



USET

SOVEREIGNTY PROTECTION FUND

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Transmitted via email to:
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January 4, 2024

Roselyn Tso
Director
Indian Health Service
5600 Fishers Lane, Mail Stop: 08E86
Rockville, MD 20857

Dear Director Tso,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write in response to the Indian Health Service's (IHS) December 18, 2023 consultation on developing a spend plan for the third year of funding from the Infrastructure Investment and Jobs Act (IIJA). The IIJA (Pub. L. No. 117-58) appropriated \$3.5 billion to IHS, with \$700 million made available over 5 years, beginning in fiscal year (FY) 2022. USET SPF previously submitted comments to IHS on this topic in [2021](#) and [2023](#) during previous consultation cycles.

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.¹ 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 acknowledges that the intent of the \$3.5 billion allocated to IHS under the IIJA for Sanitation Facilities Construction was to address all projects in the Sanitation Deficiencies System (SDS) as of the end of the year 2021. We have consistently agreed that addressing the "legacy" backlog in the SDS is important, particularly so that more contemporary issues can receive funding and prioritization and continue to maintain this position. However, as the SDS list grows and the IIJA funding dwindles, USET SPF emphasizes that, above all, the resources available through the IIJA each year should be fully utilized with deference to Tribal Nation priorities. We note that while the IIJA allocated a high level of funding to IHS for

¹ 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

this purpose, the total 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 that 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.

As IHS determines how to allocate IIJA funding in Year 3, USET SPF provides the following comments and recommendations.

Addressing Tier 1 “Legacy” Projects

In the past, USET SPF has advocated for the IIJA funding to be used to address the existing SDS list as it stood at the time of IIJA passage at the end of the year 2021. Many of these “legacy” projects had remained on the SDS list year over year, without a timeline for completion, including those that had been deemed “economically infeasible.” USET SPF continues to agree that clearing the legacy projects off the list is a worthwhile use of funds, but contends that addressing projects with the highest potential health impact could also be an efficacious use of the funds. At the current rate, the available IIJA funds may not be sufficient to cover all the legacy Tier 1 projects, and certainly will not cover any significant portion of non-legacy, non-Tier 1 projects. As such, IHS should consider those projects that stand to create the greatest health impact in Indian Country, regardless of their status as a legacy project or a later-year project.

As stated in our [December 2021 comments](#), USET SPF understands the desire to address as many shovel-ready projects as possible with this funding, but we also want to be sure that those Tribal Nations without shovel-ready projects receive equitable access to funding and support. At present, the Nashville Area does not have any remaining Tier 1 projects on the SDS legacy project list. USET SPF firmly believes that non-legacy and lower Tier projects can and should be addressed concurrently as Tier 1 projects are funded and completed, either through IIJA funds or annual Sanitation Facilities Construction (SFC) dollars. As part of the annual appropriations process, IHS should request and advocate for additional SFC funding to ensure that it avoids the circumstances that lead to the unmet obligation of \$3.5 billion that the IIJA sought to address.

Ensure All IIJA Funds Are Utilized

According to the resources provided by IHS, the agency did not fund any Tier 2 and 3 planning projects in FY 2023, despite having allocated \$33 million for this purpose across the IHS Areas. USET SPF strongly encourages IHS to provide insight into why the Tier 2 and 3 planning funding has not been accessed this past FY, despite the allocation of the funds to each Area. In addition, USET SPF requests information from IHS regarding the decision to allocate zero dollars to the Nashville area for Tier 2 and 3 planning activities. If there are actions that IHS Areas could take to secure or better utilize these funds, IHS should work to make the Areas and Tribal Nations aware of those opportunities.

Above all, IHS must ensure that the full amount of IIJA funds available each year are utilized fully and appropriately, including the funding currently set aside as “shortfall” funding. USET SPF agrees with the decision to set aside shortfall funding, as it would undermine the purpose of the IIJA funds for projects to continue to go unaddressed due to unanticipated cost overruns. However, toward the end of the 5-year IIJA funding period, IHS must ensure that any remaining shortfall dollars are reallocated and retained within the

program. Beyond being fiscally responsible, full utilization of IIJA dollars may prove necessary in attempts to secure future infrastructure funding at the IHS.

Conclusion

USET SPF appreciates the opportunity to provide guidance to IHS again 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. The funding appropriated through the IIJA is significant for the Indian Health System, and USET SPF urges IHS to ensure maximum utility and benefit through the distribution of funds. We look forward to continuing to partner with the IHS as it seeks to administer these critical funds. 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 or 615-838-5906.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director