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**Testimony of J. Michael Chavarria
Governor, Pueblo of Santa Clara
Before the
U.S. Senate Committee on Indian Affairs
Hearing on Tribal Transportation: Pathways to Safer Roads in Indian Country
Wednesday April 22, 2015**

Introduction: Thank you, Chairman Barrasso, Vice Chairman Tester, and members of the Committee, for this opportunity to testify before you regarding "Tribal Transportation: Pathways to Safer Roads in Indian Country".

My name is J. Michael Chavarria. I am the Governor of the Santa Clara Pueblo in New Mexico. I also serve as the Chairman for the Eight Northern Indian Pueblos Council and associated with the All Pueblo Council of Governors in New Mexico.

Santa Clara Pueblo's experience in the area of roads, road safety, and improvement of infrastructure in Indian Country is representative of many tribes around the Nation, and we hope that this testimony will prove informative for the Committee in its work in this area.

Reauthorization of the Transportation Bill. I testify today as the Congress is in the middle its efforts to reauthorize the transportation bill. As always, the reauthorization is a large scale task aimed at providing a comprehensive response to the Nation's transportation needs. At the outset, we would like to join the voices of other tribes and our colleagues in the states to say that we support a long-term reauthorization, and hope the members of the Committee will do the same. I bring my voice to this hearing, however, to press the Committee and other members of the Senate to remember that a comprehensive solution must include improvements to the Tribal Transportation Program (TTP) and other programs affecting Indian Country's transportation network.

Funding and Non-Funding Needs. It is undeniable that major improvements to roads, safety, and transit in Indian Country will only come with an increase in funding. During the last transportation authorization, tribal programs lost ground compared to funding for state and federal programs; at the very least, Congress must provide funding so Indian Country can keep pace with our counterparts. Funding increases are not only needed, but warranted. We urge you to provide leadership on this issue so our programs may progress. However, we come to you today to offer ideas on how tribal programs may be increased at little or no cost by improving efficiency, tribal control, and coordination with state and local governments.

Safety of Indian Roads and State Coordination. My primary concern as a tribal leader is the health and safety of our citizens and that of our neighbors. Traffic fatalities and serious injuries among Native Americans occur at rates two to three times the national average on Tribal Transportation systems. In some areas of Indian Country, these rates are even higher. Historic data show that fatal crash rates in Indian Country increased 53% during a period in which they declined for the overall population. Traffic accidents are now a leading cause of death among Native Americans.

A crucial part of road safety in our area focuses not only on our drivers, but on pedestrians and bikers as well. Our tribal lands are crisscrossed by several major routes such as U.S. Route 84 from Santa Fe and State Route 399. New Mexico Highway 30, the road that connects US-84 starting in Espanola to Los Alamos National Laboratory cuts directly through our reservation. This two-lane highway is very busy, with more than 14,000 trips per day. *This road serves as one of the major access roads to and from Los Alamos and is also an emergency relief route in case of evacuation or other disasters at Los Alamos.* For our Pueblo with a population of around 1,000, the road is a major safety concern, bisecting the Pueblo in a way that poses substantial risks to both automotive and the large amount of pedestrian traffic.

Volume on State Highway 30 is a driving force behind my Pueblo's roads and safety plans. As our Pueblo grows with a new housing development on the south side of our community along Highway 30, a new fire station on the road, an increasing number of *Santa Clara* people must cross the road or attempt to merge into it. Our transportation plans include construction of a frontage road and protected crossings, but our attempts to engage the State of New Mexico to improve the safety of their road in the interest of Indian and non-Indian users alike have fallen on deaf ears.

Our frustration about working with the state is not unusual within Indian Country, as I have heard from many tribes that experience a disparity of state effort and attention to the state's own roads serving Native American communities compared with others. Many of these problems are a result of the failure of the state to adequately maintain roads going to and through Indian Country. This, despite 23 U.S.C. 116, which requires the Secretary of Transportation to ensure that all roads are properly maintained, at the threat of the State or district losing funding.

This provision should be enforceable, though we are unaware that the Secretary has taken any action pursuant to this section. We have similar feelings about right-of-way agreements granted by the BIA to states or other jurisdictions for roads over Indian land. These rights-of-way require that the facilities on them be maintained, and often contain language granting the BIA the right to revoke the right-of-way if maintenance is not adequate. Congress could improve oversight of maintenance and safety of roads serving Indian communities by creating a process whereby tribes themselves could initiate a review under 23 U.S.C. 116 or a right-of-way agreement (or a review under a similar process for Bureau of Indian Affairs-owned roads) to determine if action to induce proper maintenance is required.

Traffic Enforcement. Regulation of all motorists using our roads and rights-of-way is of paramount importance in maintaining safety in our community. In order to enforce civil traffic jurisdiction over Indian and non-Indian motorists within the community, the Pueblo has adopted a policy of reserving civil jurisdiction over all roads and rights-of-way. Due to the heavy traffic volume over unsafe roads, the Pueblo views traffic violations as a daily threat to the health, safety and welfare of the tribal members and the surrounding community. Within the Pueblo, the burden of enforcing civil traffic laws falls upon the tribal police. The tribal police issued 2,294 civil traffic citations and 35 driving under the influence violations in 2014. Enforcing the traffic laws require trained staff and the tools of the law enforcement profession, including highly costly vehicles and gas. The tribal budget is insufficient to meet the needs of law enforcement. We are currently relocating the tribal police from cramped quarters to two modular buildings that were donated to the Pueblo of Santa Clara by the local public school district. The Department of Justice Community Oriented Policing Services (COPS) Tribal Law Enforcement grants

have gone far in meeting the needs of our tribal police, but the COPS grants have not gone far enough. Because the COPS grants are competitive and underfunded, we have been unable to garner funds for staff and tools of the trade. Increased COPS funding is needed to maintain safe roads. The Pueblo recommends an increase in funding for the COPS grants.

Justice, and due process, is carried out through the tribal traffic court. After a civil traffic citation is issued, the motorist must pay the penalty or the tribal traffic court must adjudicate the case. While penalties may offset part of the costs for the tribal traffic court and law enforcement, all costs of staff and services are not met. In the past, Congress has identified the need for fully operational tribal courts. Public Law 103-211, § 242(a)(2)(A), codified in 25 USC § 3621, authorized \$50,000,000 in base support funding for tribal justice systems each year for fiscal years 2011 through 2015. Congress intended to build and enhance tribal justice systems with this funding. The Pueblo supports a similar authorization of tribal justice system funding for the future.

Direct Funding of Tribes. Another critical way Congress can assist tribes working with the states is to simplify the transfer of funding tribes receive from the states for successful applications to state safety programs. Tribes have been seeking the ability for years to receive federal-aid funds passed through the states under 23 U.S.C. §§ 402, 405, 408, and 410 directly from DOT. This would improve efficiency by cutting down on administrative costs associated with funding transfers, and would recognize the right of tribal self-determination. The BIA could accomplish this administratively, but actually *removed* language from the recent proposed 25 CFR Part 170 rules that would make this change. We urge Congress to provide for this process via statute.

Tribal Set Asides. Given the dire statistics on road safety and traffic accidents in Indian Country, we support the calls in the Tribal Transportation Unity Act (TTUA)—an effort by diverse tribes and tribal stakeholders to come to a national consensus about tribal transportation priorities—seeking set asides for tribes from already-existing funding. The proposal is to provide for a 2% tribal set aside from the existing apportionment made under MAP-21 for the Highway Safety Improvement Program to enable tribes to compete in this competitive grant program. It would also provide 3.5% of National Highway Traffic Safety Administration’s existing highway safety program funds to the Secretary of Interior, rather than the existing 2%. These changes are cost-neutral, but open up an important stream of funding for tribal safety.

Santa Clara does not have a railroad passing through our lands, but many other tribes do. We have been advised that railroad crossings in Indian Country pose a significant hazard. For example, the Pueblo of Acoma has its community housing and public safety facilities on the south-side of the BNSF tracks, while the hospital, the interstate (with 200,000 cars passing a day) and two major transcontinental pipelines lie on the north-side. With over 85 trains a day, each about two miles long, Acoma has sought Transportation Investment Generating Economic Recovery (TIGER) funding for a bridge to prevent delays for public safety services and to reduce the risk of accidents. There is no set-aside in TIGER for tribes, but there should be. Tribes seem to be getting a very small share of these funds despite the substantial need.

Tribal Competitive Grants. We also want to stress the importance of the Tribal Transportation Program Safety Fund’s competitive grants. We are in the second year of this program which provides about \$8.6 million for tribal transportation safety projects. My Pueblo received \$12,500 in FY 2013 to help with completion of a safety plan. We have just released the “95% Draft” for public review, and hope to have the report finalized soon. This program is critical for tribes seeking to address their safety concerns in a structured and comprehensive way. However, we must alert this Committee to a failure on the part of the DOT in funding for this year’s program. While funding was released in mid-November 2013 for FY 2013, funding for FY 2014’s grants was only announced and released last month, six months into the fiscal year. There was no reason given for this significant delay, and a delay of this magnitude not only cripples the actual work done under the grants,

but increases the cost of that work as well. We ask this Committee to seek an answer from DOT as to the reason of this delay so that it is not repeated.

Strengthening Tribal Self-Governance

DOT Should Support Self-Governance Compacting. Handling transportation systems is one of the core functions of any government, and tribes are no exception. This year is the 40th Anniversary of passage of the Indian Self-Determination and Education Assistance Act (ISDEAA). This law has proven to be the single most effective Federal statute for promoting Tribal self-determination and success. In Indian Country, we think Congress has made its intent clear to expand ISDEAA compacts to the Department of Transportation when it included language for what is now 23 U.S.C. § 202(b)(7). The Department of Transportation sees this differently, however, and has only authorized “program agreements,” that, to tribes, do not properly incorporate the full slate of ISDEAA requirements and protections. Tribes are simply tired of waiting for DOT to come around.

Proposed Congressional Legislation. Accordingly, we voice our full support for the Tribal Transportation Self-Governance Act of 2015, sponsored by Reps. DeFazio (D-OR) and Young (R-AK) in the House as H.R. 1068. The language of the Act is identical to that proposed in the TTUA, and to that already reported to the full House in 2012 in H.R. 7. Passage of this bill would create in DOT a Tribal Self-Governance Program approximating that in HHS now active as Title V of ISDEAA. This would mean that tribes would be able to obtain all of their transportation funds (including not only TTP funds, but also transit, Federal-aid and other DOT funds) under a DOT self-governance agreement. By authorizing Tribes to elect to use these ISDEAA funding agreements for all transportation funds (and requiring DOT to respect that election), and thereby requiring tribes to meet only a single set of grant and administrative requirements, these amendments should significantly streamline tribal efforts to obtain and administer such funds. This section also preserves the option currently available to tribes to enter into FHWA TTP Program Agreements and referenced Funding Agreements with the Secretary of Transportation, and tribes electing to do so will continue to be able to use those existing agreements.

We ask that members of this Committee introduce and pass a companion bill to H.R. 1068, or that you work to include this important language in the current transportation reauthorization.

Programmatic and Administrative Improvements

We know that the Committee is seeking guidance from Indian Country on how transportation in Indian Country can be improved by increasing efficiency and decreasing waste. A significant way to accomplish this is by reducing the administrative burden on tribes and the agencies, and by ensuring the agencies are restrained from expanding what is required of tribes to run our own programs.

Environmental Categorical Exclusions. This can start by ensuring that the Bureau of Indian Affairs and the Federal Highway Administration are hewing to the language of Congress’s statutes. As one example, tribes have been frustrated by the BIA’s unwillingness to follow language in Section 1317 of MAP-21 containing a categorical exclusion from environmental review for any transportation project receiving less than \$5 million in federal funds. The Bureau has taken a position that the provision only applies to the Department of Transportation, which we think is both an unfair reading of Section 1317 and a willful disregard of congressional intent. The vast majority of the BIA’s projects (or those handled by tribes through a BIA agreement) receive less than \$5 million in funding, and this provision would speed the planning and construction of projects in Indian Country (and therefore reduce their costs).

Other No-Cost Proposals. The Pueblo also supports the efforts in the TTUA that contain many no-cost provisions that could drastically improve the efficiency of the TTP. We know that you are well aware of the TTUA, but wish to highlight some of the provisions we think are particularly important:

- **Transfer Tribal Bridge Program.** Moving the TTP Bridge Program back into the Highway Trust Fund as it was under SAFETEA-LU, rather than a takedown from the TTP Program. This would ensure that both the Bridge Program and the regular TTP program can fully use resources already allocated to them.
- **Full Tribal Grant Eligibility.** Ensuring that tribal governments are eligible to apply for all grant programs in the DOT under the same criteria as other governments. Currently, tribes can apply for most, but not all, of DOT's discretionary and competitive grants. For example, tribes are not eligible for programs like employee training for hazardous materials incidents or transportation technology improvement grants. Tribes only wish to be able to apply for such grants under the same criteria as state and local governments can.
- **Restoring Tribal Eligibility.** Restoring tribes' ability to apply for programs under the new "Transportation Alternatives Program." When Congress moved funding for programs like Scenic Byways, Safe Routes to Schools, and the Transportation Enhancements and Recreational Trails program into a new consolidated Transportation Alternatives funds, it inadvertently removed the ability of tribes to apply to these programs directly—now tribes must apply to states for these funds. Since they had been successful throughout Indian Country, we request that tribes' ability to apply directly be restored, with a 3% set-aside of existing funding for Indian Country projects.
- **Authorizing Direct Tribal Requests for Emergency Relief.** Streamlining the process of applying for Emergency Relief for Federally Owned Roads (ERFO) funding when a disaster or road failure occurs. Instead of requiring tribes to first apply to the BIA for ERFO funding, who then forwards the request to FHWA (though not always in a timely manner), this change would enable tribes to apply directly to FHWA. It would also require FHWA to meet with tribes to hammer out a rule setting the threshold for the program. Currently that level is a floor of \$700,000, which has the effect of excluding most tribal emergency projects, since they do not cost that much.

If I may be of any assistance to the Committee or the Congress in passing a new transportation authorization bill, please feel free to contact me at any time. Thank you for the opportunity to present on behalf of my Pueblo.