

**TESTIMONY OF THE
THE CHIPPEWA CREE TRIBE
Of the
ROCKY BOY INDIAN RESERVATION**

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Field Hearing on Tribal Transportation
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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% in 2006 to 24% 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% 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% 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 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.