



All Pueblo
Council of
Governors

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Mark Mitchell, Chairman
Jerome Lucero, Vice-Chairman
Governor Val Panteah Sr., Secretary

WRITTEN TESTIMONY
SUBMITTED TO THE SENATE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
OVERSIGHT HEARING “SETTING NEW FOUNDATIONS: IMPLEMENTING THE
INFRASTRUCTURE INVESTMENT AND JOBS ACT FOR NATIVE COMMUNITIES”

MARK MITCHELL, CHAIRMAN
ALL PUEBLO COUNCIL OF GOVERNORS

May 4, 2022

Good Afternoon. My name is Mark Mitchell. I am the former Governor of the Tesuque Pueblo and the current Chairman of the All Pueblo Council of Governors. The All Pueblo Council of Governors represents the twenty Pueblo Nations of New Mexico and Texas. Thank you for inviting me to submit written testimony about this critically important piece of legislation. I am encouraged that this Committee continues its excellent work on behalf of Indian Country by proactively seeking Tribal feedback on the implementation of the Bipartisan Infrastructure Law to-date.

We are delighted to see that this Congress’ bipartisan commitment to Indian Country has manifested in a sweeping investment in infrastructure that will begin to transform this nation. Strong infrastructure is the cornerstone of a healthy local economy and robust community engagement. Strong local infrastructure has the power to raise people out of poverty through access to affordable public transportation and reliable broadband internet. By providing exemplary water and sanitation systems, sustainable and local food pathways, and state-of-the-art healthcare facilities, it has the power to lower the rates of health issues like obesity, diabetes, and illnesses stemming from exposure to toxic chemicals, heavy metals, and unsanitary living conditions. Strong local infrastructure has the power to instill pride of community in the minds of members who everyday battle racial inequality, and who face higher than average rates of suicide, substance abuse, and other negative health outcomes.

This infrastructure investment is also a necessary investment in the future of our homelands. Land is critical to us because it is our connection to the Creator. Land is where we harvest medicinal plants and other important resources. Land is where we gain identity. Our connection to place is at the core of who we are as Pueblo people.

First, we would like to offer some global remarks about the Bipartisan Infrastructure Law. This law is more than 1,000 pages long. We need the Federal Government to commit to providing technical support to Tribes and Pueblos as we set out to navigate the funding opportunities available through the Bipartisan Infrastructure Law, and the technical requirements necessary under the soon-to-be promulgated program regulations and reporting



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obligations. We need the Federal government to invest in providing this technical support to us. To this end, we want to thank this Congress for allowing States the latitude to use up to two percent of Clean Water State Revolving Funds to award to nonprofit organizations that provide technical assistance to small, rural, and tribal publicly owned treatment facilities.¹ Given the breadth of Federal agencies responsible for carrying out programs under the Bipartisan Infrastructure Law, we expect a great variety in compliance requirements and will need all of the technical assistance we can get.

These compliance requirements are legal and technical burdens on our Tribal Governments. Many of us do not have dedicated grants administration professionals on staff, and often we do not have the budget to employ grant writers, contract professionals, or attorneys for review of program requirements. It is paramount, therefore, that the Federal government ensures that there are knowledgeable and dedicated agency staff available to provide program application, development, accounting, reporting, and other technical assistance to Tribes throughout every phase of program administration.

Second, as we have testified before, cost match requirements constitute an additional obstacle to accessing desperately-needed funds. The Pueblos are already underfunded and our budgets are tight. Most of our funds have already been earmarked for other necessary services and approved by our governing bodies for those purposes. Simply put, we do not typically have the agility to free up governance funds to meet cost match demands of Federal programs. Where not required by the Bipartisan Infrastructure Law, we urge you to ensure that the implementing Federal agencies do not add any such burdens to programs. Additionally, we hope that in drafting future legislation you keep in mind the burden placed on Indian Country and choose to forgo cost match requirements entirely.

Third, as many of our fellow tribal leaders have made clear, Indian Country is best served when Tribes have broad discretion to decide the best use of funds for our communities. This is a fundamental issue of respect: respect for tribal self-governance and self-determination under the law, respect for cultural traditions and indigenous governance structures, respect for traditional indigenous knowledge and practices, respect for our communities, and respect for our tribal elders. Moreover, the Federal Government's adoption of a policy for non-competitive grants would ensure that Tribes are not put in the inappropriate position of competing with each other to secure funding for critical services. Competitive grants unnecessarily foster strife and resentment between the winners and losers of each funding cycle.

¹ Build.gov, Building a Better America: Bipartisan Infrastructure Law Rural Playbook, 10 (April 2022).



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Fourth, as we learned through the CARES Act implementation, funding of Indian Country must maximize flexibility within authorities and utilize existing funding mechanisms to expedite distributions. Existing funding mechanisms are essential to quick distribution of funds because the mechanisms ensure that Federal agencies do not spend months (sometimes years) crafting a distribution plan from scratch. In every case, it is important that Federal agencies apply membership and enrollment figures reported by Tribes themselves. Similarly, the Federal Government must incorporate feedback we have given over the years to move to a policy of maximizing flexibility within legal authorities to ensure that our funds do not get unduly delayed by simple bureaucratic procedural hurdles.

Finally, we stress today that the Bipartisan Infrastructure Law presents a once-in-a-lifetime opportunity for our communities. We call on the Federal Government to search for ways to increase our ability to leverage programs and funds throughout the Bipartisan Infrastructure Law. Fundamentally, we need the Federal Government to move in lockstep to contemporaneously roll out these programs and streamline application procedures so that we can effectively plan and allocate resources. We need the ability to pair program dollars across agencies and programs to enhance our project goals and maximize our return on investment. To accomplish these efficiencies, we recommend that the Federal Government create a master calendar to manage program application and reporting requirements across agencies. Such a calendar would ensure that the Federal Government implements programs at the same time, and would help Tribes keep track of the dozens of deadlines, reporting requirements, and reporting agencies.

As ever, we need all of this done, quickly.

Sanitation & Water Infrastructure

We look forward to the opportunities afforded by the Bipartisan Infrastructure Law's investment in rural sanitation and water infrastructure. As you know, water projects are fundamentally important to the Southwest. We are heartened by Secretary Haaland's creation of the Drought Relief Working Group to tackle the issue of water insecurity in the West and Southwest.²

Pueblo irrigation systems are among the oldest in this nation. Addressing aging water systems, specifically the third-world sewage ponds that many of our Pueblos and Tribes continue to be subjected to, is an urgent need for our communities. Congress' decision to provide Sanitation Facilities funding to the Indian Health Service to address backlogged sanitation needs across Indian Country is an excellent initial investment in this cause.

² Department of the Interior, White House Launches Drought Relief Working Group to Address Urgent Western Water Crisis (May 9, 2021) <https://www.doi.gov/pressreleases/white-house-launches-drought-relief-working-group-address-urgency-western-water-crisis>



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However, in 2017, a report entitled “Irrigation Infrastructure Report for the Rio Grande Pueblos” identified nearly \$280 million of irrigation improvements needed on Pueblo lands.³ This report still sits unsigned at the Bureau of Reclamation. We need this Committee to urge the Department of the Interior to sign and release the report. Moreover, we need appropriations for the \$280 million worth of need first identified in 2017, as well as funding to fulfil all subsequent fiscal needs that have arisen as a result of aging systems further breaking down, new environmental contamination issues, and inflation of labor and materials costs over the last four years.

We need your continued support for establishing strong regional water infrastructure now. Regional water infrastructure will help us safeguard our communities from certain water insecurities and health impacts associated with our aging water systems. These investments in water systems will also help us to sustain our life ways and mitigate the increase in wildfires. Unfortunately, Tribes and Pueblos tend to be the last communities to benefit from these regional projects. In the Bipartisan Infrastructure Law, Congress committed to spend \$160 million on the Eastern New Mexico Rural Water System.⁴ Unfortunately, not a single Pueblo is served by the Eastern New Mexico Rural Water System.

We also urge this Committee to undertake all actions necessary to ensure robust Federal water pollution control laws. The health of our Pueblos hangs in the balance when far-away courts interpret water laws to remove pollution restrictions on New Mexico waterways and divest Pueblos of authority to block these projects.⁵

Climate Change

We applaud Congress’ action to secure \$216 million for tribal climate resilience, adaptation, mitigation, and community relocation efforts. But, you must know that this is not nearly enough.

The Pueblos are situated in the hottest, driest region in this country. We cannot afford for our climate to get hotter—our traditional homelands will become literally incapable of supporting human life. Moreover, the heat is expected to exacerbate drought conditions and threaten our already scarce water resources.

³ Bureau of Reclamation, New Mexico Pueblos Irrigation Infrastructure Improvement Project, <https://www.usbr.gov/uc/progact/NMPueblos/index.html>

⁴ See Senator Martin Heinrich, *Heinrich, Luján, Leger Fernández Announce \$160 Million in Infrastructure Funding for Eastern New Mexico Rural Water System Pipeline* (Mar. 31, 2022) <https://www.heinrich.senate.gov/press-releases/heinrich-lujn-leger-fernandez-announce-160-million-in-infrastructure-funding-for-eastern-new-mexico-rural-water-system-pipeline>

⁵ See Susan Montoya Bryan, *New Mexico tribes sue US over federal clean water rule*, Associated Press (April 1, 2021) <https://apnews.com/article/wetlands-deserts-environment-new-mexico-native-americans-4d633a296e84ee66a0a97838c920ad41>.



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We implore you to take further action to fight global warming and substantially invest in the communities that are guaranteed to face the deadly consequences of climate change. Because of climate change, we are already facing hotter, more intense, and more frequent wildfires in our region. In 2016, the Union of Concerned Scientists reported that a global temperature increase of 1.8°F would result in a projected 400% increase in wildfire-burned acreage in New Mexico.⁶

Cochiti

Isleta

Jemez

We cannot understate the threat that wildfires pose to our community. Our communities are still cleaning up from the most recent round of fires. As you may be aware, the Los Conchas fire destroyed nearly 80% of the Santa Clara Pueblo's forested lands and has prevented safe access to the Santa Clara Canyon, where many sacred traditions are practiced. The Los Conchas fire also impacted many of the Pueblos on the Jemez mountains, including Cochiti Pueblo, Jemez Pueblo, and San Ildefonso Pueblo impacting their traditional cultural practices. As with water resource issues, combatting wildfires requires a regional approach. We need increased Federal willingness to enter into cooperative and interagency agreements for wildfire mitigation efforts—with Pueblos and Tribes as partners. Additionally, we know that decreased participation in the mountains and in the north is affecting atmospheric moisture and snowpack levels which, in turn, affect the amount of water in our rivers. While the Pueblos have banded together to address our local needs, we also need the cooperation of our State, Federal, and local partners upstream. Finally, we need local tribal members employed in Forest Service regional offices to hedge against the high rate of staff turnover at the Service and to ensure continuity of operations and transmission of institutional knowledge when non-locally based staff leave.

Laguna

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The Bipartisan Infrastructure Law's \$500 million for Community Wildfire Defense programs is a much-needed investment for our community and we eagerly await its roll-out. We encourage this Committee to consider making a similar yearly investment in such programs. This will enable us to not only react to past events, but to build institutional capacity to deploy preventative programs to reduce the frequency and severity of wildfire events.

Santa Ana

Santa Clara

Santo Domingo

Broadband

Taos

As you know, the pandemic has highlighted how fundamental access to reliable, high-speed internet is for all of us. We need internet to work, to attend school, for virtual healthcare visits, and to stay engaged with our communities. The Bipartisan Infrastructure Law's substantial investment in broadband, if harnessed correctly, has the power to finally permit Indian Country to catch-up to the rest of the nation and to close the digital divide.

Tesuque

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⁶ Union of Concerned Scientists, *Confronting Climate Change in New Mexico*, 6 (April 2016)
<https://www.ucsusa.org/sites/default/files/attach/2016/04/Climate-Change-New-Mexico-fact-sheet.pdf>



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The National Telecommunications and Information Administration's Tribal Connectivity Broadband Program is an excellent start. The Bipartisan Infrastructure Law's provisions alone will channel \$2 billion to tribal governments for broadband deployment. However, the first round of the Tribal Connectivity Broadband Program funded only about \$1 billion worth of projects, despite more than \$5.8 billion worth of requests.⁷ Conservatively, Indian Country still needs an additional \$3 billion investment in broadband, assessing for inflation.

Cochiti

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Picuris

We were relieved to see that the United States Department of Agriculture's ReConnect Program will waive matching fund requirements for Tribes.⁸ Additionally, we applaud Congress for securing a \$75 per month credit for internet services on Tribal lands under the Affordable Connectivity Program.⁹ This credit will be instrumental for communities with higher-than-average connectivity costs—typically rural communities with unestablished or under-established broadband infrastructure. Together these two commitments will go a long way toward meeting the Administration's goal of providing high speed internet to every rural home and business.

Pojoaque

Sandia

San Felipe

San Ildefonso

In all broadband programs it remains vitally important that tribal governments retain authority over projects intended to serve Indian Country. All too often States do not view Pueblos and Tribes as partners in deploying broadband capabilities. To this end, we urge States and the Federal Government to consult with Pueblos and Tribes for State-led projects over tribal landholdings. Furthermore, we need protection to guarantee tribal priority within priority broadband windows to eliminate the incidence of Tribes competing with non-tribal entities.

Santa Ana

Transportation

Santa Clara

We are thrilled to hear that the Bipartisan Infrastructure Law established a fixed percentage for Public Transportation on Indian Reservations. We are always in need of assistance with maintaining our roads and we welcome all operational support that the Bipartisan Infrastructure Law provides. Similarly, we look forward to accessing the Law's

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⁷ See National Telecommunications and Information Administration, NTIA's Tribal Broadband Connectivity Program Receives More than 280 Applications, Over \$5 Billion in Funding Requests (Sep. 8, 2021) <https://broadbandusa.ntia.doc.gov/news/latest-news/ntias-tribal-broadband-connectivity-program-receives-more-280-applications-over-5>.

⁸ Build.gov, Building a Better America: Bipartisan Infrastructure Law Rural Playbook, 2 (April 2022).

⁹ *Id.* at 3.

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program funds for repairing our roads, bridges, bike and pedestrian infrastructure, and transportation funds dedicated to improving our children's commutes to and from school.¹⁰

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We are also excited about the Bipartisan Infrastructure Law's investment in an Electric Vehicle Charging Network, and the Law's particular commitment to developing the Network in rural communities. As one of the sunniest regions of the country, we see tremendous potential to stimulate our economy through this program. Moreover, we will be proud to introduce these charging stations into our communities, fueled by clean and local solar power. As you know, protection of our lands and of our Earth is vitally important to our Pueblo cultures.

As a final note, we would like to encourage the Federal Government to move away from funding tribal programs out of appropriations from the General Fund. Frequently, tribal programs are authorized, but funds are never appropriated. Indian Country deserves more than such hollow promises.

Conclusion

Once again, I would like to thank you all for the opportunity to testify before you today. I look forward to working with you to ensure that all of the needs of Indian Country are met.

¹⁰ Surface Transportation Block Grant Program; Rural Surface Transportation Grant Program; Rebuilding America's Infrastructure with Sustainability and Equity (RAISE); Clean school bus program.