



**Testimony of President Kirk Francis, United South and Eastern Tribes Sovereignty Protection Fund
House Appropriations Subcommittee on Interior, Environment, and Related Agencies
FY 2024 Tribal Public Witness Hearings, March 8, 2023**

Chairman Simpson, Ranking Member Pingree, and members of the Subcommittee, thank you for opportunity to provide testimony regarding our funding priorities for Fiscal Year (FY) 2024. 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 Department of the Interior (DOI), the Indian Health Service (IHS), and beyond. While we appreciate this Subcommittee's longstanding commitment to holding Tribal Public Witness hearings, USET SPF finds it problematic that the timing of this hearing did not allow for witnesses to review the President's Fiscal Year FY 2024 Budget Request, especially given the Office of Management and Budget's (OMB) recent commitment to consulting with Tribal Nations on the preparation of the Request. Having the opportunity to provide our views on the President's Request is an important oversight opportunity for appropriators to ensure that budget proposals reflect Tribal expectations and objectives.

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. 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 the Subcommittee is well aware, Native people have endured many injustices as a result of federal policy, including federal actions that sought to terminate Tribal Nations, assimilate Native people, and to erode Tribal territories, learning, and cultures. This story involves the cession of vast land holdings and natural resources, oftentimes by force, to the United States out of which grew an obligation to provide benefits and services—promises made to Tribal Nations that exist in perpetuity. These resources are the very foundation of this nation and have allowed the United States to become the wealthiest and strongest world power in history. Federal appropriations and services to Tribal Nations and Native people are simply a repayment on this perpetual debt. USET SPF has consistently called upon the United States to deliver and fulfill its sacred promises to Tribal Nations and to act with honor and honesty in its dealings with Indian Country.

Over the course of our centuries-long relationship, at no point has the United States honored these sacred promises; including its historic and ongoing failure to prioritize funding for Indian country. The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal governments and Native people. As the United States continues to break its promises to us, despite its own prosperity, Native people experience some of the greatest disparities among all populations in this country and have for generations. It is no surprise, then, that the failures of the federal government have come into sharper focus due to the global pandemic.

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.

While USET SPF takes a firm position that all members of Congress have an obligation to Tribal Nations, the members of this Subcommittee have a greater role in understanding and working toward fulfillment of trust and treaty obligations. As leaders who have consistently demonstrated a greater understanding of this commitment

and obligation, we implore you to lead the change within Congress that is necessary to improve how the United States views, honors, and fulfills its promises to Indian Country, including through the enactment of these proposals. The federal budget is a reflection of this commitment. We recognize that there are many causes and issues that this body considers. However, we ask that you always remember this nation's first promise to its First People—the promise that resulted in an exchange responsible for the vast wealth, power, and influence of this country. This is especially critical as we recognize there is a desire on the part of the House majority to reduce discretionary spending. However, as we have stated repeatedly before this Subcommittee any others, deficit reduction must never be accomplished to the detriment of federal trust and treaty obligations to Tribal Nations.

Mandatory Funding for the Indian Health Service and Binding Obligations USET SPF celebrates and expresses its gratitude to this body for the historic achievement of advance appropriations for IHS. For the very first time, the agency's clinical services will have budgetary certainty in the face of continuing resolutions and government shutdowns. It is our expectation that the Subcommittee will continue to include language providing advance appropriations for IHS beyond FY 2024. We urge the inclusion of all of IHS' budget line items in this mechanism, as well as advance appropriations for BIA, BIE, and all federal Indian agencies and programs as next steps for this Subcommittee. Despite its importance in the stabilization of funding, however, we continue to view advance appropriations as a temporary funding mechanism in our overall advocacy for the full delivery of trust and treaty obligations.

Above all, the COVID-19 crisis has highlighted the urgent need to provide full and guaranteed federal funding to Tribal Nations in fulfillment of federal obligations. Because of our history and unique relationship with the United States, the federal government's trust and treaty obligations to Tribal Nations, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Payments on debt to Indian Country should not be vulnerable to year to year "discretionary" decisions by appropriators. Honoring the first promises made by this country, in pursuing the establishment of its great principled democratic experiment, should not be a discretionary decision.

The Biden Administration's FY 2023 Request proposed a shift in funding for the Indian Health Service (IHS) from the discretionary to the mandatory side of the federal budget, including a 10-year plan to close funding gaps and an exemption from sequestration, a move that would provide even greater stability for the agency and is more representative of perpetual trust and treaty obligations. Year after year, USET SPF has urged multiple Administrations and Congresses to request and enact budgets that honor the unique, Nation-to-Nation relationship between Tribal Nations and the United States, including providing full and mandatory funding. While we firmly believe all Indian Country funding should be fully funded today, including the IHS, we continue to strongly support this proposal, recognizing that additional detail and planning is necessary to provide a fully developed plan to fund IHS on a full and mandatory basis. We look forward to working with IHS to draft legislation that reflects our guidance for implementing these changes.

The FY 2023 Request also proposed mandatory funding for Contract Support Costs and 105(I) leases—binding obligations—at IHS, BIA and the Bureau of Indian Education (BIE). While we contend that all federal Indian agencies and programs should be subject to mandatory funding, in recognition of perpetual trust and treaty obligations, we continue to support the immediate transfer of these lines to the mandatory side of the federal budget. This will ensure that funding increases are able to be allocated to service delivery, as opposed to the federal government's legal obligations. The Senate Appropriations Interior Subcommittee ultimately supported these important first steps in achieving mandatory funding for Indian Country in its mark for FY 2023. We now call appropriators to work with Tribal Nations and the Administration fulfill its responsibilities and work to ensure that this proposal is included in any final FY 2024 appropriations legislation.

Indian Health Service (IHS). In addition to supporting full and mandatory funding for IHS, Nashville Area Tribal Nations identified the following top 10 priority line items for increases in FY 2024:

1. **Hospitals & Health Clinics**
2. **Purchased/Referred Care**
3. **Alcohol & Substance Abuse**
4. **Mental Health**
5. **Electronic Health Record System**
6. **Dental Health**
7. **Community Health Representatives**
8. **Maintenance and Improvement**
9. **Health Education**
10. **Self-Governance**

Nashville Area priorities and hot issues also include funding for telehealth resources, recurring funding for Public Health Education, impacts of COVID-19 on user population and workload data, funding for Substance Use Disorder aftercare and housing programs, funding to reduce Hepatitis C, continued funding for Community Health Representatives, resources to modernize health information technology, and parity in group payor authorities when sponsoring patients on insurance plans.

Department of the Interior (DOI). Working in partnership with Indian Affairs, 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 and BIE budgets. However, we remain focused on the addition of a component outlining BIA's unfunded obligations in order to measure how well the U.S. is honoring its promises, on which Indian Affairs recently agreed to collaborate. This body should want to know the full extent of DOI's unmet funding obligations to Indian Country. We cite a recent report to Congress from DOI conveying placing a full funding total for just Public Safety & Justice programs at \$3 billion as the type of data we are seeking across the agency. We offer the Eastern Region's top priorities for FY 2024 in eight different strategic funding categories:

- Strengthening Tribal Communities: **Social Services (TPA)**
- Trust-Natural Resources Management: **Natural Resources (TPA)**
- Trust-Land & Water Rights Management: **Real Estate Services Program (TPA)**
- Public Safety & Justice: **Tribal Courts (TPA)**
- Economic Development: **Economic Development (TPA)**
- Education: **Scholarships & Adult Education (TPA)**
- Construction: **Education Facilities Improvement and Repair**
- Resource Management Construction: **Federal Power Compliance [FERC]**

In addition to the above priorities, USET SPF remains focused on the restoration of Tribal homelands as a top priority. The federal government's objective 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. We are pleased to see the Administration's proposed improvements to the land-into-trust process and we look forward to the opportunity to work on this and other land restoration priorities, including a fix to the decision in *Carcieri v. Salazar*. To this end, we would like to reiterate a funding request that we believe will increase the amount of land going into trust for Tribal Nations. Since 1977, the DOI has issued billions in Payments In Lieu of Taxes to local governments that help offset losses in property taxes due to the nontaxable federal lands within their boundaries. However, while PILT payments are made for lands administered by numerous other DOI Bureaus, for federal water projects and some military installations, lands held in trust for Tribal Nations are not currently eligible. USET SPF [believes that PILT](#) for lands put into trust could remove barriers to the restoration of Tribal homelands while also easing the perceived impacts to local government as a result of lost tax revenue. We urge the Subcommittee to consider working with the Administration to provide funding for this purpose in FY 2024.

Funding for Tribal Historic Preservation. Due to chronic underfunding, many Tribal Historic Preservation Offices (THPOs) are currently operating without the necessary personnel to conduct National Historic

Preservation Act Section 106 reviews. THPOs are the protectors of irreplaceable resources: our cultures and spirituality. The explosion in infrastructure development that will be funded by recent infrastructure laws is likely to overwhelm THPOs without additional funding and other resources. While we recognize a modest increase THPO funding was provided in FY 2023, we urge this Subcommittee to provide additional, increased resources for THPOs, so that we may protect our cultural and sacred sites.

Improving the OMB Crosscut. OMB asserts that over \$28 billion in federal dollars is appropriated to Indian Country annually. From our perspective, 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 lands and the natural resources which once belonged to Tribal Nations and which stand as the source of the exchange between our two sovereigns that resulted in the obligations we are discussing today. Both USET SPF and the Tribal Interior Budget Council (TIBC) have asked OMB for a full, detailed accounting of federal funding distributed to Indian Country. While OMB is working to refine its Native American Crosscut, we have not yet seen the level of detail we are seeking. This information is essential to the measurement of the federal government’s own success in meeting its obligations and the work of Tribal Nations, as well as developing accountability mechanisms for instances where states are applying for funds utilizing our population numbers and never providing pass through funding to Tribal Nations. Congress must hold itself and OMB accountable by requiring states to provide a detailed annual report reflecting actual dollars passed through to Tribal Nations, with accordant consequences for state failures to provide us with funding to which we are entitled.

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 United States. 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 United States should make this strategic investment domestically.

Promote Self-Governance through Interagency Transfer Authority. USET SPF is working toward a future in which all federal dollars are eligible to be contracted or compacted under the Indian Self-Determination and Education Assistance Act (ISDEAA). In the meantime, we urge Congress to ensure all federal Indian funding can be transferred between federal agencies, so that it may be received through contracts and compacts. We cite the unnecessary delays and barriers to the receipt of urgently needed COVID-19 relief funding as an example of why this authority must be confirmed, as well as a recent Government Accountability Office Report.

Other Selected Lines and Programs. Though not an exhaustive list, USET SPF strongly supports the continued funding and urges increases for the following lines and programs, with a goal of reaching full and mandatory funding for each: 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, the Tribal set aside from the Crime Victims Fund, and Native American Housing Block Grants. We further request permanency and dedicated funding for the following offices/programs: Treasury’s Office of Native and Tribal Affairs, OMB’s Tribal Advisor, and the White House Council on Native American Affairs.