



MAY 31 2022

Dear Tribal Leader:

On behalf of the Indian Health Service (IHS), I am writing to announce allocation decisions for \$700 million appropriated to the IHS in the Infrastructure Investment and Jobs Act, 2021, Pub. L. No 117-58, Title VI, 135 Stat. 1411 (Nov. 11, 2021) (IIJA).

The IIJA appropriates \$700 million in each fiscal year (FY) from FY 2022 through FY 2026, for a total of \$3.5 billion for the IHS Sanitation Facilities Construction (SFC) program. These resources are available until expended. These funds are one-time, non-recurring, and can only be used for the purposes specified in the statute.

The statute provides up to 3 percent of these funds (\$21 million) for “salaries, expenses, and administration” each fiscal year. These funds are only available to support federal costs. It also requires that one-half of one percent of these funds (\$3.5 million) be transferred to the United States (U.S.) Department of Health and Human Services (HHS) Office of Inspector General “for oversight of funding provided in the IIJA.” The statute also directs the IHS to use up to \$2.2 billion for “projects that exceed the economical unit cost,” also referred to as “economically infeasible” projects.

Economically infeasible projects are those that exceed the per unit cost established for each IHS Area, and three different regions within the Alaska Area IHS. While there was not a statutory barrier to funding economically infeasible projects before the IIJA was enacted, the IHS had not been able to fund these projects due to limited annual appropriations.

The IHS tracks proposed projects to address sanitation needs through the Sanitation Deficiency System (SDS). The Indian Health Care Improvement Act (IHCIA) requires the IHS to update the SDS annually to account for changes to projects on the list that receive funding, refine cost estimates, and identify any new needs.

As of December 31, 2021, there were 1,513 projects, totaling \$3.4 billion in eligible costs, and \$735 million in ineligible costs. Of the 1,513 total projects, 945 are considered economically feasible and 568 are considered economically infeasible. The IHS completed its last annual update of the SDS on December 31, 2021, which is the most up to date complete data set available on projects and costs. A breakout of projects and costs by IHS Area as of December 31, 2021, is enclosed.

Ineligible costs are costs associated with serving commercial, industrial, or agricultural establishments, including nursing homes, health clinics, schools, hospitals, hospital quarters, and non-American Indian or non-Alaska Native (non-AI/AN) homes. The Indian Sanitation Facilities Act and the IHCIA prevent the IHS from using its appropriations for these costs.

However, the IHS regularly partners with Tribes and other Federal agencies to identify alternative resources to successfully support these ineligible costs.

### **Tribal Consultation**

The IHS initiated Tribal Consultation on November 22, 2021, and provided a virtual learning session on IJA funding on December 9, 2021, during the monthly Tribal Leader and Urban Indian Organization Leader conference call. The IHS conducted virtual Tribal Consultations on the IJA on December 14, 2021; December 22, 2021; and January 5, 2022. The IHS accepted written comments through January 21, 2022. This letter only addresses decisions regarding the IJA. Funding allocation decisions related to American Rescue Plan Act funds, and input received on potential funding increases considered by Congress that were also included as part of this Tribal Consultation will be addressed under separate cover.

In general, commenters recommended that the IHS:

- Use the data in the SDS to allocate funds, and follow the direction of the IJA by providing support for economically infeasible projects;
- Prioritize the allocation of resources, so that the majority of the funds can be used to immediately construct projects;
- Provide sufficient funding for planning and design activities to get projects ready to fund, and weigh these resources toward projects that address higher-level deficiencies;
- Coordinate with Tribes and other Federal agencies, like the U.S. Department of Agriculture (USDA) and the Environmental Protection Agency (EPA), to develop a plan to address ineligible costs and discuss how to maximize community benefit of the projects;
- Create a plan to address the full need for Sanitation Facilities Construction projects in Tribal communities, and remove any unnecessary limitations that were previously used to allocate limited funding; and
- Continue to seek annual, ongoing funding to address the full scope of SFC needs, including requesting any additional administrative costs necessary to implement IJA funds.

Based on review and consideration of input received through Tribal Consultation, the IHS decided to use current SDS data and the Agency's existing funding mechanisms to allocate these resources. This includes IHS direct service projects funded through Federal Acquisition Regulations contracts or Tribal procurement, and Indian Self-Determination and Education Assistance Act construction contracts (25 C.F.R. 900 Subpart J, 42 C.F.R. 137 Subpart N).

Additionally, the IHS will continue to update the SDS on an annual basis, and will not limit IJA funding to projects included on the SDS before a certain date.

These allocation decisions align with recommendations from Tribal Leaders to prioritize funding for projects that have completed the planning phase and can be immediately placed into the design and construction phase, and to provide sufficient funding for planning and design activities to get projects ready to fund.

The following table and narrative describe Agency decisions regarding allocation of funds received through the IJA.

**FY 2022 Infrastructure Investment and Jobs Act (IIJA) Funding**  
*(dollars in millions)*

<b>Activity</b>	<b>FY 2022 IIJA</b>
Tier 1 Projects Construction Costs	581.2
Tier 1 Design & Construction Document Creation	59.8
Tier 2 and Tier 3 Planning, Design, & Construction Document Creation	33.0
Special and Emergency Projects	1.5
<i>subtotal, Projects</i>	675.5
Federal Salaries, Expenses, and Administration (3.0%)	21.0
HHS Office of Inspector General (0.5%)	3.5
<b>Total</b>	<b>700.0</b>

Note: The IJA provides \$700 million per FY, from FY 2022 through FY 2026, totaling \$3.5 billion.

**Tier 1 Project Design, Construction Document Creation, and Construction**

The IHS will allocate approximately \$581 million in FY 2022 IJA funding for Tier 1 project construction costs. A Tier 1 project is considered ready to fund because planning is complete. However, design and construction contract document creation activities are not yet complete for current Tier 1 projects. These steps must be finalized before a construction contract can be initiated through Federal or Tribal procurement methods. When combined with FY 2022 annual appropriations, the IHS will fully fund construction costs for 475 Tier 1 projects. A table displaying Tier 1 projects and funding allocation amounts by Area is enclosed. These Tier 1 projects span Deficiency Levels 2 – 5. Deficiency Levels are assigned in accordance with the IHCIA for every proposed project in the SDS. A summary of the deficiency levels is enclosed.

There are \$118 million in ineligible costs associated with these Tier 1 projects. The IHS works closely with other Federal agencies, Tribes, and other project participants to identify funding for

the portions of projects that serve non-AI/AN homes, businesses, and public institutions. For example, the IHS partners with the EPA, USDA Rural Development, the U.S. Department of Housing and Urban Development, the U.S. Department of the Interior's Bureau of Reclamation, the National Tribal Water Center, the Rural Water Association, the Rural Community Assistance Partnership, the Denali Commission, the State of Alaska, and Tribal Consortia to secure resources for ineligible costs. The IHS also participates in the EPA-led Infrastructure Task Force, along with other Federal partners, which serves as a forum to discuss funding for ineligible costs associated with SFC projects. The IHS will continue to work with our Tribal and Federal partners to identify resources to fund these ineligible costs.

This allocation also includes 79 economically infeasible Tier 1 projects, totaling \$232.5 million in eligible costs.

Design activities and construction contract document creation activities have not been completed for current Tier 1 projects. These steps must be finalized before a construction contract can be initiated through Federal or Tribal procurement methods. The IHS is allocating approximately \$60 million in FY 2022 IJA funding to support contracts with Architecture & Engineering Firms to complete these activities for Tier 1 projects.

### **Planning, Design, and Construction Document Creation for Tier 2 and Tier 3 Projects**

The IHS will allocate approximately \$33 million in FY 2022 IJA funding for the planning, design, and construction contract document creation for Tier 2 and Tier 3 projects. The IHS will also use FY 2022 annual appropriations to support additional planning, design, and construction document creation activities for Tier 2 and Tier 3 projects. The SDS currently includes 661 Tier 2 projects, totaling approximately \$2.2 billion, and 361 Tier 3 projects, totaling approximately \$505 million.

Tier 2 projects are projects that have a level of engineering assessment completed, such that the deficiency is understood and a recommended solution has been analyzed and scoped; these projects have a cost estimate and design parameters that are accurate within plus or minus 25 percent.

Tier 3 projects are projects with cost estimates and design parameters that do not have a specific accuracy target, but are based on the best information available at the time of submission. These projects demonstrate that an eligible deficiency has been identified, but the IHS Area may not have determined a recommended solution.

Consistent with current Agency practice, each IHS Area's Office of Environmental Health and Engineering will have flexibility to allocate planning funds to either Tier 2 projects or Tier 3 projects depending on the unique circumstances associated with those projects. For example, if a Tier 3 project could move forward faster because Tier 2 projects have limitations that will take more time to resolve (i.e., right-of-way and/or archeological issues, additional planning is

needed, or there is no funding commitment to cover ineligible costs), an IHS Area might choose to allocate planning funding to the Tier 3 project.

### **Special and Emergency Projects**

The IHS will allocate \$500,000 for special projects and \$1 million for emergency projects from FY 2022 IJA funding. Throughout the Tribal Consultation comment period, Tribal Leaders recommended that the IHS increase funding for special and emergency projects, in light of the significant new funding for the SFC. The IHS agrees with the recommendations as reflected by this allocation decision.

Special project funds are used to pay for research studies, training, or other needs related to the SFC. Emergency project funds are provided to address water supply and waste disposal emergencies caused by natural disasters or other unanticipated situations that require immediate attention to minimize or eliminate real and potential threats to public health.

### **Salaries, Expenses, and Administration**

The IHS will allocate \$21 million for salaries, expenses, and administration. These funds are available for SFC project support activities that are typically funded through the Facilities and Environmental Health Support annual appropriation. However, these funds are limited to Federal activities only, due to the following provision in the IJA:

*Provided further*, That no funds available to the Indian Health Service for salaries, expenses, administration, and oversight shall be available for contracts, grants, compacts, or cooperative agreements under the provisions of the Indian Self-Determination and Education Assistance Act as amended:

The IHS is aware of the limitations this language poses for Tribes that choose to manage their SFC projects directly and will continue to work with Tribes to identify potential solutions. The IHS expects to use the salaries, expenses, and administration resources provided in the IJA for additional staff required to support the implementation of SFC projects, systems improvements, stakeholder engagement, recruitment activities, and other related needs.

The IHS will use these funds to hire the additional engineers, field technicians, inspectors, Geographic Information System analysts, and other critical positions that are necessary to support the planning, design, and construction of SFC projects. The IHS will also use these funds to hire additional contract specialists, human resources specialists, and other necessary support positions to successfully recruit for the above mentioned positions, and to manage the significant influx of construction contracting needs resulting from the IJA. The IHS plans to leverage the use of multiple strategies and available authorities to ensure timely and efficient IJA-related recruitment and hiring.

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I sincerely value your input regarding allocation of IJA funding to make historic investments in SFC projects that will result in significant improvements to the SFC infrastructure in American Indian and Alaska Native communities across the country. We will begin the distribution of these funds as soon as possible.

Sincerely,

Elizabeth A. Fowler  
Acting Director

Enclosures:

Sanitation Deficiency Levels

Sanitation Deficiency System Projects as of December 31, 2021

FY 2022 Tier 1 Project Counts and Associated Total Costs Funded