DEPARTMENT OF HEALTH AND HUMAN SERVICES

STATEMENT

OF

ROBERT MCSWAIN

DEPUTY DIRECTOR, MANAGEMENT OPERATIONS

INDIAN HEALTH SERVICE

BEFORE THE

UNITED STATES SENATE

COMMITTEE ON BANKING AND HOUSING

OVERSIGHT HEARING ON

COORDINATION BETWEEN FEDERAL AGENCIES INVOLVED IN

NATIVE AMERICAN HOUSING AND/OR INFRASTRUCTURE DEVELOPMENT

MARCH 8, 2012

STATEMENT OF THE INDIAN HEALTH SERVICE
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Mr. Chairman and Members of the Committee:

Good afternoon. My name is Robert McSwain and I am the Deputy Director for Management Operations of the Indian Health Service (IHS). I am pleased to have this opportunity to appear before you today, and discuss the important issue of Native American housing and infrastructure development.

We are keenly aware of the need for adequate housing throughout Indian Country and of equal importance is the requirement for adequate infrastructure to support new and existing housing. Housing and supporting infrastructure are critical factors for a healthy living environment.

The IHS has the primary responsibility for providing water supply, along with solid and liquid waste disposal facilities for American Indian and Alaskan Native (AI/AN) homes and communities as part of delivering a comprehensive health program. The IHS provides sanitation facilities through construction projects to serve existing homes and communities, and for most new and like new homes. The IHS works cooperatively, as close partners, with tribes in providing these essential sanitation facilities. Enhancing tribal capabilities and building partnerships based on mutual respect are key factors in the success of this IHS program. The IHS also coordinates and advocates on behalf-of and in-cooperation with Tribes to seek resources from other Federal Agencies to support needed facilities.

IHS/ Federal Special Trust Responsibilities

The IHS plays a unique role within the U.S. Department of Health and Human Services (HHS), to meet the Federal special trust responsibility by providing health services and resources to the

five-hundred-sixty-five (565) Federally-recognized AI/AN Tribes. IHS provides comprehensive health services to approximately 2.1 million AI/ANs through a system of IHS, Tribal, and Urban Indian (I/T/U) operated health service units and programs, based on authorities founded in treaties, judicial determinations, and Acts of Congress.

The mission of the Agency is to raise the physical, mental, social, and spiritual health of AI/ANs to the highest level, in partnership with the population we serve. The Agency aims to assure that comprehensive, culturally acceptable personal and public health services, including traditional medicine, are available and accessible to the service population. Our obligation is to promote healthy AI/AN people, communities, and cultures, and to honor the inherent sovereign rights of Tribes.

The IHS seeks to work in partnership with the Tribal communities it serves and, as such, IHS health care facilities and their administration includes Tribal representatives who closely participate, as key stakeholders, in the health services preparedness and delivery system. Current public laws, Federal policies, and individual Tribal governance decisions determine the role and relationship IHS has with each Tribe, and the corresponding level and methods of health services delivery, support, oversight, control, and resources IHS provides.

IHS Organization and Capabilities

The IHS Headquarters (IHS-HQ) is located in Rockville, Maryland. The Agency has twelve (12) strategically located Area Offices across the United States, which include IHS and Tribally operated hospitals and ambulatory health centers, as well as 34 Urban Indian health programs, located in thirty-six (36) states. The I/T/U health care system provides patient care and public health services within Indian reservations and communities, and has well-established ongoing partnerships with Tribal governments and programs.

Role of the IHS in the Provision of Sanitation Facilities Infrastructure

Sanitation Facilities Construction (SFC) is an integral component of the IHS disease prevention activities. The IHS has carried out this program since 1959 using funds appropriated for SFC to

provide potable water and waste disposal facilities for AI/AN people. As a result, rates of infant mortality, the mortality rate for gastroenteritis and other environmentally-related diseases have been dramatically reduced by about 80% since 1973. IHS Physicians and health professionals credit many of these health status improvements to IHS's provision of water supplies, sewage disposal facilities, development of solid waste sites, and the provision of technical assistance to Tribally-owned water and sewer utility organizations. Today, while less than 1% of the U.S. population is without access to safe water more than 12% or about 48,000 AI/AN homes, are without access to safe water or adequate wastewater disposal facilities and those families that live in these homes are still at an extremely high risk for gastrointestinal and respiratory diseases at rates similar to developing countries. Many of these homes without service are very remote and may have limited access to health care which increases the importance of improving environmental conditions in the home as part of a comprehensive public health program.

IHS plans, designs and provides professional engineering and construction project management services for approximately 400 SFC projects annually with a total cost of over $190 million, which includes contributions from other agencies. The program manages annual project funding that includes contributions from Tribes, States and other Federal agencies. SFC projects can be managed by IHS or by tribes under the Indian Self Determination and Education Assistance Act. All SFC projects are carried out from beginning to end in cooperation with the Tribes to be served by the facilities. Projects are funded and implemented through an agreement between the Tribe and IHS. In these agreements tribes agree to ownership of the provided facilities as well as operation and maintenance responsibilities.

Annually, IHS works with Tribes to develop an inventory of needed sanitation facilities known as the Sanitation Deficiency system (SDS). The SDS data has sanitation deficiencies of homes by community and a priority ordered list of projects to address all of those deficiencies. As of November 2011, the list of all projects to correct sanitation deficiencies totaled almost $3.1 billion, with those projects that are considered economically and technically feasible totaling almost $1.46 billion. About 231,000 or 60% of AI/AN homes are in need of new or improved

sanitation facilities. Maximum health benefits are achieved by addressing existing sanitation needs and by providing needed facilities to new homes as they are constructed.

Over 97% of IHS SFC funds are utilized for two types of projects. Regular projects to serve existing homes are selected in priority order from SDS. Housing projects to serve new and like new homes, serve Indian homes being constructed or rehabilitated by the Bureau of Indian Affairs Housing Improvement Program, Tribes, individual homeowners, or other federal agencies except for new HUD housing. Housing projects are funded based on a priority based classification system.

Coordination with States, Tribes and other Federal Agencies

The IHS has coordinated with States, Tribes, local government and other federal agencies since the first sanitation facilities project at Elko, Nevada, in 1958 which led to the passage of P.L.86-121, the Indian Sanitation Facilities Construction Act, in 1959. Now coordination occurs at all levels of federal agencies from HQ to the local level for specific projects.

In 2007 the Environmental Protection Agency (EPA), Department of Agriculture (USDA), Department of Interior (DOI), Housing and Urban Development (HUD), and Health and Human Services (HHS) formed an Infrastructure Task Force (ITF) and signed two Memoranda of Understanding (MOU) to achieve the commitments made by the United States in 2002 under the United Nations Millennium Development Goals for improved access to safe drinking water and basic sanitation in Indian Country. Specifically, the United States committed to reduce the number of tribal homes lacking access to safe drinking water and basic sanitation by 50% by 2015. The ITF has federal agency members as well as tribal representatives. A subgroup of the ITF was chartered to identify, prioritize and categorize barriers and recommended solutions. The barriers and recommended solutions developed by the subgroup can be divided into three major themes:

1. Infrastructure Funding,
2. Operation and Maintenance funding, including support for tribal capacity development,

3. Programmatic Coordination

The ITF continues to meet quarterly and have continued to work on these themes. To track progress in meeting the goal the agencies use IHS SDS data. A current priority of the ITF is to develop and implement strategies to support sustainable tribal operation and maintenance (O&M) organizations with the intent to target limited infrastructure funding specifically towards access.

A positive outcome of the ITF was the coordination of American Recovery and Reinvestment Act sanitation projects by IHS and EPA. Projects were agreed upon in consultation with tribes at the IHS Area and EPA Regional level and two agreements were developed to move the EPA projects and funding to IHS for nearly 160 projects totaling $90 million. We have been able to agree upon standard reporting requirement which are now used for all IHS and EPA projects. We have also standardized and streamlined interagency agreements between the two programs.

All members of the ITF have been working to streamline all paperwork and processes for tribal programs from the application process through National Environmental Policy Act (NEPA) determinations. Last year a process was developed in Alaska with EPA, IHS, USDA and the State of Alaska to streamline sanitation project implementation in Alaska.

In Arizona, as a result of the efforts of the agencies under the ITF two regular coordination activities are ongoing. There is a Multi-Agency Tribal Infrastructure Collaborative which has representatives from various Arizona State agencies, EPA, HUD, USDA, DOI, the Navajo, Phoenix and Tucson IHS Areas, the Intertribal Council of Arizona, plus other participants. We also have seen a group of water and waste water system technical assistance providers start to meet and coordinate technical assistance for Tribal O&M groups.

For IHS projects, coordination with other federal agencies has always been a priority. We have historically handled this at the project level beginning with project preplanning. For projects serving existing homes, this begins in the SDS inventory of projects and is used by IHS and the Tribes to determine funding needs and possible contributions from the State, and other Federal

agencies. This information is used by IHS and the Tribes to seek and secure these sources of funding before IHS can execute the project. Many projects on SDS require funding from more than the IHS appropriations because of the vast number and scale of the projects on the list. EPA uses SDS data to select EPA Indian Set-Aside projects to access Clean Water Act and Safe Drinking Water Act State Revolving Funds. So, coordination with other Federal agencies is imperative.

Those projects that serve new and like new homes funded with SFC housing funds, are also often partially funded with outside contributions especially those for renovated homes also known as like new homes. IHS does not have the authorization to provide household plumbing, so, in many cases, other sources of funds are used to complete renovations and provide household plumbing. These projects also require advanced coordination and planning.

Approximately 43% of all IHS SFC funded projects over the last 5 years are funded either partially or entirely with contributions from others. Using these contributions IHS is able to serve homes or buildings that are not eligible for IHS funding, such as using contributed funds for provision of offsite sanitation facilities for new HUD homes funded through the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA). We use contributed funds to serve new NAHASDA homes because IHS is not authorized to use IHS construction funds for this purpose.

All projects require some coordination between IHS, the Tribes, States and other Federal agencies. In addition to funding, there is coordination that occurs under NEPA determinations which progresses to acquisition of easements. With mixed sources of funding in many IHS projects, the NEPA processes can become much more complex. After the systems are constructed, coordination still occurs to support long term technical assistance for operations.

Challenges in Providing Safe Water and Waste Disposal Facilities in Indian Country

The needs for sanitation facilities infrastructure grow every year. Growth is partially from population growth and inflation, but changing environmental laws and regulations have an impact on need which can create a long term O&M impact. This long term O&M impact is due to the operational cost and complexity of some of the facilities needed.

For example, the arsenic rule went into effect in 2006 and promptly our data indicated 18,000 additional homes impacted in 38 communities. Currently, EPA data shows there are now 36 systems on tribal lands serving 42,700 people out of compliance for Arsenic. EPA data includes BIA and other systems that are not part of the IHS needs data. While treatment may be possible, in most cases, the types of treatment needed may double or more the costs of water service. In addition, treatment requires highly trained and certified operators who may not be supportable by a small rural water system. In many of these systems, we are working with the tribes to regionalize water systems or looking to new water sources to avoid treatment. It is necessary to balance up-front costs with long term operation costs. Arsenic is just one example. The groundwater and disinfection bi-products rules also add new complexity of operations for all of rural America.

Tribally owned and operated water and waste water systems are aging. Much of the major infrastructure components were constructed nearly 30 years ago. Population growth, new environmental laws and the need for system repairs and replacement also affects the annual infrastructure need.

IHS along with other federal agencies is seeking a way to make the operation and maintenance of sanitation facilities constructed in Indian Country sustainable. This requires a multi-tiered approach, beginning with the design and construction of facilities appropriate to the operational capacity of the local community. Federal agencies need to support operator training, and necessary start-up supplies and equipment to the O&M organization to improve the operating capacity of the community as we construct new facilities. To have sustainable facilities there

needs to be sustainable O&M organizations that, in addition to operating the facilities, can set and charge user fees, along with disconnecting users for non-payment. All federal agencies are seeking ways to coordinate the activities of our O&M technical assistance providers to support this vision.

Since 1982, Congress prohibited the use of IHS sanitation facilities construction funds for HUD funded homes in appropriations bills. Before NAHASDA was passed in 1996, the IHS received funding directly from HUD to serve HUD homes. Afterwards, all funds went to the Tribally Designated Housing Entities (TDHEs) across the country and reduced funding provided to the IHS through HUD to address infrastructure for HUD homes. This has reduced coordination between HUD and IHS. IHS is willing to assist in site selection, planning design and construction if the TDHE desires. We can also assist in the coordination with other federal agencies to fund the needed facilities

Summary

In summary, IHS seeks to provide the best culturally acceptable health services to all Federally-recognized Tribes, while respecting their tribal sovereignty, and tribal self-determination. IHS is committed to providing comprehensive health services to Indian Country including the provision of sanitation facilities to support housing. In addition, IHS will continually seek opportunities to improve our communication, integration, and coordination with all Federal, State, local, and Tribal partners.

Finally, IHS participates in forums to review, discuss, and improve Federal-level coordination of infrastructure to improve access to safe water supply and wastewater disposal facilities throughout Indian Country.

This concludes my remarks, and I will be happy to answer any questions you may have.

Thank you.