

**Testimony of Bidtah N. Becker
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**U.S. House of Representatives Natural Resources Committee
Water, Oceans, and Wildlife Subcommittee**

Legislative Hearing on H.Res. 320, H.R. 4832, H.R. 5001, H.R. 5345

November 4, 2021

Chairman Huffman, Ranking Member Bentz, Representative Neguse, and Members of the Subcommittee, thank you for the invitation to testify on H.R. 320 and H.R. 5001.

My name is Bidtah Becker and I am an attorney for the Navajo Tribal Utility Authority (NTUA). NTUA is a wholly owned not for profit enterprise of the Navajo Nation providing six utility services to the Navajo Nation: water, wastewater, electricity, natural gas, communications, and power generation which currently includes off grid solar and utility scale solar.

H.R. 320: Universal Access to Clean Drinking Water for Tribal Communities

This resolution expresses the sense of the House of Representatives that access to reliable and clean drinking water is critically important to the health and welfare of American Indians and Alaska Natives. Further, the resolution calls upon the federal government to provide water access to tribal members and communities.

The need and obligation to ensure that all tribal communities have clean water to drink cannot be overemphasized. The United States has a unique window of opportunity to address the long-standing inequity of lack of access to clean drinking water Alaska Native villages and Native American communities.

The COVID-19 pandemic has shined a light on the long-standing inequities facing tribal communities, including disparities in water access. According to the [Centers for Disease Control and Prevention \(CDC\)](#), American Indians and Alaska Natives are more likely than any other ethnic or racial group to be hospitalized or die from COVID today. During the pre-vaccine days of the pandemic, American Indians and Alaska Natives contracted COVID-19 at the highest rates of any racial or ethnic group in this United States. Limited access to running water [is one of the main factors](#) contributing to this elevated rate of incidence. According to the [U.S. Water Alliance](#), Native American households are nineteen times more likely than white households to lack indoor plumbing. Black and Latinx homes are two times more likely than white households to lack indoor plumbing. Without safe, reliable, affordable, and accessible safe drinking water, these households are unable to meet basic personal hygiene, food preparation, domestic cleaning, and other needs required for good health.

[“Water is essential to every aspect of household and community life and the economy,”](#) as recognized by the American Society of Civil Engineers. Yet many tribal communities still do not have access to clean and safe water that allow protection of public health, let alone the necessary water infrastructure needed to support economic development. This lack of access reflects historical and persisting racial inequities that have resulted in health and socio-economic disparities. [“Race is the strongest predictor of water and sanitation access,”](#) with Native Americans more likely than any other group to face water access issues.

Whole of Government Approach

The proposed resolution calls upon the federal Executive Branch to employ a “whole of government” approach to ensure the provision of reliable, clean drinking water to households in Tribal communities and in Alaska Native Villages. At least seven different federal agencies provide some type of funding for tribal drinking water or sanitation projects through over twenty different programs. The primary agencies involved in water related projects include Indian Health Service through its Sanitation Facilities Construction Program; Environmental Protection Agency through its Drinking Water and Clean Water Infrastructure Grant Programs; U.S. Department of Agriculture’s Rural Development program, and U.S. Bureau of Reclamation as directed by Congress.

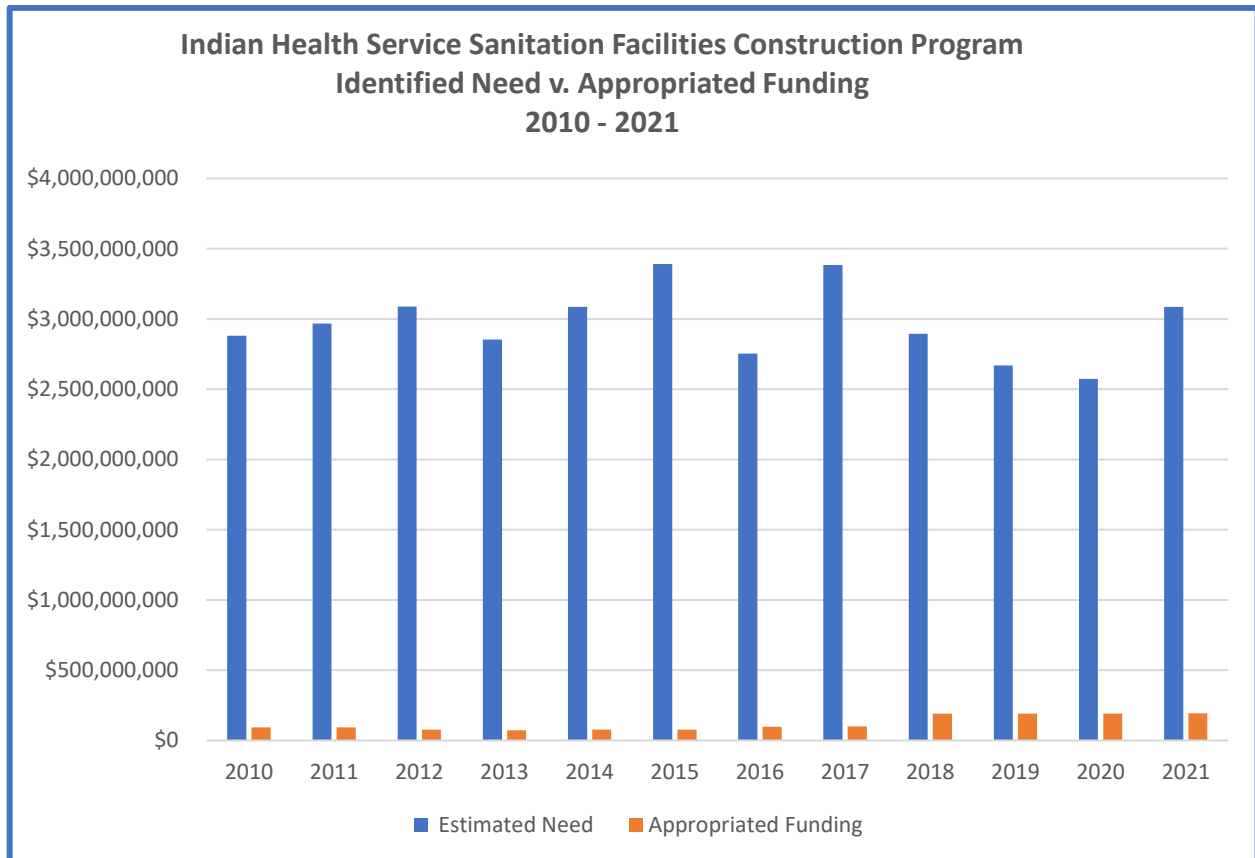
It is necessary to ensure that the work of the various federal agencies that have tribal water programs are coordinated in their approach and committed to the goal of providing universal clean water access in Indian country. The solutions for each tribal community will be site specific and a “whole of government” approach is required to take advantage of the strengths of each relevant agency.

The whole of government approach is not new. Indeed since 2007, the Department of the Interior, Department of Agriculture, Department of Health and Human Services, the Department of Housing and Urban Development, and the United States Environment Protection Agency have committed to coordinate to provide improved access to safe drinking water and basic sanitation in Indian Country. While this Task Force appears to have been dormant or had little activity in the recent past, it is encouraging that the US Environmental Protection Agency (EPA) Office of Water released its [Strengthening the Nation-to-Nation Relationship with Tribes to Secure a Sustainable Water Future](#) Action Plan last month and committed to renewing the [Tribal Infrastructure Task Force Memorandum of Understanding](#) within one year.

The Bureau of Reclamation and the Bureau of Indian Affairs are identified as the entities within the Department of the Interior with specific authorities “to assist tribes in improving quality of life by providing infrastructure and promoting sustainable practices to support the provision of safe drinking water and basin sanitation for tribal communities.”

The Indian Health Service’s Sanitation Facilities Construction Program is the effort most directly aimed at ensuring that tribes have clean drinking water infrastructure. This program, like many of the others listed above, has been historically underfunded. The chart below shows the

discrepancy between the unmet need for water and sanitation facilities in Indian country as estimated by the Indian Health Service and the annual appropriations for the program.



The full current amount of estimated need for Indian Health Service construction funding, \$3.5 billion, is included in the bipartisan [Infrastructure Investment and Jobs Act, H.R. 3684](#). This funding is an absolute necessity.

But the need does not stop with construction funding. These systems, whether new or existing, need to be operated and maintained successfully to protect the federal investment. They need to be operated by qualified personnel and maintained in a manner that preserves their functionality and delivers water that meets health and environmental standards set by the Environmental Protection Agency.

NTUA operates and maintains most public water systems on the Navajo Nation. Due to the size of the Nation, which is approximately the size of West Virginia, and the various land statuses that make up the Nation, NTUA does not operate all public water systems on the Nation. Like many rural areas, there are Navajo homes that are served by domestic wells that are privately operated. In the mid-2010s, at the request of the Navajo Nation, NTUA took over a private water system serving several Navajo homes. The system was found to have had elevated

amounts of uranium in the drinking water, above the maximum contaminate level. The private owner had been unable to safely manage the system for a variety of reasons. At the request of the Navajo Nation and other regulatory bodies, including State and Federal, NTUA was able to take over the system and these homes are now provided safe drinking water.

While the challenge of operating and maintaining safe drinking water systems may not be unique, as the lead pipe crisis in Flint, Michigan, demonstrates, the solution will be unique. Not all tribal communities enjoy a multi-utility enterprise that can step in at the request of its owner to take over a water system. When Native American and Alaska Native homes are being served, the federal government must adjust its approach to fulfill its trust responsibility to the needs of that community.

Many Tribes need assistance with operation and maintenance support because the available resources can be lacking. For the Navajo Nation, the remote nature of many of these systems increases the costs of operating and maintaining as compared to systems serving densely populated communities. Because NTUA enjoys multiple business lines, its water and wastewater services are subsidized by the higher grossing business lines in electricity and communications. Not all water providers enjoy multiple business lines that can subsidize their water and wastewater services. Financial support for operations and maintenance is necessary.

Congress has provided the authority for IHS to provide operation and maintenance assistance (25 U.S.C. 1632(b)), but that authority has never received funding. The authorizing statute contemplates the need for operation and maintenance assistance “to protect the Federal investment in tribal sanitation facilities.” The unprecedented amount of funding for construction and repair of these facilities through the bipartisan Infrastructure Investment and Jobs Act underscores the need to protect that investment and ensure sustainable operation of these systems.

Other support such as technical training and even deployment of personnel is necessary. IHS technical assistance can help fill the gaps in tribal capacity to design, operate, and maintain appropriate water and wastewater disposal systems. This is in addition to several other entities that provide training through EPA funded programs.

NTUA has had a long relationship with IHS where IHS deploys an engineer to work within NTUA to plan and construct facilities funded through IHS’s Sanitation Facilities Construction Program. NTUA supervises the engineer and has found that this partnership helps moves projects through the bureaucratic system. Most importantly, this partnership ensures that the federal partner has a better understanding of the local needs of the community.

Navajo-Gallup Water Supply Project

The Navajo Gallup Water Supply Project (NGWSP) is an example of a water project where the Bureau of Reclamation is the lead agency working closing with several agencies, including the Navajo Nation and the State of New Mexico, in what can be called a whole of government

approach. In 2009 Congress authorized the Bureau of Reclamation to construct the Navajo Gallup Water Supply Project (NGWSP or Project) as part of the Navajo Nation's Settlement of Its Water Rights to the San Juan River Basin in New Mexico. The Project consists of two laterals that will be or are delivering a clean, reliable supply of water to the Navajo Nation, Jicarilla Apache Nation, and the City of Gallup, all located in Northwest New Mexico. Delivery of water through the Cutter Lateral of the Navajo Gallup Water Supply Project began in October of 2020 to eight Navajo Nation Chapters and is expected to deliver water to the Jicarilla Apache Nation in late 2021. The San Juan Lateral is under construction and expected to be fully constructed by 2027. The San Juan Lateral is several times larger in capacity than the Cutter Lateral and will serve the City of Gallup as well as Navajo communities in Arizona.

One specific example in this 280 mile of pipe Project is the Code Talker Lateral; it is the pipeline that will convey NGWSP water from the main San Juan Lateral west towards Window Rock, the capital of the Navajo Nation, and Fort Defiance. Reclamation is building the first two of three reaches of the trunkline. Reclamation is funding the Navajo Nation Department of Water Resources through a federal assistance agreement to allow the Nation to oversee construction of the third reach. Reclamation and the Navajo Nation are working with the Indian Health Service in the design phase for this third reach. The Indian Health Service is using its programmatic funding to build connections from the trunkline to existing NTUA water distribution systems and to unserved homes. This reach will have temporary access to groundwater and there could be drinking water provided to these unserved homes before completion of the entire Project. This is a whole of government approach that can be replicated across Indian Country to address the lack of access to safe drinking water.

Reclamation is providing funding to NTUA for NGWSP through a financial assistance agreement. The financial assistance to NTUA allows NTUA to expand its existing technical team and develop its capacity to eventually take over the operations and maintenance of the Project. By developing capacity early, all are ensured a smooth transition for the transfer of operations and maintenance to NTUA.

Several years into the implementation process, Reclamation created and filled a position in the Farmington, New Mexico, construction office called the Navajo Outreach Coordinator. The Navajo Outreach Coordinator's job it is to help Reclamation effectively communicate with Navajo government officials and tribal members by translating presentations into the Navajo language. It is a critical that information be shared in the Navajo language on the Navajo Nation and it is respectful to do so. At the beginning of the pandemic, researchers determined that in addition to the lack of indoor plumbing, the other factor was the percentage of households that were English only¹. Said another way, people more quickly adapt to changing events when information is shared in their native tongue.

¹Desi Rodriguez-Lonebear, Nicolas E Barcelo, Randall Akee, and Stephanie Russo, Carroll Public Health Management Practice, found at [American Indian Reservations and COVID-19: Correlates of Early Infection Rates in the Pandemic - PubMed \(nih.gov\)](https://pubmed.ncbi.nlm.nih.gov/35444444/)

Congressional support is necessary for funding and for authorizing Reclamation to undertake the work described here. There are times when the projects envisioned in Indian Water Rights Settlements exceed the funding ceilings imposed by Congress when initially authorizing a settlement project. This is true of the Navajo Gallup Water Supply Project. The working cost estimate for constructing the Project currently exceeds the authorized cost ceiling. The Navajo Nation and the other project partners are currently working on how to address this funding gap. This Subcommittee will be hearing more about the NGWSP funding needs.

The comprehensive “whole of government” approach that Reclamation has adopted for NGWSP is consistent with H.R. 320. It is consistent with the “sense that the provision of reliable, clean drinking water to support the domestic requirements of Tribal members and Tribal communities is an essential component of the Federal trust responsibility to Indian Tribes.” Importantly, the federal trust responsibility can be manifested in many ways and to achieve universal access to clean drinking water in Indian Country, the federal government will need to be nimble and develop solutions that are unique to each tribal community.

A window of opportunity has opened to address drinking water insecurity in Indian country. It is critical that action be taken before that window closes and these issues are allowed to languish for another decade or even another generation. H.R. 320 advances the efforts of universal access at the most opportune time.

H.R. 5001 - Upper Colorado and San Juan River Basins Recovery Act

Federal investment in the Upper Colorado and San Juan River Basins Recovery Programs is critical. Protecting the San Juan River and the entire Colorado River System is of utmost importance to NTUA, the Navajo Nation, and the Navajo people.

The recovery programs (Upper Colorado and San Juan River Basin) were established to recover endangered fish while allowing water development and management activities to continue. NTUA strongly supports both purposes of these programs.

As already discussed earlier, the San Juan River provides a reliable water supply to the Navajo people, but it provides much more than that. The River is considered a Traditional Cultural Property of the Navajo People. The Recovery Program is designed so that the Colorado pikeminnow and razorback sucker of the San Juan River are recovered. By protecting these fish, the ultimate effect is protecting the health of the River as well so that the River continues to be a trusted source of traditional and cultural health and beliefs.

The Navajo Nation Department of Fish and Wildlife is an integral participant in the San Juan Recovery Program, along with State and local partners. This multi-agency partnership reflects

the complex past and present relationship in the West between the management and development of water resources and the conservation and protection of threatened and endangered species.

NTUA, and therefore the Navajo people, rely on the Colorado River System for much of its on-Nation power use. NTUA takes hydro power from both the Colorado River Storage Project Act and Hoover Dam which are critical non-carbon emitting power sources. In the summer nearly 60% of the power that NTUA provides its customers come from non-carbon emitting sources. In addition to the hydroelectric power, NTUA also receives power from its Kayenta Solar Farm. In the winter, nearly 40% of the power that NTUA provides is non-carbon emitting. The Recovery Program relies on CRSP power revenues for funding. Navajo people living on the Nation contribute to those power revenues when they use power in their homes and businesses.

Both H.R. 320 and H.R. 5001 are critical to the health and well-being of the Navajo people. NTUA supports these bills and stands ready to support the current and forthcoming federal investments in safe drinking water infrastructure and wastewater infrastructure on the Navajo Nation.