

117TH CONGRESS
1ST SESSION

S. 2369

To provide access to reliable, clean, and drinkable water on Tribal lands,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 15, 2021

Mr. BENNET (for himself and Mr. HEINRICH) introduced the following bill;
which was read twice and referred to the Committee on Indian Affairs

A BILL

To provide access to reliable, clean, and drinkable water
on Tribal lands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal Access to Clean
5 Water Act of 2021”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) access to reliable, clean, and drinkable
9 water is an essential human need and critical to the
10 public health, well-being, educational attainment,

1 and economic development of all communities in the
2 United States;

3 (2) many countries, along with the United Na-
4 tions, have recognized the urgency of the need to ac-
5 cess reliable, clean, and drinkable water by passing
6 laws or resolutions relating to the human right to
7 water and sanitation, including—

8 (A) recognizing these water and sanitation
9 needs exist among Indigenous peoples; and

10 (B) establishing aggressive targets for
11 achieving universal access to those basic serv-
12 ices;

13 (3) in the United States, access to reliable,
14 clean, and drinkable water has long been a signifi-
15 cant problem in many Native communities, such that
16 nearly half of all households in those communities do
17 not have access to reliable water sources, clean
18 drinking water, or basic sanitation, and are signifi-
19 cantly more likely than White households to lack in-
20 door plumbing;

21 (4) the trust responsibility of the Federal Gov-
22 ernment to Indian Tribes requires the Federal Gov-
23 ernment to ensure the survival and welfare of Indian
24 Tribes, and the failure to provide basic water service
25 cannot be reconciled with that trust responsibility;

1 (5) the ongoing COVID–19 pandemic has had
2 a disproportionate impact on Native communities
3 due to a multitude of factors, including—

4 (A) persistent economic disadvantages;

5 (B) racial inequity; and

6 (C) lack of public health infrastructure, in-
7 cluding access to running water;

8 (6) on January 27, 2021, President Biden
9 issued Executive Order 14008 (86 Fed. Reg. 7619
10 (February 1, 2021)), which provides that it is the
11 policy of the Biden Administration to secure envi-
12 ronmental justice and spur economic opportunity for
13 disadvantaged communities that have been histori-
14 cally marginalized and overburdened by pollution
15 and underinvestment in housing, transportation,
16 water and wastewater infrastructure, and health
17 care;

18 (7) advances in water technology, including
19 treatment, sensors, and innovative pipeline mate-
20 rials, can assist in—

21 (A) accelerating efforts to provide uni-
22 versal access to reliable, clean, and drinkable
23 water for all Native communities; and

24 (B) enhancing resilience in the face of cli-
25 mate change;

1 (8) the COVID–19 pandemic has been a stark
2 reminder that access to reliable, clean, and drinkable
3 water to support basic hygiene is a matter of life or
4 death for all individuals in the United States;

5 (9) it is in the interest of the United States,
6 and it is the policy of the United States, that all ex-
7 isting Native communities be provided with safe and
8 adequate water supply systems as soon as prac-
9 ticable; and

10 (10) both appropriate funding at the level of
11 unmet need and a “whole of government” approach
12 among all Federal agencies are essential to provide
13 a meaningful solution to the lack of access to clean
14 water on Tribal lands.

15 **SEC. 3. DEFINITIONS.**

16 In this Act:

17 (1) DIRECTOR.—The term “Director” means
18 the Director of the Indian Health Service.

19 (2) INDIAN TRIBE.—The term “Indian Tribe”
20 has the meaning given the term in section 4 of the
21 Indian Self-Determination and Education Assistance
22 Act (25 U.S.C. 5304).

23 (3) NATIVE COMMUNITY.—The term “Native
24 community” means—

25 (A) an Indian Tribe; and

1 (B) a Native Hawaiian (as defined in sec-
2 tion 801 of the Native American Housing As-
3 sistance and Self-Determination Act of 1996
4 (25 U.S.C. 4221)) community.

5 (4) REPORT.—The term “Report” means the
6 most recent annual report required to be submitted
7 by the Secretary of Health and Human Services to
8 the President under section 302(g) of the Indian
9 Health Care Improvement Act (25 U.S.C. 1632(g)).

10 (5) TRIBAL LAND.—The term “Tribal land”
11 means—

12 (A) any land located within the boundaries
13 of—

14 (i) an Indian reservation, pueblo, or
15 rancharia; or

16 (ii) a former reservation within Okla-
17 homa;

18 (B) any land not located within the bound-
19 aries of an Indian reservation, pueblo, or
20 rancharia, the title to which is held—

21 (i) in trust by the United States for
22 the benefit of an Indian Tribe or an indi-
23 vidual Indian;

24 (ii) by an Indian Tribe or an indi-
25 vidual Indian, subject to restriction against

1 alienation under laws of the United States;

2 or

3 (iii) by a dependent Indian commu-
4 nity;

5 (C) any land located within a region estab-
6 lished pursuant to section 7(a) of the Alaska
7 Native Claims Settlement Act (43 U.S.C.
8 1606(a));

9 (D) Hawaiian Home Lands (as defined in
10 section 801 of the Native American Housing
11 Assistance and Self-Determination Act of 1996
12 (25 U.S.C. 4221)); and

13 (E) those areas or communities designated
14 by the Assistant Secretary of Indian Affairs of
15 the Department of the Interior that are near,
16 adjacent, or contiguous to reservations where fi-
17 nancial assistance and social service programs
18 are provided to Indians because of their status
19 as Indians.

20 **SEC. 4. INDIAN HEALTH SERVICE.**

21 (a) SANITATION FACILITIES CONSTRUCTION PRO-
22 GRAM FUNDING.—

23 (1) APPROPRIATION.—In addition to amounts
24 otherwise available, there is appropriated to the Sec-
25 retary of Health and Human Services, acting

1 through the Director (referred to in this section as
2 the “Secretary”), out of amounts in the Treasury
3 not otherwise appropriated, \$3,410,000,000 for the
4 fiscal year ending September 30, 2021, to remain
5 available until expended, for all activities authorized
6 under section 302(b)(1) of the Indian Health Care
7 Improvement Act (25 U.S.C. 1632(b)(1)), including
8 the planning, design, construction, modernization,
9 improvement, and renovation of water, sewer, and
10 solid waste sanitation facilities: *Provided, That* the
11 Secretary may retain up to 10 percent of the
12 amounts appropriated under this paragraph for ad-
13 ministration of the Sanitation Facilities Construc-
14 tion Program and related management and staffing
15 purposes.

16 (2) PRIORITY FOR FUNDING.—In awarding
17 funding for the planning, design, construction, mod-
18 ernization, improvement, and renovation of water,
19 sewer, and solid waste sanitation facilities under
20 paragraph (1), the Secretary shall prioritize sanita-
21 tion facilities with the highest deficiency level, as es-
22 tablished in the Report.

23 (b) TECHNICAL ASSISTANCE FUNDING.—In addition
24 to amounts otherwise available, there is appropriated to
25 the Secretary, out of amounts in the Treasury not other-

1 wise appropriated, \$150,000,000 for the fiscal year ending
2 September 30, 2021, to remain available until expended,
3 for technical assistance support in Native communities
4 and for other activities authorized under section 302(b)(2)
5 of the Indian Health Care Improvement Act (25 U.S.C.
6 1632(b)(2)).

7 (c) OPERATION AND MAINTENANCE FUNDING.—

8 (1) APPROPRIATION.—In addition to amounts
9 otherwise available, there is appropriated to the Sec-
10 retary, out of amounts in the Treasury not otherwise
11 appropriated, \$500,000,000 for the fiscal year end-
12 ing September 30, 2021, to remain available until
13 expended, for the operation and maintenance of
14 water facilities serving Native communities.

15 (2) PRIORITY FOR FUNDING.—In awarding
16 funding for the operation and maintenance of water
17 facilities under paragraph (1), the Secretary shall
18 prioritize water facilities the most in need of assist-
19 ance, as identified by the Operation and Mainte-
20 nance Capability Ratings of the Indian Health Serv-
21 ice.

22 (3) FUTURE FUNDING.—On completion of an
23 operation and maintenance of water facilities project
24 described in paragraph (1), the Secretary shall, for
25 not less than 5 years after the date on which the

1 project is completed and to the extent to which an-
2 nual appropriations are available, include the com-
3 pleted project as eligible for sustained funding sup-
4 port and guidance to ensure that the investments in
5 the water facilities are adequately maintained and
6 operated for the health and welfare of Native com-
7 munities served, ensuring that the infrastructure in-
8 vestment is protected and the intended economic
9 benefit is realized.

10 **SEC. 5. DEPARTMENT OF AGRICULTURE RURAL DEVELOP-**
11 **MENT.**

12 (a) APPROPRIATION.—In addition to amounts other-
13 wise available, there is appropriated to the Secretary of
14 Agriculture (referred to in this section as the “Sec-
15 retary”), out of amounts in the Treasury not otherwise
16 appropriated, \$500,000,000 to make grants under sec-
17 tions 306C and 306D of the Consolidated Farm and Rural
18 Development Act (7 U.S.C. 1926c, 1926d) to eligible enti-
19 ties described in subsection (b) to provide for the develop-
20 ment, use, and control of water (including the extension
21 or improvement of existing water supply systems) in eligi-
22 ble entities the residents of which face significant health
23 risks, as determined by the Secretary, due to a significant
24 proportion of the residents of the eligible entity not having

1 access to, or not being served by, an adequate affordable
2 water supply system.

3 (b) ELIGIBLE ENTITIES.—An entity eligible to re-
4 ceive a grant using amounts appropriated by subsection
5 (a)—

6 (1) is a Native community; and

7 (2) in the case of a grant under section 306D
8 of the Consolidated Farm and Rural Development
9 Act (7 U.S.C. 1926d), includes a consortium formed
10 pursuant to section 325 of Public Law 105–83 (111
11 Stat. 1597).

12 (c) NO MATCHING CONTRIBUTION.—An eligible enti-
13 ty shall not be required to provide any matching contribu-
14 tion otherwise required by any other provision of law (in-
15 cluding regulations) with respect to a grant received by
16 the eligible entity from amounts appropriated by sub-
17 section (a).

18 (d) PRIORITY FOR FUNDING.—In awarding grants to
19 eligible entities using amounts appropriated by subsection
20 (a), the Secretary shall—

21 (1) treat members of an eligible entity in the
22 same manner as individuals who reside in a colonia
23 for purposes of subsections (a)(2)(B) and (c)(2) of
24 section 306C of the Consolidated Farm and Rural
25 Development Act (7 U.S.C. 1926c); and

1 (2) award the grants without requiring an eligi-
2 ble entity or the members of an eligible entity to
3 demonstrate an inability to finance the proposed
4 project—

5 (A) from the resources of the eligible entity
6 or members; or

7 (B) through commercial credit.

8 (e) INTERAGENCY COLLABORATION.—The Secretary
9 shall consult with the Director of the Indian Health Serv-
10 ice regarding agency collaboration, project prioritization,
11 and staffing needs to ensure the amounts made available
12 under this section are used in the most effective manner
13 to promote access to water and sanitation.

14 **SEC. 6. BUREAU OF RECLAMATION.**

15 (a) RURAL WATER SUPPLY PROGRAM REAUTHOR-
16 IZATION.—

17 (1) AUTHORIZATION OF APPROPRIATIONS.—
18 Section 109(a) of the Rural Water Supply Act of
19 2006 (43 U.S.C. 2408(a)) is amended by striking
20 “2016” and inserting “2031”.

21 (2) TERMINATION OF AUTHORITY.—Section
22 110 of the Rural Water Supply Act of 2006 (43
23 U.S.C. 2409) is amended by striking “2016” and in-
24 serting “2031”.

1 (b) BUREAU OF RECLAMATION RURAL WATER SUP-
 2 PLY PROGRAM.—

3 (1) DEFINITIONS.—In this subsection:

4 (A) RECLAMATION STATE.—The term
 5 “Reclamation State” means a State described
 6 in the first section of the Act of June 17, 1902
 7 (43 U.S.C. 391; 32 Stat. 388, chapter 1093).

8 (B) SECRETARY.—The term “Secretary”
 9 means the Secretary of the Interior, acting
 10 through the Commissioner of Reclamation.

11 (2) COMPETITIVE GRANT PROGRAM FOR TRIBAL
 12 CLEAN WATER ACCESS PROJECTS.—

13 (A) ESTABLISHMENT.—In accordance with
 14 section 103 of the Rural Water Supply Act of
 15 2006 (43 U.S.C. 2402), the Secretary shall es-
 16 tablish a competitive grant program under
 17 which an Indian Tribe shall be eligible to apply
 18 for a grant from the Secretary in an amount
 19 not to exceed 100 percent of the cost of plan-
 20 ning, design, and construction of a project de-
 21 termined by the Secretary to be eligible for
 22 funding under subparagraph (B).

23 (B) ELIGIBILITY.—To be eligible for a
 24 grant under subparagraph (A), a project shall,
 25 as determined by the Secretary—

1 (i)(I) provide, increase, or enhance ac-
2 cess to safe drinking water for commu-
3 nities and households on Tribal land; or

4 (II) address public health and safety
5 concerns associated with access to safe
6 drinking water; and

7 (ii) be carried out in a Reclamation
8 State.

9 (C) PRIORITY.—

10 (i) IN GENERAL.—In providing grants
11 under subparagraph (A), the Secretary
12 shall give priority to projects that meet 1
13 or more of the following criteria:

14 (I) A project that would provide
15 potable water supplies to communities
16 or households on Tribal land that do
17 not have access to running water as of
18 the date of the project application.

19 (II) A project that would address
20 an urgent and compelling public
21 health or safety concern relating to
22 access to safe drinking water for resi-
23 dents on Tribal land.

24 (III) A project that would ad-
25 dress needs identified in the Report.

1 (IV) A project that is closer to
2 being completed, or farther along in
3 planning, design, or construction, as
4 compared to other projects being con-
5 sidered for funding.

6 (V) A project that would take ad-
7 vantage of the experience and tech-
8 nical expertise of the Bureau of Rec-
9 lamation in the planning, design, and
10 construction of rural water projects,
11 particularly with respect to a project
12 that takes advantage of economies of
13 scale.

14 (VI) A project that would take
15 advantage of local or regional partner-
16 ships that complement related efforts
17 by Tribal, State, or Federal agencies
18 to enhance access to drinking water or
19 water sanitation services on Tribal
20 land.

21 (VII) A project that would lever-
22 age the resources or capabilities of
23 other Tribal, State, or Federal agen-
24 cies to accelerate planning, design,
25 and construction.

- 1 (VIII) A project that would pro-
2 vide multiple benefits, including—
3 (aa) improved water supply
4 reliability;
5 (bb) public health improve-
6 ments;
7 (cc) ecosystem benefits;
8 (dd) groundwater manage-
9 ment and enhancements; and
10 (ee) water quality improve-
11 ments.
- 12 (ii) CONSULTATION.—In prioritizing
13 projects for funding under clause (i), the
14 Secretary—
15 (I) shall consult with the Direc-
16 tor; and
17 (II) may coordinate funding of
18 projects under this paragraph with
19 the Director, the Administrator of the
20 Environmental Protection Agency, the
21 Secretary of Agriculture, and the head
22 of any other Federal agency in any
23 manner that the Secretary determines
24 would—

- 1 (aa) accelerate project plan-
2 ning, design, or construction; or
3 (bb) otherwise take advan-
4 tage of the capabilities of, and
5 resources potentially available
6 from, other Federal sources.

7 (3) FUNDING.—

8 (A) IN GENERAL.—In addition to amounts
9 otherwise available, there is appropriated to the
10 Secretary, out of amounts in the Treasury not
11 otherwise appropriated, \$2,000,000,000 to
12 carry out this subsection.

13 (B) ADMINISTRATIVE EXPENSES; USE OF
14 FUNDS.—Of the amounts made available under
15 subparagraph (A), the Secretary—

16 (i) may use up to 2 percent for—

17 (I) the administration of the
18 rural water supply program estab-
19 lished under section 103 of the Rural
20 Water Supply Act of 2006 (43 U.S.C.
21 2402); and

22 (II) related management and
23 staffing expenses; and

24 (ii) of the remaining amounts, shall
25 make available—

1 (I) 50 percent for the rural water
2 supply projects described in the report
3 of the Bureau of Reclamation entitled
4 “Assessment of Reclamation’s Rural
5 Water Activities and Other Federal
6 Programs That Provide Support on
7 Potable Water Supplies to Rural
8 Communities in the Western United
9 States” and dated October 7, 2014, to
10 remain available until expended; and

11 (II) 50 percent to carry out the
12 competitive grant program established
13 under paragraph (2), to remain avail-
14 able until expended.

15 (c) FUNDING FOR NATIVE AMERICAN AFFAIRS
16 TECHNICAL ASSISTANCE PROGRAM OF THE BUREAU OF
17 RECLAMATION.—In addition to amounts otherwise avail-
18 able, there is appropriated to the Secretary of the Interior,
19 out of amounts in the Treasury not otherwise appro-
20 priated, \$90,000,000 for use, in accordance with section
21 201 of the Energy and Water Development Appropriations
22 Act, 2003 (43 U.S.C. 373d), for the Native American Af-
23 fairs Technical Assistance Program of the Bureau of Rec-
24 lamation for the fiscal year ending September 30, 2021,
25 to remain available until expended.

1 **SEC. 7. DRINKING WATER AND CLEAN WATER STATE RE-**
 2 **VOLVING FUNDS.**

3 (a) APPROPRIATION.—Notwithstanding any amounts
 4 reserved under section 518(c) of the Federal Water Pollu-
 5 tion Control Act (33 U.S.C. 1377(c)) or section 1452(i)(1)
 6 of the Safe Drinking Water Act (42 U.S.C. 300j–12(i)(1))
 7 and in addition to amounts otherwise made available,
 8 there is appropriated to the Administrator of the Environ-
 9 mental Protection Agency (referred to in this section as
 10 the “Administrator”) for the fiscal year ending September
 11 30, 2021, out of any amounts in the Treasury not other-
 12 wise appropriated, to remain available until expended—

13 (1) \$100,000,000 for the purposes described in
 14 section 518(c)(3) of the Federal Water Pollution
 15 Control Act (33 U.S.C. 1377(c)(3)); and

16 (2) \$100,000,000 for the purposes described in
 17 section 1452(i) of the Safe Drinking Water Act (42
 18 U.S.C. 300j–12(i)).

19 (b) USE OF FUNDS.—

20 (1) TECHNICAL ASSISTANCE.—Of the amounts
 21 made available under subsection (a), the Adminis-
 22 trator may use \$5,000,000 to provide training, tech-
 23 nical assistance, and educational programs to Native
 24 communities with respect to the operation and main-
 25 tenance of treatment works (as defined in section
 26 212 of the Federal Water Pollution Control Act (33

1 U.S.C. 1292)) and public water systems (as defined
2 in section 1401 of the Safe Drinking Water Act (42
3 U.S.C. 300f)).

4 (2) MANAGEMENT AND OVERSIGHT COSTS.—Of
5 the amounts made available under subsection (a),
6 the Administrator may use 2 percent for the man-
7 agement and oversight of Native community projects
8 carried out using funds made available under that
9 subsection.

10 (c) REQUIREMENTS.—

11 (1) OUTREACH.—The Administrator shall in-
12 crease efforts to promote Native community access
13 to drinking water and wastewater services to ensure
14 the most effective use of amounts made available
15 under subsection (a), including by—

16 (A) increasing direct communication with
17 Native communities to better assess the needs
18 of those Native communities;

19 (B) providing clear information to Native
20 communities with respect to funding avail-
21 ability; and

22 (C) providing an option to receive funding
23 under this section through a direct grant using
24 the amounts made available under subsection

1 (a) or through an interagency agreement with
2 the Indian Health Service.

3 (2) INTERAGENCY COLLABORATION.—In car-
4 rying out this section, the Administrator shall con-
5 sult with the Director regarding agency collabora-
6 tion, project prioritization, and staffing needs to en-
7 sure that amounts made available under subsection
8 (a) are used in the most effective manner to promote
9 Native community access to drinking water and
10 wastewater services.

11 (d) TRANSFER OF FUNDS.—Nothing in this section
12 affects the authority of the Administrator to transfer
13 funds made available under subsection (a) among the ac-
14 counts for—

15 (1) the program established under section 518
16 of the Federal Water Pollution Control Act (33
17 U.S.C. 1377); and

18 (2) the program established under section
19 1452(i) of the Safe Drinking Water Act (42 U.S.C.
20 300j–12(i)).

○