



# USET

SOVEREIGNTY PROTECTION FUND

1730 Rhode Island Avenue, NW  
Suite 210  
Washington, DC 20036  
P: (615) 872-7900  
F: (615) 872-7417  
[www.usetinc.org](http://www.usetinc.org)

Transmitted Electronically to:  
[consultation@ihs.gov](mailto:consultation@ihs.gov)

April 28, 2023

The Honorable Roselyn Tso  
Director  
Indian Health Service  
5600 Fishers Lane  
Rockville, MD 20857

Dear Director Tso,

On behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write in response to the Indian Health Service's (IHS) April 12, 2023 Tribal consultation on developing a spend plan for the second year of funding for the Infrastructure Investment and Jobs Act (IIJA). The IIJA (Pub. L. No. 117-58 (November 15, 2021)) appropriated \$3.5 billion to IHS, with \$700 million made available over 5 years, beginning in fiscal year 2022. USET SPF previously submitted [comments](#) to IHS as it consulted upon this and other funding in December 2021.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.<sup>1</sup> USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

USET SPF continues to focus on the intent that the \$3.5 billion allocated to IHS under the IIJA for Sanitation Facilities Construction Funding address all projects in the Sanitation Deficiencies System (SDS) as of IIJA passage. It is important that this and other backlogs under IHS' purview—due to chronic underfunding—are addressed, so that more contemporary issues can receive funding and prioritization. Broadly, we note that while a high level of funding has been allocated to Indian Country as a result of recently enacted legislation, this remains insufficient to address centuries of unmet obligations for Tribal Nations. With each Tribal Nation facing at least some deficits in health care infrastructure and resources, IHS should focus on ensuring each Tribal Nation benefits in some way from this funding. In the longer-term, IHS should continue to work with Tribal Nations to advocate for funds sufficient to address the unmet health care obligations of the federal government, including full and mandatory funding for IHS.

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<sup>1</sup> USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

*Because there is Strength in Unity*

As IHS determines how to allocate IIJA funding in Year 2, USET SPF provides the following comments and recommendations:

**1. Should IHS utilize the IIJA funding to only complete “legacy projects” (e.g. projects included on SDS list at the EOY 2021)?**

Yes, we agree with the IHS that Congress intended for the funding appropriated under IIJA to address the existing Sanitation Deficiency System (SDS) list as it stood at the time of IIJA passage. Many of these projects had remained on the SDS list year over year, without a timeline for completion, including those projects that had been deemed “economically infeasible.” Meanwhile, Tribal Nations continued to go without access to proper sanitation in our communities, a situation that was highlighted and exacerbated by the COVID-19 pandemic. It is critical that all legacy projects are addressed prior to later-year projects becoming eligible for this funding. At the same time, as a part of the annual appropriations process, IHS should request and advocate for additional funding for the Sanitation Facilities Construction program to ensure it avoids the circumstances that lead to the unmet obligation of \$3.5 billion that the IIJA sought to address. Together with Congress, IHS should ensure that adequate funding is appropriated to complete SDS projects with frequency and regularity.

**2. Should IIJA funding be retained at IHS Headquarters to be used on a first come first serve basis to cover documented project costs above budgeted amounts for design, construction documents, and construction?**

Yes, we believe that a small amount should be reserved for this purpose, since this will further ensure that SDS legacy projects are completed in a timely manner. It would undermine the purpose of these funds for projects to continue to go unaddressed due to unanticipated cost overruns.

**3. Should IIJA funding only be obligated to Tier 1 design, construction documents, and construction costs?**

No, as we stated in our December 2021 comments, we understand the desire to address as many shovel-ready projects as possible in the early years of this funding but want to be sure that those Tribal Nations without shovel-ready projects receive equitable access to funding and support. Indeed, the Nashville Area does not have any remaining Tier 1 projects on the SDS legacy project list. We firmly believe that lower tiers can and should be addressed concurrently as Tier 1 projects are funded and completed.

**Conclusion**

We appreciate the opportunity to provide guidance to IHS on the distribution of this critical funding. We continue to urge that IHS ensure the distribution of these dollars results in meaningful access and benefit across Indian Country. As COVID-19 recovery efforts continue, USET SPF asks that you join us in working toward a legacy of change for Tribal Nations, Native people, and the sacred trust relationship. This involves the enactment of policies that uphold our status as sovereign governments, our right to self-determination and self-governance, and honor the federal trust obligation in full, including achieving full and mandatory funding for IHS. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at [LMalerba@usetinc.org](mailto:LMalerba@usetinc.org) or 615-838-5906.

Sincerely,



Kirk Francis  
President



Kitcki A. Carroll  
Executive Director