

Chief Kirk Francis, Penobscot Indian Nation
House Interior Appropriations Subcommittee (03/17/16)

My name is Kirk Francis and I am Chief of the Penobscot Indian Nation (“Nation”). The Nation has approximately 2,400 citizens and over 123,000 acres in land holdings, of which nearly 91,000 acres are held in trust by the United States. The Penobscot Nation’s seat of government is located on its ancestral homelands at Indian Island on the Penobscot River.

My testimony today will focus on programs within the Bureau of Indian Affairs (BIA) and Indian Health Services (IHS) that address an issue deeply impacting the Penobscot Nation and communities across the United States: the epidemic abuse of opioids, prescription drugs, and heroin. Substance abuse exacts a financial toll of more than \$700 billion annually related to crime, lost work productivity, and health care. We cannot incarcerate our way out of this problem. Tribal, federal, and local governments must instead invest in programs that prevent and/or treat substance abuse. In June 2015, the NIH’s National Institute on Drug Abuse (NIDA) released its “Drug Facts: Nationwide Trends” report. That report indicated illicit drug use in the U.S. has dramatically increased and is much higher among Native youth. In 2009-2012, NIDA found that 56.2% of American Indian 8th graders and 61.4% of 10th graders had used marijuana, compared to 16.4% of 8th graders and 33.4% of 10th graders. American Indian students’ annual heroin and Oxycontin use was two to three times higher than the national averages in those years. The report also found that American Indian youth are initiating alcohol and drug use earlier than their non-native counterparts.

The Penobscot Nation supports the Budget’s proposed increases to BIA and IHS services and operations and asks for your support of the following key programs:

TIWAHE (FAMILY) INITIATIVE: The BIA’s Tiwahe Initiative takes a comprehensive approach to address the inter-related problems of poverty, violence, and substance abuse faced by Native communities. The Budget proposes an increase of \$21M for its “Supporting Indian Families” Initiative, including +\$12.3M to expand Tiwahe sites, +\$3.4M for Indian Child Welfare Act (TPA), +\$1.7M for housing, +\$2.6M for Aid to Tribal Family Courts, and +\$1M for Job Placement and Training. The Tiwahe Initiative will be key to addressing the social factors that contribute towards the high rates of illicit drug use and other substance abuse issues on the Penobscot Reservation and in other American Indian communities.

Over the last few years, Penobscot has developed and instituted a Juvenile and Adult Healing to Wellness/Drug Court. In the few years of operations the Adult Wellness Court shows a successful graduation rate of approximately 60% while the Juvenile Wellness Court at 100%. We proudly report a “zero” recidivism rate among our graduates. DOJ provides the majority of funding for this program. Our DOJ grant funding for the Wellness/Drug Court will expire at the end of this fiscal year, and unfortunately with the limited allocation we currently receive from the BIA it is unlikely we will be able to fully continue to provide this level and type of service.

REQUEST: The Penobscot Nation asks the Subcommittee to support the proposed increases to the Tiwahe Initiative noted above. These investments will go far in addressing the substance abuse problems that plague Indian Country. If the proposed increases are adopted, Penobscot

holds hope that the Administration will select Penobscot as a new site for the Tiwahe Initiative, which would enable us to maintain our Wellness/Drug Court and build upon its success.

OJS – CRIMINAL INVESTIGATORS/POLICING SERVICES: The Indian Affairs justification acknowledges that “drug use and distribution is a major factor in violent crime and seriously impacts the health and economic vitality of Indian communities. The abuse of prescription drugs is ... a crisis in Indian Country.” It is a well-known fact that tribal communities are targets for drug trafficking because of the remoteness and complexities of criminal jurisdiction. However, the OJS drug enforcement unit is comprised of only 47 BIA criminal investigators and 16 school resource officers to cover 566 tribes nationwide. The President’s Budget proposes a minimal increase of \$432,000 for “Criminal Investigations and Police Services.” The BIA’s Eastern Region employs 3 drug investigators located in New York and North Carolina to provide drug investigative services for 26 tribes from Maine to Florida and over to Louisiana. These services are woefully inadequate.

REQUEST: To address illicit and prescription drug trafficking on Indian lands in Maine, we urge the Subcommittee to appropriate additional funding for BIA’s OJS to hire and assign at least 1 investigator to the 5 federally recognized tribal communities located in Maine.

WILDLIFE & PARKS (TPA): The Budget proposes flat funding of \$5.3M for BIA Wildlife & Parks TPA program, which funds tribal activities to manage and protect our natural resources. The U.S. holds a legal treaty and trust responsibility to protect tribal resources. The Penobscot Nation has approximately 100,000 acres geographically located throughout the State of Maine with only 2 full-time game/conservation officers.

REQUEST: We urge the Subcommittee to increase funding to BIA’s Wildlife & Parks TPA Program to better enable tribal governments to protect our natural resources.

INDIAN HEALTH SERVICES (IHS): The Budget proposes increases of \$27.9M for Alcohol and Substance Abuse, and \$48M for Purchased/Referred Care. Additionally, the Budget would extend the 100% Federal Medical Assistance Percentage (FMAP) for services provided through IHS under the Medicaid Program. This proposal would greatly increase resources to purchase health care services not available at an IHS facility. American Indians continue to die at higher rates than other Americans in many health categories. In FY 2010, the Penobscot Nation conducted a health assessment of our people. The assessment found that Penobscot people are 2.3 times more likely to be diagnosed with diabetes, 1.4 times more likely to have high blood pressure, and 1.7 times more likely to have angina or coronary heart disease. Sadly, these health disparities exist throughout all of Indian Country.

REQUEST: The Penobscot Nation asks the Subcommittee to support the overall Budget request of \$377.4M for the IHS, including specific increases to the Alcohol and Substance Abuse program (+\$27.9M), Purchased/Referred Care (+\$48M), and the 100% FMAP.

SDPI PERMANENT REAUTHORIZATION: At nearly 16%, Native Americans have the highest age-adjusted prevalence of diabetes among all United States populations (2.8x the national average). The Special Diabetes Program for Indians (SDPI), established in 1997, has

increased the availability of diabetes prevention and treatment services. These increased services translated into remarkable improvements in diabetes care and has significantly reduced diabetes-related costs related costs to Medicare, the IHS, and other third party payers.

REQUEST: The Penobscot Nation asks the Subcommittee to support the Budget request of \$150M for SDPI and to support the request to permanently authorize this important program.

CONTRACT SUPPORT COSTS: The 2017 President's Budget proposes to fully fund and eventually reclassify BIA and IHS contract support costs (CSC) to mandatory funding starting in FY 2018. Reclassifying CSC to mandatory funding will resolve the legal conflicts encountered throughout the years and will greatly enhance the tribes' ability to administer contracts/grants.

REQUEST: We urge the Subcommittee to support the reclassification of Contract Support Costs to mandatory funding beginning in FY 2018.

CHALLENGES OF THE MAINE INDIAN CLAIMS SETTLEMENT ACT. The single most important challenge the Penobscot Nation faces comes from constant attacks on our sovereignty from the State of Maine (State).

Congress passed the Maine Indian Claims Settlement Act (Settlement Act) in 1980 to resolve the longstanding and significant land claims of the Penobscot Indian Nation and the Passamaquoddy Tribe. The Settlement Act involved three parties: the Tribes of Maine, the State of Maine, and the United States. The Settlement Act sought to resolve longstanding land claims and forge a path forward for a future relationship between the Tribes and the State with the United States continuing to maintain a government-to-government relationship with the Tribes. To address active legal disputes, the Settlement provided funding for the Tribes to reacquire lands. While the Settlement Act did limit certain aspects of the Nation's authority, it affirmed our inherent authority to govern internal tribal matters, free of State interference, in keeping with long-standing protections recognized in federal Indian law and policy.

Maine Attorney General Dick Cohen acknowledged some of this intent:

"I cannot promise you that the adoption of this settlement will usher in a period of uninterrupted harmony between Indians and non-Indians in Maine. But I can tell you, however, that because we sat down at a conference table as equals and jointly determined our future relationship, in my view there exists between the State and the tribes a far greater mutual respect and understanding than has ever existed in the past in the State of Maine." (U.S. Senate Select Committee Report, p. 164)

Instead of acknowledging the Settlement as an arms-length agreement between equals, the State has sought to use the Settlement as a sword to diminish tribal sovereignty. The Nation and the State have been in some form of litigation for at least half of the 36 years under the Settlement. This is clearly not what Congress intended when it enacted the Settlement Act.

In recent years, the State, through its elected officials, has sought to diminish the Nation's authority through a narrow interpretation of the Settlement Act. The State has repeatedly interpreted the Act to prevent the application of federal laws that benefit Indian tribes from

working for the benefit of Tribes in Maine. The State's interpretation of this provision clouds the Nation's ability to provide important services to our people.

In 2013, Congress enacted two laws to benefit all federally recognized Indian tribes. The first authorized tribes to submit emergency and disaster declarations directly to the President to address natural disasters on Indian lands. The second law, the 2013 Reauthorization of the Violence Against Women Act (VAWA), clarified that all tribes have authority to investigate and prosecute crimes of domestic violence committed by non-Indians. These laws empower the ability of tribes to locally determine how to best address community needs. Neither law takes authority away from the State or limits State resources. Despite these facts, the Maine Attorney General has publicly opposed applications of both laws to Maine Tribes. With specific regard to VAWA, the Maine Legislature recently informed us they will not work with Penobscot to implement provisions that would protect Native women on the Penobscot Reservation.

The State's interpretation of the Settlement Act directly conflicts with Congress' clear policy that that federal agencies must treat all federally recognized tribes equally and that in no case can a federal agency diminish the privileges or immunities available to the Indian tribe relative to other federally recognized tribes. 25 U.S.C. Section 476(f)-(g) (1994).

The already difficult Maine-Tribal relationship significantly deteriorated over the past year. On April 16, 2015, weeks after I testified before this Subcommittee, Maine Governor LePage revoked his own 2011 executive order that recognized tribal sovereignty and sought to promote cooperation and respect between Tribes and the State. Adding to this insult, Mr. LePage has threatened to send the National Guard on to Indian lands in Maine to enforce state fishing laws. He has also publicly opposed the recommendations of the June 2015 Report of the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission, which investigated abuses of the child welfare system by state agents who systematically removed children from Indian households.

The State continues to challenge the Penobscot Nation's authority within the Penobscot River, which is central to our territory, culture and very existence. The Settlement Act reaffirms the Nation's sustenance fishing rights, and the State has acknowledged the Nation's authority in prior Attorney General opinions. We remain engaged in an ongoing legal battle for these rights.

In sum, there is simply no appetite on the part of the State for the recognition of tribal sovereignty in any practical way. These and other factors led the Penobscot and Passamaquoddy Tribes to withdraw our delegates to the Maine Legislature in May of 2015. The Penobscot Nation has sent a delegate to the Maine Legislature since 1823. Because of the repeated attacks on our sovereignty, the Penobscot Nation made this difficult decision and instead chose to focus on our own path towards self-governance and self-determination. Despite these struggles, the Penobscot Nation continues to participate in the MITSC with a renewed commitment to the development of mutually beneficial solutions for all people who live in the State of Maine.

REQUEST: As a party to this Settlement, the Nation again requests that Congress take an oversight role to investigate the impacts of the Settlement Act upon the Tribes of Maine.