to achieve economic independence, creation of jobs, and improvement of Tribal citizens' standard of living.
- ✓ **Tribal capacity building** effort involving multiple federal agencies, universities, and the private sector.
- ✓ **Reform core federal programs**, expertise, and funding to support Tribal energy resource development and market access.
- ✓ **Remove barriers to the deployment of Tribal energy resources**, such as bureaucratic processes, insufficient access to financial incentives, and interconnection and transmission on power grid.

We remain concerned, however, with efforts to streamline energy development by bypassing requirements under the National Environmental Policy Act (NEPA). USET SPF is aware of legislative proposals that would scale back environmental protections and review processes mandated under NEPA to streamline the approval of domestic energy development. We do not oppose conventional or renewable energy development, and many of USET SPF's member Tribal Nations pursue these activities. However, such development occurring outside of Tribal Nation jurisdictional boundaries must not come at the expense of our cultural resources and natural environments or Tribal consultation. Tribal Nations have already experienced immense land loss, theft, and the destruction and desecration of our cultural and environmental resources and aboriginal homelands. We should not be subjected to such actions again in to further a domestic energy policy agenda.

In addition to our concerns with scaling back NEPA provisions, several USET SPF member Tribal Nations have had to contend with federal agencies failing to properly consult with Tribal Nations on proposed energy projects. This includes wind energy development projects under the oversight of the Bureau of Ocean Management that have been proposed for construction, and some of which are currently undergoing construction, on the Outer Continental Shelf. Several of our member Tribal Nations were not properly consulted about the permitting of these wind energy project sites and have not received the resources and technical assistance required to properly and adequately review environmental, geological, and other assessments related to these projects. Funding remains stagnate and inadequate for Tribal Historic Preservation Officers (THPOs) to conduct reviews of proposed projects in order to appropriately ascertain the potential cultural and environmental impacts. We urge the Subcommittee to support increased funding for THPOs and ensure that efforts to streamline environmental review process are not implemented at the expense of the destruction of our cultural resources, sites, and natural environments.

Support the Restoration of Tribal Homelands and Enact a 'Carcieri Fix'

Possession of a land base is a core aspect of sovereignty, cultural identity, and represents the foundation of a government's economy. This is no different for Tribal Nations. USET SPF Tribal Nations continue to work to reacquire our homelands, which are fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. The federal government's objective in the trust responsibility and obligations to our Nations must be to support healthy and sustainable self-determining Tribal governments, which fundamentally includes the restoration of lands to all federally recognized Tribal Nations, as well as the legal defense of these land acquisitions. USET SPF continues to call upon Congress to enact a fix to the 2009 Supreme Court decision in *Carcieri v. Salazar*. For too long, this decision has impeded our ability to rightfully restore our land bases and pursue Nation rebuilding efforts. Congress must enact legislation that: (1) reaffirms the status of current trust lands; and (2) confirms that the Secretary of the Interior has authority to take land into trust for all federally recognized Tribal Nations.

Support the Expansion of ISDEAA Contracting and Compacting Across the Federal Government for Tribal Nations

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 must fully recognize the inherent right of Tribal Nations to fully engage in self-governance, so we may exercise full decision-making in the management of our own affairs and governmental services. Despite the success of Tribal Nations in exercising authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), the goals of self-governance have not been fully realized. Many opportunities still remain to improve and expand upon the principles of self-governance and self-determination. An expansion of ISDEAA authorities to all programs across the federal government would be the next evolutionary step in the federal government's recognition of Tribal sovereignty and reflect its full commitment to Tribal Nation sovereignty and self-determination. The expansion of self-governance contracting and compacting will not only empower us to better serve our citizens and communities, but it will enhance our abilities to manage our lands. It would empower Tribal Nations to administer federal programs in co-management, stewardship, agriculture, deployment and maintenance of critical infrastructures, and pursue economic development on our lands. It is time for Congress to enact legislation that expands our self-governance capabilities across the federal government so that we may fully exercise our inherent sovereign rights to manage our affairs and resources.

Invest in and Rebuild Tribal Infrastructure—A Marshall Plan for Tribal Nations

For generations, the federal government – despite abiding trust and treaty obligations – has substantially under-invested in Indian Country's infrastructure and engaged in hostile actions against Tribal Nations. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure. Much like the U.S. investment in the rebuilding European nations following World War II via the Marshall Plan, the legislative and executive branches should commit to the same level of responsibility to assisting in the rebuilding of Tribal Nations, as our current circumstances are, in large part, directly attributable to the shameful acts and policies of the U.S. In the same way the Marshall Plan acknowledged America's debt to European sovereigns and was utilized to strengthen our relationships and security abroad, the U.S. should make this strategic investment domestically.

Conclusion

Unlocking the economic potential of Indian Country must take into consideration several issues and priorities to support Tribal Nation rebuilding efforts. The historic and ongoing injustices that have contributed to economic insecurity in Indian Country are symptomatic of the larger issues we face as Tribal Nations. In large part, this is due to the failure of the U.S. government to live up to the terms of our diplomatic, Nation-to-Nation relationship. Development and implementation of policies and programs that recognize and uphold our inherent sovereignty and fulfill trust and treaty obligations are necessary to alleviate economic hardship, rebuild Tribal Nations, and improve the quality of life for our citizens and communities. Congress must continue to support and fully fund federal programs that encourage economic sovereignty through the restoration of Tribal homelands, self-governance contracting and compacting across all federal programs, tax parity, and responsible energy development. We welcome the opportunity to collaborate with the Subcommittee on economic policies that better honor federal trust and treaty obligations and uphold our inherent sovereignty to pursue our Nation rebuilding priorities, including unlocking the potential of international trade via our unique status.