



To: Subcommittee for Indigenous Peoples Republican Members
From: Subcommittee for Indigenous Peoples Committee Staff; Ken Degenfelder
(Ken.Degenfelder@mail.house.gov)
Date: June 14, 2021
Subject: Oversight Hearing titled “Examining Federal Facilities in Indian Country”

The Subcommittee for Indigenous Peoples will hold an Oversight Hearing titled “Examining Federal Facilities in Indian Country” on **Thursday, June 17, 2021, at 12:00 p.m. EDT** via Cisco WebEx.

Member offices are requested to notify Rob MacGregor (Robert.MacGregor@mail.house.gov) by **4:30 p.m. EDT on Tuesday, June 15, 2021**, if their Member intends to participate in person in the hearing room or remotely from his/her laptop from another location. Submissions for the hearing record must be submitted through the Committee’s electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (EverettWinnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- The American Jobs Plan (the Plan) is a \$2 trillion “infrastructure” proposal that provides little detail as to how specific infrastructure needs in Indian country under the subcommittee’s jurisdiction will be addressed.
- Rather than address underlying, systemic issues, the Plan instead relies on Democrats’ default worldview that simply increased funding for federal programs serving Indian tribes will provide prosperity to Indian communities.
- The Plan does not propose regulatory or programmatic changes to expedite efforts to expand economic development in Indian country. Without regulatory and programmatic reforms, there is no way to ensure increased funding goes to where it’s needed most and won’t instead be lost to an expanded bureaucracy and never-ending bureaucratic processes.



- The Plan ignores significant Indian health care facility needs, despite \$2.2 billion worth of projects remaining on the Indian Health Service (IHS) Health Care Facilities Construction list and the advanced age of many facilities.¹
- It remains unclear if the Majority plans to move forward on an infrastructure package in a bipartisan manner through regular order. It is concerning that many signs point to an intention to instead use the Budget Reconciliation process, which would cede House Natural Resource Committee jurisdiction to the Budget and Rules Committees.

II. WITNESSES

Panel I

- **Mr. Jason Freihage**, Deputy Assistant Secretary for Management, Bureau of Indian Affairs, U.S. Department of the Interior, Washington, D.C.
- **Mr. Randy Grinnell**, Deputy Director for Management Operations, Indian Health Service, U.S. Department of Health and Human Services, Rockville, MD

Panel II

- **The Honorable Victoria Kitcheyan**, Chairwoman, Winnebago Tribe of Nebraska, Winnebago, NE [*Republican Witness*]
- **The Honorable Chief Allan**, Chairman, Coeur d'Alene Tribe, Plummer, ID [*Republican Witness*]
- **The Honorable Ned Norris, Jr.**, Chairman, Tohono O'odham Nation, Sells AZ
- **The Honorable Timothy Nuvangyaoma**, Chairman, Hopi Tribe, Kykotsmovi, AZ
- **The Honorable David Hill**, Principal Chief, Muscogee (Creek) Nation, Okmulgee, OK

III. OVERVIEW

Committee Democrats have called a second hearing to receive testimony on tribal infrastructure, focusing on federal facilities in Indian country and how the issue may be incorporated into President Biden's American Jobs Plan.² The Plan proposes more than \$2.7 trillion in new federal spending on various forms of public infrastructure, research and development, workforce training, affordable housing, and caregiving. The Plan includes components such as improvements to highways, bridges, drinking water, and broadband infrastructure, which fall outside of the committee's jurisdiction. While the Plan provides

¹ The 2016 Indian Health Service and Tribal Health Care Facilities' Needs Assessment Report to Congress at 3. https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/RepCong_2016/IHSRTC_on_FacilitiesNeedsAssessmentReport.pdf

² <https://www.whitehouse.gov/american-jobs-plan/>

that its infrastructure components may extend to include activities on tribal lands, the only component specific to tribal communities falls under the provision titled “Partner with rural and Tribal communities to create jobs and economic growth in rural America.”³

The Plan proposes \$5 billion to help rural regions and Indian tribes “build on their unique assets and realize their vision for inclusive community and economic development. This program will empower rural regions by supporting locally-led planning and capacity building efforts and provide flexible funding to meet critical needs.”⁴

On April 10, 2021, the Administration provided additional guidance by issuing the “The American Jobs Plan Supports Tribal Communities” fact sheet.⁵ The fact sheet provided that the Plan’s focus would fall into three categories: 1) Expand Job Opportunities; 2) Support Critical Infrastructure For Tribal Communities; and 3) Advance Climate And Environmental Justice. These categories outline that investments in rural and Tribal communities should include: 100 percent broadband coverage, rebuilding crumbling infrastructure like roads, bridges, and water systems, providing research and development funding to land grant universities, and positioning the U.S. agricultural sector to lead the shift to net-zero emissions while providing new economic opportunities.⁶

IV. BACKGROUND

In Indian country and elsewhere, a wide variety of physical facilities are required for quality of life needs, economic development, and human health and safety. Infrastructure includes roads, bridges, fire support, police support, detention centers, electric and natural gas utilities, telecommunications, hospitals and clinics, administrative buildings, community centers, and schools. During the hearing the following categories will likely be discussed as priorities for inclusion in the plan.

Health Care Facility Construction

The Indian Health Service system is a mostly rural outpatient system focused on the primary care needs for American Indian and Alaska Native communities consisting of the following number and types of facilities:

	Hospitals	Health Centers	Alaska Native Village Clinics	Health Stations	Total
IHS Operated	24	51	N/A	24	99
Tribal Operated	22	229	59	79	389

Source: U.S. Dept. of Health and Human Services, Indian Health Service⁷

³ Id.

⁴ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/>

⁵ <https://www.whitehouse.gov/wp-content/uploads/2021/04/AJP-Tribal-Fact-Sheet.pdf>.

⁶ Id.

⁷ https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/factsheets/IHSProfile.pdf.

Generally, IHS facilities provide health and health education services that focus on primary and preventive care. Funding for facility construction is provided through the IHS Health Care Facilities Construction (HCFC) program. The HCFC program is funded based on an IHS list of priorities for construction projects. During FY1990, in consultation with the Tribes, the IHS revised the Health Facilities Construction Priority System (HFCPS).⁸ As part of the reauthorization of the Indian Health Care Improvement Act (IHCIA)⁹ in the Affordable Care Act,¹⁰ Congress mandated that no changes in the construction priority list shall occur after the date of enactment. The remaining health care facilities projects on the HFCPS list, including those partially funded, totaled approximately \$2.2 billion as of March 2020.¹¹

To improve oversight of health care facilities construction, Congress began requiring quinquennial¹² reports describing the health care facility needs.¹³ In 2016, the IHS reported to Congress that the current average age of IHS hospitals is 40 years old, approximately 30 years older than most U.S. hospitals.¹⁴ The increased age of IHS facilities adds to the risk of building code noncompliance and compromises the delivery of healthcare. National benchmarks for operation and maintenance costs show that a 40 year old facility will cost around 26 percent more to operate and maintain than a 10 year old facility.¹⁵ The IHS estimates the space capacity of IHS facilities is about 52 percent of that required for tribal communities. Reaching 100 percent would cost an additional \$10.3 billion.¹⁶

When Congress permanently reauthorized the IHCIA in 2010, it included a new section which required the IHS, in consultation with tribes and tribal organizations, to develop innovative approaches to address all or part of the total unmet need for construction of health facilities.¹⁷ The section also provides that IHS may consider establishing an Area Distribution Fund (ADF) in which a portion of health care facility construction funding could be devoted to all IHS service areas.

The Facilities Appropriations Advisory Board, a joint federal-Tribal advisory committee, developed the ADF concept in recognition of the grandfathered status of certain health care facilities projects on the priority list, while allowing an innovative and alternative approach for new proposals to be considered and funded.¹⁸ The ADF is intended to allow each IHS Area to improve, expand, or replace existing health care facilities. The Agency could

⁸ <https://www.ihs.gov/dfpc/resources/>

⁹ 25 U.S.C. 1601 et seq.

¹⁰ Public Law 111-148.

¹¹ https://www.ihs.gov/sites/dfpc/themes/responsive2017/display_objects/documents/projects/Planned_Construction_Priorities.pdf.

¹² Recurring every five years

¹³ 25 U.S.C. 1631.

¹⁴ Almanac of hospital financial & operating indicators: a comprehensive benchmark of the nation's hospitals (2015 ed., pp. 176-179): <https://aharesourcecenter.wordpress.com/2011/10/20/average-age-of-plant-about-10-years/>.

¹⁵ Adams, Tim, et al. Operations and Maintenance Benchmarks for Health Care Facilities. International Facility Management Association, 2010.

¹⁶ https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/RepCong_2016/IHSRTC_on_FacilitiesNeedsAssessmentReport.pdf at 3.

¹⁷ 25 U.S.C 1631.

¹⁸ <https://www.govinfo.gov/content/pkg/CHRG-115hrg24578/pdf/CHRG-115hrg24578.pdf> at 18.

extend the benefits of appropriated funds to a significantly larger number of tribes and communities throughout Indian Country than would be possible by relying solely on funding for line-item projects.

Public Safety and Justice

The U.S. Department of Justice through its Office of Justice Programs provides support for law enforcement and justice services to maintain peace and safety in Indian Country. Included in these functions are the provision of grants for the planning, coordination, and construction of tribal detention facilities.¹⁹ The Bureau of Indian Affairs (BIA) is primarily responsible for operation and management of such facilities, through its Office of Justice Services. There are 191 BIA and tribal law enforcement programs, 96 BIA-funded corrections programs, and 196 tribal courts.²⁰ The BIA is responsible for detention and correction services for about 227 tribes (nearly all in the Lower 48 States). Seventy tribes have compacted or contracted detention center services, while the BIA directly operates detention centers serving about 20 tribes, with the remaining tribes' detention services needs being met by the BIA under commercial contracts with local county or tribal facilities.²¹

In 2004, after anecdotal reports of poor conditions at BIA detention facilities, the U.S. Department of the Interior Office of the Inspector General (OIG) issued a report that confirmed previous findings that BIA managed detention facilities had widespread death, abuse, attempted suicides and inhumane conditions.²² In 2016, The OIG, released an updated report that did find conditions had improved but there are continued opportunities for further improvement.²³

On June 10, 2021, National Public Radio (NPR) released an investigative report highlighting that poor conditions and staffing needs continue to plague BIA detention facilities.²⁴

Education

The Bureau of Indian Education (BIE) within the Department of the Interior operates and maintains 1169 K-12 schools, including dormitories, on or near reservations.²⁵ The poor, crumbling condition of these facilities pose significant health and safety hazards and have been well documented through several major GAO investigations and the efforts of Members of Congress, including the Interior and Environment Subcommittee of the House Appropriations Committee.²⁶

¹⁹ An overview of tribal correction facilities is available here:

https://www.bja.gov/Programs/Tribal_corrections/index.html.

²⁰ https://www.bia.gov/sites/bia.gov/files/assets/as-ia/obpm/BIA_FY2021_Greenbook-508.pdf at IA-PSJ-2.

²¹ Id. at IA-PSJ-7.

²² <https://www.doioig.gov/sites/doioig.gov/files/IndianCountryDetentionFinal-Report.pdf>.

²³ <https://www.doioig.gov/sites/doioig.gov/files/2015WR012Public.pdf> at 1.

²⁴ <https://www.npr.org/2021/06/10/1002451637/bureau-of-indian-affairs-tribal-detention-centers-deaths-neglect>.

²⁵ <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/obpm/2021%20BIE%20Greenbook.pdf> at BIE-ED-1.

²⁶ <https://www.gao.gov/assets/gao-17-447.pdf>.

In 2017, the GAO added Indian Education to its list of “High Risk” federal programs. In May 2017, the GAO reported that the Department of the Interior “does not have a comprehensive capital asset plan to guide the allocation of funding for school construction projects across its 185 BIE schools.”²⁷ The GAO also found that the Department of the Interior “has not consistently used accountability measures or conducted sufficient oversight to ensure that BIE school construction projects are completed on time, within budget, and meet schools’ needs.”²⁸

These problems pre-date the Trump Administration and their cause cannot be laid squarely at the feet of any single Administration. It is also important to note that jurisdiction for authorizing legislation relating to BIE schools is under the jurisdiction of to the House Committee on Education and Labor.²⁹

Previous Committee Action

The Natural Resources Committee has held three recent hearings on tribal infrastructure. During the 115th Congress, the committee held a hearing that was focused on tribal infrastructure and Indian health care facilities, which are under the jurisdiction of the Natural Resources Committee.³⁰ At that hearing, the committee examined the extremely poor state of some Indian health care facilities, where infrastructure is often triple the average age of most U.S. hospitals. The Committee found that at current funding levels, newly constructed facilities today would need to last 400 years before they could be replaced.³¹

Despite the horrendous state of many Indian health care facilities, which provide critical health services to tribal members and communities, Committee Democrats are not expected to examine the poor state of Indian health care infrastructure in this hearing.

During the 116th Congress, the Committee held a hearing focused on roads, bridges, and buildings.³² In the 117th Congress, the Committee held a hearing focused only on the American Jobs Plan and areas such as broadband and climate change.³³ While many of the messages from Committee Democrats are on infrastructure matters that are outside the Committee’s jurisdiction, Committee Republicans continue to focus on the infrastructure needs of Indian health facility and sanitation systems, which fall under the committee’s jurisdiction.

²⁷ <https://www.gao.gov/products/GAO-17-447>.

²⁸ Id.

²⁹ <https://rules.house.gov/sites/democrats.rules.house.gov/files/117-House-Rules-Clerk.pdf>.

³⁰ <https://www.govinfo.gov/content/pkg/CHRG-115hhrg24578/pdf/CHRG-115hhrg24578.pdf>.

³¹ Id.

³² <https://naturalresources.house.gov/hearings/tribal-infrastructure-roads-bridges-and-buildings>.

³³ <https://naturalresources.house.gov/hearings/infrastructure-in-indigenous-communities-priorities-for-american-jobs-plan>.

Issues and Concerns

This hearing is an opportunity for Republican Members to examine the role of the National Environmental Policy Act (42 U.S.C. 4321 et seq., NEPA) and other procedural or regulatory requirements that delay and drive up the costs of vital infrastructure projects benefiting Indian Country. Unfortunately, the Committee Democrats and outside groups have omitted any discussion of the benefits that reforming NEPA will have for improving infrastructure in Indian Country.³⁴

While there is merit in examining Indian Country's infrastructure needs, Committee Democrats have focused on infrastructure issues that fall outside of this Committee's jurisdiction. To that end, it is unclear if the Democrats at the hearing plan to actually address the critical infrastructure needs in Indian Country. It is incumbent upon the Committee to explore ways to address critical Indian health care and public safety facility needs, which fall within the Committee's jurisdiction.

³⁴ <http://www.ncai.org/NCAI-InfrastructureReport-FINAL.pdf>