

**DRINKING WATER INFRASTRUCTURE  
AND TRIBAL COMMUNITIES**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON FISHERIES,  
WATER, AND WILDLIFE

OF THE

COMMITTEE ON  
ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

FIRST SESSION

SEPTEMBER 20, 2023

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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED EIGHTEENTH CONGRESS

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# **DRINKING WATER INFRASTRUCTURE AND TRIBAL COMMUNITIES**

**WEDNESDAY, SEPTEMBER 20, 2023**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
SUBCOMMITTEE ON FISHERIES, WATER, AND WILDLIFE,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:33 p.m. in room 406, Dirksen Senate Office Building, Hon. Alex Padilla (Chairman of the Subcommittee) presiding.

Present: Senators Padilla, Lummis, Carper, Kelly, Ricketts, and Sullivan.

## **OPENING STATEMENT OF HON. ALEX PADILLA, U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator PADILLA. This hearing will come to order.

Good afternoon, everyone, and thank you all for joining us today for our second hearing this Congress of the Senate Environment and Public Works Subcommittee on Fisheries, Water, and Wildlife.

Not only are we set to discuss drinking water and wastewater infrastructure in tribal communities here in EPW, but I am happy to share that as we speak, subcommittee chairman Wyden of the Energy and Natural Resources Committee is also holding a hearing on water access in underserved communities. And next week, Chairman Schatz will join us by holding a hearing of the Indian Affairs Committee on related issues as well.

So there is a growing consensus here, which is encouraging news. Ensuring tribal access to water and sanitation is a multi-jurisdictional, multi-committee, multi-agency problem. And I am proud that there is a commitment amongst my Senate colleagues to tackle it.

As we will hear from our witnesses today, this is an often overlooked and underfunded area with serious impacts on the health and well being of countless Native American communities. I want to thank Chairman Carper and Ranking Member Capito as well as my Subcommittee Ranking Member, Senator Lummis, for prioritizing this issue.

Senator Lummis is on the way; she will be joining us in a few minutes. And we expect Chairman Carper and other members of the Committee as well.

I also want to take a moment to thank all of our witnesses for joining us to help convey the challenges that Indian Country still faces, in the year 2023, the challenges still faced in securing adequate water infrastructure for their communities.

As I mentioned, we are here today to learn more about the current state of drinking and wastewater infrastructure in Indian Country. In 2023, there is no reason why any person in America should lack clean and affordable water in their taps and in their showers and reliable plumbing in their homes. Yet far too many tribal communities across the country, for too many of them, reliable and affordable water infrastructure has become a privilege, and not a right.

Native American households are 19 times more likely than white households to lack indoor pipes for running water and sanitation. Let me emphasize that statistic a little bit. Not 19 percent more likely, 19 times more likely. And even that stat on the shortage of physical infrastructure doesn't begin to capture the gap in water quality for Native Americans.

Inadequate water supply and deteriorating pipes can impact the public health, education, and economic development of tribal communities. And it is easy to see why. If you can't trust the water you are drinking, or the plumbing that keeps your home sanitary, it harms your quality of life.

On top of that, tribal communities' water systems are almost all small or rural as well as understaffed, often with only one person dedicated to transportation infrastructure and energy infrastructure and water services and more. Unlike State and local governments, tribal governments lack the tax base for infrastructure improvement and staff, often exacerbating water access issues and leading to higher water bills for tribal homes.

I know we have seen these problems in California, where for example the Tule River Tribe, like so many others, was forced onto a reservation without the irrigation and water storage facilities that the Federal Government promised. The Tule River Tribe faces a constant battle to access clean water. Families are forced to haul in water by truck for their own daily hygiene or for their children to drink.

On days when water is too tough to get, some simply go without. And when disaster strikes, as it did last month when a stray lightning bolt knocked out power, hundreds lose access to clean water in an instant.

So this must be an urgent priority for the Federal Government, which, I will remind us, has a moral and legal trust responsibility to act. Of course, last year, after decades of neglect, Congress did step up to make transformational investments in tribal infrastructure through the Bipartisan Infrastructure Law, which will bring nearly \$870 million to the EPA for tribal infrastructure construction and \$3.5 billion to the Indian Health Service for tribal sanitation.

That is good news. But for as much good as that funding will do, the need in tribal communities is even greater. They need not just an initial surge of funding for new projects, but sustained funding for securing the long term stability of the water systems.

That could mean new and continued funding for operations and maintenance, so that even without tax revenues, Tribes have a reliable stream of funding to prepare and maintain water infrastructure when needed after the initial investments dry up.

That could mean improved technical assistance to better support the design of tribal projects that will receive Federal funding. That could mean increased work force development for understaffed water managers and tailored certification training for tribal operators whom hundreds of people might rely on to stay safe.

And as we focused on in my first Subcommittee hearing, that could mean finally funding a permanent water rate assistance program like we have for energy assistance, with LIHEAP, to ensure that Native American households aren't saddled with high water bills that they can't afford.

So there is a lot on the table today, and I am looking forward to hearing from each of our witnesses about what you are seeing on the ground and what you see as the most direct solutions to getting tribal communities the support that they need.

With that, I will introduce and turn it over to Ranking Member Lummis for her opening statement.

**OPENING STATEMENT OF HON. CYNTHIA M. LUMMIS,  
U.S. SENATOR FROM THE STATE OF WYOMING**

Senator LUMMIS. Thank you, Mr. Chairman. It is a pleasure to serve with you, and your interest in this subject and mine dovetail tremendously.

We are grateful to our witnesses for being here today.

I especially want to extend a warm welcome to Jola WallowingBull, who has taken time to travel from the Wind River Reservation to be here with us today.

Jola, thank you so much for coming.

Having access to both clean drinking water and wastewater infrastructure is a necessity for communities in this day and age. It is what keeps our children safe as they develop, what keeps communities strong and bound together, and what allows economic growth to occur. Without access to adequate drinking water and wastewater infrastructure, a community will oftentimes struggle to survive.

Unfortunately, far too many communities lack access to this basic infrastructure, and too many of those communities are those of our tribal neighbors. It is my hope that this hearing today will give the members of this Committee greater insight into the unique challenges that Tribes face when providing safe and affordable drinking water and wastewater services.

The EPA can and must do better when it comes to prioritizing funding decision timing for Tribes. This includes prioritizing tribal communities within the Small and Disadvantaged Grant program.

I am also particularly interested to hear how effective EPA is in communicating the regulatory requirements that Tribes must meet under the Clean Water Act and Safe Drinking Water Act. So I hope we will hear something about that from our witnesses.

EPA's decision to move forward with a national primary drinking water standard for certain PFAS compounds will mean that Tribes will need to install expensive treatment technology in order to maintain compliance. The installation, operation, and maintenance costs will ultimately be borne by members of the Tribe.

I will be interested to also hear from the witnesses about how they plan to keep water rates affordable if they are forced to install

these new technologies. I would also be remiss if I did not reiterate my concern with EPA's proposal to list PFAS compounds under CERCLA.

The liability costs that small, rural, and tribal water systems would face if this rule is finalized could be crushing and would be crushing for some Tribes. This Committee must thoroughly address passive receiver liability issues at the earliest possible time so that small system operators have the regulatory certainty they need to continue to provide clean drinking water.

Thank you again for calling this hearing, Mr. Chairman.

Thanks again to our witnesses. I look forward to hearing your opening statements, and I look forward to our discussion afterwards.

Thanks, Mr. Chairman.

Senator PADILLA. Thank you very much.

Before we hear from our witnesses, let me offer them a very proper introduction. We are joined by Ken Norton, who serves not only as Director of the Hoopa Valley Tribal Environmental Protection Agency in California, but also chairs the National Tribal Water Council, which advocates for the best interests of Native American and Alaska Native Tribes on water. Specifically, they assist the USEPA with research and information for decisionmaking on water issues. So I know Mr. Norton will be a great resource to the Subcommittee on how we can bolster EPA's tribal water programs.

I would also like to introduce Mr. Brian Bennon, who is the Tribal Water Systems Department Director at the Inter Tribal Council of Arizona, which is an inter-tribal consortium of 21 Tribes in Arizona. Mr. Bennon oversees the Council's National Training Certification and Technical Assistance Services for Drinking Water and Wastewater Operator Personnel.

Last but not least, I will turn it over to Senator Lummis to introduce our third witness.

Senator LUMMIS. Thanks so much.

Jola WallowingBull is the Director of the Northern Arapaho Tribal Engineering Department. She is an enrolled member of the Northern Arapaho Tribe from the Wind River Indian Reservation. She graduated from the University of Wyoming in 2006 with a Bachelor of Science degree in architectural engineering. She was also recognized as the first American Indian woman to receive a degree in architectural engineering from the University of Wyoming.

Jola is currently the Director for the Northern Arapaho Tribal Engineering Department, where she works with State and Federal funding agencies to improve the water and wastewater systems for the Northern Arapaho communities. She has worked in this position since 2016, and has established a solid foundation for the department.

Mr. Chairman, I would be remiss in not having you notice the beautiful skirt that she is wearing. A friend of hers on the reservation made the skirt particularly for her visit today to Washington. It is stunning. I hope everyone will take advantage of seeing that fabulous work of art that she is wearing.

Thanks, Mr. Chairman.



Senator PADILLA. Thank you very much.  
Welcome to all three witnesses.  
Mr. Norton, we will begin with you.

**STATEMENT OF KEN NORTON, CHAIR, NATIONAL TRIBAL  
WATER COUNCIL, DIRECTOR, HOOPA VALLEY TRIBAL ENVI-  
RONMENTAL PROTECTION AGENCY**

Mr. NORTON. Thank you.

My purpose for speaking before the Committee today is to raise awareness and understanding about the immediate need to support the operation and maintenance of tribal drinking water systems in addressing public health inequalities and the fulfillment of trust to provide safe and clean water to our tribal nations.

Over the past several decades, many Tribes have developed the necessary infrastructure to bring piped water to their community households. However, for a variety of reasons, some of these tribal water systems have struggled with providing suitable water for human consumption to the communities they serve. The physical condition and the operation and maintenance of these systems influences the extent to which these communities are at risk of contamination and illness.

The Environmental Protection Agency is directly responsible for overseeing the monitoring and reporting about the water quality delivered by public water systems for most Native American Tribes. According to EPA's Safe Drinking Water Information System, it indicates that there are a total of 835 public water systems that are owned by tribal governments.

These systems serve an estimated 1.4 million people who are at a higher risk when compared to consumers served by public water systems with State oversight. Many tribal water systems serve water that exceeds health based standards, and have not been monitored in accordance with the Safe Drinking Water Act.

In addition to the health based violations, the EPA also monitors non-health based violations. These occur when a public water system owner fails to monitor or report any of the 90 contaminants required as part of the Safe Drinking Water Act. The most recent compliance data compiled from the EPA indicates that 404 of the 835 tribally owned water systems regulated by EPA had one or more non-health based violation.

The Indian Health Service and the EPA are the primary Federal agencies responsible for working collaboratively with Tribes to ensure they have access to safe drinking water and basic sanitation. These agencies have pointed out that an important root cause of the non-compliance problem is the lack of operation and maintenance capacity. Without additional resources, the leadership from these agencies concluded that EPA simply imposing additional enforcement actions will not likely result in improving drinking water quality compliance.

The Indian Health Service under the Indian Health Care Improvement Act since 1992 has had the authority to provide funds to support the cost of operating, managing, and maintaining tribal water and wastewater facilities. However, IHS has never requested funding for this purpose, and Congress has not appropriated these funds to IHS.

In order to improve the operation and maintenance capacity of tribal water systems, the National Tribal Water Council recommends, one, Congress direct EPA, in collaboration with the IHS, to evaluate all tribally owned water systems to estimate the annual cost associated with operating and maintaining these facilities. And two, Congress appropriate \$600 million over a 5 year period to be utilized by IHS in collaboration with EPA to develop and implement a pilot program that directly supports the operation and maintenance of these public water systems.

And finally, three, Congress direct IHS to utilize the assessments completed in Recommendation 1 and the data compiled in Recommendation 2 to develop a budget request that can be considered by Congress for funding appropriation to support all tribal water systems needing operation and maintenance support.

Thank you for allowing me to address the Committee today on our recommendations. Thank you.

[The prepared statement of Mr. Norton follows:]

**Senate Committee on Environment and Public Works Hearing  
EPA Drinking Water and Wastewater Infrastructure in American Indian Communities  
Testimony by Ken Norton, Chairman  
National Tribal Water Council  
September 20, 2023**

My purpose for speaking before the committee today is to raise awareness and understanding about the immediate need to support the operations and maintenance of tribal drinking water systems in addressing public health inequities and the fulfilment of trust to provide safe and clean water to our tribal nations.

Over the past several decades, many Tribes have developed the necessary infrastructure to bring piped water to their community households. However, for a variety of reasons, some of these tribal water systems have struggled with providing suitable water for human consumption to the community they serve.

The physical condition and the operation and maintenance of these systems influences the extent to which these communities are at risk of contamination and illness.

The Environmental Protection Agency (EPA) is directly responsible for overseeing monitoring and reporting about the water quality delivered by the public water systems for most Native American Tribes. According to EPA's Safe Drinking Water Information System (SDWIS)<sup>1</sup>, it indicates there are a total of 835 public water systems that are owned by tribal governments. These systems serve an estimated 1.4 million people who are at a higher risk, compared to consumers served from public water systems with State oversight. Many tribal systems serve water that 1) exceeds health-based standards, and 2) has not been monitored in accordance with the SDWA. Based on SDWIS data reported from 2023, 115 of 835 tribally owned systems were in violation of at least one health-based rule under the SDWA.

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<sup>1</sup> Oracle Analytics Interactive Dashboards – Public (epa.gov)

In addition to the health-based violations, the EPA also categorizes “non-health-based violations.” These occur when a public water system owner fails to monitor and/or report any of the 90 contaminants required as part of the SDWA. The most recent compliance data from the EPA indicates that Native American owned public water systems regulated by the EPA or the Navajo EPA are nearly twice as likely to be served by a public water system that have non-health-based violations compared to water systems regulated by a State. Nearly half or 404 of 835 Native American owned systems regulated by EPA or the Navajo Nation had one or more non-health-based violation in 2023.

The Indian Health Service (IHS) and the EPA are the primary federal agencies responsible for collaboratively working with Tribes to ensure they have access to safe drinking water and basic sanitation. IHS also works collaboratively with EPA, and United States Department of Agriculture (USDA) to provide technical assistance to assist tribal utilities with the **operation** and maintenance of their systems. Despite the agencies support of infrastructure construction and technical services, health-based drinking water violation rates for tribal water facilities has remained over 2.4 times higher than the rate for water systems regulated by States over the last 10 years. However, the federal agencies tasked to support tribal water systems have pointed out that an important root cause of the non-compliance problem is the lack of operation and maintenance capacity. Without additional resources, the leadership from these federal agencies concluded that EPA simply imposing additional enforcement actions will not likely result in improved drinking water quality compliance.<sup>2</sup>

The IHS under the Indian Health Care Improvement Act (IHCIA) since 1992 has had the authority

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<sup>2</sup> Tribal Infrastructure Task Force. Meeting the Access Goal. Strategies for Increasing Access to Safe Drinking Water and Wastewater Treatment to American Indian and Alaskan Native Homes. March 2008. <https://www.epa.gov/sites/default/files/2015-07/documents/meeting-the-access-goal-strategies-for-increasing-access-to-safe-drinking-water-and-wastewater-treatment-american-indian-alaska-native-villages.pdf>

“to provide funds to support the cost of operating, managing, and maintaining tribal water and waste facilities.”<sup>3</sup> However, the IHS has never requested funding for this purpose and Congress has not appropriated these funds to the IHS.

In order to improve the operation and maintenance capacity of tribal water systems, the NTWC recommends:

- (1) Congress to direct the EPA, in collaboration with the IHS, to evaluate all American Indian owned water systems regulated by the EPA, and the Navajo Nation, to include estimating the annual cost associated with operating and maintaining of these facilities.
- (2) Congress appropriate \$600M<sup>4</sup> over five years to be utilized by the IHS in collaboration with EPA to develop and implement a pilot program under IHS’s existing authorities to directly support the operation and maintenance of Native American owned public water facilities.
- (3) Congress to direct IHS to utilize the assessments completed (Recommendation #1), and the pilot program data (Recommendation #2) to develop a budget request to be considered by Congress for funding appropriation to support all tribal water systems needing operation and maintenance support to ensure compliance with the SDWA water quality rules. These actions will protect the significant public investments in these water systems.

Implementing the funding provided under these recommendations will require the federal government to take immediate action to fulfill the longstanding promises associated with its trust responsibilities and directly support operation and maintenance of Native American

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<sup>3</sup> Indian Health Service. Public Law 86-121 – Annual Report 2017. [https://www.ihs.gov/sites/dsfc/themes/responsive2017/display\\_objects/documents/reports/SFCAnnualReport2017.pdf](https://www.ihs.gov/sites/dsfc/themes/responsive2017/display_objects/documents/reports/SFCAnnualReport2017.pdf)

<sup>4</sup> IHS estimated in the report titled *Operation and Maintenance Cost Evaluation of American Indian Owned and Operated Drinking Water and Wastewater Systems* (April 7, 2020) that between \$40.4 and \$204.2 M annually in O&M funding was needed to support American Indian tribes to close the O&M funding gap.

owned public drinking water systems to reduce the exposure risk to contaminated drinking water that can cause disease and illness to our tribal communities.

Senator PADILLA. Thank you, Mr. Norton.  
Mr. Bennon.

**STATEMENT OF BRIAN BENNON, TRIBAL WATER SYSTEMS  
PROGRAM MANAGER, INTER TRIBAL COUNCIL OF ARIZONA,  
INC.**

Mr. BENNON. Chairman Padilla, Ranking Member Lummis, and Committee members, I am Brian Bennon, Director of the National Tribal Water Systems Program at the Inter Tribal Council of Arizona, an inter-tribal consortium of 21 federally recognized Tribes.

The ITCA program provides technical assistance, training, and operator certification services to tribal water utilities located across six EPA regions and over 200 tribal nations. Proper sanitation services are the cornerstone of modern public health and economic development. However, the rural, poverty stricken conditions of most reservations commonly result in under-resourced drinking water and wastewater facilities.

According to the Indian Health Service, 22 percent of tribal homes are without access to adequate sanitation. The word adequate, meaning in compliance with all applicable health and environmental regulations. According to Environmental Protection Agency data, over 90 percent of tribal public water systems are classified as small or very small systems, serving 3,300 or fewer customers.

EPA data averaged from the last 10 years identifies significant compliance disparities under the Safe Drinking Water Act. Tribal public water systems have two times more violations and over three times more priority violations compared to non-tribal systems. Similar compliance disparities exist for tribal wastewater facility discharges to surface water bodies regulated under the Clean Water Act.

Federal agencies annually spend hundreds of millions of taxpayers' dollars on infrastructure construction to improve tribal community access to safe drinking water and sanitation. However, infrastructure construction alone cannot solve this access crisis. Infrastructure construction must be balanced with the building of managerial, financial, and technical capacity of the utilities to properly operate and maintain the water infrastructure investments.

One major concern area is the financial viability of operations and maintenance. The water industry prescribes that utilities function as a business where operations and maintenance costs are distributed across the customer base through water service rates. However, scales of economy cause this business model to fail when there are too few customers and when communities are geographically isolated with limited economic means to pay for such services.

Such conditions additionally create work force barriers. Rural, small, tribal water utilities are challenged in attracting qualified personnel. Once trained and certified, operators often leave to work at bigger utilities that offer higher salaries and more benefits.

Based on these observations, the following recommendations may be offered. A funding mechanism in parity with the States is needed for tribally led, by Tribes for Tribes organizations, for capacity development and operator certification programs. EPA needs to en-

gage in public meetings with two existing tribally led, by Tribes for Tribes capacity development and operator certification programs for ongoing dialogue and strategic planning for future program improvements.

Create a Federal funding program that provides revolving operations and maintenance grants for small, tribal drinking water and wastewater utilities that have implemented all possible components of sustainable operations and maintenance, but whose scales of economies cause a financial viability shortfall gap.

Expand the EPA and IHS facilitated technical assistance provider coordination meetings initiative to additional areas in Indian Country. The Federal Infrastructure Task Force should return to conducting periodic publicly accessible meetings for discussions on compliance disparities, regional rural water supply systems, and funding for operations and maintenance.

Thank you for the opportunity to provide this testimony.

[The prepared statement of Mr. Bennon follows:]



Written Testimony for the Record by

Brian Bennon  
Director of the National Tribal Water Systems Programs at the  
Inter Tribal Council of Arizona, Inc.

**Challenges Achieving Adequate and Sustainable Drinking Water and  
Sanitation Services in Indian Country**

Provided to the  
Senate Committee on the Environment and Public Works,  
Subcommittee on Fisheries, Water, and Wildlife Hearing  
September 20, 2023

**OVERVIEW**

This testimony is based on years of field experience implementing capacity development and operator certification services nationally on behalf of the Inter Tribal Council of Arizona, Inc. (ITCA). ITCA is an inter-tribal consortium of 21 federally recognized Indian Tribes with lands in Arizona, California, Nevada, Utah, and New Mexico. ITCA is governed by the highest elected tribal officials from each Member Tribe, including tribal chairpersons, presidents, and governors. More information about ITCA and its National Tribal Water Systems Program is provided at the end of this written testimony.

Hundreds of millions of taxpayers' dollars are spent annually on infrastructure construction to improve access to safe drinking water and adequate sanitation in Indian Country. However, infrastructure construction alone cannot solve water access problems. Infrastructure construction must be balanced with building the managerial, financial, and technical capacity for operations and maintenance of the infrastructure investments. This testimony provides insights and recommendations on the needs for managerial, financial, and technical capacity development in Indian Country.

**INTRODUCTION**

There are 574 federally-recognized Indian tribes and 326 Indian reservations<sup>1</sup> in the U.S. Census data shows the 2019 (pre-pandemic) national poverty rate was 12.3%, while the American Indian / Alaska Native (AI/AN) poverty rate was 23.0% and was the highest poverty rate of any race group<sup>1</sup>. However, AI/AN poverty rates are much worse at the local level, as poverty rates for individual Indian reservations are frequently reported exceeding 35%<sup>2</sup>. According to National Vital Statistics, the AI/AN population has substantially higher mortality than other race populations in the U.S.<sup>3</sup>. The Indian Health Service (IHS) reported in 2019 that AI/AN people have long experienced disproportionate disease burden and explained that this is “*perhaps because of inadequate education, disproportionate poverty, discrimination in the delivery of health services, and cultural differences.*”<sup>4</sup> For years, dire warnings have largely gone ignored regarding severe underfunding and under resourcing of critical societal systems (such as housing, education, healthcare, and public works) for AI/AN communities.

Proper sanitation services are the cornerstone to modern public health in preventing disease and death caused by pathogenic organisms. In-home plumbing with running water and sanitation services has greatly improved public health with reliable access to safe drinking water for consumption and hygiene practices. Inadequate access to safe drinking water and sanitation leads to health problems. A study<sup>5</sup> of Alaska Natives showed direct correlation between pressurized, in-home water services and reduced transmission of diseases, such as pneumonia, influenza, skin

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<sup>1</sup> U.S. Census, ACS, 2019, Table ID: S1701

<sup>2</sup> [C. Graf, High Country News, May 12, 2022] and [Pew Research Center, FactTank-News in the Numbers, 2014]

<sup>3</sup> National Vital Statistics Report, Volume 70, No. 12, Nov. 9, 2021

<sup>4</sup> <https://www.ihs.gov/newsroom/factsheets/disparities/>

<sup>5</sup> Hennessy, et. al., AJPH, Nov. 2008

or soft tissue infection, and respiratory infection. In its fiscal year 2023 budget justification to Congress, IHS observed that *“individuals who live in homes without adequate sanitation facilities are at a higher risk for gastrointestinal disease, respiratory disease and other chronic diseases.* This was demonstrated during the COVID-19 pandemic, during which, AI/AN people had the highest rates of any race / ethnic group in the U.S.

The rural, poverty-stricken conditions of most AI/AN communities commonly result in under-resourced drinking water and wastewater facilities / systems. According to Indian Health Service (IHS) and Infrastructure Task Force reports<sup>6</sup>, 12.8% of AI/AN homes were without safe drinking water and/or sanitation during the time period 2000-2014. This was 21 times greater than the 0.6% “lack of access” rate of for non-AI/AN homes in 2010. Averaged over the past six years of data reported to Congress by IHS (2015-2020), 36% of AI/AN homes need some form of sanitary facility improvement, 22% of AI/AN homes are without access to **adequate** sanitation facilities, and 3.5% of AI/AN homes are without access to safe water supply system and/or sewage disposal system. In its most recent Sanitation Deficiency Levels fiscal year report to Congress (Fiscal Year 2020, released August 22, 2023), IHS states the term *“Adequate or Adequacy implies that the sanitation facilities serving an eligible AI/AN home comply with all applicable Federal, State, and local health and environmental laws and regulations and good public health practices.”*

On the frontend of the water industry, public drinking water systems are regulated under the federal Safe Drinking Water Act (SDWA), as implemented by the U.S. Environmental

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<sup>6</sup> Multiple sources located on the federal Infrastructure Task Force website <https://www.epa.gov/tribal/federal-infrastructure-task-force-improve-access-safe-drinking-water-and-basic-sanitation>; on the IHS reports to Congress webpage: <https://www.ihs.gov/newsroom/reportstocongress/>; and on the IHS budget justifications webpage: <https://www.ihs.gov/BudgetFormulation/congressionaljustifications/>

Protection Agency (USEPA). According to the USEPA SDWIS<sup>7</sup> database, there are 1,044 “Tribal” public water systems that supply drinking water to customers on tribal lands and 80% (836/1044) are listed with ownership type as “Native American” (as opposed to private, public/private, local, or federal ownership). Most Tribal public water systems (90.1%) are classified as small or very small systems serving 3,300 or fewer customers. Over the 20-year time period of 2003 to 2022, 58% of tribal public water systems had at least one violation of the SDWA during any given year, and this was 2.0 times the national average of 29%<sup>8</sup>. Newer USEPA data averaged from the 10 year period 2013-2022, identifies the following revelations on SDWA violation disparities. Tribal public water systems have: 1.9 times more instances of any violations (61% of tribal systems versus 32% non-tribal systems); 2.4 times more instances of health-based violations (14% of tribal systems versus 6% of non-tribal systems); over 3 times more instances of priority / serious violations (9.5% of tribal systems versus 3% of non-tribal systems); and over 2 times more instances of monitoring and reporting violations (54% of tribal systems versus 24% of non-tribal systems). Please refer to the detailed disparity graphs in **Exhibit 1**.

On the backend of the water industry, sewer infrastructure that collects, treats, and disposes of domestic, municipal, commercial, and industrial wastewater is regulated to protect environmental quality and public health through various local and federal laws. The federal Clean Water Act (CWA) provides protections of some surface water bodies—rivers, lakes, oceans, and [sometimes] wetlands—from pollution discharged at discrete point locations, such as from wastewater treatment facilities, through a permit program known as the National Pollution

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<sup>7</sup> U.S. EPA Safe Drinking Water Information System (SDWIS), queried September 10, 2023

<sup>8</sup> Multiple USEPA data sources, SDWIS, and the Enforcement and Compliance History Online (ECHO)

Discharge Elimination Systems (NPDES). According to USEPA data<sup>9</sup>, there are approximately 2,320 wastewater facilities on tribal lands. During the nine year period 2014-2022, tribal wastewater facilities with NPDES permits had 2.1 times more instances of regulatory violations (36%, as compared to 17% nationwide).

Federal agencies annually spend hundreds of millions of taxpayers' dollars on infrastructure construction as an attempt to improve AI/AN access to safe drinking water and adequate sanitation. However, infrastructure construction alone is incapable of solving the AI/AN water access issues. To meaningfully address tribal safe drinking water and sanitation needs, infrastructure construction must be balanced with building the managerial, financial and technical capacity to adequately operate and maintain the infrastructure investments. A 2011 USEPA Office of Policy report succinctly describes its findings in the following excerpt: "*Adequate O&M [operations and maintenance] of tribal systems is essential to both ensure that the infrastructure funded by EPA is maintained over its projected design life, and to maintain SDWA compliance. ...If existing infrastructure degrades due to inadequate O&M, homes previously provided access to drinking water or basic sanitation could no longer have access.*"

#### **OBSERVATIONS**

The National Tribal Water Systems (TWS) Program at the Inter Tribal Council of Arizona (ITCA)<sup>ii</sup> is a tribally-led water and wastewater workforce capacity-building program that provides technical assistance, training, and operator certification services to tribal water utilities located throughout USEPA regions 5 through 10. Over the past 30 years, water and wastewater utilities

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<sup>9</sup> Enforcement and Compliance History Online (ECHO)

from approximately 200 tribal nations have participated in the capacity development and operator certification services of the ITCA Program. As the Director of the TWS Program for nearly 14 years, I offer the following observations with regards to challenges in achieving adequate and sustainable drinking water and sanitation in Indian Country.

#### Tribal Water Utility Management and Governance

The ITCA – TWS Program used the water industry’s Ten Attributes of Effective Utility Management (EUM) methodology for small systems to create an adaption called the Tribal Utility Tune-Up Workshop. Since 2017, such workshops have been individually conducted for 38 small tribal utilities located across six EPA regions. Utility self-assessments conducted during the workshops identify EUM attributes that need focused attention for improvement and serve as a direct pathway for strategic technical assistance. Common barriers to implementing management efforts are reported by the Effective Utility Management Steering Committee in a document titled *Findings and Recommendations for a Water Utility Sector Management Strategy* (2007). The document identified the following challenges and barriers, which I have directly observed in Indian Country: (a) difficulty generating and sustaining support of a governing body, which is often comprised of elected officials; (b) turnover of elected officials/leaders; (c) lack of asset management and planning; and (d) lack of financial viability. For context, it is important to point out that tribal communities and tribal water utilities often have the difficult task of getting in front of and short-circuiting the crisis-to-crisis modality. Due to existing historical and socioeconomic circumstances, many tribes function within the existing backdrop of working on long-term crisis recovery endeavors to save and maintain their community and cultural existence. Thus, limited

resources and competing priorities can cause risk management of shorter-term decision making to be “placed on the back burner”.

Tribal communities have varying governmental structures and the establishment and administration of tribal water utilities within the tribal government structure can often be challenging. For example, some tribal water utilities are created as a department of the tribal government itself, while some tribal water utilities function as independent tribal business enterprises or as joint ventures with other entities (such as non-tribal or tribal economic enterprises). I have observed cases where, over time, the same tribal water utility goes through cycles of governance transition from one governance structure to another, and then back again. Such changes severely disrupt the community’s drinking water and sanitation services. Operator of tribal water utilities consistently report their frustration over the lack of support and understanding by policy/decision-makers. Without sufficient support by local governing body or a functional utility governance structure, even the most capable certified tribal operators would be crippled in their abilities to sustainably maintain water and sanitation services, protect public health, or achieve and maintain regulatory compliance.

Small water utilities are often overseen by the facility operators themselves or by operators that are promoted to utility management positions. However, for many utilities, there are no clear career pathways for utility management. According to a 2011 USEPA report<sup>10</sup>, small water systems are often overseen by part-time managers or individuals who are inexperienced, unqualified, or who are otherwise undereducated/unskilled. It is for this reason that in 2013, ITCA followed standards for certification bodies (ISO IEC 17024) and created the Tribal Utility

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<sup>10</sup> *National Characteristics Drinking Water Systems Serving 10,000 or Fewer People*, USEPA, 2011

Management Certification, which is a professional credential for personnel of tribal water utilities that are entering into the field of water utility management. This professional credential could serve an important role, much like the way federal agencies use operator certification as a benchmark tool for gauging utility capacity scoring for infrastructure funding.

#### Financial Viability of Sustainable Operations & Maintenance

Financial management of water utilities requires a relatively sophisticated skillset and capacity to operate a business model that ensures sustainability for providing ongoing services to the community. The community's public health and economic welfare depends on it. The water industry typically prescribes that utilities function as businesses whereby, customers pay service user fees through rates that are set and periodically adjusted so that the cost of the water / sewer services (the cost of delivering safe and reliable water / sanitation services for the user) are distributed across the utility's customer base. The cost of service involves revenues and expenditures that must be managed through a multitude of variables that include, but are not limited to: supply and demand, demographics, fixed and variable costs of operations and maintenance, infrastructure asset life-cycle (asset management, preventative maintenance, replacement, and capital improvement), workforce and administration, water loss and efficiencies, and regulatory compliance. In addition, the process of setting rates involves public relations and a sensitivity to local community needs and circumstances. However, scales of economy cause this business model to fail when the cost of water service is distributed across a small customer base that has limited means to pay for such services. This is particularly true for small water utilities that are geographically isolated.



Most, if not all water utilities aspire to achieve financial viability when it comes to sustainability providing safe and reliable drinking water and sanitation services for their communities. Some, but far too few, tribal water utilities achieve that goal. Many small tribal water utilities are actively working on building the numerous prerequisite components of sustainable operations and maintenance (such as, asset inventories, preventative maintenance, installation of meters to measure water use and flows, and conducting rate studies). In addition, there are numerous technical assistance service providers hard at work (and sometimes crossing paths or potentially duplicating services) to provide small tribal water utilities with assistance on these prerequisite components. Despite these efforts, many small tribal water utilities are fundamentally unable to achieve financial viability due to scales of economy that result in shortfalls in utility revenues. What this means is that their utility finances are insufficient to sustainably meet the operations and maintenance costs. For some small tribal water utilities, such shortfalls can sometimes be subsidized by their tribe's general funds, particularly for tribes with successful gaming enterprises. However, such internal subsidization is short-term in nature, as small tribal water utility managers must justify and defend their funding goals to their Tribal Councils, who face competing fiscal priorities for limited resources. In times of austerity, it can be next to impossible for small tribal utilities that are dependent on internal tribal subsidy to justify competitive salaries for utility operators and replacement of worn-out assets, or to defend the existence and continuation of reserve accounts for planned future capital improvement projects.

For decades, the need for operations and maintenance (O&M) funding alternatives for small tribal water utilities has continuously been expressed to Congress by all levels of stakeholders, including the Tribal Infrastructure Task Force and federal agencies such as the IHS. Likewise, such O&M funding needs have continuously been labeled as non-fundable. The Low

Income Household Water Assistance Program (LIHWAP) implemented by the U.S. Department of Health & Human Services, Administration for Children & Families has become a successful and important program. However, the LIHWAP process of administration and its goals are not aligned with the overarching problems of the small tribal water utilities that have financial viability shortfalls in sustainably covering O&M costs. In addition, there are a handful of cases where operations and maintenance costs for public drinking water systems appear to be federally funded under U.S. Bureau of Reclamation construction projects for regional Rural Water Supply Systems. It has been observed that some tribal community beneficiaries of Rural Water Supply projects have the perception that safe and reliable drinking water is free. Such perceptions are in stark contrast to the current realities of most small tribal water utilities and creates a dynamic of potential inequality.

#### Workforce Barriers and Professional Credentialing Complications

Many federal agencies, including USEPA and U.S. Department of Homeland Security, consider water and wastewater personnel as Essential Critical Infrastructure Workers that work to protect their communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security. Water and wastewater operators and utilities personnel are on the front lines of protecting public health because it is their job to reliably supply drinking water and sanitation services that meet public health requirements and standards. Unfortunately, workforce trends for the water industry are well documented as showing an impending workforce gap across the entire water industry. The workforce gap is further widened by the fact that small water utilities suffer from significant turnover in personnel and declining career interest in the water utility industry. Factors contributing to this problem include low wages,

lack of support by decision makers, little to no understanding by the general populace of the vital importance of water utility professions, lack of resources for operations and maintenance, and worker safety risks. Most rural, small tribal water utilities frequently lose workers looking to transition to bigger utilities that may offer more growth opportunities and higher salaries. Because of the small, rural nature and socioeconomic circumstances of many tribal communities, their water utility workforce is often too few in number, overworked, under paid, inadequately trained, and resources-starved. Furthermore, some operators of very small tribal water utilities sometimes operate more than one utility and quite often additionally have a multitude of other non-water utility jobs duties for their community. A groundbreaking study<sup>11</sup> published in 2016, demonstrated a strong statistical correlation between utility size, labor market education, and compliance with the SDWA: *“The relationship between compliance and availability of human capital is especially acute in smaller utilities, where limited organizational capacity means that organizations may struggle to attract and retain talented labor. [Smaller] Utility success in these economically and/or socially challenged regions may require specialized workforce strategies.”*

Drinking water and wastewater operators are public health professionals. Professional credentialing is needed for standardized verification that an individual is qualified for the job tasks. Therefore, primacy agencies prescribe that water and wastewater operators earn a professional credential (certification or license) that verifies the operator possesses the required knowledge, skills, and abilities. However, significant national challenges exist within the water professionals credentialing sector. A 2018 Brookings report<sup>12</sup> describes a pervasive problem that permeates the entire U.S. water utilities workforce: *“Difficulties defining needed skills and creating portable,*

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<sup>11</sup> Switzer *et al.*, JAWWA 2016. 108.0093

<sup>12</sup> *Renewing the Water Workforce*, Brookings Institute, 2018

*versatile credentials is an ongoing frustration across the sector, and pathways to developing such knowledge and skills are unclear, especially from region to region.”* A 2018 GAO report<sup>13</sup> succinctly described the U.S. water operator credentialing arena as follows: *“For drinking water operators, regulations under the SDWA establish minimum standards for certifications. Each state must implement a water operator certification program that meets the requirements of these guidelines. The Clean Water Act does not have similar minimum requirements for wastewater operators, and certification standards are established by the states. Accordingly, there is no single standard national certification. Even though there has been an industry effort to harmonize the certification requirements across states for both drinking water and wastewater operators, reciprocity of certification between different states remains limited.”* The situation is additionally challenging for Indian reservations whose boundaries don’t correspond with state boundaries and USEPA-approved tribal operator certification programs must establish reciprocity with numerous states in service area juxtaposition.

The USEPA delegates SDWA primary enforcement responsibility (“primacy”) to local jurisdictions such as states and tribes. Some states have adopted safe drinking water regulations that are more stringent than the federal minimum baseline SDWA rules and regulations. With rare exception, the USEPA is the primacy agency on federal trust lands (such as Indian reservations), where the federal minimum baseline rules and regulations are enforced. In 2017, an industry-wide effort characterized the job competencies that are necessary for drinking water operators. That work resulted in standardized certification exams that measure the industry-wide common level competencies of drinking water operators. However, the industry-wide standardized certification exams do not cover safe drinking water laws and regulations because such laws and regulations

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<sup>13</sup> Water and Wastewater Workforce Report, GAO-18-102

widely vary at the local/regional level. In response to this situation, some credentialing agencies are requiring assessment of an individual's knowledge of the applicable safe drinking water rules and regulations as a required condition for earning operator certification. Thus, utility personnel operating water systems on Indian reservation land, face the added challenges of determining what regulations are applicable and what operator certification programs are jurisdictionally appropriate. It is for this reason that ITCA – TWS developed the innovative operator certification Federal Regulatory Exam Modules<sup>14</sup>.

#### **RECOMMENDATIONS**

Based on the observations described above, the following recommendations may be offered. The recommendations are arranged in three general categories.

##### Improved Coordination

- More than a decade ago, the Tribal Infrastructure Task Force recommended improved coordination amongst stakeholders and technical assistance providers. In the spirit of that recommendation, the IHS initiated and facilitated periodic technical assistance providers (TAP) coordination meetings on a local / regional geographic basis. These TAP coordination meetings were successful in coordination of technical assistance services and

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<sup>14</sup> In response to the new industry-wide standardized water operator certification exams, the National Tribal Operator Certification Program at the Inter Tribal Council of Arizona developed baseline Federal Regulations (FedReg) Exam Modules to balance these industry changes with local self-determination goals. The FedReg Exam Modules are designed to supplement the industry-wide standardized water operator certification exams and serve as credentialing assessments of an operator's knowledge of and skills working with the federal baseline safe drinking water regulations that are enforced on federal trust tribal lands.

to this day, continue to be conducted in a few geographic areas. However, there are areas or regions of Indian Country where TAP meetings are not being conducted and could benefit from doing so.

- In addition, there appears to be a lack of coordination between federal agencies and stakeholders on the subject of O&M funding, particularly with regard to regional Rural Water Supply Systems and the needs of small tribal water utilities throughout Indian Country.
- The Tribal Infrastructure Task Force should return to conducting periodic, publicly-accessible meetings and resume discussions on access to safe and adequate drinking water and sanitation services.

Parity for Tribally-led Cap-Dev/Op-Cert

- States enjoy the ability to use a percentage of their federally appropriated State Revolving Funds (SRFs) for direct support of their state Capacity Development and Operator Certification (Cap-Dev & Op-Cert) Programs. Tribally-led programs for Cap-Dev & Op-Cert Programs do not have such funding. Instead, Cap-Dev & Op-Cert services for Indian Country are either competitively outsourced to federal contractors or are created by tribal organizations using highly competitive technical assistance and training grants (mostly short-term grants from non-EPA federal agencies). In both cases, the contact and grant competition, management, reporting burdens are, in combination, quite burdensome and

contribute to the overall problems that are intended to be solved. In fact the very few tribally-led (by tribes, for tribes) training and technical assistance programs that exist find their services in direct competition with federal agencies and federal contractors for services being provided for the same tribal communities. A funding mechanism in parity with the states is needed for tribally-led (by tribes, for tribes) organizations for Cap-Dev & Op-Cert Programs.

- The USEPA regions have varied or divergent approaches to water and wastewater operator certification matters on federal trust tribal lands. In addition, USEPA guidance on wastewater operator certification on federal trust tribal lands does not currently exist. The USEPA needs to engage in periodic meetings with the two existing tribally-led (by tribes, for tribes) Cap-Dev & Op-Cert Programs for ongoing dialog and strategic planning for future program improvements.

#### Bolstering O&M with Strategic Support

- Create a federal funding program to provide revolving O&M grants for small tribal drinking water and wastewater utilities that have implemented all possible components of sustainable operations and maintenance, but whose scales of economy (community size, community geographic isolation, and low household income) causes a financial viability shortfall gap. The revolving O&M grant would need to have flexibilities to allow for dovetail adjustments relative to LIHWAP funding that may or may not be available to the small tribal water utility's community at any given time during the grant.

Thank you for this opportunity to submit testimony. It is hoped that this testimony provided useful insight into the challenges that many small tribal water utilities face regarding financial viability, utility management, operations and maintenance, workforce development, and operator certification.

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<sup>i</sup> Indian reservations – Currently, 574 Indian tribes are federally-recognized as separate sovereigns “by virtue of their government-to-government relationship with the United States” (Federal Register, January 12, 2023). However, not all federally-recognized tribes have a land base and those with a land base have varying land title designations. According to the Bureau of Indian Affairs (BIA), there are 326 federal Indian reservations (reservations, pueblos, rancherias, missions, villages, communities, etc.). A federal Indian reservation is land to which the federal government holds title in trust on behalf of the federally-recognized tribe for resettling its peoples that were forcibly removed from their homelands by the federal government or as remnants of original homelands. Federal Indian reservations are established through treaties, acts of Congress, presidential executive orders, federal court decisions or other federal administrative actions.

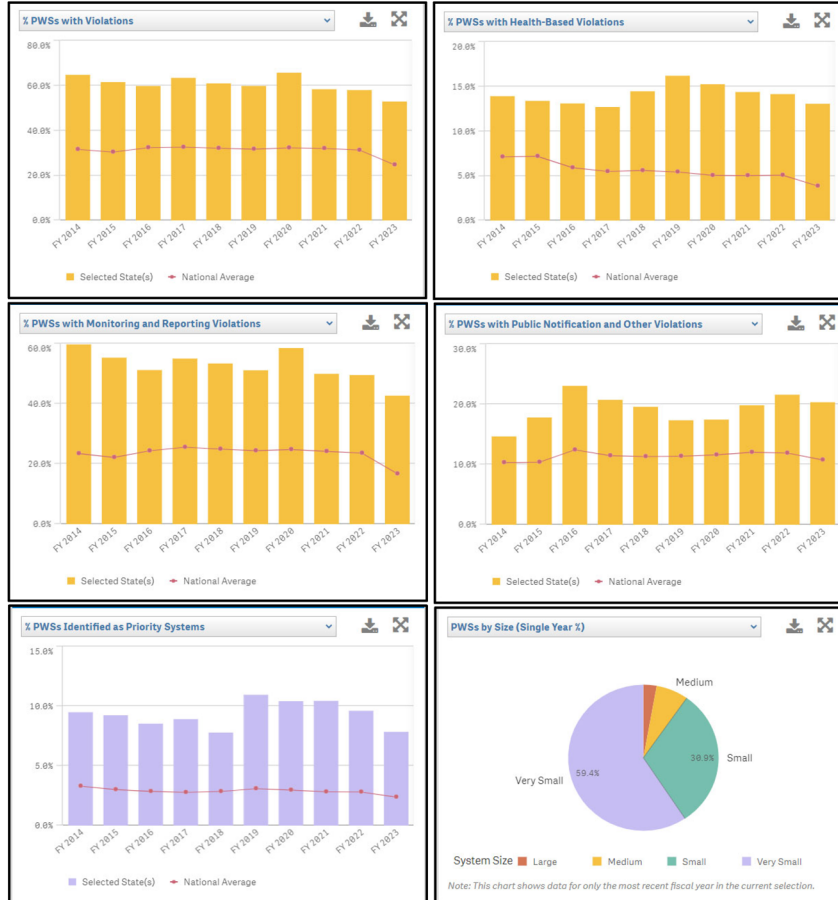
<sup>ii</sup> ITCA – TWS Program – The Inter Tribal Association of Arizona (ITAA) is an association of 21 tribal governments established in 1952 to provide a united voice for tribes located in the State of Arizona to address common issues. In 1975, ITAA formed a non-profit corporation—the Inter Tribal Council of Arizona, Inc. (ITCA). The mission of ITCA is “to provide Member Tribes with the means for action on matters that affect them collectively and individually, to promote tribal sovereignty, and to strengthen tribal governments.” The ITCA Tribal Water Systems (TWS) Program is a tribally-led water and wastewater workforce capacity-building program. Since 1983, the TWS Program at ITCA has performed the critical function—by tribes and for tribes—of empowering tribal water and wastewater operators by ensuring they have the knowledge, skills, and abilities necessary to provide adequate and reliable drinking water and sanitation services to tribal communities in a sustainable manner. In 2008, the ITCA – TWS Program was the first in the nation to be approved by the USEPA as a tribal drinking water operator certification authority and is now the largest tribal organization offering USEPA-approved water operator certification services. The ITCA – TWS Program was reaffirmed as a certification authority in 75 Federal Register 48329, August 2010. In January 2020, the ITCA – TWS Program received two prestigious awards—2019 Certification Program Award and the 2019 Outstanding Certification Officer Award. ITCA tribal operator certifications are recognized and accepted through reciprocity arrangements with other states. The uniqueness of the ITCA – TWS Program is it directly meets tribal needs and is held accountable by the tribes themselves through the TWS Program Advisory Committee and the National Tribal Operator Working Group. For decades, ITCA has provided monthly operator certification training/exam services. Following the majority of the training courses, ITCA staff administers and proctors the national standardized operator certification examinations. The ITCA Program maintains a database that tracks and administratively manages over 4,000 tribal operator certifications. The ITCA website features a portal that provides public access to tribal operator certification information from the ITCA database. Since 2013, the ITCA Program provides tribal personnel with access to the national certification exams through computer-based testing at over 300 nationwide testing centers.



**EXHIBIT 1 – Disparity Trends in Violations of the Safe Drinking Water Act, 2013-2023**

Source: USEPA Enforcement and Compliance History Online trends dashboard for Drinking Water, accessed September 2023

Selected State(s) = set to Tribal & EPA Regional Primacy Agencies, all tribes



**EXHIBIT 1 – Disparity Trends in Violations of the Safe Drinking Water Act, 2013-2023**

Source: USEPA Enforcement and Compliance History Online trends dashboard for Drinking Water, accessed September 2023

Selected State(s) = set to Tribal & EPA Regional Primacy Agencies, all tribes

Tribal Public Water Systems (PWS) Violations of SDWA											
Federal Fiscal Year	No. of Total PWSs	PWSs with Violations [%]	Health-Based Violations [%]	Priority PWSs / Serious Violations [%]	Monitoring & Reporting Violations [%]	Public Notice Violations [%]	PWSs with Enforcement		Return to Compliance		
							Informal Action [%]	Formal Action [%]	Priority PWSs [%]	all PWSs [%]	
2023	in progress										
1	2022	1,057	58.2	14.2	9.6	49.7	21.7	10.7	0.1	10.8	14.9
1	2021	1,040	58.6	14.4	10.5	50.1	19.9	16.2	1.3	13.8	14.0
1	2020	1,033	65.9	15.3	10.5	58.7	17.5	13.0	0.7	21.3	20.5
1	2019	1,028	60.0	16.2	11.0	51.3	17.4	12.6	1.6	13.3	13.4
1	2018	1,048	61.2	14.5	7.8	53.5	19.7	11.4	0.7	20.7	13.9
1	2017	1,028	63.6	12.7	8.9	55.2	20.8	21.3	1.2	15.2	14.8
1	2016	1,050	60.0	13.1	8.6	51.3	23.1	8.5	0.2	20.0	13.9
1	2015	1,035	61.7	13.4	9.3	55.5	17.9	12.0	1.5	18.8	15.8
1	2014	1,039	65.0	14.0	9.5	59.9	14.7	13.9	0.4	17.2	18.0
1	2013	1,048	59.8	13.2	9.4	53.3	14.3	20.3	1.7	49.0	25.2
10	running average		61.4	14.1	9.5	53.9	18.7	14.0	0.9	20.0	16.4

Nationwide Public Water Systems (PWS) Violations of SDWA											
Federal Fiscal Year	No. of Total PWSs	PWSs with Violations [%]	Health-Based Violations [%]	Priority PWSs / Serious Violations [%]	Monitoring & Reporting Violations [%]	Public Notice Violations [%]	PWSs with Enforcement		Return to Compliance		
							Informal Action [%]	Formal Action [%]	Priority PWSs [%]	all PWSs [%]	
2023	in progress										
1	2022	152,856	31.4	5.1	2.8	23.7	12.0	17.8	1.7	23.0	12.2
1	2021	148,086	32.2	5.1	2.9	24.3	12.1	17.5	1.6	25.1	12.4
1	2020	149,095	32.4	5.1	3.0	24.9	11.7	17.7	1.8	26.1	12.6
1	2019	151,191	31.9	5.5	3.1	24.5	11.4	18.6	2.1	24.0	13.3
1	2018	151,841	32.2	5.6	2.9	25.0	11.4	18.7	2.2	25.3	13.7
1	2017	152,688	32.7	5.5	2.8	25.6	11.5	19.3	2.0	23.3	14.1
1	2016	153,237	32.5	5.9	2.9	24.5	12.5	19.6	2.4	28.5	14.1
1	2015	156,565	30.6	7.2	3.0	22.3	10.4	19.2	2.5	30.2	14.2
1	2014	155,284	31.7	7.2	3.3	23.6	10.4	19.6	2.3	27.9	15.1
1	2013	156,968	31.3	7.0	3.3	22.7	10.7	20.2	2.4	38.0	15.2
10	running average:		31.9	5.9	3.0	24.1	11.4	18.8	2.1	27.1	13.7

Running Averages											
	PWSs with Violations [%]	Health-Based Violations [%]	Priority PWSs / Serious Violations [%]	Monitoring & Reporting Violations [%]	Public Notice Violations [%]	PWSs with Enforcement		Return to Compliance			
						Informal Action [%]	Formal Action [%]	Priority PWSs [%]	all PWSs [%]		
Nationwide	31.9	5.9	3.0	24.1	11.4	18.8	2.1	27.1	13.7		
Tribal	61.4	14.1	9.5	53.9	18.7	14.0	0.9	20.0	16.4		
difference	29.5	8.2	6.5	29.7	7.3	-4.8	-1.2	-7.1	2.8		
% difference	0.5	0.6	0.7	0.6	0.4	-0.3	-1.2	-0.4	0.2		
comparison ratio	1.9	2.4	3.2	2.2	1.6	0.7	0.4	0.7	1.2		

Senator PADILLA. Thank you very much.  
Ms. WallowingBull.

**STATEMENT OF JOLA WALLOWINGBULL, DIRECTOR,  
NORTHERN ARAPAHO TRIBAL ENGINEERING DEPARTMENT**

Ms. WALLOWINGBULL. Chairman Padilla, Ranking Member Lummis, members of the Subcommittee, thank you for holding this hearing and giving me an opportunity to speak on behalf of the Northern Arapaho Tribe.

[Phrase in Native tongue.] I am Singing Cedar Woman. My name is Jola WallowingBull. I have been the Director for the Tribal Engineering Department for 7 years.

As Director, I work with the State and Federal agencies to maintain and help improve the Tribe's water and wastewater systems. We have three water systems located in Ethete and Arapaho, Wyoming, and we have five wastewater systems between both communities.

I appreciate the opportunity to share with you some information about how these systems operate and serve our people, how we obtain funds for operations and improvements to our systems, the regulatory and work force issues we face, and the role Federal funding plays in the delivery of clean, safe water to our members and their families.

Currently the Tribe receives Federal funding from the Department of Agricultural Development Office, and from the Indian Health Service, or IHS, for water projects. The Environmental Protection Agency also provides funding through IHS.

Funding practices are often demanding and time consuming. Each agency has a different application process, and after submitting applications, it often takes a long time to receive funding and put it to use.

While we wait for applications to be approved, our work cannot and does not wait. Leaks and other issues continue while our requests slowly move through the approval process. We plug holes as best we can, but the review system ensures that we are always addressing emergencies rather than allocating our resources to planning future development.

To be clear, the Tribe and Federal agencies have developed a great working relationship over the years. And I look forward to building on our success in the future. In addition to what has already been accomplished, I hope we are able to shift our focus to securing funding for future expansion and not only focusing on existing facilities.

The Tribe also faces regulatory issues with the right of way process. Even after securing funding, the right of way process can delay the implementation of necessary projects by years. An example of this is the Ethete Wellfield. The project was originally funded in 2014, but is still incomplete because it took approximately 5 years to get a land lease on the tribal trust land.

The effects of that delay, compounded by inflation, means that every dollar we receive loses its buying power over time. We frequently run out of money for projects because of inflation driven increased costs. Streamlining the right of way process will ensure that we can start projects faster, and the dollars will go further.

The Tribe also faces problems when it comes to hiring and retaining workers. Currently, the Tribe has six water and wastewater operators. Only two of them are certified, Harold Little Bear and Floyd Addison. To effectively operate and maintain our systems, we need 12 certified operators.

A major obstacle preventing us from hiring and retaining staff is low pay. Our operators make under the State average compared to other professionals in their position. Increased pay and benefits would entice high quality candidates and retain high quality staff like Harold Little Bear and Floyd Addison. A Federal subsidy to increase wages for these positions would bolster these work force efforts.

The water and wastewater systems for the Northern Arapaho Tribe are underfunded, outdated, and at capacity. Many lines are oversized and made from substandard materials, such as thin walled PVC and asbestos concrete. Water breaks are frequent, and repair supplies are increasingly difficult to find.

Our goal is to continue to provide safe water for our people. And we will fulfill our mission. But we cannot do everything with the limited resources we have. As it stands now, we are unable to focus on tomorrow's growth and developing a master plan for the future because too many of our resources go toward the emergencies of today.

We remain passionate about our job, because of its importance to the community. Our grandparents fought to provide a brighter future for our generation. Now I look at my nieces and my nephews and their kids, and I want a brighter future for them, too.

For the longevity of the Tribe, we must have the opportunity to create a path forward and work toward a new chapter where we may proactively plan for our future as a Tribe and as a people.

[Phrase in Native tongue]. Thank you, and I look forward to your questions.

[The prepared statement of Ms. WallowingBull follows:]

**Hearing Before the United States Senate  
Committee on Environment and Public Works  
Fisheries, Water, and Wildlife Subcommittee  
September 20, 2023**

**Testimony of Jola WallowingBull  
Director of the Northern Arapaho Tribal Engineering Department**

I. Introduction

Chairman Padilla, Ranking Member Lummis, members of the Subcommittee, thank you for holding this hearing and for giving me an opportunity to speak on behalf of the Northern Arapaho Tribe.

My name is Jola WallowingBull. I am an enrolled member of the Northern Arapaho Tribe from the Wind River Indian Reservation. The Wind River is home to both the Northern Arapaho and Eastern Shoshone Tribes. We currently have approximately 10,600 enrolled members.

I have been the Director of the Tribal Engineering Department for seven years. As Director, I work with state and federal agencies to maintain and help improve the Tribe's water and wastewater systems. The Tribe has three (3) water systems located in Ethete and Arapahoe, Wyoming and we have five (5) wastewater systems between both communities. I appreciate the opportunity to share with you some information about how these systems operate and serve our people—how we obtain funds for operations and improvements to our systems, the regulatory and workforce issues we face, and the vital importance federal funding plays to ensure we are able to deliver clean, safe water to our members and their families.

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II. Funding Sources and Improvements

To begin, I will first provide some background explaining how my Department is funded. Currently, the Northern Arapaho Tribe receives federal funding from the United States Department of Agriculture Rural Development office and from the Indian Health Service, or "IHS," for water projects. We use this funding to operate our Sanitation Facilities Construction program, or "SFC." The SFC provides for the installation of water and wastewater in individual homes. We also rely on these funds to operate our Significant Deficiency Systems program, which fixes deficiencies in our water and wastewater systems. The Environmental Protection Agency also provides funding through IHS.

In addition to these federal sources, we also receive state funding from the Wyoming Water Development Commission for water projects.

At the federal level, current funding practices are often demanding and time-consuming. Each agency has a different application process with different requirements. Additionally, after submitting applications, it often takes extended periods of time to actually receive funding and then put it to use. We understand the importance of properly managing these funds, but we believe we would all benefit, both the federal government and our tribe members, from a more efficient review system.

While we must wait for our applications to fix identified issues to be reviewed and approved, our work cannot and does not wait—leaks and other significant maintenance issues continue to pile up while our requests, submitted to address past problems and issues, slowly move through the approval process. We work hard to plug holes as we can, but the current review system ensures we are always addressing immediate emergencies rather than allocating our resources to planning for a better and more reliable future.

Sometimes, high priority projects are ignored for years. For example, in Arapahoe and Ethete, we had a hydrant project for which we requested funding over a decade ago. That project was just recently funded by the EPA in 2022. Other high priority projects like the Arapaho Well Project and Scada System also remain unfunded. These projects are integral for our system's development and growth.

To be clear, it has been a pleasure working with the federal agencies. We have developed a great working relationship and have had many successes over the years. I look forward to building on our successes in the future. In addition to what has already been accomplished, my hope is that we are able to shift some of our collective focus to securing funding for future expansion, and not only focusing on existing facilities.

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### III. Regulatory Issues

The Tribe also faces regulatory issues, the most restrictive being the Right of Way process with the Bureau of Indian Affairs.

Even after securing funding, the Right of Way process can prolong and delay the implementation of necessary projects by many years. The effects of that delay, compounded by inflation, mean that every dollar we receive loses its buying power over time. We frequently run out of money for projects that had obligated funding from years prior because of inflation driven increased costs.

An example of this is the Ethete Wellfield. That project was originally funded in 2014 but is still incomplete because it took approximately five years to get a land lease for the well field on tribal trust land.

Now we are in the process of applying for a Right of Way for the pipeline from the wellfield to the water treatment plant and we have amended the project scope such that construction of the pipeline must occur on another project in which we must apply for separate funds.

Streamlining the Right of Way process will help ensure that we can start projects faster and that dollars will go further.

\* \* \*

IV. Workforce Issues

The Tribe also faces problems when it comes to hiring workers and training and retaining talent. Currently, the Northern Arapaho Tribe has six water and wastewater operators. Of these, only two operators are certified Level 1 operators, Harold Little Bear and Floyd Addison. Our goal is for all our operators to obtain Level 1 certification. To effectively operate and maintain our systems, we need 12 certified operators.

Operators have a difficult, but essential, job. This summer we had a water break almost every week. With the reduced workforce, the long hours, and rigorous physical demands, our workers are being worn down.

A major obstacle preventing us from hiring and retaining adequate staff is the low pay. Right now, our operators make under the state average when compared to other professionals in their position. Increased pay and benefits for operators would encourage higher quality candidates and help retain high quality staff like our Level 1 operators, Harold Little Bear and Floyd Addison. Having a federal subsidy to increase wages for these positions would go a long way in bolstering these workforce efforts.

\* \* \*

V. Conclusion

The water and wastewater systems for the Northern Arapaho Tribe are underfunded, outdated, and at capacity. Our systems are not uniform. Many lines are undersized and made from substandard materials such as thin-walled PVC or asbestos concrete. Water main breaks are frequent and repair supplies are increasingly difficult to find.

As a tribe that is growing quickly and includes many children and young people, with more than 50 percent of our population under the age of 18 years old, it is crucial that we provide a safe and high-quality water and wastewater system to our people.

I am passionate about my job because of my elders, my grandparents, and the younger generations behind me. My grandparents did not have the same opportunities in life that we do. They fought for everything they had to provide a brighter future for my generation. Now, I look at my nieces, nephews, and their kids and want a brighter future for them. We face roadblocks from the federal government, state government, and even from within the Tribe. But our goal is to continue to provide safe drinking water for our people and communities. And we will fulfill that mission.

I am a Northern Arapaho woman born and raised on the Wind River Indian Reservation. I, and my team, take pride in serving our people and working tirelessly to meet the Tribe's needs. All the projects and work we do could not be completed without our team.

But we can't fix everything with the limited resources we have. As it stands now, we are unable to focus on tomorrow's growth and develop a master plan for the future because too many of our resources go towards the emergencies of today.

But for the longevity of the Tribe, we must have the opportunity to create a path forward, to move beyond simply plugging holes and scrambling to solve emergencies as they arise. I hope for and work towards a new chapter where we may proactively plan for our future, to improve all our systems and ensure we may provide a safe and quality drinking water and wastewater systems for future generations.

Thank you and I look forward to your questions.

\* \* \*



Senator PADILLA. Thank you very much.

Thank you to all three of you.

We will now turn to questions from the Committee. I get to begin.

Thanks to the work of the bipartisan members of this Committee, Congress provided over \$4 billion for tribal sanitation over the next 5 years via the Bipartisan Infrastructure Law. This is transformative funding that will improve lives in Indian Country, but based on the testimony we have just heard, this funding should be viewed as just the start.

Mr. Norton, can you talk more about how the Bipartisan Infrastructure Law funding is only half of the puzzle, given the difficulties tribal water systems typically face with operations and maintenance?

Mr. NORTON. Thank you.

First, I would like to say that the Bipartisan Infrastructure Law is greatly appreciated from Tribes and the Alaska Native villages across the Nation. It actually changes lives, providing access to drinking water and basic sanitation.

But as we heard, it addresses minimally the violations that exist under the Safe Drinking Water Act. We need operations and maintenance dollars to address those, especially as new systems come aboard. These are highly technical systems that are going into our tribal nations, and that have a high capital cost. It is prudent that we as Tribes have the appropriate people to run those and the tools and the funding.

Senator PADILLA. So let me ask a very blunt question. Will the projects that are now funded because of the Bipartisan Infrastructure Law, will they be successful without funding operations and maintenance?

Mr. NORTON. Senator, I have to speak truthfully. The violations will increase, because we need certified operators and experienced operators to run these systems. As my colleagues pointed out, having the ability to maintain those certified operators is a difficult process. It has to do with the funding, salary adjustments, it has to do with competitive 401(k)s, retirements. And if there are opportunities for tribal members to move on, they certainly will, because of the very low payments or salaries.

Senator PADILLA. I know the State of California has tried to fill gaps for operations and maintenance through the SAFER program.

Mr. NORTON. That is a very good program.

Senator PADILLA. But this is really, in my opinion, an interim State solution to what is fundamentally a Federal problem and responsibility. So a follow up question for you, not from an engineering perspective, not from a technical perspective, but can you talk about the Federal trust responsibility and whether we are living up to it if we fail to fund operations and maintenance?

Mr. NORTON. Thank you, Senator.

The Federal trust obligation to Tribes is failing in regard to providing safe access to drinking water to our communities. I base this on the observations of both my testimony and my colleague, Mr. Bennon, in regard to the high violation rates of both health based violations and non-health based violations. We need to fix this

problem, putting more money into the systems so we can have proper operations of these facilities.

Senator PADILLA. I think you have given some indicators to my following question, but I want to ask it for the record. Your testimony suggests that Congress should direct the EPA, in collaboration with the IHS, to evaluate all American Indian owned water systems regulated by the EPA to include estimating the annual costs associated with operation and maintenance of facilities.

What do you expect this report would uncover?

Mr. NORTON. The IHS has completed an initial investigation of operation and maintenance. That investigation identified core cost needs for the different sizes of utilities, both wastewater and drinking water, from about \$40 million for the lowest to \$200,000 annually for the larger facilities. What we need is a follow up, more detailed investigation that looks at the costs and how to pay for these improvements, how to pay for the operation and maintenance and the cost of operating your facility, electrical costs, and having that not passed onto the consumer where we already have poverty rates in most of our reservations as high as 80 percent.

Senator PADILLA. Thank you.

Mr. Bennon, Ms. WallowingBull, I have not forgotten you. I do have some additional questions, but at this point, let me recognize Senator Lummis for her first round of questions.

Senator LUMMIS. Thank you, Mr. Chairman.

Ms. WallowingBull, I understand that there are regulatory requirements that cause difficulty for Tribes meeting their obligations under the Safe Drinking Water Act. One of the things we have heard is that the tight timeframe to have water on the reservation sampled in an approved lab can be a struggle.

Have you had that problem? If so, how can we address this?

Ms. WALLOWINGBULL. Thank you, Senator Lummis.

Yes, we face those same issues. Part of it is because the lab, as I stated before, the lab locations where we have, where we take the sampling are in the local communities which are in Lander and Riverton. That is where we submit our sampling.

One of the sampling places closed. So it is hard to, that timeline, it is expensive. So I think just allowing us a little more time to get the sampling in, because I know that is a violation when we are late for turning in sampling. But we are such a rural location, it is hard to meet those demands all the time.

Senator LUMMIS. One of the sites closed. Do you know the reason it closed?

Ms. WALLOWINGBULL. No, I am not sure.

Senator LUMMIS. I might look into that.

When it comes to Tribes utilizing the funding Congress has set up, I sort of get the sense that you are spending a lot of time filling out paperwork for grant programs. Can Congress do a better job of streamlining the grant application process? Do you have any recommendations for us in doing so?

Ms. WALLOWINGBULL. When you are talking about the EPA funding, I believe that EPA should be working with the Tribes directly. I know that their funding is funneled through IHS currently. And the process for applying for grants through IHS can be time consuming and tedious. They have a scoring system, so you

have to score really well. Your projects are, you have got to meet different areas of criteria. As I said, it is different agencies. But I think when you are dealing with bigger projects in EPA, I think EPA should be responsible for working with the Tribe directly, not funneling the funding through other agencies.

Senator LUMMIS. That is really good advice. That is just red tape upon red tape. It hurts the Tribes as much as anybody, perhaps more than anybody, who is dealing with compliance issues.

Mr. Norton, we have talked about the struggle to find trained and certified work forces. Who sets those salaries? Why is this an area that is so underpaid?

Mr. NORTON. It is based upon the hookups; it is based upon the services to the community. When you have a rural community like Hoopa, the reservation I am from, there are 800 hookups that are extended over long pipelines. And the cost and maintenance of those providing water to our tribal households is costly.

So we have to look at other subsidies for paying a competitive wage. And if I may, we just had a tribal operator leave our reservation because he was making a substandard salary. He has the educational background, but he moved to Sacramento and is making three times the amount.

It is not because he wants to leave the reservation. Our ancestors have been there for thousands of years, our families are there. It is the difficulty of meeting the salaries, of having experienced and qualified, certified operators for our wastewater and drinking water systems.

Senator LUMMIS. So when Ms. WallowingBull said that there are five systems among the two communities, Ethete and Arapaho, so those are spread out as well. Is that the big problem?

Ms. WALLOWINGBULL. Yes, as I stated, in Ethete we have a water system, but in Arapaho, we have two water systems. But we have five lagoons between both communities. So both communities are separate, so the water line ends. So the areas in between those communities are on wells.

Senator LUMMIS. Thank you. I appreciate it.

Mr. Chairman, I yield back.

Senator PADILLA. Thank you.

We have been joined by the EPW Chairman, Senator Carper. Let me recognize him for any statement and questions of the witnesses. Senator Ricketts will be next.

Senator CARPER. Thanks, Mr. Chairman.

Let me just say as an aside, my staff have been watching how well the two of you work together, and your staffs. One of the things we try to do on this Committee is we want to get good stuff done for our planet, for our environment. We also try to build bipartisan support for a lot of the initiatives we take up. You set a good example for us. I just want to say that to begin with.

Welcome to all of you.

Ken Norton, did you fight Muhammad Ali, how many, three times?

Mr. NORTON. A couple of times, yes.

[Laughter.]

Senator CARPER. I watched two of those fights. You look great for a guy who went 15 rounds with Muhammad Ali three times.

[Laughter.]

Senator CARPER. For those in the audience wondering, what is he talking about, another Ken Norton did fight Muhammad Ali I think three times. Ken won one, and Muhammad won two.

Anyway, we welcome you, and Mr. Bennon, and Ms. WallowingBull.

Where are you from?

Ms. WALLOWINGBULL. Wyoming.

Senator CARPER. And Mr. Bennon?

Mr. BENNON. Phoenix, Arizona.

Senator CARPER. OK.

Mr. NORTON. Northern California, Hoopa.

Senator CARPER. OK, good. We are happy to see you all. Thanks again for helping us for helping us. This is an important issue, we care about these issues a lot, and I know you do too, so thank you.

I think it was in April of this year, the Environmental Protection Agency released its latest drinking water needs survey and assessment. It revealed that the Native American Tribes and Indian Native villages would need over \$4 billion, I think it was over \$4 billion in investment to fully meet their drinking water infrastructure needs, which is a staggering, staggering unmet need.

Mr. Bennon and Mr. Norton, how do your organizations work with EPA and other Federal partners to identify and prioritize drinking water and wastewater infrastructure projects on tribal lands?

Mr. BENNON. Chairman Carper, the Inter Tribal Council of Arizona works very closely with EPA and IHS. We try to support the dialogue between the Tribes, the tribal utilities, and the Federal agencies. But it is pretty primarily that dialogue that generates the understanding of need.

What we do see directly working with the operators is that this is just a constant problem, because of the lack of operations and maintenance funding. We keep building infrastructure, and it is just like a car that ages that has to be maintained and kept up. If it doesn't, then we have to go buy another car. That is the same deal with the infrastructure.

Then of course, the remote geographic isolation of a lot of these rural tribal systems, the economics of the typical model for operations just doesn't really fit. So I think that is the piece that is missing. Infrastructure is needed, yes, but the other side of the coin is needed as well, operations and maintenance.

Senator CARPER. All right, thank you.

Mr. Norton.

Mr. NORTON. Yes, I echo Mr. Bennon's thoughts. The National Tribal Water Council has representatives from all the regions, tribal representatives and from the State of Alaska. What we are hearing is the state of the art technology is being implemented in Indian Country, but we need the capacity to maintain those systems over the long term, so these highly technical and costly investments from the American public are maintained over time and the operation and maintenance of those systems is essential to do so.

Senator CARPER. All right, thank you for that.

I have one more question for you, ma'am. Earlier this summer, the Environmental Protection Agency announced that over, I want

to say almost \$240 million in funding would be made available to Tribes during fiscal year 2023 for drinking water and wastewater projects. Much of this funding was made possible by the Bipartisan Infrastructure Law, which really has its roots right here in this room, this Committee. We reported it out unanimously to pass on the floor, I think by 89 to 2. Just an amazingly strong vote.

But while this is a meaningful investment, we know that projects on tribal lands often face unique challenges and may cost more on average than other water systems. You have alluded to that already.

Ms. WallowingBull, would you please explain for us some of the unique challenges that you have seen tribal communities experience when building drinking water and wastewater systems? As a corollary to this, part of that question would be, how might the Federal Government work alongside State and local partners to help address or alleviate some of those obstacles?

Ms. WALLOWINGBULL. Yes. As stated in my testimony, the biggest roadblock we face in any of our projects is the right of way process.

Senator CARPER. The right of way?

Ms. WALLOWINGBULL. The right of way process. As I have stated, it has been an issue for us on every single project that we have. I know the regulations were updated in 2016, the C.F.R. regulations for the right of way process. However, it still continues to be an issue for a lot of the projects when we can get State and Federal funds obligated for any project. And once it is obligated, we are always just holding, just waiting it out, the project, because of the right of way approval.

So that is always the main issue that we face. But just this year, we have had more meetings and more relationships with EPA, which I think we are headed in the right direction. We have a better working relationship with EPA. I think it is just the beginning. We still have a lot of issues and problems that they haven't seen, or we can identify them. But it is just the beginning of them getting involved with a lot of the work that we have going on.

Senator CARPER. All right, thanks.

My time is expired, Mr. Chairman. I would just like to briefly read a sentence or two of my next question, and then ask our witnesses to answer for the record. We don't have to do it here today. Could I do that, just very briefly?

Senator PADILLA. Go ahead.

Senator CARPER. I want to ask, and we will follow up after the hearing with requests in writing, and ask each of you to share with us your experience supporting tribal communities that lack access to safe, reliable water, and how that affects public health and a community's general welfare. We will send that to you in writing and ask you to respond to it in writing.

Thank you very much for joining us today. Nice to see you.

Senator PADILLA. Thank you very much.

Senator Ricketts.

Senator RICKETTS. Thank you very much, Chairman Padilla, and Ranking Member Lummis, for holding this important hearing today. Thank you to our witnesses for coming here today and talking about your perspectives. I think it is a great opportunity to be

able to share some of the challenges that we have in our tribal communities with regard to drinking water.

I would like to take this opportunity to discuss the EPA's proposed rule for the Federal baseline Water Quality Standards, the WQS, for Indian reservations. I recognize the importance to tribal communities in developing water quality standards within the Clean Water Act. I have several concerns with the proposed rule, only that all tribal nations should have to treat to State designations prior to the application for the water quality standards, and the EPA should also hold the Tribes to the same water quality standards process as the States under the Clean Water Act. This process should include public participation and comments when reviewing water quality standards. I think that is actually one of the things that, Ms. WallowingBull, you were talking about, just having that full blown EPA participation.

Tribes must also equally prove proficient in technical and managerial skills for adoption and implementation. To boost coordination there should be consultation with the delegate State agency as well as data transparency. EPA has two roles within the Water Quality Standards. One is to intervene only when a State or Tribe is failing to meet the requirements of the Clean Water Act, and two is to provide technical services like nationally recommended water quality criteria to States and Tribes when setting Water Quality Standards.

This role for States to lead in protecting water quality while considering other implications to communities is important, and the EPA's proposed rule undermines this division of responsibility.

So Ms. WallowingBull, can you speak to the importance, because you talked a little bit about dealing directly with EPA rather than IHS, can you talk about the importance of Tribes being allowed to take the lead in water quality plans and criteria?

Ms. WALLOWINGBULL. If we were responsible for taking the lead?

Senator RICKETTS. Yes, the importance, right. Again, the point I am trying to make here is that we ought to allow States and Tribes to be able to take the lead in this because they know the local situations the best.

Ms. WALLOWINGBULL. Yes.

Senator RICKETTS. You talked about, for example, the right of way issues. Can you talk about the importance of having Tribes take the lead when it comes to creating water quality standards with the EPA?

Ms. WALLOWINGBULL. Yes, definitely. We are a sovereign nation, but we do work well with the State. We get State funding from Wyoming Water Development for water projects. So we do work well with them when it comes to funding for projects. They understand our systems.

But as you said, we know our systems. We have an engineering firm that we currently consult with which has worked with us for 9 years. So we have knowledgeable people. As a Tribe, we know how we want to move forward. But again, it is always down to the funding issue.

But it is not, as we said, the funding issue, the right of way process, everything is timely because as we said, we have a water break every week. We are constantly fixing those issues. But yet

we are still trying to look at the bigger picture. Our goal is to create a master plan. But again, that goes back to who is going to fund that.

Senator RICKETTS. Did you say you just were starting to begin conversations with the EPA? Does that indicate you hadn't had direct contact with EPA in the past?

Ms. WALLOWINGBULL. The working relationship was not that great in the past. So we are working closely with them now. We actually are working, for our wastewater systems, we are on a compliance action plan. So they are working with us for our wastewater systems. They regulate our water.

But this year alone, we have met with several different committees from EPA, or several different groups of people from EPA. So they are trying to improve the working relationship with the Tribe, so they are making that effort to come to the reservation and assist us. They are aware of the issues we have.

Senator RICKETTS. Good. I think that is always going to be the best regulatory environment, is when the EPA allows the local people to take the lead and supplies that supporting authority, whether it is technical assistance, and of course, you are talking about not only the infrastructure dollars but also the maintenance and operation dollars as well going forward.

Thank you again to all of our witnesses for being here today and describing some of the challenges to making sure we are providing safe, high quality drinking water on our tribal reservations.

Mr. Chairman, I yield back.

Senator PADILLA. Thank you very much.

We have been joined by Senator Kelly.

Senator KELLY. Thank you, Mr. Chairman.

Let me first say thank you for holding this hearing. Water is a critical issue in Arizona, especially for our 22 federally recognized Tribes, and especially as this drought worsens. It has been going on for now over 20 years.

I am really glad we have the opportunity to be joined today by Brian Bennon from the Inter Tribal Council for Arizona, or ITCA. Brian has worked for Tribes for nearly 30 years. I think you have been with ITCA since 2010. In his role, he provides training certification and technical assistance services for drinking water and wastewater operating personnel, working with Tribes in Arizona and throughout the western part of the United States.

So I am really glad you could join us today, Brian. Thank you, and thank you to the other folks for being here.

My first question is for Brian. As I noted, you have worked with Tribes on tribal water issues for a long time. As Arizona and much of the United States has struggled with these long term drought conditions, the needs of tribal communities seem to have changed over the length of your career.

Are the needs of tribal communities and tribal water systems different now than they were 20 years ago? If so, can you explain what the differences are?

Mr. BENNON. Senator Kelly, thank you very much for that question.

Yes, I would say that they have changed, but they have gotten more complex. A lot of the same issues exist that we had decades

ago, but there are now all kinds of factors. Variability has directly increased in hydrology. We are working with many Tribes on developing drought contingency plans and looking at emergency response planning for the drinking water and wastewater utilities, tribal utilities that we wouldn't have expected to have these types of issues, for example, Tribes in Alaska or Tribes in Montana, also Tribes in the Southwest.

But this is starting to become a very complex, widespread phenomenon of trying to develop resiliency. Of course, EPA has the resiliency program for water and wastewater utilities. Those resources are being utilized right now. But we have a lot more work to do in Indian Country to help build resiliency.

Senator KELLY. Brian, I am curious, I was looking at the poster board up here that says Native American households are 19 times more likely to lack indoor pipes for running water and sanitation. That number, I might be wrong about this, that actually struck me for Arizona as probably being low. I am trying to get your sense, in the State of Arizona, what do you think that number would be?

Mr. BENNON. Senator Kelly, this is a really tricky thing to try to get numbers on. I can tell you first hand that we have had many, many staff members come through ITCA and many operators that we work with that personally have this situation in their upbringing of not having plumbing in their homes as they were growing up.

This is an issue of not only bringing pipes to the homes, bringing these services, but also operations and maintenance. These systems, once you build them, they need long term sustainability of operations and maintenance. That is the key issue that this panel is bringing forward today.

Senator KELLY. Last year, I spent some time with an Arizona family who lacked running water in their home for decades. Recently, through some programs they were able to get access to running water in their home. It is such a challenge for Native American communities in our State.

In the remaining time, are there any lessons learned that some of the relevant Federal agencies like the EPA, maybe the Indian Health Service, and others should learn to respond to some of these changing needs of tribal communities?

Mr. BENNON. Senator Kelly, yes, I think one of the recommendations that we have in our testimony is increased coordination amongst the different Federal agencies. A lot of entities or agencies are working on these problems, but there seems to be a need for more communication and coordination directly with Tribes and amongst the agencies themselves.

Senator KELLY. How do we make that happen?

Mr. BENNON. I think there are a couple of mechanisms already in place. There has been the Federal Infrastructure Task Force, which has been a great mechanism. But there is a lack of tribal participation, tribal community participation in that dialogue.

Then more on the local level, EPA and IHS have a model in place of technical assistance providers coordination meetings. They call them TAPs. These TAP meetings do happen in certain areas, but there are other areas in Indian Country where TAPS don't exist.



And I think expansion of that model would be very helpful for Indian Country.

Senator KELLY. Thank you.

Thank you, Mr. Chairman.

Senator PADILLA. Thank you, Senator Kelly.

Senator Sullivan.

Senator SULLIVAN. Thank you, Mr. Chairman.

I want to thank the witnesses here. I am a big fan of our Native American communities, Alaska Native communities. One thing I always like to brag about for our Alaska Native and Lower 48 Indian communities is the patriotism, special patriotism. Alaska Natives and Lower 48 Indians serve at higher rates in the military than any other ethnic group in the country. That is very special.

So to all your members and tribal members, tell them thank you. It is not noticed enough. It is remarkable, because let's face it, during a lot of our country's history, our Native people were discriminated against and all kinds of horrible atrocities. Yet generation after generation, they step up and serve America in the military. It is remarkable. So thank you for that.

I also think it is outrageous that we have, whether it is reservations or over 30 communities in Alaska that don't have running water or flush toilets. The richest country in the world, some of the most patriotic communities in the world, and we can't get running water or flush toilets to them. So this is a passion of mine. It is a passion of mine, especially in Alaska, where we have so many communities, I was just out in a number of our Alaska Native communities, rural communities that don't have running water and flush toilets. We need to do more.

Can I just get very quickly from the witnesses your sense on, is there enough funding to address these basic needs? During COVID, they told many Alaska Native communities to wash your hands five times a day. Oh, wait, you don't have running water. How are you going to do that?

So what do you think the best way to do it is? I will just ask each of the witnesses.

But I do want to make one other point, which I do a lot on this Committee. There is a lot of discussion on racial justice, environmental equity, the terms the Biden administration puts out. Unfortunately, for my constituents who are indigenous, there is a big asterisk with the Biden administration. It is racial justice, environmental equity, but if you are an Alaska Native, if you are an Alaska Native, this Administration is out to get you.

I just sent a text, I hope the news picks up on it, to Secretary Haaland. I have a group of Alaska Native leaders from the North Slope of Alaska, elected leaders, they're tribal leaders, Alaska Native Corporation leaders who have tried to meet with Deb Haaland six different times. They fly 5,000 miles to Washington, DC. She and the President are undertaking policies that are devastating their region. North Slope, that is the national petroleum reserve Alaska, ANWR. They never get consulted. They are in town again. Six times Deb Haaland has said, no, I am not going to meet with you.

So I have sent her a text saying, Madam Secretary, do the right thing, damn it, and meet with my constituents, please. Alaska Na-

tives, please. OK? We will see what she does. Pretty sure she is going to ignore them. Sorry, I had to vent on that.

But to the point on where we should be, what is the most effective way, I know we have different Tribes, different reservations, to make sure people get basic running water and flush toilets? Is that too much to ask in America? I will go to each of the witnesses.

Mr. NORTON. I can start, thank you, Senator Sullivan.

As we heard before, the EPA just completed the drinking water infrastructure needs assessment. That identified a need of \$4 billion.

Senator SULLIVAN. OK. For all of Indian Country?

Mr. NORTON. For Indian Country, yes, including Alaska Natives.

Senator SULLIVAN. Oh, OK. They think that would be enough to get everybody running water and flush toilets?

Mr. NORTON. The issue at hand is, providing access is one part of the puzzle. Providing the sanitation and the drinking water facilities. It is the operation and maintaining those systems that is the difficulty.

Senator SULLIVAN. Oh, right.

Mr. NORTON. So once you have a start of the facility, do you have the operators, do you have the people to maintain those? And the American public significantly put their investment into these systems. And we as Native people want to make sure they are operated over a long period of time, and serve our communities.

Senator SULLIVAN. Does the \$4 billion cover that, or is that in addition?

Mr. NORTON. I believe it is a, it only deals with the construction.

Senator SULLIVAN. OK, right.

Mr. NORTON. It doesn't deal with the operation and maintenance component.

Senator SULLIVAN. OK. Thank you. That operation and maintenance issue is a giant issue we see in Alaska all the time.

Mr. BENNON. Senator Sullivan, this is a very interesting situation that Alaska Natives have. We have been providing training courses, this gets back to the operations and maintenance side of things. Operators need to get trained, and then they go through the certification process. The trainings that we have had for Alaska Native villages have been some of the most heavily attended, standing room only, types of situations. The scenarios that were described by the operators were remarkable, having literally sled dogs and snowmobiles to get to the various communities.

I understand that the engineering side of things is very unique and specialized. But the situations are the same. Infrastructure construction, the dollar amounts I have no idea. But it is going to be very expensive. And then to maintain those systems, operations and maintenance.

So the process is all the same. It is just, is it being addressed adequately for Alaska Natives? I suspect definitely not.

Senator SULLIVAN. No, it is not. It is not. Thank you.

Ms. WallowingBull.

Ms. WALLOWINGBULL. Senator Sullivan, I agree with my colleagues here. The operation and maintenance has always been an issue. We face the same thing. I stated in my testimony, all of our water and sewer are not certified. So we face those same issues.

But I don't think, just looking at when you were mentioning dollars, I know that we did a cost estimate for our systems alone. We have two systems, with three water systems and five lagoons, which is totally different from all the other reservations.

Just the cost estimate for 2017 was \$30 million. That has tripled now. But that wasn't just for fixing what we think needs to be fixed, because our system is not uniform. Our lines, as we said, are undersized, but we go from a 4 inch to 12 inch. It is not a uniform system.

So we, the supplies we need, we have to go 2 hours away, because our local businesses do not carry any of the supplies to fix our pipelines anymore.

Senator SULLIVAN. Every place is unique. But to me, Mr. Chairman, this is an issue that I think should unite Democrats and Republicans on getting our First Peoples the ability to have clean water. It shouldn't be that hard.

So I am a big advocate for this, particularly in my State. But in all the reservations in America, again, some of the most patriotic Americans in the country have to use honey buckets, what we call honey buckets in Alaska. Well, they are not sweet smelling, I will tell you that.

So we will keep working this. I appreciate the witnesses being here on a really important topic for my State, certainly.

Thank you, Mr. Chairman.

Senator PADILLA. Thank you, Senator Sullivan. I appreciate your comments. I am sensing bipartisan support building for this effort to prioritize investing in operations and maintenance, not just the initial construction. It only makes sense for the Federal Government to financially support the longer term viability of significant initial investments.

I want to ask some additional questions on some additional issues. I want to turn back to work force and work force development. Last week, the EPA released its seventh Drinking Water Infrastructure Needs Survey and Assessment in which State, local, and tribal water systems reported that hiring difficulties will increase over the next decade. I think we have already acknowledged the current challenges. These difficulties will increase over the next decade. Small water systems specifically cited their inability to hire full time employees and offer competitive benefits.

We know that this is a national challenge. We also know that tribal water systems face their own unique issues with work force and credentialing.

Mr. Norton, you were asked about this earlier, so I will afford Mr. Bennon and Ms. WallowingBull an opportunity to weigh in here.

We will start with you, Ms. WallowingBull. Can you speak to the unique challenges of hiring and retaining staff?

Ms. WALLOWINGBULL. Yes. As I stated, we have six water and wastewater operators. It is a different, demanding job for our systems, because we have water breaks every week. The rigorous hours and the demand, once somebody in our system is without water, it is complete chaos.

As I said, our system is not uniform. So when we have a water break, half of the town is out, because we can't isolate fixing that

water break. It is always, once there is a water break, a big part of the community is going to be without water.

It is hard finding those dedicated individuals, especially within our community, to want to become certified, just because of the backlash they do get for just not being able to provide, especially when there are water breaks, it is always an issue.

We are working with Wyoming Rural Water on an apprenticeship program to start certifying more of our water operators. So they are committed to a 2 year program to become level one certification. So that is a positive step forward for our community and Wyoming Rural Water. That is something we are working on right now. They haven't started it yet, but that is something new.

Senator PADILLA. Good. I do have questions about certification. That is an important piece here.

First, I want to ask Mr. Bennon to chime in. Do you have any suggested strategies for increasing the number and the work force, number of operators needed to run these systems?

Mr. BENNON. Chairman Padilla, yes, thank you very much for this question.

I recommend a three pronged approach. The first is, you have to have viable wages and benefits at a utility to attract the talent that is needed to operate these systems. The only way to do that is to have financial viability for operations and maintenance. Because that is where the salaries are supported to have the finances for the utility. That is No. 1.

The second is, and it is not just specific to Indian Country, this is for the entire water industry in general. We have to have a top down and a bottom up approach of changing perceptions about the important role of the water operators. So many people just take it for granted, we turn on the tap or use the restroom, it just happens. Nobody understands that there are teams of people, or should be teams of people working behind the scenes to make that happen.

So we are talking about public service announcements, getting the general public, getting decisionmakers to understand that very important role of these men and women that operate the water systems.

Then the third point goes back to the fundamentals, operator certification. We really need to take another look at the credentialing industry. It is kind of a mixed bag across the country of the way primacy agencies handle it. There is a lack of consistency. But we are seeing, unfortunately, the Inter Tribal Council of Arizona, the operator certification program, the passing rates for the certification exams are dropping. The exams get more and more complex as the industry gets more complex.

We are dealing with individuals entering into this work field that, some of them have college degrees but most of them have just high school or GEDs. You look at the Department of Labor competency model for water and wastewater operators, there is this pyramid with all these bricks of all those domains of knowledge. It is astonishing what they have to know, what is on the certification exams. Then the years of experience of putting it into practice.

We have to be careful with where the barriers are. We want folks to enter into this career field. And if there are too many barriers in place, which I think they are, maybe we should look at it again.

I think the infrastructure task force is a great starting point for looking at that.

Senator PADILLA. Thank you.

Ms. WallowingBull referenced being on the verge of a partnership between Tribes and other water agencies in Wyoming. There is both official and unofficial in California.

Mr. Bennon, can you tell us why there are no Federal guidelines for tribal wastewater operator certification?

Mr. BENNON. Chairman Padilla, I couldn't tell you the reason why. I can tell you that it doesn't exist. I know that EPA is aware of the situation and that there needs to be some desire or will or impetus to create such a thing like exists in drinking water. For Indian Country, we don't have such guidance. What that means is we don't have a way of classifying wastewater infrastructure. It begins with classifying the facility, and then the level determines what level of certification is needed.

That doesn't exist right now. We don't have methodologies for operator certification for wastewater. And that needs to be created.

Senator PADILLA. So yes or no, would there be value in establishing that?

Mr. BENNON. Absolutely, it is needed.

Senator PADILLA. Is it an "and" or an "or" value added by reciprocity of certification between different States to help tribal systems?

Mr. BENNON. Reciprocity is the process of equivalency from one jurisdiction to another. So because tribal boundaries don't coincide with State boundaries, we do have operators where this is a very significant situation.

Career mobility, we talk about operators leaving to take careers elsewhere, but the fundamental issue of reciprocity for tribal operators is who is the primacy agency for their facility, and what regulations are applicable for their utility. That is what there is a lot of, it is gray. Nobody really, it is hard to figure that out, especially when primacy agencies have varying degrees of regulations.

So figuring out what regulations are applicable to their utility and what type of training and certification is needed, that is where reciprocity comes in. Having a clear distinction about the primacy agencies and regulations that are applicable to them, that is the issue.

Senator PADILLA. Thank you.

We have spent time on the need to invest in operations and maintenance. We have talked about some of the work force difficulties and challenges. I want to spend a few minutes talking about water quality. A statistic that many of us are focused on today is that Native American households are 19 times more likely than white households to lack indoor plumbing. It is so shocking, we made a poster.

But the reality is that even this devastating statistic doesn't capture water quality, whether that indoor plumbing is actually delivering clean, safe drinking water and water for sanitation.

Mr. Norton, your written testimony notes that health based drinking water violation rates for tribal water facilities are higher than the rates for water systems regulated by States. Why is that?

And what can we do to improve not only water access, but also water quality in tribal systems?

Mr. NORTON. Thank you for the question, Senator Padilla.

It comes down to having experience and certified operators. And what we see in Indian Country is the difficulty of maintaining these operators over time, longevity. Our State counterparts, they have multiple operators that specialize in certain aspects of the drinking water facility and the wastewater facility. What we have in Indian Country is an operator that wears multiple hats. It has to do multiple tasks at multiple times. When this operator is down or has to do other personal business, the utility suffers, or the person leaves due to salary inequalities.

And the replacement, what we see in Indian Country when we replace the immediate need and addressing those health based violations, Tribes are forced to hire consultants at at least four times, three times or four times the cost, Senator. It is another burden on the Tribe that is unable to pay for the operation and maintenance. And it can't be passed on to the consumer.

Those are probably the main reasons why we start seeing health based violations in Indian Country. It has to do with the operation and maintenance of those facilities.

Senator PADILLA. Thank you.

Mr. Bennon, I see you are nodding quite a bit. Is there anything you would like to add?

Mr. BENNON. Chairman Padilla, yes. Definitely operations and maintenance is a major contributing factor. Most operators understand that it is all about protecting public health. It is the No. 1 priority mission of being a water and wastewater operator.

The issue also is that these are designed to protect public health, but they are very complicated and take years to understand. So things are not helped when the certification process does not cover or does not measure operators' knowledge of the regulations. And it falls on local jurisdictions to measure that.

ITCA just got through the process of creating an assessment for tribal operators on the regulations that EPA implements on reservation lands. And the only way we could do it is to have the regulations at the fingertips of the operators on electronic tablets that they take out into the field. You can do a word search. If you were to print these things out, we tried, it is over 2,500 pages. But to have that as a tool for the operators is something that we just started this year. We are hoping over time this will start to help.

Senator PADILLA. Question for you. Is there something about the nature, the fundamental nature of the different types of water agencies that impacts for better or worse access to safe, clean drinking water by the different types of agencies, tribal versus other public versus private water systems?

Mr. BENNON. Yes, Chairman Padilla. The 1,044 public water systems in Indian Country, according to EPA's data base, the majority are tribally owned but there are significant numbers also that have different types of ownership. We see differences according to the different types of ownership. For example, the casinos, they have a lot of resources. So we see well staffed, well operated utilities.

On the other side of things, we see these public-private, public water systems at schools, whether they are tribally controlled

schools or federally controlled schools. But a lot of these schools in these very geographically remote locations have their own water systems. Those are the ones that have very limited resources. They are typically, the operators are typically the custodial staff of the school, and they are handling the maintenance of the grounds and everything. And they have practically no budgets whatsoever.

We see huge needs there. We see private enterprises in Indian Country that have water systems, such as mobile home parks and that type of thing. And we do see very significant issues with some of those types of ownership, public water systems.

Senator PADILLA. Thank you.

There are a few more issues I would like to cover, but in the interest of time, we will also offer questions for the record after the hearing and provide some time for you to respond.

The last issue I do want to raise for today has to do with water affordability. Different than access and quality, affordability. I mentioned earlier that in the first Subcommittee hearing, we focused on the issue of water affordability and small water system assistance, because unlike other forms of infrastructure, like bridges and roads, clean drinking water isn't primarily funded by taxes. Instead, more than 90 percent of the average utility's revenues comes directly from ratepayers.

But unlike State and local governments, who can also use tax revenue to supplement revenue from water bills, tribal governments don't have such a tax base and instead rely on essential government services like drinking water and wastewater for Federal support.

Mr. Bennon, your written testimony notes that over 90 percent of tribal public water systems are classified as small or very small systems, serving 3,300 or fewer customers. So not a big customer base to spread capital costs across. This obviously presents challenges when structuring rates.

How helpful would a permanent water rate assistance program be, whether it be LIHWAP or an EPA program?

Mr. BENNON. Mr. Chairman, the need for some type of a subsidy to help bridge this gap, where the scales of economy of the water utility model starts to fail, there needs to be some type of funding mechanism to help utilities bridge that difference there.

The LIHWAP program has been hugely successful, but focuses narrowly just on the one aspect of the utility revenues, and that is the ratepayer. So if you have a very small population, trying to figure out where that sweet spot is of setting the rates to cover all the costs, we do have technical assistance support out there to help utilities do that.

But my suggestion is that there should be another funding mechanism to bridge that difference, to work hand in hand with LIHWAP, but also primarily looking at the very technical side of things, not the economics so much side of things of the customer, but of what the community and the utility unique needs are.

It is a very technical process of establishing rate structure. There is definitely a need for an additional funding mechanism to assist small, rural Tribes with that.

Senator PADILLA. Ms. WallowingBull, will you share a little bit about your utility's experience with LIHWAP, and whether you

think Congress should fund a permanent water rate assistance program?

Ms. WALLOWINGBULL. Chairman Padilla, yes. Actually we received LIHWAP funding for water assistance this year, or last year. I know it has been a big thing for our Tribe. Our water billing currently is not in a great situation. Our water billing system is not enforced, so it is difficult to get everybody on the system. We are a flat rate, but even if everybody was to pay, that wouldn't even sustain our system. It would just cover the operation, barely. It wouldn't even supplement salaries or anything else.

So the operation and maintenance is continuously an issue. But the LIHWAP actually did assist a lot of individuals, as the funding goes back to the Tribe, which helps us. So I think continuously providing that funding would be beneficial. We also, because we are billing, and we work with USDA Rural Development, they also have a program that assists with low income for water bills.

Senator PADILLA. Thank you.

Mr. Norton.

Mr. NORTON. Thank you.

The LIHWAP program was very successful for the Hoopa Valley Indian Reservation. It was based upon an annual income and the majority of the annual income in Hoopa is below poverty level at 80 percent.

Having the LIHWAP program continue is essential in our Native American communities. As my colleague Mr. Bennon pointed out, if we can bridge that gap somehow where we can have the assistance of these to the ratepayer and then have the assistance from the Indian Health Service through their statute of O&M and helping offset those costs, it would be a mutually acceptable program that the Tribes would embrace.

Senator PADILLA. Wonderful.

Before we conclude the hearing, I do want to take a moment to once again thank Chairman Carper and Ranking Member Capito and the Subcommittee Ranking Member Lummis for making today's hearing possible. I appreciate the efforts of our collective staff as well.

I especially want to thank our witness for your thoughtful testimony and your ongoing efforts to improve the state of tribal water in this country. As I mentioned earlier, today's hearing is about more than just the transformational investments we are making in water infrastructure. It is about fulfilling our Federal trust responsibilities to Tribes that deserve a guarantee from the Federal Government to a safe, healthy, and prosperous life. Those responsibilities don't end after the enactment of one historic infrastructure bill, and they are not fulfilled by periodic check ins just to say we have done our job. This is a constant and growing nation to nation relationship that goes both ways.

And yes, we have a moral responsibility to continue to serve Native American Tribes who were forcibly displaced from their homelands. I want to make clear for folks back home: The problems discussed today, this isn't a matter of technical infrastructure jargon or policy speak. This is about making sure that a parent in Indian Country can turn on the tap and not fear they will get their child sick by giving them a glass of water, to making sure a family on



a reservation doesn't have to conserve every last drop of water to bathe themselves because they are not sure when the next shipment of water will come in. It is about making sure an entire community doesn't have to worry about one lightning strike or one burst pipe or extreme weather, what that could mean to the loss of all clean water. And of course, for countless Native Americans, it is about knowing that the U.S. Government values you and your family's health enough to invest in the resources that will keep you safe.

So I take this responsibility seriously, and clearly, with multiple hearings this week and next, the U.S. Senate is demonstrating that we all take this issue seriously.

Now it is time to move beyond the initial excitement over an influx of funding to tribal communities through the Bipartisan Infrastructure Law and follow it up to make sure it is accessible and implemented thoughtfully. Because we have got to make sure we are making long term, sustained investments in water systems throughout the country.

Once again, I thank our witnesses today for helping us to better understand some of the potential next steps we can take to bolster tribal communities' water systems. As Mr. Norton pointed out, that could include directing the EPA and the Indian Health Service to evaluate the specific needs of all tribal public water systems to determine what it would take to fund a Federal operations and maintenance program. Or as Mr. Bennon pointed out, that could include improving work force development, so that Tribes have access to water and wastewater system operators that can provide safe drinking water and adequate sanitation services.

And as I called for in the first Subcommittee hearing, we need to fund a permanent water rate assistance program akin to LIHEAP for energy assistance to ensure that Native American households can afford water bills. We need a whole of government approach to fully funding Federal programs related to tribal drinking water and wastewater, including the programs in the Bipartisan Infrastructure Law that we authorized but didn't fund.

So I look forward to advancing legislation in the months ahead that lives up to our trust responsibility to provide clean water throughout Indian Country. I want to thank you all again for being here. I look forward to the follow up.

With that, this hearing is adjourned.

[Whereupon, at 4:02 p.m., the hearing was adjourned.]

[Additional material submitted for the record follows:]



**TULE RIVER INDIAN TRIBE**  
**STATEMENT TO THE SENATE ENVIRONMENT AND PUBLIC WORKS SUBCOMMITTEE**  
**ON FISHERIES, WATER, AND WILDLIFE**  
**REGARDING DRINKING WATER AND WASTEWATER INFRASTRUCTURE IN TRIBAL COMMUNITIES**

Honorable Senators, Chairman Padilla, and Committee Members:

The Tule River Indian Tribe of California submits this statement to highlight some of the issues we are facing when it comes to providing water to our members. It is with great sadness and concern that I report to you about the water conditions on the Tule River Reservation (“Reservation”). We are in crisis mode after experiencing a multi-year drought followed by extreme flooding. These two back-to-back historic events created a domino effect in the last year, whereby the cascading impacts of extreme weather and climate caused damage to our Reservation lands, which in turn stressed our already struggling infrastructure. For example, the catastrophic Windy Fire in the fall of 2022 burned more than 90,000 acres of forest on and around the Reservation and contributed to flooding and washouts along denuded hillsides during record breaking flooding this past spring of 2023. As a result, our roads, bridges, and culverts, as well as our pipelines for water delivery and waste treatment are barely functioning, if at all – making life for our 1,900 members nearly impossible.

We need your help to raise awareness about this emergency in Congress and to support the durable solutions we’ve already studied and for which we have legislation introduced – S. 306, the Tule River Tribe Reserved Water Rights Settlement Act of 2023. With your help, we can get the tools we need to be resilient as we continue to face multiple unprecedented and simultaneous stressors to our infrastructure in these climate changing times. The following will provide you with the necessary overview of our situation, by summarizing the unique geography of our Reservation, the water infrastructure issues we are facing, and a description of S. 306, now pending before Congress. We hope that with this information in hand you will feel empowered to support our pending legislation to the best of your ability and assist us in working with federal agencies, such as the Indian Health Service (“IHS”) and Department of Housing and Urban Development (“HUD”).

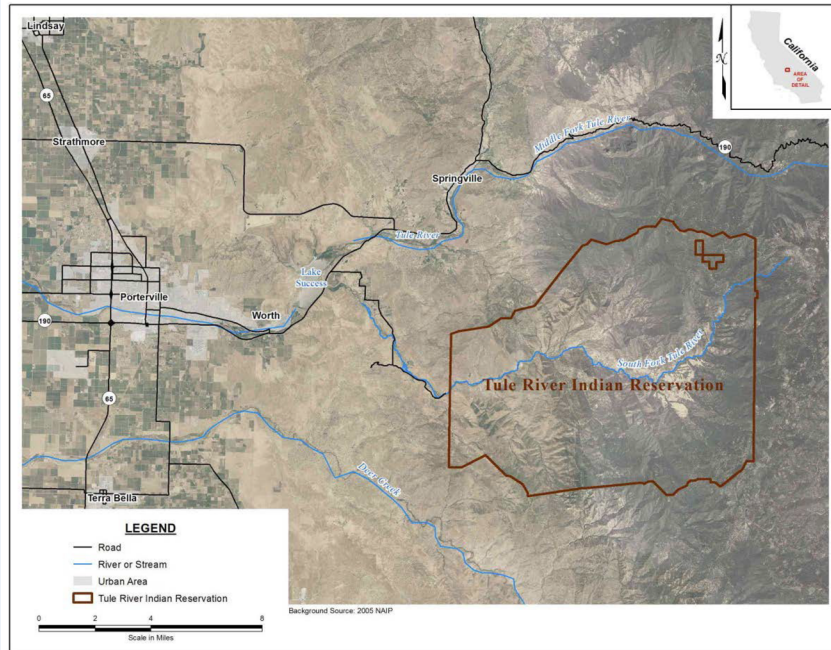
**Relevant Location Information for the Tule River Indian Reservation**

The Tule River Indian Reservation (“Reservation”) is in south central California and covers approximately 85 square miles (55,395-acres) of rugged foothill terrain in the Sierra Nevada Mountains. Many of the roads on the reservation reach grades of 7-18%, including those used to access tribal member homes. The main roadways are paved, but the majority of those used to access member residences are dirt. Culverts and bridges allow for the winding network of roadways to function as a transportation system, despite erosion and other impacts from large springtime runoffs and windy conditions

in dry times of the year. Currently, our road system is in a state of disrepair due to recent flooding and increased truck traffic for water deliveries. Potholes in some areas have been temporarily improved with metal grates to allow passage, but these are fast approaching obsolescence given the impacts from steep slopes and unusually heavy truck traffic.

The Tule River Indian Tribe (“Tribe”) was removed to its current Reservation near Porterville in 1873 by Presidential Executive Order, which replaced a previous one that had provided us more suitable lands for habitation closer to the valley floor. While the area is not ideal for domestic residence, it is part of our ancestral homelands and so is sacred to us culturally. We have a waiting list of tribal members who would like to live on the Reservation, but without water we are unable to meet their requests. It is estimated that only 56% of our population lives on the Reservation, which is confirmed by the length of our waiting list. A cohort-survival model published in 2013 indicates that by the year 2112 the Tribe’s total membership will reach about 6,035 people. (See Attachment 1, § 3.1). Below is a location map for your reference.

**Figure 1-1: Reservation Location Map**



### Current Reservation Water Infrastructure Issues

There is a lack of sufficient water supply for the Reservation generally. We have worked proactively for over 50 years now to address our federally reserved Indian water rights so that we can develop the necessary water resources to make our Reservation a permanent homeland. The current water supply is intermittent and suffers from water quality issues. The Reservation water system relies on a series of wells, springs, and water drawn directly from the South Fork Tule River, which is treated to meet potable water standards. Actual water demand exceeds documented water usage, which is constrained by availability and the water distribution system itself. (See Attachment 1, § 2.0).

For the past 15-20 years, persistent drought has caused water reductions as well as complete shutoffs. Homes typically run out of water during peak summer months and members must travel to trucked-in water stations to bathe and obtain bottled water for their home use. The Tribe's water treatment plant currently has the capacity for providing 501,700 gallons per day (562 acre-feet per year) at maximum production. We try to run the treatment plant at maximum capacity and use groundwater sources to help make up shortfalls. Many years, like this one, we have not had adequate water supplies in the late summer and early fall to meet the current minimum 100,000 gallons per day of water demand. Recent flooding has impacted our ability to operate the water treatment plant efficiently and requires the use of a patchwork system of generators, which when they fail impact the daily functioning of government services on the Reservation.

Water cisterns containing emergency stored water are difficult to access, and water delivery pipelines installed by the Indian Health Service ("IHS") are of inadequate size to deliver water reliably. In seeking information about the installation of these pipes, we were told by IHS that an as built plan for the system is not available, making updating it even more time-consuming and difficult. Meanwhile, the elevation difference between our water sources and end-users causes naturally occurring sulfur in our groundwater supplies to rise above the water as it gets pushed through the pipes, resulting in noxious sulfur odors polluting homes prior to the much-needed water arriving. The sulfur odors have made homes unlivable in some instances. Other homes are currently experiencing such water deficits that tribal members are unable to flush toilets, making their homes uninhabitable as well. Many members must live in recreational vehicles due to finances. HUD informed us it cannot make water deliveries to RVs. "Many of the residents on the Reservation continue to have a relatively low standard of living in substantial part due to the absence of an adequate and reliable potable water supply and delivery system. Inadequate water supplies have resulted in reduced opportunities for economic development on the Reservation and prevent off-Reservation Tribal members from relocating to the Reservation." (See Attachment 1, Executive Summary).

In the event of a wildfire, there is not enough water to fight fires unless imported from off the Reservation. During the Windy Fire, near vertical, rocky terrain and a lack

of dipping pools for fire protection on the Reservation complicated suppression efforts. In addition to the fire burning more than 90,000 acres of forest on the Reservation and in the neighboring Sequoia National Forest, it killed many old growth giant sequoia trees – thousands of years in the making – incinerated tens of millions of board feet of timber and contributed to flooding and erosion throughout the spring of 2023. Future ignitions in remote areas continue to threaten the Reservation and neighboring communities, given catastrophic wildfire spreads quickly and can easily burn entire towns and forest stands in a 24-hour period.

Water quality concerns exist for all three of our water sources – river water, springs, and wells. The quality of river water is affected by grazing upstream, as well as other land uses and activities in the watershed. Natural springs are used for a combination of agricultural irrigation and drinking water augmentation. Several large springs show high levels of carbon dioxide and are therefore restricted to agricultural usage. Wells located throughout the Reservation, but concentrated in the Reservation’s Lower Valley, augment the treated surface water serving our community. Less than a quarter of the wells that have been drilled on the Reservation are operational, though, due to either lack of production or water quality concerns. Well yields tend to be modest, with most producing less than 30 gallons per minute (gpm). (See Attachment 1, §§ 2.1.1-2)

#### **2007 Settlement Agreement**

As mentioned, we’ve been proactively seeking to address our water supply concerns for over half a century. In 2007, a landmark settlement agreement was reached between the Tribe and state-based water users – the Tule River Association (TRA), and the South Tule Independent Ditch Company (STIDC). The U.S. led us in the associated negotiations and through it we were able to settle the local concerns regarding recognition of our federally reserved water rights. With the state-based users, we agreed to a consumptive right to 5,828 acre-feet of water per year for the Tribe, which would be provided by building a reservoir upstream of the Reservation. The 2007 Settlement Agreement was the result of over 40 years of work and a million of our own precious dollars in research. This research included a decade of investigation in project alternatives alone as well as a Bureau of Reclamation cost-estimate study for the reservoir itself. The Settlement Agreement contains operating criteria for the administration of the reservoir on the Reservation so that it will not harm downstream users, while at the same time providing the much-needed reliable water supply for our members. Furthermore, the studies show the reservoir is the most cost-effective and durable solution to our water infrastructure concerns.

#### **Legislation – Tule River Water Settlement Act (S. 306)**

Through the last 50+ years we have worked tirelessly with everyone concerned to address issues and move our water rights settlement forward. After additional study, verification of costs, and further negotiations with federal agencies, we were proud to

work with Senator Padilla and Senator Feinstein's offices to introduce what is now known as S. 306, or the Tule River Tribe Reserved Water Rights Settlement Act of 2023. (See Attachment 2, Section-by-Section Analysis of S. 306). Senator Padilla, with co-sponsor Sen. Feinstein, introduced the bill most recently on February 2, 2023. It was read twice and referred to the Senate Committee on Indian Affairs, where on March 29, 2023 it was ordered to be reported favorably without amendment. The Congressional Budget Office issued its Cost Estimate on August 25, 2023. (See Attachment 3).

Passage of S. 306 will not immediately address our pressing water infrastructure needs, but it will provide us with the funds needed to start to implement real, long-term, and clearly overdue solutions. It would provide the funding needed to update the Tribe's water supply system and create a reliable source of water for the Reservation. It would develop a much-needed reservoir upstream of the Reservation, which would best address supply and water quality issues. It would provide stability to the rest of the considerable agricultural interests downstream, as well as provide a benefit to the U.S. by resolving outstanding legal claims and honoring the trust obligations it has to the Tribe.

In addition to supporting passage of S. 306, the Tribe needs your help in working through bureaucratic issues with the IHS to better understand and resolve issues associated with the water delivery pipelines located on our Reservation, as well as with HUD to address water delivery needs to mobile residences in times of emergency. With these three pieces addressed, we could finally rest assured that our pressing water needs are being addressed and prioritized by all levels of government – as well they should given water is fundamental to life and a nation's sovereignty.



September 20, 2023

The Honorable Tom Carper  
Chair, U.S. Senate  
Environment and Public Works Committee  
513 Hart Senate Office Building  
Washington, DC 20510

The Honorable Shelley Moore Capito  
Ranking Member, U.S. Senate  
Environment and Public Works Committee  
170 Russell Senate Office Building  
Washington, DC 20510

The Honorable Alex Padilla  
Chair, U.S. Senate  
Fisheries, Water and Wildlife Subcommittee  
Environment and Public Works Committee  
112 Hart Senate Office Building  
Washington, DC 20510

The Honorable Cynthia Lummis  
Ranking Member, U.S. Senate  
Fisheries, Water and Wildlife Subcommittee  
Environment and Public Works Committee  
112 Hart Senate Office Building  
Washington, DC 20510

Dear Senators Carper, Capito, Padilla, and Lummis,

The Rural Community Assistance Partnership Incorporated (RCAP) is pleased to provide this statement for the record in anticipation of the Senate EPW hearing on Drinking Water Infrastructure and Tribal Communities. Our organization is deeply committed to addressing the pressing water challenges faced by Tribal and rural communities across the United States. With this statement, we aim to offer a comprehensive overview of our work with Tribes and the critical water challenges they confront.

RCAP stands as a nationwide network of nonprofit partners, comprising more than 350 on the ground technical assistance providers (TAPs). These dedicated TAPs serve as trusted local resources, collaborating closely with communities to address their specific needs and challenges. In FY 2022, RCAP witnessed a year of substantial growth, change, and transition. The cornerstone of this transformative period was the passage of the Infrastructure Investment and Jobs Act (IIJA), a monumental legislative achievement that includes substantial investments in infrastructure. RCAP played a pivotal role in ensuring that these investments encompassed provisions that would profoundly benefit small, rural, and Indigenous communities by enhancing their access to safe, affordable water and wastewater services. After IIJA's passage, RCAP has been diligently collaborating with partners and government agencies to chart a strategic course for utilizing these historic funds effectively.

In FY 2022, RCAP worked on 156 tribal technical assistance projects, leveraging our relationships with approximately 200 federally recognized tribes. RCAP's impact extended to



communities in every U.S. state, the U.S. territories, and Tribal lands. We served 1,654 communities, including 253 with majority people of color populations and 514 with majority low-income populations. The average community we served had a population of 1,525, with a median household income of \$40,434. RCAP's collective efforts in these communities helped leverage an impressive \$692,488,929 in funds to support their vital projects and initiatives.

Tribal communities across the United States are confronted with myriad water challenges that demand immediate attention and sustainable solutions. These challenges are multi-faceted and encompass various critical areas:

**Inadequate Access to Safe Drinking Water and Sanitary Wastewater Disposal:** The United States Environmental Protection Agency's Environmental Compliance History Online (ECHO) system reported that as of FY 2022, there were 1,051 Tribal water systems and 3,351 Tribal National Pollutant Discharge Elimination System (NPDES) facilities. Unfortunately, many of these systems grapple with inadequate access to safe drinking water and sanitary wastewater disposal. The issue extends to approximately 38,000 American Indian and Alaska Native (AI/AN) homes that lack adequate sanitation. Approximately 7,100 of these homes do not have access to a safe water supply and/or a waste disposal facility. These statistics highlight a critical need for interventions to ensure public health, environmental well-being, and overall quality of life in Tribal communities.

**Infrastructure Upgrades:** The aging state of water and wastewater infrastructure in the U.S. is a matter of concern. In 2020, the average age of water and sewer pipes in the country was estimated to be 45 years. This aging infrastructure has resulted in approximately 250,000-300,000 water main breaks annually and the loss of 6 billion gallons of treated water each day. To bring Tribal systems up to current standards, the EPA's Drinking Water Infrastructure Needs Assessment estimated a 20-year need of \$3.8 billion. Similarly, the Indian Health Service (IHS) reported a backlog of 1,580 Tribal sanitation facility construction projects, with a price tag of \$3.1 billion. The need for infrastructure upgrades is dire, given that failing infrastructure can lead to service interruptions and endanger public health.

**Project Development Capacity:** Many Tribal water systems lack the knowledge and capacity to navigate complex financing options and borrower conditions. The application process for grants and loans can be daunting for systems with limited capacity. This complexity has resulted in funding dollars being allocated to projects in communities with fewer needs, exacerbating the challenges faced by distressed systems. Additionally, the lack of access to financing options delays project development and exacerbates financial challenges, making it difficult for Tribal systems to address critical infrastructure needs.





**Financial Sustainability:** Tribal water systems often struggle with financial sustainability due to their limited customer bases, which are frequently characterized by predominantly lower-income populations. The COVID-19 pandemic further exacerbated financial challenges, with Tribal systems experiencing negative financial impacts at a disproportionate rate. Ensuring financial sustainability is vital for these systems to provide safe and clean water services to their communities.

**Increased Management Capacity:** Leadership turnover and limited training in public administration and utility management are common challenges faced by Tribal water systems. High turnover rates among utility leadership, management, and staff, especially in smaller systems, hinder effective system operation and maintenance. Providing training and support to new staff and Tribal council members is essential to improving system performance and compliance with regulatory standards.

**Workforce Development:** The shortage of qualified water and wastewater operators is a growing concern. Many operators are retiring, making it increasingly difficult to find and retain qualified staff. Turnover also results in the loss of institutional knowledge, leaving systems with significant information and process gaps. Developing a pipeline of younger operators and providing training opportunities is crucial to addressing this workforce challenge.

**Help Complying with Federal Regulations:** Tribal-owned public water systems serving fewer than 10,000 people experienced 2,955 violations in 2021, both health-based and monitoring and reporting violations. Complying with federal regulations is a complex task for many Tribal systems, and they often require assistance in navigating the regulatory landscape.

RCAP's Tribal technical assistance has made significant strides in bolstering the long-term viability and resilience of Tribal water systems. In the recently completed USDA 22-23 Tribal Technical Assistance and Training (TAT) Grant Program, RCAP provided technical assistance to 21 Tribal projects spanning 12 states serving 23 systems. These efforts have positively impacted an estimated total population of 51,407, with each community's average population standing at 2,984, and 29% of residents living below the poverty line. Our Tribal training initiatives within the grant have included 18 sessions for 460 attendees across 10 states.

During the previous 21-22 Tribal TAT Grant Program, RCAP provided technical assistance to 28 Tribal projects across 10 states, supporting 26 systems. This impacted an estimated total population of 49,857, with each community averaging 2,367 residents and 29% living below the poverty line. Our support also facilitated the leveraging of \$1,966,138 in funding for three systems across three states, in addition to generating \$3,000,000 in USDA-RD applications and \$7,679,000 in applications for other infrastructure funding sources. These achievements



underscore our unwavering dedication to fortifying Tribal water systems and ensuring their sustainability.

In addition to this USDA supported Tribal specific water and wastewater TA program, RCAP also provides services to Tribes in water and wastewater with a number of different EPA technical assistance funding pots (including Tribal Circuit Rider) and also does significant Tribal solid waste work with support from USDA. RCAP has active relationships with approximately 200 federally recognized Tribes across the country.

One case study that highlights RCAP's involvement in ensuring Tribal communities are well-equipped was led by the Rural Community Assistance Corporation (RCAC), the western affiliate of RCAP. RCAC plays a pivotal role in supporting underserved Tribal communities across the region. One such community, Lybrook, located in northwestern New Mexico, faced significant challenges with its water system. Serving a population of just 289 and grappling with a median household income of only \$21,964, Lybrook struggled with severe technical, managerial, and financial constraints. However, the assistance of RCAC sparked a remarkable turnaround. Collaborating closely, RCAC and the Lybrook Mutual Domestic Water Consumers Association (MDWCA) achieved full compliance with regulations, including the consistent production of Consumer Confidence Reports (CCRs) and rectification of all sanitary survey deficiencies. Moreover, they instilled newfound confidence and knowledge within the community to address future challenges effectively. RCAC's facilitation of a critical partnership with the Navajo Tribe Utility Authority (NTUA) has paved the way for a pipeline project that will provide Lybrook's water system with an additional, more sustainable water source. These transformative successes mark the resilience and growth of Lybrook's water system, showcasing the potential for sustainable development in even the most challenging of environments.

Furthermore, RCAP recognizes the unique opportunities presented by the Bipartisan Infrastructure Law (BIL), which will make substantial infrastructure funding available to Tribes. RCAP understands that many Tribes will require predevelopment and planning support to access these vital subsidies effectively. Through the new EPA Environmental Finance Center program, Tribal projects are one of RCAP's seven major priorities and in partnership with IHS, RCAP is poised to provide the necessary guidance and assistance to ensure Tribes are well-prepared to secure and utilize these funds to address their water challenges effectively and to maintain and afford the infrastructure in the long term.

In closing, RCAP remains dedicated to working collaboratively with Tribal communities to confront their water challenges head-on. We understand the significance of unlocking the Tribal set-asides in IJA and partnering with federal agencies to secure the necessary resources for these communities. By enhancing the technical, managerial, and financial capacity of Tribal water/wastewater systems, we aim to improve their operation and maintenance, ensure compliance with federal regulations, and ultimately contribute to the prosperity and well-being of Tribal nations.



As we move forward, we are committed to continuing our partnership with Senators Carper, Capito, Padilla, and Lummis and other stakeholders to address the critical water challenges faced by Tribal communities. Together, we can create a brighter future where safe and reliable water services are accessible to all.

Thank you for your consideration of this request.

Sincerely,



Olga Morales Pate  
Chief Executive Officer  
Rural Community Assistance Partnership Incorporated

