

**STATEMENT
OF
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ASSISTANT SECRETARY FOR INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR
BEFORE THE UNITED STATES
SENATE COMMITTEE ON INDIAN AFFAIRS
FIELD HEARING ON INVESTING IN NATIVE COMMUNITIES:
TRANSFORMATIVE OPPORTUNITIES IN THE
INFRASTRUCTURE INVESTMENT AND JOBS ACT**

June 28, 2022

Good afternoon, Senator Smith. Thank you for the opportunity to provide a statement on behalf of the Department of the Interior (Department) on how the Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL), is an investment in Native Communities. I appreciate the opportunity to address implementation of these critical infrastructure investments and their impact across Indian country.

IIJA Funding for Indian Affairs and Across the Department

In total the IIJA invests more than \$13 billion directly in Tribal communities across the country and Tribes may apply for billions more through various grant processes being deployed throughout other agencies. These resources go to many Federal agencies to expand access to clean drinking water for Native communities, ensure every Native American has access to high-speed internet, tackle the climate crisis, advance environmental justice, and invest in Tribal communities that have too often been left behind.

The Department received over \$3.1 billion directly for Tribal communities, which included a \$466 million investment for the Bureau of Indian Affairs infrastructure projects and climate resiliency initiatives, \$150 million for Tribal orphaned wells, and a historic investment of \$2.5 billion to help the Department fulfill pre-existing settlements of Indian water rights claims. The IIJA also made Tribal communities eligible for additional Department programs to support building resiliency to wildland fire and drought, restoring ecosystems, enabling fish passage, and addressing legacy pollution from abandoned mine lands and orphan oil and gas wells.

Consistent with the Administration's commitment to consult with Tribes and support self-determination the Department began implementation with three Tribal consultations covering all programs for which Tribes are eligible. The consultations were completed within the time frames

necessary to inform spend plans that were required by the IJA. The consultations served both to increase awareness of funding opportunities for Tribes and to gather input from Tribal leaders. There were three consistent themes: interagency coordination; technical assistance, and streamline permitting. As the IJA programs will be implemented over several years, future consultations may be necessary.

Additionally, the Bureau of Reclamation (Reclamation) continues to conduct Tribal information and listening sessions on investing IJA funding with a commitment to supporting Reclamation's strong relationships with Tribal communities. Starting in December 2021 and continuing through the spring, Reclamation hosted consultation sessions with Tribal leaders on IJA implementation. Reclamation also conducted separate outreach sessions for Tribes and appreciated the opportunity to hear from these communities about the effectiveness of its IJA-funded programs. These Tribal consultation sessions provided additional ideas for broadening outreach to Tribes who are eligible for Reclamation's IJA-funded programs described below.

Creating a Whole of Government Approach and Maximizing Impact

Indian Affairs is often called upon by Indian country to represent its needs and help drive an all of government approach to maximizing the many opportunities available to Indian country. We are working to implement Indian country's recommendations through interagency coordination, technical assistance, process improvement, and leveraging of acquisition authorities.

Enhancing Coordination

Successful implementation of the IJA requires significant consultation, coordination, and leveraging of partnerships. Within the Department, weekly coordination meetings with all bureaus and Departmental leadership ensure the needs of Tribes are considered for all Department IJA programs.

We are also engaging across the Federal government with several coordination strategies. First, we are leveraging existing interagency coordinating venues. This starts with the White House Council on Native American Affairs (WHCNA). The Department, in coordination with WHCNA, is uniquely positioned to define and communicate the benefits of the infrastructure law to Indian country. The various subcommittees of the WHCNA are critical to Federal coordination and communication. We also worked with the White House Office of Intergovernmental Affairs to release a Tribal Playbook which clarifies all the IJA funding opportunities available to Tribal communities. Second, across programmatic areas, our team is leveraging interagency coordination through ongoing participation in the White House Tribal Broadband Coordination Committee and working with the Council on Environmental Quality's climate resilience working groups and the Environmental Protection Agency-led Water

Infrastructure Task Force.

Technical Assistance

The need to provide technical assistance to Tribes cannot be overstated. Therefore, the Indian Affairs spend plan included the creation of an Interagency Coordinator position who will assist Tribes and Tribal organizations identify and apply for available funds. The incumbent in this position will also be charged to work within the federal family to assist sister federal agencies in making their programs more accessible to Indian country.

Streamlining Processes

Timely approval of permitting and realty actions are critical to infrastructure investment in Indian country. To this end, BIA announced a National Policy Memorandum (NPM-TRUS-44) which streamlines the rights-of-way (ROWs) and business lease application process for projects funded by the American Rescue Plan Act and IIJA, as well as Telecommunications and Renewable Energy Projects. This action advances the policy of the BIA to support Tribal Nations in exercising their sovereignty to govern their lands and pursue economic self-sufficiency, conservation practices, and climate resiliency. Specifically, this National Policy Memorandum provides clear direction to ensure that ROWs and business leases are expedited so there is no unnecessary delay in deploying critical infrastructure to Indian country. Additionally, the fiscal year (FY) 2023 President's Budget requests an additional \$2 million that will allow the BIA to increase staffing for realty functions which are critical to infrastructure investment.

Leveraging Buy Indian Act Authorities

Indian Affairs is also working to expand the impact of IIJA and other infrastructure funding by increasing the use of Buy Indian Act authorities. This is being done by focusing on engaging with and maximizing opportunities for Indian small businesses, and using an integrated approach of policies, procedures, training, and strategic contract implementation. The recent update to Buy Indian Act regulations are a critical step forward. The updates allow the Department to eliminate barriers to Indian Economic Enterprises from competing on certain construction contracts, expand Indian Economic Enterprises' ability to subcontract construction work consistent with other socio-economic set-aside programs, and give greater preference to Indian Economic Enterprises when a deviation from the Buy Indian Act is necessary, among other updates. The update also aligns Indian Affairs and Indian Health Service regulations to facilitate more contracting opportunities for eligible entities under the Buy Indian Act. In order to leverage this rule change, Indian Affairs will solicit proposals from Native-owned construction businesses for a new \$1.5 billion nationwide contract that will cover a wide range of projects for bureaus across the Department.

Implementation of Department Programs Directly Benefiting Tribes

Meeting Our Obligations for Indian Water Rights Settlements

In February, the Department announced allocations totaling \$1.7 billion for enacted Indian water rights settlements that have outstanding federal payments necessary to complete their terms. The Bureau of Trust Funds Administration is managing and investing over \$1 billion for Tribes in trust fund portfolios pursuant to tribal financial objectives and the remainder of the funds were allocated to Bureau of Reclamation for settlement project implementation. This funding allows the administration to uphold our trust responsibilities and ensure Tribal communities receive the water resources they have long been promised. These investments promote economic development and ecosystem restoration. For example, the funding allocated to the Confederated Salish and Kootenai Tribes will be used to rehabilitate and modernize the Flathead Indian Irrigation Project and restore damages to fish and wildlife habitat, while providing water for farmers and ranchers who depend on irrigation for their livelihoods. As part of the implementation strategy, an Indian Water Rights Settlement Completion Fund Executive Committee was established, comprised of the Commissioner of the Bureau of Reclamation, Chairperson of the Working Group on Indian Water Settlements, Director of the Bureau of Indian Affairs, Assistant Secretaries of Water and Science and Indian Affairs, and the Solicitor. The Executive Committee will recommend future allocations of the remainder of the Completion Fund to the Secretary. In order to complete allocations of remaining funding, BIA is engaging with Tribes to finalize indexing costs which are necessary to determine their final settlement payments. The Bureau of Reclamation will continue to work with the Department to identify project specific allocations from the Fund to meet implementation needs.

Advancing Climate Resilience

The IJA included \$216 million for Tribal climate resilience, adaptation, and community relocation planning, design, and implementation of projects which address the varying climate challenges facing Tribal communities across the country. Within this total, \$130 million is directed toward Community Relocation and \$86 million is directed toward Climate Resilience and Adaptation Projects. Total funding of \$43.2 million is available each year for fiscal years 2022 – 2026.

On April 11th, Indian Affairs announced the request for proposals from Tribes and Tribal organizations for approximately \$46 million from the Bureau of Indian Affairs Branch of Tribal Climate Resilience which is funded by the IJA and FY 2022 annual appropriations. Tribal needs are diverse. Each Tribe has its own various climate resilience capacities, needs, and issues to address. The existing Tribal Climate Resilience Awards Program has been focused on training,

capacity building, and planning since its inception in 2011. IIA funds will enable BIA to expand the Awards Program to start funding implementation projects developed from their plans.

In addition to the Awards Program, the Department will announce Community Relocation pilot projects in a few communities to serve as demonstration sites. The sites will be chosen based on factors such as risk level, community-readiness, existing plans, and potential to yield lessons-learned for other Tribes facing similar issues. A study conducted by BIA estimated that addressing unmet infrastructure needs associated with relocation will cost \$4.8 billion in Alaska and the lower 48. Given this significant cost of implementing community relocation, effective coordination with Federal, State, local and NGO partners is critical to ensuring we successfully increase resilience of Native communities. Leveraging additional federal funding will be critical to success.

Investing in Irrigation and Power, Safety of Dams and Water Sanitation Improvements

The IIA included \$250 million for Irrigation and Power, Safety of Dams and Water Sanitation, with \$50 million available to spend annually. This funding is critical to address our deferred maintenance backlog in these areas. In FY 2022, \$10.65 million is allocated for water sanitation projects on the Hopi Reservation, Columbia In-lieu Treaty Fishing sites, and the Northern Idaho water system on the Nez Perce Reservation. Water and Sanitation project funding has been coordinated with the Indian Health Service and will be used to support improvement and repair projects that address public health and safety compliance issues at Indian Affairs-owned drinking water and sanitation systems.

In FY 2022, \$10 million is allocated for Irrigation and Power projects; within this total approximately 70% will be directed to Indian Irrigation Projects and the remaining 30% will support BIA-owned power utilities. BIA will prioritize funding of projects that reduce deferred maintenance and the risk of failure and align with condition assessments and modernization studies to rehabilitate aging infrastructure. For Safety of Dams, \$29.1 million is allocated in FY 2022 to begin addressing the \$1 billion deferred maintenance backlog for BIA owned dams. This includes at least \$20 million for rehabilitation of the Oglala Dam within the Pine Ridge Indian Reservation in South Dakota. The allocation of funding follows current program practices which prioritize project funding. The BIA routinely performs inspections and analysis of all high-hazard program dams to understand the risk each structure presents to downstream residents. BIA uses the results of this work to prioritize distribution of design and construction funding to the highest risk dams.

Collaboration Across Interior

Outside of Indian Affairs, our team continues to collaborate with other Department programs on program implementation in areas such as wildland fire, abandoned mine lands, and orphan wells. The IIA also provided the Department with \$905 million for Ecosystem Restoration and Resilience funding, of which \$464.6 million is made available to various bureaus. For the initial allocations for FY 2022, \$4.87 million was allocated to the BIA. The range of projects funded include restoration of ecological health by improving forest health and reducing the risk of

resource loss to environmental factors such as insects, disease, and wildfire. This investment will allow adaptation/plant ecologists to provide regional technical expertise to support ecological restoration efforts on Indian lands at various USGS Climate Adaptation Science Center regions. Additionally, the Department is providing funding to the recently announced America the Beautiful Challenge Fund administered through the National Fish and Wildlife Foundation. Tribes will be eligible to compete for these grants.

The \$8.3 billion investment under Title IX (Western Water Infrastructure) of the IJA supports Reclamation's ongoing work to improve water infrastructure while addressing needs in underserved communities. IJA provides significant funding for longstanding Reclamation programs including WaterSMART, which has been identified by numerous Tribes across the West as an essential program for enhancing water infrastructure and attenuating drought conditions. IJA funding will expand the reach of WaterSMART and allow Reclamation to leverage additional resources, including funding and technical assistance provided by Reclamation's Native American Affairs Program, to modernize infrastructure and increase water reliability and resilience for Native communities.

We also are engaged with partners in other Federal agencies to support their engagement with Tribes. For example, BIA is in the process of allocating BIL Tribal Transportation Program (TTP) funding from the Department of Transportation to Tribes in Minnesota and across the Nation. The National Oceanic and Atmospheric Administration recently announced funding opportunity of up to \$12 million available under the Bipartisan Infrastructure Law to implement fish passage work and build Tribal organizational capacity. This funding will support Indian Tribes, Tribal commissions, and Tribal consortia in implementing Tribal priority fish passage projects, including organizational capacity building, that benefit migratory fish in coastal ecosystems, including the Great Lakes. To help support coordination on fish passage investments, the Fish and Wildlife Service is working with the federal agencies receiving IJA fish passage funding to convene a workshop in July with Tribal representatives, state fish and wildlife agencies, and non-governmental organizations as a first step towards identifying shared goals and improving collaboration and coordination. I look forward to updating the Committee in the future about how IJA funding from our partners benefits Indian country.

Conclusion

The Department is thankful to the leadership and members of the Committee for their continued support for Indian country and the IJA. The Department looks forward to continuing to work with the Committee on implementing this once in a generation opportunity for Indian country.