

**TRIBAL TRANSPORTATION: PATHWAYS TO  
INFRASTRUCTURE AND ECONOMIC  
DEVELOPMENT IN INDIAN COUNTRY**

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**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS**

**UNITED STATES SENATE**

**ONE HUNDRED THIRTEENTH CONGRESS**

**SECOND SESSION**

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**MARCH 13, 2014**  
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**THURSDAY, MARCH 13, 2014**

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:00 a.m. in room 628, Dirksen Senate Office Building, Hon. Jon Tester, Chairman of the Committee, presiding.

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

The CHAIRMAN. We will call this hearing to order. Good morning. Welcome and thank you all for being here today. We are meeting at a different time than we normally meet, the Committee appreciates everybody's flexibility.

Today the Committee is holding an oversight hearing on tribal transportation programs at the Department of Interior and the Department of Transportation. Later this year, the current authorization of the transportation programs will expire and will have to be renewed. The Committee would like to take this opportunity to examine how tribal transportation programs are working and how we can build on the progress of the last authorization.

I recently visited with several Indian tribes in Montana, my home State, and traveled some of the very roads that we are going to be discussing. Today, the infrastructure needs in Indian Country are great, and for Indian communities to increase economic development and opportunities on reservations, we must invest in improving and expanding transportation infrastructure.

These investments are aligned with the Federal Governments' treaty and trust responsibility to American Indians, and these investments are crucial to improving the quality of life on tribal lands. It is not just economic development, it is safe and adequate roads and highways that are critical to the other issues such as public safety and education.

On some Indian reservations, children spend two hours a day traveling to and from school on roads that, quite frankly, are not adequate. And this is when there is transportation available. We hear far too often about the unspeakable tragedies of pedestrians being struck while walking alongside some of the most remote and dangerous highways, roadways in the Country. Just last month, a

young girl from Northern Cheyenne Reservation was struck and killed along highway 212, a road that has seen an incredible increase in use in recent years. This is unacceptable.

The dire conditions of these roads lead to delayed response times for law enforcement, and for medical assistance. Investments in improved roads can speed up response time and ultimately will save lives.

Motor vehicle accidents are the number one cause of death of American Indians age 1 through 34 and the third overall cause of death for all American Indians. Many of these deaths are preventable. As we prepare for the reauthorization, we must look for ways to reduce the amount of motor vehicle accidents and improve safety on our reservations.

Lastly, we need to invest in transit programs. Whether it is a trip to the doctor or ride to work, folks need public transportation options that they can count on. The last reauthorization doubled the amount of funding for tribal transit programs, but there is still plenty of work left to do.

I want to thank the witnesses for traveling a long way to Washington, D.C. to present your perspective on this important issue. I would like to personally welcome Mr. Dana Buckles from the Fort Peck Reservation in my home State of Montana. I am looking forward to visiting Fort Peck this next Sunday and bringing Secretary Jewell to Montana to show her the reservation. Thank you all for being here.

Senator Barrasso is on his way and when he gets here we will certainly give him the opportunity for an opening statement. But first I think we will just go right straight to the panel. I would like to welcome our first panel of Federal witnesses. We have Mr. Mike Black, the Director of the Bureau of Indian Affairs at the Department of Interior. Prior to this position, Mike was the Regional Director for the BIA's Great Plains regional office in Aberdeen, South Dakota, which includes North and South Dakota, Nebraska and Iowa. Prior to that, Mike was the Deputy Regional Director for Indian Services in the Bureau's Rocky Mountain regional office in Billings, Montana. Obviously, given his experience, Mike understands the needs of Indian Country.

In addition to Mr. Black, we have Mr. Bob Sparrow, who is the Director of Tribal Transportation Programs for the Federal Highway Administration. Bob has worked for Federal Highways for 18 years and he has overseen the Federal Highways Tribal Transportation Program for the last 10 years. Bob was directly involved in the development of the Federal Highway Tribal Transportation Program agreements.

Welcome, Mr. Black and Mr. Sparrow. Mr. Black, we will start with your testimony. I would just say that your entire testimony, your entire written testimony has been in both cases, and in all cases with these hearings, will be a part of the record. We look forward to your verbal presentation. Mr. Black?

**STATEMENT OF MICHAEL BLACK, DIRECTOR, BUREAU OF  
INDIAN AFFAIRS**

Mr. BLACK. Thank you. Good morning Chairman Tester. Thank you for the opportunity to provide testimony in this oversight hearing on the topic of Tribal Transportation: Pathways to Infrastructure and Economic Development in Indian Country. I am Mike Black, and I am the Director of the Bureau of Indian Affairs.

The Department and BIA remain committed to improving and adequately maintaining transportation systems to provide increased public safety and economic development opportunities to Indian communities. Transportation is a necessity for economic development, health, safety and education in our Native communities.

The BIA and the Federal Highway Administration have 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.

The Surface Transportation Assistance Act of 1982 established the Indian Reservation Roads, or IRR Program, funded within Federal Highways' Federal-aid account. Since the establishment of the IRR Program and its successor, the Tribal Transportation Program, as part of MAP-21, the Transportation Program has been jointly administered by the BIA and the Federal Highways.

The Tribes currently have five options to administer and deliver the Tribal Transportation program: self-determination contracts, self-governance annual funding agreements, Federal Highway programmatic agreements, direct service provided by the BIA, or the most recent option developed by BIA, the BIA program agreement. The BIA program agreement was developed in order to provide tribes an additional option to deliver the Tribal Transportation Program. Since its implementation in 2011, 168 tribes have selected to use the BIA program agreements for administration of the Tribal Transportation Program.

Currently there are approximately 125 self-determination agreements, 151 BIA program agreements covering 168 tribes, 46 self-governance agreements and approximately 119 Federal Highway programmatic agreements. Approximately 83 percent of the tribes are contracting under self-determination, self-governance or Title 23 program agreements. Each contracting agreement is designed to meet specific needs and administrative capacity of each tribe.

The Administration's fiscal year 2015 budget reflects the President's continued commitment to addressing transportation needs in American Indian and Native communities. This budget recognizes that supporting safe and reliable transportation with public road access to and within Indian Country contributes to stronger tribal economies, communities and families.

As we discuss the need for jobs, infrastructure and safety of roads in Indian communities, it is important to note our support for the reauthorization of MAP-21. The most significant impact on the Tribal Transportation Program under MAP-21 is the implementation of the new formula established by Congress and the fact that more funding is available for distribution to tribal sharers

under the new formula. This has allowed for more funding to be directed to tribal priorities.

The new formula also allows for a consistent estimate of allocations in advance for future projects and timely allocation to tribes, because a major portion of the data is known prior to the beginning of the fiscal year.

Although more funding is allocated to tribes for their priorities, certain programs have decreased shares under MAP-21. As an example, the bridge program has decreased significantly from a separate program of \$14 million per year to less than \$9 million per year. However, the bridge set-aside proposed in the 2015 budget would address this concern by providing approximately \$20 million to address critical bridge needs in Indian Country.

Although the MAP-21 formula has addressed the longstanding issue of the competitive formula, there are implementation issues regarding the application of certain data to calculation of tribal shares. As an example, approximately 28 or more tribes do not have a recorded population within the statutorily mandated American Indian and Alaska Native population within each Indian tribe's reservation or statistical area.

We believe the rationale for considering this data was to reflect the relative need due to tribal population of the impacted tribes. But we do not believe it was designed to impact certain tribes without any population based funding. The use of a default minimum or alternative set such as the BIA labor force report, in addition to the NAHASDA based values to make allocations, would help provide some equality to tribes that are currently disadvantaged.

While tribes with zero population as reported in NAHASDA do not receive funding based on population, they do receive some consideration for funding under other elements of the formula, including total eligible road mileage as of 2004 and the ratio of the average of the share of percentage from fiscal years 2005 through 2011, as compared to the amount for all tribes within the respective regions.

Recently recognized tribes and any tribes recognized in the future may receive little or no funding because they do not have a population recorded in the required data base, they do not have any eligible miles and they do not have a history of funding as required by the third element of the formula.

The Bureau of Indian Affairs and the Department are committed to continue working with this Committee and others in Congress to address the transportation needs of Indian Country. Thank you for the opportunity to present testimony on an issue that is an important part of the employment, economic infrastructure and road safety for tribes. I will be happy to answer any questions you may have.

Thank you.

[The prepared testimony of Mr. Black follows:]

PREPARED STATEMENT OF MICHAEL BLACK, DIRECTOR, BUREAU OF INDIAN AFFAIRS

Good morning Chairman Tester, Vice Chairman Barrasso, and members of the Committee. Thank you for inviting the Department of the Interior (Department) to provide testimony at this oversight hearing on the topic of "Tribal Transportation: Pathways to Infrastructure and Economic Development in Indian Country." My

name is Mike Black, and I am the Director of the Bureau of Indian Affairs (BIA) at the Department.

As this Committee is aware, the Department provided testimony before this Committee in the 112th Congress on the topic of “Strengthening Self-Sufficiency: Overcoming Barriers to Economic Development in Native Communities.” We identified that one of the many barriers to economic development in Native Communities was the lack of physical infrastructure. In February 2014, the Administration announced its vision for transportation. The emphasis continues to be promoting job growth in the transportation sector and putting more Americans back to work repairing and modernizing our roads, bridges, railways, and transit systems. This includes the roads and bridges that are constructed, maintained and traversed in Indian Country. We appreciate the recognition in the President’s proposal for the importance of transportation programs to Indian Country. As you will hear in my remarks, transportation is a necessity for economic development, health and safety and education in Indian Country.

The Department and the BIA remain committed to improving and adequately maintaining transportation systems to provide increased public safety and economic development 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 American Indian and Alaska Native communities are critical for economic development in such communities because these transportation networks provide access to other economic markets. I appreciate this opportunity to share with the Committee some of our accomplishments and also our concerns for tribal transportation as we implement MAP-21 and look to reauthorization of this important law.

#### **Overview**

The BIA and the Federal Highway Administration within the Department of Transportation (FHWA) have 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 through the Department of the Interior. During this time, approximately \$1.2 billion was provided for both construction and maintenance of reservation roads.

#### **Tribal Transportation Program**

The Surface Transportation Assistance Act of 1982 established the Indian Reservation Roads (IRR) Program funded within FHWA’s Federal-aid account. Since the establishment of the IRR Program and its successor as part of MAP-21, which is now called the Tribal Transportation Program (TTP), the total Federal construction authorization for Tribal Transportation has exceeded \$8 billion. The TTP is jointly administered by the BIA and the FHWA. These investments have contributed greatly to the improvement of roads and the replacement or rehabilitation of deficient bridges on or near reservations throughout Indian Country.

Today, the National Tribal Transportation Facility Inventory (NTTFI) consists of over 158,000 miles of public roads with multiple owners, including Indian tribes, the BIA, states, and counties, as well as other Federal agencies. Of this amount, approximately 11,500 miles are planned or proposed roads of varying surface types and uses. There remains a great and continuing need to improve the transportation systems throughout Indian Country. We believe Congress has viewed this as a joint responsibility including not only Federal agencies, but state and local governments with transportation investments in or near American Indian and Alaska Native communities, as well. Coordination among all of these stakeholders is required in order to maximize available resources to address transportation needs. Tribes are continuing to invest in transportation projects that are the responsibility of other public authorities. This creates jobs and contributes to the economy of local businesses that provide services and materials. Strengthening existing partnerships will continue to support the local economy and bring improved infrastructure to communities on or near Indian reservations and lands. In all, tribes have planned transportation projects estimated to lead to approximately \$270 million worth of investment in non-BIA and non-Tribal projects over the next 3 years. An investment in tribal transportation is truly an investment in the local economy.

The Bureau of Indian Affairs responded to the 1991 highway legislation, the Intermodal Surface Transportation Equity Act of 1991 (ISTEA), and recognized the importance of our Nation’s transportation infrastructure to recreational travel, tourism and trade, and our ability to compete in the global marketplace. This was an opportunity for BIA and the tribes to participate in the dialog and have a say in the execution of transportation programs. This is important because the opportunity

to develop robust economic growth is closely tied to access to transportation and related infrastructure. The BIA has invested resources toward the development of technical assistance and training for tribal tourism development through the establishment of the American Indian Tourism Conference in 1999 and the American Indian Alaska Native Tourism Association (AIANTA). AIANTA has become a voice for Indian Country to the tourism industry and is successfully helping tribal communities to realize their potential in the global tourism industry. Tribes deserve the ability to provide visitors with reasonable transportation access and safety to their rural homelands and to share their history and culture with the travelling public through transportation enhancements such as context sensitive design, interpretive signage, informational kiosks, and scenic byways. We believe Indian Country tourism is a tremendous asset to America's international tourism competitiveness and a worthy investment.

#### **BIA Road Maintenance**

In partnership with the Department of Transportation, the BIA currently implements both the TTP program, funded by within the Federal-aid account, and the BIA Road Maintenance Program, funded by the Department of the Interior. The BIA Road Maintenance Program has traditionally been responsible for maintaining only roads owned by the BIA. Today, of the 146,000 miles of existing roads in the NTTFI, the BIA has responsibility for approximately 29,500 miles of roads designated as BIA system roads. The BIA receives approximately \$25 million in Tribal Priority Allocation (TPA) funding annually for the administration of the road maintenance program for those roads.

BIA supports self-determination and the empowerment of tribes by contracting out a significant portion of the program with tribes. Approximately 85 percent of tribes with BIA system roads within their reservation boundaries currently carry out the BIA Road Maintenance Program through self-determination contracts or agreements. Approximately 22,200 miles (75 percent) of the BIA system roads are not paved and are considered "inadequate" based on the level of service index used to assess roads and bridges in the BIA road system. The FY 2013 deferred maintenance for BIA roads was estimated at \$280 million.

#### **FY 2015 Budget Request for Tribal Transportation**

The Administration's FY15 budget reflects the President's continued commitment to addressing the transportation needs of Indians and Native Americans. This budget recognizes that supporting safe and reliable transportation and public road access to and within Indian Country contributes to stronger tribal economies, communities and families. Highlights of the FY 2015 budget for the Tribal Transportation Program include:

- Program funding is increased from \$450M to \$507M. The increased amount is targeted toward new and/or increased set-asides.
- The Tribal High Priority Projects Program is integrated back into the core program as a 7 percent set-aside. MAP-21 had authorized this as a separate program funded from the General Fund.
- Increased the tribal planning set-aside from 2 percent to 3 percent to address additional data collection requirements.
- Increased the tribal bridge set-aside from 2 percent to 4 percent to address the growing backlog of tribal bridge needs.

The program structure and funding formula under MAP-21 are retained. The FY 2015 budget also includes a new \$150M program for large, nationally significant projects accessing federal and tribal lands that cannot typically be funded through core funding allocations to tribes or Federal agencies.

#### **Reauthorization of MAP-21**

As we discuss the need for jobs, infrastructure and safety of roads in Indian communities, it is important to note our support for the reauthorization of MAP-21. The most significant impact to the TTP program under MAP-21 is the implementation of the new formula established by Congress. One significant difference is that more funding is available for distribution to tribal shares under the new MAP-21 formula, although the MAP-21 allocation is equal to the amount for the last year of SAFETEA-LU. The formula share of IRR program funds in FY 2011 and 2012 were respectively \$336.7 million and \$322.3 million. The formula share of TTP funds in FY 2013 and FY 2014 were respectively \$387.6 million and \$384.3 million. This has allowed more funding to be directed to tribal priorities. The new formula also allows for a consistent estimate of allocations in advance for future projects and timely al-

location to tribes because a major portion of the data is known prior to beginning of the fiscal year.

Although more funding is allocated to tribes for their priorities, certain programs have decreased shares under MAP-21. The bridge program is decreased significantly from a separate program of \$14 million per year to a set-aside program from within the total amount of less than \$9 million per year. However, the bridge set-aside proposed in the FY 2015 budget would address this concern by providing approximately \$20 million to address critical bridge needs in Indian Country.

In addition, the requirement of the Secretaries of Transportation and Interior to perform safety inspections on all 930 tribally-owned bridges has not been adequately funded. The number of bridges which are deficient or functionally obsolete and are eligible for replacement or rehabilitation for BIA bridges alone in the 2012 National Bridge Inventory is approximately 170 of 930 (or 18.7 percent of the total). The estimated cost of correcting these deficiencies is \$53.2 million. The estimated cost of inspecting the tribally-owned bridges along with the BIA is \$3.0 million every other year.

Although the MAP-21 formula has addressed the long standing issue of competitive formula, there are implementation issues regarding the application of certain data to the calculation of tribal shares. As an example, approximately 28 or more tribes do not have a recorded population within the statutorily mandated American Indian and Alaska Native population within each Indian tribe's American Indian/Alaska Native Reservation or Statistical Area, as computed under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.). We believe the rationale for considering this data was to reflect a relative need due to tribal population of the impacted tribes, but we do not believe it was designed to in effect leave certain tribes without any population-based funding. The use of default minimum or alternate data such as the BIA Labor Force Report in addition to the NAHASDA based values to make allocations would help to provide some equality to tribes that are currently disadvantaged.

While tribes with zero population, as reported in NAHASDA, do not receive funding based on population, they do receive some consideration for funding under the other elements of the formula including total eligible road mileage as of 2004, and the ratio of the average of the share percentage from fiscal years 2005 through 2011 as compared to the amount for all tribes within the BIA Region. Recently-recognized tribes and any tribes recognized in the future may receive little or no funding because they do not have a population recorded in the required database, they will not have any eligible miles, and they do not have a history of funding as required by the third element of the formula.

#### **Conclusion**

The Bureau of Indian Affairs and the Department are committed to working with this Committee and others in Congress to address the transportation needs in Indian Country through our support for the Tribal Transportation Program, the Road Maintenance Program, and other Title 23 USC funding provided for transportation in Indian Country.

Thank you for the opportunity to present testimony on an issue that is an important part of the employment, economic infrastructure and roads safety for tribes. I will be happy to answer any questions you may have.

The CHAIRMAN. Thank you for your testimony, Mr. Black. There will be questions.

Mr. Sparrow, you are up.

#### **STATEMENT OF ROBERT W. SPARROW, DIRECTOR, TRIBAL TRANSPORTATION PROGRAM, FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION**

Mr. SPARROW. Thank you, Chairman Tester. Thank you for the opportunity to testify today to discuss Federal Highways' Tribal Transportation Program and the future of transportation needs of tribes.

At last year's White House Tribal Leaders Conference, Secretary Fox emphasized the Department's commitment to tribal transportation by announcing \$8.6 million in awards to 183 tribes for improving transportation safety on their lands. During that con-

ference, the Secretary also held the DOT Tribal Transportation Listening Session where tribal leaders could discuss their transportation-related issues directly with the leadership of the various DOT administrations. The Department also continues to implement our tribal consultation plan which outlines actions we take when developing, changing and implementing policies, programs, services with tribal implications.

Federal Highway has a long history of supporting tribal governments' rights to self-determination and working directly with tribes in a government-to-government relationship. We meet directly with tribal government elected officials and transportation staff, and I am committed to delivering a transportation program that works for all tribes, no matter their size.

We also continue to seek ways to improve the state of tribal transportation by working directly with tribal governments to improve their technical capacity as well as foster relationship and partnerships between themselves and the local governments, Federal agencies and State DOTs.

Federal Highway continues to implement the Tribal Transportation Program in accordance with MAP-21 and in partnership with the Bureau of Indian Affairs. The Tribal Transportation program serves the 566 federally-recognized tribes and Alaska Native villages in 32 States. It includes similar provisions and eligibility requirements as the former Indian Reservation Roads program and provides \$450 million annually for projects that improve access to or are located within tribal lands.

The TTP funding is distributed according to MAP-21 statutory formula, and that is taking effect over a four-year transitional period. The program seeks to balance transportation mobility and safety goals with the environmental and cultural values of tribal lands.

Since SAFETEA-LU, tribes have been authorized to enter into program funding agreements and work directly with the Federal Highway Administration for the operation of the program. The first four tribes began working directly with Federal Highway in 2006. Today, 119 tribes work directly with Federal Highway.

As the number of tribes working with Federal Highway has increased, we have strengthened our stewardship and oversight role by adding staff and working closely with tribes and the Bureau of Indian Affairs to develop uniform program guidance. To this end, we coordinate annual face to face meetings with each tribe and conduct outreach and training through webinars, regional conferences and organized classes.

We also continue to utilize and update our Tribal Transportation Program manual, which communicates program expectations, roles and responsibilities and best practices for all the tribes, States, counties and Federal agencies to use. The Federal Highways' Every Day Counts Initiative encourages the use of technology and innovation to significantly reduce the time and cost of delivering projects. For tribes, we promote this initiative through our seven tribal transportation assistance program centers by providing information to tribes and assisting them in carrying out their projects. Federal Highway also supports tribal workforce development through these

TTAP centers, which helps improve skills, and increase knowledge of tribal transportation managers.

Moving beyond MAP-21, President Obama recently proposed a budget for the next fiscal year and laid out his vision for the four-year surface transportation authorization to spur further economic growth in sound multi-year investments. This request includes increased funding for the Tribal Transportation Program and two additional programs for particular tribal projects.

Thank you again for this opportunity to testify. I will be pleased to answer any questions that you may have.

[The prepared statement of Mr. Sparrow follows:]

PREPARED STATEMENT OF ROBERT W. SPARROW, DIRECTOR, TRIBAL TRANSPORTATION PROGRAM, FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Chairman Tester, Vice Chairman Barrasso, and Members of the Committee, thank you for the opportunity to testify today to discuss the Federal Highway Administration's (FHWA's) Tribal Transportation Program (TTP) and the future transportation needs of Tribes.

The transportation needs of 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, we cannot always make that assumption. Moreover, tribal communities need good roads to support economic development.

At last year's White House Tribal Leaders Conference, Secretary Foxx emphasized the Department of Transportation's (DOT's) commitment to tribal transportation by announcing \$8.6 million in awards to 183 Tribes for improving transportation safety on their lands. In addition, the Secretary held a DOT Tribal Transportation Listening Session with tribal leaders. This session provided tribal leaders with an opportunity to meet with representatives from each DOT modal administration and provide input on important transportation issues affecting tribal communities. The Department also continues to implement our Tribal Consultation Plan, which outlines actions the Department takes when developing, changing, or implementing policies, programs, or services with tribal implications.

The FHWA has a long history of supporting tribal governments' rights to self-determination and working directly with Tribes in a government-to-government relationship. We meet directly with tribal government elected officials and transportation staff, and are committed to delivering a transportation program that works for all Tribes, no matter their size.

We also continue to seek ways to improve the state of tribal transportation by working directly with tribal governments to improve their technical capacity and to foster partnerships between tribal governments, local governments, Federal agencies, and State DOTs.

#### **The FHWA Tribal Transportation Program**

The current surface transportation law, MAP-21, authorized the TTP. This program, administered by FHWA in partnership with the Bureau of Indian Affairs (BIA), is the largest Federal Lands Highway (FLH) program and is unique due to the relationship with Federally-recognized Indian Tribal Governments under the program. The program serves 566 Federally-recognized Indian Tribes and Alaska Native villages in 32 States. TTP funding can be used to pay the costs of transportation activities and projects such as planning, research, maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of facilities identified on the National Tribal Transportation Facility Inventory (NTTFI).

The TTP includes similar provisions and eligibility requirements as the former Indian Reservation Roads program. The TTP provides \$450 million annually for projects that improve access to and within Tribal lands. The roads, bridges, and trails that are included as part of the TTP system provide access to and within Indian reservations, Indian trust land, restricted Indian land, eligible Indian communities, and Alaska Native villages.

The TTP is critical to supporting the transportation needs on this system. In many cases, it is the only source of funding for transportation improvements. TTP

funding is distributed according to a statutory formula based on tribal population, road mileage, and average funding under the 2005–2009 SAFETEA–LU Act, plus an equity provision, and takes effect over a four-year transitional period. The TTP 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 National Highway Traffic Safety Administration in coordinating transportation programs that focus on planning, safety, and construction of roads and transit services within Indian Country. We also continue to highlight other funding opportunities available to Tribes under MAP–21, such as the Highway Safety Improvement Program, and we stand ready to assist Tribes with permanent and emergency repairs through our Emergency Relief program.

Additionally, we are implementing the dedicated set-aside under TTP for Tribes to address safety issues in Indian Country. As a 2 percent set-aside from the TTP (\$8.6 million in Fiscal Year (FY) 2013), these funds are competitively awarded to Tribes based on an identification and analysis of highway safety issues and opportunities on tribal land. With input from the Tribal Transportation Program Coordinating Committee, we established goals for this funding and issued a Notice of Funding Availability (NOFA) on August 5, 2013. In response, we received more than 240 tribal applications for a total of more than \$27 million in requests. From these applications, DOT awarded \$8.6 million to 183 Tribes. We plan to issue a NOFA for the FY 2014 safety set-aside soon.

#### **FHWA/Tribal TTP Funding Agreements**

Since SAFETEA–LU, Tribes have been authorized to enter into Program Funding Agreements and work directly with FHWA (rather than BIA) for the operation of their program. The first four Tribes began working directly with FHWA in 2006. Today, 119 Tribes work directly with FHWA.

As the number of Tribes working with FHWA has increased, we have strengthened our stewardship and oversight role by adding staff and working closely with the Tribes and BIA to develop uniform program guidance. To this end, we coordinate annual face-to-face meetings with each Tribe and conduct outreach and training through webinars, regional conferences, and organized classes. We also continue to utilize and update our TTP program manual, which communicates program expectations, roles and responsibilities, and best practices for all Tribes, States, counties, and Federal agencies to use.

#### **Transportation Investment Generating Economic Recovery**

From 2009 through 2013, the DOT solicited applications for the Transportation Investment Generating Economic Recovery (TIGER) Grants. During this period, Tribes acting alone or in cooperation with State or local agencies were successful in receiving 13 projects totaling more than \$80 million from this program.

For example, the Eastern Shoshone/Northern Arapaho Tribes of the Wind River Reservation in Wyoming received \$8.23 million in TIGER funds for a project called the 17–Mile Road. The 17–Mile Road was a treacherous and dangerous series of curves. TIGER funds were used to complete reconstruction of this facility and address serious safety concerns. The grant provided incentives to enable contractors to employ over 130 Native workers from the reservation. This project was completed ahead of schedule and under budget through collaborative agreements between the Wind River Indian Reservation, the Wyoming Department of Transportation, and FHWA's Central Federal Lands Highway Division.

Another example of TIGER funds impacting tribal infrastructure can be seen in the Alaska Native Village of St. Michael, which received a \$1 million grant to carry out roadway improvements within the village. The \$10.5 million total project provided reconstruction of 4.39 miles of the streets/boardwalks within the tribal village, improved drainage, and construction of new street access to future housing sites. The project also addressed health and safety issues by providing a dust free surface on the village streets. The project was completed in September 2013.

The call for 2014 TIGER Discretionary Grants is currently underway. As in previous years, DOT will be conducting Tribe-specific webinars during the application process to provide technical assistance to those Tribes that plan to submit applications.

#### **The Every Day Counts Initiative**

FHWA's Every Day Counts (EDC) initiative encourages the use of technology and innovation to significantly reduce the time and costs of delivering projects. For Tribes, we promote this initiative through our Tribal Transportation Assistance Program (TTAP) Centers by providing information to Tribes and assisting them in carrying out their projects.

For example, the Gila River Indian Community, located just south of Phoenix, Arizona, is in the process of replacing a bridge over the Gila River that serves as a major thoroughfare for tribal members and commercial traffic. This project will utilize two EDC initiatives: Construction Manager/General Contractor and prefabricated bridge elements. By combining these initiatives with FHWA's accelerated bridge construction toolkit, it is expected that the new bridge will be constructed in less than half the time of traditional construction methods, thereby saving significant costs and providing the Tribe with a faster resolution to safety issues and increased opportunities for economic development.

#### **Education and Training**

FHWA also supports tribal workforce development through funding provided to the TTAP Centers. The purpose of our TTAP centers is to foster a safe, efficient, and environmentally-sound surface transportation system by improving the skills and increasing the knowledge of tribal transportation managers. They provide access to information, training, and program management enhancements that may not have otherwise been accessible to Tribes. For example, they provide a variety of training and professional development programs, as well as technical publications and training materials related to transportation planning, safety, the environment, infrastructure design, construction and management, and other issues. The centers are a key resource for basic services and help many Tribes become self-sufficient as sovereign nations in transportation delivery.

#### **FY 2015 Budget Request**

Building on the reforms begun through MAP-21, President Obama recently proposed a budget for the next fiscal year and laid out his vision for a four-year surface transportation authorization to spur further economic growth and sound multi-year investments. The budget requests \$507 million for the TTP in FY 2015 (up from the current \$450 million).

The budget requests an increase for two set-asides within the TTP. The first is an increase of the tribal planning set-aside from 2 percent to 3 percent to address additional data collection requirements of performance-based management. The second is an increase of the tribal bridge set-aside from 2 percent to 4 percent from current levels to address the growing backlog of tribal bridge needs.

The budget also requests funding to establish a Tribal High Priority Projects Program through a 7 percent set-aside from the TTP. This program will provide a dedicated funding source to help smaller Tribes by allowing them to apply for funds to help address high-priority transportation concerns within their community, which they cannot address through their regular TTP funding.

The budget also includes a request to establish a Nationally Significant Federal Lands and Tribal Projects Program. This program is proposed at \$150 million annually, and is intended for rehabilitation, construction, or reconstruction of large, nationally-significant transportation infrastructure within or providing access to Federal or Tribal lands. Such large projects generally cannot be advanced within the scope of the existing tribal share distribution of the TTP.

#### **CONCLUSION**

Transportation infrastructure is a critical tool for Tribes to improve the quality of life in their communities by providing safe access to jobs, hospitals, and schools. The challenges are to maintain and improve transportation systems serving Indian lands and Alaska Native villages in order to provide safe and efficient transportation, 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 the Federal Lands and Federal-aid programs.

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

The CHAIRMAN. I want to thank both of you for your testimony. I guess we will start out with a question to both of you. Mr. Black, you can kick it over to Mr. Sparrow if he is the right person to answer and back and forth.

In your testimony, Mr. Sparrow, you talked about Secretary Fox's announcement of \$8.6 million going to 183 tribes. Is that over and above the 6 percent set-aside now, which is about \$27 million? So is that \$8.6 million in addition to the \$27 million?

Mr. SPARROW. No, Senator. The \$8.6 million is actually part of the 2 percent set-aside for safety that comes out of the Tribal Transportation Program.

The CHAIRMAN. So let me understand this. There is 6 percent set-aside from the overall money, the \$450 million which amounts to about \$27 million. And if I am wrong on this or if I am close, let me know. And then there is 2 percent of that \$27 million that is set aside for safety.

Mr. SPARROW. No, sir. There is actually four set-asides off the program of the \$450 million.

The CHAIRMAN. Okay.

Mr. SPARROW. Two percent is for safety, which translates then to about \$9 million authorized. And that is money that the tribes can apply for directly through the program and directly through Federal Highway as opposed to Highway Safety Improvement Programs through the States. And we had a call for projects this last summer and went through the evaluation process and made those announcements and got them together for Secretary Fox.

The emphasis this first go-around was to assist the tribes in developing tribal safety plans, identifying what the needs are. You also have a 2 percent set-aside now that Director Black spoke about for bridges. It used to be a stand-alone program. It is now 2 percent, again, 2 percent of the \$450 million.

You have 2 percent set aside for transportation planning purposes. Again, for carrying out planning activities, collecting data. And then the other set-aside is the 6 percent, which is the set-aside called program management and oversight which are the funds that BIA and Federal Highway use for stewardship and oversight and staffing of the program.

The CHAIRMAN. So of the \$450 million, there is about 12 percent that is set aside for tribes, 2, 2, 2, 6?

Mr. SPARROW. Well, 6 is for BIA and Federal Highway to carry out stewardship and oversight of the program. Off the 450 is 2 for planning, 2 for bridges, 2 for safety.

The CHAIRMAN. And those are all dedicated to Indian tribes?

Mr. SPARROW. Yes, sir.

The CHAIRMAN. Okay. And the 6 percent which is the program management part, just to help me understand it, that goes actually for building roads, then, right?

Mr. BLACK. No, the 6 percent, sir, is for the general oversight and administration of federally inherent responsibilities, Federal Highway and BIA to administer the program and provide services.

The CHAIRMAN. Okay. That is cool. So where does the money come from for building the roads? Where does it come from for building roads? Or is any of this money meant for building roads or rehabbing roads?

Mr. BLACK. Approximately, and Mr. Sparrow can probably answer more accurately than I can, but approximately \$350 million of the total \$450 million, I believe it is. Approximately \$350 million to \$380 million of the total \$450 million goes directly to the tribes for construction, reconstruction and rehabilitation of the roads.

The CHAIRMAN. That is good. And so how many miles of road were built last year with that \$380 million?

Mr. BLACK. I don't have that figure with me, I am sorry. I can get that back to you.

The CHAIRMAN. If you could get the figure on how many miles of road were built, how many miles of road were rehabbed. Actually, go right down the line, the \$9 million that was spent for safety, how was it utilized? Who got the money? Did the tribes get it? How much went to administrative costs?

Here is the point. Quite frankly, we have had these conversations with FEMA, dollars going through the State or with highway dollars, potentially going through BIA, quite frankly. And that is that if we are going to get money on the ground, if we are going to have self-determination and empowerment of tribes, there have to be rules around it, whether it is done through whatever metrics are done, but ultimately what I am going to be looking for is how much of this is being used for administration and how much is actually used for laying pavement down and improving safety and improving roads and improving bridges and going right down the line. So that is what we are looking at.

I don't say that that anybody is doing anything wrong, or has done anything wrong. I just want to find out what is going on, that is all. Because quite frankly, as I said in my opening remarks, I travel on a lot of Native American roads in the State of Montana, because I travel the State a lot. And they are pretty sub-par. In fact, they are pretty bad.

I can give you an example. Heading over about a month and a half ago, over the divide going through Blackfeet, the only road that was not plowed of snow was the road that went through the reservation. The rest of it was all plowed. And it was pretty obvious that there is a difference in management here. I don't know if it is the tribe's fault, I don't know if it is the BIA's fault, I don't know if it is the State of Montana's fault, I don't know if it is the Federal Department of Highway's fault. But something is not being done that should be done. That is all. And it creates some real safety problems.

Vice Chair Barrasso is here. Vice Chair Barrasso, if you have opening remarks, you can certainly make them, or questions, then we will go over to Senator Heitkamp.

**STATEMENT OF HON. JOHN BARRASSO,  
U.S. SENATOR FROM WYOMING**

Senator BARRASSO. Thank you very much, Mr. Chairman. I appreciate your holding this important hearing today. Before we get started, I do want to take a second to welcome Wes Martel and John Smith from the Wind River Reservation in Wyoming. Thank you very much for being here and sharing your thoughts and your ideas. I am looking forward to your testimony.

Both of you gentlemen work very hard to make the Wind River Reservation a safer place to live through the Tribal Transportation Program. So thank you.

I do have a couple of questions, Mr. Chairman, one for Mr. Black, if I could. According to information from the Federal Lands Highway Administration, there are about 25 percent of the Tribal Transportation Program bridges which are considered deficient. On the Wind River Reservation, I think about 19 of the 122 bridges

are deficient. They are required by law to be inspected by the Bureau of Indian Affairs every two years.

Could you give us an update on the status of the most recent inspections?

Mr. BLACK. I apologize, Senator, I don't have those exact numbers with me. But I can sure provide them to you.

Senator BARRASSO. We would appreciate that, if you could get that back to us at the first available, convenient time. Thank you.

Mr. Sparrow, or both witnesses, actually, on October 30, 2013, the Office of the Inspector General released a report on the Federal Highway Administration's oversight of the Tribal Transportation Program. The report noted inefficiencies and duplication between the Department of Interior and the Department of Transportation.

For example, the Inspector General found an inconsistent environmental review process under NEPA, the National Environmental Policy Act, implemented by the departments. Can you tell me what the agencies, both your agencies, are doing to address the findings of this report, including reconciling this environmental review process?

Mr. SPARROW. Thank you, Senator, I will be glad to answer. The Office of the Inspector General report found seven recommendations for improvement of coordination between the Bureau of Indian Affairs and Federal Highway in carrying out the Tribal Transportation Program. One that speaks directly to your immediate issue was updating the memorandum of agreement and our stewardship plan to help deliver a more unified and consistent program across the Country.

Federal Highway and BIA are working closely together and developing what we are calling a national business plan which will replace those two documents. That business plan will identify the roles and responsibilities of both agencies on carrying out the program so that we can more consistently do that regardless of the tribal size or tribal location.

That is well underway. And we plan, or are hoping to have that fully in place by the end of this year.

Senator BARRASSO. Mr. Black, any additional comments?

Mr. BLACK. No, Senator, I don't have anything to add to that, other than the fact that we have developed over the time we have been working with Federal Highway a very good relationship. This is a great opportunity for us to be able to continue that and develop a more uniform program.

Senator BARRASSO. [Presiding.] Thank you.

Senator Heitkamp?

**STATEMENT OF HON. HEIDI HEITKAMP,  
U.S. SENATOR FROM NORTH DAKOTA**

Senator HEITKAMP. Thanks to the Chairman and the Ranking Member. A lot of times, this kind of infrastructure doesn't get a lot of attention until you are at the end of the line and our road isn't plowed and your kids can't get to school. And you see the traffic fatalities, the increased traffic fatalities. I think it is a result of some pretty challenging conditions on all of my reservations, but particularly up at the Mandan, Hidatsa, and Arikira Nation, where

they are experiencing a huge growth in employment and activity, and the roads are pitiful. They are horrible.

And so I just have a couple questions, but Mr. Chairman, I would like to submit additional questions for the record, if that is agreeable.

The Tribal High Priorities Project Program, I think it was provided about \$30 million each year from the general fund, is used to target the most pressing transportation issues in Indian Country. Obviously we think that there are some extreme needs in Fort Berthold, which is Mandan, Hidatsa, and Arikira. If you don't believe me, you might want to talk to Ken Hall, who is here from the tribal council, watching these proceedings.

Can you tell me, and Fort Berthold has some unique challenges, because not only do we have this incredible growth as a result of the Bakken, we had major flooding in 2011, which literally made the reservation a transportation island. Can you tell me about the criteria for this high priority program and whether any of the situations, especially in Mandan, Hidatsa, and Arikira Nation, have an opportunity to qualify for that program? Mr. Black?

Mr. BLACK. I will go first, then Mr. Sparrow can add to this. I have had the experience of traveling those roads in Fort Berthold a number of times personally. I can share the pain, I know exactly what the conditions are.

There are so many different challenges in meeting that. But to address the high priority program that you are talking about, under the previous transportation act, we did have a high priority program project identified in there, and it was a 2 percent set-aside, I believe.

Mr. SPARROW. It turned out to be a little bit more than that.

Mr. BLACK. A little bit more than that. Now, under MAP-21 it was authorized but it was never funded. So there is no program under MAP-21 currently for the high priority projects. So under the proposal there is going to be hopefully a funding mechanism under the new transportation act that we can address those concerns.

Senator HEITKAMP. And it would be very much appreciated to have clear and concise standards, so that we know when we are applying for those priority dollars that we have an opportunity to be successful.

Mr. Sparrow, I have a quick question for you. Under MAP-21, the Tribal Transportation Program is provided about \$450 million in fiscal years 2014 and 2013. Under the allocations provided by the Highway Trust Fund, this amount accounts for slightly greater than 1 percent, 1 percent of overall highway funding.

Given the great need in Indian Country to improve the quality of roads and the continuing pressure to maintain and improve transportation infrastructure, do you think that is an adequate or appropriate amount of money from the highway funds, and what steps should we take to improve access to those dollars?

Mr. SPARROW. Senator, thank you for the question. The Administration has recognized the importance of the program. And in the fiscal year 2015 budget that President Obama submitted, it did propose an increase in the program from \$450 million to \$507 million.

Senator HEITKAMP. That is one mile of road in North Dakota these days.

Mr. SPARROW. But beyond that, the Administration will be submitting reauthorization language and proposal beyond fiscal year 2015 budget in the coming months. At that time, working with Congress to answer the question.

Senator HEITKAMP. I just want to make the point, and I don't mean to point fingers, but I was talking to the chairman up at Spirit Lake. These issues came up. To the chairman's observation, you would drive down a township road and all of a sudden the road wasn't plowed, and the road wasn't plowed because the township supervisors decided those were, the people on the other end of that road were Native American people and that must be the responsibility of the tribes.

So we know we need to do a better job coordinating with State and local, county, and township authorities, especially when we have reservations with a lot of in-holdings and a lot of not understanding. But we also need the Federal Government to step up and to make a commitment, particularly in Indian Country, which is, I think, a primary responsibility. Many of these tribes cannot afford to provide that quality transportation. And as a result what happens is kids don't get to school and mail doesn't get delivered and people can't get groceries and people get more and more isolated and law enforcement can't attend to their business.

So not having these conduits has real consequences in Indian Country. I would just impress upon you and the Administration that this is the primary responsibility and we need to figure out how we are going to expand capacity.

The CHAIRMAN. [Presiding.] Thank you, Senator Heitkamp.

I was going to save this until the end, but I think I will say it now. I think folks in the agencies, whether it is BIA or Department of Transportation, need to look upon this Committee as the Committee that can help empower you to do your job. And if we know the issues that are out there and you can tell us where the gaps are or where money is being spent that may be better spent somewhere else, I think we can certainly help with your effectiveness and government efficiency in general. I think that is whether it is on the Republican side of the aisle or the Democratic side of the aisle, whether it is the ranking member, me or anybody else on this Committee, I think we all want to see things work.

In your testimony, Mr. Black, you state that there is deferred maintenance needed, about \$280 million, which is probably about the way it is just about everywhere. Yet your budget request annually is between \$20 million and \$25 million in the maintenance issue. That barely keeps up with inflation, much less takes care of the problem. Could you address that?

Mr. BLACK. I would be happy to, sir. Without trying to get up on my soap box here, just for information purposes, I did serve as a regional road engineer for the Rocky Mountain region for a couple of years as well. So I am pretty well experienced in the issues in Montana as well as South Dakota and other areas of the Country.

The road maintenance budget has been something that has basically remained steady for almost 20 years, up around \$20 million and \$25 million a year. We have deferred maintenance of approxi-

mately \$280 million. Yet as you and the folks from the Plains areas and the Dakotas know well, this is also used to remove snow and ice. So by the time we get to March and April, oftentimes the tribes' road maintenance budgets are expended and we cannot even begin to address the \$280 million.

Now, there are provisions in the Transportation Act that allow tribes to use up to 25 percent of their highway construction dollars and apply those toward maintenance. But there again, that is kind of a catch-22, because you can run into the situation where we are taking way from that need for construction and applying that to the serious need for maintenance.

So it is a challenge we have been facing for many years.

The CHAIRMAN. So here is the question that leads on to that question, and you did good. The question is, you know the issues and you know the challenges and you know how the money is spent. Who is advocating to get that number up so it is a more reasonable figure? This is the President's budget numbers.

Mr. BLACK. Well, the Department is advocating for it, but there again, we are always competing against other interests. With the road maintenance program, we do work with the tribes in setting priorities for the budget. There again, tribes have priorities and we are working with them to try and understand the issues that are out there, make sure everybody is on board as to what is most important in Indian Country at this time.

The CHAIRMAN. Okay. So tell me how this works. You have a line item in your budget that has been static for 20 years, you understand that it is used for removal of snow, and by the time they get done removing snow there is not a heck of a lot left for maintenance. You know that there is \$280 million maintenance problem out there, deferred maintenance problem out there. Is it you that advocates for the budget increase or is it somebody else?

Mr. BLACK. I definitely advocate for it. But then again it is a matter of working within the budgets that we have and also looking at other opportunities. North Dakota is a good example, where in some instances we are working with the companies that are out there doing development in order to provide additional funds. Working with the State and county. Because a lot of times, when you are talking road maintenance issues, a lot of the roads and stuff that serve our reservations are State and county roads. So it is a matter of working with them as well to ensure that we have proper maintenance for the roads that we have.

The CHAIRMAN. Okay. Well, I would just say that I think this is, I don't think there is anybody out there that thinks from 1994 we can do the same amount with the same amount of dollars we have now to get the job done. I would hope that there is a lot of fist-pounding on the table by you to make sure that these budget numbers are up. Because quite frankly, we are going to have to look at some way to bump these numbers up, that is pretty obvious to me, if we are going to address the needs that are out there. Or the infrastructure will go to pot, because if it isn't maintained, it deteriorates pretty fast. You know that.

I want to talk just a little bit with you, Mr. Black, about the administrative costs. There is about \$27 million of that \$450 million that is used for admin costs. That is 6 percent, which is what the

law allows. How do you determine, do you just take the 6 percent as a matter of fact, since it is allowed by the law? Or is there a reason, is there justification for that \$27 million? Now I am going on the other side of the equation, and that is that, do we really need the money that is there?

Mr. BLACK. Sir, I would say yes, we do. And I can provide you better justification.

The CHAIRMAN. Let me ask you this, let's say we bump that. Let's say we bump that program up to \$600 million. Would you still need the 6 percent?

Mr. BLACK. I think that would take some evaluation. But there again, if we bump it up to \$600 million, depending upon what the scope of that is, what programs could get added here, what the implementation of this new safety program, the 2 percent set-aside under MAP-21, that does create certain additional workloads for our staff out there. The inventory management, bridge inspections under MAP-21 did require that we also, in addition to inspecting all of the BIA-owned bridges, we inspect all of the tribally-owned bridges, which added about 220 bridges to the inventory that we have to inspect biannually.

So a lot of those costs need to get covered out of that 6 percent.

The CHAIRMAN. Just for our information, do you have an inventory of the bridges in Indian Country and what condition they are in?

Mr. BLACK. Yes, sir.

The CHAIRMAN. And those are redone how often?

Mr. BLACK. Biannually, ever two years we are required to inspect them.

The CHAIRMAN. Can you give me any idea on what percentage of the bridges are ready to fall down?

Mr. BLACK. I have something here somewhere. I can provide it back to you, without sitting here wasting time looking through my paperwork.

The CHAIRMAN. I have run out my clock. We can get back on that. Senator Heitkamp?

Senator HEITKAMP. Not to belabor the Chairman's point, but who do we need to talk to? I know you understand the problems, you actually have been out there on the roads. But we constantly have members from the Administration come in and talk about the needs and talk about under-serving, and acknowledge the problems. But yet, when they see the budget request, anyone would say, this is an Administration that is satisfied with the numbers that are going into Indian health, satisfied with the numbers that are going into transportation, satisfied with the numbers that are going into Indian housing, because there isn't any increased request. And that is enormously frustrating, because I think that it hides the magnitude of the problems.

So I guess my question is, I have no doubt that within your sphere, you are fighting for every dollar that you get and you have to be the good soldier and come down here and support what the Administration requests. But we need to have an understanding that we need to know what the actual needs are. When we hear the problems and then we see the budget, there is a complete dis-

connect between that understanding of the magnitude of the problems and the willingness to step up and take responsibility to help solve them and look creatively at very many kinds of strategies that could make a difference, whether it is mandating, well, I shouldn't say mandating, but having a dialogue with governors and highway commissioners about how we are going to treat this properties. You have a great relationship with governors and your highway commissioners, DOT does. So how do we get this done?

I guess the one message I would like you to take back is, look, we aren't going to be satisfied with a discussion about the great needs and then look at the commitment in dollars in budgets. Let us say no, but be honest about what you need in order to provide just basic human conditions. And that includes transportation.

The CHAIRMAN. We will help you. It is all good.

Mr. BLACK. I understand. I would be happy to work with you.

Senator HEITKAMP. I think he gets it.

The CHAIRMAN. Yes, we have had the conversation with IHS in particular, and that is that if we don't have folks that are pounding on the table saying, we have to have these dollars, how can things change. Because it hasn't been a very effective program. And I think, by the way, if that is done more then the BIA comes up in stature as far as your effectiveness, which I think is something I look forward to. It is good, because there are good people in the Department. You are one of them. So thank you.

Mr. Sparrow, I do not want to let you get off scot-free here. The Department of Transportation Inspector General report issued in October cites inconsistencies and often ineffective communication by the BIA and the Federal Land Highways hampered partly by an outdated MOA and stewardship plan. In the Federal Land Highway official response to the IG audit, Administrator and Acting Secretary Mendez stated that a jointly-developed national business plan replacing the stewardship plan will be completed by April 2014. If my math is right, that is next month. How is that coming along?

Mr. SPARROW. Senator, it is coming along very well. Actually, right after the OIG made their presentation, and actually before that, BIA and Federal Highway officials got together and, recognizing this fact, have put teams together to develop what we are calling this national business plan, which will identify the roles and responsibilities and basically can help us more consistently deliver the program across the Country.

Those teams have been working hard since late summer of last year, and the draft is actually due very soon to my office. We look forward to getting that completed and actually finalized through the process before the end of the year.

The CHAIRMAN. So is it coming out next month?

Mr. SPARROW. The draft is coming to me next month.

The CHAIRMAN. Okay. So it will be for public consumption by the end of the year?

Mr. SPARROW. Yes, sir.

The CHAIRMAN. Is that okay?

Mr. SPARROW. It is quite complicated, with everything that we are trying to do. The main focus here is that we are working closely

with the BIA to make sure that we get that consistency into the delivery of the program, and do the process right.

The CHAIRMAN. I appreciate that, although I would tell you that if folks put up goals, missing it by eight months, that is not particularly good in my book.

Mr. SPARROW. Yes, sir.

The CHAIRMAN. The bottom line, Mr. Sparrow, I go to bat for government workers every day, because I think you do a hell of a job. I do. But by the same token, there has got to be accountability too.

So motor crashes are the leading cause of death among Native Americans. The figures are sometimes two to three times above the national average. Seat belt use among Native Americans who are involved in highway fatalities, as you can guess, is far below national average. Behavioral issues, unsafe roads contribute to unacceptable highway facilities among Native Americans. These are just facts.

Is there anything else the Federal Government can do, Mr. Sparrow, to help tribes make reservations and Native American communities safer?

Mr. SPARROW. Senator, we have been conducting some tribal safety seminars across the Country to try to get the education out to the tribes. The 2 percent safety set-aside off the Tribal Transportation Program itself that Secretary Fox made the announcements last November is helping a significant number of tribes develop these tribal safety plans which will identify the needs in Indian Country.

Most importantly, that safety plan also will help them to gather data which makes them eligible then for other programs and working with the State, with the Highway Safety Improvement Program, which is State-controlled, but that is data-driven. So helping the tribes gather the data and develop these plans ultimately will help them become eligible for applying for other safety programs to address this need.

The CHAIRMAN. Thank you.

Senator Heitkamp, did you have any further questions?

Senator HEITKAMP. No, thank you, Mr. Chairman.

The CHAIRMAN. I will submit some further questions for the record. I appreciate your testimony today. I appreciate your straight answers, straight up. I appreciate that a lot. And I want to thank you for being here and thank you for the jobs you do. They are very important to Indian Country, make no mistake about that. And very important to the Country as a whole.

So thank you very much. We will bring the next panel up. I want to welcome our second panel as we convert from panel one to panel two. We have three witnesses on our second panel. As I mentioned earlier, we are joined by the Honorable Dana Buckles, who is a Tribal Executive Board Member for the Assiniboine and Sioux Tribes of the Fort Peck Reservation. He also serves as vice chairman of the tribe's health and human services committee, and their law and justice committee.

Then we will hear from Wes Martel, a member of the Joint Business Council of the Eastern Shoshone and Northern Arapahoe Tribes of the Wind River Indian Reservation in Fort Washakie,

Wyoming. He is accompanied by Mr. John Smith, who is the Director of Transportation, Department of the Wind River Reservation.

And finally, we are joined by the Honorable Edward Thomas, the President of the Central Council of the Tlingit and Haida Indian Tribes of Alaska, from Juneau, Alaska. President Thomas is responsible for overall administration of all operations of the tribes, representing more than 28,000 worldwide. I want to acknowledge that President Thomas is retiring next month, after almost 30 years of service to your people. I thank you for your service to your people and to all of Indian Country.

Councilman Buckles, we will begin with your testimony. As with the previous panel, and with all panels, your entire written testimony will be a part of the record. If you can keep your comments to five minutes, it would be much appreciated. Go ahead.

**STATEMENT OF HON. DANA BUCKLES, TRIBAL EXECUTIVE BOARD MEMBER, ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION**

Mr. BUCKLES. Good morning, Chairman Tester, Vice Chairman Barrasso and members of the Committee. My name is Dana Buckles. I am a member of the Fort Peck Tribal Executive Board.

I am pleased to present testimony today on behalf of the Assiniboine and Sioux Tribes concerning tribal transportation. Chairman Stafne and the Executive Board send you their warm greetings.

As I noted in my written testimony, my background is in health, so I want to discuss tribal transportation from that perspective. As a critical Federal investment, not only in our reservation infrastructure, but also in an investment in Native people, a well-maintained road in Indian Country is a tangible expression of our Federal trust responsibility which helps empower tribal governments to protect Native people.

I want to offer a few reasons why increasing appropriations for Federal transportation programs for Indian tribes is so important. First, motor vehicle crashes are the leading cause of death among Native Americans ages 1 to 34 and third leading cause of death overall. Over the last 15 years, nine of our members lost their lives and 43 were injured in 33 separate motor vehicle crashes on BIA Route 1 and the road below Highway 2 that goes from the Big Muddy in the eastern portion of the reservation to Wyota on the western edge of our reservation.

The Montana Department of Transportation found that the Native American fatalities in motor vehicle crashes are two to three times what they should be, based on our population.

Poorly maintained roads, roads that were not built to modern design standards, are not safe roads. Most Indian roads are rural roads. All these factors combine together with behavioral issues such as no seat belt use and drinking and driving to make tribal roads unsafe. Only sustained Federal and tribal involvement can alter this condition.

I am pleased to inform you that the Fort Peck has secured \$13,000 in highway safety grants, which we will spend this year to make improvements in our route from Box Elder to Blair, to the intersection at U.S. 2 and the Poplar Road and to restrict 26 miles of BIA routes on the reservation, making a public service an-

nouncement about highway safety and updating our highway safety plan.

If the Federal Government can set transportation infrastructure and highway safety goals in our next highway bill and reduce Native American fatalities and serious injuries from motor vehicle crashes, tribes will have more IHS and tribal dollars to engage in preventive health care, which in turn will keep our communities healthier. That would be a big dividend for Indian Country.

Second, at its core, the Tribal Transportation Program, MAP-21, is a jobs bill. It puts our members to work at the local level. There is great pride in having a job and bringing home a paycheck. A family of a wage earner promotes healthier Native families because they put healthy food on the table and maintain a stable home. With our tribal share of our Federal transportation dollars, we hire close to three dozen individuals to build our roads in the seven month construction season.

Wage earner also put money into our reservation economy: shopping for groceries, buying gas and clothes, frequenting our businesses, which grows jobs on our reservation. They pass on good work habits to the next generation. This is how to promote stable communities.

Third, a predictable, long-term increasing tribal transportation and tribal transit program communicates to outsiders that the Fort Peck Reservation is open for business. It gives us the resources we need to reconstruct and maintain existing routes and plan and build new routes. The Fort Peck tribes are very concerned about the inadequate state of our road infrastructure, especially in light of the explosive growth we see at the Bakken and Three Forks oil formations. Our 2.1 million acre reservation lies within the western part of the Williston Basin. We are too familiar with the impacts being experienced by the Fort Berthold Reservation in North Dakota: paved roads turn into gravel, unsafe truckers driving too fast, illegal dumping leads to increased motor vehicle crashes and increased fatalities among tribal members.

Chairman Tester, the Fort Peck Tribes support the efforts of the Tribal Transportation Unity Caucus in seeking comprehensive consensus changes to our Tribal Transportation Program. But we want to be clear, we support existing funding for the program and we support the consensus changes as a package. So Fort Peck tribes urge the Committee to champion investment in Native communities through increases of our Tribal Transportation to \$800 million as well as increases for the tribal transit and safety programs.

Since fiscal year 2009, the funding has not increased for the Tribal Transportation Program. In fact, it went down.

I urge the Committee to share a draft Tribal Transportation bill with the Senate committees of jurisdiction and urge them wisely to invest in Indian Country and help strengthen tribal governments and our members. Thank you.

[The prepared statement of Mr. Buckles follows:]

PREPARED STATEMENT OF HON. DANA BUCKLES, TRIBAL EXECUTIVE BOARD MEMBER,  
ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION

**I. Introduction**

My name is Dana “Sam” Buckles, and I serve as a member of the Fort Peck Tribal Executive Board, the governing body of the Assiniboine and Sioux Tribes of the Fort Peck Reservation. Tribal Chairman A.T. Stafne and my fellow Tribal Executive Board members send their best wishes and thanks to Chairman Tester and the Senate Indian Affairs Committee for holding this important oversight hearing on Tribal Transportation as a pathway to infrastructure and economic development in Indian Country. Thank you for inviting the Fort Peck Tribes to testify. I am pleased to be here today to share my testimony.

The vast majority of my career has been committed to public service to my Tribal community. Prior to my tenure on the Tribal Executive Board, I spent over 20 years working in the health and human services field for the Fort Peck Tribal Health Program. Through that experience I am keenly aware of the health disparity that exists on the Fort Peck Reservation—a disparity that extends throughout all of Indian Country. Nationally, Indians continue to rank at the bottom of every social and economic indicator regarding rates of diabetes, heart disease and cancer; infant mortality; life expectancy; chemical dependency; suicide; unemployment; and income, to name a few. Unfortunately, the leading cause of death among all Americans, especially Native Americans, is motor vehicle crashes. As the Montana Department of Transportation (MDOT) noted in its Comprehensive Highway Safety Plan a few years ago, motor vehicle crashes disproportionately strike Native Americans, including our youth, our most precious resource.

In its 2010 safety plan, MDOT noted that while Native Americans comprise 6.5 percent of the State’s population, we accounted for 14–20 percent of the State’s traffic fatalities which are more than two to three times the rate it should be. From 2005–2009, MDOT estimated that 68 percent of Native American fatalities had behavioral-based causes and 87 percent of Native American fatalities were not wearing seat belts. On our reservation, over the last 15 years on BIA Route 1 there have been nine fatalities and 43 injuries in 33 motor vehicle crashes involving our members. These are the “reported” motor vehicle crashes in Indian country. Far too many crashes go unreported. Without the data, we are all blind.

Sadly, these conditions are a direct result of federal policies over the last two centuries, and in particular, the federal government’s failure to invest in infrastructure and economic development in Indian Country. Funding for the Tribal Transportation Program—\$450 million for 566 Federally recognized Indian tribes—has not increased since FY 2009, and in fact went down under MAP–21 as the Tribal bridge program was folded into the allocation formula, Congress terminated the Public Lands Highway Discretionary Grant Program and elected not to appropriate a single dollar for the Tribal High Priority Project Program.

Tribal governments are capable transportation providers when given the adequate resources. The American Recovery and Reinvestment Act (ARRA) demonstrated our capacity to quickly utilize transportation construction and road maintenance funding to address the backlog of transportation projects. Indian tribes are in the best position, as the local government, to tackle long-term economic development, public safety, education, health care and housing needs provided we have basic infrastructure to support our communities, including safe and modern designed transportation systems.

Empowering and strengthening Tribal governments and protecting the well being of our members fulfill the Federal Government’s unique trust responsibility to the Indian nations. To rectify the economic and physical barriers that hinder so many aspects of Reservation life, we urge the Indian Affairs Committee to enact a long-term bill highway bill that provides financial predictability and certainty which ensures the Highway Trust Fund (HTF) until a politically viable substitute is in place and with sufficient funding for Indian tribes based on our well-documented transportation infrastructure needs. We request that any such legislation include the following key elements which we request you support and convey to the Senate committees charged with drafting the next highway bill:

1. *Tribal Transportation Program (TTP)*—Increase annual funding to \$800 million in FY 2015 and include stepped increases of \$50 million per year thereafter;
2. *Tribal Transit Program*—Increase the existing Tribal transit formula amount to \$35 million for FY 2014 with annual increases of \$5 million, and increase discretionary funding to \$10 million in FY 2015 with annual growth of \$5 million;

3. *Tribal Highway Safety Set-Aside*—Establish a 2 percent direct Tribal funding set-aside from the Highway Safety Improvement Program and increase the NHTSA Tribal Safety Program set-aside to 3.5 percent to reduce the unacceptably high incidence of motor vehicle fatalities among Native Americans;
4. *Obligation Limitation Deduction*—Restore the exemption that once existed for the Obligation Limitation deduction that removes tens of millions of dollars from the TTP;
5. *Federal-Aid Program*—Ease the transfer of Federal-Aid funds from State Departments of Transportation (State DOTs) to Tribes by allowing BIA or the FHWA to award State-administered federal-aid funds to tribes under existing federal agreements;
6. *Tribal Eligibility for All Federal Grants*—Ensure Tribal eligibility as a direct recipient for all U.S. Department of Transportation discretionary and competitive grants.
7. *ERFO*—Improve the speed and efficiency of getting ERFO funds to tribal governments for emergency use;
8. *Tribal Asset Management Program*—Establish a tribal Asset Management Program at \$50 million in FY 2015 with annual increases of \$5 million for BIA and Tribally-owned transportation facilities;
9. *Unused Obligation Authority*—Redistribute 10 percent of unused obligation authority for the TTP to fund competitive grants to remotely located tribes and restore HTF allocations for the Tribal High Priority Project Program; and
10. *BIA Right-of-Way Management*—Direct the BIA to update and computerize rights-of-way documentation, support tribal “corridor management” practices and authorize \$10 million to cover implementation and any trespass damages for unrecorded or improperly recorded BIA rights-of-way over Indian lands.

## II. The Opportunities and Challenges of Economic Development on the Fort Peck Reservation

### A. Safety Concerns

The Fort Peck Reservation encompasses 2.1 million acres—over two thousand square miles—in remote northeastern Montana. The Assiniboine and Sioux Tribes and individual Indian allottees own about 1 million acres of land on the Reservation. Nearly 10,000 residents live on the Reservation with roughly two-thirds of them Tribal members and non-member Indians.

The Tribes are responsible for the repair and reconstruction of nearly 400 miles of BIA system and Tribally-owned transportation facilities on the Reservation. Governments that have a taxable base have the resources to properly maintain and reconstruct transportation facilities. We do not have these resources. Our transportation infrastructure badly shows its age and what we do reconstruct we must replace far sooner than if we had the resources, equipment and labor to properly and routinely maintain it.

Our existing formula allocation does not permit us to plan, design and build new routes that must be built and maintain our existing inventory of transportation facilities. While the prospect of economic development from the Bakken and Three Forks oil formations is exciting, our infrastructure is woefully unprepared and we are concerned about safety.

The Fort Peck Reservation lies within the western part of the Williston Basin, which includes many oil producing formations, including the Bakken and Three Forks. As you know the horizontal drilling techniques and hydraulic fracture stimulation or more commonly “fracking,” have brought about unprecedented oil development in the Bakken and Three Forks immediately adjacent to our Reservation in western North Dakota and eastern Montana. As the closest neighbors to this development, our substandard infrastructure—particularly our roads—has come under significant stress, without any accompanying income from development.

Rail, truck and motor vehicle traffic has increased across the Reservation at alarming rates moving oil, people, development related products such as frac sand and pipe, in and out of the Bakken. However, the Reservation road system was not designed to handle the heavy traffic that is now the norm. Other than U.S. Highway No. 2, a federal-aid highway that runs along the southern boundary of the Reservation, the roads on our Reservation were built to accommodate passenger and agriculture transportation. These roads were meant for two-ton grain trucks and school buses. They were not designed to handle tractor-trailer combinations.

### *B. Inadequate Road Maintenance Funding Undermines Tribal Growth*

U.S. Highway No. 2 has served as the primary artery for travel between all of the major Reservation communities. However, as most direct route to the Bakken from the west, Highway 2 is now congested and dangerous even as it passes through our Reservation, one of the most sparsely populated regions of the country. This phenomenon has introduced yet another serious health and safety concern to our Reservation community. Moreover, the on-going need for maintenance on Highway 2 has forced traffic onto Tribal roadway and transit systems. If all of our \$533,138 allocated by the BIA for Road Maintenance were put to our inventory of roads, it would total less than \$1,350 per road mile. With staff, equipment, sand, salt and gasoline, it is well below that level. Even with our “repurposing” Tribal Transportation Program (TTP) construction dollars for road maintenance needs, as is permitted under MAP-21, we do not have the resources to properly maintain our routes. If routes are not routinely maintained in Montana, they deteriorate far faster than would otherwise be the case.

Our biggest maintenance expense is snow removal which occupies us from November through March. Road maintenance is an essential public safety service, especially in rural, remote Indian reservations where first responders and trauma centers are few and far between. If our roads are not well maintained, they contribute to the high incidence of motor vehicle crashes, fatalities and serious injuries among our members and other Reservation residents. This taxes our IHS funds to treat victims of motor vehicle crashes, both short-term and long-term health care needs.

Over the years many groups have advocated for the enhancement of Highway 2 across the northern plains as popularized by the 4 for 2 campaign. While we continue to support those efforts, we recognize that even if conditions existed to fund such a significant project it would not alleviate the current problems for many years.

The BIA Road Maintenance Program, funded at about \$25 million for roughly 30 years, is the leaky bucket which undermines every national and tribal goal for Indian country. Without routine road maintenance, our routes deteriorate far sooner than would otherwise be the case. Poorly maintained routes undermine our efforts to improve economic development, public safety, health care, and education. We encourage the Committee to urge the Interior Department and the Office of Management and Budget to support an annual budget of \$150 million for the BIA Road Maintenance Program to protect the public as well as the public’s investment in transportation infrastructure.

### **III. Addressing Crumbling Infrastructure and Struggling Economy Through Tribal Transportation**

First, the statutory formula for allocating money to the Tribes through Map-21 as introduced by Senator Baucus and his co-sponsors should be included in any reauthorization of a new Highway Bill. While it is difficult to arrive at a funding formula that provides fairness across the diversity of Indian Country, we believe this proposed formula adequately protects large, rural tribes like Fort Peck, while considering the needs of smaller tribes as well.

Second, we join our partners in Tribal Transportation Unity Caucus and the Rocky Mountain Transportation Planners Association in urging Congress to enact a new surface transportation bill—the Tribal Transportation Unity Act—to address tribal transportation system needs. The proposed legislation, a summary of which we included above, recognizes the capacity of Tribal Nations to deliver transportation services to Tribal membership and the public. While we support the Tribal Transportation Unity Act as developed and agreed upon last month in Denver, Colorado, our support for a guaranteed minimum funding amount of \$75,000 for small Indian tribes is expressly conditioned on the TTP Program growing sufficiently to ensure that such minimum funding level is not at the expense of large land-based tribes such as the Fort Peck Tribes. In our view, the TTP formula funding levels must be determined by considering roads, land and population. We endorse the entire package and therefore increased funding levels.

With the Tribal shares of TTP funding we receive, we hire approximately 27–30 individuals each construction season for roughly seven months. This employs members locally, who can support their families and contribute to the local economy.

With our construction dollars, we have successfully completed North Park Road, a 3.2 mile reconstruction project, replacing three large culverts, gravel, paving and chip sealing. We completed 8.4 miles of overlay-chip seal on various routes on the Reservation. We completed South Wolf Point Street, a 4 mile project of milling, leveling and overlay and we began construction of the Veterans Memorial with Montana Community Transportation Enhancement Program (CTEP) funds. We also

started construction on the Detention Center Parking lot and George Washington Roads project. These projects will be paved this calendar year.

In 2014, we are also undertaking the phased construction of the 30 mile Wolf Point—Wiota project over three years. The first phase of the project will replace two metal culverts with two box culverts and mill overlay. In addition, we are undertaking a bike path/pedestrian walkway from the Airport housing addition and crossing Highway 2 to the convenience store using CTEP funds. We are also planning to construct a frontage road for a new Wellness Center being built.

This year, we received approximately \$413,000 in safety grant funding. With these funds we will restripe 26 miles of BIA routes, make road improvements to Box Elder to Blair, prepare Public Service Announcements (PSAs), and update our Tribal highway safety plan.

More than a generation ago, when this Committee was considering important changes to the Indian Self-Determination and Education Assistance Act, the Committee noted the challenges faced primarily by rural Indian tribes, especially the challenges of basic governmental infrastructure, such as roads. I cannot think of a more tangible expression of governmental services than building and maintaining roads, bridges and transit systems that connect communities, generate jobs and protect Tribal and non-member residents every day. Transportation infrastructure is our foundation for a better tomorrow. On behalf of the Assiniboine & Sioux Tribes, I thank you Mr. Chairman and this entire Committee for all you have done for us and for all Indian tribes. I urge you to share our transportation legislative requests with the rest of the Senate. If enacted, the next highway bill will give us the tools we need in the 21st Century to not only survive, but to thrive and build our own successes.

I thank the Committee for the opportunity to present this testimony.

The CHAIRMAN. I certainly appreciate your testimony. And I appreciate your making the long haul to Washington, D.C. and tell the chairman hello.

Wes Martel, you are up.

**STATEMENT OF HON. WES MARTEL, MEMBER, JOINT BUSINESS COUNCIL OF THE EASTERN SHOSHONE AND NORTHERN ARAPAHO TRIBES OF THE WIND RIVER INDIAN RESERVATION; ACCOMPANIED BY JOHN SMITH, DIRECTOR, TRANSPORTATION DEPARTMENT**

Mr. MARTEL. Mr. Chairman, thank you for this time.

While I do have a prepared statement, I would rather just come and have an open dialogue. I will summarize some of the points in my statement.

But I would like to yield a little bit of my precious time to Mr. Smith on a couple of important issues, as he is our transportation director.

First of all, on behalf of the Eastern Shoshone Business Council Chairman Darwin St. Clair and Northern Arapaho Business Council Chairman Darrell O'Neal, I would like to thank you for this opportunity to provide testimony at this hearing. I was really gratified to hear the questions and the opening remarks. Because it really demonstrates the awareness that you and your staff have of the problems that we face in Indian Country. And your comment, Mr. Chairman, to help improve the effectiveness of the BIA was music to my ears. That is really an area that needs a lot of attention from what we are dealing with.

We are very proud of our successes on the Wind River Reservation. We have just completed an \$18 million reconstruction and safety renovation project of what is known as the Seventeen Mile Road. I have a CD here for you, Mr. Chairman, we presented one

to Senator Barrasso a few weeks back, on how that project worked. It was probably the most road in Wyoming. And we were able to work together with WYDOT, Federal Highway, BIA and the Shoshone and Arapaho Tribes and put together a road that is so nice to drive on, nice, safe, very modern, very wide road that took a lot of our lives and claimed a lot of our people and hurt a lot of our people. So we are very proud of that project. I was just telling the Federal officials here this morning, despite all the trials and tribulations we go through, there are still some positive things happening, even though we are severely underfunded and the bureaucracy at times is a hindrance to moving fast on some of these projects.

The Federal Lands highway program and the Indian Reservation Roads program represent for us a major avenue through which the United States Government fulfills its treaty obligations and honors its trust responsibilities. The biggest problem that we have, and I am sure glad to hear the comments about that this morning, is a lack of funding. It was unfortunate that MAP-21 did not increase the authorization for the Tribal Transportation Program from what it had been under SAFETEA-LU, which was only \$450 million a year. I was glad to hear your questions related to the take-downs and how that detracts and de-funds important roads construction projects.

In my testimony, I have discussed how underfunded the TTP really is. Yesterday I talked to officials at the department of Transportation to get the latest numbers. They indicate we have a backlog of \$80 billion in needed road and bridge construction, transit and safety programs in Indian Country. Mr. Chairman and Senator Barrasso, the statistics on the numbers of accidents in Indian Country that are directly attributable to bad roads should shock the conscience of every member of Congress. I was so glad to hear all three of your opening remarks, because that is a known fact. Our people and children are dying and being injured at many times the rate, and that has already been mentioned.

I would like to yield a little bit of my time, Mr. Chairman, to our Director Smith. He wants to talk a little bit about data and some of the maintenance issues.

The Chairman. Mr. Smith?

Mr. SMITH. Thank you, Senators Tester, Barrasso and Senator Heitkamp. In fact, I have one of your tee-shirts, I donated \$50 at the United Tribes to get you elected when you were there talking about our safety projects.

[Laughter.]

Mr. SMITH. It is quite an honor to be here for me, and we also campaigned for Senator Barrasso in the same manner.

[Laughter.]

Mr. SMITH. It is always an honor to be here and to accompany Mr. Martel. He has been a lifelong friend of mine and we have worked on several issues together, not only in transportation but in education and safety on our tribes. We are fortunate to do a model safety project that was worked through the Wyoming WellTAP center. It provided a great benefit.

What we are talking about here when we talk about road maintenance and the other things is really what is becoming a new

phrase, is the livability. Livability is a whole new buzz word that talks about the safety of road traffic, getting people to dialysis treatments. Our reservation is very enormous and we are opening up a brand new transit facility that will have four buses with wheelchair lifts. We try to maintain a schedule, early in the morning for; we have over 72 dialysis patients on the Wind River Reservation and the Shoshone Tribe also offers a dialysis center. Getting them to dialysis is a major obstacle that we have in getting roads open and also transporting them on their schedule. It is a life-threatening situation daily for those people.

So our safety program has really been an effort that is even tacking onto emergency services, even. When we have floods on our roadways and so forth, we have to pay for those generally out of our construction funds before we can talk about getting reimbursed by FEMA and also what you were talking about earlier, the heavy amount of paperwork. We do about a mile worth of paperwork for every mile of road. Those things are very critical when you are doing a deficient bridge. We have a community in Wyoming that necessitates the residents there who live on one side of the river and have hayfields on the other side to go 190 miles to change their irrigation water. Those things are very important to our residents and their safety and welfare is also another factor.

So I am glad to be here, and if you have any questions, I would be glad to answer those at the end of the discussion and get a little more specific about things. One of the other things was the data. As we sit here and as your questions were directed to Mr. Black about data, the tribes also have that same concern. We are trying to develop our position papers here. We had to use data that was done two years ago, it is the best practical data that we had to provide our statements to you today. We really need to improve the availability of the data and the reporting and the benefits that can assist the tribe in developing an adequate construction program and road maintenance program. Road maintenance is a very severe problem. We were here two weeks ago and met with the Eastern Tribes on their request to attend. Many of the tribes in the eastern region mentioned that when they get their monies, it is not a lot, some of the tribes don't have very many roads. But most of their money goes straight to road maintenance. Their 20 percent of their funding for the year is developed basically for keeping their roads under passable condition.

Thank you very much, Senator.

[The prepared statement of Mr. Martel follows:]

PREPARED STATEMENT OF HON. WES MARTEL, MEMBER, JOINT BUSINESS COUNCIL OF THE EASTERN SHOSHONE AND NORTHERN ARAPAHO TRIBES OF THE WIND RIVER INDIAN RESERVATION

#### **Introduction**

Good morning, Chairman Tester, Vice Chairman Barrasso and members of this Committee. My name is Wes Martel, I am a member of Eastern Shoshone Business Council and am authorized to speak on behalf of the Joint Business Council that represents both tribes on our reservation.

On behalf of Eastern Shoshone Business Council Chairman Darwin St. Clair and Northern Arapaho Business Council Chairman Darrell O'Neal 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 John Smith is accompanying me today. He is the Transportation Division Director for our Reservation and also serves as Executive Director of the Intertribal Transportation Association. Since 2004 he has served as the representative from the Rocky Mountain Region to the Tribal Transportation Program Coordinating Committee. He is perhaps the most senior member of that Committee and has great expertise.

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 2.2 million acre Reservation has tribal land held in trust for our Tribes by the United States. Consequently, our Tribal Government has a large land area over which we exercise 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. The unemployment rate at Wind River remains at an outrageously high level, many times the state or national average. While we are proud of progress we have made, the lack of adequate transportation facilities, communications, and other necessary infrastructure continues to significantly impair economic development and job opportunities.

The Shoshone and Arapaho Tribes are grateful for the leadership role this committee has taken to support the Tribal initiatives and we hope you will do so again in the upcoming reauthorization of MAP-21. We are thankful for the opportunity to comment on the reauthorization of this important legislation.

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

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

Indian Reservation Road funding (now known as Tribal Transportation Program or TTP funding) serves a crucial need in Indian country. While Congress increased IRR/TTP allocations since you first enacted TEA-21, the funding continues to lag far behind an even faster-growing need. Unfortunately in MAP-21, not only did the authorization levels for tribes not increase but the authorizing committees with jurisdiction transferred the bridge program, which had been funded separately, to the road construction account and we were told to just take bridge construction costs out from these funds. So the total authorization ended up resulting in a net loss because bridges ended up being a take down from the roads funds. That must be reversed in the next highway bill and authorizations for the TTP must increase.

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. We strongly support and urge the retention of the statutory formula that the Congress included in MAP-21. While MAP-21 was a two year bill, the TTP formula was proposed to be phased in over five years. It is essential that the formula be retained and reiterated in the next highway bill as it stopped what had been a problematic policy of reservation road money being diverted to off-reservation state and county roads. This testimony will not dwell on that topic as we did in 2011 because we think you fixed the allocation problems and we want to present a unified front with other tribes as was agreed to at the recent Transportation Unity Conference in Denver. While we agree with much of the Unity Summit's recommendations there are some areas that need clarification. The Summit recommended that each tribe be provided with a minimum base budget of \$75,000 for transportation. That may work if the authorization is increased and that there is no net loss to any tribe. Yesterday we discussed this with the proponent of the \$75,000 minimum per tribe concept and he indicated that his intent was that it would only apply if there was an increase in the overall funding for the TTP. He indicates it would take three million dollars to reach that minimum for tribes who are now getting less. Hopefully the authorized increase will be much higher than that figure.

It also may be necessary to define the parameters of the word “access” in the next highway bill since the BIA has never defined it. Since the BIA still has not issued regulations to implement MAP-21 in Indian country we cannot be certain that this issue has been resolved. It may be best to do it through statute. The Indian Reservation Road Tribal Coordinating Committee met in Sacramento a couple of years ago and agreed that while roads accessing Indian reservations need to be included in tribal inventories there must be limits and the agreed amount was 15 miles from the perimeter of the reservation. We recommend this committee include this limit in any of your recommendations.

Finally, the Unity Summit recommended that the High Priority Program (HPP) be funded with Highway Trust Fund dollars but the document out of the Denver Summit omitted a point that we believe was agreed to by the group which is that all tribes can apply for HPP funds. In the past if your tribe received more than \$1 million in IRR dollars, you were prohibited from applying for HPP funds. This led to some absurd scenarios where tribes with very few lands, roads or people were, through the HPP, getting more money than tribes with hundreds of miles of deteriorating roads. Ensuring all can apply for HPP will correct that problem.

#### **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 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 on-reservation 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 the 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.

According to the Department of Transportation there is an unmet transportation need in Indian country of nearly \$80 billion if you count roads as well as maintenance and bridges and safety planning. These are lands the US holds in trust. Our roads and bridges must be improved so that they are at a “safe and adequate standard.” We realize it will take decades to get through this backlog but we have to start somewhere. Increasing the authorizations in the next highway bill for transportation needs in Indian country is the place to start.

#### **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 less than 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 roads. 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. What is fairly astonishing is that OMB has not allowed BIA to request more than that for the past 22 years and prior to 22 years ago the BIA requested \$41 million. 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 probably around \$700 in maintenance funding per mile; most state transportation departments spend many times that figure. We had previously thought states were spending \$4,000 to \$5,000 per mile on maintenance of state roads but if you read the study you will see that state and county expenditures for maintenance are in fact much higher and they are spending between \$8,000 to \$12,000 per mile. This inequity must be remedied in the next highway bill.

If the Congress cannot or will not increase the BIA road maintenance account to a realistic level, the only practical solution we see for this problem is allocate a separate amount of money in the next highway bill from the HTF for road maintenance in Indian country as are other Federal Lands Highway Programs roads. Telling tribes to take it out of our road construction funds is robbing Peter to pay Paul and not working very well.

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 we advocate for a portion of the increase (probably a half or one cent) be set aside for the Federal Lands Programs and to include funding for the BIA road maintenance system out of this amount.

**Take Downs**

Too much money is being taken out of the \$450 million that Indian country is getting from the Highway Trust Fund each year. These are known as take downs. In FY 13 we experienced the following drawdowns:

Rescission	\$900,000
4.1 percent Obligation Limitation	\$18.5 million
2 percent for Safety Programs	\$9 million
2 percent for Bridges	\$9 million
2 percent for Planning	\$9 million
6 percent for BIA & DOT Admin	\$27 million
\$73.4 is taken away from money authorized for construction	

These are important expenditures and deserve to be funded on their own in the highway bill and not taken away from our roads funds.

Consistent with the Unity Caucus Recommendations we recommend:

- 1.) Increasing funding for the TTP to \$800 million for FY 2015 with annual step increases of \$50 million resulting in annual funding of \$1.05 billion in FY 2020. Because funding for the TTP has not been increased since 2009, and has actually been reduced through take downs, this funding recommendation is quite modest. But it will allow tribes to make some headway on the unmet construction need.
- 2.) Establish a Tribal Maintenance Program at \$50 million with annual step increases of \$5 million, for BIA and tribally owned transportation facilities, and encourage funding of at least \$150 million for the BIA road maintenance program.
- 3.) Increase funding for the Tribal Transit Program, implement annual step increases, and ensure stable funding for established tribal transit programs.
- 4.) Restore Highway Trust Fund allocation for the Tribal High Priority Projects Program, which has not been funded under MAP-21, and increase the maximum grant amount and increase funding to \$35 million with annual step increases provided all tribes can apply for these funds
- 5.) Redistribute 10 percent of unused obligation authority to the TTP for competitive grants to remote tribes.
- 6.) Separately fund the TTP Bridge Program at \$75 million with annual step increases and authorize use of funds for construction and design of new bridges.
- 7.) Establish \$75,000 as the minimum annual TTP program funding allocation provided this \$3 million increase needed to fund this minimum amount per tribe comes from an increased authorization.
- 8.) Restore the TTP exemption from the obligation limitation deduction.
- 9.) Reduce BIA and FHWA administrative take downs from 6 percent to 5 percent, and impose a 28 million annual cap.
- 10.) Begin to address the highway safety crisis in Indian country by establishing a 2 percent tribal set-aside from the Highway Safety Improvement Program, a 3 percent tribal-set aside from NHTSA, and a 3 percent set-aside from the Transportation Alternatives program to build or enhance safe

routes to schools, scenic byways, and pedestrian paths. Without a tribal set-aside, the experience under MAP-21 is that the states provide little funding to tribes.

- 11.) Create a tribal self-governance program under the U.S. Department of Transportation (DOT) to streamline funding agreements and clarify the extension of the benefits of the Indian Self-Determination and Education Assistance Act to DOT. This recommendation was vetted with DOT officials in 2011 and it was adopted as an amendment to HR 7.
- 12.) At the request of a state and tribe, require the BIA or FHWA to award state administered Federal-Aid funds to a tribe through a TTP or ISDEAA agreement to facilitate intergovernmental cooperation and collaboration.
- 13.) Ensure tribal eligibility for all DOT programs and discretionary and competitive grants, which was adopted as an amendment to HR 7.
- 14.) Require BIA to improve Right-of-Way challenges management and provide funding to implement corrections, improvement and to pay trespass damages.
- 15.) Authorize tribes to assume responsibility for approving NEPA documents if a tribe provides a limited sovereign immunity waiver for administrative actions. This is modeled on Title V of ISDEAA.
- 16.) Improve efficiency in delivering Emergency Relief Funds to tribes.
- 17.) Establish a tribal infrastructure bank capitalized at \$10 million to provide low interest loans for tribal transportation projects.
- 18.) Increase funding for the Tribal Technical Assistance Program.

#### **Conclusion**

On behalf of the Eastern Shoshone and Northern Arapaho Business Councils, I thank the Committee for its attention to and support for transportation needs in Indian country. 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.

The Chairman. Thank you both, Mr. Martel and Mr. Smith, for your testimony.

Mr. Thomas, you may proceed.

#### **STATEMENT OF HON. EDWARD K. THOMAS, PRESIDENT, CENTRAL COUNCIL OF THE TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA**

Mr. THOMAS. Thank you very much, Mr. Chairman. My name is Ed Thomas, I am President of the Tlingit Haida Central Council out of Juneau, Alaska. I am honored to be here to provide testimony to this very distinguished Committee.

I too do have some written comments that are submitted for the record. But I will talk briefly about some of the challenges we face in Alaska. Most of you are aware that Alaska is a very large State. Many of our communities are very isolated, mostly by distance. But in my part of the State, we are not only separated by distance but also by water. We are primarily made up of islands within my region.

The cost of doing business in Alaska is tremendously high, a lot higher than the rest of the United States. And so it is very important for us to address the issue of what it will cost to do business when it comes to roads. I do not want to repeat what my colleagues here have stated. I totally agree with the statements that were made.

But I want to talk a little bit also about MAP-21. When it was rolled out a couple of years ago, I happened to be here in Washington, D.C. Along with a number of other tribal leaders, we expressed our concern about the change in the approach that MAP-21 took to the utilization of formulas. It was not totally clear at

that time what was going to happen. We asked questions about negotiated rulemaking and at that time, they said, well, it doesn't look like there is going to be any, because we are building into the law the formula.

Normally when people of good intentions do that type of stuff, it comes out to the benefit of us who are the recipients of those programs. However, MAP-21 didn't work out that way. The formulas that came down totally negated several areas of the negotiated rulemaking. They created a situation where, when our sovereign tribes worked together and compromised on what our needs were, those formulas went away.

Let me give you just a brief example of the impact in one community in southeast Alaska. We have Saxman that we have joined forces with. Under the SAFETEA-OLU, they had \$63,000 for the entire year, and then under MAP-21, they were left with \$49,000. Now, those of you who are in the road business or understand roads, tell me how many miles of roads can you build with \$49,000? Not very many roads. And to get that kind of reduction, even in a community like Saxman where it does have better access to a municipality, it is really very difficult to do anything with those kinds of dollars.

Let me make another point. Many of our communities, they are lucky to have roads from their municipality to an airport or to a boat harbor. Even though their livelihood depends a lot upon having that access, those roads are much limited in many of our rural communities.

So I think it is very important to talk a little bit more about some of the things that we did under negotiated rulemaking, and bring some of those issues back to the table for the benefit of those tribes that really do struggle with small amounts of money.

One point I wanted to make also, when MAP-21 was rolled out, the comment was made that we really need to get more bang for the bucks. And that resonates in this climate where dollars are tight. But when we are taking that idea out to rural Alaska, where you have small populations, very isolated, high cost of doing business and struggling to get money even to build schools and hospitals, it is really pretty tough to have small amounts of money. So I believe very strongly that when MAP-21 was rolled out, Senator Bennett, I believe, said that we are looking at trying to increase the money to about \$800 million. That was a couple of years ago. I commend him for that.

I believe very strongly that that should be a benchmark right now. It should not be the \$460 million that we are debating over now. Because when it compares to the rest of America, the climate of roads in Indian Country and rural Alaska, there is just really no comparison. We need to get back up to that.

I bring up the issue of negotiated rulemaking because I believe that tribes themselves need to work together on what works best for us collectively. And when MAP-21 came out, there was really no consultation or participation in the development of the rules that I speak about.

Let me give you one more example of the struggle that we have with MAP-21 funding. Thirty-four percent of the dollars under MAP-21, they are equal to each of the 12 regions in this Country.

The difficulty with that is, there are 229 federally-recognized tribes that need to divide up their one-twelfth of the money. Now they are to use one tribe for one region and we have some agents that have seven tribes and some that have 16. So you can see the disparity in the distribution of dollars once it gets to the region. We really would like to redress that.

With that, I think I will close my comments. I very much appreciate the opportunity to provide my testimony and to provide testimony in this very important room that I think should be named for Senator Daniel Inouye. He fought long and hard to have a room whereby Native American issues can be discussed. The design of it is very appealing to the issues that Indian Country has to address on a regular basis.

Thank you, Mr. Chairman. I very much appreciate your comments and I am glad to see Lisa Murkowski, our Senator from Alaska here.

[The prepared statement of Mr. Thomas follows:]

PREPARED STATEMENT OF EDWARD K. THOMAS, PRESIDENT, CENTRAL COUNCIL OF THE TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA

#### **Introduction**

Good Morning! My name is Edward K. Thomas, and I am the duly-elected President of the Central Council of Tlingit & Haida Indian Tribes of Alaska ("CCTHITA" or "Central Council"), a federally recognized Indian Tribe representing over 29,000 tribal citizens primarily in 18 communities in Southeast Alaska.

#### **Personal Background**

Since the early 1980s, I have had the privilege of being in tribal leadership. I plan to retire next month after having served as Central Council's President for 27 years. Over the past four decades, I have had the opportunity to provide Capitol Hill testimony on many dozens of occasions and have met with six U.S. presidents and dozens of federal officials. Thank you for honoring me with your request to testify today to the Senate Committee on Indian Affairs in this hearing entitled "Tribal Transportation: Pathways to Infrastructure and Economic Development in Indian Country."

#### **Equitable Access to Transportation is a Matter of Life and Death**

I believe the reauthorization of the transportation legislation holds great potential to provide critically-needed assistance to address the vast unmet needs of Indian tribal governments in our roads systems.

That great potential for good lies in your hands. However, that potential is also a heavy responsibility on your shoulders.

Indian Country lags far behind the rest of America in terms of access to vital services and markets. This is particularly true in rural parts of Indian Country, especially in rural Alaska.

In rural Indian Country, we dial 9-1-1 and then wait for hours, sometimes days, for law enforcement or emergency medical help to arrive. Unlike in the rest of America, "access" in Indian Country is often a matter of life or death.

America focuses on healthy food lifestyles, but in rural Indian Country we are hours away from healthy food markets.

The lack of transportation facilities in rural Indian Country blocks our access to economic recovery, and to jobs, and to markets. It should come as no surprise, then, that high unemployment and systemic economic depression defines much of Indian Country today. We simply don't have the infrastructure access that is expected and enjoyed by all other Americans.

This is a great inequity. Surely in the transportation reauthorization, and the accompanying allocation of national Highway Trust Fund revenues, this Committee and its colleagues in the Senate and House should make a special effort to rectify this situation.

#### **MAP-21 Worsened Our Problems**

MAP-21 made our situation worse because it tossed aside an allocation formula based on "relative needs" that had been carefully crafted by tribal stakeholders our-

selves in a negotiated rulemaking proceeding. The MAP-21 approach resulted in dramatic cuts in funding to some tribes (many of them smaller and isolated) and dramatic increases in funding for other tribes. The changes had little if any logical connection to “relative need” or degree of access to critical services.

Instead of relative needs, the MAP-21 formula reflected the “relative power” of political muscles here on Capitol Hill. This is what happens when Washington D.C. power brokers make the decisions affecting Indian Country rather than tribal governments ourselves in a negotiated rulemaking procedure consistent with Indian self-determination and tribal self-governance.

Now let me be clear—Central Council did relatively ok under the MAP-21 formula, largely because the MAP-21 formula favored tribes with relatively large census numbers. But Central Council continues to object to both the MAP-21 formula process and outcome, because the MAP-21 formula short-changed many smaller and more remote tribes, especially those in Alaska. This is neither fair nor just. Allocation formula decisions like these should be made by all the tribal stakeholders together, not by the politicians holding power in Washington, D.C.

#### **Freeze the FY 2012 Formula and Mandate Tribal Negotiated Rulemaking**

Further harm will result if what I call the MAP-21 “relative power formula” is left on autopilot for Fiscal Year 2015 and beyond. Instead, as set out below, Central Council asks this Committee to seek to statutorily:

- (a) freeze in place the FY 2012 relative funding allocation formula for FY 2015 and FY 2016, and
- (b) require a new tribal negotiated rulemaking committee to come up with a more refined relative needs formula for FY 2017 and future years.

#### **Include the Tribal Transportation Unity Coalition Suggestions**

Central Council supports the position papers developed by the Tribal Transportation Unity Coalition (TTUC) which I have attached and submitted at the end of my written testimony. The new transportation reauthorization bill should include these TTUC recommendations, which many tribes believe would bring modest but much needed improvements to our tribal community road systems. We have to begin with small steps like these recommendations if Indian Country is ever, in our lifetimes, going to reach the standards for a livable community enjoyed by non-tribal communities across America.

#### **We Must Make Indian Country Accessible and Liveable**

Tribal communities have always received far less federal transportation funding than have federal, state and local governments. Where roads and other intermodal systems exist in Indian Country, they are much less safe than those in non-tribal communities. And the biggest problem is that, for many rural Indian communities, transportation infrastructure simply does not exist. As a result, travel is an extremely risky and dangerous activity for many of our tribal citizens.

Our inadequate roads block our economic development and commerce, restrict essential services, and pose a serious obstacle to our citizens who simply want to get to and from work and home.

On health care, for much of Indian Country the question is whether it is “accessible”, not whether it is “affordable”.

The end result is that many rural tribal communities fail every livability test because of our non-existent or unsafe roads. For decades now, inequitable funding for Indian roads has meant the few road miles we have are unsafe or impassable and the many miles of additional roads we need are left un-built.

#### **Equity and Fairness Must Shape the New Transportation Legislation**

These challenges could be met by this Committee and your colleagues if a simple yardstick of equity and fairness was used to shape the new transportation reauthorization bill. Here are the standards I would encourage to use in drafting the new bill:

1. *Equitable funding compared to the rest of America.* Indian Country deserves a sufficient share and an equitable allocation among tribes of the dwindling Highway Trust Fund so that Indian Country can catch up to the rest of America, and so that citizens of Indian tribal governments in their homelands can have the same basic safe access to essential services and markets enjoyed by the rest of Americans. Congress must recognize that Indian Country merits a bigger share of the Highway Trust Fund because tribal roads DO NOT now provide safe access to critical health services, supplies, job markets, and trade opportunities for remote communities throughout Indian

Country, compared to the degree of safe access accorded much of the rest of America.

2. *Equitable funding distribution formula.* The MAP-21 funding distribution allocation among tribes is inequitable. It must be replaced. The prior SAFETEA-LU relative-needs formula (RNF) adopted some years ago by all tribal stakeholders in negotiated rulemaking, as applied in FY 2012, should be reinstated for FY 2015 and FY 2016 while a new tribal negotiated rule-making committee negotiates a new relative needs formula for FY 2017 and beyond. In other words, the new roads reauthorization language should freeze the FY 2012 funding distribution formula in place for FY 2015 and FY 2016 and require that tribes employ negotiated rulemaking to negotiate among tribal sovereigns a new relative-needs formula for FY 2017 and future years.
3. *Tribal negotiated rulemaking.* Tribal negotiated rulemaking is the ONLY way that tribal-federal policy should be made on major decisions involving roads formulas and programs. Sovereign tribes are the ONLY stakeholders in these decisions. Nobody else should decide. Not Congress. Not federal bureaucrats. A tribal negotiated rulemaking process be used to make all key decisions. Anything less than tribal negotiated rulemaking offends tribal sovereignty, belittles Indian self-determination and side-steps tribal self-governance.
4. *Relative needs must be carefully balanced.* A relative-needs formula developed under negotiated rulemaking should balance key factors in an effort to be equitable relative to all tribes, such as: tribal service area of land and distance to travel, number of people, and safe access to essential services and markets. The SAFETEA-LU relative-needs formula should serve as the starting point for a new tribal negotiated rulemaking committee's formulation of a new relative-needs formula for future years.
5. *Steer unused obligation authority to unmet indian country needs.* Given the huge unmet needs of Indian Country compared to the rest of America, any transportation reauthorization legislation should reallocate to a Safe Access for Tribal Communities Fund at least 10 percent of the obligation authority within the overall Highway Trust Fund which remains unused by states at the end of each fiscal year. Upon transfer of this obligation authority to the Safe Access for Tribal Communities Fund, these funds should be available for competitively awarded applications by tribes to address unmet needs similar to the requirements of the High Priority Projects under SAFETEA-LU.
6. *Full tribal self-governance.* Pub.L. 93-638 authority should be fully extended to all aspects of tribal funding and services related to the Highway Trust Fund and administered by the U.S. Department of Transportation (DoT) and the U.S. Department of the Interior (DoI). The new law should clarify that this tribal authority is a mandatory obligation of both DoT and DoI, and is not subject to discretion. It should also clarify that all Highway Trust Funds, including those used by the DoT or DoI to administer the program, are contractible and subject to Pub.L. 93-638 authorities.

### Conclusions

The overall amount of funds distributed from the federal Highway Trust Fund to Indian country transportation needs should be equitable. What is fair must be understood in terms of the huge accumulation of unmet need and the growing gap, in terms of access to essential services, between Indian Country and the rest of America. That equity in overall funding should be matched equity in the distribution of the Indian Country roads program funds among tribes.

Central Council supports the TTUC's Tribal Transportation Unity Act requests but notes that they do not address the over-arching question of what funding allocation formula will be used to distribute the funds among tribes. Central Council opposes including a funding allocation formula in any new transportation bill.

Instead, Central Council asks that the new statute require the FY 2012 funding allocation formula to be followed for FY 2015 and FY 2016 and require that a new relative-needs formula be developed by tribes in a negotiated rulemaking procedure for FY 2017 and future years. Negotiated rule making is the only approach that is consistent with tribal sovereignty and with having tribes themselves decide how funds are allocated among tribes. Tribes are the only stakeholders who should matter in this negotiation. In the spirit of tribal sovereignty, only tribal governments should shape how federal roads funds are allocated among tribes to meet the unmet priority transportation needs of Indian Country.

Thank you.

**Attachments**

**TRIBAL TRANSPORTATION REAUTHORIZATION UNITY SUMMIT  
DENVER UNITY STATEMENT 2014**

**ADVOCATING FOR INCREASED FEDERAL INVESTMENT  
IN TRIBAL TRANSPORTATION INFRASTRUCTURE TO ENHANCE TRANSPORTATION  
SAFETY, EMPLOYMENT, ACCESS AND SYSTEM EFFECTIVENESS**

- WHEREAS,** the Tribal Transportation Unity Caucus formed to promote unified, consensus positions of Indian tribes in advocating for a new highway bill that reflects tribal transportation system challenges and recognizes the accomplishments and capacity of tribes to deliver transportation services to tribal citizens and surrounding communities; and
- WHEREAS,** Tribal leaders accompanied by tribal transportation technical staff gathered in Denver, Colorado on February 25-27, 2014, to exchange perspectives on tribal needs and opportunities in order to develop underlying positions for a coordinated strategy to engage Congress in addressing the United States' trust responsibility to the Indian people for transportation infrastructure investment and maintenance; and
- WHEREAS,** although tribal roads and transportation facilities comprise nearly 3% of the national transportation system, federal investment in those tribal facilities has remained at less than 1% of the national transportation system; and
- WHEREAS,** Tribal governments, as sovereign nations recognized in the United States Constitution, have obligations to deliver safe and reliable transportation networks and the Federal Government has trust and treaty responsibilities to provide sufficient funding to meet this obligation; and
- WHEREAS,** through TEA-21, SAFETEA-LU, ARRA and MAP-21, tribes have demonstrated their transportation needs and have proven their ability to effectively and efficiently deliver transportation programs for the benefit of tribal citizens and others in their community.
- NOW THEREFORE BE IT RESOLVED,** that the commitment expressed by participants in the Denver Tribal Transportation Reauthorization Unity Summit is to engage in tribal transportation policy advocacy in the spirit of unity and mutual support; and
- BE IT FURTHER RESOLVED,** that the positions adopted in Denver have been made in the interest of unity and shall be interpreted and understood as promoting and advancing consensus positions shared by those tribes present and that participants will work to broaden awareness of the positions discussed in Denver throughout Indian Country through presentation and discussion in the spirit of fostering coordinated advocacy before the United States Congress; and
- BE IT FINALLY RESOLVED,** standing in unity, the undersigned tribal leaders and tribal transportation officials call upon all Tribal Nations, the National Congress of American Indians (NCAI) and Intertribal Transportation Association (ITA), National Tribal Transit Association (NTTA), and all other intertribal organizations to embrace the positions developed in Denver at the Tribal Transportation Reauthorization Unity Summit, and to work jointly with the Tribal Transportation Unity Caucus and tribal advocates to develop policy briefing materials, draft proposed legislative language and engage with the congressional committee leadership and staff to advance the mutually-agreed upon objectives identified in Denver, Colorado.

The undersigned participated in the development of the Tribal Transportation Unity Act in Denver, CO on February 25-26 2014.

Arvik Tribal Council

Paul Jorg

Atmavutluk Traditional Council

Moses Parvillo Jr

Bois Forte Band of Chippewa

Quinn D

Bristol Bay Native Association

Jonathan D. Buck

Camas Go-On, Klamath Tribes, KTOI

Central Council Tlingit Haida Indian Tribes of Alaska

Cheyenne and Arapaho Tribes

Angela B. O

Cheyenne River Sioux Tribe

Bob B. B.

Chickaloon Native Village

Chief Gary Hoover

Chippewa Cree Tribe of the Rocky Boy Reservation

Citizen Potawatomi Nation

Art Mullen

Confederated Tribes of the Colville Reservation

Janet Palmer

Craig Tribal Association

Edward K. O'Connell

Eastern Band of Cherokee Nation

B. A. My. ASD J

Eastern Shoshone

Dee as Rantel

Fort Belknap Indian Community

Alfred R. R.

Fort Peck Assiniboine and Sioux Tribes

Howard M. M.

Ho-Chunk Nation

Kathy Lamontree-Whiterubber

Holy Cross Village

Ernest D.

Jicarilla Apache Nation

My Y. Y.

Kallispel Tribe

Dawn H.

Karuk Tribe

Sandra S.

Leech Lake Band of Ojibwe

W. W.

Lummi Nation

W. W.

Muscogee (Creek) Nation

Cheney L. Lawrence TTP Manager

Navajo Nation

J. C.

Nox Porco Tribe

Mary Beth J.

Nome Eskimo Community	<u>[Signature]</u>
Northern Arapaho	<u>[Signature]</u>
Northern Cheyenne	<u>[Signature]</u>
Oglala Sioux Tribe	<u>[Signature]</u>
Ohkay Owingeh	<u>[Signature]</u>
Omaha Tribe of Nebraska	<u>[Signature]</u>
Organized Village of Kasaan	<u>[Signature]</u>
Pueblo of Picuris	<u>[Signature]</u>
Pueblo of Tesuque	<u>[Signature]</u>
Quapaw Tribe	<u>[Signature]</u>
Red Lake Nation	<u>[Signature]</u>
San Carlos Apache Tribe	<u>[Signature]</u>
Sault Ste. Marie Tribe of Chippewa Indians	<u>[Signature]</u>
Seneca Nation of Indians	<u>[Signature]</u>
Shoshone-Bannock Tribes	<u>[Signature]</u>
Sisseton Wahpeton Oyate	<u>[Signature]</u>
Sitka Tribe of Alaska	<u>[Signature]</u>
Southern Ute Indian Tribe	<u>[Signature]</u>
Spirit Lake Tribe	<u>[Signature]</u>
Te-Moak Tribe of Western Shoshone	<u>[Signature]</u>
Native Village of Tetlin	<u>[Signature]</u>
Tohono O'odham Nation	<u>[Signature]</u>
White Earth Nation	<u>[Signature]</u>
Wrangell Cooperative Association	<u>[Signature]</u>
Yankton Sioux Tribe	<u>[Signature]</u>

The following Tribal Nations and tribal organizations support the legislative proposals developed at the Tribal Transportation Reauthorization Unity Summit:

[Signature]  
[Signature]

[Signature]  
[Signature]

**TRIBAL TRANSPORTATION UNITY ACT  
SUMMARY  
FOR THE 113<sup>th</sup> CONGRESS  
February 27, 2014**

Tribal leaders accompanied by tribal transportation technical staff gathered at the Tribal Transportation Reauthorization Unity Summit in Denver, Colorado on February 25-27, 2014, to exchange perspectives on tribal needs and opportunities in order to develop consensus legislative proposals to present to the 113<sup>th</sup> Congress to address the transportation needs of Tribal Nations. The Tribal Transportation Unity Caucus and the Rocky Mountain Transportation Planners Association organized this Summit to develop unified Tribal proposals for the a new surface transportation bill to address tribal transportation system needs and recognize the capacity of Tribal Nations to deliver transportation services to their Tribal citizens and the general public using Tribal roadways and transit systems:

- I. Increase Funding For Tribal Transportation Programs To Address Chronic Unmet Needs.**
- ▶ Increase Funding for the Tribal Transportation Program (TTP) to \$800 million for FY 2015 with annual step increases of \$50 million to \$1.05 billion in FY 2020;
  - ▶ Establish Tribal Asset Management Program at \$50 million in FY 2015 with annual \$5 million step increases to \$75 million in FY 2020 for BIA and tribally owned transportation facilities.
  - ▶ Encourage Interior Department and Office of Management and Budget officials to support an annual budget for the BIA Road Maintenance Program of at least \$150 million.
  - ▶ Increase funding for the Tribal Transit Program:
    - Discretionary funding increase to \$10 million in FY 2015 with annual \$5 million step increases to \$35 million in FY 2020;
    - Formula funding increase to \$35 million for FY 2015 with annual \$5 million step increases to \$60 million in FY 2020;
    - Ensure established tribal transit programs receive formula funding that is no less than the highest amount of operations funding received since the creation of the Tribal Transit Program in FY 2005.
  - ▶ Restore Highway Trust Fund allocation for the Tribal High Priority Projects Program and:
    - Increase funding to \$35 million in FY 2015 with annual \$5 million step increases to \$60 million in FY 2020;
    - Increase maximum grant amount to \$1.5 million when funding increases above \$35 million.
  - ▶ Redistribute 10% of unused obligation authority to the TTP to fund competitively awarded grants to more remotely located Tribal Nations (JTR 7).
  - ▶ Separately fund the TTP Bridge Program at \$75 million in FY 2015 with annual step increases of \$5 million to \$100 million in FY 2020 and authorize the use of funds for the construction and design of new bridges.

Final February 27, 2014

- > Establish \$75,000 as the minimum annual TTP Program funding allocation for all Tribes;
  - > Restore the TTP exemption from the Obligation Limitation deduction;
  - > Reduce BIA and FHWA program management and project-related administrative expenses from 6% to 5% with an annual cap of \$28 million.
2. **Decrease the high rate of fatalities and injuries on Tribal Transportation Systems.**
    - > Establish a 2% direct Tribal funding set-aside from the Highway Safety Improvement Program for the purpose of reducing traffic fatalities and injuries on tribal transportation systems.
    - > Increase set-aside of NHTSA Tribal Safety Program to 3.5% to address safety issues on Tribal transportation systems.
  3. **Create a Tribal Self-Governance Program under the U.S. Department of Transportation.** Creating a Self-Governance Program will streamline grant-funding agreements for federal transportation programs and more efficiently target limited transportation dollars to the improvement of Tribal transportation systems. This important step will provide an additional option to Tribes and will not supplant the existing TTP agreements. (HR7)
  4. **Ease the transfer of Federal Aid funds for Tribal Transportation Projects.** Eliminate current barriers to transfers of federal-aid funds to Tribal Nations by requiring the BIA or FHWA to award State administered federal-aid funds to Tribes under their TTP agreements. If a Tribe and State prefer, the State may make the funding award directly to the Tribe under an appropriate award instrument that respects tribal sovereignty and government-to-government nature of the agreement. (HR7)
  5. **Ensure Tribal eligibility for all U.S. Transportation Department discretionary and competitive grants.** Tribal governments are increasingly gaining direct access to federal transportation grants, but this provision would ensure that Tribes have access to all discretionary and competitive grants to increase tribal funding opportunities without increasing the overall cost of the next highway bill. (HR7)
  6. **Improve BIA Right-of-Way Management.** Requires the BIA to update and computerize rights-of-way documentation, support Tribal corridor management practices and pay trespass damages for BIA improperly obtained or recorded rights-of-way. Provide \$10 million per year to cover the cost of these statutory requirements.
  7. **Gives Tribes the Option of Assuming NEPA Approval Authority.** Authorizes but does not require Tribes to assume responsibility for approving NEPA documents, if the Tribe is willing to provide a limited sovereign immunity waiver. At the option of the Tribe, the BIA or FHWA can perform this function, but if a Tribe prefers to assume the NEPA responsibility itself, it will be required to provide a limited waiver of sovereign immunity to allow for administrative challenges to the Tribe's NEPA decision. This NEPA provision is modeled on the successful Title V Self-Governance Program administered by the Indian Health Service.
  8. **Funding to Establish a Tribal Infrastructure Bank.** Creates a Tribal Infrastructure Bank capitalized at \$10 million annually to provide low interest loans for Tribal transportation projects.

9. **Increased funding for Tribal Technical Assistance Program (TTAP).** Increases funding for the TTAPs from \$2.1 million to \$3.6 million annually.
10. **Improve the speed and efficiency in getting Emergency Relief for Federally Owned Roads (ERFO) funding to Tribes.** ERFO funding is available to Tribes to restore BIA and tribally owned roads and bridges to their pre-disaster condition. Currently there is a great delay between the time Tribes expend funds to fix these facilities, and the time they are reimbursed for these costs. The proposal would streamline the ERFO application process to speed the time Tribes are reimbursed for their ERFO expenditures.
11. **Create a 3% Tribal funding set aside in Transportation Alternatives (TA) Program.** MAP-21 replaced the Safe Routes to Schools, Scenic Byways, Transportation Enhancements and Recreational Trails Program with a new Transportation Alternatives (TA) Program. These funds go to State Transportation Departments and so far little of this funding has been provided to Tribes. This proposal would ensure that Tribes receive a fair share of these TA funds to build or enhance scenic byways, pedestrian pathways, safer school routes and other TA-eligible projects through a 3% tribal set-aside.
12. **Adequately Fund MAP-21 requirement that tribal bridges must now be inspected and included on the National Bridge Inventory.** This proposal would amend MAP-21's unfunded mandate to require that the inspection costs for including BIA and tribal bridges in the National Bridge Inventory come from Federal-Aid bridge program funds rather than from TTP funds.

**What you can do to help**

Please introduce or cosponsor legislation in the 113<sup>th</sup> Congress to ensure that Tribal Transportation investments keep pace with inflation, begin to address the terrible toll of traffic deaths and injuries in Indian country and help Tribal leaders create jobs and grow local economies to the benefit of Natives and non-Natives alike.

For additional information, please contact:

- Gwen Salt (202.466.7767 X 204; [gsalt@hcai.org](mailto:gsalt@hcai.org)) National Congress of American Indians
- Jim Glaze (626.387.9329; [jglaze@sonosky.com](mailto:jglaze@sonosky.com)) or Matt Jaffe (202.682.8240; [mjaffe@sonosky.com](mailto:mjaffe@sonosky.com)), Sonosky, Chambers, Sachs, Endreson & Perry, LLP
- F. Michael Willis, (202.822.8282; [mwillis@hobbsstrauss.com](mailto:mwillis@hobbsstrauss.com)) Hobbs, Straus, Dean & Walker, LLP
- John Smith (307.330.6876; [johnsmith@wyoming.com](mailto:johnsmith@wyoming.com)) Intertribal Transportation Association
- Burny Tibbets (218.983.3263; [burnyt@whiteearth.com](mailto:burnyt@whiteearth.com)) Tribal Transportation Unity Caucus
- Tribal Contact: \_\_\_\_\_

The CHAIRMAN. Thank you, Mr. Thomas, and I will echo your comments about Senator Inouye, somebody who we miss greatly today. Thank you all for your testimony.

Senator Murkowski is here, and I would let her give her opening statement and ask questions at this point in time.

**STATEMENT OF HON. LISA MURKOWSKI,  
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman. In my opening statement I was going to speak to much of what Mr. Thomas has already provided in his very well articulated statement. So I will defer on that. Thank you, first, for this hearing. I think it is exceptionally important.

Just to pick up on the comment here about our friend and former colleague, Senator Inouye, I think he would be proud of this room and how it has been kind of transformed to reflect some of American Indian heritage. There has been some discussion, though, that this room lacks a totem pole. I think we are still kind of working on the totem pole. They are big and they take up some space. But I think it would be important, recognizing the very close relation-

ship that Senator Inouye from Hawaii had with Senator Stevens from Alaska. So we will work on that.

I also want to recognize the contributions of Ed Thomas. He has been doing a fabulous job for many, many years on so many issues that are significant and important, not only to the Tlingits in his region of southeast, but Alaska Natives throughout our State. I understand, Ed, that you are retiring next month. What I see though is more often than not, these good fellows say that they are going to retire and they just become more active. So I look forward to seeing you a lot more, Ed, on your time. Thank you for your contributions.

I do think that it is so important that you have spoken to the issues of cost and how that relates to our geography, our distance between places. But it is a fact that I think is important that is worth repeating, that in Alaska 80 percent, approximately 80 percent of our communities are not connected by a road. So that means we fly, that means we take a boat, that means supplies come in by barge. If you are in the interior part of the State you might get two barges a year. So planning for your supplies, incredibly difficult just getting gravel to make a road.

So when you look at the costs of building a road in Alaska, it looks so far out of whack with the cost per road mile anywhere else in the Country. They think that you must be doing something wrong there. But keep in mind that we are dealing with an area that is one-fifth the size of the United States of America. Eighty percent of these communities are not accessible by road or rail, so you can't get supplies in there cheaply. Gravel sources may be hundreds of miles away.

So to speak to the relative cost is something that is hugely important to us. Then when you think about how the system now works where you are dividing things 12 ways but within one-twelfth in Alaska, we divide those funds amongst the 229 tribes, just how that all trickles down. It makes it very, very difficult. It has been an issue that we have long struggled with.

I would ask you to go into a little more detail here, Ed, on some of the administrative rules that the BIA has placed on Alaska tribes participating in the Tribal Transportation Program. Speak to the impact that they have had and then also whether or not they have placed similar administrative rules on tribes in the lower 48.

Mr. THOMAS. I can't speak on the lower 48, but let me give you an example of my tribe. We began negotiating and trying to get certification of our inventory in 1996. We did not get certification until 2005. And we finally got some money in 2005. So that is just how long it has taken the government to certify just the inventory. That is something you can do probably in a couple of hours if you have a good database. And I totally concur that some of these issues of database management on that kind of stuff really needs to be better handled, so that this certification doesn't take so long. But that is just one example.

When we have been getting involved in SAFETEA-LU and even before that, maybe not before, but I think it was SAFETEA-LU, we had such a bad feeling about the administration that we were asking to reduce that 6 percent down and utilize some of those dollars so that we could get some consultation, get some of the jobs that

needed to be done. Not just the inventory, but some of the other paperwork that needed to happen relative to roads.

So that is just an example from my tribe, dealing with the delay of getting that inventory was just one example.

The other part in Alaska, by the way, is that we have had turnover. We have had turnover within the BIA roads department that has also caused us problems in our communication with the national as well as the tribes.

Senator MURKOWSKI. It appears that within the Alaska tribes there is general consensus that formula changes to the Tribal Transportation Program should go through a negotiated rule-making process. Do you trust the BIA to implement a fair negotiated rulemaking process regarding the formula? I know this is what we are asking for. How comfortable are we with this?

Mr. THOMAS. I think that if you approach it in the manner that it was done early on, where you included the tribes from all across the Country, it would work. I think the one problem that happens with us in Alaska especially is when budgets get tight, then they reduce the numbers, and we don't have adequate representation and rulemaking. But I have to say that I trust that system better than I trust somebody without talking to us making the formula.

Senator MURKOWSKI. That is fair.

Mr. Chairman, I was not able to be here when the Federal witnesses were testifying, I was in another committee. I do have some questions for the record that I would like to submit to them that many in Alaska have asked that I advance. So I will be doing so. Thank you.

The CHAIRMAN. Absolutely.

Senator BARRASSO?

Senator BARRASSO. Thank you, Mr. Chairman. First, Mr. Smith, thank you for your comments and testimony. I am going to start quoting you on the line if I may with your permission that regulations require a mile worth of paperwork for every mile worth of road. And that is about right, 6,000 pages of paperwork for every mile of road. So it really puts it into perspective, very, very well.

Mr. MARTEL. thanks so much for coming back. You testified in the past, I think September 2011, and we talked about the need for additional maintenance on Wind River roads. You also mentioned deaths and accidental injuries. The Chairman mentioned that in his questions to the Federal panel. As an orthopedic surgeon, I have taken care of folks from the Wind River Reservation related to a number of those injuries. I liked the comment that one of you made about the livability of the roads and their importance.

So I am just wondering how, for Wind River tribes, you have been able to improve the safety of the roads and how your safer roads contributed to a reduction in mortality rates and accidental injury rates on our reservation in Wyoming.

Mr. MARTEL. I would like to defer that to Mr. Smith, some of it. But we have really been trying to take advantage of the programs that have been offered by the Federal Highway and the BIA. Fortunately, we have a transportation director that has been in this game for quite a number of years and has been able to take advantage of those programs. From Wind River and from the Unity Summit that we had in Denver a couple of weeks ago, we fully support

the formula as it pertains to those programs. As everybody states here, we all fully agree that we need increased funding and we need to do something about the take-downs.

I would like to ask Mr. Smith to be a little more specific on the safety issues and some of the cost benefits and the preparation that goes into preparing to assemble all of the parties that we got to improve the Seventeen Mile Road.

Senator BARRASSO. Let me ask one other question and then you can decide which of you want to answer or also defer a part to Mr. Smith. When you testified in September of 2011, you really talked about the need for additional maintenance, I think you said today, an \$80 billion backlog in Indian Country.

You testified that the roads then, a couple of years ago, were lasting only about half the design life, a lot of it due to deferred maintenance. So I was also asking, and maybe Mr. Smith wants to comment as well, has there been any change or improvement in the deferred maintenance or longevity, specifically, of the roads.

Mr. MARTEL. Not very much. We are still dealing with that static level of funding for maintenance and that with some of the issues of flooding that we had here a couple of years ago and the heavy snows that we have had, really detracts from the maintenance. A lot of our roads are in a sad state of disrepair. But that maintenance really needs to be addressed, Senator.

Senator BARRASSO. Thank you, Mr. Martel. Mr. Smith?

Mr. SMITH. Yes, Senator. The tribes of the rehabilitation projects that came out a few years ago, a lot of the cracked sealing and a lot of maintenance work that helps to keep the asphalt from deteriorating quite as rapidly as it does if you don't have the ability to do cracked seals and those types of things, that pavement reduces to much of what Senator Tester and others were talking about as far as getting the gravel, pavement reduced to gravel to dirt. So those are really proactive measures that we try to do yearly in the whole State of Wyoming.

What you do is, if you are a farmer, you plow when your neighbor is plowing, you water when he waters to make sure he is not taking your water. Well, we do that, the Wyoming Department of Transportation, this is the season where we generally do cracked sealing, when the cracks are wider, when the weather allows us to get into those cracks and blow the cracks out with air hoses and put longevity in our pavement.

But the other part is when we address the safety issues that Senator Tester talked about in Montana, the roads are narrow. We have one to four roll-off roads where you are going to go off the road you are generally going to roll. That was designed maybe 20, 15 years ago. And now we have wider roads, so we try to slope our shoulders. Much of that benefit came from Federal Highway doing what was called Every Day Counts. That was a real good situation that we took advantage of using technology that was given out to a lot of tribes to utilize in performing and expanding their road projects.

We tried to emulate that as best we can and render it with the best bucks we have. That is the answer to that question.

Senator BARRASSO. Thank you very much. Thanks to all the witnesses. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Barrasso.

A question for Dana Buckles. In your testimony, you talked about if oil and natural gas development came to Fort Peck Reservation, which we are on the edge of it now, the tribes wouldn't be prepared to handle it. In your assessment, what do Fort Peck tribes need to do to be prepared for such an economic boom?

Mr. BUCKLES. Well, I think it is total infrastructure, knowing the fact that if it does come, we don't have the resources. We lack in certain areas, we would have to beef up our law enforcement, hire more people. And looking at an overall statement to that, it deals with a lot more too, we would have to deal with health and maintain our roads. We just don't have the resources there or the funding to do that.

So we are really counting on hopefully that we see more funding for that. Because watching the Bakken happen in Williston and looking to see what happened at Fort Berthold, the destroying of the roads. And we also have farmers and ranchers who use the roads, and having to see oil trucks, water trucks going across our roads, as far as Highway 2 and our BIA roads, it is just going to create havoc for us. And to have to maintain that with the money we have now, we don't have the funding to do that.

The CHAIRMAN. Let me ask you this. Do you talk to folks within the BIA and talk to them about their budget and what the real impacts are? You are talking about police protection, we have talked about Indian Health Service earlier. We are talking about roads today. Is anybody in contact with the folk at the Federal level saying, hey, look, these are the kinds of challenges we have, these are the kinds of challenges that are coming down the pike and your budget needs to reflect that?

Mr. BUCKLES. I don't have the answer to that, but I can get you the answer. We are in contact with some of the Federal departments here.

The CHAIRMAN. Good. I think it is important that you do that. I think not only for your tribe, but for every tribe that is at the table and every tribe that is out there in the Country. I just think it is important.

I want to talk about administrative costs for a second. Do you think that, in your opinion, any of the three of you can answer this, and you don't have to agree, do you think the BIA needs the full 6 percent that it takes in administrative costs?

Mr. MARTEL. Mr. Chairman, we believe it would have a hard time justifying that. That is really hard to nail down the costs on that. When we talk to the BIA and others, we fully support the formula as it was in MAP-21. Because the negotiated rulemaking that was instituted resulted in total inequities. And MAP-21 corrected that by allowing money to be spent on BIA and tribal roads, on-reservation BIA and tribal roads.

So we very much support the formula in MAP-21. I think Mr. Smith might have some additional comment on the administrative side.

The CHAIRMAN. The Fort Peck Tribes are one of the first to enter into an agreement with Federal Highways to operate the transportation systems. Dana, could you talk about that agreement? Do you

believe it has allowed the tribes to better address transportation needs?

Mr. BUCKLES. Yes, I agree with that. We do to an extent too, but as far as us as being that, it is an honor for the tribes too. But I guess to me, I just have to go back to that funding. I would probably have to get back to you on that question, to update you more on that.

The CHAIRMAN. That is fine. I think if we can get the administration closer to the ground, which you guys self-determine, where your needs are, it would seem to me that that would make better sense and hopefully that agreement does that.

Mr. MARTEL. just talk a little bit, and you can kick it over to Mr. Smith, however you want to do it, about how we can continue the progress that was made with MAP-21 to improve tribal transportation programs that will better fulfill our trust responsibilities and really empower you and the Indian people of the area on transportation infrastructure.

Mr. MARTEL. I will let Mr. Smith answer that.

The CHAIRMAN. Sure.

Mr. SMITH. Mr. Chairman, that is a very good question. Our recent meeting with the Tribal Unity Conference in Denver two weeks ago really addressed that I think most appropriately. It talked about increasing funding. It talked about set-aside programs being deleted, being funded as a set-aside program, if you will, as in bridges, Mr. Sparrow indicated that the 2 percent equated to \$9 million in the MAP-21 formula. We would suggest that the take-downs be set-asides in their own practical arena, such as bridges and safety would be taken out of what would be seen as a general fund, if you will, concept to mean standalone funding.

Formerly, the bridge program out of SAFETEA-LU was \$18 million. And when it got included into MAP-21 it became \$9 million because it was included in the overall program. So if we let safety and the bridge programs as standalone projects and not fund them out of the appropriation of the construction funding program it would be much more advantageous. As was mentioned, tribal bridges now have to be inspected. That was not the same, it was introduced at the same time MAP-21 was introduced, but that was one of the flaws that was unbeknownst at that time to Indian tribes that they were also going to have to inspect tribal bridges. Although the need was always there, it just wasn't available for funding and to do that.

So we still have a big void in bridges.

The CHAIRMAN. Okay. Mr. Thomas, what part of Alaska do you live in?

Mr. THOMAS. I live in Juneau, which is southeast Alaska.

The CHAIRMAN. So you made a pretty good trip to get here, you flew down to Seattle and across.

Mr. THOMAS. Yes.

The CHAIRMAN. We appreciate your coming today, and appreciate your making the trek, because it is a pretty long haul. I have been up several times to help Senator Begich up there, and it is not easy to get here. So we appreciate your making that sacrifice.

What do you see as the biggest impediments today which prevent tribes from really building their transportation safety and transit programs?

Mr. THOMAS. I think the biggest thing is funding. When you have the backlog, that was mentioned in earlier testimony, as we do, and then you divide up the limited budget, it really creates more conflict between the tribes and the regions. And it wastes time, it wastes everybody's time and it wastes money. So by having equitable funding compared to other non-Indian territories, I believe that that would help us tremendously and would help with much better plans locally. Because we have to wait several years in one community just to have enough money for a small project.

The CHAIRMAN. Thank you very much. I appreciate those comments. I appreciate all of your comments and your testimony and I appreciate all of you making the sacrifice to get in here and talk about what is going on in Indian Country as you see it. I very much thank you for the testimony, it is very helpful.

And I want to thank the previous panel too, for coming in and their testimony. We will work on making sure they get their testimony here a little quicker next time, I believe. But this hearing record will remain open for two weeks. I encourage all tribes and tribal organizations to submit testimony as we prepare for this reauthorization. It is a critical reauthorization for Indian Country. We all know that. It is part of the way we not only get to school but create economic development and provide for safety for Indian Country.

With that, this Committee hearing is adjourned.

[Whereupon, at 11:30 a.m., the Committee was adjourned.]

## A P P E N D I X

JOINT PREPARED STATEMENT OF KATHYLEEN LONE TREE-WHITERABBIT, DISTRICT 5 LEGISLATOR/TRIBAL SECRETARY; DAVID GREENDEER, DISTRICT 2 LEGISLATOR; ANDREA ESTEBO, DISTRICT 2 LEGISLATOR, HO-CHUNK NATION

Chairman Tester and Committee members,

We are three elected Representatives of the Ho-Chunk Nation who have been selected by our colleagues on the Ho-Chunk Nation Legislature to serve as the BIA Roads Legislative liaisons. The Ho-Chunk Nation is pleased to provide the Senate Indian Affairs Committee with information regarding the importance of federal transportation funding in meeting the needs of our tribal members.

### **About Ho-Chunk Nation**

The Ho-Chunk Nation is one of the few tribes in the contiguous 48 states that do not have a single situs reservation. Instead, it has scattered trust and fee parcels located in sixteen different counties in the southern half of the State of Wisconsin. The trust and fee parcels range in size from a couple acres to a few hundred acres totaling approximately 7000 acres. The vast majority of this land was purchased on the open market over the last seventy years by the Nation as it rebuilds after numerous forced relocations. These properties include housing sites, health care clinics, government office buildings, various businesses, wildlife preserves and many cultural sites.

Due to the immense distances around and between the Nation's land holdings and the rural nature of their location, adequate roadways and transportation can be a challenge for tribal members, non-tribal employees, customers and members of the general public who visit our lands. It is not uncommon for our tribal members to commute long distances each day to work at one of the Nation's businesses. In fact, the President of our Nation and a number of current Legislators must travel between 75 and 200 miles one way from home to office nearly every day. Our tribal members have no choice but to drive to the Nation's facilities in order to receive essential governmental services, participate in cultural ceremonies, or to get to their jobs.

As the Nation continues to grow and our government evolves to address new demands, more emphasis is being put on economic development and diversification in order to meet those needs. As part of a long term strategy, the Nation is currently evaluating establishing a Chapter 17 Corporation in order to facilitate new business opportunities and provide employment for our tribal members. It is envisioned that the duties of a new tribal corporation include developing those tracts of land owned by the Nation that are suitable for conducting business operations. This will require investment in infrastructure such as sewer, water and of course, roadways. Federal transportation funding would play a key role in the success of these new ventures and assist the Nation in its efforts to reduce the high unemployment of our tribal members.

### **Tribal Transportation Program**

For decades, those roads providing access to and serving the Nation's lands were neglected by the state, counties and other local units of government with primary ownership. During this time the Nation was unable to fully participate in the Indian Reservation Roads Program (IRR), now known as the Tribal Transportation Program (TTP), due to it not having a land-based reservation. In 2004, after the passage and implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the Nation was able to fully participate in the IRR Program the first time. This allowed the Nation to undertake some desperately needed road construction projects that mainly focused on safety improvements. Funding from the Program also allowed the Nation to enter into cooperative agreements with nearby units of local governments in order to share costs for additional road construction projects that benefitted tribal members as well as

the general public. These cooperative projects also helped foster good will and build relationships between the Nation and surrounding non-tribal governments.

The passage and implementation of MAP-21 two years ago has resulted in a significant decline in the funding that the Nation receives from the TTP. The decrease in funding will require the Nation to modify its Long Range Transportation Plan and curtail the size and number of road construction projects it can accomplish. The new MAP-21 funding formula has redistributed funding to some tribes at the expense of other tribes. The Nation understands that many tribes rely on this funding and therefore we are not asking for the formula to be changed again. We do however ask that Congress increase the overall level of funding so that the effects of the MAP-21 formula change are mitigated to some extent.

#### **Transportation Reauthorization**

Representative Lone Tree-WhiteRabbit had the pleasure of representing the Nation at the Tribal Transportation Reauthorization Unity Summit in Denver, Colorado in February this year. The Nation supports the recommendations developed at the Unity Summit and encourages the Committee members to support this initiative as well.

During the Summit, over 50 tribes came together and developed a unified position on a number of provisions for inclusion in the next Highway bill. The support for these provisions from members of this Committee is key to the success for Indian Country. The focus of the recommendations from the Unity Summit is an increase in funding. An increase in funding for tribal transportation programs will help address the chronic unmet needs faced by All tribes across the country.

Although the Nation supports all twelve recommendations to come out of the Unity Summit, the provision that would be most beneficial to the Nation is the increase in funding for the TTP. As stated earlier, an increase would help mitigate the decrease in funding experienced by many tribes due to the formula change under MAP-21. In the case of the Nation, an increase in funding would also likely translate directly into an increase in employment, not only for tribal members, but for non-tribal members as well. As the Nation moves forward with its economic development plans, funding from the TTP would play a pivotal role in the success of future tribal businesses.

Thank you for your time and attention. We hope you find this information useful as you move forward with your deliberations on tribal transportation issues. Please support the recommendations of the Tribal Transportation Reauthorization Unity Summit and include them in the reauthorization of the next Highway bill.

PREPARED STATEMENT OF C. JOHN HEALY SR., PRESIDENT, INTERTRIBAL  
TRANSPORTATION ASSOCIATION (ITA)

On behalf of the Intertribal Transportation Association (ITA), its Executive Committee and our Member Tribes, I am pleased to submit these written comments to the Senate Committee of Indian Affairs (SCIA) oversight hearing on "Tribal Transportation: Pathways to Infrastructure and Economic Development in Indian Country."

ITA is the only national intertribal transportation organization. Its purpose is to represent the transportation interests of American Indian Tribes and to foster the development, operation and maintenance of transportation systems serving American Indian and Alaska Native communities.

ITA and the National Congress of American Indians (NCAI) recently entered into a Memorandum of Understanding to re-establish the Joint Task Force on Tribal Transportation ("Joint Task Force") to work with tribes to identify consensus transportation priorities to inform Congress's consideration of the reauthorization of Moving Ahead for Progress in the 21<sup>st</sup> Century (Public Law 112-141) ("MAP-21"), which is due to expire in less than seven months. ITA and NCAI first formed the Joint Task Force to assist tribal governments in presenting their priorities to Congress for the reauthorization of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59) ("SAFETEA-LU"). In that earlier effort the Joint Task Force facilitated the development of the National Tribal Leadership Paper on Tribal Transportation ("White Paper"). ITA is pleased to be working with NCAI once again to help facilitate the development of consensus transportation priorities.

I am happy to report that representatives from 50 tribes gathered in Denver the w  
24 for the Tribal Transportation Reauthorization Unity Summit.

Importantly, over the past several surface transportation bills, Congress has supported tribes in developing transportation programs and projects that are increasingly responsive to local needs and that allow for tribal innovations that enhance program effectiveness and stretch federal dollars. Today most tribes conduct transportation planning, design and develop transportation systems and implement infrastructure improvements themselves through agreements with the Bureau of Indian Affairs (BIA) and Federal Highway Administration (FHWA) based on the authority provided in the Indian Self-Determination and Education Assistance Act (ISDEAA). As federal surface transportation legislation has introduced new project completion and regulatory streamlining provisions, Indian tribes have demonstrated their effectiveness as solid partners in providing tribal citizens and the public with improved infrastructure, enhanced mobility and greater access to transportation services.

Congress has helped tribes and the federal agencies move the tribal transportation system in the right direction. Still, tribal transportation systems require sustained investment that is sufficient to address critical safety needs on long-neglected roads and to foster economic development opportunities by providing reliable and efficient transportation systems. Additional streamlining measures can be adopted to further increase project delivery and target resources where they are most needed.

ITA submits this testimony to present the views of Indian Country in the MAP-21 reauthorization effort and to attest that when Congress hears and acts upon the needs and concerns in Indian Country as identified by Indian Country, the federal investment in tribal transportation infrastructure will bring outstanding returns with vital positive impacts in tribal communities.

#### **A Growing Unmet Tribal Transportation Need**

Transportation infrastructure is the cornerstone to the wellbeing of Indian reservations and communities. The inadequate condition of tribal transportation systems impacts health care, schools, public safety, and tribal economies. Our children's educational opportunities will not advance if there is not safe and reliable transportation to schools. Our people's health will continue to suffer if they do not have reasonable transportation to medical facilities and emergency vehicles do not have reliable access to Indian reservations and tribal communities. Tribal economies cannot grow if Indian reservations and communities do not have safe, reliable and efficient access to the national transportation system and national commerce. As you consider the transportation statistics that demonstrate transportation need in Indian Country, we ask Committee members to keep in mind how these transportation deficiencies affect the overall wellbeing of tribes and tribal communities and how this reflects on the United States trust obligations to tribes.

- *Tribal Transportation Facilities Are Funded Far Below Parity*

According to BIA data, the construction need for the Indian Reservation Road System (now the Tribal Transportation Facility system) was over \$40 billion as of 2008. Although tribal roads and transportation facilities comprise nearly 3 percent of the national transportation

system, federal investment in those tribal facilities has remained at less than 1 percent of the national transportation system. In 2008, the Joint Task Force calculated that, although tribal transportation facilities represent over 9 percent of the combined total of Federal-Aid Highways and federally-owned roads, the tribal transportation facilities received only 1.4 percent of the funding authorized to be appropriated under Title I of SAFETEA-LU. To bring funding for tribal transportation facilities up to parity with funding received by Federal-Aid and federally-owned routes, it was calculated that the Indian Reservation Roads Program (now the Tribal Transportation Program) would need to be funded at \$6 billion annually. Mindful of the budget limitations facing Congress, the Joint Task Force limited its recommendation to an annual funding amount of \$800 million with annual step increases of \$50 million.

Under MAP-21, the funding available to address the unmet construction need was reduced. Although the overall funding for the TTP was kept at the 2009 level (\$450 million), it was subjected to additional take downs (e.g. a 2 percent take down for the tribal transportation bridge program which was funded separately under SAFETEA-LU and a 2 percent take down for the tribal transportation safety program), resulting in a net reduction of the funding available for construction. Moreover, with Interior appropriations failing to even remotely come close to addressing maintenance needs, tribes have had to use a portion of their construction funding for maintenance activities as authorized by SAFETEA-LU. Further, while MAP-21 provided a step increase of approximately 1.7 percent for the Federal-Aid Highway Program, no step increase was provided for the Tribal Transportation Program. Under MAP-21, funding for tribal transportation facilities has fallen further behind the funding provided to Federal-Aid Highways and other federally-owned roads. The current tribal transportation funding levels does not satisfy the United States' trust obligation to tribes,

- *Safety Needs*

Native Americans suffer injury and death driving and walking along tribal transportation facilities at rates far above the national average. The number of fatal crashes in the nation declined by 2.2 percent during a study period between 1975 and 2002, but during that same period, the number of fatal motor vehicle crashes on Indian reservations increased, up to 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. Funding for the Highway Safety Improvement Program (HSIP) (23 U.S.C. § 148) was increased substantially in MAP-21 to \$2.5 billion. However, all the funds are allocated to the states, and none of this much needed new highway safety funding is set-aside to address the rising safety traffic fatalities in Indian country. In addition to receiving no direct funding from HSIP, tribes were not expressly identified as eligible recipients of HSIP funds administered by States. In contrast to the massive investment in state highway safety programs, MAP-21 established a small tribal safety transportation program authorized at \$9 million, which is funded through a takedown of tribes' TTP funding. However, although the safety funding is quite limited, the majority of this funding has been used for the development of tribal safety plans. Many tribes are now poised to be able to development and implement safety projects identified in their safety plans, but the meager safety funding currently available will not support more than a few of the much needed engineering safety projects.

**Success Tribes have had implementing transportation programs**

A majority of tribes have taken on the responsibility of administering their own tribal transportation programs and planning and delivering projects pursuant to ISDEAA or TTP agreements with the BIA or FHWA. Tribal programs are accountable to the Indian communities they serve, and they are building critical tribal capacity and delivering major transportation projects that improve the safety of tribal communities, bring jobs to tribal members and the local community, support tribal economic development and enhance the delivery of government services. Tribes and tribal transportation programs demonstrated their capacity and their ability to plan and deliver transportation projects under tight timelines through the successful implementation of the Recovery Act. These achievements are vitally important to Indian tribes, and we must build upon this record of success and continue to move forward to build a more prosperous and safe future for our tribal communities.

#### **Developing Consensus Tribal Transportation Priorities**

- *Joint Task Force White Paper and the TRIP Act*

As noted earlier, in preparation for the reauthorization of SAFETEA-LU, the Joint Task Force, in 2008, facilitated the development of the transportation priorities set out in the White Paper. In 2009, Senator Byron Dorgan, the former Chairman of the Committee on Indian Affairs, circulated a discussion draft bill known as the Tribal Reauthorization of Indian Programs (TRIP) Act. We were disappointed that few of the consensus tribal transportation priorities described in the White Paper and reflected in the TRIP Act were made it into MAP-21. MAP-21 provided a much needed funding increase for Tribal Transit Program administered by the Federal Transit Administration and authorized tribes to use a more of their TTP funding to carry out road maintenance activities, but MAP-21 includes little else from either the White Paper or the TRIP Act. Although the House did not take action on the bill (H.R. 7), the House Transportation & Infrastructure (T&I) Committee considered and adopted several important amendments to address tribal leader priorities from the White Paper.

- *Denver Unity Gathering*

Tribal leaders and tribal transportation technical staff representing more than 50 tribes gathered in Denver on February 25-27, 2014, to exchange perspectives on tribal needs and opportunities in order to develop consensus legislative proposals for a new surface transportation bill. The "Tribal Transportation Reauthorization Unity Summit" adopted a platform of 12 consensus positions to be shared with tribal nations, NCAI and ITA, and Members of Congress. Additionally, participating tribal representatives signed onto the attached statement of unity intended to promote a coordinated approach to tribal advocating for a new highway bill.

The Denver Summit evaluated positions based upon newer concerns emerging from the implementation of MAP-21 as well as proposals developed for the SAFETEA-LU reauthorization, including provisions adopted by the T&I Committee in H.R. 7 and the TRIP Act. Summit representatives agreed to work collectively and with the Congress and the Administration to advance a dozen tribal transportation priorities, including the following:

- Increased investment in tribal transportation facilities

- Consistent with the recommendations in the White Paper and the TRIP Act, tribes recommend increasing funding for the TTP to \$800 million for FY 2015 with annual step increases of \$50 million to \$1.05 billion in FY 2020. Because funding for the TTP has not been increased since 2009, and has actually been reduced through new take downs, this funding recommendation is quite modest. But it will allow tribes to make some headway on the unmet construction need.
- Establish a Tribal Asset Management Program at \$50 million with annual step increases of \$5 million, for BIA and tribally owned transportation facilities, and encourage funding of at least \$150 million for the BIA road maintenance program.
- Increase funding for the Tribal Transit Program, implement annual step increases, and ensure stable funding for established tribal transit programs.
- Restore Highway Trust Fund allocation for the Tribal High Priority Projects Program, which has not been funded under MAP-21, and increase the maximum grant amount and increase funding to \$35 million with annual step increases.
- Redistribute 10 percent of unused obligation authority to the TTP for competitive grants to remote tribes.
- Separately fund the TTP Bridge Program at \$75 million with annual step increases and authorize use of funds for construction and design of new bridges.
- Establish \$75,000 as the minimum annual TTP program funding allocation for all Tribes. Minimum funding is enacted when the TTP funding grows sufficiently to ensure that the additional consensus principal of "No Net Loss" is preserved.
- Restore the TTP exemption from the obligation limitation deduction.
- Reduce BIA and FHWA administrative take downs from 6 percent to 5 percent, and impose a 28 million annual cap.
- Begin to address the highway safety crisis in Indian Country by establishing a 2 percent tribal set-aside from the Highway Safety Improvement Program, a 3 percent tribal-set aside from NHTSA, and a 3 percent set-aside from the Transportation Alternatives program to build or enhance safe routes to schools, scenic byways, and pedestrian paths. Without a tribal set-aside, the experience under MAP-21 is that the states provide little funding to tribes.
- Create a tribal self-governance program under the U.S. Department of Transportation (DOT) to streamline funding agreements and clarify the extension of the benefits of the Indian Self-Determination and Education Assistance Act to DOT. This recommendation was vetted with DOT officials in 2011 and it was adopted as an amendment to HR 7.

- At the request of a state and tribe, require the BIA or FHWA to award state administered Federal-Aid funds to a tribe through a TTP or ISDEAA agreement to facilitate intergovernmental cooperation and collaboration.
- Ensure tribal eligibility for all DOT programs and discretionary and competitive grants, which was adopted as an amendment to HR 7.
- Require BIA to improve Right-of-Way challenges management and provide funding to implement corrections, improvement and to pay trespass damages;
- Authorize tribes to assume responsibility for approving NEPA documents if a tribe provides a limited sovereign immunity waiver for administrative. Modeled on Title V of ISDEAA
- Improve efficiency in delivering Emergency Relief Funds to tribes.
- Establish a tribal infrastructure bank capitalized at \$10 million to provide low interest loans for tribal transportation projects.
- Increase funding for the Tribal Technical Assistance Program.

A summary of these provisions is included as an attachment to ITA's testimony.

**Conclusion:**

ITA looks forward to working with the Committee on Indian Affairs as you assess the transportation needs of Indian tribes and develop legislation and other strategies to address these issues to better fulfill the United States' trust obligations.

The SCAI 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.

PREPARED STATEMENT OF MELANIE BAHNKE, PRESIDENT, KAWERAK, INC.

### INTRODUCTION AND BACKGROUND

Kawerak, Inc. is a nonprofit corporation and tribal consortium authorized by Bering Strait Region tribes to administer certain programs of the BIA pursuant to P.L. 93-63B and has a program agreement with the FHWA Tribal Transportation Program (TTP) on behalf of 16 federally recognized tribes in this region<sup>1</sup>. Kawerak has established its Transportation Program to fulfill the requirements under its compact with BIA and FHWA and to coordinate with all governmental entities within its consortium which have transportation roles and responsibilities.

Kawerak serves the Bering Strait region in western Alaska. Currently 17 communities occupy the Nome Census Area. Nome has the largest population at 3,659 and is the regional hub for medical and transportation facilities including a port and harbor, and other essential services for the region. The Bering Strait region is about the size of West Virginia with a population of over 9,915. Most of our villages lack basic infrastructure such as water and sewer, roads, ports and harbors. The situation can be compared to third world living conditions.

Unlike most areas in America, a road system does not exist throughout the Bering Strait Region. Within the region, two State roads connect Nome to the villages of Teller and Council, which are open in the summer months and closed during winter. The BIA constructed a road connecting the villages of Stebbins and St. Michael. Otherwise, air transportation is the primary and most reliable mode of transportation throughout the year. During summer, Nome is a hub for ocean shipping, handling community re-supply and destination traffic. The conditions in this remote region of Alaska are unique; as are the needs with respect to development of transportation infrastructure. Tribes in our region and throughout rural Alaska are operating in extremely poor conditions with limited resources.

The weather here in rural Alaska is unpredictable and extreme. In rural Alaska, if you need to be medivaced to a hospital it will require air transportation. If there are poor weather conditions the wait for a medivac can be a life or death issue. Because our region lacks a road system between villages and no roads connect to the hub community of Nome (except sporadically with Council and Teller) many lives have been lost by traveling on land with snowmachine, all-terrain vehicles (i.e. 4-wheelers) or by water with boats on the river or on the ocean. The transportation infrastructure needs in our region are immense.

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<sup>1</sup> This testimony is submitted on behalf of: Native Village of Brevig Mission, Native Village of Diomedes, Native Village of Elim, Chinik Eskimo Community (Golovin), Native Village of Gambell, Native Village of Koyuk, Native Village of Mary's Igloo, Native Village of St. Michael, Native Village of Shaktoolik, Native Village of Shishmaref, Village of Solomon, Stebbins Community Association, Native Village of Teller, Native Village of Unalakleet, Native Village of Wales, Native Village of White Mountain.

MOVING FORWARD FAIRLY AND EQUITABLY TO ADDRESS  
INFRASTRUCTURE NEEDS

EQUITABLE FUNDING COMPARED TO THE REST OF THE UNITED STATES. Alaska Natives and American Indians deserve a sufficient share and an equitable allocation among tribes of the dwindling Highway Trust Fund. This will allow Alaska Natives and American Indians to catch up to the rest of the United States, and allow Alaska Native and American Indian tribal governments to have the same basic safe access to essential services and markets enjoyed by the rest of Americans. Safe roads are a necessity. Congress must recognize that Alaska Natives and American Indians merit a bigger share of the Highway Trust Fund because tribal roads do not provide safe access to critical health services, supplies, job markets, and trade opportunities for remote Alaska Native and American Indian communities compared to the degree of safe access accorded much of the rest of America.

EQUITABLE FUNDING DISTRIBUTION FORMULA. MAP-21 tossed aside an allocation formula based on "relative needs" that had been carefully crafted by tribal stakeholders in a negotiated rulemaking process. The MAP-21 approach resulted in dramatic cuts in funding to some tribes (many of them smaller and isolated) and dramatic increases in funding for other large population tribes. The MAP-21 funding distribution allocation among tribes is inequitable. It must be replaced. The prior SAFETEA-LU relative-needs formula (RNF) adopted some years ago by all tribal stakeholders in negotiated rulemaking, as applied in FY 2012, should be reinstated for FY 2015 and FY 2016 while a new tribal negotiated rulemaking committee negotiates a new relative needs formula for FY 2017 and beyond. In other words, the new roads reauthorization language should freeze the FY 2012 funding distribution formula in place for FY 2015 and FY 2016 and require that tribes engage in negotiated rulemaking to negotiate among tribal sovereigns a new relative-needs formula for FY 2017 and future years.

To be clear, Kawerak requests that Congress statutorily --

- (a) freeze in place the FY 2012 relative funding allocation formula for FY 2015 and FY 2016, and
- (b) require a new tribal negotiated rulemaking committee to come up with a more refined relative needs formula for FY 2017 and future years.

TRIBAL NEGOTIATED RULEMAKING. Tribal negotiated rulemaking is the recommended process through which tribal-federal policy should be established regarding major decisions involving roads formulas and programs.

**RELATIVE NEEDS MUST BE CAREFULLY BALANCED.** A relative-needs formula developed under negotiated rulemaking should balance key factors in an effort to be equitable relative to all tribes, such as: tribal service area of land and distance to travel, number of people, and safe access to essential services and markets. The SAFETEA-LU relative-needs formula should serve as the starting point for a new tribal negotiated rulemaking committee's formulation of a new relative-needs formula for future years.

**STEER UNUSED OBLIGATION AUTHORITY TO UNMET INDIAN COUNTRY NEEDS.** Given the huge unmet needs of Alaska Native and American Indians compared to the rest of America, any transportation reauthorization legislation should reallocate to a Safe Access for Tribal Communities Fund at least 10% of the obligation authority within the overall Highway Trust Fund which remains unused by states at the end of each fiscal year. Upon transfer of this obligation authority to the Safe Access for Tribal Communities Fund, these funds should be available for competitively awarded applications by tribes to address unmet needs similar to the requirements of the High Priority Projects under SAFETEA-LU.

**FULL TRIBAL SELF-GOVERNANCE.** P.L. 93-638 authority should be fully extended to all aspects of tribal funding and services related to the Highway Trust Fund and administered by the U.S. Department of Transportation (DoT) and the U.S. Department of the Interior (DoI). The new law should clarify that this tribal authority is a mandatory obligation of both DoT and DoI, and is not subject to discretion. It should also clarify that all Highway Trust Funds, including those used by the DoT or DoI to administer the program, are compactable and subject to P.L. 93-638 authorities.

**SUPPORT FOR TTUC.** Kawerak, Inc. supports the position papers developed by the Tribal Transportation Unity Coalition (TTUC). The new transportation reauthorization bill should include these TTUC recommendations, which many tribes believe would bring modest but much needed improvements to our tribal community road systems.

Thank you for the opportunity to provide written testimony for the Highway reauthorization bill.

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PREPARED STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS (NCAI)

On behalf of the National Congress of American Indians (NCAI), thank you for the opportunity to provide testimony for the record on 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 commends the Senate Committee on Indian Affairs for examining the tribal transportation infrastructure and the upcoming transportation reauthorization and we look forward to working with the members of this Committee to enhance investments in transportation infrastructure development.

Tribal transportation programs are critical to ensuring that tribal governments can provide for the economic and social well-being of their tribal members and members of the surrounding communities. Adequate and safe roads, transit, bridges, and infrastructure are the means that tribal economic opportunities, and that elders rely on for healthcare and mobility. When legislation is enacted that impacts how tribes carry out their tribal transportation program, it is key that implementation occurs in a timely manner and takes tribal self-determination into account.

### **Background on Tribal Transportation**

Surface transportation in Indian Country involves thousands of miles of roads, bridges, and highways. According to the latest National Tribal Transportation Facility Inventory (NTTFI),<sup>1</sup> there are approximately 159,000 miles of roads and trails in Indian Country owned and maintained by the Bureau of Indian Affairs (BIA), tribes, and states and counties. Of those, Indian tribes own and maintain 13,650 miles of roads and trails, of which only 1,000 (or 7.3 percent) are paved—12,650 miles are gravel, earth, or primitive. These 12,650 miles of roadways are still among the most underdeveloped and unsafe road networks in the nation, even though they are the primary means of access to American Indian and Alaska Native communities by tribal and non-Indian residents and visitors alike. Of the 27,500 miles owned and maintained by the BIA, only 7,100 miles are paved and 20,400 miles are gravel, earth, or primitive. These roads are the primary means of travel for Indian people across the nation, but they remain the most underdeveloped road system in the United States.

### **Preparing for Upcoming Transportation Authorization**

NCAI has partnered with the Intertribal Transportation Association (ITA) through a formal Memorandum of Understanding creating the NCAI-ITA Joint Tribal Transportation Task Force, to bring together all tribes on transportation. Indian tribes and tribal transportation technical staff came together to identify and develop tribal transportation positions to prepare for the upcoming transportation authorization. In addition, NCAI has been participating and collaborating with tribes and the Tribal Transportation Unity Caucus, and last month at the Tribal Transportation Reauthorization Unity Summit was held in Denver, CO. As these positions were identified and developed, the tribes at the national meeting took into account the political and fiscal challenges facing Congress as they consider a transportation authorization this year. These are low or no cost positions to assist tribes in making transportation programs within Department of Transportation (DOT) and BIA to be more streamlining or efficient for tribes to execute their transportation projects. Further, NCAI has attached to this testimony NCAI Resolution #ECWS-14-006 which incorporates some of the positions of the Tribal Transportation Unity Act.

### **MAP-21—Tribal Transportation Programs**

The current transportation authorization, Moving Ahead for Progress in the 21st Century (MAP-21) restructured the transportation programs for Indian tribal governments by establishing and consolidating the Tribal Transportation Program (TTP) (formerly the Indian Reservation Programs), eliminating the separately funded IRR Bridge Program and High Priority Project Program (IRRHPP) and creating discretionary grants within the TTP for tribal bridges and highway safety programs and projects. MAP-21 changed the regulatory funding formula for allocating TTP “tribal shares” for transportation construction that the BIA and FHWA must phase in over a number of years. MAP-21 also revamped the Section 5311(c) Public Transportation on Indian Reservations Program (Tribal Transit Program) administered by the Federal Transit Administration, by establishing a statutory formula for allocating transit funds among eligible Indian tribes, and increased funding.

### **Issues From MAP-21 on Tribal Transportation Programs to be Aware and to Consider for the Upcoming Transportation Legislation**

As mentioned, MAP-21 made several programmatic changes to tribal transportation programs, one of them included the removal of funding of the Tribal High Priority Projects Program from the Highway Trust Fund to the U.S. Treasury General Funds and authorized funding for \$30 million; since the enactment of MAP-21 this program has not been appropriated funds for FY 2013 and FY 2014. This program is crucial because it provides funding to tribes whose TTP annual funding allocation is inadequate to complete their highest priority projects, or for tribes that are impacted by emergency or disaster incidents that leave tribal transportation facilities unusable or inaccessible. NCAI supports the restoration of this essential program assist tribes to construct and rehabilitate their most pressing infrastructure needs.

Both the Tribal Transportation Program and Tribal Transit Program required rulemakings for implementation. As of today, Federal Lands Highway (FLH) and BIA have not finalized its rulemaking on implementation of MAP-21. The agency has held three tribal consultations; however no final rule has been published since MAP-21 was enacted. The Federal Transit Administration held two meetings with

<sup>1</sup>23 USC 202 (b)(1).

tribes and published a final rule in the May 9, 2013 Federal Register (“Notice Of Funding Availability: Solicitation Of Grant Applications For FY 2013 Tribal Transit Program Funds; And Responses To The November 9, 2012 Solicitation Of Comments”).

*Implementation of the Funding Formula.* The funding formula in MAP-21 formula consists of: 27 percent of funding based on the Tribe’s approved road mileage (national percentage); 39 percent of funding based on the Tribe’s most recent Native American Housing Assistance and Self-Determination Act (NAHASDA) population (national percentage); 34 percent of funding based on the Tribe’s RNDP and Population Adjustment Factor (PAF) amounts from FY05 to FY11 (regional percentage). The new formula now takes into account NAHASDA population component and determines how much each tribe receives for TTP. There are two concerns NCAI would like to bring to the Committee’s attention:

1. *U.S. Department of Housing and Urban Development (HUD) Negotiated Rulemaking Committee.* This Negotiate Rulemaking Committee is currently reviewing and revising HUD’s Indian Housing Block Grant (IHBG) formula allocation codified in subpart D of part 1000 of HUD’s regulations in title 24 of the Code of Federal Regulations. The outcome for the IHBG’s formula will have a significant impact on the TTP and Tribal Transit Grant Program statutory allocation formula because it uses the tribal population according to Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA, 25 USC 4101 et seq.). After MAP-21, NCAI has recommended tribes to have their transportation departments inform their tribal housing authorities about new MAP-21 statutory formula, which now uses NAHASDA tribal population component to calculate funding allocation. NCAI is uncertain if DOT is aware of this Negotiated Rulemaking Committee is currently reviewing the IHBG formula allocation or if HUD is aware that MAP-21 authorized statutory formula using tribal population from NAHASDA formula allocation.
2. *Tribes are not obligated to report their population numbers to HUD.* Federal Lands Highway and BIA are having difficulty calculating allocation funding for tribes where some tribes population is zero because they do not report their population numbers to HUD. BIA has stated in testimony on MAP-21 implementation there are over 25 tribes whose population is at zero. This component of the NAHASDA population does not give Federal Lands Highway and BIA the ability to accurately distribute TTP allocation funds.

*Addressing safety issue for tribes.* Safety issues for Indian tribes are important because many tribal communities are vulnerable by unsafe and often inaccessible roads, bridges, and ferries. Indian Country suffers injury and death driving and walking along reservation roadways at rates far above the national average. According to the Federal Highway Administration, “American Indians have the highest rates of pedestrian injury and death per capita of any racial or ethnic group in the United States.” Over the past 25 years, 5,962 fatal motor vehicle crashes occurred on Indian reservation roads, with 7,093 lives lost. While the number of fatal crashes in the nation declined 2.2 percent during this time period, the number of fatal motor vehicle crashes per year on Indian reservations increased 52.5 percent. Adult motor vehicle-related death rates for American Indians/Alaska Natives are more than twice that of the general population. These statistics are shocking and cry out for major changes in Federal transportation safety programs serving Indian Country.

Currently, Indian tribes receive a two percent set-aside from the National Highway Traffic Safety Administration (NHTSA) Highway Traffic Safety Grant Section 402 which is administered by BIA; the funding amount for FY 2014 was \$4.7 million. The purpose of Section 402 is support highway safety plans to help reduce fatalities and injuries on highways. According to BIA Indian Highway Safety Program (25 CRF PART 181), this program is a competitive grant program, and is meant to assist tribes with their proposed Highway Safety Projects. The plans aim to reduce traffic crashes, reduce impaired driving crashes, increase occupant protection education, provide Emergency Medical Service training, and increase police traffic services. Indian tribes have expressed their concern that the BIA Indian Highway Safety Program with the accountability and efficiency this program is providing to Indian tribes for highway safety projects. In reviewing grant awards, tribes have noted that the grants being awarded within the BIA Indian Highway Safety Plan are awarded for law enforcement initiatives and are not going to other safety prevention programs, leaving tribes in effect with no access to safety funding. NCAI recommends: (1) the establishment of a two percent direct tribal funding set-aside from the Highway Safety Improvement Program for the purpose of reducing traffic fatalities and injuries on tribal transportation systems; and (2) to increase the current set-aside

of two percent for tribes for the NHTSA Highway Safety Grant to three and half percent.

*Create and Expand Tribal Self-Governance Programs under the DOT.* Creating and expanding Self-Governance Programs within DOT will streamline grant-funding agreements for federal transportation programs and more efficiently target limited transportation dollars to the improvement of tribal transportation systems. This important step will provide an additional option to tribes and will not supplant the existing TTP agreements.

*Improve the speed and efficiency in getting Emergency Relief for Federally Owned Roads (ERFO) funding to tribes.* Currently, ERFO funding is available to tribes to restore BIA and tribally owned roads and bridges to their pre-disaster condition. Currently there is a great delay between the time tribes to expend funds to fix these facilities, and the time they are reimbursed for these costs.

*Ensure tribal eligibility for all DOT discretionary and competitive grants.* Tribal governments are increasingly gaining direct access to federal transportation grants, but this provision would ensure that tribes have access to all discretionary and competitive grants to increase tribal funding opportunities without increasing the overall cost of the next highway bill.

*Adequately fund MAP-21 requirement that tribal bridges must now be inspected and included on the National Bridge Inventory.* This proposal would amend MAP-21's unfunded mandate to require that the inspection costs for including BIA and tribal bridges in the National Bridge Inventory come from Federal-Aid bridge program funds rather than from TTP funds.

*Improve BIA Right-of-Way Management.* Right-of-way management would be greatly improved by requiring the BIA to update and computerize rights-of-way documentation, support tribal corridor management practices, and pay trespass damages for BIA improperly obtained or recorded rightsof-way. This Committee should authorize \$10 million per year to cover the cost of these statutory requirements.

*Ease the transfer of Federal Aid funds for tribal transportation projects.* Current barriers to transfers of federal-aid funds to Indian tribes must be eliminated by requiring the BIA or FHWA to award state-administered federal-aid funds to tribes under their TTP agreements. If a tribe and state prefer, the state may make the funding award directly to the tribe under an appropriate award instrument that respects tribal sovereignty and the government-to-government nature of the agreement.

*Give tribes the option of assuming NEPA approval authority.* This proposal would enable tribes the option, but does not require them, to assume responsibility for approving NEPA documents, if the tribe is willing to provide a limited sovereign immunity waiver. At the option of the tribe, the BIA or FHWA can perform this function, but if a tribe prefers to assume the NEPA responsibility itself, it will be required to provide a limited waiver of sovereign immunity allowing for administrative challenges to the tribe's NEPA decision. This NEPA provision would be modeled on the successful Title V Self-Governance Program administered by the Indian Health Service.

*Increased funding for Tribal Technical Assistance Program (TTAP).* The Tribal Technical Assistance Program (TTAP) is the only technical assistance program that provides much needed transportation related education and training to tribal governments for transportation road projects. Education and certification is important to assist in building a viable tribal transportation work force. In addition, well qualified skilled workers enable Indian tribes and Alaska Native Villages to further develop tribal transportation infrastructures.

There are currently seven TTAP centers located around the country. TTAP is funded by both the FHWA and BIA. Currently, each TTAP receives \$300,000 a year in total funding, which is comprised of \$150,000 from the Local Technical Assistance Program and \$150,000 from the IRR program. This totals about \$1.9 million for the overall TTAP funding each fiscal year to serve all 566 federally recognized tribes. To ensure that TTAPs are able to meet the increased demand for their services and as additional tribes assume responsibility for administering their own transportation programs, NCAI recommends Congress to increase to the overall funding of TTAPs from \$2.1 million to \$3.6 million each fiscal year. This needed funding will assist each TTAP center to adequately address the increasing need for transportation technical assistances.

### **BIA Road Maintenance**

Although the subject of this hearing is on the upcoming transportation authorization, one of important transportation program for tribes is the BIA Road Maintenance. The BIA implements, funds, (the funding is appropriated through the Interior, Environment and Related Agencies) and is responsible for maintaining 29,500

miles of roads in Indian Country. The BIA Road Maintenance is funded approximately \$25 million and funding levels have remained stagnant for several fiscal year cycles, compromising highway safety in Indian Country, dramatically shortening the useful life of the BIA System and tribal roads and bridges, and undermining tribal economic development initiatives in Indian Country. For FY 2013, deferred maintenance for BIA roads is over \$280 million. These staggering amounts of deferred maintenance on BIA roads are transportation and maintenance costs all directly on to tribes—Indian Country cannot afford to divert their scarce resources to transportation infrastructure that is BIA's responsibility. We are quite concerned that U.S. Department of the Interior has again requested only \$25 million for FY 2015 the BIA Road Maintenance which has remained unchanged again for decades.

In conclusion, NCAI is committed to improving and building upon the successes of the last authorization of MAP-21 because transportation infrastructure is vital to the enhancement of tribal governments and safety of their communities and visitors who utilize transportation facilities in Indian Country. Strengthening tribal governments and their communities by providing safe and reliable transportation infrastructure is essential for our communities to prosper.

**Attachment**

THE NATIONAL CONGRESS OF AMERICAN INDIANS RESOLUTION # ECWS-14-006

**TITLE: Unified Positions to Address the Transportation Needs of Tribal Nations**

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, on February 25 and 26, 2014 the Tribal Transportation Reauthorization Unity Summit was held in Denver, Colorado, and the Summit resulted in the development of Tribal Transportation Unity Act positions; and

**WHEREAS**, the Tribal leaders and tribal transportation officials of the Tribal Transportation Reauthorization Unity Summit developed the DENVER UNITY STATEMENT 2014, that calls upon all tribal Nations, the National Congress of American Indians and Intertribal Transportation Association, National Tribal Transit Association, and all other intertribal organizations to embrace the positions developed in Denver and to work jointly with the Tribal Transportation Unity Caucus and tribal advocates to develop policy briefing materials, draft proposed legislative language and engage with the congressional committee leadership and staff to advance the mutually agreed upon objectives identified in the attached TRIBAL TRANSPORTATION UNITY ACT SUMMARY FOR THE 113th CONGRESS February 27, 2014.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians supports the effort of the Tribal Transportation Reauthorization Unity Summit and does hereby honor the participant's request for the National Congress of American Indians to embrace the TRIBAL TRANSPORTATION UNITY ACT SUMMARY FOR THE 113th CONGRESS OF February 27, 2014; and

**NOW THEREFORE BE IT ALSO RESOLVED**, that the National Congress of American Indians will assist the Tribal Transportation Unity Caucus in: the development of policy briefing materials; drafting of proposed legislation language; engaging the congressional committee leadership and staff to advance the objectives of the Tribal Transportation Unity Act positions; and

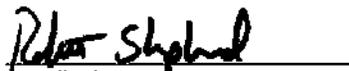
**BE IT FURTHER RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the Executive Committee at the 2014 Executive Council Winter Session of the National Congress of American Indians, held at the Westin Washington City Center March 11-13, 2014, in Washington, DC with a quorum present.

  
President

ATTEST:

  
Recording Secretary

PREPARED STATEMENT OF HON. FLOYD JOURDAIN, JR., CHAIRMAN, RED LAKE BAND  
OF CHIPPEWA INDIANS

On behalf of the Red Lake Band of Chippewa Indians, I want to express my appreciation to the Senate Committee on Indian Affairs, and to Chairman Tester for convening this hearing. 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 Tribal Transportation Program (TTP) provides funding for a coordinated program of public roads that serve Federal land transportation needs. For most Indian tribes, the TTP 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

*Background on the Red Lake Indian Reservation*

The Red Lake Band of Chippewa Indians is a small-to-medium sized Tribe with more than 11,500 members, most of who live on our relatively-large Reservation. The Red Lake Indian Reservation, with over 840,000 acres of Tribal trust land and water, is located in a rural area within the boundaries of the State of Minnesota. While over time our Reservation has been diminished from its original 15 million acres, it has never been broken apart or allotted to individuals and lost to non-Indians.

The Red Lake Tribal government is responsible, in conjunction with the United States, to provide a full range of governmental services to Reservation residents. We administer transportation, police, judicial, penal and fire protection services, natural resource protection and management, social services, health and other emergency services, economic development and planning, and many other governmental activities. The Red Lake Band is beginning its eighteenth year of operating BIA-funded programs under self-governance authorities.

Approximately 7,500 Tribal members live on the Reservation and the majority of households have incomes below the federal poverty line for a family of four. The service population of the Reservation exceeds 12,000. Forty percent of all Reservation households receive income from employment with our Tribal government, making Tribal government jobs the single most important source of income on our Reservation. Our Tribe employs approximately 2,400 workers in its governmental programs and enterprises for a total annual payroll nearing \$20.0 million. Many Tribal members survive on a traditional subsistence economy of fishing and small-scale timber harvesting.

Due in part to our location far from centers of population and commerce, we have few jobs available in the private sector economy. If our members work off-Reservation, by necessity they must often travel more than an hour to get to or from their jobs. While unemployment rates throughout Minnesota are showing a decline, the unemployment rate on the Red Lake Reservation exceeds 50%. The chronic lack of good roads, communications, and other necessary infrastructure continually derails our efforts to expand economic development and job opportunities. If our people are to secure and maintain steady work as responsible citizens we must, as a responsible government, provide adequate and safe transportation systems so that they can get to their jobs through all weather conditions.

#### *Specific Information on Red Lake Roads and Bridges*

The population of the Red Lake Indian Reservation continues to grow at a rate much faster than can be accommodated by the present infrastructure. Our infrastructure, especially our road system, is being "taxed" to its limits. The Red Lake road system consists of a total 556.9 miles included in the BIA road inventory system. This includes approximately 112.0 miles of paved roads, 73.4 miles of gravel surfaced roads and 371.5 miles of earth surfaced roads. We also have approximately 50 miles of state-owned roads on the Reservation. There are no county or township roads on the Reservation, however there are county and township roads that provide access to the Reservation. Of the 112.0 miles of paved roads, 40 % have surfaces that have outlived their design-life of 20 years. With our expanding population, new roads and streets have to be constructed in our expanding housing developments and our gravel and earth-surfaced roads will require complete reconstruction to serve our residents.

The construction and maintenance of the majority of roads on the Red Lake Reservation is a Federal responsibility, guaranteed through Treaties negotiated with the United States. However, we are denied the full benefits of recent highway legislation by the unintended consequences of the "obligation limitation" provision in the legislation and by the Federal agencies wrongful implementation of the intent of the congressionally mandated negotiated rules that were intended to govern the Indian Reservation Roads program. Because the Bureau of Indian Affairs (BIA) has allowed many tribes to include thousands of miles of non-federal roads in their inventory to generate funding, funding for tribes like Red Lake has dwindled to where we cannot meet the basic transportation needs of our members..

#### *Devastating Effect on MAP-21 Distribution Formula*

The funding distribution formula contained in the existing legislation (MAP-21) is not fair and equitable and has proven to be harmful to many tribes in that it has reduced their annual funding allocation to where they cannot address their basic transportation needs. MAP-21 discarded the Tribal Transportation Allocation Methodology (TTAM) which was based on the Relative Needs of all tribes and replaced it with a formula that is primarily based on population. This change reduced the allocation of many tribes and in fact left many small tribes ineligible for funding altogether. This inequity must be corrected in the new highway bill.

#### *Tribes Wrongly Blamed*

Tribes have been wrongfully blamed for being divided on the TTAM distribution formula when in actuality it was the manner in which the BIA and Federal Highway Administration arbitrarily chose to implement a formula contrary to the distribution formula developed and agreed to by consensus by all tribes through a tribally driven negotiated rule making process. Additionally, MAP-21 includes language that modifies the method by which tribal transportation facilities are quantified and made eligible for funding.

Under the negotiated rule making process mandated 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 implementation of the final rule, the BIA ignored critical language regarding how transportation facilities were to be included into the IRR inventory. Despite the clear language in the new regulations the BIA allowed Tribes to include thousands of miles of State, County and other Federal roads into the system and generate funding at 100%.

While SAFETEA-LU provided a significant increase in IRR funding, we were dismayed that the land based tribes, such as Red Lake, saw little increase or lost funding because of the misinterpretation and misapplication of the negotiated regulations by the BIA and FHWA. The IRR program funding formula was an inventory-driven formula based on Relative Needs of all Tribes. The accuracy of the BIA's Road Inventory field Data System (RIFDS) was paramount to ensuring the integrity of the IRR Program. The misinterpretation and misapplication of the final rules by the BIA resulted in the uncontrolled implementation of the IRR road inventory update process. The BIA allowed tribes to flood the inventory with roads and streets that were the responsibility of other governments, (i.e. States and Counties).

Land based Tribes objected to the BIA allowing thousands of miles of non-federal roads into the IRR inventory just to generate funding. As a regional program, without standardized practices among the BIA Regions the integrity of the IRR program suffered to the point that the IRR inventory became an "arms race" to see who could generate the most funding regardless of who got harmed by the process.

This led to a perceived notion that the tribes were divided on the TTAM distribution formula and Congress implemented the current MAP-21 distribution formula.

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.

#### *Fair and Equitable Funding Distribution Formula*

The MAP-21 funding distribution formula is not fair and equitable and should be replaced with a formula that reflects the true needs of all Indian Tribes. Since the perceived notion still exists that Tribes are divided on the Tribal distribution formula, we request that the following suggestions be considered in the next Highway reauthorization bill:

- Implement a study of the Tribal Transportation Program by an independent consultant to determine the true transportation needs of all Indian Tribes and develop a recommendation for a fair and equitable funding distribution formula based on determined needs.
- Replace the existing MAP-21 funding distribution formula with a formula developed in an expedited process by a tribal negotiated rulemaking committee that relies on the independent consultant's recommendations.
- Freeze the funding distribution at the FY 2012 level until the study is completed and new formula is implemented.
- Restore the High Priority Project funding to the Highway Trust Fund.
- Mandate that the BIA and FHWA implement the new formula as determined by the tribal negotiated rulemaking committee.

### *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 BIA 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 Red Lake Band 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*

Despite the many great successes and accomplishments that Tribal transportation programs have achieved over the last several years, the perceived funding formula dispute has cast a negative light on the IRR Program. As Congress begins to consider a new Highway Bill, Tribal unity is of the utmost importance and while some Indian tribes remain divided over the best means of resolving the funding formula issue, we are confident that common sense will prevail and a formula will be developed that will be fair and equitable to all tribes.

The Red Lake Tribe supports the efforts of the Tribal Transportation Unity Caucus (TTUC) but notes that the TTUC preferred not to address the funding distribution formula in the Tribal Transportation Unity Act requests. Since the funding distribution formula is viewed as the factor that is dividing Tribes, and truly is the crux of the problem that is preventing tribes from equitable access to transportation funds, we strongly urge Congress to consider an Independent study of the Tribal Transportation Program and develop a funding formula that is fair and equitable.

On behalf of the Red Lake Band of Chippewa Indians, I thank the Committee for its attention to and support for the Tribal Transportation Program. 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 allowing the Red Lake Tribe to present this testimony.

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PREPARED STATEMENT OF HON. NATHAN SMALL, CHAIRMAN, FORT HALL BUSINESS COUNCIL

*Introduction:*

On behalf of the Fort Hall Business Council of the Shoshone-Bannock Tribes (Tribes), Fort Hall Indian Reservation, Idaho, I, Nathan Small, Business Council Chairman offer these comments in regard to Tribal Transportation needs, funding and obligations to transportation programs in Indian Country.

The Fort Hall Indian Reservation is located in southeast Idaho consisting of approximately 544,000 acres situated in 4 counties (Bannock, Blingham, Caribou and Power). There are about 436 miles of paved roads on the reservation and about 125 miles of unpaved roads. The Tribes contracted the Tribal Roads Program from the Bureau of Indian Affairs (BIA) in 2001 under a self-governance contract with BIA. Since 2010 the Tribes have contracted with Federal Highways Administration (FHWA) for our construction program. The Federal Government has a wide variety of administrative responsibilities pertaining to highway transportation, including the Highway Trust Fund and other designated transportation funds, safety standards, regulations, and programs and services required by law. Most of the administration responsibilities for highway transportation rest with the Federal Highway Administration (FHWA) of the U.S. Department of Transportation (DOT). Implementation of these Federal policies and programs are usually carried out by other Federal agencies, or by agencies at the state or local levels. Transportation is essential for the community development, no matter if the community is a large sprawling metropolitan area or as small as a residential development. Accessibility and circulation is basic to human survival and can be as simple as a walking path or as complex as a metropolitan multi-modal network which includes vehicular, train, subway, biking, walking, and air transportation. The Fort Hall Indian Reservation community transportation system is a vital component of all daily operations and aspects of life. The transportation system also constitutes a major portion of the tribal budget, including vehicle

purchase and maintenance; road design, construction and maintenance; and management of these operations.

The Fort Hall Indian Reservation is a thoroughfare for a majority of the traveling public in southeastern Idaho. Whether traveling from Montana through Idaho south, Utah through to Oregon North; or just between Pocatello and Idaho Falls, you have to pass through the Fort Hall Indian Reservation. On State highway 91 there is an average of 10,000 vehicles a day traveling through the Fort Hall Community. Interstates I-15 and I-84 average over 22,000 vehicles per day through the reservation. Most of the Tribal Transportation Roads on the reservation were constructed in the 1940's, 50's and 60's and were initial farm to market roads and have had little on-going maintenance since construction due to lack of funds. We now have numerous roads that have maintenance needs, but have limited funds to address only a fraction of those needs. Currently, we have a deferred maintenance need of over 5.5 million dollars on reservation roads.

#### *Reauthorization of Tribal Transportation Programs*

The Indian Reservation Road funding (now known as the Tribal Transportation Program or TTP funding) serves a critical need in Indian Country. While Congress increased IRR/TTP allocations since enacting TEA-21, the funding continues to lag far behind a constantly growing need. With MAP-21, not only did the authorization levels to tribes not increase, but the authorizing committee with jurisdiction transferred the bridge program, which had been funded separately, to the road construction account, diminishing the ability for needed construction funds further. Several other programs, including the High Priority Projects Program and Scenic Byways program were completely done away with in the MAP-21 budgeting. While these programs were previously separated from the construction and road maintenance programs, they were important programs for tribes in trying to make headway in addressing transportation needs.

We firmly believe that the Indian Reservation Road Program/Tribal Transportation Program was established for the 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. We strongly support the retention of the statutory formula that Congress included in MAP-21. It is essential the formula be retained and reiterated in the next Highway bill as it stopped what had been a problematic policy of reservation road money being diverted to off-reservation state and county roads.

In a study conducted by the National Center for Statistics and Analysis (NCSA) and sponsored by the National Highway Traffic Safety Administration, there is an unmet transportation need in Indian Country of nearly \$80 billion including road construction needs, maintenance needs and bridges and safety planning. These are lands the US holds in Trust. Our roads and bridges must be improved so they are at a "safe and adequate standard". We realize it will take decades to go through the backlog but we must start somewhere. Increasing the authorizations in the next highway bill for transportation needs in Indian country is a place to start.

### *Road Maintenance*

Historically, the IRR road maintenance system has been chronically underfunded which has caused safety hazards and premature failure of roads in the IRR system. Proper maintenance extends the safety and the design life of a road, 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 IRR maintenance situation has become even more critical with the increase of IRR roads, therefore, IRR road maintenance funding has been declining.

The BIA Road Maintenance Program has been chronically underfunded under the U.S. Department of Interior. This program is included in the Tribal Priority Allocation (TPA) and must compete with other Tribal social program for funding. The funding invested in Road and Bridge Construction on the Indian Reservations is being compromised due to inadequate maintenance funding. While in some cases, funding for road construction has increased, the amount available for Road Maintenance has declined. Maintenance for 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.

BIA estimates \$120 million a year is needed to properly maintain the roads on the BIA system, but only receives \$25 million as its appropriations for road maintenance activities. OMB has not allowed BIA to request more than \$25 million for road maintenance for over 22 years. At present levels, BIA spend about \$700 dollars in maintenance funds per road mile; most state transportation departments spend many times that figure, in the range of \$8,000.00 to \$12,000.00 per mile. This inequity must be remedied in the next highway bill.

### *Denver Tribal Transportation Unity Summit*

The Shoshone-Bannock Tribes Support the efforts of Tribal Transportation Unity Summit held in Denver, Colorado, attended by several Tribal Nation Tribal Council and Tribal Roads personnel, and support the action requested pertaining to any Tribal Transportation Program activities in a new Highway Bill.

#### **1. Increase Funding For Tribal Transportation Programs to Address Chronic Unmet Needs.**

- > Increase Funding for the Tribal Transportation Program (TTP) to \$300 million for FY 2015 with annual step increases of \$50 million to \$1.05 billion in FY 2020;
- > Establish Tribal Asset Management Program at \$50 million in FY 2015 with annual \$5 million step increases to \$75 million in FY 2020 for BIA and tribally owned transportation facilities.
- > Encourage Interior Department and Office of Management and Budget officials to support an annual budget for the BIA Road Maintenance Program of at least \$150 million.
- > Increase funding for the Tribal Transit Program;

- Discretionary funding increase to \$10 million in FY 2015 with annual \$5 million step increases to \$35 million in FY 2020;
  - Formula funding increase to \$35 million for FY 2015 with annual \$5 million step increases to \$60 million in FY 2020;
  - Ensure established tribal transit programs receive formula funding that is no less than the highest amount of operations funding received since the creation of the Tribal Transit Program in FY 2005.
    - Restore Highway Trust Fund allocation for the Tribal High Priority Projects Program and:
      - Increase funding to \$35 million in FY 2015 with annual \$5 million step increases to \$60 million in FY 2020;
      - Increase maximum grant amount to \$1.5 million when funding increases above \$35 million.
    - Redistribute 10% of unused obligation authority to the TTP to fund competitively awarded grants to more remotely located Tribal Nations (HR 7).
  - separately fund the TTP Bridge Program at \$75 million in FY 2015 with annual step increases of \$5 million to \$100 million in FY 2020 and authorize the use of funds for the construction and design of new bridges.
  - Establish \$75,000 as the minimum annual TTP Program funding allocation for all Tribes;
  - Restore the TTP exemption from the Obligation Limitation deduction;
  - Reduce BIA and FHWA program management and project-related administrative expenses from 6% to 5% with an annual cap of \$28 million.
- 2. Decrease the high rate of fatalities and injuries on Tribal Transportation Systems.**
- Establish a 2% direct Tribal funding set-aside from the Highway Safety Improvement Program for the purpose of reducing traffic fatalities and injuries on tribal transportation systems.
  - Increase set-aside of NHTSA Tribal Safety Program to 3.5% to address safety issues on Tribal transportation systems.
- 3. Create a Tribal Self-Governance Program under the U.S. Department of Transportation.** Creating a Self-Governance Program will streamline grant-funding agreements for federal transportation programs and more efficiently target limited transportation dollars to the improvement of Tribal transportation systems. This important step will provide an additional option to Tribes and will not supplant the existing TTP agreements. (HR7)
- 4. Ease the transfer of Federal Aid funds for Tribal Transportation Projects.** Eliminate current barriers to transfers of federal-aid funds to Tribal Nations by requiring the BIA or FHWA to award State administered federal-aid funds to Tribes under their TTP agreements. If a Tribe and State prefer, the State may make the funding award directly to the Tribe under an appropriate award instrument that respects tribal sovereignty and government-to-government nature of the agreement. (HR7)
- 5. Ensure Tribal eligibility for all U.S. Transportation Department discretionary and competitive grants.** Tribal governments are increasingly gaining direct access to federal transportation grants, but this provision would ensure that Tribes have access to all discretionary and competitive grants to increase tribal funding opportunities without increasing the overall cost of the next highway bill. (HR7)

6. **Improve BIA Right-of-Way Management.** Requires the BIA to update and computerize rights-of-way documentation, support Tribal corridor management practices and pay trespass damages for BIA improperly obtained or recorded rights-of-way. Provide \$10 million per year to cover the cost of these statutory requirements.

7. **Gives Tribes the Option of Assuming NEPA Approval Authority.** Authorizes but does not require Tribes to assume responsibility for approving NEPA documents, if the Tribe is willing to provide a limited sovereign immunity waiver. At the option of the Tribe, the BIA or FHWA can perform this function, but if a Tribe prefers to assume the NEPA responsibility itself, it will be required to provide a limited waiver of sovereign immunity to allow for administrative challenges to the Tribe's NEPA decision. This NEPA provision is modeled on the successful Title V Self-Governance Program administered by the Indian Health Service.

8. **Funding to Establish a Tribal Infrastructure Bank.** Creates a Tribal Infrastructure Bank capitalized at \$10 million annually to provide low interest loans for Tribal transportation projects.

9. **Increased funding for Tribal Technical Assistance Program (TTAP).** Increases funding for the TTAPs from \$2.1 million to \$3.6 million annually.

10. **Improve the speed and efficiency in getting Emergency Relief for Federally Owned Roads (ERFO) funding to Tribes.** ERFO funding is available to Tribes to restore BIA and tribally owned roads and bridges to their pre-disaster condition. Currently there is a great delay between the time Tribes expend funds to fix these facilities, and the time they are reimbursed for these costs. The proposal would streamline the ERFO application process to speed the time Tribes are reimbursed for their ERFO expenditures.

11. **Create a 3% Tribal funding set aside in Transportation Alternatives (TA) Program.** MAP-21 replaced the Safe Routes to Schools, Scenic Byways, Transportation Enhancements and Recreational Trails Program with a new Transportation Alternatives (TA) Program. These funds go to State Transportation Departments and so far little of this funding has been provided to Tribes. This proposal would ensure that Tribes receive a fair share of these TA funds to build or enhance scenic byways, pedestrian pathways, safer school routes and other TA-eligible projects through a 3% tribal set-aside.

12. **Adequately Fund MAP-21 requirement that tribal bridges must now be inspected and included on the National Bridge Inventory.** This proposal would amend MAP-21's unfunded mandate to require that the inspection costs for including BIA and tribal bridges in the National Bridge Inventory come from Federal-Aid bridge program funds rather than from TTP funds.

#### *Conclusion*

On behalf of the Shoshone-Bannock Tribes, please accept these pages as comments and support for Tribal Transportation Programming in the new, up-coming Highway Bill. I thank the committee for its attention to and support for transportation needs in Indian Country. If we can add any additional support or answer any questions, please do not hesitate to ask.

## PREPARED STATEMENT OF THE STANDING ROCK SIOUX TRIBE

On behalf of the Standing Rock Sioux Tribe, we submit the following testimony concerning the Committee's March 13, 2014 oversight hearing regarding the state of tribal transportation. We thank Chairman Tester, Vice Chairman Barrasso and the Indian Affairs Committee for convening this important hearing.

For Indian tribes in the Great Plains Region, we can report that tribal transportation infrastructure is not adequate and mostly in a poor state of repair. Meaningful funding increases are needed in the next highway bill for the Tribal Transportation Program (TTP), safety and other programs now authorized under MAP-21. We also seek technical corrections to MAP-21's tribal chapter (23 U.S.C. 202) to facilitate tribal access to the billions of dollars in Federal-Aid funds transferred to the states by permitting tribes to apply for such funds directly or by facilitating the transfer of State-administered federal funds directly to our title 23 FHWA and BIA agreements and Indian Self-Determination Act, Pub. L. 93-638 contracts and agreements. Without increased funding for highways and safety program funds, Native Americans will continue to suffer motor vehicle fatalities and serious injuries at two- and three-times the national average. Motor vehicle crashes are the leading cause of death among Native Americans aged 1-34.

The Administration has proposed \$507 million for the TTP in the FY 2015 budget. This funding increase is targeted to new and increased take-downs from the appropriation; moving the Tribal High Priority Project Program back into the TTP funding level at 7%; increasing planning to 3% and the bridge program to 4%. In short, "tribal shares" of TTP funds will essentially remain at existing levels that have not changed since FY 2009. Before TTP tribal shares can be calculated, BIA and FHWA must reduce the annual appropriation by BIA's 6%, 2% planning, 2% safety, 2% bridge, the "obligation limitation deduction" (which permanently removes the funds from the TTP program) and any rescissions by Congress. We enclose the FY 2013 and FY 2014 "Control Panels" for MAP-21's TTP program to illustrate these takedowns.

If Congress passes a six-year highway bill for FY 2015 – FY 2020 and does not significantly grow the TTP program over that period, federal appropriations for transportation infrastructure will have decreased over the 12 year from FY 2009 – FY 2020. Indian country cannot move forward in the 21<sup>st</sup> Century with negative growth in transportation infrastructure. Without a large funding increase for the Tribal Transportation Program, Native Americans will continue to face transportation and economic barriers that undermine our efforts to maintain existing roads and bridges, grow our economies and increase pedestrian and motor vehicle safety for our Tribal members, other reservation residents, businesses and tourists who all travel on our transportation facilities.

We are carefully following the deliberations in Congress and among Indian tribes concerning the next highway bill. MAP-21 expires this year and Department of Transportation officials are now reporting that the Highway Trust Fund, which finances highway construction and public transit systems, will experience shortfalls as early as this summer and will be exhausted before the year is out. This means that FY 2014 road and bridge projects and mass transit programs may be curtailed until Congress can shore up the Fund.

To address our current and future transportation infrastructure needs, we endorse the Tribal Transportation Unity Act proposals developed by Indian tribes at a recent conference in Denver. We do so with the understanding that our endorsement is for the entire package of recommendations, especially program increases over the planned six-year term of the next highway bill. These increases are warranted to address the tens of billions of dollars in unmet need and the backlog of deferred road and bridge construction and road maintenance needs. Our goal is to build our transportation and transit systems, provide jobs to our members and help attract businesses and commerce to grow our reservation's economy. We also ask that the Senate Indian Affairs Committee endorse these amendments and encourage your colleagues on the Senate Environment and Public Works, Banking and Finance Committees to incorporate them into any highway bill the Senate takes up.

The Standing Rock Sioux Reservation encompasses 2.3 million acres in North and South Dakota. The Reservation's population – approximately 8,500 Tribal members and 2,000 non-members – reside in eight districts, and in smaller communities. The Tribe's primary industries are cattle ranching and farming. The Tribe struggles to provide essential governmental services to our members. We operate two modest Tribal casinos; Rock Industries, a small parts-on-demand operation; Standing Rock Propane; Standing Rock Telecommunications; and a sand and gravel operation, which helps the Tribe supplement services and programs for our members.

Despite these measures, our unemployment rate remains above 50%. In fact, over 40% of Indian families on our Reservation live in poverty – more than triple the average US poverty rate of 13.8%.

Infrastructure, like safe drinking water, utilities, and well-maintained roads and bridges are essential to the well-being of our people. But the primary funding source for road maintenance, the BIA's Road Maintenance Program (funded under the Interior, Environment and Related Agencies Appropriations Act), has for the last 30 years, been funded at only \$25 million, making it impossible to carry out routine, much less, emergency road maintenance. We urge Congress to increase funding for this essential public safety program.

I'd like to illustrate how vital Road Maintenance Program funding is for us. About a decade ago, we undertook a \$26.5 million reconstruction of community streets in our eight Districts. The work included paved streets, curbs, gutters, sidewalks and street lights. The project was a huge success and made us all proud. People walked more and crime dropped. We financed the project through flexible financing, leveraging our then-IRR Program dollars to borrow funds from Wells Fargo Bank. We are still repaying the loan using 50% of our TTP "Tribal shares."

We saved millions by reconstructing our streets in 2004-2006. We could not afford the same project today. But in the years since we completed the Bullhead East/Community Streets project, we have struggled to maintain these streets. Our BIA Road Maintenance Program budget has been flat at roughly \$500,000 annually. With difficult winters, we often exhaust the majority of our Road Maintenance Program funds well before September 30. As a result, we lack funds to carry out routine road and bridge maintenance and any emergency road maintenance needs we may experience. We have no choice but to "repurpose" TTP "shares" to use for road maintenance purposes. This short-changes our planning and construction needs.

State and county governments, which have a tax base, spend over \$10,000 per mile for road maintenance. The BIA Road Maintenance Program funds about 5 -- 7% of that amount (\$450 - \$700/mile). We support the recommendation to fund the BIA Road Maintenance Program at \$150 million annually to address our routine and emergency road maintenance needs.

Today, our TTP shares are divided as follows:

- 50% - loan repayment (Bullhead East/Community Street);
- 25% - repurposed for road maintenance purposes (23 U.S.C. 202(a)(8)(A));
- 25% - current planning, design, engineering, construction and safety programs.

We are fortunate to have strong partnerships with FHWA, the North Dakota Department of Transportation and the South Dakota Department of Public Safety. Through our partnerships, the Tribe, NDDOT and SDDPS contribute to fund a Tribal Highway Safety Officer position at Standing Rock. We are pleased to have such a position to help educate our school children, adults and Tribal elders about highway safety and coordinate with State and Federal highway safety officials.

We remain confident that Congress will rise to occasion and pass a highway bill this year that shores up the Highway Trust Fund and funds transportation construction and public transit based on the type of communities we need for the 21<sup>st</sup> Century, especially in rural America where most Indian tribes are located. With that confidence in mind, we support the consensus recommendations set out in the Tribal Transportation Unity Act principles, especially;

- Increase TTP funding to \$800 million in FY 2015, with annual step increases of \$50 million for each of the six years;
- Increase the Tribal Transit Program (formula) to \$35 million for FY 2015 with step increase of \$5 million each year;
- Restore the Highway Trust Fund (HTF) allocation for the Tribal High Priority Project Program and increase funding to \$35 million in FY 2015 with \$5 million annual increases (open to all Indian tribes);
- Separately fund the TTP Bridge Program at \$75 million in FY 2015 with annual increases of \$5 million for the construction and design of existing and new bridges;
- Establish a 2% direct Tribal funding set-aside from the Highway Safety Improvement Program to reduce traffic fatalities and injuries;
- Ensure Tribal eligibility for all USDOT discretionary and competitive grants and amend section 202 to ensure that such funds may be obligated to FHWA and BIA title 23 agreements and Indian Self-Determination Act contracts and agreements;
- Create a 3% Tribal funding set aside in Transportation Alternatives (TA);
- Expedite Emergency Relief for Federally Owned Roads (ERFO) funding to tribes;
- Increase funding for Tribal Technical Assistance Program (TTAP) funding to \$3.6 million annually.

For many years, it has been the goal of the Standing Rock Sioux Tribe to eliminate the 100 mile transportation barrier that exists between Bismarck, North Dakota and Mobridge, South Dakota. There is no river crossing over the Missouri River within our Reservation boundaries. We look forward to a highway reauthorization bill that could finance construction of a bridge over the Missouri River to open our reservation to greater business and commerce, help Tribal ranchers and farmers get their goods to markets, and simply facilitate the transportation of people and goods to and from our reservation.

In sum, increased federal funding is needed to improve and adequately maintain transportation systems in Indian Country. By providing adequate funding for the construction and maintenance of roads and bridges in Indian Country, the Congress will help that unsure our children are transported safely to school, our members have access to local hospitals and other medical care, and that tribal and federal employees are able to deliver emergency services. Additionally, improving infrastructure related to transportation in Indian Country will open up new economic development opportunities for Indian Tribes and their members – especially on Indian Reservations dealing with poverty and unemployment rates far above the national average.

We thank the Senate Committee on Indian Affairs for holding this hearing, advocating for the transportation needs of Indian tribes, and permitting us this opportunity to present our views.

MAP-21 General Fund			
FY19 Authorization Amount		\$450,000,000	
Resorption		0.00%	
Old Limit		0.00%	
PM&O/PRAE		0.00%	
Tribal Transportation Planning		2.00%	
Bridge Program		2.00%	
Safety Program		2.00%	
Tribal Supplemental Funding		\$92,500,000 + 12.5% of \$174,100,000	
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	Funding Authorized	\$450,000,000.00	\$449,100,000
Less Resorption		(900,000.00)	(18,413,189) Job Limit
		\$449,100,000.00	\$430,686,810
Less Obligation Limitation		\$0.00	(\$25,841,214) PM&O
	Funding Made Available	\$449,100,000.00	\$404,845,596
Less PM&O		(\$26,948,000.00)	(\$8,813,738) Planning
	Subtotal	\$422,152,000.00	\$396,031,858
Less Transportation Planning		\$8,892,000.00	(\$8,813,739) Bridge
	Subtotal	\$413,260,000.00	\$387,218,119
Less Bridge Program		(\$8,982,000.00)	(\$8,813,738) Safety
	Subtotal	\$404,278,000.00	\$378,404,381
Less Safety Program		(\$8,982,000.00)	FY11 Tribal Shares
	Subtotal	\$395,296,000.00	\$346,697,676.00
Less Tribal Supplemental Funding		(\$104,292,500.00)	
		\$290,993,500.00	
Less 80% to go under FY11 Tribal Shares		(\$277,358,627.40)	
		\$13,634,872.60	\$397,417,672
	Subtotal	\$13,634,872.60	
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Available for 27% lane miles		\$3,682,918.76	
Available for 38% tribal population		\$5,280,101.86	per region
Available for 34% Regional Population		\$4,619,728.78	\$394,877.40
	check	\$13,634,872.60	

MAP-21 Control Panel (FY 14)			
FY14 Authorization Amount		\$450,000,000	
Rescession		0.00%	
Ob Limit		8.10%	
PM&O/PRAE		6.00%	
Tribal Transportation Planning		2.00%	
Bridge Program		2.00%	
Safety Program		2.00%	
Tribal Supplemental Funding		\$62,500,000 + 12.5% of \$175,000,000	
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		For Generating	
		Tribal Shares	
	Authorized Amount	\$450,000,000.00	
Less Recession		\$0.00	
	Funding Made Available	\$450,000,000.00	
Less PM&O		(\$27,000,000.00)	total take down (\$156,375,000.00)
	Subtotal	\$423,000,000.00	
Less Transportation Planning		(\$9,000,000.00)	
	Subtotal	\$414,000,000.00	
Less Bridge Program		(\$8,000,000.00)	
	Subtotal	\$406,000,000.00	
Less Safety Program		(\$9,000,000.00)	
	Subtotal	\$396,000,000.00	FY11 Tribal Shares \$346,667,578.00
Less Tribal Supplemental Funding		(\$104,375,000.00)	
		\$291,625,000.00	
Less 80% to go under FY11 Tribal Shares		(\$208,018,547.00)	
		\$83,606,453.00	
	Subtotal	\$83,606,453.00	
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Available for 27% "eligible miles"		\$22,573,742.31	
Available for 39% "tribal population"		\$32,606,516.67	
Available for 34% "Historic Regional Shares"		\$28,426,194.02	per region \$2,368,848.50
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	check	\$83,606,453.00	

PREPARED STATEMENT OF HON. FRED VALLO, SR., GOVERNOR, PUEBLO OF ACOMA

### Introduction

The Pueblo of Acoma is a federally recognized Indian tribe and the traditional village is a National Historic Site located about 55 miles west of Albuquerque, New Mexico. According to the 2005 BIA Labor Force Report, there are 4,983 Acoma tribal members residing on the reservation. There are over 6,344 enrolled tribal members. The Pueblo of Acoma is governed by a traditional twelve-member Tribal Council. Reporting to the Tribal Council is the traditional Tribal Administration staff: Governor, 1st Lt. Governor, 2nd Lt. Governor, Tribal Secretary and Interpreter. The ancestral village of the Acoma people is "Sky City," located 16 miles south of Interstate 40 off of Exit 102. "Sky City" is the oldest, continuously inhabited village in the United States. About 50 members of the tribe live in "Sky City" year round, while other tribal members reside at communities along the Interstate 40 corridor and Rio San Jose valley area. "Sky City" and the Haaku' Museum is destination points for more than 40,000 national and international visitors annually. Interstate 40 and the BNSF Railway cross Acoma tribal lands on the northern most section of the reservation.

Acoma Pueblo has over 330 miles of BIA and tribal roads. In 2013, Acoma Pueblo's Long Range Transportation Plan (LRTP) was updated; over 30 transportation projects were prioritized with a projected cost at about \$100 million. This includes the safety need to construct a new 1,000-foot span bridge over the BNSF Railway; total bridge and road extension project is \$28 million and is 0.5 mile. A feasibility study was completed in 2004 and this project is construction ready. Planning and preliminary engineering costs were funded with New Mexico Department of Transportation (NMDOT) funds and Indian Reservation Road (IRR) funds.

Starting in 2009, Acoma Pueblo entered into a Referenced Funding Agreement (RFA) with the U.S. Department of Transportation Federal Highway Administration

(FHWA) to receive Indian Reservation Roads (IRR) program funds now the Tribal Transportation Program (TTP) funds.

FHWA—2009 IRR (Indian Reservation Road, SAFETEA—LU)	\$1,305,404.91
FHWA—2009 ARRA IRR—SP 34 Phase I	\$820,996.00
FHWA—2009 ARRA HPP (High Priority Project)—M11 Bridge	\$1,000,000.00
FHWA—2010 IRR	\$961,690.84
FHWA—2010 IRR BP (Bridge Program)—M111 Bridge	\$500,000.00
FHWA—2010 IRR BP—M117 Bridge	\$600,000.00
FHWA—2010 IRR BP—M122 Bridge	\$150,000.00
FHWA—2011 IRR	\$910,618.00
FHWA—2011 IRR BP—M122 Bridge	\$300,000.00
FHWA—2011 Federal Highway Discretionary Program	\$1,300,000.00
FHWA—2012 IRR	\$790,811.00
FHWA—2013 TTP (Tribal Transportation Program, MAP—21)	\$1,241,375.39
FHWA—2014 TTP and TTP Safety Program	\$1,364,251.18

During the last 4 years of the IRR Program, Acoma Pueblo's annual formula funding decreased from \$1,305,404.91 to \$790,811.00. During the first two years of MAP—21 TTP funding, Acoma Pueblo averaged about \$1.3 million. This historical funding will not fund the proposed \$28 million Mesa Hill Bridge and SP 36 Road Extension Project over the BNSF Railway tracks. The Congressional FY 2014 appropriation of \$450 million is severely underfunded to meet the transportation needs of Indian tribes and Alaskan native villages including Acoma Pueblo.

Because the annual allocation of IRR funds, now TTP funds, is inadequate, Acoma Pueblo must secure other non-TTP funds including state funds. The success to find other FHWA funds is noted above. Between 2005 and 2013, Acoma Pueblo was successful and secured about \$5,443,402 in New Mexico state funds for transportation projects.

Finally, was the intent of the tribal transportation program to target BIA and tribal roads? Only 340 of 566 Indian tribes and Alaskan native villages have BIA roads. The other 226 Indian tribes and Alaskan native villages use TTP funds for state, county and other roads. In summary, the current (excluding 18,761 miles of proposed roads) national tribal transportation facility inventory (miles) ownership is as follows:

BIA	Tribal	State	County/ Township/ Burrough	Other	Total
29,052	15,603	22,415	64,831	7,596	139,497
21%	11%	16%	47%	5%	100%

This creates a lingering, ongoing need to adequately fund BIA and tribal roads (32 percent combined) located within Indian reservation boundaries including roads within Acoma Pueblo.

#### Common Recommendations In Indian Country

Acoma Pueblo supports the following recommendations with other Indian tribes and Alaskan native villages:

- Increase TTP funding to \$800 million for FY 2015 with annual step increases of \$50 million resulting in annual funding of \$1.05 billion in FY 2020. Because funding for the TTP has not been increased since 2009, and has actually been reduced through take downs, this funding recommendation is modest.
- Establish a Tribal Maintenance Program at \$50 million with annual step increases of \$5 million, for BIA and tribally owned transportation facilities, and encourage funding of at least \$150 million for the BIA road maintenance program.
- Increase funding for the Tribal Transit Program, implement annual step increases, and ensure stable funding for established tribal transit programs.
- Restore Highway Trust Fund allocation for the Tribal High Priority Projects Program, which has not been funded under MAP—21 and increase the maximum grant amount and increase funding to \$35 million with annual step increases.
- Redistribute 10 percent of unused obligation authority to the TTP for competitive grants to remote tribes.
- Separately fund the TTP Bridge Program at \$75 million with annual step increases and authorize use of funds for construction and design of new bridges.

- Establish \$75,000 as the minimum annual TTP program funding allocation provided this \$3 million increase needed to fund this minimum amount per tribe comes from an increased authorization.
- Restore the TTP exemption from the obligation limitation deduction.
- Reduce BIA and FHWA administrative take downs from 6 percent to 5 percent, and impose a \$28 million annual cap.
- Begin to address the highway safety crisis in Indian country by establishing a 2 percent tribal set-aside from the Highway Safety Improvement Program, a 3 percent tribal-set aside from NHTSA, and a 3 percent set-aside from the Transportation Alternatives Program to build or enhance safe routes to schools, scenic byways, and pedestrian paths. Without a tribal set-aside, the experience under MAP-21 is that the states provide little funding to tribes.
- Create a tribal self-governance program under the U.S. Department of Transportation (DOT) to streamline funding agreements and clarify the extension of the benefits of the Indian Self-Determination and Education Assistance Act to DOT. This recommendation was vetted with DOT officials in 2011 and it was adopted as an amendment to HR 7.
- At the request of a state and tribe, require the BIA or FHWA to award state administered Federal-Aid funds to a tribe through a TTP or ISDEAA agreement to facilitate intergovernmental cooperation and collaboration.
- Ensure tribal eligibility for all DOT programs and discretionary and competitive grants, which was adopted as an amendment to HR 7.
- Require BIA to improve right-of-way challenges management and provide funding to implement corrections, improvement and to pay trespass damages.
- Authorize tribes to assume responsibility for approving NEPA documents if a tribe provides a limited sovereign immunity waiver for administrative actions. This is modeled on Title V of ISDEAA.
- Improve efficiency in delivering Emergency Relief Funds to tribes.
- Establish a tribal infrastructure bank capitalized at \$10 million to provide low interest loans for tribal transportation projects.
- Increase funding for the Tribal Technical Assistance Program.

#### **Acoma Pueblo Recommendations**

Acoma Pueblo submits the following TTP re-authorization recommendations:

- The re-authorization of the Tribal Transportation Program be separated from MAP-21 and be re-authorized on its own similar to how the Native American Housing Assistance and Self-Determination Act (NAHASDA) separated Indian Housing from the U.S. Department of Housing and Urban Development's (HUD) Public and Indian Housing Program. The re-authorization of the Tribal Transportation Program shall be established under a new law called the Native American Transportation Assistance and Self Determination Act (NATASDA) or similar.
- Similar to the Office of Native American Programs (ONAP) within the U.S. Department of HUD, the Office of Tribal Transportation Program (OTTP) be created within the U.S. Department of Transportation separated from the Federal Lands Highway Office. This Office shall report directly to the Secretary or designee. The principals of Indian self-determination and tribal self-governance identified under the Indian Self Determination and Education Assistance Act (ISDEAA) will be established.
- Mandate that new/amended federal regulations and funding formula be created through negotiated rulemaking. Adequate funding shall be appropriated to conduct meetings for an 18-month period and at regional tribal areas.
- Additional funding above current funding levels shall be appropriated specifically for BIA and tribal roads within reservation lands. The funding formula must include an adjustment factor to address this disadvantage need.
- A single National Tribal Transportation Training Center shall be established to provide a consistent structured, certification transportation training program. This national training center shall be governed by a governing board comprised of tribal transportation representatives.

#### **Conclusion**

The Pueblo of Acoma appreciates the opportunity to provide a statement on the impact and reauthorization of the MAP-21 Tribal Transportation Program. We look forward to working with the United States Congress and the U.S. Department of

Transportation to strengthen a national tribal transportation program that targets BIA and tribal roads within the guiding principles of tribal self-governance and Indian self-determination.

Thank you.

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PREPARED STATEMENT OF HON. TEX HALL, CHAIRMAN, MANDAN, HIDATSA AND ARIKARA NATION (MHA)

### **Introduction**

Chairman Tester, Vice Chairman Barrasso and members of this Committee, my name is Tex Hall and I am the Chairman of the Mandan, Hidatsa and Arikara Nation (MHA). I am also Chairman of the Great Plains Tribal Chairman's Association, and Chairman of COLT, the Coalition of Larger Land Based Tribes. I thank you for the opportunity to present testimony on Tribal Transportation issues. My comments today focus primarily on my own tribe, but my leadership roles, make me uniquely aware of the hardships tribes in my region of the country face, as well as tribes in other regions that have large inventories of reservation roads. It is more than fair to say, that Tribes with large land bases, are inadequately funded and cannot keep up with the needs they have for road maintenance and construction to ensure the safety and well being of their communities.

My Tribe the MHA Nation in North Dakota, experiences some of the coldest annual winter temperatures in the country. Our inability to clear ice and make repairs, makes travel extremely hazardous and increases fatalities. We are also located in the heart of the Bakken formation, where oil and gas development drives both our tribal and regional economy. Our boom in oil development has resulted in heavy truck traffic. Without adequate roads and roads maintenance our current level of oil and gas development cannot be sustained and our roads are unsafe. Unfortunately, we have not had assistance from the Bureau of Indian Affairs, and other Federal agencies to help force oil companies, and other outsiders, that use our BIA and Tribal roads, to assist with the maintenance and repair of these roads. We have had to use our own resources to repair and maintain roads, but our resources cannot keep up with our needs. Without adequate funding from the Tribal Transportation Program, we cannot keep up with the destruction to our roads, and the safety problems created by oil and gas development and heavy truck traffic. We cannot ensure the safety of our community members that travel daily on these same roads.

Our reservation houses in excess of 1,000 on-reservation oil and gas wells. The operation of these wells requires what today are in excess of 20,000 large trucks to transport the well materials to and from the drilling sites. These heavy trucks are traveling on the same federal and tribal roads as our school busses, our ambulances and our tribal members. BIA funded reservation roads were not designed, to handle heavy weight or this level of truck traffic.

Our problems are not unique reservations in Wyoming, Utah, Montana, New Mexico and Arizona where there is oil, gas and coal development have also experienced excessive damage to their federal and tribal roads. And like my tribe, they received little help from their states. Under existing law, a huge percentage of energy development dollars continue to go to state governments which feel little or no obligation to help the tribe build and maintain roads, bridges and other infrastructure. States insist that road construction and maintenance is solely a federal responsibility.

Members of the House and Senate Committees that are working on Transportation and Infrastructure funding, and reauthorization, have expressed the need for more money to help the economy and create jobs. They say the country is approaching a crisis this summer if a solution is not found to adequately support the Highway Trust Fund at a level that allows our economy to grow. I know this is true at our Tribe. We can not succeed in creating more jobs and more opportunity if our infrastructure cannot keep up. To address challenges Tribes face during this time of fast development the Tribal Transportation Program, needs more funding for construction and maintenance of roads, rail lines and bridges. My hope is the short fall predicted to occur this summer under the Highway Trust Fund will create the opportunity for members of Congress to find a solution that increases the fund and allows for reauthorization of the Transportation bill that more adequately addresses Tribal needs.

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

The large land based tribes have complained in recent years that they have watched their funding dwindle as money under the Indian Roads Reservation Program was diverted to communities with less population and inventory. These problems have been addressed in large part by MAP-21 through a statutory formula,

and we like many of the other larger land based reservations strongly support the formula as a more equitable way of distributing Transportation funding to all Tribes. We agree with the Testimony presented to the committee by Tribal leaders Wes Martel (The Eastern Shoshone and Northern Arapaho Tribes) and Sam Buckles (Fort Peck Tribes) that the Indian Reservation Roads program, (now referred to as the Tribal Transportation Program) has served a critical need in Indian Country but has been inadequately funded. The funding for 566 Federal Tribes has not increase its current level of funding at \$450 million since FY 2009. And when you count the need for road maintenance, bridges and safety planning the Department of Transportation admits to nearly \$80 billion in unmet Tribal Transportation needs.

For MHA, bridge construction is a priority, and we were disappointed that under MAP 21, the authorization levels for Tribes decreased, because the committee with jurisdiction transferred the bridge program to the road construction account. The result was less money designated for bridges, and instead bridge funding appeared as a take down from the roads construction funds. The MHA Nation's Charging Eagle Bridge has been authorized for almost 40 years. Yet we have not had the funding to move forward with the project. This bridge is essential to the development of natural resources in the more remote areas of reservation and would provide easier access to health care and other essential services for our community members. Restoring separate funding for bridges and increasing over all funding for the Tribal Transportation is a priority for MHA in the next reauthorization bill. Our recommendation is to separately fund the Tribal Transportation Bridge Program and increase the funding to 200 million.

#### **Road Maintenance**

Each year the federal government spends millions of dollars on new roads only to let those investments deteriorate from inadequate maintenance. Roads which were designed to last 20 years are virtually unusable after ten due to lack of adequate road maintenance funding. The BIA is responsible for providing Tribes with Road maintenance funding. However, the funding BIA provides is less than 25 percent of what BIA admits is needed to maintain the system. The BIA is appropriated approximately \$25 million per year for road maintenance. OMB has not allow BIA to increase this amount for over 22 years. As a result the condition of Tribal and BIA roads have dramatically deteriorated.

MAP-21 allows Tribes to use 25 percent of their Roads Construction money towards roads maintenance needs. That level of additional funding only takes away from our construction dollars, and fails to address the inadequate appropriation the BIA receives for roads maintenance. MHA would like the BIA to receive adequate appropriations for road maintenance as described below or to create a separate funding program out of the Highway Trust fund for Tribal Road maintenance similar to other Federal Lands Highway Programs. The current level of funding in the BIA program has been inadequate from too long.

#### **Support for Unity Summit Recommendations**

Last month Tribal Transportation planners gathered in Denver Colorado, to discuss the reauthorization of the Transportation bill, and came out with Unity Summit recommendations. MHA supports the following recommendations of the Unity Caucus:

- Increasing funding for the TTP to \$800 million for FY 2015 with annual step increases of \$50 million. This will result in an annual funding level of \$1.05 billion in FY 2020.
- Establish a Tribal Maintenance Program at \$50 million with annual step increases of \$5 million, and encourage funding of at least \$150 million for the BIA road maintenance program.
- Increase funding for the Tribal Transit Program, and implement annual step increases for that tribal program.
- Redistribute 10 percent of all unused obligation authority to the TTP and use these funds to make competitive grants to remote tribes.
- Separately fund the TTP Bridge Program at \$200 million with annual step increases and authorize the use of these funds for construction and design of new bridges. (This is an increase over the Unity Summit recommendations)
- Restore the TTP exemption from the obligation limitation deduction.
- Reduce BIA and FHWA administrative costs from 6 percent to 5 percent, and impose a 28 million annual cap on that administrative funding.
- Begin to address the highway safety crisis in Indian country by establishing a 2 percent tribal set-aside from the Highway Safety Improvement Program, a 3

percent tribal-set aside from NHTSA, and a 3 percent set-aside from the Transportation Alternatives program to build or enhance safe routes to schools, scenic byways, and pedestrian paths and authorize direct tribal funding under the rail construction program.

- Create a tribal self-governance program under the U.S. Department of Transportation (DOT) to streamline tribal funding agreements and clarify the that this funding can be accessed from DOT using the Indian Self-Determination and Education Assistance Act. This recommendation was vetted with DOT officials in 2011 and it was adopted as an amendment to HR 7.
- At the request of a state and tribe, require the BIA or FHWA to award state administered Federal-Aid funds to a tribe through a TTP or a P.L. 93–638 agreement.
- Ensure tribal eligibility for all DOT programs and discretionary and competitive grants in the manner previously included in HR 7.
- Require BIA to improve its management of Right-of-Way challenges and require the BIA to provide funding to tribes to implement corrections and improvement and to pay trespass damages.
- Authorize tribes to assume responsibility for approving NEPA documents if a tribe provides a limited sovereign immunity waiver for administrative actions.
- Order the federal agencies to improve their efficiency in delivering Emergency Relief Funds to tribes.
- Establish a tribal infrastructure bank capitalized at \$10 million to provide low interest loans for tribal transportation projects.
- Increase funding for the Tribal Technical Assistance Program.
- Provide an adequate set aside in the Highway Trust Fund to pay the added costs of roads construction and roads maintenance on tribal and federal roads negatively impacted by energy production. (Not in Unity Summit recommendations buy badly needed for Tribes impacted by heavy truck traffic.)
- Adequately Fund MAP 21 requirements that tribal bridges must now be inspected and include on the National Bridge Inventory. This would amend MAP 21's unfunded mandate to require that the inspection costs for including BIA and tribal bridges in the National Bridge inventory comes from Federal-Aid bridge program funds rather than from TTP funds.
- Improve the speed and efficiency in getting Emergency Relief for Federally owned Roads (ERFO) funding to Tribes. This proposal would streamline the ERFO application process to speed the time Tribes are reimbursed for their ERFO expenditures.

COLT the coalition of larger land based tribes adopted a resolution at its Impact Meeting in Washington DC on March 6, 2014. (Attached) That resolution supported the Unity Summit recommendations in large part, but qualified its support for funding each tribe at a base funding level of \$75,000.00, and for funding the High Priority Roads program as currently applied under MAP 21 and the proposed regulations. Since the COLT resolution was adopted, the language in the Unity Summit recommendations has been defined, to allow \$75,000.00 as the minimum annual Tribal Transportation Program funding provided that the \$3 million increase needed to fund this minimum amount per tribe comes from increased authorization funding. Therefore, this minimum would not further erode funding in the Tribal Transportation Program. MHA could support this base funding amount for each tribe if this increase in funding is authorized.

With the High Priority Projects Program, the large land based tribes, have not been allow to compete for this funding in the past. The program has given the scoring advantage to very small Tribes in isolated geographic locations and to tribes that have not completed a construction project with their current levels of funding. In short the High Priority Projects Program was designed to help only small communities in regions with limited or no roads access. Therefore, large land based Tribes with Reservation Roads, could not compete even though their funding was grossly inadequate to complete their priority projects. The group that met in Denver as part of the Unity Summit agreed that the program should be funded and that all tribes should be on equal footing. Therefore, MHA can agree to support fully funding the High Priority Projects Program as describe in the Unity Recommendations if all tribes are allowed to compete, and the program does not give an advantage to Tribes or Native Villages that are geographically isolated or who have completed a construction project. (see attached COLT resolution and Unity Summit Recommendations)

**Closing**

Thank you for allowing the MHA Nation this opportunity to present its testimony and recommendations to address Transportation needs in Indian Country. If we can answer any questions, or provide any additional information, please do not hesitate to contact me.

**Attachments**

**COALITION OF LARGE TRIBES  
RESOLUTION # 1-3-6-14**

**Title: Supporting Many Recommendations of "Tribal Transportation Unity Act Summary for the 113<sup>th</sup> Congress," Maintaining Map-21 Funding Formula, and Increasing Funding for Reservation Roads**

WHEREAS, the Coalition of Large Tribes (COLT) was formally established in April, 2011, and is comprised of Tribes with large land base, including the Mandan, Hidatsa and Arikara Nation (MHA Nation), the Oglala Sioux Tribe, the Crow Tribe, the Navajo Nation, the Sisseton Wahpcton Sioux Tribe, the Blackfeet Tribe of Montana, the Rosebud Sioux Tribe, the Ute Indian Tribe, the Shoshone-Bannock Tribes, the Colville Confederated Tribes, the Fort Belknap Indian Community, and the Cheyenne River Sioux Tribe. COLT is chaired by Chairman Tex Hall of the MHA Nation; and,

WHEREAS, COLT was organized to provide a unified advocacy base for tribes that govern large trust land bases and that strive to ensure the most beneficial use of those lands for tribes and individual Indian landowners; and,

WHEREAS, tribal governments, as sovereign nations recognized in the United States Constitution, have obligations to deliver safe and reliable transportation networks and the federal government has trust and treaty responsibilities to provide sufficient funding to meet this obligation; and,

WHEREAS, through the implementation of past Highway Bills including TBA-21, SAFETEA-LU, ARRA and MAP-21, tribes have proven their ability to effectively and efficiently deliver transportation programs for the benefit of tribal citizens and others in their community, particularly the large numbers who travel on our roads; and,

WHEREAS, although tribal roads and transportation facilities comprise nearly 3% of the national transportation system, federal investment in those tribal facilities has remained at less than 1% of the national transportation system; and,

WHEREAS, the old expression, "that the reservation begins where the paved highway ends" is still, in many instances, an accurate portrayal of the status of roads on our homelands; and,

WHEREAS, inferior and often unpaved roads and poorly maintained roads are killing and maiming Indian people who travel those roads in record numbers; and,

WHEREAS, road conditions on our lands, that federal agencies have previously described as resembling those found in Third World countries, are causing many problems and greatly hindering economic development and job creation; and,

WHEREAS, inferior roads, particularly after inclement weather, result in our residents not being able to get to their jobs, our children not being able to get to their schools and emergency vehicles not being able to respond or being greatly delayed in their response; and,

WHEREAS, the Bureau of Indian Affairs (BIA), the principal agency responsible for the maintenance of roads that the United States holds in trust for the Indian people has shirked its responsibilities by requesting so little money each year for maintenance that our roads are deteriorating and are dangerous resulting in Indian people suffering injury and death driving and walking along reservation roadways at rates far above the national average; and,

WHEREAS, state and counties are spending over \$10,000 per mile for roads maintenance whereas the BIA's requests only allow for between \$450 and \$700 per mile for maintenance on Indian reservations roads due to the fact that the BIA has requested only \$25 million a year for the past 22 years even as reservation road miles have increased and had requested \$41 million a year prior to that 22 year period; and,

WHEREAS, tribes were so desperate to secure additional road dollars that many began adding state and county roads that "access" their reservations and thousands of miles of "proposed" roads to their inventories, to take advantage of the BIA's formula for allocating funds it receives from the Federal Highway Administration (FHWA); and,

WHEREAS, this race to add inventory resulted in greatly diminishing funds being available to actual reservation roads owned by the BIA and/or by Indian tribes, whose only source of funding is the FHWA allocation set aside for federally recognized Indian tribes; and,

WHEREAS, in response, the Congress in enacting MAP-21 created a statutory formula that requires FHWA dollars to be more fairly and appropriately dedicated to BIA and Tribal roads; and,

WHEREAS, the backlog of required road construction needed to get the roads in Indian country up to standard would require an allocation of \$6 billion annually; and,

WHEREAS, a group of transportation planners and tribal leaders met recently in Denver, Colorado as a Tribal Transportation Unity Caucus to promote a consensus based position in making recommendations to the Congress for consideration during the enactment of the next highway bill.

**NOW THEREFORE BE IT RESOLVED**, that COLT, meeting in Washington, D.C. on March 6, 2014, endorses many of the recommendations in the "Tribal Transportation Unity Act Summary for the 113<sup>th</sup> Congress," dated February 27, 2014 and attached to this resolution, which accurately lays out the transportation needs for Indian Country, however: 1) COLT does not support the concept of every one of the 566 federally recognized tribes in the United States receiving base funding of \$75,000 in roads dollars; and, 2) COLT supports the reinstatement of Highway Trust Fund dollars going to the Tribal High Priority Projects (HPP) Program, *provided* that all tribes are able to apply for HPP funds and that there is not a cap put on the receipt of Indian Reservation Roads/Tribal Transportation Program (IRR/TTP) funds above which the recipient tribe is prohibited from applying for HPP funds; and, 3) COLT requests its contact,

Rollic Wilson (202-340-8232; rwilson@ndnlaw.com) Fredericks, Peebles and Morgan, LLP, be added to the list of contacts in the document, and,

**BE IT FURTHER RESOLVED**, that COLT requests that the Congress retain the statutory formula for allocating road construction funds to Indian County as contained in MAP-21; and,

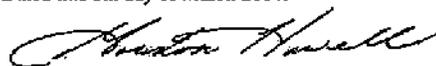
**BE IT FURTHER RESOLVED**, that COLT implores the Congress to increase funding for reservation roads to the levels recommended in the Tribal Transportation Unity Act Summary, to ensure the BIA's road maintenance budget is increased to at least \$150 million annually, to fund a reservation bridge program separately from the road construction program and to restore the exemption from the Obligation Limitation deduction that the IRJ/TTP previously had; and,

**BE IT FINALLY RESOLVED**, this resolution shall be the policy of COLT until it is withdrawn or modified by subsequent resolution.

#### CERTIFICATION

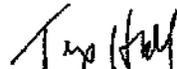
This resolution was enacted at a duly called meeting of the Coalition of Large Tribes held in Washington, D.C. on March 6, 2014, at which a quorum was present, with 6 members voting in favor, 0 members opposed, 0 members abstaining.

Dated this 6th day of March 2014.



Secretary, Coalition of Large Tribes

Attest:



Tex G. Hall, Chairman, Coalition of Large Tribes

**TRIBAL TRANSPORTATION UNITY ACT  
SUMMARY  
FOR THE 113<sup>th</sup> CONGRESS  
February 27, 2014**

Tribal leaders accompanied by tribal transportation technical staff gathered at the Tribal Transportation Reauthorization Unity Summit in Denver, Colorado on February 25-27, 2014, to exchange perspectives on tribal needs and opportunities in order to develop consensus legislative proposals to present to the 113<sup>th</sup> Congress to address the transportation needs of Tribal Nations. The Tribal Transportation Unity Caucus and the Rocky Mountain Transportation Planners Association organized this Summit to develop unified Tribal proposals for the a new surface transportation bill to address tribal transportation system needs and recognize the capacity of Tribal Nations to deliver transportation services to their Tribal citizens and the general public using Tribal roadways and transit systems:

**1. Increase Funding For Tribal Transportation Programs To Address Chronic Unmet Needs.**

- Increase Funding for the Tribal Transportation Program (TTP) to \$800 million for FY 2015 with annual step increases of \$50 million to \$1.05 billion in FY 2020;
- Establish Tribal Asset Management Program at \$50 million in FY 2015 with annual \$5 million step increases to \$75 million in FY 2020 for BIA and tribally owned transportation facilities.
- Encourage Interior Department and Office of Management and Budget officials to support an annual budget for the BIA Road Maintenance Program of at least \$150 million.
- Increase funding for the Tribal Transit Program:
  - Discretionary funding increase to \$10 million in FY 2015 with annual \$5 million step increases to \$35 million in FY 2020;
  - Formula funding increase to \$35 million for FY 2015 with annual \$5 million step increases to \$60 million in FY 2020;
  - Ensure established tribal transit programs receive formula funding that is no less than the highest amount of operations funding received since the creation of the Tribal Transit Program in FY 2005.
- Restore Highway Trust Fund allocation for the Tribal High Priority Projects Program and:
  - Increase funding to \$35 million in FY 2015 with annual \$5 million step increases to \$60 million in FY 2020;
  - Increase maximum grant amount to \$1.5 million when funding increases above \$35 million.
- Redistribute 10% of unused obligation authority to the TTP to fund competitively awarded grants to more remotely located Tribal Nations (HR 7).
- Separately fund the TTP Bridge Program at \$75 million in FY 2015 with annual step increases of \$5 million to \$100 million in FY 2020 and authorize the use of funds for the construction and design of new bridges.

- Establish \$75,000 as the minimum annual TTP Program funding allocation for all Tribes;
  - Restore the TTP exemption from the Obligation Limitation deduction;
  - Reduce BIA and FHWA program management and project-related administrative expenses from 6% to 5% with an annual cap of \$28 million.
2. **Decrease the high rate of fatalities and injuries on Tribal Transportation Systems.**
    - Establish a 2% direct Tribal funding set-aside from the Highway Safety Improvement Program for the purpose of reducing traffic fatalities and injuries on tribal transportation systems.
    - Increase set-aside of NHTSA Tribal Safety Program to 3.5% to address safety issues on Tribal transportation systems.
  3. **Create a Tribal Self-Governance Program under the U.S. Department of Transportation.** Creating a Self-Governance Program will streamline grant-funding agreements for federal transportation programs and more efficiently target limited transportation dollars to the improvement of Tribal transportation systems. This important step will provide an additional option to Tribes and will not supplant the existing TTP agreements. (HR7)
  4. **Ease the transfer of Federal Aid funds for Tribal Transportation Projects.** Eliminate current barriers to transfers of federal-aid funds to Tribal Nations by requiring the BIA or FHWA to award State administered federal-aid funds to Tribes under their TTP agreements. If a Tribe and State prefer, the State may make the funding award directly to the Tribe under an appropriate award instrument that respects tribal sovereignty and government-to-government nature of the agreement. (HR7)
  5. **Ensure Tribal eligibility for all U.S. Transportation Department discretionary and competitive grants.** Tribal governments are increasingly gaining direct access to federal transportation grants, but this provision would ensure that Tribes have access to all discretionary and competitive grants to increase tribal funding opportunities without increasing the overall cost of the next highway bill. (HR7)
  6. **Improve BIA Right-of-Way Management.** Requires the BIA to update and computerize rights-of-way documentation, support Tribal corridor management practices and pay trespass damages for BIA improperly obtained or recorded rights-of-way. Provide \$10 million per year to cover the cost of these statutory requirements.
  7. **Gives Tribes the Option of Assuming NEPA Approval Authority.** Authorizes but does not require Tribes to assume responsibility for approving NEPA documents, if the Tribe is willing to provide a limited sovereign immunity waiver. At the option of the Tribe, the BIA or FHWA can perform this function, but if a Tribe prefers to assume the NEPA responsibility itself, it will be required to provide a limited waiver of sovereign immunity to allow for administrative challenges to the Tribe's NEPA decision. This NEPA provision is modeled on the successful Title V Self-Governance Program administered by the Indian Health Service.
  8. **Funding to Establish a Tribal Infrastructure Bank.** Creates a Tribal Infrastructure Bank capitalized at \$10 million annually to provide low interest loans for Tribal transportation projects.

9. **Increased funding for Tribal Technical Assistance Program (TTAP).** Increases funding for the TTAPs from \$2.1 million to \$3.6 million annually.
10. **Improve the speed and efficiency in getting Emergency Relief for Federally Owned Roads (ERFO) funding to Tribes.** ERFO funding is available to Tribes to restore BIA and tribally owned roads and bridges to their pre-disaster condition. Currently there is a great delay between the time Tribes expend funds to fix these facilities, and the time they are reimbursed for these costs. The proposal would streamline the ERFO application process to speed the time Tribes are reimbursed for their ERFO expenditures.
11. **Create a 3% Tribal funding set aside in Transportation Alternatives (TA) Program.** MAP-21 replaced the Safe Routes to Schools, Scenic Byways, Transportation Enhancements and Recreational Trails Program with a new Transportation Alternatives (TA) Program. These funds go to State Transportation Departments and so far little of this funding has been provided to Tribes. This proposal would ensure that Tribes receive a fair share of these TA funds to build or enhance scenic byways, pedestrian pathways, safer school routes and other TA-eligible projects through a 3% tribal set-aside.
12. **Adequately Fund MAP-21 requirement that tribal bridges must now be inspected and included on the National Bridge Inventory.** This proposal would amend MAP-21's unfunded mandate to require that the inspection costs for including BIA and tribal bridges in the National Bridge Inventory come from Federal-Aid bridge program funds rather than from TTP funds.

#### **What you can do to help**

Please introduce or cosponsor legislation in the 113<sup>th</sup> Congress to ensure that Tribal Transportation investments keep pace with inflation, begin to address the terrible toll of traffic deaths and injuries in Indian country and help Tribal leaders create jobs and grow local economics to the benefit of Natives and non-Natives alike.

For additional information, please contact:

- Gwen Salt (202.466.7767 X 204; [gsalt@ncai.org](mailto:gsalt@ncai.org)) National Congress of American Indians
- Jim Glaze (626.387.9329; [jglaze@sonosky.com](mailto:jglaze@sonosky.com)) or Matt Jaffe (202.682.0240; [mjaffe@sonosky.com](mailto:mjaffe@sonosky.com)), Sonosky, Chambers, Sachse, Endreson & Perry, LLP
- F. Michael Willis, (202.822.8282; [mwillis@hobbsstrauss.com](mailto:mwillis@hobbsstrauss.com)) Hobbs, Straus, Dean & Walker, LLP
- John Smith (307.330.6876; [johnsmith@wyoming.com](mailto:johnsmith@wyoming.com)) Intertribal Transportation Association
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- Tribal Contact: \_\_\_\_\_

PREPARED STATEMENT OF RALPH ANDERSEN, PRESIDENT/CEO, BRISTOL BAY NATIVE ASSOCIATION (BBNA)

#### **Introduction**

Thank you for this opportunity to provide testimony on the tribal provisions being developed for the transportation act reauthorization. I am Ralph Andersen, President and CEO of the Bristol Bay Native Association (BBNA), which is headquartered in Dillingham, Alaska. BBNA is a consortium made up of the 31 federally recognized tribes in the Bristol Bay Region, which has land area in southwest Alaska about the size of Ohio. We operate most Bureau of Indian Affairs service programs in our region via a Self-Governance Compact, and we have operated the BIA's Tribal Transportation Program (TTP) under compact for six tribes since 2006, which increased to seven tribes this year.

#### **Summary of BBNA Position**

I have attached to this written testimony BBNA Resolution 2014-07, adopted by our board of directors on March 21, 2014, which establishes BBNA's policy position regarding the MAP-21 Reauthorization. We support the recommendations of the Tribal Unity Caucus, which met in Denver in February, and which include increased funding for tribal transportation programs, the clear extension of PL 93-638 compacting to the Department of Transportation, the establishment of a \$75,000 base budget for tribes, and full funding for the High Priority Projects Program, among other recommendations.

The Unity Caucus did not take a position on, or even discuss, the TTP funding formula as such, but BBNA strongly supports a new negotiated rule-making or some other tribally-driven process to determine the funding distribution for all tribal pro-

grams funded by the transportation act. We believe the success of the Tribal Unity Caucus itself demonstrates that tribal processes can deal with complex issues. The current statutory formula in MAP-21 has serious flaws—not the least of which is that it freezes in place all the mistakes made by the BIA in developing the IRR inventory under SAFETEA-LU.

#### **Background on BBNA**

As noted BBNA has operated the IRR and current TIP programs under compact since 2006, and before that we performed some IRR activities by contract. In the past several years we completed an American Recovery and Reinvestment Act IRR construction project, and acquired Denali Access Program funds to supplement two of our projects. We currently have one project in construction, though full funding has not been secured, and several others in the development phase for the plans, specifications, and estimates packages, as well as ongoing planning, safety, and maintenance projects. We also have a Tribal Transit Planning grant through the Federal Transit Administration.

Current BBNA staff have been involved with each of the highway bill reauthorizations since the TEA-21 act in 1998 and participated extensively in the negotiated rule-making which led to the 2004 IRR regulations. We have regularly attended the TTP Coordinating Committee meetings, and in February of this year our staff assisted in the development of the “Tribal Transportation Unity Act” recommendations. In particular we know how to read the inventory data and we are familiar with the numerous BIA implementation problems and their impact on the funding distribution.

Like other tribes and consortia, we have far greater transportation needs than we have funding to meet. Bristol Bay tribes were by no means particular funding beneficiaries of the 2004 IRR regulation or of well-known BIA implementation errors that benefited some tribes. We benefited from the regulation’s program changes, but in terms of funding shares our increases were modest and about what you would expect with the appropriations. The highest annual IRR funding share BBNA ever received for all six of our participating tribes combined was about \$400,000 in 2009. Generally we have ranged in the \$350,000 to \$380,000 range for six tribes. One tribe in our roads program had a share of \$109,000 in FY 2013, and the rest are all less than \$70,000 with the smallest tribal share being about \$30,000. You can’t really build roads at \$30,000 per year.

BBNA is not of the belief that the BIA’s transportation program is responsible to fully fund all our transportation needs, or for that matter to build entire road networks into rural Alaska comparable to the federal, state and county road systems in the lower 48 states. However, we do believe the BIA program should meet some needs in our villages and provide a stable program sufficient to serve as a base for collaboration and cooperative efforts with other agencies. Our approach has to been to leverage BIA funding with funding from other sources.

#### **Problems With MAP-21**

Unfortunately, some of the changes in MAP-21 were very harmful to us. In addition to eliminating the “Population Adjustment Factor” in the prior formula that was specifically to help smaller tribes, MAP-21 eliminated two of our greatest resources:

1. The High Priority Projects program established by the negotiated rule, which MAP- 21 kept on paper but did not fund.
2. The Denali Access Program.

Additionally, MAP-21 directs the states’ efforts to focus on the National Highway System. This has hindered the State of Alaska’s ability to fund or even partner on critically needed projects in rural Alaska. The Tiger Grant program, though appearing to offer assistance, doesn’t offer much help to remote tribes. The requirement to provide data for a cost benefit analysis predictably precludes funding of projects in remote, low population areas.

With all of these factors considered, MAP-21 has gutted the ability of small communities in Alaska to build critically needed projects or for most of our tribes to operate viable ongoing tribal transportation programs.

I don’t want to completely stress the negative: MAP-21 has some good aspects. In the TTP, expanding the use of funds for maintenance has been a benefit to our region. We believe there are some advantages to changing to a simple “road miles” factor in the formula. But, the defunding of the High Priority Projects has been a serious harm. We certainly don’t have enough funds to undertake significant construction with TTP formula funds, and without the HPP, Denali funds, or even fair

access to state funds we no longer have anyone to partner with or any outside funding to leverage.

We do appreciate the 2 percent TTP Safety Program, but prefer it not be a take-down to the funds available for distribution through the funding formula. The Bridge program is now a 2 percent TTP takedown, also effectively reducing the amount available for distribution. We preferred it when it was independent of the TTP, and we also urge that it be made available for construction of new structures as well as the replacement and rehabilitation of existing bridges.

The MAP-21 TTP distribution formula is not only harmful, it appears to actually be irrational in some respects. A glaring example is that 34 percent is divided equally by the 12 BIA Regions, and then distributed within each region based upon the tribes' in-region average IRR funding share from FY 2005 to FY 2011. Mathematically, the major impact of this is simply to shift money from regions with a large number of tribes to regions with fewer tribes, without regard to population, land area, road systems or any other factor that might actually measure need. I will note in passing that Navajo, a region with just one tribe, has such a high population that it doesn't really benefit additionally from this, but otherwise this 34 percent allocation just takes money away from the tribes in the Pacific and Alaska regions which have a high number of tribes and gives it to tribes in the regions with the fewest numbers of tribes. Two hypothetical tribes absolutely identical in every respect would get widely differing amounts under the MAP-21 formula depending on which BIA region they happen to be in. This seems to violate basic equal protection principles.

Below is an estimate of the number of tribes within each BIA Region:

1. Eastern—28 Tribes
2. Midwest—35 Tribes
3. Great Plains—16 Tribes
4. Rocky Mountain—7 Tribes
5. Northwest- 45 Tribes
6. Alaska—228 Tribes
7. Pacific—105 Tribes
8. Western—42 Tribes
9. Navajo—1 Tribe
10. Southwest—25 Tribes
11. Southern Plains—23 Tribes
12. Eastern Oklahoma—20 Tribes

The BIA Regions are not equal to each other in any measurable way; they arose by historical accident and administrative convenience. An "equal per BIA region" distribution should not be used for any funding formula.

Another serious problem is that although the changes to the funding formula in MAP-21 appear to have been motivated by BIA implementation errors and perceived over-reaching by some tribes, MAP-21 actually freezes and locks in place all of those problems and effectively prohibits the BIA from correcting them. The 34 percent allocation noted above, the 27 percent road miles allocation and the supplemental funding allocation all lock in BIA implementation errors by preserving the Transportation Facility Inventory the way it was in 2012. To the extent there were perceived abuses under the prior formula distribution, the MAP-21 formula "fixes" the wrong things and actually continues to provide disproportionate funding to those tribes that were arguably overfunded due to BIA mistakes.

We know that some tribes in the Lower 48 don't want changes to the MAP-21 funding formula; they have seen an increase in their bottom line funding as MAP-21 is implemented. However, the "fix" in MAP-21 was largely just an arbitrary transfer of funds between regions and doesn't get at the real problem, which was bad data in the inventory. We believe that removing the locked-in historical funding and requiring corrections to the inventory data would in fact provide those harmed by BIA implementation errors with even more funding. Preserving these errors by statute is the worst possible result—it not only continues the inequities it prevents anyone from fixing the data errors that caused them.

One thing I would like to stress is that in considering formula outcomes, it is essential to look at individual tribes and not at BIA Regions. There has been a lot of finger pointing at "Alaska" for example, and while it is true that some Alaska tribes benefitted from what we have called BIA implementation errors, a large majority of Alaska tribes did not benefit. Other tribes in other regions benefitted from other implementation problems. On the ground, our tribes actually have a lot in common with the large land based tribes in the Lower 48, which are mostly very rural and have underdeveloped infrastructure. Another fallacy is to conclude that a "BIA Region" or a particular state benefits because a few tribes do. If one tribe

in Alaska or Montana for example receives a \$10 million windfall because of a data error, that tribe may benefit but the funding comes out of the shares of all the other tribes in the country, including the other tribes in Alaska or Montana. It can be very misleading to look at the cumulative amounts for any BIA Region and conclude that all the tribes within that region are having the same outcomes. A large increase for one tribe or a few tribes may mask a significant decrease for all the other tribes in the same region.

#### **Implementation Errors**

I believe it important to discuss the implementation errors under the prior formula, not because we think it is desirable or even possible to revert to that formula, but to provide a background for our proposed “solutions.” The problems were not with the formula as negotiated by the tribes. Rather, the BIA failed to be a gate keeper.

1. The first and perhaps biggest error was that the BIA failed to correctly implement one of the main compromises in the negotiated formula: that tribes would be allowed to add non-BIA roads to the road inventory, but only BIA and tribally owned roads were to count at 100 percent in the funding formula. With a few limited exceptions other roads—state, county and local roads—were to count only at the local match level for federally funded projects, i.e. 20 percent or less depending on the state. Early on in implementation, the BIA concluded it didn’t have the data to determine the match rate so it arbitrarily counted everything at 100 percent. This resulted in a massive shift of funding towards state and county roads that was never intended to occur. The BIA only partially corrected this in later years.
2. Some state and urban municipal roads—some of which should probably not be in the inventory at all for definitional reasons—were still counted at 100 percent right up until MAP-21 changed the formula, and are still counted indirectly within MAP-21.
3. Federally owned roads owned by non-BIA agencies were included at 100 percent. This was based on a misreading of a poorly written part of the regulations, and as a policy matter makes no sense. Those agencies have their own federal appropriations for road construction and maintenance and their roads should not be the responsibility of the BIA. (Some of these roads may be “primary access roads” for the tribe and thus belong in the inventory under the SAFETEA-LU inventory language, but most do not—at least not at 100 percent funding.)
4. The BIA never adopted a policy regarding limits to the length routes could extend beyond reservations or Alaska Native villages and count for funding purposes in the inventory, or the closely related issue of how the boundary of tribal areas would be determined. While this was not in the negotiated regulations, it is an obvious gap in the regulations that should have been one of the first issues addressed by the Program Coordinating Committee. These issues were known by the negotiated rule-making committee but it just didn’t have time to address them, apparently believing the BIA would simply follow its prior policy on these issues. That did not occur.
5. In regard to proposed roads, the BIA failed to follow statutory standards and widely understood industry standards for transportation planning.
  - a. They allowed routes based upon 200 or even 300-year long-range transportation plans instead of limiting such plans to the 20-year window used by the states and thus also required of all Federal Lands Highways programs by Title 23. Additionally, the tribal transportation planning guides published by the government and widely used by tribes called for a 20-year planning window and also provided that a reasonable projection of revenues be used for planning purposes. As a result, most tribes did reasonable transportation plans, but the BIA allowed some tribes to disregard these standards and put in billion-dollar wish lists of projects that could not possibly be built in any foreseeable timeframe or from any known funding source.
  - b. Proposed tribal roads were put into the inventory at 100 percent funding without proof that the road was feasible to build, or even that the tribe had land ownership, jurisdiction, or the ability to acquire a public easement. This sort of proof should have been required as a matter of course to demonstrate the route met the basic definitions governing the IRR program in the Title 23 statute. Quite a few “proposed” roads were allowed in the inventory for funding purposes that would actually be illegal to

build, by anyone, without an act of Congress, because they cross wildlife refuges or other federal preserves.

6. The BIA allowed proposed roads to generate Vehicle Miles Traveled (VMT) in the formula based upon a default value used to determine “Cost to Construct” versus the actual VMT of a non-existent road, which is zero. In this instance the BIA disregarded the definitions in its own regulations.
7. The BIA allowed the functional classification of a road to be inconsistent with the BIA’s own functional classification system. This resulted in the route being entered at higher design standards for cost to construct and application of the VMT than actually allowed under the regulations.
8. It appears that the BIA allowed some roads to be entered as “proposed” when there were actually pre-existing unimproved roads on the ground. Again, this allowed the routes to generate more funding than if they had been accurately described.

It should be understood that prior to the 2004 regulations, most tribes had very limited experience performing IRR work themselves because the program was operated by the BIA on a “project” basis and the program was not generally performed under PL 93–638. In Alaska, only a relative handful of the tribes had ever received any direct benefit from the program at all—the BIA had just built a few projects around the state based on its own priority system. Consequently when there was a big push to do IRR inventories before and after the 2004 regulations, many tribes and particularly small tribes and even consortia in Alaska had no experience with the program and either depended on staff brand new to the IRR program or relied on consultants and engineering firms. The submittals were widely varied and some did push the envelope. It was up to the BIA to be the gate keeper.

The BIA staff in charge of inventory implementation tended to err in favor of tribes pushing a particular interpretation for their specific inventory submittals, without considering the impact on all the tribes nationally that may have been adversely affected. They made significant legal and policy decisions, perhaps without realizing it, and apparently without conferring with the Solicitor’s Office or higher level policy officials. The program staff only looked at the regulations, without considering the authorizing statutes that also govern the program. We believe this pattern was a significant breach of the BIA’s trust obligations to tribes.

One important point, there had been heavy pressure placed upon the tribal negotiated rulemaking committee members to keep the old Relative Need Distribution Formula which the BIA and FHWA had developed prior to and transitioned in during the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). The federal participants were highly motivated to keep a system in place they had expended significant money, time, and effort to implement. The negotiated formula thus actually contained only minor changes from its predecessor. “Cost to Improve” became “Cost to Construct,” and the expansion of eligible routes to drive funding distribution was expanded to include tribally owned routes. There were concessions to allow some additional routes owned by others into the inventory, but the negotiators never anticipated BIA’s inability to implement the “local match” limit or other reasonable and responsible controls.

In any event, the BIA made major mistakes in implementing the formula/inventory system that was developed by negotiated rule-making. Each of these mistakes created winners and losers among the tribes, and in each instance the BIA did not take the underlying policy question to the Program Coordinating Committee until after the mistake had already been made and the BIA realized it had a problem. At that point, it was difficult for the PCC to reach consensus because some tribes had a vested interest in blocking any change.

Although we do not believe this was intentional on the part of the BIA, it does appear that many of the implementation errors had a particularly negative impact on the large reservation tribes. It is understandable and predictable that those tribes would ask for changes to the law. But those mistakes also negatively impacted other tribes including perhaps 80 percent of Alaska Native villages, and we were harmed again by MAP-21.

### **Solutions**

So, how to fix the issues we raise? First, we recommend that additional funds be secured for the tribal transportation programs. The current funding, even if strictly limited to BIA and tribally owned roads, is insufficient.

Second, we agree with all of the recommendations provided within the “Tribal Transportation Unity Act” developed in Denver.

Third, we recommend that Congress either require negotiated rulemaking for the TTP funding formulas, including the Tribal Transit Program, or that Congress de-

sign some other, shorter process to reach a national tribal consensus on funding distribution. If the tribes were able to come up with reasonable consensus recommendations at a two-day meeting in Denver without the presence of federal representatives, it is hard to believe they couldn't generate a better method for distributing funds in a mediated meeting also without federal presence/interference. Congress certainly requires more information from tribes from across the country than it can get at the last minute in conference committee. It certainly makes no sense to keep frozen in place an inventory system/funding distribution system that virtually everyone involved in the program agrees includes a lot of junk data.

Fourth, to prevent implementation errors in the future, we believe the Federal Highway Administration must have a far greater role in the implementation of the TTP. Perhaps it should be in charge of the inventory, or perhaps the whole program could be moved to FHW A provided that PL 93-638 is directly extended to the Department of Transportation. Road construction is not the BIA's core competence. As it stands now, we believe that midlevel BIA managers acting without oversight not only did a great deal of damage to the program they effectively drove a wedge between tribes.

We obviously have a lot of thoughts on what an ideal TTP funding formula should look like, but believe that this should be addressed by the tribes. Senators will want to see how the tribes in their states will do, but it can be very misleading just to look at the totals for states or BIA Regions. The totals may mask serious problems within the state or region. In developing a needs-based formula, population may be a key component but it should be kept in mind that the available tribal population data sets are not very reliable, and that a tribe in a more densely populated area with state, county or municipal roads may have less need for BIA funding than a remote rural tribe of the same population that is completely dependent on the BIA. Having some proposed roads in the inventory is critical in areas like ours with little existing road infrastructure, but there must also be clear and consistent constraints because otherwise there is a virtually infinite number of possible proposed roads.

We don't have all the answers, but we firmly believe that given the opportunity the tribes can come to agreement on a far better formula than the one negotiated but excessively influenced by federal employees or the one currently in place in MAP-21. We offer our assistance to Congress to find an equitable solution. The tribal transportation programs are critically important to almost every aspect of life in our communities, from health and safety to economic development to the cost of living. Lives are on the line. Let's find a way to make sure that all tribes have a reasonable ability to benefit from these programs.

I greatly appreciate the opportunity to provide testimony on these issues.

**Attachment**

**BRISTOL BAY NATIVE ASSOCIATION  
P.O. BOX 310  
BILLINGHAM, ALASKA 99576  
(907) 842-5257  
By the Full Board of Directors**

**Resolution 2014 – 07**

**A RESOLUTION URGING CONGRESS TO INCORPORATE "TRIBAL TRANSPORTATION UNITY ACT" LANGUAGE AND TO CORRECT TRIBAL FUNDING FORMULA PROBLEMS WHEN REAUTHORIZING THE "MAP-21" TRANSPORTATION ACT**

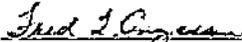
- WHEREAS:** The Bristol Bay Native Association (BBNA) is a regional Alaska Native non-profit corporation and tribal consortium serving 31 tribal communities in the Bristol Bay Region of Alaska; and
- WHEREAS:** The current national surface transportation act, "MAP-21," expires at the end of FY 2014 and efforts are currently underway in Congress to develop a reauthorization bill; and
- WHEREAS:** The "Tribal Transportation Unity Act" is proposed legislative language for tribal transportation programs that was developed at a national tribal meeting in Denver, Colorado in February of 2014 and which in general would increase funding for tribal transportation programs and make administrative improvements in such programs; and
- WHEREAS:** BBNA representatives actively participated in the negotiation and development of the Tribal Transportation Unity Act; and
- WHEREAS:** The Tribal Transportation Unity Act language represents a consensus among a broad cross-section of tribes nationally but intentionally did not address funding distribution formula issues; and
- WHEREAS:** There are elements within MAP-21's Tribal Transportation Program's funding formula that are inequitable and indeed irrational; and
- WHEREAS:** For example, the Tribal Transportation Program's formula allocates 34% of tribal shares by BIA Region, effectively taking money away from regions with a large number of tribes and giving it to regions with few tribes without regard to the tribes' relative populations, road systems, land areas or other factors which might demonstrate need, and as a result identically situated tribes receive widely different formula shares based solely on which BIA Region they are in; and
- WHEREAS:** Although the MAP-21 statutory formula was apparently enacted because of BIA implementation errors in the prior formula, MAP-21 actually keeps and makes

permanent those errors through the "Supplemental Funding" allocation and by freezing the BIA road inventory at the 2012 level; and

- WHEREAS:** The Tribal Transit Program's funding distribution formula effectively eliminates the participation by small remote tribal transit systems; and
- WHEREAS:** BBNA believes there is broad support within Indian Country for negotiated rule-making or a similar tribally-driven process for determining the funding distribution for tribal transportation programs, although some large reservation tribes oppose negotiated rule-making as such because of past BIA implementation blunders; and
- WHEREAS:** The success of the "Tribal Unity Caucus" in developing a consensus legislative package over a three-day meeting shows the success of tribally controlled processes; and
- WHEREAS:** BBNA believes it is inherent in the federal trust responsibility to Native Americans that the funding distribution formulas for any tribal program should take into account the needs of all tribes in the United States, and that this did not occur at all in MAP-21.

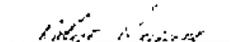
**NOW THEREFORE BE IT RESOLVED** by the Bristol Bay Native Association Board of Directors that it urges Congress to incorporate the "Tribal Transportation Unity Act" recommendations into the reauthorization of MAP-21; and

**NOW THEREFORE BE IT FURTHER RESOLVED** by the Bristol Bay Native Association Board of Directors that it urges Congress to require a negotiated rule-making to develop funding distribution formulas for the tribal programs within MAP-21, or alternatively that it devise some other tribally-driven process for providing direct input to Congress in developing need-based formulas.

  
Fred T. Angasan, Chairman

**CERTIFICATION:**

I, the undersigned Secretary of the Bristol Bay Native Association, Inc. do hereby certify that the foregoing resolution was passed by the Full Board of Directors of the Bristol Bay Native Association at a duly called and noticed meeting on the 21<sup>st</sup> day of March, 2014, and that a quorum was present.

  
Robert Heyano, Secretary

PREPARED STATEMENT OF LEANDER R. McDONALD, PH.D., CHAIRMAN, SPIRIT LAKE  
TRIBE

At the Spirit Lake Nation's current TTP funding level of approximately \$1 million per year, it takes nearly all of our construction funds just to perform maintenance activities on our roadways. We have approximately 54 miles of paved roads and have no way to fund future overlays or reconstruction. We have to save up for two years to complete a patching and chip seal project on a third of our paved miles. The current funding level does not provide for any expansion of our infrastructure to meet the growing needs of our people.

Our yearly carryover, with no changes in funding levels, and no adjustments for inflation and rising construction costs, we have approximately \$130,000 available each year for construction.

A ¾" mill and 2" overlay project, using warm mix asphalt and recycled asphalt pavement, costs approximately \$175,000 per mile. At current prices, it would take us 73 years just to complete maintenance overlays on our existing roadway network, which typically need to be done every 20 years. This is a losing battle at our current funding level.

The last overlay on our paved roads was done in 1999. That was 15 years ago. Overlays are generally needed every 20 years. To make our current system sustainable, we would need to mill and overlay in 2019. To accumulate the \$9,450,000 to achieve this goal, we need another \$1,890,000 per year. In another 20 years (2039), a full reconstruction will likely be necessary. In today's dollars, this work would cost \$500,000 per mile, or \$27,000,000. To meet that need, an additional \$1,350,000 per year is needed in years 6-25.

In closing, we need approximately 2.5 to 3 times what we currently receive in TTP funds to ensure continued service to our people. This doesn't take into account future expansion and improvement of our roadway network.

PREPARED STATEMENT OF HON. ERMA J. VIZENOR, TRIBAL CHAIRWOMAN, WHITE  
EARTH BAND OF OJIBWE INDIANS

On behalf of the White Earth Band of Ojibwe Indians, I want to express my appreciation to the Senate Committee on Indian Affairs, and to Chairman Tester for convening this hearing. 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 Tribal Transportation Program (TTP) provides funding for a coordinated program of public roads that serve Federal land transportation needs. For most Indian tribes, the TTP 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 quality of life for all Native people living on Indian lands throughout the United States.

*Background on the White Earth Indian Reservation*

The White Earth Band of Ojibwe Indians is a small-to-medium sized Tribe with more than 23,000 members, approximately 1,100 members whom live on our relatively-large Reservation. The White Earth Indian Reservation, with over 828,441 acres is located in a rural area within the boundaries of the State of Minnesota.

The White Earth Tribal government is responsible, in conjunction with the United States, to provide a full range of governmental services to Reservation residents. We administer transportation, police, judicial, penal and fire protection services, natural resource protection and management, social services, health and other emergency services, economic development and planning, and many other governmental activities. The White Earth Band is beginning its eighth year of operating BIA-funded programs under self-governance.

Due in part to our location far from centers of population and commerce, we have few jobs available in the private sector economy. If our members work off-Reservation, they necessarily must travel often more than an hour to get to or from their jobs. While unemployment rates throughout Minnesota is showing a decline, the unemployment rate on the White Earth Reservation exceeds 50%. The chronic lack of good roads, communications, and other necessary infrastructure continually derails our efforts to expand economic development and job opportunities. If our people are to secure and maintain steady work as responsible citizens we must, as a responsible government, provide adequate and safe transportation systems so that they can get to their jobs through all weather conditions.

#### *Tribal Transportation Unity Caucus*

The Tribal Transportation Unity Caucus (TTUC) was established and organized in October 2013 by Burny Tibbets, Public Works Director for the White Earth Band of Ojibwe. The following principles were developed with the National Congress of American Indians (NCAI), Intertribal Transportation Association (ITA), Rocky Mountain Planners Association (RMPA), Alaska Tribal Transportation Workgroup (ATTW), United South & Eastern Tribes (USET) and various other Tribal Nations:

#### Vision:

- Develop Unity among Tribal Nations advocating for Tribal provisions in the new highway bill.
- To support a mediated Tribal Leader engagement process to achieve unity on Tribal transportation funding formula and program requirements.

#### Principles:

- ❖ Build consensus with all Tribal Nations
- ❖ Involve all Tribes in developing legislative proposals
- ❖ Promote fair and equitable funding formula for all Tribal Nations
- ❖ Minimize negative impacts in funding distributions moving forward
- ❖ Strive for increase in funding opportunity for all Tribal transportation areas
- ❖ Strive to extend Tribal Self-Determination and Self-Governance to all USDOT Administrations.
- ❖ Direct access to all DOT funding sources
- ❖ Strive to eliminate bureaucratic roadblocks and improve the efficiency of the Tribal transportation program
- ❖ Promote Tribal success stories and avoid disparaging other Tribes
- ❖ Stress how improved Tribal transportation networks are fundamental to Tribal Nation success in all areas.

#### Goals and Objectives:

1. Increase funding, tribal transportation \$1 billion
  - a. Increase bridge funding (separate funding per SAFTEA-LU)
  - b. Tribal Bridge Inspection & Repair (currently unfunded mandate)
  - c. Highway safety funds
  - d. ROW
2. Road Maintenance program to be funded through the Highway Trust Fund (HTF)

3. Direct funding to tribes in lieu of state(s) (i.e. safety, transit, federal aid)
4. Increase FTA transit funding
5. True, fair and equitable funding
  
6. Tribal access to government data
7. Accurate inventory
8. "Obligation Limitation" at 100%

*Tribal Transportation Unity Act*

Tribal leaders accompanied by tribal transportation technical staff gathered at the Tribal Transportation Reauthorization Unity Summit in Denver, Colorado on February 25-27, 2014, to exchange perspectives on tribal needs and opportunities in order to develop consensus legislative proposals to present to the 113<sup>th</sup> Congress to address the transportation needs of Tribal Nations. The Tribal Transportation Unity Caucus and the Rocky Mountain Transportation Planners Association organized this Summit to develop unified Tribal proposals for the a new surface transportation bill to address tribal transportation system needs and recognize the capacity of Tribal Nations to deliver transportation services to their Tribal citizens and the general public using Tribal roadways and transit systems.

**\* See the Tribal Transportation Unity Act summary on pg. 86 \***

*Conclusion*

The White Earth Band of Ojibwe supports the efforts of the Tribal Transportation Unity Caucus (TTUC) and the Tribal Transportation Unity Act. We believe a unified approach that was developed and organized by Tribal Nations is the only solution.

On behalf of the White Earth Band of Ojibwe, I thank the Committee for its attention to and support for the Tribal Transportation Program. We are confident that with your help, the TPP program will be funded based on the documented needs of Indian Nations.

## PREPARED STATEMENT OF THE HO-CHUNK NATION

Dear Chairman Tester & Committee Members;

Thank you for holding the Oversight Committee Hearing regarding Tribal transportation. It is good to know that the Committee is interested in gathering information on this very important issue to tribes. The Ho-Chunk Nation (Nation) actively participates in the Tribal Transportation Program (TTP) and it has provided many benefits to our tribal members and the State of Wisconsin.

The TTP enables the Nation to complete desperately needed road projects that are vital to the safety of our tribal members and the general driving public. In the last two years alone, the Nation has completed eight different road projects that will save lives. Six of these projects either re-constructed dangerous curves or provided turning lanes at dangerous intersections on roads providing access to the tribe's housing sites or cultural sites. Two of the projects replaced sub-standard bridges accessing our Kickapoo Valley Reserve and our Mission housing site. Without this program, none of these projects would have been possible.

But there is much more that needs to be done, not only for the Nation, but for many tribes across the United States. That is why the Nation participated in the Tribal Transportation Reauthorization Unity Summit in Denver Colorado last month. During this summit, over 50 tribes came together and developed a unified position on a number of funding provisions for inclusion in the next Highway bill. The support for these provisions from members of this Committee are key to the success for Indian Country.

The focus of the recommendations from the Unity Summit is an increase in funding. The Nation has been fortunate enough to receive enough funding from the TTP to make a difference, but we continue have additional unmet needs. Most tribes face the same predicament as we do, but have continuously shown that transportation funding is one of the best investments that the federal government can make in tribes. There is a vast number of examples that prove the value of this investment and how it leads to enhanced safety, economic development and job creation for all Tribal Nations.

Attached is the Nation's Resolution supporting the legislative proposals developed at the Unity Summit. Please consider this information as you move forward in deliberations for the Transportation Reauthorization bill.

Thank you for your consideration in this matter.

**Attachment**



**HO-CHUNK NATION LEGISLATURE**  
*Governing Body of the Ho-Chunk Nation*

**HO-CHUNK NATION LEGISLATURE  
A RESOLUTION IN SUPPORT OF  
THE TRIBAL TRANSPORTATION UNITY ACT SUMMARY  
AND ADVOCATING FOR INCREASED FEDERAL INVESTMENT  
IN TRIBAL TRANSPORTATION INFRASTRUCTURE TO ENHANCE  
TRANSPORTATION SAFETY, EMPLOYMENT, ACCESS  
AND SYSTEM EFFECTIVENESS**

**RESOLUTION 03-18-14C**

- WHEREAS,** on November 1, 1994, the Secretary of the Interior approved a new Constitution for the Ho-Chunk Nation, formerly known as the Wisconsin Winnebago Nation; and
- WHEREAS,** the Ho-Chunk Nation is a federally recognized Indian Tribe, organized pursuant to the Indian Reorganization Act of 1934; and
- WHEREAS,** the Legislature of the Ho-Chunk Nation ("Legislature") is the duly constituted governing body of the Ho-Chunk Nation pursuant to the Constitution of the Nation; and
- WHEREAS,** Article V, Section 2 (a) of the Ho-Chunk Nation Constitution ("Constitution") authorizes the Legislature, to make laws, including codes, ordinances, resolutions, and statutes; and
- WHEREAS,** Article V, Section 2 (i) of the Constitution authorizes the Legislature to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals; and
- WHEREAS,** the Ho-Chunk Nation relies on a safe, efficient and dependable transportation system to support the health, economic development, social well-being of our tribal members and the general public; and
- WHEREAS,** the federal government has a trust responsibility and treaty obligations to assist tribes in developing and sustaining roads, bridges, pedestrian and bicycle paths, transit services and other transportation facilities in a state of good repair comparable to national standards; and

**WHEREAS,** in prior efforts to impact federal transportation legislation, tribal voices were not unified and resulted in Congress drafting language without the benefit of tribal input resulting in a less effective tribal transportation program and limited tribal governments' ability to provide a safe and reliable transportation system for their tribal communities and the traveling public; and

**WHEREAS,** Tribal leaders accompanied by tribal transportation technical staff attended a Tribal Transportation Unity Caucus in Denver, Colorado on February 25-27, 2014, to exchange perspectives on tribal needs and opportunities and to develop underlying positions for a coordinated strategy to engage Congress in addressing the United States' trust responsibility to the Indian people for transportation infrastructure investment and maintenance; and

**WHEREAS,** the Tribal Transportation Unity Caucus formed to promote unified, consensus positions of Indian tribes in advocating for a new highway bill that reflects tribal transportation system challenges and recognizes the accomplishments and capacity of tribes to deliver safe and reliable transportation and transit services to tribal citizens and surrounding communities; and

**WHEREAS,** the Tribal Transportation Unity Caucus meeting produced a document entitled "Tribal Transportation Unity Act Summary" that identifies recommendations for changes in the federal highway bill through a consensus process; and

**WHEREAS,** although tribal roads and transportation facilities comprise nearly 3% of the national transportation system, federal investment in those tribal facilities has remained at less than 1% of the national transportation system; and

**WHEREAS,** tribal communities suffer the impacts of motor vehicle fatalities and serious injuries at rates greatly exceeding national averages due to unsafe road conditions and underfunded tribal highway safety programs; and

**WHEREAS,** Tribal governments, as sovereign nations recognized in the United States Constitution, have obligations to deliver safe and reliable transportation networks and the Federal Government has trust and treaty responsibilities to provide sufficient funding to meet this obligation; and

**WHEREAS,** through TEA-21, SAFETEA-LU, ARRA and MAP-21, tribes have demonstrated their transportation needs and have proven their ability to effectively and efficiently deliver transportation programs for the benefit of tribal citizens and others in their community.

**NOW THEREFORE, BE IT RESOLVED** that the Ho-Chunk Nation hereby supports the commitment expressed in the Tribal Transportation Unity Act Summary to engage in tribal transportation policy advocacy in the spirit of unity and mutual support and urges our Congressional delegation to support these recommendations; and

**BE IT FURTHER RESOLVED** that the positions adopted in Denver have been made in the interest of unity and shall be interpreted and understood as promoting and advancing consensus positions shared by tribes nationally and to support coordinated advocacy before the United States Congress; and

**BE IT FURTHER RESOLVED** that the Ho-Chunk Nation hereby stands in unity with the Tribal Transportation Unity Caucus and supports the Tribal Transportation Unity Act Summary as adopted in Denver, Colorado on February 25-26 2014.

**CERTIFICATION**

I, the undersigned, as Tribal Secretary of Ho-Chunk Nation, hereby certify that the Legislature of the Ho-Chunk Nation, composed of 13 members of whom 13 constituting a quorum were present at a meeting duly called and convened and held that on the 18<sup>th</sup> day of March, 2014, adopted the foregoing resolution at said meeting by an affirmative vote of 13 members, 0 opposed, and 0 abstaining, pursuant to the Article V, Section 2(a) and (x) of the Constitution of the Ho-Chunk Nation, approved by the Secretary of the Interior on November 1, 1994, and that the foregoing resolution has not been rescinded or amended in any way. I further certify that this is a verified copy of said resolution.

Kathleen Lone Tree-Whiterabbit  
Kathleen Lone Tree-Whiterabbit, Tribal Secretary

3.18.14  
Date



*Bois Forte*  
TRIBAL GOVERNMENT

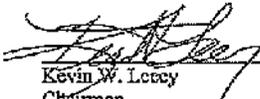
Resolution 93-2014

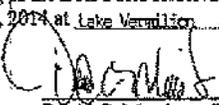
- WHEREAS,** the Bois Forte Band of the Minnesota Chippewa Tribe is a federally-recognized Indian Tribe organized under the Indian Reorganization Act of 1934 and operating under the Revised constitution and Bylaws of the Minnesota Chippewa Tribe; and
- WHEREAS,** the lawful governing body of the Band is the Bois Forte Reservation Tribal Council and it is authorized to support policies and programs that promote the health, economic development and social well-being of our tribal members and the general public; and
- WHEREAS,** the federal government has a trust responsibility and treaty obligations to assist tribes in developing and sustaining roads, bridges, pedestrian and bicycle paths, transit services and other transportation facilities in a state of good repair comparable to national standards; and
- WHEREAS,** the Tribal Transportation Unity Caucus is an initiative of Federally-recognized Indian tribes advocating for a new highway bill that reflects tribal transportation system challenges and recognizes the accomplishments and capacity of tribes to deliver safe and reliable transportation and transit services to tribal citizens and surrounding communities; and
- WHEREAS,** although tribal roads and transportation facilities comprise nearly 3% of the national transportation system, federal investment in those tribal facilities has remained at less than 1% of the national transportation system; and
- WHEREAS,** tribal communities suffer the impacts of motor vehicle fatalities and serious injuries at rates greatly exceeding national averages due to unsafe road conditions and underfunded tribal highway safety programs; and
- WHEREAS,** through TEA-21, SAFETEA-LU, ARRA and MAP-21, tribes have demonstrated their transportation needs and have proven their ability to deliver transportation programs effectively and efficiently for the benefit of tribal citizens and others in their community.
- NOW THEREFORE BE IT RESOLVED** that the Bois Forte Band of Chippewa hereby supports the commitment expressed in the Tribal Transportation Unity Act Summary to engage in tribal transportation policy advocacy in the spirit of unity and mutual support and urges our Congressional delegation to support these recommendations; and

**BE IT FINALLY RESOLVED** that the Bois Forte Band of Chippewa hereby endorses principles advanced by the Tribal Transportation Unity Caucus and supports the Tribal Transportation Unity Act Summary as adopted in Denver, Colorado on February 25-26 2014.

**CERTIFICATION**

We do hereby certify that the foregoing resolution was duly presented and enacted upon by a vote of 4 for, 0 against, 0 abstaining, at a meeting of the Bois Forte Reservation Tribal Council, a quorum being present, held on March 12, 2014 at Lake Vermilion, Minnesota.

  
\_\_\_\_\_  
Kevin W. Lacey  
Chairman

  
\_\_\_\_\_  
David C. Morrison, Sr.  
Secretary-Treasurer



**Chickaloon Village**  
*Traditional Council*  
*(Nay'dini'aa Na')*

*Cary Harrison,*  
*Traditional Chief*  
*and Chairman*

*Rick Harrison,*  
*Vice-Chairman*

*Fanny Weidat,*  
*Secretary/Member*

*Albert Harrison,*  
*Treasurer/Member*

*Doug Weidat,*  
*Elder Member*

*Shavna Larson,*  
*Member*

*Lisa Weidat,*  
*Member*

*Rick Harrison,*  
*Executive Director*

**A RESOLUTION IN SUPPORT OF THE TRIBAL TRANSPORTATION UNITY  
ACT SUMMARY AND ADVOCATING FOR INCREASED FEDERAL  
INVESTMENT  
IN TRIBAL TRANSPORTATION INFRASTRUCTURE TO ENHANCE  
TRANSPORTATION  
SAFETY, EMPLOYMENT, ACCESS AND SYSTEM EFFECTIVENESS**

**Resolution 140325-1**

WHEREAS, Chickaloon Village Traditional Council is an Indigenous Government with full power and authority to act for the Chickaloon Native Village, Chickaloon Traditional Village, and/or Chickaloon Village (Nay'dini'aa Na'); and

WHEREAS, Chickaloon Village is part of the Athabaskan Nation and is a distinct, independent political community, and as such is qualified and exercises powers of self-government by reason of its original tribal sovereignty as passed down from its ancestors since time immemorial; and nothing in this resolution shall be in conflict therewith; and

WHEREAS, Chickaloon Village is a Federally-recognized Tribal Government in Alaska (Federal Register, Volume 67, Number 134, Friday, July 12, 2002, Notices, page 46332), with full power and authority to negotiate with the Federal Government; and

WHEREAS, Chickaloon Village Traditional Council did not cede, terminate, extinguish, or relinquish their original, possessory and aboriginal rights; and

WHEREAS, Chickaloon Village Traditional Council is the governing body of Chickaloon Village as recognized by the Chickaloon tribal citizens; and has a responsibility to provide a government for the good health and welfare of its tribal citizens, address any needs in its community; and

Resolution Specifics:

WHEREAS, Chickaloon Village Traditional Council relies on a safe, efficient and dependable transportation system to support the health, economic development, social well-being of our tribal members and the general public, and

WHEREAS, the federal government has a trust responsibility and treaty obligations to assist tribes in developing and sustaining roads, bridges, pedestrian and

bicycle paths, transit services and other transportation facilities in a state of good repair comparable to national standards, and

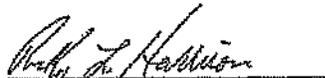
- WHEREAS, in prior efforts to impact federal transportation legislation, tribal voices were not unified and resulted in Congress drafting language without the benefit of tribal input resulting in a less effective tribal transportation program and limited tribal governments' ability to provide a safe and reliable transportation system for their tribal communities and the traveling public; and
- WHEREAS, Tribal leaders accompanied by tribal transportation technical staff attended a Tribal Transportation Unity Caucus in Denver, Colorado on February 25-27, 2014, to exchange perspectives on tribal needs and opportunities and to develop underlying positions for a coordinated strategy to engage Congress in addressing the United States' trust responsibility to the Indian people for transportation infrastructure investment and maintenance; and
- WHEREAS, the Tribal Transportation Unity Caucus formed to promote unified, consensus positions of Indian tribes in advocating for a new highway bill that reflects tribal transportation system challenges and recognizes the accomplishments and capacity of tribes to deliver safe and reliable transportation and transit services to tribal citizens and surrounding communities; and
- WHEREAS, the Tribal Transportation Unity Caucus meeting produced a document entitled "Tribal Transportation Unity Act Summary" that identifies recommendations for changes in the federal highway bill through a consensus process; and
- WHEREAS, although tribal roads and transportation facilities comprise nearly 3% of the national transportation system, federal investment in those tribal facilities has remained at less than 1% of the national transportation system; and
- WHEREAS, tribal communities suffer the impacts of motor vehicle fatalities and serious injuries at rates greatly exceeding national averages due to unsafe road conditions and underfunded tribal highway safety programs; and
- WHEREAS, Tribal governments, as sovereign nations recognized in the United States Constitution, have obligations to deliver safe and reliable transportation networks and the Federal Government has trust and treaty responsibilities to provide sufficient funding to meet this obligation; and
- WHEREAS, through TEA-21, SAFETEA-LU, ARRA and MAP-21, tribes have demonstrated their transportation needs and have proven their ability to effectively and efficiently deliver transportation programs for the benefit of tribal citizens and others in their community.
- NOW THEREFORE BE IT RESOLVED, Chickaloon Village Traditional Council hereby supports the commitment expressed in the Tribal Transportation Unity Act

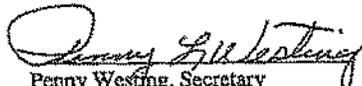
Summary to engage in tribal transportation policy advocacy in the spirit of unity and mutual support and urges our Congressional delegation to support these recommendations; and

BE IT FURTHER RESOLVED, that the positions adopted in Denver have been made in the interest of unity and shall be interpreted and understood as promoting and advancing consensus positions shared by tribes nationally and to support coordinated advocacy before the United States Congress; and

BE IT FINALLY RESOLVED, Chickaloon Village Traditional Council hereby stands in unity with the Tribal Transportation Unity Caucus and supports the Tribal Transportation Unity Act Summary as adopted in Denver, Colorado on February 25-26 2014.

It is hereby certified that this resolution was duly considered and approved this 24th of March 2014 with a majority vote of 6 affirmative; 0 negative; 0 abstention, and/or 1 absent votes.

  
Ricky Harrison, Vice-Chairman

  
Penny Westing, Secretary

  
Gary Harrison, Traditional Chief

## **Fort Belknap Indian Community**

WHEREAS, the Fort Belknap Indian Community Council is the governing body of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community, Fort Belknap Indian Reservation, Montana, by the authority of the Constitution and By-Laws of the Fort Belknap Tribes approved on the 13 day of December 1935, and

WHEREAS, under the Constitution and By-Laws of the Fort Belknap Indian Community, the Community Council is charged with the duty of protecting the health, security and general welfare of the Fort Belknap Indian Community, and

### **A RESOLUTION ON HIGHWAY BILL REAUTHORIZATION**

WHEREAS, tribal governments, as sovereign nations recognized in the United States Constitution, have obligations to deliver safe and reliable transportation networks and the federal government has trust and treaty responsibilities to provide sufficient funding to meet this obligation; and

Whereas, through the implementation of past Highway Bills including TEA-21, SAFETEA-LU, ARRA and MAP-21, tribes have proven their ability to effectively and efficiently deliver transportation programs for the benefit of tribal citizens and others in their community, particularly the large numbers who travel on our roads; and

Whereas, although tribal roads and transportation facilities comprise nearly 3% of the national transportation system, federal investment in those tribal facilities has remained at less than 1% of the national transportation system; and

Whereas, the old expression "that the reservation begins where the paved highway ends" is still, in many instances, an accurate portrayal of the status of roads on our homelands; and

Whereas, inferior and often unpaved roads and poorly maintained roads are killing and maiming Indian people who travel those roads in record numbers; and

Whereas, road conditions on our lands, that federal agencies have previously described as resembling those found in Third World countries, are causing many problems and greatly hindering economic development and job creation; and

Whereas, inferior roads, particularly after inclement weather, result in our residents not being able to get to their jobs, our children not being able to get to their schools and emergency vehicles not being able to respond or being greatly delayed in their response; and

Whereas, the Bureau of Indian Affairs (BIA), the principal agency responsible for the maintenance of roads that the United States holds in trust for the Indian people has shirked its

responsibilities by requesting so little money each year for maintenance that our roads are deteriorating and are dangerous resulting in Indian people suffering injury and death driving and walking along reservation roadways at rates far above the national average; and

**Whereas**, state and counties are spending over \$10,000 per mile for roads maintenance whereas the BIA's requests only allow for between \$450 and \$700 per mile for maintenance on Indian reservations roads due to the fact that the BIA has requested only \$25 million a year for the past 22 years even as reservation road miles have increased and had requested \$41 million a year prior to that 22 year period; and

**Whereas**, tribes were so desperate to secure additional road dollars that many began adding state and county roads that "access" their reservations (permissible but not defined under BIA regulations) and thousands of miles of "proposed" roads to their inventories (including many that will never be built but stay proposed, year after year, to generate funding), to take advantage of the BIA's formula for allocating funds it receives from the Federal Highway Administration (FHWA); and

**Whereas**, this race to add inventory resulted in greatly diminishing funds being available to actual reservation roads owned by the BIA and/or by Indian tribes, whose only source of funding is the FHWA allocation set aside for federally recognized Indian tribes; and

**Whereas**, in response, the Congress in enacting MAP-21 created a statutory formula that requires FHWA dollars to be more fairly and appropriately dedicated to BIA and Tribal roads; and

**Whereas** the backlog of required road construction needed to get the roads in Indian country up to standard would require an allocation of \$6 billion annually; and

**Whereas**, a group of transportation planners and tribal leaders met recently in Denver, Colorado as a Tribal Transportation Unity Caucus to promote a consensus based positions in making recommendations to the US Congress for consideration during the enactment of the next highway bill.

**Whereas**, that the Fort Belknap Indian Community does hereby endorse many of the recommendations in the "Tribal Transportation Unity Act Summary for the 113<sup>th</sup> Congress" which accurately lays out the transportation needs for Indian Country; but cannot support a) the concept of every one of the 566 federally recognized tribes in the United States receiving a base of \$75,000 in roads dollars (tribes without roads, land or population do not need such funds; Highway Trust Fund (HTF) dollars are not there simply to create employment), and b) can support the reinstatement of HTF dollars going to the Tribal High Priority Projects (HPP) Program *provided* that all tribes are able to apply for HPP funds and that there is not a cap put on the receipt of IRR/TTP funds above which the recipient tribe is prohibited from applying for HPP funds. Furthermore, we understand that many access roads are being ignored by states or counties but feel it best to limit tribal road inventory to a length of 15 miles from the reservation perimeter as had been agreed to by the Indian Reservation Road Tribal Coordinating Committee; and

Now Therefore Be It Resolved, that the Fort Belknap Indian Community Council does further request that the Congress retain the statutory formula for allocating road construction funds to Indian County as contained in MAP-21; and

Be It Further Resolved, that the Fort Belknap Indian Community Council does hereby particularly implore the Congress to increase funding for reservation roads to the levels recommended in the Tribal Transportation Unity Act Summary; to ensure the BIA's road maintenance budget is increased to at least \$150 million annually; to fund a reservation bridge program separately from the road construction program and to restore the exemption from the Obligation Limitation deduction that the Indian Reservation Road program (now TTP) previously had.

BE IT FINALLY RESOLVED, that the Council Officers are hereby delegated the authority and responsibility to sign all documents necessary to effect this action.

ATTEST:

Mark Azum  
Mark Azum, President,  
Fort Belknap Indian Community Council

Bonita Plainfeather  
Bonita Plainfeather, Secretary/Treasurer  
Fort Belknap Indian Community Council

CERTIFICATION:

I, the undersigned, as Secretary of the Fort Belknap Indian Community Council of the Fort Belknap Indian Reservation, Montana, do hereby certify that the Fort Belknap Indian Community Council is composed of 10 members, of whom 10 members, constituting a quorum were present at a meeting thereof, duly and regularly called, noticed, convened and held this 17 day of June, 20 14; and that the foregoing Resolution of the Fort Belknap Indian Community Council was duly adopted and approved by the affirmative vote of 8 for; 0 opposed; \_\_\_\_\_ not voting; 1 temporary absent; \_\_\_\_\_ absent; and that the said Resolution has not been rescinded in any way.

DATE: June 17, 2014

Bonita Plainfeather  
Bonita Plainfeather, Secretary/Treasurer  
Fort Belknap Indian Community Council



## **Montana Wyoming Tribal Leaders Council**

**RESOLUTION #13 March 2014-01**

### **A RESOLUTION ON HIGHWAY BILL REAUTHORIZATION**

**WHEREAS**, the Montana Wyoming Tribal Leaders Council (Tribal Leaders Council) has been created for the express purpose of providing a unified voice for Tribal governments of the Rocky Mountain Region and a collective organization to address issues of concern to member Tribes and their peoples; and

**WHEREAS**, duly elected Tribal Chairs, Presidents and Council Members of the Tribal Governments make up the membership of the Tribal Leaders Council and as such are fully authorized to represent their respective Tribes; and

**WHEREAS**, tribal governments, as sovereign nations recognized in the United States Constitution, have obligations to deliver safe and reliable transportation networks and the federal government has trust and treaty responsibilities to provide sufficient funding to meet this obligation; and

**WHEREAS**, through the implementation of past Highway Bills including TBA-21, SAFETEA-LU, ARRA and MAP-21, Tribes have proven their ability to effectively and efficiently deliver transportation programs for the benefit of tribal citizens and others in their community, particularly the large numbers who travel on our roads; and

**WHEREAS**, although tribal roads and transportation facilities comprise nearly 3% of the national transportation system, federal investment in those tribal facilities has remained at less than 1% of the national transportation system; and

**WHEREAS**, the old expression "that the reservation begins where the paved highway ends" is still, in many instances, an accurate portrayal of the status of roads on our homelands; and

**WHEREAS**, inferior and often unpaved roads and poorly maintained roads are killing and maiming Indian people who travel those roads in record numbers; and

**WHEREAS**, road conditions on our lands, that federal agencies have previously described as resembling those found in Third World countries, are causing many problems and greatly hindering economic development and job creation; and

**WHEREAS**, inferior roads, particularly after inclement weather, result in our residents not being able to get to their jobs, our children not being able to get to their schools and emergency vehicles not being able to respond or being greatly delayed in their response; and

**WHEREAS**, the Bureau of Indian Affairs (BIA), the principal agency responsible for the maintenance of roads that the United States holds in trust for the Indian people has shirked its responsibilities by requesting so little money each year for maintenance that our roads are deteriorating and are dangerous resulting in Indian people suffering injury and death driving and walking along reservation roadways at rates far above the national average; and

**WHEREAS**, state and counties are spending over \$10,000 per mile for roads maintenance whereas the BIA's requests only allow for between \$450 and \$700 per mile for maintenance on Indian reservations roads due to the fact that the BIA has requested only \$25 million a year for the past 22 years even as reservation road miles have increased and had requested \$41 million a year prior to that 22 year period; and

**WHEREAS**, Tribes were so desperate to secure additional road dollars that many began adding state and county roads that "access" their reservations (permissible but not defined under BIA regulations) and thousands of miles of "proposed" roads to their inventories (including many that will never be built but stay proposed, year after year, to generate funding), to take advantage of the BIA's formula for allocating funds it receives from the Federal Highway Administration (FHWA); and

**WHEREAS**, this race to add inventory resulted in greatly diminishing funds being available to actual reservation roads owned by the BIA and/or by Indian Tribes, whose only source of funding is the FHWA allocation set aside for federally recognized Indian Tribes; and

**WHEREAS**, in response, the Congress in enacting MAP-21 created a statutory formula that requires FHWA dollars to be more fairly and appropriately dedicated to BIA and Tribal roads; and

**WHEREAS** the backlog of required road construction needed to get the roads in Indian country up to standard would require an allocation of \$6 billion annually; and

**WHEREAS**, a group of transportation planners and tribal leaders met recently in Denver, Colorado as a Tribal Transportation Unity Caucus to promote a consensus based position in making recommendations to the US Congress for consideration during the enactment of the next highway bill.

**NOW THEREFORE BE IT RESOLVED** that the Montana-Wyoming Tribal Leader's Council (MWTLC) does hereby endorse many of the recommendations in the "Tribal Transportation Unity Act Summary for the 113<sup>th</sup> Congress" which accurately lays out the transportation needs for Indian Country; but cannot support a) the concept of every one of the 566 federally recognized Tribes in the United States receiving a base of \$75,000 in road dollars (Tribes without roads, land or population do not need such funds; Highway Trust Fund (HTF) dollars are not there simply to create employment), and b) can support the reinstatement of HTF dollars going to the Tribal High Priority Projects (HPP) Program *provided* that all Tribes are able to apply for HPP funds and that there is not a cap put on the receipt of IRR/TTP funds above which the recipient Tribe is prohibited from applying for HPP funds. Furthermore, we understand that many access roads are being ignored by states or counties but feel it best to limit tribal road inventory to a length of 15 miles from the Exterior boundaries of the reservation, which has been agreed to by the Indian Reservation Road Tribal Coordinating Committee; and

**BE IT FURTHER RESOLVED** that the MW/TLC member Tribes do further request that the Congress retain the statutory formula for allocating road construction funds to Indian Country as contained in MAP-21; and

**BE IT FINALLY RESOLVED** that the MW/TLC member Tribes do hereby particularly implore the Congress to increase funding for reservation roads to the levels recommended in the Tribal Transportation Unity Act Summary; to ensure the BIA's road maintenance budget is increased to at least \$150 million annually; to fund a reservation bridge program separately from the road construction program and to restore the exemption from the Obligation Limitation deduction that the Indian Reservation Road program (now TRIP) previously had.

**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 specially convened Board Meeting of the Montana Wyoming Tribal Leaders Council, which was held on the 15<sup>th</sup> of March, 2013 in Billings, Montana with a full quorum present.

  
Ivan Posey, Chairman,  
MT WY Tribal Leaders Council

  
Gerald Gray, Secretary  
MT WY Tribal Leaders Council

March 24, 2014



The Klamath Tribes

The Honorable Jeff Merkley  
313 Hart Senate Office Bldg.  
Washington, DC 20510

Dear Honorable Member:

I am writing to you on behalf of the Klamath Tribes of Oregon to ask for your assistance in securing support for the attached Tribal Transportation Unity Act to be included in the upcoming transportation legislation. Congress is currently considering a transportation reauthorization. There is a vital need for Tribal transportation infrastructure development.

We have joined together with Tribes across the nation to support the attached Tribal Priorities for inclusion in the new transportation bill. These Tribal priorities have broad support throughout Indian Country. Many of these provisions, developed by Tribal leaders, were included in previous proposed transportation bills.

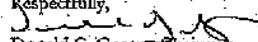
These Tribal priorities will not only improve some of the most unsafe roads and bridges in the nation, but will also address some of the nation's most entrenched long-term unemployment. Safe and adequately maintained roads are critical for viable economic development and livability in our Native communities.

The Tribal priorities include the following:

- Support for enhanced funding levels for the Tribal Transportation and Tribal Transit Programs;
- To remain the funding authority for the High Priority Projects Program from the US Treasury General Fund to Title 23, the Highway Trust Fund;
- Extend the extremely successful self-governance program to the Department of Transportation; and to continue the current practice to permit tribes access to competitive grant programs under the Secretary of Transportation.

We trust you share our conviction that these Tribal priorities are critical to economic recovery for our tribal communities, and the nation as a whole. Our tribal citizens and surrounding non-tribal communities rely on safe, dependable roads and public transportation to maintain and improve their quality of life. We respectfully request your support for the Tribal Transportation Unity Act.

Thank you for your consideration of this most important matter.

Respectfully,  
  
Donald C. Gentry, Chairman  
The Klamath Tribes

February 18, 2014

Mr. John P. Smith  
 Director of Transportation  
 Shoshone & Arapaho Tribes  
 P.O. Box 217  
 Fort Washakie, WY 82514

RE: 2014 Tribal Transportation Reauthorization of MAP-21

Dear Mr. Smith:

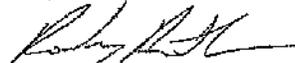
*The Mashantucket Pequot Tribal Nation (MPTN) will not be able to attend the planned Reauthorization Summit addressing the reauthorization of MAP-21. Presenting a unified front is very important, and the United Tribal Transportation Legislative Priorities paper will provide this assertion. I am pleased to provide our perspective regarding this reauthorization.*

*In review of MAP-21, we found that the lack of funding of the High Priority Program was our highest concern. We are a small tribal nation of 980 members with a road inventory of less than 80 miles. So you can understand that if a major road needs work, the only possible funding source is the application for a High Priority Project. Our tribal share is less than \$200,000 per year, and it takes four to five years to accumulate 600,000 to a million dollars to do a mill and overlay of one of our larger routes. Therefore, reinstatement/set aside of the funding for the High Priority Program is our first priority.*

*A second concern is the actual funding formula, which seems to be more complicated than it needs to be. The actual process is affected by the subjective interpretation of the law's wording. It seems that many cannot agree on what a legacy route actually is.*

*It is with appreciation for your efforts on behalf of all tribal leaders that I provide this letter of support and offer MPTN's issues with the current interpretation and implementation of MAP-21. The reauthorization of this bill is necessary to avoid another two years of confusion and planning concerns.*

Kutaputush,



Rodney A. Butler, Tribal Chairman

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. LISA MURKOWSKI TO  
 MICHAEL BLACK

*Question 1.* Supporting self-determination in all Indian programs is critical. Do you believe that MAP-21's removal of a tribally negotiated formula with a statutory funding formula supports or minimizes Tribal self-determination? Do you plan to use a negotiated rulemaking process during MAP-21 reauthorization whereby tribes are engaged and consulted?

Answer. The Bureau of Indian Affairs (BIA) supports and promotes self-determination and self-governance for tribes. The negotiated rulemaking formula was a regulatory formula, but Congress replaced it with the MAP-21 funding formula. It is difficult to predict the outcome of the MAP-21 formula until it is fully implemented: there is a four year transition process to this formula, two of which have transpired, and the remaining years of the implementation are dependent upon future legislation. Negotiated rulemaking is a helpful process when warranted. However, at this time it is not known what provisions will accompany the reauthorization of the highway act that this would be a consideration. The BIA and the Federal Highway Administration have been actively consulting with tribes on transportation matters, such as the funding formula, the use of the data from the inventory, and a proposed update of the regulations.

*Question 2.* The majority of tribes in the United States are considered small. Does the MAP-21 formula disproportionately impact small tribes with small populations; especially, in economically depressed census areas?

Answer. Established by MAP-21, the Tribal Transportation Program (TTP) funding formula found at 23 U.S.C. 202 (b)(3) encompasses three factors: road mileage, tribal population, and historic funding levels, and also incorporates a transitional element through a set aside referred to as Tribal Supplemental Funding. This supplemental funding is implemented to provide a TTP allocation very similar to the negotiated rule formula of 2004. The TTP funding formula relies on data established in the national tribal transportation facility inventory, the historical allocations of tribal share amounts under SAFETEA-LU, and the population data from the American Indian and Alaska Native population within each Indian tribe's American Indian/Alaska Native Reservation or Statistical Area, as computed under the Native American Housing Assistance and Self-Determination Act of 1996. Under the MAP-21 formula, tribal population is a large contributor to the tribal allocation amount as well as the mileage in the national inventory prior to October 1, 2004 for non-BIA roads and non-tribal roads and fiscal year 2012 for BIA and tribal roads. In addition, if the historic funding levels of a tribe is small, it would be reflected in the allocations under the TTP funding formula.

*Question 3.* Director Black, can you describe for the record, the Administrative rules you have placed on Alaska Native villages in including road and the need for the construction of roads in our rural communities in the distribution formula?

Answer. The Administration has followed the statutory requirements for inclusion of inventory data such as road miles, construction need and population into the funding formula, which is the distribution formula or tribal shares. The statute clearly defines the data that is to be included in the distribution formula. 23 USC 202 (b)(1) describes all TTP-eligible facilities in the National Tribal Transportation Facility Inventory (NTTFI), while 23 USC 202(b)(3) identifies the basis for the funding formula and how the distribution amounts are to be computed. The MAP-21 funding formula considers past participation in the negotiated rule formula of 2004, which incorporated construction need miles, usage, and population; the MAP-21 funding formula also considers road miles, the population of each federally recognized Tribe or Alaska Native village and the funding distribution allocations received under the negotiated rule.

*Question 4.* Currently, traffic safety statistics among tribal communities outpace national averages. It is concerning to me that we are not giving proper weight to need in terms of safety that we should. Currently, the Tribal Bridge Program and the Tribal Transportation Safety Program are funded with a 2 percent set aside from the TTP fund. Additionally, the Tribal High Priority Project Program does not provide funding for Alaska and this hurts 229 tribes. Given these concerns, I must ask: Do you support putting Tribal High Priority Project funding back in the Highway Trust Fund so that Alaska tribes might also access funding for high need projects? Do you plan to examine and adjust the TTP formula to increase funding for safety, bridges with an eye toward reevaluating the importance of need in annual funding levels?

Answer. In April 2014, the Administration announced its reauthorization proposal, the GROW AMERICA Act. The Administration's proposal would re-establish the Tribal High Priority Project (THPP) program back into the TTP as a Highway Trust-funded set aside from the TTP. The proposed THPP program would provide an opportunity for all tribes to receive funding for their highest priority projects along very similar procedures as the former Indian Reservation Roads High Priority Projects program, which was in 25 CFR Part 170 and was eliminated with the passage of MAP-21. In addition, the GROW AMERICA Act proposes increases in available funding for Tribal Transportation Facility Bridges and Tribal Transportation Planning, as well as increased funding for program activities.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. LISA MURKOWSKI TO  
ROBERT W. SPARROW

*Question 1.* Supporting self-determination in all Indian programs is critical. Do you believe that MAP-21's removal of a tribally negotiated formula with a statutory funding formula supports or minimizes Tribal self-determination? Do you plan to use a negotiated rulemaking process during MAP-21 reauthorization whereby tribes are engaged and consulted?

Answer. Under the Tribal Transportation Program (TTP), tribal shares of some tribes increased while other tribal shares decreased. The overall impacts will not be realized for four years due to the transition period provided in MAP-21.

FHWA and BIA are working to update the existing Indian Reservation Roads (IRR) program regulation (25 CFR 170) to reflect the statutory changes that have occurred to the program. Consultation with the tribes is underway and will continue through the final publication of the updated regulation. If additional changes are required to the TTP regulation as a result of the passage of a MAP-21 reauthorization, we would again carry out tribal consultation and solicit feedback from the tribes.

*Question 2.* The majority of tribes in the United States are considered small. Does the MAP 21 formula disproportionately impact small tribes with small populations; especially, in economically depressed census areas?

*Answer.* The statutory TTP funding formula includes three factors: road mileage, tribal population, and historic funding levels. Under this formula, tribes with higher populations generally would receive more funding than those that have smaller populations. Additionally, if a tribe has limited mileage in the approved inventory or has a history of receiving smaller funding levels from the program, these factors also could impact smaller tribes.

*Question 3.* Currently, traffic safety statistics among tribal communities outpace national averages. It is concerning to me that we are not giving proper weight to need in terms of safety that we should. Currently, the Tribal Bridge Program and the Tribal Transportation Safety Program are funded with a 2 percent set aside from the TTP fund. Additionally, the Tribal High Priority Project Program does not provide funding for Alaska and this hurts 229 tribes. Given these concerns, I must ask: Do you support putting Tribal High Priority Project funding back in the Highway Trust Fund so that Alaska tribes might also access funding for high need projects? Do you plan to examine and adjust the TTP formula to increase funding for safety, bridges with an eye toward reevaluating the importance of need in annual funding levels?

*Answer.* The Administration's reauthorization proposal, The GROW AMERICA Act, would reinstate the Tribal High Priority Project program back into the TTP to be funded through a set aside from the TTP. The program would provide an opportunity for all tribes to receive needed funding for their highest priority projects. In recognition of the need for increased availability of safety and bridge funding in Indian Country, The GROW AMERICA ACT also would increase funding made available to tribes for safety and bridge projects and activities.

