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October 27, 2026

The Honorable Adrian Smith
United States House of Representatives
Washington, D.C. 20515

RE: Tribal Concerns with the Bipartisan American Affordability and Jobs Act of 2026

Dear Congressman Smith:

On behalf of the Santee Sioux Nation, I write regarding the Bipartisan American Affordability and Jobs Act of 2026, the permitting reform bill negotiated by Senators Capito, Whitehouse, Lee, and Heinrich. The Senate is expected to begin floor consideration on November 9, and the bill will then come to the House, which must reconcile it with the SPEED Act it passed last December. Several provisions in this bill would strip tribal nations, and in many cases the State of Nebraska, of authority we have long held over projects that affect our land, our water, and the places where our ancestors are buried. As your constituents, we ask for your help in fixing them.

Let me be clear at the outset. The Santee Sioux Nation is not opposed to permitting reform. Few communities in Nebraska know the cost of federal delay better than we do. Our families have lived under a do-not-drink advisory for years while our water pipeline connection to the Randall Community Water District has worked its way through the federal process. We appreciate your office's engagement on that effort. A faster and more predictable system would serve our people well. But speed cannot come at the expense of the government-to-government relationship, or of the authority Congress has always recognized that tribes and states hold over what happens on their own land.

Tribal consultation under the National Historic Preservation Act. Title III of the bill would effectively make consultation with tribal nations under Section 106 optional. It defines "sacred places" so narrowly that most of the sites that matter to us would fall outside it. Visual and noise impacts would no longer count, and a federal agency could acknowledge that a project will harm a historic or sacred site and then do nothing to avoid or reduce that harm. Tribes and other consulting parties would also lose meaningful remedies in court.

For our people this is not abstract. After 1862, the Dakota were held at Fort Snelling, removed from our Minnesota homelands to Crow Creek, and finally settled along the Missouri River in Nebraska. Our burial grounds, village sites, and ceremonial places run along that river and across the region, much of it outside the boundaries of our reservation today. Section 106 is often the only point in the federal process where we have a seat at the table when a project threatens those places. Making consultation optional takes that seat away.

Federal takeover of tribal and state historic preservation offices. The bill would allow federal agencies to step in and take over the work of Tribal Historic Preservation Officers and State Historic Preservation Officers, including on tribal land, if those offices do not move on a timeline set in Washington. This is a direct intrusion on tribal sovereignty. It should be just as troubling to Nebraska, because it would allow federal agencies to override History Nebraska, the State's own historic preservation office, on projects inside our state. When these offices fall behind, it is almost always because of limited staff and funding. The answer is to resource them, not to replace them.

Clean Water Act Section 401. The bill would limit the ability of states and authorized tribes to condition federal permits to direct discharges at a crossing point, rather than the full footprint of a pipeline, transmission line, or other linear project. It would also limit conditions on dams and similar facilities. Our reservation sits on Lewis and Clark Lake, the reservoir behind Gavins Point Dam, and we live with the consequences of federal water decisions every day. We also understand that EPA's own rule narrowing state and tribal 401 authority has cleared OMB review and could be published at any time. Taken together, these changes would leave Nebraska and the tribes with far less say over the water we all depend on.

Project certainty and taxpayer exposure. Sections 1401 through 1403 would bar federal agencies from amending existing permits or taking any action that interferes with a project's "full operational capacity" as of September 16, 2026, and would allow companies to seek damages from the Judgment Fund. In practice this locks in today's permits for the life of a project, no matter what is later learned about its effect on water or public health, and it puts the American taxpayer on the hook for the bill. We do not believe that is a responsible result.

Other tribal and conservation partners have raised concerns with the bill's changes to NEPA, the Endangered Species Act, and federal mining law, and we share many of them. The provisions above, however, are the ones that most directly affect the Santee Sioux Nation and our neighbors in northeast Nebraska.

We respectfully ask that you raise these issues with House leadership and the committees of jurisdiction as the House takes up the Senate bill, and that you not support a final bill that leaves them unresolved. Specifically, we ask for the following changes.

First, keep consultation with tribal nations mandatory under Section 106, and adopt a definition of sacred places that reflects how tribes actually identify and protect them.

Second, strike the provisions that would allow federal agencies to take over tribal and state historic preservation offices.

Third, preserve the authority of states and tribes under Section 401 to review and condition the full footprint of a project, including dams.

Fourth, strike or substantially narrow the project certainty and Judgment Fund provisions in Sections 1401 through 1403.

The House will have its own say on this bill, and the Third District is home to the Santee Sioux Nation and to the rural communities along the Missouri River that share our stake in these decisions. Permitting reform should respect the authority of tribes and states, not override it.

Respectfully,

Chairman Alonzo Denney
Santee Sioux Nation

Vice Chairman Kameron Runnels
Santee Sioux Nation

cc:
Senator Shelley Moore Capito, Chair, Environment and Public Works
Senator Sheldon Whitehouse, Ranking Member, Environment and Public Works
Senator Mike Lee, Chair, Energy and Natural Resources
Senator Martin Heinrich, Ranking Member, Energy and Natural Resources