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Chairman

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Porcupine District

**Testimony of
Chairman Charles W. Murphy
Standing Rock Sioux Tribe
Before the Senate Committee on Indian Affairs
"Tribal Transportation: Paving the Way for Jobs, Infrastructure
and Safety in Native Communities"
September 15, 2011**

Good afternoon. My name is Charles W. Murphy. I am the Tribal Chairman of the Standing Rock Sioux Tribe. For the last three decades, I have had the privilege to serve as an elected official for my Tribe. I am serving in my sixth term as Chairman. The Standing Rock Sioux Tribe is an active participant in the Indian Reservation Roads (IRR) Program Coordinating Committee and FHWA's Safety Management System Steering Committee.

Chairman Akaka, I want to thank you, Vice Chairman Barrasso and members of the Committee for holding today's oversight hearing on Tribal transportation entitled: "Paving the Way for Jobs, Infrastructure, and Safety in Native Communities." I appreciate the invitation to testify. I want to thank the Committee for its leadership role in Indian affairs. When SAFETEA-LU was being debated in Congress in 2004 and 2005, this Committee proposed many statutory provisions benefiting Indian tribes that have become law. The Committee must do so again, as Congress debates the next highway bill. The Standing Rock Sioux Tribe and many Indian tribes are direct beneficiaries of the Committee's tireless work and bipartisan advocacy.

The Indian Reservation Roads (IRR) Program, funded under SAFETEA-LU at \$450 million annually, together with the IRR Bridge Program, Tribal Transit Grant Program, the highway safety programs of the Department of Transportation, the Public Lands Highway Discretionary Program and emergency programs such as the Emergency Relief of Federally Owned Roads (ERFO), are the primary Department of Transportation programs that are helping to transform rural Indian reservations. These federal programs, together with the Federal-Aid Program to States, are the engines that are helping to power our economy, build our transportation infrastructure and make our communities safer and more livable. These programs must continue and grow, and Congress must find a means

to pay for it, if tribal communities are to be connected to jobs, schools, health centers and commercial businesses. It is a question of national priorities. It is an investment the United States must make in its own people. Transportation and infrastructure barriers in Indian country create health and safety risks and impede our economic development.

Federal transportation programs are making a difference and changing communities and reservations for the better; making highways safer for motorists and pedestrians by incorporating modern safety features (rumble strips, striping, safety reflectors, guardrails and modern highway and bridge design features), using public transportation to help bridge long commuting distances for low-income families, and rebuilding our fragile and outdated transportation infrastructure.

Highway and pedestrian safety is very important to us. We simply lack the resources required to make physical safety improvements to our roads and bridges and to fund educational programs to promote seatbelt and child safety seat use, drinking and driving campaigns, and to finance more police officers to patrol our roads and enforce the law.

As Chairman, I am all too familiar with the high price tribal members pay each year for the unsafe condition of our public roads and bridges. Too many members have suffered serious injuries or lost their lives to motor vehicle and pedestrian accidents on our roadways. Their families are devastated and the fabric of our community is torn with each injury and death.

That is why on Standing Rock we embrace the “four Es” of education, engineering, enforcement and emergency services. It is a coordinated effort and it takes resources, both financial and personnel. The four Es work. In most instances, there is no “golden hour” in Indian country, the first 60 minutes after an accident when access to a trauma center can mean the difference between life and death. For that reason, we have begun highway safety programs such as seatbelt and child safety seat programs. We asked FHWA to perform a road safety audit to identify unsafe routes and make safety improvements. We requested additional law enforcement officers to enforce safe driving practices among our members, residents and visitors to our reservation.

We are also working closely with the North Dakota and South Dakota Departments of Transportation to improve our public roads and educate our members about highway safety. In 2006, we contracted the entire IRR Program serving our reservation from FHWA under the first-of-its-kind IRR Program Agreement pursuant to authority under SAFETEA-LU. In 2007, we contracted the Road Maintenance Program from the BIA under P.L. 93-638. In short, we are building our capacity as a public authority to engage in comprehensive transportation planning and development, to interact with other transportation stakeholders to improve our public roads and public transportation systems. This is important work and it is worth investing in at the Tribal and national level.

Jobs, infrastructure, and safety are the key ingredients to developing the future potential of Indian country. Nearly 24 years ago, this Committee emphasized the importance of infrastructure in Indian country in the context of amending the Indian Self-Determination and Education Assistance Act, Public Law 93-638. In 1987, the Committee wrote:

“The conditions for successful economic development on Indian lands are essentially the same as for any other predominantly rural community. There must be community stability, including adequate law enforcement and judicial systems and basic human services. There must be adequate infrastructure including roads, safe water and waste disposal systems, and power and communications utilities. When these systems and services are in place, tribes are in the best position to implement economic development plans, taking into account the available natural resources, labor force, financial resources and markets.”

I could not agree more with the Committee’s remarks and in 2004, the Tribe took the Committee’s advice. We put together engineering plans to reconstruct over 25 miles of long neglected community streets and to build sidewalks, curbs, gutters, and street lights to make all eight communities on the Reservation safer. The price tag was \$26.5 million. We did not have the funds. We used innovative financing and leveraged our federal IRR Program and tribal funds, and borrowed most of the money to rebuild our reservation infrastructure. Using our TERO Ordinance, we employed many tribal laborers and some Native owned businesses.

The advance construction project was the best decision we made. Today, the Bullhead East/Community Streets Project is a source of great pride. People began taking care of their yards, planting grass and cleaning up. People began to walk more. Crime went down. Had we waited until we could afford to build the project under the pay-as-you-go method, we would have never saved enough because of rising oil and construction costs and our limited federal and tribal funds. The recession that began in 2008 would have made it very difficult for us to borrow money cheaply if at all.

We invested in ourselves and are reaping the rewards today. Our advance construction project made our communities safer. Rather than traveling through mud and pot-hole clogged streets, members drove on well paved roads. When the American Recovery and Reinvestment Act (ARRA) funds became available to us in 2009 for road construction and repair and restoration projects, we did not hesitate to contract these funds from FHWA and the BIA. We used the ARRA funds and our recurring IRR Program “tribal shares” to reconstruct and improve large sections of Kenel Road, a school bus route that links our South Dakota Districts with our North Dakota Districts and governmental offices in Fort Yates, and we repaired many BIA owned bridges with these funds.

FHWA reported that Indian tribes drew down and expended nearly 100% of the ARRA construction funds appropriated by Congress for eligible and much needed transportation projects.

I believe that there is a national lesson to be learned from our recent experiences at Standing Rock. The United States must determine what communities and societies it wants to create in the 21st century and invest in infrastructure and public transportation systems that help realize those goals. We left no community behind in our effort to improve our unsafe transportation infrastructure. The United States must do the same and invest in the Nation's transportation infrastructure if we are to be competitive with the rest of the world. Every generation has made sacrifices and built upon and improved the Nation's infrastructure. Not paying for needed infrastructure comes at a very high price.

On Standing Rock, we have witnessed the transformation of our reservation through the development of infrastructure (water and irrigation, roads and public safety and communications systems). Over the last few decades, we have grown our Tribal government by assuming responsibility for programs of the BIA, the Indian Health Service (IHS), Housing and Urban Development, and in the past five years, the Secretary of the Interior's duties for the Indian Reservation Roads (IRR) Program and BIA's Road Maintenance Program.

As a result of these measures, together with establishing tribally-owned businesses such as the Standing Rock Farms, a Parts-on-Demand operation, two modest Tribal casinos, and a sand and gravel operation, we are able to supplement basic governmental services and programs and provide jobs to some of our more than 14,000 enrolled members. Despite the measures we have taken to improve the living conditions of our members, we continue to experience persistent unemployment, high dropout rates and the resulting poverty.

This Committee knows all too well the record unemployment levels that exist on Indian reservations; levels that are often well over 50%, unemployment levels that should shock the rest of the country. SAFETEA-LU and the Indian Reservation Roads (IRR) Program – at their heart - are jobs programs that put many Native Americans to work planning, engineering, building and maintaining roads and bridges and public transportation systems on Indian reservations.

We contract with local engineering and local construction firms. Our TERO Office seeks to place as many qualified tribal laborers as possible. With our ability to use our IRR Program funds as matching funds, we partner with State Departments of Transportation and county governments to improve our shared Indian Reservation Roads, public roads located on and which provide access to our reservations. But our IRR Program funds are not enough. With authority under SAFETEA-LU to rebudget up to 25% of our IRR Program construction dollars for road maintenance, we rob our construction funds to cover emergency road maintenance needs, especially during our severe winters and spring floods, because our BIA Road Maintenance Program funds are

inadequate. The conversion of these funds to maintenance depletes our construction funds for new transportation infrastructure or the reconstruction of our existing road inventory. Our Tribal and federal resources are stretched to the limits.

Standing Rock lost a great deal of our transportation infrastructure and self-sufficiency when 56,000 acres of our reservation's most fertile land was flooded in the 1950s to create the Oahe Dam as part of the Pick-Sloan Missouri hydro-electric system. The dam devastated our Tribe, displacing more than one-fourth of our members. We lost communities and community streets. Lake Oahe has created a 100 mile transportation barrier from Bismarck, North Dakota to Mobridge, South Dakota where the first bridge crossing over the Missouri River south of Bismarck is located.

The last three winters have been especially harsh on the Standing Rock Reservation. In 2009, three bridges and miles of our roads were damaged by spring floods caused by melting snow and ice. In January 2010, I was forced to declare a State of Emergency due to the disastrous winter storms that toppled thousands of electric poles and wires and dumped large amounts of snow over our region. Thousands of families on the Reservation were left without electricity and heat for days. Snow drifts rose to over ten feet making many roads impassable. We used our available BIA Road Maintenance Program funds to remove snow, lease additional heavy road maintenance equipment, repair damaged vehicles, purchase fuel, salt and sand, and pay over-time to our road crews. In a few months, we exhausted nearly a year's worth of our federal Road Maintenance Program funds. In the spring, floods came and washed away one of our temporary bridge detours. Conditions got so bad that we called the BIA to request emergency snow removal assistance from the Rocky Mountain Region to help us clear snow.

This year, our region witnessed flooding again which damaged roads, homes and businesses. Lake Oahe rose so high we had to place riprap along the causeway that leads into Fort Yates. We are planning an alternate route into Fort Yates to ensure that our Tribal administrative offices, homes and businesses will not have to be abandoned in the event of future floods.

Were it not for our IRR Program "Tribal shares" funds and supplemental programs as the IRR Bridge Program, FHWA's Emergency Relief for Federally Owned Roads (ERFO) Program and its Public Lands Highway Discretionary Grant Program, and the Department of Homeland Security's FEMA Program, we could not have rebuilt our fragile road and bridge infrastructure. Left unrepaired, it would have imposed more hardship on our members, especially our school children who ride on our paved, gravel and dirt roads every weekday.

Roads in Indian country are not safe. Many resemble those found in developing countries, not the most powerful nation in the world. The United States must help Indian country recover its lost transportation infrastructure. As former Senator Dorgan stated a few years ago: "A sound transportation system is essential to economic growth and civic

activity. . . . Unfortunately, in Indian country, the majority of the roads are unsafe and unreliable. The statistics are alarming.”

The statistics that Senator Dorgan noted are well known to the Committee. The National Highway Traffic Safety Administration reported that motor vehicle injuries are the leading cause of death for Native Americans aged 1-34 and the third leading cause of death overall for all Native Americans. A 2007 report by FHWA stated that American Indians have the highest rates of pedestrian injury and death per capita of any racial or ethnic group in the United States.

Nearly two-thirds of the roads on our Reservation are gravel roads, which are costly for the Tribe and county governments to maintain. Driving on gravel roads generates masses of dust and limits visibility for our school buses and other motorists. Consequently, Tribal residents do not have all-weather access to work, schools, health facilities and retail businesses when roads and bridges are washed out. The past few winters and springs proved just how fragile our infrastructure is. This is more than just a temporary inconvenience for our members. It is life threatening.

Like other rural communities, Indian reservations have gone without adequate funds for too long. Our unsafe roads and structurally deficient bridges tell the tale. But now America’s Eisenhower Interstate system, long the envy of the world is also showing signs of age and neglect. This summer, the American Society of Civil Engineers issued a report that estimated that the Nation’s deteriorating roads, bridges, railroads and transit systems are costing the United States \$130 billion a year in additional motor vehicle operating costs, travel delays and safety. In 10 years, they estimate that this cost will rise to \$440 billion in transportation costs, household incomes will fall by more than \$7,000 and U.S. exports will fall. The Society’s 2009 report card for America’s infrastructure graded roads a D-, bridges a C and transit a D.

If Congress does not act soon and extend SAFETEA-LU or enact a new highway bill, Americans will suffer and transportation projects all over the country will come to a halt. This will hit Indian country especially hard as we rely to such a great extent on appropriations to the U.S. Department of Transportation to cover routine and emergency transportation needs.

Here are my recommendations to address job creation, improve safety and tackle the lack of infrastructure in Indian country:

1. Support MAP-21: The Senate Environment and Public Works Committee developed a bipartisan recommendation to reauthorize the next highway bill for two years at not less than current authorized funding levels. Congress can reduce the national deficit by putting Americans to work rebuilding the Nation’s infrastructure. The House proposal to cut transportation spending by 36% from current levels for the next six years will harm our economy, increase unemployment, and weaken us as a nation;

2. Increase funding for Tribal Transportation Programs: Support modest, but important, increases to federal transportation programs serving Indian country such as President Obama’s proposal for increase funding to \$600 million for a consolidated IRR Program, IRR Bridge, Tribal Transit and Tribal safety programs and to set a floor below which IRR Program funding for BIA-owned and Tribally-owned roads will not fall, or increase federal transportation programs serving Indian tribes to the levels requested in the NCAI-ITA Joint Task Force’s proposed “Tribal Reauthorization of Indian Programs (“TRIP”);
3. Increase the BIA Road Maintenance Program: Congress undermines our reservation infrastructure and makes our roads unsafe by keeping the BIA Road Maintenance Program flat at \$25 million for the last 20 years. Appropriate \$100 million annually as recommended by the BIA so that Tribes and BIA Regions can make heavy equipment purchases to replace obsolete equipment and pay for routine road maintenance work (pot hole repairs, chip seals, overlays, re-graveling, and mowing) and address road maintenance emergencies (snow and ice removal, flood prevention and repairs, etc.) to extend the useful life of road and bridge projects and keep our public roads safe and in good condition;
4. Provide Tribal Set-Asides for Safety and Planning: Build capacity in Indian country for comprehensive transportation planning, safety and economic development by appropriating more funds for tribal planners, law enforcement and highway safety officers so that tribal governments can fulfill our roles as public authorities and transportation stakeholders. Existing grant programs are not reaching Indian tribes. These funds can and will make a difference and help save lives; and
5. Streamline the delivery of transportation programs for Indian tribes: Support budget neutral proposals that streamline the delivery of federal transportation programs for Indian tribes. These include:
 - Make tribes direct recipients of FHWA’s ERFO Program, DHS’s FEMA grants, and NHTSA’s and FHWA’s many safety grant programs (e.g., Highways for Life and Safe Routes to Schools) Current regulations require Tribes to request ERFO assistance from, and receive ERFO funding through, the BIA. This makes no sense and delays our receipt of these emergency funds;
 - Lower the dollar thresholds for tribes for TIGER grants and Transportation Infrastructure and Finance Innovation Act (TIFIA) program eligibility; and
 - Create simple award instruments for State DOT-Tribal transfers of Federal-aid (e.g., Highway Safety Improvement Program (HSIP) and Transportation Enhancement funds) and other Federally-appropriated but state-administered highway improvement and safety programs (eliminate the need for waivers of sovereign immunity, recourse to State courts and application of state procurement, management systems, and other federal laws which do not apply to Indian tribes).

6. Urge the White House to appoint the Deputy Assistant Secretary for Tribal Government Affairs at the Department of Transportation: Authorized under SAFETEA-LU more than six years ago, neither the Bush nor the Obama Administration have nominated nor has the Senate confirmed a Deputy Assistant Secretary for Tribal Government Affairs to “plan, coordinate, and implement the Department of Transportation policy and programs serving Indian tribes and tribal organizations and to coordinate tribal transportation programs and activities in all offices and administrations of the Department.” Transportation issues in Indian country justify a full time USDOT official to help develop, implement, and advocate for uniform USDOT transportation policies for Indian tribes.

I ask this Committee to introduce tribal transportation legislation this month so that Senators less familiar with Indian country can consider the unique transportation needs of Indian country and incorporate sensible recommendations in the next reauthorization bill. Lack of infrastructure makes it challenging for Tribal governments to achieve Tribal and national goals for education, public safety, housing, health care and economic development. Outdated road designs and lack of road maintenance resources make Indian Reservation Roads some of the most dangerous roads in the country.

A tribal transportation bill will educate fellow members of Congress to the transportation needs of Indian country and help Tribal governments entice businesses and tourism to our reservations. When Americans work together, there is nothing we cannot achieve. That is why I urge this Committee and all members of Congress to work in a bipartisan manner to tackle the reauthorization of SAFETEA-LU and put the Nation to work.

At \$450 million annually, the IRR Program is the largest transportation program serving Indian country. There are over 144,000 miles of public roads in the IRR Program inventory today. The cost-to-construct these IRR Program roads, to bring their design standards to an acceptable level, are over \$60 billion. Because of the importance of infrastructure to the future of Indian country, I urge Congress to elevate transportation issues in Indian country within the Department of Transportation as well as the Department of the Interior.

Finally, I want to add a word about the need to reform the IRR Program funding formula. Last week, the five Indian tribes of North Dakota (the “United Tribes”), enacted two unanimous resolutions calling on the Interior Department to alter the funding formula for the Indian Reservation Roads (IRR) Program to recognize the great unmet needs of Indian tribes located in the Great Plains and Rocky Mountain Regions and to ensure that the allocation of federal transportation funds is under the IRR Program is adequate to meet our road maintenance, improvement and construction needs so that our members, especially our school children travel on safe, well maintained roads.

Specifically, the United Tribes of North Dakota request that 75% of funds appropriated by Congress for the IRR Program be allocated to BIA-owned and tribally-owned roads, that not more than 20% of funding be allocated to roads that provide access

to Indian reservations, that proposed roads (roads that do not currently exist, but which tribes identify in their long range transportation plans) be eligible for funding only after plans, specifications and estimate (PS&E) packages have been completed and approved by state-licensed engineers, that State maintained roads be ineligible for IRR Program funding and that State routes included in the inventory with state certifications of inability to provide funding be deleted from the road inventory. I ask that both United Tribes resolutions be included in the Committee's oversight hearing record.

In conclusion, Indian tribes will realize our goals to lift our members out of poverty and provide a better life for our grandchildren when we no longer have third world transportation and transit systems. In the 21st Century, Indian tribes must truly be connected to centers of business and commerce so our members can remain on the Reservation and where our neighbors have easy, inexpensive access to our Reservation and to the cultural, recreational, and retail opportunities we have to offer. In a time of tight budgets, Tribes, States, local governments and the Federal government must pool our resources and use "smart solutions" to stretch every available dollar.

It has been our Tribe's goal to preserve our heritage and culture and to share that rich heritage with our neighbors. Transportation infrastructure makes that goal possible. I encourage State, local and Federal officials to work constructively with Indian tribes to tackle our shared transportation challenges so that all our communities may benefit.

Thank you for giving me the opportunity to discuss the transportation and employment needs of the Standing Rock Sioux Tribe.