

U.S. Senate Committee on Indian Affairs
Legislative Hearing on S. 2385, S. 2068, S. 3022, S. 2796, and S. 3230
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Introduction

Access to clean water is a basic human right. It is essential for people to live with dignity and foundational for human health, growing economies, and a basic level of existence for communities. It is unacceptable that in the 21st Century, many Native Americans must travel for miles to collect water that is safe for drinking and everyday use. An estimated 48% of households on Indian reservations do not have access to reliable water sources, clean drinking water, or adequate sanitation.¹

Household water security is defined as “the safe and reliable access to sufficient quantity and quality of water for household consumption, production, and cleanliness.”² “In the United States, potable water infrastructure is broadly assumed to be ‘universal’ in its coverage, to the point where the U.S. Census Bureau has recently considered dropping its plumbing question from the [American Community Survey] questionnaire.”³ However, despite public perception, “universalized water infrastructure remains an incomplete promise for different populations in different places across the nation[.]”⁴

Native American households are more likely to lack adequate water services than any other group in the United States. Existing water infrastructure on reservations continues to deteriorate and inadequate water quality remains pervasive across Indian Country. According to the U.S. Water Alliance, Native households are 19 times more likely than white households to lack indoor plumbing.⁵ This is not a random disparity - the lack of access to clean and safe drinking water in Tribal communities reflects historical and persisting racial inequities.

The United States government has long promised all Native American Tribes a “permanent homeland,” a livable reservation,” and a home “conducive to the health and prosperity of the

¹ House Committee on Natural Resources, Democratic Staff, *Water Delayed is Water Denied: How Congress has Blocked Access to Water for Native Families* (Oct. 2016), <https://democrats-naturalresources.house.gov/water-delayed-is-water-denied>.

² Shiloh Deitz & Katie Meehan, *Plumbing Poverty: Mapping Hot Spots of Racial and Geographic Inequality in U.S. Household Water Insecurity*, 109 *Annals Am. Ass’n Geographers* 1 (2019) [hereinafter *Plumbing Poverty*].

³ *Id.* at 1, 7 (2019).

⁴ *Id.* at 8.

⁵ DigDeep-US Water Alliance, *Closing the Water Access Gap in the United States* (2019), <https://www.digdeep.org/close-the-water-gap>.

Indians.” But these promises are broken when our people do not have clean water to drink or for cooking and personal hygiene. A permanent, livable, and prosperous homeland cannot exist without this minimum requirement of life—access to an adequate and healthful supply of drinking water.

In our White Mesa Ute Community, groundwater for the community supply is of poor quality. We have a treatment system that removes current contaminants. Operations are challenging and the future is uncertain. Two miles up the road we have a uranium mill that has thousands of acre feet of toxic radioactive waste stored there forever. The license requires that the reclamation plan be safe for 1000 years. Tribe has been here tens of thousands of years and this industry has existed less than 100 years. We simply do not know if the mill will affect the drinking water aquifer in 100 years or 300 or 1000.

In the 2000’s the Tribe petitioned the Environmental Protection Agency to designate the drinking water aquifer as a sole-source aquifer. The petition was denied, probably because of the uranium mill and the multitude of federal decisions it would influence. However, if the N aquifer is not a sole-source, where do we get another source of water? There is not enough surface water- the City of Blanding told us that. Either designate it as a sole source or inform us of another source.

In our Towaoc community, the water line from the Dolores Project was installed over 30 years ago. It is ductile iron and subject to breaks due to the shifting and saline geology. We have a few breaks each year causing temporary water conservation measures and quality issues. Each repair costs us over \$50,000 and sometimes hundreds of thousands. We have replaced a two mile section and we are poised to replace another section in the next year, but there is still over 15 miles of pipeline to replace to get clean water to our community. Ongoing housing expansion, repair and replacement are a constant driver for funding for drinking water and wastewater infrastructure in Towaoc.

Thanks to the sponsors of Tribal Clean Water legislation in the 117th Congress, funding for safe drinking water systems for Tribal communities received a significant boost from the Bipartisan Infrastructure Law and the Inflation Reduction Act. While groundbreaking and long overdue, the funding now available for construction and repair of domestic water systems in Indian country is not a complete solution. The Tribal Access to Clean Water Act, S. 2385, is intended to fill some of the remaining gaps and ensure that the benefit of the investments in Tribal water infrastructure made in the previous legislation are fully realized. The various components of the Act and the needs that have prompted this legislation are explained below.

Technical Assistance. Many, if not most, Tribes lack a dedicated water resource staff, program, or department. Identifying and successfully applying for the various forms of federal funding available is an arduous and time-consuming task. Most Tribes do not have a qualified grant writer or sufficient staff to handle the research and application process. In addition, many Tribes require new or rehabilitated infrastructure to allow access to clean drinking water, but do not currently have “shovel ready” projects that can take advantage of construction funding provided in the BIL and IRA. Technical assistance is

needed to allow Tribes to plan and design the systems necessary to remedy the longstanding problem of lack of access to clean drinking water, and to successfully apply for available funding.

The Act would authorize the U.S. Department of Agriculture to make rural development grants and loans for technical assistance, in addition to the existing authorization for construction purposes. It would also authorize additional funding to USDA, the Bureau of Reclamation, and the Indian Health Service for technical assistance to Tribes. This funding could also assist Tribes in developing the managerial, financial, and regulatory capacity necessary for a fully functional and self-sustaining utility, a foundation for ensuring that Tribal water systems will continue to operate as intended into the future.

Making projects “shovel ready” can be cumbersome and expensive. To get a project for a water infrastructure project to that point many tasks need unique expertise and require investment by the project proponent: engineering, community planning, surveys for resources, comprehensive NEPA writing and execution, identification of cost-share resources, and other components specific to a project. Providing opportunity for technical assistance grants to assist in getting projects there can be extremely important to tribes in this situation.

Community Facilities. IHS construction funding is not currently available to connect essential community facilities, like schools and clinics, to centralized water and sanitation. While IHS’s existing authorization allows for provision of water service to “Indian homes, communities, and lands,” IHS has self-limited its deployment of construction funding to projects and connections for individual homes. That self-imposed constraint has resulted in schools, teacher dormitories, nursing homes, Tribal government buildings, and other essential community structures without connection to basic water service. The Act would direct IHS to include community facilities in its overall deployment of construction funding. This inclusion is absolutely necessary to support a basic level of Tribal economic development.

We support the Indian Health Service improving its policies to better assist the Tribe with community facility connections.

Operation and Maintenance. The ongoing operation and maintenance of water and sanitation infrastructure is a difficult burden in Indian country. Tribes cannot rely on the same types and volumes of revenue streams to support operation and maintenance of water systems as most municipal water providers. For example, Tribes cannot impose and collect property taxes on Tribal land (as the land is owned by the U.S. Government) which many providers rely on to finance new water infrastructure and significant capital improvements. In addition, the economic character of the customer base is generally less able to sustain the kinds of routine O&M costs than the average American water

customer. Finally, the remote and rural nature of many Tribal reservations results in higher routine O&M expenditure because of longer distribution lines, greater pumping requirements, and higher costs of repair. Initial and temporary O&M assistance helps to ensure that the benefits of any investment in infrastructure are fully realized.

In recognition of these unique challenges, the IHS has been authorized since the 1950s to provide operation and maintenance assistance for Tribal water and sanitation facilities when necessary to avoid health hazard or to protect the Federal investment in sanitation facilities.⁶ To date, however, Congress has never appropriated funding to IHS to carry out this authorization. The Act would remedy this longstanding deficiency.

The Tribe is challenged with consistent drinking water and wastewater operations and operators. Staff turnover is prevalent and competitive salary opportunities are not usually available. Obtaining a certification at the appropriate level to be an operator is a *career* level accomplishment, taking years of experience in addition to successful course and testing completion. Knowing the systems requiring operation is paramount and most are different. With a limited amount of STEM guided career paths in the Tribal population, the chances of having a Tribal Member get the education and experience to be an operator is low. To keep an employee with these qualifications by virtue of salary alone is untenable. The combination of these makes it tough to keep operators.

In our smaller Utah community, we have a treatment system, but we do not have a certified operator. This law could help the Tribe to maintain and operate the water system in White Mesa.

We support the Indian Health Service assisting with the maintenance and operations as needed and most-especially with training and hands-on learning about water and wastewater systems and the certification required for them.

Conclusion

The Ute Mountain Ute Tribe supports passage of the Tribal Access to Clean Water Act, S. 2385, recognizing the critical importance of access to reliable, clean drinking water for Native Americans. In addition, the Tribe supports Senate Resolution 355 affirming the responsibility of the Federal Government to ensure such water access and calling on the Executive Branch to employ a “whole

⁶ The Indian Sanitation Facilities Act authorizes the Surgeon General “to construct, improve, extend, or otherwise provide and maintain by contract or otherwise, essential sanitation facilities[.]” Pub. L. No. 86-121, 73 Stat. 267 (1959) (codified at 42 U.S.C. § 2004a(a)). Pursuant to the Indian Health Care Improvement Act, the Secretary is authorized to provide “(A) Financial assistance to Indian Tribes and communities in the establishment, training, and equipping of utility organizations to operate and maintain Indian sanitation facilities; (B) Ongoing technical assistance and training in the management of utility organizations which operate and maintain sanitation facilities; (C) Operation and maintenance assistance for, and emergency repairs to, Tribal sanitation facilities when necessary to avoid health hazard or to protect the Federal investment in sanitation facilities” as well as “financial assistance to Indian Tribes and communities in an amount equal to the costs of operating, managing, and maintaining the facilities provided[.]” Pub. L. No. 94-437 (1976) (codified at 25U.S.C. §§ 1632(b)(2), (e)(1)).

of government” approach to ensure access to reliable, clean drinking water to households on Indian reservations, in Alaska Native villages, and in Native Hawaiian communities.

Failure to provide basic water service cannot be reconciled with the general trust responsibility of providing a permanent homeland to Tribes and promoting the survival and welfare of their communities. “Ensuring access to water and sanitation for all people is not simply a question of water resources, technology and infrastructure, but also of setting priorities, tackling poverty and inequality, addressing societal power imbalances, and above all, political will.”⁷

Thank you for the opportunity to testify on water access barriers encountered by the Ute Mountain Ute Tribe and by Tribal communities in general. The Tribe urges the passage of S. 2385 and Senate Resolution 355.

⁷ U.N., Outcome of the International Experts’ Meeting on the Right to Water, Paris, France, July 7-8, 2009, at 2.