

COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON WATER, OCEANS, AND WILDLIFE
REMOTE OVERSIGHT HEARING
October 20, 2021
11:00 a.m. ET

Oversight Hearing on “*Colorado River Drought Conditions and Response Measures – Day Two*”

Responses to Questions for the Record for Ms. Anne Castle, Senior Fellow, Getches-Wilkinson Center for Natural Resources, Energy and the Environment, University of Colorado

Thank you for the opportunity to testify to the Subcommittee on this critical topic. My responses to your excellent questions are provided here.

Questions from Rep. Joe Neguse, CO

1. Earlier this year, I introduced a resolution that recognizes the critical importance of access to reliable, clean drinking water for Native Americans and Alaska Natives, and confirms the responsibility of the federal government to ensure such water access.

- a. What are the barriers that prevent a whole of government approach to solving this tragic problem of water access for Tribal communities?**
- b. What steps can Congress take to invest in universal access to clean drinking water in Indian country?**

Castle response: Thank you Rep. Neguse for your introduction of [House Resolution 320](#), recognizing the critical importance of access to reliable, clean drinking water for Native Americans and Alaska Natives and confirming the responsibility of the Federal Government to ensure such water access. All of the testimony of witnesses at the [hearing of this subcommittee on November 4, 2021](#) supported H. Res. 320 and the concepts it propounds.

As documented in the [report of the Colorado River Water and Tribes Initiative on Universal Access to Clean Water for Tribal Communities](#), there are at least seven different federal agencies with over twenty different programs that provide some type of drinking water or sanitation funding for Tribes. Each agency has unique strengths and challenges in effectively implementing its programs to address some or all of the forms of lack of access to clean drinking water in Indian country. Every program provides different types of assistance and levels of funding, and has its own eligibility, cost share, and application requirements. The multiplicity of programs and requirements creates a very difficult navigational challenge for Tribal communities and water/wastewater providers. Limited historical funding for these programs has also meant that the responsible agencies have prioritized and circumscribed the projects and efforts to which agency funding will be directed. These limitations are not necessary or appropriate now with the infusion of funding for these programs in the [Infrastructure Investment and Jobs Act](#) (IIJA).

A new [report released on November 16, 2021 by the Water & Tribes Initiative](#) (Admin Reform Report) describes in specific detail the barriers to optimal deployment of funding to support universal access to clean water in the programs of the Indian Health Service, EPA, USDA-Rural Development, and the Bureau of Reclamation, and provides recommendations for operational, administrative, policy and regulatory reforms. This report recommends a “whole of government” approach to maximize the capabilities of each of these agencies and provides a roadmap for implementing that approach, including the establishment of a Cross-Agency Priority Goal by the Executive Branch and reinvigorating the [Federal Tribal Infrastructure Task Force](#) established in 2007 but dormant during the last Administration. Tanya Trujillo, Assistant Secretary for Water and Science at the Department of the Interior, also recommended the use of this task force in her [testimony](#) to this Subcommittee on November 4. In October 2021, the EPA Office of Water issued its report on [Strengthening the Nation-to-Nation Relationship with Tribes to Secure a Sustainable Water Future](#) Action Plan, which also indicates its support for this task force (which EPA heads) and for renewing the Memorandum of Understanding that created the task force. The Admin Reform Report provides specifics on appropriate changes to the federal agency programs that will enhance the agencies’ abilities to effectively utilize the new funding made available by the IJA and eliminate constraints on assistance that are no longer necessary.

Congress can ensure that the funding provided by the IJA for Tribal access to clean drinking water is appropriately and expeditiously utilized and effectuates real solutions on the ground. Oversight hearings on the deployment of this funding can be useful to establish deadlines and spur progress. The House Natural Resources Committee can require accountability and request regular reporting on plans for deployment of funding and progress made. Specific milestones and metrics can be established, e.g., number of Tribal households newly provided with access to clean water, number of households where the reliability of water supply was substantially improved, etc.

In addition, funding is required to support operation and maintenance (O&M) of clean and safe drinking water systems for Tribal communities. Multiple Tribes have attested to the desperate need for O&M support, even for new facilities, as the remote nature of many of these systems makes them expensive to maintain and the available resources within Tribal communities to support ongoing costs can be lacking. The Indian Health Service is currently authorized to directly provide O&M support for Tribal water, sewage, and solid waste systems (25 U.S.C. 1632(b)). However, Congress has never appropriated any funding for IHS to provide assistance to Tribes for the day-to-day expenses related to effectively running a drinking water system. This funding should be appropriated in the amount of \$500 million, as provided in [S. 2369, the Tribal Access to Clean Water Act of 2021](#). IHS should also develop a method of identifying any systems in service that have ongoing challenges meeting their long-term O&M costs.

2. You mentioned in your testimony the existing history of officials in the Colorado River Basin and the federal government coming together to develop plans and address the low water levels in the basin in the past, but that there has not yet been a similar agreement reached for this year, despite the impending water cutbacks that will begin in January of next year for Lower Basin states.

a. What additional action should the federal government take in order to support these collaborative efforts?

b. How do we ensure that all states, tribes, and communities that will be impacted will be represented in those discussions?

Castle response: As my testimony pointed out, directives or deadlines from the Secretary of the Interior to the Colorado River Basin States have been critical in the past to spurring agreement among the States and interested water users. In some cases, the Secretary proposed a default plan that would go into place if the collaborative agreement everybody wants did not come together quickly enough. That has not yet occurred in connection with the crisis now unfolding in the Colorado River Basin with precipitous declines in the major reservoirs and low flows in the river. The urgency of what the river basin is currently experiencing and the rapid declines in the reservoirs mean that we need all available tools to be deployed. It is simply not clear that the river will allow us to continue the current pace of discussions without devastating consequences.

There are multiple communities that are affected by agreements concerning the operation and management of the Colorado River, and the impacts on those communities must be considered in any proposed management regime. Because of the significant quantum of water owned or controlled by Tribal communities and their historical exclusion from these discussions, however, it is particularly critical that a formal process be followed to ensure Tribal participation. [Daryl Vigil of the Jicarilla Apache Tribe in his testimony to this Subcommittee on Day One of this oversight hearing on Oct. 15](#) suggested the formation of a Sovereign Governance Team that would include the sovereigns in the Colorado River Basin (both states and Tribes) and provide a forum for substantive discussions. This or some similar type of formal structure would integrate tribes in a meaningful way into planning and problem-solving before decisions are made and provide an opportunity for all stakeholders, experts, and the public to be more meaningfully involved in an inclusive, open, and transparent process. I support this concept and the proposal for a formal structure to ensure meaningful involvement.