

**TESTIMONY OF**  
**THE EASTERN SHOSHONE AND NORTHERN ARAPAHO TRIBES**

**PRESENTED BY WES MARTEL**  
**VICE CHAIRMAN**  
**EASTERN SHOSHONE BUSINESS COUNCIL**

**Before the U.S. Senate Committee on Indian Affairs**  
**Oversight Hearing on Tribal Transportation**  
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***Introduction***

Good afternoon, Mr. Chairman and members of this Committee. My name is Wes Martel, Vice Chairman for the Eastern Shoshone Business Council.

On behalf of Eastern Shoshone Business Council Chairmen Mike Lajeunesse, Northern Arapaho Business Council Chairman Jim Shakespeare and the Tribal members of the Wind River Indian Reservation in Wyoming, I thank you for this opportunity to provide testimony concerning Transportation Issues in Indian Country. I am pleased that Chairman Shakespeare is accompanying me today as is John Smith and Jim Garrigan.

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 tribe and to other Indian tribes. This program is vital to the well being of all Native people living on 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***

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%, unemployment on our Reservation remains at outrageously high levels, many times the state or national average. 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.

### ***Reauthorization of Tribal Transportation Programs***

The Shoshone Tribe is 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 reauthorization of this important legislation.

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. However, when BIA officials abuse their powers and arbitrarily divert IRR funds to non-BIA system or non-Tribal facilities, we fall farther behind.

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 six 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 formula share amounts for the Land Based Tribes has been significantly reduced from 76% in 2006 to less than 20% in 2011 and is declining at an alarming rate. Mr. Chairman I ask you to consider the implications of this incredible situation. Only 20% of the money Congress appropriates for the Indian Reservation Program is being on on BIA and Tribal Reservation Roads!! Surely this is not what Congress intends.

This presents an even worsening condition to Land Based Tribes like the Eastern Shoshone Tribe whose only source of funding is from the Indian Reservation Roads

Program. Our funding is generated from BIA system road and Tribal roads and we do not have high volume (traffic wise) State and County roads running through our reservation. As an example of funding process for the Wind River reservation, it has taken us ten years to complete a 7.5 mile long project (Plunkett Road).

You will hear from the BIA that the problems identified above are as a result of a negotiated rule making process. First of all, that process was flawed but as importantly it must be noted that after the rule making committee issued its recommendations the BIA took those recommendations and on their own, arbitrarily and unilaterally made changes before they were finalized and placed in the Federal Register. The impact of those changes resulted in reducing the funding allocations as much as 60% to land based tribes by allowing some tribes to indiscriminately add State, County Roads, and Proposed Roads into their IRR inventory without justification.

### ***Indian Reservation Roads Program and Its Impact on Safety***

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% increase over the previous recorded high of 264 crashes in 1996 and a 52.5% 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 diversion 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.

This 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 us 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.

Based on the above, the Shoshone Tribe has 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. We feel that these 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. Those items are as follows:

- Replace the Tribal Transportation Allocation Methodology (TTAM) – The Tribal Transportation Allocation Methodology (TTAM), as contained in 25 CFR 170, has been so misconstrued by Bureau of Indian Affairs (BIA) TTAM that it favors only those direct service tribes whose trust lands are surrounded by high volume State and County Roads and has resulted in pitting Tribes against Tribes. The most fair and equitable solution to this problem is for the Secretary of the Interior to suspend 25 CFR 170 until it can be corrected to reflect the actual intent of Congress. The previous rule should be temporarily put into effect during the time period that the existing rule is scrutinized. A distribution methodology that consists of Tribal Trust Land and Population (80% Land Area and 20% Population) would be more fair and equitable to the land based Tribes.
- 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 Roadless and Wild areas. Some BIA Regional Road Engineers are allowing this abuse and others are prohibiting it as they believe such annexing is not allowed.
- 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 allowing it 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 140+ thousand miles in 2011) 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. See the February 1, 2010 Interior Inspector General's report on this point. 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. The Congress cannot allow this to continue. The DOI leadership should fix this on their own because they should not give countenance to fraud but despite the fact that we pointed this out to senior leaders of DOI and FLHA a year ago, nothing has been done to end the fraudulent actions.

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.

### ***Road Maintenance***

Protection of the investment in any type of infrastructure requires proper maintenance. Historically, the IRR maintenance system has been chronically underfunded 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% 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 Tribe 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 Eastern Shoshone and Northern Arapaho Business Councils, 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 Joint Business Council to present this testimony. If we can answer any questions, now or at some future date, please do not hesitate to ask.