UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SAINT REGIS MOHAWK TRIBE,

Plaintiff,

v.

UNITED STATES OF AMERICA; **ROBERT F. KENNEDY, JR.**, in his official capacity as Secretary, U.S. Department of Health & Human Services; and **BENJAMIN SMITH**, in his official capacity as Acting Director, Indian Health Service,[1]

Defendants.

Civil Action No.
8:24-cv-01479 (AMN/PJE)

REPLY MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

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[1] Pursuant to Federal Rule of Civil Procedure 25(d), the current Secretary of the U.S. Department of Health and Human Services, Robert F. Kennedy, Jr., and the current Acting Director of Indian Health Service, Benjamin Smith, should be substituted for their predecessors, Xavier Becerra and Roselyn Tso, respectively.

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INTRODUCTION

The Saint Regis Mohawk Tribe advocates for a construction of ISDEAA and related authorizing statutes that is contrary to those statutes' plain language and their overall context. As Defendants argued in their cross-motion for summary judgment, no statute or combination of statutes authorizes IHS to function as a public utility for Indian homes, communities, and lands as the Tribe seeks. Rather, relevant statutes and legislative history show that Congress authorized IHS only to *construct* sanitation facilities before turning title of them over to individual Indian homeowners, Tribes, or to state or local governments for ongoing maintenance and operation.

Nothing that the Tribe sets forth in its response-reply brief alters that conclusion. The Tribe dedicates most of that brief to rehashing its untenable interpretations of the relevant statutory scheme and repeating arguments that Defendants refuted in their cross-motion for summary judgment and opposition to the Tribe's summary judgment motion. As a result, Defendants primarily rely on their original motion papers, with a few exceptions to address arguments by the Tribe that warrant further discussion.

The Tribe argues, in the main, that IHS has the authority to operate a public utility service simply because certain statutes contain the words "maintain" or "maintenance." In so arguing, the Tribe oversimplifies the relevant authorizing statutes and considers or quotes them only selectively. And, the Tribe gives no regard to the full statutory scheme, which shows Congress authorized the *provision* of sanitation facilities, not the routine maintenance of sanitation facilities, along with necessary appurtenances and fixtures. Where the Tribe's statutory interpretation arguments fall short, it resorts to invoking the Indian canon of construction to rewrite statutes in its favor and create ambiguity where there is none. The Tribe's arguments therefore should be rejected, and summary judgment granted in favor of Defendants.

I. IHS is Not Statutorily Authorized to Perform Routine Operation and Maintenance of Sanitation Facilities.

The crux of the Tribe's argument is that 42 U.S.C. § 2004a(a) and 25 U.S.C. § 1632(b)b simply contain the words "maintain" or "maintenance," and so, in the Tribe's view, IHS is authorized to carry out the program it seeks for routine operation and maintenance of sanitation facilities. *See* Dkt. 30 at 10[1] ("The Sanitation Facilities Construction Act and the IHCIA both use the words "maintain" or "maintenance" when describing the scope of IHS's authority over sanitation facilities."). But both § 2004a(a) and § 1632(b) are far more nuanced than the Tribe acknowledges when examined—as they should be—in full, alongside the whole statutory scheme and relevant legislative history.

A. The Indian Sanitation Facilities Construction Act (42 U.S.C. § 2004a(a))

In its response-reply brief, the Tribe oversimplifies the Indian Sanitation Facilities Construction Act, 42 U.S.C. § 2004a(a) and ignores key provisions that elucidate its meaning. Rather than meaningfully addressing the absurd consequences that would flow from the interpretation of § 2004a(a) that it advances, the Tribe summarily dismisses those consequences as "ridiculous[]," Dkt. 30 at 14.

As discussed in Defendants' opening brief, reading all subsections of § 2004a(a) together reveals that IHS is not authorized to carry out routine operation and maintenance of sanitation facilities, and that the plain language of the statute also makes practical sense, given the consequences of adopting the Tribe's interpretation. *See* Dkt. 29-1 at 25-31. The Tribe writes off Defendants' highlighting of those consequences—which would obligate the federal government to maintain Indian homeowners' toilets and indoor plumbing—as "flippant[]" and "ridiculous[]."

[1] Citations to filings on the Court's docket refer to the pagination generated by CM/ECF.

Dkt. 30 at 7, 14. Following the Tribe's reasoning to its logical end is prudent—not flippant. By statute, "essential sanitation facilities" includes "domestic and community water supplies and facilities, drainage facilities, and sewage- and waste-disposal facilities, together with necessary appurtenances and fixtures." 42 U.S.C. § 2004a(a)(1). "[N]ecessary appurtenances and fixtures" means the kitchen sink and connecting water and wastewater lines for "domestic . . . water supplies and facilities." *Id.* Therefore, according to the Tribe's reasoning, if Congress authorized IHS to maintain a water treatment plant, then it follows that Congress equally authorized IHS to maintain a toilet. This shows the absurdity of the Tribe's argument, which should not be ignored or trivialized. *See, e.g.*, *Jones v. Hendrix*, 599 U.S. 465, 480 (2023) ("'The illogical results of applying such an interpretation . . . argue strongly against the conclusion that Congress intended these results.'" (quoting *W. Air Lines, Inc. v. Bd. of Equalization*, 480 U.S. 123, 133 (1987)).

The Tribe appears not to disagree that these are the consequences of its interpretation, responding just that IHS can "make rational decisions" about whether to act as the plumber. *See* Dkt. 30 at 14 ("IHS can make rational decisions about how to use its limited funds to carry out the activities it is authorized to perform."). But further questions (and absurdities) arise when considering other parts of the statutory scheme. For example, did Congress authorize IHS to be a public utility if a Tribe stops providing an ongoing maintenance service? *See* 25 U.S.C. § 5386(f) (allowing an Indian tribe to retrocede a program back to IHS). That cannot be. Instead, the plain reading of the Indian Sanitation Facilities Construction Act indicates that Congress intended responsibility for the routine operation and maintenance of a water treatment plant or a toilet be transferred "*to any State or Territory* or subdivision or public authority thereof, *or to any Indian tribe*, group, band, or community *or, in the case of domestic appurtenances and fixtures, to any one or more of the occupants of the Indian home served* thereby." 42 U.S.C. § 2004a(a)(4)

(emphasis added). Notably, the Tribe fails to cite, let alone grapple with, § 2004a(a)(4), which authorizes transfer of title to the Tribe, in its response-reply brief. *See generally* Dkt. 30. The Tribe's selective reading of § 2004a(a) should therefore be rejected, as "[i]t is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *W. Virginia v. Env't Prot. Agency*, 597 U.S. 697, 721 (2022) (citation omitted).

If the plain language and statutory scheme were not enough, the legislative history of the Indian Sanitation Facilities Construction Act is further support for IHS's position. Indeed, the legislative history includes multiple references to transferring constructed facilities to the Tribes. *See, e.g.*, H.R. Rep. No. 86-589 (1959), *reprinted in* 1959 U.S.C.C.A.N. 1963, 1964 ("The Committee feels that it would be highly desirable for general legislation of this nature to be enacted in order to *avoid the necessity of having the Congress enact legislation authorizing on a project-by-project basis individual Indian sanitation projects*." (emphasis added)), 1965-66 (noting that enactment of the Indian Sanitation Facilities Construction Act "would authorize acquisition of the necessary interests in lands . . . the acceptance of contributions, *and the ultimate transfer of the completed facilities upon appropriate terms and conditions to local or state authorities, or to the Indians themselves*" (emphasis added)).

For these reasons, the Court need not dwell on the Tribe's protests that IHS has shirked its responsibilities as health care provider for Indian tribes by rejecting the final offer and interpreting the statutes consistent with their plain language and statutory context. *See, e.g.*, Dkt. 30 at 16 (arguing IHS's position is a "stunning rebuke" to Congressional policy and an effort to "frustrate[] . . . the Tribe's health goals and objectives"). There is no dispute that IHS is authorized to and does act in furtherance of those goals—but can do so only in the ways Congress has authorized,

which, in this instance, is by constructing sanitation facilities before turning them over to the Tribe for ongoing maintenance and operation.

B. Indian Health Care Improvement Act ("IHCIA") (25 U.S.C. § 1632(b))

The Tribe's argument that IHCIA authorizes IHS to provide ongoing routine maintenance of sanitation facilities overlooks key qualifying language within that statute. *See* Dkt. 30 at 15. Specifically, the Tribe emphasizes the provision of the statute that authorizes IHS to provide "operation and maintenance assistance for, and emergency repairs to" sanitation facilities—but ignores a key qualifying phrase: "*when necessary to avoid a health hazard or to protect the Federal investment in sanitation facilities*." 25 U.S.C. § 1632(b)(2)(C) (emphasis added). The Tribe's brief fails to quote the language in its entirety, *see* Dkt. 30 at 15, but when read in full, the statute clearly authorizes operation and maintenance only in emergency circumstances. *See* 25 U.S.C. § 1632(b)(2)(C).

The Tribe also continues to oversell 25 U.S.C. § 1632(b)(2)(A), which authorizes IHS to provide only "*financial and technical assistance* to Indian tribes and communities in the establishment, training, and equipping of utility organizations to operate and maintain Indian sanitation facilities." 25 U.S.C. § 1632(b)(2)(A). Relatedly, the Tribe has twice cited former Acting Director of IHS Elizabeth Fowler's statement agreeing that IHS has the authority "to *fund* the operation and maintenance costs for sanitation systems." Dkt. 30 at 6 (emphasis added); Dkt. 25-1 at 8. This statement does not advance the Tribe's position and is beside the point at issue in this case. Providing *financial* assistance to a Tribal utility organization is not equivalent to providing the actual utility service to Indian homes, communities, and lands. Indeed, IHS currently provides financial assistance to the Tribe for the sanitation facilities construction program, which may be used for "the establishment, training, and equipping of utility organizations to operate and maintain

Indian sanitation facilities." 25 U.S.C. § 1632(b)(2)(A); *see also* USA000047 (Funding Agreement stating that for Calendar Year 2021 "the SRMT share of program funds for SFC project management funds for SFC is $157,941"). Neither § 1632(b)(2), nor the statement of Ms. Fowler, authorizes IHS to provide routine operation and maintenance of a sanitation facility.

The Tribe also points to 25 U.S.C. § 1621b(a) and § 1603(11)(D), (G)(vii), (xx) and (xxv), extrapolating from very broad authorizations for IHS to engage in "health promotion" activities and make available safe water the *specific* authorization to provide ongoing maintenance for sanitation facilities. "But construing statutory language is not merely an exercise in ascertaining 'the outer limits of a word's definitional possibilities,' and here, 'only one . . . meaning produces a substantive effect that is compatible with the rest of the law." *Sackett v. Env't Prot. Agency*, 598 U.S. 651, 676 (2023) (citations and alterations omitted). Because the Tribe's interpretation of § 1621b(a) and § 1603(11)(D), (G)(vii), (xx) and (xxv) is incompatible with the rest of the statutory scheme—which makes clear that Congress intended responsibility for the routine operation and maintenance of sanitation facilities be transferred to the Tribe following construction—it must be rejected.

C. The Tribe Concedes that Congress Can Authorize Routine Operation and Maintenance Services, When Intended.

As Defendants have argued, the Indian Lands Open Dump Cleanup Act of 1994 shows that Congress is capable of expressly providing for routine operation and maintenance services for programs in other authorizing statutes and thus is evidence of Congress' intentional choice *not* to authorize IHS to provide routine and ongoing operation and maintenance for sanitation facilities. *See* Dkt. 29-1 at 33-34 & 34 n.8. The Tribe concedes that Congress may have deemed "ongoing maintenance" language necessary in the Indian Lands Open Dump Cleanup Act for reasons unique

to maintenance of a closed facility. *See* Dkt. 30 at 17. This fails to rebut—and, indeed, advances Defendant's point: whatever the reason Congress had for including that language in the Indian Lands Open Dump Cleanup Act, it shows that Congress has the ability to specifically authorize routine operation and maintenance services for certain programs, *when intended*. Its absence in the context of sanitation facilities is therefore telling. *See* Dkt. 29-1 at 33-34. Contrary to the Tribe's assertion, that is not an impermissible "negative inference." Dkt. 30 at 17. Rather, it is simply another application of standard statutory interpretation principles. *See, e.g.*, *Polselli v. Internal Revenue Serv.*, 598 U.S. 432, 439 (2023) ("We assume that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another section of the same Act." (cleaned up)).

D. The Tribe's Recent Construction Project Agreement Supports IHS' Position

As Defendants argued in their original motion papers, the Tribe's recent Title V Construction Project Agreement for the Tribe's Solid Waste Transfer Station contemplates that the Tribe assumes title to any constructed or improved sanitation facility, and that the Tribe's public utility program is responsible for the continued operation and maintenance of that sanitation facility. *See* USA000155-68. Contrary to the Tribe's suggestion, *see* Dkt. 30 at 17-18, Defendants never argued that the Construction Project Agreement is binding statutory authority. *See* Dkt. 29-1 at 35. Rather, it is further evidence of the parties acting in accordance with what the statutory scheme makes plain about the authority of IHS: IHS is authorized to construct sanitation facilities before turning title of them over to individual Indian homeowners, Tribes, or to state or local governments for ongoing maintenance and operation.

The recent Title V Construction Project Agreement, *see* USA000155-68, is not the only example of the parties having acted in accordance with the plain language of the statute. Indeed,

in 2010, similar language was included in a construction project agreement. *See* USA000169-71 (SFC Project Funding Agreement from 2010). In that 2010 Agreement, with respect to the "maintenance" construction performed on the Tribe's water treatment plant in 2010, "[t]he St. Regis Mohawk Tribe and DHHS agree that DHHS shall at no time have any vested right or interest in the facilities construction pursuant to the negotiated Project Scope(s), and that the St. Regis Mohawk Tribe will make such arrangements as are necessary for the operation and maintenance of said facilities identified in any Project Scope(s) and PFA." USA000171. In that instance, IHS was authorized pursuant to 42 U.S.C. § 2004a(a)(1) and (3) to accept funds from the Environmental Protection Agency ("EPA")—the agency responsible for administering the Safe Drinking Water Act, 42 U.S.C. § 300f, *et. seq*. ("SDWA"), the federal law that authorizes a federally recognized Tribe to establish and operate a public water system in Indian Country—and then transfer those funds to the Tribe to "otherwise provide and maintain" a water treatment plant that the Tribe is responsible "for maintenance thereof." *See* 42 U.S.C. §§ 2004a(a)(1), (3); USA000169-71 (SFC Project Funding Agreement from 2010). Although construction is paid for by the EPA, or IHS depending on the situation, the Tribe maintains ownership. *See* 42 U.S.C. § 2004a(a)(4). This past practice underscores what is plain from the statutory scheme.

II. The Tribe Overstates the Scope of the Indian Canon of Construction.

Throughout its response-reply brief, the Tribe overstates the scope of the Indian canon of construction to advance its interpretation of the statutory scheme where traditional tools of statutory interpretation cannot do so. *See, e.g.*, Dkt. 30 at 6, 8-10, 11, 12. There is no dispute that ISDEAA codifies the Indian canon of construction, "an established canon of interpretation that statutes must be construed liberally in favor of the Indians." *Red Lake Band of Chippewa Indians v. Dep't of Health & Hum. Servs.*, 718 F. Supp. 3d 50, 59 (D.D.C. 2024) (cleaned up)). What is in

dispute is *when* the Indian canon applies. The Tribe appears to assert that the Indian canon applies at the outset of the Court's interpretive inquiry, regardless of whether a statute is ambiguous. *See* Dkt. 30 at 8-10 (arguing that Congress has mandated that "all federal laws be construed favorably to the Tribe in cases like this one"). But the Indian canon does not go that far, as the language of the ISDEAA and relevant caselaw show.

Contrary to the Tribe's assertions, the Indian canon comes into play only when a statute is *ambiguous*. *See* 25 U.S.C. § 5392(f)[2] (requiring "any *ambiguity*" to be "resolved in favor of the Indian tribe" (emphasis added)); *see also N. Arapaho Tribe v. Becerra*, 61 F.4th 810, 814 (10th Cir.) ("[T]he canon applies only if the statute is ambiguous in the first place. As a logical matter, that must be so: If the text of a statute is unambiguous, there cannot be competing reasonable interpretations."), *aff'd sub nom*. *Becerra v. San Carlos Apache Tribe*, 602 U.S. 222 (2024). Even the cases selectively quoted in the Tribe's response-reply confirm this, once examined in full. *See, e.g.*, *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985) (recognizing that "statutes are to be construed liberally in favor of the Indians, *with ambiguous provisions interpreted to their benefit*" (emphasis added)); *Ramah Navajo Chapter v. Salazar*, 644 F.3d 1054, 1062 (10th Cir. 2011) (recognizing that "*[i]f a statute is ambiguous*," the court looks to "traditional canons of statutory construction to inform our interpretation" and the Indian canon of construction" (emphasis added)), *aff'd*, 567 U.S. 182 (2012). In other words, the Tribe cannot invoke the Indian canon to rewrite statutes, as the canon "does not permit reliance on ambiguities that do not exist;

[2] For the same reasons, the Court should reject the Tribe's related argument that the Compact's incorporation of 25 U.S.C. § 5392(f) (which codifies the Indian canon) somehow requires the Court to invoke the Indian canon to *find* ambiguity and, in turn, read the relevant statutes the way that the Tribe does. *See* Dkt. 30 at 10. Rather, the Compact's incorporation of the Indian canon simply maintains the *status quo*: a statutory construction favorable to the Tribe should be used only when a statute is ambiguous, and otherwise, the plain language of the statute, informed by its context, controls.

nor does it permit disregard of the clearly expressed intent of Congress." *South Carolina v. Catawba Indian Tribe, Inc.*, 476 U.S. 498, 506 (1986).

Rather, "[i]f the terms of a statute are clear and unambiguous, they are controlling absent rare and exceptional circumstances." *Ramah Navajo Chapter*, 644 F.3d at 1062. And, when construing a statute, a court should rely on "bedrock principles of statutory interpretation," including that "the broader context of a statute as a whole may clarify the meaning of a particular provision." *N. Arapaho Tribe*, 61 F.4th at 814 (cleaned up). As such, the law does not support the Tribe's strategy of invoking of the Indian canon as a license to disregard Congressional intent as shown by "bedrock principles of statutory interpretation," *id.* Applying those principles in this case—by examining the plain language of the statutes, combined with the statutory scheme as a whole and legislative history—reveals that Congress authorized IHS only to construct sanitation facilities before turning title of them over to individual Indian homeowners, Tribes, or to state or city governments for ongoing maintenance and operation.

CONCLUSION

For the reasons set forth above and in Defendants' original motion papers, Defendants' motion for summary judgment should be granted, the Tribe's motion denied, and judgment entered in Defendants' favor as a matter of law.

Dated: July 11, 2025

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