



**To:** Subcommittee for Indigenous Peoples Republican Members  
**From:** Subcommittee for Indigenous Peoples Committee Staff; Ken Degenfelder ([Ken.Degenfelder@mail.house.gov](mailto:Ken.Degenfelder@mail.house.gov)) and Rob MacGregor ([Robert.MacGregor@mail.house.gov](mailto:Robert.MacGregor@mail.house.gov))  
**Date:** April 19, 2021  
**Subject:** Oversight Hearing titled “Infrastructure in Indigenous Communities: Priorities for American Jobs Plan”

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The Subcommittee for Indigenous Peoples will hold an Oversight Hearing titled “Infrastructure in Indigenous Communities: Priorities for American Jobs Plan” on **Wednesday, April 21, 2021, at 10:00am EST** online via Cisco WebEx.

Member offices are requested to notify Rob MacGregor by **4:30pm on Monday, April 19, 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 depository at [HNRCDocs@mail.house.gov](mailto:HNRCDocs@mail.house.gov). Please contact David DeMarco ([DavidDeMarco@mail.house.gov](mailto:DavidDeMarco@mail.house.gov)) or Everett Winnick ([Everitt.Winnick@mail.house.gov](mailto:Everitt.Winnick@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 increasing 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 or never ending bureaucratic processes.



- The plan proposes to spend less than 6 percent of total funding on roads and bridges and less than 5 percent on broadband, both of which are critical needs in Tribal Communities.
- 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 .<sup>1</sup>
- 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

- **The Honorable Rodney Cawston**, Chairman, Confederated Tribes of the Colville Reservation, Nespalem, WA [*Republican Witness*]
- **Ms. Megan Alvana-Stimpfle**, Self-Governance Liaison, Norton Sound Health Corporation, Nome, AK [*Republican Witness*]
- **The Honorable Kevin Killer**, President, Oglala Lakota Nation, Pine Ridge, SD
- **Mr. Walter Haase**, General Manager, Navajo Tribal Utility Authority, Fort Defiance, AZ
- **Mr. William Aila, Jr.**, Chairman, Hawaiian Homes Commission, Kapolei, HI
- **Dr. Traci Morris, PhD.**, Executive Director, American Indian Policy Institute, Phoenix, AZ

## III. OVERVIEW

Committee Democrats have called a hearing to receive testimony on tribal infrastructure, focusing on President Biden’s American Jobs Plan which was announced on March 31, 2021.<sup>2</sup> 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 that its infrastructure components may extend to include activities on tribal lands, the only component specific tribal communities fall under

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<sup>1</sup> 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](https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/RepCong_2016/IHSRTC_on_FacilitiesNeedsAssessmentReport.pdf)

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

is “Partner with rural and Tribal communities to create jobs and economic growth in rural America.”<sup>3</sup>

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.”<sup>4</sup>

On April 10, 2021, the Administration provided additional guidance by issuing the “The American Jobs Plan Supports Tribal Communities” fact sheet.<sup>5</sup> 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.<sup>6</sup>

#### **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, water treatment and sewer systems, electric and natural gas utilities, telecommunications, dams, irrigation, detention centers, 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***

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

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

*Source:* U.S. Dept. of Health and Human Services, Indian Health Service<sup>7</sup>

<sup>3</sup> Id.

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

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

<sup>6</sup> Id.

<sup>7</sup> [https://www.ihs.gov/sites/newsroom/themes/responsive2017/display\\_objects/documents/factsheets/IHSProfile.pdf](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 FY 1990, in consultation with the Tribes, the IHS revised the Health Facilities Construction Priority System (HFCPS).<sup>8</sup> As part of the reauthorization of the Indian Health Care Improvement Act (Pub. Law 94-437, IHCA) in the Affordable Care Act (Pub. L 111-148), 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.<sup>9</sup>

To improve oversight of health care facilities construction, Congress began requiring quinquennial<sup>10</sup> reports describing the health care facility needs.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

When Congress permanently reauthorized the IHCA 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.<sup>15</sup> 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.<sup>16</sup> The ADF is intended to allow each IHS Area to improve, expand, or replace existing health care facilities. The Agency could extend the benefits of appropriated funds to a significantly larger number of tribes and

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

<sup>9</sup> [https://www.ihs.gov/sites/dfpc/themes/responsive2017/display\\_objects/documents/projects/Planned\\_Construction\\_Priorities.pdf](https://www.ihs.gov/sites/dfpc/themes/responsive2017/display_objects/documents/projects/Planned_Construction_Priorities.pdf)

<sup>10</sup> Recurring every five years.

<sup>11</sup> 25 U.S.C. 1631.

<sup>12</sup> 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/>

<sup>13</sup> Adams, Tim, et al. Operations and Maintenance Benchmarks for Health Care Facilities. International Facility Management Association, 2010.

<sup>14</sup> [https://www.ihs.gov/sites/newsroom/themes/responsive2017/display\\_objects/documents/RepCong\\_2016/IHSRTC\\_on\\_FacilitiesNeedsAssessmentReport.pdf](https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/documents/RepCong_2016/IHSRTC_on_FacilitiesNeedsAssessmentReport.pdf) at 3.

<sup>15</sup> 25 U.S.C § 1631.

<sup>16</sup> <https://www.govinfo.gov/content/pkg/CHRG-115hhr24578/pdf/CHRG-115hhr24578.pdf> at 18.

communities throughout Indian Country than would be possible by relying solely on funding for line-item projects.

### ***Roads and Bridges***

There are more than 140,000 miles of public roads in Indian Country (i.e., Indian reservations, trust, and restricted lands). The federal government, through joint collaboration between the Bureau of Indian Affairs (BIA) within the Department of the Interior and the Office of Tribal Transportation (OTT) within the Department of Transportation, has a responsibility for approximately 29,000 miles of paved, gravel, and dirt roads and approximately 1,000 bridges in Indian Country.<sup>17</sup> The road mileage consists of 7,150 miles of paved, 4,720 miles of gravel, and 17,130 miles of unimproved and earth surface roads.<sup>18</sup>

The Federal Lands Highway Program contains the Tribal Transportation Program (TTP) which BIA and OTT jointly administer to address the transportation needs of Indian tribes.<sup>19</sup> Within the BIA's Office of Indian Services, the Division of Transportation is the primary office which provides oversight and distributes funding for the TTP. Most maintenance funds are allocated to each of the BIA regions by formula or provided to tribes directly under self-determination contracts or compacts.<sup>20</sup> Work components for road maintenance include snow and ice control, interior pavement sealing, pavement maintenance, gravel maintenance, and remedial work on improved earth roads. In some severe winter seasons, snow and ice control activities have consumed the majority of maintenance funds.<sup>21</sup>

The Department of Transportation, through the OTT administers the TTP. This program provides stewardship and oversight for the direct funding of 135 Indian tribes.<sup>22</sup> The OTT additionally manages the Tribal Transportation Bridge Program and the Tribal Transportation Program Safety Fund for all federally recognized Tribes. These grant programs are set-asides from the overall Tribal Transportation Program.

The "Fixing America's Surface Transportation Act" or "FAST Act,"<sup>23</sup> which was enacted in 2015, extended the TTP, to provide access to basic community services and to enhance the quality of life in Indian Country. TTP funding is allocated according to a fixed formula and it also authorizes a 100% Federal share for projects within Federal or tribal land.

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<sup>17</sup> FY2021 Budget Justification. Bureau of Indian Affairs. IA-ES-3. [https://www.bia.gov/sites/bia.gov/files/assets/as-ia/obpm/BIA\\_FY2021\\_Greenbook-508.pdf](https://www.bia.gov/sites/bia.gov/files/assets/as-ia/obpm/BIA_FY2021_Greenbook-508.pdf).

<sup>18</sup> Id. at IA-TG-5.

<sup>19</sup> 23 U.S.C. 204.

<sup>20</sup> FY2021 Budget Justification. Bureau of Indian Affairs at IA-TG-4. [https://www.bia.gov/sites/bia.gov/files/assets/as-ia/obpm/BIA\\_FY2021\\_Greenbook-508.pdf](https://www.bia.gov/sites/bia.gov/files/assets/as-ia/obpm/BIA_FY2021_Greenbook-508.pdf).

<sup>21</sup> FY2021 Budget Justification. Bureau of Indian Affairs at IA-TG-5. [https://www.bia.gov/sites/bia.gov/files/assets/as-ia/obpm/BIA\\_FY2021\\_Greenbook-508.pdf](https://www.bia.gov/sites/bia.gov/files/assets/as-ia/obpm/BIA_FY2021_Greenbook-508.pdf).

<sup>22</sup> <https://flh.fhwa.dot.gov/programs/ttp/>.

<sup>23</sup> 23 U.S.C. 201-202

The FAST Act also established the Nationally Significant Federal Lands and Tribal Projects program to provide funding for the construction, reconstruction, and rehabilitation of nationally significant projects on Federal or tribal lands.<sup>24</sup> Funding under this program is subject to appropriation from the General Fund.

According to the National Congress of American Indians (NCAI), infrastructure in Indian Country is vastly underfunded, a problem related to the very rural character of most Indian lands. With respect to roads and bridges, as of FY 2018 estimated deferred maintenance backlog for BIA roads in Indian Country was \$392 million<sup>25</sup> and the total maintenance backlog for roads and bridges was \$490 million.<sup>26</sup> NCAI further argues that tribes are left out of the planning for large-scale federal infrastructure projects and that tribes should be participants at the earliest stages.<sup>27</sup>

### ***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.<sup>28</sup> The 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.<sup>29</sup> 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.<sup>30</sup>

### ***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.<sup>31</sup> 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 Subcommittee of the House Appropriations Committee.<sup>32</sup>

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<sup>24</sup> <https://highways.dot.gov/federal-lands/programs/significant>.

<sup>25</sup> [https://www.indian.senate.gov/sites/default/files/LeRoyGishi4.3.19%20SCIA%20re%20Indian%20Roads%20%2B%20Self%20Governance\\_FINAL.pdf](https://www.indian.senate.gov/sites/default/files/LeRoyGishi4.3.19%20SCIA%20re%20Indian%20Roads%20%2B%20Self%20Governance_FINAL.pdf)

<sup>26</sup> <https://www.ncai.org/Transportation.pdf>.

<sup>27</sup> <http://www.ncai.org/NCAI-InfrastructureReport-FINAL.pdf> at 4.

<sup>28</sup> An overview of tribal correction facilities is available here:

[https://www.bja.gov/Programs/Tribal\\_corrections/index.html](https://www.bja.gov/Programs/Tribal_corrections/index.html)

<sup>29</sup> [https://www.bia.gov/sites/bia.gov/files/assets/as-ia/obpm/BIA\\_FY2021\\_Greenbook-508.pdf](https://www.bia.gov/sites/bia.gov/files/assets/as-ia/obpm/BIA_FY2021_Greenbook-508.pdf) at IA-PSJ-2.

<sup>30</sup> [https://www.bia.gov/sites/bia.gov/files/assets/as-ia/obpm/BIA\\_FY2021\\_Greenbook-508.pdf](https://www.bia.gov/sites/bia.gov/files/assets/as-ia/obpm/BIA_FY2021_Greenbook-508.pdf). at IA-PSJ-7.

<sup>31</sup> <https://www.bia.gov/sites/bia.gov/files/assets/as-ia/obpm/2021%20BIE%20Greenbook.pdf> at BIE-ED-1.

<sup>32</sup> <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.”<sup>33</sup> 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.”

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

### ***Previous Committee Action***

The Natural Resources Committee has held two recent hearings on tribal infrastructure. During the 115<sup>th</sup> 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.<sup>34</sup> 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.

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 116<sup>th</sup> Congress, the Committee held a hearing focused on roads, bridges, and buildings.<sup>35</sup>

### ***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.<sup>36</sup>

While there is merit in examining Indian Country’s infrastructure needs, Committee Democrats’ plan to actually address critical infrastructure needs in Indian country is

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<sup>33</sup> <https://www.gao.gov/products/GAO-17-447>

<sup>34</sup> <https://www.govinfo.gov/content/pkg/CHRG-115hhr24578/pdf/CHRG-115hhr24578.pdf>.

<sup>35</sup> <https://naturalresources.house.gov/hearings/tribal-infrastructure-roads-bridges-and-buildings>

<sup>36</sup> <http://www.ncai.org/NCAI-InfrastructureReport-FINAL.pdf>

unclear at best. While specific legislation addressing tribal infrastructure broadly are referred to other Committees. The House Natural Resources Committee can and should explore ways to address critical Indian health care facility needs, which do fall within the Committee's jurisdiction.