

S. HRG. 111-917

**EXAMINING TRIBAL TRANSPORTATION IN INDIAN  
COUNTRY**

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**FIELD HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS**

**UNITED STATES SENATE**

**ONE HUNDRED ELEVENTH CONGRESS**

SECOND SESSION

OCTOBER 15, 2010

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## EXAMINING TRIBAL TRANSPORTATION IN INDIAN COUNTRY

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Friday, October 15, 2010

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Polson, MT.*

The Committee met, pursuant to notice, at 2 o'clock p.m. in the Best Western KwaTaqNuk Resort Building, Hon. Jon Tester, presiding.

[The hearing opened with the Pledge of Allegiance and a blessing of the proceedings.]

### STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM MONTANA

Senator TESTER. I'd like to call this Senate Committee on Indian Affairs Field Hearing on tribal transportation to order.

First of all, I would just say welcome to Montana to all of you. I want to thank the members of the Confederated Salish and Kootenai tribe for hosting us here on the beautiful Flathead Lake at the KwaTaqNuk Resort on the shores here of the Flathead. A beautiful spot to be. And want to thank everybody who traveled across the country to be here today. Thank you very much for that.

I think this is a very important hearing. And we have a great couple panels that we're going to hear from shortly.

Once again, I want to thank Chairman Moran. I want to thank Reuben and Tony very much for helping us open this Committee hearing.

Today's hearing is to look into the current status of Tribal transportation. And I look forward to sharing our discussion today with my colleagues on the Senate Indian Affairs Committee.

As the folks in this room know all too well, our transportation infrastructure is critical to economic development, creating jobs and improving the lives of everybody who lives in Indian country.

As with other challenges facing Indian country, the situation is getting better. Our hearing today is progress. But we have more work to do, much more work to do.

The Committee last addressed this topic back in July of 2007. Since then we've consulted with tribes around the country. Chairman Dorgan released draft legislation in March 2009 called the TRIP Act. The bill seeks to address many of the issues raised at that hearing back in July of 2007 and with the consultations that have been held. So I look forward to hearing the views of the witnesses on that draft.

As we move forward, my priorities for any legislation are safe roads, responsibly invested taxpayer dollars, stronger transportation infrastructure, and more American jobs in that process.

As with almost every issue facing Congress today, the simple solution seems to be more money. Of course that's easier said than done. Today's financial reality is that we're going to have to make fewer dollars go much further. But even if we can't find more money, it's good to ensure that it's invested fairly and smartly. And I want to make sure we maintain roads in Indian country to the same standard that we maintain other roads.

I also want to make sure that community members are working together to solve community challenges. In many instances, reservation roads serve Indians and non-Indians alike. We need to encourage government-to-government partnership between tribes and state and federal agencies at every level. We have good examples of those partnerships in Montana, and I look forward to our witnesses talking about them today.

While we fight wars all over the world, Montanans should be able to work across the fence with one another. I am willing to lend a hand in that process however I can.

Today's hearing is organized slightly different than most committee hearings. Like others, we'll have two panels of witnesses. The first panel is comprised of government witnesses. The second panel is comprised of tribal leaders.

The tribal leaders will tell us about their priorities for reauthorizing the upcoming Highway Bill, their fight to maintain funding equity and provide examples of how the Recovery Act has improved roads and created jobs in Indian country.

Administration witnesses will report on their efforts to ensure funding equity, to ensure transportation dollars stretch as far as possible in Indian country, and their plans for including tribal leaders from the very beginning of the process to craft the next Highway Bill.

The last part of this hearing is going to be just a bit different. Assuming we have time, and we will have time because we will hold our presenters to the allotted amount of time, we will dedicate the last half hour to take public comments.

I am going to give preference to tribal officials in the public comment period, and then we'll go to everybody else.

So with that I want to introduce the first panel. We have the Honorable Larry J. Echo Hawk, Assistant Secretary for Indian Affairs, Department of the Interior, Washington, D.C. Larry, welcome to Montana. I very, very much appreciate Larry being here today. I supported his nomination for this position and his confirmation in the Senate. Larry is a quality individual. He has testified before this Committee several times, and we very much appreciate you being at this important hearing. Thank you, Larry.

He is accompanied by Mr. Michael Black, who is the Director of the Bureau of Indian Affairs in the Department of the Interior in Washington, D.C. Michael, thank you very, very much for being here today. I appreciate you guys making the trip.

We also have John R. Baxter, Associate Administrator of Federal Lands Highway Program at the Department of Transportation in

Washington, D.C., a very, very important position as it applies to federal lands, roads, highways and the like.

He is accompanied by Robert Sparrow, Jr., who is the manager of the Indian Reservation Roads Program for the Federal Highway Administration in Washington, D.C., and your title talks about the importance of your position in particular as it applies to this hearing. So thank you for being here, Robert.

And then last but certainly not least, we have the Honorable Jefferson Keel, who is the President of the National Congress of American Indians in Washington, D.C.

Although, in past hearings we have included NCAI on the second panel, we thought it more appropriate for them to testify on today's first panel. Not only to honor the principals of government-to-government relations, but also because NCAI faces some of the same challenges that our agencies do. They represent both urban and rural tribes with sometimes very different perspectives and priorities. So perhaps Jefferson can shed some light on that and how to prioritize some of these important, yet very complex issues.

Once again, before I call on you, Larry, let me remind the witnesses to restrict your oral testimony to five minutes. We will make sure that your complete written testimony is a part of the official record. But, you know, use your judgment and try to make it—and I'm not going to be absolutely, smack-on, cut you off, but if you tend to keep going, I'll remind you of that.

And by the way, it's not that we don't want to hear everything you've got to say. We do want to hear everything you got to say. So you've got to make it as concise as possible. And we appreciate that.

We want to thank you very much. And with that, Larry.

**STATEMENT OF HON. LARRY J. ECHO HAWK, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY MICHAEL S. BLACK, DIRECTOR, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR AND LEROY GISHI, CHIEF, DIVISION OF TRANSPORTATION, BUREAU OF INDIAN AFFAIRS**

Mr. ECHO HAWK. Thank you, Senator Tester. I appreciate the invitation to be here, especially when you made the personal call to me. I do appreciate that personal invitation you gave me. I wanted to mention that not only do I have the BIA Director with me today, but the Division Chief over at BIA Transportation, LeRoy Gishi is also with me. We want to make sure that whatever questions are presented to us, that we give you a detailed answer.

I want to highlight just a few points from my written statement that's been submitted. I'll begin by just stressing the importance of the roads in Indian country. President Obama and Secretary Salazar have identified their top priorities as being education, public safety and economic development. Roads and highways are involved in all three of those top priorities.

It is vitally important that we have an adequate transportation system in Indian country, because roads connect tribal citizens to vital services, they provide travel to and from school, access to medical facilities, delivery of emergency services, access to jobs and

economic markets. So the transportation system in Indian country must be adequate and it must be safe.

Unfortunately, we still have great needs in Indian country. I want to note that we are very blessed to have been able to have the ARRA funding that has made a significant difference in our ability to repair and restore roads in the BIA Roads Program. We have received \$141 million, which led to 400 projects under that program. Under the IRR program, we've received \$225 million, which has funded 420 projects. In addition, \$50 million is being awarded to tribes contracting directly with Federal Highways Administration. I'm very pleased to say that the deadline that we were facing for obligating these funds on September 30th of this year, we were able to obligate 99.9 percent of those funds. So that is a very nice thing to be able to report. And I want to thank all people who made that possible.

Our next challenge is to achieve a timely outlay of these projects. Our staff is working very hard to accomplish that.

I want to make a few comments with regard to Question 10 and the distribution of the IRR Program funds. I've been fortunate to have some very hard-working people involved in our coordinating committee that is spread across Indian country representing all regions. They provide recommendations, not only to BIA, but to the Federal Highway Administration on policies and procedures. I thank them for their service.

But when it came to Question 10, they could not resolve the recommendation that they would like to present. And there are differences in Indian country about what ought to be done. So I recall going to a meeting at the National Congress of American Indians over a year ago in Palm Springs, and NCAI tried to resolve that and were unable to do it. So when I was asked to join with the Federal Highways Administration and try to resolve that, we did it. We didn't want to be involved in any kind of disagreement among tribes, but we were asked to do it and we did our best.

So we have generated a proposal to try to move that Question 10 forward. And I want to thank all the people that have been involved in that process. We have done consultation sessions throughout Indian country where we heard from numerous tribal leaders. I went to assure everyone that all of those comments are being considered. This morning we once again heard from tribal leaders who testified and spoke at the end of our discussions this morning to assure them that their comments will be heard and considered as we decide how to move forward with our proposal.

Lastly, I just want to assure the Senate Indian Affairs Committee that within Interior and Indian Affairs, we will be working diligently to ensure that tribal needs are met as the reauthorization of the safety move moves forward.

Thank you very much, Senator.

[The prepared statement of Mr. Echo Hawk follows:]

PREPARED STATEMENT OF HON. LARRY J. ECHO HAWK, ASSISTANT SECRETARY FOR  
INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

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 CFR 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 roads' 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.

Senator TESTER. Thank you, Larry. And we will have questions after everybody gets done on the first panel.

John Baxter's next.

#### **STATEMENT OF JOHN R. BAXTER, ASSOCIATE ADMINISTRATOR FOR FEDERAL LANDS, FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY ROBERT SPARROW, JR., MANAGER, INDIAN RESERVATION ROADS PROGRAM, FEDERAL HIGHWAY ADMINISTRATION**

Mr. BAXTER. Senator Tester, thank you for inviting me to testify today on the transportation issues facing the Native American communities and the programs that the Federal Highway Administration administers to this tribe in addressing these challenges. I thank you for making my full statement part of the record for this hearing.

The Indian reservation road system consists of more than 126,000 miles of road and 8,000 bridges that link housing, schools, emergency services and work places as well as facilitate tourism and resource use. Millions of vehicle miles are travelled annually on the Indian reservation road system, even though it's among the most rudimentary of any transportation at work for the United States.

More than 60 percent of the system is unpaved and about 24 percent of the bridges are classified as deficient. These conditions make basic travel associated with the community difficult for residents of tribal communities. We are committed to providing safe, efficient transportation to both residents and visitors to and within Indian lands and Alaska Native villages, while protecting the environment and cultural resources.

The Indian Reservation Roads Program administered by FHWA in partnership with the Bureau of Indian Affairs serves over 560 federally recognized Indian tribes and Alaska Native villages in 32 states.

In many cases this is the only program where we have a source of funds for transportation improvements.

Today I'd like to focus on three key areas where our agency has been working to address transportation challenges in Indian country. These areas include safety, outreach and capacity building, and implementation of the Recovery Act.

Despite reaching record-low traffic deaths last year on all the nation's roads, the annual fatality rate on Indian reservation roads is still more than three times the national average. To address this serious problem the FHWA has co-sponsored seven state-based safety summits in the past two years focused on this issue and to bring safety partners together. More of these summits are planned for this year.

The agency also continues to implement safety-based programs such as the Highway Safety Improvement Program and the Safe Routes to School Program, which benefits tribes as well as states and are aimed at reducing crash fatalities and injuries on public roads through the implementation of infrastructure improvements.

The Highway Safety Improvement Program funds have been used in Montana to provide improvements such as the installation of variable message signs on U.S. 2 on the Blackfeet reservation and the addition of a left-turn bay on U.S. 93 on the Flathead reservation. And the Montana Department of Transportation provided over \$50,000 for Safe Routes to School funds for the city of Ronan for the design and construction of hard-surfaced bicycle and pedestrian paths, lighting, and installation of seven bike racks at the Ronan Elementary School within the Flathead reservation just south of here.

In addition, FHWA supports tribes for outreach and capacity-building programs. The agency maintains seven tribal technical assistance program centers that provide a variety of training and professional and development programs, technology updates and technical assistance to improve road management and safety. These centers are a key resource for basic services and have helped many tribes to become self-sufficient as sovereign nations in transportation delivery.

The Recovery Act supplemented safety funding for tribal communities by providing additional \$310 million for the Indian Reservation Roads Program. FHWA and BIA have worked diligently to ensure that the Recovery Act funds for these projects were distributed quickly and wisely. And as it has already been noted, nearly 99.9 percent of the Recovery Act were obligated to tribes for eligible and other infrastructure-related projects, including improving roads that provide critical links between tribal residences and vital community services such as schools and health care facilities.

In addition, the Recovery Act TIGER funds are being used in the Mission Valley and Lake County for road paving and construction and will improve connectivity and create a safer, more convenient transportation system for residents of the county and the Flathead Indian Reservation.

We recognize that transportation is a critical tool for tribes to improve the quality of life and the economy in our communities. FHWA is committed to improving transportation access to and through tribal lands by providing safe and innovative roadways



that blend into or enhance the existing environment by providing technical services to the transportation community and by coordinating our efforts with partnering agencies and tribes such as BIA.

We're also focused on building more effective day-to-day working relationships with Indian tribes with respect to rights of self-government and self-determination based on the principals of tribal sovereignty.

Senator Tester, thank you for the opportunity to testify and I'll be pleased to answer your questions.

[The prepared statement of Mr. Baxter follows:]

PREPARED STATEMENT OF JOHN R. BAXTER, ASSOCIATE ADMINISTRATOR FOR FEDERAL LANDS, FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Chairman Dorgan, Senator Tester, and Members of the Committee, thank you for the opportunity to testify today regarding transportation issues facing Native American communities and programs administered by the Federal Highway Administration (FHWA) that provide support to Tribes for addressing these issues.

President Obama's meeting in November 2009 with tribal leaders from across the Nation signaled the start of a new and stronger relationship between the Tribes and the Federal Government. The President made very clear that Native Americans will not be forgotten by this Administration, and he gave his strong commitment to addressing tribal issues and concerns. By establishing an Office of Tribal Liaison within the White House, the President has made sure that Native Americans will have a seat at the table when issues, including the economy, education, health care, and the environment, are being discussed—issues which can all involve transportation.

Secretary LaHood shares President Obama's commitment to addressing tribal issues and concerns. This past spring, the Secretary spoke before the National Congress of American Indians, emphasizing the Department's commitment to improving existing tribal transportation programs by seeking tribal input on important regulations, providing timely technical assistance, and ensuring tribes are given ample opportunities to compete for grants. The Department also finalized its Tribal Consultation Plan, a detailed plan of action the agency will take when developing, changing, or implementing policies, programs, or services with tribal implications.

In addition, Secretary LaHood has made livability a key objective for transportation. This initiative is not a one-size-fits-all approach—we recognize that transportation needs for tribes are often different than what we see needed elsewhere in the U.S. transportation network. In much of this country, we take for granted that roads and highways will be there for children to reach their schools, for emergency vehicles to reach those in need of medical care, and for members of the community to get to work. But, in Indian Country, you cannot always make that assumption. Moreover, tribal communities need good roads to support their economic development.

FHWA has a long history of supporting tribal governments' rights to self-determination and working directly with Tribes in a government-to-government relationship. FHWA's top leadership continues to meet directly with tribal government elected officials and transportation staff, and is committed to delivering a transportation program that works for all Tribes whether they are large or small.

FHWA has sought to improve the state of tribal transportation by working directly with tribal governments to improve Tribes' technical capacity, to improve safety on reservations and native communities, and to foster partnerships between tribal governments, Federal agencies, and State DOTs.

The Indian Reservation Roads (IRR) program, administered by FHWA in partnership with the Bureau of Indian Affairs (BIA), is critical to tribal communities to support tribal transportation needs. In many cases, it is the only source of revenue for transportation improvements. In working through FHWA's partnership with the Tribes and the BIA, the IRR program seeks to balance transportation mobility and safety goals with the environmental and cultural values of tribal lands. FHWA also works with the Federal Transit Administration and the National Highway Traffic Safety Administration (NHTSA) in coordinating transportation programs that focus on planning, safety, and construction of roads and transit services to and on reservations and serving Alaska Native villages.

## Overview

The IRR system of roads provides access to and within Indian reservations, Indian trust land, restricted Indian land, eligible Indian communities, and Alaska Native villages. The IRR system consists of more than 120,000 miles of roads which link housing, schools, emergency services, places of employment, and facilitate tourism and resource use. Almost eleven billion vehicle miles are traveled annually on the IRR system, even though it is among the most rudimentary of any transportation network in the United States. More than 60 percent of the system is unpaved. If only BIA and tribal roads of the IRR system are considered, this number increases to over 80 percent. Within the system, there are more than 8,000 bridges and approximately 24 percent of these bridges are classified as deficient. These conditions make it very difficult for residents of tribal communities to travel to hospitals, stores, schools, and employment centers—the most basic needs for a livable community.

The poor road quality on tribal lands also affects safety. Last year, Secretary LaHood announced that the number of traffic deaths on U.S. roads reached a record low. Despite the gains we have made on other systems, the annual fatality rate on Indian reservation roads continues to be more than three times the national average. Safety continues to be the Department's top priority, and FHWA is working closely with tribes, the BIA, NHTSA, and others to address this disproportionate level of fatalities on tribal roads.

The IRR program, established in section 204 of title 23, United States Code, is the largest Federal Lands Highway (FLH) program, and it is unique due to the relationship with Federally-recognized Indian Tribal Governments under the program. The IRR program serves over 560 Federally-recognized Indian Tribes and Alaska Native villages in 32 States. FHWA co-administers the IRR program with the BIA under an agreement originating in 1948 and a Stewardship Plan from July 1996.

IRR program funding has grown significantly under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), from a program size of \$275 million annually under the Transportation Equity Act for the 21st Century (TEA-21) to \$450 million annually today. This equates to a total of \$2.42 billion over the life of SAFETEA-LU, including the recent extensions through the end of this calendar year. These funds have been distributed according to a tribal shares formula, which was developed through a negotiated rulemaking with tribal governments. SAFETEA-LU also increased the eligible uses of IRR program funds by allowing a Tribe to use up to 25 percent of its share of funds for road and bridge maintenance activities. This change allowed Tribes to supplement the funding they receive annually from the Department of the Interior (DOI) for maintenance activities. It allowed the Tribes to address critical safety, snow removal, and pavement preservation issues that otherwise could not be addressed. The increased funding and programmatic changes provided in SAFETEA-LU for the IRR program, along with an additional \$310 million provided by the American Recovery and Reinvestment Act of 2009 (Recovery Act), discussed below, have provided tools and resources to substantially improve tribal transportation. Despite progress, however, much work remains.

## Safety Programs

Safety remains a significant issue in Indian Country. Native Americans are over-represented in several fatality categories—including individuals under the age of 35, unbelted drivers, and individuals driving under the influence of alcohol. Seven State-based summits have been held in the past two years to focus on the subject and to bring the many safety partners together to discuss the safety issues affecting them. FHWA and NHTSA will continue these summits in the future to promote safety strategies across the four E's of safety—engineering, enforcement, education, and emergency medical services. Strategies such as Road Safety Audits and community based enforcement are proving to be effective tools for reducing fatalities.

### *Highway Safety Improvement Program*

The Highway Safety Improvement Program (HSIP) was established by SAFETEA-LU with the overall purpose of achieving a significant reduction in traffic fatalities and serious injuries on all public roads through the implementation of infrastructure-related highway safety improvements. Since the program's inception, HSIP funding has been utilized for tribal lands projects across the country.

In Montana, for example, two HSIP construction projects totaling \$1.88 million provided improvements such as the installation of Variable Message Signs on US-2 on the Blackfeet Reservation and the addition of a left-turn bay on US-93 on the Flathead Reservation.

A \$107,650 HSIP project in North Carolina along US-74 from the Haywood County line to NC-28 (North), in Cherokee Nation, funded the installation of milled rumble strips on the median and outside shoulders.

In North Dakota, two HSIP projects totaling \$300,000 provided improvements along State highways within reservation boundaries of Standing Rock Reservation and Fort Berthold Reservation. Such improvements included the installation of shoulder and centerline rumble strips along State Highways 23 and 24.

In Wisconsin, a \$316,000 HSIP project was undertaken by the Wisconsin DOT along with the Forest County Potawatomi Tribe to improve a Tribal owned intersection at Everybody's Road and USH 8 in Forest County. The intersection project was combined with \$900,000 BIA funds and \$74,000 Tribal funds to construct a newly relocated intersection and frontage road (Everybody's Road) that leads to the Tribal headquarters offices and Tribal Community Center.

#### *Safe Routes to School*

The Safe Routes to School (SRTS) program is a Federally-funded but State managed and administered grant program established by section 1404 of SAFETEA-LU. Each State receives not less than \$1 million each fiscal year to fund planning, design, and construction of infrastructure-related projects that will improve the ability of students to walk and bicycle to school. A portion of each State's SRTS funding must also be used for non-infrastructure-related activities to encourage walking and bicycling to school. Federally-recognized Tribes are eligible sub-recipients of this State administered program.

Several States are working with Tribes to promote the SRTS program. For example, the Montana DOT provided \$51,823 in SRTS funds to the City of Ronan for the design and construction of approximately 400 lineal feet of hard-surfaced bicycle and pedestrian path, lighting, and installation of 8 bike racks at the Ronan elementary school within the Flathead reservation. The Washington DOT provided SRTS funds to the Taholah School District, serving the Quinalt Indian Nation, for infrastructure, enforcement and education activities. In South Dakota, the DOT provided \$15,815 in SRTS funds to the Sisseton-Wahpeton Oyate's Enemy Swim Day School for a trail to the school.

#### *Section 402 State and Community Highway Safety Grant Funds*

NHTSA provides safety grant funds to the Secretary of the Interior to save lives, prevent injuries, and reduce economic loss due to motor vehicle related crashes on Tribal land. The BIA administers the funds, known as the Section 402 State and Community Highway Safety Grant Funds. NHTSA provides technical assistance to Tribes through partnership with BIA.

#### **SAFETEA-LU Funding for Tribal Transportation**

Although the IRR program is the principal funding source for tribal roads, these roads are eligible to receive funding under other SAFETEA-LU programs as well.

#### *Indian Reservation Roads Bridge Program (IRRBP)*

The Indian Reservation Roads Bridge Program (IRRBP) was established under TEA-21 and funded through a \$13 million takedown from the primary IRR Program. The program's purpose was to provide funding for reconstruction or rehabilitation of structurally deficient or functionally obsolete IRR bridges. SAFETEA-LU amended the IRRBP by establishing it as an independently funded program, authorized at \$14 million per year, and allowing design activities to be funded. FHWA coordinated with the Indian Reservation Roads Program Coordinating Committee to implement these legislative changes. Since its inception in TEA-21, the IRRBP has provided more than \$165 million in funding to nearly 300 different bridge projects in Indian Country.

#### *National Scenic Byways Program*

Indian Tribes have participated in the National Scenic Byways Program since its inception under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). SAFETEA-LU authorized the Secretary of Transportation to make grants from this program directly to Indian Tribes and to allow Tribes to nominate Indian roads directly to FHWA (without going through a State department of transportation) for possible designation as a National Scenic Byway or an All-American Road.

FHWA has participated in tribal transportation conferences to inform Tribes of these changes to the National Scenic Byways Program. FHWA also worked with the America's Byways Resource Center (in Duluth, Minnesota) to establish a tribal liaison position within the Resource Center to provide technical assistance to Indian

Tribes for establishing tribal scenic byways programs and designating roads as Indian Tribe scenic byways.

In addition, FHWA has modified its grant application procedures so Indian Tribes may submit grant applications directly to FHWA. In fiscal year 2009, Tribes submitted 10 applications directly to FHWA and two applications through the State departments of transportation, requesting a total of \$1.85 million. The Department selected seven of the projects, providing a total of \$945,232 in funding.

#### *Public Lands Discretionary Program*

The Public Lands Highway Discretionary program provides funding to any project eligible under title 23, United States Code, which is within, adjacent to, or provides access to tribal or Federal public lands. It is another source of funding that is available to Tribes for their transportation needs. During SAFETEA-LU, nearly \$480 million dollars was made available through this program. Of the \$480 million, \$52 million was provided for 62 tribal related transportation projects.

#### **FHWA Implementation of SAFETEA-LU Requirements for Tribal Transportation**

In addition to increased funding, SAFETEA-LU brought about many changes in how the IRR program is administered and to the roles and responsibilities of all parties involved in transportation delivery to tribal communities. Prior to SAFETEA-LU, FHWA's role was to provide stewardship and oversight to the IRR program from a national perspective, and the BIA's role was to work with the Tribes by delivering the funds and providing technical assistance. With the passage of SAFETEA-LU, Tribes now have the option to enter into IRR Program Funding Agreements and work directly with FHWA for their IRR Program share as long as they meet financial audit and management capacity requirements. The number of Tribes electing this option has grown from three the first year to more than 75 Tribes today, with several more Tribes expressing an interest to FHWA.

In response to this increase in the number of Tribes, and increased stewardship and oversight responsibilities, the Federal Lands Highway (FLH) Office, which has direct responsibility for administering the IRR program, has increased staffing and worked closely with the Tribes to develop program guidance. In addition to carrying out numerous face-to-face meetings with each Tribe and conducting outreach and training through webinars, regional conferences, and organized classes, FLH developed a new program manual for all Tribes, States, counties, and Federal agencies that communicates program expectations, roles and responsibilities, and best practices.

#### *National Indian Reservation Road Inventory*

SAFETEA-LU directed FHWA to complete a comprehensive national inventory of IRR eligible transportation facilities and submit a Report to Congress. The purpose of the inventory study was to develop the true need and cost for tribal transportation, to ensure that the data in the existing inventory is accurate, and to help streamline the procedures that Tribes utilize for updating their inventory. The inventory is the most significant factor used to calculate the tribal shares of IRR program funding; thus, it is critical that data in the inventory be as accurate as possible.

FHWA completed and delivered the required Report to Congress in 2008. The Report outlined our assessment of the inventory process, including its accuracy and consistency of application. The Report included the identification of more than 100,000 miles of road as well as recommendations for improvement and additional study areas. Since issuance of the Report, the inventory has grown to more than 125,000 miles of road. As a result of the Report and issues that have arisen from the Question 10 series of consultations, FHWA and BIA will work together to review more than 75 percent of the inventory data this coming year. This work will clarify programmatic definitions and correct inventory errors and omissions to produce a more accurate data system. Ultimately, the inventory will reflect the needs of tribal road transportation and serve as an important tool to help make the program fair and equitable for all tribes.

#### **Outreach and Capacity Building**

##### *Road Safety Audits and Safety Trainings*

Strategies such as Road Safety Audits (RSAs) and community based enforcement are proving to be effective tools for reducing fatalities on tribal lands. The FHWA Office of Safety sponsors training on Road Safety Fundamentals and RSAs, and works with State and local jurisdictions and tribal governments to integrate RSAs into the project development process for new and existing roads and intersections.

RSAs examine the safety performance of an existing or future road or intersection by an independent, multidisciplinary team. They estimate and report on potential road safety issues and identify opportunities for improvements in safety for all road users. RSAs enable localities and Indian tribes with little or no safety data to get an expert assessment on how to improve the safety of their roads.

RSAs were funded by FHWA's Office of Safety from the Surface Transportation Research Development and Deployment Program for the following tribal organizations— Tohono O'odham and Navajo Nations in Arizona; Santa Clara Pueblo and Jemez Springs Pueblo, New Mexico; Standing Rock Sioux, North Dakota; the Eastern Band of Cherokee Indians, North Carolina; the Navajo Nation, Utah; and Red Cliff Band of Lake Superior. These RSAs were carried out in cooperation with State DOTs.

#### *Research and Development*

FHWA has launched a cross-functional initiative to address tribal transportation safety problems through research and practical applications. The project will support the development and adoption of the Tribal Safety Management System, which has been identified by a multi-agency committee as a key strategy to assist Native American Tribes in addressing transportation safety problems. The initiative will develop and implement comprehensive safety program templates that Tribes can use and tailor to their specific needs. The initiative also includes a pilot program in 3 tribal nations, the results of which will be included in a report showing the benefits, challenges, and lessons learned from the implementation of highway safety programs.

#### *Tribal Technical Assistance Program*

Tribes report that education and training remain significant challenges. Many Tribes do not have a sustainable level of transportation expertise, given their size and resources. The FHWA supports a tribal transportation assistance program with seven centers serving Indian Country. These Tribal Technical Assistance Program (TTAP) centers provide a variety of training and professional development programs, technology updates, and technical assistance to enhance road management and safety. They are a key resource for basic services and to help many Tribes become self-sufficient as sovereign nations in transportation delivery. The purpose of our seven TTAP centers is to foster a safe, efficient, and environmentally sound surface transportation system by improving the skills and increasing the knowledge of local transportation professionals.

FHWA, through the TTAPs, continues to provide technical assistance and training to Tribes on conducting their own RSAs. For example, FHWA has provided funding and support to the Northern Plains TTAP to sponsor a Road Safety Audit Outreach Coordinator, who has provided training and RSAs for the Spirit Lake Nation, the Winnebago Tribe of Nebraska, and others.

While FHWA has remained focused on implementing SAFETEA-LU since its enactment, the Agency has also been recently hard at work ensuring that Tribes use the much needed supplemental resources provided by the Recovery Act.

#### **American Recovery and Reinvestment Act of 2009**

In addition to SAFETEA-LU funding, the Recovery Act has supplemented funding for tribal communities by providing an additional \$310 million for the IRR program. Since the Recovery Act was signed into law by President Obama on February 17, 2009, FHWA and BIA have worked diligently to ensure that the funds for these projects are distributed quickly, wisely, and with unprecedented transparency and accountability. The Federally-recognized Tribes were eligible to receive Recovery Act funding based on the IRR formula, which takes into account the highway projects' estimated construction cost, volume of traffic along the route, and the Tribe's current population. Much of the IRR portion of the Recovery Act has been dedicated to improving roads that provide critical links between tribal residences and vital community services such as schools and health care facilities. More than 99.9 percent of these Recovery Act were obligated.

In the summer of 2009, the Blackfeet Indian Tribe awarded a project for \$916,068 to improve a 14-mile segment of road known as the Starr School Road. This nearly-completed project will provide for a safer facility for school buses and other school traffic through sign replacement, new right of way fences, and new roadway striping. Drainage and pavement improvements will extend the life of the facility.

On February 17, 2010, the one-year anniversary of the Recovery Act, Secretary LaHood announced \$1.5 billion in Transportation Investment Generating Economic Recovery (TIGER) Grant awards for 51 projects nationwide. The Department could provide awards to fewer than 3 percent of the more than 1,400 applicants, who submitted more than \$60 billion in applications for this \$1.5 billion program.

TIGER funds are being used for an important project in the Mission Valley in Lake County, Montana which overlays most of the Flathead Indian Reservation. This \$12 million project is to upgrade city and county roads and increase the safety and transportation options in this predominantly rural area. Road paving and construction will improve connectivity and create a safer and more convenient transportation system for residents of the county and the Flathead Indian Reservation, including the Confederated Salish and Kootenai Tribes. The project also includes vital improvements to Skyline Drive, a road near the city of Polson, which the Montana DOT identified as a safety risk.

FHWA, along with BIA and with input from Tribes, developed a process that described the requirements for Tribes to receive and obligate their share of Recovery Act funding and focused on assuring obligation of the majority of the \$310 million before the end of this past fiscal year. FHWA and BIA developed guidance to ensure a fair and transparent process to redistribute funds for cases where funds would otherwise not get obligated. The redistribution of more than \$22.5 million to approximately 25 Tribes nationwide helped ensure the efficient and effective use of Recovery Act funds.

### **Conclusion**

Transportation is a critical tool for Tribes to improve the quality of life in their communities. The challenges are to maintain and improve transportation systems serving Indian lands and Alaska Native villages in order to provide safe and efficient transportation options for residents and access for visitor enjoyment, while at the same time protecting environmentally sensitive lands and cultural resources. The Department is committed to improving transportation access to and through tribal lands through stewardship of Federal Lands Highway programs by providing balanced, safe, and innovative roadways that blend into or enhance the existing environment; and by providing technical services to the transportation community. We are also committed to building more effective day-to-day working relationships with Indian Tribes, reflecting respect for the rights of self-government and self-determination based on principles of tribal sovereignty.

Members, thank you again for this opportunity to testify. I will be pleased to answer any questions you may have.

Senator TESTER. Thank you, John. Next we'll hear from the National Congress of American Indians, Jefferson Keel.

### **STATEMENT OF HON. JEFFERSON KEEL, PRESIDENT, NATIONAL CONGRESS OF AMERICA INDIANS**

Mr. KEEL. Thank you, Senator. On behalf of National Congress of American Indians, I want to thank you for the opportunity to testify and provide information regarding the tribal transportation infrastructure. Thank you.

Indian reservation roads comprise over 120,000 miles of public roads with multiple owners including the Bureau of Indian Affairs, Indian tribes, states and counties.

Indian reservation roads are the most underdeveloped road network in the nation, yet it's the primary transportation systems for all residents of and visitors to American Indian land and Alaska Native communities.

Over 66 percent of the system is unimproved earth and gravel. Approximately 24 percent of Indian reservation bridges were classified as deficient. In many places there are no roads and bridges to begin with, forcing huge travel distances on inadequate roads. These conditions make it very difficult for residents of tribal communities to travel to hospitals, stores, schools and employment centers.

Next year we anticipate that Congress will reauthorize the federal transportation programs. And it's vital that the Indian Reservation Roads Program receives significant increases in funding. Lives and livelihoods depend on it.

NCAI urges Congress to increase the funding for all tribal transportation programs to address the deficiency with road construction and maintenance, to continue to build upon the current infrastructure, and increase technical assistance to tribal governments.

Indian people suffer from injury and death by driving and walking along reservation roadways with rates far above the national average, as you've already heard. Shocking data showed thousands of fatal motor vehicle crashes on Indian reservation roads and the trend is increasing. While the number of fatal crashes per year has declined 2.2 percent nationally, the number of fatal motor vehicle crashes on Indian reservations increased over 52 percent.

American Indians also have the highest rate of pedestrian injury and death per capita of any racial or ethnic group in the United States.

NCAI recommends that Congress use the 2 percent tribal funding set aside within the High Risk Rural Roads Program to create a new Tribal Traffic Safety Program. And increase the funding for Tribal Safety Program to \$50 million annually and to improve the unsafe road systems on tribal lands.

Indian country has over 741 public schools and over 82,000 native students. The Bureau of Indian Education serves over 50,000 students and 181 elementary and secondary schools. Many of these schools are located in remote and rural areas.

The Safe Route to School program provides funds to states to improve the ability for primary/middle school students to safely walk and bike to school. Unfortunately BIE schools are not eligible for this program. There's no information on whether public schools in Indian country receive anything from the program.

NCAI is encouraged that Congress is exploring alternate sources of revenue for the Highway Trust Fund. Simply put, the system is founded on a combination of federal gas taxes and state gas taxes. Indian reservation roads have not equitably benefitted from either of these sources of revenue.

Given the dire conditions of reservation roads, it is unconscionable that the Reservation Roads Program does not enjoy parity with the amount given to other governments through the Highway Trust Fund. NCAI feels strongly that this inequity of distribution must be addressed in any system devised to fund transportation systems across the nation.

NCAI is working with tribal governments to improve and build upon the successes of the last transportation reauthorization, because transportation infrastructure is vital to the enhancement of Indian governments and sovereignty.

We look forward to working with this Committee on tribal-specific transportation issues. Thank you.

[The prepared statement of Mr. Keel follows:]

PREPARED STATEMENT OF HON. JEFFERSON KEEL, PRESIDENT, NATIONAL CONGRESS  
OF AMERICAN INDIANS (NCAI)

On behalf of the National Congress of American Indians (NCAI), thank you for the opportunity to testify on tribal transportation in Indian Country. NCAI is the oldest and largest national organization in the United States and is steadfastly dedicated to protecting the rights of tribal governments to achieve self-determination and self-sufficiency. NCAI applauds the Senate Committee on Indian Affairs for examining the tribal transportation infrastructure. NCAI looks forward to working

with members of this Committee to enhance investments in infrastructure development such as transportation.

Indian Reservation Roads comprise over 120,000 miles of public roads with multiple owners, including the Bureau of Indian Affairs, Indian tribes, states and counties. Indian Reservation Roads are the most underdeveloped road network in the nation<sup>1</sup>—yet it is the primary transportation system for all residents of and visitors to American Indian and Alaska Native communities. Over 66 percent of the system is unimproved earth and gravel. Approximately 24 percent of Indian Reservation Roads Program (IRR) bridges are classified as deficient. These conditions make it very difficult for residents of tribal communities to travel to hospitals, stores, schools, and employment centers.<sup>2</sup>

In 2005, the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, authorized the U.S. Department of Transportation (USDOT) to administer and distribute billions of dollars of highway, transit and other transportation-related funding to federal, Tribal, state and local transportation departments. Included in SAFETEA-LU were several significant tribal provisions: providing an increase in funding for Indian Reservation Roads Program; creating a new specific funding set-aside to address the condition of bridges on tribal lands; initiating a new tribally-specific transit program that would provide much needed funding for tribes; and establishing within the office of the Transportation Secretary, a Deputy Assistant Secretary for Tribal Government Affairs to plan, coordinate, and implement the Department of Transportation policy and programs. In addition, SAFETEA-LU provided important changes in the IRR program. IRR funding can now be provided through a funding agreement in accordance with the Indian Self-Determination and Education Assistance Act as long as the requesting tribal government has satisfactorily demonstrated financial stability and financial management to the Secretary of Transportation.

Transportation infrastructure development is critical to economic development, creating jobs, and improving living conditions for individuals and families in Indian Country. Construction of transportation systems that allows for safe travel and promotes economic expansion will help us strengthen our tribal communities while at the same time making valuable contributions to much of rural America. Surface transportation in Indian Country involves thousands of miles of roads, bridges, and highways. It connects and serves both tribal and non-tribal communities.

### **Funding**

In SAFETEA-LU, tribal transportation programs within the Department of Transportation have received the following funding levels. Funding for the Indian Reservation Roads Program (IRR) was \$300,000,000 for Fiscal Year 2005, and steadily increased each fiscal year to \$450,000,000 for Fiscal Year 2009; funding for the IRR Bridge Program stayed at \$14 million for Fiscal Years 2005 through 2009; Public Transportation on Indian Reservations Section 5311(c), was funded at \$8,000,000 for Fiscal Year 2006, and gradually increased each fiscal year to \$15,000,000 for Fiscal Year 2009. These funding levels were maintained in FY 2010 for tribal transportation programs through DOT.

#### *Indian Reservation Roads Program*

The officials at the Departments of Interior and Transportation have recognized that transportation systems within Indian Country are suffering from a nearly \$40 billion construction backlog. An equaling distressing deferred maintenance backlog exists for Tribal transportation facilities. Rising construction inflation rates continue to diminish the purchasing power of the limited federal funds currently provided to the IRR Program and other Tribal transportation programs. Even solid Tribal roads and bridges fall into disrepair and require costly reconstruction years before the end of their design life due to a lack of more cost-effective maintenance funding. Under any assessment, Tribal transportation programs remain severely underfunded and the construction and maintenance funding backlog will only get worse without significant funding increases during the next highway reauthorization period.

To address the deficiencies of road construction and maintenance in the upcoming reauthorization, we encourage this Committee to recommend to Congress an increase in the funding level for IRR Program to \$800,000,000 for Fiscal Year 2013; \$850,000,000 for Fiscal Year 2014; \$900,000,000 for Fiscal Year 2015; \$950,000,000

<sup>1</sup>Bureau of Indian Affairs, Transportation Serving Native American Lands: TEA-21 Reauthorization Resource Paper (2003).

<sup>2</sup>Statement of John Baxtor, Administrator of Federal Lands, FHWA, U.S. DOT, *Hearing on Transportation issues in Indian Country Before Senate Comm. on Indian Affairs*, 110th Cong. 1 (2007).



for Fiscal Year 2016; \$1,000,000,000 for Fiscal Year 2017; and \$1,050,000,000 for Fiscal Year 2018. For the IRR Bridge Program, NCAI recommends \$75,000,000 for Fiscal Year 2013; \$87,500,000 for Fiscal Year 2014; \$100,000,000 for Fiscal Year 2015; \$100,000,000 for Fiscal Year 2016; \$100,000,000 for Fiscal Year 2017; and \$100,000,000 for Fiscal Year 2018.

*Public Transportation on Indian Reservations*

Since the enactment of SAFETEA-LU, the Transportation on Indian Reservations Section 5311(c), also known as the Tribal Transit Program, has been very successful. In the first year of operation, 63 tribes were awarded transit funding. This program brings severely needed transit services to Indian Country so that tribes can provide much needed transportation access to employment, health services, education, and business opportunities for tribal members.

While tribal transit systems continue to develop and thrive, the funding authorized in SAFETEA-LU barely addresses the transit needs in Indian Country and tribal governments need additional funding to adequately address the transit services in Indian Country. NCAI recommends funding for the Tribal Transit Grant Program to be increased to \$35 million for Fiscal Year 2013 with continuing increases of \$10 million for every year thereafter to \$85 million. NCAI also recommends raising the cap for Transit Planning Grants to \$50,000. Currently, tribes are capped at \$25,000 to use for planning and design. This cap is a hindrance for tribes who do not possess the financial resources to initially establish a reliable transit system on their tribal land. SAFETEA-LU allowed Indian tribes to pursue improved public transportation for their tribal communities, however there continues to be significant need in Indian Country.

*Tribal Technical Assistance Program (TTAP)*

The TTAPs are the only technical assistance program that provides much needed education, research, and training to tribal governments. There are currently 7 TTAP centers located around the country that serve all the tribes in different regions. TTAP is funded by both the Federal Highway Administration (FHWA) and Bureau of Indian Affairs (BIA). Currently, each TTAP receives \$280,000 a year in total funding, which is comprised of \$140,000 from the Local Technical Assistance Program and \$140,000 from the IRR program. This totals about \$1.9 million for the overall TTAP funding each fiscal year to serve all 565 federally-recognized tribes.

To ensure that the TTAPs are able to meet the increased demand for their services as additional tribes assume responsibility for administering their transportation programs, NCAI recommends Congress to have the Department of Transportation institute a TTAP for each of the twelve BIA Regions. Additionally, NCAI recommends an increase to the overall funding of TTAPs from \$1.9 million to \$4.2 million each fiscal year. This much needed funding will assist each TTAP center to adequately address the increasing need for transportation technical assistances.

**Safety**

State governments spend between \$4,000 and \$5,000 per road mile on maintaining state roads and highways. While in Indian Country, by contrast, road maintenance funding is less than \$500 spent per road mile. Indian Country has an unmet immediate need of well over \$258 million in maintenance funding for roads and bridges, and \$310 million in unmet need for new roads and bridges projects.

Tribal members and communities are threatened by unsafe and often inaccessible roads, bridges and ferries. Indian people suffer from injury and death by driving and walking along reservation roadways at rates far above the national average. Data shows 5,962 fatal motor vehicle crashes were reported on Indian reservation roads between 1975 and 2002 with 7,093 lives lost.<sup>3</sup> The trend is on the increase, up nearly 25 percent to over 284 lives lost per year in the last five years of study. While the number of fatal crashes in the nation during the study period *declined* 2.2 percent, the number of fatal motor vehicle crashes per year on Indian reservations *increased* 52.5 percent. American Indians also have the highest rates of pedestrian injury and death per capita of any racial or ethnic group in the United States.

Tribal communities share many similar concerns and obstacles as rural communities in addressing how to improve the safety needs. NCAI has worked diligently with tribal governments to find solutions for improving the safety and infrastructure of Indian Country. Presently, tribes receive a two-percent set aside of the total allocation from the National Highway Traffic Safety Administration; the funding is then allocated to BIA where the BIA Highway Indian Safety Program administers the

<sup>3</sup>Fatal Motor Vehicle Crashes on Indian Reservations, 1975–2002, April 2004, DOT HS 809 727, U.S. Department of Transportation, National Highway Traffic Safety Administration,

programs. The purpose of this program is to assist tribes with their proposed highway safety projects, which are intended to reduce traffic crashes and impaired driving crashes; increase occupant protection education; provide emergency medical service training; and increase police traffic services. The two percent set aside is equivalent to \$14 million annually, and it is a competitive grant process. NCAI has received concerns from tribal leaders about the inadequate effectiveness of the BIA Highway Indian Safety Program. In the past, there has been turnover of the directorship of the office and lack of guidance and support to tribes. For example, tribes have been denied the grant funding but they were not informed of the reasons for the denial, and tribes have contacted the office, and no one seems to be returning their phone calls.

NCAI recommends Congress assist in confronting the high injury and fatalities on tribal roadways and to resolve the concerns about the BIA Highway Indian Safety Program by establishing a 2 percent Tribal funding set-aside within the High Risk Rural Roads Program, and create a new Tribal Traffic Safety Program within the FHWA-Federal Lands Highways office and within NHTSA, each funded at \$50 million annually to dramatically reduce the incidence of death and injury on America's Indian reservation roads. The creation of these new programs would help to reduce the safety and behavioral problems that contribute to the high rates of death and injury on Indian reservation roads.

#### **Safe Route to School**

The Safe Route to School Program<sup>4</sup> was created under SAFETEA-LU within the FHWA and is administered by State Departments of Transportation. Each State has its own administering guidelines for applying for Safe Routes to School program. This program received a total of \$612 million for the fiscal years of 2005 to 2009, and each State funding is formula based. The Safe Routes to School Program essentially provides funds to States to improve the ability for primary and middle school students to safely walk and bike to school. Furthermore, the program assists schools within a two-mile square radius, to plan, develop, and implement safety projects and activities to reduce traffic and fuel consumption; and encourage active lifestyles.

There are over 741 public schools located in American Indian and Alaskan Native areas, with a total of 82,406 native students; and the Bureau of Indian Education serves approximately 50,155 native students at 181 elementary and secondary schools.<sup>5</sup> Many of these schools are located in remote and rural areas, where students have to be bused for more than 50 miles.

NCAI is supportive of programs that promote safety and active healthy lifestyles of school students. However, NCAI is concerned about the inability to know the number of schools on tribal lands who have successfully applied and been awarded funding under the Safe Route to School program. Since each State Transportation Departments and their coordinators administered the program, it is difficult to determine who and how many public schools on Indian reservations have benefited from this program. In addition, the Bureau of Indian Education (BIE) schools are not eligible to receive this funding.

NCAI recommends this Committee consider amending the statutory language of the Safe Route School Program to enable BIE schools to be eligible to receive funding; to create a tribal set-aside for public, bureau, charter, impact-aid and grant schools on tribal lands to be able to participate in this program; and to increase two mile radius requirement. Naturally, this produces additional questions on the issue of who would administer this program for these schools, and the amount of funding. NCAI looks forward to working with this Committee on this matter.

#### **Gas Excise Tax**

To date, there are over 120,000 miles in the Indian Reservation Roads (IRR) system but yet it is the most underdeveloped road network in the nation,<sup>6</sup> and it is the primary transportation system for all residents of and visitors to American Indian and Alaska Native communities. Over two-thirds of the roads on the system are unimproved dirt or gravel roads, and less than 12 percent of IRR roads are

<sup>4</sup> Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109-59, § 1404, 119 Stat. 1228, 86-88 (2005)

<sup>5</sup> IES National Center for Educational Statistical Common Core of Data, *Public and BIE elementary and secondary schools: number of schools and enrollment in the American Indian and Alaska Native Areas, 2005-2006 and 2007-2008*, Table 1, (2010), [http://nces.ed.gov/cd/tables/ccd07\\_aia\\_schools.asp](http://nces.ed.gov/cd/tables/ccd07_aia_schools.asp)

<sup>6</sup> Bureau of Indian Affairs, *Transportation Serving Native American Lands: TEA-21 Reauthorization Resource Paper* (2003) (attached).

rated as good.<sup>7</sup> The condition of IRR bridges is equally troubling. Over 25 percent of bridges on the system are structurally deficient.<sup>8</sup>

Tribal economies, education systems, health care and social service programs are threatened by unsafe and often inaccessible roads, bridges and ferries. A recent Federal traffic safety study showed that Indian tribes suffer the highest per capita traffic fatality rate in the Nation, more than four times the national average.<sup>9</sup> Each year, drivers on the IRR system travel over 2 billion vehicle miles on a system that is a clear health and safety hazard for our communities and an impediment to meaningful economic development.<sup>10</sup>

#### *Funding for Tribal Transportation Systems*

The current scheme for funding surface transportation in the United States is based on a federal-state motor fuel taxation regime that precludes tribes from participating in the system on an equitable basis. While the system of using federal fuel tax revenue for road construction and state fuel tax revenue for maintenance has worked to dramatically improve roads in many parts of the nation, it has failed miserably in Indian Country.

Like states, Indian tribes receive some funding for road construction from the federal Highway Trust Fund, but the amount given to tribes is much less than what states receive. Currently, Indian Reservation Roads make up nearly three percent of federal roadways, but they receive less than 0.5 percent of total federal highway funding.<sup>11</sup> At the current funding levels, the IRR program receives only about half the amount per road mile that states receive.

The Federal Government also makes some funds available to tribes for IRR maintenance under the BIA Maintenance Program. This Program is also woefully inadequate. The BIA spends less than \$1000 per mile for road maintenance, compared to estimates of \$4000–\$5000 per mile used by states to fund non-IRR maintenance.<sup>12</sup> Moreover, the states, who receive federal funding for their own roads that fall within reservations, frequently shirk their obligation to improve or maintain these roads and instead siphon off the funds for use elsewhere.<sup>13</sup>

Faced with a severe inadequacy of funding from federal and state sources, tribal governments have looked for other sources of revenue, including levying their own motor fuel taxes. While tribes have the same authority as other governments to collect taxes, the ability of tribes to tax fuel on tribal lands has been severely diminished by the Supreme Court. The Court has upheld the authority of the states to reach onto tribal land to collect a state motor fuel tax. The dual taxation that would result if both states and tribes impose a motor fuel tax makes it impractical for tribes to generate revenue through motor fuel taxes. Although some tribes and states have been able to negotiate motor fuel tax revenue-sharing agreements, those cases are the exception rather than the rule. In most areas, the state governments' collection of motor fuel taxes in Indian country displaces the ability of tribal governments to collect motor fuel taxes.

NCAI encourages this Committee to explore alternate sources of revenue for reservations roads. Given the dire conditions of reservation roads, it is unconscionable that the IRR program does not enjoy parity with the amount given to other governments through the Highway Trust Fund. NCAI feels strongly that this inequity of distribution must be addressed in whatever new system is devised to fund transportation systems across the nation. In addition, if motor fuel taxes are to remain the primary source of funding for road construction and maintenance, we urge the Committee to recommend that Congress clarify authority of Indian tribes to collect this tax on tribal lands. Finally, if the Committee recommends a dramatic change to the way revenue is raised for transportation costs, NCAI recommends that any such system be devised in a manner that treats Indian tribal governments equitably and gives them the same authority as state and local governments to raise revenue to fund the costs associated with building and maintaining transportation infrastructure.

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

<sup>9</sup>National Center for Statistics and Analysis, *Fatal Motor Vehicle Crashes on Indian Reservations: 1975–2002*, (2004)

<sup>10</sup>BIA Paper, *supra* note 1.

<sup>11</sup>U.S. Dept. of Transportation, Federal Highway Administration, TEA-21, A Summary (1998).

<sup>12</sup>Brief of Amicus Curiae the Inter-tribal Transportation Association in *Wagnon v. Prairie Band of Potawatomi*, available at <http://www.narf.org/sct/richardsvpbp/ITA%20amicus%20final.pdf>.

<sup>13</sup>*Id.*

### Conclusion

NCAI is committed to working with tribal governments to improve and build upon the successes of the last authorization of SAFETEA-LU because transportation infrastructure is vital to the enhancement of Indian tribal governments. Strengthening tribal governments and their communities by providing safe and reliable transportation infrastructure is essential for communities to prosper.

Senator TESTER. Thank you, Jefferson. We'll start out with you, Larry. You talked about the Question 10 and that you've had ten consultation sessions, and correct me if I'm wrong, across the U.S. Can you give me an idea of where you've held them and what kind of participation you've had. Because tribal consultations are critically important as we move forward and address that issue.

Mr. ECHO HAWK. Senator Tester, we've had ten of those consultations sessions. We tried to make sure they were located in different regions to provide tribal officials access. And we presently have going about, I think, more than half a dozen different subjects on consultations. And I'm not able to attend personally all. I did attend one in Alaska.

And I'd like LeRoy Gishi maybe to respond to more details about how those consultation sessions were carried out.

Senator TESTER. That would be great. LeRoy.

Mr. GISHI. Thank you, Senator Tester.

Yes, we had ten consultation sessions in the 12 regions that are associated with the BIA Region offices. And we can provide a list of those. Off of my head, I can think of only a few. But we did have those.

Primarily, what we did is the same presentation. So it gave the opportunity for tribes to be able to get the same content of what is in the presentation and publish the agenda and the presentation was published as part of the Federal Register, so that everybody had an opportunity to ask questions and also comment. And that process will continue as we go through the implementation process.

Senator TESTER. Couple questions. How much participation?

Mr. GISHI. We generally got on the average of about 50 to 60 at each location with a high of 138 in one of the locations.

Senator TESTER. Do you have plans to do many more?

Mr. GISHI. We will continue as a part of the process of this consultation to make sure that meetings like this morning are available where we're able to come and provide questions. And as the process continues, as more information is provided, it will be provided in the consultations.

Senator TESTER. Okay. And you can continue or you can kick it back to Larry. Is there any sort of pattern starting to develop as far as the Question 10 as far as solutions for it?

Mr. GISHI. In general, what we were doing was providing information for the purposes, of course, for the tribes to be able to have input into this. As we've gone through these ten sessions, we received various comments that are generally everywhere from in favor to opposition. That's part of the process that we're hoping to be able to get. We realize as we go through this, we will continue to get more, because for tribes in many cases to provide a final assessment or comment on things, at this point is premature because this implementation process has been over a year, and basically over the next two years.

Senator TESTER. So maybe I should rephrase the question. Has the input been positive towards it, negative towards it, or what has the input been towards Question 10?

Mr. GISHI. In general what we've found is that the tribal leaderships have identified and always and certainly reserve the right to continue to have comments. But in many cases have indicated that they understand that there is a process. That this was referred to the leadership of both Indian Affairs and the Federal Highway Administration for the purpose of providing a plan. And for that reason, they were in favor of moving forward with what was there.

Senator TESTER. Okay. Larry, you talked about the Recovery Act briefly in your statement today. You talked about the fact that there were hundreds of millions of dollars put out, 99.9 percent. And you need to be commended for that as obligated.

Can you give me an example of some of the projects? Were they primarily highway projects, bridge projects? What kind of projects are we talking about? And you can pass that over to Michael if you want.

Mr. BLACK. Thanks, Senator. We were able to, through the ARRA program, work approximately 400 repair and restoration projects, probably about 141 million, which was largely through the Road Maintenance Program on bridges and roads. And in addition, over 420 projects through the IRR Construction Program and for a total of about \$225 million.

It has enabled us to make a big difference out there on our transportation systems. A good example of that would be the Chippewa Cree Route 6 project, which was brought to us as a proposed project to be funded through ARRA. It had a lot of major safety concerns. We were able to reach a distribution process of approximately \$1.7 million toward that project.

Senator TESTER. Overall, do you have any idea of how many jobs were either saved or created by those dollars?

Mr. BLACK. I don't have that figure. We can provide that to you.

Senator TESTER. That'd be great. Thank you.

Last question as it applies to your group, Larry. We will be working on a highway bill reauthorization. It's been talked about by the other panels up here. How do you plan to include tribes and getting their perspective as far as that Highway Bill when it comes up?

Mr. GISHI. Thank you, Senator Tester. The process that we went through—The Indian Reservation Road Program and Highway Program, and we will continue to work with not only the Federal Lands Highway Program with Mr. Baxter and Mr. Sparrow, but also through the administration we have with other agencies' programs within Interior, including the National Parks Program of the National Park Service. And those will come through the Interior Department. And certainly in that process we have access to the TRIP Act, and we know what tribes are looking at relative to that. And those are things that are certainly a big part of what the administration will be looking at.

Senator TESTER. Well, I have a ton of different tribes, we're going to hear from some folks here in this next panel. And I guess the question is, do you have an outreach method that you utilize to reach out to tribes in both rural and urban America to make sure

that the Highway Bill meets the needs once we get to the floor of the Senate or the Committee?

Mr. ECHO HAWK. Senator Tester, from my perspective the coordinating committee that we've got that represents all regions is a primary conduit that we have for receiving information. And I would hope that they would be very active in working with us to make sure that we're receiving guidance. In addition to that, I'd just like to assure the Senator that I'm travelling across Indian country, going into communities, and it seems like tribes regularly talk to me about the transportation needs. So I feel like I have a pretty good network of communications with tribal leaders.

Senator TESTER. Very good. Thank you, Larry. I appreciate that. And appreciate both you fellows for being here. John, do you want to add to that? John Baxter.

Mr. BAXTER. I want to add that over the past several months Secretary LaHood has had a series of town hall meetings on reauthorization. And as part of that process has invited the tribal community into that discussion and for testimony to be heard throughout that process. So we will continue to have that effective outreach with the tribal nations.

Senator TESTER. Okay. That's good and as long you've got the microphone, I'll just keep going.

Mr. BAXTER. Sure.

Senator TESTER. We've got the folks and Larry Echo Hawk that are doing some outreach obviously. You have methods and you're doing some outreach with Ray LaHood. Do you have the ability to gather the information that these guys are gathering when you're working on a proposal?

Mr. BAXTER. We do. And oftentimes, we're meeting with them and outreaching with them. We certainly have the Indian Reservation Roads coordinating committee as a critical communications piece for all of us to utilize.

Senator TESTER. Good.

Mr. BAXTER. We have the consultation process that the Department of Transportation recently adopted, which reinforces, I think, the outreach effort that we already had in the past.

But in every effort we have opportunities with senior leadership to visit in Indian country and to participate in national conferences. And oftentimes at these conferences we will meet with tribal representatives and leadership to hear their issues face-to-face, one-on-one, and to get information on that process as well.

Senator TESTER. Because I think it's critically important, as you can tell by that question, that you have tribal consultations from the folks that are living it every day. So that's important. John, as long as you have the mic, one of the first statements you talked about in your testimony was that fatality is three times the national average on Indian roads. Can you pick out one or two things as to why this is the case?

Mr. BAXTER. There are a number of reasons the average is higher than you would see elsewhere. Native Americans are over-represented in certain categories of fatalities. There's a mention of pedestrians as one of those categories. DUI fatalities is another category. Speed fatalities, 35 years and younger. So there are certain categories where we know that the Native American population is

over-represented. And that's why our behavioral programs as well as our technical programs are targeted toward those areas where we see the greatest need.

Senator TESTER. Okay. We will get to Jefferson Keel. He has some statistics to define that. I'll get to Jefferson in a second. Have you been in on the Question 10 consultations over the summer?

Mr. BAXTER. Extensively, yes.

Senator TESTER. What have you learned?

Mr. BAXTER. Well, I think there's a couple things we have learned about Question 10. One is it's a complex issue. This has been in discussion since I've been in my position almost four years ago, and it wasn't resolved at the point through the Indian Reservation Roads Committee, and almost four years later we're still working that issue. So we know there's a complexity to it.

We also know there's a divergence of opinion across Indian country as to what the next step should be. And that's also been a challenge to work through the issue and facilitate and negotiate that issue.

We know that we need to resolve the issue. We need to move forward beyond Q-10. We are in the midst of looking at reauthorization needs for the next legislative cycle. And the more we're discussing and debated the Q-10 issue, that takes energy and time away from the more important broader concepts that we need to look forward towards the reauthorization needs of Indian country for the next several years.

Senator TESTER. Okay. Can you give me your perspective on the Recovery Act and what it's done for Indian roads?

Mr. BAXTER. I think the Recovery Act is a major success story in Indian country. As was already alluded to, we obligated 99.9 percent of over \$310 million of funds that were given to us.

What we haven't stated is that's on top of a program for regular Indian reservation funds program of \$450 million. Three years ago we had unobligated funds of over \$200 million. Now we've got that down to a very reasonable level from last year to this year. We've kept that balance down, so the net result is we delivered a \$450 million-plus program, plus \$310 million on top of that over the last year and a half. That is a tremendous accomplishment for this program, for the tribal nations that participated in the program and for the Bureau of Indian Affairs and Federal Highway Administration in delivery of that program.

So I see it as a major success story. I think what it shows is that needs are great and the ability to deliver on the program is great as well. And it's growing. It's grown since the beginning of SAFETEA-LU, \$275 million. This year we've delivered over \$700 million. So that's a significant statement.

Senator TESTER. Yes. Are you familiar with the position, and I think I've got the name right, Deputy Assistant Secretary of Tribal Transportation?

Mr. BAXTER. Yes.

Senator TESTER. Can you give me any idea, is that position filled at this point in time?

Mr. BAXTER. It's not yet. I just checked on it this week, and understand that that position is in process with the White House and we expect the selection in the near future.

Senator TESTER. How near is “near future?”

Mr. BAXTER. Don’t know.

Senator TESTER. Well, I would just say that I encourage you to fill that position. I think it’s really important as far as conduit goes.

Mr. BAXTER. Absolutely.

Senator TESTER. Okay. Jefferson, let’s talk about Question 10 for a second, because you’re in an interesting position that you do represent urban and rural tribes. Can you just give me your perspective on that fix and if it’s reasonable?

Mr. KEEL. Senator, in terms of the Question 10, NCAI doesn’t officially take a position. We represent over 250 tribes, and in that process there’s going to be winners and losers if there’s a change in the formula.

The official position would be that NCAI believes that any fix should be coordinated with tribal leaders. It should be fair and equitable. And as you’ve heard, tribal leaders believe there is a fix on the way, and they understand that they’re working through the program. But at the same time, there’s a difference and there’s no common ground in many areas.

There are tribal leaders who are very staunchly opposing any fix. There are those who believe it should be changed immediately. So NCAI’s position is that we will work to coordinate and facilitate any of those meetings and work with all of those parties concerned to make sure we get to the point where it is equitable and it’s fair in how it’s distributed.

Senator TESTER. Okay. We’ve heard from folks from transportation. We’ve heard from folks from Interior about outreach. Honest assessment is—You know, this is an age of cooperation we live in. And I think it’s critically important we have collaboration. How has the tribal consultation been from your perspective as it applies to highways?

Mr. KEEL. I believe that the consultations, as you’ve heard, have been positive. I’m not so sure that we’ve had enough. I know that those consultations need to continue. There are often concerns about the level of consultations in terms of how the information is distributed, how it’s received and the inclusion of the tribal leaders in trying to develop a fix.

In terms of collaboration, I think that it’s very difficult to get consensus in every or any region regardless of where those consultations occur. I believe honestly that tribal leaders will agree that there needs to be a fix. But I believe there is still going to be a process where it’s going to be very difficult to change the formula to something that not only is easily understood, because I believe that many tribal leaders simply don’t understand how that formula is derived and developed.

Senator TESTER. And for good reason.

Mr. KEEL. Probably so. Well, historically tribes have never been involved in the process. And so I think tribal leaders are now are becoming more and more sophisticated and more and more involved, and they’re able to not only acquire or hire or get experts to come and assist them, but they’re actually more and more able to participate in those developments. And I think that’s a positive.



Senator TESTER. I agree. And I'll just tell you from my perspective that reaching out, getting input is critically important. I think you guys are doing it. I think you need to do more of it and do it to the best of your ability.

It was pointed out to me earlier today at a meeting I was at, and that is, the legislative process isn't such where everybody wins. I mean, you go in and negotiate and collaborate and take input and you make the best call you can. And that's the best you can do.

Jefferson, from your position with NCAI, do you guys have priorities for the next Highway Bill, and if you do, what are they?

Mr. KEEL. Well, again we would ask that there be a 2 percent set aside for the safety program. I think I outlined in my oral testimony what some of those priorities were. We would ask that the tribes receive some of the equitable funding from the federal and state gas taxes, how that highway trust fund is developed and how it's distributed.

Senator TESTER. Okay. Last thing, and then we'll move on. In your testimony you put forth some information that said fatalities throughout the country were decreasing at 2.2 percent and increasing in Indian country by 52 percent. That's a stunning statistic.

First question is, what period was that gauged over, number one? And number two, why?

Mr. KEEL. The period was actually from 2000—Those are 2007 numbers.

I believe that there's \$14 million set aside for the Tribal Safety Program. That's a competitive process. Many times tribes have to apply for grants. Many times tribes aren't able to apply for those grants in a timely fashion, therefore they don't receive the funding. Oftentimes when tribes don't receive the grant and they call to find out why, they don't receive an adequate answer. That's not the reason why fatalities increased. That's the reason we don't get technical assistance to help us plan better and utilize the systems that we have within.

Senator TESTER. Okay. Well, thank you very much. I want to thank all the folks that were on this panel. I very much appreciate it. Thank you very much for being here.

Now, we'll have the next panel come up. We're going to do this transition real quick.

Thank you all very much. The next panel consists of the Honorable E.T. Bud Moran who is Chairman of the Confederated Salish and Kootenai tribes right here in this neck of the woods, Pablo, Montana.

Beside him we have Mr. James Steele, Jr., Chairman of the Montana-Wyoming Tribal Leaders Council. And that organization is headquartered in the town of Billings.

Beside him we're going to have Timothy Rosette, who's Chief of the Environmental Health Division of the Chippewa-Cree tribe of the Rocky Boy reservation. And there's Mark Selder.

And then once again, last but certainly not least, we've got John Smith, the Director of the Division of Transportation, Eastern Shoshone and Northern Arapaho Tribes in Fort Washakie, Wyoming.

The same rules apply here. Before I start with Chairman Moran, I want to remind you all to restrict your oral comments to five minutes. We will make your complete written statement a part of the

official record. But for your testimony, I'd like your statements to be about five minutes. And if you could do that, we'd be forever grateful.

So, Bud, you're first.

**STATEMENT OF HON. E.T. "BUD" MORAN, CHAIRMAN,  
CONFEDERATED SALISH AND KOOTENAI TRIBES**

Mr. MORAN. Senator Tester, George Waters wanted to be here to accompany me.

Senator TESTER. Absolutely. George Waters is welcome anywhere.

Mr. MORAN. Senator Tester and distinguished guests, I have submitted a detailed statement for the record and will now summarize my testimony.

It is an honor to be hosting this hearing on our reservation. I'm pleased to present this statement representing the position of my tribes on transportation issues of the Salish and Kootenai people.

I ask that you please relay my regards to Committee Chairman Dorgan. He's been a great advocate for the Indian people with his pending retirement from the Senate. Please let him know we will miss him and wish him the best of luck.

I also have to send my regards to Senator Barrasso. We have also appreciated his support.

For too long much of the basic infrastructure of almost every Indian reservation in the United States was simply overlooked. The things most Americans take for granted are lacking on our homelands. Many do not have decent roads, drinking water, sanitation systems or communications. Many do not have broadband or decent cell phone coverage. While all of us, and I'm sure every member of the U.S. Congress, would like to see Indian people become more self sufficient and to raise levels of employment on our reservations, these things are not possible without basic infrastructure.

Nationally there's a lacking backlog of about \$13 billion for BIA road systems and tribal roads to bring existing roads up to adequate design standards. Indian tribes still have the highest vehicle and pedestrian fatality rates found anywhere in the country, and in a number of areas they are three to four times the national average.

Beyond the issue of road construction is a profound problem of road maintenance. Not only has the Bureau of Indian Affairs road maintenance been underfunded but it has been stagnant at a rate of \$26 million annually for the entire United States for at least two decades. This is really a serious problem on the Flathead Reservation, as I am sure it is elsewhere. We have been getting only \$190,000 a year for road maintenance for the past six years.

Over the course of the last two years, Senator Dorgan circulated a discussion draft known as the TRIP Act. The discussion draft contained many provisions that would be tremendously helpful to the Indian tribes. And I've highlighted some of these sections in my written statement.

I understand the positive nature of many provisions contained in the TRIP Act; I would not support it being introduced next year without a number of changes.

The Indian reservation road formula is broken. It will gain nothing from the TRIP Act if it is not fixed. Let me give a rather startling example of why I feel this strongly. Prior to the enactment of SAFETEA-LU, the national funding level for the Indian reservation roads was \$275 million a year. Of that amount the tribes in the Rocky Mountain Region, all tribes in Montana and Wyoming except Salish-Kootenai who are in the Northwest Region, got \$20 million.

With the increase authorization in SAFETEA-LU, the national funding level for Indian reservation roads increased to 450 million. After that significant national increase, the Rocky Mountain Tribes' total allocation was 19 million. Yes, with 175 million national increase, the Rocky Mountain Region lost money. This is the region with most of the largest reservations and the most miles of roads of any in the country.

On the Flathead Indian Reservation in 2006, we received 1.3 million from the formula. In 2010 we will likely be receiving only 750,000 for a 1.3 million reservation.

I don't understand how this is possible or how the BIA has not put an immediate halt to this drain of money from Tribal and BIA roads. This is because the Indian Reservation Roads Inventory is being unethically and improperly manipulated by tribes and states that have learned how to game the system by adding thousands of miles of roads to the inventory. This needs to stop and it should stop today.

It does not require an act of Congress or even a new regulation. It simply requires the BIA to stop pretending this is not a crisis and to stop allowing the Indian Reservation Roads Inventory System to be manipulated.

So while there are Indian people on the reservations who can't get to their jobs or their schools or to the hospital due to impassable roads, we have a situation where BIA roads funds are being used to supplant a state's responsibility for its own interstate highway system. A system and a road for which the state undoubtedly receives Federal Highway Trust Funds.

Mr. Chairman, my submitted testimony also discusses an Interior Inspector General's report that found major inaccuracies in BIA road inventory and its claimed increases in roads in the inventory. My testimony discusses roads that are proposed to be constructed in areas that will never allow such construction. These discrepancies cannot be ignored and should not continue.

In conclusion, I want to again thank the Committee and Senator Tester for convening this hearing. Transportation directly affects health, safety, and economic matters including jobs and the ability to attract businesses. Safe roads allow us to remain connected as a tribal people. I want to thank you. And we will continue our support of positive changes to the Indian Reservation Road System. And we will keep current.

[The prepared statement of Mr. Moran follows:]

PREPARED STATEMENT OF HON. E.T. "BUD" MORAN, CHAIRMAN, CONFEDERATED SALISH AND KOOTENAI TRIBES

Senator Tester and distinguished guests; as I said in my welcoming statement, it is an honor to be hosting this hearing on our Reservation and I am pleased to

present this statement representing the position of my Tribes on transportation concerns and priorities of the Salish and Kootenai people. I ask that you please relay my regards to Committee Chairman Dorgan. He has been a great advocate for the Indian people and with his pending retirement from the Senate, please let him know that we will miss him and we wish him the best of luck in whatever venture he decides to pursue. I also ask that you send my regards to Senator Barrasso of Wyoming, the Ranking Member on this Committee. We have also appreciated his advocacy and understanding of our issues.

Let me start by stating that for far too long much of the basic infrastructure of almost every Indian Reservation in the United States was simply overlooked. The things that most Americans take for granted often are lacking on our homelands. Many do not have decent roads, drinking water and sanitation systems, or communications. Many do not have broadband or decent cell phone coverage. While all of us—and I am sure every member of the U.S. Congress—would like to see the Indian people become more self sufficient and to raise levels of employment on our Reservations those things often are just not possible without basic infrastructure. I am always glad when Congress enacts legislation that might, for instance, include tax breaks or accelerated depreciation for businesses that locate on Indian reservations, however the truth is that you can enact tax breaks all day long but until we can ensure a business that they will have access to good infrastructure, none of them are likely to chose to build a business on reservation lands. You have probably heard the old story about a tourist out west who pulls into gas station and asks where the local Indian reservation starts. The answer is “the reservation starts where the highway ends.” For many decades that was not just a joke but a pretty accurate portrayal of the roads in Indian County. Now things have gotten better, particularly on the Flathead Reservation but there are still many roads here—and it is worse on most other Indian reservations—where the roads are severely substandard. The FY 2009 Indian Reservation Roads Program Relative Needs Distribution Factors Report found a backlog of \$13 billion for BIA system and Tribal roads to bring existing roads up to adequate design standards. Indian tribes still have the highest vehicle and pedestrian fatality rates found anywhere in the country and in a number of areas are three to four times the national average. The leading cause of death in many Indian communities is fatal car crashes and much of that is related to road conditions including both design and lack of maintenance. The problem is worsened when a responding ambulance (when there even is one), has to deal with the same roads and is delayed in its response. There are many studies showing the extent to which reservation roads are underfunded and poorly maintained when compared to comparable roads in off-reservation communities and urban areas.

The \$310 million included in the American Recovery and Reinvestment Act for Indian reservation roads was most appreciated and we thank President Obama and the Congress for enacting that bill. We were able to address some of our backlog of needed road repair and in so doing created much needed employment. We also were able to use ARRA funds for a bus transit project we’ve worked on together with the State of Montana.

Beyond the issue of road construction is a profound problem throughout all of Indian country relative to road maintenance. Not only has the Bureau of Indian Affairs (BIA) road maintenance program been underfunded but it has been stagnant at a rate of \$26 million annually for the entire United States for at least *two decades*. This is really a serious problem on the Flathead Reservation as I am sure it is elsewhere. We have been getting only \$190,000 a year for maintenance for the past six years. When some of earlier highway bills such as TEA-21 were enacted that included construction money from the Department of Transportation for Indian Country there was an understanding that those funds would supplement the budget of the Transportation Office of the Bureau of Indian Affairs, that the BIA would not be allowed to use new DOT funding to supplant existing BIA roads funds and that the BIA would continue to be primarily responsible for maintenance. The BIA did not live up to its end of that bargain and now, due to the totally unrealistic funding for maintenance from the Bureau, tribes had to secure a provision in the SAFETEA-LU bill of 2005 allowing them to reprogram up to 25 percent of their road construction money for maintenance. That legislation included language directing the BIA to continue to be primarily responsible for maintenance but as you can see from the stagnant \$26 million figure, the BIA, no doubt with pressure from OMB, has shirked that responsibility. So as a result, not only are roads in Indian Country dangerous due to lack of maintenance but they fall apart more quickly and then have to be rebuilt at far greater costs than if they had been maintained and resurfaced.

This year Congress was not able to enact a Highway Bill and the present program is funded only through the end of calendar year. We certainly hope it will be ex-

tended and that during the next Congress you will enact a Highway Reauthorization Bill. It is critical that such a bill includes a major Indian title, as has been the case for at least the last three Highway Authorization bills, and that you include Indian tribes throughout as much of the bill as is possible ensuring that we can access all appropriate programs. Over the course of the last two years Senator Dorgan circulated a discussion draft which was a comprehensive amendment to SAFETEA-LU known as the Tribal Reauthorization of Indian Programs or simply the TRIP Act. The discussion draft contained many provisions that would be tremendously helpful to Indian tribes including increased appropriations for the Indian Reservation Road (IRR) program to \$800 million with stepped increases that would take the program to \$1 billion annually by FY 2015. It included significant increases for the Tribal Transit Program and the Tribal Bridge Program and established a Reservation Safety Program. It ensured increases in reservation road maintenance funding; allowed tribal access to other Federal programs and allows utilization of the Indian Self Determination Act as a vehicle for directly accessing DOT funds. Beyond these positive provisions that were in the TRIP Act there are various additional provisions we would like to see in the next highway bill. We support the increases proposed for transit and as stated above we used some ARRA funding to upgrade and purchase transit equipment but that money came through the State of Montana and they require matching funds on our part to operate the buses, so we hope there can be some money dedicated to tribal transit services in addition to equipment.

Somehow there also needs to be a requirement for counties and states to coordinate with tribes relative to roads that cross reservations where there are varying governmental entities, state, tribes and counties that might have jurisdiction over a the same but at various points along that road. We can't have one entity maintaining a road for a two mile stretch and then have a different entity ignore that same road in the next two mile segment. All transportation agencies need funding but there needs to be some direction for coordinating. Perhaps with the acceptance of Federal funds would require a commitment for coordination and an annual report describing that coordination.

Senator Tester, while I hope that you introduce the TRIP Act early next year, and while I understand the positive nature of many of the provisions contained in the conceptual Dorgan draft, I would not support your actions in introducing it if you did not first make a number of key changes. The IRR formula that the BIA is using, and that the Federal Land Highway Office is supporting, is now broken and *we will gain nothing from the TRIP Act if you don't fix it*. Let me give a rather startling example of why I feel this strongly.

Prior to the enactment of SAFETEA-LU, the national funding level for the IRR was \$275 million a year. Of that amount the Tribes in the Rocky Mountain Region (all tribes in Montana and Wyoming, except CSKT who are in the NW Region), got \$20 million. With the increased authorization in SAFETEA-LU the national funding level for the IRR increased to \$450 million. *After that significant national increase the Rocky Mountain Tribes total allocation was \$19 million*. Yes, with a \$175 million national increase, the Rocky Mountain Region tribes lost money! This is the region with some of the largest reservations and the most miles of roads of any in the country. On the Flathead Indian Reservation in 2006 we received \$1.3 million from the formula. In 2010 we will likely be receiving only about \$750,000 for a 1.3 million acre reservation. I don't understand how this is possible or how the BIA has not put an immediate halt to this drain of money from Tribal and BIA lands. This is because the IRR Inventory is being unethically and improperly manipulated by tribes and states that have learned how to game the system by adding thousands of miles to IRR Road Inventory for roads that should not qualify to be on such a list. The TRIP Act did nothing to change that. Senator, if this is not corrected and if the next Highway Authorization bill did manage to increase the funding level for the IRR to \$800 million, the tribes in Montana and Wyoming might end up going down to a \$15 million share! This needs to stop and it should stop today. It does not require an act of congress or even new regulations. It simply requires the BIA to stop pretending this is not a crisis and to stop allowing the IRR Inventory system to be manipulated. Despite contentions to the contrary the changes they are suggesting in Question 10 of the IRR formula will not fix this problem. The Question 10 changes contain some improvements but nowhere near enough.

In 2006, 76 percent of the roads generating share in the BIA's nationwide Road Inventory were Tribal or BIA roads. Certainly these are the roads the program is intended for. That is why it is called the "Indian Reservation Road" program (emphasis added). This program is intended to construct, repair and maintain roads on Indian reservations and traveled by the Indian people who live on those reserva-

tions. These roads are on lands that the United States holds in trust and the program is a part of Federal governments fiduciary trust responsibility to federally recognized Indian tribes. The injury and death statistics used to justify the program certainly come from those on-reservation roads. Yet, in 2010 only 24 percent of the roads generating share in the BIA's nationwide Road Inventory are Tribal or BIA roads. Instead of being called the Indian Reservation Road program it should be changed to the "State and County Road Program Being Supplemented by the BIA." This is happening because certain tribes are adding thousands of miles of off-reservation state and county roads to their IRR inventories. In 2004 there were 62,000 miles in the national IRR Inventory. In 2010 there are 126,000 miles on this same inventory. So while we have remained stagnant or lost funds during times of large appropriations increases, tribes that are gaming the system are doing just the opposite. There is a tribe in Minnesota whose IRR funds went from \$700,000 to \$7.3 million over the course of two years. A tribe in Oklahoma gave \$20 million of IRR funds to the state of Oklahoma for Interstate Highway 44, a road that the State of Oklahoma is clearly responsible for. This will apparently help customers get to one of this tribe's numerous casinos. So while there are Indian people on reservations who can't get to their jobs, or their schools or to the hospital due to impassable roads, we have a situation where BIA roads fund are being used to supplant a state's responsibility for its own interstate highway system, a system and a road for which that State undoubtedly receives Federal Highway Trust Funds.

The formula used to allocate IRR funds is known as the Tribal Transportation Allocation Methodology (TTAM). The BIA continues to tell the Congress and the public that TTAM was a bi-product of a Negotiated Rulemaking Committee called for in the TEA-21 highway bill. What is not discussed is that after that rulemaking committee submitted its work to the BIA, the BIA made some rather substantial changes *on its own*. Those changes resulted in the manipulation of inventory data that has skewed the Cost to Construct (CTC) and Vehicle Miles Traveled (VMT) calculations for those tribes located near urban area and high volume highways.

IRR funds are allocated under formula known as the Relative Need Distribution Factor and it has three basic components: (1) Costs to Construct (CTC) (2) Vehicle Miles Traveled (VMT) and (3) Population (POP). In addition to on-reservation roads the formula allows tribes to include roads that "access" the reservation. Unfortunately, access is not defined. Without a definition the possibilities are endless. Senator, when you are in DC and fly out of Dulles Airport and are heading west on I-66 if you kept going far enough and connected to other highways you would eventually "access" an Indian reservation wouldn't you? Highway 93 crosses our reservation but just south of our reservation and slightly north of Missoula it intersects I-90. Should we claim that as accessing our reservation? It gets better. Think if instead of Missoula there was a much larger urban city there, and think of the Vehicle Miles Traveled—the VMT part of the formula—on I-90. How many vehicles that traveled such a road and that didn't have a single Indian person inside can be claimed? The BIA is allowing tens of thousands of miles of such roads into the inventory including Interstates, National Highway System Roads, State, County and Township Roads. Most of these routes do not legitimately provide direct access to an Indian Reservation. A tribe in Wisconsin whose total land base is 4,600 acres now generates 800,878 Vehicles Miles Traveled on 2,436 miles of claimed roads in its inventory. This VMT is greater than the entire VMT for each of five BIA regions of the country.

Lest you think that these are simply the observations of a tribe who has seen nothing from the Congressional increases let me quote from a memo by the Interior Inspector General who examined this issue in a report entitled "*Department of the Interior Roads Programs—The Dangers of Decentralization*," dated February 1, 2010. The IG wrote: "We found significant inaccuracies in roads inventories that affect the ability of bureaus to identify needs correctly and inefficiencies in the processes that bureaus use to prioritize their needs". The report indicated that the BIA Roads Program "lacked sufficient safeguards to adequately detect misuse and mismanagement of funds." The report further indicated that the BIA did not have adequate inventories of its roads and it referenced the large increases in the BIA's national inventory of roads as being "unexplained."

Another major area of concern that tribes have can be found in the many miles of "proposed" roads that have been added to a number of tribes' inventories. These are roads that a tribe would like to build someday so they ask for and get funds from the IRR formula for them. The problem is that many of them will never be built. We have seen situations where Alaskan Villages are claiming proposed roads in wilderness areas or in areas where the terrain is such that 100 German engineers could not build a road. Yet as long as that proposed road remains on a tribe's list it will continue to get funded, year after year after year. There does not appear

to be anything in the BIA's proposed Question 10 revisions that will change these problems.

When a road is added to a tribe's inventory its pavement condition is supposed to be rated as to its actual degree of needed repair and for a paved road, if it gets a rating of 60 or less it can generate funding for the paved surface and the aggregate base under the surface at 100 percent. There are untold miles that have been added to the inventory that are all rated at exactly 60 which is nearly impossible. This means that someone sitting at a desk simply listed the road without a scintilla of a field examination. This practice has resulted in thousands of miles of non-BIA and non-Tribal roads generating funding at 100 percent with bogus data and at the expense of those tribes who choose not to cheat the system.

What is equally amazing is that after claiming these roads in their inventories, these same tribes don't actually do any work on them. With the exception of the Oklahoma tribe that gave that state \$20 million for I-44, we have never heard of a tribe actually doing work on the thousands of off-reservation miles claimed. They simply use the existence of the road to add it to their inventory and then spend it on something else, presumably transportation related but not on the claimed road. I am not an attorney but I wonder if this practice is not coming very close to being fraudulent. Additionally the statutes governing this program indicate that the funds are for road "projects" and 23 USC 101(a) defines that term as "an undertaking to construct a particular portion of a highway." It defines "construction" as "the supervising, inspecting, actual building and incurrence of all costs incidental to the construction or reconstruction of a highway." Senator, if there is no "project" and there is no "construction" how are these roads qualifying?

Continuing with the remarkable situation is the fact that non-tribal and non-BIA roads that are added to tribal inventories are supposed to be added at what is known as a "Non-Federal Share" of the costs of the project. 23 USC 201(1) says that funds appropriated to carry out the Federal lands highway program may be used to pay the Non-Federal Share (NFS) of the costs of a project that provides access to or is within an Indian reservation. The non-Federal share is normally between 5 percent to 20 percent yet many of these roads are being funded at 100 percent of their costs. The issue of what percentage of costs a tribe should get is discussed in Question 10 of 25 CFR Part 170, Subpart C a key part of the IRR formula. On February 12, 2009, Senator Jeff Bingaman forwarded a letter from the Navajo Nation to the Interior Department and to Federal Highway Administration. The Chairman of the Navajo Nation's Transportation Committee was expressing concerns similar to what you have heard from me today. Jeff Paniati, the Acting Administrator of the FHWA responded to the Senator on March 25, 2009 and in addressing concerns about funding for such non-BIA and non-tribal roads said,

"In the calculation that determines a Tribe's share of the IRR Program funding, data from State routes generates funding only at the local match rate (typically 10 to 20 percent of their generated total.)" [parenthetical included in original]

If Mr. Paniati is correct, there is a major violation of the regulations ongoing as there are quite literally thousands of miles of such exact roads being funded at 100 percent, not 10 to 20 percent.

The Paniati letter also said that,

"Interstates, although eligible for expenditure of IRR Program funding, are not included in the data entered into the distribution formula at all."

Again, if Mr. Paniati is correct, there are further ongoing violations of the regulations and laws as there many miles of Interstate highways that tribes *are* absolutely including in their inventories that profoundly affect the distribution formula. How else could the tribe in Oklahoma have gotten \$20 million that it gave to the state?

Question 10 ostensibly tells us that two key factors in the IRR formula (Cost to Construct, CTC) and the aforementioned VMT, should be computed at the Non-Federal Share for matching funds if the road in question is otherwise eligible for other Federal Highway funds *unless* (see subpart 3) the public authority (i.e. State or County) responsible for maintenance of the road in question provides a) a certification of maintenance responsibility and b) a statement that it is unable to provide funding for the facility. When States accept Federal Highway funds from the United States they are required under 23 USC 116 to certify that they will maintain the project that the federal funds were used to construct. If they do not do so the Federal Government may cease all funding for road work in the state. I do not understand how a state that has certified it is responsible for maintaining its roads can then turn around with a wink and a nod and tell a tribe that the state does not have the money to maintain the road so the tribe can claim it within its inventory. When tribes in Montana asked our State Highway Department if they would make

such a statement they indicated that they would not and that they felt they would be perjuring themselves if they did. Beyond differing interpretations of the law by states, one of the many problems with how the BIA is implementing the formula is that it is not even being applied uniformly from one BIA Regional Office to another. Some regions will allow the inclusion of such roads and others will not.

In conclusion, I want to again thank the Committee and Senator Tester for convening this hearing. Transportation is very important for the Indian people. It directly affects health, safety and economic matters including jobs and the ability to attract businesses. We hope that the TRIP Act will be reintroduced next year. If the BIA does not thoroughly fix the misapplication of formula by a large number of tribes and the widely varying application of the formula that change from one BIA Regional office to the next, the Congress will need to do so via amendments to the underlying statutes.

Senator TESTER. Well, thank you Chairman Moran. I want to thank you for hosting us here today and thank you for your testimony. And we will follow up with some questions after we get done with the rest of the presenters. Thank you very much. James Steele.

**STATEMENT OF JAMES STEELE, JR., CHAIRMAN, MONTANA-WYOMING TRIBAL LEADERS COUNCIL**

Mr. STEELE. Thank you, Senator Tester. And I want to thank you for responding to our resolution dated August of 2010 requesting this hearing on Indian reservation roads. And in my opinion, the term Indian Reservation Roads in this current system is not proper for this process.

These roads in my opinion as Chairman of the Montana-Wyoming Tribal Leaders Council, in large part in a lot of the regions of the nation are not Indian reservation roads. They are in fact other things. They are interstate highways, they are roads that do not exist, they are proposed roads, and in our opinion from the Montana-Wyoming Tribal Leaders Council, we're unified. Our region is not split on this issue. We are unified 100 percent in all of our member tribes.

And it is our opinion that this system is broke as chairman Moran has stated, it's broken. We appreciate the hearings and the consultations sessions. We appreciate the session that we had last fall—I believe it was in California—on this issue. There was not consensus.

But it is our opinion that the BIA has been interpreting data region-by-region in a different manner. And while we vary in manners of interpretation, some regions are allowing roads to be added, where other regions would reject the same road in a similar circumstance. Some regions are including interstate highways in clear violation of the BIA-DOT guidelines for the IRR program.

The Montana-Wyoming Tribal Leaders Council has previously made its concerns known to the BIA and the Federal Highway Administration regarding the IRR data. So we still express those concerns. And you will hear testimony from Mr. Rossette and John Smith on this issue in more detail, but I want to give a general background that our tribal leaders and our tribal councils and governments that are part of the Montana-Wyoming Tribal Leaders Council are unified. And I take a little bit of exception to President Keel's comment that some regions are not unified. Maybe some are not. Ours is.



And so with that, Senator Tester, I appreciate you holding this hearing. I appreciate your leadership on the Indian Affairs Committee. And I appreciate you including the Majority/Minority staff here and Senator Barrasso's representative also.

Senator TESTER. Absolutely, James. Thank you for being here, too. I very much appreciate your work.

Tim Rosette.

**STATEMENT OF TIMOTHY W. ROSETTE, SR., CHIEF,  
ENVIRONMENTAL HEALTH DIVISION, CHIPPEWA CREE  
TRIBE, ROCKY BOY RESERVATION**

Mr. ROSETTE. Thank you, Senator Tester. I'm having throat problems here, a little congestion. I hope you guys can all hear me. It's never been a problem, me being heard.

Senator TESTER. First time I've heard you. Could you put the mic a little closer and it will help your throat and help people hear you, too.

Mr. ROSETTE. Okay. While the SAFETEA-LU provided us a significant increase in IRR funding, we are dismayed that the land-based tribes saw little increases and a lot of times literally lost funding because of the misinterpretation, misapplication, whatever we want to call it, on controlled implementation on the formula that the BIA Federal Highways administers.

Let me explain why funding decreases to our largest land-based tribes in the U.S., why that has happened. Because certain BIA regions allow their road engineers to include all types of roads regardless of ownership, and Federal Highways is doing nothing about it since they directly benefit from the off-reservation roadwork being done. By allowing all roads into the BIA Roads Inventory System, the funding becomes diluted to the larger land-based tribes of the United States.

All we have, sir, is all that we have in these rural areas. Every statistic that was presented to you today, Senator Tester, that came from reservations in Montana, Wyoming, North Dakota, South Dakota, all of the land-based reservations. These statistics come from them.

The majority of the money goes to other places. That's one of the bottom line problems with this whole system. And they talk about statistics and increases in Indian country. Nobody answers questions directly. I mean, if you ask me a question, I'll answer you directly. You know me. I will be very direct, sir.

The reason why deaths have increased on Indian reservations is because the funding's not coming to Indian reservations. That's why the increase. We're not able to fix our roads like we used to be able to fix our roads. We're not able to maintain our roads like we used to be able to maintain our roads. It's a major, major problem.

The TRIP Act, you know, to me the TRIP Act is a good start at a piece of legislation, but until the problems are fixed within the formula, and it's been mentioned before, and Question 10 is a part of that, but there are lot of other things within the formula that lead to manipulation and so forth by those who really just try to build their inventories just to build their inventories.

Mr. Chairman, IRR funding has been reduced from 76 percent of the IRR gross funding to larger rural-based tribes in 2006 to 24 percent in 2010. This represents a significant loss of critical funding at a time of increases in roads funding.

The increases are going to tribes in the urban areas that have more access roads to their reservation, have more BMTs, their cost to construct it considerably higher, and even with the changes presented forth by the Bureau of Indian Affairs with the non-federal share, instead of funding them at 100 percent, funding them at the non-federal share, it still would be a considerable amount of money that would go to those areas.

Taken out of Mr. Smith's report, I'd like to read a statement. It was reported specifically from the United States Office of the Inspector General, February 1st, 2010. "We find significant inaccuracies in roads inventories that affect the ability of bureaus to identify needs correctly and inefficiencies in the process that bureaus use to prioritize their needs." The report further states, "All bureaus have project implementation plans and the ability to track spending. Two of the bureaus, however, Bureau of Indian Affairs and Bureau of Land Management, lack sufficient safeguards to adequately detect misuse and mismanagement of funds."

As Chairman Moran has pointed out, we believe that there has been significant misuse and mismanagement of these programs.

I'd like to throw a few more statistics at you, Mr. Chairman. Motor vehicle injuries are the leading cause of Native American deaths from ages 1 to 34. And they're the third leading cause of death in Indian country.

Mr. Chairman, to date there have been at least two investigations by the Inspector General's office on the IRR program showing negative impacts. The one statement I read directly out of Mr. Smith's testimony, the other was an incident in Alaska.

I don't like to just complain. I'd like to propose some solutions. I don't think it takes an act of Congress to fix this problem. I think it's an administration problem. I think administratively this thing can be handled. It can't be handled politely, sir. I know that. And I know the politics of this whole thing. When you take money from one place and redistribute it to another place, it's going to be daunting for the Senate and everybody involved. And has to be done to such a way that—I don't know.

But to point out further, we weren't asked when it was taken from us. We were the third largest recipients of Indian reservations roads funding prior to SAFETEA-LU. Now we've become the smallest recipient of Indian reservations roads funds since its implementation.

Thank you for your time.

Senator TESTER. I appreciate your testimony.

[The prepared statement of Mr. Rosette follows:]

PREPARED STATEMENT OF TIMOTHY W. ROSETTE, SR., CHIEF, ENVIRONMENTAL HEALTH DIVISION, CHIPPEWA CREE TRIBE, ROCKY BOY RESERVATION

## **I. Introduction**

On behalf of the Chippewa Cree Tribe, I want to express my appreciation to the Senate Committee on Indian Affairs, to you Senator Tester and to retiring Committee Chairman Dorgan, for convening today's hearing concerning Tribal transportation. Thank you for your advocacy on behalf of Indian tribes. With all the other

problems in our country today, transportation needs can easily be overlooked. We are grateful that you are taking a leadership role to address the most basic protection that we can afford our members today—safe transportation through our lands.

The Federal Lands Highway Program and the Indian Reservation Roads Program (IRR) provides funding for a coordinated program of public roads that serve Federal land transportation needs. The Indian Reservation Roads (IRR) Program is administered cooperatively by the Federal Highway Administration (FHWA), the Bureau of Indian Affairs (BIA), and the Indian Tribes that have self-determination contracts or self-governance compacts in place for the administration of IRR program functions and funds. The Chippewa Cree Tribe is a self-governance Tribe and we administer most Federal programs formerly administered by the BIA including the IRR Program. For most Indian tribes, the IRR program is the sole source of funding through which the local Indian communities receive critically needed transportation improvements to facilitate better access to jobs, health services, educational opportunities, and economic development. This program is vital to the well being of all Native people living on Indian lands throughout the United States

Over the last five years, as a result of significant increases Congress has provided for the Indian Reservation Roads (IRR) Program, some Tribes have achieved many successes and improved transportation infrastructure throughout our communities and helped educate our members about road safety. The infusion of American Recovery and Reinvestment Act (ARRA) stimulus funds put our Members to work and accelerated road and bridge improvements.

Because of ARRA funding, the Chippewa Cree Tribe was able to seal cracks, chip seal, replace fences, and replace traffic signs on approximately 30 miles of BIA system roads as well as providing temporary employment to approximately 40 tribal members.

While SAFETEA-LU provided a significant increase in IRR funding, we are dismayed that the land based tribes saw little increase or lost funding because of the misinterpretation and misapplication of the regulations by the BIA and FHWA. The IRR program funding formula is an inventory-driven formula. The accuracy of the BIA's Road Inventory field Data System (RIFDS) is paramount to ensuring the integrity of the IRR Program. The misinterpretation and misapplication of the regulations has manifested itself as the uncontrolled implementation of the road inventory update process which is used to generate formula shares for all tribes. As a regional program, without standardized practices among the BIA Regions the integrity of the IRR program has suffered to the point that the IRR inventory has become an "arms race" to see who can generate the most funding regardless of who gets harmed by the process. This uncontrolled implementation of the inventory continues to go unchecked and is having a devastating effect on Land Based Tribes located in Montana, Wyoming, Arizona, New Mexico, Utah, the Dakotas and some tribes in Minnesota.

Because of this uncontrolled implementation of the inventory update process, that part of the inventory which generates share amounts for the Land Based Tribes has been significantly reduced from 76 percent in 2006 to 24 percent in 2010 and is declining at an accelerated rate. My colleague Mr. John Smith will elaborate more on the problems we are experiencing with the IRR inventory in his testimony which will follow mine.

The following testimony highlights what the Chippewa Cree Tribe considers to be the most critical needs for the IRR program and requests that the Committee consider incorporating them in the new highway reauthorization bill.

The successes we achieved with our recurring IRR Program funds and ARRA stimulus dollars must be sustained by Congress in the next surface transportation bill. I ask that you champion transportation issues for Indian country in the 112th Congress and introduce the *Tribal Reauthorization of Indian Program (TRIP)* legislation (including Land Based Tribes suggested revisions), which Indian tribes, the National Congress of American Indians (NCAI) and the Inter-Tribal Transportation Association (ITA) developed and which this Committee circulated for comment last year. Please give Tribes a seat at the table in the next Congress so that the authorizing committees know our needs and see Tribal consensus recommendations to improve our transportation infrastructure. We are anxious to contribute new ideas and recommendations to improve that draft legislation, to build on it and on the successes Tribes realized under TEA-21 and SAFETEA-LU.

As I will detail more fully below, the proposed TRIP legislation:

- increases annual appropriations for the IRR to \$800 million annually, with stepped increases of \$50 million thereafter to grow the IRR Program to just over \$1.0 billion at the end of the next reauthorization;

- increases the Tribal Transit Program to \$35 million annually, with stepped increases of \$10 million each fiscal year thereafter;
- increases the IRR Bridge Program to \$75 million annually, with stepped increases of \$12.5 million thereafter;
- establishes two new Tribal Safety Programs (within FHWA and NHTSA) and appropriates \$50 million annually for each program, to address roadway structural and design safety flaws and driver, passenger, and pedestrian behavioral issues;
- authorizes Tribes to expend up to \$500,000 annually for road maintenance;
- make Tribes direct recipients of Federal transportation program funds;
- develops and streamlines award instruments between Tribes and federal agencies and between Tribes and the States in a manner similar to the Indian Self-Determination and Education Assistance Act (ISDEAA), P. L. 93-638, to better ensure that Tribes actually receive federal transportation funding.

The backlog of unmet transportation construction needs in Indian Country is in the tens of billions of dollars. Many of the jobs, educational opportunities, health care and social services for Native Americans are located at considerable distance from our Tribal homes and communities. To move closer to these opportunities, we would have to move away from our lands and homes, undermining the continuing viability of our communities, Tribal sovereignty, and our Native culture. This is unacceptable.

Despite these limitations, Indian Country has achieved many successes in improving transportation infrastructure throughout our communities in recent years. Many of these successes were fostered by the passage of SAFETEA-LU which significantly increased program funding, created the Tribal Transit Grant Program, and authorized the Secretary of Transportation to enter into direct agreements with Tribes to receive IRR Program funds, Tribal Transit funds and Scenic Byways funds rather than requiring Tribes to access these funds through the Bureau of Indian Affairs (BIA) or as subrecipients of State Federal-aid funds.

Tribal transportation successes are threatened unless the next highway reauthorization includes provisions specific to Tribal governments. We realize this is no easy task for Congress. But maintaining the status quo of third-world transportation infrastructure in Indian country comes at a terrible price which Congress must consider.

## II. Current State of Transportation in Indian Country

Indian Tribes have heard a lot about the Administration's "livable communities" initiative to decrease transportation costs, expand affordable housing, and improve economic competitiveness. Congress and the Administration need to understand that Indian country lacks basic transportation infrastructure to realize those goals. Congress must realize that Tribes have the most rudimentary transportation infrastructure in the country, and lack the funds needed to construct even the most basic road improvements such as safer intersections, railway crossings, breakdown lanes, and basic safety features such as guardrails, rumble strips, stripping, road reflectors, crosswalks, traffic lights and streetlamps. Just as importantly, Tribes lack the funds necessary to perform basic routine as well as emergency road maintenance to keep our roadways in a safe condition to protect our Members and other motorists.

Tribal transportation infrastructure still lags far behind transportation infrastructure in the rest of the country—with tragic results. The poor condition of many Tribal roads and bridges jeopardizes the health, safety, security and economic well-being of Tribal members and all those who travel through Indian Country. Our inadequate transportation infrastructure hinders every priority of the Federal Government and Tribes which our respective governments have sought to achieve over the last few decades—economic development, law enforcement and other first responders, education, health care, and housing—because it raises the cost of doing business on reservations and in Indian communities in every aspect of our daily living.

The unsafe conditions are reflected in our tragic statistics. Indian Country still has the highest vehicle and pedestrian fatality rates in the country which in some areas are 3–4 times the national average. Motor vehicle injuries are the leading cause of death for Native Americans ages 1–34, and the third leading cause of overall for Native Americans. The motor vehicle death rate for Native Americans is nearly twice as high as other races.

Reservation roads also have the highest level of pedestrian fatalities in the country. American Indians have the highest rates of pedestrian injury and death per capita of any other racial or ethnic group in the United States. The leading cause

of death for Tribal-members and Alaska Natives between the ages of 10 and 64 is a motor vehicle crash. The fourth leading cause of death in these communities is pedestrian crashes.

We are troubled by the disparity between national traffic safety statistics and the statistics coming out of Indian Country. The Government Accounting Office (GAO) and the US Department of Transportation have published studies that have proven that rural roads, especially those serving Tribal communities, experience a much higher rate of vehicle accidents and fatalities, but they receive much less federal funding than roads serving urban communities. In fact, Indian reservations and Tribal communities have the highest rate of vehicle fatalities in the country. While traffic fatalities in the rest of the nation have been decreasing, the number of fatal crashes in Indian Country has been continually increasing. In the period from 1975–1979 there were on average 185 fatal crashes on Reservation-based and Tribal roads each year, with 231 fatalities. In the period from 1998–2002, the number increased by 29.5 percent to 239 crashes per year with 284 fatalities. These statistics are obtained from data collected from on reservation crashes only and should not be used to justify adding off reservation facilities to the IRR system.

### **III. Roadblocks to Fulfilling the Need in Indian Country**

The number one roadblock to fulfilling the needs in our Tribal communities is lack of funding. Too often Congress, the Department of Transportation, and the Department of the Interior ignored their trust responsibility and treaty obligations to the Indian nations and Native people to provide safe and efficient transportation systems. While the Department provided \$1.275 billion for the High Risk Rural Roads Program and \$700 million for the Highway Safety Program to State and local governments in FY 2008 to address behavioral and design safety issues, the Department provided less than \$5 million per year for all 565 federally recognized Indian Tribes (which averages to \$8,850/Tribe compared to an average of \$40 million/State). Tribes had to compete for this wholly insufficient level of funding. After grant development, grant management and other transactional costs are taken into account, the few successful Tribal grant recipients typically have only a few thousand dollars remaining to begin to address the huge backlog of dangerous road conditions and unsafe driver behaviors. Even if considered on a per capita basis, Indian country receives pennies on the dollar for their transportation needs.

We recognize that the nation is going through economic hardship. For most Tribes, it is our way of life. We further recognize that the budget will likely be tight for the next few years. One way to help fulfill Tribal funding needs for transportation infrastructure without raising the cost to the nation is to provide better access for Tribes to federal-aid highway system and other federal appropriations made to State and local governments. The layers of administrative bureaucracy that Tribes must go through to gain access to federal transportation funds passed through to the States increases our costs and provides us with far less money than we need to address our transportation needs.

Unfortunately, many State and local funding agreements are ill-suited for the unique government-to-government relationships that exist between Tribes and States and have become obstacles to the award of these much needed funds to Tribes. For example, State funding agreements are usually written either as standard commercial procurement contracts or as “local use” agreements designed to award funds to counties or municipalities. When these standard agreements are applied to Tribes, they often include broad indemnification provisions, unnecessarily broad waivers of sovereign immunity, and provisions imposing State administrative and accounting rules on Tribes. Nearly all of these agreements require Tribal governments to appear in State court in the event of a dispute. We are separate sovereign governments—not subdivisions of the States—and these provisions are wholly unacceptable and inappropriate for use in transferring State transportation funds to Tribal governments.

While some State and local governments may be willing to modify funding agreements to accommodate Tribal concerns, negotiating such modifications can be costly and time consuming. Most often, State and local governments refuse to modify standard agreements to address our concerns. The solution is simple: make Tribes eligible direct recipients of federal transportation programs.

Tribes are also faced with disproportionately burdensome administrative responsibilities that waste our already insufficient transportation funding. For example, the finance, procurement and auditing systems of Tribal governments are primarily geared toward ensuring compliance with the Indian Self-Determination and Education Assistance Act, P.L. 93–638, grant and contract requirements. It is a waste of precious resources for the Department to require Tribes to comply with redundant and sometimes conflicting grant and contract requirements.

Also, the lack of access to funds for maintenance requires Tribes to expend a disproportionate amount of funds undertaking large construction projects because of the disrepair of reservation roads or bridges. Maintaining transportation infrastructure in a state of good repair extends the useful life of these critical routes. It improves safety at a much lower total cost than the reconstruction of long-neglected roads and bridges. When Congress, in SAFETEA-LU, authorized Tribes to spend up to 25 percent of their IRR Program dollars for maintenance, it expressly stated that the BIA retained the primary responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations. Congress also expressly stated that the Secretary of Transportation must ensure that IRR Program funding be made available for maintenance of Indian reservation roads for each fiscal year and that these funds are supplementary to, and not in lieu of, any obligation of funds by the BIA for road maintenance on reservations.

Unfortunately, these Congressional requirements have not been fulfilled. As funding for the IRR Program goes up, the Administration submits budgets to Congress to reduce funding for the BIA Road Maintenance Program. Newly built or reconstructed roads must be maintained if they are to meet their design life. Tribes must retain the authority to determine whether to expend a portion of its IRR Program funds on road maintenance. The agencies have let Indian Country down and not fulfilled their obligations.

#### **IV. Specific Proposals**

##### *1. Increase Funding for the IRR Program, Road and Bridge Maintenance, and Safety and Transit Program in the Next Highway Reauthorization Bill*

The backlog of unmet transportation construction needs in Indian Country is in the tens of billions of dollars, and increases by tens of millions of dollars each year. The amount of funds provided to Tribes to address these unmet needs does not even come close to being adequate. As stated above, if Tribes are to maintain the positive gains we have made under TEA-21 and SAFETEA-LU and keep our progress going, we request that Congress authorize funding increases in the next highway reauthorization bill for the IRR Program, including road maintenance, Tribal Safety Programs, the Tribal Transit Grant Program, and the IRR Bridge Program. The state of infrastructure in Indian country, like anywhere else, determines the health and vitality of our economies and of our people. Congress must address the declining status of America's transportation infrastructure and must include Indian country in programs that will improve transportation infrastructure and transit and break down barriers between Tribes and surrounding communities.

I would also like to advocate for additional funding for road maintenance. Tribes receive so little road maintenance funding that there is no allowance for emergency needs to address life threatening circumstances that result from "a catastrophic failure or natural disaster." Every BIA Region experiences some form of emergency maintenance—ice and snow, traffic control, rock slides, washouts, flooding, wildfires, and hazardous waste spills—but lacks the resources to respond to them.

On average, six cents of every dollar is spent on road maintenance in Indian Country. This does not protect the investment that the United States and Tribes have made in transportation infrastructure. This funding gap between construction and maintenance exacerbates the backlog of unmet construction need by cutting the useful life of new built or reconstructed roads in half and will lead to more traffic injuries and fatalities. It makes no sense to expend millions of dollars to construct a new road if that road is poorly maintained. No one knows the routes through our communities better than our Tribal governments. Our Tribal government should be authorized to decide what amount should be spent on maintenance—and receive adequate federal appropriations—to preserve the lifetime of the road and to protect the life and health of its members.

##### *2. Tribes Must be Eligible Direct Recipients of Federal Transportation Funds*

For these necessary transportation programs to work in Indian communities, the funds must reach the intended beneficiaries. Unfortunately, this is not the case. As mentioned above, when Tribes are not eligible direct recipients, they must apply for State transportation programs funded by the United States. More often than not, Tribes do not receive the federal funds awarded to States and local governments. This situation exacerbates the history of Tribal exclusion by State and local governments from participating in regional community development planning.

It has long been recognized that regional planning works best when local government officials are allowed to establish their own priorities and to propose solutions that address local problems and needs. Recently, however, Tribal, State, and local governments have begun to seek a more collaborative approach to transportation challenges faced by their regions. These fledgling efforts make clear that where Fed-

eral programs provide funding to Tribes directly, State governments are more likely to work cooperatively with them.

Including Tribes as eligible direct recipients in all of the transportation infrastructure grant programs would support the further development of these Tribal, State, and local relationships to address community development challenges, and would help all governments increase their available funding by making it possible to join forces, and funds, with other governmental entities. Such direct funding would also significantly cut down on Tribal administrative costs.

I will say it again: Tribes are separate sovereign governments. Tribal governments have demonstrated that they possess the capacity to deliver successful transportation programs despite the many obstacles that stand in our way. Across the country, Tribes are increasingly serving our communities by assuming the Secretary of the Interior's responsibility for administering the IRR Program funds by entering into Self-Determination Contracts or Self-Governance Compacts with the Secretary of the Interior or by entering into FHWA IRR Program Agreements with the Secretary of Transportation. We are sovereign nations, we are responsible for providing basic governmental services to our members, and we are now accustomed to administering funds under these contracts, compacts, and agreements.

*3. Streamline the Grant Award Process by Which Federal Transportation Funds are Distributed to Tribes*

Streamlining the grant award process will reduce transactional and administrative costs associated with the award of federal transportation safety grants and will leave more funding available to us to do the "on the ground" work needed to provide safe transportation infrastructure for our members and guests in our communities. We ask that Congress work with the Department of Transportation on the next highway reauthorization legislation to develop a uniform set of Tribal grant and contract requirements based on the ISDEAA.

Thank you for allowing me to present this testimony for the record. I hope my comments this afternoon will lead to productive action to improve the delivery of transportation services to all Indian tribes and correct the anomalies that are having a negative effect to the Land Based Tribes. I will be happy to answer any questions you may have.

Senator TESTER. John Smith.

**STATEMENT OF JOHN P. SMITH, DIRECTOR, DIVISION OF TRANSPORTATION, EASTERN SHOSHONE AND NORTHERN ARAPAHO TRIBES**

Mr. SMITH. Thank you, Senator.

Mr. Chairman, I would like to request that you also forward my regards and appreciation to Senator Barrasso for being able to represent the great state of Wyoming. Tim calls it Southern Montana. It's easier than Northern Wyoming.

It's a great pleasure to have you here and to actually discuss with people who can render the completion of this enormous problem. Our tribes here are working under the Indian Reservation Road System under two separate rules, Title 23 and Title 25, which is complex in tribal members' thinkings of what the responsibilities are when they are both shared equally, not only with the BIA, but also with the Federal Highway System and the administration in which oversees our road program on behalf of our great—my good Crow brother in Washington, D.C.—he was adopted by the Crow tribe—and to resolve these issues on his behalf and our behalf.

When we talk about the \$600 billion of need, we need to have definitions of need versus greed in the system. We have people putting on inventory items into the Road Inventory System that do not properly provide any services to Indian people. But we're asked in the Rocky Mountain Region to sit by and be patient.

Many of our long-term road projects take four to five years to complete, as we develop them in segments. We have to clear earth,

we have to clear the old road bed, put it to the side, widen the road to new standards. Our roads are narrow with maybe a foot off the road to a two-foot embankment, some places in lengths of 25 feet to 50 feet, which is a critical matter. If you go off that road by accident, bad weather, you're going to roll, sir. That is a honest safety situation for our tribes to egress onto medical facilities, emergency care, just going to get delivery of goods and services for their people back home in their household. Plus, our school children ride over those precarious roads.

During the flood of last year we lost a bridge that got flooded out. We had to go for two months to dirt roads to get back onto the road situation, other than go 80-mile detour one way and a 95-mile detour to improved roads to get from one end of the reservation to the other end of the reservation because our conduit was destroyed by the flood. We do now have a temporary bridge in place. And we're not experiencing that condition presently, but it did take a toll on what our business could be done. We paved a road on the west-half of the river and our gravel sources and our asphalt was on the east-half. We had to ensure extra cost to go through the town of Lander to deliver asphalt to our roadway in order to get it completed, and that road began construction in 2002 in segments. It was a BIA construction project when the tribes began to take over our own construction program under the 638 Process. We now do operate our road construction program as well as our maintenance program on behalf of the Federal Government.

We do have safety regulations in place that were put into by the tribe. We have a mandatory seatbelt use. We also have limited intoxication for alcoholic beverages to be a 0.5, rather than the 0.8 like the State of Wyoming, which has greatly curbed our alcohol use. And we've taken a concentrated effort to curb the driving while under influence.

We participated in Bismarck, North Dakota, along with the other states, state transportation Officials from the States of North Dakota, South Dakota, Montana and Wyoming where we asked Mr. Secretary to consider funding programs along with road maintenance for increased funding for our programs. We were speaking for our needs. We believe that people as we progress along will have to come to an agreement of how they're going to submit inventory items. We were the first region that completed our inventory update. We were the first region that completed our IRR profit contracts for the use of those funds. Mr. Rossette here was the first tribe in the nation to complete his ARRA projects within one year of the same funding cycle. Sadly he lost a lot of that during flood season, all his beautiful work, and he's getting that restored.

I know I'm running out of time. My council always gets after me for talking too much. And so I don't want to take up any more time. But it is a serious need, and we do need help in resolving this issue. It's not going to go away by itself, I'm afraid. Thank you.

PREPARED STATEMENT OF JOHN P. SMITH, DIRECTOR, DIVISION OF TRANSPORTATION,  
EASTERN SHOSHONE AND NORTHERN ARAPAHO TRIBES

#### **Introduction**

Good afternoon, Mr. Chairman and members of this Committee. My name is John Smith, Transportation Director for the Shoshone/Arapaho Tribes. I am also a mem-



ber of the Indian Reservation Roads Coordinating Committee formed by various Indian Tribes to help shape federal policy and practice in this area.

On behalf of Joint Business Council Chairmen Ivan Posey and Harvey Spoonhunter, and the people they represent who reside on the Wind River Indian Reservation in Wyoming, I thank you for this opportunity to provide testimony concerning Transportation Issues in Indian Country.

The Federal Lands Highway Program and the Indian Reservation Roads Program represents for us a major avenue through which the United States Government fulfills its trust responsibilities and honors its obligations to the Eastern Shoshone and Northern Arapaho tribes and to other Indian tribes. This program is vital to the well being of all Native people living on or near Indian lands throughout the United States. Because of its great importance, reform of the Indian Reservation Roads Program has become a top legislative priority for many Indian Tribes.

#### **Background on the Wind River Indian Reservation**

Compared to other Tribes, the Shoshone/Arapaho Tribes are medium-sized with more than 14,500 enrolled members, most whom live on our Reservation. The Wind River Indian Reservation is located in a rural area within the boundaries of the State of Wyoming. Our Reservation has over 2.2 million acres of tribal land held in trust for our Tribes by the United States. While over time it has been diminished from its original 3.3 million acres, our Reservation has never been broken apart or allotted to individuals and lost to non-Indians. Nor has our Reservation ever been subjected to the criminal or civil jurisdiction of the State of Wyoming. Consequently, our Tribal Government has a large land area over which our Tribe exercises full and exclusive governmental authority and control in conjunction with the United States. At the same time, due in part to our location far from centers of population and commerce, we have few jobs available on our Reservation. While the unemployment rate in Wyoming is at approximately 11 percent, unemployment on our Reservation remains at an outrageously high level of 85 percent. The lack of adequate transportation facilities, communications, and other necessary infrastructure continues to significantly impair economic development and job opportunities.

Although great strides have been made in improving the IRR program under TEA-21 and SAFETEA-LU, several issues have arisen that are negatively affecting the full implementation of the provisions of these Acts as intended by Congress.

#### **Transportation Reauthorization of Indian Programs (TRIP) Act**

The Shoshone/Arapaho Tribes are grateful for the leadership role this committee has taken to support the Tribal initiatives in the upcoming reauthorization of SAFETEA-LU. Under this leadership we are certain that the issues and concerns of all tribes will be considered in the reauthorization of SAFETEA-LU. We are thankful for the opportunity to comment on the TRIP Act.

IRR funding serves a crucial need in Indian country. While Congress has increased IRR allocations in recent years, the funding continues to lag far behind an even faster-growing need. When BIA officials abuse their powers and arbitrarily divert IRR funds to non-BIA system or non-Tribal facilities, we fall farther behind.

The Shoshone/Arapaho Tribes has reviewed the provisions of the proposed Reauthorization Bill, published by the Senate Committee on Indian Affairs, to amend the SAFETEA-LU, titles 23 and 49, United States Code, and the Indian Self-Determination and Education Assistance Act also cited as the "Transportation Reauthorization of Indian Programs (Trip) Act".

While we agree with most of the provisions of the proposed TRIP document, we disagree with certain items as contained in the proposed Bill and we also find that there are many on going issues negatively affecting Land Based Tribes that are not addressed in the proposed bill. As such we offer our comments as Follows:

The proposed TRIP Bill as written does not address the issues and concerns confronting the Land Based Tribes regarding the diversion of Indian Reservation Road Program funds meant for the benefit of Indians to non-Indian entities. The percentage of funding generated by non-Reservation facilities is near 80 percent. We are concerned that if this trend continues, the IRR Program will cease to exist and Tribes will have to access their Road construction funding through the States.

Of particular concern, we see that the injury and death statistics used in justifying funding increases are taken from statistics on roads actually located on "Indian Reservations". While this is all well and good to document the appalling conditions on Indian Reservations, we are dismayed when we see news articles of Indian Tribes giving millions of IRR dollars for construction of Interstate Highways and Bridges. We ask how does donating IRR funding for construction of an interstate highway address the appalling conditions on Indian Reservations.

We firmly believe that the Indian Reservation Roads Program was established for benefit of Indians living on Indian Reservations. This is a Trust Responsibility of the Federal Government guaranteed by Treaties between Indian Tribes and the Federal Government when Indian Tribes gave up their land and were forced to live on Reservations.

For the past 4 years the Council of Large Land Based Tribes has been attempting to correct the misinterpretation and misapplication by the Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA) of the recently enacted regulation of the Indian Roads Program as contained in 25 CFR 170. This misinterpretation and misapplication manifests itself as the uncontrolled implementation of the road inventory update process which is used to generate formula shares for all tribes. This uncontrolled implementation of the inventory continues to go unchecked and is having a devastating effect on Land Based Tribes located in Montana, Wyoming, Arizona, New Mexico, Utah, the Dakotas and some tribes in Minnesota.

Because of this uncontrolled implementation of the inventory update process, that part of the inventory which generates share amounts for the Land Based Tribes has been significantly reduced from 76 percent in 2006 to 24 percent in 2010 and is declining at an accelerated rate.

We feel that the following critical issues are the root cause of the rapid decline in funding for the Land based Tribes and must be corrected in the Reauthorization Bill in order to return this program to what Congress intended it to be.

Based on the above, the Shoshone/Arapaho Tribes have identified several critical items that must be incorporated into a new reauthorization bill in order to make 25 CFR 170 a useable rule that is not biased against Land Based Tribes constrained by reservation boundaries and geographical locations. Those items are as follows:

- *Define Access*—The current statute and regulation does not define “access” nor does it place any limit on to what extent the route can be included in the IRR inventory. Because of this ambiguity, the Bureau of Indian Affairs is allowing tens of thousands of non-BIA miles or non-Tribal system routes into the IRR inventory. These routes include Interstate Highways, National Highway System Roads, State, County and Township Roads, Federal Forest Roads, and proposed roads. Most of these routes are not located within nor do they provide access to Indian or Native lands with some even being located in designated Road less and Wild areas.
- *Better define the term “Project”*—the current regulations do not define “Project”. Most of the non-Federal roads included in the IRR inventory are generating funding regardless if it is a project or not. The BIA and FHWA are allowing tens of thousands of miles into the IRR Inventory only to generate funding with no intention of ever building a project on these facilities.
- *Define Relative Need*—We believe that the term “Relative Need” is being misinterpreted by certain tribes and the Bureau of Indian Affairs Central Office personnel. By allowing thousands of miles of State and County Roads in the IRR Inventory (now in excess of 130,000 miles) this does not accurately represent the actual transportation needs of tribes.

How are the needs of a tribe that is located close to Interstate highways, high volume US highways or urban areas and surrounded by high volume roads and streets that are owned by others relative to the needs of a tribe that is located on a remote reservation and whose only source of funding is the IRR program?

Land Based tribes cannot compete with tribes that are located close to urban areas and whose needs are being addressed by other public agencies. A concise definition of “Relative Need” is essential in order to ensure the intention and to improve the consistency of the methodology applied by each BIA Region.

- *Restrict Proposed Roads in the IRR Inventory*—Proposed roads are being added indiscriminately to the IRR Inventory System. The BIA and FHWA are allowing thousands of miles proposed roads into the IRR inventory only to generate huge funding amounts. The manner in which the BIA is allowing proposed roads into the system is inconsistent whereby certain BIA Regions are allowed into the inventory and other Regions are not.
- *Establish an IRR Inventory Oversight Committee*—From the uncontrolled and indiscriminate manner in which inventory data is being added into the IRR Inventory, (33+ thousand miles in 2004 to 120+ thousand miles in 2009) it is obvious that neither the BIA nor the FHWA are providing any quality control or quality assurance of the inventory data that is being used to calculate funding for IRR distribution. Or worse, the quality control of the data is disparate or discriminating and is not applied consistently across all tribal data. This is evidenced by the fact that Tribes in certain Regions are being allowed to input

fraudulent data only to generate funding. The owing agency has no intentions of doing a project on the route, yet the tribe can put it on their inventory and generate funding indefinitely.

An Inventory Oversight Committee made up of Tribal Transportation Officials must be established to monitor the inventory data that is being submitted. This committee will review all inventory data and will decide what data is eligible to be included into the official inventory.

### **Indian Reservation Roads Inventory and Its Impact on Funding**

Under the negotiated rule making process required by TEA-21, Indian Tribes and the Federal agencies negotiated new rules (25 CFR 170) by which the IRR program would operate. These rules provide the process by which Tribes and the BIA update the inventory of roads and bridges on the IRR system. The negotiated rulemaking process took four and one half years to complete and it took the BIA another two and one half years to publish a final rule. Upon publication of the final rule, we were dismayed to discover that the BIA unilaterally left out or changed critical language affecting the inventory that was included in the proposed rule. The BIA has never explained why it decided, without consultation or involvement of the Tribes, to remove or change regulatory provisions proposed by the tribal negotiation team that would improve the integrity of the inventory system.

It is our understanding that the Indian Reservation Roads Program was established by Congress primarily to fund the construction of roads and bridges on Indian reservations due to the fact that these roads and bridges are considered Federal Facilities and it is the Federal Government's responsibility to construct and maintain these facilities on Indian reservations. We believe that the IRR program should *primarily* address the construction and improvement needs of roads that are located within or provide primary access to Indian lands *and that are not eligible for other Federal, State, or County funding sources*. The final rule makes a lot more Federal, State and County supported roads eligible for IRR funding, if an Indian Tribe timely submits the data information required to place a highway on the IRR inventory system. While Congress and the Administration have substantially increased IRR funding, the number of roads that are eligible for funding has been increased at the same time. Some of these roads are eligible for substantial sources of other funding. As a result, roads for which the only source of funding is IRR program are receiving a smaller slice of the bigger funding pie.

When Congress enacted Section 1115 (k) of P.L. 105-178 (TEA-21), we believe it intended that non-BIA or non-Tribal roads within or accessing an Indian reservation were to be included in the Indian Reservation Road Inventory to generate only part of the funding needed to improve those roads. Otherwise, the County, State and other Federal highway budgets would get a windfall. The law is quite specific: ". . . [F]unds authorized to be appropriated to carry out the Federal lands highways program under section 204 may be used to pay the non-Federal share of the cost of any project that is funded under this title of chapter 53 of title 49 and that provides access to or within Federal or Indian lands." 23 USC 120(1). We believe this means IRR funds can only be used to pay the non-Federal share on a state or county route is if it is project funded under 23 U.S.C. 104 and that it is a designated IRR project.

The unilateral BIA decision on the final rule favors those tribes who are located near urban areas, where transportation needs are the shared responsibility of tribes and their neighboring governments and where the Indians are overwhelmingly outnumbered by non-Indian users of these roads. The BIA system for on reservation roads has a documented construction backlog of thirteen billion dollars. In the face of that need, the BIA's unilateral final rule has the result of siphoning off scarce IRR dollars from areas where the greatest need exists.

A study conducted by the National Center for Statistics and Analysis (NCSA) and sponsored by the National Highway Traffic Safety Administration found that 5,962 fatal motor vehicle crashes occurred on roads under the jurisdiction of Indian reservations between 1975 and 2002, an average of 213 fatal crashes per year. In 2002, the number of crashes on reservations reached a new high of 276, representing a 4.5 percent increase over the previous recorded high of 264 crashes in 1996 and a 52.5 percent increase over the 181 crashes in 1975. Over the years, these crashes have resulted in the loss of 7,093 lives of which 3,322 were drivers, 2,717 were passengers and 1,001 were pedestrians.

The objective of the study was to examine the characteristics of fatal motor vehicle crashes that occurred on federal lands, specifically, those lands that have been designated as Indian reservations. Using data from 1975-2002 NCSA's Fatality Analysis Reporting System (FARS), Characteristics of these crashes were examined to better understand the circumstances that are involved in these particular types of crashes.

Roads on Indian reservations are considered Federal roads due to the fact that Indian reservations are considered Federal lands and the Federal Government is responsible for constructing and maintaining these roads. State and County roads are not considered Federal roads and they have separate funding sources and should not be siphoning off critical funding meant for Indian Reservations. To allow the hemorrhaging of funds away from Land Based Reservation to continue is a travesty and Land Based Tribes will never be able to reduce these tragic statistics.

Rural Tribes, including large land-based Tribes, have expressed their concerns in writing to the BIA and the IRR Coordinating Committee regarding changes to the final rule that have altered the intent of the negotiated rulemaking process. To date, they have received no responses addressing their concerns.

#### **Need for a Tribal Transportation Facility Inventory That Is Truly “Comprehensive”**

The Federal Highway Administration (FHWA) has failed to meet the intent of Section 1119(f) of SAFETEA-LU regarding the conduct of a “comprehensive” National Tribal Transportation Facility Inventory. Despite the mandatory nature of this statutory requirement, FHWA has decided to conduct merely a “windshield survey” sampling of IRR roads. This approach and methodology falls far short of the statutory requirement. We urge the Congress to insist that FHWA complete a “comprehensive” inventory of the IRR system as intended.

The Land Based and rural tribes continue to lose millions of dollars of IRR funding because the BIA and FHWA are misinterpreting the provisions of SAFETEA-LU and 25 CFR 170. The mileage of the IRR system has grown from approximately 62,000 miles in 2004 to over 126,000 miles in 2010. This growth can be directly attributed to the addition of roads that are the responsibility of other public authorities (i.e. States and Counties). It is very apparent that these roads are being added to system only to generate funding for a particular tribe with no intention of ever constructing these roads. We have verifiable proof that many of these roads are being added to the IRR inventory with bogus data. This practice is favoring tribes whose lands are located near urban areas with high volume traffic and is harming rural tribes with large land bases whose system is comprised mainly of BIA and tribal roads. We have tried to correct this problem administratively and have met with no success. Critical funding continues to hemorrhage from Land Based reservations and people to those tribes with high volume State and County roads included in their IRR inventory. The IRR program has become a state and county roads program.

This fact has been further substantiated by the United States Department of the Interior, Office of the Inspector General’s evaluation report on the Department of the Interior roads programs, dated February 1, 2010. That report specifically states *“We found significant inaccuracies in roads inventories that affect the ability of bureaus to identify needs correctly and inefficiencies in the process that bureaus use to prioritize their needs.”* The report further states *“All bureaus have project implementation plans and the ability to track spending. Two of the bureaus, however, Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM), lack sufficient safeguards to adequately detect misuse and mismanagement of funds.”* Although the problems have been identified, it appears that the BIA is ignoring these findings and the diversion of critical road construction funding for Land Based Tribes continues.

The issue remains urgent to land based tribes since we deal with critical on-reservation vehicular transportation needs. Our needs arise from tribal and BIA roads, and meeting them relies primarily on IRR funding. The geographic isolation of most land based tribes prohibit them from competing in a system of adding Interstates/NHS highways, State and County roads onto the IRR system just to reap the inflated formula amounts. Also most land based tribes’ priorities are not others’ interstate or state roads, but the very roads they must travel to get the basic medical and educational services. On the BIA system alone, there is a documented backlog of \$13 Billion just to improve the system to a safe and adequate standard. At present funding levels, and without further deterioration of the system, it would take 28 years to address this need. Allowing State and County roads into the IRR system simply to generate funding is siphoning off critical road construction funding for tribes whose only source of funding is the IRR program.

#### **BIA/FHWA Proposed Fix to 25 CFR 170 Question 10**

The BIA and the FHWA are proposing an administrative fix to 25 CFR 170 Appendix C to sub-Part C Question 10. Of particular concern to the Shoshone/Arapaho Tribes is the Bureau of Indian Affairs and Federal Highway Administration’s interpretation of certain critical items of Question 10 which we feel are flawed and

should be reassessed to ensure that they are interpreted correctly and in accordance with the intent of the original regulation as negotiated and agreed to by the Tribes and the Federal Government. Of particular concern are the following items:

- The proposed fix fails to correct the problems that are negatively affecting the Land Based Tribes in that non-BIA system and non-Tribal facilities will still be able to generate funding at 100 percent.

23 USC 120(1) clearly restricts the use of IRR funds to the non-Federal share for any project that is funded with section 104 funds of this title or chapter 53 of title 49.

- The proposed fix will allow local roads and minor collectors to generate IRR funding at 100 percent.

23 USC 101(5) clearly indicates that local roads or rural minor collectors are not classified as “Federal Aid Highways” therefore are not eligible for federal funding. For a non-Federal or non-Tribal road to be eligible to IRR funding, it has to be eligible for other Federal funding. (See 25 CFR 170 appendix C to subpart C—question 10).

- The proposed fix will change the process of determining eligibility of non-BIA or non-Tribal eligibility from whether it meets the definition of a Federal aid highway to determining eligibility by Functional Classification.

It is our understanding that a Federal Regulation can only be changed through the negotiated rulemaking process. We find that changing a non-BIA or non-Tribal facility's eligibility from whether it meets the definition of a Federal aid highway to determining eligibility by Functional Classification is a major change in the regulation. We question the legality in this change as well as the matrices for the transition year and the final cannot be implemented as proposed.

- The BIA made significant changes to Question 10 from what was proposed by the negotiated rulemaking committee. These changes, although subtle, allowed thousands of miles of non-BIA and non-Tribal miles to generate funding at 100 percent.

The proposed BIA/FHWA administrative fix should not be implemented until all of the questions and concerns of Land Based tribes are satisfactorily answered and resolved.

### **Road Maintenance**

Protection of the investment in any type of infrastructure requires proper maintenance. Historically, the IRR maintenance system has been chronically under-funded which has caused safety hazards and premature failure of many roads on the IRR system. Roads usually have a 20 year design life but, because of inadequate maintenance, many of the IRR system roads last only about half of their design life and have to be reconstructed much sooner. The BIA is responsible for maintaining BIA system roads; however the funding BIA provides is approximately 25 percent of what is required to properly maintain the system. The IRR maintenance situation has become even more critical with the increase of IRR funding through SAFETEA-LU. While IRR construction funding is increasing, BIA road maintenance funding is declining.

The BIA Road Maintenance Program has been chronically underfunded under the U.S. Department of the Interior. This program is included in the Tribal Priority Allocation (TPA) and must compete with other Tribal social programs for funding. The funding invested in Road and Bridge Construction on Indian Reservations is being compromised due to inadequate maintenance funding. While funding for Road Construction has increased the amount of funding available for Road Maintenance has declined. Consequently, roads and bridges constructed on Indian Reservations last about half of their design life. The maintenance of these facilities is a Federal responsibility and the health and welfare of Tribal members who have to use these roads is at risk on most reservations.

The BIA receives approximately \$25 million per year as part of its lump sum appropriation for road maintenance activities. BIA now estimates that \$120 million per year is actually what is needed to properly maintain roads on the BIA system. At present levels, the BIA spends less than \$500 in maintenance funding per mile; most state transportation departments spend approximately \$4,000 to \$5,000 per mile each year on maintenance of state roads. Of course, states receive highway taxes based upon the sale of gasoline within that state. While users of tribal roads pay these same state highway fuel taxes, tribal roads receive little or no benefit from state fuel taxes. Tribes are unable to impose gas taxes in addition to, or in lieu of, those imposed by the surrounding states.

The only practical solution we see for this problem is that since the roads on the BIA system are considered Federal roads, the BIA road maintenance program should be provided extra funds out of the Highway Trust Fund as are other Federal Lands Highway Programs roads.

It seems inevitable that a gas tax increase will be required to fund the nearly bankrupt Highway Trust Fund. If a gas tax is implemented the Shoshone/Arapaho would advocate for a portion of the increase (probably a half or one cent) be set aside for the Federal Lands Programs and include funding for the BIA road maintenance system out of this amount.

**Conclusion**

On behalf of the Shoshone/Arapaho Joint Business Council, I thank the Committee for its attention to and support for the Indian Reservation Roads program. We have attempted to provide the Committee with a few examples of what is happening with the current interpretation by the BIA and FHWA that is having negative impact on the funding for Land Based Tribes. We are confident that with your help, the IRR program will be restored to what it was originally intended—building and maintaining infrastructure on Indian Lands. Thank you for inviting the Shoshone/Arapaho Tribes to present this testimony. If we can answer any questions, now or at some future date, please do not hesitate to ask.

**Attachment****SHOSHONE AND ARAPAHO TRIBES  
AND  
THE TRIBAL TRANSPORTATION COALITION OF LAND BASED  
TRIBES****COMMENTS ON TRIP ACT****Introduction:**

The Tribal Transportation Coalition of Land Based Tribes is grateful for the leadership role Senator Byron L. Dorgan has taken to support the Tribal initiatives in the upcoming reauthorization of SAFETEA-LU. Under Senator Dorgan's leadership we are certain that the issues and concerns of all tribes will be considered in the reauthorization of SAFETEA-LU. We are thankful for the opportunity to comment on the TRIP Act.

The Tribal Transportation Coalition of Land Based Tribes has reviewed the NCAI White Paper along with the Discussion Draft of the proposed Reauthorization Bill, published by the Senate Committee on Indian Affairs, to amend the SAFETEA-LU, titles 23 and 49, United States Code, and the Indian Self-Determination and Education Assistance Act also Cited as the "Transportation Reauthorization of Indian Programs (Trip) Act".

While we agree with most of the provisions of the proposed TRIP document, we disagree with certain items as contained in the proposed Bill and we also find that there are many on going issues negatively affecting Land Based Tribes that are not addressed in the proposed bill. As such we offer our comments as Follows:

**Comments on Proposed Bill:**

- Page 11, Line 8 references 23 U.S.C. section 202(d) (9). There is no section 202(d) (9) in 23 USC.
- Page 11, Lines 21, 22 & 23. Indian Tribes are not eligible to apply for these funds directly and must apply through the State if they have an approved project. The funds referenced in section 202(1) (b) (1) are restricted to States and Forest Highways.
- Page 12, Lines 1, 2, & 3. Same as above.
- Page 13, Lines 23, 24, & 25 and Page 14 Lines 1 through 13. The Coalition of Land Based Tribes cannot agree with this section. Allocation of IRR funds is to be based on "Relative Needs" of Indian Tribes. The set aside of another \$28 million off the top will further erode the funding available for actual IRR projects.

- Page 33, Lines 11, 12, 13, & 14. This appears to set the floor amount a Tribe can use IRR funds for Road Maintenance at \$500,000. The Coalition disagrees with this provision because it relieves the Federal Government of their responsibility to maintain reservation roads and redirects critical IRR funding to road maintenance.

### **Other Concerns and Comments:**

The proposed TRIP Bill as written does not address the issues and concerns confronting the Land Based Tribes regarding the diversion of Indian Reservation Road Program funds meant for the benefit of Indians to non-Indian entities. The percentage of funding generated by non-Reservation facilities is near Ninety (90) percent. We are concerned that if this trend continues, the IRR Program will cease to exist and Tribes will have to access their Road construction funding through the States.

Of particular concern, we see that the injury and death statistics used in justifying funding increases are taken from statistics on roads actually located on "Indian Reservations". While this is all well and good to document the appalling conditions on Indian Reservations, we are dismayed when we see news articles of Indian Tribes giving millions of IRR dollars for construction of Interstate Highways and Bridges. We ask how does this address the appalling conditions on Indian Reservations.

We firmly believe that the Indian Reservation Roads Program was established for benefit of Indians living on Indian Reservations. This is a Trust Responsibility of the Federal Government guaranteed by Treaties between Indian Tribes and the Federal Government when Indian Tribes gave up their land and were forced to live on Reservations.

The funding for the IRR program comes out of the Federal Lands Highway Program whose primary purpose is to provide funding for a coordinated program of public roads that serve the transportation needs on Federal lands which are not a State or local government responsibility. Also, Title 23 United States Code, Section 204 specifically states that the Federal Lands Highways Program was established for **Federal roads**. State and County roads are neither Federal roads nor are they located on Federal Lands. Tens of Thousands of non Federal roads are being used to calculate tribal shares which is limiting the shares to land based tribes. We do not understand how the Federal Land Highway Program Office can condone funding tens of thousands of miles of State and County roads which are not a Federal responsibility.

For the past 2 ½ years the Council of Large Land Based Tribes has been attempting to correct the misinterpretation and misapplication by the Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA) of the recently enacted regulation of the Indian Roads Program as contained in 25 CFR 170. This misinterpretation and misapplication manifests itself as the uncontrolled implementation of the road inventory update process which is used to generate formula shares for all tribes. This uncontrolled implementation of the inventory continues to go unchecked and



is having a devastating effect on Land Based Tribes located in Montana, Wyoming, Arizona, New Mexico, Utah, the Dakotas and some tribes in Minnesota.

Because of this uncontrolled implementation of the inventory update process, that part of the inventory which generates share amounts for the Land Based Tribes has been significantly reduced from 76% in 2006 to 28% in 2008 and is declining at an accelerated rate.

Additionally, there has been inconsistent application of the regulations that have harmed the Land Based Tribes. Specifically, there are tribes in certain BIA Regions that are allowed to generate 100% funding on U.S. Highways while Tribes in other Regions are restricted to the non-Federal Share. Similarly, certain regions are allowed to include unlimited miles of proposed roads, while others cannot.

We feel that the following critical issues are the root cause of the rapid decline in funding for the Land based Tribes and must be corrected in the Reauthorization Bill in order to return this program to what Congress intended it to be.

Based on the above, The Coalition of Land Based Tribes has identified various corrective actions that must be implemented immediately in order to make 25 CFR 170 a useable rule that is not biased against Land Based Tribes constrained by reservation boundaries and geographical locations.

The various corrective actions are:

### **1. Define Indian Reservation Road:**

The definition of an Indian Reservation Road (IRR) that is contained in 25 CFR 170. is *“a public road that is located within or provides access to an Indian reservation or Indian trust land, or restricted Indian land that is not subject to fee title alienation without the approval of the Federal government, or Indian or Alaska Native Villages, groups, or communities in which Indian and Alaska Natives reside, Whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians”*.

**Recommendation:** We propose that the following be added to the above paragraph: *Public roads owned by State or local governments that are eligible for Federal funding, other than Federal Lands Highway Program funding, are considered an Indian Reservation Road and may be included in the IRR Inventory however, formula funding generated by these State and local government roads shall be restricted to those routes that have a documented scheduled project and IRR funding shall be limited to the non-Federal share.*

### **2. Define Access:**

The term “Access” is not defined in the regulation. There are tribes in certain BIA Regions that are being allowed to include thousands and thousands of miles of State and County roads into their IRR inventories which are generating huge amounts of funding.

However, many of these roads do not connect to tribal lands nor are they limited in the lengths that are being added into the inventory. This is especially unfair to Land Based reservations which are most typically geographically isolated and therefore cannot add thousands of miles of roads just to generate high formula numbers.

Definition of Access. – The statutory definition of an Indian Reservation Road is: “a public road that is located within or provides access to an Indian reservation or Indian trust land, or restricted Indian land that is not subject to fee title alienation without the approval of the Federal government, or Indian or Alaska Natives Villages, groups, or communities in which Indians and Alaska Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.” See CFR 170.5

Although this is a somewhat comprehensive definition of an Indian Reservation Road it does not define “access” nor does it place any limit on to what extent the route can be included in the IRR inventory. Because of this ambiguity, the Bureau of Indian Affairs is allowing tens of thousands of non-BIA miles or non-Tribal system routes into the IRR inventory. These routes include Interstate Highways, National Highway System Roads, State, County and Township Roads, Federal Forest Roads, and proposed roads. Most of these routes are not located within nor do they provide access to Indian or Native lands with some even being located in designated Roadless and Wild areas.

The Coalition believes that the intent of Congress was to limit the term to roads, or portions thereof, whose **primary or exclusive** purpose is to provide access to Indian lands by actually connecting to the Reservation or Trust Lands.

**Recommendation:** *We propose that the term “Access” be clarified in the Statute to mean that the route’s primary or exclusive purpose is to provide access **from** the established exterior boundary of Indian Lands to the route’s intersection with the next equal or greater functional classification or the first mile from the established exterior boundary, whichever is less.*

*No funding shall be generated for the portion outside the exterior boundaries of those Indian lands except those routes owned by Tribes or the BLA, or those routes with an approved project agreement in place with the owning agency and in such cases, the funding shall be restricted to the non-Federal share. Access roads shall be restricted to those roads that physically connect to Tribal lands.*

### **3. Define Project in the Regulation.**

The regulations do not define “Project”. Most of the non-Federal roads included in the IRR inventory are generating funding regardless if it is a project or not. It is our interpretation of the regulation that any non-Federal facility can be included in the IRR

inventory for planning and intergovernmental coordination purposes but, they cannot generate funding until there is a project designated on the route. The BIA and FHWA are allowing tens of thousands of miles into the IRR Inventory only to generate funding with no intention of ever building a project on these facilities.

23 USC defines a project as an undertaking to construct a particular portion of a highway, or if the context so implies, the particular portion of a highway so constructed or any other undertaking eligible for assistance under this title. There are Tribes who are interpreting the regulation to mean that any facility that is added to the IRR inventory is to be construed to be a project.

**Recommendation:** *The definition of Project as contained in 23 USC must be included in the definitions section of 25 CFR 170 and before a route can generate IRR funding, documentation verifying that an actual project is being planned for the route and a project agreement with the facility owner must be provided to the BIA and FHWA.*

#### **4. Define Relative Need**

We believe that the term “Relative Need” is being misinterpreted by certain tribes and the Bureau of Indian Affairs Central Office personnel. By allowing thousands of miles of State and County Roads in the IRR Inventory (now in excess of 100,000 miles) this does not accurately represent the actual transportation needs of tribes.

Because the term “*Relative Need*” not defined in the Statutes or regulation, we ask clarification on the following:

- (a) Although tribal members may use State and County roads to access essential goods and services, is it the Federal government’s responsibility to provide funding for these routes if there is no intention to construct any portion of the route?
- (b) How are the needs of a tribe that is located close to Interstate highways, high volume US highways or urban areas and surrounded by high volume roads and streets that are owned by others relative to the needs of a tribe that is located on a remote reservation and whose only source of funding is the IRR program?
- (c) Is it fair to allow a tribe to include State and County facilities into their inventory just to generate funding (in many cases using bogus data) when those facilities are the responsibility of others and have other sources of funding?

Land Based tribes cannot compete under these circumstances and allowing this to continue does not address the deplorable conditions on Indian reservations. A concise definition of “Relative Need” is essential in order to ensure the intention and to improve the consistency of the methodology applied by each BIA Region.

**Recommendation:** *In determining “Relative Need” for the IRR Program, only those facilities owned by the Bureau of Indian Affairs or Tribe shall be incorporated in the equation. Facilities owned by others may be included only if an actual need is identified in the Tribe’s Long Range Transportation Plan and an actual project is planned by the Tribe and the owning agency.*

**5. Legality of 25 CFR Part 170, Appendix C to Subpart, C Question 10.**

The language in this Subpart allows non-Federal facilities (i.e. State and County roads) into the IRR inventory to generate funding at 100%. No where in the Federal Statutes (23 USC) does it allow non-Federal facilities to be included over and above the non-Federal share (typically 20%).

The language contained in the existing appendix is contrary to the intent of Congress when it created the Federal Lands Highway program under the Surface Transportation Assistance Act. The current question 10 as it is written is illegal in that it is allowing non-Federal facilities to generate funding at 100%.

**Recommendation:** Question 10 must be rewritten to comply with all statutes governing the Federal Lands Highway program. We recommend that Question 10 be re-written as follows:

***Do all IRR Transportation Facilities in the IRR Inventory Count at 100 Percent of their CTC and VMT?***

*No. Other than BIA and Tribal roads, only those transportation facilities that were approved, included, and funded at 100 percent of CTC and VMT in the IRR Inventory for funding purposes prior to the issuance of these regulations. All other facilities will be computed at the non-Federal share requirement only if they meet the following criteria:*

- A. The transportation facility is included in the approved five (5) year Transportation Improvement Plan (TIP). Upon inclusion in the approved TIP, those facilities that are included in the IRR inventory with a Construction Need (CN) of 0 or 2 must be converted to a Construction Need (CN) of 1.*
- B. Public roads owned by the Bureau of Indian Affairs or Tribal Governments shall generate 100% funding. Public roads owned by State or local governments shall be eligible to generate IRR program funding at the non-Federal or local match only if there is an actual project scheduled for the route and the Bureau of Indian Affairs or the Tribal Government has an executed Project Agreement with the owning agency.*

**6. Restrict Proposed Roads in the IRR Inventory:**

Proposed roads being added indiscriminately to the IRR Inventory System. The BIA and FHWA are allowing thousands of miles proposed roads into the IRR inventory only to generate huge funding amounts. We have reason to believe that many of the routes are located within designated “Road less and Wild” areas and are not eligible to be included in the inventory. The manner in which the BIA is allowing proposed roads into the system is inconsistent whereby certain BIA Regions are allowed into the inventory and other Regions are not.

**Recommendation:** *Proposed Roads shall comply with all Federal Regulations regarding Roadless and Wild Areas. Calculation of CTC and VMT for Proposed Roads shall be restricted to actual projects scheduled for the route and the Bureau of Indian Affairs or the Tribal Government has an executed Project Agreement with the owning agency. A proposed road project must demonstrate actual need and the planning processes used to document need.*

**7. Establish an IRR Inventory Oversight Committee:**

From the uncontrolled and indiscriminate manner in which inventory data is being added into the IRR Inventory, (33+ thousand miles in 2004 to 120+ thousand miles in 2009) it is obvious that neither the BIA nor the FHWA are providing any quality control or quality assurance of the inventory data that is being used to calculate funding for IRR distribution. Or worse, the quality control of the data is disparate or discriminating and is not applied consistently across all tribal data. This is evidenced by the fact that Tribes in certain Regions are being allowed to input fraudulent data only to generate funding. The owning agency has no intentions of doing a project on the route, yet the tribe can put it on their inventory and generate funding indefinitely.

**Recommendation:** *An Inventory Oversight Committee made up of Tribal Transportation Officials must be established to monitor the inventory data that is being submitted. This committee will review all inventory data and will decide what data is eligible to be included into the official inventory. The committee will work as needed to verify inventory updates, working on records submitted first (first in – first out concept) and it's work will not delay computation of new formula percentages. Data not reviewed by the inventory update deadline will be handled as part of the next years inventory update.*

8. **Fund the BIA Road Maintenance out of the Highway Trust Fund:**

The BIA Road Maintenance Program has been chronically underfunded under the U.S. Department of the Interior. This program is included in the Tribal Priority Allocation (TPA) and must compete with other Tribal social programs for funding. The funding invested in Road and Bridge Construction on Indian Reservations is being compromised due to inadequate maintenance funding. While funding for Road Construction has increased the amount of funding available for Road Maintenance has declined. Consequently, roads and bridges constructed on Indian Reservations last about half of their design life. The maintenance of these facilities is a Federal responsibility and the health and welfare of Tribal members who have to use these roads is at risk on most reservations.

**Recommendation:** *It appears that a gas tax increase is evitable to restore the Highway Trust Fund. Construction and maintenance of roads and bridges on Federal Lands is the responsibility of the Federal Government. A portion of the new tax (1/2 Cent) should be designated for construction and maintenance for Federal Lands highway Programs.*

**Numbers and Statistics of Concern:**

As discussed above, there clearly are ambiguities and loopholes contained in the Federal Regulation, 25 CFR 170 that in fact have been exploited at the expense of the Land Based Tribes. This exploitation has diverted scarce funding intended for the benefit of Indians to non-Indian entities and has resulted in pitting tribe against tribe. Furthermore, the fantastically unreasonable formula outputs have demonstrated a basic failure to oversee a system responsible for distributing over \$2.5 Billion in IRR program funds. Confidence in this whole inventory driven system is shaken, especially due to the accelerated rate of decline of tribal shares going to Land Based Tribes. The results of the latest formula runs shown that the Land Based Tribes have in fact suffered major declines in share amounts determined by the current system. Following are examples to illustrate this assertion (NOTE: The numbers/statistics below are derived from data received from the Regional Offices and other published data from Central Office. Various specific data requests from Central Office have gone unmet and therefore slight differences from official Central Office data and that shown in this paper may exist. None-the-less, the differences in source data is insignificant and would not significantly alter the numbers/statistics following).

The following (**Table 1**) shows a comparison of the regional TTAM formula shares from 2004 through 2009:

| REGION           | 2004    | TTAM formula %s<br>2009 | % chng          | % Trust Acreage |
|------------------|---------|-------------------------|-----------------|-----------------|
| <b>G Plains</b>  | 7.726%  | 7.004%                  | <b>-9.334%</b>  | 11.1030%        |
| S Plains         | 5.227%  | 4.759%                  | -8.952%         | 0.8806%         |
| <b>R Mount</b>   | 6.812%  | 6.481%                  | <b>-4.855%</b>  | 11.8647%        |
| Alaska           | 10.036% | 11.508%                 | 14.663%         | 1.6362%         |
| Midwest          | 6.321%  | 15.235%                 | 141.009%        | 2.2342%         |
| E Okla.          | 11.536% | 14.284%                 | 23.823%         | 1.2250%         |
| <b>Western</b>   | 9.037%  | 6.259%                  | <b>-30.746%</b> | 23.3723%        |
| Pacific          | 2.285%  | 3.201%                  | 40.072%         | 0.8024%         |
| <b>Southwest</b> | 7.957%  | 3.934%                  | <b>-50.555%</b> | 8.1288%         |
| <b>Navajo</b>    | 22.529% | 17.123%                 | <b>-23.993%</b> | 28.9848%        |
| <b>Northwest</b> | 8.057%  | 7.537%                  | <b>-6.457%</b>  | 8.6853%         |
| Eastern          | 2.477%  | 2.675%                  | 7.974%          | 1.0827%         |

(TABLE 1)

From the above (Table 1), it is easily discerned that those regions with the Land Based Tribes / reservations and large amounts of Trust lands have all experienced significant formula percentage reductions in some cases. Conversely, those regions with no/small reservations and small amounts of Trust lands have all experienced significant formula percentage increases. (Table 1) reflects the uncontrolled implementation of inventory data which is allowing non-BIA/Tribal roads such as National Highway System Roads, State and County Roads to generate enormous Cost to Construct (CTC) and Vehicle Miles Traveled (VMT) numbers. This is a critical concern to the Land Based Tribes since we deal with massive on-reservation vehicular transportation needs. Land Based Tribes needs arise from tribal and BIA roads located on the reservation and meeting them relies primarily on IRR funding. The geographic isolation and reservation boundaries of most Land Based tribes prohibits them from competing in a system that promotes including off reservation high volume National Highway System Highways, State and County into the system - just to reap the high VMT and CTC formula values. Most Land Based Tribes priorities are not others National Highway, State or county roads, but the very roads they must travel to get the basic medical and educational services.

Another indication of how that this system is working against the Land Based Tribes is by looking at the IRR Program investments across the Regional Offices. The following (Table 2) shows Tribal Share dollar amounts by regions as compared against Trust Acreage:

| Region          | 2009 Funding | Trust Acre | Trust Acre | Regions w/Min Trust Acreage |               |
|-----------------|--------------|------------|------------|-----------------------------|---------------|
|                 | \$           |            | %          | i.e. Non-Traditional Resvns |               |
| Great Plains    | 24,613,530   | 5,999,690  | 11.10302%  |                             |               |
| <b>S Plains</b> | 17,167,425   | 475,868    | 0.88064%   | 0.88064%                    | 17,167,425    |
| Rocky Mtn       | 22,424,899   | 6,411,254  | 11.86466%  |                             |               |
| Alaska          | 45,824,695   | 884,131    | 1.63617%   | 1.63617%                    | 45,824,695    |
| Midwest         | 53,384,113   | 1,207,310  | 2.23425%   | 2.23425%                    | 53,384,113    |
| E Okla.         | 49,510,074   | 661,947    | 1.22500%   | 1.22500%                    | 49,510,074    |
| Western         | 22,817,509   | 12,629,572 | 23.37227%  |                             |               |
| Pacific         | 13,792,605   | 433,591    | 0.80240%   | 0.80240%                    | 13,792,605    |
| Southwest       | 14,405,174   | 4,392,501  | 8.12876%   |                             |               |
| Navajo          | 58,517,213   | 15,662,413 | 28.98484%  |                             |               |
| Northwest       | 27,472,545   | 4,693,240  | 8.68530%   |                             |               |
| Eastern         | 10,065,050   | 585,050    | 1.08269%   | 1.08269%                    | 10,065,050    |
| Totals          | 359,994,832  | 54,036,567 | 100.00%    | 7.86%                       | \$189,743,963 |

(Table 2)

(Table 2) above reveals that in 2009, approximately \$190 M are being spent on approximately 7.9% of the trust acres at those Regions with little Trust Land area and/or with few small or no reservation based tribes. Conversely, approximately 53% (\$189M+ / \$359M+) of the IRR funding is being spent on approximately 7.9% of the trust acres at those Regions with little Trust Land area and/or with few small or no reservation based tribes. Back in 2004 before the current inventory update process/formula was implemented, only 37 % of the IRR funding was spent on these same regions with approximately 7.9% of the trust acres at those Regions with little Trust Land area and/or with few small or no reservation based tribes. Although the data is not displayed in the (Table 2) above, data exists that shows approximately 47 % of the fund generating miles and approximately 53% of the fund generating VMT are within approximately 7.9% of the trust acres at those Regions with little Trust Land area and/or with few small or no reservation based tribes. These disproportionate percentages further demonstrate the unfair advantage realized by those tribes in high population density areas where large numbers of proposed roads are added to inter-connect fragmented or non-reservation Indian communities such as Interstate/NHS and county roads for VMT purposes -- or in very low population density areas where large numbers of proposed roads (as very lengthy access roads) are added to connect non-reservation Indian communities to various State infrastructure.

Some other striking numbers that strongly indicate that the reservation Land Based tribes cannot compete in the current system and further demonstrate how the system is skewed against those Regions with the Land Based Tribes and vast majority of the Trust Acreage is shown in (Table 3):



|                 | Trust Acre / Mile             |                         | \$ / Trust Acre               |                         |
|-----------------|-------------------------------|-------------------------|-------------------------------|-------------------------|
|                 | Significantly non-Trust Acres | Significant Trust Acres | Significantly non-Trust Acres | Significant Trust Acres |
| Great Plains    |                               | 431                     |                               | 4                       |
| S Plains        | 80                            |                         | 36                            |                         |
| Rocky Mtn       |                               | 664                     |                               | 3                       |
| Alaska          | 56                            |                         | 52                            |                         |
| Midwest         | 72                            |                         | 44                            |                         |
| E Okla.         | 53                            |                         | 75                            |                         |
| Western         |                               | 1,369                   |                               | 2                       |
| Pacific         | 184                           |                         | 32                            |                         |
| Southwest       |                               | 674                     |                               | 3                       |
| Navajo          |                               | 1,226                   |                               | 4                       |
| Northwest       |                               | 401                     |                               | 6                       |
| Eastern         | 180                           |                         | 17                            |                         |
| <b>Averages</b> | <b>104</b>                    | <b>794</b>              | <b>43</b>                     | <b>4</b>                |

(Table 3)

(Table 3) above shows that in those Regions with approximately 7.9% of the trust acres, i.e. with little Trust Land area and/or with few small or no reservations, one mile of road serves an average of 104 Trust Acres (with the low of only 53 miles in Eastern Oklahoma). Conversely, one mile of road in those Regions with the vast majority of Trust Acres must serve an average of 794 acres (with the high of 1,369 miles). Similarly, the data shows that the current system is only investing about \$4 per Trust Acre in those regions with the vast majority of Trust Acres, while it invests \$43/Acre or over 10 times as much per Acre in those Regions with approximately 7.9% of the trust acres, i.e. with little Trust Land area and/or with few small or no reservations. The current system is punitive to those Regions with Land Based Tribes who are constrained by reservation borders in geographically isolated areas and is making them poorer and poorer.

Additionally, there is another aspect of the current IRR distribution system that is often overlooked when discussing fairness. This has to do with the TTAM takedowns or set-asides for small tribes. These set-asides are known as the Population Adjustment Factor or PAF and High Priority Projects or HPP. During the rulemaking process from 1999 through 2004, the Land Based Tribes made major concessions in allowing for the creation of the PAF and HPP set-asides as part of assisting small tribes to develop capacity building efforts. The practical affect of these set-asides however are significant reductions to the larger Land Based Tribes. For instance, since the TTAM has been implemented, the total set-asides have been approximately \$106 Million for the HPP and approximately \$50 Million for the PAF for a combined total of approximately \$156 Million. Using Navajo as an example with an average tribal share percentage of 20%, they would have received approximately \$31 Million (.20 x \$156 m) had these set-asides not been in place. Instead, Navajo as well as all larger tribes received none of the approximately \$106 Million set-aside for the HPP and only about \$140 Thousand of the approximately \$50 Million set-aside for the PAF. There are 2 points to be made here; 1) these set-asides were concessions made as part of the negotiated rule making process and

represents a significant relinquishment of program funds. Additionally during this same period of time, Navajo has also experienced an approximate 25% reduction in their tribal share percentage due to the uncontrolled implementation of the road inventory process described above, producing a devastating double jeopardy affect. Many other larger Land Based Tribes have the experienced the same negative impacts, and 2) The practice of prohibiting the larger Land Based tribes from accessing any portion of the TTAM funds (HPP set-aside) is discriminatory and cannot continue.

### Unreasonable Formula Outputs:

There are numerous other “anomalies” or formula outputs that question the reasonableness and integrity of the current system. Although there are many, just a few will be listed here:

There is a one person tribe that receives over \$55 Thousand dollars out of the current system,

There is a single tribe that possesses more VMT than 4 Regions have under their entire jurisdiction, which is driven mainly by NHS routes. This particular tribe has approximately 6,400 members has more VMT than every tribe except Navajo which has 185,376 members. This would mean that each tribal person would have to take 183 trips each day to generate this type of VMT number.

There is a village that has seasonal population of 16 members with a cost to construct or CTC value larger than 530 of the tribes and more than that of the Large Land Based tribe of Standing Rock. This same village has over 590 miles in its inventory and has over 30,000 VMT. This is in spite of the fact that there may be 1 or 2 vehicles in the community and there are about 10 miles of existing roads. The remainder is a combination of proposed roads and/or Forest Service roads in a designated wilderness area and the VMT is a result of default ADT values (a concession made by the large tribes during negotiated rulemaking),

It is questionable as to how can this system be acceptable when it recognizes over 8,000 miles of proposed roads in Alaska when the state of Alaska is not allowed to use proposed roads in the STIP formulas? It is unreasonable to think a significant portion of the 8,000 miles of roads will be built in a lifetime, and those that do would not be maintained. Yet these ghost roads or proposed roads are allowed to populate and drive incredible formula values at the expense of other tribes who are not allowed to include proposed roads into their inventories.

As indication that the current system is out of control, the latest inventory data shows a number of urban gaming tribes have begun to take advantage of the IRR program. There are tribes in the California, Seattle, and Minneapolis that have added NHS routes that put their VMT values within the top 15 amongst all tribes. At the same time, these tribes have very small land areas and populations incapable of generating these VMT values, which further indication of non-BIA roads being used to generate

high formula values. What is the rationale of allowing some of the most profitable tribes use State or County roads to beef up their inventory? What transportation needs do they have that the local governments and HUD aren't already meeting?

The final thought in this section has to do with the fact that TTAM formula was used to distribute the ARRA funds which will put approximately 53% of available funds or approximately \$142 million to those 6 Regions with 7.9% of the trust acres with little Trust Land area and/or with few small or no reservations. The vast majority of infrastructure in these 6 Regions is non-BIA owned and there is a strong likelihood that these funds will be put into cooperative agreements to fund State and County just to spend them as part of the strict requirements of the law. How can this be when there are Billions of dollars of backlogged needs on BIA roads on the Land Based Reservations?

### **Conclusion:**

25 CFR Part 170.4 poses the question of "What is the effect of this part on existing Tribal rights?" In (c) of that section the answer is; "This part does not terminate or reduce the trust responsibility of the United States to Tribes or individual Indians." The Land Based Tribes are requesting a congressional investigation into the funding of State and County road systems using Indian Reservation Roads dollars. We desire to expose the very wide and very negative impact this issue has had against the majority of Land Based Indian Tribes all across America. Although SAFETEA-LU made great strides in funding the IRR program, we believe it has also insidiously diminished the sovereignty of Tribes by mandating them to create agreements with states/state entities in order to receive funding which is a trust responsibility of the federal agencies. As mentioned in the 'Other Comments and Concerns' section above, the percentage of funding generated by non-Reservation facilities is nearing Ninety (90) percent. We are concerned that if this trend continues, the IRR Program will cease to exist and Tribes will have to access their Road construction funding through the States. Our recommendation is to remove the language in 25 CFR Part 170 allowing Tribes to include State and County roads in their inventories unless they are part of an approved project and to immediately remove any and all State and County road systems that have been placed on the BIA Indian Reservation Road Inventory under the rule.

The volatility of this formula has made it impossible for tribes to plan a program. There have been fluctuations of \$1M to \$2M a year, both positive and negative for all tribes. How can tribes get flexible financing when they don't know if they will have and IRR program budget in 5 years?

This formula/system may have been manageable if the 2% annual growth rate cap was kept in place as part of the 25 CFR 170. When the 2% annual growth rate cap policy was discontinued upon implementation of the new 25 CFR 170 in 2004, the result has been an arms race, i.e. the miles generating funding in the system went from 33 thousand in 2004 to 120 thousand in 2009 (with no end in sight). Additionally, the Council of Large Land Based Tribes indicated that 25 CFR 170 was a workable rule, however, this is

before 7 of it's' letters went unacknowledged and before it spun completely out of control. It is now clear that there is nobody controlling the system when the same National System State Highway which is allowed to function at 100% producing an approximate \$5 M upswing in one Region yet only being allowed to function at a fraction of that at another Region.

It is absolutely clear that the system will continue to be manipulated and will never be controlled – it is clear that the FHWA has no interest in controlling it since it is their opinion that it has been good to include all these extra miles, since in their view of the problem is that until all the tribes include any / all the inventory updates, they will not intervene and control the situation.

The 6 corrective actions recommended in the 'Other Comments and Concerns' section above may never be implemented without congressional action. Therefore it is critical to correct these problems during the Highway Reauthorization process and failure to do so only perpetuates a flawed 25 CFR 170 rule and formula which has failed to measure relative need while harming the Land Based Tribes in the process.

Ultimately we feel the solution lies in implementation of a formula that cannot be manipulated or mismanaged by FHWA and BIA. With this, The Coalition of Land Based Tribes recommends a statutorily mandated formula be contained in the reauthorization bill that is based on 80% Trust Acreage and 20% Trust Land Area for each Tribe.

Although this formula approach will pull funding back from the regions/tribes with little Trust Land area and/or with few small or no reservation based tribes, this is the aim of the Transportation Coalition of Land Based Tribes which has been formed to work to return the IRR program to what the United States Congress intended it to be -- the only source of funding for the transportation needs of Land Based Tribes. Furthermore it must be pointed out that during implementation of SAFETEA-LU, the tribal share percentage for most Land Based Tribes was relentlessly decreased at accelerated rates without warning and certainly without consultation. With this, it would seem irrational to put so much concern into correcting the formula that takes back the ill-gotten gains achieved by the urban/land-less tribes during the past 5 years.

It is very obvious that the uncontrolled manipulation of 25 CFR 170. is having a devastating effect on Land Based Tribes. Since we have previously attempted to correct this unfair manipulation of the regulations to no avail, we feel that we must turn to Congress to return the IRR program back to its original intent.

Senator TESTER. Thank you, John. I appreciate your respect for the time. I thank you for your comments.

Before we get into questions, once again I would just ask if you've got a comment during our public comment time, raise your hand so Virginia can get you. Anybody that's not on this list, if you still want to comment, get ahold of Virginia.

Let's go to questions. So I'm going to make the assumption that you've all been involved with the Q-10 consultations. Fair assumption?

Mr. STEELE. Yes.

Senator TESTER. Good. So I'll just start with you, Chairman Moran. What did you learn from the Q-10 consultations?

Mr. MORAN. The main thing I picked up on that was that the funding that's there is not done in an ethical manner. It's not done

in a sharing that comes from data that's from an Indian reservation. It comes from data that's put together there from past records, and records sometimes aren't current. And it's used accordingly.

Senator TESTER. Okay. Jim, same question. What'd you learn at the Q-10 consultations?

Mr. STEELE. I think one of things that we've learned in this whole process, including the Q-10 and other things and other meetings, is that one thing for sure is we need some sort of standard quality assurances to submission of the numbers into the data. What kind of data is being submitted? Is it accurate?

And we had a meeting just before you arrived, Senator, on this issue, and it was very telling.

Our region is going by the book. We report on the conditions of our roads, and that's what we submit. There's regions that submit the quality of roads, but it's not the actual on-the-ground quality of those roads. And so that's troublesome when you have inaccuracies in the Bureau reporting—the people in different regions reporting inaccuracies and entering inaccuracies into the system to gain the extra dollar over other regions. That's not fair, and that's not equitable, and that's not Indian Reservation Roads.

And so I would contend, Senator, that we either need to change the IRR name to something else. It's obviously not Indian Reservation Roads. But if we're going to keep the name IRR, we need to put it back the way it was.

And I would contend once again that if we're going to keep this system the way it is, it's unfair, inaccuracies being reported and not being corrected, then change the name from IRR to something else, State Highway Fund or Extra County Fund for their roads. But it's certainly not Indian Reservations Roads.

Senator TESTER. Thanks, Jim. Tim, what did you learn from the Q-10 consultations?

Mr. ROSETTE. It's complicated, you know, very complicated. There's a lot of issues out there outstanding. I've been doing this for over five years, and I'll tell you, Senator Tester, we've been writing letters for years and years and years, and I'll tell you what, nobody listens. Nobody cares. I don't know. Toss them over to the side. I don't know what they do with it. You know, until finally this year with Assistant Secretary Echo Hawk. He finally tried to grab that bull by the horns. But, you know, it's a big bull, and he does need help.

Senator TESTER. Okay. John Smith, same question. What have you learned from the Q-10 consultations?

Mr. SMITH. We still have a long way to go in resolving the issues that intertwine with Q-10. Q-10 is a conglomerate of various factors that are very technical in nature.

When you talk about the cost to construct, when you talk about vehicle miles traveled, when you talk about the integrity of submission of information, it is very complex.

I think we need to look at a possible simpler solution that would not be quite as ambiguous and be as broad as it is now to narrow it down to simple activities, such as population, land base, and road miles, rather than VMT.

VMT is a very subjective matter, which comes to vehicle miles traveled. We cannot compete here in Montana and Wyoming with vehicle miles traveled as they can in a small-acre reservation in, say, eastern Washington, which is on I-5. They have an interstate and a turn-off into their reservation, and it's considered an Indian road. When you have 28,000 vehicles per day times 365, the VMT escalates at an enormous rate.

We need to have factors that are very essential to Indian reservation way of life and our needs for assistance. We have, in some cases, lost tribal members who have called for emergency services, which then the ambulance has to come for a maybe 45-minute tour. And then they to have a police officer come and verify it is a sound accident, which takes time. And then they have to be retrieved and put in an ambulance to get to town. That's more than an hour. Most fatalities are considered, effectively, if they're treated within the first hour, the golden hour of life. We don't have that luxury, sir.

Senator TESTER. Okay. Each one of you represent different entities, and I think you're fully aware that they're in the process of working on a new Highway Bill coming up this next year. Do you have priorities for that bill?

And we'll start with you once again, Chairman Moran, if you have priorities for the upcoming Highway Bill reauthorization?

Mr. MORAN. The biggest priority I think would be to get Section 10 of that bill, rename the bill, get Section 10 into an accurate distribution-type formula so that the way the funds are going to be distributed, are distributed equally. To ensure that that's done, I think that has to be.

There's a lot of discomfort among us tribal leaders. And we don't want to say that some tribes are treated because of the noise they make. But sometimes that formula is distributed and it happens that way. I think it will make everybody happy.

Senator TESTER. Okay. Jim, priorities for the next Highway Bill reauthorization?

Mr. STEELE. I think if there's a way to get over this big hurdle or the bill that Mr. Smith was talking about, I think each individual reservation has their own specific priorities in terms of the bill. And usually we take the lead of our member tribes, so I'll defer to Mr. Smith and Mr. Rosette. They deal a little more specifically on those areas. And so they bring those to our body and will push those forward. Generally, we're united on our priorities. And as Mr. Smith and Mr. Rosette are working on them and they come up to our council, we're going to be standing 100 percent behind their efforts. So I'd defer to them to answer more specifically.

Senator TESTER. Good, Jim.

Tim.

Mr. ROSETTE. I agree with Big John on one of the proposals. You know, it has to be fair and equitable distribution of funding. And please don't consider me an advocate of the solutions for any tribe, because I'm not. We need to be fair and equitable. But fair and equitable has not been the case over this last Highway Bill, especially for rural land-based tribes. The distribution of their distribution is not there, sir.

And I think it needs to be toned down and simplified. One-third, one-third, one-third. Vehicle miles traveled has its places, but not with us, because we cannot equitably distribute on vehicle miles travelled. That in itself, even with the proposed changes to Question 10 right now, vehicle miles traveled even at the non-federal share are massive amounts that we can't compete.

We don't have—You know where we live. You know.

Senator TESTER. I do.

Mr. ROSETTE. We don't have it. What we have is what we have, you know. There's just nothing, you know, unless we come down to that realization and we can get NCAI and the rest of them and they can come aboard and say, Hey, let's just do this and do it right. Because it comes down to what's right and what's wrong. And what's going on is wrong.

Senator TESTER. Okay. John.

Mr. SMITH. Thank you, sir. I think we've maintained the program pretty much as it is. We do have road construction. We have road maintenance. We do have the need for safety improvements. Also with that, we have needs in transit. The ability of getting our elders to and from the clinics, treatment, pay their bills in town, give them a ride with this current economic condition. Our seniors pay people to take them to town. They give them gas money to take them to town and come back, pay their bills. And senior citizens are the ones who are the best bill payers in the world. Our water departments have delinquency rates among younger people, but very little with the senior citizens. They have their lives budgeted, they take care of themselves, and they need assistance. And we as Indian people have always prided ourselves on taking care of our elderly.

And I think that also we would recommend that we would work through the Montana-Wyoming Tribal Leaders Association, our council, in preparing our issues and our needs for transportation improvements. We do have a committee chairman who currently serves as our representative in our transportation committee. And we usually work most of our issues through that process. Thank you.

Senator TESTER. Thank you. And I want to thank you all for your presentation and your answers to the questions.

We've got 110 people at this hearing. That's more than probably any D.C. hearing we've had in a while. So we appreciate the public being here. I want to express my appreciation to this panel and the preceding panel for their honesty and their eloquence. Thank you for being here.

We're going to move now to the public comment section. So while this group disbands, we will do that.

Yes, Bud.

Mr. MORAN. Senator, I want to thank you and thanks for your support people. They've been very helpful here. And it's been a pleasure to have you here and have this meeting with them. It's been really good.

Senator TESTER. I think we're going to make a proposal to have all our Senate Indian Affairs hearings here; how's that?

The public comment section, and I would ask everybody to try to keep it to three minutes. If some of you came so well prepared that

you have a written statement, that's outstanding. You can turn that in, too. I have a list here that Virginia has given me. There's a mic in the center of the room. And so we'll ask you to go to it.

I'm going to start with Jim Lynch, who's Director of the Montana Department of Transportation. Jim, you'll get the ball rolling. And then after Jim gets done, if Kevin Howlett wants to get in line, we'll go to Kevin. Then we'll just kind of go down the list. Okay. Jim, good to have you here.

**STATEMENT OF JIM LYNCH, DIRECTOR, MONTANA  
DEPARTMENT OF TRANSPORTATION**

Mr. LYNCH. Senator Tester, thank you very much for asking me to speak. I want to thank Chairman Moran and the Salish-Kootenai people who have opened up their home for us all here today to have this hearing.

I listened to the panel and I've heard some of the concerns, and I think the common denominator here is Indian Reservation Road investment is very important to the land-based reservations here in the state of Montana.

And to give you a little bit of a highlight of the Montana Department of Transportation and our relationship with the existing land-based reservations in the state of Montana, it's been a very positive one over the last five years. The Department of Transportation, and I'm saying this for an important point to make, since 2006 we've invested \$325 million in highway infrastructure on state highways that are inside the exterior boundaries of Montana reservations. We've included \$4 million in transit, \$3 million in training grants, \$1 million in highway safety investment, \$6 million in community transportation enhancement projects, and \$150,000 for safe roads to school programs.

And I'm saying that not to make the point that they don't need Indian Reservation Road investment, but just the opposite. I am making that point to let you know that state highway departments in Montana have taken a very responsible road in using its core highway dollars to take care of its highways, even the highways within the existing boundaries of the Native American Indian reservations in Montana. That allows the Indian Reservation Road Program revenue that the reservations receive to be spent on their roads. And I think it also demonstrates the importance of that investment for those roadways.

We have a great relationship with the seven land-based reservations in the state of Montana. And I can assure you as the Director of Transportation who's been on every one of those reservations, I can assure you there's tremendous need for highway infrastructure investment. And it's not state highways, but actually truly Indian reservations roads. Thank you for your time.

Senator TESTER. Thanks, Jim. Before you give up the mic, tell your name and position, that way you got it on the record.

Mr. LYNCH. I am sorry, Senator. My name is Jim Lynch. I'm the Director of the Montana Department of Transportation.

Senator TESTER. Thank you very much. Kevin, you're up next. He's coming up. Saw a great health care facility. Kevin, man, it's spectacular. We appreciate the tour today, Kevin. You're up next.



**STATEMENT OF KEVIN HOWLETT, COMMISSIONER, DISTRICT  
1, MONTANA DEPARTMENT OF TRANSPORTATION**

Mr. HOWLETT. Thank you, Mr. Chairman. For the record, I'm Kevin Howlett. I'm a Transportation Commissioner for the Department of Transportation. I'm also the Director of Health and Human Service for the Salish-Kootenai tribes.

Thank you, Mr. Chairman, for holding the the transportation hearing today here in Indian country, Flathead reservation, my home.

First, let me say that my testimony does not represent the State of Montana, but reflects my service and observation as a Native American who has the privilege of sitting with this distinguished group of Montana citizens who represent the entire state.

I was first appointed to the commission by Governor Judy Martz and was subsequently reappointed by Governor Brian Schweitzer. It has been a very challenging role, but one that I feel a great sense of accomplishment and pride in the projects that we've been able to do.

The issue of transportation in Indian country is one that I have become increasingly observant. The specific needs that are present, including isolation and financial resources all need to begin to address the long overlooked infrastructure that has and continues to add to the many social and economic issues confronting tribal nations today.

The purpose of my presentation today is two-fold. I would like to see the operations of the IRR Program be more reflective of the needs on ground. Methods by which scarce funds are distributed tend to ignore the needs of tribes who are large land-based and favor former Indian country. The reality is that most of the country was formally Indian country.

As you are aware, tribal governments have very little ability to generate resources to meet the needs. There are many areas of our state that need repair and reconstruction. And the resources, as well as we can plan, are insufficient to meet the need. This is especially true for many Indian reservations that are not part of the Interstate System, National Highway System or State Secondary System.

In addition to roads, there are issues of bridges, pedestrian walkways, et cetera. While I know very little about the operation and infrastructure of the BIA Roads Program, I can reflect upon a very concerted effort that I led as a commissioner to work with the BIA on projects on the Cheyenne Reservation. We and the Transportation Commission were able to utilize an agreement with the BIA that would have allowed them to use their force account equipment, et cetera, to complete the project. They were not able to deliver the project, and the state had to complete the project. This put a cold shoulder on further discussions about agreements on Indian land between the BIA and the state.

I would hope that the issue of Indian reservation roads is further discussed and consideration be given to the formulation of an infrastructure and necessary resources to accommodate and utilize funds the state may have utilizing the reservation workforce.

I would also like to recommend that the Bureau of Indian Affairs create an entity that can provide Reservation Roads Programs with

the needed technical assistance to provide Indian contractors the expertise, including financial bargaining to compete for projects on the reservation, that they can within the scope of their resource and capacity achieve.

The issue of financing could be expanded within the scope of this technical review and structure. My concern is that because the state has contracting law and regulations, there's oftentimes no opportunity for local contractors or for that matter tribes the ability to compete. It might also be worth examining the potential for Legislative Land Reach, the new transportation bill, that would provide a preference on federal projects on Indian lands to tribes capable of competing on construction jobs, again, within the scope of their capacity.

A final issue, I would like to ask for your support for federal resources to complete the Highway 93 project on this reservation.

Again, thank you for holding the hearing and for your continued support for Indian country and the citizens of Montana.

[The prepared statement of Mr. Howlett follows:]

PREPARED STATEMENT OF KEVIN HOWLETT, COMMISSIONER, DISTRICT 1, MONTANA  
DEPARTMENT OF TRANSPORTATION

Mr. Chairman,

Thank you for holding a hearing on Transportation issues in Indian Country.

I especially want to thank you for holding this hearing on the Flathead Indian Reservation, my home.

First, let me say that my testimony does not represent the State of Montana, but reflects my service and observation as a Native American who had the privilege of sitting with this distinguished group of Montana citizens who represent the entire state.

I was first appointed to the Commission by Governor Judy Martz, and was subsequently re-appointed by Governor Brian Schweitzer.

It has been a very challenging role, but one that I feel a great sense of accomplishment and pride in the project that have been done.

The issue of transportation in Indian Country is one that I have become increasingly observant. The specific needs that are present including isolation and financial resources only begin to address a long overlooked infrastructure that has, and continues to add to the many social and economic issues confronting tribal nations today.

The purpose in my presentation today is two-fold:

I would like to see operations of the IRR program be more reflective of the needs on the ground. The methods by which scarce funds are distributed tend to ignore the needs of Tribes who are large land based, and favor former Indian country locations. (Oklahoma) The reality is that most of the country was formerly Indian country.

As you are aware, tribal governments have very little ability to generate resources to meet the needs.

There are many areas of our state that need repair / reconstruction and the resources as well as we can plan are insufficient to meet the need. This is especially true for many roads on Indian reservations that are not part of the Interstate System, National Highway System, or State Secondary Systems.

In addition to roads, there are the issues of bridges, pedestrian walkways, street safety improvements, etc..

While I admittedly know very little about the operation and infrastructure of the BIA roads program, I can reflect upon a very concerted effort I led as a commissioner to work with the BIA on a project on the Northern Cheyenne Reservation. We (commission) were able to utilize an agreement with the BIA that would have allowed them to use their force account, equipment, etc. to complete a project. They were not able to deliver, and the state had to complete the project. This put a cold shoulder on further discussion about agreements on Indian lands between the BIA and the State.

I would hope that as the issue of Indian Reservation Roads is further discussed that consideration be given to the formulation of an infrastructure and necessary resources to accommodate and utilize funds the state may have utilizing the reservation work force.

I would also like to recommend that the Bureau of Indian Affairs create an entity that can provide reservation roads programs with the needed technical assistance to provide to potential Indian contractors the expertise, including financial bonding to compete for projects on the reservation, that they can within the scope of the resources and capacity achieve. The issue of financing / bonds could be examined within the scope of this technical review / structure. My concern is that because the state has contracting laws and regulations, there is often times no opportunity for local contractors or for that matter tribes the ability to compete. It might also be worth examining the potential for legislative language in the new Transportation bill that could provide a preference on federal projects on Indian lands to tribes capable of competing for construction jobs; again within the scope of their capacity.

A final issue I would like to ask for your support for federal resources to complete the highway 93 project on the reservation.

Again, thank you for holding the hearing, and for your continued support to Indian Country and to all the citizens of Montana.

Senator TESTER. Kevin, thank you for your testimony.

Scott Russell, part of the Crow Nation will be next. After him will be Jay St. Goddard.

**STATEMENT OF SCOTT RUSSELL, SECRETARY, CROW NATION**

Mr. RUSSELL. Thank you, Senator Tester. For the record my name is Scott Russell, Secretary of the Crow Nation.

Once again, thank you, Senator, for holding the hearing here. Also, we'd like to extend our gratitude to the Flathead Nation for hosting this event and also for having the hearing here.

Senator Tester, we do have written testimony that we've given to your staff already. But just to highlight a little bit. For the Crow reservation, at one time in the Fort Laramie Treaty of 1851, the Crow reservation accomplished 38 million acres. Since that time, it has dwindled down to 2.2 million acres. In the 1920 Crow Allotment Act, our reservation now is the highest fractionated reservation in the country. Ten percent of the all fractionation—The problem with fractionation is right here on the Crow reservation in Montana.

And we need technical assistance to help us deal with right-of-way issues. We need technical assistance to help us deal with some 200 landowners on one tract of land. And on our Crow reservation we have 184 interstate highway miles. We also have 3,500 miles of reservation roads.

Now, you know Montana weather. It does not compare with southwest. It does not compare to anything in the south. We need

more money for maintenance. And some of these roads are impassable during that time.

We had a premeeting prior to this hearing this morning, and I was quick to add that this nation is at war in Iraq and Afghanistan. And I was also proud to mention that per capita Native Americans are the highest minority group that enlist in times of war since World War I. We feel that we have given and given and given way too much. And we do appreciate what we get, but we have still kept giving. And yet we defend this country proudly.

The United States Government has given billions upon billions of dollars to rebuild a foreign country in Iraq and Afghanistan. We feel that it's about time that the United States Government rebuilt Native America. It's only right.

Any amount of money is good, but regardless, you start putting dollar amounts, it's hard. Who's to say who gets more. And it boils down to a divide and conquer theory, and it's not right.

But we do thank you for being here.

Senator TESTER. Thank you, Scott. We appreciate your testimony.

Jay St. Goddard following. After Jay will be Jacque Hostler.

Jay's part of the Blackfeet Tribal Council.

Jay.

#### **STATEMENT OF JAY ST. GODDARD, BLACKFEET TRIBAL BUSINESS COUNCIL**

Mr. ST. GODDARD. Thank you, Mr. Tester. For the record my name's Jay St. Goddard, Blackfeet Tribal Business Council, Land Chairman in our Resources and Roads Department.

Also I want to thank Mr. Echo Hawk for being here with his staff. Once again, I think it's great that you come out to the state of Montana to hold these kind of hearings. When you're very sincere in your work, it shows the Montanans that you want to get the job done.

As stated earlier, Mr. Echo Hawk does have a big bull by the horns, but I've seen a John Deere tractor slow a bull down, too.

But there was a lot of talk this morning, and I made a comment in our session earlier about dollars. A lot of them to me were millions of dollars being spent on federal, state and county roads. But the need is still not being met in Indian country. And safety is an issue. And the roads all need to be rebuilt that were built in the 1970s.

Right now our roads are over 1,200 miles of BIA roads. State roads run through our reservations as Mr. Smith has stated. But off of those turns those other roads are BIA roads and are in poor shape. To the west of us is Glacier National Park. \$20 million are being put into a road, and yet our needs are still being underfunded each year.

You talk about the formula, Question 10. I've been to these consultations. Everyone who went to those consultations, they drove onto a nice interstate off of a nice state highway road. Maybe one of these consultations needs to be held in Heart Butte, Montana, where your car would fall apart on half of that BIA road.

Anyway, I'd like to get to the point. And I'd like to point out that the graphs that were shown by these gentlemen that worked for

the that seven to eight years—Mr. Rosette, John Smith, Donny White from the Blackfeet—that they be listened to. As you heard, they've been writing letters for years. Tribal politics, councilmen like myself come and go, but these gentlemen work diligently and hard. They got the statistics. They know. And we can only bring this to you as tribal leaders. These gentlemen need to be listened to by the Interior. These people sitting right here.

Mr. LeRoy stated that things were going good. That's not true. I wasn't happy with the consultation. I went to the one in Billings.

Question 10 is being avoided. They don't know how to answer it. The formula is so complex. Some of the people still don't know how to figure it out today. And yet we're hurting for dollars in Indian country.

Seventy-eight percent of the roads since 2004 and 2009 have went to state and county roads, not BIA roads. So this formula is not working. If they don't want to use Question-10, then we should go back to the old way. There was no problems then.

And right now maintenance is hurting. We build roads in Indian country, but there's no maintenance. You take the dollars away from the maintenance workers.

Thank you and thank you for all your help and the other three senators that help you.

Senator TESTER. Thank you, Jay. Next up is Jacque Hostler. Jacque will be followed by Pete Red Tomahawk. Jacque is a representative of the Indian Reservation Roads Program from California, so thanks for being here, Jacque.

**STATEMENT OF JACQUE HOSTLER, CALIFORNIA PRIMARY REPRESENTATIVE; VICE CHAIRPERSON, INDIAN RESERVATION ROADS COORDINATING COMMITTEE**

Ms. HOSTLER. Thank you very much. Distinguished Senator Tester, honored witnesses, guests and staff, I would like to thank Chairman Dorgan, Vice Chairman Barrasso, the Senate Committee Leadership and express appreciation for the successful work this year and major accomplishments on transportation and other issues, as well as the Salish-Kootenai tribe. Good afternoon. My name's Jacque Hostler. I'm the California Primary Representative and the Vice Chairperson of the Indian Reservation Roads Coordinating Committee. I am the Chairperson of the North Coast Tribal Transportation Commission and the Chief Executive Officer of the Trinidad Rancheria. Today I bring you comments from the North Coast Tribal Transit Association, which represents eight tribes. In addition, I'm speaking on behalf of 110 California tribes.

As of 2005, California was the state with the largest native America population according to the census, and we received historically less than 2 percent of the IRR funding.

Historically California treaties were negotiated setting aside 7.5 million acres of land for California tribes. These treaties were never ratified with the state or the senate and kept hidden until 1905.

During the termination era, 43 tribes were terminated in California and lands were taken out of trusts and often lost. Through litigation settlement and congressional action many tribes have

been restored, but the scars still remain and continue to affect the ownership of tribal land.

Eventually many executive reservations and rancherias were established in California, although they were much smaller than the original treaty land. Because of this history, many lands that were constructed by the tribes and the Bureau of Indian Affairs were conveyed to state, county and local ownership.

I bring this to you to bring the other perspective. This is why we have county and state roads on the Indian Reservation Roads Program.

Today, history is repeating itself. Tribes do not have ingress and egress to the reservations and rancherias. Palm Springs is one example of stretching limits of the IRR program, and there may be others in California as well as every region in the nation. However, this perception is incorrect, and California should not be judged as building roads to Disneyland.

While there are a handful of urban tribes with large casinos located on and near interstates, there are thousands of tribal dirt and gravel and unimproved roads that provide access to tribal reservations, villages and communities.

Many tribes in California are located in remote areas without safe access to basic services such as health services, emergency services, jobs and schools. People die because they cannot get to medical services just as they do in every other region. It does not matter who owns the right-of-way. What is critical is that the ambulance can get through, that the school bus can travel safely, that people can get to safety if their land is consumed by wildfire, that the roads can support a tribal economy on a reservation, and that tribal members can get to jobs located off the reservation. SAFETEA-LU recognizes this and funding was based on relative need.

You have my written comments. We do support the directive the agencies are putting forward. The BIA and Federal Highways are contracting with a private consultant to review the IRR inventory and address roads that are incorrectly classified. The process must be transparent and provide an opportunity for tribes to be part of the process. We're pleased with the agencies in trying to resolve it.

In closing, as I speak to you today, I am not only speaking as a transportation leader, I'm speaking from the heart of our people. I was born and raised in northern California. I went to school on the Hoopa reservation. I married a Hoopa tribal member. I have two tribal member children, four tribal member grandchildren. Our tribal elders, our grandmothers are cultural and spiritual leaders, and all of our tribal members depend on roads to access, not only basic necessities, but also spiritual, ceremonial and religious sites. We live in the mountains, in the river valleys, in the deserts and on the coast. We all ask you to visit California and see California tribes and lands through our eyes.

Thank you again on behalf of California's Pacific Region, 110 tribes and tribal people. Thank you for your dedication.

[The prepared statement of Mr. Hostler follows:]

PREPARED STATEMENT OF JACQUE HOSTLER, CALIFORNIA PRIMARY REPRESENTATIVE;  
VICE CHAIRPERSON, INDIAN RESERVATION ROADS COORDINATING COMMITTEE

**Introduction**

**I would like to thank the Chairman Dorgan and Vice-Chairman Baraso, and the Senate Committee Leadership and express appreciation for the successful work this year and major accomplishments on Transportation and other issues including the Health Care Reform Bill and for the opportunity to provide comment today on behalf of California Tribes**

Good Afternoon, my name is Jacque Hostler. I am the California Primary Representative and the Vice Chairperson of the Indian Reservation Roads Coordinating Committee, a Board Member of the Cal Trans Native American Advisory Committee, the Chairperson of the North Coast Tribal Transportation Commission (a coalition of over ten Northern California Tribes), and the Chief Executive Officer of the Trinidad Rancheria. I am a Technical Advisory Committee member for the Humboldt County Association of Governments, our local regional planning agency. Today I bring you comments from the North Coast Tribal Chairmen's Association, including the following Tribes: Hoopa, Yurok, Karuk, Trinidad Rancheria, Smith River Rancheria, Elk Valley Rancheria, Resighini Rancheria, and I would like to honor and recognize Vice-Chairperson, Shirley Laos of the Cher-Ae Heights Indian Community of the Trinidad Rancheria who is with me today.

In addition I am speaking on behalf of 110 California Tribes. As of 2005, California is the state with the largest self-identified Native American population according to the U.S. Census at 696,600.<sup>141</sup> **As the U.S. Census is updated in 2010 this number will reflect increases believed to be over 700,000 California Indians.**



### **Historical Perspective**

California treaties were negotiated setting aside 7.5 million acres of land for California Tribes. These treaties were never ratified by the Senate and kept hidden until 1905. During the termination era, 43 Tribes were terminated in California and lands were taken out of trust and often lost. Through litigation, settlements and congressional action many tribes have been restored, but the scars still remain and continue to affect the ownership of Tribal lands. Eventually, many executive Reservations and Rancherias were established in California, although they were much smaller than the original treaty lands. Because of this history, many lands that were constructed by the Tribes or Bureau of Indian Affairs were conveyed to State, County or Local ownership.

### **History Repeats Itself**

The Cher-Ae Heights Indian Community of the Trinidad Rancheria was established in 1906, and although not terminated experienced the same unfair, irresponsible federal and state policies in 1960. The State of California unilaterally took land from the Trinidad Rancheria and provided it to be used for the construction of Highway 101. This action split our reservation lands into non-contiguous sections and resulted in the loss of valuable tribal land. The State built Highway 101 without granting access to the Tribes' land and today we do not have direct ingress or egress to the Rancheria. We rely on one access route which is failing due to the location on steep ocean bluffs. Our members' safety, our livelihoods, our tribal economic development and the continuation of our culture depend on decisions being made today as a result of this hearing.

This is one example from one of the 110 California Tribes (as every other tribe in the nation) who can share stories of loss of life, loss of land, and loss of culture because of the horrible atrocities we have experienced.

### **Mischaracterization of California Tribes**

Palm Springs is one example of stretching the limits of the IRR Program and there may be others in California as well as in every region in the Nation. However this perception is incorrect and California should not be judged as "Building Roads to Disneyland" While there are a handful of urban tribes with large casinos located on or near interstates, there are thousands of tribal dirt and gravel and unimproved roads that provide access to tribal reservations, villages, and communities. Many tribes in California are located in remote areas without safe access to basic services such as health services, emergency services, jobs, and schools. People die because they cannot get to medical services, just as they do in every other Tribal Region in our Nation. It does not matter who owns the right of way - what is critical is that the ambulance can get through, that the school bus can travel reliably and safely, that people can get to safety if their land is consumed by wildfire, that the road can support a tribal economy on reservation and that tribal members can get to jobs located off reservation. SAFETEA-LU recognizes this, and funding is based on relative NEED.

### **BIA/FHWA Policy Directive - 25 CFR Part 170, Appendix C to Subpart C, Question 10**

The BIA and FHWA are proposing a directive to the Indian Affairs Manual that would interpret the general rule of Question 10. The proposed directive is to determine which transportation facilities are eligible for Federal-aid Highway funding, and those roads which will only generate funding at

the local match – rather than 100%. Roads, including those located on remote reservations, which are owned by a state or local government are eligible for Federal-aid funding – and will only generate the local match - unless the road is a local road or a rural minor collector.

The functional classifications in the IRR inventory do not align with the classifications in the Federal-aid system, which are established by each State DOT. The BIA and FHWA are contracting with a private consultant to review the IRR inventory data and align the functional classifications so that BIA can determine which transportation facilities are eligible for Federal-aid highway funding.

This week, FHWA committed that tribes will be notified of any proposed changes to their inventory, and provided an opportunity to appeal the change. This is clearly a requirement of basic due process, but it is insufficient to satisfy the unique government-to-government relationship and does not recognize the self-governing authority of tribes. At a minimum, we respectfully request the following:

- **This process must be transparent and tribes must be provided an opportunity to play an active role in this process.** This private contractor will have a tremendous amount of power to determine to change a tribe's inventory and a tribe's funding. Who will have oversight and how will tribes be included in this process?
- **Tribes need to know what the contractor is being hired to do – we need to be able to review the Request for Proposal (Scope of Work).**
- The contractor will need to apply the Federal-aid classification system in each state to the roads on a tribe's IRR inventory. **The contractor must consult with tribes during this process.** We know the inventory on our inventories and we work with the state DOTs and local governments and often know how they classify a road in their plans. (i) The contractor should be required to consult with tribes as they develop the classification definitions that they will apply.
- **Tribes need to have the ability to provide information to the contractor regarding the definition and the inventory data.**
- **Tribe must receive notice of any proposed changes to a tribe's inventory and an opportunity to provide additional information and to contest the proposed change.**

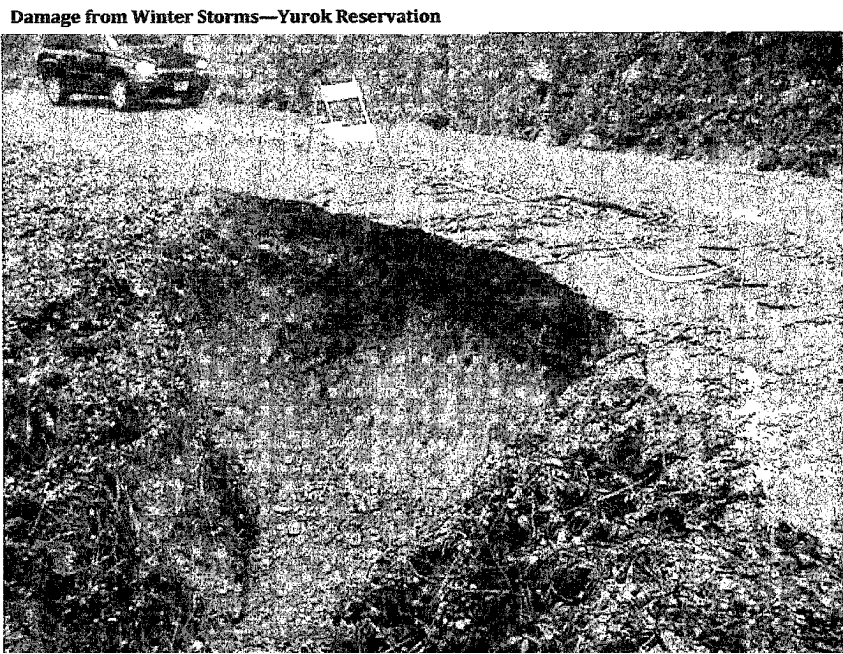
*We are pleased that the agencies have sought to resolve this issue by returning to the actual language in the applicable statutes and regulation and developing a new policy directive intended to bring the formula process into compliance with the governing law. We understand the time constraints under which the agencies are operating, but it is imperative that agencies consult with tribes in this process. Our thanks go out to Mr. John Baxter, Mr. Robert Sparrow, and Mr. Leroy Gishi and the Indian Reservation Roads Coordinating Committee members and many others for their long hours of work on this important issue.*

#### **Words from Home**

As I speak to you today, I am not only speaking as a Transportation Leader, I am speaking from the heart of our people. I was born and raised in Northern California. I went to school on the Hoopa Reservation. I married a Hoopa Tribal Member who came from the Village of Takmildin (Hostler Village). I have two Tribal Member Children and four tribal member grandchildren.

Our Tribal Elders, our grandmothers, our cultural and spiritual leaders, and all of our tribal members depend on roads to access not only basic necessities, but also spiritual, ceremonial and religious sites. We live in the mountains, in the river valleys, in the deserts, and on coastal bluffs. We all ask you to visit California and see California Tribes and lands through our eyes.

**Thank You again on behalf of the California Pacific Region, 110 California Tribes and Tribal People, and for your dedication to Indian Country and addressing this serious issue.**



Damage from Winter Storms—Yurok Reservation



Senator TESTER. Thank you, Jacque. I appreciate you coming all the way from California.

Next we have Pete Red Tomahawk from the Standing Rock Sioux Tribe. Behind Pete will be Sampson Begay.

**STATEMENT OF HON. PETE RED TOMAHAWK, DIRECTOR OF TRANSPORTATION PLANNING AND DEVELOPMENT; GREAT PLAINS REGION PRIMARY MEMBER, INDIAN RESERVATION ROADS PROGRAM COORDINATING COMMITTEE, STANDING ROCK SIOUX TRIBE**

Mr. RED TOMAHAWK. For the record, my name is Pete Red Tomahawk. I am the Director of Transportation Planning and Development, and also I'm the Great Plains Region Primary Member on the Indian Reservation Roads Program Coordinating Committee representing the 16 tribes in North Dakota, South Dakota and Nebraska.

On behalf of the Standing Rock Sioux Tribe, I want to express my appreciation to the Committee of Indian Affairs, to you, Senator Tester, and to the retiring Committee Chairman, Byron Dorgan for convening today's hearing concerning tribal transportation. Thank you for your advocacy on behalf of the Indian tribes.

With all of the problems facing our country today, transportation needs have been overlooked. We are grateful that you are taking a leadership role to address the most basic protection that we can afford for our members today, safe transportation through our lands.

Over the past five years, as a result of significant increases, Congress—through Indian Reservation Roads Program, tribes have achieved many successes and improved transportation infrastructure throughout our communities and helped educate our members about road safety.

Infusion of the American Recovery and Reinvestment Act and stimulus funds put our members to work and accelerated roads reservation improvements. Funds Congress had provided to tribes have saved lives and made a change for the betterment of our communities. Our tribe is doing our part to make road safety our number one priority along with the Federal Highway Administration.

For the record, Mr. Chairman, I did leave a copy with your staff, you know, on our testimony. But what we would ask for is, you know, for the past two winters, we had back-to-back disasters. We had some severe winters. So what we've asked is to look at the road maintenance issue. The number one issue is to look at Congress—looking your direction to champion through the highway trust funds. \$100 billion in looking at this issue of road maintenance. We need your help in this area. And with that, you know, for the record, you have my testimony.

Senator TESTER. Thank you, Pete.

And for everybody else, if you have written documents, it will be part of the record if you turn it into us.

Pete Red Tomahawk. Thank you very much. Appreciate you coming.

Sampson Begay, and after Sampson it will be Richard Palmer. Sampson.

**STATEMENT OF SAMPSON BEGAY, CHAIRMAN,  
TRANSPORTATION AND COMMUNITY DEVELOPMENT  
COMMITTEE, NAVAJO NATION**

Mr. BEGAY. Thank you, Senator and members of the Committee. My name is Sampson Begay. Please accept these comments on behalf of the Navajo Nations from the state of Arizona and in support of today's testimony by John Smith, the Transportation Director for the Shoshone Arapaho tribe. I am also Chairman of the Transportation and Community Development Committee of the Navajo Nation. I am also a member of the Indian Reservation Roads Program Coordinating Committee. I joined Mr. Smith in the stages of the Navajo Nation disagreement with and opposition to the Bureau of Indian Affairs and Federal Highway Administration new interpretive policy on Question 10 in which they seek to justify the expenditure of scarce Indian reservation roads and state and county roads.

On February 4 and 5, 2009, in Denver, Colorado, the Navajo Nation hosted a meeting attended by leaders from eleven small rural tribes whose exterior boundaries encompass an excess of 30,000 square miles. These were and are the tribes for which we believe the Indian Reservation Roads Program was created. Tribes whose locations are so remote that they cannot rely on state and county transportation infrastructure.

Yet, it was these very same tribes who by 2009 had lost the most under the BIA and the Federal Highway Administration's implementation of the 2004 program regulations. The funds allocated to the land-based tribes loss were from 76 percent in 2004 to 28 percent in 2008. Because of these staggering drops in funding to rural tribes, was a staggering increase in the miles of state and county roads allowed into the Indian Reservation Roads Program inventory.

From 2005 to 2007, the miles of the State Interior and miles of Tribal and BIA roads increased from 30,000 to 39,000. Clearly the BIA and the Federal Highway Administration were improperly using scarce Indian Reservation Road monies as a second source of funding for roads improperly using scarce monies that should have been used for reservation roads.

At the meeting in Denver, the land-based and small tribes agreed——

Senator TESTER. Sampson, I've got four or five more folks who want to speak, and we're going to run out of time, so I'll ask you to wrap up. Your full written testimony that you turned in will be a part of the record, so——

Mr. BEGAY. That being the case, I also have a written comment, so I will turn it in. I thank you very much.

[The prepared statement of Mr. Begay follows:]

PREPARED STATEMENT OF SAMPSON BEGAY, CHAIRMAN, TRANSPORTATION AND  
COMMUNITY DEVELOPMENT COMMITTEE, NAVAJO NATION

Please accept these comments on behalf of the Navajo Nation, and in support of today's testimony by John P. Smith, Transportation Director for the Shoshone/Arapaho Tribes. I am Chair of the Transportation and Community Development Committee of the Navajo Nation Council. I am also a member of the Indian Reservation Roads Program Coordinating Committee. I join Mr. Smith in stating the Navajo Nation's disagreement with and opposition to the Bureau of Indian Affairs' and Federal Highway Administration's new interpretive policy on Question 10, in which they seek to justify the expenditure of scarce Indian Reservation Road funds on state and county roads.

On February 4 and 5, 2009, in Denver Colorado, the Navajo Nation hosted a meeting attended by leaders from 11 land-based and small rural tribes whose exterior boundaries encompass in excess of 30,000 square miles. These were and are the tribes for which the Indian Reservation Road program was created: tribes whose locations are so remote that they cannot rely on state and county transportation infrastructure. Yet it was these very same tribes who by 2009 had lost the most under the BIA's and FHWA's implementation of the 2004 program regulations. The fund allocation to land-based tribes dropped from 76% in 2004 to 28% in 2008. The cause of this staggering drop in funding to rural tribes was the staggering increase in the miles of state and county roads allowed in the IRR program inventory. From 2005 to 2007, the miles of state and county roads in the IRR inventory rose from approximately 30,000 to 57,000. During the same period, the miles of tribal and BIA roads increased from 30,000 to 39,000. Clearly, BIA and the FHWA were improperly using scarce Indian Reservation Road monies as a second source of funding for roads covered by the Federal-aid highway program. At the meeting in Denver, the land-based and small rural tribes agreed 1) that that BIA and FHWA would not address their transportation needs in an equitable manner and 2) the only way to achieve a just allocation of IRR funds was to seek amendments in the SAFETEA-LU reauthorization that would overturn BIA's regulations.

I am sorry to say that almost two years after the Denver meeting, the new Question 10 policy interpretation offered by BIA and FHWA justifies and underscores the conclusions reached by the meeting's participants. For the reasons stated in Mr. Smith's prepared testimony, the Nation believes that the federal agencies' Question 10 policy is nothing more than legal window-dressing created for the sole purpose of justifying 6 years of failed, inequitable, and perhaps illegal implementation of the Indian Reservation Road program. The Navajo Nation's participation in the IRR Coordinating Committee will continue, and we hold out some hope that the tribes may reach consensus on other critical issues that impact the allocation of IRR funds.

Thank you for the opportunity to provide these comments to the Committee.

Attachment

Draft Amendments to Title 23  
Tribal Transportation Coalition of Land Based Tribes  
Indian Reservation Roads Restoration Act Proposal

111<sup>TH</sup> CONGRESS 1<sup>ST</sup> SESSION **S.** \_\_\_\_\_

To amend the SAFETEA-LU, titles 23 and 49, United States Code, and to modify Provisions relating to highway projects, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice  
and referred to the Committee on

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**A BILL**

To amend the SAFETEA-LU, titles 23 and 49, United States Code, and to modify provisions relating to highway projects, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “*Indian Reservation Roads*

5 *Restoration Act of 2011*”.



Sec. 3. Highway Amendments--

§ 101. Definitions and declaration of policy.--

Paragraph 101(a)(12) of this section is amended:

(1) add between the words "is" and "located" the following:

"under the jurisdiction of the Bureau of Indian Affairs or Tribal or Alaska native village governments"

(2) add the following sub-definition to paragraph (a)(12):

"(A) The term "access" as used above means that a route's primary or exclusive purpose is to provide admission from the established exterior boundary of Indian reservations (or communities) to the route's intersection with the next equal or greater functional classification or the first mile from the established exterior boundary, whichever is less."

(3) Add the following definitions to paragraph (a):

"(39) Indian Tribe; Tribal Government-

(A) The terms 'Indian tribe' and 'tribal government' have the meaning given the term 'Indian tribe' in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.C.S. 479a);

(B) The terms 'Indian tribe' and 'tribal government' include-

(i) A tribal organization (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)); and

(ii) A tribal consortium.

"(40) Tribal Consortium.- The term 'tribal consortium' means an organization composed of 2 or more tribal governments for the purpose of entering into a contract or other agreement with the Secretary or the Secretary of the Interior under--

(A) Section 202(d); or

(B) the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

"(41) Tribal Community. - The term "tribal community" means a community of people living within a (federal) service boundary in which the majority of residents are American Indians or Alaska Natives."

✦125 Emergency Relief.

Section 125(e) of Title 23, United States Code is amended—

(1) by striking Paragraph (e) entirely and inserting the following:

“(e) Forest, Park, Public Lands, and Indian Reservation Roads.-

(1) In general.- The Secretary may expend funds from the emergency fund herein authorized, either independently or in cooperation with any other branch of the Government, State agency, or transportation organization, for the repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are Federal-aid highways;

(2) Applications by Tribal Governments.-

(A) In General. - Notwithstanding any other provision of law (including any threshold level established for determining eligibility for assistance under this section), a tribal government may submit to the Secretary an application for emergency relief funding for the repair and reconstruction of a public transportation facility that is owned or maintained by the tribal government or the Bureau of Indian Affairs.

(B) Action by the Secretary. - The Secretary shall-

(i) process each application from a tribal government under subparagraph (A) in the same manner as an application from a Federal agency; and

(ii) develop criteria for the provision of emergency relief funding under this paragraph, including appropriate eligibility thresholds under this subsection pursuant to regulations promulgated in accordance with §553 of Title 5.”

(iii) Coordinate for the repair or reconstruction of any BIA highway with the Secretary of the Interior as required.”

§133 Surface transportation program.

Section 133(c) of Title 23, United States Code is amended—

(1) by striking paragraph “ (c) LOCATION OF PROJECTS.—Except as provided in...” in its entirety and inserting the following:

“(c) Location of Surface Transportation Program Projects--

(1) IN GENERAL—Except as provided in paragraph (2) subsection (b)(1) surface transportation program projects (other than those described in subsections (b)(3) and (4)) may not be undertaken on roads functionally classified as local or rural minor collectors,

unless such roads are on a Federal-aid highway system on January 1, 1991, and except as approved by the Secretary, and;

(2) INDIAN RESERVATION ROADS EXCEPTION—Paragraph (1) shall not apply to Indian Reservation Roads.”

§134 Metropolitan Transportation Planning.

Section 134(f) of Title 23, United States Code is amended—

(1) under paragraph (f)(3)(C)(ii)(II) FUNDING.— add “subsections (a) through (c) under” between the words “allocated under” and “section 202”;

(2) under paragraph (f)(3)(D)(ii) Activities. – add “subsections (a) through (c)” between the words “allocated under” and “section 202” ; and

(3) under paragraph (g)(3)(C)(3) Relationship.—add “the public lands highways, park roads and parkways, and refuge roads programs under” between the words “under” and “section 204.”

§ 140 NonDiscrimination.

Section 140 of Title 23, United States Code is amended—

(1) by striking paragraph (d) entirely and insert the following:

“(d) INDIAN PREFERENCE.-

Notwithstanding any provision of State law (including regulations), in accordance with section 703(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(i)), with respect to any project carried out on or near the boundaries of an Indian reservation or Indian community, a State shall require, to the maximum extent practicable—

(1) the provision of preference and opportunities for training and employment to Indians and Alaska Natives; and

(2) preference in the provision of subcontracts and subgrants to—

(A) Indian and Alaska Native organizations; and

(B) economic enterprises (as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452))”

§ 148. Highway safety improvement program. –

Section 148(i)(1) of Title 23, United States Code is amended—

(1) strike “2005” and insert “2010”; and

(2) add the following subparagraph (3):

“(3) HIGH-RISK RURAL TRIBAL ROADS.

(A) IN GENERAL.—Of the amounts made available under paragraph (1), the Secretary shall set aside 2 percent for each fiscal year for the purpose of providing grants to tribal governments for any purpose eligible under this section, in accordance with such terms and conditions as the Secretary may establish pursuant to section §553 of Title 5.

(B) FEDERAL SHARE.—The Federal share of the cost of a project under this paragraph shall be 100 percent.

(C) REQUIREMENTS.—The Secretary shall provide grants to tribal governments under this section in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and section 17 202(d)(5).”

Section § 202. Allocations.

Section 202 of Title 23, United States Code is amended—

(1) add under section 202(b)(1)(A) “or on application by any Indian tribal government” after the words “respective States”;

(2) add under 202(b)(1)(B) “or by an Indian Tribal government with jurisdiction over lands in a state” between the words “State” and “that contains”;

(3) under Section 202(d)(2) strike “2000” and insert “2011”;

(4) under Section 202(d)(2)(A) strike “2000” and insert “2011”;

(5) under Section 202(d)(2)(A) insert “Relative Need Distribution Formula (RNDF)” between the words “with a” and “established by”;

(6) under Section 202(d)(2)(B) insert “including the procedures” between the words “program” and “to carry”; insert “RNDF” between the words “using the” and “formula”; strike “2000” and insert “2011”; strike the rest of the paragraph after “in accordance with” and insert “section 553 of Title 5. The regulations shall be issued in final form not later than April 1, 2011 and shall take effect not later than July 1, 2011.”

(7) Strike paragraph 202(d)(2)(C) entirely and insert the following:

“(C) FORMULA RULEMAKING. The Secretary of Transportation shall carry out the rulemaking process for the Relative Need Distribution Formula (RNDF) in accordance with §553 of Title 5. The formula shall comprise of the following factors:

- 1) the Cost to Construct projects on or near tribal reservations at 50% of funds made available;
- 2) vehicle miles traveled on BIA and tribal roads at 30% of the funds made available; and
- 3) the Indian population (most current US Census) being served within the reservation lands, and/or tribal communities at 20% of the funds made available.”

(8) under paragraph 202(d)(2)(D) strike “be based on factors that”;

(9) insert under 202(d)(2)(D)(i) “transportation” between the words “relative” and “need”;

(10) under 202(d)(2)(D)(ii) strike “administrative” and insert “transportation”

(11) Strike clause 202(d)(2)(F)(i) and insert the following:

(F) ADMINISTRATIVE EXPENSES.—

(i) IN GENERAL.—Of the funds authorized to be appropriated for Indian Reservation roads, \$30,000,000 for fiscal year 2011, \$32,000,000 for fiscal year 2012, \$34,000,000 for fiscal year 2013, \$38,000,000 for fiscal year 2014 and \$40,000,000 for 2015 may be used by the Secretary of the Interior for program management and oversight and non-project-related administrative expenses.

(12) Strike paragraph 202(d)(2)(G) entirely and insert the following:

“(G) NATIONAL TRIBAL TRANSPORTATION FACILITY INVENTORY

(i) IN GENERAL.—Not later than 2 years after enactment of this clause, the Secretary, in cooperation with the Secretary of the Interior, shall complete a comprehensive national IRR inventory review of all public transportation facilities that are eligible for assistance under the Indian reservation roads program.

(I) The Secretary, in cooperation with the Secretary of the Interior, shall ensure that the Indian reservation roads program inventory accurately reflects the existence, condition, proper class, and regulatory requirements of all transportation facilities eligible for inclusion in the inventory under clause (ii), to at least a 95-percent degree of accuracy. Those transportation facilities not meeting the procedural and regulatory requirements shall be removed from the inventory by the Secretary of Interior before distribution of funds under 202(d)(2)(A) of this part.

“(ii) TRANSPORTATION FACILITIES INCLUDED IN THE INVENTORY.—For purposes of identifying the tribal transportation system and determining the relative transportation needs among Indian tribes, the Secretary shall include, at a minimum, public transportation facilities that meet the definition of Indian Reservation Roads under the Indian reservation roads program that has been determined to have a public purpose, including public transportation facilities that—

“(I) were included in the Bureau of Indian Affairs system inventory in 1992 through 2003;

“(II) were constructed or reconstructed with funds from the Highway Trust Funds (other than the Mass Transit Account) under the Indian reservation roads program since 1983;

“(III) are owned by an Indian tribal government or Bureau of Indian Affairs;

“(IV) are public community roads, streets or bridges within the exterior boundary of Indian reservations, Alaska Native villages, and other recognized Indian communities in which the majority of residents are American Indians or Alaska Natives; and

“(V) public primary access routes up to one mile outside the exterior boundary of Indian reservations, Alaska Native villages, and other recognized Indian communities proposed by tribal governments, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal termini, such as airports, harbors, or boat landings; and

(VI) all proposed transportation facilities, currently included or added to the IRR Inventory, must be reflected in the tribal long range transportation plan and IRR TIP, and shall be constructed within 5 years from the date of the enactment of this clause. If the proposed or currently inventoried proposed facility is not constructed, the Secretary shall immediately exclude that proposed facility from generating any funds under the RNDP.

The Secretary shall establish procedures, in accordance with §553 of Title 5, for determining public roads serving tribal communities within one year from enactment of this clause.

(iii) LIMITATION ON PRIMARY ACCESS ROUTES.—

For purposes of this subparagraph, a proposed primary access route is the shortest practicable route connecting 2 points of the proposed route not to exceed one mile beyond the exterior boundaries of the Indian reservation, village, or tribal community.

(iv) ADDITIONAL FACILITIES.—Nothing in this subparagraph shall preclude the Secretary from including additional public transportation facilities that meet the requirements under the Indian reservation roads program in the inventory under subsection (ii) if such additional facilities are included in the inventory in a uniform and consistent manner nationally.

(I) These other existing transportation facilities, including state and interstate routes cannot be used in the IRR RNDP formula to generate funds for a given tribe, nor can county roads added to the official inventory after 2004 be used in the IRR RNDP to generate funding under Section 202(d)(2)(A).”

(II) Non BIA or Tribal proposed transportation facilities must comply with:

- (1) all applicable Federal laws and regulations regarding roadless and wilderness areas;
- (2) be included in the current tribal long range transportation plan and Tribal TIP; and
- (3) must have a project agreement with the owner that shows the project is planned, scheduled, and ready to go to construction for up to 20% of IRR matching funds to be eligible for the planned project.

(v) REPORT TO CONGRESS.—Not later than 90 days after the date of completion of the inventory review under this subparagraph, the Secretary shall:

(I) prepare and submit a detailed report to Congress that includes the data gathered and the results and findings of the inventory.

(II) The Secretary shall also provide a detailed report on the findings of the inventory review with recommendations for corrective actions to be taken by the Secretary of Interior and tribes.

(vi) IRR Inventory Oversight Committee-- No later than 180 day after the date of enactment of this Act (IRRRRA), the Secretary shall:

(I) Establish a committee to be known as the “IRR Inventory Oversight Committee” to be composed of two tribal transportation officials (primary and alternate) from each of the 12 regions, at least one BIA regional, one BIA DOT engineer, and at least 2 Federal Lands Highway’s engineers.

(1) working in teams, the committee is responsible for conducting reviews of all the official inventories for the entire IRR Program every two years to insure integrity of the official inventory;

(2) establish uniform, and consistent rules and procedures in carrying out the inventory update process;

(3) provide a detailed report of findings to the Secretary of Interior on questionable transportation facilities and those that do not meet the requirements under section 204 and accompanying regulations for immediate action to be taken to remove those facilities from the official inventory database for those tribes reviewed before the next formula distribution cycle.

(4) Provide the affected tribes (no more than 30 calendar days from written notice by the Secretary) the opportunity to further justify those transportation facilities removed from the inventory to be reentered upon satisfying all the requirements under this section.

(i) those facilities re-entered into the official inventory can only generate funds beginning in the following year's distribution cycle.

II. Action of, or failure to act by, the Committee under this subsection, shall not result in a delay of calculation of any formula (or percentage included in a formula) or release of each tribes share of funds relating to the inventory under this subparagraph.

(vii) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out Section 202(d)(2)(G), for use by the Secretary and the Secretary of Interior in fiscal years 2011 thru 2015, a total of (\$10,000,000).

(f) FLEXIBLE FINANCING.

“(i) IN GENERAL.—A tribal government that has entered into a self-determination contract or a self-governance compact with the Secretary or the Secretary of the Interior pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), or that has entered into an agreement with the Secretary of Transportation under paragraph (5), may—

“(I) carry out advanced construction of any project eligible for assistance under this title or chapter 53 of title 49;

“(II) use any debt financing instrument under section 122 or other applicable law for any project eligible for assistance under this title or chapter 53 of title; and

“(III) use funds made available to the tribal government under this title or chapter 53 of title 49 for—

“(1) interest payments under an eligible debt financing instrument;

“(2) the retirement of principal of an eligible debt financing instrument;

“(3) the cost of the issuance of an eligible debt financing instrument;

“(4) the cost of insurance for an eligible debt financing instrument; and

“(5) any other cost incidental to the sale of an eligible debt financing instrument (as determined by the Secretary).

(ii) INCLUSION OF PROVISIONS IN AGREEMENTS. —

“(I) IN GENERAL.—On receipt of a request from any tribal government described in clause (i), the Secretary or the Secretary of the Interior, as appropriate, shall include in the applicable contract, compact, or Agreement provisions that facilitate advanced construction or the use of flexible financing methods under clause (i) and other applicable law for any project eligible for assistance under this title or chapter 53 of title 49.

“(II) INCLUSIONS.—The provisions described in subclause (I) may include provisions that—

“(1) authorize the electronic transfer of funds made available to the tribal government under this title or chapter 53 of title 49 directly from the Secretary or the Secretary of the Interior to a trustee or other depository designated by the tribal government; or

“(2) authorize the Secretary or the Secretary of the Interior to maintain any Bureau of Indian Affairs owned projects so funded on the transportation improvement program approved by the Secretary.”

(1) Strike Section 202(d)(4) and add under 202(d)(2) the following:

(g) INDIAN RESERVATION ROAD BRIDGE PROGRAM.—

The Secretary shall establish a Indian Reservation Road Bridge Program for improving deficient Indian reservation road bridges.

(B) FUNDING.—

(i) AUTHORIZATION OF APPROPRIATIONS.—

In addition to any other funds made available for Indian reservation roads for each fiscal year, there is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) amounts provided under Section 1102(a)(9)(E) of SAFETEA\_LU (1119 Stat. 1154) for each of fiscal years 2011 through 2015 to carry out planning, design, engineering, preconstruction, construction, and construction inspection of projects to replace, rehabilitate, seismically retrofit, paint, apply calcium magnesium acetate, sodium acetate/formate, or other environmentally acceptable, minimally corrosive anti-icing and de-icing compositions or install scour countermeasures for deficient Indian reservation road bridges, including multiple pipe or box culverts.

(ii) AVAILABILITY.—Funds made available to carry out this subparagraph shall be available for obligation in the same manner as if such funds were apportioned under chapter 1.

(C) ELIGIBLE BRIDGES.—To be eligible to receive funding under this subsection, a bridge described in subparagraph (A) must—

- (i) have an opening of 20 feet or more;
- (ii) be on an Indian reservation road;
- (iii) be structurally deficient or functionally obsolete; and
- (iv) be recorded in the national bridge inventory administered by the Secretary under subsection (b).

(D) APPROVAL REQUIREMENT.—

(i) IN GENERAL.—Subject to clause (ii), on request by an Indian tribe or the Secretary of the Interior, the Secretary shall make funds available under this subsection for preliminary engineering for Indian reservation road bridge projects.

(ii) CONSTRUCTION AND CONSTRUCTION ENGINEERING.—

The Secretary shall make funds available under clause (i) for construction and construction engineering after approval of applicable plans, specifications, and estimates in accordance with this title.

(h) TRIBAL TRANSPORTATION SAFETY PROGRAM.—

“(A) DEFINITION OF TRIBAL TRANSPORTATION SAFETY IMPROVEMENT PROJECT.—

“(i) IN GENERAL.—In this paragraph, the term ‘tribal transportation safety improvement project’ means a project that—

“(I) corrects or improves a hazardous road location or feature; or



“(II) addresses a safety problem on a tribal transportation facility that is included in the national tribal transportation facility inventory under paragraph (2)(G).

“(ii) INCLUSIONS.—The term ‘tribal transportation safety improvement project’ includes any project for 1 or more of the following:

- (1) An intersection safety improvement.
- (2) Pavement and shoulder widening (including addition of a passing lane to remedy an unsafe condition).
- (3) Installation of rumble strips or another warning device, if the rumble strips or other warning device does not adversely affect the safety or mobility of bicyclists, pedestrians, and the disabled.
- (4) Installation of a skid-resistant surface at an intersection or other location with a high frequency of accidents.
- (5) An improvement for pedestrian or bicyclist safety or safety of the disabled.
- (6) Construction of any project for the elimination of hazards at a railway-highway crossing that is eligible for funding under section 130, including the separation or protection of at grades railway crossings.
- (7) Construction of a railway highway crossing safety features, including installation of highway protective devices.
- (8) The traffic enforcement activity at a railway-highway crossing.
- (9) Construction of a traffic calming feature.
- (10) Elimination of a roadside obstacle.
- (11) Improvement of highway signage and pavement markings.
- (12) Installation of a priority control system for emergency vehicles at signalized intersections.
- (13) Installation of a traffic control or other warning devices at high accident locations.
- (14) Safety-conscious planning.
- (15) Collection and analysis of crash data for highway safety improvements.
- (16) Planning integrated interoperable emergency communications equipment, operational activities, or traffic enforcement activities (including police assistance) relating to work zone safety.
- (17) Installation of guardrails, barriers (including barriers between construction work zones and traffic lanes for the safety of motorists and workers), and crash attenuators.
- (18) The addition or retrofitting of structures or other measures to eliminate or reduce accidents involving vehicles and wildlife.
- (19) Installation of signs (including fluorescent, yellow-green signs) at pedestrian-bicycle crossings and in school zones.
- (20) Construction and operational improvements on high-risk rural roads that appear on the national tribal transportation facility inventory.
- (21) Development and operation of tribal safety management systems.
- (22) Highway safety education programs.
- (23) Safety projects and activities authorized under chapter 4.

“(B) ESTABLISHMENT.—The Secretary shall establish and implement a tribal transportation safety program in accordance with this section.

“(C) PURPOSE.—The purpose of the tribal transportation safety program shall be to achieve a significant reduction in traffic fatalities and serious injuries on Indian reservation roads and bridges.

“(D) GRANTS.—

“(i) IN GENERAL.—The Secretary shall use amounts made available to carry out this section to provide grants to tribal governments to carry out tribal transportation safety improvement projects.

“(ii) REGULATIONS.—

“(I) IN GENERAL.—The Secretary shall develop requirements for the provision of grants under this paragraph by regulation, pursuant to §553 of Title 5

“(II) FAILURE TO PROMULGATE.—A failure by the Secretary to promulgate regulations under subclause (I) shall not limit the effect of this paragraph.

“(iii) REQUIREMENT.—The Secretary shall provide grants under this subsection in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

“(E) FEDERAL SHARE.—The Federal share of the cost of a tribal transportation safety improvement project carried out under this paragraph shall be 100 percent.

(2) Change section 202(d)(5) to “202(d)(4)”

#### §204. FEDERAL LANDS HIGHWAY PROGRAM.--

Section 204 of Title 23, United States Code is amended—

(1) Subsection 204(b)(6) is replaced with the following:

“(6) RESERVATION OF FUNDS.—The Secretary of the Interior may shall reserve no more than \$2,100,000 from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section for each of fiscal years 2011 through 2015 to finance Indian technical centers under section 504(b).”

(2) Subsection 204(c) is replaced with the following:

“(c) Before approving as a project on an Indian reservation road any project eligible for funds apportioned under section 104 or section 144 of this title in a State, the Secretary must determine that the obligation of funds for such project is supplementary to and not in lieu of the obligation, for projects on Indian reservation roads, of a fair and equitable share of funds apportioned to such State under section 104 of this title. The Bureau of Indian Affairs shall continue to retain primary responsibility, including annual funding request responsibility, for BIA road maintenance programs on Indian reservations. The Secretary of Interior shall ensure that maintenance funding, at least equal to the amounts reported in the BIA's IRR deferred maintenance annual reports, be made available, for those BIA roads built or improved under this subsection for each fiscal year.”

Title 23, United States Code is amended—

(1) Add the following new program after section 412:

## § 413. Tribal Safety Program.—

- (a) ESTABLISHMENT.—The Secretary shall establish and carry out a national highway traffic safety administration tribal safety program in accordance with this section.
- (b) PURPOSE.—The purpose of the national highway traffic safety administration tribal safety program shall be to address driver, passenger, and pedestrian behavioral issues that contribute to death and injury on tribal transportation systems.
- (c) GRANTS.—
- (1) IN GENERAL.—The Secretary shall use amounts made available to carry out this section to provide grants to tribal governments to carry out eligible projects and activities.
- (2) REGULATIONS.—
- (A) IN GENERAL.—The Secretary shall develop requirements for the provision of grants under this section by regulation, pursuant to section 553 of Title 5.
- (B) FAILURE TO PROMULGATE.—A failure by the Secretary to promulgate regulations under subparagraph (A) shall not limit the effect of this section.
- (3) REQUIREMENTS.—The Secretary shall provide grants under this subsection in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).
- (d) ELIGIBLE PROJECTS AND ACTIVITIES.—A tribal government may use a grant under this section for any project or activity that is—
- (1) eligible for assistance under—
- (A) this chapter; or
- (B) section 1404, 1411, 1906, 2009, 2010, or 2011 of the SAFETEA-LU (119 Stat. 1144); or
- (2) carried out—
- (A) to reduce injuries and deaths resulting from motor vehicles being driven in excess of posted speed limits;
- (B) to encourage the proper use of occupant protection devices (including the use of safety belts and child restraint systems) by occupants of motor vehicles;
- (C) to reduce deaths and injuries resulting from persons driving motor vehicles while impaired by alcohol or a controlled substance;
- (D) to prevent accidents and reduce deaths and injuries resulting from accidents involving motor vehicles and motorcycles;
- (E) to reduce injuries and deaths resulting from accidents involving school buses;
- (F) to reduce accidents resulting from unsafe driving behavior (including aggressive or fatigued driving and distracted driving arising from the use of electronic devices in vehicles);
- (G) to improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures;
- (H) to improve the collection, compilation, analysis, and management of traffic safety data; or
- (I) to develop and implement a tribal transportation safety planning process.
- (e) RECEIPT OF OTHER FUNDS.—The fact that a project or activity receives or has received funding or support from a source other than the Highway Trust Fund, or from an agency other than the Department of Transportation, shall not render the project or activity ineligible for funding under this section, if the project or activity would otherwise be eligible for funding under this section.

(f) FEDERAL SHARE.—The Federal share of the cost of a project or activity carried out under this section shall be 100 percent.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$50,000,000 for each of fiscal years 2011 through 2015.

§ 504 of Title 23 is amended—

(1) add “(including Tribal Governments)” between the words “contracts” and “to provide” of Section (1)(b)(2).

(2) Section (1)(b)(2)(D) is replaced as follows:

“(D) operate, in cooperation with State transportation departments, Bureau of Indian Affairs, and universities—

(i) local technical assistance program centers designated to provide transportation technology transfer services to rural areas and to urbanized areas; and

(ii) for each of the 12 regions served by the Bureau of Indian Affairs, a local technical assistance program centers designated to provide transportation technical assistance to tribal governments; and”

TITLE 49 TRANSPORTATION AMENDMENTS.

Title 49 of United States Code is amended.—

(a) METROPOLITAN TRANSPORTATION PLANNING.—

(1) Section 5303(f)(3)(C)(i)(II) is replaced with the follows:

“(II) Funding.—In addition to funds made available to the metropolitan planning organization for the Lake Tahoe region under other provisions of this chapter and title 23, 1 percent of the funds allocated under subsections (a) through (c) of 202 of title 23 shall be used to carry out the transportation planning process for the Lake Tahoe region under this subparagraph.”

(2) Section 5303(f)(3)(C)(ii) is replaced with the follows:

“(ii) may, in accordance with chapter 2 of title 23, be funded using funds allocated under subsections (a) through (c) of 202 of such title.”

(3) Section 503(f)(4)(g)(3)(C) is replaced with the following:

“(C) recipients of assistance under the public lands highways, park roads and parkways, and refuge roads programs section 204 of title 23.”

TITLE 49 5311(b) FORMULA GRANTS FOR OTHER THAN URBANIZED AREAS.—

(4) Section 5311(b)(3)(B) of title 49, United States Code, is replaced with the follows:

“(B) Grants and contracts.—

(i) In General – Subject to clause (ii), in carrying out this paragraph, the Secretary may use no more than 2 percent of the amount made available to carry out this section to make grants and contracts for transportation research, technical assistance, training, and related support services in other than urbanized areas.

(ii) GRANTS TO TRIBAL GOVERNMENTS AND INDIAN TECHNICAL CENTERS.— Of the funds made available to carry out this subparagraph, the Secretary shall use not less than \$1,000,000 for each fiscal year to provide grants to, and enter into contracts with, tribal governments and Indian technical centers operating under section 503(b) of title 23 for transportation research, technical assistance, training, and support services relating to the provision of transit services in tribal communities.”

Sec. 5338 of Title 49 United States Code is amended-

(1) Section 5338(c) is replaced with the following:

“(c) Apportionments.—

(1) Public transportation on Indian reservations.—Of the amounts made available or appropriated for each fiscal year pursuant to subsections (a)(1)(C)(v) and (b)(2)(G) of section 5338, the following amounts shall be apportioned for grants to Indian tribes, pursuant the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.)(including title VII of that Act) or section 202(d)(5) of title 23 for any purpose eligible under this section, under such terms and conditions as may be established by the Secretary:

- (A) \$35,000,000 for fiscal year 2011.
- (B) \$45,000,000 for fiscal year 2012.
- (C) \$55,000,000 for fiscal year 2013.
- (D) \$65,000,000 for fiscal year 2014.
- (E) \$75,000,000 for fiscal year 2015.”

## SEC. 2. SAFETEA-LU AMENDMENTS.

(a) FEDERAL LANDS HIGHWAYS PROGRAM.—Section 1101(a)(9) of the SAFETEA-LU (119 Stat. 1154) is amended -

(1) Section 1101(a)(9)(A) clause (i) thru (v) is replaced with the following:

- “(i) \$800,000,000 for fiscal year 2011;
- (ii) \$850,000,000 for fiscal year 2012;
- (iii) \$900,000,000 for fiscal year 2013;
- (iv) \$950,000,000 for fiscal year 2014; and
- (v) \$1,000,000,000 for fiscal year 2015.”

(2) Section 1101(a)(9)(E) is added as follows:

- “(E) INDIAN RESERVATION ROAD BRIDGE PROGRAM.—For the Indian reservation road bridge program under section 202(d)(4) of such title—
- (i) \$75,000,000 for fiscal year 2011;
  - (ii) \$87,500,000 for fiscal year 2012;
  - (iii) \$100,000,000 for fiscal year 2013;
  - (iv) \$100,000,000 for fiscal year 2014; and
  - (v) \$100,000,000 for fiscal year 2015.”

(3) Section 1101(a)(9)(F) is added as follows:

- “(F) TRIBAL TRANSPORTATION SAFETY PROGRAM.—For the tribal transportation safety program under section 202(d)(6) of such title, \$50,000,000 for each of fiscal years 2011 through 2015.”

## SEC. 1102. OBLIGATION CEILING.

Section 1102(b)(11) of the SAFETEA-LU (119 Stat. 1154) is amended -

(1) Add “and section 202(d) of Title 23.” to the end of paragraph (b)(11).

## SEC. 1404. SAFE ROUTES TO SCHOOL PROGRAM

(1) Add “through (5),” after “(2)” of Subsection (c)(1); and

(2) Add the following paragraph (5) between subsection (c) and (d):

- “(5) TRIBAL SAFE ROUTES TO SCHOOLS TO SCHOOLS.—
- (A) IN GENERAL.—Of the amount apportioned for each fiscal year under subsection (f)(1), the Secretary shall use not less than \$10,000,000 to provide grants to Indian tribal governments during that fiscal year for any eligible purpose under this section, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and section 202(d)(5) of title 23, United States Code.

(B) FEDERAL SHARE.—The Federal share of the cost of a project under this paragraph shall be 100 percent.”

SEC. 1502. HIGHWAYS FOR LIFE PILOT PROGRAM.

Section 1502(b)(1) is amended↑

(1) Section 1502(b)(1) is amended by adding the words “or Indian tribal government” between the words “State” and “shall submit”.

(2) Section 1502(b)(2) is replaced with the following:

“(2) ELIGIBILITY.—A proposed project shall be eligible for assistance under the pilot program if the project— constructs, reconstructs, or rehabilitates a route or connection on—  
 (i) a Federal-aid highway eligible for assistance under chapter 1 of title 23, United States Code; or  
 (ii) a route included in the national tribal transportation facility inventory under section 202(d)(2)(G) of title 23, United States Code.”

(3) Section 1502(b)(6) and (7) is replaced with the following:

“(6) PROJECT SELECTIONS.—In the period of fiscal years 2011 through 2015, the Secretary, to the maximum extent practicable shall:  
 (A) approve at least 1 project in each State for participation in the pilot program and for financial assistance under paragraph (5) if:  
 (i) the State submits an application;  
 (ii) and the project meets the eligibility requirements and selection criteria under this subsection; and  
 (B) approve for each fiscal year, not less than 2 projects of Indian tribal governments for participation in the pilot program and for financial assistance under paragraph (5), if—  
 (i) Indian tribal governments submit an application; and  
 (ii) the projects meet the eligibility requirements and selection criteria under this subsection.  
 (7) MAXIMUM NUMBER OF PROJECTS.—The maximum number of projects for which the Secretary may allocate funds under this subsection in a fiscal year is 17.”

SEC. 2010. MOTORCYCLIST SAFETY.

(1) Section 2010(f)(1) is replaced as follows:

“(f) DEFINITIONS.—In this section, the following definitions apply:  
 (1) MOTORCYCLIST SAFETY TRAINING.—  
 (A) In GENERAL. --The term “motorcyclist safety training” means a formal program of instruction that is approved for use in a State or Indian reservation by the designated State or Indian tribal government authority having jurisdiction over motorcyclist safety issues, which may include the State or Indian tribal government motorcycle safety administrator or a motorcycle advisory council appointed by the Governor of the State.  
 (B) The term “State” shall include any eligible Indian tribal government for eligibility purposes.”

SEC. 5204. TRAINING AND EDUCATION.

(1) Section 5204(c) is replaced as follows:

“(c) FUNDING.—Of the funds made available by section 5101(a)(2) of this Act, \$11,100,000 for each of fiscal years 2011 through 2015 shall be available to carry out section 504(b) of such title of which not less than \$2,100,000 shall be made available to carry out subsection (b)(2)(D)(ii) of that section.”

Senator TESTER. No, I want to thank you very much for coming up. I appreciate it very much. Thank you for your testimony.

Richard Palmer is next. Richard, before you get up, I just ask that you be concise or we're going to run out of time, as much as possible. I should have cut the other ones off earlier, I guess. But be as concise as possible.

After Richard Palmer will be Harvey Spoonhunter.

So go ahead, Richard.

**STATEMENT OF RICHARD PALMER, WHITE MOUNTAIN  
APACHE TRIBE**

Mr. PALMER. Thank you, sir. My name is Richard Palmer. I'm from the White Mountain Apache Tribe from Arizona.

I've been involved in transportation for a long time. I know most of the members in here. Served with them. Sat with them. Laughed with them. And we all have the same problem. We need more money. My reservation is 1.6 million acres. We are a large land-based tribe. We are from Arizona, northeastern Arizona. And we suffer the same problems everybody else here does. We need money. We need interpretations of the Q-10. We need to look at reauthorization. A whole lot of this stuff is not just talk. We need to see action.

Thank you very much.

Senator TESTER. Thank you. Thank you for being concise, too, Richard. Thank you very much.

Next is Harvey Spoonhunter followed by Rick Kirn.

Harvey, you're up.

**STATEMENT OF HON. HARVEY SPOONHUNTER, CHAIRMAN,  
WIND RIVER INDIAN RESERVATION**

Mr. SPOONHUNTER. Thank you, Senator. I'd also like to also thank Assistant Secretary Larry Echo Hawk and his staff. And I had the privilege of meeting with them at these consultations meetings. I appreciate the candor of the discussions and their view on all these complex issues.

Mine is more of a comment, as John Smith has submitted our testimony and the panel, too.

For the record, my name's Chairman Harvey Spoonhunter from the Wind River Indian Reservation.

And I'd just like to comment that before we can go forward on this road on resolve, we need to look at the past. When I say we need to look at the past, on April 29th, 1994, the Clinton Administration, we had the same memorandum where all federal agencies consulted with tribes. So we cannot wait any longer. We need to address these issues. I think we're at a crossroads now. We had the opportunity to. Tribes are united together. And I would like to commend the President for setting up these consultation meetings so that we can have a voice in resolving a lot of these issues.

Senator TESTER. Thank you. I Appreciate it. Thank you very much.

Next is Mr. Kirn followed by Wilford.



**STATEMENT OF RICK KIRN, MEMBER, FORT PECK  
ASSINIBOINE AND SIOUX TRIBE; MEMBER, FORT PECK  
TRIBAL COUNCIL**

Mr. KIRN. Good afternoon, Senator Tester.

For the record, my name is Rick Kirn. I'm a member of the Fort Peck Assiniboine and Sioux Tribe. I'm also a member of the Fort Peck Tribal Council.

And I'll be brief, Senator Tester. I think I can't add too much to what people have said about the importance of tribal transportation.

But do want to thank you for what you've done in Washington, D.C. We want you there and we need you there, but it's also nice to have you home. I've been to several listening sessions you've had, and I know that you don't only listen, but you also hear what people are trying to say. I want to thank you for that.

And I think the main thing I wanted to talk about was the importance of the tribal transportation system. I think everybody here know what's happening in western North Dakota and also southeastern Montana. It's what they call Rockin' the Bakken. And it's one of the biggest in the country right now, and it's heading for Fort Peck. And I can't stress the importance of transportation in great economic development to our reservation, and actually to all of northeastern Montana.

Fort Peck Reservation has four counties that we basically support up there as a reservation. Anything that happens with our transportation system has benefited all of northeastern Montana.

And again, I just want to thank you for being here and listening to us.

Senator TESTER. Thank you, Rick. I appreciate you being here, too. Wilford, you're up next.

**STATEMENT OF HON. WILFORD WHATONAME, SR., CHAIRMAN,  
HUALAPAI TRIBE**

Mr. WHATONAME. Senator Tester, we want to thank you. I am Wilford Whatoname from the Hualapai Tribe out in Arizona.

The day before we celebrated the Hoover Dam overpass that was constructed and built and now the public can travel over the Hoover Dam. Anyway, I was there yesterday and so was Mr. Tester, yes, and I want to say that we want to thank you, Senator Tester, for convening this meeting today, since Chairman Dorgan has been retired. And I want to thank you for your advocacy on behalf of many tribes.

With all of the others problem with our country today, reservation needs seem to be overlooked. We are grateful that you have taken a leadership role to address the most basic protection that can afford our members today and safe transportation through lands.

I have a book here. And one is a letter that was sent September 22, 2010. And also Inner-Tribal Council of the Arizona Resolution, 1710, addressing the methodology for the distribution of funding questioning Question 10. Also Resolution No. 1710, also in support of the distribution of funding.

And also I have here a testimony of the Hualapai Tribe, July 12, 2007. Which was done by Erin Forrest, 2007, and he is a director

for the Hualapai Tribe on transportation. And he was a member of the committee that was working on the new TRIP Act that we had, and he finally said, I can't get them to all agree on one thing, you know, all tribes are not agreeing, so therefore, he resigned from that committee.

And, sir, I want to thank him and the other tribal members that were on that committee. And I just want to hand this in to you today. And hopefully we can get something done.

Today the biggest thing that seems to bother very tribe is Question 10. It affects us and impacts us as well.

Thank you for your time.

[The prepared statement of Mr. Whatoname follows:]

PREPARED STATEMENT OF HON. WILFORD WHATONAME, SR., CHAIRMAN, HUALAPAI TRIBE

**I. Introduction**

On behalf of the Hualapai Indian Tribe, I, Wilfred Whatoname, Sr., Chairman, want to express my appreciation to the Senate Committee on Indian Affairs, to you Senator Tester and to retiring Committee Chairman Dorgan, for convening today's hearing concerning Tribal transportation. Thank you for your advocacy on behalf of Indian tribes. With all the other problems in our country today, transportation needs can easily be overlooked. We are grateful that you are taking a leadership role to address the most basic protection that we can afford our members today – safe transportation through our lands.

Over the last five years, as a result of significant increases Congress for the Indian Reservation Roads (IRR) Program, Tribes have achieved many successes and improved transportation infrastructure throughout our communities and helped educate our members about road safety. The funds Congress has provided to Tribes have saved lives and made a change. The infusion of American Recovery and Reinvestment Act (ARRA) stimulus funds put our Members to work and accelerated road improvements.

The successes we achieved with our recurring IRR Program funds and ARRA stimulus dollars must be sustained by Congress in the next surface transportation bill. I ask that you champion transportation issues for Indian country in the 112<sup>th</sup> Congress and introduce the **Tribal Reauthorization of Indian Program (TRIP)** legislation which Indian tribes, the National Congress of American Indians (NCAI) and the Inter-Tribal Transportation Association (ITA) developed and which this Committee circulated for comment last year. Please give Tribes a seat at the table in the next Congress so that the authorizing committees know our needs and see Tribal consensus recommendations to improve our transportation infrastructure. We are anxious to contribute new ideas and recommendations to improve that draft legislation, to build on it and on the successes Tribes realized under TEA-21 and SAFETEA-LU.

As I will detail more fully below, the proposed TRIP legislation:

- increases annual appropriations for the IRR to \$800 million annually, with stepped increases of \$50 million thereafter to grow the IRR Program to just over \$1.0 billion at the end of the next reauthorization;
- increases the Tribal Transit Program to \$35 million annually, with stepped increases of \$10 million each fiscal year thereafter;

- increases the IRR Bridge Program to \$75 million annually, with stepped increases of \$12.5 million thereafter;
- establishes two new Tribal Safety Programs (within FHWA and NHTSA) and appropriates \$50 million annually for each program, to address roadway structural and design safety flaws and driver, passenger, and pedestrian behavioral issues;
- authorizes Tribes to expend up to \$500,000 annually for road maintenance;
- make Tribes direct recipients of Federal transportation program funds;
- develops and streamlines award instruments between Tribes and federal agencies and between Tribes and the States in a manner similar to the Indian Self-Determination and Education Assistance Act (ISDEAA), P. L. 93-638, to better ensure that Tribes actually receive federal transportation funding.

The backlog of unmet transportation construction needs in Indian Country is in the tens of billions of dollars. Many of the jobs, educational opportunities, health care, social services, and economic development for Native Americans are located at considerable distance from our Tribal homes and communities. To move closer to these opportunities, we would have to move away from our lands and homes, undermining the continuing viability of our communities, Tribal sovereignty, and our Native culture. This is unacceptable.

Despite these limitations, Indian Country has achieved many successes in improving transportation infrastructure throughout our communities in recent years. Many of these successes were fostered by the passage of SAFETEA-LU which significantly increased program funding, created the Tribal Transit Grant Program, and authorized the Secretary of Transportation to enter into direct agreements with Tribes to receive IRR Program funds, Tribal Transit funds and Scenic Byways funds rather than requiring Tribes to access these funds through the Bureau of Indian Affairs (BIA) or as subrecipients of State Federal-aid funds.

Tribal transportation successes are threatened unless the next highway reauthorization includes provisions specific to Tribal governments. We realize this is no easy task for Congress. But maintaining the status quo of third-world transportation infrastructure in Indian country comes at a terrible price which Congress must consider.

## **II. Current State of Transportation in Indian Country**

Indian Tribes have heard a lot about the Administration's "livable communities" initiative to decrease transportation costs, expand affordable housing, and improve economic competitiveness. Congress and the Administration need to understand that Indian country lacks basic transportation infrastructure to realize those goals. Congress must realize that Tribes have the most rudimentary transportation infrastructure in the country, and lack the funds needed to construct even the most basic road improvements such as safer intersections, railway crossings, breakdown lanes, and basic safety features such as guardrails, rumble strips, stripping, road reflectors, crosswalks, traffic lights and streetlamps. Just as importantly, Tribes lack the funds necessary to perform basic routine as well as emergency road maintenance to keep our roadways in a safe condition to protect our Members and other motorists.

Tribal transportation infrastructure still lags far behind transportation infrastructure in the rest of the country – with tragic results. The poor condition of many Tribal roads and bridges jeopardizes the health, safety, security and economic well-being of Tribal members and all those who travel through Indian Country. Our inadequate transportation infrastructure hinders every priority of the federal government and Tribes which our respective governments have sought to achieve over the last few decades -- economic development, law enforcement and other first responders, education, health care, and housing -- because it raises the cost of doing business on reservations and in Indian communities in every aspect of our daily living.

The unsafe conditions are reflected in our tragic statistics. Indian Country still has the highest vehicle and pedestrian fatality rates in the country which in some areas are 3-4 times the national average. Motor vehicle injuries are the leading cause of death for Native Americans ages 1 – 34, and the third leading cause of overall for Native Americans. The motor vehicle death rate for Native Americans is nearly twice as high as other races.

Reservation roads also have the highest level of pedestrian fatalities in the country. American Indians have the highest rates of pedestrian injury and death per capita of any other racial or ethnic group in the United States. The leading cause of death for Tribal-members and Alaska Natives between the ages of 10 and 64 is a motor vehicle crash. The fourth leading cause of death in these communities is pedestrian crashes.

We are troubled by the disparity between national traffic safety statistics and the statistics coming out of Indian Country. The Government Accounting Office (GAO) and the US Department of Transportation have published studies that have proven that rural roads, especially those serving Tribal communities, experience a much higher rate of vehicle accidents and fatalities, but they receive much less federal funding than roads serving urban communities. In fact, Indian reservations and Tribal communities have the highest rate of vehicle fatalities in the country. While traffic fatalities in the rest of the nation have been decreasing, the number of fatal crashes in Indian Country has been continually increasing. In the period from 1975-1979 there were on average 185 fatal crashes on Reservation-based and Tribal roads each year, with 231 fatalities. In the period from 1998-2002, the number increased by 29.5% to 239 crashes per year with 284 fatalities.

### **III. Roadblocks to Fulfilling the Need in Indian Country**

The number one roadblock to fulfilling the needs in our Tribal communities is lack of funding. Too often Congress, the Department of Transportation, and the Department of the Interior ignored their trust responsibility and treaty obligations to the Indian nations and Native people to provide safe and efficient transportation systems. While the Department provided \$1.275 billion for the High Risk Rural Roads Program and \$700 million for the Highway Safety Program to State and local governments in FY 2008 to address behavioral and design safety issues, the Department provided less than \$5 million per year for all 565 federally recognized Indian Tribes (which averages to \$8,850/Tribe compared to an average of \$40 million/State). Tribes had to compete for this wholly insufficient level of funding. After grant development, grant management and other transactional costs are taken into account, the few successful Tribal grant recipients typically have only a few thousand dollars remaining to begin to address the

huge backlog of dangerous road conditions and unsafe driver behaviors. Even if considered on a per capita basis, Indian country receives pennies on the dollar for their transportation needs.

We recognize that the nation is going through economic hardship. For most Tribes, it is our way of life. We further recognize that the budget will likely be tight for the next few years. One way to help fulfill Tribal funding needs for transportation infrastructure without raising the cost to the nation is to provide better access for Tribes to federal-aid highway system and other federal appropriations made to State and local governments. The layers of administrative bureaucracy that Tribes must go through to gain access to federal transportation funds passed through to the States increases our costs and provides us with far less money than we need to address our transportation needs.

Unfortunately, many State and local funding agreements are ill-suited for the unique government-to-government relationships that exist between Tribes and States and have become obstacles to the award of these much needed funds to Tribes. For example, State funding agreements are usually written either as standard commercial procurement contracts or as “local use” agreements designed to award funds to counties or municipalities. When these standard agreements are applied to Tribes, they often include broad indemnification provisions, unnecessarily broad waivers of sovereign immunity, and provisions imposing State administrative and accounting rules on Tribes. Nearly all of these agreements require Tribal governments to appear in State court in the event of a dispute. We are separate sovereign governments – not subdivisions of the States – and these provisions are wholly unacceptable and inappropriate for use in transferring State transportation funds to Tribal governments.

While some State and local governments may be willing to modify funding agreements to accommodate Tribal concerns, negotiating such modifications can be costly and time consuming. Most often, State and local governments refuse to modify standard agreements to address our concerns. The solution is simple: make Tribes eligible direct recipients of federal transportation programs.

Tribes are also faced with disproportionately burdensome administrative responsibilities that waste our already insufficient transportation funding. For example, the finance, procurement and auditing systems of Tribal governments are primarily geared toward ensuring compliance with the Indian Self-Determination and Education Assistance Act, P.L. 93-638, grant and contract requirements. It is a waste of precious resources for the Department to require Tribes to comply with redundant and sometimes conflicting grant and contract requirements.

Also, the lack of access to funds for maintenance requires Tribes to expend a disproportionate amount of funds undertaking large construction projects because of the disrepair of reservation roads or bridges. Maintaining transportation infrastructure in a state of good repair extends the useful life of these critical routes. It improves safety at a much lower total cost than the reconstruction of long-neglected roads and bridges. When Congress, in SAFETEA-LU, authorized Tribes to spend up to 25% of their IRR Program dollars for maintenance, it expressly stated that the BIA retained the primary responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations. Congress also expressly stated that the Secretary of Transportation must ensure that IRR Program funding be made

available for maintenance of Indian reservation roads for each fiscal year and that these funds are supplementary to, and not in lieu of, any obligation of funds by the BIA for road maintenance on reservations.

Unfortunately, these Congressional requirements have not been fulfilled. As funding for the IRR Program goes up, the Administration submits budgets to Congress to reduce funding for the BIA Road Maintenance Program. Newly built or reconstructed roads must be maintained if they are to meet their design life. Tribes must retain the authority to determine whether to expend a portion of its IRR Program funds on road maintenance. The agencies have let Indian Country down and not fulfilled their obligations.

#### IV. Specific Proposals

##### 1. Increase Funding for the IRR Program, Road and Bridge Maintenance, and Safety and Transit Program in the Next Highway Reauthorization Bill

The backlog of unmet transportation construction needs in Indian Country is in the tens of billions of dollars, and increases by tens of millions of dollars each year. The amount of funds provided to Tribes to address these unmet needs does not even come close to being adequate. As stated above, if Tribes are to maintain the positive gains we have made under TEA-21 and SAFETEA-LU and keep our progress going, we request that Congress authorize funding increases in the next highway reauthorization bill for the IRR Program, including road maintenance, Tribal Safety Programs, the Tribal Transit Grant Program, and the IRR Bridge Program. The state of infrastructure in Indian country, like anywhere else, determines the health and vitality of our economies and of our people. Congress must address the declining status of America's transportation infrastructure and must include Indian country in programs that will improve transportation infrastructure and transit and break down barriers between Tribes and surrounding communities.

I would also like to advocate for additional funding for road maintenance. Tribes receive so little road maintenance funding that there is no allowance for emergency needs to address life threatening circumstances that result from "a catastrophic failure or natural disaster." Every BIA Region experiences some form of emergency maintenance – ice and snow, traffic control, rock slides, washouts, flooding, wildfires, and hazardous waste spills – but lacks the resources to respond to them.

On average, six cents of every dollar is spent on road maintenance in Indian Country. This does not protect the investment that the United States and Tribes have made in transportation infrastructure. This funding gap between construction and maintenance exacerbates the backlog of unmet construction need by cutting the useful life of new built or reconstructed roads in half and will lead to more traffic injuries and fatalities. It makes no sense to expend millions of dollars to construct a new road if that road is poorly maintained. No one knows the routes through our communities better than our Tribal governments. Our Tribal government should be authorized to decide what amount should be spent on maintenance – and receive adequate federal appropriations – to preserve the lifetime of the road and to protect the life and health of its members.

## 2. Tribes Must be Eligible Direct Recipients of Federal Transportation Funds

For these necessary transportation programs to work in Indian communities, the funds must reach the intended beneficiaries. Unfortunately, this is not the case. As mentioned above, when Tribes are not eligible direct recipients, they must apply for State transportation programs funded by the United States. More often than not, Tribes do not receive the federal funds awarded to States and local governments. This situation exacerbates the history of Tribal exclusion by State and local governments from participating in regional community development planning.

It has long been recognized that regional planning works best when local government officials are allowed to establish their own priorities and to propose solutions that address local problems and needs. Recently, however, Tribal, State, and local governments have begun to seek a more collaborative approach to transportation challenges faced by their regions. These fledgling efforts make clear that where Federal programs provide funding to Tribes directly, State governments are more likely to work cooperatively with them.

Including Tribes as eligible direct recipients in all of the transportation infrastructure grant programs would support the further development of these Tribal, State, and local relationships to address community development challenges, and would help all governments increase their available funding by making it possible to join forces, and funds, with other governmental entities. Such direct funding would also significantly cut down on Tribal administrative costs.

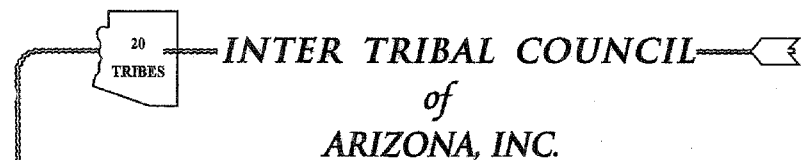
I will say it again: Tribes are separate sovereign governments. Tribal governments have demonstrated that they possess the capacity to deliver successful transportation programs despite the many obstacles that stand in our way. Across the country, Tribes are increasingly serving our communities by assuming the Secretary of the Interior's responsibility for administering the IRR Program funds by entering into Self-Determination Contracts or Self-Governance Compacts with the Secretary of the Interior or by entering into FHWA IRR Program Agreements with the Secretary of Transportation. We are sovereign nations, we are responsible for providing basic governmental services to our members, and we are now accustomed to administering funds under these contracts, compacts, and agreements.

## 3. Streamline the Grant Award Process by Which Federal Transportation Funds are Distributed to Tribes

Streamlining the grant award process will reduce transactional and administrative costs associated with the award of federal transportation safety grants and will leave more funding available to us to do the "on the ground" work needed to provide safe transportation infrastructure for our members and guests in our communities. We ask that Congress work with the Department of Transportation on the next highway reauthorization legislation to develop a uniform set of Tribal grant and contract requirements based on the ISDEAA.

Thank you for permitting my Tribe the opportunity to present written testimony.

Attachments



September 22, 2010

MEMBER TRIBES  
 AK-OHIE-SHOSHO COMMUNITY  
 COCOPIH TRIBE  
 COLORADO RIVER INDIAN TRIBES  
 FORT MOHAVE TRIBE  
 GILA RIVER INDIAN COMMUNITY  
 HAVASUPAI TRIBE  
 HOPAI TRIBE  
 MARICOPA TRIBE  
 NAVAJO TRIBE  
 PUEBLO OF ZUNI  
 QUICHMAN TRIBE  
 SALT RIVER PIMA-ARIZONA  
 INDIAN COMMUNITY  
 SAN CARLOS APACHE TRIBE  
 TONTO APACHE TRIBE  
 WHITE MOUNTAIN APACHE TRIBE  
 YAVAPAI APACHE NATION  
 YAVAPAI-PRESGOTT INDIAN TRIBE

The Honorable Larry Echo Hawk  
 Assistant Secretary – Indian Affairs  
 Bureau of Indian Affairs  
 1849 C Street, N.W.  
 Washington D.C. 20240

Dear Assistant Secretary Echo Hawk,

The Inter Tribal Council of Arizona (ITCA) is submitting the following recommendations regarding interpretation of the Question 10 provisions and the June 2010 Bureau of Indian Affairs Division of Transportation's (BIADOT) Resolution [proposal] to improve the calculation and distribution of the Indian Reservation Roads (IRR) funding. During July 2010, ITCA approved the attached Resolution 0710, which is attached and provides a more detailed discussion of our position on the Question 10 issues.

**25 CFR, Part 170, 1 Appendix C to Subpart C, Question 10: Do All IRR Transportation Facilities in the IRR Inventory Count at 100 Percent of Their CTC and VMT?**

No. The CTC and VMT must be computed at the non-Federal share requirement for matching funds for any transportation facility that is added to the IRR inventory and is eligible for funding for construction or reconstruction with Federal funds, other than Federal Lands Highway Program funds. However, if a facility falls into one or more of the following categories, then the CTC and VMT factors must be computed at 100 percent:

**Exception 1:** The transportation facility was approved, included, and funded at 100 percent of CTC and VMT in the IRR Inventory for funding purposes prior to the issuance of these regulations.

- ITCA has no comment regarding exception 1.

**Exception 2:** The facility is not eligible for funding for construction or reconstruction with Federal funds, other than Federal Lands Highway Program funds; or



- ITCA recommends that BIADOT consider the definition of the “Federal funds other than the Federal Lands Highway Program funds” to mean all Federal Highway Programs other than the Federal Lands Highway Program funds.
- Three examples of Federal Highway Programs that can be utilized to construct or reconstruct facilities, IRR classes 3, 4 and 5, are the Highway Safety Improvement Program, High Risk Rural Roads Program and Safe Routes to School Program.

**Exception 3:** The facility is eligible for funding for construction or reconstruction with Federal funds, however, the public authority responsible for maintenance of the facility provides certification of maintenance responsibility and its inability to provide funding for the project.

- ITCA supports the BIADOT’s decision to rescind exception 3 until the 25 CFR, part 170, is updated.

Concerning the proposed transitional and final phases contained in the June 2010 BIADOT Resolution:

Phase 1 – Transitional

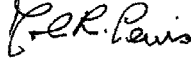
- ITCA recommends during the transitional phase, BIADOT calculate the Relative Need Distribution Factor (RNDF) for the non-BIA and non-tribal facilities, classes 2 through 8, at the non-federal share of 5-20 percent and classes 1, 9 through 11 at 0 percent; and the BIA and tribal facilities, classes 1 through 8, at 100% federal share and classes 9 through 11 at 0 percent. See attachment A.
- ITCA recommends during the transitional phase, BIADOT complete an assessment to align the IRR functional classification system with the Federal functional classification system and incorporate the realigned classification system into the IRR inventory.
- ITCA recommends that after the IRR functional classification system is aligned with the Federal system and is incorporated into the IRR inventory, BIADOT provide the tribes an updated RNDF Report based on its proposed “final Question 10 Resolution”.
- ITCA recommends that after the tribes are provided information on their revised relative need distribution factors and tribal allocations, BIADOT conduct 10 regional meetings to review the information and the impact of the proposed “final Question 10 Resolution” on the tribal allocations.

Phase 2 – Final

- ITCA recommends that only after BIADOT has provided tribes with their revised factors and allocation information do they solicit comments on proceeding with the proposed “final Question 10 Resolution”.
- ITCA recommends that BIADOT not finalize the Indian Affairs Manual Directive on September 2013, but rather a later date after tribes have their revised factors and allocation information and have had reasonable time to comment to BIADOT on a final Question 10 Resolution.

Thank you for the opportunity to comment on the June 2010 BIADOT resolution. If you require additional information, please contact me .

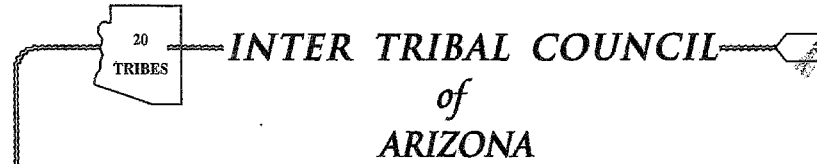
Sincerely,



John R. Lewis  
Executive Director  
Inter Tribal Council of Arizona, Inc.

**Copies:** LeRoy Gishi, BIADOT  
Bryan Bowker, BLA Western Regional Office  
Victor Mendez, FHWA  
Robert Sparrow, FLHP  
Tribal Leaders in AZ  
Tribal Transportation Contacts in AZ

**Attachments:** ITCA Resolution 0710  
Attachment A - Matrix on the Transitional Distribution of IRR Funds



**INTER TRIBAL COUNCIL**  
*of*  
**ARIZONA**

MEMBER TRIBES  
 ASICHI INDIAN COMMUNITY  
 GHOPOAN TRIBE  
 COLORADO RIVER INDIAN TRIBES  
 FORT McDOWELL YAVAPAI NATION  
 FORT MOHAVE TRIBE  
 GILA RIVER INDIAN COMMUNITY  
 HANASUPAI TRIBE  
 HOPAI TRIBE  
 HUALAPAI TRIBE  
 KAIABA-PARIALE TRIBE  
 MARICOPA TRIBE  
 PUEBLO OF ZUNI  
 QUCHEAN TRIBE  
 SALT TRUCE PIMA-MARIKOPA  
 INDIAN COMMUNITY  
 SAN CARLOS APACHE TRIBE  
 TONGHO O'ODHAM NATION  
 TONTON APACHE TRIBE  
 WHITE MOUNTAIN APACHE TRIBE  
 YAVAPAI APACHE NATION  
 YAVAPAI PRESOTT INDIAN TRIBE

**RESOLUTION 0710**

**Indian Reservation Roads (IRR) – Question 10**

- WHEREAS,** the Inter Tribal Council of Arizona (ITCA), an organization of twenty tribal governments in Arizona, provides a forum for tribal governments to advocate for national, regional and specific tribal concerns and to join in united action to address those issues; and
- WHEREAS,** the member Tribes of the ITCA have the authority to act to further their collective interests as sovereign tribal governments; and
- WHEREAS,** the Indian Reservation Roads (IRR) is a vital program for approximately 560 federally recognized tribes in the United States as a means to provide safe and adequate transportation within and to tribal lands, while contributing to the economic development, self-determination and employment of American Indians and Alaska Natives; and
- WHEREAS,** the revised IRR policies, procedures and funding formula were proposed during the 1999-2002 negotiated rulemaking process and were finalized in the July 19, 2004, 25 CFR, Part 170; and
- WHEREAS,** the IRR funding is distributed based on the Tribal Transportation Allocation Methodology for required takedowns and the Tribal Transportation Planning, High Priority Project, and Population Adjustment Factor programs, and includes the Relative Need Distribution Factor (RNDF), a factor for distributing tribal-specific construction allocations; and
- WHEREAS,** the eligible public routes to be included in the calculation of the RNDF incorporate state, urban, county, and federal routes (non-BIA and non-tribal routes), in addition to BIA and tribally owned public routes; and
- WHEREAS,** all eligible public routes, regardless of ownership, generate funding; and

**WHEREAS**, the consequence of BIA's implementation of RNDF has been a five-year trend of favoring non-BIA and non-tribal routes, where majority of funds have been redirected to BIA regions with tribes incorporating high mileages of non-BIA and non-tribal routes; and

**WHEREAS**, the non-BIA and non-tribal routes, unlike BIA and tribally owned routes, can be funded utilizing non-IRR sources; and

**WHEREAS**, the majority of tribes in the BIA Western Region, a region with limited non-BIA and non-tribal route mileage, have been experiencing drastic funding reductions; and

**WHEREAS**, the tribes in Arizona rely primarily on IRR funds, since they are not eligible for state transportation funds; and


**WHEREAS**, the BIA Division of Transportation has recognized the most notable IRR issue impacting all tribes has been the funding formula, it's implementation, and the resulting funding trend; and

**NOW THEREFORE BE IT RESOLVED THAT**, Appendix C to Subpart C, 25 CFR, Part 170, Question 10 continues to be unresolved and negatively impacts the tribes of the Inter Tribal Council of Arizona; and

**BE IT FINALLY RESOLVED THAT**, the Inter Tribal Council of Arizona recommends to the Bureau of Indian Affairs that public non-BIA and non-tribal routes be calculated in the Relative Need Distribution Factor at a zero percent federal share or a maximum, the non-federal share of five to twenty percent.

**CERTIFICATION**

The foregoing resolution was presented and duly adopted at a meeting of the Inter Tribal Council of Arizona on the July 30, 2010, where a quorum was present.

  
\_\_\_\_\_  
Shan Lewis  
President, Inter Tribal Council of Arizona  
Vice Chairman, Fort Mojave Indian Tribe

**Attachment A  
Indian Reservation Roads Program  
Methodology for the Distribution of Funding**

| ITCA Recommendation:<br>Transition and Final<br>Distribution |                      | Road Classification |       |       |       |       |       |       |       |       |       |       |       |    |    |    |
|--|----------------------|---------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|----|----|----|
|  |                      | 1                   | 2     | 3     | 4     | 5     | 6     | 7     | 8     | 9     | 10    | 11    |       |    |    |    |
| <b>Ownership</b>   | 1 BIA                | 100%                | 100%  | 100%  | 100%  | 100%  | 100%  | 100%  | 100%  | 100%  | 100%  | 100%  | 100%  | 0% | 0% | 0% |
|  | 2 Tribal             | 100%                | 100%  | 100%  | 100%  | 100%  | 100%  | 100%  | 100%  | 100%  | 100%  | 100%  | 100%  | 0% | 0% | 0% |
|  | 3 State              | 0%                  | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 0% | 0% | 0% |
|  | 4 Urban              | 0%                  | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 0% | 0% | 0% |
|  | 5 County<br>Township | 0%                  | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 0% | 0% | 0% |
|  | 6 Other BIA          | 0%                  | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 0% | 0% | 0% |
|  | 7 Other<br>Federal   | 0%                  | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 0% | 0% | 0% |
|  | 8 Other              | 0%                  | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 5-20% | 0% | 0% | 0% |

Calculated at 100% federal share

Calculated at 5-20% non-federal share

Calculated at 0% federal share


Non-EIA and Non-tribal facilities


- WHEREAS,** the Indian Reservation Roads (IRR) is a vital program, administered by the Bureau of Indian Affairs (BIA), for approximately 560 federally recognized tribes in the United States as a means to provide safe and adequate transportation within and to tribal lands, which contributes to the economic development, self-determination and employment of American Indians and Alaska Natives; and
- WHEREAS,** the revised IRR policies, procedures and funding formula were proposed during the 1999-2003 negotiated rulemaking process and finalized in the July 19, 2004, 25 CFR, Part 170; and
- WHEREAS,** the IRR funding is distributed based on the Tribal Transportation Allocation Methodology for the Tribal Transportation Planning, High Priority Projects, and Population Adjustment Factor programs, and includes the Relative Need Distribution Factor (RNDF), a factor for distributing tribal-specific construction allocations; and
- WHEREAS,** the eligible public routes to be included in the calculation of the RNDF incorporate state, urban, county/townships, and federal routes (non-BIA and non-tribal routes), in addition to BIA-owned and tribally-owned public routes; and
- WHEREAS,** the consequence of BIA's implementation of RNDF has been a five-year trend of favoring non-BIA and non-tribal routes, where a majority of funds have been redirected to BIA regions with tribes incorporating high mileages of non-BIA and non-tribal routes; and
- WHEREAS,** the BIA and the Federal Highway Administration (FHWA) recognized this disturbing five-year trend and after many meetings over a three-year period, decided to revisit their implementation of paying 100 percent of the cost-to-construct (CTC) and vehicle-miles-traveled (VMT) for all roads added to the IRR inventory, which conflicted with the intent of Question 10; and
- WHEREAS,** the BIA in June 2010 offered a two-phased proposal for the resolution of Question 10 issues: a) assess and realign the IRR functional classification with the FHWA functional classification system in FY2011; b) implement in FY 2012 its final Question 10 resolution to recalculate the RNDF for IRR roads; c) rescind Question 10, exemption 3, until the CFR 25, Part 170, has been updated; and d) carry out its proposal as an Indian Affairs Manual Directive with an expiration date of September 2013; and
- WHEREAS,** the BIA has reported that non-BIA and non-tribal routes, classes 3, 4 and 5, comprised 70 percent of the IRR inventory, so the potential of the June 2010 proposal is a continued trend of favoring non-BIA and non-tribal routes; and
- WHEREAS,** the non-BIA and non-tribal routes, unlike BIA and tribally owned routes, can be funded utilizing non-IRR sources; and

- WHEREAS**, concerning Question 10 exception 2, the FHWA interprets the "Federal funds, other than the Federal Lands Highway Program (FLHP) funds" meaning the Surface Transportation Program only for the non-BIA and non-tribal routes, classes 3, 4, and 5; and
- WHEREAS**, the majority of tribes in the BIA Western Region, a region with limited non-BIA and non-tribal route mileage, have been experiencing drastic funding reductions.
- NOW THEREFORE BE IT RESOLVED THAT**, Appendix C to Subpart C, 25 CFR, Part 170, Question 10 continues to be unresolved and negatively impacts the Hualapai Tribe; and
- BE IT FURTHER RESOLVED THAT**, during the proposed transition period, the BIA calculate the RNDP for the BIA and tribal routes, classes 1 through 8 at a 100 percent and classes 9 through 11 at 0 percent; and the non-BIA and non-tribal routes, classes 1, 9, 10 and 11 at a 0 percent federal share and classes 2 through 8 at the non-federal share of 5 to 20 percent; and
- BE IT FURTHER RESOLVED THAT**, during FY2011, the BIA conduct an assessment to align the IRR functional classification system with the Federal Highway Administration (FHWA) functional classification and incorporate the realigned classification system into the IRR inventory; and
- BE IT FURTHER RESOLVED THAT**, during FY2012, the BIA develop and distribute to tribes for their review a revised RNDP Report that will be based on the new functional classification and the BIA proposed final Question 10 resolution; and
- BE IT FURTHER RESOLVED THAT**, during FY2012, the BIA conduct ten regional meetings to receive input from the tribes regarding the revised RNDP Report; and
- BE IT FURTHER RESOLVED THAT**, the BIA consider tribal comments prior to the implementation of the final resolution for Question 10 and the finalization of the Indian Affairs Manual Directive; and
- BE IT FINALLY RESOLVED THAT**, the Hualapai Tribe recommends the BIA for Question 10 exception 2, to consider the definition of Federal funds other than FLHP funds to mean all Federal Highway Programs other than FLHP.

#### CERTIFICATION

I, the undersigned as Chairman of the Hualapai Tribal Council hereby certify that the Hualapai Tribal Council of the Hualapai Tribe is composed of nine (9) members of whom **(8)** constituting a quorum were present at a Special Council Meeting thereof held on this 27<sup>th</sup> day of September 2010; and that the foregoing resolution was duly adopted by a vote of **(8) in favor, (0) opposed, (0) not voting, (1) excused**, pursuant to authority of Article V, Section (a) of the Constitution of the Hualapai Tribe approved March 13, 1991.

  
 Wilfred Whatoname Sr., Chairman  
 Hualapai Tribal Council

ATTEST:  
  
 Aveline Crozier, Assist. Secretary  
 Hualapai Tribal Council

**SURFACE TRANSPORTATION**  
**April 2010**

**INTRODUCTION:** The member Tribes of the Inter Tribal Council of Arizona (ITCA) and the Arizona Indian Gaming Association (AIGA) represent all 22 Tribes in Arizona (Arizona). The ITCA provides a forum for tribal governments to advocate for national, regional, and specific tribal concerns and to join in united action to address these issues. The AIGA is committed to protecting and promoting the general welfare of Tribes striving for self-reliance by supporting tribal gaming enterprises on tribal lands in Arizona. Together, the ITCA and AIGA strive to strengthen the governance of Tribes in Arizona.

**POSITION:** The Tribes in Arizona occupy 28% of the total land base of Arizona. Each of the five interstate highways passes through or near one or more reservations, and many of Arizona's major transportation corridors cross Indian lands. Therefore, Surface Transportation is a critical concern for the Tribes.

**RECOMMENDATIONS:**

Finance

- Increase the funding range to \$800 million through \$1.05 billion for the Indian Reservation Roads (IRR) program to address escalating construction and product costs, the acquisition of rights-of-way (ROW) and the establishment of systems to manage pavement, ROW, and traffic and crash data.
- Authorize the funding range to \$75 through \$100 million for the IRR Bridge Program to reconstruct deficient BIA bridges.
- Provide \$150 million annually for the BIA Road Maintenance Program to maintain the BIA roads and to enhance the management of data.
- Include innovative financing methods, beyond public private partnerships (PPPs) and toll roads that will be equitable for governments in remote rural areas.
- Do not include the vehicle miles traveled (VMT) fees in rural areas that will financially burden residents in remote and economically depressed areas.
- Create an IRR [state] infrastructure bank (SIB) to advance Tribes low interest loans for construction projects.

Transportation Safety

- Continue the enhancement of transportation safety provisions with sufficient funding and program flexibility for Tribes to establish data management, and enhance engineering and behavioral countermeasures.

Tribal Transit Grant Program

- Provide a funding range of \$35 through \$85 million to assist Tribes to create or improve mobility choices for their members.

General

- Include tribal representation on commissions/study groups created in the new legislation.
- Establish a multimodal tribal transportation program that is comprehensive, yet flexible, to provide Tribes options to develop and sustain livable communities.
- Do not support the establishment of an independent National Surface Transportation Commission that would be authorized to make revenue recommendations for the Federal Lands Highway Programs (FLHP).
- Do not eliminate safety data improvement grants; tribal and local governments in rural areas need financial assistance to establish and maintain their traffic records.



**BACKGROUND:** As with States, Tribes need access to flexible and sustainable transportation programs. Tribal transportation is complex, because of the varied federal, state and local jurisdictions and programs involved. Since 1998, key tribal challenges have been developing capacity, decreasing shares of the IRR funds, delinquent or partial IRR allocations, lack of agency and program coordination to eliminate crash disparities, minimal maintenance investments and inaccessibility to non-IRR funds. The diverse IRR network in Arizona serves as freight and tourism corridors for the public and as lifelines for reservation residents to off-reservation services to conduct government and family business.

Finance: As the Nation faces the challenges for infrastructure maintenance and improvement, much attention has been devoted to the role of the federal government to sustain the deteriorating infrastructure. For Tribes in Arizona, the federal role starts with the FLHP that encompasses the IRR and programs for other federal lands. Realistically, the IRR program is the sole source of transportation funding for the majority of Tribes in Arizona. Tribes have had minimal success in accessing non-IRR federal funds through the regional planning process and would prefer a direct application process with the state transportation department. Concerning state transportation funds, the Arizona constitutional provisions and legislation either prohibits tribal eligibility or requires a partial waiver of sovereignty. An ITCA Inc. task force examined issues concerning innovative financing, and tribal access to state transportation funding and loan programs.

A provision of the Arizona constitution prohibits tribal access to revenues in the State Highway User Revenue Fund (HURF). Instead, Tribes can opt to negotiate a fuel tax agreement with the state transportation department for the reimbursement of fuel taxes collected on tribal lands and/or levy tribal excise taxes on fuel sold on reservation land. The number of commercial gas stations on tribal lands, which are relatively few, correlates to both of these financing options and to the capability of the Tribes to negotiate a successful outcome. Yet HURF contributions include the fuel purchases made by tribal members and/or employees of the tribal governments and enterprises, BIA and Indian Health Service.

Although state legislation provides eligibility for Tribes to borrow from the Arizona SIB, several major obstacles prevent effective access to this money. The barriers stem from program regulations that require Tribes to: waive their sovereign immunity; agree to resolve disputes in state courts; create separate legal entities to receive the funding; and disclose their government assets. A federal IRR SIB could bypass these issues. A proposal to the U.S. Senate Committee on Indian Affairs has called for the establishment and start-up funding of an IRR loan program comparable to the SIBs. Such an IRR SIB could make direct, low-interest loans to Tribes for transportation infrastructure development, and guarantee loans to enhance prospects for leveraging tribal resources.

Tribes and reservation residents have an important stake in the types of approaches will be adopted to raise transportation revenue. Some of these potential solutions would seriously disadvantage Indian people, particularly in remote rural and economically depressed reservation communities. These include VMT fees, tolls, congestion pricing and PPPs, all of which might be desirable in urban areas, but would adversely impact the rural population that must drive considerable distances for employment and services, and where there is minimal private sector with which to create transportation partnerships.

**Transportation Safety:** Motor vehicle crashes (MVCs) are the leading cause of death for American Indians younger than 45 years. Since 1980, the MVC fatality rate for American Indians in Arizona has been consistently more than three times the overall state rate.

In 2007, when Arizona approved its statewide Strategic Highway Safety Plan, ITCA was concerned that the data driven plan, including issue and countermeasure identification, would be pertinent for Tribes, since they have the highest MVC fatality rate in Arizona. It took two years before ITCA, Inc., could access funding to initiate analyses comparing statewide crash outcomes/issues to those on the reservations. The analyses have identified high crash locations and young drivers, seat belt, speeding, and impaired driving issues associated with these crashes. The chart below shows the total number of crashes, injuries and fatalities, and the number of truck-involved crashes, injuries and fatalities occurring annually in 2005 through 2008.

| <b>Crash History on Tribal Lands in Arizona, 2005-2008</b>   |             |             |             |             |              |
|--|-------------|-------------|-------------|-------------|--------------|
| <b>Data Type</b>   | <b>2005</b> | <b>2006</b> | <b>2007</b> | <b>2008</b> | <b>Total</b> |
| <b>Total # of Crashes</b>  | 2,972       | 2,979       | 3,432       | 2,635       | 12,018       |
| <b>Total # of Injuries</b>   | 1,675       | 1,843       | 2,075       | 1,441       | 7,034        |
| <b>Total # of Fatalities</b>   | 134         | 169         | 175         | 118         | 596          |
| <b>Total # Large Truck Crashes*</b>  | 161         | 172         | 204         | 143         | 680          |
| <b>Total # Large Truck Injuries</b>  | 66          | 80          | 105         | 66          | 317          |
| <b>Total # of Large Truck Fatalities</b>   | 9           | 9           | 10          | 13          | 41           |
| Data Source: Arizona Department of Transportation, Accident Location and Identification Surveillance System.   |             |             |             |             |              |
| *These data include only truck tractors and truck tractors with semi-trailers and do not include buses, motor homes, military vehicles and other truck combinations. |             |             |             |             |              |

Tribes in Arizona have been working to heighten safety awareness among their membership; to adopt and enforce ordinances intended to increase seatbelt usage and decrease impaired driving; and to assess transportation facilities to identify and eliminate environmental hazards for the pedestrians, drivers and bicyclists. Tribal health, emergency medical services (EMS), law enforcement and transportation staff have been coordinating activities to reduce the number and severity of MVC occurring on tribal lands that are affecting both residents and the public driving on reservation roads. However, the BIA leadership and funding are lacking. The Tribes need BIA to establish a safety priority and to coordinate their safety activities with law enforcement, transportation and the highway safety office. Foundational to this endeavor would be resources for data management and staffing to establish systems for collecting and analyzing the details of the crashes and linking this information to EMS and roadway data.

**SURFACE TRANSPORTATION**  
April 2010

**SENATORS:**

Environment and Public Works Committee [Roads]: **Senator Inhofe**, (OK) Ranking Member;  
**Senator Udall** (NM)

Transportation & Infrastructure Sub-committee: **Senator Crapo** (ID)

Banking, Housing and Urban Affairs Committee:

Housing, Transportation & Community Development Sub-committee [Transit]: **Senator Tester** (MT); **Senator Johnson** (SD); **Senator Akaka** (HI); **Senator Crapo** (ID)

Finance Committee [Funding]: Member; **Senator Kyl** (AZ)

Energy, Natural Resources and Infrastructure Sub-committee: **Senator Bingaman** (NM), Chair;  
**Senator Hatch** (UT); **Senator Crapo** (ID)

Commerce, Science and Transportation Committee [Safety]:

Surface Transportation & Merchant Marine, Safety & Security Sub-committee: **Senator Udall** (NM)

Energy and Natural Resources Committee: **Senator Bingaman** (NM), Chair; **Senator Murkowski** (AK), Ranking Member

Public Lands & Forests Sub-committee: **Senator Johnson** (SD); **Senator McCain** (AZ)

Appropriations Committee: **Senator Murkowski** (AK)

Interior, Environment & Related Agencies Sub-committee: **Senator Tester** (MT)

Transportation, Housing & Urban Development & Related Agencies Subcommittee: **Senator Johnson** (SD)

Senate Committee on Indian Affairs: **Senator McCain** (AZ); **Senator Akaka** (HI); **Senator Johnson** (SD); **Senator Udall** (NM); **Senator Coburn** (OK); **Senator Tester** (MT); **Senator Coburn** (OK); **Senator Murkowski** (AK); **Senator Crapo** (ID)

**REPRESENTATIVES:**

Transportation and Infrastructure Committee:

Highways and Transit Sub-committee: **Representative DeFazio** (OR), Chair; **Representative Mitchell**, (AZ); **Representative Rahall** (WV)

Natural Resources Committee: **Representative Flake** (AZ); **Representative Rahall** (WV);

**Representative Pallone** (NJ)

National Parks, Forests & Public Lands Sub-committee: **Representative Grijalva** (AZ), Chair;  
**Representative Kildee** (MI); **Representative Boren** (OK); **Representative DeFazio** (OR)

Appropriations Committee:

Interior, Environment & Related Agencies Sub-committee: **Representative Pastor** (AZ);  
**Representative Cole** (OK)

Transportation, Housing & Urban Development & Related Agencies Sub-committee:

**Representative Pastor** (AZ)

Congressional Native American Caucus: **Representative Kildee** (MI), Chair; **Representative Grijalva** (AZ); **Representative Kirkpatrick** (AZ); **Representative Matheson** (UT); **Representative Pastor** (AZ)

**INTRODUCTION:** The member Tribes of the Inter Tribal Council of Arizona (ITCA) and the Arizona Indian Gaming Association (AIGA) represent all 22 Tribes in Arizona. The ITCA provides a forum for tribal governments to advocate for national, regional, and specific tribal concerns and to join in united action to address these issues. The AIGA is committed to protecting and promoting the general welfare of Tribes striving

for self-reliance by supporting tribal gaming enterprises on tribal lands in Arizona. Together, the ITCA and AIGA strive to strengthen the governance of Tribes in Arizona.

**ISSUE STATEMENT:** The Tribes in Arizona have identified the need to adopt surface transportation reauthorization provisions to advance program accessibility and flexibility, and funding opportunities for tribal governments.

**TALKING POINTS:**

- Tribes have a vested interest in the advancement of infrastructure to support the tribal economy and to link the delivery of services to tribal members both from within and from outside reservations.
- The Indian Reservation Roads program is the sole source of available transportation funds for many Tribes in Arizona.
- Arizona constitutional provisions and legislation for transportation program funds either do not provide for tribal eligibility or don't provide for direct tribal access. In the latter case, tribal applications must be submitted to counties or regional planning organizations and usually require the waiver of tribal sovereignty.
- Innovative financing in the form of mileage fees, toll roads, congestion pricing, and public private partnerships have been suggested as the means to raise capital for the national infrastructure. Although, these instruments have been deemed as extensions of the current system-user-payments, they are intended for highly populated urban areas to alleviate congestion and to move freight, and penalize rural residents. Small rural governments in Arizona find themselves in need of revenue to deal with untraditional transportation issues stemming from the overflow of metropolitan traffic - congestion mitigation, commercial trucking, oversized vehicles, and transportation safety. However, the innovative financing methods will not raise the needed revenue for the small governments and will financially burden citizens in remote rural and economically depressed areas. These citizens usually don't earn high incomes; lack transportation options, incur high mileage driving the long distances for services and goods; pay higher fuel costs; and cannot afford to drive the modern fuel efficient vehicles. In Arizona, the state transportation department has identified the vehicle-types paying more for system usage, which are SUVs, light pickup trucks, and vans. Due to the crude transportation systems on tribal lands, these types of vehicles can maneuver the conditions and therefore, comprise the majority of tribal government fleets and are the vehicles of choice for many tribal citizens.
- Tribes in Arizona experience project delays, as do other governments, and are interested to improve the process for project delivery, but are concerned that they have not been directly engaged in the formulation of reform recommendations to consolidate the federal transportation programs or to establish an independent National Surface Transportation Commission. The Commission is proposed to have oversight of performance standards. It would also have authority to develop revenue recommendations for system user fee rates and adjustments and the federal share; to approve the national strategic plan; and to adopt the maintenance of effort requirements.
- Motor vehicle crashes are taking the lives of tribal members three times more often than the general population of Arizona, leaving many more with long term injuries, and straining family resources. In response, tribal governments have been working to institutionalize ordinances, such as primary seatbelt laws, and prevention activities, including the assessment of traffic data, and the rehabilitation and maintenance of roadways to improve the safe transport of the public. Tribes need flexible programs and sufficient multi-year funding that helps to address this complex topic.
- Tribal members, especially elders and youth, need mobility options to help them to access tribal services and to link them with off reservations services and opportunities. With the establishment of the federal Tribal Transit Grant program, the number of Tribes planning and/or operating transit programs has increased from three to ten.

**CONCLUSION:** Tribes in Arizona are experiencing huge transportation problems without the tools and resources necessary to meet these challenges in a rapidly growing state like Arizona. We need federal government assistance to obtain these tools and resources because many state avenues have been blocked.

Senator TESTER. Thank you, Wilford, for being here.

I think it's about time to wrap this up. We had a good hearing. And I want to thank you everybody for traveling, some of you very long distances, here to the Flathead Valley for today's hearing. I very much appreciate that. And I want to thank you for sharing your thoughts. And it's good to hear about how the Recovery Act

has created jobs and improved transportation infrastructure throughout Indian country. And I appreciate the work you've done to find common ground on the Q-10 issue.

It's reassuring to hear that tribal leaders and administration officials are committed to working together closely. As we craft the next highway bill, it is critically important. And I appreciate your ideas. I appreciate the constructive thoughts that were offered. But it's more important to know we don't want the dialogue to end here. As we approach time to reauthorize the highway bill, we need to make sure Indian country is included in that process from the very beginning.

Committee staff and my staff will be here for the next hour or so to keep today's conversation open. And it's important to know that this hearing will remain open for written testimony for two weeks, until October 29th. In case you have other folks out there that want to get their testimony in, there's some time to do that. So please keep in touch with the administration and individual advocates on your particular priorities. We'll keep the Committee's official hearing record open, as I said, for two weeks.

We saw here today that transportation is vital in Indian country. Whether it's a fire truck trying to reach a rancher, a single lane road covered with ice or snow, or someone trying to navigate 12 miles of 12 lanes of gridlock in southern California. Each tribe has its unique challenges, and we need to keep all of those challenges in mind. Rather than fighting against each other, I challenge everybody, as always, to work together. We're fighting wars in the Middle East, we have troops deployed worldwide to keep our enemies at bay, so it's essentially critical that we treat our neighbors as neighbors and not as enemies.

We have a lot in common, including our community challenges, whether it's tribes working with cities and counties to improve access or rural tribes working with urban tribes to protect all our members. Working together on these issues is absolutely critical. We need to keep talking together. We need to keep working these issues out with one another. We need to keep defining our priorities together, building alliances.

By working together, we will improve tribal transportation. By improving tribal transportation, we will create jobs, we will make communities safer, and we will rebuild our public infrastructure.

I want to thank you, again, all for being here. And I also want to thank Vice Chair, Senator John Barrasso, my friend out of Wyoming, for his contribution to this Committee. But it is of particular significance for me to point out somebody who we all know sitting in this room who has been a great leader for Indian country over all the time I've been in the U.S. Senate, which hasn't been that long, but many years before that. Chairman Dorgan is going to be retiring from this Committee as Chairman of it. He has done nothing short of an incredible job addressing the issues in Indian country. If you take a look at what's transpired in the last two years on this Committee under the leadership of Byron Dorgan, it has been absolutely incredible. So when you see him, if appropriate, give him a kiss.

I want to thank you all for being at this Senate Committee on Indian Affairs Hearing, and we are now adjourned.

[Whereupon, at 4:10 p.m., the proceedings were in recess and subsequently reconvened at 4:23 p.m., and the following proceedings were entered for the record:]

LISTENING SESSION

**STATEMENT OF ALLISON BINNEY, MAJORITY STAFF  
DIRECTOR/CHIEF COUNSEL, SENATE COMMITTEE ON  
INDIAN AFFAIRS**

Ms. BINNEY. I'd like to ask everybody to take their seats, please.

So for everyone that's still here, I wanted to make sure that you knew that we're going to keep the hearing record open until the end of the month. And so if anyone wants to submit written comments or written testimony to be a part of the hearing record, you have until the end of the month to get that to the Committee. I would fax it to us or e-mail us, and we'll make sure it's part of the record. It can be any length and it can include charts, anything like that. So feel free to do that.

Senator Tester had to leave, and he wanted to make sure if there were any people who wanted to continue to get comments on the record today, that we had a listening session afterwards. So I know there's only a few people here, but if any of you did want to go ahead and provide more oral comments, please go ahead and do those. We have our court reporter over here who is going to go ahead and keep track of the comments so they can become part of the official record. My name's Allison Binney, by the way. I'm the Staff Director of the Senate Committee on Indian Affairs underneath Senator Byron Dorgan. This is Denise Desiderio. She's our Senior Counsel for Chairman Byron Dorgan. And then Jim Hall, over here in the red tie, he is Counsel for Vice Chairman Barrasso from Wyoming. He's the Vice Chairman of the Committee.

And so with that, I don't know if anybody here wants to provide any oral comments, but let me go ahead and open up the microphones. I'm going to ask that people use the microphone here in the middle. And I know it's not there, because it's right over here.

Is there anybody who would like to provide any oral comments for the record? Anyone?

Well, Chairman, we know you always have lots of comments. And then, Chairman, did you hear when I said that we're going to leave the hearing record open until the end of the month?

Mr. WHATONAME. Yes.

Ms. BINNEY. Did you provide us any written testimony today?

Mr. WHATONAME. Yes. I gave you some, but I think we did it more hurriedly because when the notice came out that you were going to have this field hearing, about just a few days ago, and then they had the Window Rock hearing out there, and I missed that one, so we decided to come up here. So we gave you some information there, but that was on Question 10 and also in support of the new TRIP Act, what they're recommending in that.

Ms. BINNEY. Well, we'll keep these, and then if you want to provide additional written testimony or revamp the whole thing—

Mr. WHATONAME. Yes. It was just more hurriedly thrown together, just kind of a mishmash of stuff. It does include the Intertribal Council's Resolution. They didn't authorize me to do that, but, you know, I just thought I'd do that for them as well. But I did talk to Esther Corbett, she's the Arizona person on that committee on transportation that represents the tribes in the Western Region.

So anyway, we'll do that when we get back. And we do want to thank you for taking your time to come up here and meeting with us again, and Senator Tester being able to sit down and listen to us. Besides, getting all the BIA, Department of the Interior, that's great. You know, that's that the other Montana-Wyoming tribes have to get to do. I know it's with them, but I felt that we should come up and also address our concerns. It's very important that we do that. We do have, basically, the same issues, funding.

So again, we just want to thank you. And whatever you can do on our behalf. I do want to thank Denise and the others on the Committee on the juvenile detention facility that was built in 2007. It's fully staffed now with 30-some staff people, and it's up and running. We were sitting there empty for almost a year, but now it's running and it's working. So we want to thank you for that.

Ms. BINNEY. Good. That's great. One of your tribal judges, Joseph Flies-Away, testified on that. I think he submitted some written testimony looking into the fact that it was sitting there empty for so long. So I'm glad to hear that.

Mr. WHATONAME. Yes. We just recently got some funding for the Green Entry Program where the juveniles are being taught gardening and farming. They do grow produce, lettuce, tomatoes and stuff. They're kind of feeding the staff and themselves. They call it Green Entry Program for DOJ. So that's working for them.

I want to thank you again for coming here and working with us. I appreciate that.

Ms. BINNEY. Thank you, Chairman.

Did anyone else want to provide any additional oral comments?  
Pete Red Tomahawk.

Mr. RED TOMAHAWK. Yes. The areas that I didn't read for the record is the written testimony from Standing Rock Sioux Tribe. In looking at the advocacy for increase of annual probation for the IRR program to 800 million annually with step increases of 50 million, we're likely to grow the IRR Program to just over one million at the end of the next reauthorization.

And also to highlight the area of safety. And we need to lower the numbers. I'm presently a member of the FHWA Safety Committee and looking at the tribes' use throughout Indian country and looking at the educational component and doing the Tribal Safety Summits throughout the country. We just did one here in Oklahoma. We're going to be doing one here next week in the state of South Dakota at the Lower Brule Sioux Tribe on the 26th and 27th, and looking at that.

I shared with John Baxter. And Mr. Baxter is going to be present at the Safety Summit. And I shared the comments with the Montana MHW Division administrators. And looking towards Montana and Wyoming having a Tribal Safety Summit also. So in looking in that direction, overall we've come back to national reports,



and looking at lowering the numbers and lowering—At the present time, even looking at the national decrease in the numbers, still for Indian Country the numbers, they're still starting to—So looking at that issue, we advocate for two various safety—one though FHWA. And looking at these hearing components, we have a lot of roads that need new engineering component and looking at the slopes of these highways that we travel on a daily basis. So hopefully with looking at those corrections that can be done, we're able to make the, you know, increases and also these decreases of these things that are taking place.

So the other area was enforcement. Looking at engineering, enforcement, education and EMS, emergency medical services. So in looking at the engineering, education, enforcement, we presently have a surge that's going on at Standing Rock. And it's working very well, looking at the amount of law enforcement officers being able to go to all communities. Yet, more importantly, looking at the deterrence towards these five issues that possibly couldn't have happened without them being there and actually happening. So in looking at that, it is working.

And then the EMS, and looking at the emergency medical services. You know, from the rural side, there's no such thing as the golden hour. In looking at these crashes that happen that, you know, to the nearest trauma center, it's some distance away from these scenes that happen in Indian country.

So looking at these issues, I share with you the advocacy of trying to get more funding to these areas. So with that, I want to thank you for allowing me to make additional comments and also to share the written testimony. I shared that with you, Denise.

Also we wanted to share our congratulations to Senator Dorgan, looking at the excellent job that he's done throughout the years. It's very sad for us to see him go and wanting him to stay on, but Senator, even when he came to Standing Rock in June or July, you know, tribe was very honored for him to come and make that visit. But more importantly, congratulate him for the excellent work that he's done, not only for the tribe, but all of Indian country across the country.

So with that, I want to thank you for taking time out of your schedule to be here with us. Thank you very much.

Ms. BINNEY. Thank you. Would anyone else like to provide any additional oral comments?

**STATEMENT OF SHIRLEY KNAUS, VICE CHAIRPERSON,  
TRINIDAD RANCHERIA**

Ms. KNAUS. Hi. My name is Shirley Knaus. I am the Vice Chairperson at Trinidad Rancheria in northern California.

And I've testified before other hearings for transportation in the past couple of years. And I just wanted to say once again that we need to work together and not pit tribe against tribe, find that fair and equitable solution like everybody is saying, and not to lose sight of the commonalities and the common meanings that all the tribes have, and to sort out the extreme examples on both positions, no matter what stand a region has. Look at what a viable solution would be, and also what the law and the regulation states, and not leave it to be one or two persons' interpretation of—for in-

stance, a BIA employee making an interpretation. Because that's one theme I heard throughout all these different hearings, is that the BIA differs from region to region and they interpret it differently. So the consultant and the analysis and just restructuring possibly within the BIA to make it more consistent, then we might not have as many different problems if each region was applying the regulation in a consistent manner.

So I would just like to see that consultations continue, the town halls and the hearings and that whole process continue for tribes to get engaged and to help work in the manner that everybody talks about. And I would hope that everyone, the tribes and the administration, take that to heart and really be collaborative, not just when they're making their speeches. But if we really work together, I think we can come up with a good solution that meets the needs of tribal people, because that's all the same no matter where you go.

Thank you.

Ms. BINNEY. Thank you. Would anyone else like to provide some comments.

**STATEMENT OF TIM PENNEY, TRIBAL TRANSPORTATION COORDINATOR, FEDERAL HIGHWAY ADMINISTRATION, OFFICE OF POLICY**

Mr. PENNEY. Yes. If I could make a couple comments to possibly for you and maybe to make it back to other members and staff and the Committee.

My name's Tim Penney. I'm the Tribal Transportation Coordinator for Federal Highway Administration in the Office of Policy.

You know, one thing that's really been focussed on here today and in a lot of these consultation sessions and different hearings that have been held, there's a real focus on the Indian Reservation Roads Program, and I think rightly so, because that is the dedicated source of funding. But what gets a little bit lost in that is all the other areas in which tribal governments are working in transportation and all the other needs that are out there in tribal transportation that go beyond IRR Program funding.

And I wanted to touch on just a few of them to point them out that some of the activities that are happening and some of the needs that remain out there among tribal governments and transportation. Let me start with one. One of the items that we've worked on a lot in Federal Highways with tribes and with state DOTs is looking at state and tribal intergovernmental relations. How can we get tribes and states to better work together? Looking at cooperative projects. Looking at technical assistance and training. And really looking at building expertise of tribes. And that's sort of a theme that we've continued to push. And that's a desire that we've heard from tribes in wanting to build their own programs, sort of grow their own staff, take on as much of the program as they can, and not continue their dependence on the BIA to run the programs.

And there's tribes all over the country that are at various stages of that. Some that are almost running complete transportation programs. Some that are taking it piece by piece, maybe just doing planning, maybe just doing the construction. But that's a common

theme among tribes, of wanting to take over more of those programs.

There is no actual sort of mandate to do that or dedicated funds to do that, but that's something we built into our program at the Federal Highways. We see that as a tremendous need. And from our administrator on down to really make that part of our mission, and not just an extra, not having working with tribes, just an extra piece. So when we talk about our primary mission on the federal aid side is working with states, but we also include tribal governments as part of that. So that would be one area.

Another area—what I kind of mentioned—sort of jumping from the state/tribal intergovernmental relation to building capacity. You know, the main reason I want to look at that, is looking at that for the tribes and from the tribes, not just for them, but to sort of really support self-determination in transportation. They're really taking that on. If we can look at aspects of transportation with tribes, that's going to support self-determination and self-governments.

this concept has been bounced around for 30-plus years. We talk about it a lot. We hear about it a lot. They talk about sovereignty and self-determination, but when it gets down to it, there's got to be some push from their end to take over these programs and the ability from the Federal Government-side in the programs to support that. And I think those two pieces have to meet.

One of the other areas that I want to talk about, and this has come up because at one point in Federal Highways, we did have a little dedicated money for research funding. When people think of research, they think of some of the hard engineering research and crash testing and some of the things we've done in Federal Highways. But there's a real need for a dedicated research program within Tribal Transportation. There's a whole range of topics, from policy topics to technical topics. And especially now, as tribes are getting into building their own equipment and running their own programs. What does that mean and how does that work? There's funding out there, but again, it's always directed towards state DOTs or universities or transportation research boards or things like that. But there's no dedicated, sort of, line item for tribal transportation programs. And there's a tremendous need out there. We've been lucky to do a few things over the years, but it's really scraping and stealing from other pieces of programs to convince the folks in safety to do a safety research project on tribes. We've been able to convince some people in planning to do some tribal planning. But we aren't able to just, from my office, identify a problem statement and go after it. It takes a lot of work of pulling in other staff and, you know, to convince them to convince their superiors that this is really something worthy to fund, something they don't have to do within their own program. If it's a safety program or an infrastructure program, they think something's worth funding, they go after it. Within the tribal program, if we think something's worth funding, we have to convince a lot of people to tap into their resources, be it dollars or people, the expertise here.

Really those are some of the program areas. You know, one of the things I wanted to say also is within Federal Highways, again, you heard a lot about the IRR and continue to hear about that.

But I just want to say one of the things we've been trying to push is some of the themes within Federal Highways and when do we want to do the tribal transportation, not next year, not the next legislative cycle, but where are we looking? Ten, twenty years down the line? And this is really not just from Federal Highways, but based on some of the input and observations we have from the tribes that we've been working with and being able to get out around the country. But I think we really want to see, sort of, national support and self-determination, tribal self-determination in transportation, is gonna really push that for tribes within the program development of the transportation program.

The next piece is fulfilling that capacity and expertise where they can take on programs, where they're able to talk to state DOTs at the same level, have the same technical skills as all those transportation practitioners and understand the regulation side and the technical side of the program. And finally, in doing that, I think we'll finally see the improvement in transportation systems and highway safety out there among reservations and tribal communities.

So those are kind of the themes, I think, we're trying to build on internally at Federal Highways, and I know that goes beyond a lot of IRR Program. Again, I know when you look at \$450 million, it looks big, and that becomes a topic of discussion. I think there's a lot of other things that don't have large dollar amounts attached to them. Sometimes it's an idea rather than a dollar amount, and we have to push those ideas and concepts out among our divisions and state DOTs and tribal governments to accomplish some of these things.

So with that, I thank you for being out here and having this today. Thanks.

Ms. BINNEY. I actually have a question. You had mentioned that, you know, there's a movement with some tribes toward starting up their own department of transportations.

Mr. PENNEY. Right.

Ms. BINNEY. Do you have any good examples where tribes have actually developed full department of transportations up and running?

Mr. PENNEY. I don't know if I can say there's anybody that has a full department of transportation. Cherokee in Oklahoma has a lot of their work inhouse. They do design work. They do materials testing. I think they do some of their planning.

And Navajo has a big program, even though technically they're considered a direct service tribe. They've got over 120 people on staff within Navajo DOT. So they're building the planning side and technical side. So they're doing a lot of their work, doing a lot more maintenance, buying the equipment they need to take on some of these tasks.

There's others that are sort of getting the piece work. For a while at Oglala Sioux at Pine Ridge, they were starting to build a department where they looked at, you know, what were their needs. They had a safety program. They had a maintenance group. They had a construction group.

So I don't know if there's anyone that can really say from start to finish has done this. I'd like to hold up examples and say, here's

the ten that we have right there. There's some that are getting there. There's some that are close. There's some that maybe say that they're there. I think it's a work in progress for the tribes. And that's something I think we need to focus on with those tribes that are doing it. Get some peer-to-peer exchange on how they did it. Because there's a lot of considerations, not just getting program funding, political considerations of going through tribal chairmen saying, we need ten people, twenty people to run this program, and we've got salaries that are going to eat up this much. And how you go about that. What are the technical considerations? What are the job requirements for the people that you're bring on? How does that fit with the existing tribal government structure?

So I think from the tribes that are doing that—and what we've tried to do is bring some of them together, to say, How did you do that? What were the consideration to sustain this? You know, might be, you can do this for one year, two years, but five, ten, twenty years down the line, are you still going to have a tribal DOT out there?

Mr. HALL. One of the big things you said—I'm just kind of building on what Allison said, but, you know, within tribal capacity and what you were discussing in terms of building transportation departments. There's been a lot of folks in the United States Senate that have been interested in that. You kind of already kicked out a couple of examples, but do you have any other examples of what we could do legislatively to take a look legislatively that would help build capacity for tribal transportation departments?

Mr. PENNEY. Well, you know, one thing we bounced around last go-round for SAFETEA-LU internally, and it got folded into another program and sort of disappeared. We talked about having a tribal capacity building program, and it got folded into this planning capacity building program that became a very generic thing. But I think something like that where we're looking at—I mean, that's a big thing for a lot of the tribes, how do you start that program? If you now have the capability to do a 638 Program, you know, where there is no start-up money, unless the tribes are putting in some other source of funds. And some tribes are. Some tribes are putting in tribal gas tax money or casino revenues or other tribal revenues. Jacque is over there. Up at Hoopa they had the gravel operation. Some of that went back into transportation. So, you know, people are building programs in those ways. But I think if there was a program where we could identify the tribes or really self-identify tribes and propose a plan on what they're trying to build to help with that sort of start-up cost where they can get into the same things that state DOTs do.

I worked for a state DOT when I first started my career, and that was a thing every day, you wanted a project to charge to, something to charge your costs to every day. And tribes don't have that ability right now, and that's where they're stuck. They're not able to charge their planning costs or design costs or construction costs to something. And I think that's the idea to get them up to speed with the rest of the transportation profession, how things are done industry-wide, and not have, well, here's how states and counties do it, and tribes are a little bit different. I mean, we should have a program that's kind of seamless, even through there are

vast differences on how things operate on the reservation. But I think in structuring a program, there's some good lessons out there on how things have been done from a lot of different sizes we're looking at for tribes. Anything from a small roads department to a public works department to a full blown DOT-size operation. And, you know, tribes are going to fit into many of those models that are out there.

Ms. BINNEY. Thank you.

Mr. PENNEY. Thanks.

Ms. HOSTLER. For the record, I'm Jacque Hostler. I'll just go with Trinidad Rancheria for now.

You know, Tim brings up a lot of good points. You guys are asking some questions. Grassroots on the ground in Indian country, there are so many disconnects. There's a disconnect between the chairman and the tribal council to the staff and understanding SAFETEA-LU and understanding 25 CFR Part 170. It was said over and over today, it's extremely complex.

I've been working in it since February of 2005. This is October of 2011. And I consider myself literate in the inventory in the system. The disconnect also—because the tribal chairmen and the tribal counsel don't understand what the staff understands. But then also our system is totally different than Federal Highways, state DOTs, than the counties, than the local governments. So we are like a six-category, and none of those categories totally interconnect.

So we in northern California created the North Coast Tribal Transportation Commission to try and share our knowledge. And as Tim mentioned, I went to work for Hoopa in 2002 as their aggregate and ready-mix manager. And in that time I brought my private enterprise experience, and I taught them how to build capacity. We built an aggregate crushing plant. We came up with spec material. We delivered spec ready-mix. We went out and we used the new construction money that came through the IRR allocation to build projects. We supplied those projects with our own aggregates, our own ready-mix, and our own workers. If it needed to be bid out, then it was bid out, but our equipment, our men, our materials were put to work. It was an exemplary. And we were teaching the other tribes how to do that in northern California.

We ended up with two counties, Humboldt and Del Norte County, and over 11 tribes participating in this consortia and beginning to understand and learn about 25 CFR Part 170 and how to update the inventory and how to section-by-section get your roads in.

And our biggest disconnect was with the regional engineer and his not understanding 25 CFR, but then also with all of the other agencies within our county, within our state and nationally. Because it felt like we were fish out of water. It felt like we were the different ones, and nobody really understood what we had to go through in our county.

So the first step was to build the North Coast Tribal Transportation Commission. The next step was to become part of the Regional Planning Authority, which in Humboldt County was Humboldt County Association of Governments. So within three years, we had five tribes sitting on that technical advisory committee, because money was coming in through that regional planning agency

for tribes. We were part of the county, but we were never getting that money. They counted our populations. The tribal chairmen are at home slamming our fists on the table saying, the county doesn't do anything on the reservations, and they're right, they don't. Because the county cannot provide services for the rest of the county, and reservations are the last on the list.

So as we became part of that association of governments, that regional planning authority, we were able to learn their system. We were able to say, wait a minute, this a county road. We have a project ready to go, and you need to give us money for this project. Slowly but surely over the past five or six years, we've gotten projects on that State Transportation Improvement Plan. Because we started really small, and we began developing that. You know, those baby steps of learning the system.

Then we took it to Caltrans. The Native American Advisory Committee meets statewide southern California, northern California, central California. We began sharing this knowledge with them on how we were doing things in northern California. And I would say, over the last seven years, we've built a lot of our social networking has really, really improved. And we have a direct line now to the director at Caltrans.

We agree the states and the counties need to step up and do what they need to do. California's in a budget crisis. There's all of these issues. So how do we become part of the solution? How do we leverage funds with the other funds that are available? Those are the things we are teaching the tribes in northern California.

And you can go in and build a transportation department. I love doing that. That's easy. The hard part is understanding the system, getting those systems to all coexist and not having the systems say, well, I can't help you with that.

So then we wind up at the Indian Roads Coordinating Committee. And the regions that have lost their lands and have county and state roads bisecting traditional lands, it's not our fault that that happened. We still have to deliver services to Indian country. So they don't understand our situation. As we go and visit their regions, we understand their situation. They need to come and understand our situation.

And one of the reasons that it's difficult to speak, is my husband's been over twenty years building that relationship in Hoopa. And, you know, it takes a long time to move forward before a tribe. They don't want to give up that sovereignty, that self sufficiency, that self determination, and go over to the county and the state and say, you know, we're a sovereign nation and in California not be recognized. There's so many issues.

So, you know, we won't go away. We keep showing up, you know, we keep being the underdog, but that's okay, because we're educating people.

Ms. BINNEY. Thank you, Jacque. I just want to thank everyone for being here. Again, the oral comments that were just made now are going to be part of the hearing record. But the hearing record will stay open until the end of the month, so if you want to provide written testimony, get that to the committee by the end of the month, and we'll include that as part of the hearing record as well.

And with that, thank you for being here. It was a great hearing.  
Thanks.  
[End of proceedings.]



## A P P E N D I X

PREPARED STATEMENT OF HON. CEDRIC BLACK EAGLE, CHAIRMAN, APSAALOOKE  
(CROW) NATION

Thank you, Senator Tester, on behalf of the Crow Nation, for arranging and chairing this Oversight Field Hearing on Tribal Transportation in Indian Country. We all greatly appreciate and honor your hard work for Indian Tribes, for Montana, and for all of the country. We are also honored by the presence of Assistant Secretary Echo Hawk, Director Black, and the other officials and representatives who are joining the discussion.

There are approximately 12,000 Crow tribal members today and about two-thirds of them live on our Reservation between Billings, Montana, and Sheridan, Wyoming. The Crow Nation has three formal treaties with the United States, with the last being the Fort Laramie Treaty of May 7, 1868, about twenty years before Montana became a state. Such treaties promised to the Indian Tribes the absolute and undisturbed use and occupation of their treaty lands in their reservation homelands. Over a 70-year period, the Crow treaty land base was reduced by 92% to its present 2.2 million acres, and Crow and other Tribes struggled to survive through the historical policy eras of allotment, assimilation, and termination. Over the past few decades, the United States has again pledged to honor the rights of Tribes to govern themselves and administer their own programs. Under Public Law 93-638, the Indian Self-Determination and Education Assistance Act, Tribes have been working with the Bureau of Indian Affairs and other federal agencies to administer programs formerly handled by the agencies; and at Crow, we have been administering most of the

Indian Reservation Roads program on our reservation for about three years. So we have accumulated quite a bit of experience in the challenges to be faced in building, maintaining, and protecting transportation infrastructure.

Tribes should have the ability to construct, maintain, and protect roads and roadways throughout their Reservations. Federal statutes should define Indian lands for transportation purposes to include all lands within the exterior boundaries of a reservation—similar to definitions elsewhere in federal law. There should be underlying or reversionary title for rights of way that comes back to the Tribes in trust. Instead, the federal trust responsibility has not been applied to claim or protect tribal transportation rights. Jurisdictional chaos and historical hard feelings prevent the exercise of tribal sovereignty. Tribal governments are prevented from exercising governmental authority even over their own citizens. Such a simple thing as a driver's license can be almost impossible to get—partly because these programs have been delegated to the states, partly because rural areas have almost no access to motor vehicle services. Roads, licenses, reliable vehicles and maintenance, basic access to work, recreation, and health services—all of these things are scarce enough in rural areas, but tremendous challenges to Indian Country.

The Bureau of Indian Affairs has administered the Indian Reservation Roads program. We appreciate the tremendous efforts of our Billings area construction office in working hard with us to create the best possible program. But system-wide, the federal government has failed to provide the legal and monetary support to fulfill its trust responsibilities. Indian road inventories are incomplete and the rules for providing services are difficult to work with—an example is in awkward definitions of public roads eligible for services. The federal government failed to establish sound rights-of-way or other legal protections for roads and roadways on the reservation. As a result, the following kinds of problems are not uncommon: bridge maintenance is prevented because private landowners block off a section of road that crosses fee land, and then the entire route is lost because the bridge cannot be repaired. A dispute between private landowners over a road built and maintained by the Bureau of Indian Affairs lands in state court and is adjudicated as if it were not on the Reservation because of incomplete legal infrastructure establishing a public Reservation road. Tribal members are promised passage for all time in exchange for railroad rights-of-way, but when the railroads are abandoned, the transportation is lost and not replaced, and the route itself is also lost, and the land beneath it.

We need the full participation in policy-making of those of us who understand the complex historical and jurisdictional problems of Indian Country. At Crow, two results of

the failed federal policy of allotment cripple our efforts in many areas, including building and maintaining roads. Even though Section 2 of the 1920 Crow Allotment Act sought to protect tribal lands and sovereignty by preventing individuals and corporations from owning or controlling large tracts of land, today approximately a third of our reservation is owned in fee status in violation of that Act. The unique history of Section 2 violations adds to the “checkerboard” problem faced by many large land base tribes—land ownership maps show mixtures of trust and fee land in a jurisdictional nightmare and it would be impossible to construct roads that did not cross different kinds of land. Besides checkerboarding, the other land ownership issue that affects transportation planning and use is “fractionation.” Historically, tribal members who received allotments were not allowed to sell their interests for a period of time and those lands were passed down with “undivided interests” to all heirs. As a result, a single tract of land held in trust for the benefit of Crow tribal members might have hundreds of actual owners, thus multiplying by factors of tens, dozens, or hundreds any transaction that involves owner permission—and those transactions include almost everything to do with roads. It might take two years and several thousand dollars to negotiate a road right-of-way even in circumstances where the owners were not adverse to the proceeding and no government takings were involved.

One actual example of these problems is that our Tribal Transportation Department needed three months to complete a relatively minor survey because they needed to collect **three hundred** separate approvals. In order to construct a road through the area, they would need to negotiate right-of-way agreements with the same three hundred owners. Surveying and negotiation of rights-of-way are just two steps in the complex process of planning and constructing a road, but this example gives you some sense of the extra resources—time, manpower, and money—needed to plan and construct reservation roads.

Private landowners within the external boundaries of the reservation have closed roads to public access and services even when those roads have been publicly used and should by almost all standards remain public, even when they provide access to treaty areas and activities. Some landowners threaten even government officials with guns and put spikes on the roads to keep others off. If a road cannot be surveyed, it cannot be added to the road inventory and is ineligible for funding for maintenance and other purposes. Tribal members are denied access to treaty rights such as hunting and gathering teepee poles, and the Tribe is denied opportunities for development of its own resources. Sometimes those blocking the roads do not even own the properties—in one case at Crow, a non-Indian leasing Indian land was successful in preventing a road’s being included on the Transportation Inventory

Planning document, with the result that the road cannot be added as a bus route maintained through the winter months for school children.

Non-Indians who own or lease even small pieces of reservation land located in strategic areas have been able to control larger sections and dramatically restrict access and opportunity. Whether it's a problem with locating a rightful signer for a right-of-way to extend a guardrail by 10 feet or whether it's a problem with uncooperative land owners, the result is inadequate roads and bridges for access to health care, employment, schools and other services. Reservation roads are treacherous and we can all point to many fatalities that would have been prevented with better safety measures such as guardrails, lights, signs, and markings—and the drain of resources for jurisdictional challenges makes fewer funds available for these other purposes. We have 184 interstate miles and 3,500 miles of roads on our reservation. State highways without fenced rights-of-way cross hundreds of miles of range land—and whether in adding measures to enhance public safety or in legal proceedings after a vehicle strikes a horse or cow on the road, the tribal government is often the last jurisdiction allowed at the table.

As you can see, there are enormous needs for transportation help in rural, large land base areas and reservations, including reservations in Montana, Wyoming, and the Dakotas. But funding sources tend to dry up and it often seems our needs are not taken seriously. We appreciate federal funds being made available to us for our transit program, which we are just starting, and the support of the State of Montana Department of Transportation in beginning transit services for our reservation. In general, there is just not enough funding when road construction costs are approximately a million dollars a mile; and in order to use Indian Reservation Roads funding for transit and tourism programs that assist our economic development and also benefit others, we must take money away from our roads programs. It is difficult to suffer from restrictions on our use of funds and have to stand by and watch as other entities are provided with grant dollars to exploit our tourism resources. Federal dollars intended through Indian Reservation Roads funding to reach just such problems and such areas as I have been describing are instead channeled off through funding formulas that privilege high traffic urban areas and go towards roads for which Tribes have no responsibility or control. We ask your help in Congress to increase available funding, but also to focus on our unique jurisdictional needs and provide us with the support needed to protect our roads and resources.

Thank you very much again for holding this hearing today and especially for coming to Montana to consult with us.

PREPARED STATEMENT OF HON. CHARLES W. MURPHY, CHAIRMAN, STANDING ROCK  
SIOUX TRIBE**I. Introduction**

On behalf of the Standing Rock Sioux Tribe, I want to express my appreciation to the Senate Committee on Indian Affairs, to you Senator Tester and to retiring Committee Chairman Dorgan, for convening today's hearing concerning Tribal transportation. Thank you for your advocacy on behalf of Indian tribes. With all the other problems facing our country today, transportation needs can easily be overlooked. We are grateful that you are taking a leadership role to address the most basic protection that we can afford our members today – safe transportation through our lands.

Over the last five years, as a result of significant increases Congress for the Indian Reservation Roads (IRR) Program, Tribes have achieved many successes and improved transportation infrastructure throughout our communities and helped educate our members about road safety. The infusion of American Recovery and Reinvestment Act (ARRA) stimulus funds put our Members to work and accelerated road and bridge improvements. The funds Congress has provided to Tribes have saved lives and made a changed for the better the appearance of our communities. Our Tribe is doing our part to make road safety our number one priority.

On our Reservation, we put the more than one million in ARRA IRR Program construction funds to work to reconstruct Kenel Road (BIA Route 3), a primary bus route road connecting our South Dakota Districts with our North Dakota Districts and reconstructing the Fort Yates causeway. These funds accelerated our road construction projects, saved the Tribe hundreds of thousands of dollars in mobilization costs, and made our Reservation safer.

The successes we achieved with our recurring IRR Program funds and ARRA stimulus dollars must be sustained by Congress in the next surface transportation bill. I ask that you

champion transportation issues for Indian country in the 112<sup>th</sup> Congress and introduce the **Tribal Reauthorization of Indian Program (TRIP)** legislation which Indian tribes, the National Congress of American Indians (NCAI) and the Inter-Tribal Transportation Association (ITA) developed and which this Committee circulated for comment last year. I urge you to give Tribes a seat at the table in the next Congress so that the authorizing committees know our needs and acknowledge the consensus recommendations Tribes have made to improve our transportation infrastructure. Our Tribe looks forward to contributing new ideas and recommendations to improve that draft legislation, to build on it and on the successes Tribes realized under TEA-21 and SAFETEA-LU.

As I will detail more fully below, if Congress enacts the proposed TRIP legislation, it will:

- increase annual appropriations for the IRR to \$800 million annually, with stepped increases of \$50 million thereafter to grow the IRR Program to just over \$1.0 billion at the end of the next reauthorization;
- increase the Tribal Transit Program to \$35 million annually, with stepped increases of \$10 million each fiscal year thereafter;
- increase the IRR Bridge Program to \$75 million annually, with stepped increases of \$12.5 million thereafter;
- establish two new Tribal Safety Programs (within FHWA and NHTSA) and appropriates \$50 million annually for each program, to address roadway structural and design safety flaws and driver, passenger, and pedestrian behavioral issues;
- authorize Tribes to expend up to \$500,000 annually for road maintenance;
- make Tribes direct recipients of Federal transportation program funds;
- develop and streamlines award instruments between Tribes and federal agencies and between Tribes and the States in a manner similar to the Indian Self-Determination and Education Assistance Act (ISDEAA), P. L. 93-638, to better ensure that Tribes actually receive federal transportation funding.

The backlog of unmet transportation construction needs in Indian Country is in the tens of billions of dollars. Many of the jobs, educational opportunities, health care and social services for Native Americans are located at considerable distance from our Tribal homes and communities. To move closer to these opportunities, we would have to move away from our lands and homes, undermining the continuing viability of our communities, Tribal sovereignty, and our Native culture. This is unacceptable.

Despite these limitations, Indian Country has achieved many successes in improving transportation infrastructure throughout our communities in recent years. Many of these successes were fostered by the passage of SAFETEA-LU which significantly increased program funding (from \$275 - \$450 million), created the Tribal Transit Grant Program, the IRR Bridge Program, and authorized the Secretary of Transportation to enter into direct agreements with Tribes to receive IRR Program funds, Tribal Transit funds and Scenic Byways funds rather than requiring Tribes to access these funds through the Bureau of Indian Affairs (BIA) or as subrecipients of State Federal-aid funds.

Tribal transportation successes are threatened, however, unless the next highway reauthorization includes provisions specific to Tribal governments. We realize this is no easy task for Congress. But we have third-world transportation infrastructure in Indian country. And that too comes at a terrible price which Congress must consider.

## **II. Current State of Transportation in Indian Country**

Indian Tribes have heard a lot about the Administration's "livable communities" initiative to decrease transportation costs, expand affordable housing, and improve economic competitiveness. Congress and the Administration need to understand that Indian country lacks basic transportation infrastructure to realize those goals. Congress must realize that Tribes have the most rudimentary transportation infrastructure in the country, and lack the funds needed to construct even the most basic road improvements such as safer intersections, railway crossings, breakdown lanes, and basic safety features such as guardrails, rumble strips, striping, road reflectors, crosswalks, traffic lights and streetlamps. Just as importantly, Tribes lack the funds necessary to perform basic routine as well as emergency road maintenance to keep our roadways in a safe condition to protect our Members and other motorists.

Tribal transportation infrastructure still lags far behind transportation infrastructure in the rest of the country -- with tragic results. The poor condition of many Tribal roads and bridges jeopardizes the health, safety, security and economic well-being of Tribal members and all those who travel through Indian Country. Our inadequate transportation infrastructure hinders every priority of the federal government and Tribes which our respective governments have sought to achieve over the last few decades -- economic development, public safety, education, health care, and housing -- because it raises the cost of doing business on our Reservation in every aspect of our daily living.

The unsafe conditions are reflected in our tragic statistics. Indian Country still has the highest vehicle and pedestrian fatality rates in the country which in some areas are 3-4 times the national average. Motor vehicle injuries are the leading cause of death for Native Americans ages 1 - 34, and the third leading cause of overall for Native Americans. The motor vehicle death rate for Native Americans is nearly twice as high as other races.

Reservation roads also have the highest level of pedestrian fatalities in the country. American Indians have the highest rates of pedestrian injury and death per capita of any other racial or ethnic group in the United States. The leading cause of death for Tribal-members and Alaska Natives between the ages of 10 and 64 is a motor vehicle crash. The fourth leading cause of death in these communities is pedestrian crashes.

We are troubled by the disparity between national traffic safety statistics and the statistics coming out of Indian Country. The Government Accounting Office (GAO) and the US Department of Transportation have published studies that have proven that rural roads, especially those serving Tribal communities, experience a much higher rate of vehicle accidents and fatalities, but they receive much less federal funding than roads serving urban communities. In fact, Indian reservations and Tribal communities have the highest rate of vehicle fatalities in the country. While traffic fatalities in the rest of the nation have been decreasing, the number of fatal crashes in Indian Country has been continually increasing. In the period from 1975-1979 there

were on average 185 fatal crashes on Reservation-based and Tribal roads each year, with 231 fatalities. In the period from 1998-2002, the number increased by 29.5% to 239 crashes per year with 284 fatalities.

National highway fatalities and injuries are dropping significantly, except in Indian country.

### **III. Roadblocks to Fulfilling the Need in Indian Country**

The number one roadblock to fulfilling the needs in our Tribal communities is lack of funding. Too often Congress, the Department of Transportation, and the Department of the Interior ignored their trust responsibility and treaty obligations to the Indian nations and Native people to provide safe and efficient transportation systems. While the Department provided \$1.275 billion for the High Risk Rural Roads Program and \$700 million for the Highway Safety Program to State and local governments in FY 2008 to address behavioral and design safety issues, the Department provided less than \$5 million per year for all 565 federally recognized Indian Tribes (which averages to \$8,850/Tribe compared to an average of \$40 million/State). Tribes had to compete for this wholly insufficient level of funding. After grant development, grant management and other transactional costs are taken into account, the few successful Tribal grant recipients typically have only a few thousand dollars remaining to begin to address the huge backlog of dangerous road conditions and unsafe driver behaviors. Even if considered on a per capita basis, Indian country receives pennies on the dollar for their transportation needs.

We recognize that the nation is going through economic hardship. For most Tribes, it is our way of life. We further recognize that the budget will likely be tight for the next few years. One way to help fulfill Tribal funding needs for transportation infrastructure without raising the cost to the nation is to provide better access for Tribes to federal-aid highway system and other federal appropriations made to State and local governments. The layers of administrative bureaucracy that Tribes must go through, however, to gain access to federal transportation funds passed through to the States, increases our costs and provides us with far less money than we need to address our transportation needs.

Unfortunately, many State and local funding agreements are ill-suited for the unique government-to-government relationships that exist between Tribes and States and have become obstacles to the award of these much needed funds to Tribes. For example, State funding agreements are usually written either as standard commercial procurement contracts or as "local use" agreements designed to award funds to counties or municipalities. When these standard agreements are applied to Tribes, they often include broad indemnification provisions, unnecessarily broad waivers of sovereign immunity, and provisions imposing State administrative and accounting rules on Tribes. Nearly all of these agreements require Tribal governments to appear in State court in the event of a dispute. We are separate sovereign governments – not subdivisions of the States – and these provisions are wholly unacceptable and inappropriate for use in transferring State transportation funds to Tribal governments.

While some State and local governments may be willing to modify funding agreements to accommodate Tribal concerns, negotiating such modifications can be costly and time consuming. Most often, State and local governments refuse to modify standard agreements to address our



concerns. The solution is simple: make Tribes eligible direct recipients of federal transportation programs.

Tribes are also faced with disproportionately burdensome administrative responsibilities that waste our already insufficient transportation funding. For example, the finance, procurement and auditing systems of Tribal governments are primarily geared toward ensuring compliance with the Indian Self-Determination and Education Assistance Act, P.L. 93-638, grant and contract requirements. It is a waste of precious resources for the Department to require Tribes to comply with redundant and sometimes conflicting grant and contract requirements.

Also, the lack of adequate maintenance funding forces our Tribe to expend a disproportionate amount of funds undertaking large construction projects because of the accelerated rate of fatigue our reservation roads or bridges suffer. Maintaining transportation infrastructure in a state of good repair extends the useful life of these critical routes. It improves safety at a much lower total cost than the reconstruction of long-neglected roads and bridges. When Congress, in SAFETEA-LU, authorized Tribes to spend up to 25% of their IRR Program dollars for maintenance, it expressly stated that the BIA retained the primary responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations. Congress also expressly stated that the Secretary of Transportation must ensure that IRR Program funding be made available for maintenance of Indian reservation roads for each fiscal year and that these funds are supplementary to, and not in lieu of, any obligation of funds by the BIA for road maintenance on reservations.

Unfortunately, these Congressional requirements have not been fulfilled. As funding for the IRR Program goes up, the Administration submits budgets to Congress to reduce funding for the BIA Road Maintenance Program. BIA Road Maintenance Program funds as a percentage of IRR Program construction funds have fallen to less than 6%. At one time, it was as high as 25%. Newly built or reconstructed roads must be maintained if they are to meet their design life. Tribes must retain the authority to determine whether to expend a portion of its IRR Program funds on road maintenance. The agencies have let Indian Country down and not fulfilled their obligations.

#### **IV. Specific Proposals**

##### **1. Increase Funding for the IRR Program, Road and Bridge Maintenance, and Safety and Transit Program in the Next Highway Reauthorization Bill**

The backlog of unmet transportation construction needs in Indian Country is in the tens of billions of dollars, and increases by tens of millions of dollars each year. The amount of funds provided to Tribes to address these unmet needs does not even come close to being adequate. As stated above, if Tribes are to maintain the positive gains we have made under TEA-21 and SAFETEA-LU and keep our progress going, we request that Congress authorize funding increases in the next highway reauthorization bill for the IRR Program, including road maintenance, Tribal Safety Programs, the Tribal Transit Grant Program, and the IRR Bridge Program. The state of infrastructure in Indian country, like anywhere else, determines the health and vitality of our economies and of our people. Congress must address the declining status of

America's transportation infrastructure and must include Indian country in programs that will improve transportation infrastructure and transit and break down barriers between Tribes and surrounding communities.

I would also like to advocate for additional funding for road maintenance. Tribes receive so little road maintenance funding that there is no allowance for emergency needs to address life threatening circumstances that result from "a catastrophic failure or natural disaster." I declared a State of Emergency on the Standing Rock Sioux Reservation this year due to the snow storms that hit our communities. Every BIA Region experiences some form of emergency maintenance – ice and snow, traffic control, rock slides, washouts, flooding, wildfires, and hazardous waste spills – but lacks the resources to respond to them.

On average, six cents of every dollar is spent on road maintenance in Indian Country. This does not protect the investment that the United States and Tribes have made in transportation infrastructure. This funding gap between construction and maintenance exacerbates the backlog of unmet construction need by cutting the useful life of new built or reconstructed roads in half and will lead to more traffic injuries and fatalities.

It makes no sense to expend millions of dollars to construct a new road if that road is poorly maintained. No one knows the routes through our communities better than our Tribal governments. Our Tribal government should be authorized to decide what amount should be spent on maintenance – and receive adequate federal appropriations – to preserve the lifetime of the road and to protect the life and health of its members.

I urge Congress to appropriate \$100 million from the Highway Trust Fund, separate from IRR Program appropriations, to provide additional road maintenance funds to address the large backlog of deferred road maintenance needs for BIA System and Tribally-owned roads and bridges.

## 2. Tribes Must be Eligible Direct Recipients of Federal Transportation Funds

For these necessary transportation programs to work in Indian communities, the funds must reach the intended beneficiaries. Unfortunately, this is not the case. As mentioned above, when Tribes are not eligible direct recipients, they must apply for State transportation programs funded by the United States. More often than not, Tribes do not receive the federal funds awarded to States and local governments. This situation exacerbates the history of Tribal exclusion by State and local governments from participating in regional community development planning.

It has long been recognized that regional planning works best when local government officials are allowed to establish their own priorities and to propose solutions that address local problems and needs. Recently, however, Tribal, State, and local governments have begun to seek a more collaborative approach to transportation challenges faced by their regions. These fledgling efforts make clear that where Federal programs provide funding to Tribes directly, State governments are more likely to work cooperatively with them.

# ND – Tribes Great Plains Region

## IRR ARRA Construction

Before and After Photos



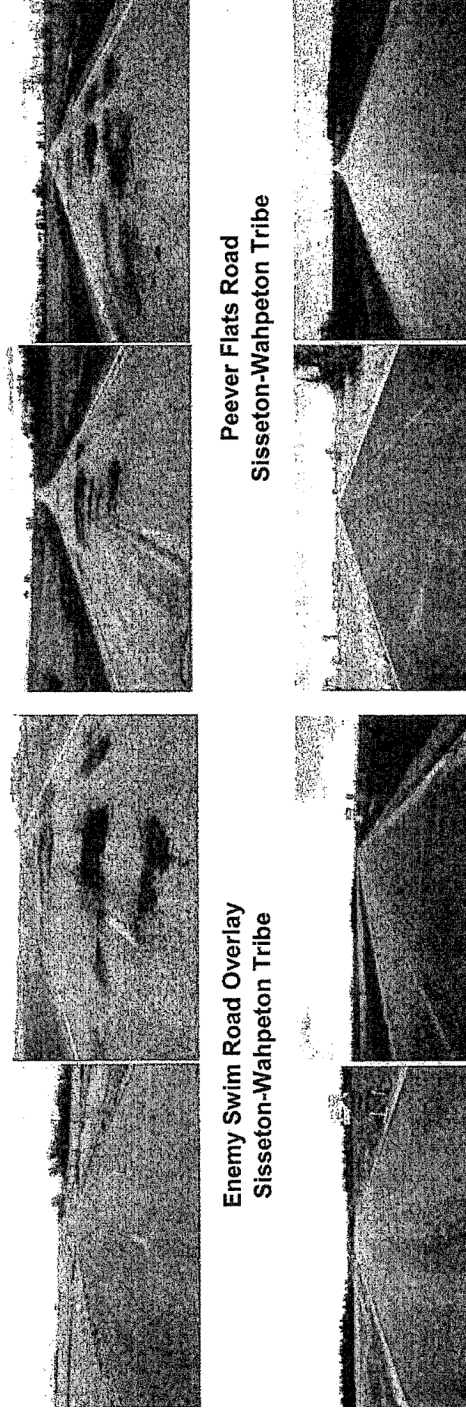
Sioux Village  
Standing Rock Sioux Tribe



# SD – Tribes Great Plains Region

## IRR ARRA Construction

Before and After Photos



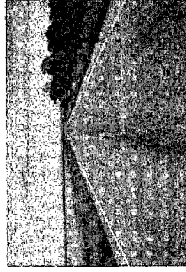
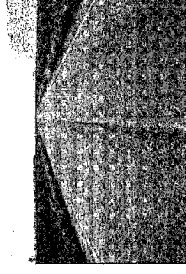
Before and After Photos



Buffalo Lake Road Overlay  
Sisseton-Wahpeton Tribe



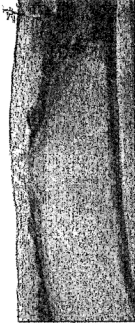
Route 30 Base and Blotter  
Yankton Sioux Tribe



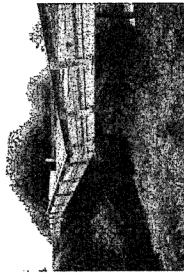
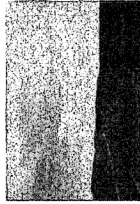
Before and After Photos



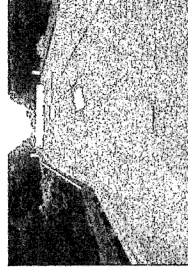
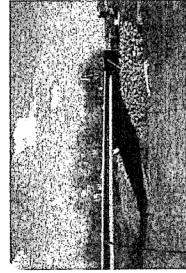
Culverts  
Cheyenne River Sioux Tribe



Kernel Road  
Standing Rock Sioux Tribe



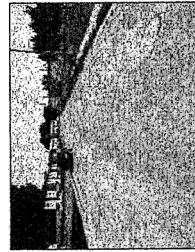
Oak Creek Bridge  
Standing Rock Sioux Tribe



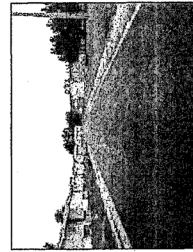
# NE - Tribes Great Plains Region

## IRR ARRA Construction

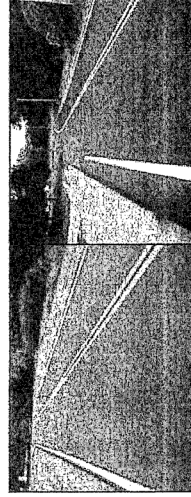
### Before and After Photos



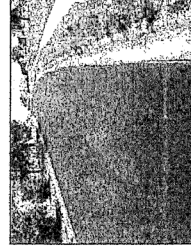
Macy NE  
Omaha Tribe



Winnebago NE  
Omaha Tribe



Omaha ARRA  
Omaha Tribe



PREPARED STATEMENT OF THE NORTH COAST TRIBAL CHAIRMEN'S ASSOCIATION  
(NCTCA)

The Northern California Tribal Chairmen's Association (NCTCA)<sup>1</sup> is an intertribal consortium that coordinates the activities of several tribes in the California North Coast area on issues of mutual interest. We are pleased to submit our comments to the Senate Committee on Indian Affairs for the Committee's October 15 hearing on tribal transportation programs. Our comments focus primarily on the policy directive proposed by the Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA) interpreting the Indian Reservation Road (IRR) Program funding formula set forth in Question 10 of Appendix C to Subpart C the part 170 of the BIA's regulations, the principles set out in these comments apply to the implementation of the IRR Program more generally.

It is imperative that the IRR Program be implemented in accordance with applicable statutes and regulations and that it be implemented in a transparent and consistent manner. However, the BIA and FHWA have acknowledged that, because of a lack of available data in the IRR inventory, the funding formula has not been applied in accordance with all applicable regulations. Furthermore, implementation of the formula has not been transparent, and many tribes have concluded that the formula was not applied consistently among the regions. This situation led to significant discord among tribes, and between tribes and the agencies. We are pleased that the agencies have sought to resolve this issue by returning to the actual language in the applicable statutes and regulations and developing a new policy directive intended to bring the formula process into compliance with the governing law. We understand the time constraints under which the agencies are operating, but, in light of past implementation, it is absolutely critical that there is transparency and that the agencies consult with tribes at critical stages during the process. The agencies have committed that tribes will be notified of any proposed changes to the functional classifications of the roads within their inventories and provided an opportunity to challenge any reclassifications. It is also important that the BIA and FHWA take steps to generally provide greater transparency and consistency in the updating the IRR inventory.

Before turning to the proposed policy, we first review circumstances that affect the transportation issues and the implementation of the IRR program in California, which is home to 110 federally recognized tribes and has the largest Native American population in the United States. Tribes across the country have faced horrible atrocities, but there are certain federal and state policies in California that continue to impact our transportation issues.

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<sup>1</sup>NCTCA Tribes: Blue Lake Rancheria, Elk Valley Rancheria, Hoopa Valley Tribe, Karuk Tribe, Resighini Rancheria, Smith River Rancheria, Trinidad Rancheria, and Yurok Tribe.



First, 18 treaties were negotiated and signed with California tribes, setting aside approximately 7.5 million acres for tribes. However, these treaties were never ratified by the Senate and were kept hidden until 1905. Although much smaller than the treaty lands, eventually many executive reservations and Rancherias were established in California, but during the Termination Era 43 tribes in California were terminated and their lands were taken out of trust and often lost. Through litigation, settlements, and Congressional action, many tribes have been restored, but the scars of this history continue to affect the ownership of many roads on our lands.

As a result of this history, many roads constructed by tribes or the BIA in California were conveyed, often without the consent of the tribe, to the State or local government. Additionally, contrary to an all too common mischaracterization, many tribes in California are located in remote areas and do not have adequate or safe access to many basic requirements, such as health and transportation facilities, and jobs and schools. In many cases tribal members living on the reservation must depend upon relatively remote state and local roads to access these necessities. Congress has recognized the importance of tribal access roads, and the BIA and FHWA must implement this policy in a manner that does not endanger the safety of tribal members, or hinder economic opportunities, reliant upon these access roads. Our members' safety, our livelihoods, our tribal economic development, and the continuation of our culture depend on improving our transportation infrastructure.

Under SAFETEA-LU, many tribes in California have, for the first time been able to establish a transportation program and plan their tribe's transportation needs. Although the base funding is often inadequate to construct projects, we are now able to apply for additional federal and state funds to address our critical needs. Partnerships and coordination among tribes, and between tribes and state and local agencies, is a necessity in California, where our IRR funding has been insufficient to delivery of projects. Because of the importance of transportation to our people, we have worked to build a transportation alliance in Northern California – the North Coast Tribal Transportation Commission, which we believe represents a model of cooperative efforts among tribes and between tribes and state and local agencies. Through our intergovernmental efforts, we are able to much more effectively and efficiently address the transportation needs on our tribal lands. However, while great strides have been made in fostering cooperative efforts, the BIA and Department of Transportation (DOT) must ensure that states and local governments fulfill their statutory obligations to properly maintain state and local roads which are eligible to receive federal-aid funding.

#### **Review of the Funding Formula**

In the transportation authorization in 1998 (TEA-21), Congress called for a negotiated rulemaking process that "reflects the unique government-to-government relationship between the tribes and the federal government and for a Committee that included representatives of "geographically diverse small, medium and large Indian tribes." 23 USC 202(d)(2)(C). Congress stated that the funding formula must be based on factors that reflect: (i) the relative needs of the Indian tribes, and reservation or tribal communities, and (ii) the relative administrative capacities of, and challenges faced by, various Indian tribes. 23 USC 202(d)(2)(D).

Tribal representatives participated in an arduous negotiated rulemaking process. The rulemaking committee met 23 times in 18-months in 1999-2000, and the committee held a series of chairpersons' meetings for another three years seeking to resolve unresolved issues afterward. The formula is the product of a tremendous investment of time and energy by Indian Country. The funding formula reflects Congress's intent that the funding distribution method "balance the interests of *all* tribes and enable *all* tribes to participate in the IRR Program."<sup>2</sup> The new formula broadened tribal participation by allowing the inclusion of state-, county-, and municipally-owned IRR-eligible facilities in the inventory so that "*actual IRR transportation needs* [may] be counted for funding purposes."<sup>3</sup> (emphasis added) The funding formula was intended to open up participation in the IRR program for all tribes and to allocate funding on the basis of relative need and construction costs.

<sup>2</sup> Indian Reservation Roads, Proposed Rule, 67 Fed Reg. 51328, 51333 (2002) (emphasis added).

<sup>3</sup> 67 Fed. Reg. at 51333-34.

#### Proposed Policy Directive on Question 10

Question 10 determines whether a transportation facility included on the IRR inventory will generate funding for Cost to Construct (CTC) and Vehicle Miles Traveled (VMT) at the non-federal share or at 100 percent. Question 10 provides that the CTC and VMT must be computed at the non-Federal share requirement for matching funds for transportation facilities added to the IRR inventory and *eligible for funding for construction or reconstruction with Federal funds, other than Federal Lands Highway Program needs*. However, a transportation facility eligible for Federal-aid Highway construction or reconstruction funding will still generate CTC and VMT at 100 percent if the facility falls into one of the following exceptions set forth in Question 10:

- (1) The transportation facility was approved, included, and funded at 100 percent of CTC and VMT in the IRR inventory for funding purposes prior to the issuance of these regulations.
- (2) The facility is not eligible for construction or reconstruction with Federal funds other than Federal Lands Highway Program funds; or
- (3) The facility is eligible for funding for construction or reconstruction with Federal funds; however, the public authority responsible for maintenance of the facility provides certification of maintenance responsibility and its inability to provide funding for the project.

The BIA and FHWA are proposing a directive to the Indian Affairs Manual (IAM) that would interpret the general rule of Question 10 to mean that facilities eligible for Federal-aid highway system funding (other than local roads or rural minor collectors) will only generate CTC and VMT funding at the non-federal share. The proposed directive would also rescind the third exception on the grounds that public authorities have a duty under 23 U.S.C. § 116(a) to maintain any project constructed under the provisions of Chapter One of Title 23 (the Federal-aid Highway System).

If a road does not meet the definition of a Federal-aid highway, under the proposal it will generate 100% CTC and VMT. The BIA/FHWA have determined that the Functional Classifications defined in the IRR Program do not align with the definitions applicable to the Federal-aid highway system and that Question 10 cannot be applied using the existing classifications coded in the IRR inventory. In order to implement the proposed directive, the agencies propose to develop new definitions for Functional Classifications to align with and mirror the Federal-aid Highway functional classifications. In particular, the BIA proposes to align the IRR inventory with "newly defined" functional classifications for Class 3, 4, and 5 facilities.<sup>4</sup>

However, the regulations governing the Federal-aid Highway System provide that the state transportation agencies have the primary responsibility for developing and updating a statewide highway functional classification to determine the functional usage of existing roads and streets. 23 C.F.R. § 470.105. Thus, if the BIA and FHWA plan to apply Question 10 on the basis of Federal-aid Highway functional classifications, the appropriate state Federal-aid Highway classifications must be applied.

We understand that FHWA will be retaining a private contractor to (i) establish new definitions for road classifications 3, 4, and 5, (ii) align the classifications in the IRR inventory with these new definitions, and (iii) check the accuracy of the inventory data. During the IRR Program Coordinating Committee meeting, the FHWA stated that tribes will be notified of any proposed changes to the classification of roads in their tribal inventory and provided an opportunity to provide additional information and object to the proposed change. We agree that Tribes are certainly entitled to notice and the right to challenge a specific change to a tribe's IRR inventory, but this, alone, is not a sufficient role and it does not provide the necessary transparency. Tribes should have the opportunity to review the consultant's scope of work, and the consultant, with the FHWA and the BIA, should consult with tribes regarding the determination of the classification definitions. Rather than proposing to develop new IRR definitions, the BIA and FHWA should develop a transparent and accountable process to apply

<sup>4</sup> Under the IRR regulations, Class 3 roads are streets within communities that serve residential areas; Class 4 roads are rural major collectors, and Class 5 are rural local roads.

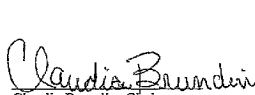
the appropriate state functional classification definition to IRR facilities, and tribes should have the opportunity to provide information to appropriately apply the state functional classification system to the specific transportation facilities within the tribe's inventory.

In light of the many problems and errors associated with the data on the IRR inventory, it is imperative that this process be conducted in a fully transparent manner that affords tribes an opportunity to participate in this process and provide evidence regarding the determination of the facility's functional classification.

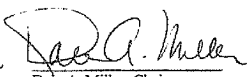
The BIA and FHWA policy may affect the funding allocations for tribes, if any of the roads on their inventory are determined to be eligible for the Federal-aid Highway System. In California, where many allocations are already quite small, such reductions could prevent some tribes from operating a viable transportation program and endanger the safety of their tribal members, who rely upon these access roads. Such an outcome is wholly unacceptable to the NCTCA. At a minimum, if a road is reclassified and will no longer generate 100% funding because the road is found to be eligible for Federal-aid Highway funding, the FHWA and BIA must, as part of its trust obligation, take active steps to assure that the state and local governments fulfill their duty under the Federal-aid Highway Program, adequately maintain the road, and consult properly with the affected tribes on their transportation plans. Furthermore, in many regions, the process for updating IRR inventories has long been mired in a bureaucratic morass. The process must be opened up and made accountable, so that tribes can reliably update their inventories in a fair and timely manner.

The NCTCA commends the Senate Committee on Indian Affairs for the leadership it has shown on tribal transportation issues, and we greatly appreciate the opportunity to submit our comments on these important issues.

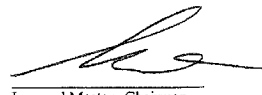
Sincerely,



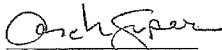
Claudia Brundin, Chairwoman  
Blue Lake Rancheria



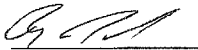
Dale A. Miller, Chairman  
Elk Valley Rancheria



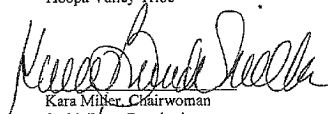
Leonard Masten, Chairman  
Hoopa Valley Tribe



Arch Super, Chairman  
Karuk Tribe



Rick Dowd, Chairman  
Resighini Rancheria



Kara Miller, Chairwoman  
Smith River Rancheria



Garth Sundberg, Chairman  
Trinidad Rancheria



Thomas O'Rourke, Chairman  
Yurok Tribe

## PREPARED STATEMENT OF HON. TIMOTHY P. HINTON, SR., VICE CHAIRMAN, WHITE MOUNTAIN APACHE TRIBE

On behalf of the Apache people of the White Mountain Apache Tribe, I bring greetings and prayers to you and yours. We are thankful for all the work you do for Indian Country and it is our hope that we continue our meaningful dialogue to bring prosperity to our native people.

Herein, I am submitting the following statement on "Tribal Transportation in Indian Country" on behalf of the White Mountain Apache Tribe.

The Fort Apache Indian reservation is the homeland of the White Mountain Apache Tribe and is located in Central Eastern Arizona and includes portions of Gila County, Navajo County and Apache County. It is one of the ten largest tribes in the United States in population and land base. The Fort Apache Indian Reservation is a remote rural area, 190 miles from the nearest major city and there are 23 established communities and housing projects. There are four communities that are located in rural areas of the reservation; the furthest from Whiteriver is 45 miles away. The reservation encompasses 1.6 million acres of land with desert low land and mountainous high lands. The community of Whiteriver serves as the capital and is the location of the tribal headquarters. There is a permanent population of approximately 25,000 residents living in 23 remote communities; they include tribal members, non-members and other native people. The White Mountain Apache Tribe offers year round outdoor recreational activities and has several lakes and several hundred miles of streams. The tribe owns and operates a ski resort and a resort/casino. The population increases throughout the year as people come to visit the reservation and participate in recreational activities and annual events throughout the year.

A greater Federal investment in government infrastructure will produce a more long-lasting and beneficial means of stimulating the National economy. The White Mountain Apache Tribe supports that concept and believes that same philosophy applies to our reservation. In a recent Senate oversight hearing, the transportation system in Indian Country was called the "most rudimentary" in the United States. By investing in new road and bridge projects on the Fort Apache Indian Reservation, we will be able to protect the health and safety of pedestrians and

drivers in our tribal communities. Besides creating new jobs for the Apache people, it will also provide an immediate stimulus to businesses in the entire White Mountain region.

The White Mountain Apache Tribe is a member of the Inter Tribal Council of Arizona (ITCA). The ITCA provides a forum for tribal governments to advocate for national, regional, and specific tribal concerns and have taken a united front on addressing the following transportation issues. These were obtained by ITCA.

**POSITION**

The Tribes in Arizona occupy 28% of the total land base of Arizona. Each of the five interstate highways passes through or near one or more reservations, and many of Arizona's major transportation corridors cross Indian lands. Therefore, Surface Transportation is a critical concern for the Tribes.

**RECOMMENDATIONS:**

**Finance**

- Increase the funding range to \$800 million through \$1.05 billion for the Indian Reservation Roads (IRR) program to address escalating construction and product costs, the acquisition of rights-of-way (ROW) and the establishment of systems to manage pavement, ROW, and traffic and crash data.
- Authorize the funding range to \$75 through \$100 million for the IRR Bridge Program to reconstruct deficient BIA bridges.
- Provide \$150 million annually for the BIA Road Maintenance Program to maintain the BIA roads and to enhance the management of data.
- Include innovative financing methods, beyond public private partnerships (PPPs) and toll roads that will be equitable for governments in remote rural areas.
- Do not include the vehicle miles traveled (VMT) fees in rural areas that will financially burden residents in remote and economically depressed areas.
- Create an IRR [state] infrastructure bank (SIB) to advance Tribes low interest loans for construction projects.

**Transportation Safety**

- Continue the enhancement of transportation safety provisions with sufficient funding and program flexibility for Tribes to establish data management, and enhance engineering and behavioral countermeasures.

**Tribal Transit Grant Program**

- Provide a funding range of \$35 through \$85 million to assist Tribes to create or improve mobility choices for their members.

**General**

- Include tribal representation on commissions/study groups created in the new legislation.
- Establish a multimodal tribal transportation program that is comprehensive, yet flexible, to provide Tribes options to develop and sustain livable communities.

- Do not support the establishment of an independent National Surface Transportation Commission that would be authorized to make revenue recommendations for the Federal Lands Highway Programs (FLHP).
- Do not eliminate safety data improvement grants; tribal and local governments in rural areas that need financial assistance to establish and maintain their traffic records.

The aforementioned highlights are only a sampling of the kinds of transportation issues facing the White Mountain Apache Tribe and other tribes in Arizona. One of our Tribe's main challenges have been developing capacity because of decreasing shares of IRR funds, minimal maintenance investments and inaccessibility to non-IRR funds. Our network of roads serves as lifelines for our residents on the reservation as they tend to conduct government and family. These funds are desperately needed to support these daily efforts.

Funding is always inadequate to address one of our most important transportation issue which is safety. "Motor vehicle crashes (MVCs) are the leading cause of death for American Indians younger than 45 years. Since 1980, the MVC fatality rate for American Indians in Arizona has been consistently more than three times the overall state rate. In 2007, when Arizona approved its statewide Strategic Highway Safety Plan, ITCA was concerned that the data driven plan, including issue and countermeasure identification, would be pertinent for Tribes, since they have the highest MVC fatality rate in Arizona. It took two years before ITCA, Inc., could access funding to initiate analyses comparing statewide crash outcomes/issues to those on the reservations. The analyses have identified high crash locations and young drivers, seat belt, speeding, and impaired driving issues associated with these crashes. The chart below shows the total number of crashes, injuries and fatalities, and the number of truck-involved crashes, injuries and fatalities occurring annually in 2005 through 2008.

| Crash History on Tribal Lands in Arizona (2005-2008)   |      |      |      |      |       |
|--|------|------|------|------|-------|
| Data Type  | 2005 | 2006 | 2007 | 2008 | Total |
| Total # of Crashes   | 2972 | 2979 | 3432 | 2635 | 12018 |
| Total # of Injuries  | 1675 | 1843 | 2075 | 1441 | 7034  |
| Total # of Fatalities  | 134  | 169  | 175  | 118  | 596   |
| Total # of Large Truck Crashes*  | 161  | 172  | 204  | 143  | 680   |
| Total # of Large Truck Injuries  | 66   | 80   | 105  | 66   | 317   |
| Total # of Large Truck Fatalities  | 9    | 9    | 10   | 13   | 41    |
| <i>Data Source: Arizona Department of Transportation, Accident Location and Identification Surveillance System.</i>  |      |      |      |      |       |
| *These data include only truck tractors and truck tractors with semi-trailers and do not include buses, motor homes, military vehicles and other truck combinations. |      |      |      |      |       |

Tribes in Arizona have been working to heighten safety awareness among their membership; to adopt and enforce ordinances intended to increase seatbelt usage and decrease impaired driving; and to assess transportation facilities to identify and eliminate environmental hazards for the pedestrians, drivers and bicyclists. Tribal health, emergency medical services (EMS), law enforcement and transportation staff have been coordinating activities to reduce the number and severity of MVC occurring on tribal lands that are affecting both residents and the public driving

on reservation roads. However, the BIA leadership and funding are lacking. The Tribes need BIA to establish a safety priority and to coordinate their safety activities with law enforcement, transportation and the highway safety office. Fundamental to this endeavor would be resources for data management and staffing to establish systems for collecting and analyzing the details of the crashes and linking this information to EMS and roadway data.

All of the issues presented are important and vital to the transportation program of our Tribe. The highways and byways that traverse our lands should be safe for that of our residents and our visitors. To meet that goal, we seek the assistance of the United States, to respect it's trust responsibility. I applaud your efforts in identifying new programs in the Indian Transportation Project Modification Act of 2009 but adequate and fair funding to accommodate those new initiatives will help us better to carry out the intentions of the Act.

Thank you for allowing me to present my statement and I look forward to working with you and your committee on all issues that concern Indian Country.

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PREPARED STATEMENT OF TRACY "CHING" KING, PRESIDENT, FORT BELKNAP INDIAN  
COMMUNITY COUNCIL

On behalf of the Fort Belknap Indian Community, I submit the following comments regarding the Tribal Transportation in particular the Implementation of Question #10 of 25 CFR Part 170, Subpart C, Indian Reservation Roads Program.

Over the past four years Large Land Based Tribes have expressed their concerns with regard to the "uncontrolled implementation" of the IRR Inventory system due to a misapplication and/or erroneous interpretation of 25 CFR 170 on numerous occasions with little or no response. This correspondence also included language which provided recommended solutions to the misapplication of the regulations.

This has proven to be detrimental to large land based tribes. We feel there are critical issues the BIA and FHWA must address in order to arrest the uncontrolled implementation of inventory data that is allowing non-BIA and non-Tribal roads to generate enormous formula amounts.

It has been very frustrating attempting to get some action, much less even a response to our concerns. In spite of growing criticism towards the large land based tribes for raising this issue of uncontrolled inventory updates, the issue remains urgent to large land based tribes since we deal with massive on-reservation vehicular transportation needs. Our needs arise from tribal and BIA roads, and meeting them relies primarily on IRR funding. The geographic isolation of most large land based tribes prohibit them from competing in a system of adding Interstates/NHS

highways, State and County roads onto the IRR system just to reap the inflated formula amounts. Also most large land based tribes' priorities are not others' interstate or state roads, but the very roads they must travel to get the basic medical and educational services. On the BIA system alone, there is a documented backlog of \$13 Billion just to improve the system to a safe and adequate standard. At present funding levels, and without further deterioration of the system, it would take 28 years to address this need. Allowing State and County roads into the IRR system simply to generate funding is siphoning off critical road construction funding for tribes whose only source of funding is the IRR program.

Enclosed in this packet are previous letters from the CLLBT – none of which have been answered or even acknowledged. I ask you to review these letters. They are identifying the problems and offer solutions. Your intervention is requested since the current uncontrolled manipulation of the IRR inventory system is pitting tribe against tribe. It is inherently unrealistic to expect the tribes to battle amongst themselves to fix a problem that will harm one or another. Ultimately this is a BIA and FHWA/FLH responsibility.

The direct nature of these comments is a reflection of the frustration the tribes have experienced attempting to elevate this issue, however it is in no way intended as an indictment of any tribal entity or of the BIA/FHWA itself. In fact we are confident that this problem can be solved and that 25 CFR 170 is workable regulation.

Throughout the past few years, the IRR Program funding distributions have become dramatically skewed through blatant misapplication of the Program regulations in which certain tribes and communities have increased their IRR funding three and four fold by inappropriately applying the regulations regarding generation of funding on state, county, and proposed routes that have been added to their inventory.

**The core issues** regarding the uncontrolled implementation of the IRR Inventory. The heart of this issue is threefold and includes; **relaxing the protocol which requires minimum attachments supporting each update; inconsistent interpretation of the Program regulations at 25 CFR 170 and in defining an “Indian Reservation Road”;** and **allowing an uncontrolled expansion of the IRR system.**

**Solution:**

Minimum Attachments must be required. Explicitly defined Attachments were originally required in the IRR road inventory update process to substantiate each request. These requirements provide a fundamental tool to the BIA for quality assurance of each update. In order to concur with a recommended update, BIA officials must at least be assured that the facility exists (section photo), that the documented physical attributes of the facility are accurately reflected in the database (representative section photo), that facility ownership is confirmed and post-improvement maintenance responsibility is acknowledged (MOA Owner Agreement), and that each facility is incorporated into the tribal Long Range Transportation Plan (LRTP). It is inconceivable to think that waiving the requirement of these fundamental tools results in an adequate, representative IRR database. In fact, this measure is counterproductive, at



the least requiring more in-depth, time-consuming inquiries at the Regional/BLADOT level, or, more likely, simply disregarding the confirmation process and approving unverified records.

**It is also recommended** that surface condition ratings be supplemented by a wearing surface calculation worksheet along with representative photo to verify published indices. Being somewhat subjective by nature, backup documentation will result in more accurate, objective results in incorporating SCI into the crucial CTC calculation.

An Indian Reservation Road “providing access to an Indian reservation or Indian trust land” must be interpreted consistently. Vague, inconsistent interpretations of IRR roads have resulted in gross misrepresentation of the relative need across Indian country. Refining the regulations did not redefine the definition. We recommend that federal officials provide written guidance and direction in defining precisely what qualifies as an IRR and provide training to all BIA Regional Road Engineers and BIA/DOT personnel to ensure uniformity and consistency in the interpretation and application of the update process.

Many reservations possess a network of tribal roads which provide public rural local access to remote tribal lands within the exterior boundaries of the reservation. These routes are included on the IRR system as construction need miles to support the economic development of large land based tribes. In order to promote tribal self determination through economic development as it was intended, these facilities must be enhanced. Contesting, or otherwise rejecting these routes from inclusion as a Rural Local road, regardless of the surface type, prevents the LLBT’s from quantifying their relative need, which is ultimately reflected in the distribution of Program funds.

Large land based tribes are generally located in remote/rural areas in which a majority of the public access roads are BIA or tribally owned. In order to enhance public health and safety on these facilities, we are solely reliant on IRR Program funds. As funds are shifted to roads owned by state and local governments, the trust responsibility of the federal government is severely compromised, in turn jeopardizing the general health and welfare of the traveling public on these facilities.

There are thousands of miles of non-BIA/Tribal routes on the IRR inventory that are not in compliance with 25 CFR 170. By regulation, at 25 CFR 170 Appendix C to Subpart C, under no circumstances should any non-BIA/Tribal route generate 100% funding. Likewise, National Highway System/Interstate highways should never generate funding. County-owned facilities which meet the precisely established criteria (as recommended above) of an IRR road shall generate at the federal sliding scale percentage, however state-owned facilities, which meet the precisely established criteria of an IRR road, shall not generate funding unless a project exists for said route, and then only at the non-federal share until construction of the facility. NonBIA/Tribal roads, particularly state-owned roads, are adequately maintained and funded through 23 USC and state-owned roads were never intended to be included in ascertaining the relative need of Indian tribes.

The IRR Inventory has experienced an unprecedented growth rate in the past 3 years. Of particular significance is the expansion of the very definition of an IRR road. Inconsistent determinations of IRR eligible facilities have resulted in a skewed system which is detrimental to those tribes who rely solely on the IRR Program to address public health and safety on public

roads within Indian reservations. BIA must limit the growth rate of the Program to a respectable, realistic level.

Proposed roads have had a major impact on the funding distributions in the IRR Program. These forever funded facilities include numerous miles which will never be built, but are simply added to the database to generate funding. A well-established justification in the LRTP must be submitted with each update to assure that these proposed roads are in fact included in the future development plans of the respective tribe(s) as a project. Further, proposed roads should only generate funding for up to five years, at which time inactivity results in  $CTC = 0$   $VMT = 0$ .

In order to assure that Road Inventory Field Data System (RIFDS) records portray the spirit and character of the IRR Program, a review team consisting preferably of tribal officials or an outside, impartial review team should be employed to assess the interpretation of BIADOT and assure each submitted record lies within the scope of the regulations.

In accordance with 25 CFR 170.444(f), the BIA provides each tribe with copies of the Relative Need Distribution Factor (RNDF) distribution percentages by August 15 of each year. Providing this information allows tribes to plan and prepare the IRR Program for the upcoming fiscal year, including preparing budgets and funding Agreements; procuring materials, equipment, and manpower for upcoming projects; and identifying projects to be including onto the Tribal Transportation Improvement Program (TTIP). However, the FY 2008 distribution percentages were not published until July 2008. This situation creates an extreme burden on the tribes in their efforts to deliver an efficient, productive Program from year to year.

**Issue:**

Another concern which is directly related to the funding issues, is the BIA DOT review and approval of RIFDS records. The Program regulations, at 25 CFR 170.444, explicate the process by which the IRR inventory is updated. In order to provide the RNDF distribution percentages by August 15<sup>th</sup>.

**Solution:**

Action must be taken on the inventory update submittals, i.e. they must be approved or rejected, and discharged within this timeframe. There has been no consistency in this process since the promulgation of the Final Rule in 2004. Communication is obviously the missing element in delivering this process with efficiency and accuracy, particularly in providing feedback to the Regional offices regarding the records submitted by the tribes. The BIA must correct this process and take action on RIFDS records in order that these overriding issues do not continue to trickle down to the tribal programs, hindering our abilities to function efficiently and productively.

Your timely leadership can help Tribes expand on the gains that have been made in the transportation arena. We look forward to working with you and your staff to continue improving the quality of transportation infrastructure for the benefit of our Tribal members and our surrounding communities.

I thank you for this opportunity to submit these written comments.

Attachments:



## Montana-Wyoming Tribal Leaders Council

222 North 32<sup>nd</sup> Street, Suite 401 Billings, Montana 59101

**RESOLUTION # 2010-08-19-01**

**A RESOLUTION REQUESTING CONGRESSIONAL INVESTIGATION OF THE INDIAN RESERVATION ROADS (IRR) INVENTORY DATA**

**WHEREAS**, the Montana-Wyoming Tribal Leaders Council (MT-WY TLC) has been created for the express purpose of providing the Indian Tribes of Montana and Wyoming with a unified voice and a collective organization to address issues of concern to the Tribes and Indian people; and

**WHEREAS**, the Tribes in Montana and Wyoming realize the importance of being involved in issues at all levels of government; and participating in and having a voice in forming national, regional and local policy on all issues that may affect the Tribes and reservations; and

**WHEREAS**, the Board of Directors of the MT-WY Tribal Leaders Council consists of duly elected Tribal Chairs, Presidents and Council Members who are fully authorized to represent their respective Tribes; and

**WHEREAS**, this Article Amends Montana-Wyoming Tribal Leaders Council Resolution # 2010-04-29-01 that requested distribution of 2010 Indian Reservation Roads (IRR) funds to be based on 2006 Indian Reservation Roads (IRR) inventory data.

**WHEREAS**, the Federal Register Doc 2010-17174 published July 14<sup>th</sup>, 2010 Vol. 75, Num. 134 and the subsequent interpretation and implementation of Question 10 of 25 CFR Part 170, Subpart C, Indian Reservation Roads Program does not address the problem that is occurring in a timely manner;

**WHEREAS**, the proposed timeline requires a 2 year implementation period which is not appropriate; and

**NOW, THEREFORE BE IT RESOLVED** that this Article Amends Montana-Wyoming Tribal Leaders Council Resolution #2010-04-29-01, and

**BE IT FURTHER RESOLVED** that a hearing with the Senate of Indian Affairs Select Committee is hereby requested in order to Present inaccuracies of inventory; to Present the case that Bureau of Indian Affairs (BIA) roads program has become a township, forest service, county, state road program at the expense of the reservations with BIA roads; to Present the case that funding for BIA roads is being redirected to other roads and that these other roads have available sources of funding from federal highway administration and local agencies that are not available to Tribes; and above all, that Current Tribal and BIA roads for which funding was intended, are being neglected; and

**BE IT FINALLY RESOLVED** that the Montana Wyoming Tribal Leaders Council does hereby formally request a hearing with the Senate of Indian Affairs Select Committee on this matter and a Congressional Investigation of the Indian Reservation Roads (IRR) Inventory Data.

**CERTIFICATION**

We, the undersigned, as the Chair and the Secretary of the Montana Wyoming Tribal Leaders Council, do hereby certify that the foregoing Resolution was duly presented and approved, at a Board Meeting of the Montana Wyoming Tribal Leaders Council, which was convened on the 19<sup>th</sup> of August 2010 in Billings, Montana.

Chairman James Steele, Jr.  
MT WY Tribal Leaders Council

Secretary Patricia Enos-Bergie  
MT WY Tribal Leaders Council