



UNIVERSAL ACCESS TO CLEAN WATER  
**FOR TRIBAL COMMUNITIES**

January 17, 2023

Bureau of Reclamation  
1849 C Street NW  
Washington DC 20240-0001  
*Via e-mail: [usbr.ir.act@usbr.gov](mailto:usbr.ir.act@usbr.gov)*

**Re: Comments on Allocation of Funding from the Inflation Reduction Act**

On behalf of the Universal Access to Clean Water for Tribal Communities (UACW) team, we appreciate the opportunity respond to the Bureau of Reclamation's request for comments regarding the allocation of funding received under the Inflation Reduction Act (IRA). We are limiting our comments to the \$550 million appropriated to Reclamation by Section 50231 of the IRA. As outlined further below, we primarily recommend Reclamation: **(1) Include Tribes under the definition of disadvantaged communities; and (2) Utilize this funding to support the planning, design, and construction document preparation of water and wastewater projects from the Indian Health Service Sanitation Deficiency System list.**

The UACW is a project launched by the Colorado River Basin Water & Tribes Initiative, a group of Tribal members, water experts, and non-profit organizations working together to enhance Tribal capacity and advance sustainable water management in the Basin through collaborative decision-making.<sup>1</sup> In recent years, our team has looked closely at the programs of the various federal agencies that address the provision of clean water and associated infrastructure in Indian country. Our published reports address the historical provision of support for Tribal water infrastructure by four agencies: Environmental Protection Agency (EPA), Indian Health Service (IHS), U.S. Department of Agriculture, and Bureau of Reclamation.<sup>2</sup> A summary of relevant key points is attached as Appendix A (including an overview of the status of drinking water access in Tribal communities and the importance of building Tribal capacity).

Along with the Infrastructure Investment and Jobs Act (IIJA), the IRA offers unprecedented funding that will help address longstanding inequities and injustices that Tribal communities face today and that may worsen in the future without special consideration and attention. We encourage an interpretation of the IRA that would ensure that Tribal needs are not only included in this newly available funding, but comprehensively addressed as well. In addition,

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<sup>1</sup> For more information, please visit: Universal Access to Clean Water for Tribal Communities, <http://www.tribalcleanwater.org>.

<sup>2</sup> Universal Access to Clean Water for Tribes in the Colorado River Basin, April 2021, available at [https://drive.google.com/file/d/11\\_a5wZNFJE-1xw94K5K4f2cwLDAuUzaW/view](https://drive.google.com/file/d/11_a5wZNFJE-1xw94K5K4f2cwLDAuUzaW/view); Recommendations for Operational, Administrative, Policy, and Regulatory Reform, Nov. 2021, available at <https://tribalcleanwater.org/wp-content/uploads/2021/11/Full-Report-11.21-FINAL.pdf>.

the funding provided by the IRA and IJA that targets domestic water supply projects for communities that do not have reliable access can be most effectively deployed through a “whole-of-government approach” that capitalizes on the skills, resources, and funding streams of multiple Federal agencies. Therefore, we recommend that Reclamation take the steps enumerated below:

**1. Include Tribes in Reclamation’s definition of disadvantaged communities for the purposes of Section 50231 of the IRA.**

Section 50231 funding under the IRA provides:

*In addition to amounts otherwise available, there is appropriated to the Secretary, acting through the Commissioner of Reclamation, for fiscal year 2022, out of any money in the Treasury not otherwise appropriated, \$550,000,000, to remain available through September 30, 2031, for grants, contracts, or financial assistance agreements for **disadvantaged communities (identified according to criteria adopted by the Commissioner of Reclamation)** in a manner as determined by the Commissioner of Reclamation for up to 100 percent of the cost of the planning, design, or construction of water projects the primary purpose of which is to provide domestic water supplies to communities or households that do not have reliable access to domestic water supplies in a State or territory described in the first section of the Act of June 17, 1902 (43 U.S.C. 391; 32 Stat. 388, chapter 1093).*

As highlighted above, Section 50231 does not explicitly define disadvantaged communities. Instead, it states that such communities should be “identified according to criteria adopted by the Commissioner of Reclamation,” giving a relatively large amount of discretion to Reclamation in defining this term.

While some agencies such as the EPA<sup>3</sup>, Department of Transportation (DOT)<sup>4</sup>, and Department of Energy<sup>5</sup> have developed their own tools and guidance in defining disadvantaged communities, there are not standardized national criteria for evaluating or determining such a definition. This excellent report by Lawyers For Good Government provides extensive information on existing federal and state definitions of disadvantaged communities, as well as the Biden Administration’s Justice40 Initiative (J40), which aims to direct federal climate and clean energy investments to disadvantaged communities.<sup>6</sup> As the report notes, and we concur: “It will take careful coordination between all levels of government and communities to meet the J40 targets.”

In line with J40 efforts, the Council on Environmental Quality (CEQ) developed a Climate and Economic Justice Screening Tool (CEJST) which uses a consistent methodology and datasets

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<sup>3</sup> Env’t Protection Agency, EJScreen: Environmental Justice Screening and Mapping Tool, <https://www.epa.gov/ejscreen>.

<sup>4</sup> U.S. Dep’t of Transportation, Federal Tools to Determine Disadvantaged Communities Status, <https://www.transportation.gov/grants/dot-navigator/federal-tools-determine-disadvantaged-community-status>.

<sup>5</sup> Office of Economic Impact and Diversity, Justice40 Initiative, <https://www.energy.gov/diversity/justice40-initiative>.

<sup>6</sup> J40 was included in Executive Order 14008 and directs 40% of the overall benefits of certain federal investments to flow to disadvantaged communities. See Executive Order on Tackling the Climate Crisis at Home and Abroad (Jan. 27, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/>.

to identify communities that are economically disadvantaged and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.<sup>7</sup> CEQ has explicitly stated that “[t]o respect Tribal sovereignty and self-government and to fulfill Federal trust and treaty responsibilities to Tribal Nations, *land within the boundaries of Federally Recognized Tribes are designated as disadvantaged on the map* (emphasis added).”<sup>8</sup> Moreover, CEQ’s decision was made after “meaningful and robust consultation with Tribal Nations” and is consistent with other federal action (e.g., CEQ’s Action Plan for Consultation and Coordination with Tribal Nations, President Biden’s Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Consultation, and Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments).<sup>9</sup>

By providing \$550 million to combat western drought, Section 50231 of the IRA has a goal of helping disadvantaged communities in Reclamation states plan, design and construct projects intended to provide domestic water supplies to households that do not currently have reliable access. As we explain in further detail in Appendix A, Tribes within Reclamation states are particularly disadvantaged when it comes to water and sanitation access and affordability. Directing resources from Section 50231 of the IRA to Tribes in these states would directly meet the goals of the IRA, as well as help to remedy a longstanding and shameful injustice. In addition, including Tribes in the definition of disadvantaged communities is consistent with CEQ’s designation for the Justice40 Initiative.<sup>10</sup> Accordingly, we encourage the Commissioner of Reclamation to adopt criteria pursuant to Section 50231 that include “any lands within the boundaries of Federally Recognized Tribes” in the definition of “disadvantaged communities.”

## **2. Maximize the impact of Reclamation’s IRA funding by utilizing it to advance projects from the IHS Sanitation Deficiency System list to the “shovel ready” stage where construction funding can then be provided by IHS.**

A whole of government approach optimizes resources and creates synergies through the cooperation of sister agencies in the federal government. Reclamation can increase the impact of IRA and IJA funds through coordination with IHS.

The IHS, as part of its Sanitation Facilities Construction Program, collects sanitation data—information about water supply and sewage disposal—for Native American homes within its service areas. This information is compiled into a Sanitation Deficiency System (SDS) list and reported annually.<sup>11</sup> (See Appendix B for figure depicting the number of Native American homes requiring sanitation facility improvements). Under IJA, IHS received \$3.5 billion to fully

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<sup>7</sup> Climate and Economic Justice Screening Tool, <https://screeningtool.geoplatform.gov/>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Under the Indian Health Care Improvement Act (IHCA) (25 U.S.C. § 1632(g)) the annual report shall set forth the following: (a) the current Indian sanitation facility priority system of the Service; (b) the methodology for determining sanitation deficiencies; (c) the level of sanitation deficiency for each sanitation facilities project of each Indian Tribe or community; (d) the amount of funds necessary to raise all Indian Tribes and communities to a level I sanitation deficiency; and (e) the amount of funds necessary to raise all Indian Tribes and communities to zero sanitation deficiency. FY 2021 Annual Report of Sanitation Deficiency Levels, [https://www.ihs.gov/sites/dsfc/themes/responsive2017/display\\_objects/documents/FY\\_2021\\_Appendix\\_Project\\_Listing.pdf](https://www.ihs.gov/sites/dsfc/themes/responsive2017/display_objects/documents/FY_2021_Appendix_Project_Listing.pdf).

fund its end-of-year 2021 SDS list. The IJA funds are a game changer for water infrastructure in Indian country, but are not a panacea. Many of the SDS projects are not yet deemed “shovel ready” and, consequently, are not able to move forward to construction. IHS has funding for construction of SDS projects, but insufficient funding to support the technical work required to bring all identified and necessary projects to the shovel ready stage.

The SDS list does not include the project design cost, inflation (which will increase design costs), and costs considered “ineligible” based on IHS’s definition of “Indian community.” In addition, the non-comprehensive nature of the SDS project list (the SDS does not purport to assess every water and sanitation need in Indian country, but rather catalogs known, needed projects specifically for American Indian and Alaska Native homes) means that not all needed domestic water supply projects are included. As a result, the actual total spending need is higher than identified in the SDS list reported annually by IHS. These limitations can be, in part, addressed through a whole of government approach between IHS and other agencies to collectively utilize available funding and provide more comprehensive coverage of the need for water and sanitation infrastructure in Tribal communities. A unique opportunity has arisen for Reclamation and IHS to partner, given the significant overlap between the IHS SDS list, and the types of projects envisioned in Sec. 50231 of the IRA.

The projects in the IHS SDS are divided into the following three tiers:

- Tier 1 – Ready to fund. These projects may still require construction documents, but the basic engineering has occurred, and they are ready to be funded for construction.
- Tier 2 – Engineering assessed. These projects are not yet ready to fund. They have had a feasibility level assessment, but work remains to engineer the project and get construction documents ready.
- Tier 3 – Preliminarily assessed. These projects are at the conceptual stage. They need a complete feasibility assessment and all engineering work.

IHS area offices have been directed to work to transition Tier 2 and Tier 3 projects into Tier 1 projects as soon as possible. IHS is currently funding Tier 1 projects with the IJA money, but may fully fund the construction of all Tier 1 projects as soon as this year. There will be construction funding remaining from the IJA, but insufficient projects on the SDS list that are at the “ready to fund” stage. This creates an urgent need to complete feasibility assessments and basic engineering work in Tier 2 and Tier 3 projects to quickly transition them to “ready to fund” Tier 1 projects. Appendix C provided by IHS, estimates the number of projects and the planning and design costs for the three tiers of projects in twelve western states.

Reclamation is uniquely suited to fill some of these gaps with IRA funds, since they are authorized for use for “planning, design, or construction.” This is a particularly promising opportunity because the IRA language explicitly states that matching funds are not required, so Reclamation does not need to require a match to complement IHS funding. Many Tribes are unable to secure matching funds, so this ability to provide funding without a match overcomes a critical barrier. (*See* Appendix A for additional information on filling gaps in IHS funding). In addition, because IHS has already identified Tribal community water and sanitation needs and appropriate projects to fill those needs, Reclamation does not need to duplicate this effort (or reinvent the wheel) for the disadvantaged Tribal communities in Reclamation states.

There are three key areas where Reclamation funding could be significantly leveraged to obtain maximum benefit for disadvantaged Tribal communities:

- First, Reclamation’s engineering expertise and water system design experience would be particularly useful in assisting Tribes with completing planning and design work because IHS has insufficient funding and limited capacity to accomplish these critical first steps for the successful completion of all projects identified on the SDS list. To assist IHS in getting Tier 2 and 3 projects ready to fund, Reclamation could enter into an interagency agreement with IHS, in which Reclamation would agree to provide planning and design services for IHS SDS projects, either through use of its in-house expertise or by contracting for outside engineering services.
- Second, Reclamation funds can be used to “unlock” funds for an otherwise eligible project where Tribes are not able to meet IHS’s cost match requirement.
- Finally, because Reclamation’s agency mission is not limited to serving only Indian communities (i.e., communities comprised of 50 percent or more federally recognized AI/AN people), Reclamation funds could be used in partnership with IHS funds to complete portions of projects which may serve both Indian and non-Indian communities.

The initiative on Universal Access to Clean Water for Tribal Communities strongly supports Reclamation’s efforts to provide clean water access and sanitation services to disadvantaged communities and applauds the new funding available through the IRA. We appreciate the thoughtful approach that Reclamation is taking to the allocation of this funding.

Thank you for your time and consideration.

Sincerely,

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## APPENDIX A – Additional Background and Considerations

**A substantial portion of Reclamation’s funding through IRA Section 50231 should be directed to Tribal communities because they constitute some of the most disadvantaged communities in the country and the federal government has treaty and trust responsibilities to provide clean water access to Tribes.**

“Water is essential to every aspect of household and community life and the economy.”<sup>1</sup> And yet, tribal communities face high rates of water insecurity.<sup>2</sup> While the exact number is unknown, a 2016 Congressional report estimated that “[o]ver 660,000 American Indian and Alaska Native men, women, and children lack access to clean and reliable water sources or basic sanitation.”<sup>3</sup> Native American communities are “equally likely to lack complete plumbing whether they are high- or low- income, and whether they live in urban or rural areas.”<sup>4</sup> Neither spatially nor socially random, plumbing poverty is clearly racialized. In fact, race is the most significant predictor of plumbing access. Living in a Native household dramatically increases the odds of being plumbing poor, with Native households being 19 times more likely than white households to lack indoor plumbing with running water.<sup>5</sup>

Tribes within Reclamation states are among the most impacted. Without a safe, reliable, affordable, and easily accessible water supply, these households are unable to meet basic personal hygiene, food preparation, domestic cleaning, and other needs required for good health.<sup>6</sup> Under any definition, Tribes clearly constitute a disadvantaged community when it comes to access to water and sanitation infrastructure.

Several factors contribute to water insecurity for Tribes, including the isolated nature of some reservations, lack of adequate infrastructure, and lack of clean water sources.<sup>7</sup> As a result, the exact nature and cause(s) of water insecurity vary from tribe to Tribe. Through outreach to the various Tribes, we have identified four broad challenges to water security:

- (1) Native American households are more likely to lack piped water services than any other racial group.** The Navajo Nation, the largest and most populous reservation in the country, has significant piped water access gaps. Navajo residents are 67 times more likely than other Americans to live without access to running

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<sup>1</sup> AMERICAN SOCIETY OF CIVIL ENGINEERS, THE ECONOMIC BENEFITS OF INVESTING IN WATER INFRASTRUCTURE at 3 (2020).

<sup>2</sup> GOV’T ACCOUNTABILITY OFF., GAO-18-309, DRINKING WATER AND WATER INFRASTRUCTURE: OPPORTUNITIES EXIST TO ENHANCE FEDERAL AGENCY NEEDS ASSESSMENT AND COORDINATION ON TRIBAL PROJECTS (2018), <https://www.gao.gov/assets/700/691757.pdf>.

<sup>3</sup> Democratic Staff of the House Committee on Natural Resources, *Water Delayed Is Water Denied: How Congress has Blocked Access to Water for Native Families* 1 (Oct. 10, 2016), [https://naturalresources.house.gov/imo/media/doc/House%20Water%20Report\\_FINAL.pdf](https://naturalresources.house.gov/imo/media/doc/House%20Water%20Report_FINAL.pdf).

<sup>4</sup> Shiloh 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); U.S. Water Alliance & DigDeep, CLOSING THE WATER ACCESS GAP: A NATIONAL ACTION PLAN 22 (2019).

<sup>5</sup> CLOSING THE WATER ACCESS GAP at 22.

<sup>6</sup> See, e.g., Paul R. Hunter, Alan M. MacDonald and Richard C. Carter, *Water Supply and Health*, 7(11) PLOS MED. (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2976720/>.

<sup>7</sup> BUREAU OF RECLAMATION, COLORADO RIVER BASIN TEN TRIBES PARTNERSHIP TRIBAL WATER STUDY 7–11 (2018), <https://www.usbr.gov/lc/region/programs/crbstudy/Tribalwaterstudy.html>.

water.<sup>8</sup> That equates to roughly 30 percent of residents who lack indoor plumbing and must haul water long distances to meet basic household needs.<sup>9</sup> Beyond the Navajo Nation, several other Tribes suffer from plumbing poverty, including Hopi Tribe, White Mountain Apache Tribe, and Southern Ute Indian Tribe.

- (2) **Inadequate water quality is pervasive in Indian country.** Some Tribes may have developed the necessary infrastructure to bring piped water into all of the community households. However, for a variety of reasons, that water may not be suitable for human consumption due to quality concerns. For example, the Hopi Tribe has struggled with arsenic contamination in its water supply since its drinking water systems were first installed in the 1960s.<sup>10</sup> Such contamination poses serious health risks, including diabetes, skin discoloration, cancer, blindness, and partial paralysis.<sup>11</sup>
- (3) **Existing water infrastructure is deteriorating or inadequate.** Investment in water infrastructure has not kept up with population growth and other needs. Such underinvestment harms “the social, physical, and mental wellbeing” of Tribal communities and impairs their ability to thrive.<sup>12</sup> For the Colorado River Indian Tribes (CRIT), deteriorating infrastructure has hindered their water delivery system and negatively impacted their economic development. A significant portion of CRIT’s water comes through infrastructure installed over the course of many decades, beginning in the 1870s.<sup>13</sup> The high costs associated with outdated technology and infrastructure repairs has limited CRIT’s ability to realize the full potential value of its water and meet the growing needs of its community.
- (4) **Operation and maintenance of water systems is a critical component of ensuring long-term water security.** While many Tribes have constructed suitable water infrastructure, operation and maintenance (O&M) of the systems can be difficult. The Jicarilla Apache Nation has experienced the unique challenges associated with providing ongoing support for O&M. For a period of time, the Tribal Utility Authority managed O&M for a newly constructed water delivery system. However, like other Tribes, the Jicarilla Apache Nation is unable to utilize traditional means of collecting revenue to support O&M—e.g., taxing Tribal lands. As a result, the Tribal Utility Authority ceased overseeing O&M. Without establishing another means of maintaining the existing infrastructure, water services to the community have been threatened.

The stark and disproportionate lack of access to clean water on reservations is particularly egregious because the federal government has treaty and trust responsibilities to

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<sup>8</sup> DigDeep, *About the Navajo Water Project*, <https://www.navajowaterproject.org/project-specifics>.

<sup>9</sup> TRIBAL WATER STUDY, § 5.5, Navajo Nation; CLOSING THE WATER ACCESS GAP, at 38.

<sup>10</sup> *U.S. House of Representatives Committee on Appropriations, Subcommittee on Interior, Environment, & Related Agencies*, 116th Cong. (Mar. 7, 2019) (testimony of Timothy Nuvangyaoma, Chairman, Hopi Tribe).

<sup>11</sup> NATIONAL RESEARCH COUNCIL, ARSENIC IN DRINKING WATER (1999), available at <https://www.ncbi.nlm.nih.gov/books/NBK230891/>.

<sup>12</sup> ECONOMIC BENEFITS at 3.

<sup>13</sup> Tribal Water Study, at § 5.8.6.

provide clean water to Tribes.<sup>14</sup> Several Tribes entered into treaties with the federal government. In exchange for the cession of millions of acres of lands, Tribes received certain promises from the federal government. These promises often included the establishment of a reservation as a permanent homeland for Tribes.

In *Winters v. United States*, the U.S. Supreme Court addressed Tribal water rights, holding that when reservations were created, Tribes reserved expansive water rights—enough to fulfill the purposes of the reservation, from domestic to agricultural to hunting and fishing.<sup>15</sup> The *Winters* decision was a moral statement as well as a legal ruling, for the heart of Indian water rights involves the United States’ trust obligation to provide true homelands to Tribes. “Access to a clean, reliable supply of water is basic to human health,”<sup>16</sup> and clearly a necessary component to making a homeland habitable and permanent.

In at least partial recognition and fulfillment of its treaty and trust responsibility to provide access to clean water for Tribes, various federal agencies have established programs that provide support for water related projects. However, more must be done to remedy the shameful levels of plumbing poverty in Tribal communities. Reclamation can help address this urgent situation by directing a substantial portion of the IRA Section 50231 funding to improve water and wastewater infrastructure for these disadvantaged communities. We strongly urge Reclamation to do so.

### **Reclamation should support Tribal capacity development with existing resources.**

Increasing Tribal capacity will protect current and future investments in drinking water infrastructure and help meet the water access gap in Tribal communities. Where possible, Reclamation should prioritize interfacing directly with Tribes which are awarded IRA funds, with a focus on an exchange of knowledge that will benefit both Tribes and the agency in the future.

Reclamation engineers should work closely with Tribal members during projects in the planning and design phase. Though Tribes may not currently have an engineer on staff, bringing in Tribal members can help the Tribe to better understand the engineering process. By gaining this knowledge, future projects could be closer to “shovel ready” as the Tribe will have a better understanding of the preliminary work needed before construction begins. Additionally, Reclamation staff could benefit greatly by more closely working with the community. Particularly in systems where knowledge is institutionalized, e.g., where detailed drawings of the existing system are not available or incomplete, Reclamation can design and construct projects more efficiently through this working relationship.

Building the relationships necessary to increase Tribal capacity may require an upfront investment of time, one which may seem straining to agency staff already stretched thin.

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<sup>14</sup> Bureau of Indian Affairs, *What is the Federal Indian Trust Responsibility?*, <http://www.bia.gov/FAQs/index.htm>. See also *United States v. Kagama*, 118 U.S. 375, 384 (1886) (“From their very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power.”).

<sup>15</sup> 207 U.S. 564 (1908).

<sup>16</sup> TRIBAL WATER STUDY.

However, these investments are worth the time and resources as they will help future projects to be completed more efficiently and over time allow Tribes to take more ownership of their drinking water infrastructure, lessening the need for federal assistance.

**Consider broader approaches to advance environmental justice and provide opportunities to Tribal communities under Executive Order 13985.**

We applaud any ongoing efforts to advance environmental justice and equity by Reclamation and encourage additional efforts across all programs to provide opportunities to communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care. This recommendation is in line with Executive Order 13985,<sup>17</sup> signed on January 20, 2021, which establishes a whole of government approach to advancing equity for all, including people “who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.”

As a basic premise, Executive Order 13985 states that “[a]ffirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government. Because advancing equity requires a systematic approach to embedding fairness in decision-making processes, executive departments and agencies (agencies) must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.” Under this order, the term “equity” means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. The order also defines the term “underserved communities” as populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the preceding definition of “equity.”

**Maximize community benefit by not requiring matching funds or other requirements to support Tribal water supply projects; and to the extent needed, utilize the funds to support broader community projects for which IHS would otherwise require matching funds to proceed.**

Section 7(a)(1) of the Indian Sanitation Facilities Act (ISFA) authorizes IHS to provide sanitation facilities to “Indian homes, communities, and lands.”<sup>18</sup> To date, and likely due to historically insufficient funding, IHS has adopted a restrictive interpretation of this responsibility, providing funding only to projects that serve Native homes directly, and requiring communities to find matching funds for other structures in the community that would be served

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<sup>17</sup> Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>.

<sup>18</sup> Pub. L. 86-121.

by water and wastewater infrastructure.<sup>19</sup> This is true even for structures that are essential to the life of the Native community and provide indispensable educational, economic, and community services, such as schools, hospitals, nursing homes, teachers' homes, Tribal offices, and post offices. The matching requirement creates an insurmountable financial obstacle for too many communities, particularly in Alaska, as no portion of the project may proceed if a community cannot secure the required funds. This unnecessary matching requirement, coupled with IHS's narrow interpretation of their Section 7(a)(1) duty to Native communities has left far too many American Indian and Alaska Natives (AI/AN) without water and wastewater services. Utilizing IRA funding, Reclamation can help fill this gap by providing the matching requirement needed to build drinking water infrastructure to structures essential to the educational, economic, and health needs of the community.

Additionally, and relatedly, though IHS has established basic eligibility criteria<sup>20</sup> for providing service to "Indian homes, communities, and lands" under Section 7(a)(1) of the ISFA, the agency does not have regulations that define Indian community for this purpose. Under current criteria, IHS assistance depends upon the community size and Indian population.<sup>21</sup> In Indian communities (50 percent or more Federally recognized AI/AN people), non-Indian persons or organizations must contribute funds to cover the prorated cost of facilities required to serve them. In non-Indian communities, IHS can only provide funding to improve or replace existing sanitation facilities in communities with less than 10,000 people, and again, that funding is prorated to cover only the cost to serve Tribal homes. It cannot be used for any commercial, industrial, institutional or governmental establishments benefitting from the projects. In non-Indian communities with more than 10,000 people, IHS is only able to support connecting individual Tribal homes to public infrastructure, making these communities entirely reliant on state or other sources of funding for upgrades to existing systems. These community and population distinctions are both unnecessarily complex and confusing, and create barriers and disadvantages for both AI/AN households that are located within non-Indian communities, and non-AI/AN households that are located within Indian communities. Reclamation's definition of disadvantage communities should provide drinking water and sanitation to all Tribal members, regardless of the makeup of the communities in which they live. As noted by Senator Lisa Murkowski of Alaska, "it makes sense to provide some incidental benefits to non-Indians in an Indian community in order to get the full sanitation benefits to the folks that are there."<sup>22</sup>

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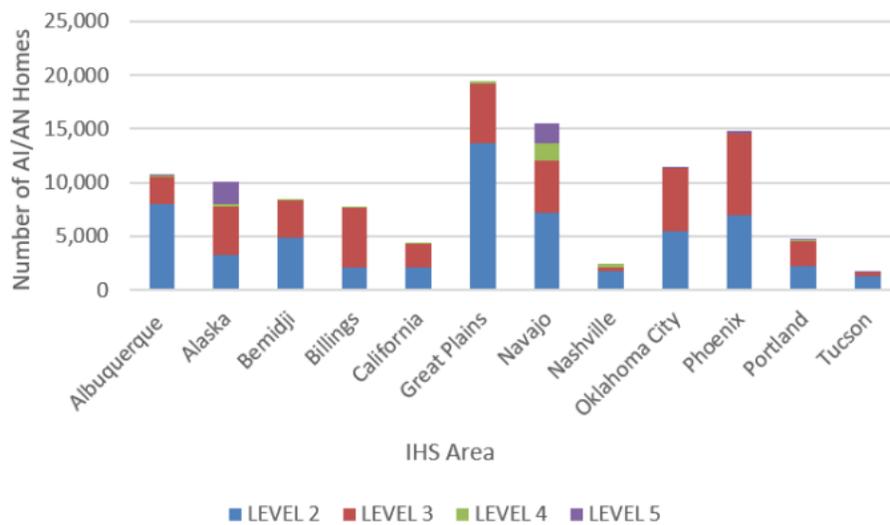
<sup>19</sup> Jojo Phillips, *'Unserviced': Why some Western Alaska villages lack basic sanitation infrastructure*, KNOM NEWS, May 20, 2020.

<sup>20</sup> Indian Health Service, *Criteria for the Sanitation Facilities Construction Program*, at 5-3 (2003).

<sup>21</sup> *Id.* at 5-7.

<sup>22</sup> Lisa Murkowski, *Senator Murkowski Speaks on Improving Health Care Outcomes and Sanitation in Indian Country*, YOUTUBE, (Dec. 12, 2019).

## APPENDIX B – Number of Native American Homes Requiring Sanitation Facility Improvements by IHS Service Area



<b>Level I:</b> An Indian tribe or community with a sanitation system which complies with all applicable water supply and pollution control laws, and in which the deficiencies relate to routine replacement, repair, or maintenance needs.
<b>Level II:</b> An Indian tribe or community with a sanitation system which complies with all applicable water supply and pollution control laws, and in which the deficiencies relate to capital improvements that are necessary to improve the facilities in order to meet the needs of such tribe or community for domestic sanitation facilities.
<b>Level III:</b> An Indian tribe or community with a sanitation system which has an inadequate or partial water supply and a sewage disposal facility that does not comply with applicable water supply and pollution control laws, or that has no solid waste disposal facility.
<b>Level IV:</b> An Indian tribe or community with a sanitation system which lacks either a safe water supply system or a sewage disposal system.
<b>Level V:</b> An Indian tribe or community that lacks a safe water supply and a sewage disposal system.

Source: Indian Health Service, Annual Report to the Congress of the United States on Sanitation Deficiency Levels for Indian Homes and Communities FY 2019 (2019), available at [https://www.ihs.gov/sites/newsroom/themes/responsive2017/display\\_objects/documents/FY\\_2019\\_RTC\\_Sanitation\\_Deficiencies\\_Report.pdf](https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/FY_2019_RTC_Sanitation_Deficiencies_Report.pdf).

**APPENDIX C – IHS Estimated Planning & Design Costs for SDS List Projects in Reclamation States**

State	Tier 1		Tier 2		Tier 3	
	Project Count	Project Cost	Project Count	Project Cost	Project Count	Project Cost
ARIZONA	27	\$ 5,084,576	125	\$ 68,492,011	37	\$ 19,581,688
CALIFORNIA	17	\$ 13,022,805	48	\$ 30,737,901	12	\$ 2,740,517
IDAHO	6	\$ 88,450	5	\$ 218,500	1	\$ 84,800
KANSAS	5	\$ 211,350	3	\$ 907,600	5	\$ 361,350
MONTANA	1	\$ 200,000	0	\$ -	2	\$ 500,000
NEVADA	2	\$ 46,850	3	\$ 875,800	1	\$ 233,550
NEW MEXICO	22	\$ 1,712,530	49	\$ 9,906,751	8	\$ 1,318,600
OKLAHOMA	12	\$ 1,492,550	5	\$ 1,007,200	0	\$ -
OREGON	3	\$ 380,350	4	\$ 11,859,700	0	\$ -
UTAH	1	\$ 52,800	10	\$ 2,916,750	5	\$ 1,649,450
WASHINGTON	13	\$ 1,194,880	3	\$ 645,000	6	\$ 5,862,916
WYOMING	0	\$ -	1	\$ 50,000	1	\$ 150,000
<b>Totals</b>	<b>109</b>	<b>\$ 23,487,141</b>	<b>256</b>	<b>\$ 127,617,213</b>	<b>78</b>	<b>\$ 32,482,871</b>

Total Projects: 443

Total Costs:<sup>23</sup> \$183,587,225

<sup>23</sup> This table identifies the non-specialty engineering costs associated with Tier 1-3 projects within Reclamation states. IHS defines “non-specialty” engineering as engineering work that is within the scope or expertise of IHS in-house engineers. The actual cost for project completion is higher and requires additional “specialty” engineering costs. “Specialty” engineering is work that is outside the scope of expertise of in-house IHS engineering. Because “non-specialty” engineering is done in-house, it is typically not included in IHS project cost estimates, but recent direction from headquarters has directed inclusion of these costs going forward. *See* Sanitation Deficiency System: A Guide for Reporting Sanitation Deficiencies for American Indian and Alaska Native Homes and Communities 22-23 (Sept. 2019) and IHS CY 2022 Data Memorandum Sec. IX Engineering Costs (July 19, 2022).