

**Senate Committee on Environment and Public Works Hearing**  
**EPA Drinking Water and Wastewater Infrastructure in American Indian Communities**  
**Testimony by Ken Norton, Chairman**  
**National Tribal Water Council**  
**September 20, 2023**

My purpose for speaking before the committee today is to raise awareness and understanding about the immediate need to support the operations and maintenance of tribal drinking water systems in addressing public health inequities and the fulfilment of trust to provide safe and clean water to our tribal nations.

Over the past several decades, many Tribes have developed the necessary infrastructure to bring piped water to their community households. However, for a variety of reasons, some of these tribal water systems have struggled with providing suitable water for human consumption to the community they serve.

The physical condition and the operation and maintenance of these systems influences the extent to which these communities are at risk of contamination and illness.

The Environmental Protection Agency (EPA) is directly responsible for overseeing monitoring and reporting about the water quality delivered by the public water systems for most Native American Tribes. According to EPA's Safe Drinking Water Information System (SDWIS)<sup>1</sup>, it indicates there are a total of 835 public water systems that are owned by tribal governments. These systems serve an estimated 1.4 million people who are at a higher risk, compared to consumers served from public water systems with State oversight. Many tribal systems serve water that 1) exceeds health-based standards, and 2) has not been monitored in accordance with the SDWA. Based on SDWIS data reported from 2023, 115 of 835 tribally owned systems were in violation of at least one health-based rule under the SDWA.

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<sup>1</sup> Oracle Analytics Interactive Dashboards – Public (epa.gov)

In addition to the health-based violations, the EPA also categorizes “non-health-based violations.” These occur when a public water system owner fails to monitor and/or report any of the 90 contaminants required as part of the SDWA. The most recent compliance data from the EPA indicates that Native American owned public water systems regulated by the EPA or the Navajo EPA are nearly twice as likely to be served by a public water system that have non-health-based violations compared to water systems regulated by a State. Nearly half or 404 of 835 Native American owned systems regulated by EPA or the Navajo Nation had one or more non-health-based violation in 2023.

The Indian Health Service (IHS) and the EPA are the primary federal agencies responsible for collaboratively working with Tribes to ensure they have access to safe drinking water and basic sanitation. IHS also works collaboratively with EPA, and United States Department of Agriculture (USDA) to provide technical assistance to assist tribal utilities with the **operation** and maintenance of their systems. Despite the agencies support of infrastructure construction and technical services, health-based drinking water violation rates for tribal water facilities has remained over 2.4 times higher than the rate for water systems regulated by States over the last 10 years. However, the federal agencies tasked to support tribal water systems have pointed out that an important root cause of the non-compliance problem is the lack of operation and maintenance capacity. Without additional resources, the leadership from these federal agencies concluded that EPA simply imposing additional enforcement actions will not likely result in improved drinking water quality compliance.<sup>2</sup>

The IHS under the Indian Health Care Improvement Act (IHCIA) since 1992 has had the authority

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<sup>2</sup> Tribal Infrastructure Task Force. Meeting the Access Goal. Strategies for Increasing Access to Safe Drinking Water and Wastewater Treatment to American Indian and Alaskan Native Homes. March 2008. <https://www.epa.gov/sites/default/files/2015-07/documents/meeting-the-access-goal-strategies-for-increasing-access-to-safe-drinking-water-and-wastewater-treatment-american-indian-alaska-native-villages.pdf>

*“to provide funds to support the cost of operating, managing, and maintaining tribal water and waste facilities.”*<sup>3</sup> However, the IHS has never requested funding for this purpose and Congress has not appropriated these funds to the IHS.

In order to improve the operation and maintenance capacity of tribal water systems, the NTWC recommends:

- (1) Congress to direct the EPA, in collaboration with the IHS, to evaluate all American Indian owned water systems regulated by the EPA, and the Navajo Nation, to include estimating the annual cost associated with operating and maintaining of these facilities.
- (2) Congress appropriate \$600M<sup>4</sup> over five years to be utilized by the IHS in collaboration with EPA to develop and implement a pilot program under IHS’s existing authorities to directly support the operation and maintenance of Native American owned public water facilities.
- (3) Congress to direct IHS to utilize the assessments completed (Recommendation #1), and the pilot program data (Recommendation #2) to develop a budget request to be considered by Congress for funding appropriation to support all tribal water systems needing operation and maintenance support to ensure compliance with the SDWA water quality rules. These actions will protect the significant public investments in these water systems.

Implementing the funding provided under these recommendations will require the federal government to take immediate action to fulfill the longstanding promises associated with its trust responsibilities and directly support operation and maintenance of Native American

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<sup>3</sup> Indian Health Service. Public Law 86-121 – Annual Report 2017. [https://www.ihs.gov/sites/dsfc/themes/responsive2017/display\\_objects/documents/reports/SFCAnnualReport2017.pdf](https://www.ihs.gov/sites/dsfc/themes/responsive2017/display_objects/documents/reports/SFCAnnualReport2017.pdf)

<sup>4</sup> IHS estimated in the report titled *Operation and Maintenance Cost Evaluation of American Indian Owned and Operated Drinking Water and Wastewater Systems* (April 7, 2020) that between \$40.4 and \$204.2 M annually in O&M funding was needed to support American Indian tribes to close the O&M funding gap.

owned public drinking water systems to reduce the exposure risk to contaminated drinking water that can cause disease and illness to our tribal communities.