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Subcommittee on Fisheries, Water, and Wildlife

Washington, D.C.

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DRINKING WATER INFRASTRUCTURE AND TRIBAL COMMUNITIES

Wednesday, September 20, 2023

United States Senate

Committee on Environment and Public Works

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The subcommittee met, pursuant to notice, at 2:33 p.m. in room 406, Dirksen Senate Office Building, the Honorable Alex Padilla [chairman of the subcommittee] presiding.

Present: Senators Padilla, Lummis, Carper, Kelly, Ricketts, Sullivan.

STATEMENT OF THE HONORABLE ALEX PADILLA, A UNITED STATES SENATOR
FROM THE STATE OF CALIFORNIA

Senator Padilla. This hearing will come to order. Good afternoon, everyone, and thank you all for joining us today for our second hearing this Congress of the Senate Environment and Public Works Subcommittee on Fisheries, Water, and Wildlife.

Not only are we set to discuss drinking water and wastewater infrastructure in tribal communities here in EPW, but I am happy to share that as we speak, subcommittee chairman Wyden of the Energy and Natural Resources Committee is also holding a hearing on water access in underserved communities. Next week, Chairman Schatz will join us by holding a hearing of the Indian Affairs Committee on related issues as well.

So there is a growing consensus here, which is encouraging news. Ensuring tribal access to water and sanitation is a multi-jurisdictional, multi-committee, multi-agency problem. I am proud that there is a commitment amongst my Senate colleagues to tackle it.

As we will hear from our witnesses today, this is an often overlooked and underfunded area with serious impacts on the health and well-being of countless Native American communities. I want to thank Chairman Carper and Ranking Member Capito as well as my subcommittee Ranking Member, Senator Lummis, for prioritizing this issue. Senator Lummis is on the way; she will

be joining us in a few minutes. And we expect Chairman Carper and other members of the committee as well.

I also want to take a moment to thank all of our witnesses for joining us to help convey the challenges that Indian Country still faces, in the year 2023, the challenge still faced in securing adequate water infrastructure for their communities. As I mentioned, we are here today to learn more about the current state of drinking and wastewater infrastructure in Indian Country. In 2023, there is no reason why any person in America should lack clean and affordable water in their taps and in their showers and reliable plumbing in their homes. Yet, far too many tribal communities across the Country, for too many of them, reliable and affordable water infrastructure has become a privilege, and not a right.

Native American households are 19 times more likely than white households to lack indoor pipes for running water and sanitation. Let me emphasize that statistic a little bit. Not 19 percent more likely, 19 times more likely. Even that stat on the shortage of physical infrastructure doesn't begin to capture the gap in water quality for Native Americans.

Inadequate water supply and deteriorating pipes can impact the public health, education, and economic development of tribal communities. It is easy to see why. If you can't trust the water you are drinking, or the plumbing that keeps your home

sanitary, it harms your quality of life.

On top of that, tribal communities' water systems are almost all small or rural as well as understaffed, often with only one person dedicated to transportation infrastructure and energy infrastructure and water services and more. Unlike State and local governments, tribal governments lack the tax base for infrastructure improvement and staff, often exacerbating water access issues and leading to higher water bills for tribal homes.

I know we have seen these problems in California, where for example the Tule River Tribe, like so many others, was forced onto a reservation without the irrigation and water storage facilities that the Federal Government promised. The Tule River Tribe faces a constant battle to access clean water. Families are forced to haul in water by truck for their own daily hygiene or for their children to drink.

On days when water is too tough to get, some simply go without. When disaster strikes, as it did last month when a stray lightning bolt knocked out power, hundreds lose access to clean water in an instant.

So this must be an urgent priority for the Federal Government, which, I will remind us, has a moral and legal trust responsibility to act. Of course, last year, after decades of neglect, Congress did step up to make transformational

investments in tribal infrastructure through the Bipartisan Infrastructure Law, which will bring nearly \$870 million to the EPA for tribal infrastructure construction and \$3.5 billion to the Indian Health Service for tribal sanitation.

That is good news. But for as much good as that funding will do, the need in tribal communities is even greater. They need not just an initial surge of funding for new projects, but sustained funding for securing the long-term stability of the water systems.

That could mean new and continued funding for operations and maintenance, so that even without tax revenues, tribes have a reliable stream of funding to prepare and maintain water infrastructure when needed after the initial investments dry up.

That could mean improved technical assistance to better support the design of tribal projects that will receive Federal funding. That could mean increased workforce development for understaffed water managers and tailored certification training for tribal operators whom hundreds of people might rely on to stay safe.

And as we focused on in my first subcommittee hearing, that could mean finally funding a permanent water rate assistance program like we have for energy assistance, with LIHEAP, to ensure that Native American households aren't saddled with high water bills that they can't afford.

So there is a lot on the table today, and I am looking forward to hearing from each of our witnesses about what you are seeing on the ground and what you see as the most direct solutions to getting tribal communities the support that they need.

With that, I will introduce and turn it over to Ranking Member Lummis for her opening statement.

[The prepared statement of Senator Padilla follows:]

STATEMENT OF THE HONORABLE CYNTHIA LUMMIS, A UNITED STATES
SENATOR FROM THE STATE OF WYOMING

Senator Lummis. Thank you, Mr. Chairman. It is a pleasure to serve with you, and your interest in this subject and mine dovetail tremendously. We are grateful to our witnesses for being here today.

I especially want to extend a warm welcome to Jola Wallowingbull, who has taken time to travel from the Wind River Reservation to be here with us today. Jola, thank you so much for coming.

Having access to both clean drinking water and wastewater infrastructure is a necessity for communities in this day and age. It is what keeps our children safe as they develop, what keeps communities strong and bound together, and what allows economic growth to occur. Without access to adequate drinking water and wastewater infrastructure, a community will oftentimes struggle to survive.

Unfortunately, far too many communities lack access to this basic infrastructure, and too many of those communities are those of our tribal neighbors. It is my hope that this hearing today will give the members of this committee greater insight into the unique challenges that tribes face when providing safe and affordable drinking water and wastewater services.

The EPA can and must do better when it comes to

prioritizing funding decision timing for tribes. This includes prioritizing tribal communities within the Small and Disadvantaged Grant program.

I am also particularly interested to hear how effective EPA is in communicating the regulatory requirements that tribes must meet under the Clean Water Act and Safe Drinking Water Act. I hope we will hear something about that from our witnesses.

EPA's decision to move forward with a national primary drinking water standard for certain PFAS compounds will mean that tribes will need to install expensive treatment technology in order to maintain compliance. The installation, operation, and maintenance costs will ultimately be borne by members of the tribe.

I will be interested to also hear from the witnesses about how they plan to keep water rates affordable if they are forced to install these new technologies. I would also be remiss if I did not reiterate my concern with EPA's proposal to list PFAS compounds under CERCLA.

The liability costs that small, rural, and tribal water systems would face if this rule is finalized could be crushing and would be crushing for some tribes. This committee must thoroughly address passive receiver liability issues at the earliest possible time so that small system operators have the regulatory certainty they need to continue to provide clean

drinking water.

Thank you again for calling this hearing, Mr. Chairman.
Thanks again to our witnesses. I look forward to hearing your
opening statements and I look forward to our discussion
afterwards.

Thanks, Mr. Chairman.

[The prepared statement of Senator Lummis follows:]

Senator Padilla. Thank you very much.

Before we hear from our witnesses, let me offer them a very proper introduction. We are joined by Ken Norton, who serves not only as Director of the Hoopa Valley Tribal Environmental Protection Agency in California, but also chairs the National Tribal Water Council, which advocates for the best interests of Native American and Alaska Native tribes on water. Specifically, they assist the USEPA with research and information for decision-making on water issues. So I know Mr. Norton will be a great resources to the subcommittee on how we can bolster EPA's tribal water programs.

I would also like to introduce Mr. Brian Bennon, who is the Tribal Water Systems Department Director at the Inter Tribal Council of Arizona, which is an inter-tribal consortium of 21 tribes in Arizona. Mr. Bennon oversees the Council's National Training Certification and Technical Assistance Services for Drinking Water and Wastewater Operator Personnel.

Last but not least, I will turn it over to Senator Lummis to introduce our third witness.

Senator Lummis. Thanks so much.

Jola Wallowingbull is the Director of the Northern Arapaho Tribal Engineering Department. She is an enrolled member of the Northern Arapaho Tribe from the Wind River Indian Reservation. She graduated from the University of Wyoming in 2006 with a

Bachelor of Science degree in architectural engineering. She was also recognized as the first American Indian woman to receive a degree in architectural engineering from the University of Wyoming.

Jola is currently the Director for the Northern Arapaho Tribal Engineering Department, where she works with State and Federal funding agencies to improve the water and wastewater systems for the Northern Arapaho communities. She has worked in this position since 2016, and has established a solid foundation for the department.

Mr. Chairman, I would be remiss in not having you notice the beautiful skirt that she is wearing. A friend of hers on the reservation made the skirt particularly for her visit today to Washington. It is stunning. I hope everyone will take advantage of seeing that fabulous work of art that she is wearing.

Thanks, Mr. Chairman.

Senator Padilla. Thank you very much. Welcome to all three witnesses.

Mr. Norton, we will begin with you.

STATEMENT OF KEN NORTON, DIRECTOR, HOOPA VALLEY TRIBAL
ENVIRONMENTAL PROTECTION AGENCY, CHAIR, NATIONAL TRIBAL WATER
COUNCIL

Mr. Norton. Thank you. 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 inequalities 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 communities 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 is directly responsible for overseeing the monitoring and reporting about the water quality delivered by public water systems for most Native American tribes. According to EPA's Safe Drinking Water Information System, 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 when compared to consumers served by public water systems with State oversight. Many tribal water systems serve water that exceeds health-based standards, and has not been monitored in accordance with the Safe Drinking Water Act.

In addition to the health-based violations, the EPA also monitors non-health-based violations. These occur when a public water system owner fails to monitor or report any of the 90 contaminants required as part of the Safe Drinking Water Act. The most recent compliance data compiled from the EPA indicates that 404 of the 835 tribally-owned systems regulated by EPA had one or more non-health-based violation.

The Indian Health Service and the EPA are the primary Federal agencies responsible for working collaboratively with tribes to ensure they have access to safe drinking water and basic sanitation. These agencies 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 agencies concluded that EPA simply imposing additional enforcement actions will not likely result in improved drinking water quality compliance.

The Indian Health Service under the Indian Health Care Improvement Act since 1992 has had the authority to provide funds to support the cost of operating, managing, and maintaining tribal water and wastewater facilities. However,

IHS has never requested funding for this purpose and Congress has not appropriated these funds to IHS.

In order to improve the operation and maintenance capacity of tribal water systems, the National Tribal Water Council recommends, one, Congress direct EPA, in collaboration with the IHS, to evaluate all tribally owned water systems to estimate the annual cost associated with operating and maintaining these facilities. And two, Congress appropriate \$600 million over a five-year period to be utilized by IHS in collaboration with EPA to develop and implement a pilot program that directly support the operation and maintenance of these public water systems.

And finally, three, Congress direct IHS to utilize the assessments completed in Recommendation 1 and the data compiled in Recommendation 2 to develop a budget request that can be considered by Congress for funding appropriation to support all tribal water systems needing operation and maintenance support.

Thank you for allowing me to address the committee today on our recommendations. Thank you.

[The prepared statement of Mr. Norton follows:]

Senator Padilla. Thank you, Mr. Norton.

Mr. Bennon?

STATEMENT OF BRIAN BENNON, TRIBAL WATER SYSTEMS PROGRAM MANAGER,
INTER TRIBAL COUNCIL OF ARIZONA, INC.

Mr. Bennon. Chairman Padilla, Ranking Member Lummis, and committee members, I am Brian Bennon, Director of the National Tribal Water Systems Program at the Inter Tribal Council of Arizona, an inter-tribal consortium of 21 federally recognized tribes.

The ITCA program provides technical assistance, training, and operator certification services to tribal water utilities located across six EPA regions and over 200 tribal nations. Proper sanitation services are the cornerstone of modern public health and economic development. However, the rural poverty-stricken conditions of most reservations commonly result in under-resourced drinking water and wastewater facilities.

According to the Indian Health Service, 22 percent of tribal homes are without access to adequate sanitation, the word adequate, meaning in compliance with all applicable health and environmental regulations. According to Environmental Protection Agency data, over 90 percent of tribal public water systems are classified as small or very small systems, serving 3,300 or fewer customers.

EPA data averaged from the last 10 years identifies significant compliance disparities under the Safe Drinking Water Act. Tribal public water systems have two times more violations

and over three times more priority violations compared to non-tribal systems. Similar compliance disparities exist for tribal wastewater facility discharges to surface water bodies regulated under the Clean Water Act.

Federal agencies annually spend hundreds of millions of taxpayer dollars on infrastructure construction to improve tribal community access to safe drinking water and sanitation. However, infrastructure construction alone cannot solve this access crisis. Infrastructure construction must be balanced with the building of managerial, financial and technical capacity of the utilities to properly operate and maintain the water infrastructure investment.

One major concern area is the financial viability of operations and maintenance. The water industry prescribes that utilities function as a business where operations and maintenance costs are distributed across the customer base through water surface rates. However, scales of economy cause this business model to fail when there are too few customers and when communities are geographically isolated with limited economic means to pay for such services.

Such conditions additionally create workforce barriers. Rural, small water utilities are challenged in attracting qualified personnel. Once trained and certified, operators often leave to work at bigger utilities that offer higher

salaries and more benefits.

Based on these observations, the following recommendations may be offered. A funding mechanism imperative with the States is needed for tribally led, by tribes for tribes organizations for capacity development and operator certification programs. EPA needs to engage in public meetings with two existing tribally led, by tribes for tribes capacity development and operator certification programs for ongoing dialogue and strategic planning for future program improvements.

Create a Federal funding program that provides revolving operations and maintenance grants for small tribal drinking water and wastewater utilities that have implemented all possible components of sustainable operations and maintenance, but whose scales of economies cause a financial viability shortfall gap.

Expand the EPA and IHS facilitated technical assistance provider coordination meetings initiative to additional areas in Indian Country. The Federal Infrastructure Task Force should return to conducting periodic publicly accessible meetings for discussions on compliance disparities, regional rural water supply systems, and funding for operations and maintenance.

Thank you for the opportunity to provide this testimony.

[The prepared statement of Mr. Bennon follows:]

Senator Padilla. Thank you very much.

Ms. Wallowingbull?

STATEMENT OF JOLA WALLOWINGBULL, DIRECTOR, NORTHERN ARAPAHO
TRIBAL ENGINEERING DEPARTMENT

Ms. Wallowingbull. Chairman Padilla, Ranking Member Lummis, members of the Subcommittee, thank you for holding this hearing and giving me an opportunity to speak on behalf of the Northern Arapaho Tribe.

[Phrase in Native tongue.] I am Singing Cedar Woman. My name is Jola Wallowingbull. I have been the Director for the Tribal Engineering Department for seven years.

As Director, I work with State and Federal agencies to maintain and help improve the tribe's water and wastewater systems. We have three water systems located in Ethete and Arapaho, Wyoming and we have five wastewater systems between both communities.

I appreciate the opportunity to share with you some information about how these systems operate and serve our people, how we obtain funds for operations and improvements to our systems, the regulatory and workforce issues we face, and the role Federal funding plays in the delivery of clean, safe water to our members and their families.

Currently the tribe receives Federal funding from the Department of Agricultural Development Office, and from the Indian Health Service for water projects. The Environmental Protection Agency also provides funding through IHS.

Funding practices are often demanding and time-consuming. Each agency has a different application process, and after submitting applications, it often takes a long time to receive funding and put it to use.

While we wait for applications to be approved, our work cannot and does not wait. Leaks and other issues continue while our requests slowly move through the approval process. We plug holes as best we can, but the review system ensures that we are always addressing emergencies rather than allocating our resources to planning future development.

To be clear, the tribe and Federal agencies have developed a great working relationship over the years. I look forward to building on our success in the future. In addition to what has already been accomplished, I hope we are able to shift our focus to securing funding for future expansion and not merely focusing on existing facilities.

The tribe also faces regulatory issues with the right-of-way process. Even after securing funding, the right-of-way process can delay the implementation of necessary projects by years. An example of this is the Ethete Wellfield. The project was originally funded in 2014, but is still incomplete because it took approximately five years to get a land lease on tribal trust land.

The effects of that delay, compounded by inflation, means

that every dollar we receive loses its buying power over time. We frequently run out of money for projects because of inflation-driven increased costs. Streamlining the right-of-way process will ensure that we can start projects faster and the dollars will go further.

The tribe also faces problems when it comes to hiring and retraining workers. Currently, the tribe has six water and wastewater operators. Only two of them are certified, Harold Little Bear and Floyd Addison. To effectively operate and maintain our systems, we need 12 certified operators.

A major obstacle preventing us from hiring and retaining staff is low pay. Our operators make under the State average compared to other professionals in their position. Increased pay and benefits would entice high-quality candidates and retain high-quality staff like Harold Little Bear and Floyd Addison. A Federal subsidy to increase wages for these positions would bolster these workforce efforts.

The water and wastewater systems for the Northern Arapaho Tribe are underfunded, outdated and at capacity. Many lines are undersized and made from substandard materials, such as thin-walled PVC and asbestos concrete. Water breaks are frequent and repair supplies are increasingly difficult to find.

Our goal is to continue to provide safe water for our people. We will fulfill our mission. But we cannot do

everything with the limited resources we have. As it stands now, we are unable to focus on tomorrow's growth and developing a master plan for the future because too many of our resources go toward the emergencies of today.

We remain passionate about our job, because of its importance to the community. Our grandparents fought to provide a brighter future for our generation. Now I look at my nieces and my nephews and their kids, and I want a brighter future for them, too.

For the longevity of the tribe, we must have the opportunity to create a path forward and work toward a new chapter where we may proactively plan for our future as a tribe and as a people.

[Phrase in Native tongue]. Thank you, and I look forward to your questions.

[The prepared statement of Ms. Wallowingbull follows:]

Senator Padilla. Thank you very much. Thank you to all three of you.

We will now turn to questions from the committee. I get to begin.

Thanks to the work of the bipartisan members of this committee, Congress provided over \$4 billion for tribal sanitation over the next five years via the Bipartisan Infrastructure Law. This is transformative funding that will improve lives in Indian Country, but based on the testimony we have just heard, this funding should be viewed as just the start.

Mr. Norton, can you talk more about how the Bipartisan Infrastructure Law funding is only half of the puzzle, given the difficulties tribal water systems typically face with operations and maintenance?

Mr. Norton. Thank you. First, I would like to say that the Bipartisan Infrastructure Law is greatly appreciated from tribes and the Alaska Native villages across the Nation. It actually changes lives, providing access to drinking water and basic sanitation.

But as we heard, it addresses minimally the violations that exist under the Safe Drinking Water Act. We need operations and maintenance dollars to address those, especially as new systems come aboard. These are highly technical systems that are going

into our tribal nations, and that have a high capital cost. It is prudent that we as tribes have the appropriate people to run those and the tools and the funding.

Senator Padilla. So let me ask a very blunt question. All the projects that are now funded because of the Bipartisan Infrastructure Law, will they be successful without funding operations and maintenance?

Mr. Norton. Senator, I have to speak truthfully. The violations will increase, because we need certified operators and experienced operators to run these systems. As my colleagues pointed out, having the ability to maintain those certified operators is a difficult process. It has to do with the funding, salary adjustments, it has to do with competitive 401(k)s, retirements. If there are opportunities for tribal members to move on, they certainly will, because of the very low payments or salaries.

Senator Padilla. I know the State of California has tried to fill gaps for operations and maintenance through the SAFER program.

Mr. Norton. That is a very good program.

Senator Padilla. But this is really, in my opinion, an interim State solution to what is fundamentally a Federal problem and responsibility. So a follow-up question for you, not from an engineering perspective, not from a technical

perspective, but can you talk about the Federal trust responsibility and whether we are living up to it if we fail to fund operations and maintenance?

Mr. Norton. Thank you, Senator. The Federal trust obligation to tribes is failing in regard to providing safe access to drinking water for our communities. I base this on the observations of both my testimony and my colleague, Mr. Bennon, in regard to the high violation rates of both health-based violations and non-health-based violations. We need to fix this problem, putting more money into the systems so we can have proper operations of these facilities.

Senator Padilla. I think you have given some indicators to my following question, but I want to ask it for the record. Your testimony suggests that Congress should direct the EPA, in collaboration with the IHS, to evaluate all American Indian-owned water systems regulated by the EPA to include estimating the annual costs associated with operation and maintenance of facilities.

What do you expect this report would uncover?

Mr. Norton. The IHS has completed an initial investigation of operation and maintenance. That investigation identified core cost needs for the different sizes of utilities, both wastewater and drinking water, from about \$40 million for the lowest to \$200,000 annually for the larger facilities. What we

need is a follow-up, more detailed investigation that looks at the costs and how to pay for these improvements, how to pay for the operation and maintenance and the cost of operating your facility, electrical costs, and having that not passed onto the consumer where we already have poverty rates in most of our reservations as high as 80 percent.

Senator Padilla. Thank you. Mr. Bennon, Ms. Wallowingbull, I have not forgotten you. I do have some additional questions, but at this point, let me recognize Senator Lummis for her first round of questions.

Senator Lummis. Thank you, Mr. Chairman.

Ms. Wallowingbull, I understand that there are regulatory requirements that cause difficulty for tribes meeting their obligations under the Safe Drinking Water Act. One of the things we have heard is that the tight time frame to have water on the reservation sampled in an approved lab can be a struggle.

Have you had that problem? If so, how can we address this?

Ms. Wallowingbull. Thank you, Senator Lummis. Yes, we face those same issues. Part of it is because the lab, as I stated before, the lab locations where we have, where we take the sampling are in the local communities which are in Lander and Riverton. That is where we submit our sampling.

One of the sampling places closed. So it is hard to, that timeline, it is expensive. So I think just allowing us a little

more time to get the sampling in, because I know that is a violation when we are late for turning in sampling. But we are such a rural location, it is hard to meet those demands all the time.

Senator Lummis. One of the sites closed. Do you know the reason it closed?

Ms. Wallowingbull. No, I am not sure.

Senator Lummis. I might look into that.

When it comes to tribes utilizing the funding Congress has set up, I sort of get the sense that you are spending a lot of time filling out paperwork for grant programs. Can Congress do a better job of streamlining the grant application process? Do you have any recommendations for us in doing so?

Ms. Wallowingbull. When you are talking about the EPA funding, I believe that EPA should be working with the tribes directly. I know that their funding is funneled through IHS currently. And the process for applying for grants through IHS can be time-consuming and tedious. They have a scoring system, so you have to score really well. Your projects are, you have to meet different areas of criteria. As I said, it is different agencies. But I think when you are dealing with bigger projects in EPA, I think EPA should be responsible for working with the tribe directly, not funneling the funding through other agencies.

Senator Lummis. That is really good advice. That is just red tape upon red tape. It hurts the tribes as much as anybody, perhaps more than anybody, who is dealing with compliance issues.

Mr. Norton, we have talked about the struggle to find trained and certified workforces. Who sets those salaries? Why is this an area that is so underpaid?

Mr. Norton. It is based upon the hookups; it is based upon the services to the community. When you have a rural community like Hoopa, the reservation I am from, there are 800 hookups that are extended over long pipelines. The cost and maintenance of those providing water to our tribal households is costly.

So we have to look at other subsidies for paying a competitive wage. If I may, we just had a tribal operator leave our reservation because he was making a substandard salary. He has the educational background, but he moved to Sacramento and is making three times the amount.

It is not because he wants to leave the reservation. Our ancestors were there for thousands of years, our families are there. It is the difficulty of meeting the salaries, of having experienced and qualified, certified operators for our wastewater and drinking water systems.

Senator Lummis. So when Ms. Wallowingbull said that there are five systems among the two communities, Ethete and Arapaho,

so those are spread out as well. Is that the big problem?

Ms. Wallowingbull. Yes, as I stated, in Ethete we have a water system, but in Arapaho, we have two water systems. But we have five lagoons between both communities. So both communities are separate, so the water line ends. So the areas in between those communities are on wells.

Senator Lummis. Thank you. I appreciate it.

Mr. Chairman, I yield back.

Senator Padilla. Thank you. We have been joined by the EPW Chairman, Senator Carper. Let me recognize him for any statement and questions of the witnesses. Senator Ricketts will be next.

Senator Carper. Thanks, Mr. Chairman. Let me just say as an aside, my staff have been watching how well the two of you work together, and your staffs. One of the things we try to do on this committee is we want to get good stuff done for our planet, for our environment. We also try to build bipartisan support for a lot of the initiatives we take up. You set a good example for us. I just want to say that to begin with.

Welcome to all of you. Ken Norton, did you fight Muhammed Ali, how many, three times?

Mr. Norton. A couple of times, yes.

[Laughter.]

Senator Carper. I watched two of those fights. You look

great for a guy who went 15 rounds with Muhammed Ali three times.

[Laughter.]

Senator Carper. For those in the audience wondering, what is he talking about, another Ken Norton did fight Muhammed Ali I think three times. He won one, and Muhammed won two.

Anyway, we welcome you, and Mr. Bennon, and Ms. Wallowingbull. Where are you from?

Ms. Wallowingbull. Wyoming.

Senator Carper. And Mr. Bennon?

Mr. Bennon. Phoenix, Arizona.

Senator Carper. Okay.

Mr. Norton. Northern California, Hoopa.

Senator Carper. Okay, good. We are happy to see you all. Thanks again for helping us for helping us. This is an important issue, we care about these issues a lot, and I know you do too, so thank you.

I think it was in April of this year, the Environmental Protection Agency released its latest drinking water needs survey and assessment. It revealed that the Native American tribes and Indian Native villages would need over \$4 billion, I think it was over \$4 billion in investment to fully meet their drinking water infrastructure needs, which is a staggering, staggering unmet need.

Mr. Bennon and Mr. Norton, how do your organizations work with EPA and other Federal partners to identify and prioritize drinking water and wastewater infrastructure projects on tribal lands?

Mr. Bennon. Chairman Carper, the Inter Tribal Council of Arizona works very closely with EPA and IHS. We try to support the dialogue between the tribes, the tribal utilities, and the Federal agencies. But it is pretty primarily that dialogue that generates the understanding of need.

What we do see directly working with the operators is that this is just a constant problem, because of the lack of operations and maintenance funding. We keep building infrastructure and it is just like a car that ages that has to be maintained and kept up. If it doesn't, then we have to go buy another car. That is the same deal with the infrastructure.

Then of course, the remote geographic isolation of a lot of these rural tribal systems, the economics of the typical model for operations just doesn't really fit. So I think that is the piece that is missing. Infrastructure is needed, yes, but the other side of the coin is needed as well, operations and maintenance.

Senator Carper. All right, thank you.

Mr. Norton?

Mr. Norton. Yes, I echo Mr. Bennon's thoughts. The

National Tribal Water Council has representatives from all the regions, tribal representatives and from the State of Alaska. What we are hearing is the state of the art technology is being implemented in Indian Country, but we need the capacity to maintain those systems over the long term, so these highly technical and costly investments from the American public are maintained over time and the operation and maintenance of those systems is essential to do so.

Senator Carper. All right, thank you for that.

I have one more question for you, ma'am. Earlier this summer, the Environmental Protection Agency announced that over, I want to say almost \$240 million in funding would be made available to tribes during Fiscal Year 2023 for drinking water and wastewater projects. Much of this funding was made possible by the Bipartisan Infrastructure Law, which really has its roots right here in this room, this committee. We reported it out to pass on the Floor, I think by 89 to 2. Just an amazingly strong vote.

But while this is a meaningful investment, we know that projects on tribal lands often face unique challenges and may cost more on average than other water systems. You have alluded to that already.

Ms. Wallowingbull, would you please explain for us some of the unique challenges that you have seen tribal communities

experience when building drinking water and wastewater systems? As a corollary to this, part of that question would be, how might the Federal Government work alongside State and local partners to help address or alleviate some of those obstacles?

Ms. Wallowingbull. Yes. As stated in my testimony, the biggest roadblock we face in any of our projects is the right-of-way process.

Senator Carper. The right-of-way?

Ms. Wallowingbull. The right-of-way process. As I have stated, it has been an issue for us on every single project that we have. I know the regulations were updated in 2016, the C.F.R. regulations for the right-of-way process. However, it still continues to be an issue for a lot of the projects when we can get State and Federal funds obligated for any project. Once it is obligated, we are always just holding, just waiting it out, the project, because of the right-of-way approval.

So that is always the main issue that we face. But just this year, we have had more meetings and more relationships with EPA, which I think we are headed in the right direction. We have a better working relationship with EPA. I think it is just the beginning. We still have a lot of issues and problems that they haven't seen, or we can identify them. But it is just the beginning of them getting involved with a lot of the work that we have going on.

Senator Carper. All right, thanks. My time is expired, Mr. Chairman. I would just like to briefly read a sentence or two of my next question, and then ask our witnesses to answer for the record. We don't have to do it here today. Could I do that, just very briefly?

Senator Padilla. Go ahead.

Senator Carper. I want to ask, and we will follow up after the hearing with requests in writing, and ask each of you to share with us your experience supporting tribal communities that lack access to safe, reliable water, and how that affects public health and a community's general welfare. We will send that to you in writing and ask you to respond to it in writing.

Thank you very much for joining us today. Nice to see you.

Senator Padilla. Thank you very much.

Senator Ricketts?

Senator Ricketts. Thank you very much, Chairman Padilla, and Ranking Member Lummis, for holding this important hearing today. Thank you to our witnesses for coming here today and talking about your perspectives. I think it is a great opportunity to be able to share some of the challenges that we have in our tribal communities with regard to drinking water.

I would like to take this opportunity to discuss the EPA's proposed rule for the Federal baseline Water Quality Standards, the WQS, for Indian reservations. I recognize the importance to

tribal communities in developing water quality standards within the Clean Water Act. I have several concerns with the proposed rule, only that all tribal nations should have to treat to State designations prior to the application for the water quality standards, and the EPA should also hold the tribes to the same water quality standards process as the States under the Clean Water Act. This process should include public participation and comments when reviewing water quality standards. I think that is actually one of the things that, Ms. Wallowingbull, you were talking about, just having that full-blown EPA participation.

Tribes must also equally prove proficient in technical and managerial skills for adoption and implementation. To boost coordination there should be consultation with the delegate State agency as well as well as data transparency. EPA has two roles within the Water Quality Standards. One is to intervene only when a State or tribe is failing to meet the requirements of the Clean Water Act, and two is to provide technical services like nationally recommended water quality criteria to States and tribes when setting Water Quality Standards.

This role for States to lead in protecting water quality while considering other implications to communities is important and the EPA's proposed rule undermines this division of responsibility. So Ms. Wallowingbull, can you speak to the importance, because you talked a little bit about dealing

directly with EPA rather than IHS, can you talk about the importance of tribes being allowed to take the lead in water quality plans and criteria?

Ms. Wallowingbull. If we were responsible for taking the lead?

Senator Ricketts. Yes, the importance, right. Again, the point I am trying to make here is that we ought to allow States and tribes to be able to take the lead in this because they know the local situations the best.

Ms. Wallowingbull. Yes.

Senator Ricketts. You talked about, for example, the right-of-way issues. Can you talk about the importance of having tribes take the lead when it comes to creating water quality standards with the EPA?

Ms. Wallowingbull. Yes, definitely. We are a sovereign nation, but we do work well with the State. We get State funding from the Wyoming Water Development for water projects. So we do work well with them when it comes to funding for projects. They understand our systems.

But as you said, we know our systems. We have an engineering firm that we currently consult with which has worked with us for nine years. So we have knowledgeable people. As a tribe, we know how we want to move forward. But again, it is always down to the funding issue.

But it is not, as we said, the funding issue, the right-of-way process, everything is timely because as we said, we have a water break every week. We are constantly fixing those issues. But yet we are still trying to look at the bigger picture. Our goal is to create a master plan. But again, that goes back to who is going to fund that.

Senator Ricketts. Did you say you just were starting to begin conversations with the EPA? Does that indicate you hadn't had direct contact with EPA in the past?

Ms. Wallowingbull. The working relationship was not that great in the past. So we are working closely with them now. We actually are working, for our wastewater systems, we are on a compliance action plan. So they are working with us for our wastewater systems. They regulate our water.

But this year alone, we have met with several different committees from EPA, or several different groups of people from EPA. So they are trying to improve the working relationship with the tribe, so they are making that effort to come to the reservation and assist us. They are aware of the issues we have.

Senator Ricketts. Good. I think that is always going to be the best regulatory environment, is when the EPA allows the local people to take the lead and supplies that supporting authority, whether it is technical assistance, and of course,

you are talking about not only the infrastructure dollars but also the maintenance and operation dollars as well going forward.

Thank you again to all of our witnesses for being here today and describing some of the challenges to making sure we are providing safe, high-quality drinking water on our tribal reservations. Mr. Chairman, I yield back.

Senator Padilla. Thank you very much.

We have been joined by Senator Kelly.

Senator Kelly. Thank you, Mr. Chairman.

Let me first say thank you for holding this hearing. Water is a critical issue in Arizona, especially for our 22 federally recognized tribes, especially as this drought worsens. It has been going on for now over 20 years.

I am really glad we have the opportunity to be joined today by Brian Bennon from the Inter Tribal Council for Arizona, or ITCA. Brian has worked for tribes for nearly 30 years. I think you have been with ITCA since 2010. In his role, he provides training certification and technical assistance services for drinking water and wastewater operating personnel, working with tribes in Arizona and throughout the western part of the United States. So I am really glad you could join us today, Brian. Thank you, and thank you to the other folks for being here.

My first question is for Brian. As I noted, you have

worked with tribes on tribal water issues for a long time. As Arizona and much of the United States has struggled with these long-term drought conditions, the needs of tribal communities seem to have changed over the length of your career.

Are the needs of tribal communities and tribal water systems different now than they were 20 years ago? If so, can you explain what the differences are?

Mr. Bennon. Senator Kelly, thank you very much for that question. Yes, I would say that they have changed, but they have gotten more complex. A lot of the same issues exist that we had decades ago, but there are now all kinds of factors. Variability has directly increased in hydrogeology. We are working with many tribes on developing drought contingency plans and looking at emergency response planning for the drinking water and wastewater utilities, tribal utilities that we wouldn't have expected to have these types of issues, for example, tribes in Alaska or tribes in Montana, also tribes in the southwest.

But this is starting to become a very complex, widespread phenomenon of trying to develop resiliency. Of course, EPA has the resiliency program for water and wastewater utilities. Those resources are being utilized right now. But we have a lot more work to do in Indian Country to help build resiliency.

Senator Kelly. Brian, I am curious, I was looking at the

poster board up here that says Native American households are 19 times more likely to lack indoor pipes for running water and sanitation. That number, I might be wrong about this, that actually struck me for Arizona as probably being low. I am trying to get your sense, in the State of Arizona, what do you think that number would be?

Mr. Bennon. Senator Kelly, this is a really tricky thing to try to get numbers on. I can tell you first-hand that we have had many, many staff members come through ITCA and many operators that we work with that personally have this situation in their upbringing of not having plumbing in their homes as they were growing up.

This is an issue of not only bringing pipes to the homes, bringing these services, but also operations and maintenance. These systems, once you build them, they need long-term sustainability of operations and maintenance. That is the key issue that this panel is bringing forward today.

Senator Kelly. Last year, I spent some time with an Arizona family who lacked running water in their home for decades. Recently, through some programs they were able to get access to running water in their home. It is such a challenge for Native American communities in our State.

In the remaining time, are there any lessons learned that some of the relevant Federal agencies like the EPA, maybe the

Indian Health Service, and others should learn to respond to some of these changing needs of tribal communities?

Mr. Bennon. Senator Kelly, yes, I think one of the recommendations that we have in our testimony is increased coordination amongst the different Federal agencies. A lot of entities or agencies are working on these problems, but there seems to be a need for more communication and coordination directly with tribes and amongst the agencies themselves.

Senator Kelly. How do we make that happen?

Mr. Bennon. I think there are a couple of mechanisms already in place. There has been the Federal Infrastructure Task Force, which has been a great mechanism. But there is a lack of tribal participation, tribal community participation in that dialogue.

Then more on the local level, EPA and IHS have a model in place of technical assistance providers coordination meetings. They call them TAPs. These TAP meetings do happen in certain areas, but there are other areas in Indian Country where TAPS don't exist. I think expansion of that model would be very helpful for Indian Country.

Senator Kelly. Thank you. Thank you, Mr. Chairman.

Senator Padilla. Thank you, Senator Kelly.

Senator Sullivan?

Senator Sullivan. Thank you, Mr. Chairman. I want to

thank the witnesses here. I am a big fan of our Native American communities, Alaska Native communities. One thing I always like to brag about for our Alaska Native and Lower 48 Indian communities is the patriotism, special patriotism. Alaska Natives and Lower 48 Indians serve at higher rates in the military than any other ethnic group in the Country. That is very special.

So to all your members and tribal members, tell them thank you. It is not noticed enough. It is remarkable, because let's face it, during a lot of our Country's history, our Native people were discriminated against and all kinds of horrible atrocities. Yet generation after generation, they step up and serve America in the military. It is remarkable. So thank you for that.

I also think it is outrageous that we have, whether it is reservations or over 30 communities in Alaska that don't have running water or flush toilets. The richest country in the world, some of the most patriotic communities in the world, and we can't get running water or flush toilets to them. So this is a passion of mine. It is a passion of mine, especially in Alaska, where we have so many communities, I was just out in a number of our Alaska Native communities, rural communities that don't have running water and flush toilets. We need to do more.

Can I just get very quickly from the witnesses your sense

on, is there enough funding to address these basic needs? During COVID, they told many Alaska Native communities to wash your hands five times a day. Oh, wait, you don't have running water. How are you going to do that?

So what do you think the best way to do it is. I will just ask each of the witnesses. But I do want to make one other point, which I do a lot on this committee. There is a lot of discussion on racial justice, environmental equity, the terms the Biden Administration puts out. Unfortunately, for my constituents who are indigenous, there is a big asterisk with the Biden Administration. It is racial justice, environmental equity, but if you are an Alaska Native, if you are an Alaska Native, this Administration is out to get you.

I just sent a text, I hope the news picks up on it, to Secretary Haaland. I have a group of Alaska Native leaders from the North Slope of Alaska, elected leaders, tribal leaders, Alaska Native Corporation leaders who have tried to meet with Deb Haaland six different times. They fly 5,000 miles to Washington, D.C. She and the President are undertaking policies that are devastating their region. North Slope, that is the national petroleum reserve Alaska, ANWR. They never get consulted. They are in town again. Six times Deb Haaland has said, no, I am not going to meet with you.

So I have sent her a text saying, Madam Secretary, do the

right thing, damn it, and meet with my constituents, please. Alaska Natives, please. Okay? We will see what she does. Pretty sure she is going to ignore them. Sorry, I had to vent on that.

But to the point on where we should be, what is the most effective way, I know we have different tribes, different reservations, to make sure people get basic running water and flush toilets? Is that too much to ask in America? I will go to each of the witnesses.

Mr. Norton. I can start, thank you, Senator Sullivan. As we heard before, the EPA just completed the drinking water infrastructure needs assessment. That identified a need of \$4 billion.

Senator Sullivan. Okay. For all of Indian Country?

Mr. Norton. For Indian Country, yes, including Alaska Natives.

Senator Sullivan. Oh, okay. They think that would be enough to get everybody running water and flush toilets?

Mr. Norton. The issue at hand is, providing access is one part of the puzzle. Providing the sanitation and the drinking water facilities. It is the operation and maintaining systems that is the difficulty.

Senator Sullivan. Oh, right.

Mr. Norton. So once you have a start of the facility, do

you have the operators, do you have the people to maintain those? And the American public significantly put their investment into these systems. We as Native people want to make sure they are operated over a long period of time, and serve our communities.

Senator Sullivan. Does the \$4 billion cover that, or is that in addition?

Mr. Norton. I believe it is a, it only deals with the construction.

Senator Sullivan. Okay, right.

Mr. Norton. It doesn't deal with the operation and maintenance component.

Senator Sullivan. Okay. Thank you. That operation and maintenance issue is a giant issue we see in Alaska all the time.

Mr. Bennon. Senator Sullivan, this is a very interesting situation that Alaska Natives have. We have been providing training courses, this gets back to the operations and maintenance side of things. Operators need to get trained, and then they go through the certification process. The trainings that we have had for Alaska Native villages have been some of the most heavily attended, standing room only, types of situations. The scenarios that were described by the operators were remarkable, having literally sled dogs and snowmobiles to

get to the various communities.

I understand that the engineering side of things is very unique and specialized. But the situations are the same. Infrastructure construction, the dollar amounts I have no idea. But it is going to be very expensive. And then to maintain those systems, operations and maintenance.

So the process is all the same. It is just, is it being addressed adequately for Alaska Natives? I suspect definitely not.

Senator Sullivan. No, it is not. It is not. Thank you.

Ms. Wallowingbull?

Ms. Wallowingbull. Senator Sullivan, I agree with my colleagues here. The operation and maintenance has always been an issue. We face the same thing. I stated in my testimony, all of our water and sewer are not certified. So we face those same issues.

But I don't think, just looking at when you were mentioning dollars, I know that we did a cost estimate for our systems alone. We have two systems, with three water systems and five lagoons, which is totally different from all the other reservations.

Just the cost estimate for 2017 was \$30 million. That has tripled now. But that wasn't just for fixing what we think needs to be fixed, because our system is not uniform. Our

lines, as we said, are undersized, but we go from a 4 inch to 12 inch. It is not a uniform system.

So we the supplies we need, we have to go two hours away, because our local businesses do not carry any of the supplies to fix our pipelines anymore.

Senator Sullivan. Every place is unique. But to me, Mr. Chairman, this is an issue that I think should unite Democrats and Republicans on getting our First Peoples the ability to have clean water. It shouldn't be that hard.

So I am a big advocate for this, particularly in my State. But in all the reservations in America, again, some of the most patriotic Americans in the Country have to use honey buckets, what we call honey buckets in Alaska. Well, they are not sweet-smelling, I will tell you that.

So we will keep working this. I appreciate the witnesses being here on a really important topic for my State, certainly. Thank you, Mr. Chairman.

Senator Padilla. Thank you, Senator Sullivan. I appreciate your comments. I am sensing bipartisan support building for this effort to prioritize investing in operations and maintenance, not just the initial construction. That makes sense for the Federal Government to financially support the longer-term viability of significant initial investments.

I want to ask some additional questions on some additional

issues. I want to turn back to workforce and workforce development. Last week, the EPA released its seventh Drinking Water Infrastructure Needs Survey and Assessment in which State, local and tribal water systems reported that hiring difficulties will increase over the next decade. I think we have already acknowledged the current challenges. These difficulties will increase over the next decade. Small water systems specifically cited their inability to hire full-time employees and offer competitive benefits.

We know that this is a national challenge. We also know that tribal water systems face their own unique issues with workforce and credentialing.

Mr. Norton, you were asked about this earlier, so I will give Mr. Bennon and Ms. Wallowingbull an opportunity to weigh in here. We will start with you, Ms. Wallowingbull. Can you speak to the unique challenges of hiring and retaining staff?

Ms. Wallowingbull. Yes. As I stated, we have six water and wastewater operators. It is a different, demanding job for our systems, because we have water breaks every week. The rigorous hours and the demand, once somebody in our system is without water, it is complete chaos.

As I said, our system is not uniform. So when we have a water break, half of the town is out, because we can't isolate fixing that water break. It is always, once there is a water

break, a big part of the community is going to be without water.

It is hard finding those dedicated individuals, especially within our community, to want to become certified, just because of the backlash they do get for just not being able to provide, especially when there are water breaks, it is always an issue.

We are working with Wyoming Rural Water on an apprenticeship program to start certifying more of our water operators. So they are committed to a two-year program to become level one certification. So that is a positive step forward for our community and Wyoming Rural Water. That is something we are working on right now. They haven't started it yet, but that is something new.

Senator Padilla. Good. I do have questions about certification. That is an important piece here.

First, I want to ask Mr. Bennon to chime in. Do you have any suggested strategies for increasing the number and the workforce, number of operators needed to run these systems?

Mr. Bennon. Chairman Padilla, yes, thank you very much for this question. I recommend a three-pronged approach. The first is, you have to have viable wages and benefits at a utility to attract the talent that is needed to operate these systems. The only way to do that is to have financial viability for operations and maintenance. That is where the salaries are supported to have the finances for the utility. That is number

one.

The second is, and it is not just specific to Indian Country, this is for the entire water industry in general. We have to have a top-down and a bottom-up approach of changing perceptions about the important role of the water operators. So many people just take it for granted, we turn on the tap or use the restroom, it just happens. Nobody understands that there are teams of people, or should be teams of people working behind the scenes to make that happen.

So we are talking about public service announcements, getting the general public, getting decision makers to understand that very important role of these men and women that operate the water systems.

Then the third point goes back to the fundamentals, operator certification. We really need to take another look at the credentialing industry. It is kind of a mixed bag across the Country of the way primacy agencies handle it. There is a lack of consistency. But we are seeing, unfortunately, the Inter Tribal Council of Arizona, the operator certification program, the passing rates for the certification exams are dropping. The exams get more and more complex as the industry gets more complex.

We are dealing with individuals entering into this work field that, some of them have college degrees but most of them

have just high school or GEDs. You look at the Department of Labor competency model for water and wastewater operators, there is this pyramid with all these bricks of all those domains of knowledge. It is astonishing what they have to know, what is on the certification exams. Then the years of experience of putting it into practice.

We have to be careful with where the barriers are. We want folks to enter into this career field. If there are too many barriers in place, which I think they are, maybe we should look at it again. I think the infrastructure task force is a great starting point for looking at that.

Senator Padilla. Thank you.

Ms. Wallowingbull referenced being on the verge of a partnership between tribes and other water agencies in Wyoming. There is both official and unofficial in California. Mr. Bennon, can you tell us why there are no Federal guidelines for tribal wastewater operator certification?

Mr. Bennon. Chairman Padilla, I couldn't give you the reason why. I can tell you that it doesn't exist. I know that EPA is aware of the situation and that there needs to be some desire or will or impetus to create such a thing like exists in drinking water. For Indian Country, we don't have such guidance. What that means is we don't have a way of classifying wastewater infrastructure. It begins with classifying the

facility, and then the level determines what level of certification is needed.

That doesn't exist right now. We don't have methodologies for operator certification for wastewater. That needs to be created.

Senator Padilla. So yes or no, would there be value in establishing that?

Mr. Bennon. Absolutely, it is needed.

Senator Padilla. Is it an "and" or "or" value added by reciprocity of certification between different States to help tribal systems?

Mr. Bennon. Reciprocity is the process of equivalency from one jurisdiction to another. So because tribal boundaries don't coincide with State boundaries, we do have operators where this is a very significant situation.

Career mobility, we talk about operators leaving to take careers elsewhere, but the fundamental issue of reciprocity for tribal operators is who is the primacy agency for their facility, and what regulations are applicable for their utility. That is what there is a lot of, it is gray. Nobody really, it is hard to figure that out, especially when primacy agencies have varying degrees of regulations.

So figuring out what regulations are applicable to their utility and what type of training and certification is needed,

that is where reciprocity comes in. Having a clear distinction about the primacy agencies and regulations that are applicable to them, that is the issue.

Senator Padilla. Thank you.

We have spent time on the need to invest in operations and maintenance. We have talked about some of the workforce difficulties and challenges. I want to spend a few minutes talking about water quality. A statistic that many of us are focused on today is that Native American households are 19 times more likely than white households to lack indoor plumbing. It is so shocking, we made a poster.

But the reality is that even this devastating statistic doesn't capture water quality, whether that indoor plumbing is actually delivering clean, safe drinking water and water for sanitation.

Mr. Norton, your written testimony notes that health-based drinking water violation rates for tribal water facilities are higher than the rates for water systems regulated by States. Why is that? What can we do to improve not only water access, but also water quality in tribal systems?

Mr. Norton. Thank you for the question, Senator Padilla. It comes down to having experience and certified operators. What we see in Indian Country is the difficulty of maintaining these operators over time, longevity. Our State counterparts,

they have multiple operators that specialize in certain aspects of the drinking water facility and the wastewater facility.

What we have in Indian Country is an operator that wears multiple hats. It has to do multiple tasks at multiple times. When this operator is down or has to do other personal business, the utility suffers, or the person leaves due to salary inequalities.

And the replacement, what we see in Indian Country when we replace the immediate need and addressing those health-based violations, tribes are forced to hire consultants at at least four times, three times or four times the cost, Senator. It is another burden on the tribe that is unable to pay for the operation and maintenance. It can't be passed on to the consumer.

Those are probably the main reasons why we start seeing health-based violations in Indian Country. It has to do with the operation and maintenance of those facilities.

Senator Padilla. Thank you. Mr. Bennon, I see you are nodding quite a bit. Is there anything you would like to add?

Mr. Bennon. Chairman Padilla, yes. Definitely operations and maintenance is a major contributing factor. Most operators understand that it is all about protecting public health. It is the number one priority mission of being a water and wastewater operator.

The issue also is that these are designed to protect public health, but they are very complicated and take years to understand. So things are not helped when the certification process does not cover or does not measure operators' knowledge of the regulations. It falls on local jurisdictions to measure that.

ITCA just got through the process of creating an assessment for tribal operators on the regulations that EPA implements on reservation lands. The only way we could do it is to have the regulations at the fingertips of the operators on electronic tablets that they take out into the field. You can do a word search. If you were to print these things out, we tried, it is over 2,500 pages. But to have that as a tool for the operators is something that we just started this year. We are hoping over time this will start to help.

Senator Padilla. Question for you. Is there something about the nature, the fundamental nature of the different types of water agencies that impacts for better or worse access to safe, clean drinking water by the different types of agencies, tribal versus other public versus private water systems?

Mr. Bennon. Yes, Chairman Padilla. The 1,044 public water systems in Indian Country, according to EPA's data base, the majority are tribally owned but there are significant numbers also that have different types of ownership. We see differences

according to the different types of ownership. For example, the casinos, they have a lot of resources. So we see well-staffed, well operated utilities.

On the other side of things, we see these public-private, public water systems at schools, whether they are tribally controlled schools or federally controlled schools. But a lot of these schools in these very geographically remote locations have their own water systems. Those are the ones that have very limited resources. They are typically, the operators are typically the custodial staff of the school and they are handling the maintenance of the grounds and everything. They have practically no budgets whatsoever.

We see huge needs there. We see private enterprises in Indian Country that have water systems, such as mobile home parks and that type of thing. We do see very significant issues with some of those types of ownership, public water systems.

Senator Padilla. Thank you.

There are a few more issues I would like to cover, but in the interest of time, we will also offer questions for the record after the hearing and provide some time for you to respond.

The last issue I do want to raise for today has to do with water affordability and access and quality, affordability. I mentioned earlier that in the first subcommittee hearing, we

focused on the issue of water affordability and small water system assistance, because unlike other forms of infrastructure, like bridges and roads, clean drinking water isn't primarily funded by taxes. Instead, more than 90 percent of the average utility's revenues comes directly from ratepayers.

But unlike State and local governments, who can also use tax revenue to supplement revenue from water bills, tribal governments don't have such a tax base and instead rely on essential government services like drinking water and wastewater for Federal support.

Mr. Bennon, your written testimony notes that over 90 percent of tribal public water systems are classified as small or very small systems, serving 3,300 or fewer customers. So not a big customer base to spread capital costs across. This obviously presents challenges when structuring rates.

How helpful would a permanent water rate assistance program be, whether it be LIHWAP or an EPA program?

Mr. Bennon. Mr. Chairman, the need for some type of a subsidy to help bridge this gap, where the scales of economy of the water utility model starts to fail, there needs to be some type of funding mechanism to help utilities bridge that difference there.

The LIHWAP program has been hugely successful, but focuses narrowly just on the one aspect of the utility revenues, and

that is the ratepayer. So if you have a very small population, trying to figure out where that sweet spot is of setting the rates to cover all the costs, we do have technical assistance support out there to help utilities do that.

But my suggestion is that there should be another funding mechanism to bridge that difference, to work hand-in-hand with LIHWAP, but also primarily looking at the very technical side of things, not the economics so much side of things of the customer, but of what the community and the utility unique needs are.

It is a very technical process of establishing rate structure. There is definitely a need for an additional funding mechanism to assist small rural tribes.

Senator Padilla. Ms. Wallowingbull, will you share a little bit about your utility's experience with LIHWAP, and if you think Congress should fund a permanent water rate assistance program?

Ms. Wallowingbull. Chairman Padilla, yes. Actually we received LIHWAP funding for water assistance this year, or last year. I know it has been a big thing for our tribe. Our water billing currently is not in a great situation. Our water billing system is not enforced, so it is difficult to get everybody on the system. We are a flat rate, but even if everybody was to pay, that wouldn't even sustain our system. It

would just cover the operation, barely. It wouldn't even supplement salaries or anything else.

So the operation and maintenance is continuously an issue. But the LIHWAP actually did assist a lot of individuals, as the funding goes back to the tribe, which helps us. So I think continuously providing that funding would be beneficial. We also, because we are billing and we work with USDA Rural Development, they also have a program that assists with low income for water bills.

Senator Padilla. Thank you. Mr. Norton?

Mr. Norton. Thank you. The LIHWAP program was very successful for the Hoopa Valley Indian Reservation. It was based upon an annual income and the majority of the annual income in Hoopa is below poverty level at 80 percent.

Having the LIHWAP program continue is essential in our Native American communities. As my colleague Mr. Bennon pointed out, if we can bridge that gap somehow where we can have the assistance of these to the ratepayer and then have the assistance from the Indian Health Service through their statute of O&M and helping offset those costs, it would be a mutually acceptable program that the tribes would embrace.

Senator Padilla. Wonderful. Before we conclude the hearing, I do want to take a moment to once again thank Chairman Carper and Ranking Member Capito and the subcommittee Ranking

Member Lummis for making today's hearing possible. I appreciate the efforts of our collective staff as well.

I especially want to thank our witness for your thoughtful testimony and your ongoing efforts to improve the state of tribal water in this Country. As I mentioned earlier, today's hearing is about more than just the transformational investments we are making in water infrastructure. It is about fulfilling our Federal trust responsibilities to tribes that deserve a guarantee from the Federal Government to a safe, healthy, and prosperous life. Those responsibilities don't end after the enactment of one historic infrastructure bill, and they are not fulfilled by periodic check-ins just to say we have done our job. This is a constant and growing nation-to-nation relationship that goes both ways.

And yes, we have a moral responsibility to continue to serve Native American tribes who were forcibly displaced from their homelands. I want to make clear for folks back home: the problems discussed today, this isn't a matter of technical infrastructure jargon or policy-speak. This is about making sure that a parent in Indian Country can turn on the tap and not fear they will get their child sick by giving them a glass of water, to making sure a family on a reservation doesn't have to conserve every last drop of water to bathe themselves because they are not sure when the next shipment of water will come in.

It is about making sure an entire community doesn't have to worry about one lightning strike or one burst pipe or extreme weather, what that could mean to the loss of all clean water. And of course, for countless Native Americans, it is about knowing that the U.S. Government values you and your family's health enough to invest in the resources that will keep you safe.

So I take this responsibility seriously, and clearly, with multiple hearings this week and next, the U.S. Senate is demonstrating that we all take this issue seriously.

Now it is time to move beyond the initial excitement over an influx of funding to tribal communities through the Bipartisan Infrastructure Law and follow it up to make sure it is accessible and implemented thoughtfully. Because we have to make sure we are making long-term, sustained investments in water systems throughout the Country.

Once again, I thank our witnesses today for helping us to better understand some of the potential next steps we can take to bolster tribal communities' water systems. As Mr. Norton pointed out, that could include directing the EPA and the Indian Health Service to evaluate the specific needs of all tribal public water systems to determine what it would take to fund a Federal operations and maintenance program. Or as Mr. Bennon pointed out, that could include improving workforce development,

so that tribes have access to water and wastewater system operators that can provide safe drinking water and adequate sanitation services.

And as I called for in the first subcommittee hearing, we need to fund a permanent water rate assistance program akin to LIHEAP for energy assistance to ensure that Native American households can afford water bills. We need a whole-of-government approach to fully funding Federal programs related to tribal drinking water and wastewater, including the programs in the Bipartisan Infrastructure Law that we authorized but didn't fund.

So I look forward to advancing legislation in the months ahead that lives up to our trust responsibility to provide clean water throughout Indian Country. I want to thank you all again for being here. I look forward to the follow-up.

With that, this hearing is adjourned.

[Whereupon, at 4:02 p.m., the hearing was adjourned.]