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S. RES. 355

Recognizing the critical importance of access to reliable, clean drinking water for Native Americans and affirming the responsibility of the Federal Government to ensure such water access.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2023

Mr. BENNET (for himself, Mr. PADILLA, Mr. SCHATZ, Mr. WYDEN, Ms. WARREN, Mr. MERKLEY, Ms. DUCKWORTH, Mr. HICKENLOOPER, Mrs. MURRAY, Mr. BOOKER, Mr. TESTER, Mr. KELLY, Mr. LUJÁN, Mr. KING, Mr. HEINRICH, and Ms. CANTWELL) submitted the following resolution; which was referred to the Committee on Indian Affairs

RESOLUTION

Recognizing the critical importance of access to reliable, clean drinking water for Native Americans and affirming the responsibility of the Federal Government to ensure such water access.

Whereas access to reliable, clean drinking water is an essential human need that is critical to the public health, well-being, educational attainment, and economic development of all communities in the United States;

Whereas many countries, along with the United Nations, have recognized the urgency of water access by passing laws or resolutions relating to the human right to water, including recognition of this right among indigenous peo-

ples and establishing aggressive targets for achieving universal access to this basic right;

Whereas, in the United States, access to reliable, clean drinking water has long been a significant problem in many Native communities, such that nearly $\frac{1}{2}$ of all Native households in the continental United States still do not have access to reliable water sources or clean drinking water, and Native households are significantly more likely than White households to lack indoor plumbing;

Whereas reliable, clean drinking water may be unavailable to Native households for many reasons, including because—

(1) there is no piped water system connecting to the house;

(2) the water available to the household does not meet minimum protective standards;

(3) the water infrastructure is deteriorating or insufficient; or

(4) Indian Tribes, Alaska Native Villages, and Native Hawaiian communities are unable to support the operation and maintenance needs of existing water infrastructure;

Whereas many Native communities have significant unresolved claims for federally reserved water rights, many of which have been unresolved for decades and which may not be resolved for many years to come, due in part to the complex and significant issues typically involved in water rights adjudication and settlements;

Whereas the development of water infrastructure on Federal Indian reservations, in particular, has frequently been conditioned on the settlement of Tribal reserved water rights and has been prevented or delayed by—

(1) continuing uncertainty over the status of Tribal water rights;

(2) the years-long process of Tribal water rights settlements; or

(3) conflict over the quantification of Tribal reserved water rights in State water rights adjudications;

Whereas the quantity of water that would be required to supply reliable, clean drinking water to provide for the basic needs of each Native community is typically only a small fraction of the total quantity water allocated to the Native community;

Whereas the trust responsibility of the Federal Government to Indian Tribes, Alaska Native Villages, and Native Hawaiian communities requires the Federal Government to ensure the survival and welfare of Native Americans, and the failure to provide basic water service cannot be reconciled with this trust responsibility;

Whereas the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.) affirmed the trust responsibility of the Federal Government to support Tribal self-governance and self-determination, and these goals cannot be fully realized without addressing inequities, including ensuring access to reliable, clean drinking water for every Tribal community;

Whereas the COVID–19 pandemic provided a stark reminder that access to reliable, clean drinking water to support basic hygiene is a matter of life or death for all individuals of the United States and Native communities suffer disproportionate impacts during epidemics and disasters due to a multitude of factors, including—

(1) persistent economic disadvantages on Federal Indian reservations, in Alaska Native Villages, and in Native Hawaiian communities;

(2) lack of on-reservation affordable and safe housing; and

(3) lack of public health infrastructure, including access to running water;

Whereas, on January 27, 2021, President Biden issued Executive Order 14008 (86 Fed. Reg. 7619; relating to tackling the climate crisis), which provides that it is the policy of the Biden Administration to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care;

Whereas, through the bipartisan Infrastructure Investment and Jobs Act (Public Law 117–58; 135 Stat. 429) (referred to in this preamble as “IIJA”) and the Inflation Reduction Act of 2022 (Public Law 117–169; 136 Stat. 1818) (referred to in this preamble as “IRA”), Congress has provided funding for the Indian Health Service, the Environmental Protection Agency, and the Bureau of Reclamation to support the construction and repair of Tribal clean water infrastructure, but inadequate resources are available to Tribes to assist them with accessing these construction and repair funding programs, and to support Tribal operation and maintenance of water infrastructure, which is necessary to successfully implement the historic investment in clean water infrastructure;

Whereas many Native communities need technical assistance to ensure that the Native communities can—

- (1) access and take advantage of the new construction funding made available through the IIJA and IRA;
- (2) develop the managerial, financial, and regulatory framework necessary for a fully functional and self-sustaining utility; and
- (3) engage appropriate outside support to assist, as needed;

Whereas advances in water technology, including treatment, sensors, and innovative pipeline materials, can assist in—

- (1) accelerating efforts to provide universal access to reliable, clean, and drinkable water for all Native communities; and
- (2) enhancing resilience in the face of climate change;

Whereas it is in the interest of the United States, and it is the policy of the United States, that all existing Native communities be provided with safe and adequate water supply systems as soon as practicable; and

Whereas appropriate funding at the level of unmet need and a “whole-of-government” approach among all Federal agencies are both essential to provide a meaningful solution to the lack of access to clean water in Native communities: Now, therefore, be it

1 *Resolved*, That—

2 (1) it is the sense of the Senate that—

3 (A) access to reliable, clean drinking water
 4 is an essential human need, and such access on
 5 Federal Indian reservations, Alaska Native vil-
 6 lages, and in Native Hawaiian communities is—

1 (i) critical to the health, well-being,
2 and economic development of the individ-
3 uals living on those lands and in those
4 communities; and

5 (ii) integral to maintaining the public
6 health of the people of the United States;

7 (B) settlement or adjudication of Tribal
8 claims of reserved water rights is not and
9 should not be a prerequisite to the provision of
10 this basic human service to households located
11 in Native communities, nor should the provision
12 of basic human services be used to leverage the
13 resolution of Tribal reserved water rights and
14 claims;

15 (C) the provision of reliable, clean drinking
16 water to support the domestic requirements of
17 Indian Tribes, Alaska Native Villages, and Na-
18 tive Hawaiian communities is an essential com-
19 ponent of the Federal trust responsibility to
20 Native Americans and critical to supporting
21 permanent homelands;

22 (D) while funding for safe drinking water
23 systems for Native communities received a sig-
24 nificant and groundbreaking boost from the In-
25 frastructure Investment and Jobs Act (Public

1 Law 117–58; 135 Stat. 429) (referred to in this
2 resolution as “IIJA”) and the Inflation Reduc-
3 tion Act of 2022 (Public Law 117–169; 136
4 Stat. 1818) (referred to in this resolution as
5 “IRA”), the funding made available for con-
6 struction and repair of domestic water systems
7 in Native communities is not a complete solu-
8 tion;

9 (E) technical assistance is urgently needed
10 to allow Native communities to plan and design
11 the systems necessary to remedy the long-
12 standing problem of lack of access to clean
13 drinking water and bring those plans to the
14 “shovel ready” stage where Native communities
15 can take advantage of available construction
16 funding;

17 (F) Native communities need support to
18 develop the managerial, financial, and regu-
19 latory capacity necessary for a fully functional
20 and self-sustaining utility and to support the
21 operation and maintenance of water systems;
22 and

23 (G) further measures are necessary to en-
24 sure that the benefits of the historic invest-

1 ments made by the IIJA and IRA in infrastruc-
2 ture are fully realized; and

3 (2) the Senate—

4 (A) calls upon the Federal executive
5 branch to—

6 (i) work in collaboration with the rel-
7 evant Native governmental entities and
8 State and local jurisdictions to expedite the
9 planning, design, development, and oper-
10 ation of the infrastructure necessary to
11 provide reliable, clean drinking water on
12 Federal Indian reservations, in Alaska Na-
13 tive Villages, and in Native Hawaiian com-
14 munities; and

15 (ii) inform Congress of further au-
16 thorizations and expenditures that may be
17 necessary to meet the objective described
18 in clause (i);

19 (B) calls upon the Federal executive
20 branch to—

21 (i) employ a “whole-of-government”
22 approach to ensure the provision of reli-
23 able, clean drinking water to households on
24 Federal Indian reservations, in Alaska Na-

1 tive villages, and in Native Hawaiian com-
2 munities;

3 (ii) create an interagency task force
4 consisting of high-level representatives
5 from departments and agencies with au-
6 thority to provide water infrastructure that
7 will work to remove barriers, optimize
8 funding, and make immediate and tangible
9 progress on meeting the objective described
10 in clause (i); and

11 (iii) report annually to Congress on
12 the progress toward the objective described
13 in clause (i); and

14 (C) calls upon the Federal executive
15 branch, State governments, and affected water
16 agencies to—

17 (i) affirmatively support de-coupling
18 the planning, design, development, and op-
19 eration of water infrastructure from the
20 settlement or adjudication of Tribal re-
21 served water rights; and

22 (ii) support the development of water
23 infrastructure necessary to provide reliable,
24 clean drinking water in Native commu-

1 nities independent of settlements or adju-
2 dications of Tribal reserved water rights.

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