



Testimony of President Kirk Francis
United South and Eastern Tribes Sovereignty Protection Fund
House Appropriations Subcommittee on Interior, Environment, and Related Agencies
FY 2022 Native American Public Witness Hearings, April 16, 2021

Chairwoman Pingree, Ranking Member Joyce, and members of the Subcommittee, thank you for opportunity to provide testimony regarding the federal government's chronic failure to fully uphold its fiduciary trust and treaty obligations to Tribal Nations and the President's Budget Request for Fiscal Year (FY) 2022. 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. Since the Biden Administration has released only a "skinny" version of its FY 2022 Request, we are unable to fully react to the President's priorities in detail. However, we are pleased with the high-level summary currently available and after years of requests that neglected trust and treaty obligations, welcome the more substantial increases proposed by this Administration. We appreciate this Subcommittee's longstanding commitment to holding Tribal Public Witness hearings and while we are anxious to resume in-person proceedings, we are glad our testimony continues to be a priority amid the COVID-19 pandemic.

USET SPF advocates on behalf of 33 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.

With hope on the horizon as we look toward recovery from COVID-19, Indian Country finds itself at an inflection point in our centuries-long relationship with the United States. The global pandemic and social injustice brought extreme challenges, sorrow, and upheaval to Tribal Nations and the whole of America. As COVID-19 tore through our communities, our country engaged in a reckoning with its past and looked toward a more honorable future. 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. But the global pandemic has exposed for the world to see the extent to which generations of federal neglect and inaction have created the unjust and untenable circumstances facing Tribal Nations. The time is long overdue for a comprehensive overhaul of the trust relationship and obligations, one that results in the United States finally keeping the promises made to us as sovereign nations in accordance with our special and unique relationship.

As the Subcommittee is well aware, Native peoples 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.

At no point, however, 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 peoples. As the United States continues to break its promises to us, despite its own prosperity, Native peoples 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 are coming into horrifyingly sharper focus due to the global pandemic. Decades of broken promises, neglect, underfunding, and inaction on behalf of the federal government have left Indian Country severely under-resourced and at extreme risk during this COVID-19 crisis.

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.

Above all, the COVID-19 crisis is highlighting the urgent need to provide full and guaranteed federal funding to Tribal Nations in fulfillment of the trust obligation. While we unequivocally support budget stabilization mechanisms, such as Advance Appropriations, 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. Payments on debt to Indian Country should not be vulnerable to year to year “discretionary” decisions by appropriators.

Recently, some in Congress, as well as the Biden Administration, 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 realized via an entirely new budget component—one that contains all of the funding dedicated to Indian Country. Not only would this streamline access to these dollars, this mechanism would reflect true prioritization of and reverence for America’s trust obligation to and special relationship with Tribal Nations. While some will quickly dismiss this as unrealistic and untenable, when compared against the value of the land and natural resources the United States gained as part of the exchange, both voluntarily and involuntarily, it becomes evident that this is only a matter of will and desire.

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, detailed accounting of federal funding distributed to Indian Country. To date, OMB has not responded to this request, though after holding its first-ever Tribal consultation we are hopeful that the agency will work to compile this document. 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, a dedicated Tribal Affairs department, and a Tribal advisory committee.

Invest in and Rebuild Tribal Infrastructure—A Marshall Plan for Indian Country. For generations, the federal government – despite abiding trust and treaty obligations – has substantially under-invested in Indian Country’s infrastructure. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure, such as running water and passable roads. Now, the nation and world are witnessing the deadly consequences of this neglect, as COVID-19 has spread through Tribal communities that are unable to implement such simple public health measures as frequent hand washing. As Congress and the Administration turn the focus to a once-in-generation infrastructure, jobs, and social reform package, the United States must commit to supporting the rebuilding and restoration of the sovereign Tribal Nations that exist within its domestic borders. 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. Strong Tribal Nations will result in a strengthened United States. 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.

Mandatory Funding for Binding Obligations. While USET SPF celebrates the achievement of separate, indefinite appropriations for both 105(l) leases and Contract Support Costs, we note that likely continued growth in these areas threatens future increases for other IHS and Bureau of Indian Affairs (BIA) lines. 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 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.

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 this Subcommittee and the full Appropriations Committee 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.

Department of the Interior (DOI). Without the full President’s FY 2022 Budget Request in hand, USET SPF cannot react to line item-level proposals for DOI and the BIA. We are pleased to note that President Biden’s topline request for federal Indian programs administered by DOI is \$4 billion, which is a \$600 million increase over the FY 2021 enacted level. We support the targeted investments the proposal makes in for teachers and students in Tribal schools, clean energy development, and tribal law enforcement and court programs to improve safety. However, we note the historic and continued unmet funding obligations with regard BIA’s diverse line items. It is our expectation that, after years of Budget Requests proposing deep cuts to BIA, the Biden Administration’s full Request will propose and Congress will enact substantial increases across the agency.

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, we remain focused on the addition of 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: **Scholarships & Adult Education (TPA)**
- Construction: **Public Safety & Justice Facilities Replacement/New Construction**
- Resource Management Construction: **Federal Power Compliance [FERC]**

Indian Health Service (IHS). While USET SPF is similarly unable to comment on the President's FY 2022 Budget Request for IHS in great detail, we are pleased to see the proposed funding amount of \$8.5 billion, a substantial increase of \$2.2 billion over FY 2021 enacted. We are further encouraged that, for the first time, the President will include an advance appropriations request for IHS in FY 2023. We support advance appropriations as an important mechanism to provide certainty in funding to Tribal Nations and urge the Subcommittee to support this mechanism for all federal Indian programs. Finally, USET SPF strongly supports the Biden Administration's commitment to consulting with Tribal Nations on the possibility of mandatory funding for IHS. We hope that this Subcommittee will support these efforts for IHS—all federal Indian agencies and programs—as this, in combination with full funding¹, is the only way to truly uphold fiduciary obligations to Tribal Nations.

In addition to providing a robust funding stream for current operations that reflects medical inflation, Nashville Area Tribal Nations identified our top 6 priority line items for increases in FY 2022: **Hospitals and Clinics, Purchased/Referred Care (PRC), Alcohol and Substance Abuse Program, Mental Health Services, Dental Health, and Electronic Health.** Nashville Area priorities and hot issues also include funding for Maintenance & Improvement, Sanitation Facilities Construction, Health Education, Urban Indian Health Program Support, continued support for newly federally recognized Tribal Nations, culturally appropriate substance abuse treatment aftercare and housing programs, Hepatitis C prevention and treatment, constitutionality challenges, increases in SDPI funding, and parity in group payor authorities when sponsoring patients on insurance plans.

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, the 5% Tribal set aside from the Crime Victims Fund, and Native American Housing Block Grants. We also strongly support the Biden Administration's proposed \$450 million investment to facilitate climate mitigation, resilience, adaptation, and environmental justice projects in Indian Country.

¹ Current estimates put full funding for IHS at approximately \$48 billion.