

Indian Health Service Testimony

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**Oversight Hearing before the
Senate Committee on Indian Affairs**

"Water as a Trust Resource: Examining Access in Native Communities."

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Good afternoon Chairman Schatz, Vice Chair Murkowski and Members of the Committee. Thank you for the opportunity to provide testimony on the topic of "Water as a Trust Resource: Examining Access in Native Communities" and the issue of waterlessness and sanitation issues in Native Communities, and to provide an update on Indian Health Service's (IHS) Sanitation Facilities Construction program benefitting American Indian and Alaska Native communities under the Infrastructure Investment and Jobs Act (IIJA).

I want to start by underscoring that the Biden-Harris Administration agrees that water is a sacred resource that must be protected. The IIJA represents a once in a generation investment in our nation's infrastructure and competitiveness. It also represents an opportunity to make good on decades of chronic underinvestment in infrastructure for American Indian and Alaska Native (AI/AN) communities. The bipartisan efforts of Congress – including many champions in this room – helped to ensure these funds for clean drinking water and modern wastewater and sanitation systems were included in the final bill. The Department of Health and Human Services and IHS are grateful for this partnership with Congress, and our shared commitment to ensure that this historic funding is implemented successfully and that these dollars reach Indian Country as quickly as possible. We look forward to sharing our progress on implementation of the IIJA, as part of our commitment to transparency to Congress and AI/AN communities.

As you know, the Indian Health Service's mission is to raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives to the highest level. This mission is carried out in partnership with American Indian and Alaska Native Tribal communities through a network of over 687 Federal and Tribal health facilities and 41 Urban Indian Organizations (UIOs) that are located across 37 states and provide health care services to approximately 2.7 million American Indian and Alaska Native people annually.

Sanitation Facilities Construction Program

The 1988 amendments to the Indian Health Care Improvement Act require the IHS to maintain an inventory of sanitation deficiencies for existing Indian homes and communities, to prioritize those deficiencies, and to annually report those deficiencies to Congress. Since 1989, the IHS has annually reported these needs to Congress in the form of projects, which are currently

catalogued in the Sanitation Deficiency System (SDS). Projects are identified by the facilities to be provided, the cost of those facilities, and the number of homes to be served by the facilities. Funding for projects is distributed to the Areas based on an allocation formula that takes into account the relative needs identified in each Area's SDS inventory. The Sanitation Facilities Construction (SFC) program employs a cooperative approach for planning, designing, and constructing sanitation facilities serving American Indian and Alaska Native communities. Each project is initiated at the request of a Tribe or Tribal Organization, and coordination is maintained throughout project planning, design, and construction.

The SFC Program works collaboratively with Tribes to strive toward providing all American Indian and Alaska Native homes and communities with safe and adequate water supply and waste disposal facilities. The residents of these homes will benefit from reduced health care cost associated with water-related illnesses. The IHS estimated in FY 2022 that every \$1 in funding provided for sanitation facilities resulted in \$0.68 in avoided medical cost related to inpatient and outpatient visits related to respiratory, skin and soft tissue, and gastro enteric disease.

At the end of fiscal year (FY) 2022 about 5,906, or 1.6 percent of all American Indian and Alaska Native homes tracked by IHS lacked water supply or wastewater disposal facilities; and, about 113,749 or approximately 30 percent of American Indian and Alaska Native homes tracked by IHS were in need of some form of sanitation facilities improvements. Many of these homes without service are typically located in remote locations such as on the Navajo Nation and in some remote Alaska Native Villages. In addition to operational challenges, the capital cost to construct these facilities are significantly higher than the provision of similar facilities in other geographic locations. Additionally, the cost burden associated with operation and maintenance of these facilities usually exceeds the capacity of the Tribal utility to generate sufficient revenue from the system users to support ongoing operation.

As mentioned, sanitation projects are tracked in the SDS. The list of sanitation projects in the SDS is not static. In collaboration with Tribes, the IHS annually updates the SDS project list to account for newly identified sanitation deficiencies and to update cost estimates due to increases related to inflation, labor and material costs, and project scope changes.

At the end of calendar year (CY) 2022, the SDS included 1,369 projects. Of this total, 751 projects were feasible and 618 projects were infeasible with a combined total database cost estimated at \$4.4 billion in eligible costs and an additional \$1.1 billion in ineligible costs that will have to come from other non-IHS funding resources.

Ineligible costs are the costs associated with serving commercial, industrial, or agricultural establishments, including nursing homes, health clinics, schools, hospitals, hospital quarters, and non-American Indian and Alaska Native homes. The Sanitation Facilities Construction Act prevents the IHS from using its appropriations for these costs. However, the IHS regularly partners with Tribes and other Federal Agencies to identify alternative resources to successfully support these ineligible costs. If our Federal funding partners are not able to contribute financial support for the projects that have IHS ineligible costs, those projects will not be fully funded and cannot be completed if the Tribe does not have the financial capability to fund the ineligible portion of the project.

Economically infeasible projects are those that exceed a per unit cost set for each IHS Area, and three different regions within the IHS Alaska Area. While there was not a statutory barrier to funding economically infeasible projects, the IHS had not been able to fund these projects in light of limited annual appropriations before the IJA was enacted and had to prioritize those which were economically feasible. The IJA provides \$2.2 billion for economically infeasible projects.

The IHS categorizes SDS projects into three Tiers depending on a project’s progress toward completing planning activities.

- Tier 1 projects are considered ready to fund because planning is complete. However, design and construction contract document creation activities are not yet complete for current Tier 1 projects. These projects then move through the design and construction contract document creation steps before a construction contract can be initiated through Federal or Tribal procurement methods.
- Tier 2 projects are projects that have a level of engineering assessment completed, such that the deficiency is understood and a recommended solution has been analyzed and scoped; these projects have a cost estimate and design parameters that are accurate within plus or minus 25 percent.
- Tier 3 projects are projects with cost estimates and design parameters that do not have a specific accuracy target, but are based on the best information available at the time of submission. These projects demonstrate that an eligible deficiency has been identified, but the Area may not have determined the recommended solution.

The IHS also assigns a Deficiency Level to each project in the SDS. Deficiency Levels are assigned in accordance with section 302(g)(4) of the Indian Health Care Improvement Act (IHCA) (25 U.S.C. § 1632(g)(4)) for each sanitation facilities project that has been identified as a need to support Indian Tribes and communities. The Deficiency Levels are explained in the table below.

Sanitation Deficiency Level	Description
V	An Indian tribe or community that lacks a safe water supply and a sewage disposal system.
IV	An Indian tribe or community with a sanitation system that lacks either a safe water supply system or a sewage disposal system.
III	An Indian tribe or community with a sanitation system that has an inadequate or partial water supply and a sewage disposal facility that does not comply with applicable water supply and pollution control laws, or has no solid waste disposal facility.
II	An Indian tribe or community with a sanitation system that complies with all applicable water supply and pollution control laws, and in which the deficiencies relate to capital improvements that are necessary to improve the

	facilities in order to meet the needs of such tribe or community for domestic sanitation facilities.
I	An Indian tribe or community with a sanitation system that complies with all applicable water supply and pollution control laws, and in which the deficiencies relate to routine replacement, repair, or maintenance needs.
0	No deficiencies to correct.

SFC projects can be directly operated by the IHS through Federal Acquisition Regulation contracts or through Tribal procurement. Tribes can directly operate SFC projects through Indian Self-Determination and Education Assistance Act construction contracts (25 C.F.R. 900 Subpart J, 42 C.F.R. 137 Subpart N).

Infrastructure Investment and Jobs Act

Research supported by the Centers for Disease Control and Prevention states populations in regions with a lower proportion of homes with water service, reflect significantly higher hospitalization rates for pneumonia, influenza, and respiratory syncytial virus.¹ Researchers associated the increasing illnesses with the restricted access to clean water for hand washing and hygiene. The IJA supports the construction of water, wastewater, and solid waste facilities in American Indian and Alaska Native tribes and communities. The IHS support for these facilities is an integral component of IHS disease prevention activities.

The IJA appropriated a total of \$3.5 billion to the IHS SFC program. The IJA includes \$700 million annually from FY 2022 through FY 2026 which includes a maximum 3 percent (\$21 million) set-aside for salaries, expenses, and administration each year. This set-aside is limited to Federal costs only. It also directs the IHS to provide 0.5 percent (\$3.5 million) each year to the Office of Inspector General for oversight of these funds. Finally, the IJA directs the Agency to use up to \$2.2 billion of the \$3.5 billion appropriation on economically infeasible projects providing an opportunity to address longstanding, unmet needs in many tribal communities. As required by the bill, IHS will update the Congressional spend plan for these funds annually through FY 2026.

FY 2022 Bipartisan Infrastructure Law Funding Allocations

Since President Biden signed the Infrastructure Investment and Jobs Act, the Administration has prioritized results and is making key progress towards implementation. Last year, on May 31, 2022, the IHS announced the FY 2022 allocation decisions for \$700 million appropriated to the IHS in the IJA.

The IHS conducted 3 virtual tribal consultations on the IJA from November 22, 2021, to January 5, 2022, and based on review and consideration of input received through tribal consultation, the IHS decided to use current SDS data and the agency’s existing funding

¹ Thomas W. Hennessy, Troy Ritter, Robert C. Holman, Dana L. Bruden, Krista L. Yorita, Lisa Bulkow, James E. Cheek, Rosalyn J. Singleton, and Jeff Smith. The Relationship Between In-Home Water Service and the Risk of Respiratory Tract, Skin, and Gastrointestinal Tract Infections Among Rural Alaska Natives. American Journal of Public Health: November 2008, Vol. 98, No. 11, pp. 2072-2078.

mechanisms to allocate these resources. This includes IHS direct service projects funded through Federal Acquisition Regulations contracts or tribal procurement, and Indian Self-Determination and Education Assistance Act construction contracts.

The FY 2022 allocation decisions align with recommendations from tribal leaders to prioritize funding for projects that have completed the planning phase and can be immediately placed into the design and construction phase, and to provide sufficient funding for planning and design activities to get projects ready to fund.

FY 2023 Bipartisan Infrastructure Law Funding Allocations

On September 7, 2023, the IHS announced the FY 2023 allocation decisions for \$700 million appropriated to the IHS in the IIJA.

The IHS conducted a virtual Tribal Consultation on the IIJA on April 12, 2023, and accepted written comments through April 28, 2023.

The IHS will allocate approximately \$612.6 million in FY 2023 IIJA funding for Tier 1 project construction costs. When combined with FY 2023 annual SFC appropriations, the IHS will fully fund construction costs for 197 Tier 1 projects. These Tier 1 projects span Deficiency Levels 2 through 5.

This allocation also includes 68 economically infeasible Tier 1 projects, totaling \$496.6 million in eligible costs.

Since design activities and construction contract document creation activities have not been completed for current Tier 1 projects, these steps must be finalized before a construction contract can be initiated through Federal or Tribal procurement methods. The IHS is allocating approximately \$28.9 million in FY 2023 IIJA funding to support contracts with architecture and engineering firms to complete design and construction document creation activities for Tier 1 projects.

The IHS will use FY 2023 annual SFC appropriations to support additional planning, design, and construction document creation activities for Tier 2 projects. The SDS currently includes 589 Tier 2 projects, totaling approximately \$2.5 billion.

The IHS will allocate \$65.5 million in FY 2023 IIJA funding to address potential project shortfalls, and to support additional planning, design, and construction document creation activities. Project shortfall funding is needed to support previously funded SFC projects that exceeded the original project budget due to increased construction costs driven by inflation and supply chain constraints.

Sanitation Facilities Construction Workforce and Support Resources

Historically, the IHS has received limited program support resources to address the SFC project workload. SFC project funding has increased since FY 2018, and the IIJA funding has

significantly increased the SFC workload. However, the IJA limits funding for program support activities to 3 percent per year. Given this limitation, it is possible that the average project duration could be greater than the current average project duration of 3.6 years. The IJA also restricts program support funding to federal activities, which means that Tribes that operate their SFC projects directly cannot access these needed administrative resources.

To address the need for administrative support, the FY 2024 President's Budget requests an additional \$49 million in Facilities and Environmental Health Support resources to support IJA implementation. This funding would be available for federal activities and to Tribes who compact or contract under the Indian Self-Determination and Education Assistance Act to implement SFC projects, unlike the administrative set-aside in the IJA. This investment is critically necessary to maintain existing project completion deadlines and ensure successful implementation of IJA resources.

As with much of our work to deliver care and services in Indian Country, IHS has encountered some familiar challenges, including workforce recruitment and retention. The IHS is leveraging multiple strategies and available authorities to support IJA recruitment, hiring, and project execution. The IHS has centralized SFC recruitment and hiring at the headquarters level to streamline processes. The IHS is also implementing a recently approved Office of Personnel Management (OPM) waiver to allow it to pay recruitment, relocation, and retention incentives of up to 50 percent for certain engineers and is working with OPM to support the development of marketing tools. The IHS is maximizing other partnerships by collaborating with the American Indian Science and Engineering Society to recruit recent graduates; using an Inter-Agency Agreement with the U.S. Army Corps of Engineers to provide planning, design, and/or construction support; and formalizing a partnership with the Department of the Interior Bureau of Reclamation (BOR) to leverage BOR's Inflation Reduction Act funds.

We look forward to continuing our work with Congress related to the SFC program and the use of IJA funds to make improvements in tribal communities. We are committed to working closely with Tribes and we understand the importance of working with other stakeholders and partners to address the needs of American Indians and Alaska Natives.