



Testimony of President Brian Patterson
United South and Eastern Tribes Sovereignty Protection Fund
House Appropriations Subcommittee on Interior, Environment, and Related Agencies
FY 2017 Native American Public Witness Hearings, March 17, 2016

Chairman Calvert, Ranking Member McCollum, and members of the Subcommittee, thank you for allowing me to be here today and for committing to hold Native American Public Witness Hearings in spite of this year's compressed legislative schedule. My name is Brian Patterson. I serve as President of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF). I am also Bear Clan Representative to the Oneida Indian Nation Men's Council and Clan Mothers.

USET SPF represents 26 federally-recognized Tribal Nations from Texas to Florida to Maine. USET SPF member Tribal Nations are within the Eastern Region and Southern Plains Region of the Bureau of Indian Affairs and the Nashville Area of the Indian Health Service, covering a large expanse of land compared to other regions. Due to this large geographic area, USET SPF Tribal Nations have great diversity in cultural traditions, land holdings, and resources. From an economic standpoint, some of our Tribes have highly developed economies, while others remain mired in poverty.

Regardless of Tribal economic status, this Congress and all branches of the federal government hold sacred fiduciary trust responsibilities and obligations to all Tribal Nations, which are upheld through treaties, statute, and case law. These responsibilities and obligations should be viewed with a level of honor and respect that reflects the unique status of the diplomatic relations that exist between the U.S. and Tribal Nations. While USET SPF applauds this Subcommittee's strong, long-standing commitment to Indian Country, Indian funding continues to fall short of these fiduciary trust obligations. In the short-term, we urge this Subcommittee and this Congress to honor or increase the topline spending levels committed to for Fiscal Year (FY) 2017 in the 2-year budget deal passed last October. These levels have the potential to provide modest, but sorely needed, increases to federal Indian programs that will assist in strengthening Tribal Nation communities and the overall health and well-being of Tribal citizens. Any increase in spending on obligations to Tribal Nations puts the federal government a step closer to fully delivering on its trust responsibility.

In the long-term, USET SPF firmly believes that as long as the execution of the fiduciary trust obligation remains on the discretionary side of the budget, and therefore subject to the unpredictability of the current appropriations process, the trust responsibility will go unfulfilled. The trust responsibility is not discretionary; therefore, these dollars should be distributed via mandatory spending. We strongly encourage this Subcommittee to consider how this might someday be achieved.

Indian Health Service: While USET SPF supports the President's FY 2017 request for the Indian Health Service (IHS) of \$5.18 billion, we urge this Subcommittee to consider even higher levels of funding for IHS. A number of the failures revealed during a recent Senate Committee on Indian Affairs hearing can be attributed, at least in part, to the systematic and persistent underfunding of IHS. Although Congress has appropriated additional funding for IHS in recent years, the costs of health care continue to increase and the agency remains funded at just 59% of demonstrated need. Historically, IHS funding levels have not kept pace with inflation, both medical and non-medical. Financial barriers lead to poor health outcomes and severe health disparities in Indian Country. We urge this Subcommittee to fully fund fixed costs.

USET SPF was pleased to learn that each of its top 5 priority line items received increases in the President's FY 2017 budget request. These priority line items are as follows:

- **Hospitals & Health Clinics (H&C):** Funding for Hospitals & Clinics (H&C) remains a top Tribal budget priority. H&C funding supports essential personal health services including inpatient care, routine and emergency ambulatory care, medical support services and important community health initiatives.
- **Purchased/Referred Care (PRC):** IHS and the Tribes serve primarily small, rural populations and provide mainly primary care and community health services. Much of the secondary care, and nearly all of the tertiary care needed, must be purchased from non-IHS facilities.
- **Alcohol/Substance Abuse:** The abuse and misuse of substances is at epidemic levels within the USET SPF Area and the limited dollars available do not provide our citizens the adequate care they need.
- **Mental Health:** Behavioral Health, including Mental Health, is also a top Tribal health priority. The high incidence of mental health disorders, suicide, violence, and behavior-related chronic diseases is well documented. Each of these serious behavioral health issues has a profound impact on the health of individuals and community health, both on- and off-reservation.
- **Contract Support Costs (CSC):** USET SPF's fifth priority is the full funding of CSC, which we will discuss later in this testimony.

However, with the exception of H&C and CSC, levels proposed for our other top priorities continue to fall short of the levels requested by our Area, as well as the IHS Budget Formulation Workgroup. Though we appreciate and support proposed new mandatory funding and pilot programs for issues such as substance abuse and behavioral health, these line items remain underfunded on the discretionary side of the budget. The underfunding of PRC, in particular, remains a persistent problem in Indian Country. At current funding levels, most IHS and Tribal PRC programs are approving limited services beyond medically emergent referrals, and less urgent, routine or preventive care must be deferred or denied pending additional appropriations. In the meantime, the pain associated with any pending operations or other health issues is often managed with opioid medication. In FY 2015, IHS estimates that it denied 132,000 necessary PRC services to American Indian and Alaska Native (AI/AN) patients due to lack of funds.

In addition to existing line items, we request that this Subcommittee seek to provide funding for new authorities under the permanent reauthorization of the Indian Health Care Improvement Act (IHCA). Passed in 2016, IHCA contained the authorizations for a number of new, but necessary, programs and services for provision by the IHS and Tribal Nations, including the ability to provide dialysis, behavioral health services, and prescription drug monitoring. A majority of these new programs and activities, while authorized, remain unfunded by Congress.

Bureau of Indian Affairs: USET SPF supports this Administration's efforts to continue to request increases for BIA. Though the only agency within DOI charged with direct services to people, BIA has, historically, received lower percentage increases than other agencies at DOI. Recent budget requests are seeking to correct this disparity. We encourage this Subcommittee to appropriate levels consistent with the President's FY 2017 Budget Request, or higher, for the BIA.

Representatives from USET and USET Member Tribal Nations serve on the Tribal Interior Budget Committee (TIBC), the body that advises BIA on its budget. With nearly 150 different line items to evaluate,

this is no small task. Unfortunately, under the FY 2017 budget formulation process, Area representatives were asked to list only their top five priorities for funding. This forced Tribal Nations to make impossible choices. USET is working with BIA to change this process, which now includes the distribution of an 8% increase for FY 2018. As a part of improvements to the process, we support BIA's data initiative as an initial step, which will provide greater support and substantiation for Indian programs within the agency. Through its work with TIBC, USET SPF has identified the following top 5 priority line items for BIA funding:

- **Tribal Courts:** Following recent jurisdictional gains, need for Tribes to have strong judicial systems has drastically increased. Lack of Tribal Court funding leaves Tribes vulnerable as they may lack the capacity to prosecute offenders.
- **Indian Child Welfare Act (ICWA):** Although ICWA recognizes the Tribes' inherent sovereign right to make decisions pertaining to Tribal children, many Tribes are unable to fully exercise this right due to lack of funding. Many Tribes have funding to employ only 1 case manager, and so additional funding is needed to employ additional staff, such as case managers, investigators, and legal counsel.
- **Housing Improvement:** Various reports indicate approximately 40% of on-reservation housing is considered inadequate and yet, this line item remains severely underfunded. In the USET SPF region alone, unmet need totals several million dollars.
- **Social Services:** With a poverty rate of 23.9% in Indian Country, the services provided by Tribal Social Services Department are often a difference between life and death. To fulfill a more comprehensive service delivery approach, additional Tribal social workers and supportive costs are needed.
- **Aid to Tribal Government:** Aid to Tribal Government is one of the largest BIA programs contracted and compacted by the Tribes in the USET SPF Region.

Many of USET SPF's Priority line items are funded through the Tiwahe Initiative. USET supports the Tiwahe Initiative's aims wholeheartedly. However, USET requests that the Tiwahe pilot programs be expanded to include more regional and circumstantial diversity, including USET SPF member Tribal Nations.

The President's Budget Request includes an increase of just \$2.6 million for Tribal Courts, which is USET's top priority line item. The 300 Tribal Courts and 7 courts of Indian Offenses desperately need additional funding in order to effectively manage current caseloads and recent jurisdictional gains. For Tribal Nations to fully exercise new authorities, their courts need to comply with costly requirements. Currently, many Tribes do not have adequate funding to abide by these requirements and will not be able to assume new authorities. In addition, we were disappointed to see that funding for Tribal Law Enforcement is reduced under the President's Budget Request. As Penobscot Police Chief Bob Bryant testified during a meeting of the President's 21st Century Task Force on Policing, "when looking at Tribal law enforcement agencies across the nation, it is typical to have only one officer per shift with a ratio of not more than 2 officers per 1,000 residents."

Bureau of Indian Education: USET supports BIE's Blueprint for Reform. We believe that increased accountability, better Tribal control, greater funding for early childhood development, enhanced language and culture programs, and improved teacher quality will result in better outcomes for our students. VIA the TIBC process, USET SPF has also identified its top 5 Priorities for BIE funding:

- **Scholarships & Adult Ed**
- **Early Childhood Development**
- **Education Program Enhancement**
- **Johnson O'Malley**
- **Tribal Grant Support Costs**

Contract Support Costs: USET SPF was thrilled when Congressional appropriators included in the FY 2016 omnibus bill a separate line item and indefinite appropriation for CSC at both IHS and BIA. USET SPF urges the Subcommittee to preserve this new designation for CSC in FY 2017 and future appropriations bills. However, we disagree with the proviso that was included in the FY 2016 appropriations language and which is also included in the Administration's proposed FY 2017 budget, which states: "amounts obligated but not expended by a tribe or tribal organization for contract support costs for such agreements for the current fiscal year shall be applied to contract support costs otherwise due for such agreements for subsequent fiscal years." This proviso is concerning to us because it could be misread to effectively deny the carryover authority granted by the Indian Self-Determination and Education Assistance Act. We ask that the proviso be removed for FY 2017 and not included in future appropriations for CSC. Additionally, USET SPF continues to support proposals that would designate CSC as mandatory funding rather than discretionary. This includes the proposal that appears in the FY 2017 President's Budget request, which would make funding for these legal obligations mandatory, beginning in FY 2018.

Opioid Abuse: As with many other communities nationally, opioid abuse is a persistent and growing problem in Indian Country, including within the USET SPF area. President Obama has designated \$1.1 billion in the FY 2017 budget request to address and prevent opioid addiction in America. However, the bulk of this new mandatory funding would be directed toward states. In order to ensure that Tribal Nations are properly equipped to fight this epidemic, USET SPF requests that Tribes be made eligible and have access to a Tribal-specific set aside for any funding that is appropriated under the President's plan. Additionally, we request that this Subcommittee provide funding for a multi-state IHS Prescription Drug Monitoring Program within IHS' Resource and Patient Management System and increase funding to the BIA's drug enforcement program. In the USET SPF area, there are currently only 7 Tribal Drug Enforcement agents assigned to provide services to 30 Tribes. Our Tribal chiefs of police have called for additional assistance to prevent drug trafficking in our communities.

Climate Change: While USET SPF is supportive of the President's Coastal Climate Resilience Program, and the need for a focus on Alaska's circumstances, we note that USET SPF Tribal Nations also live in coastal areas and are experiencing the effects of climate change. In addition to Alaska Native communities, our communities would be well-served with access to this funding. We request that this Subcommittee consider increased diversity for set asides in this funding.

Policy Proposals: USET SPF supports the following legislative/policy proposals as they appear in the President's FY 2017 Budget Request:

- Permanent reauthorization of the Special Diabetes Program for Indians
- Medicare-like Rates for Non-hospital services purchased by IHS and Tribes
- 100% FMAP [federal match] for Health Care Services delivered to AI/AN Medicaid patients through IHS/Tribal facilities
- A fix to the multiple definitions of Indian that appear in the Affordable Care Act
- A fix, once and for all, to the Supreme Court decision in *Carcieri v. Salazar*