



Testimony of President Kirk Francis
United South and Eastern Tribes Sovereignty Protection Fund
House Appropriations Subcommittee on Interior, Environment, and Related Agencies
FY 2019 Native American Public Witness Hearings, May 9, 2018

Chairman Calvert, Ranking Member McCollum, and members of the Subcommittee, thank you for allowing me to be here today and for your consistent commitment to holding Native American Public Witness Hearings. 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.

USET SPF represents 27 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 member Tribal Nations have highly developed economies, while others remain dependent upon the federal government to provide essential services to their citizens.

As was acknowledged by the 100th Congress, the United States owes a “historical debt” to Tribal Nations. This debt includes the many injustices that Native peoples have suffered as a result of federal policy, including federal actions that sought to terminate Tribal Nations and assimilate Native people. It also involves the ceding of our land holdings and natural resources, oftentimes by force, to the United States resulting in a perpetual trust obligation 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 Indian Country are simply a repayment on this debt. This is not merely a question about addressing poverty or needs. Our relationship is more than this. This is ultimately a question about honor, about fulfilling commitments and promises.

The President’s FY 2019 Request for Indian Programs Violates the Trust Responsibility. In his 2017 Native American Heritage Month proclamation, the President stated,

“My Administration is committed to tribal sovereignty and self-determination. A great Nation keeps its word, and this Administration will continue to uphold and defend its responsibilities to American Indians and Alaska Natives. Together, we will strengthen the relationship between the United States Government and Native Americans.”

A great nation does keep its word. The first step toward fulfillment of America’s promises is not just words, but action. While this Administration professes to prioritize Indian Country, this Budget Request reveals otherwise. At all levels of the Administration, from the Office of Management and Budget (OMB) to BIA to IHS, Tribal Nations and others objecting to this draconian budget request are being told that the request is just a “messaging document.”

While we understand that only Congress has the power to appropriate funds, the Administration is sending a powerfully negative message to Indian Country. In reducing, eliminating, and calling into question the constitutionality of federal Indian programs, this Administration is ignoring and undermining its trust responsibility to Tribal Nations. Moreover, the message that this sends to all American citizens is one of disregard and dishonor, further exacerbating the challenges we face in educating the nation on our history, sovereignty, and the continued obligation to Tribal Nations. Finally, the agencies most directly charged with delivering on the fiduciary trust responsibility—BIA and IHS—are demonstrating no accountability for

budget request numbers and instead, are directing Tribal Nations to advocate for funding with Congress. This is a failure on the part of the Administration to take seriously its role as trustee.

Funding Requests and Mechanism do not Reflect Trust Obligations. 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 unfulfilled 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 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.

We further note the long-lasting effects of continued underfunding for federal Indian programs. The FY 2019 Budget Request fails to reflect a prioritization of trust obligations and the related promises that are at the core of our special and unique relationship. These unfulfilled treaty and trust obligations will ultimately lead to hearings by this very Subcommittee, as the consequences of this Request results in the problems and difficulties that SCIA is charged with addressing.

Constitutionality of Federal Indian Programs. Several times now, this Administration has called into question the constitutionality of programs or targeted accommodations for American Indians and Alaska Natives (AI/AN). 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. Appropriations that support programs and services such as this are provided in perpetuity in exchange for the millions of acres of land and natural resources ceded, often times by force, to the U.S. In addition, the Executive Branch, regardless of party, has a decades-long history of policy-making that includes exemptions or accommodations from federal actions for Tribal Nations and Native people.

Infrastructure Plan. If this Congress and Administration intend to modernize and repair infrastructure throughout the country, the chronically neglected obligations to Indian Country must be addressed. It is critical that Tribal Nations have direct access to any funding available via an infrastructure package. We must not be restricted to partnering or competing with another entity in order to be in receipt of infrastructure dollars. Additionally, in support of Tribal self-determination, these dollars should be eligible for inclusion in Self-governance contracts and compacts. While we acknowledge that the President’s infrastructure plan does state that some funding will be set aside for Tribal Nations within its proposed Rural Infrastructure Program, it remains unclear exactly how much funding is being proposed and whether Tribal Nations would have access to other parts of the President’s plan.

The President’s plan also proposes to streamline infrastructure permitting processes. While there remain many unknowns associated with these streamlining measures, USET SPF is concerned that these proposals could serve to undermine Tribal sovereignty, and the protection of cultural resources and public health. We note that the Federal Communications Commission is already planning to move forward, over the strong objections of Tribal Nations, with a Report and Order that restricts Tribal cultural reviews and illegally redefines the meaning of ‘federal undertaking’ under the National Environmental Policy Act and the National Historic Preservation Act.

Department of the Interior (DOI) Reorganization. USET SPF is deeply concerned that the reorganization of the Department of the Interior is moving forward in the absence of Tribal consultation. Although Interior

Secretary Ryan Zinke recently stated, "we're going to go into consultation, as we should, and it's really up to the tribes whether they're going to participate or not, and I respect sovereignty," a consultation has yet to be initiated on the specifics of the reorganization plan. The Secretary has yet to significantly consult with or provide much detail to Tribal Nations on the reorganization of the Department, although we are aware of meetings held with federal employees and other units of government. Yet, we note that new DOI regions have been proposed and there is \$900,000 set aside in the BIA Budget Request for its share of initial pre-planning responsibilities (with the knowledge that this figure will increase significantly in the out years). USET SPF urges this Subcommittee and this Congress to withhold any funding for Interior reorganization pending confirmation that the Reorganization will not impact funding to Tribal Nations or inherent federal functions, as well as meaningful consultation with Tribal Nations resulting in consent for or an exemption from the reorganization.

Bureau of Indian Affairs (BIA). The FY 2019 President's Budget Request for Indian Affairs is \$2.4 billion, a 15.6% decrease from the FY 2018 CR level and a 20% decrease from the FY 2018 Omnibus. Nearly every line item in the BIA budget would see reductions in the FY 2019 budget request. However, Interior's Budget Justification describes the Request in the following way,

"The 2019 budget supports the Administration's commitment to help promote tribal nation-building and self-determination, empower tribal communities, foster tribal self-sufficiency, create educational and economic opportunities, ensure safe Indian communities, preserve and foster cultural heritage, and steward natural resources."

It is difficult to see how any of this could be true, considering the deep reductions and eliminations found in the Request. Moreover, on a February 12th conference call, Tribal leaders and advocates were told that the BIA budget request supports the "core mission" of the Agency, but with nearly every line item receiving a decrease, it is impossible to determine what the Administration deems its "core mission." According to the BIA's website, its mission is, "to enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes and Alaska Natives." By any measure, this Budget Request fails to uphold these words.

Overall, Human Services programs would fall by 27%, Natural Resource programs by 23%, Public Safety and Justice by 9%, and the Bureau of Indian Education by 16%. Similarly, the top priorities identified by the Tribal Nations of the Eastern Region for FY 2019 would all see drastic reductions or eliminations: Social Services—cut by 37%; Scholarships and Adult Education—eliminated; Indian Child Welfare Act—cut by 27%; Tribal Courts—cut by 28%; and Aid to Tribal Government—cut by 10%.

One of the few increases would be \$2.5 million in the Law Enforcement Special Initiatives budget to fight the opioid epidemic by, "expand[ing] BIA capacity to address the increase in drug-related activities through interdiction programs to reduce drug use, distribution, and drug related crime." While USET SPF welcomes any funding provided directly to Indian Country to combat the opioid epidemic in our communities, including for law enforcement, \$2.5 million in what may be one-time funding falls short. To increase the number of BIA drug enforcement officers, USET SPF has requested no less than \$11 million annually.

Indian Health Service (IHS). The FY 2019 Budget Request would include \$5.4 billion for IHS, 8% above the FY 2018 Continuing Resolution, but a slight decrease from the FY 2018 Omnibus. While we acknowledge and support increases to this chronically underfunded agency, we also note that for FY 2019, the Tribal Budget Formulation Workgroup (TBFWG) which meets annually and is comprised of Tribal leader representatives from each of the 12 IHS Areas, recommended \$6.4 billion.

USET SPF strongly supports increases to several critical IHS line items: an increase for clinical services, including an increase of \$268 million for Hospitals and Clinics for a total funding amount of \$2.1 billion; increase of \$32 million for purchased/referred care (PRC) for total funding of \$955 million; and increase of \$340 million for Mental Health, and Alcohol and Substance Abuse Programs, which is \$30 million above current spending levels. These line items were the top four funding priorities of Tribal Nations in the Nashville Area of IHS. However, as with overall funding for IHS, it is important to recognize that these increases fall far short of IHS' obligation to the health of Tribal Nations, as well as the TBFWG's recommendations. We continue to support and urge the adoption of a plan to phase-in full funding for IHS. USET SPF maintains that until Congress fully funds the IHS, the Indian Health System will never be able to fully overcome its challenges and fulfill its trust obligations.

Despite these increases, the President's Budget also proposes cuts and eliminations to other parts of the IHS budget. USET SPF and others in Indian Country are strongly opposed to the elimination of the Community Health Representatives program, as well as other eliminations and decreases found in the Request.

The Budget Request proposes a total \$10 billion in new funding to combat the opioid epidemic. Under the proposal, IHS would receive \$150 million "to provide multi-year competitive grants based on need for opioid abuse prevention, treatment, and recovery support in Indian Country." Considering the disproportionate levels of opioid abuse and mortality in Tribal communities, a small amount of funding delivered through competitive grants, while welcome, does not even begin to scratch the surface. USET SPF calls upon this Subcommittee and this Congress to prioritize substantial direct funding to Tribal Nations as it seeks to address the opioid crisis.

The Request also proposes to move the Special Diabetes Program for Indians (SDPI) from mandatory to discretionary spending. When asked for an explanation on an "All-Tribes" call, IHS indicated that all health extenders are proposed to be moved from mandatory to discretionary. This proposal has not received any Tribal consultation, in violation of IHS' & HHS' Tribal consultation policies. From USET SPF's perspective, this proposal represents the exact opposite of what we are trying to achieve—which is mandatory funding for all federal Indian programs.

Other FY 2019 Budget Proposals: While outside of IHS and BIA, USET SPF is deeply concerned with reduction in funding, elimination, and radical changes in policy of the following agencies and programs: within the President's FY 2018 Budget Blueprint. As members of the full Committee on Appropriations and advocates for Indian Country, USET SPF is confident that you understand how these changes would negatively impact Tribal Nations. With this in mind, we implore the Subcommittee to ensure that these cuts, eliminations, and changes are not enacted:

- Deep cuts to the Environmental Protection Agency (including cuts to state and Tribal assistance grants), the Centers for Disease Control & Prevention, the Substance Abuse and Mental Health Services Administration, Minority Business Development Agency, Tribal Historic Preservation, and Native American Housing Block Grants, as well as block granting the Medicaid program to states.
- Elimination of the following programs and agencies: Good Health and Wellness in Indian Country (CDC), Rural Community Facilities (ACF), Community Development Financial Institutions Fund grants, the Indian Community Development Block Grant, the Economic Development Administration, USDA Rural Business Development grants, the Department of Labor's Division of Indian and Native American Programs and the Low Income Home Energy Assistance Program (LIHEAP).