



# USET

SOVEREIGNTY PROTECTION FUND

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**Testimony of the United South and Eastern Tribes Sovereignty Protection Fund  
Before the House Natural Resources Subcommittee on Indigenous Peoples of the United States  
For the Legislative Hearing, "Advance Appropriations: Protecting Tribal Communities from the  
Effects of a Government Shutdown."**

Chairman Gallego, Ranking Member Cook, and members of the Subcommittee, thank you for the opportunity to provide testimony regarding the federal government's failure to uphold its fiduciary trust and treaty obligations to Tribal Nations. I am Cheryl Andrews-Maltais, Chairwoman of the Wampanoag Tribe of Gay Head (Aquinnah) and a member of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) Board of Directors. I also serve as one of the two Eastern Region representatives to the Tribal Interior Budget Council.

USET SPF represents 27 federally-recognized Tribal Nations from Texas to Florida to Maine<sup>1</sup>. USET SPF is dedicated to enhancing the development of Tribal Nations, to improving the capabilities of Tribal governments, and assisting the USET SPF Member Tribal Nations in dealing effectively with public policy issues and in serving the broad needs of Indian people.

## Background

One has only to walk the halls of the Capitol to see many works of art and sculpture that depict the central role that Tribal Nations have played in the development of America's national identity. Not depicted on the walls of the Capitol are many of the injustices that Native peoples have suffered 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. Where these injustices are depicted, our tragedies are romanticized<sup>2</sup> and told through a revisionist lens. The true 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 in perpetuity to Tribal Nations. 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 to Tribal Nations and Native people are simply a repayment on this perpetual debt.

As it became more powerful and maintaining strong relations with us became less necessary, the United States quickly moved from an approach based on consent to an approach based upon the notion of domestic dependency and plenary authority. Notwithstanding its Constitutional foundation, the federal

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<sup>1</sup> USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

<sup>2</sup> See <https://www.aoc.gov/capitol-hill/native-americans-art>

government engaged in many actions that betrayed the treaties and trust obligation to Tribal Nations, such as the seizure of Tribal lands and the forced assimilation efforts of the Indian boarding school system. Fortunately, Tribal efforts to exert our sovereign rights in collaboration with our federal partners have led to more enlightened policies since the termination and assimilation eras, reflected in a host of laws that support Tribal sovereignty and are critical to the vitality and well-being of Tribal communities. Regrettably, these laws are rarely funded to the level necessary to achieve their intended purposes.

The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal governments and Native peoples. As the United States continues to break its promises to us, Native peoples experience some of the greatest disparities among all populations in this country—including 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, which found deep failures in the delivery of federal fiduciary trust and treaty obligations. 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.

On top of chronic underfunding and its accordant challenges, Tribal Nations face the problem of discretionary funding that is almost always delayed. Since Fiscal Year (FY) 1998, there has only been one year (FY 2006) in which appropriated funds for the Indian Health Service (IHS) and Bureau of Indian Affairs (BIA) were released prior to the beginning of the new fiscal year. Due to Congressional inaction and gridlock resulting from unrelated issues, these delays in funding severely hinder the federal government’s execution of its trust obligations to Tribal Nations—having destabilizing and disruptive effects on the provision of basic government services in Indian Country. This includes vital programs and services such as housing, law enforcement, road maintenance, social services, and health care—to name a few. Tribal Nations have long urged the federal government to insulate the federal fiduciary obligation from its own failures to enact appropriations legislation. On the heels of the longest government shutdown in history and as we approach yet another Continuing Resolution (CR) to begin the FY, it is time for this body to recognize its responsibility to ensure that funding for federal Indian programs and services, at the very least, reaches Indian Country on time.

This is not a question about addressing poverty and needs across Indian Country. Our relationship is much more than this. This is ultimately a question 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 unfilled treaty and trust obligations. This funding is not delivered on the basis of poverty or for social welfare purposes. The federal government’s trust obligations are the result of the millions of acres of land and extensive resources ceded to the U.S., in exchange for which it 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. USET SPF urges Congress to take legislative action to ensure the U.S. finally delivers upon its promises. As the U.S. Commission on Civil Rights states in the “Broken Promises” report, “the United States expects all nations to live up to their treaty obligations; it should live up to its own.”

### **35-day Government Shutdown**

As is becoming lamentably routine in Washington, the recent shutdown was precipitated by political disagreement over partisan issues largely unrelated to overall spending and completely unrelated to Indian

Country. Yet, year after year, the execution of the federal fiduciary trust obligation is held hostage to partisan bickering and gridlock. As you are likely well-aware, the 2018-2019 shutdown, given its historic length, nearly brought the funding and services the United States is obligated to provide to Tribal Nations to a halt.

The effects of the shutdown on the federal government's execution of its trust responsibility and obligations to Tribal Nations rippled across Indian Country. More than 50% of BIA workers were furloughed. And while nearly 60% of IHS employees were forced to continue working without pay, as of late January, the agency had begun to deny specialty care. This close call could have resulted in tragic ends, up to and including loss of life in Indian Country—all due to the federal government's inaction.

My own Tribal Nation, the Wampanoag Tribe of Gay Head (Aquinnah), came dangerously close to reductions in programs, services, and staff. Though our compacts with the federal government state that our Self-Governance funding is to be delivered at the beginning of each FY on October 1<sup>st</sup>, this has not occurred in years. As a result, we are forced to use our own limited Tribal resources to financially support our programs and services—to attempt to fulfill the federal government's trust obligations while Congress and the Administration attempt to fund the government. Since we have no alternative income or economic development, these resources provide only a limited bridge during CRs and shutdowns.

This winter's shutdown had destructive and disruptive effects on our ability to provide essential governmental services to our people, as well as our ability to fulfill grant requirements. I had to begin to assess and prioritize our programs and services; to determine how to cut expenses, including reductions to our workforce during the off-season on Martha's Vineyard where non-seasonal jobs are scarce. Further, despite being awarded new, annual and multiple year grants, for new or continuing programs or services, there was no one available to distribute the funds. Because of the shutdown, we either lost the ability to perform critical grant deliverables because of the uncertainty of lack of funds, or we missed the seasonal window to begin and complete those deliverables. This situation put the Tribe in a position of potentially losing precious grant dollars by having to return the funds or failing in performing the grant deliverables, and/or needing to request extensions, which are not guaranteed.

### **Support for Advance Appropriations**

Following the longest federal government shutdown in history, Indian Country has renewed calls for legislative action to insulate the federal fiduciary trust responsibility and obligations from Congressional inaction and political stalemates. The time has arrived for the United States to prioritize its commitments to Indian Country by taking the necessary steps to fully fund its obligations. This would require fundamental changes to the way federal Indian programs are funded.

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. This would ensure that the federal government continues to meet its obligations regardless of politics and provide some certainty to our people, patients, and employees each year. It would also bring our funding into parity with other discretionary programs that the federal government deems critical, including those at the Department of Education, Department of Housing and Urban Development, Department of Labor, and the Department of Veterans Affairs which are authorized for advance appropriations. Finally, it would represent a more complete recognition of the federal trust responsibility and obligations.

With this in mind, USET SPF lends its unequivocal support to legislation that would put an end to the instability of CRs and shutdowns for all federal Indian agencies, programs, and funding. This includes strong support for advance appropriations authority for both IHS and BIA. USET SPF strongly supports H.R. 1128, the Indian Programs Advance Appropriations Act (IPAAA), and H.R. 1135, the IHS Advance Appropriations Act. We extend our appreciation to the bills' respective sponsors, Reps. McCollum and Young, for introduction and their tireless support for federal Indian funding. We further note that advance appropriations for IHS and BIA have broad bipartisan support across the House, as evidenced by the bills' cosponsors, as well as a "Dear Colleague" letter supporting their inclusion in the Budget Resolution signed by 60 of your colleagues.

Passage of this legislation, and the certainty it would bring, is long overdue. USET SPF urges this Congress to act swiftly to bring the destabilizing effects of its own inaction to an end for Indian Country. As leaders who have consistently demonstrated a true understanding of this commitment and obligation, we implore this Subcommittee to work with your colleagues to ensure enactment of these bills.

### **Indian Country Funding Mechanisms Need Comprehensive Overhaul**

While we strongly support Advance Appropriations as a vital mechanism to bring certainty in the short-term, in the long-term USET SPF is calling for a comprehensive reexamination of federal funding delivered to Indian Country across the federal government. Because of our history and unique relationship with the United States, the trust obligation of the federal government to Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Inadequate funding to Indian Country needs to be viewed as unfilled treaty and trust obligations and should not be vulnerable to year to year "discretionary" decisions by appropriators. Recently, some in Congress have called for mandatory funding for specific agencies serving Indian Country. 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.

With a renewed focus on domestic issues and putting America first, this focus must also include a commitment to rebuilding the sovereign Tribal Nations that exist within the domestic borders of the United States. 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.

Further, USET SPF is urging the expansion of self-governance to all federal agencies, programs, and funds. Much of the federal funding across Indian Country is delivered through the competitive grant process (and often through the states). Not only is this an abrogation of the federal trust responsibility to force Tribal Nations to compete for federal dollars, the competitive grant process often precludes Tribal Nations from having access to those dollars at all. Grant funding fails to reflect the unique nature of the federal trust obligation and Tribal sovereignty by treating Tribal Nations as non-profits rather than governments. Self-governance Contracting and Compacting should be an available option across the federal system.

In addition, USET SPF urges Congress to exercise its oversight authority in determining how much actual funding actually reaches Indian Country. The Office of Management and Budget (OMB) asserts that over \$20 billion in federal dollars is appropriated to Indian Country annually. From the perspective of Tribal advocates, including those who serve on budget formulation committees for federal agencies, 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. 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. USET SPF firmly believes that 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.

Following the issuance of the "Broken Promises" report in the December and the "Quiet Crisis" report before that, USET SPF has been calling for fundamental change in the way the federal government delivers upon its fiduciary trust and treaty obligations. We acknowledge and commend current legislative efforts to bring about this change, and urge that any resulting bill include these types of bold proposals.

### **Conclusion**

While USET SPF recognizes this Committee's strong, long-standing commitment to Indian Country, we cannot accept funding mechanisms for federal Indian programs that continue to leave us vulnerable to partisan brinkmanship and fail to reflect and respect fiduciary trust obligations. This Committee must use its influence to ensure that the federal government upholds and provides greater certainty the fiduciary trust obligation to Tribal Nations in FY 2020 and beyond through the passage of advance appropriations legislation during the first session of the 116<sup>th</sup> Congress. In the long-term and in pursuit of a relationship more reflective of this obligation, USET SPF urges this Committee, Congress, and all branches of the federal government to ensure that full funding for the trust obligation is realized in our lifetimes. USET SPF thanks the Subcommittee for the opportunity to testify and looks forward to partnering with its members to bring this to fruition.