



USET

SOVEREIGNTY PROTECTION FUND

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May 18, 2022

Shalanda Young
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Director Young,

We write on behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) to provide comment to the Office of Management and Budget (OMB) in response to its April 25, 2022 “Dear Tribal Leader” letter initiating consultation on the President’s Fiscal Year (FY) 2023 Budget Request. As we have noted in response to other recent OMB consultations, the agency’s consultations with Tribal Nations on the federal budget are a long-awaited and welcome development. With the release of the President’s FY 2023 Request and its historic proposals for the Indian Health Service (IHS) and binding obligations, we are seeing the voices and guidance of Tribal Nations raised to new heights within the Administration’s priorities. We celebrate this achievement and attribute it, in large part, to OMB’s commitment to meaningful dialogue with Indian Country.

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.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Mandatory Funding for the Indian Health Service and Binding 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 the trust obligation. 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

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), 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), Mi’kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), 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), Rappahannock Tribe (VA), 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), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

“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.

For the very first time, the Request proposes a shift in funding for the IHS from the discretionary to the mandatory side of the federal budget, a move that stabilizes the agency and is more representative of perpetual trust and treaty obligations. Further, a substantial request of \$9.1 billion for IHS in FY 2023 includes a 10-year plan to close funding gaps, increasing IHS funding to \$36.7 billion in FY 2032—a 296% increase over this period—and exempting agency funds from sequestration. This change makes meaningful inroads in the chronic underfunding of the IHS, while responding to the dangerous instability the Indian Health System faces during continuing resolutions and government shutdowns. 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 recognize that the Biden Administration has taken an unprecedented and positive step forward in its proposal to move us closer to that reality.

In addition to doing so as a part of the IHS proposal, the Request proposes mandatory funding for Contract Support Costs and 105(l) leases—binding obligations—at BIA and the Bureau of Indian Education. 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.

These proposals represent a dramatic shift in federal Indian policy and the delivery of trust and treaty obligations—for which USET SPF has consistently and passionately advocated. Never before has an Administration issued a Budget Request that calls for mandatory funding, as well as a plan to substantially increase funding for an agency charged with fulfilling sacred promises to Tribal Nations. We now call upon the Administration to fulfill its responsibilities and work with Tribal Nations and Congress to ensure that these proposals are enacted this Congress. This includes working with Tribal Nations and IHS to draft legislation that reflects our guidance for implementing these changes.

We are pleased to see the proposed funding amount of \$9.1 billion, a substantial increase of \$2.5 billion over FY 2022 enacted. While we have consistently advocated for full funding² for IHS, as this is the only way to truly uphold fiduciary obligations to Tribal Nations, we greatly appreciate the Administration’s commitment to increasing IHS resources and urge additional consultation on a full funding number. In addition to supporting a robust funding stream for current operations that reflects medical inflation, Nashville Area Tribal Nations identified the following top 10 priority line items for FY 2023, all of which receive increases under the President’s Request:

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

Nashville Area priorities and hot issues also include funding for Health Care Facilities Construction and the specific implementation of an Area Distribution Fund, Facilities and Environmental Health, continued

² Current estimates put full funding for IHS at approximately \$48 billion.

support for newly federally recognized Tribal Nations, Hepatitis C prevention and treatment, funding for telehealth resources, Health Education, impacts of COVID-19 on user pop and workload data, constitutionality challenges, increases in SDPI funding, modernizing health IT, and parity in group payor authorities when sponsoring patients on insurance plans.

Department of the Interior (DOI)

We are pleased to note that President Biden's topline request for Indian Affairs within DOI is \$4.5 billion, which is a \$1.1 billion increase over the FY 2022 enacted level. This includes \$2.8 billion for BIA and \$1.6 billion for BIE. We support the targeted investments the proposal makes in public safety and justice, including funds to address the crisis of Missing and Murdered Indigenous People, social services, and Tribal climate resilience. We also note the historic and continued unmet funding obligations with regard BIA's diverse line items and remain encouraged by the nearly across-the-board increases provided under the FY 2023 request. After years of budget requests proposing deep cuts to BIA, we urge Congress to work with the Biden Administration to enact substantial increases across the agency.

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 or calculation of BIA's unfunded obligations in order to measure how well the U.S. is honoring its promises, on which Indian Affairs Leadership 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 continue to elevate the Eastern Region's top priority in eight different strategic funding categories, all of which have received increases, many substantial, under the President's FY 2023 proposal:

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

In addition to the above priorities, we would also like to register our strong support for continued funding via the Natural Resources line in order to establish homelands for recently federally recognized or landless Tribal Nations. The Tribal land base is a core aspect of Tribal sovereignty, cultural identity, and represents the foundation of our Tribal economies. The Tribal Nations located in the south and eastern part of what is now the United States have a lengthier history when it comes to the systematic dispossession of our lands as a result of hundreds of years of federal (and before that, colonial) policies. In the wake of these policies, a majority of USET SPF Tribal Nations hold only a fraction of their homelands and some remain landless.

In addition, while USET SPF firmly believes that the trust obligation supersedes responsibilities to other units of government, one opportunity to mitigate the impacts of trust land acquisition asserted by state and local governments lies within the Payment in Lieu of Taxes (PILT) program. Currently, state and local jurisdictions, citing lost tax revenue, frequently oppose the restoration of Tribal homelands (either indefinitely or until Tribal Nations agree to payments), hindering efforts to restore Tribal land bases, provide governmental services to Tribal citizens, and engage in economic development.

Since 1977, the Department of the Interior (DOI) has issued billions in PILT to local governments that help offset losses in property taxes due to the existence of nontaxable federal lands within their boundaries. However, while PILT payments are made for lands administered by the Bureau of Land Management, the National Park Service, the U.S. Fish and Wildlife Service, and the U.S. Forest Service (part of the U.S. Department of Agriculture) and for Federal water projects and some military installations, lands held in trust for Tribal Nations are not currently eligible. USET SPF [believes that PILT](#) (or a PILT-like mechanism) for lands put into trust could remove barriers to the restoration of Tribal homelands while also easing the perceived burdens of and impacts to local government as a result of lost tax revenue.

We continue to work to reacquire our homelands, which are a fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. The federal government's objective in the trust responsibility and obligations to our Nations 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. With this in mind, we are pleased to see the Administration's support for a fix to the Supreme Court Decision in *Carcieri v. Salazar*, and we look forward to the opportunity to work on this and other land restoration priorities, as well as improvements to the land-into-trust process.

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 the Bipartisan Infrastructure Law is likely to overwhelm THPOs without additional funding and other resources. While we recognize a modest increase THPO funding is proposed under FY 2023 Request, we urge the Administration to request and provide additional resources for THPOs, so that we may protect our cultural and sacred sites.

Funding for the White House Council on Native American Affairs

Presently, and throughout its short history, the White House Council on Native American Affairs (WHCNAA) has operated with virtually no dedicated staffing or financial resources. Traditionally, the work of the Council has been coordinated by an executive director on detail from the Department of the Interior (DOI). And under the Executive Order establishing the Council, DOI "shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations." In practice, this has resulted in a lack of substantive support for the work of the body and the executive director, along with a restricting of the WHCNAA's scope and ability to provide meaningful contact between the Cabinet and Indian Country. We note that under the Obama Administration, WHCNAA's major focus appeared to be planning and facilitating the White House Tribal Nations Conference, which, while an important development in the Nation-to-Nation relationship, does not necessarily provide Tribal Nations or the Administration with a more intimate understanding of one another.

USET SPF envisions a WHCNAA that engages in transformative policymaking and, at a minimum, makes several visits to Tribal homelands annually. This cannot be accomplished without direct and dedicated funding for the WHCNAA. Given the potential for WHCNAA to play a significant role in advancing the delivery of the federal government's delivery of trust and treaty obligations, as well as our diplomatic relationship, we urge this Administration to designate a dedicated funding stream for WHCNAA—through the President's Budget Request or other means. It is our belief that this will allow the WHCNAA's work to be more substantive, productive, and meaningful for our evolving U.S.-Tribal Nation relationship.

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. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure. Following insufficient levels of funding for Tribal Nations in the Infrastructure Investment and Jobs Act, 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.

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, the 5% Tribal set aside from the Crime Victims Fund, and Native American Housing Block Grants.

Correct Failures in the Federal Budget Process and Funds Administration

As a part of OMB’s renewed commitment to delivering upon its trust and treaty obligations to Tribal Nations, USET SPF continues to urge the agency to make structural reforms to the budget formulation process, the delivery of federal funding to Tribal Nations, and its early and ongoing engagement with Indian Country. To this end, we continue to underscore the necessity of the following changes:

- **OMB Must Produce a Detailed Crosscut of Federal Indian Funding**

The agency 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. While OMB has provided a high-level crosscut of this funding in the past, both USET SPF and the Tribal Interior Budget Council (TIBC) have asked for a full, detailed accounting of federal funding distributed to Indian Country. This should include details such as how many Tribal Nations accessed funding under each line, how the funding was delivered, and whether the funds were accessed directly through the federal government or through states. USET SPF firmly believes that this information is absolutely essential to consultation around federal budget formulation, as well as the measurement of the federal government’s own success in meeting its obligations and the work of Tribal Nations.

- **Presidential Budget Requests Must Contain Full Funding Figures**

Several federal agencies engage in a Tribal budget formulation process, via Tribal consultation, which is then supposed to influence the Administration’s request. Yet, it is typical for any Tribal recommendations that appear in the President’s budget request to be significantly scaled back.

While we recognize that the Administration may be unable to incorporate all of our recommendations into the official request, Congress should, at the very least, be informed of what Tribal Nations are requesting. In addition, OMB must work with federal agencies and Tribal Nations to determine and reflect shortfalls, both total and by agency/program, in the overall funding of trust and treaty obligations.

Similarly, OMB should require departments/agencies to provide annually a full and complete picture of unfulfilled trust and treaty obligations. The only way the United States can effectively measure how well it is fulfilling its obligations is in comparison to a full funding for Indian Country budget number. Each department/agency should be required to work in partnership with Indian Country to determine complete budgetary fulfillment of trust and treaty obligations.

- **Reduce Burdens for Tribal Nations**

A primary function of the agency is to help improve administrative management, to develop better performance measures and coordinating mechanisms, and to reduce any unnecessary burdens on the public. In fulfilling this responsibility, OMB must approach its dealings with Indian Country in a manner that works to significantly diminish unnecessary burdens placed on Tribal Nations. Moving away from a grants-based mentality is an initial step toward a more appropriate approach. In addition to measuring the performance of Tribal Nations with appropriated federal dollars, OMB must also work to measure how well federal entities are performing in carrying out their trust duties and functions.

The sacred trust obligation to Tribal Nations transcends measurements, outputs, data, and statistics. While these things are important, the obligations due to Tribal Nations should not be based on this understanding. Rather, these are things that Tribal Nations concern themselves with as an internal matter to ensure they are providing strong services to their citizenship. We must explore a new approach together that better respects Tribal sovereignty.

- **Invest in Diplomacy**

The federal government must fully recognize and uphold our Nation-to-Nation diplomatic relationship. This directive extends to ensuring both federal agencies and Tribal Nations have access to resources that support diplomatic activities. True diplomacy, as evidenced by activities conducted by the U.S Department of State, would involve U.S. ambassadors appointed to liaise with each federally recognized Tribal Nation on behalf of the federal government, rather than facilitating this relationship through national or regional consultations. While we recognize retooling the consultative relationship to allow for a truly diplomatic relationship involves many steps, funding for these activities is certainly one of them. We encourage OMB to consider how it might include diplomacy in future budget requests. This would include funding for federal agencies to build and sustain diplomatic infrastructure, as well as increased funding for Tribal Nation participation in these processes.

- **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 short-term, we urge OMB 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.

- **Expansion and Evolution of Tribal Self-Governance**

Despite the success of Tribal Nations in exercising authority under ISDEAA, as well as the recently enacted Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for Indian Tribes Act, the goals of self-governance have not been fully realized. Many opportunities still remain to improve and expand upon its principles. An expansion of Tribal self-governance to all federal programs under ISDEAA would be the next evolutionary step in the federal government's recognition of Tribal sovereignty and reflective of its full commitment to Tribal Nation sovereignty and self-determination. Department of Health and Human Services (HHS) agencies and programs outside of the Indian Health Service are particularly well-positioned for ISDEAA expansion. Tribal Nations have worked over multiple Congresses and Administrations to demonstrate that this expansion is feasible and introduce necessary legislation. We ask the OMB join us in supporting this evolution. Broadly, OMB must treat Tribal Nations in a manner befitting our government status, not as grant funded entities or special interest groups. Far too many dollars are only accessible via competitive grants. Forcing Tribal Nations to compete for grants utilizes a process that does not respect the sacred and unique diplomatic relationship that exists between Tribal Nations and the United States.

- **Establish a dedicated OMB Tribal Affairs Department within the Director's Office**

Recognizing OMB's current staffing limitations (approx. 400 FTEs), it is necessary to invest in new resources to honor the agency's trust and treaty obligations. This includes creating a new department to serve as an advocate for Tribal Nations and coordinate within the agency on the development of policies and budgets impacting Tribal Nation interests. Currently, examiners assigned to specific federal agencies or programs and housed in different departments are the only OMB personnel dedicated to Indian Country. The creation of a higher-level, more comprehensive department would assist the agency in fulfilling its obligations to Tribal Nations and be more representative of the sacred duty to our governments.

- **Establish an OMB Tribal Advisory Committee**

A Tribal advisory committee (TAC) would provide the agency with the opportunity for direct communication with and guidance from Tribal leaders on a regular basis. The TAC would complement OMB's consultation with all Tribal Nations, as well as its Indian Desk, by providing specialized guidance on agency initiatives and functions. The TAC should provide broad regional representation reflective of the diverse circumstances facing Indian Country and members should be selected by the Tribal Nations of each region.

- **Ensure Adequate Funding for Inherent Federal Functions**

While we firmly believe that the United States must fully honor its promises and obligation to Indian Country, including direct programmatic funding, we recognize that there are federal functions and services that we cannot contract and compact. When these functions and services are not adequately funded, it is to the direct detriment of Indian Country.

Conclusion

We view the President's Budget Request as a statement on each Administration's regard for its trust and treaty obligations to Tribal Nations. USET SPF celebrates the historic proposals found FY 2023 President's Budget Request as a meaningful first step in ensuring federal funding to Tribal Nations honors and fulfills the sacred promises made as part of our diplomatic relationship with the United States. We are fully committed to working with the Administration and our allies on Capitol Hill to make this a reality and call upon OMB to assist in this legislative effort. We further urge your support for the inclusion of proposals that uphold our status as sovereign governments, recognize our right to self-determination and self-governance,

and honor the federal trust obligation in full in FY 2023 appropriations and beyond. Should you have any questions or require additional information, please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at (615) 838-5906 or by e-mail at lmalerba@usetinc.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Francis', with a long horizontal stroke extending to the right.

Kirk Francis
President

A handwritten signature in black ink, appearing to read 'K. A. Carroll', with a stylized, cursive script.

Kitcki A. Carroll
Executive Director