

**S. 2385, S. 2796, S. 2868, S. 3022, AND S.
3230**

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED EIGHTEENTH CONGRESS
SECOND SESSION

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FEBRUARY 8, 2024
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THURSDAY, FEBRUARY 8, 2024

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

The Committee met, pursuant to notice, at 10:31 a.m. in room 628, Dirksen Senate Office Building, Hon. Brian Schatz, Chairman of the Committee, presiding.

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

The CHAIRMAN. Good morning. During today's legislative hearing, we will consider five bills, S. 2385, Tribal Access to Clean Water Act of 2023; S. 2796, a Bill to Provide for the Equitable Settlement of Certain Indian Land Disputes Regarding Land in Illinois and for Other Purposes; S. 2868, a Bill to Accept the Request to Revoke the Charter of Incorporation of the Lower Sioux Indian Community of the State of Minnesota at the Request of That Community and for Other Purposes; S. 3022, the IHS Workforce Parity Act of 2023; and S. 3230, the Winnebago Land Transfer Act of 2023.

S. 2385 was introduced by Senator Bennett and has eight cosponsors. The bill would expand access to funding provided through the Infrastructure Bill for clean water across Indian Country. Specifically, it authorizes the U.S. Department of Agriculture to make loans and grants for technical assistance, authorize additional funding for technical assistance to existing Indian Health Service water facilities programs, and authorize funding for the Bureau of Reclamation's existing Native American Technical Assistance Program.

S. 2796 was introduced by Senator Mullin. This bill would waive any statute of limitation and grant the United States Court of Federal Claims jurisdiction to decide a land claim of the Miami Tribe of Oklahoma arising under its 1805 Treaty of Grouseland with the United States. The bill would also extinguish any and all other claims the tribe, its members, descendants or predecessors in interest have to lands in Illinois, and a clear title to those lands.

S. 2868 was introduced by Senators Smith and Klobuchar. This bill would revoke, at the request of the Lower Sioux Indian Community, the tribe's corporate charter under Section 17 of the Indian Reorganization Act.

S. 3022 was introduced by Senator Cortez Masto and Senator Mullin. This bill would permit the Indian Health Service scholar-

ship and loan repayment assistance recipients to fulfill service obligations through half-time clinic practice.

S. 3230 was introduced by Senator Fisher and has three cosponsors. This bill would transfer approximately 1,585 acres of land currently administered by the United States Army Corps of Engineers to the Bureau of Indian Affairs to be held in trust for the Winnebago Tribe of Nebraska as part of the tribe's reservation. The bill would prohibit gaming activities on these lands under the Indian Gaming Regulatory Act.

Before I turn to the Vice Chair for her opening statement, I would like to extend my welcome and thanks to our witnesses for joining us today. I look forward to your testimony and our discussion.

For the audience's and panelists' information, I think there are seven hearings happening at the exact same time, and a Republican Caucus meeting, which I am sure is going smoothly.

[Laughter.]

The CHAIRMAN. Now I will recognize Senator Cortez Masto to introduce her witness. Senator Cortez Masto?

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

Senator CORTEZ MASTO. Thank you, Chairman. I am so pleased to be introducing Angie Wilson. Angie serves as the Tribal Health Director for the Reno Sparks Indian Colony in Reno, Nevada. It is the largest tribal health clinic in my State, having served more than 6,000 American Indians and Alaska Natives.

Ms. Wilson is an enrolled member of the Pit River Tribe of Northern California and a descendant of the Klamath Tribe of Southern Oregon. Ms. Wilson's career has spanned nearly three years in tribal health administration. Apart from her directorship, she serves several tribal delegations, including the National CMS Tribal Technical Advisory Group, the California Area IHS Tribal Advisory Committee, and the Pit River Tribal Health Service Board of Directors.

Over her career, Ms. Wilson has directed multi-award winning tribal health clinics and has received recognition from the National Indian Health Board for her significant work in advocacy to strengthen quality health care initiatives and sustainability methodologies for American Indian and Alaska Native communities.

I welcome Angie to this Committee and the hearing today. Thank you, Mr. Chair.

The CHAIRMAN. Thank you, Senator Cortez Masto.

Senator Smith, are you ready to introduce your witness? I know you just sat down.

Senator SMITH. I think I am ready, Mr. Chair, thank you very much. It is one of those mornings.

The CHAIRMAN. I understand. If you want me to stall for 30 seconds, I will do so.

[Laughter.]

**STATEMENT OF HON. TINA SMITH,
U.S. SENATOR FROM MINNESOTA**

Senator SMITH. Good morning. I want to thank Chair Schatz and Vice Chair Murkowski for holding this hearing today and also for including my bill to revoke the corporate charter of the Lower Sioux Indian Community at the request of the tribe.

I also want to welcome President Larsen, “Deuce” Larsen, of Lower Sioux to the Committee. Deuce has served on the council for over a decade and is a tremendous leader for the tribe. I am honored to call Deuce my friend as well as my colleague. And I am very grateful that he is with us today to discuss the importance of this bill to the Lower Sioux.

Mr. Chair, you know that the Indian Reorganization Act of 1934 set about a new era of Federal Indian policy, one that allowed for self-determination and government-to-government relationships between tribal nations and the Federal Government. It also created these paternalistic and burdensome corporate charters under which tribes would theoretically be able to conduct their business activities.

For Lower Sioux, this corporate charter limits transactions that they can make to \$1,000 without the direct consent of the Secretary of the Interior. So \$1,000, or you have to go to the Secretary of the Interior. It limits lease terms, corporate income and prohibits the sale of land held by the corporation.

So the charter is outdated, and Lower Sioux is asking Congress to revoke it, and that is the purpose for the bill that we have here.

I am grateful for the opportunity to have a hearing on this bill, and I welcome Deuce to the Committee, and welcome to all our panelists here today. It is great to be with you. Thank you.

The CHAIRMAN. Thank you, Senator Smith. We will now recognize the Vice Chair for her opening statement.

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

Senator MURKOWSKI. Thank you, Mr. Chairman. My apologies for being late. We are bouncing in between three different hearings and a caucus meeting this morning. So it is a busy day.

Thank you, and welcome to our witnesses. I appreciate your being here and the contribution you will provide to the Committee. I am going to keep my comments brief, as I know members will be speaking about their bills.

I am pleased; this is a good range of issues that we have before the Committee today. Everything from promoting tribal economic development to hiring and retaining doctors at IHS to restoring tribal lands and settling outstanding tribal land claims.

We also have legislation aimed at expanding access to water in Indian Country. I would just like to make a couple of short comments, because I have raised it so often in this Committee about the significance, the importance, the responsibility to deliver clean, affordable water to our Native communities.

IHS estimates that one in ten Native Americans lacks access to water or indoor plumbing. This is 2024. So to know that that statistic is still one that so many are living with is really very troubling.

I come from a place where we have families that have to haul or barge in their water. In some cases, river water is the only option. And as clean as we might want to think that is, it doesn't meet the Federal water quality standards. But it is truly one of our great public health challenges in rural Alaska and so many parts of the Country as well.

We have made some progress through the Bipartisan Infrastructure Law in clearing the backlog of water and sanitation projects at IHS. Communities that have waited for decades to get piped water and sewer are finally getting connected, that is great.

We had a hearing in September on the trust responsibility of providing full water and sanitation needs for those in our Native communities. Again, a recognition that the need is great and there is so much more that remains to be done.

It is not only the construction side of it, but it is also the operation and the maintenance. So the Federal investment that is made as we seek to meet our trust obligations is so important.

We have launched a GAO study to examine the operation and maintenance issue in greater detail. But I think it is pretty clear that the Federal Government has to start working with tribes now to address O&M before costs begin to compound in the coming years. So there is a lot to be done in that space, and I think the opportunity we have with leadership that is before the Committee now to help us address some of these challenges, raise them to the level of the legislation that is being considered today and then move to improve outcomes is good.

Thank you for the opportunity, Mr. Chairman.

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

Now we will introduce the remainder of our panel. I will start with the Honorable Melanie Anne Egorin, the Assistant Secretary for Legislation, Health and Human Services at Health and Human Services. Ms. Kathryn Isom-Clause, the Deputy Assistant Secretary of Indian Affairs at the Department of Interior.

The Honorable Manuel Heart, the President of the Ute Mountain Tribe in Colorado, welcome. The Honorable Douglas Lankford, Chief of the Miami Tribe of Oklahoma, Miami, Oklahoma. Thank you. The Honorable Victoria Kitcheyan, the Chairwoman of the Winnebago Tribe of Nebraska, Winnebago. We appreciate your being here.

I will remind all of our witnesses that we have your full written testimony. Please keep it within five minutes, so that we have time for questions.

We will start with Ms. Egorin. Please proceed with your testimony.

**STATEMENT OF HON. MELANIE ANNE EGORIN, Ph.D.,
ASSISTANT SECRETARY FOR LEGISLATION, HEALTH AND
HUMAN SERVICES**

Ms. EGORIN. Good afternoon, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. Thank you for the opportunity to provide testimony on two important legislative proposals, and for your continued support of the Department of Health and Human Services' efforts to improve health and well-being for American Indians and Alaska Natives.

Your consideration today of Senator Cortez Masto's Indian Health Service Workforce Parity Act and Senator Bennett's Tribal Access to Clean Water Act underscores the commitment to improving the quality of life in Indian Country.

I am Melanie Anne Egorin, the Assistant Secretary for Legislation at HHS. My office serves as the primary link between the Department and Congress, providing technical assistance on legislation, facilitating informational briefings related to Department programs, and supporting the implementation of legislation passed by Congress.

The Department has been pleased to collaborate with Congress and this Committee to investigate the many challenges facing Indian Country. HHS remains committed to working with Congress to improve health for tribal and Native communities, including finding solutions related to clean water access and IHS workforce shortages.

The IHS, as a rural health care provider, experiences difficulty recruiting and retaining health care professionals. In particular, recruiting physicians and other primary care clinicians has been especially challenging. There are over 1,800 current vacancies at IHS. Staffing shortages are particularly prevalent in the behavioral and mental health fields, which has only exacerbated the substance use crisis and suicide crisis that tribes across the Country are facing in their communities.

Workforce challenges and the impacts on care that come from them are one of the top concerns raised to the Department by tribes. My staff and I have heard first-hand on our visits to the Oglala Sioux Tribe on the Pine Ridge Reservation in South Dakota and the Blackfeet Tribe in Montana. The Blackfeet Tribe shared that workforce shortages of over 40 percent at their hospitals and clinics greatly impacts the accessibility and quality of health care in their rural community.

These experiences have been echoed by other tribes across the Nation to IHS, particularly during tribal consultation.

The IHS continues to support new strategies to develop workforce and leverage advanced practice providers and paraprofessionals to improve the access and quality of health care in tribal communities, and ultimately the Indian Health Services needs additional authorities and resources to build our workforce pathway.

That is why the President's budget has included a number of proposals that have sought to make IHS more competitive with other Federal agencies in our hiring process and reduce systemic barriers to recruitment and retention. The IHS Workforce Parity Act would allow recipients of IHS scholarships and loan programs to fulfill their service obligations through half-time clinical practice. This bill is certainly aligned with the goals of IHS in many respects.

The President's budget includes a similar proposal that permits both IHS scholarship and loan repayment recipients to fulfill service obligations through half-time clinical practice over an extended period of time. This would increase the ability of IHS to recruit and retain health care clinicians and to provide primary care health and specialty services.

This is one of many proposals in the President's budget that are budget-neutral, small fixes that have major impacts in the efficacy

and quality of IHS. Specifically, IHS also seeks tax exemption for their health professional scholarship and loan repayment programs. Exempting this program would allow IHS to support an additional 190 providers in a given year.

The agency is seeking discretionary use of all Title 38 Personnel flexibilities to help pay higher salaries and offer more flexible time off to providers, permanent authority to hire and pay experts and consultants that would combat future pandemics and emergencies, and unique health care challenges by providing additional high level resources to IHS unavailable in the current workforce.

The agency is also seeking legislative authority to conduct mission-critical emergency hiring beyond 30-day appointments to fill key positions.

I want to reiterate that the Biden-Harris Administration agrees that water is a sacred resource and must be protected. The Administration and HHS have worked hard to begin to address decades of chronic underinvestment in infrastructure with tribal and Native communities.

The bipartisan efforts of Congress, including many champions in this room, have helped to ensure critical funds for clean drinking water and modern water and sanitation systems were included in the Infrastructure Investment and Jobs Act. We are committed to ensure that these historic funds are implemented successfully, and that the dollars reach Indian Country as quickly as possible.

That being said, too many tribal families still do not have access to clean water and reliable wastewater infrastructure. The Tribal Access to Clean Water Act aims to help expand HHS' role in providing access to reliable and clean water on tribal lands. HHS is still currently reviewing the language and implications of this bill, but that said, the Department would like to continue to work with the bill's sponsors and Committee to ensure compatibility with existing sanitation facility authorities and determine the best way to serve non-eligible homes and commercial properties located within tribal communities.

Thank you again for the opportunity to testify today. Thank you, Senators Cortez Masto and Bennett, who have led these legislative efforts to fix systemic challenges in Indian Country. We look forward to continuing our work with Congress on these bills.

As always, HHS is committed to working closely with tribal communities and our external partners and understand the importance of working together to address the needs of American Indians and Alaska Natives.

[The prepared statement of Ms. Egorin follows:]

PREPARED STATEMENT OF HON. MELANIE ANNE EGORIN, PH.D., ASSISTANT
SECRETARY FOR LEGISLATION, HEALTH AND HUMAN SERVICES

Good afternoon, Chairman Schatz, Vice Chair Murkowski, and Members of the Committee. Thank you for the opportunity to provide testimony on two important legislative proposals before your Committee, and for your continued support for Department of Health and Human Services (HHS or Department) efforts to improve the health and well-being of American Indians and Alaska Natives (AI/AN). Your consideration today of Senator Cortez Masto's *IHS Workforce Parity Act of 2023*, and Senator Bennet's *Tribal Access to Clean Water Act of 2023* underscores that commitment to improving the quality of life in Indian Country.

I am Melanie Anne Egorin, the Assistant Secretary for Legislation (ASL) at HHS. My office serves as the primary link between the Department and Congress. The

Office of the ASL provides technical assistance on legislation to Members of Congress and their staff, facilitates informational briefings relating to Department programs to support policy development by Congress, and supports implementation of legislation passed by Congress.

The Department has been pleased to collaborate with Congress and this Committee to investigate the many challenges facing Indian Country. We have been engaged specifically in recent months as the Committee has examined issues with water access in Native communities, and operational challenges such as workforce recruitment and retention, and the direct and secondary impacts that the Indian Health Service has faced in combatting the growing fentanyl crisis. As both IHS Director Roselyn Tso and Deputy Director Benjamin Smith have respectively testified to this committee, we remain committed to working with Congress to improve health for AI/AN communities including finding solutions to challenges related to clean water access and workforce shortages. We are deeply appreciative of the work of Senators Cortez Masto and Bennet to draft legislation that aims to tackle some of these urgent problems in Indian Country.

The IHS, as a rural health care provider, experiences difficulty recruiting and retaining health care professionals. In particular, recruiting physicians and other primary care clinicians has been especially challenging. There are currently over 1,856 IHS vacancies for health care professionals including: physicians, dentists, nurses, pharmacists, physician assistants, and nurse practitioners. Staffing shortages are particularly prevalent in the behavioral and mental health fields, which has only exacerbated the concurrent substance use crisis and suicide crisis that tribes across the country are facing in their communities. AI/ANs overdose mortality rates and suicide rates remain the highest compared to other racial and ethnic groups.

Workforce challenges—and the impacts on care that come with them—are one of the top concerns raised to the Department by tribes. The IHS continues to support new strategies to develop the workforce and leverage advanced practice providers and paraprofessionals to improve the access to quality care in AI/AN communities. Ultimately, the Indian Health Service needs additional authorities and resources to build out their workforce pipeline. That is why the President’s budget has included a number of proposals dating back to Fiscal Year 2019 that have sought to make the IHS more competitive with other federal agencies in their hiring process and reduce systemic barriers to recruitment and retention. HHS looks forward to working with Congress on policy solutions to this effect, several of which are outlined below.

I want to also reiterate that the Biden-Harris Administration agrees that water is a sacred resource that must be protected. The Administration and HHS have worked hard to make good on decades of chronic underinvestment in infrastructure for AI/AN communities. The bipartisan efforts of Congress—including many champions in this room—helped to ensure that critical funds for clean drinking water and modern wastewater and sanitation systems were included in the Infrastructure Investment and Jobs Act (IIJA). The Department of Health and Human Services and the IHS are grateful for this partnership with Congress, and our shared commitment to ensure that this historic funding is implemented successfully and that these dollars reach Indian Country as quickly as possible. That being said, too many tribal families still do not have access to clean water and reliable wastewater infrastructure.

S. 3022, IHS Workforce Parity Act of 2023

The *IHS Workforce Parity Act*, would amend the Indian Health Care Improvement Act to allow recipients of the IHS scholarship and loan programs to fulfill their service obligations through half-time clinical practice.

Under current law, the *Indian Health Care Improvement Act* requires recipients of IHS Health Professions Scholarships or loan repayments to provide clinical services on a full-time basis. The Public Health Service Act (PHSA) was amended by the Patient Protection and Affordable Care Act (ACA) to permit certain National Health Service Corps (NHSC) loan repayment and scholarship recipients to satisfy their service obligations through half-time clinical practice for double the amount of service time or, for NHSC loan repayment recipients, to accept half the loan repayment award amount in exchange for a two-year service obligation fulfilled on a half-time basis. The PHSA defines “full-time” clinical practice as a minimum of 40 hours per week, for a minimum of 45 weeks per year. It also defines “half-time” as a minimum of 20 hours per week, for a minimum of 45 weeks per year.

The *Indian Health Care Improvement Act* would permit both IHS Health Professions Scholarship and loan repayment recipients to fulfill service obligations through half-time clinical practice, under authority similar to that now available to the NHSC Loan Repayment Program (LRP) and Scholarship Program. Thus, if simi-

lar authority provided in section 331(i) of the PHSA were extended to IHS, IHS loan repayment and scholarship recipients would have more options and flexibility to satisfy their service obligations through half-time clinical work for double the amount of service time or to accept half the amount of loan repayment award in exchange for a two-year service obligation. This legislative change would create parity between IHS and the NHSC programs and enable IHS to make better use of these tools to recruit and retain key professionals in a highly competitive environment.

S. 3022 as drafted attempts to model the language used in the NHSC demonstration language. It should be noted, however, that the NHSC language combines the two programs—Scholarship and LRP—in their language whereas S. 3022 separates Scholarship and LRP. Additionally, IHS is still examining how the text in S. 3022 might apply to the IHS Health Professions Scholarship, a tool that plays a significant role in the recruitment and retention of the health care professionals needed to fill workforce vacancies. Lastly, the NHSC language goes further in that the recipient has to agree to the conversion to full-time equivalents in determining damages if a breach occurs. IHS would like to work with the drafters of S. 3022 to ensure the language fits within the IHS Scholarship and Loan Repayment Program.

The *IHS Workforce Parity Act* is certainly aligned with the goals of the IHS in many respects. The Fiscal Year (FY) 2024 President's Budget includes a similar proposal to permit both IHS scholarship and loan repayment recipients to fulfill service obligations through half-time clinical practice. The ability to provide scholarship and loan repayment awards for half-time clinical service would make these recruitment and retention tools more flexible and cost-effective, providing incentives for an additional pool of clinicians and other medical providers that otherwise may not consider a commitment to the IHS federal, tribal, and urban Indian sites. Having similar authority as the NHSC would increase the ability of the IHS to recruit and retain health care clinicians to provide primary health care and specialty services and otherwise support the IHS and HHS priorities.

Additional half-time direct care employees could also reduce the number and cost of Purchased/Referred Care program referrals, especially at sites that do not need full-time specialty care services. There are also a number of smaller rural IHS sites where clinicians will be able to provide a minimum of half-time clinical services with the remainder of their time devoted to much needed administrative/management responsibilities. This proposal will provide flexibility for providers who might not otherwise consider service in the IHS by allowing part-time practice in IHS to coincide with a part-time private practice, as well as part-time practice in the IHS combined with part-time administrative duties within the IHS.

Human Resources Proposals

As the IHS continues to prioritize recruitment and retention of providers in our system, we would encourage members of this Committee to review other proposals in the FY 2024 President's Budget that would better enable the IHS to attract top talent. Many of these proposals are budget neutral—small fixes that would have a major impact on the efficacy and quality of the IHS.

For example, the IHS seeks a tax exemption for Indian Health Service Health Professions Scholarship and Loan Repayment Programs. Exempting the IHS Loan Repayment Program would allow the IHS to award an additional 190 loan repayment contracts in a given year. Thus, the IHS would be better able to increase the number of health care providers entering and remaining within the IHS to provide primary health care and specialty services.

The agency is also seeking the discretionary use of all Title 38 Personnel authorities that are currently available to the Veterans Health Administration to pay higher salaries and offer more flexible time off to their providers. Typically, the private sector can offer candidates better scheduling options and paid time off—particularly important benefits to providers who serve in remote and rural locations. The VHA has demonstrated the impact of these authorities on public sector's ability to hire for these critical roles, particularly in rural areas. As such, the IHS faces specific public sector competition in the area of annual leave accrual. Supervisors report anecdotally that the IHS has lost many candidates to the private sector and VHA due to this difference in accrual rates.

The IHS also seeks permanent authority to hire and pay experts and consultants. Hiring experts and consultants is another tool IHS can use to strengthen its workforce and better serve the AI/AN population. These highly specialized individuals can bring added skills, knowledge, and expertise to meet mission-critical tasks. To combat future pandemics, emergencies, and unique health-care challenges, it would be beneficial to hire experts and consultants to provide additional high-level resources to the IHS unavailable within the current workforce.

Additionally, the IHS seeks legislative authority to conduct mission critical emergency hiring needs beyond 30-day appointments. Critical hiring occurs when an agency needs to fill positions to meet agency requirements brought on by natural disasters, emergencies, or threats. The IHS has previously used this hiring authority to fill positions in nursing, facility management, radiology, and many other critical areas to ensure the operation of IHS facilities and quality patient care. Lengthening emergency hire appointments from 30 to 60 days would better enable the IHS to effectively provide services and staff health care facilities from both an operational and budgetary perspective. The effort to hire, onboard, and vet candidates through the pre-clearance and background investigation process is significant, reducing the benefit of this hiring tool.

S. 2385, Tribal Access to Clean Water Act of 2023

The *Tribal Access to Clean Water Act* (S. 2385) aims to expand HHS' role in providing access to reliable, clean, and drinkable water on tribal lands. While this legislation has cross cutting implications for multiple federal agencies, I will focus on the provisions that pertain to HHS and IHS' Sanitation Facilities Construction Program.

The IHS is required by statute to maintain an inventory of sanitation deficiencies for existing Indian homes and communities, to prioritize those deficiencies, and to annually report those deficiencies to Congress. Since 1989, the IHS has annually reported these needs to Congress in the form of projects, which are currently catalogued in the Sanitation Deficiency System (SDS). Projects are identified by the facilities to be provided, the cost of those facilities, and the number of homes to be served by the facilities. Funding for projects is distributed to the IHS Areas based on an allocation formula that takes into account the relative needs identified in each IHS Area's SDS inventory. The Sanitation Facilities Construction (SFC) program employs a cooperative approach for planning, designing, and constructing sanitation facilities serving American Indian and Alaska Native communities. Each project is initiated at the request of a Tribe or Tribal Organization, and coordination is maintained throughout project planning, design, and construction.

IHS is currently still reviewing the language and implications of S.2385. The bill would amend current law related to the "Indian homes, communities, and lands" for which the Secretary has authority to construct, improve, extend, or otherwise provide and maintain essential sanitation facilities, to include community structures that are essential to the life of a AI/AN community. These community structures are further defined as facilities that provide indispensable educational, economic, and community services, such as schools, hospitals, nursing homes, teachers' homes, tribal offices, and post offices. The bill would also authorize funds to construct, improve, or maintain essential sanitation facilities, including domestic and community water supplies and facilities, drainage facilities, and sewage-disposal and waste-disposal facilities, for community structures. Finally, the Tribal Access to Clean Water Act would authorize the Secretary to provide financial assistance for the operation and maintenance of water facilities serving AI/AN communities. It includes language that would prioritize funding awards for the maintenance of water facilities in order of the facilities that are in the most need of assistance.

I do want to highlight that this bill appears to be in conflict with the current IHS authority. Statute currently authorizes IHS to provide necessary water and sewer for "Indian homes, communities, and lands" Under existing law, the phrase Indian homes, communities, and lands is undefined. IHS has interpreted this authorization as being related to the provision of services to AI/AN and generally barring the use of SFC project funds for commercial establishments and facilities associated with non-Indians. IHS policy reflects this interpretation by requiring Indian communities to identify matching funds to be used in IHS-funded projects to cover the cost of these ineligible facilities. The draft legislation would provide a definition for "Indian homes, communities, and lands" that is inconsistent with the current IHS policy and potentially inconsistent with statutory mandates regarding the provision of services by IHS to non-Indians. This new definition could cause the IHS challenges in the orderly administration of the program in the form of final offers or Title I proposals seeking to compel allocations of IHS's appropriation in ways that depart from the current formula-based approach, which treats all Tribes equally, focuses only on IHS beneficiaries, and does not subsidize commercial establishments.

The IHS would like to work with the bill sponsors and the Committee to determine how best to serve the non-eligible homes and commercial properties, including those listed in this bill, that are located within tribal Communities. The IHS would also like to continue to work with the drafters of S. 2385 to ensure compatibility with the IHS Sanitation Facilities Construction Program's existing authorities.

Thank you again for the opportunity to testify today, and thanks to Senators Cortez Masto and Bennet, who have led these legislative efforts to fix systemic challenges in Indian Country. We look forward to continuing our work with Congress on these bills and as always, welcome the opportunity to provide technical assistance as requested by the Committee or its Members. HHS is committed to working closely with tribal communities and other external partners and understands the importance of working together to address the needs of American Indians and Alaska Natives.

The CHAIRMAN. Thank you very much.
Ms. Isom-Clause, please proceed.

STATEMENT OF KATHRYN ISOM-CLAUDE, DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Ms. ISOM-CLAUDE. Thank you. Good morning, Chairman Schatz, Vice Chair Murkowski and members of the Committee. My name is Kathryn Isom-Clause. I am Taos Pueblo, and I am the Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs at the Department of the Interior.

Thank you for the opportunity to present testimony on four bills before the Committee today.

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

The Tribal Access to Clean Water Act of 2023 seeks to help fund water infrastructure projects in tribal communities by increasing funding, including \$90 million over five years for the Bureau of Reclamation's Native American Affairs Technical Assistance Program, or TAP. TAP provides technical assistance to tribes to develop, manage, and protect their water and related resources.

The program has supported a broad range of activities including water needs assessments, improved water management studies, water quality data collection and assessments, and water measurement studies.

Work under TAP is carried out in different ways, sometimes by Reclamation under cooperative agreements, working relationships with tribes. Other times, tribes carry out the work themselves. Alternatively, Reclamation may provide training to enhance tribal members' knowledge and expertise in the use, protection, and development of water resources.

The Department is committed to further developing this program in the coming years, including with the Fiscal Year 2024 President's budget request of \$23.5 million. We appreciate the interest and support of the sponsors of S. 2385 in TAP and as partners in efforts to address the longstanding water crises that continue to undermine public health and economic development in Indian Country.

Next up is S. 2868. The Lower Sioux Indian Community is a federally recognized Indian tribe organized under a constitutional and bylaws adopted by the community's membership in 1936, pursuant to Section 16 of the Indian Reorganization Act, or IRA. In 1937, the community was issued and ratified a corporate charter pursuant to Section 17 of the IRA.

In a November 2021 resolution, the community stated that it has not used the charter since ratification in 1937, and it serves no function. The IRA requires that any charter so issued shall not be revoked or surrendered except by act of Congress. S. 2868, at the request of the community, would revoke the charter.

Consistent with the Administration's support for tribal self-determination and self-governance, the Department believes that the decision of whether to maintain or revoke such a charter shall ultimately be the community's, and therefore supports S. 2868.

S. 2796 would confer jurisdiction to the United States Court of Federal Claims to hear, determine, and render judgment regarding the Miami Tribe of Oklahoma's land claims under the Treaty of Grouseland, and would remove legal or equitable defenses based on the passage of time, including the statute of the limitations.

The jurisdiction conferred to the United States Court of Federal claims expires unless a claim is filed under paragraph (1) of S. 2796 by the tribe within one year of enactment of the legislation. The bill extinguishes all other claims to title of the Miami Tribe of Oklahoma or any member, descendant, or predecessor in interest to the Miami Tribe of Oklahoma to land in the State of Illinois.

The Department needs to better understand the claims by the Miami Tribe of Oklahoma and the impacts of this legislation and any remedy sought by the tribe. The Department therefore takes no position on the legislation at this time.

Finally, S. 3230. The Winnebago Reservation was established by the treaty of March 8th, 1865, in exchange for cession of the Winnebago Tribe's lands in the Dakota Territory. However, in the 1970s, the tracts identified in S. 3230 were acquired by the U.S. Army Corps of Engineers. S. 3230 would transfer the identified lands from the Army Corps of Engineers to the United States to be held in trust for the benefit of the Winnebago Tribe.

The Department of the Interior supports S. 3230. This bill is in line with the Administration's commitment to honor treaty rights, respect tribal sovereignty and support the right of tribal governments to acquire land in trust in furtherance of their self-determination.

Chairman Schatz, Vice Chair Murkowski, members of the Committee, thank you for the opportunity to provide the Department's views.

[The prepared statement of Ms. Isom-Clause follows:]

PREPARED STATEMENT OF KATHRYN ISOM-CLAUDE, DEPUTY ASSISTANT SECRETARY,
INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Good morning, Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Kathryn Isom-Clause and I am the Deputy Assistant Secretary for Policy and Economic Development for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony on S. 2385, Tribal Access to Clean Water Act of 2023; S. 2868, A bill to accept the request to revoke the charter of incorporation of the Lower Sioux Indian Community in the State of Minnesota at the request of that Community, and for other purposes; S.2796, A bill to provide for the equitable settlement of certain Indian land disputes regarding land in Illinois, and for other purposes; and S. 3230, Winnebago Land Transfer Act.

S. 2385, Tribal Access to Clean Water Act of 2023

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

and valuable resources for Tribal nations. The Administration further recognizes that long-standing water crises continue to undermine public health and economic development in Indian Country.

The Tribal Access to Clean Water Act of 2023 seeks to help fund water infrastructure projects in Tribal communities and provide clean water to Native American households who currently lack access by increasing funding through the Indian Health Service, Bureau of Reclamation (BOR), and the United States Department of Agriculture. The bill provides \$90 million over five years for the BOR's Native American Affairs Technical Assistance Program (TAP).

TAP provides technical assistance to Indian Tribes to develop, manage, and protect their water and related resources. The program has supported a broad range of activities in each year since its inception in the early 1990s. Such activities have included water needs assessments, improved water management studies, water quality data collection and assessments, and water measurement studies. In FY 2022 and FY 2023, TAP received approximately \$8 million in each fiscal year, which was a significant increase from the \$3–5 million received annually from FY 2018 to FY 2021.

Work under TAP is carried out in different ways. Sometimes the work is performed by the BOR under cooperative working relationships with Indian Tribes, which provide the Tribes with opportunities to benefit from BOR's technical expertise and resources. Other times, the work is carried out by Indian Tribes. Alternatively, assistance may be provided in the form of training to enhance Tribal members' knowledge and expertise in the use, protection, and development of water resources. Work may also be carried out in partnership with other governmental or non-governmental entities, thereby enabling assistance provided to Tribes with greater efficiency.

The Department is committed to further developing this program in the coming years, including with the FY 2024 President's budget request of \$23.5 million. We appreciate the interest and support of the sponsors of S. 2385 in TAP.

S. 2868, A bill to accept the request to revoke the charter of incorporation of the Lower Sioux Indian Community in the State of Minnesota at the request of that Community, and for other purposes

The Lower Sioux Indian Community (Community) is a federally recognized Indian Tribe organized under a Constitution and Bylaws adopted by the Communities membership on May 16, 1936, pursuant to Section 16 of the Indian Reorganization Act (IRA) under which it organizes its businesses. On July 17, 1937, the Community was issued and ratified a corporate charter (Charter) pursuant to Section 17 of the IRA. The IRA requires that, "Any charter so issued shall not be revoked or surrendered except by Act of Congress." (25 U.S.C. § 5124). S. 2868, at the request of the Community, would revoke the Charter.

In a November 2021 resolution, the Community stated that it has not used the Charter since ratification in 1937 and it serves no function. The Department, consistent with the Administration's support for Tribal self-determination and self-governance, believes that the decision whether to maintain or revoke such a charter ultimately should be the Community's and therefore supports S. 2868.

S. 2796, A bill to provide for the equitable settlement of certain Indian land disputes regarding land in Illinois, and for other purposes

S. 2796 would confer jurisdiction to the United States Court of Federal Claims to hear, determine, and render judgment regarding the Miami Tribe of Oklahoma's land claims under the Treaty of Grouseland (7 Stat. 91), signed August 21, 1805, and would remove legal or equitable defenses based on the passage of time, including the statute of limitations. The jurisdiction conferred to the United States Court of Federal Claims expires unless a claim is filed under paragraph (1) of S. 2796 by the Miami Tribe of Oklahoma within one year of enactment of this legislation. The bill extinguishes all other claims to title of the Miami Tribe of Oklahoma, or any member, descendant, or predecessor in interest to the Miami Tribe of Oklahoma to land in the State of Illinois.

The Department needs to better understand the claims by the Miami Tribe of Oklahoma and the impacts of this legislation on those claims and any remedy sought by the Tribe. The Department therefore takes no position on the legislation at this time.

S. 3230, Winnebago Land Transfer Act

S. 3230, the Winnebago Land Transfer Act of 2023, would transfer administrative jurisdiction of certain federal lands from the Army Corps of Engineers to the Bureau of Indian Affairs, to take such lands into trust for the Winnebago Tribe of Nebraska (Winnebago Tribe). S. 3230 would apply to lands on the east side of the Missouri

River, located within Woodbury County and Monona County, Iowa-specifically, a portion of Tract No. 119, all of Tract 210, and all of Tract 113. Lands placed into trust by this legislation will not be eligible for Class II and III gaming under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

The Winnebago Reservation was established by the Treaty of March 8, 1865, in exchange for cession of the Winnebago Tribe's lands in the Dakota Territory. The Treaty of 1865 designated that the Winnebago Reservation would be set apart for the occupation and future home of the Winnebago Indians, forever. However, in the 1970s, the tracts identified in S. 3230 were acquired by the U.S. Army Corps of Engineers through an erroneous condemnation action and eminent domain. S. 3230 would rightfully restore the Winnebago Reservation boundaries, insofar as the tracts identified are concerned, and would be in keeping with the United States' promise to the Winnebago Tribe in the Treaty of March 8, 1865.

The Department of the Interior supports S. 3230. This bill is in line with the Administration's commitment to honor treaty rights, respect Tribal sovereignty, and support the right of Tribal governments to acquire land in trust in furtherance of their self-determination.

Conclusion

Chairman Schatz, Vice Chairman Murkowski, and Members of the Committee, thank you for the opportunity to provide the Department's views.

The CHAIRMAN. Thank you very much.

Chairman Heart, welcome, and please proceed with your testimony.

STATEMENT OF HON. MANUEL HEART, CHAIRMAN, UTE MOUNTAIN UTE TRIBE

Mr. HEART. Thank you, Chairman Schatz. On behalf of the Ute Mountain Ute Tribe, thank you for the opportunity to provide testimony on S. 2385, the Tribal Access to Clean Water Act of 2023.

One of the most significant issues facing the tribe today is access to reliable, clean drinking water. Without reliable, clean drinking water, the Ute Mountain Ute people cannot sustain their sovereign right to self-sufficiency and to self-government. The funding made available through the Tribal Access to Clean Water Act of 2023 is crucial to ensuring the tribe has access to reliable, clean drinking water and is a necessary first step to meeting the United States treaty obligation and trust responsibility to Ute Mountain Ute people.

Despite our tribe's contemporary success in developing irrigation systems and award-winning farming operations, it is still the case, 101 years after making these comments, that the Ute Mountain Ute people remain without Federal support for adequate supply of water. I am here today to remind the United States of its obligations once again to the Ute Mountain Ute people, and to collect on the promise made long ago to Chief Ignacio and all the Ute Mountain Utes.

The Ute Mountain Utes' sovereign lands are in the States of Colorado, New Mexico, and Utah, magnifying the issues of access to clean water three-fold. The tribe faces unique issues related to access of a reliable clean water source of drinking water on its reservation lands in each of those States.

I would like to address two of the States' access to clean water, in Utah and in Colorado. Although the three negotiations and settlements claims for its Federal reserve rights in Colorado in 2000, the tribe remains unable to access critical water resources due to lack of water infrastructure, 24 years later.

As you may know, the Colorado Ute Settlement Act of 2000 guaranteed the Ute people 16,525 acre-feet of water from the Animas-La Plata project, ALP, at Lake Nighthorse. However, year after year, the tribe has been unable to access its water due to the lack of water infrastructure connecting the ALP project to the tribe's reservation lands.

Although the tribe has spent significant time and resources to develop access to its water and ALP, the tribe cannot do without financial assistance from the Federal Government. The funding that would be able to be available as part of Senate Bill 2385 both for technical assistance and for the development, use and control of water and the installation of essential community facilities and necessary related equipment is crucial for the advancement for the Federal Government's treaty obligation and trust responsibility to the Ute Mountain Ute people.

Today, we have 16,000 acre-feet of water that we have no access to and that we have no infrastructure in place. We are not even compensated for it. Yet it sits there decade after decade.

Access to clean water in Utah. Access to reliable clean drinking water is a concern for all the tribe's lands, but perhaps none more so than in Utah. As previously mentioned, the tribe has non-contiguous reservation lands in southeastern Utah, separate from its reservation lands in southwestern Colorado and New Mexico.

White Mesa is the primary tribal community in the Utah portion of the tribe's lands. The tribe and individual tribal citizens also hold trust along the lands along the west and east of White Mesa along Cottonwood Canyon. The current source of water for the majority of the use for the White Mesa Community is a deep-water aquifer.

The White Mesa Uranium Mill is located approximately 2.5 miles north of the White Mesa Tribal Community. It is the only conventional uranium mill still in operation in the United States. The tribe and its tribal citizens are very concerned about the potential for the mill to infiltrate and contaminate the aquifer relied upon by the tribe for its water supply.

The tribe has spent significant funds to build a water treatment and testing facility in White Mesa. However, the tribal community is afraid of drinking contaminated water and no one will consume it.

Presently, the tribe is in discussion with the State engineer of Utah in settling the tribe's water rights in White Mesa. Water quality issues will be a key piece of those discussions and to ensure access to clean drinking water is part of those negotiations. A Federal presence in those discussions, including the EPA, is critical to ensure access to clean water for White Mesa and all the Ute Mountain Ute tribal communities.

In addition to resources devoted to settling the tribe's water fights, access to technical assistance, funding under Senate Bill 2385 would help ensure unique issues at White Mesa are adequately addressed. We have concerns and we are asking for an epidemiology study from the IHS for the Albuquerque Region Area, and also with the State of Utah.

Thank you for your consideration of this testimony. We look forward to continuing to work with you to enact legislation to support

tribal access to reliable, clean drinking water on the Ute Mountain Ute Reservation lands in Utah, Colorado, and New Mexico.

[The prepared statement of Mr. Heart follows:]

PREPARED STATEMENT OF HON. MANUEL HEART, CHAIRMAN, UTE MOUNTAIN UTE TRIBE

Introduction

Access to clean water is a basic human right. It is essential for people to live with dignity and foundational for human health, growing economies, and a basic level of existence for communities. It is unacceptable that in the 21st Century, many Native Americans must travel for miles to collect water that is safe for drinking and everyday use. An estimated 48 percent of households on Indian reservations do not have access to reliable water sources, clean drinking water, or adequate sanitation.¹

Household water security is defined as “the safe and reliable access to sufficient quantity and quality of water for household consumption, production, and cleanliness.”² “In the United States, potable water infrastructure is broadly assumed to be ‘universal’ in its coverage, to the point where the U.S. Census Bureau has recently considered dropping its plumbing question from the [American Community Survey] questionnaire.”³ However, despite public perception, “universalized water infrastructure remains an incomplete promise for different populations in different places across the nation[.]”⁴

Native American households are more likely to lack adequate water services than any other group in the United States. Existing water infrastructure on reservations continues to deteriorate and inadequate water quality remains pervasive across Indian Country. According to the U.S. Water Alliance, Native households are 19 times more likely than white households to lack indoor plumbing.⁵ This is not a random disparity—the lack of access to clean and safe drinking water in Tribal communities reflects historical and persisting racial inequities.

The United States government has long promised all Native American Tribes a “permanent homeland,” a livable reservation,” and a home “conducive to the health and prosperity of the Indians.” But these promises are broken when our people do not have clean water to drink or for cooking and personal hygiene. A permanent, livable, and prosperous homeland cannot exist without this minimum requirement of life—access to an adequate and healthful supply of drinking water.

In our White Mesa Ute Community, groundwater for the community supply is of poor quality. We have a treatment system that removes current contaminants. Operations are challenging and the future is uncertain. Two miles up the road we have a uranium mill that has thousands of acre feet of toxic radioactive waste stored there forever. The license requires that the reclamation plan be safe for 1000 years. Tribe has been here tens of thousands of years and this industry has existed less than 100 years. We simply do not know if the mill will affect the drinking water aquifer in 100 years or 300 or 1000.

In the 2000’s the Tribe petitioned the Environmental Protection Agency to designate the drinking water aquifer as a sole-source aquifer. The petition was denied, probably because of the uranium mill and the multitude of federal decisions it would influence. However, if the N aquifer is not a sole-source, where do we get another source of water? There is not enough surface water—the City of Blanding told us that. Either designate it as a sole source or inform us of another source.

In our Towaoc community, the water line from the Dolores Project was installed over 30 years ago. It is ductile iron and subject to breaks due to the shifting and saline geology. We have a few breaks each year causing temporary water conservation measures and quality issues. Each repair costs us over \$50,000 and sometimes hundreds of thousands. We have replaced a two mile section and we are poised to replace another section in the next year, but there is still over 15 miles of pipeline to replace to get clean water to our community. Ongoing housing expansion, repair

¹House Committee on Natural Resources, Democratic Staff, *Water Delayed is Water Denied: How Congress has Blocked Access to Water for Native Families* (Oct. 2016), <https://democrats-naturalresources.house.gov/water-delayed-is-water-denied>.

²Shiloh Deitz & Katie Meehan, *Plumbing Poverty: Mapping Hot Spots of Racial and Geographic Inequality in U.S. Household Water Insecurity*, 109 *Annals Am. Ass’n Geographers* 1 (2019) [hereinafter *Plumbing Poverty*].

³*Id.* at 1, 7 (2019).

⁴*Id.* at 8.

⁵DigDeep-US Water Alliance, *Closing the Water Access Gap in the United States* (2019), <https://www.digdeep.org/close-the-water-gap>.

and replacement are a constant driver for funding for drinking water and wastewater infrastructure in Towaoc.

Thanks to the sponsors of Tribal Clean Water legislation in the 117th Congress, funding for safe drinking water systems for Tribal communities received a significant boost from the Bipartisan Infrastructure Law and the Inflation Reduction Act. While groundbreaking and long overdue, the funding now available for construction and repair of domestic water systems in Indian country is not a complete solution. The Tribal Access to Clean Water Act, S. 2385, is intended to fill some of the remaining gaps and ensure that the benefit of the investments in Tribal water infrastructure made in the previous legislation are fully realized. The various components of the Act and the needs that have prompted this legislation are explained below.

Technical Assistance. Many, if not most, Tribes lack a dedicated water resource staff, program, or department. Identifying and successfully applying for the various forms of federal funding available is an arduous and time-consuming task. Most Tribes do not have a qualified grant writer or sufficient staff to handle the research and application process. In addition, many Tribes require new or rehabilitated infrastructure to allow access to clean drinking water, but do not currently have “shovel ready” projects that can take advantage of construction funding provided in the BIL and IRA. Technical assistance is needed to allow Tribes to plan and design the systems necessary to remedy the long-standing problem of lack of access to clean drinking water, and to successfully apply for available funding.

The Act would authorize the U.S. Department of Agriculture to make rural development grants and loans for technical assistance, in addition to the existing authorization for construction purposes. It would also authorize additional funding to USDA, the Bureau of Reclamation, and the Indian Health Service for technical assistance to Tribes. This funding could also assist Tribes in developing the managerial, financial, and regulatory capacity necessary for a fully functional and self-sustaining utility, a foundation for ensuring that Tribal water systems will continue to operate as intended into the future.

Making projects “shovel ready” can be cumbersome and expensive. To get a project for a water infrastructure project to that point many tasks need unique expertise and require investment by the project proponent: engineering, community planning, surveys for resources, comprehensive NEPA writing and execution, identification of cost-share resources, and other components specific to a project. Providing opportunity for technical assistance grants to assist in getting projects there can be extremely important to tribes in this situation.

Community Facilities. IHS construction funding is not currently available to connect essential community facilities, like schools and clinics, to centralized water and sanitation. While IHS’s existing authorization allows for provision of water service to “Indian homes, communities, and lands,” IHS has self-limited its deployment of construction funding to projects and connections for individual homes. That self-imposed constraint has resulted in schools, teacher dormitories, nursing homes, Tribal government buildings, and other essential community structures without connection to basic water service. The Act would direct IHS to include community facilities in its overall deployment of construction funding. This inclusion is absolutely necessary to support a basic level of Tribal economic development.

We support the Indian Health Service improving its policies to better assist the Tribe with community facility connections.

Operation and Maintenance. The ongoing operation and maintenance of water and sanitation infrastructure is a difficult burden in Indian country. Tribes cannot rely on the same types and volumes of revenue streams to support operation and maintenance of water systems as most municipal water providers. For example, Tribes cannot impose and collect property taxes on Tribal land (as the land is owned by the U.S. Government) which many providers rely on to finance new water infrastructure and significant capital improvements. In addition, the economic character of the customer base is generally less able to sustain the kinds of routine O&M costs than the average American water customer. Finally, the remote and rural nature of many Tribal reservations results in higher routine O&M expenditure because of longer distribution lines, greater pumping requirements, and higher costs of repair. Initial and temporary O&M assistance helps to ensure that the benefits of any investment in infrastructure are fully realized.

In recognition of these unique challenges, the IHS has been authorized since the 1950s to provide operation and maintenance assistance for Tribal water and

sanitation facilities when necessary to avoid health hazard or to protect the Federal investment in sanitation facilities.⁶ To date, however, Congress has never appropriated funding to IHS to carry out this authorization. The Act would remedy this longstanding deficiency.

The Tribe is challenged with consistent drinking water and wastewater operations and operators. Staff turnover is prevalent and competitive salary opportunities are not usually available. Obtaining a certification at the appropriate level to be an operator is a career level accomplishment, taking years of experience in addition to successful course and testing completion. Knowing the systems requiring operation is paramount and most are different. With a limited amount of STEM guided career paths in the Tribal population, the chances of having a Tribal Member get the education and experience to be an operator is low. To keep an employee with these qualifications by virtue of salary alone is untenable. The combination of these makes it tough to keep operators.

In our smaller Utah community, we have a treatment system, but we do not have a certified operator. This law could help the Tribe to maintain and operate the water system in White Mesa.

We support the Indian Health Service assisting with the maintenance and operations as needed and most-especially with training and hands-on learning about water and wastewater systems and the certification required for them.

Conclusion

The Ute Mountain Ute Tribe supports passage of the Tribal Access to Clean Water Act, S. 2385, recognizing the critical importance of access to reliable, clean drinking water for Native Americans. In addition, the Tribe supports Senate Resolution 355 affirming the responsibility of the Federal Government to ensure such water access and calling on the Executive Branch to employ a “whole of government” approach to ensure access to reliable, clean drinking water to households on Indian reservations, in Alaska Native villages, and in Native Hawaiian communities.

Failure to provide basic water service cannot be reconciled with the general trust responsibility of providing a permanent homeland to Tribes and promoting the survival and welfare of their communities. “Ensuring access to water and sanitation for all people is not simply a question of water resources, technology and infrastructure, but also of setting priorities, tackling poverty and inequality, addressing societal power imbalances, and above all, political will.”⁷

Thank you for the opportunity to testify on water access barriers encountered by the Ute Mountain Ute Tribe and by Tribal communities in general. The Tribe urges the passage of S. 2385 and Senate Resolution 355.

The CHAIRMAN. Thank you very much.

Before we move on, if Senator Bennett is ready, I am going to defer to Senator Bennett so that it makes sense that we do States adjacent to each other. Then I will recognize Senator Mullin for his witness and Senator Fisher for hers.

Without further ado, Senator Bennett.

STATEMENT OF HON. MICHAEL BENNET, U.S. SENATOR FROM COLORADO

Senator BENNETT. Thank you, Mr. Chairman. That is very kind of you. I know the schedule is moving around here, and I am very

⁶The Indian Sanitation Facilities Act authorizes the Surgeon General “to construct, improve, extend, or otherwise provide and maintain by contract or otherwise, essential sanitation facilities[.]” Pub. L. No. 86–121, 73 Stat. 267 (1959) (codified at 42 U.S.C. § 2004a(a)). Pursuant to the Indian Health Care Improvement Act, the Secretary is authorized to provide “(A) Financial assistance to Indian Tribes and communities in the establishment, training, and equipping of utility organizations to operate and maintain Indian sanitation facilities; (B) Ongoing technical assistance and training in the management of utility organizations which operate and maintain sanitation facilities; (C) Operation and maintenance assistance for, and emergency repairs to, Tribal sanitation facilities when necessary to avoid health hazard or to protect the Federal investment in sanitation facilities” as well as “financial assistance to Indian Tribes and communities in an amount equal to the costs of operating, managing, and maintaining the facilities provided[.]” Pub. L. No. 94–437 (1976) (codified at 25 U.S.C. § 1632(b)(2), (e)(1)).

⁷U.N., Outcome of the International Experts’ Meeting on the Right to Water, Paris, France, July 7–8, 2009, at 2.

glad I had the opportunity to be here for Chairman Heart's testimony. I am deeply, deeply grateful that he is here today.

He has served on the Ute Mountain Council since 1995, he has been chairman for 14 years. His leadership has meant a lot not just to the Ute Mountain Ute but to all of Colorado, and to the west, in the work he has done on water and public lands. It has been incredibly important.

He has done it all while he has been a cattle rancher at the same time, so I just want to say, I have had the benefit of his leadership and today the Country has the benefit of his leadership.

Today only half of households on Native American reservations have clean water or adequate sanitation. I know the chairman knows these issues well. Tribal households are nearly 20 times more likely than White households to lack indoor plumbing. Chairman Heart has told me that it is customary in the White Mesa Community to bring bottled water as a greeting gift, because water contamination remains a profound challenge.

Mr. Chair, the status quo is completely unacceptable to me, and it should be unacceptable to every member of the United States Senate. No family in this Country should have to raise their children without clean water. No member of a tribe should have to accept circumstances none of us would accept for our own family. This hardship is particularly egregious, because it is a direct consequence of the Federal Government's failure to honor promises and treaties made to tribes across this land.

I think that if any of us faced the challenges that the tribal leaders are facing today and that their membership is facing today when it comes to clean water for their families and for their kids, none of us would stay here in Washington, D.C. We would all go home to make sure that that clean water was being provided. That is why this leadership is here today.

A few years ago, we took big steps forward to secure clean water for tribes in the Bipartisan Infrastructure Law, including by providing the Indian Health Service with \$3.5 billion for their sanitation deficiency list, and the Bureau of Reclamation with \$1 billion for rural water supply projects.

But the Ute Mountain Ute Tribe and other tribes have struggled to access this funding, because their projects require planning and other preconstruction work before being considered shovel-ready by the Government.

The Tribal Access to Clean Water Act addresses these challenges by authorizing critical technical assistance at the Indian Health Service, Department of Agriculture, and the Bureau of Reclamation for tribes to receive support for project planning and design and take full advantage of Bipartisan Law Funding. This bill would help the Ute Mountain Ute Tribe replace 15 miles of 30-year old iron water lines which service the growing Towaoc Community, which regularly break.

This bill is broadly supported across Native communities, and I have brought letters of support from more than 20 members of the Clean Water for All Coalition, including the Navajo Nation, National Congress of American Indians, Vessel, and Dig Deep. I would ask unanimous consent, Mr. Chairman, that we enter these into the record.

The CHAIRMAN. Without objection, so ordered.

Senator BENNETT. Mr. Chair, thank you. Just to close, when the Federal Government established reservations for Native American tribes, it promised a permanent and livable homeland for those it had displaced from their ancestral lands. When access to clean and safe water, a human right, is being denied, this promise clearly has been betrayed, this promise clearly has been denied.

With this bill, we have an opportunity to ensure more Native communities have access to clean water, the same way every Senator does and every Senator's family does. I welcome the Committee's feedback on how to improve this legislation so we can ensure Native Hawaiians and Alaska Natives and tribes across the Country can access Bipartisan Infrastructure Law funds to guarantee reliable access to clean water.

I hope that once you have had the opportunity to look at this bill, it will earn a strong bipartisan vote from this Committee. I thank you all for your leadership, and for giving me the opportunity to be here today.

The CHAIRMAN. Thank you very much, Senator Bennett. Senator Mullin?

**STATEMENT OF HON. MARKWAYNE MULLIN,
U.S. SENATOR FROM OKLAHOMA**

Senator MULLIN. Thank you, Mr. Chairman. I do apologize about coming in late, and I apologize for having to leave too, because as Mr. Bennett referred to, our schedules are changing a lot right now today. All is kind of up in the air.

I do want to say real quickly though, thank you for having this hearing today on Senate Bill 2032, IHS Workforce. All of us that live, like I do, in Indian Country or work for Indian Country understands that is a huge need. I have mentioned it multiple times. I grew up without insurance because we had Indian Health Services, which is, Tahlequah Hospital for Cherokee Nation was the health care place.

So the workforce need is real and it is in dire straits. So I appreciate your hearing that.

Also, Senate Bill 2796, which is the Miami Illinois Land Claims Settlement Act, which is what I have worked with my good friend, I say really good friend, I mean that, because when we first met, Chief, you had a full head of hair and you were built like a warrior.

[Laughter.]

Senator MULLIN. That is quite the opposite now, sir, but you are working on it. I get that. But Chief Lankford and I go way back. The only thing I have on him is, and you guys can't really judge him on this, I do, but he went to school in Missouri. But I understand where the Miami Tribe is, it is right on the line. So it is close enough that we will accept him.

Just to give you kind of a little background, Chief Lankford, he has served the Miami Tribe since 2008, both as second chief and chief, since 2013. Chief Lankford directs the tribe's government affairs at the Federal, State and intertribal levels. He is responsible for management and oversight of the multi-million dollar budget for various Federal grants and tribal entities.

Sadly, as I said before, he went to school in Missouri. But I think we all claim he is from Oklahoma now. And you have worked tirelessly up in Ottawa County for not just your tribe, but for the people that live in and around your reservation. It doesn't go without notice. It is a bragging point for me to see how you interact with everybody that lives and interacts inside your reservation.

As I had mentioned before, he is a very good friend of mine. That is why I can joke and make fun of him, and I am sure I will have that one coming back at some point.

Just to kind of give you a brief overlay of the Miami-Illinois land claim settlement bill, this has no cost at all related to it. It is actually, if you take a look at it, it makes perfect sense, but you and I have been fighting this for years. I offered this bill up in the House, I think the first time was in 2014. And now we are here in the Senate. I really hope we take a hard look at this and get this behind us. It is sad when you see something that makes sense and really should have no pushback, it takes years to make it right, especially inside Indian Country.

So, Chairman, for allowing this to go this far so far, I just want to tell you how much I truly, truly appreciate it. I will speak for the chief, too, I know he really appreciates it, too. Thank you for this time.

The CHAIRMAN. Thank you very much, Senator Mullin. Chief Lankford, please proceed with your testimony.

**STATEMENT OF HON. DOUGLAS LANKFORD, CHIEF, MIAMI
TRIBE OF OKLAHOMA**

Mr. LANKFORD. Thank you. Aya akima eecipoonkwia weenswiaani niila myaamia. I am Chief Doug Lankford of the Miami Tribe of Oklahoma. I want to thank the Committee today for the opportunity to testify in support of S. 2796.

This bill resolves the tribe's land claim in east central Illinois by doing two things. First, it gives the United States Court of Federal Claims the authority to decide whether the United States took land protected by the 1805 Treaty of Grouseland without paying the tribe. And second, it extinguishes the tribe's claim to those lands which forever eliminates the cloud on title for the current landowners.

For seven years, we have worked to make this bill law. In that time, we have only encountered one question: why now? In short, because time does not sit still. Our claims were not resolved during the ICC. And due to past litigation, there is a cloud on title for the landowners of 2.6 million acres in east central Illinois.

The only way to clear cloud on title is for Congress to extinguish our land claim. And all we are asking in exchange for 2.6 million acres of ancestral homeland, is an opportunity to be heard in court. We are not asking for an outcome; we are asking for a chance to seek justice.

You might ask, how did this come about? Although the Miami Tribe's seat of government is in northeastern Oklahoma, the tribe was forcibly removed from its ancestral homelands in Indiana, Illinois, and Ohio. In 1805, the Miami Tribe signed the Treaty of Grouseland. By Article IV of that treaty, the United States agreed

that it would not take additional lands in the watershed without permission and consent of the tribe.

Between 1805 and 1840, the Miamis entered into several treaties, ceding most of its homeland. However, 2.6 million acres located in the watershed, today east central Illinois, were never ceded to the United States. Despite lacking title, the United States sold the reserve land to non-Indian settlers, giving rise to the Miami claim and creating a cloud on title on these lands.

S. 2796 represents a commonsense, mutually beneficial resolution to this problem. It is based on the legislation introduced by the Illinois delegation in 2001, H.R. 791, and S. 533. That legislation was widely supported as a commonsense approach, and so is our bill.

S. 2796, which enjoyed bipartisan support throughout its life, would extinguish the tribe's land claim, resolving the cloud on title, and grant the tribe one year to bring its case before the United States Court of Federal Claims. To be clear, the passage of this legislation extinguishes the Miami land claim and the cloud on title is clear, regardless of the tribe's outcome in litigating its claim before the court.

When the tribe asked Congressman Don Young to cosponsor the bill years ago, he looked me in the eye and said, so the landowners get resolved, the tribe still has to prove its case, are you sure that is what you want? I said, yes, sir, it is. He said, fair enough.

Congressman Young was a straight shooter and a tireless advocate for Indian Country. He understood the common sense of the bill right away.

The tribe has worked closely and diligently with the Congressional leadership and local leaders from Illinois, especially those in the affected treaty area. And the Illinois Farm Bureau supports this legislation.

Finally, please note this bill is not a land claim settlement bill or an appropriation bill. If the tribe prevails in court, its judgment would be paid from the Federal judgment fund. Also, this bill does not decide the merits or defenses and does not declare any winners except the landowners in east central Illinois.

Mihsi neewe. Thank you, Mr. Chairman and Committee members for your time and the opportunity to testify in support of this bill. I have to say a special thank you to Senator Mullin for his many years of advocating for this bill. I also want to thank Senator Durbin for the time and attention he has given to this matter.

I am happy to answer any questions the Committee may have. [The prepared statement of Mr. Lankford follows:]

PREPARED STATEMENT OF HON. DOUGLAS LANKFORD, CHIEF, MIAMI TRIBE OF OKLAHOMA

Aya akima eecipoonkwia weenswiaani nila myaamia. My name is Chief Douglas Lankford of the Miami Tribe of Oklahoma. I want to thank the Subcommittee for this opportunity to testify in support of S. 2796, a Bill that would permanently resolve the Tribe's treaty-based land claim to the Wabash River Watershed in east-central Illinois and permanently resolve the cloud it creates on title held by landowners in east central Illinois.

The Bill accomplishes this by doing two things:

- 1) First, it gives the United States Court of Federal Claims (CFC) the authority to decide whether the United States took lands protected by the 1805 Treaty of Grouse land (Reserved Lands) without paying the Tribe; and
- 2) Second, it extinguishes the Tribe's claim to those lands, which forever eliminates the cloud on title for landowners.

Background

The Miami Tribe of Oklahoma is a federally recognized Indian tribe. Our ancestral homelands are located south of the Great Lakes, in what are now the states of Indiana, Illinois, and Ohio. In 1846, the Tribe was removed from its homelands to what is now the state of Kansas and, in 1867 was again removed from Kansas to the Indian Territory, now the State of Oklahoma. Our seat of government is located in Ottawa County in Northeast Oklahoma.

In 1805, the Miami Tribe and its historical constituents Eel River Band and Wea signed the Treaty of Grouseland with the United States.¹ By Article IV of that Treaty the United States recognized the three Bands as “joint owners of all the country on the Wabash and its waters, above the Vincennes tract, and which has not been ceded to the United States, by this or any former treaty”² and further agreed that “they [the United States] do farther engage that they will not purchase any part of the said country without the consent of each of the said Tribes.”³ Thereafter, the United States never negotiated with the Tribe for the cession of the Reserved Land, nor paid the Tribe for that land. Yet, over time, the United States transferred the Reserved Lands to non-Indians.

The Miami Tribe of Oklahoma is the sole contemporary tribal body politic with a treaty title claim under Article IV of the Treaty of Grouseland. As explained below, the Eel River Miami have been a part of the federally recognized Miami Tribe of Oklahoma for over a century. The Wea, now a part of the Peoria Tribe,⁴ ceded all their interests in lands in Indiana, Ohio and Illinois, including their 1/3 interest in the Reserved Land, through treaty in 1818.⁵

The Miami Indian confederacy consisted of major group of people located in the Native diaspora that existed just south of the central Great Lakes when the French arrived in the territory in the 1620s. The core bands of the Miami confederacy, that consistently intermarried and forged a clear alliance as a tribe, were the Miami Proper, the Eel River Miami, and the Wea.

Throughout the Eighteenth Century, the Miami Confederacy came into increasing contact with fur traders at trading posts established throughout the region. In 1801, the federal government sent a territorial governor, William Henry Harrison, to administer the region occupied by the Miami Confederacy. The encroachment of non-Indians on Indian lands generated tensions and made clear the need for the United States to negotiate Indian treaties and purchase land. From 1802 to 1804, Harrison negotiated a series of land cession treaties with various tribes,⁶ including a series of 1804 treaties that cleared a path for non-Indian occupation along the north bank of the Ohio all the way to the Mississippi River.⁷ The Miami disputed many of the agreements, arguing that they had rightful claim to large swaths of the lands ceded by other tribes.

The mess caused by Harrison's approach and the resulting 1802–1804 treaties set the stage for the Treaty of Grouseland. On August 21, 1805, the three Miami bands ceded a small strip of land in present-day southern Indiana. In exchange for this land cession, the Miami demanded and received acknowledgement by the United States of the Tribe's ownership of the vast regions of the Wabash River watershed, including the Reserved Land in present-day Illinois.⁸ Because of Harrison's past practice of attempting to negotiate cessions from more “cooperative” tribes regardless of their title to the land evidenced in the 1802–1804 treaties, the Miami, Eel River, and Wea insisted on the recognition of their joint ownership, each with an

¹Treaty of Grouseland, August 21, 1805, 7 Stat. 91. Appendix 2.

²*Id.* at art. IV.

³*Id.* at art. IV.

⁴*Peoria Tribe of Indians of Oklahoma v. United States*, Docket 314–D, 22 Ind. Cl. Comm. 469,478 (1970) (citing *Peoria Tribe of Indians of Oki. v. United States*, 4 Ind. Cl. Comm. 233 (1956), *rev'd on other grounds*, 390 U.S. 468, 88 S. Ct. 1137, 20 L. Ed. 2d 39 (1968)).

⁵Article 1, Treaty with the Wea, 7 October 2, 1818, Stat. 186.

⁶*See* Treaty with the Delawares, Etc., June 7, 1803, 7 Stat. 74; Treaty with the Eel River, Etc., Aug. 7, 1803, 7 Stat. 77.

⁷*See* Treaty with the Delawares, Aug. 18, 1804, 7 Stat. 81; Treaty with the Piankeshaw, Aug. 27, 1804, 7 Stat. 83.

⁸Treaty of Grouseland, Aug. 21, 1805, 7 Stat. 91. Appendix 2.

undivided interest in the whole,⁹ such that the United States could “not purchase any part of the said country without the consent of each of the said [three] tribes.”¹⁰

Article IV’s recognition of lands vested in the Miami, Eel River, and Weas established treaty also known as recognized title to the lands on the Wabash and its waters above the Vincennes, including the area in Illinois that is the subject of the Bill¹¹ “Treaty” or “Recognized Title” exists where Congress has by treaty or statute conferred or acknowledged a tribal right to permanently occupy and use land. Indians then have a right or title to that land, which has been variously referred to in court decisions as “treaty title,” “reservation title,” “recognized title,” and “acknowledged title.”¹² Tribal rights under treaty title, including usufructuary rights, may only be abrogated or limited by clear Congressional expression,¹³ and neither title nor use rights may be abrogated or extinguished by implication.¹⁴ Following the Grouselnd Treaty, the United States was thereafter required to secure lands reserved by Article IV by Treaty containing a clear expression, and to provide compensation to the Tribe as required by the Fifth Amendment of the United States Constitution if that title was subsequently taken.¹⁵ The Tribe’s treaty recognized title is in contrast to “original Indian title,” which is based solely on aboriginal occupancy and use,¹⁶ and which can be taken by the United States without compensation because it—unlike treaty recognized title—does not constitute “property” within the meaning of the Fifth Amendment.¹⁷

Between 1805 and 1840, the Tribe’s lands came under ever increasing pressure from white settlers¹⁸ and the federal government, and the Tribe ultimately ceded most of its lands reserved under the Treaty of Grouselnd through a series of subsequent treaties. See Figure 1.¹⁹ However, as depicted in Figure 1,²⁰ the Tribe remained in possession of treaty title to a significant remaining tract of the Article IV. The United States never sought to acquire, and the Tribe never sold the remaining Article IV Reserved Land. Several reasons likely explain this, most notably that, during this period, the remaining lands were wet and not suitable for the farmers who were encouraged to enter and cultivate the land. Ironically, the lack of value attributed to the land by non-Indians was precisely the value of the land to the Tribe, because it was rich with plants, medicine, fish, and furbearing animals.

Despite its lack of title, in 1821 the United States, through the Illinois Land Office, began selling parcels of land within the Tribe’s unceded territory to white settlers until settlers fully occupied the area with United States land patents in hand. The United States did not seek or obtain consent of the Miami before making these sales in violation of Article IV of the Treaty of Grouselnd, and the United States has never compensated the Tribe for the taking.

⁹*Id.* at art. IV.

¹⁰*Id.* (emphasis added).

¹¹*United States v. Kickapoo Tribe of Kansas*, 174 Ct. CL 550, 554 (Ct. CL 1966) (holding that Article IV of the Treaty of Grouselnd “plainly recognizes title to and ownership of the designated lands”).

¹²*US. v. Kiowa, Comanche, and Apache Tribes of Indians*, 479 F.2d 1369, 1374 (Ct. CL 1973).

¹³*Minnesota v. Mille Lacs Band of Chippewa*, 526 U.S. 172, 202–203 (1999).

¹⁴*United States v. Santa Fe Pacific Railroad*, 314 U.S. 339,358 (1941).

¹⁵*United States v. Sioux Nation*, 448 U.S. 371, 408 (1980) (explaining that Congressional power over tribal lands “does not extend so far as to enable the Government to give the tribal lands to others, or to appropriate them to its own purposes, without rendering, or assuming an obligation to render, just compensation”) (internal quotation marks omitted); *Tee Hit-Ton v. United States*, 348 U.S. 272, 277–78 (1955) (explaining that although Congress has no constitutional obligation to compensate tribes for the taking of land held under original Indian title, “[w]here the Congress by treaty or other agreement has declared that thereafter Indians were to hold the lands permanently, compensation must be paid for subsequent taking”).

¹⁶*Tee Hit-Ton*, 348 U.S. at 279.

¹⁷*Id.* at 285 (stating that “the taking by the United States of unrecognized Indian title is not compensable under the Fifth Amendment”).

¹⁸The transformation in the non-Indian population between 1790 and 1840 in this region was stunning. In 1790 the population of the United States was 3,929,000 and in 1800 it was 5,297,000. The earliest population figures for the Northwest Territory were compiled in 1800, reflecting 45,365 residents of Indiana, 5,641 in Indiana, and no reported population in Illinois, it being considered fully Indian country. *Pottawatomie et al v. United States*, Consolidated Dockets, 43 Ind. Cl. Comm. 687, 724 (1978). By 1840 the numbers were 686,866 in Indiana, 1, 519,467 in Ohio, and 476,183 in Illinois. Returns of the 6th Census, United States Census Bureau (1841).

¹⁹Treaty of September 30, 1809, 7 Stat. 13; Treaty of September 30, 1809, 7 Stat. 115; Treaty of October 6, 1818, 7 Stat. 189; Treaty of October 23, 1826, 7 Stat. 300; Treaty of February 11, 1828, 7 Stat. 309; October 23, 1834, 7 Stat. 458,463; Treaty of November 6, 1838, 7 Stat. 569; Treaty of November 28, 1840, 7 Stat. 582. Many of these were signed under coercion, and the last was signed in 1840 shortly before the Tribe was forcibly removed by the United States to Kansas in 1846.

²⁰Additional depictions of the Article IV Reserved Land are found at Appendix 3.

Because it had not acquired title from the Tribe, the United States did not transfer good title to the land it sold, and its actions give rise for a claim for a treaty taking from the Tribe, which has created a cloud on title to the Reserved Lands, affecting some 2.6 million acres of east central Illinois. Through no fault of their own, and despite having worked the land for generations, the landowners in the Reserved Land have a cloud on their title.

Pressure on the Tribe's people and lands accelerated in the following decades and, following the Treaty of 1840,²¹ and after resisting removal for nearly 6 years, the Tribe was forcibly removed from its homeland in 1846 to a reservation in Kansas, by river boat, rail, and by foot. Just 20 years later, the Tribe was again forcibly removed from Kansas to the Indian Territory, following the Treaty of 1867—where it purchased an undivided one-half interest in a reservation set aside for the shared use of the Miami and the Confederated Peoria Tribes. See Figure 2 .

Against all odds, despite two brutal removals in a 20-year span, and the application of federal laws and policies intended to bring an end to the Tribe, the Miami Tribe has survived and flourished.

The Need for Legislation

In 2000 the Tribe initiated a claim to title,²² making a matter of public record the cloud that the Treaty itself created on title to the Reserved Land. That litigation remains unresolved. In 2001, the Illinois delegation introduced H.R. 791 (JohnsonIL) (Appendix 4) and S. 533 (Durbin-IL) (Appendix 5) that proposed a different approach. The bills garnered strong bipartisan support from members of the Committee on Resources. Specifically, Congressman Phelps stated:

I am in support of Congressman Johnson's legislation, H.R. 791, and I commend him for his leadership on this issue, which will place this issue's accountability where it belongs, with the Federal Government. This is not a question of who is right and who is wrong, the Miami Tribe or the landowners. This is a question of who is going to take responsibility.²³

Many others echoed Congressman Phelps' support, acknowledging that the Tribe should be given the opportunity to right serious historic wrongs, the responsibility for which, if proven, would fall on the United States and not the landowners of Illinois. For example, Congressman Timothy Johnson, the sponsor of H.R. 791, clarified that the legislation "enjoyed widespread support" and expressed that, while H.R. 791 did not render a judgment on the merits of the Tribe's claim, "there is no question there have certainly been examples throughout history of wrongs committed on Native Americans."²⁴ Similarly, Speaker Dennis Hastert referred to H.R. 791 as "commonsense legislation" and stressed that judgement on the merits of the Tribe's claim based on the Treaty of Grouseland "can and should be made by experts."²⁵ Likewise, Congressman John Shimkus, whose district later came to include the Reserved Lands, described H.R. 791 as "straightforward and fair to both sides."²⁶

While that legislation did not become law, failing because of the sheer breadth of what it proposed, the Tribe found the approach of the legislation to be reasonable and sensible and it began work toward fashioning legislation limited just to Miami's rights that (1) would not repeat the kind of dispossession on the farmers of Illinois that the Tribe endured throughout the 19th Century; and (2) would direct its request for redress to the party responsible for the wrongful conveyance of its Treaty protected land—the United States. Using H.R. 791 and S. 533 as its template, the Tribe introduced H.R. 183, 396 and 6063 in the 115th, 116th, and 117th Congresses, respectively.

The Tribe then spent time in the affected district and in Springfield to discuss the proposal to determine whether those affected by the dispute would support the resolution. And with that support, presented the legislation to the Illinois delegation and it was ultimately introduced by then Congressman Markwayne Mullin as H.R. 183. The Bill ultimately became H.R. 396 (Mullin—OK), and H.R. 6063 (McCollum—MN), each iteration enjoyed broad bipartisan support, and H.R. 396 and H.R.

²¹Treaty with the Miami, Nov. 28, 1840 (7 Stat. 582).

²²*Miami Tribe of Oklahoma v. Walden, et al.*, Case No. 4:00-cv-041420—JPG (S.D. Ill.) (filed on June 2, 2000).

²³*Legislative Hearing on HR. 521 and HR. 791 Before the Committee on Resources, U.S. House of Representatives*, 107th Cong. 7 (2002), available at: <https://www.govinfo.gov/content/pkg/CHRG-107hrg79494/pdf/CHRG107hrg79494.pdf> (prepared statement of Congressman David Phelps) (emphasis added).

²⁴*Id.* at 3 (testimony of Congressman Timothy V. Johnson).

²⁵*Id.* at 79 (prepared statement of Congressman J. Dennis Hastert, Speaker of the U.S. House of Representatives).

²⁶*Id.* at 5 (prepared statement of Congressman John Shimkus).

6063 were heard by the House Indigenous Peoples' Subcommittee but were not passed because of circumstances beyond the Tribe's control, including a government shutdown, COVID-19 shutdown, and other unprecedented events. It is now time for this broadly supported, common sense Bill to become law.

S. 2796 extinguishes the cloud on title created by the Tribe's land claim in exchange for a one-year window for the Tribe to bring its claim for a treaty taking before the CFC. Extinguishment of the claim and the cloud on title does not depend on the Tribe's success in that litigation. The claim is extinguished, and title cleared regardless of the result of CFC litigation.

The Tribe has worked closely and diligently with the Congressional Leadership from Illinois, with local leaders from Illinois, especially those in the affected treaty area, and with the Illinois Farm Bureau²⁷ to develop a Bill that will resolve, once and for all, this claim and its effect on title.

S. 2796 is uncommon Among Jurisdictional Bills Because of its Mutuality

While Congress has passed numerous jurisdictional bills over the prior decades²⁸ the Bill is unique because of its mutuality, which provides Congressional relief to the current and historic landowners at the same time.

S. 2796 Does not Seek and Appropriation and its CBO Score is "0"

Finally, it is important to note that S. 2796 is not a land claim settlement bill, and it does not authorize any payment to the Tribe. All it does is allow the Tribe the opportunity to present its case—it gives the Tribe access to its day in court. The claim must be filed exclusively against the United States and only for money damages. The authority of the CFC to award monetary awards granted by the United States Court of Claims exists in 31 U.S.C § 1304 (a)(3).

The Tribe is responsible for proving its case. If it fails in this effort, the statutory extinguishment of the cloud on title remains effective. If the Tribe succeeds in its case, and damages are awarded by the Court, liability for the claim is limited to the United States and Federal law provides that a final judgment rendered by the United States Court of Federal Claims against the United States is paid out of "the Judgment Fund."²⁹ The Judgment Fund is a permanent, unlimited appropriation which is available to pay judicial and administratively ordered monetary awards against the United States.³⁰ In fact, the Judgment Fund was specifically created by Congress in 1956 to alleviate the need for individual congressional appropriations for each claim against the United States.³¹

The Judgment Fund may only be accessed if certain statutory conditions are met.³² The Treasury Department's Bureau of Fiscal Services certifies payment from the Judgment Fund if the award or settlement is final, it is monetary, the requirements of 31 U.S.C § 1304(a)(3) are met, and payment may not be made from another source of funds. The Judgment Fund "requires no further Congressional action and does not expire at the close of any fiscal year."³³ Since 1956, most judgments have been paid from the Judgment Fund.³⁴

So, if the Tribe is successful and gets a judgement, Congress does not have to appropriate new money to pay it,³⁵ and the CBO score for this Bill is therefore "0," and the payment of any award would obviously not be an "earmark."

Conclusion

S. 2796 is simple and fair. It addresses both the current and historic landowners' needs. The current landowners' title is cleared, and the people of the Miami Tribe get their day in court.

Mihsi neewe. Thank you, Mr. Chairman, and to the Committee members for their time and the opportunity to testify in support of the Bill and a special thank you to Congressman Mullin for his leadership and assistance on this Bill.

²⁷ Appendix 1.

²⁸ A summary of jurisdictional legislation over the past 50 years is attached at Appendix 6.

²⁹ 31 U.S.C. § 1304(a) provides in relevant part: "Necessary amounts are appropriated to pay final judgments, awards, compromise settlements, and interests and costs specified in the judgment or otherwise authorized by law when (1) payment is not otherwise provided for; (2) payment is certified by the Secretary of the Treasury; and (3) the judgment, award or settlement is payable under section 2414, 2517, 2672, or 2677 of Title 28."

³⁰ 31 C.F.R Part 256.1. See also *The Judgment Fund: History, Administration and Common Usage*, Congressional Research Service, March 7, 2013, available at: <https://fas.org/sgp/crs/misc/R42835.pdf>

³¹ *Id.* at 2.

³² 31 C.F.R. 256.1.

³³ *Id.* at 5.

³⁴ *Principles of General Appropriations Law*, 3d. Edition, Volume II, pp. 14–31.

³⁵ *Principles of General Appropriations Law*, 3d. Edition, Volume II, pp. 14–29.

I am happy to answer any questions that the Committee may have.

Attachments*

It is also important for the Committee to note that S. 2796 does not set new precedent or plow new ground. Rather, it is based on the language of past Acts of Congress that provided precisely the relief proposed in S. 2796. Yes, the Congress has done this before. Four statutes passed by Congress after the ICC's jurisdiction closed, provide access for Tribes to assert treaty takings claims to the Court of Federal Claims. Pub Law 97-385, 96 Stat. 1944 (Cherokee Nation), Pub L. 96-405, 94 Stat. 1713 (Blackfeet and Gros Ventre Tribes); Pub. L 96-404, 94 Stat. 1711 (Three Affiliated Tribes); and Pub L 96-251, 94 Stat. 372 (Cow Creek Band) (Attached as Appendices 1, 2, 3, and 4 respectively). Like S. 2796, these laws authorize the Court of Federal Claims to "hear, determine, and render judgment on" the Tribes' claims filed within a fixed window of time from the date of the Act. Like S 2796, the Blackfeet, Cherokee, and Three Affiliated Tribes had a window of one year from the date of the Act. Cow Creek was given a five-year window. And like S. 2796, the Acts provide access notwithstanding the ICC jurisdictional statute of limitations or other defenses based on "lapse of time, "statutes of limitations, or defense of res judicata or collateral estoppel, or any other provision of law."

In fact, the jurisdictional language found in the 2001 legislation (HR. 791 and S. 533) mirrored the language of these Acts. S 2796 was, in turn, based on the 2001 legislation and these Acts. So, the goal and precise language of S. 2796 is based on language that Congress shaped and passed several times. The only difference between S. 2796 and the earlier Acts is that those Acts did not provide the mutual benefit that S 2796 does. Those Acts granted access to the CFC without any waiver of land claim or resolution of clouded title. Here, the Tribe agrees to the statutory extinguishment of its land claim in exchange and that clears title to land in Illinois.

JOINT STATEMENT OF THE MIAMI TRIBE OF OKLAHOMA AND ILLINOIS FARM BUREAU
ON H.R. 5831 AND S. 2796—OCTOBER 4, 2023

Illinois Farm Bureau members and landowners in eastern Illinois may remember efforts about two decades ago by the Miami Tribe to lay claim to hundreds of thousands of acres of Illinois farmland under the 1805 Treaty of Grouseland. In recent years, the Miami's representatives approached Illinois Farm Bureau to write federal legislation that would resolve the tribe's two century-old claim in a way that forever holds private landowners harmless.

Under H.R. 5831, sponsored by Oklahoma Republican Tom Cole, and S. 2796, sponsored by Oklahoma Republican Markwayne Mullin, Congress would remove any cloud on title resulting from the Miami Tribe of Oklahoma's claim to 2.6 million acres of eastern Illinois farmland. Under the bill's provisions, the Tribe waives all claims to the land under any possible legal theory against Illinois landowners but may argue its claim against the United States before the United States Court of Federal Claims. If the Tribe prevailed in its claim against the federal government, the Court of Claims could provide only monetary damages.

"We are pleased to work with the Miami on this legislation. While IFB takes no position on the Tribe's monetary claims, we support passage of H.R. 5831 and S. 2796," said Illinois Farm Bureau President Richard Guebert, Jr.

"The Tribe is focused on a solution to the Grouseland Treaty claim that is fair to Illinois farmers. The IFB has been exceptional to work with toward this end," said Miami of Oklahoma Chief Doug Lankford.

The CHAIRMAN. Thank you very much, Chief.

By the way, for any member, any staff, any testifier, I take pronunciation very seriously, because I come from Hawaii, and also because my last name is Schatz. So we try very hard to get it right. So please help us with phonetics and whispering in my ear. I do consider it a serious sign of respect when you get it right. Accidental in this case, disrespect when you get it wrong.

Senator MULLIN. Did you just say Schatz?

The CHAIRMAN. Yes, Schatz, Schartz, whatever you want.

Senator MULLIN. That is a lot easier. I can pronounce that.

[Laughter.]

*All other figures and Appendix documents have been retained in the Committee files.

The CHAIRMAN. Senator Fisher?

**STATEMENT OF HON. DEB FISCHER,
U.S. SENATOR FROM NEBRASKA**

Senator FISCHER. Thank you, Chairman Schatz. It is great to be back before this Committee again.

Today it is my honor to introduce the Chairwoman of the Winnebago Tribe of Nebraska, Victoria Kitcheyan, to testify in support of the Winnebago Land Transfer Act. I am grateful that the bill passed the House of Representatives just this week. I am hopeful that we can soon follow here in the Senate.

Chairwoman Kitcheyan has been serving in her current role for the Winnebago Tribe since 2020. But for years before her election as chairwoman, she dedicated herself to the welfare and prosperity of her tribe.

Chairwoman Kitcheyan was first elected to the Winnebago Tribal Council nearly a decade ago. She is the former chairwoman of the National Indian Health Board, and she has served on the Board's Medicare, Medicaid, and Health Reform Policy Committee. She has also served on the Secretary's Tribal Advisory Committee at the Department of Health and Human Services.

Chairwoman Kitcheyan has demonstrate unwavering devotion to her tribe and a comprehensive understanding of the issues they face. There is no more knowledgeable or committed individual who could testify here today.

My colleagues and I introduced the Winnebago Land Transfer Act last year to respond to the trials this tribe has faced over decades, trials imposed, sadly, by our own government. The Winnebago Tribe endured forced removal from their homeland in the mid-1800s. They settled in the Winnebago Indian Reservation in Nebraska in 1865.

The Government promised the Winnebago Tribe that land in my home State. They promised it forever. But in 1970, the U.S. Army Corps of Engineers condemned approximately 1,600 acres of the tribe's reservation land for a proposed recreation project, a project that was never started.

What ensued was over half a century of legal battles between the Winnebago Tribe and the U.S. Government, battles that never brought this matter to a just resolution. Our bill would restore the tribe's rightful land, transferring the outstanding tracts of land back from the Army Corps. The Corps no longer objects to returning the land, but this legislation is needed to actually get it transferred to the tribe.

I am optimistic that we can continue raising bipartisan, bicameral support for this bill, and that we can send it to the President's desk. Thank you, Madam Chairwoman, for being here today. It is an honor to have you. And thank you, Chairman Schatz.

The CHAIRMAN. Senator Smith and Chairman Larsen, with your indulgence, we are going to try to keep the member with the relevant testifier together, just so we are not confusing ourselves.

Chairwoman Kitcheyan, please proceed with your testimony.

**STATEMENT OF HON. VICTORIA KITCHEYAN, CHAIRWOMAN,
WINNEBAGO TRIBE OF NEBRASKA**

Ms. KITCHEYAN. Good morning, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. My name is Victoria Kitcheyan and I have the honor of serving as the chairwoman of the Winnebago Tribe of Nebraska. Thank you for holding this hearing on S. 3230, the Winnebago Land Transfer Act.

I would like to begin by expressing my heartfelt gratitude toward Senators Fischer, Ricketts, Grassley, and Ernst for their leadership in championing this bill. Senator Fischer, it has been my honor to work with you, and the kind introduction was so nice. The sheer determination that you have shown in helping us get this legislation passed, and the elders at home told us of a lady out east that was going to help us. The leadership that you have demonstrated, our delegation believes that you are that lady. So thank you for being an answer to pray for the Winnebago people.

Honorable members of the Committee, you have my written testimony. I want to use this time to tell you about the historic and meaningful week our delegation has had. On Monday, the Winnebago delegation was in the gallery when the House passed our bill by a voice vote. It was an emotional experience to hear the tribe's name in the introduction of that bill. And it was a milestone and an historic moment in the tribe's work.

On Tuesday, we were able to visit the archives and look at our 11 treaties, among them the 1865 Treaty that established our reservation and that that would be our home forever. Getting to have this humbling experience, to see the markings of the warriors, Chief Little Priest, Chief Whirling Thunder, and the bravery and the respect and the diplomacy that they exhibited in establishing the government-to-government relationship.

It was that bravery and that respect that carries over to our tribal council, and our responsibility to uphold those treaties. That exercise was significant in creating that space for change. The ancestors were with us.

That afternoon, we went to the Smithsonian's Cultural Resource Center, and were able to view our relatives' items that they left behind. It was by no coincidence that our delegations represented families in the clans that were there that day. Being in the presence and getting to look at the beauty and take in the spirit of those items was powerful.

It was the designs and the materials used in those materials that are still in our families and our community today and are celebrated as a remembrance of who we are. It was this intrinsic tie to the land in our everyday life and our culture, and it also demonstrates the depth of our relationship with Man'una's creation. The ancestors are with us.

Yesterday, we had an amazing visit with Senator Fischer and many other of the Committee staff. We were able to discuss this bill and talk about how important this was to the tribe. And here we are today amongst this distinguished body and recognizing the work that has been brought before you and what strong advocates you are for Indian Country.

I share these moments because I want you to know how meaningful this has been to us and the significance of returning this

land. Our Winnebago delegation is here, carrying the work forward of others, most notably the late Louis LaRose [phrase in Native tongue], who was the chairman in the 1970s. He served over a span of 50 years. He was the chairman when this land was taken. It was my honor to get to sit at the table with him. Sadly, he passed the day after the Senate introduced our bill.

So we are here to continue Louis' work. We are here to finish this on behalf of the people. Once this land is restored, we plan to keep this land in conservation. Our wildlife and parks department has the capacity and resources to manage this land for recreation and conservation activities. The tribe has no intention of making any changes to those conservation efforts by the Army Corps or the Iowa DNR.

In conclusion, I want to share some teachings of the Winnebago people. The elders tell us it is really simple. They say, love one another, take care of one another, be good to one another. So I want to ask this Committee to be good to the Winnebago people. Our people say, [phrase in Native tongue], stand arm in arm. I say [phrase in Native tongue] to this Committee and ask you to stand arm in arm with the Winnebago people and pass S. 3230.

[Phrase in Native tongue.]

[The prepared statement of Ms. Kitcheyan follows:]

PREPARED STATEMENT OF HON. VICTORIA KITCHEYAN, CHAIRWOMAN, WINNEBAGO
TRIBE OF NEBRASKA

Introduction

Good morning Chairman Schatz, Vice Chairman Murkowski, and Members of the Senate Committee on Indian Affairs. My name is Victoria Kitcheyan, and I have the honor of serving as the Chairwoman of the Winnebago Tribe of Nebraska ("Tribe" or "Winnebago"). Thank you for holding this hearing on S. 3230, the Winnebago Land Transfer Act, which would restore a portion of our homelands that were illegally taken from the Tribe decades ago.

I. Background on the Winnebago Tribe

In the mid-1800s, the Winnebago people were forcibly removed by the United States Army from Wisconsin to Minnesota, Iowa, South Dakota, and finally in 1865 to the Winnebago Indian Reservation in Nebraska and Iowa. Our treaty promised that land was "set apart for the occupation and future home of the Winnebago Indians, forever.." Today, the Winnebago people make our home on a reservation along the hills and banks of the Missouri River in Northeastern Nebraska and North-western Iowa.

II. Need for Legislation

Over 150 years after my ancestors made their marks on our 1865 Treaty, I am here fighting to ensure that the federal government lives up to the obligations it made in that agreement. I am carrying forward the work of Winnebago leaders that came before me, including the late Louis LaRose, who served on the Winnebago Tribal Council intermittently for the past 50 years.

Louis was elected to the Tribal Council at the age of 26, then became chairman at just 28 years old. It was during his time as chairman in the early 1970s when the U.S. Army Corps of Engineers ("Army Corps") improperly and illegally condemned approximately 1,600 acres of our reservation in Iowa and Nebraska for a proposed recreation project, a project that never came to fruition.

The Army Corps filed two condemnation proceedings against the Tribe, one in Iowa and one in Nebraska. As trustee, the U.S. should have defended the Tribe as part of its trust responsibility for our land. However, because the Army Corps itself is a federal entity, the U.S. could not defend the Tribe's interests. Therefore, the Tribe had to defend its own interests in multiple lawsuits, in multiple states, in multiple courts, and on extremely short notice with limited resources. Louie would share a story about the Tribe having only one day to get a lawyer to defend our lands.

The Tribe initially lost in both the U.S. District Court of Nebraska and U.S. District Court for the Northern District of Iowa, Western Division. However, when the Tribe appealed to the federal Court of Appeals, we prevailed in our lawsuit in Nebraska. The Appeals Court found that the Army Corps did not have Congressional authorization to condemn our reservation lands.

We also appealed the Iowa case to the federal Court of Appeals. After years of litigation and appeals, the Eighth Circuit Court of Appeals found that the condemnation was illegal, but the Court did not have the authority to order the Army Corps to return the land to the Tribe because of *res judicata*, the matter was already decided.

The Tribe has exhausted its remedies in the court system, and we've been unable to obtain redress from the Army Corps, nor the Department of the Interior. So, the Winnebago Tribe is here today to urge Congress to return those lands to the Tribe by enacting the Winnebago Land Transfer Act.

III. BILL OVERVIEW

The Winnebago Land Transfer Act is a testament to the Winnebago peoples' persistence, determination, and commitment to being a good neighbor. Our approach led to the introduction of bicameral, bipartisan legislation that is supported by our entire Congressional delegation, the Department of the Interior, as well as many stakeholders.

The bill would transfer approximately 1,600 acres of the Tribe's former reservation lands from the Army Corps back to the Department of the Interior to be held in trust for the Tribe. The land being returned to the Tribe is mostly woodland and marsh along the Iowa side of the Missouri River that is primarily used for recreational hunting and fishing. For the Winnebago people, we also have a strong cultural connection to this land as it contains many of our traditional medicines.

The lands that are the subject of the bill are currently maintained by the Iowa Department of Natural Resources (DNR) who supports this legislation. In fact, the latest renewal agreement of the license between the Iowa DNR and the Army Corps includes a provision that anticipates the return of the land to the Winnebago Tribe.

Once restored to the Tribe, the Winnebago Wildlife and Parks Department ("Department") would be responsible for managing this land. Our Department has the experience and resources to regulate recreational and conservation activities and ensure laws and regulations are enforced, as well as a strong commitment to improve the overall management of these lands. It currently oversees hunting and fishing on 10,000 acres of woodland on the Nebraska side of the Missouri River, where hunters from all over the country come to hunt.

The Tribe has no intention of making any major changes to the conservation measures in place now by the Army Corps and the Iowa DNR. Further, those hunting and fishing on the land will only have to pay a fee to the Tribe, not both the Tribe and the Iowa DNR. Our Department's website will provide information on fees and regulations and offers an online process to obtain hunting and fishing licenses.

IV. Support for Legislation

The Winnebago people have waited for more than 50 years to have the lands that were wrongfully seized by the Army Corps returned to the Tribe. The Tribe is very thankful to have so many champions of that effort here in Congress. We greatly appreciate Senator Fischer, Senator Grassley, Senator Ricketts, and Senator Ernst introducing and championing the Winnebago Land Transfer Act in the Senate.

Earlier this week, the House of Representatives approved the Winnebago Land Transfer Act. This historic moment would not have been possible without the strong support of Representative Randy Feenstra, our congressman on the Iowa side of our reservation where these lands are located; Representative Sharice Davids, a member of our sister tribe, the Ho-Chunk Nation; Representative Mike Flood; Representative Zach Nunn; Representative Adrian Smith; Representative Mariannette Miller-Meeks; Representative Don Bacon; and Representative Ashley Hinson.

Conclusion

Our late Chairman Louis LaRose fought tirelessly to see these lands returned to the Winnebago people throughout his distinguished career, a career that included many significant achievements, initiatives, and movements on behalf of our people, and on behalf of Indian Country. Sadly, he passed away the day after the Winnebago Land Transfer Act was introduced in the Senate. Louis started the work which led to the development of the bill, and now the Tribal Council is determined to help send this legislation to the President's desk in his name and honor.

The Winnebago Tribe urges the Committee and full Senate to approve the Winnebago Land Transfer Act. Through the enactment of this legislation, the United States would correct an injustice and ensure that our Tribe's homelands are pro-

tected, respected, and preserved. Thank you again for the opportunity to testify on S. 3230, the Winnebago Land Transfer Act.

The CHAIRMAN. Thank you very much, Chairwoman.

Now the Honorable Robert Larsen, President of the Lower Sioux Indian Community in Minnesota.

STATEMENT OF HON. ROBERT L. LARSEN, PRESIDENT, LOWER SIOUX INDIAN COMMUNITY

Mr. LARSEN. [Greeting in Native tongue.] Hello, my relatives. [Phrase in Native tongue.] In English, Robert Larsen, or Deuce. [Phrase in Native tongue.] I introduce myself with my Dakota name and my English name. I am the President at Lower Sioux; I have that great honor to serve them.

And I just want to say thank you to Chair Schatz, Vice Chair Murkowski, and the Committee for the opportunity to present testimony in support of Senate Bill 2868, to Accept the Request to Revoke the Charter of the Incorporation of the Lower Sioux Indian Community in the State of Minnesota.

The charter was never requested by the community, and the community has never used it. It is a paternalistic document that limits the community's ability to manage its own economic affairs without Department of Interior approval. The charter is laced with restrictions from a long-ago era that do not work today, and it serves no function for the community.

The community voted to adopt and organize under its constitution and bylaws, and it has always operated its economic activities as a government, rather than a Federal corporation.

The community has full constitutional authority to manage the business affairs of the community and to adopt tribal law governing the organization and operation of corporate entities, and it has done so. It can further organize corporate entities under community law which would be better equipped to fulfill the goals of the community to keep up with the changes in the marketplace and at the pace of business.

Also, the community has passed its own limited liability company ordinance, which allows the community and individuals to organize as tribal companies and eliminates Federal involvement in corporate affairs.

Senate Bill 2868 is based on a well-worn path as many IRA organized tribes that were issued charters have abandoned them by the same legislative method, including the Minnesota Chippewa Tribe, the Perry Island Indian Community, Stockbridge Muncie Community of Mohican Indians, and the Miami Tribe of Oklahoma. The community believes that abandoning the Federal corporate charter is an effective and important statement that it is self-governing, sovereign, and is capable of operating economic activities of the community without the Department of Interior's assistance.

I appreciate your support for Senate Bill 2868, which revokes the community's charter. [Phrase in Native tongue], and thank you.

[The prepared statement of Mr. Larsen follows:]

PREPARED STATEMENT OF HON. ROBERT L. LARSEN, PRESIDENT, LOWER SIOUX
INDIAN COMMUNITY

Thank you, Chairman Schatz, Vice Chair Murkowski, members of the Committee—My name is Robert “Deuce” Larsen, and I have the privilege of serving as President of the Lower Sioux Indian Community in the State of Minnesota.

I want to thank the Committee for the opportunity to present testimony in support of Senate Bill 2868—to accept the request to revoke the charter of incorporation of the Lower Sioux Indian Community in the State of Minnesota.

The Lower Sioux Indian Community in the State of Minnesota (the Community) has requested assistance in revoking its antiquated federal Corporate Charter pursuant to the provisions of the Indian Reorganization Act of June 18, 1934 (IRA). These charters were issued over 80 years ago to tribes organized under the IRA. Nearly uniformly, tribes have not operated under these charters because they are cumbersome and ineffective for dealing with Tribal resources, and many tribes have seen their charters revoked by simple legislative action by Congress as required by the charters themselves.

One of the purported purposes of the IRA was to provide a means by which tribes could function in mainstream business. Section 17 of the IRA established federal corporate charters as a means for tribes to facilitate business transactions. A Section 17 corporation provides the framework by which a tribe can segregate tribal business assets and liabilities from the assets and liability of tribal governmental assets.

A vast majority of federal charters went unused or were quickly abandoned due to the charters’ restrictive requirements for Secretary of the Interior approval, unrealistic temporal and financial limitations, and failures to update the charters’ provisions. Instead, tribes often chose to operate their enterprises through their authority as sovereign government entities—rather than engage their federal corporate charters.

A number of tribes have requested and gained Congressional repeal of their individual federal corporate charters. By their own terms, most federal corporate charters restrict the revocation or surrender of the charter by requiring “an act of Congress.”¹

In 1996, Congress accepted the Minnesota Chippewa Tribe’s surrender of their “Corporate Charter of the Minnesota Chippewa of the Consolidated Chippewa Agency.”²

Later that same year, the Prairie Island Indian Community (“Prairie Island”) made a similar request of Congress.³ Considering a bill sponsored by Congressman Gil Gutknecht (R-MN), the House Committee on Resources (“Committee”) noted that Prairie Island considered the federal Corporate Charter to be “outdated, ineffective and cumbersome,” and the tribe did not engage the corporate authority, operating its businesses enterprises pursuant to its tribal constitutional authority instead.⁴ The Committee further noted that “revocation of charters of incorporation issued to tribes is a common practice by Congress.”⁵ The House passed the bill and, in the Senate, Senator John McCain (R-AZ) spoke in favor of revoking the Prairie Island Corporate Charter due to its ineffectiveness, pointing out that a number of the Prairie Island charter’s provisions were “particularly paternalistic and inappropriate for effective management of tribal resources.”⁶ On October 9, 1996, P.L. 104-261 officially revoked Prairie Island’s federal Corporate Charter.⁷

In 2000, the Stockbridge Munsee Community of Mohican Indians (“Stockbridge Munsee Community”) also pursued Congressional action in order to repeal the tribe’s federal Corporate Charter.⁸ The Stockbridge Munsee Community requested that Congress revoke its federal Corporate Charter because it was “outdated” and

¹1T3A See U.S. Dep’t of Interior, Corporate Charter of the Lower Sioux Indian Community in Minnesota (July 17, 1937) at § 10; Dep’t of Interior, Corporate Charter of the Minnesota Chippewa Tribe of the Consolidated Chippewa Agency (Nov. 13, 1937) at § 10; U.S. Dep’t of Interior, Corporate Charter of the Stockbridge Munsee Community of Wisconsin (May 21, 1938) at § 10, U.S. Dep’t of Interior, Corporate Charter of the Miami Tribe of Oklahoma (June 1, 1940) at § 8.

²Technical Corrections to Laws Relating to Native Americans, Pub. L. No. 104-109, 110 Stat. 763 (1996).

³See H.R. REP. No. 104-584 (1996).

⁴142 CONG. REC. H5388-04 (May 22, 1996).

⁵*Id.* (referring to Public Law 104-109, wherein Congress approved the Minnesota Chippewa Tribe’s request for revocation).

⁶142 CONG. REC. S11-53-01 (Sept. 19, 1996).

⁷Pub. L. No. 104-261, 110 Stat. 3176 (1996).

⁸See U.S. Dep’t of Interior, Corporate Charter of the Stockbridge Munsee Community of Wisconsin (May 21, 1938).

“never used.”⁹ In the House, Mr. James Hanson (R-Utah) pointed to the charter’s “unrealistic” limitations on the tribe’s corporate powers and urged that the Corporate Charter be revoked in order to facilitate the tribe’s economic development. On June 20, 2000, Congress passed P.L. 106–216, accepting the Stockbridge Munsee Community’s surrender of its charter of incorporation.¹⁰

In 2014, the Miami Tribe of Oklahoma requested Congressional revocation of their Corporate Charter.¹¹ The Miami Tribe noted that their charter was “archaic,” “unnecessary,” and “a relic of a bygone, more paternalistic time in federal Indian policy.”¹² Representative Markwayne Mullin (R-OK), speaking in support of the Tribe’s request at the House of Representatives, noted that the Miami Tribe created “not just jobs at a casino, but manufacturing jobs, jobs that help our national defense. Yet they are hindered constantly by the effect that they can’t simply do the work without asking Congress’ permission”¹³ Congress passed P.L. 114–28 on July 6, 2015, accepting surrender of and revoking the Miami Tribe’s charter.¹⁴

The Community’s Corporate Charter is comparable to the charters issued to the Minnesota Chippewa Tribe, Prairie Island Indian Community, the Stockbridge Munsee Community, and the Miami Tribe of Oklahoma. The charter’s language provides similar corporate powers to the Community. For example, the Community’s charter provides that the corporation may borrow money, but not in excess of \$1000 without express approval by the Secretary of the Interior.¹⁵ The Community’s charter limits the corporate entity to the assignment of future corporate income to a period of three years, limits lease terms to 10 years, and prohibits any sale of land held by the corporation. Also, the corporation’s powers are heavily limited by Secretarial approval requirements.

The Community has full constitutional authority to manage the business affairs of the Community and to adopt tribal law governing the organization and operation of corporate entities, and it has done so. It can further organize corporate entities under Community law, which would be better equipped to fulfill the goals of the Community and to keep up with changes in the marketplace and at the pace of business.

It is for these reasons that I ask for support of Senate Bill 2868. Pidamaya-do.

The CHAIRMAN. Thank you very much. Now we will introduce our final testifier, Ms. Angie Wilson, the Executive Director of the Reno Sparks Indian Colony Tribal Health Center. Please proceed with your testimony online.

STATEMENT OF ANGIE WILSON, EXECUTIVE DIRECTOR, RENO SPARKS INDIAN COLONY TRIBAL HEALTH CENTER

Ms. WILSON. [Greeting in Native tongue]. Greetings and good morning to everyone.

Before I begin, I would like to acknowledge all of the tribal leaders in the room and their powerful testimony on behalf of your tribal communities. It is beautiful to hear.

Chairman Schatz, Vice Chair Murkowski and members of the Senate Committee on Indian Affairs, I want to thank you for inviting me to speak with you all today. My name is Angie Wilson, and I serve as the Executive Director for the Reno Sparks Tribal Health Center for the Reno Sparks Indian Colony here in northern Nevada. I am a citizen of the Pit River Tribe of Northern California and a Klamath/Modoc descendant of the Klamath Tribe of Southern Oregon. It is an honor to be here today.

⁹ 145 CONG. REC. H12131-01 (Nov. 17, 1999).

¹⁰ Pub. L. No. 106-216, 114 Stat. 343 (2000).

¹¹ See U.S. Dep’t of Interior, Corporate Charter of the Miami Tribe of Oklahoma (June 1, 1940).

¹² Testimony of Douglas G. Lankford before the House Natural Resources Committee Subcommittee on Indian and Alaska Native Affairs (March 27, 2014).

¹³ 161 CONG. REC. H3588 (June 1, 2015).

¹⁴ Pub. L. No. 114-28, 129 Stat. 420 (2015).

¹⁵ *Id.* at § 5(d). Comparatively, the Minnesota Chippewa Tribe and Stockbridge Munsee charters each authorized independent borrowing up to \$5,000, and the Prairie Island charter authorized up to \$1000. The Miami Tribe of Oklahoma’s Charter authorized borrowing up to \$150.

First, I would like to express my sincere gratitude for the opportunity to testify before the Senate Committee on Indian Affairs in support of the bipartisan bill to expand the Indian Health Service Loan Repayment Program to part-time healthcare professionals. I would like to thank our United States Senator, Catherine Cortez Masto, and United States Senator Markwayne Mullin from Oklahoma on their collaboration to propose this bipartisan bill. Sepk'eec'a, thank you for your dedication to this effort.

It should be no surprise to any one of us here today, in our respective positions as United States Senators, health policy experts, or tribal health advocates, that health care for our Indian people lags that of other Americans, despite the legal obligation of the United States to provide health care to American Indians and Alaska Natives as a trust responsibility. As evidenced in well documented health disparities, the health outcomes for our Indian people should be the report card for how well the trust responsibility is being upheld.

In addition to decades-long underfunding, there are additional barriers that further compound inadequate access to care for our Indian people. One key factor in many of our Indian health and tribal and urban Indian programs is the shortage of health care personnel.

This is especially true for our rural and frontier based reservations. As detailed in the effort on this bipartisan bill, the Indian Health Service holds a provider vacancy at over 25 percent. While that number may seem staggering to some, the reality is that the vacancy rates are much higher in our tribal clinics and especially severe in our rural and frontier based tribal communities.

I work closely with our Nevada Tribal Health Directors. Here we have 17 counties, 3 being rural and 11 of those are frontier, with a vacancy rate as high as 50 percent in some of our tribal clinics.

The impacts of such vacancies results in our most vulnerable clinics utilizing locum tenens at such a high cost, it almost feels impossible for us to get ahead of this situation. In addition, the ability of our tribes to engage with the Indian Health Services to buy back a provider is left unresolved as the vacancy rates with the IHS leave little to no fruitful opportunity to fulfill the staffing needs at the local tribal level.

Our Indian people continue to die at higher rates than other Americans in many categories of preventable illness, including chronic liver disease and cirrhosis, diabetes and chronic lower respiratory diseases. This month, my extended family has lost the sixth person to cirrhosis, all of which were under 34 years old, while an additional young family member is struggling to endure dialysis while waiting for a kidney transplant.

It is important that we look at this issue through the eyes of our patients, including but not limited to our members with chronic health conditions, elders with geriatric health care needs, and the overwhelming need for behavioral health services within our tribal communities. Having a regular and reliable relationship with a health care provider is strongly associated with more use of preventive care, greater satisfaction with care, lower health care costs and better health outcomes. This is especially true for our elder populations and reduced risk of preventable hospitalizations.

The Reno Sparks Tribal Health Center currently employs recipients of the IHS Loan Repayment Program. This bill would help to support our efforts to extend loan repayment options to part-time employees, allowing improved opportunities for staffing to better meet the needs in our tribal health care delivery systems.

Currently, this allowance would improve our opportunities to offer part-time employment for expanded access to health care providers such as psychiatric nurse practitioners and practitioners in women's health, pediatrics, psychologists and physical therapists. This allows our clinics to better utilize our space to schedule various providers throughout the week while also extending services through our mobile medical, dental, and behavioral health units to the extended tribal community.

On behalf of the Reno Sparks Indian Colony and our Tribal Health Center, we are in full support of this important bill, and further advocate that loan repayment funds should be exempt from Federal income and employment taxes, in alignment with loan repayment programs of the National Health Services Corps.

In closing, I just want to express my gratitude to the entire Senate Committee for your continued work in Indian Country and urge you, the importance of upholding the Federal trust responsibility to our Indian people, because their lives depend on it. [Phrase in Native tongue.] Thank you for having me.

[The prepared statement of Ms. Wilson follows:]

PREPARED STATEMENT OF ANGIE WILSON, EXECUTIVE DIRECTOR, RENO SPARKS
INDIAN COLONY TRIBAL HEALTH CENTER

Chairman Schatz, Vice Chair Murkowski, and Members of the Senate Committee on Indian Affairs, thank you for inviting me to speak with you all today. My name is Angie Wilson and I serve as the Executive Director of the Reno Sparks Tribal Health Center for the Reno Sparks Indian Colony. I am a citizen of the Pit River Tribe of Northern California and a Klamath/Modoc descendant of the Klamath Tribes of Southern Oregon.

First, I would like to express my sincere gratitude for the opportunity to testify before the Senate Committee on Indian Affairs in support of the bipartisan bill to expand the Indian Health Service Loan Repayment Program to part-time healthcare professionals. I am proud of the work of our U.S. Senator Catherine Cortez-Masto (NV) and her ongoing dedication to assisting our tribes with key initiatives. In addition, to U.S. Senator Markwayne Mullins (OK) and fellow tribal member of the Cherokee Nation. The collaboration to propose this bipartisan bill is an outstanding example of leadership in action. Sepk'eec'a (thank you) for your dedication to this effort.

It should be no surprise to any one of us here today, in our respective positions as United States Senators, Health Policy Experts, or Tribal Health Advocates, that health care for our Indian people lags that of other Americans, despite the legal obligation of the United States to provide health care to American Indians and Alaskan Natives as a trust responsibility. As evidenced in well documented health disparities, the health outcomes for our Indian people should be the report card for how well the Trust Responsibility is being upheld.

In addition to decades-long underfunding, there are additional barriers that further compound inadequate access to care for our Indian people. One key factor in many of our Indian Health and Tribal Health Clinics, is the shortage of healthcare personnel. This is especially true for our rural and frontier based Tribal reservations. As detailed in the effort on this bipartisan bill, the IHS holds a provider vacancy rate at over 25 percent. While that number may seem staggering, the reality is that the vacancy rates are much higher in our tribal clinics and especially severe in our rural and frontier based tribal communities. I work closely with our Nevada Tribal Health Directors, with 17 counties in our state, 3 being rural and 11 frontier, the vacancy rate is as high as 50 percent in some tribal clinics.

The impact of such vacancies result in our most vulnerable tribal clinics utilizing locum tenens at such a high cost, it feels impossible for tribal clinics to get ahead

of this situation. In addition, the ability of our tribes to engage with the Indian Health Services to buy back a provider is left unresolved as the vacancy rates with the IHS, leave little to no fruitful opportunity to fulfill the staffing needs at the local tribal level.

Our Indian people continue to die at higher rates than other Americans in many categories of preventable illness, including chronic liver disease and cirrhosis, diabetes and chronic lower respiratory diseases. This month, my extended family has lost the sixth person to cirrhosis, all of which were under 34 years old, while an additional young family member is struggling to endure dialysis while waiting for a kidney transplant. It is imperative that we look at this issue through the eyes of our patients including, but not limited to, our members with chronic health conditions, elders with geriatric healthcare needs, and the overwhelming need for behavioral health services within our tribal communities. Having a regular and reliable relationship with a healthcare provider is strongly associated with more use of preventive care, greater satisfaction with care, lower healthcare costs and better health outcomes. This is especially true for our elder populations and reduced risk of preventable hospitalizations.

The Reno Sparks Tribal Health Center currently employs recipients of the IHS Loan Repayment Program. This bill would support our efforts to extend loan repayment options to part-time employees, allowing improved opportunities for staffing to better meet the needs in our tribal healthcare delivery systems. Currently, this allowance would improve our opportunities to offer part-time employment for expanded access to healthcare providers such as Psychiatric Nurse Practitioners, and practitioners in Women's Health, Pediatrics, Psychologists and Physical Therapist etc. . . This allows our clinics to better utilize limited space to schedule various providers throughout the week while also extending services through our mobile medical, dental and behavioral health units to the extended tribal community.

As such, on behalf of the Reno Sparks Indian Colony Tribal Health Center, we are in full support of this important bill and further advocate loan repayment funds to be exempt from federal income and employment taxes, in alignment with the loan repayment programs of the National Health Services Corps.

The CHAIRMAN. Thank you very much.

Senator Cortez Masto?

Senator CORTEZ MASTO. Thank you. I want to thank the Chairman and Ranking Member for holding this hearing on several important pieces of legislation that have a positive impact on Indian Country.

I also thank them for pulling up the IHS Workforce Parity Act. It is a piece of legislation that Senator Mullin and I have worked on together, after talking with our tribes, and understanding that too many tribal members can't access the health care they need because of a dire doctor shortage in Indian Country. So we need to make it easier, as we have heard today from our incredible panelists.

That is why this legislation would allow health care providers working part-time to access IHS scholarship and loan repayment programs. You have heard why this is so important.

Let me start with Ms. Wilson. Angie, thank you again for participating virtually here. Thank you for explaining really the workforce shortages in Indian Country, what you are actually seeing on the ground and the impact it is having to so many members of our tribal community.

Can you also talk about particularly in our rural health care areas, quite often because there is a limited amount of health care workers, when we do get them in Indian Country or rural areas, they are actually wearing different hats. They don't just wear one hat. There are different things they are doing, because that flexibility is important. Whether it is full-time or part-time, the clinical hour requirements really increase staff time for our capacity.

Why is this bill that important? Angie, let me start with you. Please address the flexibility piece of it and the many hats that somebody, even working part-time, will have that benefits Indian Country.

Ms. WILSON. I think that if you are, especially in our State, we are a primarily rural State. Access to health care providers is somewhat challenging for us. I would say especially when we look at things like behavioral health, there have been oftentimes where we get one psychiatrist, that one tribe may find that all of us see if we can do a contract with that person, even for just one day or just to meet the need in our tribal clinics.

So it is somewhat in a dire situation where people wear multiple hats, it diminishes the amount of time that we really get with our patients. When we look at the health disparities of American Indians and Alaska Natives, there is really no time for that. We need help on the ground. We have infant mortality rates that are off the charts compared to non-Hispanic Whites, mothers who are almost three times less likely to receive late or no prenatal care. We don't have access to some of the urgent care needs that we have in our community.

So by being able to pass a bill that would allow the flexibility of onboarding part-timers, and giving them, extending them benefits for loan repayment, it really helps us in our clinics to be able to strategize access to care in a more convenient way for our patients and be able to allow us to schedule them appropriately to be able to utilize their skills for what we need them there for.

Senator CORTEZ MASTO. Thank you.

Let me jump to Assistant Secretary Ms. Egorin, is that right?

Ms. EGORIN. It is Egorin.

Senator CORTEZ MASTO. Thank you very much. Ms. Egorin, thank you for the support of this piece of legislation, the Workforce Parity Act. Can you talk a little bit about how it would help build the workforce pipeline in Indian Country?

Ms. EGORIN. Yes, thank you for that question, Senator. I want to thank Senator Smith, she actually met with the Secretary when he was out in the district and talked about these issue, and the need for support and increased capacity in our tribal health care workforce.

This bill would allow the flexibility you were just talking about, whether that is being able to recruit health care providers who want to serve tribal communities, but also have family or other obligations, to be able to split their time, or true rural communities that may not have full capacity, may not need somebody 40 hours a week, to be able to utilize their clinical time as well as administrative time or other time to serve that community.

So it builds capacity. We have seen that it builds the ability to recruit people and retain people, which is a critical need.

Senator CORTEZ MASTO. Thank you. Thank you to all the panelists. Thank you to every one of you. The advocacy and what we hear from you is so important as we look to passing this legislation and doing right by Indian Country. Thank you.

The CHAIRMAN. Senator Smith?

Senator SMITH. Thank you so much, Chair Schatz.

President Larsen, welcome again. I am so glad to be with you. Could you just explain to us, we think about these IRA corporate charters, I think sometimes it is hard for people to understand the real world implications for what these charters mean and how they end up constraining the Lower Sioux.

Could you tell us a little bit more? How does it make life more difficult exactly?

Mr. LARSEN. Thank you, Senator Smith. I apologize, I forgot to thank you personally for championing this.

Senator SMITH. You did earlier this morning, so it is okay.

[Laughter.]

Mr. LARSEN. The charter was not written with sovereignty in mind, tribal sovereignty. It is actually an impediment to tribal sovereignty. The language that is restrictive and paternalistic, such as the contracts cannot be made for more than three years at a time. If we want to borrow money over \$1,000, we have to get approval from the Federal Government.

So when we go to banks, they don't want to deal with that. They don't want to work with us, looking at that as a possibility.

Also, it has potential for exorbitant and egregious legal fees. So revoking the charter is to us a step toward self-governance.

Senator SMITH. It seems, even though you sort of put it to the side, you are not required to use it, it still constrains, for example, how banks might think about what you are working on.

Mr. LARSEN. Correct.

Senator SMITH. Of course, symbolically, it is a sign of, we both used the word paternalistic in our discussion of it. So I am thinking about, there are so many great things that you all are doing. As you know, I am very interested in the work that you are doing around building houses made out of hemp. I wonder if you just might share a little bit about that project, in mind like how this revocation of the corporate charter would help to do that work more efficiently and effectively.

Mr. LARSEN. Certainly. Senator, I thank you for bringing up that effort, the effort that we have to bring our citizens a safer, healthier and more energy efficient home that could potentially last for generations. All the while it cleans the carbon out of the air. And while it is standing and lasting for generations, as I said, it continues to clean the carbon out of the air.

We are currently building a hemp campus which will house our processing equipment. We are getting funding for that. People did look at that possibility. They said, well, what about this, and we had to take more time to explain that the governance that we have does not use the corporate charter. It is in people's minds. So if we could get rid of that, I think it would speed up the process for the things we are trying to do in the future.

Senator SMITH. Right. Thank you so much.

I want to just take the opportunity, Chief Lankford, while we have both of you on the panel, I wonder if you would tell us a little bit about how the work that you all did with the revocation of your corporate charter and what that has meant for the Miami Tribe.

Mr. LANKFORD. Senator, I have to take a moment and thank you for your efforts to help this Nation, as I want to thank Senator Mullin, then Congressman Mullin, for his help. Yes, everything he

is saying, it is really hard for tribes at times. We have enough trouble with banks, being a sovereign nation. We actually lost a bank, they got in there, they saw the corporate charter, and were like what's this, and they just panicked.

So it is a real hindrance, it is an archaic thing. I have to thank you for helping tribes to remove that impediment that should have never been there in the first place. Mihsi neewe.

Senator SMITH. Thank you so much. Thank you, Mr. Chair.

The CHAIRMAN. Thank you very much.

I have one question for the Assistant Secretary Egorin. It is no secret that getting providers to serve in Indian Country and Alaska, particularly in rural areas, is a tremendous challenge. So I support giving more flexibility to IHS to recruit and retain providers.

What are HHS and HRSA doing to improve provider recruitment and retention in Native Hawaiian health care systems, which face similar challenges?

Ms. EGORIN. Thank you, Senator, for being able to talk about the work that HRSA is doing to oversee the Native Hawaiian Health Scholarship Program, which provides scholarships for 300 Hawaiians in primary and behavioral health disciplines. So it is working to expand the health workforce for Native Hawaiians. Those who have served, the majority continue to serve, once they go through this training, continue to serve medically high need areas in the populations within Hawaii. So it shows that the investments in having people serve in communities have people stay in communities.

The CHAIRMAN. Thanks very much.

Could the tools proposed in S. 3022 be applicable to the Native Hawaiian health care systems?

Ms. EGORIN. Senator, if it is okay with you, I would actually like to make sure that I go back to HRSA and get the correct information and have a technical conversation with your staff.

The CHAIRMAN. Okay. Thank you very much.

If there are no more questions for our witnesses, members may also submit follow-up questions for the record. The hearing record will be open for two weeks. I want to thank all the witnesses for their time and their testimony. I know how hard it is to get to Washington, and I really appreciate all these tribal leaders and also Administration officials for making the journey, and also the testifier online as well.

This hearing is adjourned.

[Whereupon, at 11:40 a.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF KABIR THATTE, VICE PRESIDENT, POLICY AND EXTERNAL AFFAIRS, DIGDEEP

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

The water access gap disproportionately impacts Tribal communities; Native American households are 19 times more likely to live without water than white households. An estimated one in 10 Native Americans lack access to safe drinking water or sanitation¹ and an estimated 48 percent of households on Native American reservations face this issue.² For so many, accessing clean water is a costly, daily struggle that negatively impacts their mental and physical health and takes time away from school and work.

Roughly 30 percent of people on the Navajo Nation are forced to purchase bottled water, haul water long distances, or use contaminated water to meet their basic needs. Across Alaska, thawing permafrost and sinking land routinely threaten infrastructure in Alaska Native communities, fundamentally changing where people can live, and how they can access water. In Montana, many Tribal wells are contaminated, causing greater rates of chronic diseases.³ At the height of the COVID-19 pandemic, the rate of COVID-19 cases for Native Americans and Alaska Natives was 3.5 times higher than the rest of the nation, as water access is fundamental to basic hygiene and disease and virus prevention.⁴

We live in the richest country on the planet, yet over 25 percent of Native Americans live in poverty.⁵ For each year that we allow the water access gap to persist, households lose nearly \$16,000 per year, often more than their net annual income.⁶ Without sustained access to water, families will continue to be stuck in a cycle of poverty, as they are forced to make unreasonable choices for water allocation and household spending. Without basic access to clean water, it is impossible for a person to live in dignity.

New influxes of federal funding, including the Bipartisan Infrastructure Law (BIL) have been key in addressing infrastructure issues, but not deficits. Accelerated funding in the last few years was not intended to close the water access gap. Additionally, specific programs that are aimed at providing new infrastructure investments—such as Section 50208, the Decentralized Wastewater Grant Program—have not yet received any funding. Congress needs to develop more targeted programs to address remaining infrastructure and access needs, or the gap will remain open and continue to widen. As we celebrate new victories on replacing crumbling and contaminated infrastructure nationwide, we must recognize that progress is uneven.

Four key elements continue to prevent effective access and sanitation for Tribal communities: (1) Technical assistance is urgently needed for Tribes to plan and design necessary systems to address the lack of access to clean drinking water and bring those plans to a “shovel ready” stage in order to utilize available construction

¹Lakhani, Nina. “Tribes Without Clean Water Demand an End to Decades of US Government Neglect.” *The Guardian*, 28 Apr. 2021, www.theguardian.com/us-news/2021/apr/28/indigenous-americans-drinking-water-navajo-nation.

²Water Delayed is Water Denied.” Democratic staff of the House Committee on Natural Resources, 2016, https://democratsnaturalresources.house.gov/imo/media/doc/House%20Water%20Report_FINAL.pdf.

³“Reviving Traditional Aps alooke Water Sources.” *High Country News*, www.hcn.org/issues/53.8/north-water-reviving-traditionalapsalooke-water-sources.

⁴“The COVID-19 Outbreak in the Navajo Nation NMAI Magazine.” *NMAI Magazine*, www.americanindianmagazine.org/story/the-covid-19-outbreak-in-the-navajo-nation.

⁵Tec, Dedrick Asante-Muhammad Esha Kamra, Connor Sanchez, Kathy Ramirez and Rogelio. “Racial Wealth Snapshot: Native Americans; NCRC.” *NCRC*, 7 Apr. 2022, ncrc.org/racial-wealth-snapshot-native-americans.

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

funding. (2) Tribes need support to develop the technical, managerial, and financial (TMF) capacity necessary to develop fully functional and self-sustaining utilities. (3) Construction funding is not currently available to connect essential community facilities, like schools and clinics, to centralized water and sanitation, which negatively impacts Tribal economic development. (4) Tribes cannot rely on the same types and volumes of revenue streams to support operation and maintenance (O&M) of water systems; new initial and temporary O&M assistance is sorely needed.

The Water Access Gap

- At least 2.2 million people across the U.S. have no regular access to running water or flush toilets.⁷
- Native American households are 19 times more likely to live without water than white households.
- Black and Latino households are twice as likely to lack running water and flush toilets than white households.
- 44 million Americans are served by water systems that have had a recent health-based Safe Drinking Water Act violation.
- Water insecurity is growing nationwide.

A recent study by DigDeep, *Draining: the Economic Impact of America's Hidden Water Crisis*, finds that the U.S. economy loses a staggering \$8.58 billion every year in decreased household earnings, higher healthcare costs, lost tax revenues, and labor market disruptions because of the water access gap. In the context of Tribal sovereign lands: considering the number of households without piped water on the Navajo Reservation, water insecurity may cost the Navajo Nation and the broader U.S. economy as much as \$152.5 million each year.⁸ The federal government must intervene to close the water access gap in order to rectify historic imbalances related to water quality, infrastructure and funding, address the racial access and Tribal access gaps, and ensure that the basic standard of living enjoyed by most Americans is available to all.

The water access gap has rippling effects on our economy, health, labor market, and justice for disaffected communities. Past investments in water infrastructure excluded many Tribal Nations, communities of color, immigrant communities, low-income communities, and rural areas.

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

Effects On Tribal Communities

As documented above, the water access gap has significant effects across the United States, with Tribal communities taking a disproportionate impact. Across many intersecting spaces in water and sanitation, Native American communities are often left with significant disadvantages.

Infrastructure Gaps: For many Tribal Nations, a lack of investment in infrastructure has had significant consequences on the ability for households to access safe and reliable water. Decades of disinvestment or lack of investment is a lead driver of infrastructure disrepair. As an example, Alaska has the highest proportion of the U.S. population that lacks access to adequate water infrastructure. There are more than 30 unserved communities where 45 percent or more homes are not served by piped, septic tanks and wells, or covered haul systems. These unserved communities are largely located in rural areas that house mostly American Indian/Alaska Native populations.⁹

Such gaps in service lead to extreme water conservation and water quality issues, exacerbating existing health disparities in Native communities.

⁷"Close the Water Access Gap." DIGDEEP, www.digdeep.org/close-the-water-gap. Accessed 18 Sept. 2023.

⁸Supreme Court of the United States. *Department of the Interior v. Navajo Nation*. 20 March 2023. https://www.supremecourt.gov/DocketPDF/21/21-1484/254361/20230208163233914_DigDeep%20UTRF%20Amicus%20Brief%20-%20final.pdf

⁹Spearing, Lauryn A., et al. "What Impacts Water Services in Rural Alaska? Identifying Vulnerabilities at the Intersection of Technical, Natural, Human, and Financial Systems." *Journal of Cleaner Production*, vol. 379, Elsevier BV, Dec. 2022, p. 134596. <https://doi.org/10.1016/j.jclepro.2022.134596>.

Polluted and Unsafe Water Sources: Contaminated water sources on Tribal lands continue to be a major concern for public health and adequate access. On the Crow Reservation in Montana, local water sources are contaminated with feces, heavy metals, nitrates, and *E. coli*.¹⁰ Crow members, along with health researchers, have identified a connection between uranium contamination and diabetes, a growing health crisis on the Reservation.¹¹ In New Mexico, around the San Juan Basin (the state's largest oil and gas region), there are an estimated 40,000 wells, thousands of which are likely neglected, abandoned, or orphaned. "Orphaned" oil and gas wells leak methane into the air and groundwater that pose serious public health risks to rural, Tribal, and communities of color. It is estimated that 1,700 wells are orphaned and abandoned on state and private land.¹²

Weather Impacts and Reduced Water Sources: Climate change has also ravaged water supplies and changed the nature of how people collect it. There is a unique threat to Indigenous communities: contamination of water supplies are rampant on Tribal lands, traditional water sources are depleting or run dry, and issues such as drought and wildfires continue to threaten Native communities. For example, rising temperatures and declining rainfall have made groundwater the principal drinking water source, as surface water on Navajo Nation is estimated to have decreased by 98 percent of the twentieth century.¹³ Limited water resources in Hawaii are disproportionately used by the tourist industry (i.e., water resources are diverted to hotels), which, in conjunction with the recent wildfires devastating Maui, will directly impact permanent residents, including Native Hawaiians.

Insufficient Data: Additionally, data continues to result in less attention and infrastructure investment for Native American homes. It is well documented that survey data has repeatedly undercounted Native Americans, particularly the U.S. Census.¹⁴ Insufficient data has inevitably led to diminished investment in water access for Indigenous communities; for other fundamental issues, including housing grants and other federal assistance, undercounting communities severely reduces funding allocations for Tribal governments.¹⁵ The few entities having better data collection and analysis (i.e., the Indian Health Services' Sanitation Facilities Deficiency List),¹⁶ however, have been able to justify and obtain higher funding levels.

Barriers To Accessing Government Funding

Tribal, rural, disadvantaged, and low-income communities have the greatest need for financial assistance to bridge a historical gap in water and wastewater services. Larger, more populated communities around the nation enjoy the benefit of having a working tap and flush toilet, components of a standard of living everyday Americans have come to rely on. These municipalities have a documented greater likelihood of accessing Clean Water SRFs (CWSRFs), primarily due to more substantive resources, as well as a risk that state agencies may not allocate funds equitably between larger communities and more disadvantaged communities.¹⁷ Comparatively smaller communities face challenges in accessing SRFs for a variety of reasons.

Native American communities and other communities of color—which face much higher rates of water insecurity—often bear the greatest burden of inequitable access to clean water infrastructure and have the most pressing need for CWSRF re-

¹⁰ Bienkowski, Brian. "Part 1: Tainted Water Imperils Health, Traditions for Montana Tribe." EHN, 8 July 2020, www.ehn.org/part_1_tainted_water_imperils_health_traditions_for_montana_tribe-2497203331.html.

¹¹ Martin, Christine, et al. "Our Relationship to Water and Experience of Water Insecurity Among Apsalooke (Crow Indian) People, Montana." *International Journal of Environmental Research and Public Health*, vol. 18, no. 2, Jan. 2021, p. 582. <https://doi.org/10.3390/ijerph18020582>.

¹² Gilbert, Samuel. "To Understand the Orphan Well Problem in NM, Someone's Going to Have to Count Them." Source New Mexico, May 2022, sourcenm.com/2022/05/31/to-understand-the-orphan-well-problem-in-nm-someones-going-to-have-to-count-them.

¹³ "Navajo Women Struggle to Preserve Traditions as Climate Change." *The World From PRX*, 25 May 2018, theworld.org/stories/2018-05-25/navajo-women-struggle-preserve-traditions-climate-change-intensifies.

¹⁴ "The US Government Has Always Undercounted Native Americans. But COVID-19 Could Make the 2020 Census a Disaster." Mother Jones, www.motherjones.com/politics/2020/06/census-coronavirus-native-americans.

¹⁵ Udall, Senators Press for Accurate 2020 Census Count for Native Communities the United States Senate Committee on Indian Affairs. www.indian.senate.gov/news/press-release/udall-senators-press-accurate-2020-census-count-native-communities.

¹⁶ https://www.ihs.gov/sites/dsfc/themes/responsive2017/display_objects/documents/FY_2021_Appendix_Project_Listing.pdf

¹⁷ Environmental Policy Innovation Center. "New Report: Small Towns and Communities of Color Less Likely to Receive Funding for Clean Water Infrastructure—Environmental Policy Innovation Center." Environmental Policy Innovation Center, 1 May 2023, www.policyinnovation.org/blog/fairer-funding-stream.

sources.¹⁸ These communities have faced the greatest level of discrimination in terms of government investment and attention historically, and these issues persist today.

Smaller communities also face significant hurdles in receiving much-needed funds due to resource constraints. While funding sources like SRFs may have intention to tackle inequalities, without adequate technical assistance, education, or capacity, there remains a wide accessibility gap for disadvantaged communities.

These barriers are accentuated in a few key areas across rural, disadvantaged, low-income, or Tribal communities:

Eligible Applicants for Funding are Overburdened: Directors and operators of water and wastewater service districts in rural and disadvantaged communities are often stretched thin due to understaffing, older and more time-intensive technology, increased maintenance due to aging infrastructure, and high turnover rates. This dearth in capacity can make the SRF application process intimidatingly complex and time-consuming for eligible applicants. In some cases, the person(s) most likely to initiate or drive action on community infrastructure projects may not be the same person(s) eligible to apply for and navigate the SRF application. In other cases, awareness of existing grants and loans may be limited, a particular challenge in areas lacking quick and reliable Internet connection or a high level of technological literacy, as much of this work is conducted online.

Inadequate Technical Expertise: Rural and disadvantaged communities encounter a series of systemic barriers and may lack technical expertise to implement innovative solutions (for example, alternative decentralized water and wastewater systems) according to EPA standards.¹⁹

Traditional wastewater solutions are often an unsustainable, narrow approach to solve a complex set of community concerns. In addition, many small systems lack certified operators, engineers, and/or plumbing and pipefitting professionals, creating high barriers to entry.

Limited Funding for Operations and Maintenance: First-time systems' funding is a critical need, albeit limited in its current state. Small, disadvantaged communities cannot use Drinking Water SRFs (DWSRFs)²⁰ or CWSRFs for much-needed operations and maintenance work.²¹ Sustainability is a difficult factor for smaller communities to implement if there are no consistent funds to ensure that local water and wastewater systems do not face risks of failing or shutting off. Tribes cannot rely on the same types and volumes of revenue streams to support O&M of water systems.

Loans as Barriers: For communities that face significant economic burdens, or are low-income or facing poverty, loans are not adequate measures to provide water and wastewater access. Some households are unable to pay upfront costs, or to repay low-interest loans offered by funding programs, practically barring them from accessing much-needed support. Other communities and utilities have shared with DigDeep that their fear of inability to fulfill repayment obligations prevents them from seeking out loans. Additionally, declining rural populations and rate payer bases make loans even more challenging for small utilities.

Inequality and Inconsistency Across State-Administered Funds: Eligibility requirements for state-level funding (e.g., SRFs) can vary considerably from state to state. Thus, there are more application barriers for disadvantaged communities in states with stricter eligibility requirements. This also puts an onerous burden on entities (like Tribal nations) that cross state lines.²² It also makes it difficult to disperse technical assistance resources between states. States also have full authority to determine what "disadvantaged" means—with some focusing on population sizes or other factors at the exclusion of at-risk communities.²³

¹⁸ Ibid.

¹⁹ "DWIC—DIGDEEP." DIGDEEP, www.digdeep.org/dwic.

²⁰ Association of State Drinking Water Administrator. "State Drinking Water Program Challenges and Best Practices: Small and Disadvantaged Water System Funding and Assistance." PDF. <https://www.asdwa.org/wp-content/uploads/2022/08/ASDWA-White-Paper-Small-and-Disadvantaged-Water-System-Funding-and-Assistance-FINAL-080822.pdf>

²¹ "Overview of Clean Water State Revolving Fund Eligibilities." U.S. EPA. May 2016. PDF. https://www.epa.gov/sites/default/files/2016-07/documents/overview_of_cwsrf_eligibilities_may_2016.pdf

²² Ibid.

²³ Murakami, Kery. "States Differ Over What's a 'Disadvantaged' Community." Route Fifty, 5 May 2023, www.routeifty.com/infrastructure/2023/05/clean-water-funding-isnt-helping-cities-disadvantaged-populations/386035.

Solutions

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

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

Greater investment into long-term O&M infrastructure will be critical to ensuring sustained water access forever.²⁴ When a water system falls into disrepair, more people are susceptible to falling into the water access gap. Investments do not go far enough, as many rural and Tribal communities may not be able to access O&M investments effectively.²⁵ Targeted investments in operations and maintenance are key solutions to preventing problems. Replenishing the fledgling workforce in maintaining water systems will be instrumental in ensuring people do not lose access to water and sanitation over time.

Several key solutions include:

Eliminate Barriers to Government Funds: Apply agency resources to identify inefficiencies, eliminate burdensome steps in application and implementation, and reduce upfront costs of application for the largest programs (e.g., CWSRF and USDA–RD programs) to improve workflows for funding access. Additionally, eligibility and application criteria should be made more consistent across states. Accessing government funds to create first-time water systems should not be a barrier to complete plumbing, and Native communities must be treated equitably when considered for federal funding.

Expand Existing Technical Assistance Efforts: Ongoing technical assistance efforts are incredible mechanisms for ensuring communities are well-equipped to handle additional capacity burdens. TA programs, such as the EPA Technical Assistance for Rural, Small, and Tribal Wastewater Systems program, should be better funded and expanded significantly to help support communities lacking the ability to apply for and execute project funding and assistance programs. Increased funding for TA programs, including those existing under the Indian Health Service or the Bureau of Reclamation’s current Native American Affairs Technical Assistance Program, will rapidly improve outcomes for Tribal communities.

Diversify Funding for New Technologies and Training: Some parts of the U.S. are simply not a good fit for traditional utility services. Many Native households are decentralized, particularly in Alaska, on the Navajo Nation, and across reservations. In many of these contexts, navigating topography can be too challenging, or simple setup and installation are too expensive. The federal government must expand funding for communities to apply decentralized technology, and support efforts like workforce development that are crucial for O&M, and the long-term success of these systems, as installing the technology without local technical expertise to sustain it will lead to disrepair and underuse. Further, authorizing federal agencies to make grants for technical and financial assistance for training will go far in bridging the skills gap that continues to grow.

Expand Grants, Not Loans: For impacted communities, repayment of loans may be cumbersome, as many of these communities are already economically disadvantaged. Grants are key to ensuring that other economic burdens are not placed on households in these communities. Disadvantaged communities should not have to face additional financial burdens by repaying water and sanitation projects, particularly with the likelihood of new increased costs for households in the form of water bills.

²⁴<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>

²⁵“Draining—DIGDEEP.” DIGDEEP, digdeep.org/drainig.

Provide Guides to Access Funds: Funding programs and technical assistance are important investments, and additional, publicly-available, user-friendly resources will aid disadvantaged communities even further. This includes guides for best practices, as well as strategies for states and recipients to best utilize funding sources like CWSRFs.

Closing

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

PREPARED STATEMENT OF THE U.S. DEPARTMENT OF AGRICULTURE (USDA)

Chairman Schatz, Vice Chairman Murkowski, and Members of the Committee, thank you for the opportunity to present the views of the U.S. Department of Agriculture (USDA) on S. 2385, the “Tribal Access to Clean Water Act of 2023.” The objective of the bill is to provide access to reliable, clean, and drinkable water on Tribal lands.

This bill proposes extending the provisions of 306C (Water and Waste Disposal Loans and Grants) and 306D (Water Systems for Rural and Native Villages in Alaska) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c, 1926d) and providing authorization for additional funds. USDA supports the goals of this bill and would like to work with the Committee and bill sponsors to address the concerns identified in this testimony and to implement any changes to the programs effectively and efficiently. The Agency is committed to working with our partners to achieve these goals.

Section 4(a)—Extension of Authority for Grants and Loans

This section of the bill allows eligible entities, as defined in subsection (c) of this section, to access grants and loans for not only existing purposes, but also for technical assistance.

USDA supports the need to provide additional technical assistance for these awards, particularly for underserved communities. Currently, under sections 306C and 306D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c, 1926d), there are set asides for Tribal, Colonias, and Rural Alaska Village Grant programs, and yet only the Rural Alaska Village program in section 306D has a technical assistance component. Of the Technical Assistance and Training Grants program (7 U.S.C. 1926(a)(14)) funding received, recent appropriations have carried a requirement to award at least \$800,000 in funding to support a nationwide Tribal Organization in providing technical assistance for rural water systems. However, this program is annually oversubscribed.

USDA has long supported efforts to increase access to technical assistance and build capacity to plan and develop projects. Projects and entities receiving technical assistance are more likely to submit a competitive and successful application for funding and allows USDA to make awards in areas and to entities that may not have accessed USDA resources in the past.

USDA strongly supports this change and would like to work with bill sponsors and the Committee to build out a robust technical assistance program.

Section 4(b)—Authorization of Appropriations

This section of the bill would allow for additional authorizations for the program awards and technical assistance, up to \$100,000,000 and \$30,000,000 respectively. These amounts would be an increase of funding and would allow for USDA to effectively make awards to existing and newly eligible entities. USDA strongly supports this new language.

USDA is concerned, however, because in the draft House Appropriations Budget for FY24, the proposed funding for the 306C and 306D programs have been dramatically cut, down to \$30 million from the FY23 enacted amount of \$70 million—a decrease of about 57 percent. While additional authorizations are welcomed, USDA would also encourage funding these programs at the Administration’s requested level of \$87 million, but at the very least straight lining the enacted level of \$70 million. The improvements provided by the bill go hand in hand with full funding for the program.

USDA would like to work with the bill sponsors, the Committee, and appropriators to identify the right funding levels and support needed for these programs to be successful.

Section 4(c)—Eligible Entities

This section would expand the definition of eligible entities able to access the 306C and 306D programs to include tribal nations, Native Hawaiians, and Alaska Native Corporations (ANCs).

USDA supports expanding the definition of eligible entities in order to better serve more communities in need of access to clean water and waste disposal resources. USDA also suggests that in order to be as inclusive as possible, the bill sponsors and Committee also consider additional changes that would make eligibility for tribal nations, Native Hawaiians, and ANCs easier. These would include excluding certain requirements of 306C(a)(2)(A), which are already waived through 306C(a)(2)(B) for colonias. USDA's Water and Environmental Programs (WEP) has conducted outreach and listening sessions with tribes and other eligible entities as part of the Agency's revisions to implementing regulations at 7 CFR 1777. During this outreach, participants and potential applicants consistently voiced concerns about the eligibility requirements related to the per capita and unemployment requirements found at 306C(a)(2)(A). These requirements substantially limit the ability of tribal nations, Native Hawaiians, and ANCs to access WEP programs authorized through 306C, including the Tribal set-asides grants.

(2) Certain areas targeted

(A) In general—Loans and grants under paragraph (1) shall be made only if the loan or grant funds will be used primarily to provide water or waste services, or both, to residents of a county—

- (i) the per capita income of the residents of which is not more than 70 percent of the national average per capita income, as determined by the Department of Commerce; and
- (ii) the unemployment rate of the residents of which is not less than 125 percent of the national average unemployment rate, as determined by the Bureau of Labor Statistics

Additionally, USDA does not currently have a WEP program specifically targeting Hawaiian Homelands. USDA looks forward to working with the Committee to make sure that Native Hawaiians and their communities are served.

USDA would like to work with the bill sponsors and the Committee to determine how best to serve the most with these programs.

Section 4(d)—No Matching Contribution

This section would eliminate the need for a matching contribution (306D(b)) from the eligible entity in order to access these resources. USDA strongly supports this change and looks forward to working with the bill sponsors, the Committee, and eligible entities in implementing this change.

Section 4(e)—Priority for Funding

This section would require the Secretary of Agriculture to prioritize eligible entities in the same manner as individuals who reside in colonias and to eliminate the requirement that eligible entities demonstrate an inability to finance the project themselves or through a commercial lender. USDA supports this section and looks forward to working with the Committee to ensure that the eligibility criteria match Congress' intent, particularly with respect to ANCs and Native Hawaiian Communities.

Section 4(f)—Interagency Collaboration

This section would require the Secretary of Agriculture to consult with the Director of the Indian Health Services on agency collaboration, project prioritization, and staffing needs to ensure the amounts appropriated under subsection (b) of the bill are used in the most effective manner to promote access to water and sanitation.

USDA supports this change as it formalizes coordination already being undertaken between USDA, the Indian Health Service, and funding partners serving these communities.

Conclusion

USDA supports the goals of this bill and would like the opportunity to work with the Committee and bill sponsors to address the issues we have identified.

FEBRUARY 6, 2024

Hon. Brian Schatz, Chairman;
 Hon. Lisa Murkowski, Vice Chairman,
 Senate Committee on Indian Affairs,
 Washington, DC.

Dear Chairman Schatz and Vice Chairman Murkowski,

I write today in strong support of the Winnebago Land Transfer Act of 2023. I thank you for bringing this important piece of legislation before the Senate Committee on Indian Affairs.

The Winnebago Tribe of Nebraska (Tribe) and its 5,000 tribal members reside on a reservation along the Missouri River in northeastern Nebraska and northwestern Iowa. Originally, the Winnebago people called present-day Wisconsin home, but in the mid-1800s, they were moved by the U.S. Army to Minnesota, Iowa, South Dakota, and finally to the Winnebago Reservation, as recognized today. Through the Treaty of 1865, the U.S. government promised this land as “. . . set apart for the occupation and future home of the Winnebago Indians, forever. . . .”

In the 1970s, the United States Army Corps of Engineers (USACE) condemned tracts of the Winnebago Reservation on both sides of the Missouri River through the use of eminent domain to implement flood mitigation and recreational projects. With subsequent litigation and appeals, the courts ultimately ruled in favor of the Tribe and stated that the USACE had illegally taken the land. However, the land on the eastern side of the river could not be returned to the Winnebago people because of a doctrine known as “res judicata.” Congressional action is the only option afforded to the Tribe to reclaim their 1,600 acres from the USACE.

As a way to remedy the situation, I helped introduce the Winnebago Land Transfer Act of 2023, alongside Senators Deb Fischer, Chuck Grassley, and Pete Ricketts. This legislation would transfer administrative jurisdiction of the land from the USACE to the Bureau of Indian Affairs to hold in trust for the Winnebago Tribe of Nebraska. This common-sense measure simply corrects a wrong and returns the 1,600 acres of marsh, which the USACE never had the authority to condemn nearly 50 years ago.

Under your continued leadership and commitment to the Alaska Natives, Native Hawaiians, and American Indians, I ask the Senate Committee on Indian Affairs to quickly pass the Winnebago Land Transfer Act of 2023. Thank you for your consideration and action.

Sincerely,

HON. JONI K. ERNST, U.S. SENATOR

FEBRUARY 22, 2024

Hon. Brian Schatz, Chairman;
 Hon. Lisa Murkowski, Vice Chairman,
 Senate Committee on Indian Affairs,
 Washington, DC.

Dear Chairman Schatz and Vice Chairman Murkowski,

On behalf of our organizations' millions of members and supporters, we write to express our support for the *Tribal Access to Clean Water Act of 2023*, and thank you, and your hard-working staff, for holding a legislative hearing on the bill on February 8, 2024.

Our organizations have a long history of supporting Colorado River restoration, bird and wildlife habitat conservation, and diverse stakeholder engagement. The Colorado River is one of the American West's national treasures. It is a foundation for the West's economy, supporting five million acres of irrigated farmland that deliver produce nationwide, and providing drinking water for over 40 million people, including under-served Tribal and rural communities. The Colorado River is also an essential part of the cultural fabric for 30 federally-recognized Tribal Nations that call the Basin home. The river, though, is in crisis. Reservoirs in the Colorado River Basin are at historic lows after more than twenty years of drought and climate-related changes. Resulting diminished stream flows pose increasingly serious challenges for cities, farms, wildlife, and recreation. Last year's wet winter brought a short reprieve but did not address the long-term aridification of the region.

Funding programs and projects that help address historic western drought conditions will support Tribes, communities, and agriculture, as well as fish and wildlife. The Infrastructure Investment and Jobs Act (IIJA) and Inflation Reduction Act (IRA) provided significant investments for addressing western water infrastructure challenges, including addressing decades of underinvestment in Tribal water and wastewater systems. While IIJA and IRA are an important step forward, Tribes

often lack capacity and resources to navigate, apply for, and administer the complex array of available federal programs. Grant writing assistance, engineering evaluation and design of water infrastructure systems, and training of certified operators are all critical for ensuring that the infrastructure funding is utilized expeditiously and appropriately. Securing sufficient cash funding or collateral for meeting federal match requirements is also a significant barrier to Tribes in accessing certain federal funding opportunities.

S. 2385, the *Tribal Access to Clean Water Act of 2023*, makes significant strides in addressing the barriers Tribes must navigate in terms of accessing federal funding for much needed water and wastewater infrastructure improvements. We look forward to continuing to work with you on removing such barriers and creating more equitable access to federal programs.

We appreciate the Committee's consideration of this bill and encourage its advancement to support clean water for Tribes. Thank you again for your leadership.

Sincerely,

AMERICAN RIVERS
NATIONAL AUDUBON SOCIETY
THE NATURE CONSERVANCY
THEODORE ROOSEVELT CONSERVATION PARTNERSHIP
TROUT UNLIMITED
WESTERN RESOURCE ADVOCATES

FEBRUARY 7, 2024

Hon. Brian Schatz, Chairman;
Hon. Lisa Murkowski, Vice Chairman,
Senate Committee on Indian Affairs,
Washington, DC.

Dear Chairman Schatz and Vice Chairman Murkowski,

I am pleased to be a co-sponsor of S. 3230, the Winnebago Land Transfer Act of 2023. About 150 years ago, the Winnebago Reservation was created by treaty. However, in the 1970s, the Army Corps of Engineers condemned a portion of the reservation along the Missouri River. After years of legal fights, the Eighth Circuit Court of Appeals ruled that the taking was unlawful, returning the Tribe's land on the Nebraska side of the river. Unfortunately, the land on the Iowa side was never returned because the Tribe did not preserve its right to appeal the case. The same arguments apply on both sides of the river, and the courts have made clear that the Army Corps did not have the authority to condemn this land.

Earlier this week, the House version of this bill, H.R. 1240, easily passed the House of Representatives. After many years of waiting, it is now time to right this wrong. I would like to thank you for holding this hearing and for engaging in thoughtful discussion on this important topic.

Sincerely,

HON. CHARLES E. GRASSLEY, U.S. SENATOR

THE NAVAJO NATION
January 31, 2024

Hon. Brian Schatz, Chairman;
Hon. Lisa Murkowski, Vice Chairman,
Senate Committee on Indian Affairs,
Washington, DC.

Dear Chairman Schatz and Vice Chairman Murkowski,

I am writing to express strong support for the Tribal Access to Clean Water Act, S. 2385 and H.R. 4746, which will provide technical assistance, capacity, and resources to address the inequity in access to clean water for Tribes.

Access to clean water is a basic human right. Clean water is foundational for human health, growing economies, and a minimum level of support for communities. However, an estimated 48 percent of Native American households do not have clean water or adequate sanitation. Indeed, Native American homes are 19 times more likely than white households to lack indoor plumbing. Such water inequity is particularly egregious in light of the federal treaty and trust responsibility to ensure Tribes have a viable, permanent homeland. Water is a necessity for any homeland.

Funding for safe drinking water systems for Tribal communities received a significant boost from the Infrastructure Investment and Jobs Act and the Inflation Reduction Act. While groundbreaking and long overdue, the funding now available for

construction and repair of Tribal water systems is not a complete solution. Technical assistance is needed to allow Tribes to plan and design the systems necessary to access clean drinking water and bring those plans to the “shovel ready” stage where they can take advantage of the newly available construction funding.

While the Navajo Nation is blessed to have created a multi-purpose utility in 1959, many Tribes need support to develop the managerial, financial, and regulatory capacity required for a fully functional and self-sustaining utility. Importantly, because Tribes, including the Navajo Nation, cannot currently rely on the same types and volumes of revenue streams to support operation and maintenance (O&M) of water systems, O&M assistance helps to ensure that the benefits of the historic investment in infrastructure are fully realized and allows the customer to put their income to other uses, such as food, education, and childcare.

The Tribal Access to Clean Water Act of 2023 would address these gaps and advance the federal government’s treaty and trust obligations to provide clean and accessible water for Native communities. I strongly support swift passage of The Tribal Access to Clean Water Act.

Sincerely,

DR. BUU NYGREN, PRESIDENT, NAVAJO NATION

CLEAN WATER FOR ALL COALITION
August 29, 2023

Hon. Brian Schatz, Chairman;
Hon. Lisa Murkowski, Vice Chairman,
Senate Committee on Indian Affairs,
Washington, DC.

Dear Chairman Schatz and Vice Chairman Murkowski,

On behalf of the Clean Water for All Coalition, we are writing to express our strong support for the Tribal Access to Clean Water Act, S. 2385 and H.R. 4746, which will provide badly needed technical assistance, capacity, and resources to address the inequity in access to clean water for Tribes.

Access to clean water is a basic human right. Clean water is foundational for human health, growing economies, and a minimum level of support for communities. However, 48 percent of households on Native American reservations do not have clean water or adequate sanitation. Native American homes are 19 times more likely than white households to lack indoor plumbing.

Funding for safe drinking water systems for Tribal communities received a significant boost from the Infrastructure Investment and Jobs Act and the Inflation Reduction Act. While groundbreaking and long overdue, the funding now available for construction and repair of domestic water systems in Indian country is not a complete solution. Technical assistance is needed to allow Tribes to plan and design the systems necessary to access clean drinking water and bring those plans to the “shovel ready” stage where they can take advantage of the newly available construction funding. In addition, Tribes need support to develop the managerial, financial, and regulatory capacity required for a fully functional and self-sustaining utility. Finally, because Tribes cannot rely on the same types and volumes of revenue streams to support operation and maintenance (O&M) of water systems, O&M assistance helps to ensure that the benefits of the historic investment in infrastructure are fully realized.

The Tribal Access to Clean Water Act of 2023 would address these gaps and advance the Federal Government’s treaty and trust obligations to provide clean and accessible water for Native communities. We strongly support swift passage of The Tribal Access to Clean Water Act.

Sincerely,

Heather Tanana, Initiative Lead, Universal Access to Clean Water
Cindy Lowry, Executive Director, Alabama Rivers Alliance
Colton Fagundes, Policy Director, American Sustainable Business Network
Harriet Festing, Executive Director, Anthropocene Alliance
Beth K. Stewart, Executive Director, Cahaba River Society
Tracy Kolian, Health Policy Consultant, Children’s Environmental Health Network
Sean Jackson, National Water Campaigns Organizer, Clean Water Action
Julian Gonzalez, Senior Legislative Counsel, Earthjustice
Ann Mesnikoff, Federal Legislative Director, Environmental Law & Policy Center
Val Schull, Water Equity and Ocean Program Director, Green Latinos

Alicia Vasta, Water Program Director, Iowa Environmental Council
 Laura Gregory, Watershed Program Director, Kentucky Waterways Alliance
 Lizzy Duncan, Government Affairs Representative, Healthy Communities League of Conservation Voters
 Cynthia Robertson, Executive Director, Micah Six Eight Mission
 Wendy Weaver, Executive Director, Montana Freshwater Partners
 Garrit Voggesser, National Director, Tribal Partnerships, National Wildlife Federation
 Rebecca Hammer, Deputy Director of Federal Water Policy, Natural Resources Defense Council
 Sylvia Orduno, Managing Director, People's Water Board Coalition
 April Ingle, Advocacy Director, River Network
 Elaine Packard, Chair, Sierra Club's National Grassroots Network Water Sentinels Team
 Jessica Dandridge, Executive Director, The Water Collaborative of Greater New Orleans
 Alex Funk, Director of Water Resources; Senior Counsel, Theodore Roosevelt Conservation Partnership
 Sara Porterfield, Western Water Policy Advisor, Trout Unlimited
 Tahlia Bear, Indigenous Peoples Engagement Manager, Western Resource Advocates
 Debra Buffkin, Executive Director, Winyah Rivers Alliance

VESSEL
 February 2, 2024

Hon. Brian Schatz, Chairman;
 Hon. Lisa Murkowski, Vice Chairman,
 Senate Committee on Indian Affairs,
 Washington, DC.

Dear Chairman Schatz and Vice Chairman Murkowski,

Vessel™, America's Domestic WASH Collective, writes in strong support of the Tribal Access to Clean Water Act of 2023 (S. 2385 and H.R. 4746). These bills, before both the House and Senate, provide a necessary vehicle for ensuring the government meets its trust obligation to provide clean and accessible water for Tribal communities. While funding allocated through the Bipartisan Infrastructure Law and Inflation Reduction Act have provided much needed support for Tribal water systems, gaps in critical areas, particularly technical assistance and operations and maintenance (O&M), still remain. S. 2385 and H.R. 4746 seek to address these gaps through the availability of dedicated funds.

Vessel™ is a collective of U.S. WASH organizations fighting for universal access to water and sanitation in the U.S. Over 2 million people are forced to live in the water access gap—where families and children across America are without access to running water or a working toilet at home—a number that is disproportionately made up of Native Americans. This water access gap has a significant impact on our economy, causing a \$8.6 billion loss each year.¹ Vessel™ brings together organizations across the private, nonprofit, academic, utility, and philanthropic sectors to find solutions to the crisis in our own backyards. The collective actively coordinates policy advocacy efforts to remove barriers to WASH access and improve government funding and regulation.

Water is a human right. Yet for so many people nationwide—particularly Native Americans—this basic standard is out-of-reach. For Tribal communities across the United States, reliable access to basic services has long been a problem. An estimated 48 percent of households on Native American reservations do not have clean water or adequate sanitation.² DigDeep and the US Water Alliance, two members of the Vessel™ collective, have reported that Native American households are 19 times more likely than white households to lack indoor plumbing, a statistic ref-

¹“Draining—DIGDEEP.” DIGDEEP, www.digdeep.org/draining.

²“Fact Sheet: Tribal Access to Clean Water Act of 2023” Universal Access to Clean Water for Tribal Communities, 2024, <https://tribalcleanwater.org/wp-content/uploads/2024/01/Fact-Sheet-Tribal-Clean-Water-legislation-2024-01.pdf>

erenced by many government leaders and agencies as an ongoing national issue.^{3, 4, 5, 6} This inequality was particularly acute during the COVID–19 pandemic, as access to basic hygiene became a matter of life and death.⁷

Historically, past investments in water infrastructure excluded many Tribal Nations, communities of color, immigrant communities, low-income communities, and rural areas. This lack of investment has had significant economic impacts on Tribal communities. Nationwide, each year that the water access gap remains open, the U.S. economy loses a staggering \$8.58 billion, or an average \$15,800 per impacted household per year.⁸ These losses take the form of water hauling costs and water purchasing costs when reliable, potable water is unavailable—a common occurrence on many Tribal lands. Many individuals also incur medical costs from exposure to unsafe water, or water related stressors. In some impacted Tribal communities, these costs outweigh average household incomes. Overtime, these costs hamper economic growth for Tribes, and divert important resources and funding away from other needed community investments.

Several of our member organizations routinely work with Native American and Alaska Native communities to ensure a high standard of public health and safety are provided through drinking water and sanitation solutions. This work has shown that the federal government is a critical partner in delivering these services, and ensuring that disconnected communities are both counted and supported.

Our collective expertise—working hand-in-hand with communities facing disparate water insecurity issues—validate the critical need for technical assistance and provisions for O&M. While many nonprofit organizations are currently working to help bridge these gaps, they are unable to provide the level of funding needed to meet the volume of demand.

Technical assistance is an effective method of building the capacity of Tribes. Before many Tribal communities can take advantage of funding opportunities, they must first have knowledge of said funding, as well as the capacity and expertise to apply. The Tribal Access to Clean Water Act of 2023 will authorize new grants and loans specifically for technical assistance, and increase available funding from the U.S. Department of Agriculture, Indian Health Service (IHS), and Bureau of Reclamation over the next five years. This increase in funding will help move infrastructure improvement plans to a “shovel ready” stage, thereby expediting delivery, and helping develop much-needed managerial, financial, and regulatory capacities crucial for long-term sustainability.

Unlike traditional utilities, Tribes across the U.S. do not have access to the same revenue streams used for upkeep and system maintenance. Unfortunately, this leaves little support for O&M, a key component to realizing many of the investments designated in the Bipartisan Infrastructure Law and Inflation Reduction Act. Initial funding for building systems is an incredible boon; however, without long-term sustainability considerations from the beginning, systems will inevitably fail. O&M should be factored into federal funding allocation. To that end, the Tribal Access to Clean Water Act of 2023 authorizes increased funding for O&M assistance through IHS over the next five years.

In addition, many Tribes in the U.S. today are disproportionately affected by climate change, including drought and extreme weather events. Tribal and Indigenous people, for example, are more likely to live in areas with land lost to inundation,

³“Close the Water Access Gap.” DIGDEEP, www.digdeep.org/close-the-water-gap.

⁴“Addressing Water and Wastewater Challenges in Tribal Nations.” Office of Community Service, Administration of Children and Families, 2022, <https://www.acf.hhs.gov/blog/2022/08/addressing-water-and-wastewater-challenges-tribal-nations>.

⁵“Padilla Leads Hearing on Improving Access to Clean Drinking Water and Wastewater Infrastructure in Tribal Communities.” Alex Padilla U.S. Senator for California, 2023, <https://www.padilla.senate.gov/newsroom/press-releases/padilla-leads-hearing-on-improving-access-to-clean-drinking-water-and-wastewater-infrastructure-in-tribal-communities/>.

⁶“U.S. National Statement at the United Nations 2023 Water Conference.” Secretary Deb Haaland, U.S. Secretary of the Interior, 2023, <https://usun.usmission.gov/u-s-national-statement-at-the-united-nations-2023-water-conference/>.

⁷“Strengthening the Nation-to-Nation Relationship with Tribes to Secure a Sustainable Water Future.” United States Environmental Protection Agency, 2021, https://www.epa.gov/system/files/documents/2021-10/2021-ow-tribal-action-plan_508_0.pdf.

⁸“Draining—DIGDEEP.” DIGDEEP, www.digdeep.org/draining.

⁹“Climate Change Impacts to Water and Sanitation in Frontline Communities in the United States (working document), Water, Sanitation, and Climate Change in the US Series, Part 1”. Pacific Institute, 2023, <https://pacinst.org/publication/climate-change-impacts-was-2023/>.

¹ Testimony of Valerie Nurraraaluk Davidson, Senate Indian Affairs Committee, March 24, 2021, available at <https://www.indian.senate.gov/wp-content/uploads/Testimony%20of%20VDavidson%20ANTHC%20before%20SCIA%203-24-2021.pdf>.

¹ Lakhani, Nina. “Tribes Without Clean Water Demand an End to Decades of US Government

requiring communities to move, adapt, and repair systems at a higher rate than they would otherwise.⁹ O&M for current water and sanitation infrastructure, as well as the ability to learn about and utilize new technologies that meet the needs of these communities, will enhance their resilience in the face of climate change.

Reliable water and sanitation delivery provide indispensable educational, economic, and community services. Without these essential services, we continue to put the health and well-being of Tribal communities at risk. Therefore, Vessel™ strongly supports the swift passage of The Tribal Access to Clean Water Act.

Everyone deserves a human right to water and sanitation. For far too long, Native Americans have faced disproportionate levels of water insecurity, poverty, and health disparities. For too many Tribal families, water has become a privilege and not a right; the richest democracy in the world has a duty to eliminate this water access gap, once and for all. Providing this basic human right will unlock change for Tribal communities for generations to come. This starts with ensuring equitable and reliable access to government funding and technical assistance, as outlined in both S. 2385 and H.R. 4746.

Sincerely,
 The Vessel™ Collective
 DigDeep
 Center for Indigenous Health
 Community Engineering Corps
 GreenLatinos
 International Association of Plumbers and Mechanical Officials
 Moonshot Missions
 The Center for Water Security and Cooperation
 US Water Alliance
 Water For People

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
 HON. MELANIE ANNE EGORIN

Question 1. Last year this Committee heard testimony about capacity needs within Tribal communities for water infrastructure deployment and maintenance. We heard that Tribes need more resources—whether through finding and applying for grants or through building technical expertise to care for existing systems. How would the Indian Health Service (IHS) use funds directed at providing technical assistance to build Tribal capacity under S. 2385?

Answer. If S. 2385 became law, the Secretary would be authorized to develop a new program to utilize the funds for “the operation and maintenance of water facilities serving Native communities”. This program could be designed to ensure the funds would support the better and timelier documentation of the operational challenges resulting from failing infrastructure and earlier identification of solutions to address these challenges. This earlier problem recognition could lead to capital infrastructure solutions (e.g., interventions) that are less expensive over the long run. Additionally, the funds could help ensure the infrastructure built is operated in a way that comply with regulations intended to protect public health and the environment for tribal communities. However, the time provided in the bill for IHS to develop such a program is severely limited. The current draft of the bill would authorize \$100,000,000 each fiscal year, likely starting in the first fiscal year of the authorization. It would be extremely difficult for the IHS to develop a methodology in collaboration with tribes and to hire the necessary staff to implement that methodology. A preferred approach would be to include language that provides time and funding for IHS to develop the methodology and hire the additional staff needed to support implementation.

Question 2. Under current law, the IHS is authorized to provide water and sanitation services to “Indian homes, communities, and lands.” 42 U.S.C. 2004a. Our understanding is that current IHS interpretation requires matching funds to provide such services to community structures such as schools, hospitals, nursing homes, post offices—basically, public facilities that Tribal members use, frequently on a daily basis, and are essential components of community life. Tribes have frequently stated that they are unable to provide those matching funds, and as a result, these community facilities don’t get connected to clean water service. This is particularly

⁹“Climate Change Impacts to Water and Sanitation in Frontline Communities in the United States (working document), Water, Sanitation, and Climate Change in the US Series, Part 1”. Pacific Institute, 2023, <https://pacinst.org/publication/climate-change-impacts-was-2023/>.

true in Alaska.¹ Please explain the purpose behind the IHS cost matching policy referenced above.

Answer. Section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a) and section 302 of the Indian Health Care Improvement Act (25 U.S.C. 1632(b)), authorize IHS to provide necessary water and sewer for “Indian homes, communities, and lands[.]” Under existing law, the phrase “Indian homes, communities, and lands” is undefined. IHS has interpreted this authorization, in conjunction with statutory restrictions, as being related to the provision of services to American Indians/Alaska Natives (AI/AN) and barring the use of Sanitation Facilities Construction (SFC) project funds for commercial establishments (generally) and facilities associated with non-Indians. IHS policy reflects this interpretation by requiring Indian communities (or others) to identify matching funds to be used in IHS-funded projects to cover the cost of these ineligible facilities. These funds are considered contributions to cover the pro-rata portion of the project cost associated with serving ineligible users as described in the Sanitation Deficiency System Guide. In many cases, including in projects serving Alaska Native Villages, over the past five years the ineligible costs averaged roughly 21 percent of the total project cost. The current policy does not require a matching amount for costs associated with serving eligible homes. However, current policy does require the non-Indian home establishments contribute to the project to cover their portion of the project costs (i.e. ineligible costs).

Question 2a. In light of the funding provided in the Bipartisan Infrastructure Law for IHS Sanitation Facilities Construction Program to address historical underfunding, is the IHS’ current policy still needed?

Answer. Yes, the Bipartisan Infrastructure Law was based on the eligible costs as reported to the Congress at the end of fiscal year 2021. The report to the Congress does not include costs associated with serving commercial, industrial, or agricultural establishments including office buildings, nursing homes, health clinics, schools, hospitals, and hospital quarters, which are considered as ineligible costs and are not funded with SFC appropriated funds. These non-Indian homes can be included in a project if they pay their own cost. As of December 31, 2021, there were 1,513 projects, totaling \$3.4 billion in eligible costs and \$735 million in ineligible costs. As of December 31, 2022, there were 1,369 projects, totaling \$4.4 billion in eligible costs, and \$1.1 billion in ineligible costs. As of December 1, 2023, there are 1,346 projects, totaling \$4.7 billion in eligible costs, and \$1.1 billion in ineligible costs. The Bipartisan Infrastructure Law does not provide sufficient funding to address the current eligible costs let alone the ineligible cost portion of the Sanitation Deficiency System projects reported to the Congress.

Question 3. Your written testimony states that HHS has interpreted the existing statutory term “Indian homes, communities, and lands” to bar the use of IHS funding for “commercial establishments and facilities associated with non-Indians,” and expresses concern that S. 2385 “is inconsistent with the current IHS policy and potentially inconsistent with statutory mandates regarding the provision of services by IHS to non-Indians.” The essential community structures described in the legislation include schools, hospitals, nursing homes, teachers’ homes, Tribal offices, and post offices, not commercial enterprises. Could this be clarified in the legislation by, for example, specifically excluding “commercial establishments” and allowing for some incidental benefits to a small number of non-Indian residents?

Answer. The proposed change would still conflict with IHS policy, as IHS has interpreted the funding authorized under section 7 of the Act of August 5, 1954 (42 U.S.C. 2004a) and section 302 of the Indian Health Care Improvement Act (25 U.S.C. 1632(b)) as intending to provide sanitation facilities for tribal homes. Under IHS policy other non-tribal homes and buildings served by the project are required to provide funding to support the pro-rata cost of the service. There may be funding available from other sources depending on the structure. For example, as explained in the Criteria for the Sanitation Facilities Construction Program, June 1999, Chapter 4, page 3, Health Care Facilities Construction (HCFC) funds are for the construction of new hospitals, health centers, staff quarters, and additional space to existing facilities. The cost to serve these types of facilities with sanitation infrastructure would be taken from the HCFC account.

Question 4. In addition to the Native Hawaiian Health Scholarship program, what else is the Department of Health and Human Services (HHS) and the Health Resources and Services Administration (HRSA) doing to improve recruitment and retention of medical providers to serve in Native Hawaiian Health Care Systems?

¹Testimony of Valerie Nurr’araaluk Davidson, Senate Indian Affairs Committee, March 24, 2021, available at <https://www.indian.senate.gov/wp-content/uploads/Testimony%20of%20Valerie%20Nurr%20araaluk%20Davidson%20ANTHC%20before%20SCIA%203-24-2021.pdf>.

Answer. In addition to the Native Hawaiian Health Scholarship program, HHS, through HRSA, administers the Native Hawaiian Health Care Program. This program improves the health of Native Hawaiians by making health education, health promotion, and disease prevention services available through a combination of outreach, referral, and linkage mechanisms, and provided medical and enabling services to over 6,800 people in 2022. Supporting the recruitment and placement of Native Hawaiian Health Scholarship recipients is a key activity in the Native Hawaiian Health Care Systems.

HRSA also supports the Native Hawaiian Center of Excellence at the University of Hawai'i, which provides individualized premedical advising, workshops, and Medical College Admission Test preparation resources to Native Hawaiian Students. The Center of Excellence has a mentoring and academic support program for current Native Hawaiian medical students.

Furthermore, HRSA's Area Health Education Centers (AHEC) Program develops and enhances education and training networks within communities, academic institutions, and community-based organizations. The Hawai'i/Pacific Basin AHEC has formal partnerships with a variety of organizations across the state, including Papa Ola Lokahi and the Waimanalo Community Health Center, to collaborate on planning health workforce assessments across the region and assist with placing health professions students in rural areas of Hawaii. These partnerships focus on promoting the Native Hawaiian Health Scholarship Program and providing continuing education.

Question 4a. Could the tools proposed in S. 3022 be applied to the Native Hawaiian Health Care Systems? How?

Answer. In regards to HRSA's Native Hawaiian Health Care Systems Program, Native Hawaiian Health Centers receive funding (through the HRSA Health Center Program appropriation) to provide medical and enabling services to Native Hawaiians. Native Hawaiian Health Centers improve the health status of Native Hawaiians by providing access to health education, health promotion, and disease prevention services. Services provided include nutrition programs, screening and control of hypertension and diabetes, immunizations, and basic primary care services. The proposed bill seeks to allow Indian Health Service scholarship and loan recipients to fulfill service obligations through half-time clinical practice. HHS is committed to strengthening the health workforce and connecting skilled health care providers to communities in need. HHS would be happy to take another look at this legislation with a focus on Native Hawaiian Health Care Systems if the Committee would like to request additional technical assistance.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
HON. MANUEL HEART

Question 1. How can the funds and programs proposed in S. 2385 supplement existing resources and address community need? Can you provide a couple of specific examples?

Answer. Our White Mesa Ute Community in Utah is adjacent to the only remaining operating uranium mill in the United States. Stored at the mill are thousands of acre feet of toxic radioactive waste that are anticipated to be there forever. The White Mesa Community depends on groundwater resources buried deep in the Navajo aquifer for its municipal (domestic) needs. The groundwater for the community supply is of poor quality. The Ute Mountain Ute Tribe has long expressed concern that the uranium mill operations (in particular, documented management practices that have allowed continued contamination of surface resources, groundwater resources, and surface water resources) pose serious threats to the health of the surrounding land and waters, to the natural and cultural resources within and around the White Mesa community, and to the health and welfare of its Tribal members and their future generations. Members of the Tribe have experienced an alarming increase in health problems in recent years, including increased levels of cancer.

The additional funding for technical assistance that would be authorized under S. 2385 for USDA, IHS, and the Bureau of Reclamation could provide the Tribe with the necessary help to assess necessary and appropriate upgrades for the White Mesa water treatment system. Such an assessment could determine whether current supplies are contaminated and provide recommendations for upgrades that will remove existing contaminants and guard against future contamination. Such technical assistance funding could also allow the Tribe to commission design and engineering plans for any recommended upgrade. The funding for the USDA rural development grant and loan program could help the Tribe bring its existing treatment system up to current practice standards. Currently, Federal funding for water system tech-

nical assistance and upgrades is severely limited, and none has been made available to the Tribe for this purpose.

In our Towaoc Community in Colorado, the primary water line that supplies water from the Bureau of Reclamation Dolores Project to 600 residences is more than 30 years old. The line is ductile iron and is vulnerable to breaks due to the shifting and saline geology and a lack of adequate cathodic protection. The Tribe experiences multiple such breaks every year, which cause temporary interruption of water deliveries to the Community and exacerbate the potential for water quality contamination. Each repair of the ductile iron line costs the Tribe \$50,000 +/-.

The Tribe has replaced 2.7 miles of ductile iron pipe with 16-18" HDPE (High Density Polyethylene Pipe) which requires no cathodic protection and has a useful life of 100 years. There are another 19 miles of ductile iron pipe that needs to be replaced. The Tribally-owned WCA Construction, LLC is recognized for expertise in HDPE pipe installation. The 2.7 miles of HDPE pipe has been installed with funding from USDA at the rate of one mile per year. At that rate, it will take another 19 years to replace the entire line, with a high probability of increases in costly, contaminating and service interrupting breaks.

The Tribe is preparing an application for the USDA funding that would be provided by S. 2385 if it is enacted to plan and design replacement of the entire remaining 19 miles of pipe to be followed by an application for construction funding. If construction funding is available, the entire pipeline could be replaced by WCA Construction, LLC in 3 years, including installation of isolation valves and SCADA improvements. The result would be a problem free domestic pipeline to the Towaoc community with a life of 100 years.

There is currently no Federal funding available to assist with operation and maintenance of water systems on Tribal reservations. As the above description of the ductile iron pipe illustrates, lack of ability to maintain an appropriate level of O&M makes the entire system more vulnerable. Lack of O&M assistance means that costs of repair and replacement will compound in coming years. S. 2385 would authorize and direct IHS to provide funding for O&M assistance to needy Tribes.

In addition to equipment and facility challenges, the Tribe has considerable difficulty recruiting and retaining qualified facility operators. Staff turnover is prevalent and competitive salary opportunities are not usually available. Obtaining a certification at the appropriate level requires years of experience in addition to successful course and testing completion. With a limited amount of STEM guided career paths in the Tribal population, the chances of having a Tribal member get the education and experience to be an operator is low. To keep an employee with these qualifications by virtue of salary alone is not possible. The combination of these makes it tough to keep operators.

In our smaller Utah community, we have a treatment system, but we do not have a certified operator. S. 2385 and its authorization of O&M assistance funding could help the Tribe to operate and maintain the water system in White Mesa.

