



Testimony of President Kirk Francis
United South and Eastern Tribes Sovereignty Protection Fund
House Appropriations Subcommittee on Interior, Environment, and Related Agencies
FY 2021 Native American Public Witness Hearings, February 11, 2020

Chairwoman McCollum, Ranking Member Joyce, and members of the Subcommittee, thank you for opportunity to provide testimony regarding the federal government's failure to fully uphold its fiduciary trust and treaty obligations to Tribal Nations. My name is Kirk Francis. I serve as the President of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF). I am also the Chief of the Penobscot Indian Nation, located at Indian Island, Maine. My testimony will focus on funding for federal Indian programs at the Bureau of Indian Affairs (BIA), the Indian Health Service (IHS), and beyond. While we appreciate this Subcommittee's longstanding commitment to holding Tribal Public Witness hearings and note this year's truncated timeline for Congressional action, USET SPF finds it problematic that the timing of this hearing did not allow for witnesses to review the President's Fiscal Year (FY) 2021 Budget Request.

USET SPF advocates on behalf of 30 federally-recognized Tribal Nations from the Canadian Border to the Everglades and across the Gulf of Mexico. 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.

As this Subcommittee is aware, Native people have suffered many injustices as a result of federal policy, including actions that sought to terminate Tribal Nations, assimilate our people, and erode Tribal territories, learning, and cultures. This story involves the cession of vast land holdings and natural resources, oftentimes by force, to the U.S. out of which grew an obligation to provide benefits and services in perpetuity to Tribal Nations. These resources are the very foundation of this nation and have allowed the U.S. to become the wealthiest and strongest world power in history. Federal appropriations to Tribal Nations and Native people are simply a repayment on this perpetual debt.

The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal governments and Native peoples. As the U.S. continues to break its promises to us, Native peoples experience some of the greatest disparities among all populations in this country—including, but not limited to, those in health, economic status, education, and housing. Indeed, in December 2018, the U.S. Commission on Civil Rights issued the Broken Promises Report, following years of advocacy from Tribal Nations and organizations seeking an update to the 2003 Quiet Crisis report. The Commission concluded that the funding of the federal trust responsibility and obligations remains "grossly inadequate" and a "barely perceptible and decreasing percentage of agency budgets." The report confirms what we in Indian Country already know—with the exception of some minor improvements, the U.S. continues to neglect to meet its "most basic" obligations to Tribal Nations. Though these chronic failures have persisted throughout changes in Administration and Congress, it is time that both the legislative and executive branches confront and correct them.

Despite the findings and recommendations within the Broken Promises and Quiet Crisis reports, no Administration has ever submitted a budget request that would fully deliver upon the federal trust responsibility and obligations. And at the Congressional level, funding for Indian Country continues to fall victim to issues unrelated to the trust obligation. While increases in funding for federal Indian agencies and programs have been enacted over the years, nothing has come close to reflecting the true depth of the U.S. obligation to Tribal Nations, fully upholding our governmental status, or even keeping pace with inflation. This is not about addressing poverty and needs across Indian Country. Our relationship is much more than this. This is ultimately about honor, about fulfilling commitments and promises. A nation's exceptionalism is grounded in these principles.

Inadequate and unstable Indian Country funding needs to be viewed as unfulfilled treaty and trust obligations. This funding is not delivered on the basis of poverty or for social welfare purposes. In exchange for Tribal lands and resources, the U.S. is legally and morally obligated to provide benefits and services in perpetuity—a debt that must be paid. At no point has the government fully delivered upon these obligations. In order to begin delivering upon the recommendations of the Broken Promises report, the Administration must propose and Congress must demand budgets containing full funding for Indian Country.

Funding Levels and Mechanisms Must be Reflective of the Trust Obligation. The 2018-2019 federal government shutdown, the longest in U.S. history, had a negative impact on Indian country and has renewed calls for legislative action to insulate the federal fiduciary trust responsibility and obligations from Congressional inaction and political stalemates. The vast majority of funding for Indian programs appears on the discretionary side of the budget. That our funding is vulnerable to governmental inaction and political bickering is a failure of the federal government to honor its sacred duty to Tribal Nations. In the short-term, all federal Indian funding must be protected from shutdowns and continuing resolutions through advance appropriations legislation. We strongly urge this Subcommittee and all Congress to work to enact this legislation immediately, as well as provide advance appropriations authority for both the Bureau of Indian Affairs and Indian Health Service via Budget Resolution.

While we strongly support advance appropriations in the short-term, in the long-term USET SPF is calling for a comprehensive reexamination of funding delivered to Indian Country across the federal government. Because of our history and unique relationship with the U.S., the trust obligation to Native people, as reflected in the budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Recently, some in Congress have called for mandatory funding for IHS. USET SPF strongly supports this proposal, which is more consistent with the federal trust obligation, and urges that this be expanded to include all federal Indian programs.

Reforming the Office of Management and Budget. The Office of Management and Budget (OMB) asserts that over \$21 billion in federal dollars is appropriated to Indian Country annually. From the perspective of Tribal advocates, this number seems to be widely inflated, with far less actually reaching Tribal Nations and Tribal citizens. We suspect that OMB arrives at this figure by tallying the amount for which Tribal Nations and entities are “eligible”, regardless of whether these dollars actually reach Indian Country. Regardless, this represents less than 1/10 of 1% of the annual value that the U.S. enjoys from federal lands and the natural resources derived off of these lands, which once belonged to Tribal Nations. Both USET SPF and the Tribal Interior Budget Council (TIBC) have asked OMB for a full accounting of federal funding distributed to Indian Country. To date, OMB has not responded to this request. This information is absolutely essential to the measurement of the federal government’s own success in meeting its obligations and the work of Tribal Nations. Congress must hold OMB accountable and require the agency to provide the necessary detail to support this funding claim on an annual basis. In the long-term, we are seeking reforms to OMB that would include a consultation requirement, as well as a dedicated Tribal Affairs position.

Invest in and Rebuild Tribal Infrastructure. For generations, the federal government – despite abiding trust and treaty obligations – has substantially under-invested in Indian Country’s infrastructure. As Congress once again considers action on infrastructure, it is critical that this body recognize that while the U.S. faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure. According to a report released in 2017 by National Congress of American Indians, there exists at least \$50 billion in unmet infrastructure obligations across Indian Country. Much like the U.S.

investment in the rebuilding of European nations following World War II via the Marshall Plan, the federal government should commit to 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. At the same time, any infrastructure build-out, in Indian Country and beyond, must not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.

Constitutionality of Federal Indian Programs. Several times now, this Administration, Members of Congress, and even the courts have called into question the constitutionality of programs or targeted accommodations for Native people. As this Subcommittee well knows, all federal Indian programs are based on a political, government-to-government relationship between the U.S. and Tribal Nations. And funding for these programs and services is provided in perpetuity in exchange for the vast lands and natural resources ceded, often times by force, to the U.S. In addition, the Executive and Legislative Branches, regardless of party, have a long history of policy-making that includes exemptions or accommodations from federal actions for Tribal Nations and Native people.

Bureau of Indian Affairs (BIA). Without the President's FY 2021 Budget Request in hand, USET SPF cannot react to its specific proposals. However, under this Administration, the Department of the Interior (DOI) has never acted to insulate BIA from its own spending caps, deficit reduction, or cuts. Rather, it has consistently proposed budgets containing deep cuts to and the elimination a variety of lines and programs, despite trust and treaty obligations. This is compounded by the fact that though it is the only agency within DOI charged with direct services to people, BIA has, historically, received lower percentage increases than other agencies at DOI. Further, the spending caps and 302(b) agreements for FY 2020 resulted in BIA receiving just a 4% increase and reductions in lines over FY 2019. With this in mind, we urge this Subcommittee to reject any cuts within the President's FY 2021 Budget and to prioritize funding for the federal trust obligation within its 302(b) allocation.

Working in partnership with the BIA, the yearly budget formulation process now offers a much more comprehensive look at the priorities of Tribal Nations across the many lines and accounts found within the BIA budget. However, it remains unacceptable that this Administration refuses to include a component or calculation of BIA's unfunded obligations in order to measure performance. Due to space constraints, we offer the Eastern Region's top priority in eight different strategic funding categories:

- Strengthening Tribal Communities: **Social Services (TPA)**
- Trust-Natural Resources Management: **Natural Resources (TPA)**
- Trust-Land & Water Rights Management: **Trust Services (TPA)**
- Public Safety & Justice: **Tribal Courts (TPA)**
- Economic Development: **Economic Development (TPA)**
- Education: **Johnson O'Malley (TPA)**
- Construction: **Education Facilities Improvement & Repair**
- Resource Management Construction: **Engineering & Supervision**

Sovereign Immunity Funding. As a part of our overall efforts to affirm and protect Tribal sovereign immunity, we urge the inclusion of appropriations language providing a funded directive in the FY 2021 Interior and CJS Appropriations Bills for risk management measures aimed at preserving sovereign immunity in tort cases.

Indian Health Service (IHS). While USET SPF is similarly unable to comment on the President's FY 2021 Budget Request for IHS, we continue to advocate for the highest increases possible and provide Nashville

Area priority line items and hot issues. Though we understand the Subcommittee is constrained by its 302(b) allocation, we continue to assert that as long as IHS is so dramatically underfunded, the root causes of recent agency failures will not be addressed and the U.S. will fail to live up to its obligations.

In addition to providing a robust funding stream for current operations that reflects medical inflation, Nashville Area Tribal Nations identified our top 5 priority line items for increases in FY 2021: **Hospitals and Clinics, Purchased/Referred Care (PRC), Alcohol/Substance Abuse and Mental Health Services, Health Information Technology, and Health Education.** Nashville Area priorities and hot issues also include funding for Urban Indian Health Program Support, continued support for newly federally recognized Tribal Nations, culturally appropriate substance abuse treatment aftercare and housing programs, and Hepatitis C prevention and treatment.

It is also critical that we draw the Subcommittee's attention to the inaccuracy of IHS' current "level of need funded" (LNF) calculation. The Indian Health Care Improvement Fund Workgroup has recently determined that IHS' LNF has been grossly overestimated due to a benchmark that does not include all authorities under the Indian Health Care Improvement Act. Formerly reported to be approximately 59%, the new LNF is expected to be significantly lower. IHS is working with Tribal advocates to begin work on an accurate LNF in order to arrive at the total funding obligation for the Agency. This number is essential to the federal government's understanding of how well it is delivering upon trust and treaty obligations, as well as what it would take to fully fund IHS.

Urgent Need for Separate, Indefinite 105(l) Lease Appropriation. USET SPF continues to advocate for a separate, indefinite appropriation for 105(l) lease costs, much like Contract Support Costs, in order to avoid impacts to other lines in the BIA, BIE, and IHS budgets. For FY 2019, IHS recently announced the reprogramming of approximately \$72 million within the agency's Services account in order to make these legally mandated payments. For FY 2020, the \$125 million appropriation for 105(l) leases at IHS represents over 50% of the total increase for the agency, an increase that already does not fully account for medical inflation. While the appropriation may help avoid a large reprogramming of other lines of the IHS budget, it impacts the IHS budget overall by consuming a majority of new monies. The current situation is untenable and unfair. While IHS is working to convene a workgroup to better predict 105(l) lease estimates, immediate Congressional action is necessary. Our funding should not be held hostage to poor agency tracking. Extending "such sums as may be necessary" language to costs associated with section 105(l) leases would provide the certainty and insulate other IHS lines.

VOCA Tribal Set Aside. USET SPF urges the preservation of the 5% Tribal set aside from the Crime Victims Fund in the FY 2021 Commerce, Justice, Science appropriations bill. Despite earlier distribution issues, we are encouraged by recent framing questions for DOJ's consultation on a formula for future distribution. We urge continued oversight of this process to ensure all appropriated funding is reaching Indian Country.

Other Selected Lines and Programs. Though not an exhaustive list, USET SPF strongly supports the continued funding and increases for the following lines and programs: Good Health and Wellness in Indian Country (CDC), Rural Community Facilities (ACF), Tribal Opioid Response Grants (SAMHSA), Community Development Financial Institutions Fund grants, the Indian Community Development Block Grant, USDA Rural Business Development grants, EPA state and Tribal assistance grants, BIA Tribal Climate Science Centers, Tribal Historic Preservation funding, and Native American Housing Block Grants.