

**WATER AS A TRUST RESOURCE: EXAMINING  
ACCESS IN NATIVE COMMUNITIES**

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**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE**

ONE HUNDRED EIGHTEENTH CONGRESS

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# **WATER AS A TRUST RESOURCE: EXAMINING ACCESS IN NATIVE COMMUNITIES**

**WEDNESDAY, SEPTEMBER 27, 2023**

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:35 p.m. in room 628, Dirksen Senate Office Building, Hon. Brian Schatz, Chairman of the Committee, presiding.

## **OPENING STATEMENT OF HON. BRIAN SCHATZ, U.S. SENATOR FROM HAWAII**

The CHAIRMAN. Good afternoon. We will call the hearing to order.

Access to clean, reliable water is essential for the health and well-being of all people in the United States. But this access is under increasing threat, and the need to find solutions is urgent.

Families and communities across the Country face daily risks to safe, affordable, and reliable water supplies. That is why this Committee, along with the Energy and Natural Resources and Environment and Public Works Committees coordinated hearings to examine the ongoing challenges to clean water access.

For too many Native communities, the total lack of access to clean and safe drinking water and sanitation facilities is an everyday reality. An estimated 2 percent of Native homes lack access to safe water supply or wastewater disposal facilities, as compared to less than 1 percent of all homes in the United States.

Native households are 19 times more likely than non-Native households to lack indoor plumbing. Approximately 29 percent of Native homes need sanitation improvements.

These statistics are not just numbers on a page. They reflect real threats to the health, safety, and well-being of Native peoples living on Indian reservations, on Hawaiian homelands, and Alaska Native villages.

The COVID-19 pandemic ripped the band-aid off and exposed these inadequacies, spurring Congress to act with urgency. So over the last two and a half years, Congress and this Committee worked hard to address water insecurity in Native communities, resulting in the Bipartisan Infrastructure Law and the Inflation Reduction Act.

These landmark laws cleared longstanding water and sanitation infrastructure backlogs by delivering \$3.5 billion to IHS for critical water and sanitation infrastructure, \$2.5 billion to fully fund exist-

ing water rights settlements, and millions of dollars in dedicated funding for drought mitigation in Native communities.

Today, we will hear from our witnesses on how the Bipartisan Infrastructure Law and the IRA are addressing water access disparities. We will learn about the work we still have to do to protect water as a trust resource and secure access for all Native communities.

Let's be clear: ensuring water access is not just the right thing to do. It is the Federal Government's trust and treaty responsibility. It is our legal obligation, not just to reserve rights, but to live up to our promises and take affirmative steps to secure this access to the best of our ability.

Before I turn to the Vice Chair for her opening statement, I would like to extend my aloha to Chairman Kali Watson, and my many thanks to our witnesses for joining us today.

Vice Chair Murkowski?

**STATEMENT OF HON. LISA MURKOWSKI,  
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman. I really am appreciative that we are having this hearing today. You have outlined the case, the priorities. But for most of us here in this Country, filling up our glass with tap water or washing our hands is pretty commonplace. But as we know, unfortunately, it is not the case for far too many of our Native communities.

According to the IHS, one in ten Native Americans lacks access to clean water or indoor plumbing. It is often the case that tribal members in remote communities pay a premium to haul water to their homes by truck or barge. Others fill drums with river water or rain water that oftentimes fails to meet water quality standards.

In Alaska, roughly 20 percent of Native homes don't have an adequate supply of clean water or a connection to a sewer system. There is an estimated 3,000 homes in 34 villages that are completely without basic indoor plumbing. I have been to many of these communities. Many of these underserved communities use communal facilities that are called washeterias. It is where you go to wash your clothes, it is where you go to take a shower for your family. So if you have a husband and wife and four or five kids, and you are living in a village of 350 people, and you have a washeteria that has four washers, four dryers, maybe they all work, usually, they don't. Usually in these washeterias the showers, many of them are not operational. I have gone to certain villages where the entire washeteria has been closed for the past year.

So when you think about what does that mean, what does that mean just from your own personal sanitation, how you keep your kids clean, how you make sure that you are able to really meet some pretty basic needs? Instead of flushable toilets in so many of these homes, they have a system that we call a honey bucket. A honey bucket is no more sophisticated than basically a Home Depot bucket that is sitting in the corner. Sometimes there is a screen around it.

I think for most in this room today you can't imagine what it means to basically collect your human waste in a bucket and have

somebody empty it. I have been to many of these villages. I have shared a story with many back home of being in one village, I asked to use the facilities before we left the community center and I was told they don't have any in the community center, but I was invited to go over to the mayor's mom's home, which was not too many homes down.

I went in and was directed to a corner in a kitchen right next to the stove, toilet paper sitting on top of the stove. And there was the bucket in the corner. The mom and a daughter were sitting at the table beading, without interruption, because this was just a function of life.

I share it because it should shock us as Alaskans. It should shock us as Americans that basic, basic matters like safe water, drinking water, basic sanitation needs are still so unmet in so many places. That can be a hazard to public health. We can recount what it meant during COVID time to not be able to properly wash your hands.

It is not just the water, sewer and washing your hands with COVID, studies show that infants in the Yukon Kuskokwim Delta are up to 11 times more likely to be hospitalized for respiratory infections and pneumonia than those with access to piped water.

Mr. Chairman, you mentioned the Bipartisan Infrastructure Law and the historic investment that was made in sanitation system construction. We are seeing some improvement, we are starting to see some gains, connecting homes to sewer and water treatment systems in villages like Akiachak and Stebbins. Stebbins, they have been waiting for water there for 40 years.

I was there earlier this year, and I asked, it has taken 40 years, when are we going to see running water, when are we finally going to see it? I was told, it is going to be a little bit more time, even with the funding, it is going to take maybe a couple of years.

I thought that the people in that community meeting would be outraged that it was going to take a couple of years. One man said to me, you know, I have waited 40 years, I can wait another couple of years. That was his comment.

When I went and talked to the women at the back of the room who had been waiting to be able to have an easier way to wash clothes, not have to haul water to do the dishes, to wash their family, they were like, hurry it up.

But we are seeing things moving. In Kipnuk, in Tuluksak, in Tununak, in Wales, this is going to be a big step forward.

But we know Native communities are going to face additional challenges to water and sanitation infrastructure. Erosion and melting permafrost are damaging rural water systems actually faster than we can rebuild them. EPA's latest tribal needs survey estimates that \$4 billion is needed for tribal water systems over the next 20 years, nearly \$1 billion in Alaska alone.

Projects constructed today will require recapitalization in they ears ahead. Of course, inflation is driving up the costs of labor and materials for tribes that operate and maintain these systems.

Earlier this year, I asked GAO to conduct a study on agency support for tribal O&M costs. My understanding is that the GAO is going to start work on that request within the next few weeks. I

am looking forward to those findings and recommendations from that work.

This issue requires a whole-of-government approach. I am glad that both the ENR and EPW committees here in the Senate are also looking at water issues. One committee, though, Mr. Chairman, you and I have talked about and we are engaging with them on, is the Agriculture Committee with the Farm Bill right around the corner here. But there are, under USDA, eight grant and technical assistance programs specific to tribes along with many other water programs at Rural Development and Rural Housing Service. That is yet another opportunity for us.

Mr. Chairman, again, I thank you for the hearing today. I am looking forward to hearing from our panel about ways that we can optimize all of these programs across the Federal Government to ensure that Native people have access to affordable, clean water and basic sanitation, something that every person deserves.

That concludes my opening. I am happy to introduce our Alaskan witness when it is appropriate. I am happy that we are here today. Thank you.

The CHAIRMAN. Thank you very much, Vice Chair Murkowski.

I will now introduce the witnesses. We have the Honorable Bryan Newland, the Assistant Secretary for Indian Affairs at the Department of the Interior. We have Mr. Benjamin Smith, Deputy Director at IHS, at the U.S. Department of Health and Human Services. We have Crystalne Curley, the Speaker of the Navajo Nation Council in Arizona. My friend, Kali Watson, the Chairman of the Hawaiian Homes Commission and the Director of the Department of Hawaiian Home Lands. And Professor Heather Tanana, Professor Heather Tanana, Initiative Lead, Universal Access to Clean Water for Tribal Communities Project in San Clemente, California.

Vice Chair Murkowski, if you would like to introduce your witness.

Senator MURKOWSKI. Thank you, Mr. Chairman.

Valerie Davidson is going to be joining us virtually from Anchorage. She is the President and CEO of the Alaska Native Tribal Health Consortium. She was born in Bethel; she is an enrolled tribal citizen of the Orutsararmiut Traditional Native Council. Val is part of OTNVC, and she has been not only an extraordinary leader for us in the Alaska Native communities, but she previously served as our Lieutenant Governor for the State of Alaska. I am pleased to be able to welcome Val Davidson.

Senator SCHATZ. Thank you.

Okay, before we get started, both of our Federal witnesses submitted written testimony well after the Committee deadline. We have a Committee rule that requires Federal witnesses who fail to timely file their written testimony, that they explain their reason for tardiness.

We have done this before. I usually wait, I don't want to sit here and chew you out for being late, but I just want you to understand, this actually does impede the work. This isn't some arbitrary administrative requirement. I can't see your testimony when I am prepping for the hearing. That is not a trivial thing. That means none of the Committee memos can be finished, that means that



members are not briefed, that means the Vice Chair doesn't have the information she needs.

So I am going to ask a couple of specific questions. Assistant Secretary Newland, you have to go through an interagency process, correct?

Mr. NEWLAND. Yes.

The CHAIRMAN. Where is the holdup? Which agency?

Mr. NEWLAND. Mr. Chairman, we have had some challenges with our colleagues at the Department of Justice getting timely review of our testimony.

The CHAIRMAN. When you have been late in the past, has it been Justice every time?

Mr. NEWLAND. I can't answer that question.

The CHAIRMAN. Well, let me say it another way, because I know you are careful. Has this happened before with the Department of Justice in the interagency process?

Mr. NEWLAND. Yes.

The CHAIRMAN. Is it usually them?

Mr. NEWLAND. It has often been the Department of Justice, Mr. Chairman.

The CHAIRMAN. Mr. Smith?

Mr. SMITH. Thank you very much, Senator, for the reminder. We certainly want to work as expeditiously as possible. To your points about being timely, we certainly want to make sure that our information is correct as well. That interagency collaboration is just essential.

The CHAIRMAN. I get all that. But were you guys on time and another agency held you up?

Mr. SMITH. This is really a team approach when it comes to—

The CHAIRMAN. Come on. I am asking you a direct question about a violation of the Committee rules. I don't need a talking point. I just want to know where the holdup is. No one is going to jail over this. I need to know where the problem is so we can talk to them and say, could you please prioritize the Senate Committee on Indian Affairs, so that we can conduct our business.

So is it DOJ with you guys too?

Mr. SMITH. I honestly cannot pinpoint an agency, but I will take it back.

The CHAIRMAN. Can you consider that a question for the record? This is not something that should take two weeks for you to get back to us about. I just want to know where the holdup is. We have friends in most of the agencies. There is an Office of Legislative Affairs. I am not even sure they are entirely aware that they are the holdup.

It is not your job to cover for anybody. I am being the jerk here, I am saying, who is the holdup. So you have to tell me who the holdup is, so we can follow up, so I don't have to waste time and the Committee doesn't have to waste its breath on such a goofy little thing. But on the other hand, I need the testimony in time. So, onward. Thank you.

Mr. SMITH. Understood. Thank you.

The CHAIRMAN. Secretary Newland, please proceed with your testimony.

**STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. NEWLAND. Thank you, Mr. Chairman. Boozhoo, good afternoon, Chairman Schatz, Vice Chair Murkowski and members of the Committee. I am pleased to be here again to present the department's views on access to water in Native communities.

As you noted, Mr. Chairman, the United States acts as a trustee for the land and water rights of Indian people. The United States has a trust responsibility to Indian tribes and Indian people and has charged itself with obligations of the highest responsibility and trust. These obligations are at their greatest when it comes to protecting the ability of tribes and their citizens to continue to exist on their homelands.

The President's Administration recognizes that water is necessary for Indian people to lead healthy, safe, and fulfilling lives on their homelands. This Administration also recognizes that longstanding water crises continue to undermine public health and economic development in Indian Country.

We strongly support the resolution of Indian water rights claims through negotiated settlements. These settlements protect the senior water rights reserve by tribal nations and help ensure that citizens of these nations have reliable and safe water. These settlements also help fulfill the United States' trust responsibility to tribes.

We also know that water plays an important role in the Native Hawaiian community. The Native Hawaiian community has asserted its water rights through specific and sometimes prolonged litigation with private water users and the State of Hawaii. Through our historical role and expertise in protecting Indian water rights, the department seeks to examine the nature and extent of water rights available for Hawaiian homelands and for Native Hawaiian traditional and customary rights and practices.

One way the Federal Government and the Administration has demonstrated its commitment to meeting its trust obligation is by negotiating settlements of Indian water rights claims and working with Congress to them enacted into law. These settlements lead to real change on the ground in tribal communities.

To date, the Biden-Harris Administration has invested more than \$3.1 billion toward fulfilling the terms of enacted Indian water rights settlements. This includes more than \$2.2 billion from the Indian Water Rights Settlement Completion Fund enacted under the Bipartisan Infrastructure Law.

Building on investments under that law, the President recently submitted a proposal to the Senate and the House for mandatory funding over ten years to fund Indian water rights settlements. This includes \$250 million per year to expand the Indian Water Rights Settlement Completion Fund, which will cover the costs of enacted and future water rights settlements. It also includes \$34 million per year for ongoing costs, including O&M associated with those settlements.

The Inflation Reduction Act provided \$550 million for the Bureau of Reclamation to tackle issues relating to water access for disadvantaged communities. This funding can be used for planning,

design or construction of water projects to provide domestic water supplies to communities that don't have reliable access to them.

The IRA also provides a unique authority and opportunity for the department. The Bureau of Reclamation generally requires a cost-share and/or repayment. But the IRA allows Reclamation to provide up to 100 percent of the cost of planning, design, or construction of water projects. This flexibility will benefit communities that do not have reliable access to domestic water supplies. Since enactment, Reclamation has worked with tribes and stakeholders across the west to understand how to implement this funding to benefit disadvantaged communities.

Lastly, I want to highlight two cases where we have been able to use funds from the Bipartisan Infrastructure Law to deliver clean drinking water to communities in Indian Country. At Hopi, we have invested more than \$25 million in funding from this law to install new drinking water infrastructure. This will connect communities and homes to the Hopi arsenic mitigation project, which is a regional water supply system that brings safe drinking water to the Hopi reservation.

We are also investing more than \$3 million in Bipartisan Infrastructure Law funding to improve drinking water at treaty fishing access sites in Oregon and Washington along the Columbia River. We have already used this money to install a new drinking water well at the Cook site in Washington, which has allowed us to work with EPA to lift an administrative order for that site. We are planning additional investments in drinking water wells and improvements at other sites.

I want to thank you, Mr. Chairman, Madam Vice Chair, for the opportunity to present the department's views today. I have submitted longer written testimony for the record, and I appreciate the opportunity to answer your questions.

[The prepared statement of Mr. Newland follows:]

PREPARED STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Aanii (Hello)! Good afternoon, Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the U.S. Department of the Interior (Department). Thank you for the opportunity to present the Department's testimony at this important oversight hearing, "Water as a Trust Resource: Examining Access in Native Communities."

### **Introduction**

The United States acts as a trustee for the land and water rights of Tribes, American Indians, and Alaska Natives. The United States has a trust responsibility to Indian Tribes and Indian people and consistent with that has charged itself with moral obligations of the highest responsibility and trust. These obligations are at their greatest when it comes to protecting the ability of Tribes, and their citizens, to maintain their existence on lands the United States holds in trust for their benefit.

The Biden Administration recognizes that water is essential for people to lead healthy, safe, and fulfilling lives on Tribal lands. Water is the among the most sacred and valuable resources for Tribal nations.

The Administration further recognizes that long-standing water crises continue to undermine public health and economic development in Indian Country. The Administration strongly supports the resolution of Indian reserved water rights claims through negotiated settlements. Indian water settlements protect the senior water rights reserved by Tribal Nations and help ensure that the citizens of these Nations have reliable and safe water for drinking, cooking, and sanitation; improve the pub-

lic health and environment on reservations; enable economic growth; promote Tribal sovereignty and self-sufficiency; and help fulfill the United States' trust responsibility to Tribes.

Within the Department, the Office of Native Hawaiian Relations is responsible for discharging the Secretary's responsibilities in administering the United States' relationship with the Native Hawaiian Community. Water plays an important role in the Native Hawaiian Community. That Community has a saying "*Ola i ka wai*" which translates to water (*wai*) is life (*ola*), and the importance of water is expressed in other words such as *waiwai* which means valuables or wealth and *kānāwai* which means laws and codes and literally translates to "belonging to the waters" as traditional laws regulated the water systems. While the Native Hawaiian Community has asserted its water rights through specific and sometimes prolonged litigation with private water users and the State of Hawai'i, through its historical role and expertise in protecting Indian water rights, the Department seeks to examine the nature and extent of water rights available for Hawaiian home lands and for Native Hawaiian traditional and customary rights and practices.

Below is a discussion of some of the ways that we are meeting our obligations to Tribes to ensure access to this critical resource.

### **Water Rights Settlements**

Indian water rights settlements are one of the many areas in which the Department is working to uphold the federal government's trust responsibilities to Tribes. These settlements help ensure that Tribal Nations have safe and reliable water supplies that provide the foundation for future economic development. The Secretary's Indian Water Rights Office manages the Department's Indian Water Rights Settlement Program. Since 1978, the Department has entered into 35 Congressionally-enacted Indian water rights settlements. Water rights settlements typically quantify Tribal water rights, identify water supplies available to satisfy those rights, and provide funding for water-related infrastructure and other purposes. When determining sources and quantity of water, drought and climate change are considerations, especially now that we are experiencing significant drought in many areas.

Settlements often include mechanisms to address drought and climate change. For example, the Arizona Water Settlements Act of 2004 (AWSA), involving water rights of the Gila River Indian Community and the Tohono O'odham Nation, allows for underground storage of surface supplies when surface water is not immediately needed so that that stored water can be accessed in times of shortage. In addition, AWSA, the White Mountain Apache Tribe Water Rights Quantification Act of 2010, and the Hualapai Tribe Water Rights Settlement Act of 2022 each require the Secretary and the State of Arizona to provide specific quantities of "firmed" Central Arizona Project water. Through "firming," the Tribes receive delivery of higher priority water during times of shortage. An additional drought mitigation tool is surface storage. Several settlements include funding for the construction of surface water storage facilities for use by Tribes. One such example is the White Mountain Apache Tribe Water Rights Quantification Act of 2010, which authorizes the construction of a rural water project, including a reservoir, to serve the White Mountain Apache Tribe. Some settlements, such as the Navajo-Utah Water Rights Settlement, provide funding for on-farm efficiencies intended to increase conservation and thereby make additional water available for domestic purposes. Finally, settlements often include funding to rehabilitate and modernize Indian irrigation projects. As discussed below, improvements to irrigation can conserve water by making these projects more efficient.

Investments in Indian water rights settlements lead to real change on the ground for Tribal communities. To date, the Biden-Harris Administration has invested more than \$3.1 billion towards fulfilling the terms of enacted Indian Water Rights Settlements. This includes more than \$2.2 billion from the Indian Water Right Settlement Completion Fund (Completion Fund) enacted under the Bipartisan Infrastructure Law (BIL).

Building upon investments in the BIL, the Biden-Harris Administration recently transmitted a proposal to the Senate and House for \$250 million annually in mandatory funding over 10 years to expand the Indian Water Rights Settlement Completion Fund to cover the costs of enacted and future water rights settlements and \$34 million annually in mandatory funding over 10 years for ongoing costs including operations and maintenance costs associated with enacted water settlements. These annual requirements are associated with the Ak Chin Indian Water Rights Settlement Project, the Animas-La Plata Project (Colorado Ute Settlement), the Columbia and Snake River Salmon Recovery Project (Nez Perce Settlement), and the Navajo-Gallup Water Supply Project. Providing a stable, dedicated funding source for Indian water rights settlements helps to ensure these commitments are honored and

Tribal communities have safe, reliable water supplies to support public and environmental health and economic opportunity.

### **Bureau of Indian Affairs (BIA) Drought Mitigation Efforts**

#### *Tribal Climate Resilience Program*

Since 2011, the Tribal Climate Resilience Program (TCR) has awarded over 35 projects that address Tribal specific Drought Plans and Vulnerability Assessments. TCR has funded around \$1 million in Drought Vulnerability assessments for Tribes to conduct studies and assess impacts on their lands and people. TCR also funded \$4 million to Tribes to identify drought mitigation strategies for the future. In 2022, TCR awarded two implementation projects addressing drought specific impacts: \$1.6 million for the installation of infrastructure for water recirculation at a Tribal hatchery and \$999,436 for rangeland water improvement. TCR is part of three Drought Working Groups across the nation and have attended five technical meetings that deal with drought specifically.

#### *Irrigation Programs*

Many of the Indian Irrigation projects were designed and constructed over a hundred years ago, long before drought mitigation became a concern. The old infrastructure and the design of the Irrigation projects themselves need to be modernized to adapt to less available water for irrigation. To mitigate drought effects, BIA is incorporating state-of-art modernization concepts that modify existing facilities to improve water management and improve irrigation service to customers. Examples of drought mitigation projects include transitioning from open channel canals to pipelines, or using canal liners, to reduce evaporation and seepage. BIA is also advancing the concept of small, re-regulating reservoirs to store irrigation water within the project boundaries, which improves water use efficiency during droughts. BIA is increasing utilization of SCADA (Supervisory Control and Data Acquisition) systems, which use computers to control, monitor, and analyze water usage rather than relying on a ditch rider to open and close water control gates. SCADA helps mitigate effects of water shortage due to drought by improving operations.

Recent modifications to pumping plants at the Fort Peck Irrigation Project in Montana will improve water supply to the Project, especially during times of low flow in the Missouri River. Uintah and Flathead Irrigation Projects are converting open channel canals to pipelines, which eliminates seepage and evaporation. BIA is currently working with the Colorado River Indian Tribes on a proposed re-regulating reservoir at the Colorado River Irrigation Project in Arizona to allow BIA to better manage water within the Project and reduce the impacts of drought.

#### *Colorado River Indian Tribes Water Resiliency Act*

The BIA is implementing P.L. 117-343, the Colorado River Indian Tribes Water Resiliency Act, with the Colorado River Indian Tribes (CRIT) and the Bureau of Reclamation to establish water conservation and leasing agreements which will make Tribal decreed water available for drought mitigation in the Lower Colorado River Basin. P.L. 117-343 authorized permanent authority for CRIT to enter into lease or exchange agreements, storage agreements, and agreements for reductions in consumptive use (e.g., conserved water) of CRIT's Arizona decreed water allocation in the Lower Colorado River Basin in Arizona. The Department, CRIT, and the State of Arizona are in the process of finalizing the three-party agreement required for implementation of P.L. 117-343.

#### *San Carlos Irrigation Project-Power Division (SCIP)*

Reductions in hydropower generation in the Lower Colorado River Basin due to years of drought and extremely low water levels available to generate hydropower negatively impact the cost of SCIP's power purchase contracts. Recent extreme weather events in Texas, wildfires in California and other factors outside of BIA's control, such as spikes in natural gas prices, also impacted the purchase power market available to SCIP. Recent spikes in the cost of purchased power created significant funding shortfalls for SCIP. As a result, the BIA increased rates charged to its customers to meet the new purchase power requirements and continue normal operation and maintenance of SCIP facilities. SCIP has not had its own hydro-generation for several decades and relies solely on power purchases to serve its customers. BIA has little or no access to renewable energy sources to mitigate drought impacts. The BIA, Tribes, and customers would all benefit from the development of large-scale renewable power generation projects which could be the source of a long-term power supply commitment for SCIP.

### *Water Resources Programs*

The Branch of Water Resources provides funding for necessary technical research, studies, and other information for Indian Tribes to serve as informed and prudent managers of their water resources. Water supplies and availability are under stress on multiple Tribal reservations and/or jurisdictions across the United States. Some of these areas have longstanding issues related to water stress such as the Colorado River and the Rio Grande River Basins, and these challenges are likely to increase with development and climate change. The Branch has provided project funding to aid Tribes in assessing their water supply vulnerabilities during drought. These projects include the preparation of comprehensive reservation water management and development plans, interagency drought management plans, and technical assessments to define and characterize Tribal water resources. Projects to fund stream gauging systems have provided groundwater, surface water and reservoir water data to aid Tribes in management decisions regarding water supply management during all stages of drought.

### *Improvement of Bureau of Indian Affairs and Hopi Public Water Systems*

To address groundwater supplies with naturally occurring elevated arsenic concentrations, the Hopi Tribe (Tribe) implemented a regional water supply delivery system termed the “Hopi Arsenic Mitigation Project” (HAMP). HAMP involves the construction of wells at the Turquoise Trail region and the installation of water lines to the areas of First Mesa and Second Mesa.

To address challenges with arsenic treatment, and to assure drinking water quantity and quality with the BIA public water systems (PWSs) serving Hopi communities, the BIA initiated a process to connect the BIA PWSs to the HAMP or regional water supply, increase the capacity of the HAMP, and to update the BIA-owned water delivery infrastructure. This process involves BIA and Hopi Tribal partnerships in the design and construction of drinking water delivery infrastructure related to connecting BIA assets to HAMP to include expanding the capacity of the HAMP; and upgrading BIA assets so that these assets are in acceptable condition for transfer to the Tribe.

The Department has invested \$10.48 million in annual appropriations and \$15.366 million BIL funding to accomplish the replacement of old water infrastructure with new state of the art infrastructure as well as the addition of new water infrastructure, enhancing the HAMP/existing regional water supply.

Successes completed and planned include: (1) strengthening the Hopi Tribal government’s utility program; (2) historic investment in the Hopi community to help bolster community resilience and replace aging infrastructure; (3) the provision of superior quality drinking water to Hopi communities; (4) improving the safety and reliability of water to Hopi communities; (5) the provision of the effective use and management of trust resources/groundwater for the next 50 years; and (6) the transfer of water infrastructure assets, and the operation and maintenance of those assets to the Tribe.

With these accomplishments, the Department demonstrates a new vision on leveraging the resources of the federal government to help the Hopi community. Funding is essential to advancing, supporting, and empowering the Tribe. These investments ensure operational, efficient, and resilient water systems, protect Hopi communities, and fulfill the Department’s trust responsibilities.

### *Columbia River*

Drought increases impact on water quantity and quality of the rivers Indian Tribes rely on for economic, subsistence and cultural activities. From 2017 to 2023, the BIA doubled the amount of funding from approximately \$5 million to approximately \$10 million to the Columbia River Columbia River Inter-Tribal Fish Commission (CRITFC) to ensure Tribal access to the river and support a healthy fishery resource. In addition to annual appropriations, the BIA also awarded \$2.5 million in BIL water sanitation funding to CRITFC to upgrade critical water and sanitation needs that will ensure safe drinking water. With these annual appropriations, the BIA continues to work on multiple Treaty Fishing Access Sites (TFAS) and In-Lieu Fishing Sites, including Cooks In-Lieu and North Bonneville TFAS.

### **Bureau of Reclamation Drought Mitigation**

The BIL and Inflation Reduction Act (IRA) provided substantial funding to help Reclamation advance its mission. Combined, these laws represent the largest investments in climate resilience in the nation’s history and provide unprecedented resources to support the Administration’s comprehensive, government-wide approach to make western communities more resilient to drought and climate change. For Reclamation, this includes a \$13 billion total investment in western water infra-

structure as well as a share in executing the \$2.5 billion for authorized water rights settlement projects. These additional resources made available by Congress have significantly increased Reclamation's efforts to mitigate for drought while advancing substantial investments to increase water access for underserved communities.

Section 50231 of the IRA provided \$550 million specifically to tackle the issue of water access for disadvantaged communities—allowing for Reclamation to provide funding for planning, design, or construction of water projects to provide domestic water supplies to communities or households that don't have reliable access to domestic water supplies. The funding provided under Section 50231 provides a unique authority and opportunity for Reclamation—while Reclamation's analogous authorities generally require a cost share and/or repayment, this section allows for us to provide up to 100 percent of the cost of the planning, design, or construction of water projects. Reclamation expects this flexibility to significantly benefit communities that do not have reliable access to domestic water supplies and may require additional funding assistance. Since enactment, Reclamation has worked with Tribes and stakeholders across the west to understand how to best implement this funding and ensure that the federal investment assists in delivering benefits to disadvantaged communities.

Regarding BIL's implementation over the past two years, Reclamation's focus has been on using the historic investments in water infrastructure in an effective and efficient way while ensuring it has tangible impacts in the communities we serve. To date, Reclamation has allocated \$2.7 billion of BIL funding to 370 projects across more than 12 program areas and sub-categories identified in the law, and in all 17 western states as well as Hawai'i and Puerto Rico. The BIL made substantial investments in designated programs, including significant funding for programs that directly address mitigating drought and increasing water access.

#### **United States Geological Survey Drought Mitigation Efforts**

The U.S. Geological Survey (USGS) uses Cooperative Matching Funds (CMF), which leverage other agencies' resources with USGS funding, to support water research in Indian Country. In Fiscal Year 2022, through USGS Water Science Centers, CMF were used in partnership with 64 Tribes or Tribal entities to conduct a wide range of monitoring and interpretive science activities. This amounted to \$4.5 million in combined funding.

In addition to CMF, the USGS has provided limited funding through the National Groundwater Monitoring Network and the Federal Priority Streamgages Program for monitoring and research on Tribal lands. Starting in 2017, Congress directed the USGS to use CMF to work closely with Tribal leaders in conducting water-resource investigations to support Indian water rights negotiations, implementations, and settlements. Through Fiscal Year 2023, a total of \$3.5 million has been allocated, through a solicitation process, to support Indian water rights settlement activities.

#### **Conclusion**

We have a clear charge from the President and Secretary Haaland to improve water access and water quality on Tribal lands. Access to water is fundamental to human existence, economic development, and the future of communities—especially Tribal communities. As highlighted above, the Department has tried to maximize the impact of IRA, BIL, and annual appropriations to uphold our trust responsibilities and ensure Tribal communities receive the water resources they have long been promised.

The CHAIRMAN. Thank you very much.  
Mr. Smith, please proceed with your testimony.

#### **STATEMENT OF BENJAMIN SMITH, DEPUTY DIRECTOR, INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Mr. SMITH. 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.

Let me start by underscoring that the Biden-Harris Administration agrees that water is sacred. It is a sacred resources that must be protected.

As part of my statement, I would like to provide an update on the Indian Health Service's sanitation facilities construction program benefiting American Indians and Alaska Native communities under the Infrastructure Investment and Jobs Act, or what we refer to as IIJA.

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 communities.

The bipartisan effort in Congress, including many champions in this room, helped to ensure that these funds for clean drinking water and modern wastewater and sanitation systems were included in the final IIJA. Thank you. The Department of Health and Human Services and the Indian Health Service are grateful for this partnership with Congress, our shared commitment to ensure that this historic funding is implemented successfully, and that these dollars reach Indian Country as quickly as possible.

As you know, the mission of the Indian Health Service is to raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives to the highest level. One way that we can do this is through our sanitation facilities construction program.

The 1988 amendments to the Indian Health Care Improvement Act require that the Indian Health Service maintain an inventory of sanitation deficiencies for existing Indian homes and communities, to prioritize those deficiencies, and to annually report those deficiencies to Congress. This 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 list of sanitation projects is in our sanitation deficiency system, but these lists of projects are not static. In collaboration with tribes, the IHS annually updates the project list to account for newly identified sanitation deficiencies as well as to update cost estimates due to increases in the various factors, such as inflation, labor, material costs and project scope changes.

This brings me to the IIJA, which 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 IIJA appropriated a total of \$3.5 billion to this program over the next five years, and the IIJA directs the agency to use up to \$2.2 billion of that \$3.5 billion total on economically infeasible projects, providing an opportunity to address longstanding unmet needs in many tribal communities.

Last year, as well as this year, we have announced two years of funding for Fiscal Years 2022 and 2023 the allocation decisions for \$700 million appropriated in each of these fiscal years of the IIJA. For example, in Fiscal Year 2023, the IHS will allocate over \$612.5 million in IIJA funding for Tier I projects construction costs.

When you combine this with the Fiscal Year 2023 annual appropriations, this means the IHS will fully fund construction costs for 197 Tier I projects. This allocation also includes 68 economically in-



feasible Tier I projects, totaling nearly \$500 million in eligible costs.

Historically, the IHS received limited program support resources to address the sanitation facility construction project workload. The project funding has increased since Fiscal Year 2018, and more importantly, the IHS funding has significantly increased the sanitation facility construction workload.

However, the IIJA also 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 project duration which we estimate about three and a half years per project.

As with much of our work to deliver care and services in Indian Country, we have encountered a number of issues related to workforce recruitment. Through our efforts, we have worked with various agencies such as the Office of Personnel Management to look at waivers that will allow recruitment, relocation and retention up to 50 percent for certain engineers.

We are also enhancing our partnerships with organizations like the American Indian Science and Engineering Society as well as the U.S. Army Corps of Engineers and the Department of Interior's Bureau of Reclamation to leverage Inflation Reduction Act funds.

I too have submitted written testimony. We look forward to working with Congress relating to this program and the use of the IIJA funds. I am happy to take any questions that the Committee may have for me today. Thank you.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF BENJAMIN SMITH, DEPUTY DIRECTOR, INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

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 IIJA was enacted and had to prioritize those which were economically feasible. The IIJA 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.<sup>1</sup> 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.

<sup>1</sup>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.

### **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 IIJA.

The IHS conducted 3 virtual tribal consultations on the IIJA 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 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 IIJA 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 IIJA 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 IIJA 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 IIJA. This investment is critically necessary to maintain existing project completion deadlines and ensure successful implementation of IIJA 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 IIJA 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 develop-

ment 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 ILJA 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.

The CHAIRMAN. Thank you very much.

The Honorable Crystalyne Curley, please proceed with your testimony.

**STATEMENT OF HON. CRYSTALYNE CURLEY, SPEAKER,  
NAVAJO NATION COUNCIL**

Ms. CURLEY. Ya'át'ééh, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. My name is Crystalyne Curley, Speaker of the 25th Navajo Nation Council.

This year the Navajo Nation Council celebrates its 100th year anniversary. I point this out because I am testifying today on water access and water as a trust resource. The challenges facing the Navajo Nation concerning water access today are at least as old as our Council, pre-dating our Council's creation and coincide with the American presence in Diné Bikeyah, translated as Navajo Aboriginal Territory.

Our Navajo people often say that water is sacred, and we fully understand the sacredness of this precious resource. Unfortunately, approximately 30 percent of our Navajo Nation homes lack running water. I know this esteemed body is already aware of the impact COVID-19 had on the Navajo people, resulting in the highest rates of transmission and death on a per capita basis.

This esteemed Committee worked tirelessly to fully fund the Indian Health Service Sanitation Deficiency Program through the Investment in Infrastructure and Jobs Act in 2021. And I thank you for that.

While we are still anxiously waiting for the IHS funding to be fully deployed, the Navajo Government is working hard to streamline the environmental clearance processes so that we are not standing in the way of the construction of water and sewer lines.

The lack of access to water includes more than a domestic water supply. The lack of water access impedes economic development on the Navajo Nation. Water is needed to support farming, industrial development, and municipal development.

As you know, the IHS program is limited to water and sewer for Navajo homes. There are no Federal programs to address water access for economic development. Therefore the settlement of our water rights cases has served as a vehicle for obtaining sufficient Federal funding and authorization as necessary to design and construct clean drinking water projects that will promote economic development by serving businesses, government buildings and other municipal needs.

Along these lines, one of the most important ways that this Committee can support the Navajo Nation is by helping to enact legisla-

tion to approve and implement water rights settlements we have negotiated with States, the Federal Government, and other parties. Through these settlements, the Navajo Nation can secure more reliable water supplies by quantifying our reserved water rights and obtaining support for infrastructure projects needed to put those water rights to use to benefit our people.

In July of this year, Navajo Nation President Buu Nygren testified in support of the Navajo-Gallup Water Supply Project Amendments Act of 2023, S. 1898. By making it possible to fully implement the commitments made by the Federal Government as part of the San Juan River Basin Water Rights Settlement, enacting S. 1898 will help secure a reliable water supply for water users in the eastern part of the Navajo Nation, the southwestern portion of the Jicarilla Apache Nation, and the City of Gallup, New Mexico.

Currently, the areas that this project will serve rely on a rapidly depleting groundwater supply that is of poor quality and is unable to meet current and future water demands. Additionally, the Navajo Nation anticipates working with our Congressional delegation and this Committee to introduce settlement legislation to approve water rights settlements for the Rio San Jose Basin and the Zuni Basin in New Mexico.

The Navajo Nation is also working very hard to bring parties together within the State of Arizona so we can bring a settlement of our water rights in Arizona to this Congress. While ambitious, it is doable.

I say this is doable because non-Indian parties are expressing their desire to work with the Navajo Nation, and my people are energized by the Navajo-Gallup Water Supply Project pipelines that are currently being laid on the side of major roadways on the Navajo Nation. They know water is coming. We want to have this same excitement and opportunity throughout the entire Navajo Nation.

Finally, I want to express support for Tribal Access to Clean Water Bills S. 2385 and H.R. 4746. These bills will, among other things, address operations and maintenance of IHS constructed facilities and ensure that we do not create another crisis on the Navajo Nation.

Navajo Nation leadership stands ready to work with this Committee, with Congress, and the Administration to address the biggest issue facing the Navajo Nation, which is access to clean drinking water. Such leadership working together can secure a future where the Navajo people have access to clean, reliable water needed to thrive.

Thank you for your time, and I look forward to further discussions on how we can address the water crisis facing the Navajo Nation. Ahéhee’.

[The prepared statement of Ms. Curley follows:]

PREPARED STATEMENT OF HON. CRYSTALYNE CURLEY, SPEAKER, NAVAJO NATION COUNCIL

Yá’át’ééh Chairman Schatz, Vice Chair Murkowski, and Members of the Committee,

My name is Crystalayne Curley, Speaker of the 25th Navajo Nation Council. This year the Navajo Nation Council celebrates its 100th year anniversary.

I point this out because I am testifying today on water access and water as a trust resource. The challenges facing the Navajo Nation concerning water access today,

are at least as old as our Council and indeed pre-date our Council's creation and coincide with the American presence in what I call Diné Bikeyah, roughly translated as Navajo Aboriginal Territory. Our Navajo people often say that "water is life" and we fully understand the sacredness of this precious resource.

Unfortunately, approximately 30 percent of Navajo Nation homes lack running water. I know this esteemed body is already aware of that fact as the COVID-19 pandemic shined a light on the disparities in the standard of living on the Navajo Nation that resulted in not only the highest rates of COVID but the highest rates of death from COVID throughout the United States. This esteemed Committee worked tirelessly to fully fund the Indian Health Service (IHS) Sanitation Deficiency Program through the Investment in Infrastructure and Jobs Act in 2021. And I thank you for that.

While we are still anxiously waiting for the IHS funding to be fully deployed, the Navajo Government is working hard to streamline the environmental clearance processes so that we are not standing in the way of the construction of water and sewer lines.

The lack of access to water includes more than a domestic water supply. The lack of water access impedes economic development on the Navajo Nation. Water is needed to support farming, industrial development, and municipal development. As you know, the IHS program is limited to water and sewer for Navajo homes.

There have not been federal programs to address water access for economic development and therefore the settlement of our water rights cases has served as the vehicle for obtaining sufficient federal funding and authorization as necessary to design and construct clean drinking water projects that serve businesses, government buildings, other municipal needs, and light industry.

Along these lines, one of the most important ways that this Committee can support the Navajo Nation is by helping to enact legislation to approve and implement water rights settlements we have negotiated with States, the federal government, and other parties. Through these settlements, the Nation secures a more reliable water supply by quantifying our reserved water rights and obtaining support for infrastructure projects needed to put those water rights to use to benefit our people.

In July of this year, Navajo Nation President Buu Nygren testified in support of the Navajo-Gallup Water Supply Project Amendments Act of 2023, S. 1898. By making it possible to fully implement the commitments made by the Federal government as part of the San Juan River Basin Water Rights Settlement, enacting S. 1898 will help secure a reliable water supply for water users in the eastern part of the Navajo Nation, the southwestern portion of the Jicarilla Apache Nation, and the

City of Gallup, New Mexico. The areas that the Navajo-Gallup Water Supply Project will serve currently rely on a rapidly depleting groundwater supply that is of poor quality and is inadequate to meet current and future water demands. In addition to this pending bill, the Navajo Nation anticipates working with our Congressional delegation and this Committee to introduce settlement legislation to approve water rights settlements for the Rio San Jose Basin and the Zuni Basin in New Mexico in the near future as well. In addition, the Navajo Nation is working very hard to bring parties together within the State of Arizona so we can also bring a settlement of our water rights in Arizona to this Congress. While ambitious, it is doable.

I say this is doable because non-Indian parties are expressing their desire to work with the Navajo Nation, and my people are energized by the Navajo-Gallup Water Supply Project pipelines that are currently being laid on the side of major roadways on the Navajo Nation. They know water is coming. We want to have this same excitement and opportunity throughout the entire Navajo Nation.

Finally, I want to express support for Tribal Access to Clean Water Bills S. 2385 and H.R. 4746. These bills will among other things address operations and maintenance of IHS constructed facilities and ensure that we do not create another crisis on the Navajo Nation.

Navajo Nation Leadership stands ready to work with this Committee, with Congress, and with the Administration to address the biggest issue facing the Navajo Nation, access to clean drinking water. Such leadership working together can secure a future where the Navajo people have access to clean reliable water needed to thrive.

Thank you for your time, and I look forward to further discussions on how we can address the water crisis facing the Navajo Nation. Ahéhee'.

The CHAIRMAN. Thank you very much, Speaker.

Next, we have Mr. Kali Watson, the Chairman of the Hawaiian Homes Commission, and Director of the Department of Hawaiian Home Lands. Welcome, Mr. Watson.

**STATEMENT OF KALI WATSON, CHAIRMAN, DEPARTMENT OF  
HAWAIIAN HOME LANDS**

Mr. WATSON. Aloha, Chairman Schatz, and Vice Chair Murkowski. I would like to thank you for inviting me to testify on behalf of the Department of Hawaiian Home Lands at your oversight hearing.

My name is Kali Watson. I am the Chairman as well as the Director of the Department of Hawaiian Home Lands. Access to water has been and remains a critical barrier in fulfilling the purposes of the Hawaiian Homes Commission Act. As detailed in my written testimony, if DHHL is to fulfill the requirements of that Act, we need access to millions of additional gallons of water per day, which will also require hundreds of millions of dollars of investment to develop.

A little history about this program, it was created by Congress over 100 years ago. It started in 1921. It was created in response to the deterioration of the Native Hawaiians, or the indigenous people of Hawaii. As a result of that, Prince Jonah Kuhio Kalaniana'ole lobbied and was successful in passing this Act, which resulted in the setting aside of a little over 200,000 acres.

Unfortunately, the lands that were set aside were not arable lands, with little infrastructure, isolated and very, very expensive to develop. Besides this huge deficiency in the assets of the program, there was also a lack of funding. So in the past 100 years of the program's existence, there has been roughly maybe 100 units or homestead lots that were created. A very, very dismal record based on all these challenges that were really not addressed when the program was created over 100 years ago.

So if Prince Kuhio were to be alive today, While he would be happy about the passage of the Act, he would be very, very disappointed and sad, especially when you look at the reason why that Act was created. It was the deterioration of these Hawaiian people that really was the motivation and the passion with which he lobbied successfully for the passage of this Act.

Even today, we still have the same problems. Forty percent of incarcerated people in the prisons are Native Hawaiians. Forty percent of the homeless in Hawaii are Hawaiians. They have the most disparate or lowest amount of home ownership of all the ethnic groups, the most overcrowded situations. When you look at the health, they lead all the statistics on whether it is diabetes or breast cancer, it goes on and on.

Part of the problem is a lack of housing. We are in the process of trying to get our projects out.

But the biggest hurdle is access to infrastructure, because of the location of the lands. So how do we address that?

In looking at the funding sources, I think the biggest problem is a lack of parity. When we talk about the Bipartisan Infrastructure Law, Hawaiian Home Lands doesn't have access to that. DHHL and Native Hawaiian beneficiaries of the Act are not eligible and do not have the dedicated stream of Federal funding for infrastruc-



ture needs that are currently afforded as provided in the program such as the Indian Health Services program in the Bureau of Indian Affairs.

The Winters Doctrine, which protects a reservation's water, established as of the date that the Federal Government created the reservation involved, does not apply to Hawaiian Home Lands. But the need for the access, as well as the funding, remains. So basically, when we look at all our different homestead areas throughout the State, we have this big, big problem. A good example is in Leiali'i, which is part of Lahaina, where we had these wildfires, as all of you know about. It was very, very tragic. Many people died in that event.

Fortunately, Leiali'i, which is a phase one we have there, about 104 homesteaders, they were, because of the construction materials used and various other things, only two of the houses were destroyed, unlike the 2,200 that were lost.

So we are in the second phase, and where we want to put additional housing, not only over there, but right up the street in Honokowai, another area we want to put in housing as well as develop our agriculture and pastoral lots, big problem: no water. So we are attempting to find sources of funding to move these programs along.

But without that kind of funding, these unfortunate next phases as well as current development of Honokowai as well as all of our projects throughout the State, whether it is the big island, Moloka'i or Maui or even O'ahu, without infrastructure funding, not only can we not put in the water systems, but also the sewer systems, the roads and all this infrastructure that makes development possible.

So unless the Federal Government steps up, it is going to be very, very difficult for us. Part of it is not only the funding, but the current laws that really deprive our particular program, which was federally created 100 years ago. Unless we change those laws to create parity with other Indian as well as Alaskan entities, we are going to continue to be plagued. At present, we have 29,000 people on our waiting list, and it is growing.

So I ask you to really consider that in your deliberations. In conclusion, I want to thank Chairman Schatz for allowing me this opportunity to testify. Mahalo.

[The prepared statement of Mr. Watson follows:]

PREPARED STATEMENT OF KALI WATSON, CHAIRMAN, DEPARTMENT OF HAWAIIAN HOME LANDS

Aloha Chairman Schatz, Vice Chairman Murkowski, and Members of the U.S. Senate Committee on Indian Affairs:

Thank you for inviting me to testify on behalf of the Department of Hawaiian Home Lands (DHHL) at your Oversight Hearing entitled "Water as a Trust Resource: Examining Access in Native Communities." DHHL is governed by the Hawaiian Homes Commission Act of 1920 (HHCA), enacted by the U.S. Congress to protect and improve the lives of native Hawaiians.<sup>1</sup> Spearheaded by Prince Jonah Kūhio Kalaniana'ole, the HHCA set aside public lands, called Hawaiian Home

<sup>1</sup> Hawaiian Homes Commission Act, 1920, Pub. L. No. 67-34, 42 Stat. 108 (1921), <https://www.doi.gov/sites/doi.gov/files/uploads/Act-of-July-9-1921-42-Stat-108.pdf>.

Lands, to establish a rehabilitative program for native Hawaiians.<sup>2</sup> Under the HHCA, native Hawaiians may obtain 99-year homestead leases at \$1 per year for residential, agricultural or pastoral purposes. Indeed and as my testimony will explain, access to water has been and remains a critical barrier in fulfilling the purposes of the HHCA. As detailed in my testimony, if DHHL is to fulfill the requirements of the Act we will need access to tens of millions of additional gallons of water per day, which will require hundreds of millions of dollars in investment to develop.

My testimony is divided into four main parts. In Part 1, I explain how water accessibility issues have been central to our struggle, even before the passage of the HHCA and to this day. Part 2 details the various Federal, State and Local policies that have attempted to address our water accessibility issues. Part 3 reviews the types of water accessibility issues we face, our calculated demands for water, water reservations held, and our known and estimated costs to develop needed water sources and systems. Part 4 summarizes how water is an essential trust asset for fulfillment of the HHCA.

### **Part 1: Background on the HHCA and Water Accessibility Challenges**

As contained in the Congressional Record and well documented by scholars,<sup>3</sup> passage of the HHCA by Congress took many years of effort by Delegate Kalaniana'ole, was controversial both in Hawai'i and in Washington D.C., and required multiple compromises in order to secure passage. One of the key areas of controversy and compromise had to do with the dry and remote nature of the lands to be set aside in the Act and the difficulty homesteaders would face in water accessibility. This was discussed before the US Senate Committee on the Territories in December 1920 as they considered HR 13500, which became the HHCA. A written submittal to the Committee was provided by Albert Horner, a noted agricultural expert, who said in part:<sup>4</sup>

You will note that all 'cultivated sugar-cane lands' are excluded from 'available lands'. . . thus confining the lands available for the rehabilitation project to those upon which it is not possible for the Hawaiian or anyone else to make good. In short, it gives the plantation all arable and the Hawaiians all arid lands.

As it stands today, most of DHHL's lands are located on the neighbor islands in rural or more remote locations with over half of the acreage on the island of Hawai'i,<sup>5</sup> including over 56,000 acres on the slopes of Mauna Kea and over 11,000 acres at the southernmost point in both the Hawaiian Islands and US.<sup>6</sup> With over 30,000 acres on Maui,<sup>7</sup> a significant portion of those lands include over 22,000 acres on the dry southern flank of Haleakalā at Kahikinui with elevation ranges from sea level to 9,700 feet near the summit.<sup>8</sup> DHHL's lands on Moloka'i consist of over 25,000 acres of which over half of those lands at Ho'olehua is a rural agricultural community ranging from level plains to rolling hills and sea cliffs at the northern coastal boundary.<sup>9</sup> Kaua'i includes over 20,000 acres of Hawaiian Home Lands with over 15,000 acres in Waimea, of which two thirds of the area is described as steep, mountainous terrain and isolated valleys.<sup>10</sup> O'ahu, the island with the greatest demand of applicants looking for homestead opportunities has the least amount of

<sup>2</sup>The HHCA defines a native Hawaiian as any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.

<sup>3</sup>See for instance McGregor, Davianna Pomaika'i. 1990. "Aina Ho'opulapula: Hawaiian Homesteading." *Hawaiian Journal of History*. Vol. 24.

<sup>4</sup>The 1920 U.S. Senate Committee on the Territories Hearing on H.R. 13500 to Establish the Hawaiian Homes Commission, <https://www.doi.gov/sites/doi.gov/files/uploads/HHCA-House-Hearing-Dec-14-1920-for-HR-13500.pdf>

<sup>5</sup>DHHL Hawaii Island Plan (May 2002), [https://dttl.hawaii.gov/wpcontent/uploads/2012/05/Island\\_Plan\\_Hawaii\\_2002.pdf](https://dttl.hawaii.gov/wpcontent/uploads/2012/05/Island_Plan_Hawaii_2002.pdf).

<sup>6</sup>South Point Resources Management Plan (October 2016), [https://dttl.hawaii.gov/wpcontent/uploads/2017/06/DHHL-South-Point-Final-Plan\\_101916\\_to-DHHL\\_low-res.pdf](https://dttl.hawaii.gov/wpcontent/uploads/2017/06/DHHL-South-Point-Final-Plan_101916_to-DHHL_low-res.pdf).

<sup>7</sup>Maui Island Plan (September 2004), [https://dttl.hawaii.gov/wpcontent/uploads/2012/05/Island\\_Plan\\_Maui\\_2004.pdf](https://dttl.hawaii.gov/wpcontent/uploads/2012/05/Island_Plan_Maui_2004.pdf).

<sup>8</sup>Kahikinui Regional Plan (July 2011), [https://dttl.hawaii.gov/wpcontent/uploads/2011/06/Kahikinui\\_RP\\_110711.pdf](https://dttl.hawaii.gov/wpcontent/uploads/2011/06/Kahikinui_RP_110711.pdf).

<sup>9</sup>DHHL Molokai Island Plan (June 2005), [https://dttl.hawaii.gov/wpcontent/uploads/2012/05/Island\\_Plan\\_Molokai\\_2005.pdf](https://dttl.hawaii.gov/wpcontent/uploads/2012/05/Island_Plan_Molokai_2005.pdf) and 2019 Molokai Regional Plan, [https://dttl.hawaii.gov/wp-content/uploads/2020/02/Molokai-Regional-Plan-Update-Final\\_02-18-20\\_HHC.pdf](https://dttl.hawaii.gov/wp-content/uploads/2020/02/Molokai-Regional-Plan-Update-Final_02-18-20_HHC.pdf).

<sup>10</sup>Kauai Island Plan (May 2004), [https://dttl.hawaii.gov/wp-content/uploads/2012/05/Island\\_Plan\\_Kauai\\_2004.pdf](https://dttl.hawaii.gov/wp-content/uploads/2012/05/Island_Plan_Kauai_2004.pdf).

land with just over 8,000 acres, of which over 1,400 acres is designated conservation primarily consisting of the steep cliffs along the Koʻolau.<sup>11</sup>

Awareness of the water access challenges for Hawaiian Home Lands continued through the territorial period, and concerns about how access related to larger issues of equity were just as prominent in the 1950s as they were in the 1920s. In 1957, then territorial Delegate to Congress (and later Governor) John Burns raised concerns about water access for Hawaiian Home Lands. A contemporary news account noted his concern with obtaining water for planned homestead development in Waimanalo, Oʻahu. The Hawaiian Homes Commission had been told by the water utility that there was insufficient source, and yet the paper went on to note “Many are asking why this could be when Harold Castle’s Kaneohe Ranch is getting ample water for [its] subdivisions and is planning more subdivisions with hundreds of homes.”<sup>12</sup>

The first responsibility to fulfill the Act and address its water accessibility and other challenges fell to the federal government, which served as the sole trustee of the Hawaiian Home Lands program until Statehood. As required by the Admission Act of 1959<sup>13</sup> and as a compact with the United States, the State and the people of Hawaii adopted the HHCA as a provision of the State Constitution and agreed to faithfully carry out the spirit of the HHCA.<sup>14</sup> The Admission Act provides that the United States continues to have oversight responsibilities over the HHCA and certain amendments may be made only with the consent of the United States. Thus, the United States and the State assumed the duties of a trustee for native Hawaiians under the HHCA. Primary responsibility for the management and administration of the Hawaiian Home Lands program rests with DHHL, a principal department of the State subject to State and Federal laws.

Section 101 of the HHCA establishes the purpose of the Act as a device to enable native Hawaiians to return to their lands to fully support self-sufficiency for native Hawaiians and the self-determination of the native Hawaiians while preserving the values, traditions, and culture of native Hawaiians. This philosophy can only be attained by first making the lands delineated to DHHL usable. In particular this section notes that a principal purpose of the Act is “Providing adequate amounts of water and supporting infrastructure, so that homestead lands will always be usable and accessible.”<sup>15</sup>

To the degree that water accessibility and other challenges have been successfully overcome, credit goes not only to Federal and State efforts but to the homestead lessees themselves. As noted by Molokaʻi homesteader, farmer, and scholar Glenn Teves:<sup>15</sup>

If these early pioneers didn’t succeed, the Hawaiian Homes Commission Act would be rescinded. Through perseverance, and against all odds, they succeeded, and personal homestead journals of this era speak of fasting and praying for rain to assure success in their plantings. In the late 1920’s, state and federal officials visited Hoʻolehua and saw the success of crops growing. As a result, the Act was deemed a success and the program was made permanent. It was through the determination of these early pioneers that the Hawaiian Homes Commission Act exists today.

Along with developing new homesteads, DHHL also has other critical, albeit lesser-known responsibilities. Akin to a County, DHHL maintains and repairs existing infrastructure (e.g. clearing of flood channels and drainage, fire protection of all lands, roads and facilities maintenance, sewer emergencies and repairs, etc.) In addition to County-like responsibilities, DHHL also performs water utility functions as part of its efforts to address water accessibility challenges. DHHL owns and operates three regulated public water systems on Molokaʻi, Kāuaʻi, and Hawaiʻi islands. Together, the systems have a total of 826 meters serving approximately 2,500 individuals (not including the schools and airport that are supported by the Molokaʻi

<sup>11</sup>Oahu Island Plan (July 2014), <https://dhl.hawaii.gov/wp-content/uploads/2013/04/DHHL-OIP-Final-140708.pdf>.

<sup>12</sup>Honolulu Record, Volume 10 No. 19, Thursday, December 5, 1957 p. 1. <https://www.hawaii.edu/uho/clear/HonoluluRecord/articles/v10n18/Hawaiians%20Kept%20Off%20Land%20By%20Suburban%20Water%20Stall%20System%20Supplies%20Subdivides%20but%20Not%20Homesteads.html>

<sup>13</sup>Hawaii Admission Act, Pub. L. No. 86-3, 73 Stat. 4 (1959), <https://www.doi.gov/sites/doi.gov/files/uploads/An-Act-to-Provide-for-the-Admission-of-the-State-of-Hawaii.pdf>.

<sup>14</sup>HAW. CONST. ART. XII §1-2 (1978), [https://www.capitol.hawaii.gov/hrscurrent/Vol01\\_Ch0001-0042F/05-Const/CONST\\_0012-0001.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol01_Ch0001-0042F/05-Const/CONST_0012-0001.htm) and [https://www.capitol.hawaii.gov/hrscurrent/Vol01\\_Ch0001-0042F/05-Const/CONST\\_0012-0002.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol01_Ch0001-0042F/05-Const/CONST_0012-0002.htm).

<sup>15</sup>See pp. 2 in Teves, Glenn. ‘Aina Hoʻopulapula: The Hawaiian Homes Act Going Forward. *Molokai Native Hawaiian Beginning Farmers Quarterly* (Summer 2022).

system). DHHL also owns and operates a non-potable water system for stock watering purposes in Pu'ukapu and soon to be constructed non-potable water system in Honokaia, both on Hawai'i Island. These non-potable water systems are designed to service over 200 connections.

The mission of DHHL is to manage the Hawaiian Home Lands Trust effectively and to develop and deliver land to native Hawaiians. Today, DHHL is responsible for the management of approximately 200,000 acres of these trust lands, 9,997 homestead leases statewide, and 47,036 lease applications.<sup>16</sup> Addressing this long list of lease applications will depend in significant part on continuing to address problems of water accessibility. There are some Federal, State, and County policies that have been enacted which are intended to address these and I will review those next.

## **Part 2: Federal, State and County Policies Addressing DHHL Water Accessibility Federal Policies**

DHHL and native Hawaiian beneficiaries of the HHCA do not enjoy access to all the same programs, laws, and court rulings that are available in Indian Country. Notably, Hawai'i Courts have ruled that the "Winters Doctrine" (which protects a reservation of water established as of the date the federal government created the reservation involved) does not apply to Hawaiian Home Lands.<sup>17</sup>

Programs that provide for funding in Indian Country for water accessibility through the Indian Health Service does not extend to Hawaiian Home Lands. However, there is some availability for funding for DHHL water projects through the United States Department of Agriculture (USDA) and the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA).

### *State Policies*

Water in Hawai'i is held as a public trust resource, a status which derives from laws in the Hawaiian Kingdom as well as common law, case law, and State Constitutional provisions.<sup>18</sup> A number of laws and policies at the State level have been enacted and/or ruled on which, at least in black letter law, provide mechanisms for addressing the water needs of native Hawaiians on Hawaiian Home Lands. Chief among these are provisions of the State Water Code (HRS 174C). Key mechanisms in the Water Code which address DHHL water accessibility include:

- HRS 174C-101, "Hawaiian Water Rights" which provides in part that "Decisions of the commission on water resource management relating to the planning for, regulation, management, and conservation of water resources in the State shall, to the extent applicable and consistent with other legal requirements and authority, incorporate and protect adequate reserves of water for current and foreseeable development and use of Hawaiian home lands as set forth in section 221 of the Hawaiian Homes Commission Act." This has allowed DHHL to work with the State of Hawai'i's—Department of Land and Natural Resources (SOH—DLNR) Commission on Water Resource Management (CWRM) to reserve water for DHHL across the archipelago.
- HRS 174C-49(e) which provides in designated water management areas, all permits issued "shall be subject to the rights of the department of Hawaiian home lands as provided in section 221" of the HHCA. Currently these permits are required for groundwater and surface water only in a portion of the state.<sup>19</sup>
- HRS 174C-31 requires the development of a multi-part Hawai'i Water Plan (HWP). The Plan consists of five component parts including a Water Resource Protection Plan, Water Quality Plan, State Water Projects Plan, Agricultural Water Use and Development Plan, and Water Use and Development Plans for each County. Provision (q) of this part requires that in each of these Plans ". . . each county and the commission shall incorporate the current and foreseeable development and use needs of the department of Hawaiian home lands for water as provided in section 221 of the Hawaii Homes Commission Act."

<sup>16</sup>Lease and application counts as of 8/31/2023. An applicant can hold a maximum of two applications, one for a residential lease and the other for either an agricultural lease or pastoral lease. The 47,036 lease applications are held by less than 29,000 native Hawaiian applicants.

<sup>17</sup>In re Waiola o Molokai, 103 Hawai'i 401, 83 P.3d 664 (2004). However, water reservations under state law are allowed, discussed further below.

<sup>18</sup>See for example D. Kapua'ala Sproat, From Wai to Kanawai: Water Law in Hawai'i, in Native Hawaiian Law: A Treatise (Second Edition of the Native Hawaiian Rights Handbook) (MacKenzie, Serrano, & Sproat eds., 2015).

<sup>19</sup>See <https://files.hawaii.gov/dlnr/cwrm/maps/wmainfo.pdf>

Some progress has been made in implementing these provisions since passage of the Code in 1987 and key amendments addressing DHHL water access issues in 1990. For instance, in 2015 CWRM reserved water for DHHL outside of a water management area. The 2017 update to the State Water Projects Plan specifically focused on DHHL water needs for nearly all of its landholdings, which provided information allowing for additional water reservations to be made.<sup>20</sup>

Though DHHL has some reservations granted by CWRM, the reservation process is still incomplete. DHHL has twenty-seven reservations as of November 2022. DHHL has submitted additional reservation requests and continues to calculate additional reservations for tracts. Triggers for CWRM considering water reservations include establishing new Interim Instream Flow Standards (which determine how much water should remain in streams for instream beneficial and public trust uses), adoptions of components of the HWP, designation of Water Management Areas, and State issuance of water licenses/leases.

Generally speaking, consistent underfunding and understaffing of CWRM compared to its vast duties has hindered DHHL interests, as it has slowed progress on the many triggering actions that would require adoption and/or enforcement of DHHL water needs and reservations. In addition, it is important to note that CWRM has often had their initial decisions overruled by State appellate courts, often for failing to protect native Hawaiian water rights, including the rights of DHHL and its beneficiaries.<sup>21</sup>

Other State legal provisions taking into account DHHL water accessibility challenges and rights are also noteworthy. These include:

- HRS 171–58(g), which requires that water dispositions by the State must be preceded by a reservation of water for DHHL sufficient for foreseeable needs.
- HRS Chapters 167 and 168, regarding the Molokai irrigation system, which protect DHHL and homesteader interests in that system.
- Hawai'i Supreme Court rulings that have protected DHHL water interests and clarified that the reservations for and uses of water by DHHL are one of four protected public trust uses of water that should be accommodated prior to the allocation of water to private, commercial uses:

—Waiola o Moloka'i, 103 Haw. 401 (2004) and Kukui (Moloka'i), Inc., 116 Haw. 481 (2007) established DHHL water reservations and homesteading uses as a public trust purpose, thereby creating priority over private interests. Additionally, proposed water uses cannot negatively affect native Hawaiian traditional and customary practices or impermissibly raise salt levels in DHHL wells.

—These provisions have been reiterated in many subsequent decisions, notably in *Kaua'i Springs, Inc. v. Kaua'i Planning Commission*, 133 Hawai'i 141 (2014)

Just as funding challenges for CWRM have impacted DHHL, shifting policy implementation priorities have also sometimes lessened our ability to address water accessibility issues. For a number of years, it was the practice of the State of Hawai'i's Department of Land and Natural Resources to secure funding for water exploration and development, and some of the water resources so produced were dedicated to County Boards and Departments of Water Supply, with some of the resulting credits issued in favor of DHHL. Those efforts however, ceased over a decade ago.

#### *County Policies*

Partly in recognition of the significant role in which DHHL Homestead development can address much needed housing demand in the Counties, the Counties have started to explore ways in which they can use their limited powers related to water to address the water needs and accessibility challenges of DHHL.

Maui County has led the way in these efforts. In 2007, Maui County enacted Ordinance 3502, often referred to as the “show me the water” ordinance. This requires verification of “a long-term reliable source of water before subdivisions are approved.” The goal of this policy is to conserve the County's resources for affordable housing. In 2021, Ordinance 5313 specifically exempted DHHL projects from this requirement.

<sup>20</sup>State Water Projects Plan Update (May 2017), <https://files.hawaii.gov/dlnr/cwrm/planning/swpp2017.pdf>

<sup>21</sup>See pp. 97–98 in Scheuer, J. L. and B. K. Isaki, 2021. *Water and Power in West Maui*. Lahaina: North Beach West Maui Benefit Fund.

Also in Maui County, in November of 2022, Charter Amendment 12 was approved, establishing the East Maui Water Authority Board. This eleven-member Board will oversee the Nahiku, Ke‘anae, Honomanu and Huelo water license areas. The responsibilities of the Board include approval of watershed management plans and related programs, approval of annual operations budget appropriation requests, and recommendations on water rates. One seat was reserved for a representative of the Hawaiian Homes Commission. This is the first instance in which a state or county water managing body has specifically dedicated a seat to represent and look out for DHHL interests.

In 2023, also in Maui County, the Council passed a 0.5 percent surcharge on top of the State’s 4 percent general excise tax. Twenty percent of the county’s revenue from the surcharge will go toward development of County infrastructure projects that would allow DHHL to proceed with homestead development, including the development of necessary water infrastructure.

In April 2022, the Hawai‘i County Council passed two bills allowing the development of timeshares, affordable workforce housing and other facilities at a particular site in Waikoloa, South Kohala. As passed, 2 percent of timeshare sales and resales from the proposed project will be donated to the Waikoloa Foundation, and 25 percent of those derived funds will be allocated to an agency or program to directly or indirectly support water-related needs associated with housing programs for Native Hawaiians within the South Kohala district.

Despite the importance and significance of these Federal, State, and County policies, progress on addressing the significant water access challenges of DHHL on the Hawaiian Home Lands remains a very significant challenge. The scope of this challenge is described in greater detail next.

### **Part 3: DHHL Water Needs by Type, Island, Reservation, and Known and Estimated Costs**

The water needs of DHHL on Hawaiian Home Lands are extensive and diverse. Beyond the basic distinction that we have significant needs for potable and non-potable water, there are other notable characteristics of our water accessibility challenges. I first review the types of water access issues we face and then offer a high-level summary of needs by Island, our reservations to date, and an overview of known and estimated capital needs.

#### *Types of Water Access Issues*

In some parts of Hawaiian Home Lands—such as Keokea and Waiohuli on the island of Maui—we have access to some water, but there is an insufficient volume of both potable and non-potable water, restricting both the ability to use vast landholdings for additional homesteads, and preventing existing homesteaders from farming or even irrigating residential yards. Just a few miles away, our lands at Kahikinui lack access to any flowing water whatsoever and homesteaders rely on trucking in water for domestic uses.

Some areas have access to water but it is not of potable quality, such as our Pu‘ukapu tract on Hawai‘i island, which only has access to a non-potable water system. While the water comes from a potable source controlled by Hawai‘i County, the vast size of the tract and the costs involved of building a system to county standards made that infeasible. Other tracts have similar situations where County water systems border Hawaiian Home Lands, but these lands have no access to that water, even as nearby developments receive water from those water lines, just as Waimanalo, O‘ahu faced the same challenges in the 1950s described above. This includes HHL at Pu‘ueo and La‘i ‘Opua on Hawai‘i Island, Honokowai on Maui, and Ualapu‘e on Moloka‘i. Similarly, HHL in Anahola and Moloa‘a on Kaua‘i have privately controlled water systems abutting HHL, and yet lack sufficient access to water for homesteading. On Moloka‘i, despite significant landholdings and homesteading and demands for irrigation water, and a statutory guarantee to two thirds of the water from the Moloka‘i Irrigation System, many homesteaders lie just outside the service area of the system and cannot access that water. On Kaua‘i, for DHHL’s extensive landholdings above the Mana Plain, DHHL is partnering with the Kaua‘i Island Utility Cooperative in their pursuit of a pumped storage hydroelectric project that will if implemented, provide water access and other needed infrastructure to HHL around Pu‘u ‘Opae.

Some tracts, in addition to having source limitations, also face exorbitant water delivery costs. At Kailapa near Kawaihae on Hawai‘i Island, water is delivered to homesteaders from a secondary system with source deliveries from a private system, and they pay some of the highest water costs of any customers in the State. Kailapa also faces some level of water insecurity, as the agreement with that private system, which provides water to a luxury development immediately north, allows that pur-

veyor to cease delivering water with two years' notice. Water security issues also extend to other areas of Hawai'i. Especially on O'ahu, the fuel spills from the US Navy Red Hill Bulk Fuel Storage Facility have contaminated the island's most productive and relied on aquifer. While the Navy has its own water system that draws on that aquifer, all homesteaders on O'ahu are customers of the Honolulu Board of Water Supply, which has been challenged by the loss of access to some of their most productive water sources.

*Unmet Water Demands Statewide and by Island*

While the typology above describes the diverse nature of water access challenges on Hawaiian Home Lands, much of DHHL's focus has been on securing basic water access for each tract, as it is self-evidently impossible to successfully homestead lands without any access to water. As noted above, the 2017 update to the State Water Projects Plan (SWPP) was developed by the Department of Land and Natural Resources' Engineering Division and focused on DHHL needs across all islands and tracts.

The SWPP 2017 update records DHHL's potable and non-potable water projections for each island until the year 2031. Though not completely up to date not without limitations, it is the best available estimate for DHHL water needs statewide.

A specific methodology and set of assumptions were employed in the SWPP to calculate water demands due to the diverse scope of land uses across Hawaiian Home Lands, the particular land use designation categories applied by the HHC under the General Plan, and the diversity of DHHL tracts. While those are laid out in detail in that document, the general practice was to calculate the demands by correlating DHHL's land use designations to an equivalent land use in the applicable County Water System Standards and apply the respective demand unit rate. For each tract, low, medium, and high demand rates were calculated. Under the guidelines adopted by CWRM for all elements of the Hawai'i Water Plan, the SWPP only looks at a twenty-year planning horizon. For this reason, the numbers in the SWPP do not represent the full build out demands for all Hawaiian Home Lands, but represent a research-based estimate of some of the demands.

Under a medium water demand scenario, the total potable water demand across the State was calculated to be just under 22 million gallons per day (mgd). The total non-potable water demand projection across the State is approximately 183.5 mgd. This medium demand by island appears immediately below.

**DHHL Medium Range Water Demands through 2031**

<b>Island</b>	<b>Primary Use</b>	<b>2031 Demand (mgd)</b>

Kaua'i	Potable	2.918
	Non-Potable	35.807
	Total Island Demand	38.725
O'ahu	Potable	5.426
	Non-Potable	22.539
	Total Island Demand	27.965
Moloka'i	Potable	1.061
	Non-Potable	34.985
	Total Island Demand	36.046
Lāna'i	Potable	0.067
	Non-Potable	0
	Total Island Demand	0.067
Maui	Potable	3.521
	Non-Potable	27.557
	Total Island Demand	31.078
Hawai'i	Potable	9.002
	Non-Potable	62.582
	Total Island Demand	71.584
<b>All Islands</b>	<b>Potable</b>	<b>21.996</b>
	<b>Non-Potable</b>	<b>183.47</b>
	<b>Total Demand</b>	<b>205.466</b>

*Water Reservations to Date from CWRM*

While the SWPP has been a valuable resource in helping DHHL and CWRM calculate our water demands as a basis for securing reservations of water (discussed in Part 2, above), the nature of the calculations in the SWPP means the two do not always completely correlate. Most significantly, as previously noted, the SWPP has a 20 year time horizon for calculating demand estimates. Water Reservations under Hawai'i State law are by contrast intended to protect "foreseeable" demands, which for the DHHL must include scenarios where all reasonably usable land is available for homesteading.

To date, reservations by CWRM for DHHL's uses have been pursued in a collaborative manner. DHHL has proposed its best estimates of foreseeable demands, and CWRM has evaluated them with knowledge of the set limits previously determined by them for the respective water resources. Progress has been slow but improving.

After passage of the Code in 1987, CWRM staff had interpreted the Code as only allowing for DHHL reservations in water management areas. However, beginning in 2015 they agreed with DHHL staff interpretation of HRS 174C-101 that reserva-



tions can and must be made anywhere we have foreseeable needs. Our reservations to date, representing about 16 percent of our foreseeable needs by volume, total 32.610 mgd.

The reservations adopted to date by CWRM by hydrologic unit are as follows.<sup>22</sup>

Island	Hydrologic Unit	Type	Reservation (mgd)	Adoption Date
<b>Kaua'i</b>	Waimea	Surface	6.903	6/20/17
	Wailua	Ground	0.708	9/18/18
	Wailua	Surface	0.513	10/16/18
	Anahola	Ground	1.470	9/18/18
	Kekaha	Ground	0.336	9/18/18
	Makaweli	Ground	0.405	9/18/18
<b>O'ahu</b>	Waipahu-Waiawa	Ground	1.724	2/18/94
	Waimānalo	Ground	0.124	2/18/94
<b>Moloka'i</b>	Kualapu'u	Ground	3.272	6/10/95
<b>Lāna'i</b>	Leeward	Ground	0.067	9/18/18
<b>Maui</b>	Honokōhau	Surface	2.000	5/18/21
	Honokōwai	Ground	0.770	9/18/18
	Kama'ole	Ground	2.547	9/18/18
	Ke'anae	Ground	0.003	9/18/18
	Kawaipapa	Ground	0.118	9/18/18
	Luala'iula	Ground	0.063	9/18/18
<b>Hawai'i</b>	Wailuku	Surface	1.600	3/17/20
	Hāwī	Ground	0.148	9/18/18
	Māhukona	Ground	3.014	9/18/18
	Keauhou	Ground	3.398	8/17/15
	Honoka'a	Ground	0.396	9/18/18

	Hakalau	Ground	0.083	9/18/18
	Onomea	Ground	0.250	9/18/18
	Hilo	Ground	0.492	9/18/18
	Kea'au	Ground	1.336	9/18/18
	'Ōla'a	Ground	0.025	9/18/18
	Nā'ālehu	Ground	0.185	9/18/18
	Pāhoa	Ground	0.660	9/18/18
		<b>TOTAL</b>	<b>32.610</b>	

The CWRM is still considering DHHL's newer reservation requests.

*Infrastructure and Financing Needs to Develop and Maintain Homestead Lots*

The HHC annually approves DHHL's budget requests, including funding for lot development and repair and maintenance of infrastructure. Funding of \$198.5 million for lot development and over \$228 million for repair and maintenance of infrastructure including sewer and water systems would provide the level of infusion needed to quicken the pace of homestead development. A dedicated, consistent, and reliable stream of funding allows for steady production of lots. The funding amounts reflected in the table that follows may only represent funding for a particular phase (planning, design, construction) and not the entire amount.

<sup>22</sup> As summarized in a CWRM staff submittal from November 15, 2022 available at <https://files.hawaii.gov/dlnr/cwrn/submittal/2022/sb20221115B5.pdf>

AREA or SUBDIVISION	PROJECT COMPONENTS	Lots	FY 2025
LOT DEVELOPMENT			
HAWAII			
Honokaia	Honokaia Water System		1,300,000
East Hawai'i	East Hawai'i Development (Pi'ihonua, etc.)		1,000,000
Ka'u	Ka'u Agricultural Lots (Pu'ueo)	50	1,000,000
Ka'u	Ka'u Farm & Ranch Lots Site Imp. (Kamaoa)	25	2,000,000
Kawaihae	Kawaihae Water Prod, Storage & Transm		2,000,000
<i>Kawaihae</i>	<i>Emergency Access Road</i>		<i>2,000,000</i>
Kealakehe	La'i 'Opua Utility and Infrastructure Changes		500,000
Keaukaha	Hilo Community College Model Home	1	450,000
Keaukaha	Scattered Lots		5,000,000
Kona	North Kona Exploratory Well		2,000,000

Kona	North Kona Well, transm, storage (600 lots)		45,000,000
Lāilānilo	Lāilānilo Phase 2A, Increment 2	80	16,500,000
Pana'ewa	Pana'ewa Lot 184	6	2,000,000
Pu'ukapu	Pu'ukapu Pastoral Lots Pump & Elec. Fac		1,500,000
<i>Island-wide</i>	<i>UXO Mitigation and Construction Support</i>		<i>1,000,000</i>
KAUAI			
Anahola	Pi'ilani Mai Ke Kai Phase 3	40	1,000,000
Anahola	Anahola Residence Lots, Units G & G-1	30	750,000
Hanapēpē	Hanapēpē Residential Subd Ph 3 Offsite Dev		15,000,000
Hanapēpē	Hanapēpē Residential Subdivision Phase 3	250	4,000,000
Moloa'a	Moloa'a Ag and Pastoral Lots	47	1,000,000
Wailua	Wailua Second Well Exploration		1,000,000
Wailua	Wailua Residential Lots Masterplan	200	1,000,000
MAUI			
Honokōwai	Honokōwai Water Non-potable Improvements		4,000,000
Honokōwai	Honokōwai Water System Imp, offsite storage		4,000,000
Kēōkea-Waiohuli	Kēōkea -Waiohuli Phase 3 Site Improvements	75	1,000,000
Pūlehunui	Pūlehunui Site Improvements & Infrastructure		4,000,000
Pūlehunui	Pūlehunui Regional Infrastructure Masterplan		3,000,000
Wākiu	Wākiu Development Plan		500,000
MOLOKA'I			
Ho'olehua	Nā'iwa Agriculture Lots (Acceleration Awards)	50	25,000,000
Ho'olehua	Ho'olehua Scattered Agriculture Lots	8	3,000,000
Kalama'ula	Kalama'ula Farm Lots Water Improvements		3,000,000
STATEWIDE			
Statewide	Environmental Mit & Remediation on HHL		4,000,000
Statewide	Acquisition: Land and/or Building Purchase		40,000,000
	<b>Total for Lot Development</b>	<b>1462</b>	<b>198,500,000</b>
REPAIR AND MAINTENANCE OF INFRASTRUCTURE			
HAWAII			
<i>Kaumana</i>	<i>Kaumana Drainage Maintenance</i>		<i>100,000</i>
Kawaihae	Kawaihae Water: Production, Storage & Trans		750,000
Keaukaha	Keaukaha New Sewers/Conversions Imp		20,000,000
Lāilānilo	Lāilānilo Phase 1 Kawaihae Road Imp		300,000
Lāilānilo	Lāilānilo New Sewers/Conversions Imp		3,000,000

Pana'ewa	Pana'ewa New Sewers/Conversions Imp	3,100,000
Pu'ukapu	Pu'ukapu Non-Potable Water System Imp	250,000
<i>Pu'ukapu</i>	<i>Pu'ukapu Road Improvements</i>	<i>1,000,000</i>
<i>Keaukaha</i>	<i>Keaukaha Road Improvements</i>	<i>1,900,000</i>
Hilo	General Maintenance for Various Sites in Hilo	28,500
Islandwide	Hawai'i Cesspool Assessment	775,000
KAUA'I		
Anahola	Anahola Fire Station	50,000
Anahola	Farm Lots, New Backup Well Improvements	3,000,000
Anahola	Anahola Dam & Reservoir Improvements	100,000
<i>Hanapēpē</i>	<i>Hanapēpē Drainage Improvements</i>	<i>100,000</i>
<i>Anahola</i>	<i>General Maintenance for Pi'ilani Mai Ke Kai</i>	<i>175,000</i>
LĀNA'I		
<i>Lāna'i</i>	<i>Lāna'i Drainage Improvements</i>	<i>500,000</i>
MAUI		
<i>Kahului</i>	<i>Waiehu Kou Drain Main (Fire Break Clearing)</i>	<i>200,000</i>
<i>Kahului</i>	<i>Waiehu Kou New Sewers/Conversions Imp</i>	<i>1,000,000</i>
<i>Kahului</i>	<i>Waiehu Kou Sewer, Pump St Upgrades Imp</i>	<i>50,000</i>
<i>Kula</i>	<i>Waiohuli Drainage Improvements</i>	<i>500,000</i>
<i>Kula</i>	<i>Waiohuli New Sewers/Conversions Imp</i>	<i>2,000,000</i>
Islandwide	Maui Cesspool Assessment	350,000
Islandwide	General Maint for Various Sites on Maui	535,000
MOLOKA'I		
Ho'olehua	Ho'olehua Water System Imp – Equip	1,000,000
<i>Kalama'ula</i>	<i>Kalama'ula Drainage Improvements</i>	<i>2,000,000</i>
<i>Kalama'ula</i>	<i>Kalama'ula Water Improvements</i>	<i>400,000</i>
<i>Kalama'ula</i>	<i>Kalama'ula New Sewers/Conversions Imp</i>	<i>2,000,000</i>
<i>Kapa'akea-One Ali'i</i>	<i>Kapa'akea-One Ali'i Drainage Improvements</i>	<i>2,000,000</i>
<i>Kapa'akea-One Ali'i</i>	<i>Kapa'akea-One Ali'i New Sewers/Conversions Improvements</i>	<i>2,000,000</i>
Islandwide	H&H Drainage Study	325,000
Islandwide	General Maint for Various Sites on Moloka'i	175,000
O'AHU		
Kapolei	Kapolei Sewer Repair Improvements	1,000,000
<i>Nānākuli</i>	<i>Nānākuli Concrete Spall and Fencing</i>	<i>5,000,000</i>

Nānākuli	Nānākuli Drainage Improvements	5,000,000
Nānākuli	Nānākuli Sewer Improvements	40,000,000
Nānākuli	Rehabilitation of School Seawall Imp	4,000,000
Papakōlea	Papakōlea Drainage Improvements	5,000,000
Papakōlea	Papakōlea Sewer Repair Improvements	1,000,000
Papakōlea	Papakōlea Sewer Improvements Phase 2	20,000,000
Papakōlea	Kapahu St & ʻĀuwaiolimu St Slope Maint	150,000
Princess Kahanu	Princess Kahanu Sewer Repair Improvements	15,000,000
Waimānalo	Waimānalo Bell Street Drainage Imp	7,000,000
Waimānalo	Waimānalo Drainage Improvements, Ph2	500,000
Waimānalo	Waimānalo Dirt Drainage Fire Break Clearing	200,000
Waimānalo	Waimānalo Relining of Concrete Flood Ch	8,000,000
Waimānalo	Kakaina & Kumuhau Subd Sewer Repairs	2,000,000
Waimānalo	Waimānalo Sewer Repair Improvements	18,000,000
Islandwide	Fence Installation	3,000,000
islandwide	Sewer Spill Response	45,000
Islandwide	Towing Service	50,000
Islandwide	Street Light Maintenance	100,000
Islandwide	Street Sign Maintenance	100,000
Islandwide	Tree Trimming Maintenance	150,000
Islandwide	General Maint for Various Sites on Oahu	1,028,000
STATEWIDE		
Statewide	Wildfire Resp, Recovery, Prevention & Maint	20,000,000
Statewide	Geographic Information System (GIS)	100,000
	Act 164/23 FY25 Appropriation	20,000,000
	<b>Total for R &amp; M of Infrastructure</b>	<b>228,086,500</b>

Another critical component of infrastructure funding is upgrading and modernizing wastewater systems through cesspool conversion. Hawai'i has nearly 88,000 cesspools that put 53 million gallons of raw sewage into the State's groundwater and surface waters every day.<sup>23</sup> An estimated 2,500 cesspools or around 3 percent are on Hawaiian Home Lands.<sup>24</sup> The Cesspool Conversion Working Group recognizes that it is critical to carefully consider conversion requirements that are socially equitable and financially feasible. Cesspool conversion costs are high, especially in remote locations, meaning that conversion options must be practical and regionally specific. There is no simple, single solution to replace Hawai'i's cesspools. Each community's risk of health and environmental harm is different, along with the costs of conversions, when considering geography, hydrology, cesspool density, and proximities to groundwater and the ocean are taken into consideration.

The above data reflects the budgetary request from the DHHL to the State Legislature, but is not inclusive of all the costs that would be needed to develop the necessary infrastructure to deliver potable and non-potable water to tracts, either in the amounts of calculated demand from the SWPP or the amounts already reserved by CWRM.

Estimates of these costs are necessarily rough and will vary considerably by island, location, local hydrology, and proximity to existing infrastructure including power sources, roads, and water transmission and storage structures. For ground water, recent DHHL experience is that fully developing a one mgd well, along with the associated infrastructure, permitting, and reviews, will cost a range of \$10–20 million. Looking only at one of our known reliable numbers—reserved ground water—DHHL would need an additional \$220–\$440 million in capital funds. Less

<sup>23</sup> Interim Report for the Cesspool Conversion Working Group (December 2020), <https://health.hawaii.gov/opppd/files/2020/12/Act-170-Cesspool-2021-Leg-Report.pdf>.

<sup>24</sup> The cesspool estimates are still being assessed by DHHL because there may be a conflation of cesspools and septic systems and some of the old cesspools may have long been decommissioned.

productive wells, developing surface water, and developing non-reserved water would require multiples of that figure.

**Part 4: Conclusions**

As potentially disarming and daunting as the above testimony is, it should also be noted that there are additional water issues and challenges related to water accessibility that are not addressed in this testimony today. DHHL under the original terms of the HHCA is entitled to 30 percent of the receipts from water leases/licenses that are issued by the State and that provision is contained in the State Constitution today. These receipts are to be deposited into the Native Hawaiian Rehabilitation Fund (NHRF) and distributed in grants to Hawaiian Homestead Associations. Due to significantly delayed State action on converting Revocable Permits into leases, and not assertively pursuing leases for private entities using water emanating from State lands, DHHL has had precipitously declining revenue into the NHRF in the past years.

DHHL, as a native Hawaiian serving organization also faces challenges in developing its water resources so that HHCA beneficiaries may also exercise constitutionally protected traditional and customary practices associated with those waters. Not only can this both constrain water resource development and represent additional water needs for our beneficiaries, this raises additional complexities. Due to the history and nature of the Hawaiian Home Lands, many HHL tracts are in areas where there are also Native Hawaiian non-Hawaiian Home Land communities. DHHL must navigate how to develop its lands and serve its beneficiaries, but not in a manner that would harm other Native Hawaiian non-Hawaiian Home Land communities. This and other water dynamics in Hawai'i are reviewed in a "Water Primer" that I have attached to this testimony.

Finally, we note that the state CWRM estimates of water available from surface and ground water sources do not currently incorporate climate change projections. As our islands may be facing a much drier future—which can both decrease supply and increase demand—we must continue to monitor and update our water demands for existing and future homestead communities.

Water in Hawai'i is held in trust by the State, a distinct advantage we have in planning for a changing world where we still will work to implement the HHCA. However, our challenges we face in water access are very significant, as we have touched on in my testimony. Access to water has been and remains one of the most significant—if not the single largest barrier—toward fulfillment of the HHCA.

In closing, I wish to express my appreciation and gratitude to Chairman Schatz for inviting me to testify and for focusing on this critical issue. It has been an honor to have had this opportunity to address you and this Committee.\*

The CHAIRMAN. Thank you very much, Chair Watson.  
Professor Tanana, please proceed with your testimony.

**STATEMENT OF HEATHER TANANA, PROFESSOR, INITIATIVE LEAD, UNIVERSAL ACCESS TO CLEAN WATER FOR TRIBAL COMMUNITIES PROJECT**

Ms. TANANA. [Greeting in Native tongue.] Thank you to the Committee and the members for inviting me to testify today. [Phrase in Native tongue.] My name is Heather Tanana. [Phrase in Native tongue.] I am a citizen of the Navajo Nation.

I wear many hats, one of those being a law professor. But I am here today as the Lead of the Universal Access to Clean Water for Tribal Communities Initiative.

The water challenges tribes face are extensive and historic in nature. While training in public health and the law, I didn't need to go to school to learn about the inequities experienced in Indian Country. I had personally witnessed it since I was born on the Navajo Nation. It is my family's experience.

If you are Navajo, you or someone close to you has experienced plumbing poverty. My father grew up in a home without water

\*The publication OLA I KA WAI: A LEGAL PRIMER FOR WATER USE AND MANAGEMENT IN HAWAII has been retained in the Committee files.

service. Two of his brothers, my uncles, fought as Navajo code talkers during World War II. Remarkably, for some of the code talkers, training was the only time in their life when they had running water, a toilet, a sink where they lived.

Today we recognized and honor the service of Navajo code talkers, yet this Country has done little to ensure that after they returned, they and their family, future generations, would be able to survive on their federally promised homelands here in the United States. Mass federally supported infrastructure projects have been constructed near and across tribal lands to benefit neighboring cities and large-scale agriculture.

Despite Federal promises of an agrarian lifestyle and an economy for Native communities, much of the land remains barren due to the lack of water. Today I still have relatives residing on the Navajo Nation without reliable access to clean water.

Universal's work and that of others has led to an increasing acknowledgement of these challenges. It has garnered much public sympathy. But sympathy alone cannot close the water gap experienced in Indian Country. Instead, the Federal Government, particularly Congress, must take action and in fact, is obligated to do so under its treaty and trust responsibility to tribes.

The Federal Government has treaty and trust responsibility to tribes. In recognition of these legal duties, Congress has already authorized various Federal programs to support tribal water infrastructure by several different agencies. We heard from two today. Through these programs, the Federal trust responsibility is being implemented and recognizes two binding promises of the Federal Government. First, the promise of a permanent homeland where tribal communities can live, prosper and thrive forever.

Second, the promise to promote the health of Native Americans. Access to water is required to fulfill both of these legal mandates. Land without water is not viable and cannot be a homeland. Water is also necessary for health. Death is inevitable without water, and that is not a doomsday prophecy, it is the reality. It is unacceptable that 21st century Native Americans experience such severe water insecurity, particularly because tribes have a secure and legally defensible right to obtain water.

Under the Winters Doctrine, the U.S. Supreme Court decision, when reservations were created it included water rights sufficient to be a viable homeland. Congressional action is needed, in fact required after the Supreme Court's ruling in *Arizona v. Navajo Nation* this past June. The court recognized Navajo Nation has water rights. They are actually held in trust by the United States.

Shockingly, the court found the Federal Government does not have a duty to simply help secure those rights. In other words, the United States does not have to help the Navajo Nation access water that it is legally entitled to, despite the promise of a permanent and viable homeland.

This is not the first time Congress would have to fix something that the court has done. The most well-known case was after *Duro v. Reina*, in 1990, when Congress enacted the Duro fix to restore tribal criminal jurisdiction over non-members. Congressional action affirming the Federal trust duty is necessary to close the water gap in Indian Country.

In the wake of *Arizona v. Navajo Nation*, the burden has been fully placed on tribes. Some may say that is just part of tribal self-governance, but they are wrong. Fulfillment of the Federal trust responsibility is a necessary pre-condition to truly realize tribal self-determination.

Past Federal policies sought to destroy and terminate Native existence that created the inequalities that we are experiencing today. It is imperative that the Federal Government remedy harms inflicted, but even more so, just hold up its end of the deal and honor healthy permanent homelands.

To that end, we recommend Congress explicitly reaffirm the trust responsibility, support tribal capacity through passage of bills like the Tribal Access to Clean Water Act, and assist in the realization of tribal water rights.

Thank you. We have also submitted written testimony and look forward to any questions you may have.

[The prepared statement of Ms. Tanana follows:]

PREPARED STATEMENT OF HEATHER TANANA, INITIATIVE LEAD, UNIVERSAL ACCESS TO CLEAN WATER FOR TRIBAL COMMUNITIES PROJECT

### Introduction

On behalf of the initiative on Universal Access to Clean Water for Tribal Communities (UACW), thank you for holding this hearing and the opportunity to provide testimony. UACW is composed of Tribal members, water experts, and non-profit organizations working together to enhance Tribal capacity and secure access to clean, safe drinking water for all Native communities in the United States.<sup>1</sup>

Access to clean water is a human right. Clean water is foundational for human health, growing economies, and a basic level of support for communities. As such, access to water is fundamental to the exercise of tribal sovereignty. However, an estimated 48 percent of households on Native American reservations do not have access to reliable water sources, clean drinking water, or adequate sanitation.<sup>2</sup> The lack of access to clean and safe drinking water in Tribal communities reflects historical and persisting racial inequities that have resulted in health and socioeconomic disparities. The federal government, often through treaties, promised to establish reservations as permanent homelands for Tribes.<sup>3</sup> A permanent, livable, and prosperous homeland cannot exist without this minimum requirement of life—access to an adequate and healthful supply of drinking water. Unfortunately, the federal government has largely failed to fulfill its duty to ensure clean water access for Tribes. Congress could remedy this failure by explicitly reaffirming its trust responsibility to Tribes, supporting Tribal capacity, and assisting in the realization of Tribal water rights.

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, while Black and Latinx households are almost twice as likely as white households to lack indoor plumbing, Native American households are about 19 times as likely.<sup>4</sup>

Without a safe, reliable, affordable, and easily accessible water supply, Tribal households are unable to meet basic personal hygiene, food preparation, domestic cleaning, and other needs required for good health. Indeed, without access to water, tribal nations are unable to truly exist and fully exercise their sovereign rights. The

<sup>1</sup> Universal Access to Clean Water for Tribal Communities, <https://tribalcleanwater.org>.

<sup>2</sup> Democratic Staff, House Committee on Natural Resources, *Water Delayed is Water Denied: How Congress has Blocked Access to Water for Native Families* (Oct. 2016), <https://democrats-naturalresources.house.gov/waterdelayed-is-water-denied>.

<sup>3</sup> See e.g., Treaty Between the United States of America and the Navajo Tribe of Indian art. XI, Sept. 9, 1849, 9 Stat. 974. See also Treaty with the Apache art. XI, July 1, 1852, 10 Stat. 979.

<sup>4</sup> DigDeep-US Water Alliance, “Closing the Water Access Gap in the United States,” 2019, <https://www.digdeep.org/close-the-water-gap>; Jay Willis, *The Hidden Racial Inequities of Water Access in America*, *GQ*, November 25, 2019, <https://www.gq.com/story/hidden-racial-inequities-water-access>.



harsh reality is that the U.S.'s failure to prioritize and meaningfully address tribal water rights and access essentially perpetuates pre-1800s extermination policies.

As part of UACW, we have looked closely at the various federal programs that address the provision of clean water and associated infrastructure in Indian Country. These programs are based on the federal government's treaty and trust responsibilities to Tribes and have improved conditions for some Native American communities. However, several barriers exist which prevent Tribes from fully realizing the benefits of these programs. This testimony addresses the severe water insecurity challenges many Tribes continue to experience and the federal responsibility to assist Tribes in overcoming those challenges. UACW has produced two reports to date, *Universal Access to Clean Water for Tribes in the Colorado River Basin and Recommendations for Operational, Administrative, Policy, and Regulatory Reform*, which we request be entered into the record of this hearing.<sup>5</sup>

### **Federal Trust Responsibility to Tribes**

The federal government has an underlying trust responsibility to Tribes. The trust responsibility is a "fiduciary obligation . . . to protect Tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal Indian law."<sup>6</sup> To be "judged by the most exacting fiduciary standards," the federal government has "charged itself with moral obligations of the highest responsibility and trust."<sup>7</sup> Indeed, "[n]early every piece of modern legislation dealing with Indian tribes contains a statement reaffirming the trust relationship between tribes and the federal government."<sup>8</sup>

#### *Permanent Homelands Require Water*

The federal trust responsibility includes fulfilling the promise of a permanent homeland. Each Tribe has its own unique history, traditions, and community. However, many Tribes share common experiences stemming from colonization, including forced removal from their homelands, treaty making with the federal government, and establishment of reservations. When the United States established reservations, it did so to provide a permanent home for each Tribe that would support their people forever. "The key to carrying out that promise is water—a fact that the tribal leadership has always known but which the United States has sometimes forgotten."<sup>9</sup>

In *Winters v. United States*,<sup>10</sup> the U.S. Supreme Court addressed Tribal water rights, holding that when reservations were created, the United States and Tribes reserved water rights—enough to fulfill the purposes of the reservation, including the residential, economic, and governmental needs of the Tribe. At the heart of the *Winters* decision is the United States' trust obligation to provide true homelands to Tribes. There is no substitute for water. "Access to a clean, reliable supply of water is basic to human health,"<sup>11</sup> and clearly a necessary component to making a homeland habitable and permanent.

The *Winters* doctrine is an important component of Tribal water access because it provides a secured and legally defensible right to obtain water—particularly in the western United States, where water generally is awarded under a system of prior appropriation. Under the doctrine of prior appropriation, "water is allocated to users based on the order in which water rights were acquired."<sup>12</sup> "The doctrine's basic command that 'first in time is first in right' incentivized rapid development and use of scarce water resources with little regard for conservation, efficiency, or

<sup>5</sup>Portions of this testimony are taken from UACW's findings and reports and Professor Tanana's scholarship, *Securing a Permanent Homeland: The Federal Government's Responsibility to Provide Clean Water Access to Tribal Communities*, 69 *The Federal Lawyer* 2 (Mar./Apr. 2022).

<sup>6</sup>Bureau of Indian Affairs, *What Is the Federal Indian Trust Responsibility?* <http://www.bia.gov/FAQs/index.htm>.

<sup>7</sup>*Seminole Nation v. United States*, 316 U.S. 286, 297 (1942).

<sup>8</sup>Cohen's Handbook of Federal Indian Law § 5.04[3][a] (Nell Jessup Newton ed., 2012).

<sup>9</sup>Colorado Ute Settlement Act Amendments of 1998: Hearing on H.R. 3478 Before the U.S. H. Natural Res. Comm., 105th Cong. (July 28, 1998) (testimony of Clements Frost, Chairman, Southern Ute Indian Tribe).

<sup>10</sup>207 U.S. 564 (1908).

<sup>11</sup>U.S. Bureau of Reclamation, *Colorado River Basin Ten Tribes Partnership, Tribal Water Study* at 7–10 (2018).

<sup>12</sup>Congressional Research Serv., *Indian Water Rights Settlements* (Mar. 28, 2023) at 5, <https://crsreports.congress.gov/product/pdf/R/R44148>.

equitable allocation.”<sup>13</sup> Federally reserved Indian water rights have been recognized as impliedly included in a Tribe’s foundational agreements with the federal government.<sup>14</sup> But, these rights are often overlooked by states, even though Tribal rights often have more senior priority dates than other state-based users in prior appropriation states.

The federal government also has a treaty and trust responsibility “to ensure the highest possible health status for Indians” and to provide healthcare services to Tribes.<sup>15</sup> The link between water and survival is so strong that the United Nations, several countries, and a few states have recognized a human right to water.<sup>16</sup> Lack of water access exposes individuals to preventable health risks and can contribute to malnutrition and diarrheal disease, among other illnesses.<sup>17</sup> “For decades, experts have documented how lack of access to clean water and sanitation in Indian Country contributes to high rates of morbidity and mortality among American Indians and Alaska Natives.” Notwithstanding the strong connection between water access and public health, the federal government has contributed to health disparities and other inequities in Tribal communities by prioritizing nontribal water projects in the past. A century ago, the U.S. government invested in modern water and sanitation systems as a means of eradicating waterborne diseases, but largely bypassed reservations.<sup>18</sup>

#### *Fulfilling the Trust Responsibility*

The late 1960s/early 1970s ushered in the current federal Indian policy era of self-determination. This era purports to strengthen Tribal sovereignty and promote Tribal self-determination. The federal government must implement the trust relationship with the foundational goals of the selfdetermination era in mind, including respecting Tribal sovereignty, capacitating Tribal sovereigns, and, more broadly, facilitating the continued existence of Native peoples within the United States. Ensuring Tribal access to clean water is essential to those goals.

Following the U.S. Supreme Court’s decision in *Arizona v. Navajo Nation*, it is critical that Congress reaffirm the trust responsibility to Tribes and its commitment to the survival of Tribal Communities. The Court found that the Navajo treaties did not establish a conventional trust relationship with respect to accessing water for the Tribe. As a result, the Navajo treaties did not require the United States “to take affirmative steps to secure water for the Navajos.”<sup>19</sup> But, the Court recognized that Congress may enact—and often has enacted—laws to assist Tribes with their water needs. Congress should therefore express an intent in any legislative action that the United States take affirmative steps to secure water for Tribes, including assessing a Tribe’s water needs, developing a plan to secure needed water, and facilitating access to that water. “Under the Constitution, Congress and the President have the responsibility to update federal law as they see fit[.]”<sup>20</sup> Now is the time to do so.

UACW supports passage of the Tribal Access to Clean Water Act and the Senate Resolution recognizing the critical importance of access to reliable, clean drinking water for Native Americans and affirming the responsibility of the Federal Government to ensure such water access. Importantly, the resolution calls on the Executive Branch to employ a “whole of government” approach to ensure access to reliable,

<sup>13</sup>Brief of Tribal Nations and Indian Organizations as Amici Curiae in Support of Respondents, No. 21–1484 (U.S.), June 22, 2023, [https://www.supremecourt.gov/DocketPDF/21/21-1484/254374/20230208173956207\\_43203%20pdf%20Whitemanrunshim%20br.pdf](https://www.supremecourt.gov/DocketPDF/21/21-1484/254374/20230208173956207_43203%20pdf%20Whitemanrunshim%20br.pdf).

<sup>14</sup>207 U.S. 564 (1908).

<sup>15</sup>Indian Health Care Improvement Act, Pub. L. 94–437 § 2, 601.

<sup>16</sup>G.A. Res. 64/292, The Human Right to Water and Sanitation, (July 28, 2010). See also *Global Analysis and Assessment of Sanitation and Drinking-Water (GLAAS), National Systems to Support Drinking-Water Sanitation and Hygiene: Global Status Report 2019*, World Health Organization, at 48–55 (2019). Massachusetts and Pennsylvania recognize the right to water in their state constitutions, and California and Virginia have been successful in passing legislation recognizing this right. Mass. Const., art. XCII; Pa. Const., art. 1, § 27; Assemb. B. 685, 2011–12 Leg. Sess. (Cal. 2012) (codified at Cal. Water Code § 106.3); Assemb. B. 401, 2015–16 Leg. Reg. Sess. (Cal. 2015); H.R.J. Res. 538, 2021 Leg., Spec. Sess. (Va. 2021).

<sup>17</sup>Ctrs. for Disease Control and Prevention, *Food and Waterborne Diarrheal Disease* (Dec. 21, 2020), [https://www.cdc.gov/climateandhealth/effects/food\\_waterborne.htm](https://www.cdc.gov/climateandhealth/effects/food_waterborne.htm). See also World Health Organization, *Drinking Water*, <https://www.who.int/news-room/fact-sheets/detail/drinking-water>.

<sup>18</sup>U.S. House of Representatives Comm. on Appropriations, Subcomm. on Energy and Water Develop., 116th Cong. (Mar. 10, 2021) (testimony of Bidtah Becker, Navajo Nation); see also Nat’l Water Comm’n, *Water Policies for the Future* 476 (1973) (“[I]n the water-short West, billions of dollars have been invested, much of it by the Federal Government, in water resource projects benefiting non-Indians but using water in which the Indians have a priority of right if they choose to develop water projects of their own in the future.”).

<sup>19</sup>*Arizona v. Navajo Nation*, No. 21–1484 at 2 (June 22, 2023).

<sup>20</sup>*Id.*

clean drinking water to households on Indian reservations, in Alaska Native villages, and in Native Hawaiian communities.

Congress also must provide a better, more reliable process by which federal reserved Indian water rights can be recognized, quantified, and tribes compensated through fair and expedient settlement. Through the Secretary of the Interior's Indian Water Rights Office (SIWRO), Tribes across the country have an opportunity to explore settlement of their water right claims and obtain much needed funding to address infrastructure and access issues, in addition to the legal certainty needed to maintain and enforce water rights when they come into competition with other uses.<sup>21</sup> However, of the 574 federally recognized tribes, only 39 have achieved settlement.<sup>22</sup> Of these Tribes with settled water rights, a still smaller set have received the funding they agreed to in exchange for vast amounts of water to which they would otherwise still have a legal claim.<sup>23</sup> The Indian Water Rights Settlement Completion Fund and the Reclamation Water Settlements Fund have served as the sources of federal dollars for these settlements, but rely on the priorities of a given administration for funding. If made permanent, the way settlements are achieved would become more durable and efficient.

Failure to help Tribes secure water access 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."<sup>24</sup>

#### **Tribal Water Needs Today**

Household water security is defined as "the safe and reliable access to sufficient quantity and quality of water for household consumption, production, and cleanliness."<sup>25</sup> "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."<sup>26</sup> However, despite public perception, "universalized water infrastructure remains an incomplete promise for different populations in different places across the nation[.]"<sup>27</sup> This is particularly true for Native Americans, who are generally the first occupants, but often the last to receive the promises of a permanent homeland. For example, within the Colorado River Basin, it is largely Tribal communities that lack piped water services and suffer from plumbing poverty, including the Navajo Nation, Hopi Tribe, White Mountain Apache Tribe, Ute Mountain Ute Tribe, and Southern Ute Indian Tribe.

From a Tribal perspective, there are four interrelated aspects to ensuring and maintaining water security for their communities:

- **Service**—there is a reliable piped water system connecting to the household;
- **Quality**—the water available to the household meets minimum acceptable quality standards;
- **Infrastructure**—existing water and sanitation infrastructure are sufficient and in good condition to meet community needs; and
- **Maintenance**—the operation and maintenance (O&M) requirements and associated costs to support existing water and sanitation infrastructure are met;

As discussed below, Tribes encounter challenges in each of these areas.

#### *Service*

The rural location of many Tribal reservations and homelands presents unique challenges to the construction and maintenance of water systems. Connecting remote homes to a centralized piped water system results in a higher cost per connection. There are also practical design and construction concerns that must be taken into account, such as difficult terrain and short construction seasons. However,

<sup>21</sup> U.S. Dep't of Interior, Secretary's Indian Water Rights Office, <https://www.doi.gov/siwro>.

<sup>22</sup> U.S. Dep't of Interior, Secretary's Indian Water Rights Office, *Enacted Indian Water Rights Settlements*, <https://www.doi.gov/siwro/enacted-indian-water-rights-settlements>.

<sup>23</sup> *Indian Water Rights Settlements*; see also FY 2022 Allocation of Funding for Indian Water Rights Settlements, <https://www.doi.gov/sites/doi.gov/files/fy-2022-bil-iwrs-allocations.pdf>.

<sup>24</sup> U.N., Outcome of the International Experts' Meeting on the Right to Water, Paris, France, July 7–8, 2009, at 2.

<sup>25</sup> 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*].

<sup>26</sup> *Id.* at 1, 7 (2019).

<sup>27</sup> *Id.* at 8.

“[r]urality is not the sole or even best predictor of plumbing poverty”—race is the most significant predictor of plumbing access.<sup>28</sup> Native American communities are “equally likely to lack complete plumbing whether they are high- or low- income, and whether they live in urban or rural areas.”<sup>29</sup> And, living in a Native household dramatically increases the odds of being plumbing poor.<sup>30</sup>

The Navajo Nation, the largest and most populous reservation in the country, has significant piped water access gaps.<sup>31</sup> Navajo residents are 67 times more likely than other Americans to live without access to running water.<sup>32</sup> As a result, many households are required to haul water from communal wells—a costly and time-consuming burden.

#### *Water Quality*

Inadequate, unsafe water quality is another barrier to clean and secure water access, where an estimated 1 in 10 Tribal members lacking access to reliable clean tap water and basic sanitation.<sup>33</sup> Although a home may have access to piped water and indoor plumbing, the accessibility is negated if the water is contaminated and unsafe for consumption. The geographic profile and history of mining in the West has led to elevated levels of contaminants, such as arsenic and uranium, in groundwater sources.<sup>34</sup> Agricultural runoff has also caused nitrate and bacteria contamination that can be particularly troubling for Tribal resources and uses of water. Concentrations of these contaminants above drinking water standards in unregulated water sources pose health risks to the local community. In addition, water quality issues also exist in regulated water sources. In its first Indian Policy, the Environmental Protection Agency (EPA) recognized regulatory gaps that exist in Indian Country with respect to water quality protection:

[W]ithout some modification, our programs, as designed, often fail to function adequately on Indian lands. This raises the serious possibility that, in the absence of some special alternative response by EPA, the environment of Indian reservations will be less effectively protected than the environment elsewhere. Such a result is unacceptable. The spirit of our federal trust responsibility and the clear intent of Congress demand full and equal protection of the environment of the entire nation without exceptions or gaps.<sup>35</sup>

Although there have been several legislative and regulatory changes since the EPA Indian Policy was first issued in 1980,<sup>36</sup> the water quality gap in Indian Country has persisted and inadequate water quality is pervasive. For example, in Nebraska, the Santee Sioux Nation has been under a no-drink order from the EPA since 2019 for manganese contamination in their drinking water wells. Tribal members have used funding from the Bureau of Indian Affairs to buy bottled water, but it will soon run out and there is no long-term solution on the horizon.<sup>37</sup> Similarly, the Hopi Tribe has struggled with arsenic contamination in its water supply since its drinking water systems were first installed in the 1960s. The Tribe estimates that approximately 75 percent of people living on Hopi land are drinking contami-

<sup>28</sup>*Id.* at 9.

<sup>29</sup>U.S. Water Alliance and DigDeep, *Closing the Water Access Gap in the United States: A National Action Plan 22* (2019) [hereinafter *Closing the Water Access Gap*].

<sup>30</sup>*Plumbing Poverty* at 1, 3; *Closing the Water Access Gap*, at 22.

<sup>31</sup>DigDeep, *Brief of DigDeep Right to Water Project and Utah Tribal Relief Foundation as Amici Curiae in Support of Respondents*, No. 21–1484 (U.S.), June 22, 2023, [http://www.supremecourt.gov/DocketPDF/21/21-1484/254361/20230208163233914\\_DigDeep%20UTRF%20Amicus%20Brief%20-%20final.pdf](http://www.supremecourt.gov/DocketPDF/21/21-1484/254361/20230208163233914_DigDeep%20UTRF%20Amicus%20Brief%20-%20final.pdf).

<sup>32</sup>DigDeep, Navajo Water Project, <https://www.navajowaterproject.org/project-specifics>.

<sup>33</sup>Lakhani, Nina, *The Guardian*, *Tribes without clean water demand an end to decades of US government neglect*. April 28, 2021.

<sup>34</sup>Jani C. Ingram, et al., *Uranium and Arsenic Unregulated Water Issues on Navajo Lands*, *J. Vacuum Sci. Tech. A* 38(3) (2020). Percy Deal is a Navajo citizen and lifetime resident of Black Mesa, Arizona, which is where Peabody Energy operated a coal mine for several decades. His personal story, outlined in a letter to the Office of Surface Mining Reclamation and Enforcement identifies the environmental degradation experienced in the area and the impact it has had on water quality and community health. UACW requests that Mr. Percy’s letter be entered into the record.

<sup>35</sup>Env’t. Protection Agency, *EPA Policy For Program Implementation on Indian Lands 3* (Dec. 19, 1980).

<sup>36</sup>Safe Drinking Water Act Amendments of 1986, Pub.L. No. 99–339, 42 U.S.C. § 300j-11(a); Clean Water Act Amendments of 1987, Pub. L. No. 100–4, 33 U.S.C. § 1377(e).

<sup>37</sup>Nebraska Public Media, *‘Everyone’s sympathetic,’ But after 4 years without safe drinking water, sympathy isn’t enough for the Santee Sioux Nation*. (September 11, 2023), <https://nebraskapublicmedia.org/en/news/newsarticles/everyones-sympathetic-but-after-4-years-without-safe-drinking-water-sympathy-isnt-enough-for-the-santeesioux-nation/>.

nated water. Such contamination poses serious health risks, including diabetes, skin discoloration, cancer, blindness, and partial paralysis.

#### *Water Infrastructure*

Water infrastructure refers to the network of structures (e.g., pumps, pipes) and facilities (e.g., treatment plants, storage facilities) required to deliver water services. A large proportion of water systems were built over a century ago and either have reached the end of their expected lifespan, or are not able to handle additional demands associated with growing populations, increased treatment requirements, and the impacts of climate change.<sup>38</sup> Aging infrastructure also contributes to unnecessary water loss. “Drinking water systems currently lose at least six billion gallons of treated water per day, or 2.1 trillion gallons per year.”<sup>39</sup> This water loss is particularly felt in the Western United States where water is already a scarce resource. Additionally, as infrastructure deteriorates, risk of water contamination and non-potable water delivery increases, which can lead to additional challenges to secure a reliable water supply.<sup>40</sup>

Tribal communities typically face even greater challenges and woefully inadequate water infrastructure. Investment in water infrastructure has not kept up with population growth and other needs. Such underinvestment in physical infrastructure harms “the social, physical, and mental wellbeing” of Tribal communities and impairs their ability to thrive.<sup>41</sup> A significant portion of existing Tribal infrastructure was installed over the course of many decades, beginning in the late 1800s. The high costs associated with outdated technology and infrastructure repairs can limit a Tribe’s ability to realize the full potential value of its water and meet the growing needs of its community.

The Warm Springs Indian Reservation in Oregon has lacked reliable clean drinking water for decades. In December 2022, the EPA and the Indian Health Service (IHS) completed a formal agreement that provided more than \$23 million to build a new water treatment plant at the Reservation. Nearly all the funding is the result of the Infrastructure Investment and Jobs Act (IIJA).

#### *Operation and Maintenance (O&M)*

The ability to continually operate and maintain functional water delivery infrastructure is critical for providing communities with clean and safe water access. Similar to water infrastructure costs, O&M costs have also increased over time and are outpacing available funding across the United States.<sup>42</sup> The rise in O&M costs is partly associated with aging infrastructure—it is more costly to operate and maintain systems that are near or have exceeded their expected lifespan. The shortage of trained and qualified individuals to undertake the planning and construction, and long-term O&M of infrastructure projects compounds the lack of funding available for infrastructure projects in Indian Country.<sup>43</sup>

“There are many federal programs authorized and funded to support water infrastructure construction and technical assistance, but they have limited authority or funding to support direct operation and maintenance of the facilities provided.”<sup>44</sup> Ironically, both the Indian Sanitation Facilities Act (ISFA) and the Indian Health Care Improvement Act authorize IHS to provide O&M activities for existing water and sanitation facilities.<sup>45</sup> However, Congress has never appropriated funding to provide those services.

<sup>38</sup> American Society of Civil Engineers, *The Economic Benefits of Investing in Water Infrastructure* 6 (2020).

<sup>39</sup>*Id.* at 10.

<sup>40</sup> Deborah Vacs Renwick, *et al.*, *Potential Public Health Impacts of Deteriorating Distribution System Infrastructure*, 111 *J. Am. Water Works Association* 2, 42–53 (2019).

<sup>41</sup> National Congress of American Indians, *Tribal Infrastructure: Investing in Indian Country for a Stronger America* 4 (2017), <https://www.ncai.org/NCAI-InfrastructureReport-FINAL.pdf>.

<sup>42</sup> American Society of Civil Engineers, *The Economic Benefits of Investing in Water Infrastructure* 12 (2020).

<sup>43</sup> National Congress of American Indians, *Tribal Infrastructure: Investing in Indian Country for a Stronger America* 4 (2017), <https://www.ncai.org/NCAI-InfrastructureReport-FINAL.pdf>.

<sup>44</sup> Bloomberg American Health Initiative, *Getting Out Ahead of Water Infrastructure Challenges: Q&A with Bloomberg Fellow David Harvey* (Aug. 6, 2020), <https://americanhealth.jhu.edu/news/getting-out-ahead-waterinfrastructure-challenges-qabloomberg-fellow-david-harvey>.

<sup>45</sup> 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

While certain Tribes have been able to initially construct suitable water infrastructure, O&M of the systems has proven to be difficult. The Jicarilla Apache Nation has experienced the challenges associated with providing ongoing support for O&M of Tribal infrastructure. Like other Tribes, the Jicarilla Apache Nation is unable to utilize traditional means of collecting revenue to support O&M—e.g., taxing Tribal lands. Infrastructure O&M, therefore, must be separately budgeted for year after year. When budgets are tight, allocations for O&M often suffer, repairs are delayed, and established infrastructure starts to degrade. The Jicarilla Apache Nation has seen this happen to its water delivery system, and water services to the community has been threatened.

### Maximizing Funding for Tribal Water Infrastructure

In recognition of its treaty and trust responsibilities, the federal government has established several programs under various agencies to support Tribal water infrastructure and clean water access. The primary agencies include the Indian Health Services (IHS), Environmental Protection Agency (EPA), United States Department of Agriculture (USDA), and Bureau of Reclamation (Reclamation). Historically, these programs have been grossly underfunded compared to Tribal needs. However, the Infrastructure Investment and Jobs Act (IIJA) and Inflation Reduction Act (IRA) have provided much needed funding to fulfill the federal trust responsibility to Tribes, including the following:

- **Indian Health Services**—IHS received \$3.5 billion from IIJA for its Sanitation Facilities Construction Program, which designs and constructs water, wastewater, and solid waste facilities for Native American homes. This funding level accounts for the end of year 2020 estimate of currently identified projects in the Sanitation Deficiency System (SDS), although an Office of Inspector General report noted several challenges to implementing this funding.<sup>46</sup>
- **Environmental Protection Agency**—EPA funds drinking water and wastewater infrastructure largely through two Tribal set-aside programs for the Safe Drinking Water Act (SDWA–TSA) and Clean Water Act (CWISA), respectively. IIJA increased appropriation to both programs. From fiscal years 2022–2026, EPA anticipates investing over \$254 million in Tribal wastewater infrastructure improvements, and over \$614 million in Tribal drinking water infrastructure improvements.<sup>47</sup> Under the IRA, Congress also appropriated billions into several environmental justice programs administered by the EPA. However, it remains to be seen how those will be implemented or how they might improve Tribal access to water.
- **Bureau of Reclamation**—Reclamation has primarily been involved in Tribal water projects because of federal Indian water rights settlements or other specific Congressional direction. IIJA provided \$8.3 billion to Reclamation, including \$3.2 billion for aging infrastructure projects, \$1 billion for rural water projects.<sup>48</sup> Although not Tribal specific, this funding could potentially benefit Native communities. IIJA also provided \$2.5 billion to the Secretary of the Interior for a newly created Indian Water Rights Settlement Completion Fund. It is expected that a portion of this funding will be directed to implementation of previously authorized Indian water rights settlements, while other funding will be distributed directly to Tribes for settlement implementation. The IRA appropriated additional funding for new programmatic authority; specifically, \$550 million for disadvantaged communities domestic water supply projects (including planning, design, and construction) and \$12.5 million for financial assist-

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)).

<sup>46</sup> HHS Office of Inspector General Report, Initial Observations of IHS Capacity to Manage Supplemental \$3.5 Billion Appropriated to SFS Projects (2022), <https://oig.hhs.gov/oei/reports/OEI-06-22-00320.pdf>.

<sup>47</sup> Memorandum re: Implementation of the Tribal Water Infrastructure Appropriations in the Bipartisan Infrastructure Law from Radhika Fox, EPA, to Reg1 Water Div. Dirs. et al., (May 27, 2022), at 3, [https://www.epa.gov/system/files/documents/2022-05/Final%20Tribal%20Set-Asides%20Memo\\_May%202022.pdf](https://www.epa.gov/system/files/documents/2022-05/Final%20Tribal%20Set-Asides%20Memo_May%202022.pdf).

<sup>48</sup> Congressional Research Serv., Bureau of Reclamation Provisions in the Infrastructure Investment and Jobs Act (P.L. 117–58) (2022), <https://crsreports.congress.gov/product/pdf/R/R47032>.

ance to address drinking water shortages and mitigate loss of trust resources due to drought for Tribes impacted by the operation of a Reclamation project.

#### *Need for Tribal Capacity Building*

In order to providing drinking water and sanitation as quickly as possible to those currently lacking these basic services, the federal government must focus on building Tribal capacity through technical assistance and O&M support. Many Tribes lack a dedicated water resource staff, program, or department. Additionally, identifying and successfully applying for the various forms of federal funding available is an arduous and time-consuming task. Tribal governments, which are often already at capacity in addressing other facets of governance, must also track and prepare applications for funding programs across several federal agencies. Many Tribes lack a qualified grant writer or sufficient staff to handle the research and application process. And, even if Tribes are apprised of funding opportunities, the amounts offered may not be sufficient to merit an application.

While some technical assistance (TA) is available to assist Tribes in various parts of the application process, TA providers are often unable to fully serve Tribal water needs. Many providers are not culturally competent or knowledgeable about the Tribe's unique needs. Furthermore, providers often work in silos. EPA's technical assistance providers, for example, are not necessarily familiar with all the other federal programs available to Tribes. Tribal governments, then, may be required to work with a different provider in each agency for every funding opportunity. In a similar vein, no agencies have mapped out or otherwise explained to Tribes how all of these federal programs can fit together to support water infrastructure projects.

Notably, USDA did not receive funding for its Tribal water infrastructure programs under IIJA or IRA. However, the Tribal Access to Clean Water Act of 2023, H.R. 4746 and S. 2385, seeks to address Tribal capacity challenges, in part through USDA authorizations. The bill would authorize the USDA to make grants and loans for technical and financial assistance as well as for construction; and authorize increased funding for USDA's Rural Development Community Facilities Grant and Loan Program of \$100 million per year for five years and \$30 million per year specifically for technical assistance. Such assistance would help ensure that Native communities are treated equitably and appropriately when considered for grants and loans.

To that end, UAWC has also supported reauthorizing of the USDA Water & Waste Disposal Technical Assistance & Training Grant Program to the maximum amount (Section 306(a)(14)(A)) of the Consolidated Farm and Rural Development Act 7 U.S.C. 1921 et seq.), with a set-aside of no less than 10 percent of the funding directed to expanded technical assistance and capacity building for Tribes.

#### **Conclusion**

Thank you for the opportunity to testify on water access in Tribal Communities and to share our recommendations on how the federal government can fulfill its trust responsibility to Tribes.

#### **Attachment**

*September 25, 2023*

Amy Ryser,  
One Federal Center,  
Building 41,  
Lakewood, CO.

Ms. Ryser:

Please accept this comment leJer regarding the consideraKon by OSMRE bond release (Phased I N11 and J21 and Phase II J19 and J21) as requested by the Peabody Mine.

My name is Percy Deal, reKred and 74 years old and lifeKme resident of Black Mesa, just south of Peabody Lease area. My parents (both gone) and their parents going back many generaKons always resided in the area. My family and neighbors raised sheep and other animals for food and other economic purposes, and we sKll do. As a boy in my early years, I tended to herd sheep. I remember many different naKve plants for our animals for the wildlife, herbs for medicine, food for ourselves, and for ceremonies. We planted crops in our field, and it brought many vegetables. There were no windmills anywhere, however there were several places in the washes, at the base of the mountains and elsewhere, where there was water available year-round. The air was clean, and we were blessed with plenty of moisture year-round. Life was wonderful.

My mother told me, the community received visitors from Window Rock and some white men in late 60's to tell them there will be coal mining with big machines, the community will in return receive money and jobs. The operation will last 50 years. They were never told about the use of ground water. It wasn't until years later, people noticed their springs were drying up, native plants were disappearing and changing. That's when they started to ask questions, they were finally told the mining operation was pumping millions and millions of gallons of ground water. The people were never told it was never explained to them how much water, they didn't understand what an acre foot of water was, and they never gave consent to the use of their water.

Today, the natural springs are still dry, many native plants are gone together with the wildlife. Cornfields do not produce crops, corn used to grow six to seven feet tall, today it either does not grow or it will only get a foot high and not produce any crop. The ground is very dry, obnoxious weeds took over. The weather has drastically changed; they call it climate change. It's caused by the extraction and power plant industries. The coal mines and power plant are closed, their lease term has expired; they are in the process of moving out. It's now time for reclamation of areas disturbed and recharging and replacing water used.

OSMRE held public meetings, to hear from the public. I attended most of those meetings including site visits to the mined areas to share my concerns. In listening to the impact communities, in addition to their unsatisfactory comments on the reclamation just about everyone spoke very strongly about the water, which OSMRE seems to have very little concerns, as a matter of fact they provided us a one page on water (N-aquifer) indicating very minimal impact on the aquifer from mining. This is very disheartening and very disturbing that an arm of our trustee would take opposition to the people whom they are charged with protecting and instead side with the destroyer of land and water.

In the 40+ years Peabody Coal been in operation, it paid royalties to the Navajo Nation. If you drive through the Black Mesa area, you will not seem any benefit from the revenue received. Peabody instead destroyed all local businesses with their lack of support. Doing away with all local jobs immediately outside the lease area.

Today, after the closure of the mine and power plant we are seeing new challenges, new forces all wanting to take what's left of our ground water to benefit outside interest. We don't know how much of the N-aquifer is left and if it's safe from contamination. We are aware, USEPA did a study a few years ago on the Hopi reservation and found high levels of arsenic in the aquifer they were drinking, we share the same water with the Hopis. The Navajo Nation will not tell us if the water we are using is also contaminated. We are also aware; U.S. Geological Survey did a study and determine Peabody has used 63 percent of the ground water to support its operation. We don't have a river or large reservoir nearby, all we have is the aquifers, it's our sole source.

Briefly, the new challenges and forces are Nature and People First, an industry from Phoenix who applied for preliminary permits with the Federal Energy Regulatory Commission for three pumped storage energy projects at the northern edge of Black Mesa to produce energy for Phoenix and other cities south of the reservation. The project requires 450,000 acre-feet of water and it's looking at Black Mesa aquifer for a period of 100 years. Next, the Hopi Tribe claimed over 90,000 acre-feet of water from the Little Colorado River, the Arizona Superior Court awarded them less than 30,000 AF from the aquifers and run offs from rain and snow. And it appears none from the river. All run off comes from Black Mesa. Navajo Department of Justice told us the Hopi decision is a preview of what's coming to Navajo (Black Mesa). The other force is the water shortage in Arizona, particularly from Colorado River which the state of Arizona didn't allow the Navajo tribe any share. The recent Supreme Court decision did not help at all, instead the tribe will have to get its share from the state through litigation and/or negotiation which will take years. I don't see any equity in Arizona that would share their water with the Navajo Nation. Above all these challenges are climate change and drought.

I strongly recommend the federal government (OSMRE) take a stronger stand to protect the interests of the local communities, protect natural resources and not let Peabody mine receive the bond money. Once they receive it, the people will be left with all the issues; failed reclamation, not knowing how much water is left and not knowing if the water is free from contamination, failure to provide recharge system, failure to provide reservoirs for wildlife, not knowing how much health and economic impact they created. The reclamation should not be limited to the 64,000-acre lease area but must include surrounding areas. The remaining bond money should be used to study all the impacts and look at restoring all areas and should be used to provide a true economic transition.



The federal government must fully exercise its trust responsibility and ensure the land is returned as received.

Thank you,

PERCY DEAL, BIG MOUNTAIN

The CHAIRMAN. Thank you very much.

Finally, we have Ms. Val Davidson, President and CEO of Alaska Native Tribal Health Consortium in Anchorage. Welcome.

**STATEMENT OF HON. VALERIE NURR'ARAALUK DAVIDSON,  
PRESIDENT/CEO, ALASKA NATIVE TRIBAL HEALTH  
CONSORTIUM**

Ms. DAVIDSON. Quyana. Thank you. My name is Valerie Nurr'araaluk Davidson. I serve as the President-CEO of the Alaska Native Tribal Health Consortium. We are a statewide tribal health organization serving all 229 federally recognized tribes in Alaska and all Alaska Native and American Indian people in Alaska.

Chairman Schatz, Vice Chair Murkowski, my favorite, and members of the Committee, thank you for holding this hearing on water as a trust resource. As you have heard repeatedly today, reliable water and sanitation services really are critical to the health and well-being of our families and our communities.

Senator Murkowski mentioned earlier, Vice Chair Murkowski mentioned that Alaskans living in communities without access to running water are five times more likely to be hospitalized for lower respiratory tract infections and eleven times more likely to be hospitalized for pneumonia than those with it. This is not theory; these are not numbers; these are actually real people that we know and love.

My youngest daughter contracted RSV, respiratory syncytial virus, when she was only eight months old. She was hospitalized for nine days, fighting for her life. Her compromised respiratory system meant by the time she was seven years old, she had been hospitalized nine times. Ironically, I was in D.C. advocating for sanitation funding to improve our health when I received the call that she was in the hospital. That baby is now 20 years old today.

Sadly, her experience is common. In our underserved communities, we expect one in every three infants to be hospitalized every year. Imagine in the room that you are in today, one out of every three people as babies being hospitalized every year and suffering long-term respiratory issues. That would be unacceptable.

We really appreciate the significant Federal investment over 40 years that has dramatically reduced the number of unserved communities. Today, though, roughly 20 percent of our homes in rural Alaska Native still lack in-home piped water, and 34 communities remain unserved, even in these great United States of America.

Thanks to your leadership, the bipartisan Infrastructure Investment and Jobs Act provides resources to help. We so appreciate your prioritization of projects in communities whose high cost of service historically disqualified them from funding. Without your brilliant vision of making that change, communities without running water would have continued to go without it and our children would have continued to suffer, not only physically, but also the message that they heard at the time before your intervention, that their lives weren't worth as much as the lives of other Americans.

On behalf of those who will live healthier lives because of your investment, we really appreciate the members of this Committee for your advocacy and your leadership.

We also appreciate our partners at the IHS for their work in ensuring that these resources reach the communities intended by Congress. ANTHC absolutely supports the IHS Fiscal Year 2023 allocation decision for infrastructure funding. We recognize that this legislation is intended to address the most challenging communities to serve, those that were considered economically infeasible under prior policy.

ANTHC also supports the IHS Fiscal Year 2023 allocation of \$65.5 million for projects that exceeded the original budget estimate due to persistent inflation and ongoing supply chain challenges. The challenge of rising costs also impacts the ongoing operations and maintenance of these systems.

The good news is that the Indian Health Care Improvement Act recognizes the IHS's authority to provide funding in support of operating, managing, and maintaining tribal water and waste facilities. IHS acknowledged that authority and the need for O&M funding in its Fiscal Year 2024 Congressional justification. The inclusion of O&M in the Fiscal Year 2024 justification is an important step in the right direction.

For decades, ANTHC and our partners in the Alaska Tribal Health System have really worked to increase local and regional operational capacity in support of these systems. While we have made great progress, the most significant challenge continues to be the lack of ongoing financial resources to support these activities. We look forward to working with Congress and the IHS to ensure that operation and maintenance resources necessary to protect your investment of Federal infrastructure in our communities continues.

We appreciate the Committee's focus on such an important and pressing issue and appreciate the opportunity to provide testimony today. Quyanana. Thank you.

[The prepared statement of Ms. Davidson follows:]

PREPARED STATEMENT OF HON. VALERIE NURR'ARAALUK DAVIDSON, PRESIDENT/CEO,  
ALASKA NATIVE TRIBAL HEALTH CONSORTIUM

My name is Valerie Nurr'araluk Davidson. I serve as the President/CEO of the Alaska Native Tribal Health Consortium (ANTHC), a statewide Tribal health organization serving all 229 Tribes and all Alaska Native and American Indian people in Alaska.

Chairman Schatz, Vice Chair Murkowski, and members of the committee, thank you for holding this hearing on water as a trust resource.

Reliable water and sanitation services are critical to the health and well-being of our families and communities.

Alaskans living in communities without access to these services are five times more likely to be hospitalized for lower respiratory tract infections and 11 times more likely to be hospitalized for pneumonia than those with it.<sup>1</sup>

My youngest daughter contracted respiratory syncytial virus when she was eight months old and was hospitalized for nine days. Her compromised respiratory system resulted in eight additional hospitalizations before her eighth birthday.

Sadly, her experience is common.

In our unserved communities, we expect one in every three infants to be hospitalized every year—who also then face long-term health challenges.

<sup>1</sup>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

While significant federal investment over four decades has dramatically reduced the number of unserved communities, roughly 20 percent of rural Alaska Native homes still lack in-home piped water, and 34 communities remain unserved.

Thanks to your leadership, the Infrastructure Investment and Jobs Act (IIJA) provides resources to serve these communities. We especially appreciate your prioritization of projects in communities whose high cost of service historically disqualified them from funding. Without your brilliant vision, communities without running water would have continued to go without it. Our children would have continued to suffer.

On behalf of those who will live healthier lives due to this investment, thank you to the members of this committee for your advocacy and leadership.

Thanks also to our partners at the Indian Health Service (IHS) for their work in ensuring these resources reach the communities intended by Congress.

ANTHC fully supports the IHS Fiscal Year (FY) 2023 allocation decision for IIJA funding, recognizing the legislation is intended to address the most challenging communities to serve, those considered economically infeasible under IHS policy.

ANTHC also supports the IHS FY 2023 allocation of \$65.5 million for projects that exceeded the original budget estimate due to persistent inflation and ongoing supply chain challenges.

The challenge of rising costs also impact the ongoing operations and maintenance (O&M) of these systems.

The Indian Health Care Improvement Act recognizes the IHS's authority to provide funding in support of operating, managing, and maintaining tribal water and waste facilities.

In its FY 2024 Congressional Justification, IHS acknowledged this authority and the need for O&M funding.

The inclusion of O&M in the FY24 Congressional Justification is an important step in the right direction.

For decades, ANTHC and our partners in the Alaska Tribal Health System have worked to increase local and regional operational capacity in support of these systems.

While we have made great progress in developing the capacity needed to extend the working life of these systems, the most significant challenge continues to be the lack of ongoing financial resources to support these activities.

We look forward to working with Congress and IHS to ensure the O&M resources necessary to protect the existing and future federal infrastructure investments in our communities.

ANTHC appreciates the Committee's focus on such an important and pressing issue and for the opportunity to provide testimony today.

The CHAIRMAN. Thank you very much.

I will start with Mr. Watson. Chair Watson, how would DHHL benefit from a program like the IHS Sanitation Facilities Construction Program that provides dedicated funding for construction and maintenance of water and sanitation infrastructure?

Mr. WATSON. We would benefit tremendously from such a source. Unfortunately, we have to go to the legislature every year to, I won't call it beg, but lobby for funding. Recently, I have to say that this legislature in 2022 was very generous in the fact that they provided about \$600 million. But that \$600 million goes, and is used up quickly when you have all these infrastructure costs. Primarily, most of that money is going to infrastructure.

So if we can use some Federal funds in lieu of that, especially with a steady stream, that would help our program tremendously. As I said, we have 29,000 people on our waiting list. We have lands that are marginal at best. So the infrastructure is a huge, huge cost that needs to be addressed.

The CHAIRMAN. Thank you very much.

Professor Tanana, I have been a co-sponsor of Senator Bennet's resolution that clarifies and affirms that the United States' trust responsibility is to ensure water access. Can you walk us through exactly what the Supreme Court said, whether or not you agree

with it, and what we can do about it? You have three and a half minutes, not three and a half hours.

[Laughter.]

Ms. TANANA. First of all, thank you so much for your co-sponsorship and support of that resolution. It talks about all of the issues we talked about today, including the trust responsibility. So I think it is really key that that was introduced and hopefully ratified.

Why did the Supreme Court go the other way, not finding a trust responsibility? I would like to note it was a closed case, five to four decision. Frankly, I do think that the majority got it wrong. They did not find Navajo treaties or any other acts of Congress, anything to specifically impose this fiduciary duty on the United States to assess Navajo Nation.

At that point, Navajo Nation was just asking for help in assessing, where is our water, what are our needs, what is a plan. There is a lot of talk about building pipes and infrastructure in that case that I think was kind of a distractor. This was just help in understanding what asset the government has been holding in trust for them and if it has been misused, let's get a plan to fix that.

Now, I think what is really important is that in that case, the Supreme Court explicitly recognized that Congress may enact and often has laws to assist tribal nations and others with their water needs, and that Congress has the authority to do that. So there is no question today that Congress can affirm the trust responsibility, strengthen the fiduciary duties to tribes, and actually make it mean something.

The CHAIRMAN. The question I have is, it is a lot easier to pass an appropriations bill than an authorizing statute. I am trying to figure out whether degree of difficulty wise, if we try to establish that trust responsibility as a matter of Federal statute, that could be a long battle.

However, getting money to Native communities for infrastructure I think is an easier sell. I am wondering whether you think that does the trick or still leaves Native communities vulnerable. What is your tactical advice on this?

Ms. TANANA. Passing these appropriation bills, and that is really why we are pursuing water settlements as a means of quantifying tribal rights, is because as opposed to adjudication and litigation in court, you can include these infrastructure projects. But I think that is a challenge because tribes desperately needing water have often conceded their rights, things that they are entitled to, to get those Federal projects through.

So certainly that is helpful on the ground, that is how we got Gallup Water Supply approved.

The CHAIRMAN. But as a practical matter, can that extinguish claims and all that?

Ms. TANANA. Right. I don't think it is our best tool. And it doesn't broadly address all 574 tribes. We would be doing it on a tribe by tribe basis. Yet as we saw at the Supreme Court, a case without all nations broadly is affecting all our tribal nations.

The CHAIRMAN. So you are saying, just in terms of how they got it wrong, you are saying they essentially misunderstood the assignment in the sense of, it would have been a closer call if the question is, does the Federal, especially the Executive Branch, have an

affirmative obligation to develop water into wet water in every instance. You are saying, that is not even what Navajo was asking for, they were just asking for help in inventorying those things that are held in trust.

And if you are holding something in trust, it is not unreasonable for the tribe to go and say, hey, can you just tell us what we have here, trustee? Am I getting that right?

Ms. TANANA. Yes, I think that is an apt summary.

The CHAIRMAN. I am going to go to law school.

[Laughter.]

Ms. TANANA. I think Congress has often recognized in all modern statutes, there is often a reference to the trust responsibility. But the way it has been worded to date, the U.S. Supreme Court did not read statutes that are in existence, did not read the Navajo treaty to find that. That is why we need Congressional clarification.

The CHAIRMAN. Thank you very much.

Vice Chair Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman. This is an issue we probably want to come back to and have a discussion with the Assistant Secretary as well.

I want to shift to the issue that you raised, Ms. Davidson. Val, you had mentioned in your comments the O&M and how critical those are. As you know, I am assuming you know, for the Fiscal year 2024 appropriations, IHS requested \$10 million to conduct a nationwide analysis to determine the cost funding for O&M for tribes. They are looking at that, at this study, to inform mandatory spending levels down the road, so that when the infrastructure funds run out, we have a better handle on that.

Given what you know of the operation and maintenance needs in Alaska villages today, there are a couple of questions here for you. First of all, can they wait for the results of this study that we really won't see until Fiscal Year 2027; and do you feel we have sufficient data, that IHS has the data that they need now to make an informed estimate on O&M support, at least for the Alaska region right now?

Ms. DAVIDSON. Quayana for the question, Vice Chair Murkowski.

The quick answer is no, we don't think that we should wait. We already have enough data in Alaska. In fact, with the inclusion of an O&M study in the recent IHS Congressional justification, we know that that need is there. In Alaska, ANTHC, along with EPA, USDA and the Alaska Department of Environmental Conservation have already provided extensive data and feedback to the IHS in the development of numerous studies that appear to match the current proposal's intent.

These are potential ideas, these are actual tribal utilities and their respective operation and maintenance expenses, including employee wages, benefits, electrical engineering, energy expenses, water testing, treatment costs, and other common operational requirements.

So from our perspective, we can either spend our limited time and resources to perfect another study, and make that study perfect, or we can invest in what we already know works. The data that ANTHC has previously provided is not an estimate. These are from real systems that exist in Alaska today.

So we believe that the best investment would be to use those dollars to be able to fund a pilot project that would be able to extend and provide real information that the IHS could then build upon. So really, we have a choice to make. We can either fund another study or we can make an investment to protect our babies and to keep them in communities, our communities, where we belong.

Senator MURKOWSKI. Let me interrupt and ask this to Mr. Smith. I think you have outlined what it is that we do know, and again, it is not just numbers, as you state, from ANTHC, but these are from our other Federal agencies, EPA, USDA, the Alaska Department of Environmental Conservation.

Mr. Smith, what do you think about Ms. Davidson's suggestion about piloting the deployment of O&M support in the interim, at least in Alaska? The year 2027 is a long way away, and as you have heard me detail and certainly she has outlined it as well, the need is extensive. We have infrastructure that is in place that is threatened. So O&M support is pretty key.

What do you think about a pilot?

Mr. SMITH. Thank you, Vice Chair Murkowski, for the question. First off, we absolutely agree that operation and maintenance funds are necessary to ensure that sanitation facilities projects can remain functional for their entire usable life. That is just a given; we have enough to see out there.

And as you mentioned, thank you for mentioning what is proposed in the President's budget request for a study.

I also want to point out that the budget also requests \$250 million per year for operation and maintenance activities, starting in Fiscal Year 2027, which would be the final year of the Bipartisan Infrastructure Law appropriations, when those end. So we are looking at every opportunity possible. So we would look to learn more about what is being proposed as a pilot and whether that falls within our existing scope of authority.

Senator MURKOWSKI. We would encourage you to look at that. Again, I don't think anybody feels like we need to have another study to know that we have a very extensive list when it comes to O&M needs.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cortez Masto?

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,  
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Thank you, thank you to the Chairman and Ranking Member for this important discussion today. It is pretty timely for what we are dealing with in Nevada. I want to touch on that a little bit.

A study was published last year by Nevada-based Desert Research Institute, in partnership with the Guinn Center. They found that tribal water access in Nevada lags behind the rest of the Nation. Nevada had a higher rate of Native American homes without indoor plumbing, a growing rate of plumbing poverty, and an increase in the number of Safe Drinking Water Act violations, in Nevada.

Now, combine these circumstances with the unprecedented drought across the southwest, and it is clear that there is a lot of

work we have to do, not just in Nevada, but across the Country. So I am very proud we have passed legislation, the Bipartisan Infrastructure Law and the Inflation Reduction Act to start focusing Federal dollars and investments in our tribal communities, Native Hawaiian and Native Alaskan communities across this Country.

But I want to bring to your attention one issue that I really need an answer and help from the Federal Government with addressing. So I am going to direct this question to Mr. Smith and Assistant Secretary Newland. The correlation between investment in water infrastructure and health outcomes is well documented.

One example of what under-investment and lack of oversight can result in is in the town of Owyhee, it is located within the Duck Valley Shoshone Paiute Reservation in northern Nevada. The water supply was contaminated as a result of improper disposal of diesel and other oils through a shallow well within a BIA maintenance shop located on the reservation. The proximity of this contaminated water deposit to the 70-year old Owyhee Combined School where tribal members have been educated for generations has caused hundreds of children to be exposed to these dangerous toxins.

Now, over 100 tribal members in the area have died of cancer of the years. That is an extraordinary number for a tribe of around 3,000 members. So these deaths are likely the result of contamination that started in the 1950s.

So my question to you, gentlemen, is can you provide an update on BIA's plan for remediation of the reservation's water supply?

Mr. NEWLAND. Thank you for the question, Senator. I have had a chance to speak directly with tribal leadership up there on the Duck Valley Reservation about this issue. I know our team has as well. We have invested, or committed, rather, \$1.2 million on the assessment work that the tribe has asked for related to the contamination as well as to assist in the development of a remediation plan. We are going to continue to work with leadership from the tribe there on those issues.

I know also that there were concerns about the school.

Senator CORTEZ MASTO. Relocating the school.

Mr. NEWLAND. Yes, relocating the school, which is, my understanding is that is a State-funded public school. But we are trying to assist the tribe with the assessment and remediation work.

In terms of the study that you also referenced for the cancer rates, I have had a chance to speak with Deputy Director Smith and Director Tso about this issue fairly recently in trying to coordinate between our agencies the appropriate folks to respond to the tribe.

Senator CORTEZ MASTO. I appreciate that, and I am going to hold you to it. I look forward to continued conversations with all of you to make sure we are taking action and doing right here at the end of the day. Yes, we are going to relocate the school. State funding has kicked in. But I do think there is a Federal obligation here, because the contamination, my understanding, is that because of the BIA maintenance facility.

So I am hopeful that you all, in telling us what we need to do here at a Federal level in Congress, but working together to ad-

dress this and not taking time to get it done. It has already taken too much time, as we have seen.

My time is running out, so thank you, gentlemen. I appreciate that.

Let me jump to an issue, Ms. Tanana, thank you for being here. Thank you for the conversation. I am going to jump to an issue that I also believe is something and a barrier we have to deal with, which is a workforce related issue. It is one thing to get all these Federal funds available, all these great projects into our tribal communities.

But I also hear from my tribes that there is a challenge, particularly in the rural areas, about the workforce. How do we put these projects together? Where is the workforce? What do we need to be doing with respect to a workforce that is deficient to move forward one some of these projects that are important?

I hate to put it all on you, but do you have any ideas that would be helpful?

Ms. TANANA. Thank you for bringing that up. That is one of the biggest barriers to getting this historic investment, IIJA, IRA funds out. It is great. But if tribes cannot access it because they don't have that capacity to apply for these complex grants from multiple agencies, we are not going to get there. I think putting it in context, it is important to acknowledge the Federal Government contributed to these capacity issues, with the boarding school rules. You took our engineers, you took our leaders, and we are healing from that still.

Notwithstanding amazing hydrologists like Crystal Tulley-Cordova, Navajo Nation, best hydrologist I know. But more are needed. I think maybe tying it in with education programs, these circuit riders, these ideas are floating around of having tribal circuit riders to come out and do trainings. But it has to be of the local people. We can't just continually have outsiders come in, because we know they will stay for a little while, and then they leave.

So I think there are broader systems. We have a couple of reports that talk about tribal capacity specifically, that I have referenced in my written testimony. It is a critical issue.

Senator CORTEZ MASTO. Thank you. Thank you, Mr. Chairman. The CHAIRMAN. Senator Luján.

**STATEMENT OF HON. BEN RAY LUJÁN,  
U.S. SENATOR FROM NEW MEXICO**

Senator LUJÁN. Thank you, Mr. Chairman, and to our Vice Chair, for this important hearing.

Speaker Curley, welcome. It is good to see you again.

Mr. Chairman, I would like to ask for unanimous consent to enter a statement from Dig Deep into the record which highlights the extraordinary water access gap that tribal households are facing.

The CHAIRMAN. Without objection, so ordered.

Senator LUJÁN. Without action, Mr. Chairman, insufficient Federal funding will remain a significant barrier to Indian water rights settlements. Insufficient annual appropriations have also caused construction delays and increased total project cost.



Assistant Secretary Newland, yes or no, does the Bureau of Indian Affairs plan to ask for additional appropriations for Indian water rights settlements in future budget requests?

Mr. NEWLAND. Senator, may I say yes, it is part of the mandatory funding proposal that we have submitted to Congress for Indian water rights settlements over the next decade.

Senator LUJÁN. I would also like to point out that maintenance of project infrastructure is just as important as constructing it. The line of questioning we have heard from colleagues today; it seems that we all agree here.

Assistant Secretary Newland, yes or no, would expanding the Indian Water Rights Completion Fund help meet our trust responsibility to tribes with an active water rights settlement?

Mr. NEWLAND. Yes.

Senator LUJÁN. And how is the Department of Interior coordinating with Reclamation to ensure costs for Indian water rights settlement projects do not surpass their authorizations requiring additional action from Congress?

Mr. NEWLAND. Thank you, Senator. That is an ongoing effort to make sure that this work starts in a timely manner before costs can rise beyond what was contemplated in the settlement. So it has been a priority of ours at the department, both Reclamation and Indian Affairs and the other offices involved to get started as quickly as we can to avoid those scenarios. That is one important way to avoid that.

Senator LUJÁN. I appreciate that. Yesterday I was proud to introduce legislation to waive 50 percent cost share for tribe for WaterSMART grants which received \$1 billion from the Bipartisan Infrastructure law. Reclamation recently put out a notice for the WaterSMART grants with the reduced cost share, but stopped short of waiving the cost share for tribes.

Assistant Secretary Newland, yes or no, does the presence of even a reduced cost share limit tribal access to Federal funds?

Mr. NEWLAND. Yes.

Senator LUJÁN. And yes or no, do you agree that Congress should waive the cost share entirely for tribes whenever it can?

Mr. NEWLAND. Senator, respectfully, I want to defer to my colleagues within the Bureau of Reclamation and follow up on that question. I know it bears on consideration of other legislation that is pending.

Senator LUJÁN. I am surprised by that answer. The answer should be yes. We hear the problems with tribe after tribe; the question that went to Ms. Tanana associated with technical expertise to even go after a grant. And how many tribes are in a position financially if they secure then they can't come up with the cost share?

I don't mean to go on a tangent, Mr. Chairman, but I am about to. There was a project where a bridge went out in Manuelito. There was a declaration, FEMA came forward, put the money forward. There was still a question on cost share. But BIA said, we are not going to give you the easement because of all the process that it takes.

What should have taken 12 months took 12 years. We finally broke ground on this. Cost shares, lack of support technically, or

agencies not working together results in projects not being completed. I am hopeful we can find a way to get there with some of this. I apologize, Mr. Chairman.

Earlier this year, like every year, I ask the leadership from the Navajo Nation, namely NTUA, to give me numbers of families that are not connected to water and wastewater, electricity and broadband. The numbers I got this year from the Navajo Nation was approximately 15,500 Navajo households, nearly double those that I get when I ask IHS. SES lists for the area office as well.

Mr. Smith, yes or no, does IHS have adequate staff to fully quantify the water access gap on tribal lands?

Mr. SMITH. No, we do not. However, we are working within the resources and some of the examples that were provided to address the workload issues as we move forward. But the true answer is no.

Senator LUJÁN. Does the Department of Interior at Indian Affairs collect the data, Assistant Secretary?

Mr. NEWLAND. I am not sure about that, Senator, but I can confirm that for you shortly.

Senator LUJÁN. I appreciate that.

The reason for this question, Mr. Chairman, and to our Vice Chair, is there should be data that we can rely on that progress is being made, when we are able to work together to pass bipartisan infrastructure packages as well, to make sure that that number, in this case drops from 15,500 to 10,500 in a year. Then down to zero at some point, understanding that there may be some additional numbers.

I am constantly and consistently frustrated by the lack of data gathering and consistent data in this space. I hope that is somewhere we can have a more robust conversation, look at methodology, understand what may or may not be occurring in that space so that we can move forward with funding, especially given the decision that came down from the Supreme Court so that we can just have initiatives for water settlements that move forward to ensure that our brothers and sisters are able to get the water that is theirs.

I appreciate that, Mr. Chairman. Thank you, Vice Chair, as well.

The CHAIRMAN. Thank you very much, Senator Luján.

**STATEMENT OF HON. JOHN HOEVEN,  
U.S. SENATOR FROM NORTH DAKOTA**

Senator HOEVEN. Thank you, Mr. Chairman. I appreciate it.

Director Smith, my staff has been in contact with yours regarding efforts that we have been working on with both the Devil's Lake Community in North Dakota, but also with the Spirit Lake Tribe. The existing hospital in Devil's Lake is a critical access hospital that serves the entire lake region, the community, the tribe, and the whole region.

But there is widespread concern about the hospital and care there, not because of the employees. The employees there are great. They are doing a super job. The problem is getting investment into that hospital. It is a critical access care hospital so it means it is the only one that can have that designation in a 35-mile radius, and as you know, provides better reimbursement rates.

But that hospital needs investment. The parent company is not doing that. So I would like to know what role Indian Health Service can play in helping us get needed investment in that rural hospital to serve that community, that rural area and the Spirit Lake Tribe.

Mr. SMITH. Thank you, Senator Hoeven, for the question. Certainly, we acknowledge the serious challenges that Devil's Lake is experiencing right now. We are certainly aware of the services that are provided to members of the Spirit Lake Tribe within that facility.

In terms of what is available under the Bipartisan Infrastructure Law funding—

Senator HOEVEN. No, I want to know any and all tools that you have under any and all funding, or any funding or any authorities or anything else you have that can help us get the common spirit, parent company, to make the needed investment in that hospital for the benefit of the tribe as well as all the people that live in this lake region area. Any and all authorities and funding you have, not limited to any specific bill.

Mr. SMITH. Okay, understood. Our answer for the Indian Health Service funding is going to be limited. But we know that the Spirit Lake Tribe is operating under Title 5 of the Indian Self-Determination and Education Assistance Act. We would be happy to partner with them and have conversations about things that they might be utilizing, or plans that they have within the local community with the Federal funding that they have awarded through their self-governance compact and funding agreement.

So I would be happy to take that back to the agency and work with the tribe.

Senator HOEVEN. Would you be willing to sit down with my office and strategize on anything, any possibilities that we can undertake to help with this very important challenge?

Mr. SMITH. We would be happy to provide any technical assistance once requested.

Senator HOEVEN. We really do need your help on figuring out how we get this needed investment for the benefit of the tribe and the region. So we really do need you to sit down with us and strategize, and of course, with the tribe as well. But we need to know what you can do to help get this problem solved.

Mr. SMITH. Understood. We are very aware of other communities where a tribal health program or the Indian Health Service may be the only shop in town, which is a little bit of the reverse of the situation.

Senator HOEVEN. Well, this is different. It is a different situation, but it is one that I think is not only really important in this case, but if we can come up with some good solutions here it will help in a lot of other cases as well. So we need your best creativity and your good ideas to help us meet this challenge.

Mr. SMITH. Thank you very much. We will be happy to help.

Senator HOEVEN. Good, thank you. I appreciate it, Director.

My other question is to Assistant Secretary Newland, regarding the Tribal Trust Grant program. Again, Spirit Lake on Devil's Lake, or as they call it, Spirit Lake, and also our Standing Rock

Sioux Tribe on the Missouri River both have grants related to tourism and utilization of their water resources for that purpose.

Will you commit to work with both those tribes to see how we could, and then of course we have Three Affiliated Tribes on Lake Sakakawea, which you are well aware of. How do we better pair water resource development with economic development opportunities?

Mr. NEWLAND. Thank you, Senator. It is great to see you. I appreciate the question.

I absolutely would be willing to work with tribal leadership on those issues. As somebody who was previously a leader of a tribe on Lake Superior, I understand very well the importance of water and economic development for tribal communities. I would be happy to talk with leadership from the tribes.

Senator HOEVEN. Yes, with your background, there are some great opportunities there in all three cases and some others that you could be very helpful with. All the tribes want to see if that can do some more beneficial things, not just with water use but with tourism. Thank you.

Mr. NEWLAND. Thank you.

The CHAIRMAN. Thank you, Senator Hoeven.  
Senator Daines?

**STATEMENT OF HON. STEVE DAINES,  
U.S. SENATOR FROM MONTANA**

Senator DAINES. Chairman Schatz, Vice Chair Murkowski, thank you and thanks to your staff for working with me to include the Fort Belknap Indian Community Water Rights Settlement Act, the NDAA. It is a big deal. It is the last water rights battle we have in Indian Country, and it is a big deal for Montana. It is also a big deal for our Nation.

I am grateful for all the work and support you have given us to finish the last Indian water settlement in the State of Montana. This hearing is perfectly timed to examine the importance of water rights settlements.

Finalizing Montana's settlements has been a bipartisan effort in the State for decades. Really it goes back it feels like almost over a century. Through years of hard work, sometimes tough negotiations, we are very close to bringing certainty to tribal and non-tribal water users all across Montana.

Without finalized settlements, our farmers, our ranchers, our water users are left in limbo. If Congress doesn't act, then these issues will play out in the courts, where no one is a winner except for lawyers and everybody is harmed.

We can and we must get the Fort Belknap Indian Community water rights settlement to the President's desk this year. I will be working very hard every day to make sure that happens.

Assistant Secretary Newland, the Senate has already included the Fort Belknap settlement in this year's NDAA. The settlement was a negotiation between the States, the Federal Government, and the tribe. Do you agree it is important to finalize this agreement?

Mr. NEWLAND. I do, Senator, thank you for the question. As you will recall, I was able to testify in support of that bill earlier this year.

Senator DAINES. We appreciate that. That was a part of continuing the momentum forward to get a bipartisan agreement here through and finalized.

This probably is an easy question, I am going to ask it anyway. Will you commit to working with us to ensure that this bill stays in the NDAA and is signed into law this year?

Mr. NEWLAND. Yes, Senator, we will continue to work with you and others interested in this bill.

Senator DAINES. I appreciate it.

Speaker Curley, as a leader of the Navajo Nation, you know firsthand the importance of finalizing water settlements. Can you explain what it means for tribal and non-tribal stakeholders to have the certainty that water settlements bring and the importance of working this out to the settlement process versus the courts?

Ms. CURLEY. Thank you, Senator Daines. Nice to see you as well. Thank you for that question.

Overall, completing water compact agreements with tribes, including the Navajo Nation, is important for several reasons. First, number one, protecting our water rights. Water compacts provide a legal framework to protect and secure water rights for tribal communities and also promoting economic development.

Access to water is crucial for economic activities, such as agriculture, industry and tourism. Water impact enables tribes to have certainty and control over their water resources, which leads to job creation, increased revenues and improved living standards.

Another reason is supporting environmental stewardship. Water compacts allow tribes to participate in the management and preservation of water resources, promoting sustainable practices and protecting ecosystems. Most importantly, upholding tribal sovereignty.

Competing water compacts is a crucial step in recognizing tribal sovereignty and self-governance, and it grants tribes the authority to manage their water resources and make decisions that best serve their communities.

For the Navajo Nation specifically, our water impacts are crucial due to our historical water shortages, our geographical location and the need to address water scarcity, infrastructure development and most importantly, health disparities. Thank you, Senator, for that question.

Senator DAINES. It is really dry in northern Montana, but it is a lot drier in Arizona. So I know you understand the importance of water very, very well.

Mr. Chairman, thank you.

The CHAIRMAN. Vice Chair Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

This is probably one last question for you, Deputy Director Smith. There has been conversation about workforce, there has been conversation about increased costs due to supply chain issues, and just the cost of labor overall. You have indicated that we got some newly identified sanitation deficiencies, and to update the cost estimates due to increases in all these various costs that I mentioned.

This \$65.5 million that has been announced, how much of this is tied to inflation? Where I am going with the question is whether or not you are going to need to expand this funding for project shortfalls in future years? I am wondering, is this going to be adequate to get you where you need to get or because of all of these other factors that are out there, are you worried about a shortfall?

Mr. SMITH. Thank you, Senator Murkowski, for the question. If I understand your question, it relates to maybe how we are managing cost overruns and shortfalls in some of the projects.

Senator MURKOWSKI. Right.

Mr. SMITH. Yes, we have been learning a lot, I think just like anybody else who is doing any construction these days, that prices have changed, we are confronting supply challenges just to complete anything or with workforce.

What we have been doing based on our projections is that we have identified an amount and are retaining approximately \$65 million at our headquarters to address these project shortfalls. So this amount is retained at our headquarters and it is based on projections and information that we are receiving from the areas, all 12 IHS areas, based on Fiscal Year 2022.

What that amounts to is looking at the information around the time when contract documents were completed and bids were able to go out, and some of the changes in price, whether it is a result of inflation, material costs, fuel costs, labor costs, there are multiple factors that play into this. So that helps us identify the initial amount.

So in Fiscal Year 2022, we retained \$21.6 million for cost overruns and experienced about a 30 to 40 percent change in some of the projects. What we are doing within the current need of \$43.7 million that has been projected is that we are evaluating and distributing on a needed basis. So to date, we have distributed about \$28.5 million to over half of our IHS areas. We are going to continue to monitor projects and requests from our areas to have updated data to make the needed adjustments.

Senator MURKOWSKI. Good. It sounds like you have concerns about shortfalls that you may anticipate. We are all watching what is happening with higher prices of oil and what that means for fuel costs. I know that certainly factors into everything that we are trying to do in Alaska, because of course, everything needs to be flown up, it is either flown up or barged in the case of Alaska or Hawaii. So that is going to increase our costs.

You also said something in both your written and your stated testimony about the limitation through the infrastructure funds. You stated that it is possible the average project duration could be greater than the current average project duration of 3.6 years. The Infrastructure Bill restricts program support funding to Federal activities, which means the tribes that operate there, the projects directly, can't access this.

I am trying to understand what that means for a State like Alaska, where oh, my goodness, my soul, if we could finish a project in three years, we would be happy. It just doesn't happen when your building season is really like three months long.

So is there a time limitation here that we should be worried about where because of, again, either supply chain issues where

you can't get the materials necessary, everyone is looking for pipe, everyone is looking for plumbing stuff, or you have construction issues in a place like Alaska, where we are not going to be able to access the monies that we think we are going to be able to access because we have a time limit here?

Mr. SMITH. Absolutely. I think all of those factors play in. When you talk about average, some projects can be completed super quick, others are going to be longer. So I think it really depends on the type of projects that are at play.

Part of the correlation with the infusion of additional funds, which we are very thankful for, also increases the workload.

Senator MURKOWSKI. And if you can't get the workforce, which Ms. Tanana has mentioned, and in some cases, you can't get the materials, because we are just not manufacturing them like we need to, what do we do?

Mr. SMITH. Right. So what we have done is taken an approach that—we are looking at all sources. So we know that tribal health programs, for example, have access to their own architectural engineering firms. We are encouraging procurement through that means. We have been working with our colleagues at Interior and the Bureau of Reclamation to see what types of activities can be completed with them, as well as the Army Corps of Engineers.

It is really looking at every opportunity possible to maximize one, the engineering capacity, but then two, the acquisition components to procure these activities.

I would like to give you a more detailed response, if we could provide you updates.

Senator MURKOWSKI. Better than that, I would like it if you and your team could meet with our folks, maybe we could get some of the folks from ANTHC, with Ms. Davidson. I am trying to map out and understand, because we just have a lot of variables, a lot of factors that are coming into play that when we started this whole thing out a few years ago, on paper it all looked good.

But I don't want to be in a position where we have finally answered people's prayers by saying, you are going to get all this Federal money, there is a lot in the pipeline, but then we just can't stuff it into the limited capacity pie that we have here. I think this is something we all need to be working on.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Vice Chair.

If there are no more questions for our witnesses, members may also submit follow-up written questions for the record.

The hearing record will be open for two weeks. I want to thank all of the witnesses for their time and their testimony today.

This hearing is adjourned.

[Whereupon, at 4:07 p.m., the hearing was adjourned.]





# A P P E N D I X

## PREPARED STATEMENT OF THE UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION

### Introduction

Chairman Brian Schatz, Vice Chairman Lisa Murkowski, and Members of the Committee thank you for the opportunity to submit testimony for the record as a part of the Senate Committee on Indian Affairs' September 27, 2023, Legislative Hearing on "Water as a Trust Resource: Examining Access in Native Communities." The Ute Indian Tribe ("Tribe") strongly supports Congressional action to confirm and uphold Indian reserved water rights. Our testimony includes a legislative proposal that Congress should pass to affirm and protect Indian reserved water rights.

Congress cannot and should not stand by as the United States heads down another path of broken treaties, agreements, and trust responsibilities to Indian tribes. We can see the writing on the wall—first, they came for our lands, then they came for our resources, and now they want our water. As we face increasing droughts and competition over water resources, it is time for Congress to pass legislation to affirmatively protect Indian reserved water rights.

The Ute Indian Tribe has fought for more than a century to protect our water rights and resources. Some of the earliest court decisions protecting Indian reserved water rights come from our Uintah and Ouray Reservation ("Reservation"). Soon after Indian reserved water rights were upheld in the seminal United States Supreme Court decision, *Winters v. United States*, 207 U.S. 564 (1908), the federal courts in Utah issued decrees protecting our water rights in 1923. We were forced to take action in court to prevent encroachment on the very water we reserved to sustain our members, provide a homeland, and transition our economy.

Indian tribes need Congress to recognize what we all agreed to in treaties, agreements, and acts of Congress reserving our lands. We agreed that our reserved lands include enforceable water rights, and early on, the United States took steps in court to protect those rights. There is no other possible conclusion under federal Indian law. However, as water resources become scarce, the Biden Administration argued against protecting and accounting for Indian reserved water rights. And, as suggested in the Supreme Court's recent *Arizona v. Navajo Nation*, 599 U.S. \_\_\_\_\_ (2023) decision, our waters can go unaccounted for or taken by others with no recourse.

Congress should follow the direction set out by Justice Neil Gorsuch's dissent in the *Arizona v. Navajo Nation* case, affirm more than 100 years of federal Indian law, and pass legislation that will protect Indian reserved water rights and ensure that those rights are enforceable. This is much more than a funding problem. This is a problem with the United States failing to comply with the Supreme Law of the Land and the contracts and agreements negotiated upon the founding of the United States.

### Failure to Protect our Indian Reserved Water Rights

Our Reservation is located in northeastern Utah and lies within the Upper Colorado River Basin. Our Reservation is the second largest Indian reservation in the United States, covering more than 4.5 million acres. We have about three thousand members, and a majority live within the exterior boundaries of our Reservation.

Water is critical to our survival. The State of Utah is recognized as the second most arid State in the United States. In his 1905 Annual Report, the Commissioner of Indian Affairs described the conditions on our Reservation and bluntly stated, "The future of these Indians depends upon [water]. . . for without water their lands are valueless, and starvation or extermination will be their fate." Despite the clear acknowledgement of the importance of water to our survival, the United States has failed time and time again to protect and uphold our water rights. We include a few important examples here.

First, the United States has failed a number of times to properly maintain our irrigation project. On June 21, 1906, the United States Congress authorized the con-

struction of the Uintah Indian Irrigation Project. The Bureau of Indian Affairs (BIA) constructed a system to irrigate 78,950 acres of allotted land via an extensive system of canals and ditches to convey water from three river drainages: the Strawberry-Duchesne, Lake Fork-Yellowstone, and the Uintah-Whiterocks Rivers.

Most recently, a report issued by the BIA in 2008 asserted, “The Uintah Irrigation Project has deferred maintenance needs in excess of \$86.1 million to bring the aging, deteriorated infrastructure up to current standards.” The majority of our diversion structures lack any safety features to keep personnel safe while operating gates and cleaning debris for the upstream side of the structures. There is no fencing or gates to prevent the general public from getting on any of our structures or safety features. The Tribe has yet to see the comprehensive rehabilitation of the Project promised by the Government.

The United States has also refused to uphold and enforce our water rights agreements. A portion of our Indian reserved water rights was recognized through two federal court decrees in 1923 for our reserved water rights on the Lake Fork and Uintah Rivers and their territories, where the majority of Tribal members reside. Agreement on the remaining portion of our Indian water rights was reached under a 1965 Deferral Agreement between the Tribe, State, and Federal government. We agreed to temporarily defer the use of a portion of our Indian water rights in the Duchesne River in the Uinta Basin.

This allowed Utah to proceed with development of the Central Utah Project (CUP) because they could certify to Congress that the State had uncontested water rights in the Uinta Basin. The CUP is a massive federal project that diverts and stores water from our region and our Reservation to provide water to the Wasatch Front, including Salt Lake City and Provo. As a part of this Project, the government promised to construct a water storage facility in the Uinta Basin that would provide the Tribe with the necessary water resources to develop and use our Reserved Water Rights on our Reservation. This storage still has not been built.

Now the State of Utah is looking to the water rights that we deferred to the Green River as a source of water for its Lake Powell Pipeline Project (“Pipeline Project”). The Project is a proposed water delivery pipeline that would begin at Lake Powell near Glen Canyon Dam in Page, Arizona, and end at Sand Hollow Reservoir near St. George, Utah. The Tribe is concerned that the Project is being developed without any consideration of the Tribe’s Indian reserved water rights.

To provide water for the Pipeline Project, on September 7, 2018, the Utah Board proposed a draft water exchange contract with the Bureau of Reclamation (“Reclamation”). The water exchange contract proposes that the Utah Board will forgo its right to divert a portion of the Colorado (Green) River natural flows. Instead of diverting these flows, they would be left instream to contribute to meeting requirements of the Endangered Species Act and Upper Colorado River Recovery Implementation Program, currently required in the Green River. In exchange, the Utah Board would be permitted to deplete an equal amount of water, i.e., 86,249 acre-feet annually, which would be released from the Flaming Gorge Dam throughout the year and available at Lake Powell for transfer through the Pipeline Project to the Lower Colorado River Basin at St. George.

This proposed action conflicts with the Tribe’s ongoing interest in storing a portion of its Green River Indian reserved water rights in the Flaming Gorge Reservoir. Reclamation and the State promised that this storage would be made available to the Tribe and negotiations occurred for over ten years, stalling when Reclamation began working with the State on its proposed Green River water exchange contract. In fact, Reclamation and the State have given no consideration for how the Pipeline Project and the water exchange contract will adversely impact the Tribe’s senior Indian reserved water rights and development of its use.

At the same time the Utah Board proposed the Pipeline Project water exchange contract, in 2018 the State Legislature approved a “Revised 1990 Water Compact” that proposed to transfer a substantial amount of Tribal water rights from the Duchesne River to the Green River for the Tribe’s use to the benefit of State water users in the Uinta Basin. The State cannot have it both ways—transfer the Tribal water rights out of the Uinta Basin to the Green River and tie up the Green River water in contracts and agreements for the State’s use and federal environmental compliance requirements.

These are just a few examples. Time and time again, the Federal government continues to act unfairly and without honor toward our Tribe and our Treaty reserved water rights, even after entering into numerous agreements. Assistant Secretary for Indian Affairs Bryan Newland testified that “[t]he United States acts as a trustee for the land and water rights of Tribes. . . a trust responsibility to Indian Tribes and Indian people and consistent with that has charged itself with moral obligations of the highest responsibility and trust. The Administration strongly supports the

resolution of Indian reserved water rights claims through negotiated settlements.” These promises and commitments are meaningless. Despite our senior water rights and the United States’ commitments to protect and uphold our water rights, our waters are the last to be secured and the last to be developed—if at all.

### **Legislation to Affirm Indian Reserved Water Rights**

Congress must take action to address the Administration’s failure to protect and uphold our Indian reserved water rights. Congress should pass legislation following the standards and guidelines set out in Justice Gorsuch’s dissent in *Arizona v. Navajo Nation* to protect and uphold Indian reserved water rights. While we appreciate Senator Michael Bennet’s efforts to take on this issue through S. Res. 355, entitled “Recognizing the critical importance of access to reliable, clean drinking water for Native Americans and affirming the responsibility of the Federal Government to ensure such water access,” much more is needed.

Congress should pass legislation that requires the Federal government be held to the most exacting fiduciary standards in accounting, implementing, and protecting Indian reserved water rights. The Federal government has failed to carry out its fiduciary trust obligations to Indian tribes whether those obligations were established by treaties, acts of Congress, Executive orders, or agreements. Those failures include a long-standing, systematic taking of water rights and resources reserved by Indian tribes.

Legislation would help put an end to the history of broken treaties and agreements. Legislation would allow tribes to seek individual enforcement of their water rights. This vehicle is needed to address the ongoing failures of the United States to uphold and protect Indian reserved water rights. The Tribe proposes the following legislation to require the Federal government be held to the most exacting fiduciary standards in accounting, implementing, and protecting Indian reserved water rights:

- T2Section 1. Short Title.

This Act may be cited as the “Indian Reserved Water Rights Act.”

- T2Section 2. Findings.

(a) Congress finds that—

- (1) Indian tribes are distinct sovereigns that have a government-to-government relationship with the Federal government;
- (2) the Federal government has trust and treaty obligations to Indian tribes that are established in treaties, acts of Congress, Executive orders, and agreements, recognized in court decisions, and federal policies and regulations;
- (3) the Federal government has historically failed to carry out its fiduciary trust obligations to Indian tribes whether those obligations were established by treaties, acts of Congress, Executive orders, or agreements;
- (4) those failures include a long-standing, systematic taking of water rights and resources reserved by Indian tribes through treaties and agreements, and affirmed in acts of Congress, Executive orders, and court decisions;
- (5) they also include failing to protect, secure, and ensure the water resources necessary for Indian tribes to sustain and develop homelands reserved and established in treaties, agreements, acts of Congress, Executive orders, and court decisions;
- (6) the failure to protect and secure the water rights and resources of Indian tribes has resulted in the violation of Indian reserved water rights as well as an environmental justice and civil rights crisis across Indian Country;
- (7) the fulfillment of Indian reserved water rights and providing the water resources reserved by Indian tribes to sustain and develop their reservation homelands requires that Congress take action to affirm such rights and define and establish the requirements for accounting, implementing, and protecting those Indian reserved water rights; and
- (8) the requirements set out in this Act are intended to establish a specific fiduciary duty of the Federal government to account for, implement, and protect Indian reserved water rights according to the most exacting standards, and that shall be enforceable in court.

- T2Section 2. Definitions.

(1) The term “Indian tribe” means the governing body of any individually identified and federally recognized Indian or Alaska Native tribe, band, nation, pueblo, village, community, affiliated tribal group, or component reservation included on the list published pursuant to section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131(a)).

(2) The term “Indian reserved water rights” means a federal, presently perfected property right to water impliedly reserved and necessary to fulfill the purposes of a tribal reservation, recognized with a priority date as of the date the reservation was established or time immemorial.

- T2Section 3. Standards for Accounting, Implementing, and Protecting Indian Reserved Water Rights.

(a) The Federal government shall apply the following standards in accounting for, implementing, managing, and protecting Indian reserved water rights:

(1) Under the United States Constitution, Art. VI, cl. 2, all treaties are the Supreme Law of the Land;

(2) Over the course of the United States’ government-to-government relationship with Indian tribes, commitments once expressed in treaties have also been expressed in agreements ratified by Congress; and

(3) The United States holds Indian reserved water rights in trust creating enduring and enforceable Federal obligations and duty to manage the water it holds for tribes in a legally responsible manner.

(4) Treaties and agreements ratified by Congress establish a contract between two sovereign nations, which in this case is between Indian tribes and the Federal government, and such contracts shall be implemented and enforced by:

(A) determining the parties’ intent, determining the shared expectations of the contracting parties, and ensuring that both sides receive the benefit of their bargain;

(B) ensuring the utmost good faith and fair dealings between parties, construing any uncertainty against the drafting party; and, if two parties understand a key provision differently, the controlling meaning shall be the one held by the party that could not have anticipated the different meaning attached by the other party;

(C) by applying a higher degree of scrutiny on contracts made between parties sharing a fiduciary relationship that reflects the Federal government’s role as the trustee and fiduciary for the interests, lands, waters, and other resources of Indian tribes;

(D) construing such treaties and agreements as upholding and protecting the interests of an Indian tribe and shall be implemented and interpreted to generously recognize the full obligation of the United States;

(E) giving effect to the terms and conditions of treaties and agreements as would have been understood by the Indian tribe;

(F) reviewing and considering the larger context and historical background that frame the written words of such treaties and agreements;

(G) treaties and agreements ratified by Congress that establish a reservation for an Indian tribe includes the water rights and water resources necessary for a permanent homeland;

(H) the Federal government would not establish an Indian reservation as a permanent homeland without intending to reserve the water resources necessary for an Indian tribe to sustain and develop its homeland; and

(I) the Federal government shall manage Indian reserved water rights and water resources of an Indian tribe according to the most exacting fiduciary standards.

(b) An Indian tribe may bring an action in equity against the United States for failing to apply the requirements set out in subsection (a) related to:

(1) providing an accurate accounting of the Indian reserved water rights and water resources held by the United States in trust for an Indian tribe;

(2) implementing the development and use of Indian reserved water rights and water resources held by the United States in trust for an Indian tribe by failing to construct, maintain, or otherwise fund the necessary infrastructure needed by an Indian tribe to utilize its water rights or water resources to sustain and develop its reserved homelands; and

(3) protecting and enforcing the Indian reserved water rights and water resources held by the United States in trust for an Indian tribe from use by others against the interests of an Indian tribe or without the tribe’s consent and compensation to the Indian tribe.

- T2Section 4. Applicability.

(a) The requirements set out in this Act shall apply to all Indian reserved water rights regardless of whether such rights are subject to a court decree, adjudication, settlement, or agreement, unless the requirements of this Act conflict with a specific term or requirement of a court decree, adjudication, settlement, or agreement.

#### **Failure to Adequately Fund Tribal Water Infrastructure**

Once our water rights and sources of water are protected and secure, the United States must also address the chronic underfunding of tribal water infrastructure. The vast majority of our members live on the Reservation and are provided with water for domestic, commercial, municipal, and industrial (DCMI) purposes by our Ute Tribal Water System (UTWS). Our UTWS service area covers roughly 175 square miles, including the towns of Whiterocks, Fort Duchesne, Randlett, Ouray, and other rural areas. We also operate a high school for our Tribal members in Fort Duchesne. Through external connections, our UTWS is also the sole water supplier to the Ballard Water Improvement District, the Ouray Park Improvement District, and the Independence region of the Johnson Water Improvement District.

Our UTWS diverts and treats water from Whiterocks and Uriah Heap Springs, which is delivered by gravity through nearly 60 miles of pipelines and numerous valves, hydrants, and water meters. Each spring subsystem on the UTWS has its own water treatment facility. Whiterocks typically takes 100 gpm through treatment, while Uriah Heap takes about 700 gpm through its system. Whiterocks Springs subsystem serves 115 connections with an average daily demand of 63 gpm. Uriah Heap has 815 connections and an average daily demand of 700 gpm.

In 2010, we asked an engineering firm to evaluate the conditions of the water collection systems at Whiterocks River and Uriah Heap Springs. They found that multiple improvements for environmental health and better water management within our UTWS were needed. Deteriorated conditions included vegetation growth and poor surface drainage in the spring areas, root intrusion, sediments, and cracking in collection pipes, a lack of water meters in the system, a need for increased water quality monitoring in the system, and unmonitored spillage of untreated spring water into local canals. Though customer water meters have since been installed and a new Uriah Heap treatment plant was built, not all recommended improvements have been fully implemented.

In 2014, another engineering firm observed or was made aware of the following concerns related to our UTWS:

- continued poor surface drainage and vegetation in spring collection fields;
- insufficient fencing around springs that could allow livestock to contaminate water sources;
- rusted, leaking, or overflowing water storage tanks;
- freezing or burst water pipes in the winter throughout the system;
- vandalism of UTWS structures; and
- a strong need for a hydraulic model to understand water flow within the system.

Despite these issues and our requests for support, the Indian Health Service (IHS) has not been able to fund and install spillage meters needed at both springs for several years, and individual water meters are not read; as a result, both users and external connections pay only a flat monthly water rate regardless of use. Although we appreciate the technical support that IHS has been able to provide, most of its limited infrastructure or construction funding goes towards drilling domestic water wells for individual Tribal members. As a result, our UTWS has continued to suffer from a lack of maintenance, rehabilitation, and expansion funding.

Due to chronic underfunding for our UTWS, we have had difficulty maintaining, providing, and ensuring that our Tribal members have access to safe drinking water. Since 2018, we have made a concerted effort to improve our internal monitoring and auditing procedures related to the quality of the water delivered by our UTWS. However, the lack of consistent and available funding sources to rehabilitate, improve, and expand access to our UTWS remains a significant and serious issue for the majority of our Tribal members. And some of our Tribal members must rely on relatively shallow individual wells or developed springs for their water supply. It is time for the United States to adequately fund tribal water infrastructure.

#### **Conclusion**

The time is now for Congress to pass legislation to uphold and protect our reserved water rights. The United States has repeatedly failed to uphold its commitments in treaties, agreements, and acts of Congress to protect and enforce our Indian reserved water rights. Even worse, in the *Arizona v. Navajo Nation* case, the

United States argued before the Supreme Court that it was not required to fulfill its obligations to protect and uphold Indian reserved water rights.

The burden for upholding Indian reserved water rights and funding tribal water infrastructure cannot fall completely on the negotiation and settlement of our water rights. The history of each tribe is different, the history of our waters is different, and not every tribe will have the same opportunity to negotiate a water rights settlement agreement that is ratified by Congress. In addition, in the past 45 years, the Federal government has only managed to negotiate 35 Indian water rights settlements. At this rate, it will take more than 700 years to negotiate settlements with the remaining tribes.

In contrast, every Indian tribe would benefit from legislation that sets clear standards for holding and managing Indian reserved water rights as a trust resource. Our proposed legislation is based on standards developed over more than 100 years of federal Indian law. These are standards that derive from our government-to-government, treaty, and trust relationship, and that the United States must uphold as the Supreme Law of the Land. Under our proposed legislation individual Indian tribes could seek enforcement of these standards and finally turn their paper water rights into wet water rights that will ensure our homelands can continue to sustain our members.

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#### PREPARED STATEMENT OF DIGDEEP

The United States has a hidden water crisis: over 2.2 million people across America lack running water or proper sanitation. This is the water access gap, where people in all 50 states are forced to ration their water supplies, families must haul water from distant sources, and children cannot play in their wastewater-flooded yards.

The water access gap disproportionately impacts Tribal communities; Native American households are 19 times more likely to live without water than white households. An estimated one in 10 Native Americans lack access to safe drinking water or sanitation.<sup>1</sup> For so many, accessing clean water is a costly, daily struggle that negatively impacts their mental and physical health and takes time away from school and work.

Across Alaska, thawing permafrost and sinking land routinely threaten infrastructure in Alaska Native communities, fundamentally changing where people can live, and how they can access water. In Montana, many Tribal wells are contaminated, causing greater rates of chronic diseases.<sup>2</sup> At the height of the COVID-19 pandemic, the rate of COVID-19 cases for American Indian and Alaska Natives was 3.5 times higher than the rest of the nation, as water access is fundamental to basic hygiene and disease and virus prevention.<sup>3</sup>

We live in the richest country on the planet, yet over 25 percent of Native Americans live in poverty.<sup>4</sup> Without sustained access to water, families will continue to be stuck in a cycle of poverty, as they are forced to make unreasonable choices for water allocation and household spending. Without basic access to clean water, it is impossible for a person to live in dignity.

#### **The Water Access Gap**

- At least 2.2 million people across the U.S. have no regular access to running water or flush toilets.<sup>5</sup>
- Native American households are 19 times more likely to live without water than white households.
- Black and Latino households are twice as likely to lack running water and flush toilets than white households.
- 44 million Americans are served by water systems that have had a recent health-based Safe Drinking Water Act violation.

<sup>1</sup>Alakhani, Nina. "Tribes Without Clean Water Demand an End to Decades of US Government Neglect." *The Guardian*, 28 Apr. 2021, [www.theguardian.com/us-news/2021/apr/28/indigenous-americans-drinking-water-navajo-nation](http://www.theguardian.com/us-news/2021/apr/28/indigenous-americans-drinking-water-navajo-nation).

<sup>2</sup>"Reviving Traditional Apsalooke Water Sources." *High Country News*, [www.hcn.org/issues/53.8/north-water-reviving-traditionalapsalooke-water-sources](http://www.hcn.org/issues/53.8/north-water-reviving-traditionalapsalooke-water-sources).

<sup>3</sup>"The COVID-19 Outbreak in the Navajo Nation—NMAI Magazine." *NMAI Magazine*, [www.americanindianmagazine.org/story/the-covid-19-outbreak-in-the-navajo-nation](http://www.americanindianmagazine.org/story/the-covid-19-outbreak-in-the-navajo-nation).

<sup>4</sup>Tec, Dedrick Asante-Muhammad Esha Kamra, Connor Sanchez, Kathy Ramirez and Rogelio. "Racial Wealth Snapshot: Native Americans; NCRC." *NCRC*, 7 Apr. 2022, [ncrc.org/racial-wealth-snapshot-native-americans](http://ncrc.org/racial-wealth-snapshot-native-americans).

<sup>5</sup>"Close the Water Access Gap." *DIGDEEP*, [www.digdeep.org/close-the-water-gap](http://www.digdeep.org/close-the-water-gap). Accessed 18 Sept. 2023.

- Water insecurity is increasing nationwide.

A recent study by DigDeep, *Draining: The Economic Impact of America's Hidden Water Crisis*, finds that the U.S. economy loses a staggering \$8.58 billion every year in decreased household earnings, higher healthcare costs, lost tax revenues, and labor market disruptions because of the water access gap. The federal government must intervene to close the water access gap in order to rectify historic imbalances related to water quality, infrastructure and funding, address the racial and Tribal access gap, and ensure that the basic standard of living enjoyed by most Americans is available to all.

The water access gap has rippling effects on our economy, health, labor market, and justice for disaffected communities. Each year that this gap remains open, every household loses an average of \$15,800 per year.<sup>6</sup> Past investments in water infrastructure excluded many Tribal Nations, communities of color, immigrant communities, low-income communities, and rural areas.

Funding in the Bipartisan Infrastructure Law is an incredible start, but it will not close the water access gap on its own. Congress needs to develop more targeted programs to address remaining infrastructure and access needs or the gap will remain open and may continue to widen. Federal investment will benefit regions in dire need—often places facing decline, fiscal shortfalls, and loss of financial opportunities—allowing them to reinvest in their broader communities and local economies.

#### Effects On Tribal Communities

As documented above, the water access gap has impacts across the United States, with Tribal communities taking a disproportionate effect. For many Tribal Nations, a lack of investment in infrastructure has had significant consequences in the ability for households to access safe and reliable water. Decades of disinvestment or lack of investment is a lead driver of infrastructure disrepair. As an example, Alaska has the highest proportion of the U.S. population that lacks access to adequate water infrastructure. There are more than 30 unserved communities where 45 percent or more homes are not served by piped, septic tanks and wells, or covered haul systems. These unserved communities are largely located in rural areas that house mostly American Indian/Alaska Native populations.<sup>7</sup> Such gaps in service lead to extreme water conservation and water quality issues, exacerbating existing health disparities in Native communities.

Contaminated water sources on Tribal lands continue to be a major concern for public health and adequate access. On the Crow Reservation in Montana, local water sources are contaminated with feces, heavy metals, nitrates, and *E. coli*.<sup>8</sup> Crow Tribal members, along with health researchers, have identified a connection between uranium contamination and diabetes, a growing health crisis on the Reservation. In New Mexico, around the San Juan Basin (the state's largest oil and gas region), there are an estimated 40,000 wells, thousands of which are likely neglected, abandoned, or orphaned. Orphaned oil and gas wells leak methane into the air and groundwater that pose serious public health risks to rural and Tribal homes, as well as communities of color. It is estimated that 1,700 wells are orphaned and abandoned on state and private land.<sup>9</sup>

The Environmental Protection Agency recorded 187 health-based violations in public water systems serving Native American communities in Nevada between 2005 and 2020.<sup>10</sup> Similar trends are apparent in other communities, with traditionally reliable systems in the Cheyenne and Arapaho Tribal jurisdictional area in Oklahoma registering high concentrations of nitrates exceeding EPA standards.<sup>11</sup>

<sup>6</sup>“Draining—DIGDEEP.” DIGDEEP, *digdeep.org/draining*.

<sup>7</sup>Spearing, Lauryn A., et al. “What Impacts Water Services in Rural Alaska? Identifying Vulnerabilities at the Intersection of Technical, Natural, Human, and Financial Systems.” *Journal of Cleaner Production*, vol. 379, Elsevier BV, Dec. 2022, p. 134596. <https://doi.org/10.1016/j.jclepro.2022.134596>.

<sup>8</sup>Bienkowski, Brian. “Part 1: Tainted Water Imperils Health, Traditions for Montana Tribe.” EHN, 8 July 2020, [www.ehn.org/part\\_1\\_tainted\\_water\\_imperils\\_health\\_traditions\\_for\\_montana\\_tribe-2497203331.html](http://www.ehn.org/part_1_tainted_water_imperils_health_traditions_for_montana_tribe-2497203331.html).

<sup>9</sup>Gilbert, Samuel. “To Understand the Orphan Well Problem in NM, Someone's Going to Have to Count Them.” *Source New Mexico*, May 2022, [sourcencm.com/2022/05/31/to-understand-the-orphan-well-problem-in-nm-someones-going-to-have-to-count-them](https://sourcencm.com/2022/05/31/to-understand-the-orphan-well-problem-in-nm-someones-going-to-have-to-count-them).

<sup>10</sup><https://www.nevadacurrent.com/2022/09/08/nevadas-native-communities-face-worsening-access-to-clean-water-plumbing/>

<sup>11</sup>Becker, Carol J., and Matthew S. Varonka. “Water Resources in the Cheyenne and Arapaho Tribal Jurisdictional Area, West-central Oklahoma, With an Analysis of Data Gaps Through

Climate change has also ravaged water supplies and changed the nature of how people collect it. There is a unique threat to Indigenous communities: contamination of water supplies is rampant on Tribal lands, traditional water sources are depleting, and issues such as drought and wildfires continue to threaten Native communities. For example, rising temperatures and declining rainfall have made groundwater the principal drinking water sources, as surface water on Navajo Nation is estimated to have decreased by 98 percent of the twentieth century.<sup>12</sup> Limited water resources in Hawaii are disproportionately used by the tourist industry (i.e., water resources are diverted to hotels), which, in conjunction with the recent wildfires devastating Maui, will directly impact permanent residents, including Native Hawaiians.

Additionally, data continues to result in less attention and infrastructure investment for Tribal homes. It is well documented that survey data has repeatedly undercounted Native Americans, particularly the U.S. Census.<sup>13</sup> Insufficient data has inevitably led to diminished investment in water access for Indigenous communities; for other fundamental issues, including housing grants and other federal assistance, undercounting communities severely reduces funding allocations for Tribal governments.<sup>14</sup> The few entities having better data collection and analysis (i.e., the Indian Health Services' Sanitation Facilities Deficiency List<sup>15</sup>), however, have been able to justify and obtain higher funding levels.

### Impact On The Navajo Nation

Water insecurity is prevalent throughout the Navajo Nation. Roughly 30 percent of families are forced to purchase bottled water, haul water long distances, or use contaminated water to meet their basic needs. Some individuals survive on as few as two to three gallons of water per day, as compared to the average American's eighty-eight gallons—an incredibly difficult standard of living. Many people must depend on thousands of unregulated wells, livestock troughs, or other sources to meet their daily needs. The EPA recorded that these sources may contain bacterial or fecal contaminants, along with unsafe levels of arsenic and uranium—caused by long-term mining on Navajo land.<sup>16</sup> The number of unregulated water sources on the Navajo Nation is estimated to be in the low thousands.<sup>17</sup>

On the Navajo Nation, and for many Native Americans nationwide, this lack of water access is a public health crisis. It is required for human survival and critical in ensuring effective healthcare. Lack of access to clean water contributes to high morbidity and mortality rates, the spread of waterborne illness, and lower mental and social development in children.<sup>18</sup> Furthermore, the lack of access to clean, reliable drinking water is a direct threat to the Navajo Nation's well-being and ability to thrive on their ancestral homelands.

Since 2013, DigDeep's Navajo Water Project<sup>19</sup> has brought clean, running water and sanitation to hundreds of families on the Navajo Nation, where many live without basic access as a result of prolonged drought, groundwater contamination, and lack of infrastructure.

As noted in DigDeep's and the US Water Alliance's 2019 report, *Closing the Water Access Gap in the United States*:

2015." Scientific Investigations Report, United States Geological Survey, Jan. 2020, <https://doi.org/10.3133/sir20205105>.

<sup>12</sup>"Navajo Women Struggle to Preserve Traditions as Climate Change." The World From PRX, 25 May 2018, [theworld.org/stories/2018-05-25/navajo-women-struggle-preserve-traditions-climate-change-intensifies](http://theworld.org/stories/2018-05-25/navajo-women-struggle-preserve-traditions-climate-change-intensifies).

<sup>13</sup>"The US Government Has Always Undercounted Native Americans. But COVID-19 Could Make the 2020 Census a Disaster." Mother Jones, [www.motherjones.com/politics/2020/06/census-coronavirus-native-americans](http://www.motherjones.com/politics/2020/06/census-coronavirus-native-americans).

<sup>14</sup>Udall, Senators Press for Accurate 2020 Census Count for Native Communities—the United States Senate Committee on Indian Affairs. [www.indian.senate.gov/news/press-release/udall-senators-press-accurate-2020-census-count-native-communities](http://www.indian.senate.gov/news/press-release/udall-senators-press-accurate-2020-census-count-native-communities).

<sup>15</sup>IAfound at [https://www.ihs.gov/sites/dsfc/themes/responsive2017/display\\_objects/documents/FY\\_2021\\_Appendix\\_Project\\_Listing.pdf](https://www.ihs.gov/sites/dsfc/themes/responsive2017/display_objects/documents/FY_2021_Appendix_Project_Listing.pdf)

<sup>16</sup>Bourzac, Katherine. "Arsenic and Other Metals Contaminate Navajo Nation and Alaska Native Wells." Chemical & Engineering News, Aug. 2019, [cen.acs.org/content/cen/articles/97/web/2019/08/Arsenic-metals-contaminate-Navajo-Nation.html](http://cen.acs.org/content/cen/articles/97/web/2019/08/Arsenic-metals-contaminate-Navajo-Nation.html).

<sup>17</sup>"Providing Safe Drinking Water in Areas With Abandoned Uranium Mines—US EPA." US EPA, 16 May 2023, [www.epa.gov/navajo-nationuranium-cleanup/providing-safe-drinking-water-areas-abandoned-uranium-mines](http://www.epa.gov/navajo-nationuranium-cleanup/providing-safe-drinking-water-areas-abandoned-uranium-mines).

<sup>18</sup>Supreme Court of the United States. Department of the Interior v. Navajo Nation. 20 March 2023. <https://www.supremecourt.gov/DocketPDF/21/21-1484/254361/20230208163233914-DigDeep%20UTRF%20Amicus%20Brief%20-%20final.pdf>

<sup>19</sup>DigDeep. "Navajo Water Project—DIGDEEP." DIGDEEP, July 2023 [www.digdeep.org/our-works/navajo-water-project](http://www.digdeep.org/our-works/navajo-water-project).



Many households on the Navajo Nation are not good candidates for centralized water systems because extending lines to low-density, mountainous areas is expensive. Some Navajo instead rely on unregulated wells, springs, or livestock troughs to meet their daily needs, which can be unsafe because groundwater is contaminated by some 521 abandoned uranium mines. Gastric cancer rates doubled in the 1990s in some areas where uranium mining occurred. At the same time, rising temperatures and declining rainfall have made groundwater the principal drinking water source, as surface water on the Navajo Nation is estimated to have decreased by 98 percent over the course of the twentieth century. According to EPA, unregulated drinking water sources are the greatest public health risk on the Navajo Nation. Another public health impact of water access challenges is the Navajo Nation's high rate of diabetes, due to the fact that for many inhabitants, sugary beverages are more readily available than clean water. Navajo are two to four times more likely to have Type-2 diabetes than whites.

DigDeep calculated that the economy loses nearly \$15,800 for each household without access to running water each year. Considering the number of households without piped water on the Navajo Nation, water insecurity may cost the Navajo Nation and the broader U.S. economy as much as \$152.5 million each year.<sup>20</sup>

### Solutions

Closing the water access gap will create health, happiness, and economic prosperity in Tribal communities. However, we cannot effectively close this gap without an accurate understanding of every household facing water insecurity. The U.S. needs better data to understand the full scope of economic and health-related impacts of the water access gap. We need more actionable data—for example, information showing the location and nature of infrastructure deficits—to help government, the private sector, and nonprofits prioritize and plan infrastructure projects more effectively. Without this data, it is impossible to measure the effectiveness of costly interventions such as the recent Bipartisan Infrastructure Law.

A lack of flexible, targeted federal funding is one of the key barriers to solving this problem once and for all. As discussed below, especially for low-income communities facing the most acute challenges regarding running water and sanitation, federal funding flexible enough to support the work of nonprofits would make an enormous difference. New technology is making it possible to build decentralized systems that, once installed, are affordable to operate and maintain. Decentralized systems have the potential to provide water and sanitation access to thousands of communities—and dedicated operation and maintenance will ensure sustained access for years to come.

Greater investment into long-term operations and maintenance infrastructure will be critical to ensuring sustained water access forever.<sup>21</sup> When a water system falls into disrepair, more people are susceptible to falling into the water access gap. Investments do not go far enough, as many decentralized and Tribal communities may not be able to access O&M investments effectively.<sup>22</sup> Targeted investments in operations and maintenance are key solutions to preventing problems. Replenishing the fledgling workforce in maintaining water systems will be instrumental in ensuring people do not lose access to water and sanitation over time.

Finally, there are no one-size-fits-all technologies; expanding options for decentralized water service infrastructure will be critical in expanding access for many families. Many Native households are decentralized, particularly in Alaska, on the Navajo Nation, and across the United States. As it stands, there are not sufficient financial assistance options to install water service and delivery infrastructure for communities in need of decentralized water infrastructure. Alternative technologies—including rainwater harvesting systems, local water reuse systems, or central wells—are needed in certain communities where neither connecting to the municipal utility service nor installing an individual household well is feasible. Without investment and flexible funding access for these communities, some folks will be stuck in the water access gap for longer periods of time.

<sup>20</sup> Supreme Court of the United States. *Department of the Interior v. Navajo Nation*. 20 March 2023. [https://www.supremecourt.gov/DocketPDF/21/21-1484/254361/20230208163233914\\_DigDeep%20UTRF%20Amicus%20Brief%20-%20final.pdf](https://www.supremecourt.gov/DocketPDF/21/21-1484/254361/20230208163233914_DigDeep%20UTRF%20Amicus%20Brief%20-%20final.pdf)

<sup>21</sup> <https://www.epa.gov/sites/default/files/2015-07/documents/meeting-the-access-goal-strategies-for-increasing-access-to-safe-drinking-waterand-wastewater-treatment-american-indian-alaska-native-villages.pdf>

<sup>22</sup> "Draining—DIGDEEP." DIGDEEP, [digdeep.org/drainig](http://digdeep.org/drainig).

### Closing

Everyone deserves a human right to water and sanitation. For far too long, Native Americans have faced disproportionate levels of water insecurity, poverty, and health disparities. For too many Tribal families, water has become a privilege and not a right; the richest democracy in the world has more to prove by eliminating this water access gap, once and for all. Providing this basic human right will unlock change for Tribal communities for generations to come.

PREPARED STATEMENT OF HON. MERYL PICARD, CHAIRWOMAN, BISHOP PAIUTE TRIBE

My name is Meryl Picard, and I am the Chairwoman of the Bishop Paiute Tribe (Bishop Paiute). The Bishop Paiute tribe is just one of many Nüümü (Paiute) that call the Payahuunadü (the land of flowing water) the Owens Valley home. The Bishop Paiute is the fifth largest tribe in California, with over 2,000 enrolled members and one of the smallest land bases in the state. Although I will testify on the history of the Nüümü in the Payahuunadü, I only speak for the Bishop Paiute. Thank you for holding this important hearing on “Water as a Trust Resource.”

The United States has a trust responsibility to Indian Tribes and Indian people. Water is among the most sacred and valuable resources for Tribal nations. Although the United States is tasked as the trustee for the land and water rights of Tribes, American Indians, and Alaska Natives, the United States continues to fail to uphold its promises.

### The Land of Flowing Water

The Paiute are peoples whose ways of being and knowing are intricately and intimately tied to water. Since time immemorial, the Paiute have lived and thrived in the Owens Valley, managing water resources across the land to sustain the plants and animals that sustain our community. Irrigation, utilizing water from the streams that descend from the Sierra Nevada, was practiced in the Owens Valley for millennia before contact with settlers. The Paiute people stewarded the Valley’s resources and carefully harvested abundant seed to nourish our people and to sow for future generations. Our practice was a longstanding, ecologically sustainable means of agricultural production.

Today, our people have been stripped of much of our water resources; we have limited federal reserved water rights inaccessible to our people due to the Federal Government’s failed trust responsibility on behalf of the Bishop Paiute people.

### Background of Owens Valley Water

The delicate balance we maintained in our water and land was interrupted when settlers entered the Valley in the 19th century. Settlers did not recognize the form of agriculture practiced by our ancestors and only saw land available for the taking. In 1870, an article in the *Inyo Independent* noted the fertile nature of the soil in the Valley, giving no credit to the Paiute, who had nourished and built that soil by Paiute irrigation practices over many years.

The article claimed that settlers would quickly transform the land into “luxuriant gardens, orchards, and green fields.”<sup>1</sup> Settlers were quick to harness the existing irrigation networks built by Paiute hands for their canal infrastructure, and within 50 years of contact with settlers, the distribution of water across Payahuunadü had changed forever.<sup>2</sup>

To make matters worse, the City of Los Angeles (City) would soon repeat the same pattern of displacement, theft, and coercion to strip our ancestral water source for the City’s growing population (300+ miles to the south) via the Owens Valley aqueduct project. This time, Paiute and non-Indians were displaced and stripped of their water rights by the City.

The City purchased land and water rights throughout the Valley, employing coercive methods with Paiute people and non-Indians alike. Much of the landownership of the Valley was transferred to the City, which authorized the removal of mass amounts of water from the landscape so that by the end of the 1920s, the City-owned 95 percent of the Valley’s private land and water rights. Soon, surface water alone was not enough to sustain the booming expansion of Los Angeles, so the City also began groundwater pumping.

Next, the City turned to the lands held in trust for the Paiute by the federal government. In 1912, President Taft originally reserved a 67,120-acre tract of land for the allotment of Paiute Homeless Indians, known as the Casa Diablo Reservation.

<sup>1</sup> Chalfant, *Story of Inyo*, 1922, pp. 210, 212, 304, 314, and *Homes for Settlers*, p. 5

<sup>2</sup> *Id.*

Between 1875 and 1930, at least 70 Indian allotments of roughly 6,000 acres were established in the Owens Valley, with more around Mono Lake and Benton. By 1933, the City had purchased 78 percent of the Indian allotments in the Owens Valley, adding up to more than 4,400 acres (three times the combined acreage of the Bishop, Big Pine, and Lone Pine reservations in the Owens Valley today). Many of the allotments the City purchased had valuable water rights, strategic riparian lands, or access to springs.

Ironically, despite this, these lands were often assessed as wasteland, and Paiute landholders often received about one-fourth of what non-Indian landholders were paid. The final blow against the Paiute people came when, in 1932, the City lobbied President Hoover to remove these trust lands to be designated as watershed protection for the City of Los Angeles and other towns in California.<sup>3</sup>

### **Land Exchange**

Meanwhile, between 1920 and 1930, as agricultural activities in Owens Valley decreased due to land sales, many Paiute who had turned to wage labor for survival were left without work. The City of Los Angeles issued multiple reports between 1930 and 1936, calling them the “Indian problem” in the Owens Valley, and demanded that the federal government either remove the Paiute from the Valley altogether or relocate them to centralized reservations out of the way of their new export operations.

Various factors influenced the City’s interest in a land exchange between the City and the United States Government that was ultimately authorized by the Land Exchange Act of 1937<sup>4</sup> (Land Exchange). One of the primary factors was the City’s observation that all water expended upon agriculture in the Valley limited water available for export. It was thus in the City’s interest to consolidate the Owens Valley Paiute on three (3) reservations (Bishop, Big Pine, and Lone Pine) and exchange its lands with lands held by the federal government.

In the 1937 Land Exchange, the Federal Government exchanged 2,913.5 acres of land reserved for Paiute Indians for 1,391.48 acres of land owned by the City without water rights. This land exchange resulted in the establishment of the current-day reservation lands for the Bishop, Big Pine, and Lone Pine Tribes. This occurred with little or no consultation or approval from Paiute residing on the land.<sup>5</sup>

### **Owens Valley Paiute Water Rights**

In 1937, when U.S. Congress authorized the land exchange, the exchange was to be for “land, water, and mineral rights.” However, just weeks after Congress approved the land exchange, City officials announced that they could not transfer the water rights without approval from two-thirds of City voters. This was the source of great surprise and dismay among the Indian Service officials who were involved in the exchange. It was deemed that obtaining a two-thirds vote would “unduly delay consummation of the exchange,” so the land exchange went forward.

The land exchange did not include any water rights that remain with the original 2,913.5 acres of land previously held in trust for the Owens Valley Paiute. Today, the water the tribes receive and use for irrigation is only a contractual water right guaranteeing delivery by the City.

### **Conclusion**

The United States has a trust responsibility to Indian Tribes and Indian people, yet today, our Federal Reserved Indian Water Rights remain unresolved. We ask this Committee to work with the Administration to implement and resolve the Water rights owed to the Paiute of the Owens Valley. Water is among the most sacred and valuable resources for Tribal nations, and Indian County’s water crises continue to undermine public health and economic development in Indian Country.

We look forward to working with Congress, the Administration, and our partners to finally resolve the water rights owed to the Bishop Paiute Tribe and the Paiute of the Owens Valley. I am available for any questions; thank you for your time and consideration.



<sup>3</sup> Owens Valley Indian Water Commission, Summary of Payahuunadü Water & Land History. 10.06.23. [www.oviwcc.org](http://www.oviwcc.org)

<sup>4</sup> Act of April 20, 1937 (50 Stat. 70).

<sup>5</sup> The Grant Deed of June 29, 1939, Exchange Agreement between the United States of American and the City of Los Angeles.