



## Recommendations for Operational, Administrative, Policy and Regulatory Reform Congressional Roadmap and Call to Action

Access to clean drinking water is a fundamental human right. As highlighted by the COVID-19 pandemic, basic water and sanitation services are critical to public health and economic development, yet absent from many Tribal communities. The federal government has treaty and trust responsibilities to promote the general welfare of Tribes, and to provide Tribes with permanent and livable homelands. This includes a duty to provide water security to Tribes.

Recent legislation and executive actions are bringing the necessary attention and financial resources to support real, tangible progress toward providing universal access to clean water for all Americans. Through bipartisan efforts, for the first time in history Congress is providing substantial levels of funding to federal agencies for programs that can be used to provide drinking water and sanitation in Tribal communities. This funding will enable the federal government to more fully deliver on its responsibilities to Tribes.

The federal government must be ready to utilize this funding to deliver the maximum benefit and achieve enduring solutions. The Report on Recommendations for Operational, Administrative, Policy, and Regulatory Reforms (Report) describes specific actions and agency reforms to capitalize on this opportunity. While the unprecedented levels of funding are a step in the right direction, Congress could also provide clear directives to the federal agencies tasked with deploying these funds. The following roadmap highlights some of the recommendations included in the report, such as promoting a whole of government approach and removing unnecessary programmatic barriers, which will enable progress toward the goal of providing *Universal Access to Clean Water for Tribes*.

### Roadmap for Congress

#### 1. Promote a whole of government approach.

The Biden Administration has promoted a whole of government approach, which involves the coordination of several overlapping agencies and departments, to other issues with similar scope and breadth as *Universal Access to Clean Water for Tribes*. *See Report, page 6.*

In the absence of a clear directive by the Executive Branch to implement a whole of government approach, Congress can step in to provide appropriate direction. If Congress chooses to act, it must ensure that it allows the Executive Branch the necessary flexibility to provide tailored solutions to on-the-ground issues. An advantage to Congress acting is the Congressional power to include appropriations for a whole of government approach. *See Report, page 10.*

In promoting a whole of government approach, the Administration should capitalize on existing interagency working groups to quickly transition to a whole of government deployment of funds for clean drinking water infrastructure for Tribal communities. The best existing vehicle for this is the Tribal Infrastructure Task Force, which includes U.S. Department of Agriculture, Environmental Protection Agency's (EPA) Office of Water, Bureau of Reclamation (BOR), Bureau of Indian Affairs, Indian Health Service (IHS), U.S. Department of Health and Human Services Administration for Native Americans, and U.S. Department of Housing and Urban Development's Public and Indian Housing. *See Report, pages 13-14.* The revitalization and utilization of the Tribal Infrastructure Task Force for this purpose has been proposed by the Assistant Secretary of the Interior for Water and Science and by the EPA's Office of Water Action Plan on Strengthening the Nation-to-Nation Relationship with Tribes to Secure a Sustainable Water Future. If progress on the whole of government approach is not made in a timely manner, Congress could direct the utilization of the Tribal Infrastructure Task Force, establish clear goals and metrics for achievement of access to clean water for Tribes, and require periodic reporting.

## **2. Remove barriers to program administration.**

Federal programs addressing the lack of clean drinking water have historically been understaffed and underfunded. As a result, agencies and departments have developed regulations and policies intended to prioritize the distribution of very limited resources. With an influx of funding for these programs, these agencies must now reconsider restrictive regulations and policies, and instead remove barriers to participation in these programs. While many of these restrictions are based in regulation or policy, if not done in a timely manner by the agencies, then Congress could provide a clear statutory directive to remove these barriers, including:

- Eliminating the matching fund requirement imposed by IHS for sanitation facility construction projects. *See Report, pages 18-19.*
- Providing clearer definitions of eligible Indian Communities. *See Report, pages 19-21.*
- Authorizing IHS to account for future Tribal growth when planning and constructing infrastructure projects. *See Report, page 21.*
- Removing the "no funding elsewhere" requirement imposed by USDA on applicants for Section 306(c) Grants. *See Report, page 25.*
- Increasing the scope of BOR's authority to allow BOR to contribute its technical expertise and resources to addressing the lack of universal access to clean water for Tribes. *See Report, page 27.*

## **3. Ensure accountability.**

Congress should exercise appropriate oversight, and hold agencies accountable in the deployment of new funds. As noted above, and detailed in the Report, there are significant regulatory and policy barriers which prevent Tribes from participating in some federal programs. Before agencies begin to distribute funding through these programs, Congress should hold hearings and require each agency to

describe what changes they will make to promote greater access to Tribal drinking water infrastructure programs through increase flexibility. This will give Congress a better sense of which barriers can be removed through rulemaking or internal policy changes, and which barriers may require a legislative fix.

Additionally, Congress must ensure agencies are not simply allocating funds, but making identifiable progress. For example, Congress receives annual reports from IHS on the status of the Sanitation Facilities Construction Program (SFCP). Now that IHS will receive full funding for this program, Congress must ensure that these annual reports demonstrate progress towards the goal of universal access to clean drinking water through completed projects. Furthermore, in addition to IHS and other agency reports, Congress should require progress reports from the interagency working group, to ensure that agencies are coordinating resources and making progress on the ground.

#### **4. Provide funding for operation & maintenance support.**

Congress has provided full funding to address IHS's estimated need for the SFCP through the Infrastructure Investments and Jobs Act (IIJA). However, Congress has provided no funding for IHS to carry out its statutory authorization to provide operation and maintenance (O&M) support for Tribal water, sewage, and solid waste systems. The lack of funding for O&M fails to protect existing and future investments in drinking water infrastructure, and hinders Tribes' ability to develop their own capacity. A report by the Canadian Parliamentary Budget Office, analyzing similar issues affecting Canada's First Nations communities, stated, "if [O&M] funding is insufficient, water-related infrastructure may continue to deteriorate at a faster-than-expected rate, and overall costs may continue to increase as the infrastructure ages." Therefore, providing funding for IHS to provide O&M assistance for Tribal infrastructure is critical to the long-term success of efforts to address the lack of universal access to clean drinking water. *See Report, page 31.*

The federal government must act quickly and adeptly to deploy the unprecedented level of funding that Congress has provided through the Coronavirus Aid, Relief, and Economic Security Act, American Rescue Plan Act, and IIJA. These recommendations will optimize the expertise and funding available from multiple federal agencies to support water access for Tribes and make tangible progress in developing the required internal Tribal resources that will ensure long-term sustainability and resilience in drinking water systems.



UNIVERSAL ACCESS TO CLEAN WATER  
FOR TRIBAL COMMUNITIES