

**TESTIMONY OF
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ON**

S.1797, Urban Indian Health Providers Facilities Improvement Act, S.1895, The Indian Health Service Sanitation Facilities Construction Enhancement Act, and H.R. 1688, Native American Child Protection Act

**BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
U.S. SENATE**

JULY 12, 2021

Yá'át'ééh (Hello) Chairman Schatz, Vice-Chairman Murkowski, and Members of the Committee. Thank you for the opportunity to speak to you about water infrastructure issues on the Navajo Nation and the need for funding opportunities through the Indian Health Service Sanitation facilities Construction Enhancement Act, S.1895. My name is Jonathan Nez and I am the President of the Navajo Nation.

The Navajo Nation, known as *Diné*, is the largest American Indian tribe in the United States, with 399,494 enrolled tribal members as of February 1, 2021. Over half of the Navajo people reside on a land mass of over 27,000 square miles that extends into the states of Arizona, New Mexico, and Utah. If the Navajo Nation was a state, it would rank 41st in size, behind South Carolina and just before West Virginia.

The Navajo Nation is committed to improving the standard of living on the reservation. Access to land, water, and electricity for families, government programs, public institutions, and businesses are critical to a better quality of life—equitable to that of most American communities. Recognizing that water is integral to human health and economic development, the Navajo Nation has placed water development as one of its highest priorities.

I. The Navajo Nation's Water System & IHS' SDS Listing

The development of potable water delivery and sewage disposal systems on the Navajo Nation are among the most pressing issues we need to address to help our people. This fact is shown in particular by data collected by the Indian Health Service (IHS) as part of its obligations under the Indian Health Care Improvement Act:

The Indian Health Care Improvement Act (IHCA) requires the Indian Health Service (IHS) to identify the universe of sanitation facilities needs for existing American Indian and Alaska Native (AI/AN) homes by documenting deficiencies and proposing projects to address their needs. These projects prevent communicable diseases by providing new and existing homes with services such as water wells, onsite wastewater disposal systems, or connections to community water supplies and wastewater disposal systems.

These projects can also include provision of new or upgraded water supply or waste disposal systems.¹

IHS fulfills this responsibility by maintaining a Sanitation Deficiency System (SDS) list. As of December 2020, the SDS list identified water and sanitation projects just on the Navajo Nation that were deemed necessary (including both feasible and infeasible projects) at a cost of \$535 million,² with a total cost for all of Indian Country in excess of \$2.6 billion for all projects.³

As the Committee is probably aware, the IHS continually updates the SDS list to include new deficiencies in water and sewage systems, but unfortunately this does not mean they are making much progress in fixing the problems identified on the list. Some projects have been on the IHS SDS list for more than a decade. Households where projects are delayed are forced to contend with band-aid solutions such as cisterns which still require families to haul water, sometimes from unregulated sources that may be unsafe. The Navajo Nation has at least 9,000 homes without any running water or sewage disposal, with some estimates as high as 16,000. Of those homes, 6,000 are included in projects on the SDS list, but are ineligible for IHS funding as they have been deemed economically infeasible.⁴

How Projects are Added to and Classified on the SDS Listing

To comprehend how this is possible, it is important to understand how this list is created. Projects are added to the SDS list if they are for existing facilities, and a tribe, the Bureau of Indian Affairs, or the IHS demonstrates that the water, sewage, and solid waste systems are insufficient based on federal standards of insufficiency.⁵ The projects are given classifications on a scale of 1 to 5 based on their level of adequacy in terms of water delivery and solid waste/sewage disposal. Level 1 is where the water delivery system has reliable access to clean running water that meets federal standards for water quality and sanitation--the tribal community has reliable disposal of sewage and solid waste. It is the stated goal of the IHS Navajo Area Office that all tribal water and sanitation systems on the Navajo Nation meet level 1 criteria.⁶ Level 2 projects require capital improvements to meet the standards of level 1. Level 3 projects include water supply and sanitation systems that are partially or somehow inadequate. Level 4

¹ Indian Health Service. (February 2020). Justification of Estimates for Appropriations Committees. P. CJ-201. Retrieved from:

https://www.ihs.gov/sites/budgetformulation/themes/responsive2017/display_objects/documents/FY_2021_Final_CJ-IHS.pdf

² Roselyn Tso. (Dec. 23, 2020). RE: Navajo Area IHS sanitation deficiency system (SDS) list—FY 2021. *Navajo Nation Department of Health & Human Services*. See Appendix.

³ Indian Health Service. (2018). Annual report to the Congress of the United States on sanitation deficiency levels for Indian homes and communities. *Indian Health Service*. P. 9. Retrieved from:

https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/Report_To_Congress_FY18_SanitationFacilitiesDeficiencies.pdf

⁴ From a conversation with Jason John, Director of the Navajo Nation Department of Water Resources, on July 8, 2021.

⁵ Indian Health Service. (September 2019). SDS: A guide for reporting sanitation deficiencies for American Indian and Alaska Native homes and communities. *Indian Health Service*. P. 5-12. Retrieved from:

https://www.ihs.gov/sites/dsfc/themes/responsive2017/display_objects/documents/Final_SDS_Guide_v2.pdf

⁶ From a conversation with David McConnell, Chief Project Engineer for the Navajo Area Indian Health Service, on June 8, 2021.

projects have either no reliable access to clean running water *or* no safe, healthy sewage disposal system, and level 5 projects have neither.⁷

SDS Project Prioritization

SDS projects are then prioritized based on eight (8) factors. The first is health impacts, which evaluates the link between disease outbreaks in tribal communities and the deficiencies in their water supply, solid waste, and sewage systems. The second is the project deficiency level, where they are assigned one of the aforementioned classifications of levels 1-5. The third evaluates whether a house, facility, or community system has been funded in the past by IHS to address its deficiencies. If it has not been funded in the past, it gets a higher score. The fourth is the capital cost, where the most expensive projects are often given negative scores to move them to a lower position on the priority list.⁸ The fifth is local tribal priorities, where the tribe can provide input to adjust the position of the different projects on the SDS list. The sixth is operation and maintenance capability, where the results on annual reports on each project are factored in. The seventh is contributions, an optional assessment criterion where the availability of outside funding is assessed, if applicable. The eighth is other factors, another optional criterion, which include other legal or environmental issues that stand in the way of a project such as rights of way, or geologic impediments such as the clay soil in the vicinity of Chinle, Arizona.⁹ The point values from all of these criteria are combined to produce an assessment score, which is weighed against the others to find the position of each project on the SDS list from highest to lowest priority.¹⁰

SDS Listing for the Navajo Area

The Navajo Nation IHS Area has more level 4 and 5 projects than any of the other IHS Areas throughout the country.¹¹ About 40% of households on the Navajo Nation are multigenerational, with extended families all living under one roof, increasing the need for safe, reliable water delivery and sanitary sewage disposal.¹² Finally, many of the homes that have been addressed in the past have septic systems that are failing because the households cannot afford to have them cleaned and maintained, and/or the homeowners were not instructed how to take care of them.¹³

⁷ Indian Health Service. (September 2019). SDS: A guide for reporting sanitation deficiencies for American Indian and Alaska Native homes and communities. Indian Health Service. P. 18. Retrieved from: https://www.ihs.gov/sites/dsfc/themes/responsive2017/display_objects/documents/Final_SDS_Guide_v2.pdf

⁸ From a conversation with David McConnell, Chief Project Engineer for the Navajo Area Indian Health Service, on June 8, 2021.

⁹ Indian Health Service. (September 2019). SDS: A guide for reporting sanitation deficiencies for American Indian and Alaska Native homes and communities. *Indian Health Service*. P. 27-32. Retrieved from: https://www.ihs.gov/sites/dsfc/themes/responsive2017/display_objects/documents/Final_SDS_Guide_v2.pdf

¹⁰ Indian Health Service. (September 2019). SDS: A guide for reporting sanitation deficiencies for American Indian and Alaska Native homes and communities. *Indian Health Service*. P. 32-33. Retrieved from: https://www.ihs.gov/sites/dsfc/themes/responsive2017/display_objects/documents/Final_SDS_Guide_v2.pdf

¹¹ From a conversation with David McConnell, Chief Project Engineer for the Navajo Area Indian Health Service, on June 8, 2021.

¹² From a conversation with Jason John, Director of the Navajo Nation Department of Water Resources, on July 8, 2021.

¹³ From a conversation with Ronnie Ben, Navajo Nation Environmental Agency Environmental Department Manager, on July 8, 2021.

II. Concerns and Issues We See

Inadequate Funding and Staffing

For fiscal years 2017-2021, the Sanitation Facilities Construction Program that administers the SDS list received the following amounts:

Fiscal Year	Amount
2017	\$101,772,000
2018	\$192,033,000
2019	\$193,577,000
2020	\$192,931,000

An annual appropriation of nearly \$200 million is woefully insufficient. As noted above, the total estimated cost of all reported projects is approximately \$535 million for the Navajo Region and \$2.6 billion for Indian Country for fiscal year 2019 and 2018, respectively. If we continue this funding trajectory, which only provides approximately 7% of the funding needed, the needs will never be met, especially as new projects are added to the list every year. Congress is turning a blind eye to the overwhelming need of delivering safe water to American Indians.

In addition to funding, we know the IHS offices for the Navajo Area are chronically understaffed, with 30 positions that the agency is currently struggling to fill. They need to be able to attract and maintain engineers and engineering assistants to make these projects go smoothly and be addressed as soon as possible.¹⁴

Prohibitive Internal Policies and Procedures with the SDS Listing

The IHS has internal policies and procedures governing how they complete assessments which further frustrates IHS' ability to address our needs, even if Congress fully funds projects listed on the SDS listing. For example:

- The criteria IHS employs to determine whether a project is "feasible" is arbitrary and subjective. If a project is too costly, it is "not feasible." If the project has an issue that cannot be easily addressed, it is "not feasible." If a project is deemed to be "not feasible" it is ineligible for IHS funding, even though it remains on the SDS list.
- The Sanitation Deficiency list does not take the age of a reported project into account, meaning some older projects remain untouched on the list, while newer projects get funded.
- Navajo areas with the most need, such as the most remote parts of the Navajo reservation, are sparsely populated, and may never be addressed under current rules because the IHS deems projects that exceed the cost of \$107,500 per household in Arizona and \$101,500

¹⁴ From a conversation with Roselyn Tso, Area Director for the Navajo Area Indian Health Service, on July 8, 2021.

in New Mexico and Utah¹⁵ as economically infeasible and ineligible for funding. Western areas, such as the former Bennett Freeze Area¹⁶, are among the communities that have long been neglected and are in dire need of water.

- The Navajo Nation is unable to receive its full proportionate share of funding because too many projects are deemed not feasible. Currently, the Navajo Nation is only eligible to receive a third of the IHS funding of what is actually needed to bring all households up to level 1 (reliable access to running water, sanitary disposal of sewage, compliance with federal water quality and sanitation standards).
- IHS is permitted to add negative points to any project on the SDS listing with potential issues. For example, a project with a right of way issue may be assigned negative points, pushing the project further down the line from being funded. Changes need to be made internally at BIA to resolve these issues to limit unnecessary delays.

Growth is not a Factor in the SDS Listing

The IHS SDS list documents the backlog of water and sanitation deficiencies, but it does not account for future economic growth, nor does it consider the fact that the Navajo Nation has a chronic housing shortage for our current population notwithstanding additional people and families in the future. As a matter of fact, the IHS is not allowed to consider future needs for funding.¹⁷ The Navajo Nation is planning for water needs 40 years into the future.¹⁸ This puts our assessed water development needs at \$4 billion total, well over the \$535 million that would fix current deficiencies. Of this, \$2.4 billion would go to the most imperative domestic and municipal projects alone.¹⁹

Proposed Changes

We are concerned that even if S.1895 is passed with its current language, IHS' internal rule that bars economically "infeasible" projects from being funded would limit the intent of the bill. For the Navajo Nation, which has the second longest SDS listing in all of Indian Country, second

¹⁵ Indian Health Service. (September 2019). SDS: A guide for reporting sanitation deficiencies for American Indian and Alaska Native homes and communities. *Indian Health Service*. P. 47. Retrieved from:

https://www.ihs.gov/sites/dsfc/themes/responsive2017/display_objects/documents/Final_SDS_Guide_v2.pdf

¹⁶ The former Bennett Freeze Area consists of nine (9) Navajo Chapters or Navajo local governments, located in Coconino County, Arizona on the Navajo Nation, 1) Bodaway/Gap; 2) Coppermine; 3) Kaibeto; 4) Coalmine Canyon; 5) Leupp; 6) Tolani Lake; 7) Tuba City; 8) Tonalea; and 9) Cameron. More than 12,000 Navajo people living in the area were subjected to a 41-year freeze on development until Congress lifted that freeze in December 2006.

¹⁷ Indian Health Service. (September 2019). SDS: A guide for reporting sanitation deficiencies for American Indian and Alaska Native homes and communities. *Indian Health Service*. P. 6 & 15. Retrieved from:

https://www.ihs.gov/sites/dsfc/themes/responsive2017/display_objects/documents/Final_SDS_Guide_v2.pdf

¹⁸ From a conversation with Jason John, Director of the Navajo Nation Department of Water Resources, on July 8, 2021.

¹⁹ Jason John. (March 24, 2021). Build back better: Water infrastructure needs for Native communities. *Navajo Nation Department of Water Resources*. P. 2. Retrieved from:

https://www.indian.senate.gov/sites/default/files/2021-03-22%2024March2021_Testimony_draft%20-%20final.pdf

only to Alaska²⁰, there is nothing more frustrating than having funds with no ability to spend them. Therefore, we urge Congress to consider changes to the proposed legislation that address these concerns or demand that IHS remove administrative barriers in order to fully realize and address the true magnitude of the inadequacies of water infrastructure in Indian Country and the human impact that this widespread problem has.

In addition, IHS should also be permitted to spend a portion of these funds on educating household members on how to maintain their water and sewer systems and assist them with upkeep. Maintenance of critical infrastructure is just as important as constructing it.

III. Conclusion

We applaud Congress and the current Administration for their commitment to honoring the federal trust obligation by making a meaningful investment in Indian Country. Although significant administrative hurdles remain, the bill currently under consideration, S.1895, would provide the resources needed to make significant progress toward addressing the current water and sanitation needs of the Navajo Nation and Indian Country in general. The funding it will provide is long overdue, and perhaps most importantly, will literally save lives by reducing the spread of disease through improved sanitation in Indian Country.

As we make progress towards fixing many of the problems that afflict our people, the Navajo Nation is reminded of the valuable partnership we have with the Indian Health Service and the members of this Committee. We look forward to working with the 117th Congress to continue the work on legislation such as S.1895 that can protect the public health and environment of our tribal communities.

Ahéhee' and thank you.

²⁰ Indian Health Service. (2018). Annual report to the Congress of the United States on sanitation deficiency levels for Indian homes and communities. *Indian Health Service*. P. 1-31. Retrieved from: https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/Report_To_Congress_FY18_SanitationFacilitiesDeficiencies.pdf