

**STATEMENT OF
LARRY ECHO HAWK
ASSISTANT SECRETARY INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
FIELD HEARING ON
TRIBAL TRANSPORTATION IN INDIAN COUNTRY**

OCTOBER 15, 2010

Good afternoon Mr. Chairman and members of the Committee. My name is Larry Echo Hawk and I am the Assistant Secretary for Indian Affairs at the Department of the Interior. With me today is Michael Black, the Director of the Bureau of Indian Affairs (BIA). And also with me today is LeRoy Gishi, the Division Chief for the BIA's Division of Transportation. We are pleased to be here today to provide you with an overview of the BIA's Road Maintenance Program and the Indian Reservation Roads (IRR) Program.

Background

The BIA has been involved in the repair, construction and reconstruction of roads on Indian Reservations since the 1920s. From 1950 until 1983, Congress appropriated annual construction and maintenance funds to the BIA to maintain, repair and construct roads on Indian Reservations. During this time, approximately \$1.2 billion were provided for both construction and maintenance of reservation roads. The Surface Transportation Assistance Act of 1982 (Public Law 97-424) created the Federal Lands Highways Program (Title 23 U.S. Code, Chapter 2) which established the IRR Program as a category of public roads providing access to or within Indian reservations, lands, communities and Alaska Native villages. This funding contributed to the improvement of roads and the replacement or rehabilitation of deficient bridges on or near reservations throughout Indian country. Shortly after the establishment of the IRR Program, only road maintenance funds were appropriated through the Department of the Interior. Since the establishment of the IRR Program, the federal construction investment has exceeded \$6 billion in the IRR system that is comprised of BIA, tribal, state, county and local roads and bridges. The IRR Program is jointly administered by the BIA and the Federal Highways Administration (FHWA), which is within the Department of Transportation.

There remains a great and continued need for improving the transportation system in Indian country. The BIA views this as a joint responsibility, not only of federal agencies, but a shared responsibility of state and local governments with transportation investments on or near Indian and Alaska Native communities. Improved and maintained transportation systems provide increased public safety and economic opportunities in Indian communities. Safe roads are important when transporting people in rural areas to and from schools, to local hospitals, and for delivering emergency services. In addition, transportation networks in Indian and Alaska Native communities are critical for economic development in such communities because these transportation networks provide access to other economic markets.

The IRR Program comprises over 126,000 miles of public roads with multiple owners, including Indian tribes, the BIA, states and counties. Coordination among all of these owners is required in order to maximize available resources to address transportation needs.

Road Maintenance in the BIA

The BIA currently implements both the Department of Transportation's Highway Trust Fund-funded IRR program as well as the Department of the Interior's (DOI) funded Road Maintenance Program. The DOI's Road Maintenance Program has traditionally been the responsibility of the agency owning the road. Of the 126,000 miles roads in the IRR Program, the BIA has responsibility for 28,000 miles of roads designated as BIA system roads. The BIA receives Tribal Priority Allocation (TPA) funding annually for the administration of the road maintenance program for those roads. Further, approximately 30 percent of tribes with BIA system roads within their reservation boundaries currently operate the road maintenance program under a P.L. 93-638 self-determination contract or agreement. And of the 28,000 BIA road miles, approximately 20,500 miles are unpaved roads. Therefore, over 73 percent of the BIA roads are unpaved, and are, thus, considered "inadequate" from the perspective of the Level of Service index used to assess roads and bridges in the BIA road system.

Question 10 of 25 CFR Part 170

In 2004, the Department of the Interior published the Final Rule establishing the policies and procedures governing the IRR Program. *See* 69 Fed. Reg. 43090 (July 19, 2004), codified at 25 C.F.R. Part 170. Question 10, in Appendix C to Subpart C of the Final Rule, addressed a question regarding the IRR Program's funding formula. Since 2004, the IRR Program and Tribes have been struggling with "Question 10" and the BIA and FHWA have worked to clarify the interpretation.

As background, and for the purposes of the tribal shares formula, an "Indian reservation road" is a public road that is located within or provides access to an Indian reservation, Indian trust land, restricted Indian land, or Indian and Alaska Native villages. All tribes receive a portion of the \$450 million annual IRR Program funding through a "tribal share" approach for their approved inventory of "Indian reservation" roads. These tribal shares are computed by a formula based on each road's Cost To Construct (CTC), Vehicle Miles Traveled (VMT), and population of the tribe. Every road in the inventory has a value associated to its CTC and VMT.

Question 10 (Q10) addresses whether a road's CTC and VMT is to count at 100 percent in the formula calculation, or at the non-Federal share if the road is otherwise eligible for Federal-aid funds. *See* 69 Fed. Reg. at 43121. The non-Federal share is the local match percentage as established by the FHWA for federal aid system highways, which varies from 5 percent to 20 percent. The non-Federal share is the percentage of cost of Federal-Aid projects payable by the Federal Government.

While the answer specified in the Final Rule was that a non-Federal share percentage should be applied, the BIA has administered the program with all costs counting 100 percent (except for

State-owned roads), since there was no data in the inventory to clearly distinguish roads which were eligible for Federal funds.

The Final Rule on IRR established an IRR Program Coordinating Committee (IRRPCC), to provide input and recommendations to both the BIA and the FHWA in the development or revision of the IRR Program's policy and procedures. The IRRPCC has been reviewing the Q10 issue since August 2006 and has been unable to agree on a recommendation on this issue. As a result, representatives from the IRRPCC requested that the BIA and the FHWA develop a proposed clarification for Q10. This proposal eliminates road ownership from consideration and places the determination strictly on roadway classification. This clarification will allow the non-Federal share percentages to be applied to the roads that are determined to be otherwise eligible for Federal funds which will result in a consistent application of the non-Federal share across all roads in the IRR Program inventory.

This proposed clarification recognizes that except for BIA and tribally owned roads (which contribute 100 percent to the CTC and VMT regardless of functional classification, as referenced elsewhere in the regulation) any road with a functional classification above local road or rural minor collector will contribute its CTC and VMT at the non-Federal share rate. This interpretation is aligned with the original language of Q10. Given the length of time this provision has been administered under a less than clear interpretation, any change will create questions from various locations where tribes may lose funding. However, until the work during the transition year is complete, the overall impacts to specific tribes will not be known. Nonetheless, since June of this calendar year, the BIA and the FHWA have held 10 regional tribal consultation meetings on this proposed interpretation of Q10.

It is anticipated that the proposed clarification of Q10 will appropriately move the focus of discussions surrounding the IRR Program roads inventory and funding process from Q10 to the broader issues of the quality, physical size and composition of the IRR Program roads inventory. Achieving consistency in the IRR Program roads inventory is an on-going effort involving training, process improvements, and establishing consistent parameters that will require a dedicated effort from all parties over the next 2 to 3 years.

American Recovery and Reinvestment Act (ARRA)

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) (ARRA). ARRA provided supplemental funding for infrastructure investment in Indian Country. A portion of ARRA funding was provided to the IRR Program within Indian Affairs, subject to certain restrictions and requirements. ARRA offered a unique opportunity to make tangible improvements to Indian communities, while promoting economic recovery through the preservation and creation of jobs.

As of September 30, 2010, 99.9 percent of the available funds for both Repair and Restoration of BIA roads and bridges and the construction and reconstruction of IRR Program facilities were obligated to projects approved by the Secretaries of the Department of the Interior and the Department of Transportation. Within the Repair and Restoration of BIA roads program, approximately 400 projects were awarded over \$141 million. Within the IRR Program,

approximately 420 projects were awarded over \$225 million. In addition, over \$50 million was awarded to tribes contracting directly with the FHWA. Outlays for these programs under ARRA funding within the Department were 37 percent or \$83 million for the IRR program and 53 percent or \$75 million for the Repair and Restoration program.

ARRA funds made a significant contribution to improving transportation facilities in Indian Country. Each eligible tribe was given the opportunity to receive maintenance and construction improvements on their BIA and IRR Program facilities (roads, bridges, transit structures, docks, boardwalks, etc). In addition, the provisions of ARRA authorized the Secretary of Transportation to redistribute unobligated funds to projects submitted by tribes based on a call for projects in February 2010. The total ARRA funding redistributed by both agencies was approximately \$22.5 million. One such project from redistributed unobligated funds was a project submitted by the Chippewa Cree Tribe of the Rocky Boy Indian Reservation in Montana. This project was a priority project for the Tribe because of the unsafe nature of the roadway alignment, which resulted in several severe accidents. This project was reviewed and scored in accordance with the provisions established by the BIA and the FHWA. The Chippewa Cree Tribe's project was awarded the amount requested by the Tribe, in the amount exceeding \$1.7 million. Likewise other tribes with annual allocations that were not enough to meet the needs of their priority projects were able to submit projects for review and consideration. These tribes received funds totaling over \$15 million.

Reauthorization of SAFETEA-LU

The BIA, along with other Federal Land Management agencies within the Department, have and will continue to coordinate with each other in the development of the Administration's proposal for the reauthorization of the Safe, Accountable, Flexible, Efficient Transportation Equity: A Legacy for Users (SAFETEA-LU Act). The need for prompt and immediate reauthorization of the SAFETEA-LU Act is crucial to tribal governments who rely on early notification of their tribal shares from the funding formula to plan their priority projects. The numerous short term extensions of SAFETEA-LU result in infrequent and delayed allocations to the tribes and have also resulted in late planning and obligations to tribal contracts. These delays force projects to be delayed as much as one year. The BIA commits to work with the Department to advance the reauthorization of SAFETEA-LU in the near future.

Conclusion

Thank you for the opportunity to present testimony on an issue that is an important part of the economic infrastructure for tribes. We will be happy to answer any questions you may have.