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# TRIBAL TRANSPORTATION: PAVING THE WAY FOR JOBS, INFRASTRUCTURE, AND SAFETY IN NATIVE COMMUNITIES

## HEARING

BEFORE THE

## COMMITTEE ON INDIAN AFFAIRS
## UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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# TRIBAL TRANSPORTATION: PAVING THE WAY FOR JOBS, INFRASTRUCTURE, AND SAFETY IN NATIVE COMMUNITIES

**THURSDAY, SEPTEMBER 15, 2011**

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

The Committee met, pursuant to notice, at 2:15 p.m. in room 628, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

## OPENING STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

The CHAIRMAN. The Committee will come to order.

Aloha and welcome to the Committee's oversight hearing on Tribal Transportation: Paving the Way for Jobs, Infrastructure, and Safety in Native Communities. And I must tell you that we are very timely on this hearing in Washington, and would really like to move on it.

Investment in transportation and infrastructure projects is critical to bringing economic development opportunities to States and local jurisdictions across the Country. Nowhere is this more evident than in Indian Country.

As you can see by the chart we have here, the Indian Reservation Roads program has grown significantly since the last Surface Transportation bill was enacted, going from approximately 63,000 road miles in 2005 to nearly 144,000 road miles today. The current transportation needs of Tribes have grown along with the program. Current backlog to bring the road inventory to adequate conditions is approximately $69 billion. One in every four BIA bridges is structurally deficient. And the annual fatality rate on Indian reservation roads continues to be three times the national average.

These are the roads that Native children rely on to get to school, that emergency responders must navigate, and that Tribal and local employees drive to get to and from work. The President's proposed American Jobs Act has a strong emphasis on investments for highway projects, transit, highway safety and other transportation-related activities. It is critical that Tribal transportation programs be part of any surface transportation reauthorization considered by the Congress.

Tribes must be empowered to build the programs in a way that makes Tribal members safer, brings jobs and economic develop-

ment to Native communities and allows Tribal governments to work in partnership with State and local governments. This last part, working with State and local governments, is crucial. The roads in Native communities serve the whole community, not just the Tribal members. Improvements to Tribal roads benefit everyone. And investments in infrastructure bring jobs and economic development opportunities to Tribal and non-Tribal members alike.

In May, this Committee held a Tribal transportation roundtable, which was attended by over 65 Tribal leaders, transportation planners and congressional staff. We will use the information obtained at that roundtable, along with this hearing record, to write a Tribal transportation bill.

So I encourage any of you that are here today and any other interested parties to submit written testimony for the record with recommendations. The hearing record will remain open for two weeks from today.

Now I would like to call on Senator Johanns for any opening remarks he may have.

**STATEMENT OF HON. MIKE JOHANNS,**
**U.S. SENATOR FROM NEBRASKA**

Senator JOHANNS. Mr. Chairman, thank you very much.

My remarks will be relatively brief today. I can only be here a rather short period of time, so I am kind of anxious to get the testimony of the witnesses started.

The Chairman has outlined the challenge that we face, I think, very, very well. We want to do all we can as we look forward to the next Highway Bill and the bill specifically dealing with the needs in Indian Country. We want to make absolutely sure that we are efficiently using the resources that we have.

As I look out there, and I think about funding for various programs including the one that this hearing is devoted to, I just have to reach the conclusion that money will be hard to come by. It will be a constrained process, if you will, maybe more constrained than we have seen in a long time.

So what I would ask our witnesses to think about, whether it is in the testimony today or whether it is in a written submission after the testimony, is what is not working well that you feel is chewing up resources. For example, as I was reading the information for today's hearing, it just occurs to me that when you deal with projects in Indian Country, you are often dealing with a number of bureaucracies. And that costs money and that chews up resources.

Is there something that we can focus on to help you and to help those who are trying to provide the best transportation they can? Is there something we can focus on that would be helpful to streamline that process, to make that process easier to manage?

The second area that I have a real interest in, being a former governor, not every Tribe has significant resources in terms of staff and engineering. Typically the Tribes are trying to do so much, oftentimes with volunteers in many cases. So I am curious to know about the interrelationship with the Tribes in their States when it comes to transportation planning, grant funding, whatever it is and

how we might facilitate that relationship, if that is not working well.

With that, I just want to say to all the witnesses who are here, thank you very much. This is an opportunity for you to educate us, and I look forward to your testimony. Thank you.

The CHAIRMAN. Thank you very much, Senator Johanns.

We look forward to hearing from the witnesses who are with us today. I appreciate your commitment to this issue and for sharing your views with us today.

Our first panel of witnesses today is Mr. John Baxter, the Associate Administrator for the Office of Federal Lands, Federal Highway Administration at the Department of Transportation. Mr. Baxter is accompanied by Mr. Robert Sparrow, the Indian Reservation Roads Program Manager at the Department of Transportation.

Mr. Paul Tsosie, Chief of Staff in the Office of the Assistant Secretary for Indian Affairs at the Department of Interior. Mr. Tsosie is accompanied by Mr. Leroy Gishi, Chief of the Division of Transportation, Bureau of Indian Affairs, Department of Interior.

I welcome all of you. Mr. Baxter, will you please proceed with your testimony?

**STATEMENT OF JOHN R. BAXTER, ASSOCIATE ADMINISTRATOR, OFFICE OF FEDERAL LANDS HIGHWAY, FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY: ROBERT SPARROW, INDIAN RESERVATION ROADS PROGRAM MANAGER**

Mr. BAXTER. Chairman Akaka and Senator, thank you very much for inviting me to testify today on transportation issues facing Native American communities and the programs the Federal Highway Administration administers that provide support to Tribes to address these issues.

Accompanying me today is Mr. Robert Sparrow, he is our Indian Reservation Roads Program Manager.

The FHWA is committed to improving safe transportation access to and through Tribal lands through our stewardship and oversight responsibilities for the Federal lands and the Federal-aid programs. The Indian Reservation Roads program, which is administered by FHWA in partnership with the Bureau of Indian Affairs, serves 565 federally-recognized Indian Tribes and Alaska Native villages in 32 States. In many cases, this program is the only source of funds for transportation improvements.

Today I would like to focus on three key areas where our agency has been working to address the transportation challenges in Indian Country. These include safety, outreach and capacity building and infrastructure. Despite reaching record low traffic deaths for the past two years on all of our Nation's roads, the annual fatality rate in Indian Reservation Roads is still more than two times the national average. To address this serious problem, FHWA has cosponsored 11 summits in the past two years to focus on this issue and bring safety partners together. Two additional State-based summits, as well as another national Tribal safety summit are planned for the near future.

The agency also continues to implement SAFETEA–LU programs, such as the Highway Safety Improvement Program and the Safe Routes to School Program, which benefit Tribes as well as States, and are aimed at reducing traffic fatalities and injuries on public roads through the implementation of infrastructure improvements.

FHWA also supports Tribes through outreach and capacity building programs. We maintain seven Tribal technical assistance program centers that 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 project management and other topics.

Infrastructure condition remains a significant challenge in Indian Country. The Indian Reservation Roads system consists of over 140,000 miles of roads that link housing, schools, emergency services and places of employment and facilitate tourism and resource use. Billions of vehicle miles are traveled annually on the Indian Reservation Road system, even though it is among the most rudimentary of any transportation network in the U.S.

Just over 60 percent of the network is unpaved, and about 27 percent of the bridges are classified as deficient. These conditions make even the most basic travel difficult for residents of Tribal communities.

The Recovery Act supplemented SAFETEA–LU funding for Tribal communities by providing an additional $310 million for the Indian Reservation Roads program. Much of the Indian Reservation Roads portion of the Recovery Act has been dedicated to improving roads that provide critical links between Tribal residences and vital community services, such as workplaces, schools and health care facilities.

In July of this year, Secretary LaHood announced the availability of $527 million in funding for a third round of the Transportation Investment Generating Economic Recovery (TIGER) grant program. This discretionary funding will provide an additional opportunity for Tribes to compete for capital Improvement funds as direct recipients.

In recognition of the importance of this program to the Tribes, DOT will hold a webinar tomorrow, actually, to provide outreach and education to the Tribes on the application process. Such outreach will continue through the application process over the next few weeks.

We recognize that transportation is a critical tool for Tribes to improve the quality of life for Tribal residents by providing safe access to jobs, hospitals and schools. FHWA is committed to maintaining and improving the safety and conditions of transportation systems serving Indian lands and Alaska Native villages.

Chairman Akaka, again, thank you for the opportunity to testify and I will be pleased to answer any questions that you or other members may have. Thank you.

[The prepared statement of Mr. Baxter follows:]

PREPARED STATEMENT OF JOHN R. BAXTER, ASSOCIATE ADMINISTRATOR, OFFICE OF FEDERAL LANDS HIGHWAY, FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee, thank you for the opportunity to testify today regarding transportation issues facing Native American communities and the programs administered by the Federal Highway Administration (FHWA) that provide support to Tribes for addressing these issues.

The Department of Transportation (DOT) recognizes that transportation needs for 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.

Secretary LaHood shares President Obama's commitment to addressing Tribal issues and concerns. Last year, meeting with the National Congress of American Indians, the Secretary emphasized the DOT's commitment to improving existing Tribal transportation programs by seeking Tribal input on important regulations, providing timely technical assistance, and ensuring that Tribes are given ample opportunities to compete for grants. The Department also has implemented its Tribal Consultation Plan, a detailed plan of action the agency will take when developing, changing, or implementing policies, programs, or services with Tribal implications.

FHWA has a long history of supporting Tribal governments' rights to self-determination and working directly with Tribes in a government-to-government relationship. FHWA's top leadership continues to meet directly with Tribal government elected officials and transportation staff, and is committed to delivering a transportation program that works for all Tribes whether the Tribe has a large or small population.

FHWA has sought to improve Tribal transportation by working directly with Tribal governments to improve Tribes' technical capacity, to improve safety on reservations and Native communities, and to foster partnerships between Tribal governments, local governments, Federal agencies, and State DOTs.

The Indian Reservation Roads (IRR) program, administered by FHWA in partnership with the Bureau of Indian Affairs (BIA), is critical to supporting Tribal transportation needs. In many cases, it is the only source of revenue for transportation improvements. In working through FHWA's partnership with the Tribes and the BIA, the IRR program 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 the National Highway Traffic Safety Administration (NHTSA) in coordinating transportation programs that focus on planning, safety, and construction of roads and transit services within Indian country.

**Overview**

The IRR system of roads provides access to and within Indian reservations, Indian trust land, restricted Indian land, eligible Indian communities, and Alaska Native villages. The IRR system consists of more than 140,000 miles of roads that link housing, schools, emergency services, and places of employment, and facilitate tourism and resource use. Almost 11 billion vehicle miles are traveled annually on the IRR system, even though it is among the most rudimentary of any transportation network in the United States. Just over 60 percent of the system is unpaved. If only BIA and Tribal roads of the IRR system are considered, this number increases to approximately 80 percent. Within the system, there are more than 8,000 bridges and approximately 27 percent of these bridges are classified as deficient. These conditions make it very difficult for residents of Tribal communities to travel to employment centers, hospitals, schools, and stores—the most basic needs for a livable community.

The poor road quality on Tribal lands also affects safety. For the past two years, traffic deaths on U.S. roads have reached record lows. However, despite the gains we have made on other systems, the annual fatality rate on Indian reservation roads continues to be more than twice the national average. Safety continues to be the Department's top priority, and FHWA is working closely with Tribes, the BIA, NHTSA, and others to address this disproportionate level of fatalities on Tribal roads.

The IRR program 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 IRR program serves 565 Federally-recognized Indian Tribes

and Alaska Native villages in 32 States. FHWA co-administers the IRR program with the BIA under an agreement originating in 1948 and a Stewardship Plan from July 1996.

IRR program funding has grown significantly under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), from a program size of $275 million annually under the Transportation Equity Act for the 21st Century (TEA–21) to $450 million annually today. This equates to a total of $2.76 billion over the life of SAFETEA–LU, including the extensions through the end of this fiscal year. These funds have been distributed according to a Tribal shares formula, which was developed through a negotiated rulemaking with Tribal governments. SAFETEA–LU also increased the eligible uses of IRR program funds by allowing a Tribe to use up to 25 percent of its share of funds for road and bridge maintenance activities. This change allowed Tribes to supplement the funding they receive annually from the Department of the Interior (DOI) for maintenance activities. It also allowed the Tribes to address critical safety, snow removal, and pavement preservation issues. The increased funding and programmatic changes provided in SAFETEA–LU for the IRR program, along with an additional $310 million provided by the American Recovery and Reinvestment Act of 2009 (Recovery Act), discussed below, have provided tools and resources to substantially improve Tribal transportation.

**Safety Programs**

Safety remains a significant transportation issue in Indian Country. Native Americans are overrepresented in several traffic fatality categories—including individuals under the age of 35, unbelted drivers, and individuals driving under the influence of alcohol. Eleven safety summits, including ten State-based and one national summit held in the past two years have focused on the subject, bringing the many safety partners together to discuss the safety issues affecting them. Two additional State-based summits, as well as an updated national Tribal safety summit are planned for the near future. FHWA and NHTSA will continue these summits to promote safety strategies across the four E's of safety—engineering, enforcement, education, and emergency medical services.

*Highway Safety Improvement Program*

SAFETEA–LU established the Highway Safety Improvement Program (HSIP) with the purpose of achieving a significant reduction in traffic fatalities and serious injuries on all public roads through the implementation of infrastructure-related highway safety improvements. HSIP funding has been utilized for Tribal lands projects across the country.

In Montana, for example, two HSIP construction projects totaling $1.88 million provided improvements such as the installation of Variable Message Signs on US–2 on the Blackfeet Reservation and the addition of a left-turn bay on US–93 on the Flathead Reservation.

A $107,650 HSIP project in North Carolina along US–74 from the Haywood County line to NC–28 (North), in Eastern Band of Cherokee Nation, funded the installation of milled rumble strips on the median and outside shoulders.

In North Dakota, two HSIP projects totaling $300,000 provided improvements along State highways within reservation boundaries of Standing Rock Reservation and Fort Berthold Reservation. Such improvements included the installation of shoulder and centerline rumble strips along State Highways 23 and 24.

In Wisconsin, a $316,000 HSIP project was undertaken by the Wisconsin DOT along with the Forest County Potawatomi Tribe to improve a Tribal owned intersection at Everybody's Road and USH 8 in Forest County. The intersection project was combined with $900,000 BIA funds and $74,000 Tribal funds to construct a newly relocated intersection and frontage road (Everybody's Road) that leads to the Tribal headquarters offices and Tribal Community Center.

*Safe Routes to School*

The Safe Routes to School (SRTS) program is a Federally-funded but State-managed and administered grant program established by section 1404 of SAFETEA–LU. Under this program, each State has received at least $1 million each fiscal year to fund planning, design, and construction of infrastructure-related projects to improve the ability of students to walk and bicycle to school. A portion of each State's SRTS funding must also be used for non-infrastructure-related activities to encourage walking and bicycling to school. Federally-recognized Tribes are eligible sub-recipients of this State-administered program.

Several States are working closely with Tribes to promote the SRTS program. For example, in Washington State, DOT provided SRTS funds to the Suquamish Tribe to install sidewalks, bike lanes and signs and to conduct education and enforcement

activities to teach children pedestrian safety skills. Similarly, in Arizona, the Yavapai-Apache Nation utilized SRTS funds to add signs and roadway striping throughout the community surrounding a Montessori Children's House school. In Montana, SRTS funds were utilized in the City of Arlee for an elementary school traffic education program and construction of a pathway. The Santee Sioux Nation Indian Reservation used SRTS funds in Nebraska to build a path for children that connected a local school with a residential community and increased pedestrian visibility. In Oregon, Warm Springs Elementary School on the Warm Springs Reservation, received a $1000 mini-grant in Safe Routes to School Clearinghouse Funds to reduce speeding and improve yielding to pedestrians in crosswalks. These funds will be used for a media campaign and to hire a crossing guard trainer for crossing guard volunteers.

*Section 402 State and Community Highway Safety Grant Funds*

NHTSA provides safety grant funds to the Secretary of the Interior to save lives, prevent injuries, and reduce economic loss due to motor vehicle related crashes on Tribal land. The BIA administers the funds, known as the Section 402 State and Community Highway Safety Grant Funds. NHTSA provides technical assistance to Tribes through partnership with the BIA.

**SAFETEA–LU Funding for Tribal Transportation**

Although the IRR program is the principal funding source for Tribal roads, these roads are eligible to receive funding under other SAFETEA–LU programs as well.

*Indian Reservation Roads Bridge Program (IRRBP)*

The Indian Reservation Roads Bridge Program (IRRBP) was established under TEA–21 and funded using $13 million of the primary IRR Program. The program's purpose was to provide funding for reconstruction or rehabilitation of structurally deficient or functionally obsolete IRR bridges. SAFETEA–LU amended the IRRBP by establishing it as an independently funded program, authorized at $14 million per year, and allowing design activities to be funded. FHWA worked with the Indian Reservation Roads Program Coordinating Committee to implement these legislative changes. Since its inception in TEA–21, the IRRBP has provided more than $175 million in funding to over 300 bridge projects in Indian Country.

*National Scenic Byways Program*

Indian Tribes have participated in the National Scenic Byways Program since its inception under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). SAFETEA–LU authorized the Secretary of Transportation to make grants from this program directly to Indian Tribes and to allow Tribes to nominate Indian roads directly to FHWA (without going through a State department of transportation) for possible designation as a National Scenic Byway or an All-American Road.

FHWA has participated in Tribal transportation conferences to inform Tribes of these changes to the National Scenic Byways Program. FHWA also worked with the America's Byways Resource Center in Duluth, Minnesota to establish a Tribal liaison position within the Resource Center to provide technical assistance to Indian Tribes for establishing Tribal scenic byways programs and designating roads as Indian Tribe scenic byways.

In addition, FHWA has modified its grant application procedures so that Indian Tribes may submit grant applications directly to FHWA. In fiscal year 2011, Tribes submitted nine applications directly to FHWA and two applications through the State departments of transportation, requesting a total of $3.13 million. FHWA selected five of the projects, providing a total of $2,104,796 in funding.

*Public Lands Discretionary Program*

The Public Lands Highway Discretionary program is another source of funding available to Tribes for transportation needs. The program provides funding to any project eligible under title 23, United States Code, that is within, adjacent to, or provides access to Tribal or Federal public lands. Over the life of SAFETEA–LU, including the extensions through the end of this fiscal year, nearly $570 million was made available through this program. Of the $570 million, $72 million was provided for 78 Tribal related transportation projects. This year alone, 16 Tribal projects totaling more than $20 million will receive funding through this program.

**FHWA Implementation of SAFETEA–LU Requirements for Tribal Transportation**

In addition to increased funding, SAFETEA–LU brought about many changes in how the IRR program is administered and to the roles and responsibilities of all

parties involved in transportation delivery to Tribal communities. Prior to SAFETEA–LU, FHWA provided stewardship and oversight to the IRR program from a national perspective, and the BIA worked with the Tribes by delivering the funds and providing technical assistance. With the passage of SAFETEA–LU, Tribes now have the option to enter into IRR Program Funding Agreements and work directly with FHWA for their IRR Program share as long as the Tribes meet financial audit and management capacity requirements. The number of Tribes electing this option has grown from three the first year to more than 92 Tribes today.

In response to this increase in the number of Tribes, and increased stewardship and oversight responsibilities, FHWA's FLH Office, which has direct responsibility for administering the IRR program, has increased staffing and worked closely with the Tribes and the BIA to develop uniform program guidance. In addition to carrying out numerous face-to-face meetings with each Tribe and conducting outreach and training through webinars, regional conferences, and organized classes, FLH developed a new program manual for all Tribes, States, counties, and Federal agencies that communicates program expectations, roles and responsibilities, and best practices.

*National Indian Reservation Road Inventory*

SAFETEA–LU directed FHWA to complete a comprehensive national inventory of IRR eligible transportation facilities and submit a Report to Congress. The purpose of the inventory study was to ensure that the data in the existing inventory is accurate, and to help streamline the procedures that Tribes utilize for updating their inventory. The inventory is the most significant factor used to calculate the Tribal shares of IRR program funding; thus, it is critical that data in the inventory be accurate.

FHWA completed and delivered the required Report to Congress in 2008. The Report outlined the Agency's assessment of the inventory process, including its accuracy and consistency of application. The Report included the identification of more than 100,000 miles of road as well as recommendations for improvement and additional study areas. Since issuance of the Report, the inventory has grown to more than 140,000 miles of road. As a result of the Report and issues that have arisen from the Question 10 series of consultations, FHWA plans to work with a consultant to review more than 75 percent of the inventory data. This work will clarify programmatic definitions of the inventory entries and correct critical data errors and omissions that exist within the current inventory in order to ensure an accurate data system. Ultimately, the inventory will reflect the needs of Tribal road transportation and serve as an important tool to help make the program fair and equitable for all Tribes.

**Outreach and Capacity Building**

*Road Safety Audits and Safety Trainings*

Strategies such as Road Safety Audits (RSAs) and community-based enforcement are proving to be effective tools for reducing fatalities on Tribal lands. The FHWA Office of Safety sponsors training on Road Safety Fundamentals and RSAs, and works with State and local jurisdictions and Tribal governments to integrate RSAs into the project development process for new and existing roads and intersections.

RSAs examine the safety performance of an existing or future road or intersection by an independent, multidisciplinary team. They estimate and report on potential road safety issues and identify opportunities for improvements in safety for all road users. RSAs enable localities and Indian Tribes with little or no safety data to get an expert assessment on how to improve the safety of their roads.

RSAs were conducted for the following Tribal entities—Santa Clara Pueblo and Jemez Springs Pueblo, New Mexico; Standing Rock Sioux, North Dakota; the Eastern Band of Cherokee Indians, North Carolina; the Navajo Nation, Utah; Red Cliff Band of Lake Superior Wisconsin; Smith River Rancheria, California; Native Villages of Minto and Manley Hot Springs Village, and on Prince of Wales Island in Alaska; and six additional Tribes in Arizona. These RSAs were carried out in cooperation with State DOTs.

*Tribal Technical Assistance Program*

Tribes report that education and training remain significant challenges. Many Tribes do not have a sustainable level of transportation expertise, given their size and resources. The FHWA supports a Tribal transportation assistance program with seven centers serving Indian Country. These Tribal Technical Assistance Program (TTAP) centers 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 manage-

ment, and other issues. The centers are a key resource for basic services and to help many Tribes become self-sufficient as sovereign nations in transportation delivery. The purpose of our seven TTAP centers is to foster a safe, efficient, and environmentally sound surface transportation system by improving the skills and increasing the knowledge of local transportation professionals.

The TTAP centers provide access to information, training, and program management enhancements that may not have otherwise been accessible to Tribes. In 2010, the TTAP Centers provided 299 training courses to over 7,000 participants.

Through the TTAPs, FHWA also continues to provide technical assistance and training to Tribes on conducting their own RSAs. For example, FHWA has provided funding and support to the Northern Plains TTAP to sponsor a Road Safety Audit Outreach Coordinator, who has provided training and RSAs for the Spirit Lake Nation, the Winnebago Tribe of Nebraska, and others.

While FHWA has remained focused on implementing SAFETEA–LU programs, the Agency has also been recently hard at work ensuring that Tribes use the much needed supplemental resources provided by the Recovery Act.

**American Recovery and Reinvestment Act of 2009**

In addition to SAFETEA–LU funding, the Recovery Act has supplemented funding for Tribal communities by providing an additional $310 million for the IRR program. Since the Recovery Act was signed into law, FHWA and BIA have worked diligently to ensure that the funds for these projects are distributed quickly, wisely, and with unprecedented transparency and accountability. The Federally-recognized Tribes were eligible to receive Recovery Act funding based on the IRR formula, which takes into account the highway projects' estimated construction cost, volume of traffic along the route, and the Tribe's current population. Much of the IRR portion of the Recovery Act has been dedicated to improving roads that provide critical links between Tribal residences and vital community services such as schools and health care facilities.

FHWA, along with BIA and with input from Tribes, developed a process that described the requirements for Tribes to receive and obligate their share of Recovery Act funding by focusing on obligating the majority of the $310 million before the end of fiscal year 2010. FHWA and BIA also developed guidance to ensure a fair and transparent process to redistribute funds in cases where funds would not otherwise be obligated. The redistribution of more than $22.5 million to approximately 25 Tribes nationwide helped ensure the efficient and effective use of Recovery Act funds. To date, the more than 518 ARRA funded projects are on average 80 percent complete, and according to documentation provided by the Tribes, these projects have generated more than 8,500 jobs.

An example includes the Blackfeet Indian Tribe in Montana that awarded a project for $916,068 to improve a 14-mile segment of road known as the Starr School Road. This completed project is now providing a safer facility for school buses and other school traffic through sign replacement, new right of way fences, and new roadway striping. The drainage and pavement improvements made will extend the life of the facility.

Another example is the Ramah Navajo Chapter in New Mexico that used its Recovery Act funding along with its allocated IRR funding to construct a $2.2 million project to provide an all weather surfaced road to a new housing development. These residents had previously been required to access their homes via a two-track mud road which became impassible in inclement weather.

In the Native Village of Tuntutuliak in Alaska, the Tribe combined Recovery Act funding with IRR Program funds and funding from the Denali Commission to reconstruct a 30-year-old board road. This $846,000 project now allows villagers to move within the village without having to trudge through the tundra. The BIA reports that this project was completed using all Tribal employment.

For the Transportation Investment Generating Economic Recovery (TIGER) grant award program, Congress dedicated $1.5 billion under TIGER I and $600 million under TIGER II for DOT to provide direct grants to State, local, and Tribal governments, to fund surface transportation projects that have a significant impact on the Nation, a region or a metropolitan area. DOT was able to fund 51 innovative capital projects under TIGER I, and an additional 42 capital projects under TIGER II. TIGER II also featured a planning grant category, and DOT was able to fund 33 planning grant projects. Both TIGER programs involved a highly competitive process and received tremendous applicant interest. Tribal projects were selected under both TIGER I and TIGER II.

The Navajo Nation received a $31 million TIGER I grant to improve US–491, the primary north-south highway that connects the Tribe to other parts of New Mexico, Colorado, and the Four Corners area, by constructing two new lanes and making

safety improvements. The project is being administered by the New Mexico DOT and will improve safety and transportation efficiency. It will also create potential economic development opportunities for the Navajo Nation.

TIGER I funds were also used to reconstruct a portion of US–18 between Oglala and Pine Ridge on the Pine Ridge Reservation in South Dakota. This $10 million project upgraded 15.6 miles of a two lane highway that had no shoulders and deteriorating pavement. These improvements will significantly improve the overall safety of this section of road which has experienced an accident rate more than 2.5 times the South Dakota average.

The Pueblo of Laguna received a $1,470,000 TIGER II planning grant to plan and design approximately 40 miles of trails on the reservation to connect six distinct communities with a focus on their traditional village cores. Creating links between five villages supports the collaborative efforts of the communities on the reservation and provides inexpensive transportation choices in this rural region of need.

On July 6, 2011, Secretary LaHood announced the availability of $527 million in funding for a third round of the TIGER grant program. This discretionary funding will provide an additional opportunity for Tribes to compete for capital improvement funds as direct recipients. In recognition of the importance of this program to the Tribes, DOT will hold a webinar tomorrow to provide outreach and education to the Tribes on the application process. Such outreach will continue through the application process in order to ensure quality applications are received for consideration.

**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. Thank you very much, Mr. Baxter.

I would like to ask Mr. Tsosie to please proceed with your testimony.

**STATEMENT OF PAUL TSOSIE, CHIEF OF STAFF, OFFICE OF THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY LEROY GISHI, CHIEF, DIVISION OF TRANSPORTATION, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. TSOSIE. Thank you. Good afternoon, Mr. Chairman and other members of the Committee. Aloha.

The CHAIRMAN. Aloha.

Mr. TSOSIE. My name is Paul Tsosie. I am the Chief of Staff for the Assistant Secretary for Indian Affairs. And as is customary with Navajos, I am going to introduce myself in Navajo.

[Greeting in Native tongue.]

Mr. TSOSIE. In preparation for this testimony, I want to thank certain individuals, Mr. Darren Pete and Chastity Bodoni, who both work in the Office of Congressional Affairs for the Department of Interior. I also want to give a special thanks to Leroy Gishi, who is here to my right, the Division Chief for the BIA's Division of Transportation. He will be here with me to answer any technical questions after I testify.

Last week, the President of the United States gave an urgent message about the lagging economy, the need to create jogs, to put people to work, to rebuild decaying roads and bridges. On behalf of the Department of Interior, we have a duty to carry this out for Indian communities.

Now, as a piece of background, I want to give the baseline. We have around 145,000 roads in Indian communities; 31,000 of those are BIA, Bureau of Indian Affairs, roads. That is about 22 percent. And 20,000 of those are unpaved, which means that two-thirds of the BIA roads are automatically considered inadequate for BIA standards. We need investment in our road system. If we invest in our road system, we can create jobs and safer communities.

Since 1982, under the IRR program, the Department of Interior, along with the Department of Transportation, we have invested over $6 billion into infrastructure within Indian communities. Another good example of our investment into Indian communities is ARRA. Under ARRA, about 6,500 jobs were created in Indian communities. That was over 800 projects estimated to be around $440 million into these projects. And we had an obligation on behalf of the Department of Interior of 99.9 percent. And 90 percent of these funds made it directly into Tribal communities and local economies.

This was investment into local economies where unemployment is high, the average income is low, and people are hungry for the work. As far as safety goes, our roads are being used every day by police officers, ambulance drivers, school buses, everyday traffic. And to add on top of this, these past few years in Indian Country have been some of the worst, with floods, rain, snow, natural disasters in Indian Country. These natural disasters emphasize the need for safe roads within Indian communities.

Mr. Baxter just testified that the annual fatality rate on Indian reservation roads is more than twice the national average. So what all these facts add up to is that we have a big job to do. We have a big job to invest in infrastructure which will lead to jobs and safety.

Now, this is not just a responsibility of the Department of Interior. It is not just the responsibility of the Department of Transportation. This is a responsibility of the Federal Government and Indian Tribes. We look forward to working together with Mr. Jefferson Keel from NCAI, Chairman Murphy from Standing Rock. We look forward to working together with them and we also look forward to working together with State, county and local entities.

And especially, we look forward to working together with this Committee on any SAFETEA–LU reauthorizations where we can offer specific recommendations to this Committee to make sure this happens. Because in Indian Country right now, Tribal individuals need employment. Tribal companies need to be put to work. Tribal communities are waiting for infrastructure development. Roads and bridges are there that need to be repaired. There are projects in the Southwest, Great Plains, the Rocky Mountains and Alaska that need to be completed. We need to provide job opportunities and safe roads for our Indian people.

Thank you, mahalo. I will be here for any questions.

[The prepared statement of Mr. Tsosie follows:]

PREPARED STATEMENT OF PAUL TSOSIE, CHIEF OF STAFF, OFFICE OF THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

**Introduction**

Good afternoon Mr. Chairman and members of the Committee. My name is Paul Tsosie and I am the Chief of Staff for the office of the Assistant Secretary for Indian

Affairs at the Department of the Interior (Department). With me today is Mr. LeRoy Gishi, the Division Chief for the Bureau of Indian Affairs' (BIA) Division of Transportation.

Last week President Obama reminded us of the urgency of addressing our country's lagging economy, the need to create jobs, the need to put people to work rebuilding America, and to address our badly decaying roads and bridges all over our country. This includes the roads and bridges that are constructed, maintained and traversed in Indian Country. This Administration has been focusing on improving the lives of people living in Indian Country through the BIA Indian Reservation Roads and the Roads Maintenance Programs. This focus has also been supplemented with the federal government's investment through the American Recovery and Reinvestment Act (ARRA) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) funding authorizations.

Improving and adequately maintaining transportation systems provides 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. Thus, we are pleased to testify before this Committee on Tribal Transportation: Paving the Way for Jobs, Infrastructure, and Safety in Native Communities, and to provide an overview of the BIA's Road Maintenance Program and the Indian Reservation Roads (IRR) Program.

**Overview**

The BIA has 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. During this time, approximately $1.2 billion was provided for both construction and maintenance of reservation roads. The Surface Transportation Assistance Act of 1982 (Public Law 97–424) created the Federal Lands Highway Program (Title 23 U.S. Code, Chapter 2) and established the IRR Program as a category of public roads providing access to or within Indian reservations, lands, communities and Alaska Native villages. The IRR Program is now jointly administered by the BIA in the Department, and the Federal Highway Administration (FHWA), which is within the Department of Transportation.

*BIA Indian Reservation Roads (IRR) Program*

The change in the Surface Transportation Assistance Act of 1982 meant that the IRR Program would be funded by the Department of Transportation's Highway Trust Fund. Since the establishment of the IRR Program, the Federal construction investment in the IRR system that is now comprised of BIA, Tribal, state, county and local roads and bridges has exceeded $6 billion. 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 IRR Program supports over 145,000 miles of public roads with multiple owners, including Indian Tribes, the BIA, states and counties. There remains a great and continuing need to improve the transportation system throughout Indian Country. The BIA views this as a joint responsibility including not only Federal agencies, but state and local governments with transportation investments on or near American Indian and Alaska Native communities, as well. Coordination among all of these owners is required in order to maximize available resources to address transportation needs.

*Question 10 of 25 CFR Part 170*

Specific to the IRR Program, in 2004, the Department of the Interior published the Final Rule establishing the policies and procedures governing the IRR Program. *See* 69 Fed. Reg. 43090 (July 19, 2004), codified at 25 C.F.R. Part 170. Question 10, in Appendix C to Subpart C of the Final Rule, addressed a question regarding the IRR Program's funding formula. Since 2004, the IRR Program and Tribes have been struggling with "Question 10" and the BIA and FHWA have worked to clarify the interpretation.

Question 10 (Q10) addresses whether a road's Cost to Construct (CTC) and Vehicle Miles Traveled (VMT) is to count at 100 percent in the formula calculation, or at the non-Federal share if the road is otherwise eligible for Federal-aid funds. *See* 69 Fed. Reg. at 43121. The non-Federal share is the local match percentage as established by the FHWA for federal aid highways, which varies from 5 percent to 20 percent. The Federal share is the percentage of cost of Federal aid projects payable by the Federal Government.

While the answer specified in the Final Rule was that a non-Federal share percentage should be applied, the BIA has administered the program with all costs counting 100 percent (except for State-owned roads), since there was no data in the inventory to clearly distinguish roads that were only eligible for certain types of Federal funds. The Final Rule on IRR also established an IRR Program Coordinating Committee (IRRPCC), to provide input and recommendations to both the BIA and the FHWA in the development or revision of the IRR Program's policies and procedures. The IRRPCC took up the Q10 issue beginning in August of 2006 but was unable to agree upon a recommendation. As a result, representatives from the IRRPCC requested that BIA and FHWA develop a proposed clarification for Q10.

The BIA and FHWA proposal eliminates road ownership from consideration in the IRR formula calculation and places the determination strictly on roadway classification. This clarification calls for the non-Federal share percentages to be applied to roads that are determined to be otherwise eligible for Federal funds, resulting in a consistent application of the non-Federal share across all roads in the IRR Program inventory.

This proposed clarification recognizes that any road with a functional classification above local road or rural minor collector will contribute its CTC and VMT at the non-Federal share rate, except for BIA and Tribally owned roads which contribute 100 percent to the CTC and VMT regardless of functional classification. This interpretation is aligned with the original language of Q10.

It is anticipated that the proposed clarification of Q10 will appropriately move the focus of discussions surrounding the IRR Program roads inventory and funding process from Q10 to the broader issues of the quality, physical size and composition of the IRR Program roads inventory. Over the past 6 years the inventory has increased from approximately 65,000 miles in 2005 to approximately 145,000 in 2010. Achieving consistency in the IRR Program roads inventory is an on-going effort involving training, process improvements, and implementing consistent parameters that will require a dedicated effort from all parties.

More recently, the FHWA, working with BIA, has entered into a contract with an independent engineering firm to review more than 75 percent of the inventory data. This work will clarify programmatic definitions of the inventory entries and correct critical data errors and omissions that exist within the current IRR inventory in order to ensure an accurate data system. This data review and clarification of the inventory will reflect the needs of Tribal road transportation and serve as an important tool to help make the program fair and equitable for all Tribes.

*BIA Road Maintenance*

The BIA currently implements both the Department of Transportation's Highway Trust Funded IRR program and the Department of the Interior-funded BIA Road Maintenance Program. The BIA Road Maintenance Program has traditionally been responsible for maintaining only roads owned by the BIA. Today, of the 145,000 miles of roads in the IRR Program, the BIA has responsibility for 31,000 miles of roads designated as BIA system roads. The BIA receives Tribal Priority Allocation (TPA) funding annually for the administration of the road maintenance program for those roads.

Further, approximately 30 percent of Tribes with BIA system roads within their reservation boundaries currently carry out the BIA Road Maintenance Program through P.L. 93–638 self-determination contracts or agreements in lieu of federal employees. Approximately 20,500 miles (66 percent) of the BIA system roads are not paved and are, thus, considered "inadequate" from the perspective of the Level of Service index used to assess roads and bridges in the BIA road system.

There are numerous different vehicles utilizing the road systems, paved and unpaved, in Indian Country. Passenger vehicles, commercial vehicles and public safety and emergency medical vehicles use these roads. The IRR Program does not track the specific type of vehicle using the road systems in Indian Country. Building, repairing and maintaining the roads system in Indian Country is crucial for providing safe and adequate roads for individuals and commercial businesses and for public safety in Indian Country.

*American Recovery and Reinvestment Act (ARRA)*

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) (ARRA). ARRA provided supplemental funding for infrastructure investment in Indian Country. A portion of ARRA funding was provided to the IRR Program within Indian Affairs, subject to certain restrictions and requirements. ARRA offered a unique opportunity to make tangible improvements to Indian communities while promoting economic recovery through the preservation and creation of jobs. A few of the requirements, such as, obligating

and expending the ARRA funds within two years, resulted in an increase in employment for road construction in Indian Country in order to meet these requirements. Based on reports by Tribes that participate in the IRR Program, we estimate that over 6,500 jobs were created under the ARRA funding that flowed into Indian Country. This figure may be higher if the Tribes who did not report job increases did in fact have increased employment numbers as it related to ARRA funding they received for road construction.

As of September 30, 2010, 99.9 percent of the funding provided by ARRA for both Repair and Restoration of BIA roads and bridges and the construction and reconstruction of IRR Program facilities had been obligated to projects approved by the Secretaries of the Department of the Interior and the Department of Transportation. Within the Repair and Restoration of BIA roads program, over 400 projects were awarded totaling over $141 million. Within the IRR Program, approximately 420 projects were awarded totaling over $225 million. In addition, over $50 million was awarded to Tribes contracting directly with the FHWA.

ARRA funds made a significant contribution to improving transportation facilities in Indian Country. Each eligible Tribe was given the opportunity to receive maintenance and construction improvements on their BIA and IRR Program facilities, including roads, bridges, transit structures, docks, and boardwalks. In addition, the provisions of ARRA authorized the Secretary of Transportation to redistribute unobligated funds to projects submitted by Tribes based on a call for projects in February 2010. The total ARRA funding redistributed by both agencies was approximately $22.5 million.

**Reauthorization of SAFETEA–LU**

As we discuss the need for jobs, infrastructure and safety of roads in Indian communities, it is important to note that there is the need for prompt and immediate reauthorization of the SAFETEA–LU Act. This reauthorization is crucial to Tribal governments that rely on early notification of their Tribal shares from the funding formula to plan their priority projects. The numerous short term extensions of SAFETEA–LU result in infrequent and delayed allocations to the Tribes and have also resulted in late planning and obligations to Tribal contracts. These delays force projects to be delayed as much as one year.

Indian Affairs established its priorities for the reauthorization of the surface transportation programs. These priorities include, but are not limited to, additional resources to meet the need of a deteriorating roads system, establish an IRR Safety Program, additional resources for the IRR Bridge Program, and increase the planning set-aside from the IRR Programs from two percent to four percent.

**Conclusion**

Indian Affairs is committed to addressing the transportation needs in Indian Country through our support for the IRR Program, the Road Maintenance Program, and applaud the infusion of ARRA funding for transportation in Indian Country. As the President stated last Thursday, "[t]here are private construction companies all across America just waiting to get to work. There's a bridge that needs repair between Ohio and Kentucky that's on one of the busiest trucking routes in North America. A public transit project in Houston that will help clear up one of the worst areas of traffic in the country." A similar statement can be made for Indian Country. We know there are American Indian owned and Tribally owned construction companies all across Indian Country just waiting to get to work. There are bridges that need repair on Tribal lands in New Mexico, North Dakota, South Dakota, and on Tribal lands in Wyoming. And there are transit projects on Tribal lands that provide rural transportation on those Tribal lands. And as part of the immediate infrastructure investments that the President sent to Congress in the American Jobs Act, $310 million would be directed towards the Indian Reservation Roads program.

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. We will be happy to answer any questions you may have.

The CHAIRMAN. Thank you very much, Mr. Tsosie, for your testimony.

I know that some of my colleagues are limited in how long they will be able to stay for today's hearing, so I am going to ask the first panel one question, and then I will defer to my colleagues to make an opening statement and to ask their questions.

My question to both witnesses is, whether you think that the Administration's recommendations to deal with the IRR funding formula issue, or what we call Question 10, will resolve that issue? Or is legislative action necessary? Mr. Baxter?

Mr. BAXTER. Mr. Chairman, my sense is that we have done quite a bit of work to remedy the issue of Question 10. Of course, the issue gets to whether the non-Federal share is applied toward the inventory process or not. There have been a number of discussions related to the issue. And recently, the Department has been working with Tribes and the coordinating committee to make sure that we address the issue and are moving forward with the intent of the original rulemaking process.

We have undergone efforts to make the guidance more clear. We are working on the coding guides to eliminate any subjectivity that might be part of that. And we are developing teams that will look at the quality of the data that is in the inventory.

We actually have a consultant on board to review about 75 percent of the inventory that is in question, and whether or not those roads are otherwise eligible for Federal aid. And that determines the percentage of the funds that are counted toward the inventory process.

So we have been working directly with the Tribes. We think we have an appropriate solution that honors the original intent of the rulemaking process. And therefore, we don't believe that there is a legislative fix necessary. We believe that what we are doing, in partnership with the Tribal leadership, is moving the issue forward, and we will resolve it.

The CHAIRMAN. Thank you very much, Mr. Baxter.

Mr. Tsosie?

Mr. TSOSIE. Mr. Baxter exactly, he stole my answer. But I just wanted to address the Committee and indicate that it is premature at this time for any legislative action because this rule was developed with consultation with Indian Tribes, the rulemaking process, and now we are implementing it in a fair manner that is consistent with the law.

Thank you.

The CHAIRMAN. Thank you very much.

Now I would like to call on our Vice Chairman, Senator Barrasso, for any opening statement he may have and questions.

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

Senator BARRASSO. Thank you very much, Mr. Chairman, and thank you for holding this hearing today.

Before I begin with the questions, I do want to welcome Wes Martel, who is Co-Chair of the Eastern Shoshone Tribe in Wyoming, as well as Jim Shakespeare, who is Chair of the Northern Arapaho Tribe in Wyoming.

Mr. Chairman, I have a brief opening statement, because transportation facilities are key to improving the quality of life in Indian Country. Tribes and their members need safe, accessible and well-maintained roads. They need them to get to work, to get their children to and from school and to allow police and firefighters and other emergency responders to do their jobs as well.

They need these roads also to make economic development possible. The Indian Reservation Roads program has over the years greatly improved transportation infrastructure in Indian Country. As we have heard, though, still much work needs to be done. So hopefully we are hearing today how we can continue working toward safe and reliable infrastructure in Native communities.

My first question for both witnesses is this: in the second panel we are going to hear John Healy testifying about inconsistent interpretations of the definition of "Indian reservation roads," and that inconsistent interpretation has resulted in some misrepresentation of the needs in Indian Country.

Do you think that maybe your agencies should adopt a uniform guideline for determining what roads qualify as Indian Reservation Roads? Mr. Baxter, we can start with you, and then Mr. Tsosie.

Mr. BAXTER. Thank you.

I do believe that discussions we have had on the Q10 issue are addressed in that issue. As we know, the Indian Reservation Roads program consists of roads that are owned and operated by the Bureau of Indian Affairs, those that are Tribally owned, as well as those that are owned by State and county governments. When we look at those roads, we look at the classifications of them, the types of facilities, how much it costs to reconstruct those facilities, the volumes, the population base that they support, all those things are part of the formula, part of the necessary analysis of determining what is a fair and equitable distribution of funds through that inventory process.

So we apply those definitions of the different types of roadways and whether it is on a reservation or not. A lot of roads are not within a reservation boundary, but they certainly serve and provide access to Tribal lands and access to Tribal communities.

So I think we are addressing those definitions through the process of the Q10 issue as well as the inventory items that we addressed.

Senator BARRASSO. Mr. Tsosie?

Mr. TSOSIE. Thank you.

On this question, I am going to defer to Mr. Leroy Gishi.

Mr. GISHI. Thank you.

Senator Barrasso, what Mr. Baxter said is exactly correct. In fact, one of the significant changes in the regulations as a result of the negotiated rulemaking was to develop a committee of Tribal representatives, one of the few, in fact, that we have at the Department of Interior that are in regulation. This Committee, the Indian Reservation Roads program coordinating committee, we have been working with them since they were developed as part of the regulation. And part of that process is to work through a lot of these issues.

We are currently working on three major issues, one of them was Question 10, and working with that same committee, as well as, as Mr. Baxter indicated, those roads which are identified as access roads, proposed roads. We continue to work with them and coordinate. The committee, 24 members from Indian Country throughout the Nation, are very dedicated in helping us to resolve those very issues that are out there. And we do recognize that and they do also.

Thank you.

Senator BARRASSO. Thank you.

Mr. Baxter, last October I think you testified that the number of traffic deaths on U.S. roads reached a record low. Meanwhile, the annual fatality rate on Indian reservation roads continued to be more than three times the national average. You also testified that safety summits were held to address these high fatality rates. Today you have testified regarding additional highway safety efforts.

Can you tell us a little bit about the effects of these efforts, what they have had on the fatality rates in Indian communities?

Mr. BAXTER. Thank you. We have been very aggressive in the safety area in Indian Country. We applied a comprehensive approach, we call it the 4E approach of safety, we looked at engineering countermeasures, we looked at enforcement, we looked at education and we looked at emergency services. We need to make progress in all four of those areas.

We are working very closely with the National Highway Traffic Safety Administration on behavioral programs such as belt usage and DUI enforcement. In Indian Country, alcohol usage is above the national average, 48 percent versus 32 percent. And percentage of unrestrained occupants is 75 percent versus 55 percent. So we have some areas that we really need to make some improvements and focus our resources.

On the infrastructure side, there are a number of proven technologies and proven strategies that we use on all of our roads across the Country. Certainly the use of rumble strips and guardrails and roundabouts, the way we approach and design intersections, adequate shoulders, all these things are basic safety measures that we can take. So we have been very aggressive in that area.

We also have a Tribal safety planning steering committee which is represented by a number of Federal agencies as well as a number of Tribal leaders around the Country. This past summer, they developed a Tribal safety plan which identifies a number of these strategies, such as the summits and plans. Road safety audits are a very important tool, because oftentimes in Indian Country we don't have adequate data to support the analysis of highway crashes. So we use multidisciplinary teams to look at these areas, corridors and roads, and make determinations based on safety issues as to what improvements need to be made. So that is very important as well.

Senator BARRASSO. I have a final question for Mr. Tsosie. In February of 2010, the Office of Inspector General issued a report on the Department of the Interior roads program, citing several concerns including inaccuracies in road inventories and prioritizing needs and the inability to adequately detect mismanagement or any mis-use of funds. Your response to the report noted that the BIA was implementing a corrective plan for the inventories. I wonder if you could just bring us up to date on the corrective action plan and how you are addressing the other concerns of the Inspector General.

Mr. TSOSIE. Two parts of that corrective action plan. One, we have an internal committee within the Department of Interior com-

posed of the bureaus within the Department of Interior. And we meet on a regular basis. And we monitor what is going on on a policy level.

The second part of that is that we did not decentralize or we kept these functions out in the field where they belong, because that is where the experts are. We are keeping a close tab on that.

The rest of the answer I am going to turn over to Mr. Leroy Gishi.

Mr. GISHI. One of the areas that is very critical to this process is the majority of the work that is done in the field is performed by Tribal members through contracts under self-determination. And that is very critical, because for us to be able to do that as an agency, whether Federal highways or BIA, would be very difficult. The provisions are there within the law.

So for that reason, it is very important to make sure that it was understood that bringing these types of activities into central office in terms of the actual work, the expert level work, was not necessary and that it will continue to be handled at the field level. But the policy areas will be handled at the central office level.

Senator BARRASSO. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Barrasso.

Senator Franken, any opening statement or questions you may have.

**STATEMENT OF HON. AL FRANKEN,**
**U.S. SENATOR FROM MINNESOTA**

Senator FRANKEN. Sure, thank you, Mr. Chairman. Thank you first for holding this hearing on this important issue, and I want to thank all the witnesses for your great testimony.

I really agree with the Vice Chairman, who said that on roads in Indian Country, you have police cars and firefighters and school buses and normal, everyday traffic, families and of course economic activity, goods and services. So you have the need for safe, accessible, well-maintained roads. It is a source of economic development. I think that was well put by the Vice Chairman.

I was interested, because Mr. Tsosie, you said that during the ARRA, or the Recovery Act, that there were 6,500 jobs approximately created in Indian Country. Is that correct?

Mr. TSOSIE. Yes.

Senator FRANKEN. That was during the Recovery Act?

Mr. TSOSIE. Yes.

Senator FRANKEN. What some people have referred to as the stimulus.

Mr. TSOSIE. Yes.

Senator FRANKEN. That is interesting to me. Were these Tribal contractors, by and large, and workers on the Tribes, on the reservations?

Mr. TSOSIE. Initially, the money goes into Indian communities and the local communities surrounding Indian communities. I can get back to you with a breakdown of, as far as the information that we have, about exactly where the money went.

Senator FRANKEN. But it put 6,500 people to work in Indian Country building infrastructure?

Mr. TSOSIE. Yes.

Senator FRANKEN. Okay. That is interesting, because that is 6,500 more than some of my colleagues on the other side of the aisle say that the Recovery Act created, which I think is really interesting. Because somewhere, 6,500 jobs are uncreated somewhere else, I guess, in the entirety of the Recovery Act.

I can't agree with the Vice Chairman more that infrastructure creates economic development. When I go around the State of Minnesota, I have companies talking about getting their goods around the State. And yet I hear from members of the other side that during the stimulus package, we created zero jobs, or the only jobs created were Federal bureaucrats. Were these people building the roads in Indian Country, were they Federal bureaucrats? Were they like bean counters in the GAO or something?

Mr. TSOSIE. The money was used for infrastructure projects.

Senator FRANKEN. Right.

Mr. TSOSIE. Not bean counters.

Senator FRANKEN. Yes, that is what I thought.

Mr. Baxter, in your testimony you say that 27 percent of bridges within the Indian Reservation Roads program are classified as deficient. And the current backlog to bring all Indian reservation roads to adequate condition is $69 billion. How would you say the state of the roads and bridges in Indian Country compares to those in the rest of the United States?

Mr. BAXTER. That is a good question. As far as the percentage of deficient bridges, compared to the States, the State side is 24 percent deficient bridges, for local governments it is 27 percent deficient bridges, which is about the same overall number as the Tribal bridges. The biggest difference is the the percentage that are structurally deficient. On the State side of the 24 percent, 7.9 percent are structurally deficient. For the local percentage, 27 percent, 15 percent of that is structurally deficient.

But in Indian Country, for BIA's roads, of the 27 percent, 20.7 percent are structurally deficient. So what we are seeing is a disproportionately higher number of bridges that are structurally deficient in Indian Country compared to other routes.

Senator FRANKEN. So we have relatively higher need in Indian Country.

Mr. BAXTER. That is correct.

Senator FRANKEN. Now, under current law, 25 percent of Indian Reservation Roads construction funds can be used for maintenance, and the rest of the maintenance money comes from annual appropriations through the BIA. In States like Minnesota, maintenance projects like snow removal and pavement preservation can be incredibly expensive.

Given the backlog, as we have just discussed, are we spending enough on road maintenance compared to what we spend on new construction? Anybody. And my time has run out, so I apologize. But if I can get an answer.

Mr. TSOSIE. On this answer, I am going to defer to Mr. Leroy Gishi again.

Mr. GISHI. That is correct. The provision in SAFETEA–LU provided that 25 percent of the funds be used for road maintenance. And these are for all IRR roads that are out there.

As we begin to see the Tribes, in the first few years, continue to defer to the owner agencies to continue to maintain roads, it has in the last few years increased from the standpoint of about $7 million to $8 million a year to $32 million a year. So the Tribes are realizing and making an effort to address those roads which are out there, and a lot of times they are even utilizing their own funds to be able to maintain roads. That is one of the critical areas that are out there.

Senator FRANKEN. Thank you. Thank you all.

The CHAIRMAN. Thank you. Thank you very much, Senator Franken.

Senator Udall, an opening statement or questions.

**STATEMENT OF HON. TOM UDALL,**
**U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you very much, Chairman Akaka, for holding this important hearing on Tribal transportation.

Right now there is much debate about the future of surface transportation. As you know, an extension of that surface transportation bill is awaiting Senate action. That same extension may be held up due to a disagreement on how our transportation dollars are spent.

What we know, however, is that our Nation needs investment in our infrastructure. That includes the Tribal transportation system. We should not allow political fighting to hold up the critical extension, and ultimately a long-term reauthorization bill.

I am pleased to see that Mr. Paulson Chaco will be joining us today on the third panel. He serves as the Executive Director for the Navajo Nation Division of Transportation. Mr. Chaco has a challenging job to address the transportation needs of the vast Navajo Nation. In the past, he has worked to develop the Navajo Nation fuel excise tax program. This program results in $10 million annually for road construction on the Nation.

He was also successful in applying for and receiving a TIGER grant to improve a critical section of roadway in New Mexico and make it safer for all travelers. I look forward to hearing his testimony and that of the other witnesses, and I look forward to working aggressively to draft legislation to ensure that adequate funding is provided to maintain and improve the transportation network in Tribal communities.

Now, a question for this panel. I am impressed with what seems like very positive impacts of SAFETEA–LU and IRR in Indian Country. Yet I remain concerned with the growing safety and fatality rates that persist. You all have stressed the need for increased and sustained funding in the reauthorization of SAFETEA–LU. Yet the numbers you have given us, increased car and pedestrian fatalities, show that even with this program, the issues of safety persist.

How do we account for the rising numbers of fatalities in Indian Country, even after SAFETEA–LU, with its increased funding and additional programs, has been implemented? Mr. Baxter, why don't you start, then I would love to hear from Mr. Tsosie.

Mr. BAXTER. Thank you. In recognition of the continued needs for safety in Indian Country, what we have proposed in our 2012 budg-

et is that we would have a dedicated safety fund for the Indian Reservation Roads program, essentially taking about 2 percent of those funds, dedicated specifically toward safety projects. We think that will make a major impact.

We also have within our safety program, our overall program, proposed funding for rural safety, up to 10 percent of the funds for rural safety. Again, we believe Tribes will compete well in that program, and that will offer opportunities for projects that would address the safety and fatality issue.

Senator UDALL. Thank you. Mr. Tsosie?

Mr. TSOSIE. Yes, and on this question again, I am going to defer to Mr. Leroy Gishi.

Mr. GISHI. It is important to note that the roads which we refer to in the Indian Reservation Roads program are traditionally 20 to 30 years behind what the State systems are. Many of the roads that are out there were roads that were put in place by utility companies, resource companies and were never engineered. So when these companies leave, a lot of the roads are no longer usable at 55 miles an hour.

So when we talk about the $69 billion backlog, it really reflects the need to bring the system to an adequate standard, not overkill, but to an adequate standard. So that is the reason why there are a lot of those problems that are out there, because of the condition of the roads.

Senator UDALL. I think the point that you are making is that, and it cannot be made enough, is that we have to bring Tribal roads up to the level of our other roads at the State and Federal level. And we need to do that soon because of the safety issue. So that is the message that I get from you.

I very much appreciate Chairman Akaka. He has been very aggressive on all of the issues across Native nations, and this Tribal transportation is an important one. He once again is bringing it to the forefront. Thank you very much.

The CHAIRMAN. Thank you very much, Senator Udall.

I want to thank this panel. In the interest of time, I will send my remaining questions and any questions remaining members may have to you for responses. And I want to thank you so much, mahalo nui loa, for being here and giving us invaluable information that is going to help us deal with the problems that we are facing on transportation and jobs.

So thank you very much, panel one.

I would like to invite the second panel to the witness table.

Serving on the second panel is the Honorable Jefferson Keel, President of the National Congress of American Indians, and Mr. C. John Healy, Sr., President of the InterTribal Transportation Association.

Mr. Keel, will you please proceed with your testimony?

## STATEMENT OF HON. JEFFERSON KEEL, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

Mr. KEEL. Thank you, Mr. Chairman. Good afternoon, Committee members.

My name is Jefferson Keel. I am Lieutenant Governor of the Chickasaw Nation and the President of the National Congress of

American Indians. I am honored to be here today. I want to thank you, Mr. Chairman and Senators, for holding this hearing.

This is an extremely important hearing and the topic is something that is not new to us. In fact, I have testified before this Committee on other occasions, even regarding this topic. And in the past, we have provided the Committee with the national Tribal leadership on transportation priorities for Tribes.

I don't need to reiterate the importance of this. You have heard from the previous panel how important it is for Tribal members to have access to transportation. The idea that 60 percent of the system is still under-improved earth in Indian communities, of that 140,000 miles that we have talked about, and the bridges that are structurally deficient, you have already heard.

The transit, rights of way, safety, and increasing the Indian Reservation Roads program and streamlining the process through self-determination contracting will greatly enhance our efforts. Today, I want to talk a little bit about the job challenges and focus on Tribal transportation for sustainable economic development. That is something that is very important to Indian communities. As this Committee is aware, unemployment is high in many Tribal communities. Creating and sustain jobs are a significant issue for Tribal leaders and for our Nation. Transportation infrastructure is critical in addressing these issues.

Of course, everyone wants to create jobs. But the question is, what is the best investment? How can you spend Federal funds in a way that creates jobs and also spurs new development in the private sector that leads to even more jobs? How can you get the multiplier effect moving?

The answer is, transportation. Every form of development starts with transportation. When transport systems are improved, they provide economic opportunities and benefits that result in positive multiplier effects with new investments from business, better accessability to markets and more employment. The productivity of land, capital and labor increases with improvements in transportation.

Indian Country gets more out of every transportation dollar because so much of what we do is infrastructure development. When we pave a dirt road or build a new bridge, there are immediate and profound effects on the economy, on the businesses and on the lives of the very people that we are representing.

While I am on the subject of jobs, jobs in Tribal transportation provide training and skill development for our Tribal members in the transportation construction and planning fields. Many Tribes have the capacity today to hire architects, engineers and planners to help us develop those systems that we need. Some Tribes do not. But the fact is, many Tribes are engaged in that activity as we speak.

We need more support for the Tribal Technical Assistance Program, which is the only technical assistance program that provides education and training to Tribal governments for transportation and roads projects. Training and education is important to assist in building a viable transportation workforce.

Last week, President Obama proposed the American Jobs Act, to establish a national infrastructure bank. We would like to have our

own Tribal infrastructure bank. This would increase the ability of Tribes to obtain funding for a broad range of infrastructure projects, especially when Federal spending is becoming more limited.

In closing, as we move forward in addressing these challenges, it is critical to realize that Tribal communities offer unique innovations that can make significant contributions to the policy debate regarding the economy. The National Congress of American Indians looks forward to partnering with the Committee to ensure that Tribes are included in developing and paving the way for Tribal transportation.

Thank you very much.

[The prepared statement of Mr. Keel follows:]

PREPARED STATEMENT OF HON. JEFFERSON KEEL, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

On behalf of the National Congress of American Indians (NCAI), thank you for the opportunity to testify on Tribal transportation in Indian Country. NCAI is the oldest and largest national organization of Indian Tribes in the United States and is dedicated to protecting the rights of Tribal governments to achieve self-determination and self-sufficiency. NCAI looks forward to working with members of this Committee to enhance transportation infrastructure and jobs for Indian Country.

Transportation infrastructure development is critical to economic development, creating jobs, and improving living conditions for individuals and families in Indian Country, and the millions of Americans who travel through our reservations every day. Construction of transportation systems that allows for safe travel and promotes economic expansion will help us strengthen our Tribal communities while at the same time making valuable contributions to much of rural America. Surface transportation in Indian Country involves thousands of miles of roads, bridges, and highways. It connects and serves both Tribal and non-Tribal communities.

Currently, there are over 140,000 miles of Indian reservation roads with multiple owners, including the Bureau of Indian Affairs, Indian Tribes, states and counties. Indian reservation roads are still the most underdeveloped road network in the nation however; it is the principal transportation system for all residents of and visitors to Tribal and Alaska Native communities. Approximately eight billion vehicle miles traveled on Indian Reservation Roads (IRR) Program system annually. Many road conditions on Indian reservations are unsafe, inequitable and it is the primary barrier to economic development and improvement of living conditions. For example, more than 60 percent of the system is unimproved earth and gravel, and approximately 24 percent of IRR bridges are classified as deficient. American Indians have the highest rates of pedestrian injury and vehicle deaths per capita of any racial or ethnic group in the United States. These conditions make it very difficult for residents of Tribal communities to travel to hospitals, stores, schools, and employment centers.

The passage of a new transportation authorization is imperative for Indian Country for construction of roads and bridges; and the generation of jobs in Indian Country. As you are aware, Tribal communities have faced Depression level unemployment for generations. In 2000, when the national unemployment rate was less than 3.5 percent, the on-reservation unemployment rate was 22 percent.[1] The Economic Policy Institute reports that the Native unemployment rate has risen at a rate 1.6 times the size of the white increase during the recession (to 15.2 percent for all Native people).[2] Jobs and unemployment are important issues for this Administration and Tribal leaders, and next transportation authorization will help address these concerns for Indian and Alaskan Native communities.

**Jobs In Tribal Transportation**

Transportation infrastructure development not only provides economic development but it also provides access to job training and employment in transportation related field. Unfortunately, there are not adequate unemployment data to show the depiction of accurate numbers of unemployment for every Indian Tribes and Alaska

[1] U.S. Census Bureau, Census 2000 Summary File 4.

[2] Algernon Austin, (2010), "Different Race, Different Recession: American Indian Unemployment in 2010." Retrieved at: *http://www.epi.org/page/-/pdf/ib289.pdf?nocdn=1*

Native villages. And, it is particularly concerning to us that the Bureau of Labor Statistics does not include on-reservation unemployment rates (often at levels well beyond 50 percent) in their monthly employment reports. This absence means that the unemployment rate for states with high Native populations is likely considerably understated, whether states with higher than average unemployment rates (as in Michigan or Oregon at 14.1 and 12.1 percent, respectively) or lower than average (as in Arizona or Montana, at 8.2 or 6.2 percent respectively). The role of this data in directing federal appropriations and guiding federal, Tribal and state policymaking underscore the importance of remedying this situation.

*Long-term Job Planning*

In order for any viable economic development growth there must be initiatives for workforce development for Tribal and Alaska Native communities. To ensure that Indian Country develops and enhances a sophisticated skilled Tribal work force in transportation construction it is important that Congress consider at long-term job planning. Job planning includes job training and skill development; and providing employment resources such as entrepreneurship training, resume building, internship programs, and referral services.

The recruitment and need for engineers, planners, entrepreneur and other skilled professional within Tribal communities are necessary for transportation infrastructure. Tribal colleges and universities can play an important role in workforce and skills development, family support, and community education services. They are true community-based institutions, providing the education and skills development needed for entrepreneurship and job creation. According to a 2007 report from the Institute for Higher Education Policy, an associate's or bachelor's degree on a reservation may enable a person to create jobs by starting a business, foster the spirit of leadership and entrepreneurship, and alter negative cultural perceptions of education for future generations. [3] The economic and social benefits of one Tribal citizen receiving a college degree are experienced throughout a community.

Tribal governments can serve as significant incubators of economic growth in relation to long-term job planning in general, and in innovating areas of transportation infrastructure specifically. To address these opportunities in the areas of transportation related jobs: supporting job programs such as Temporary Assistance for Needy Families, creating transportation related apprenticeship and the potential of Tribal colleges and universities to spur job growth to the benefit of a range of rural communities.

*Tribal Technical Assistance*

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, having well qualified skilled workers enables Indian Tribes and Alaska Native Villages to further develop Tribal transportation infrastructure.

There are currently seven TTAP centers located around the country. TTAP is funded by both the U.S. Federal Highway Administration (FHWA) and U.S. Bureau of Indian Affairs (BIA). Currently, each TTAP receives $280,000 a year in total funding, which is comprised of $140,000 from the Local Technical Assistance Program and $140,000 from the IRR program. This totals about $1.9 million for the overall TTAP funding each fiscal year to serve all 565 federally recognized Tribes.

To ensure that the 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 have the U.S. Department of Transportation institute a TTAP for each of the twelve BIA Regions. Additionally, NCAI recommends an increase to the overall funding of TTAPs from $1.9 million to $4.2 million each fiscal year. This much needed funding will assist each TTAP center to adequately address the increasing need for transportation technical assistances.

**Infrastructure**

After years of little investment in Tribal infrastructure, America faces a national deficit of $14.2 trillion that is prompting federal budget reductions that are likely to severely impede economic investment and undermine any progress towards estab-

[3] Institute for Higher Education Policy. (2007). *The Path of Many Journeys: The Benefits of Higher Education for Native People and Communities.* Washington, DC: Institute for Higher Education Policy.

lishing an Indian Country economy. As federal spending become more limited the need for enhancing infrastructure in Indian Country will continue to grow.

To help address the tough economy and budget deficit, infrastructure development is still essential for Tribal economic growth. To achieve this there are some issues we would like this Committee and Congress to address that would spur infrastructure development:

- Establishing a Tribal infrastructure bank that would form an independent financial institution owned by the government and Tribes. This would give Tribes the ability obtain funding for a broad range of infrastructure projects, and to be able to sell or issue general purpose bonds to raise funds for lending and investment.
- The equitable access to transportation is more critical in rural Tribal communities because many Tribal members do not own personal vehicles and must travel long distances to get to a job or school, or even see a healthcare professional. Supporting the Tribal public transportation is essential to improving transportation infrastructure in Indian Country.
- Extending the Indian Self Determination Act and Educational Assistance Act (ISDEAA) to the Department of Transportation and its modal administrations will streamline the negotiation, execution and implementation of grant, contract and funding agreements for federal transportation program funding available to Tribes and more effectively target program dollars to the improvement of our Tribal transportation system.
- In order for Tribes to construct road projects or improve existing road routes, Tribes have to go to the Bureau of Indian Affairs to acquire rights-of-way. It has been articulated by Tribes that obtaining the rights-of-way is a frustrating time-consuming and costly which hampers the transportation infrastructure development.

*Tribal Infrastructure Bank*

Last week, the President proposed the "American Jobs Act" that included the establishment of a National Infrastructure bank. In the proposal, the President has asked Congress to fund the infrastructure bank with $10 billion to assist in leveraging with private and public capital to invest in infrastructure projects. This would provide the ability to fund a broad range of infrastructure projects; it would make loans and loan guarantees and leverage private capital. It should be able to sell or issue general purpose bonds to raise funds for lending and investment, sell specific project bonds when necessary, and invite private investment, along with Tribal government pension plan investments.

To address Tribal specific transportation infrastructure needs, NCAI would like Congress to establish a Tribal Infrastructure Bank with an initial capital investment of $10 million per year for five years. Section 350 of the National Highway System Designation Act of 1995, Public Law 104–59, authorized the U.S. Department of Transportation to establish the State Infrastructure Bank (SIB) Pilot Program. A SIB is a revolving fund mechanism for financing a wide variety of highway and transit projects through loans and credit enhancement. SIBs were designed to complement traditional Federal-aid highway and transit grants by providing States increased flexibility for financing infrastructure investments. Under the initial SIB Pilot Program, ten states were authorized to establish SIBs. In 1996 Congress passed supplemental SIB legislation as part of the DOT Fiscal Year (FY) 1997 Appropriations Act that enabled additional qualified states to participate in the SIB pilot program. This legislation included a $150 million General Fund appropriation for SIB capitalization. Since then, Congress has continued to support the SIB program, and specifically reauthorized it in SAFETEA–LU.

The Tribal Infrastructure Bank (TIB) Pilot Program under which Tribes would be eligible to obtain infrastructure funds in the form of capital investments for use on authorized transportation projects. The TIB would operate much like the SIBs. The TIB would be initially funded with Federal start-up capital, with the goal of becoming self-sufficient through its capital lending program. Tribes would be eligible to leverage their IRR program and other Federal transportation funds to obtain financing from the TIB at reasonable rates as one preferred method of the flexible financing techniques described above. Loans from the TIB shall not exceed a 20 year period.

*Transit*

All transportation infrastructures including transit are important to economic growth in Indian Country. Tribal transit is a necessary element to transportation infrastructure because it offers Tribal members access to employment, health, edu-

cation and commerce for Tribes. Lack of employment has continuously been a difficult issue for Tribes. Currently, the approximate unemployment rate for on-reservation Indians is 18.6 percent, while for Alaska Native villages it is 25.1 percent. In addition, 15 percent of Tribal members have to travel over 100 miles to access basic services such as a bank or ATM. The combination of high unemployment and the long distances to travel to access basic services result in a great need for public transportation infrastructure in Indian Country and surrounding non-Indian rural communities.

In 2005, the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, authorized the U.S. Department of Transportation Federal Transit Administration (FTA) to administer Section 5311 (c), the "Public Transportation on Indian Reservations Program" or as it is referred to as, Tribal Transit Program. The purpose of the Tribal Transit Program is to fund capital, operating, planning, and administrative expenses for public transit projects in rural Tribal communities.

The Tribal Transit Program provides grant transit funding through a national competitive process to federally-recognized Tribes. The Tribal Transit Program funding level began at $8 million for FY 2006 and increased to $15 million for FY 2010. Since the initiation of the Tribal Transit Program, FTA has awarded approximately 236 grants to Tribes totaling $60 million. However, the total amount requested by Tribes who have applied for the Tribal Transit program is approximately $189 million. So, even though the amounts that have been awarded thus far are a good start on addressing the immense need for public transportation in Indian Country, the overall need is much greater.

Many Tribes utilize the Tribal Transit Program to begin or maintain their transit services on Tribal lands. NCAI is conscious of the significant role that public transportation infrastructure plays in Indian Country, and how much Tribes rely on this transit funding to further their transportation infrastructure. It is important Congress continues to sustain the Tribal Transit Program.

NCAI recommends the following: (1.) Funding: increase funding for Tribal Transit Program to $35 million for FY2012 with stepped increases of $10 million for every year thereafter to $85 million; and (2.) Transit Planning: raise the current cap for Transit Planning Grants to $50,000. Currently, Tribes are capped at $25,000 to use for planning and design. This cap is a hindrance for Tribes who do not possess the financial resources to initially establish a reliable transit system on their Tribal land.

*Extend the ISDEAA to all DOT Programs*

Since the implementation of the Indian Self Determination Act and Educational Assistance Act in 1975, infrastructure needs for many Tribes have grown. Tribes opted to contract their own services in health, government and education, capital-intensive programs, it has spurred infrastructure development. New local jobs became available and many professional Tribal members returned back to their Tribal communities. Because of the diversity of Tribal operations that were created as result of building local capacity, Tribal governments were elevated to full-time operations.

Under the past few reauthorizations, Congress has sought to extend greater authority to Tribes to carry out the Indian Reservation Roads (IRR) Program under ISDEAA agreements with the Bureau of Indian Affairs and the Federal Highway Administration. As a result, Tribes have succeeded in reducing transaction costs and eliminating counterproductive bureaucratic practices in order to maximize federal investment in roads infrastructure and to put more people to work.

Still, conflicting grant conditions and contract requirements arising from other federal transportation programs continue to obstruct the efficient and cost-effective transportation infrastructure development Congress has envisioned for Indian Country. Few Tribal governments have the staff or resources for negotiations to conform these extensive conditions and requirements to Tribal-specific legal and policy considerations or to establish duplicative administrations for managing disparate contract and grant requirements—and they should not have to. In other agencies, Tribal implementation of federal programs under the ISDEAA has allowed Tribes to adopt uniform and more cost-effective accounting, management, procurement and reporting systems. Under ISDEAA, Tribes spend less on program administration and more on program services and activities.

NCAI recommends the ISDEAA be extended to all Department of Transportation (DOT) programs serving Tribes, including programs administered by the Federal Highways Administration (FHWA), FHWA-Federal Lands Highway, Federal Transit Administration, National Highway Traffic Safety Administration and other federal transportation agencies. Extending the ISDEAA to the DOT and its modal adminis-

trations will streamline the negotiation, execution and implementation of grant, contract and funding agreements and more effectively direct program dollars to enhancing our nation's transportation infrastructure system.

*Right of Way*

Congress has the opportunity to significantly enhance efficiency and cost-savings in infrastructure investment by requiring BIA to maintain adequate rights-of-way (ROW) records. Currently, BIA has no streamlined process to assist Tribes in securing proof of ROW quickly or in processing trust allotted land ROW applications in a short, defined timeline. Tribes preparing infrastructure improvements too frequently face delays and additional costs in their project administration because the BIA lack records of rights-of-way the Agency acquired, disposed of, or otherwise transferred long ago. For example, right now the Oglala Sioux Tribe has been working on securing BIA assistance to examine rights of way in the BIA's Land Title Records Office for a 21 mile project on Pine Ridge; to date, BIA has not been helpful. This echoes examples for numerous Tribes when attempting to develop road projects on Tribal lands. And, the timeline in receiving ROW varies depending on many variables including ownership of the road (State, county, BIA, or Tribal route), the length in miles of the project, the reservation, whether the project crosses fee, restricted fee, allotted, or trust lands, whether the project is new construction or reconstruction of an existing route, the agency or regional office involved, the Tribe involved, etc.

To mitigate delays, NCAI recommends this Committee and Congress to require that BIA respond to a Tribe's request for right-of-way documentation for routes on its priority construction list within 120 days. If the BIA lacks right-of-way documentation, the BIA—and not the Tribe—should be responsible for the costs associated with obtaining enforceable rights-of-way. To fulfill this objective, NCAI proposes that Congress launch a $10 million initiative for the Department of Interior to catalogue, organize, update and computerize right-of-way documentation.

**Safety**

State governments spend between $4,000 and $5,000 per road mile on state road and highway maintenance. In contrast, road maintenance spending in Indian Country is less than $500 per road mile. Indian Country has an unmet immediate need of well over $258 million in maintenance funding for roads and bridges. Tribal members and communities are threatened by unsafe and often inaccessible roads, bridges, and ferries. Indian people suffer from injury and death by driving and walking along reservation roadways at rates far above the national average. According to Center Disease Control, "American Indians and Alaska Natives (AI/AN) are at increased risk of motor-vehicle related injury and death with rates 1.5 to 3 times higher than rates for other Americans."[4] And, other data shows 5,962 fatal motor vehicle crashes were reported on Indian reservation roads between 1975 and 2002 with 7,093 lives lost. The trend is on the increase, up nearly 25 percent, to over 284 lives lost per year in the last five years of study. While the number of fatal crashes in the nation during the study period declined 2.2 percent, the number of fatal motor vehicle crashes per year on Indian reservations increased 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.

Tribal communities share many similar concerns and obstacles as rural communities in addressing how to improve the safety needs. NCAI has worked diligently with Tribal governments to find solutions for improving the safety and infrastructure of Indian Country. Presently, Tribes receive a two percent set aside of the total allocation from the National Highway Traffic Safety Administration (NHTSA); the funding is then allocated to BIA where the BIA Highway Indian Safety Program administers the programs. The purpose of this program is to assist Tribes with their proposed highway safety projects, which are intended to reduce traffic crashes and impaired driving crashes; increase occupant protection education; provide emergency medical service training; and increase police traffic services. The two percent set aside is equivalent to $14 million annually, and it is a competitive grant process. NCAI has heard concerns from Tribal leaders about the inadequate effectiveness of the BIA Highway Indian Safety Program. In the past, there has been significant employee and leadership turnover within the BIA office. This has created a lack of guidance and support to Tribes. For example, Tribes have been denied competitive grant funding, but were not informed of the reasons for the denial. As a result,

[4] Center for Disease Control, *Injuries Among American Indians/Alaska Natives (AI/AN): CDC Activities* (2011), *http://www.cdc.gov/motorvehiclesafety/Native/research.html.*

Tribes contacted the office for a rationale for denial but were not provided assistance nor a return phone call.

NCAI recommends this Committee and Congress assist in confronting the high injury and fatalities on Tribal roadways and to resolve the concerns about the BIA Highway Indian Safety Program by (1) establishing a two percent Tribal funding set-aside within the High Risk Rural Roads Program, (2) creating a new Tribal Traffic Safety Program within the FHWA-Federal Lands Highways office, and (3) funding each NHTSA, at $50 million annually to dramatically reduce the incidence of death and injury on America's Indian reservation roads. The creation of these new programs would help to reduce the safety and behavioral problems that contribute to the high rates of death and injury on Indian reservation roads.

**Gas Excise Tax**

To date, there are over 140,000 miles in the Indian Reservation Roads (IRR) system but yet it is the most underdeveloped road network in the nation,[5] and it is the primary transportation system for all residents of and visitors to American Indian and Alaska Native communities. Over two-thirds of the roads on the system are unimproved dirt or gravel roads, and less than 12 percent of IRR roads are rated as good.[6] The condition of IRR bridges is equally troubling. Over 25 percent of bridges on the system are structurally deficient.[7]

Tribal economies, education systems, health care and social service programs are threatened by unsafe and often inaccessible roads, bridges and ferries. A recent Federal traffic safety study showed that Indian Tribes suffer the highest per capita traffic fatality rate in the Nation, more than four times the national average.[8] Each year, drivers on the IRR system travel over 2 billion vehicle miles on a system that is a clear health and safety hazard for our communities and an impediment to meaningful economic development.[9]

*Funding for Tribal Transportation Systems*

The current scheme for funding surface transportation in the United States is based on a federal-state motor fuel taxation regime that precludes Tribes from participating in the system on an equitable basis. While the system of using federal fuel tax revenue for road construction and state fuel tax revenue for maintenance has worked to dramatically improve roads in many parts of the nation, it has failed miserably in Indian Country.

Like states, Indian Tribes receive some funding for road construction from the federal Highway Trust Fund, but the amount given to Tribes is much less than what states receive. Currently, Indian Reservation Roads make up nearly three percent of federal roadways, but they receive less than 0.5 percent of total federal highway funding.[10] At the current funding levels, the IRR program receives only about half the amount per road mile that states receive.

The Federal Government also makes some funds available to Tribes for IRR maintenance under the BIA Maintenance Program. This Program is also woefully inadequate. The BIA spends less than $1000 per mile for road maintenance, compared to estimates of $4,000–$5,000 per mile used by states to fund non-IRR maintenance.[11] Moreover, the states, who receive federal funding for their own roads that fall within reservations, frequently shirk their obligation to improve or maintain these roads and instead siphon off the funds for use elsewhere.[12]

Faced with a severe inadequacy of funding from federal and state sources, Tribal governments have looked for other sources of revenue, including levying their own motor fuel taxes. While Tribes have the same authority as other governments to collect taxes, the ability of Tribes to tax fuel on Tribal lands has been severely diminished by the Supreme Court. The Court has upheld the authority of the states to reach onto Tribal land to collect a state motor fuel tax. The dual taxation that would result if both states and Tribes impose a motor fuel tax makes it impractical for Tribes to generate revenue through motor fuel taxes. Although some Tribes and

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[5] Bureau of Indian Affairs, Transportation Serving Native American Lands: TEA–21 Reauthorization Resource Paper (2003).

[6] *Id.*

[7] *Id.*

[8] National Center for Statistics and Analysis, *Fatal Motor Vehicle Crashes on Indian Reservations: 1975–2002,* (2004).

[9] BIA Paper, *supra* note 1.

[10] U.S. Dept. of Transportation, Federal Highway Administration, TEA–21, A Summary (1998).

[11] Brief of Amicus Curiae the Inter-Tribal Transportation Association in Wagnon v. Prairie Band of Potawatomi, available at *http://www.narf.org/sct/richardsvpbp/ITA%20amicus%20final.pdf.*

[12] *Id.*

states have been able to negotiate motor fuel tax revenue-sharing agreements, those cases are the exception rather than the rule. In most areas, the state governments' collection of motor fuel taxes in Indian country displaces the ability of Tribal governments to collect motor fuel taxes.

NCAI encourages this Committee to explore alternate sources of revenue for reservations roads. Given the dire conditions of reservation roads, it is unconscionable that the IRR program does not enjoy parity with the amount given to other governments through the Highway Trust Fund. NCAI feels strongly that this inequity of distribution must be addressed in whatever new system is devised to fund transportation systems across the nation. In addition, if motor fuel taxes are to remain the primary source of funding for road construction and maintenance, we urge the Committee to recommend that Congress clarify authority of Indian Tribes to collect this tax on Tribal lands. Finally, if the Committee recommends a dramatic change to the way revenue is raised for transportation costs, NCAI recommends that any such system be devised in a manner that treats Indian Tribal governments equitably and gives them the same authority as state and local governments to raise revenue to fund the costs associated with building and maintaining transportation infrastructure.

**Conclusion**

This testimony has highlighted the unique challenges Tribes and their members have faced for generations. NCAI's member Tribes, and their citizens, face significant challenges—particularly in the midst of the budget reduction climate. However, as we move forward in addressing these challenges, it is critical to realize that Tribal communities offer unique innovations that can make significant contributions to the policy debate regarding the economic crisis and the prospects for a fair and equitable recovery for all Americans. Indian Tribes recognize that transportation infrastructure is vital to the enhancement of Indian Tribal economic development and to provide safe and reliable transportation infrastructure to Tribal communities and surrounding non-Tribal areas. NCAI look forward to partnering with the Committee, as critical members of the federal policymaking community, to ensure Tribes are included in developing and paving a way for Tribal transportation.

The CHAIRMAN. Thank you very much, Mr. Keel, for your testimony.

Mr. Healy, will you please proceed with your testimony?

## STATEMENT OF C. "JOHN" HEALY, SR., PRESIDENT, INTERTRIBAL TRANSPORTATION ASSOCIATION

Mr. HEALY. Thank you, Mr. Chairman, members of the Committee.

Senator FRANKEN. Mr. Healy, I really apologize. I have to leave, but thank you for your testimony, and I will be absorbing it. Thank you.

Mr. HEALY. Thank you. Nice to meet you. I liked Saturday Night Live.

[Laughter.]

Senator FRANKEN. Thanks for remembering.

[Laughter.]

Mr. HEALY. Good afternoon, members of the Committee, Mr. Chairman, staff. I would just like to thank everybody for holding this hearing on this very crucial issue for Indian Country. I would also like to thank my Native brothers and sisters in the back of me for attending. As you can see, it is a very important subject we are taking up today.

As President of the InterTribal Transportation Association, our founding father, so to speak, we were created and organized back in 1993 with the hopes of having a seat at the table, as we are here today. Back then, Tribal transportation was of course just being recognized and Tribes were just starting to get into Tribal transportation. So I am glad to see that we have actually come a long

way since 1993 with the help of our congressional delegations, dedicated staff, such as Mark.

So we have come a long way in Tribal transportation over the years. Of course, we would like to continue that. We have, in my written comments that I submitted, I have many points I brought up, which I won't go into them all right now. But I agree with much of what has been said so far as far as streamlining the process. I attended the roundtable here in May. I also submitted some testimony then. In that I mentioned some of the points about streamlining.

As far as advocating for Indian Country, we partnered with NCAI back in 2007. We formally created the NCAI–ITA Joint Task Force on Tribal Transportation. Within that group, we have created, you have probably seen the national leadership paper, it was called, or white paper. In that, it points out many areas that the Tribes are concerned with as a whole across the Country.

We have tried to garner comments from Tribes across the Country on common Tribal transportation issues, and of course, over the last year or so, it has been concentrating on reauthorization and some of the funding levels the Tribes would like to see in the next Highway Bill.

Of course, the continued funding of these programs would be much appreciated. Being that ITA represents Tribes across the Nation, small, medium and large, we try to not really get into the controversial issues. However, there are some issues out there of controversy. But as was mentioned by panel one, those issues are being addressed.

Some of the funding issues, I will touch on these real quick, of course we would like to continue funding of the IRR program. Continued funding for transit, transit is a very, very important avenue for Tribes out there to pursue. There are many Tribes into Tribal transit now. It goes along with the sustainability and livability concepts that DOT has adopted as well. Because as Native Americans, of course, some of the areas we live are very isolated. So having a Tribal transit system comes in very handy for a lot of people. It gets them to jobs, school, many college students use these Tribal transit systems. Students, elderly, it is open to the public and it saves people a lot of money plus it is directly tied into economic development as well. So we would like to continue our Tribal transit program.

The streamlining, we have some suggestions in our packet about streamlining funding, some direct funding is needed for some of the programs. With that, Mr. Chairman, you have my written testimony and I will answer any questions that you have.

Thank you.

[The prepared statement of Mr. Healy follows:]

PREPARED STATEMENT OF C. "JOHN" HEALY, SR., PRESIDENT, INTERTRIBAL TRANSPORTATION ASSOCIATION

Thank you for this opportunity to provide testimony today.

On behalf of the InterTribal Transportation Association (ITA), Executive Committee and Member Tribes we formally submit these written comments at the Senate Committee of Indian Affairs (SCAI), Hearing today.

ITA's involvement with NCAI, and our involvement in the development of the National Tribal Leadership Paper on Tribal Transportation (White Paper), is in line

with our Strategic Plan Objectives. Since ITA inception (*circa* 1993), one of the goals was to partner with organizations to assist in getting the Tribes voices heard. I believe we have accomplished this over the last four years, without this partnership I don't think we would have developed such a comprehensive document.

We must show unity to the furthest extent possible, there is strength in numbers, there will always be issues we have differences on, however let us show unity on the big issues that will help us prosper as a Nation, as a family.

We have for many years viewed the Indian Reservation Roads (IRR), Program as a Jobs Program at the local reservation level. Each year our construction crews employee many enrolled members which supports their families not only during the construction months but year round.

This is why were pleased to hear in the President's speech of his plan for job creation to reinvigorate the economy.

We support the rebuilding our deficient roads and bridges. There is no shortage of these roads on reservations across the nation.

We support the "American Jobs Act."

Moving Ahead for Progress in the 21st Century (MAP–21):

The Senate Environment and Public Works Committee (EPW): released an bipartisan outline titled, Moving Ahead for Progress in the 21st Century, or MAP–21 in mid-July. The bill supports is a 2 year reauthorization with a total cost of $109 billion or $54.5 billion a year. There is still the issue of how to pay for this bill, and it will be up to the Senate Finance Committee to figure this out, and as mentioned numerous times raising the gas tax is not an option.

We support President Obama's jobs bill and the benefit it will have for Indian Country.

**Areas That Can Be Addressed During the Reauthorization Process**

Key points that address needed improvements to Tribal transportation.

1) Fund the IRR Program with annual 50 million dollars increases starting at 800 million in FY–12 and increasing annually reaching 1,050,000,000 in FY–16 and restore the obligation limitation deduction exemption that existed for the IRR Program under ISTEA.

2) Increase funding for BIA Road Maintenance Program to at least 150 million annually

3) Increase FTA's Tribal transit Grant Program to:

FY 2012: $35,000,000
FY 2013: $45,000,000
FY 2014: $55,000,000
FY 2015: $65,000,000
FY 2016: $75,000,000

4) Increase funding for IRR Bridge Program to:

FY 2012: $75,000,000
FY 2013: $87,500,000
FY 2014: $100,000,000
FY 2015: $100,000,000
FY 2016: $100,000,000

5) Enforce the statutory requirement in SAFETEA–LU which mandates the BIA to make IRR Program funds "immediately available" for Tribes within 30 days of the BIA's receipt of funds from FHWA.

6) Simplify the award process by which Federal transportation funds are distributed to Tribes by creating uniform grant eligibility, application, and administration criteria

7) Develop model funding agreements for use by DOI and DOT to facilitate the efficient transfer of transportation funding and program authority to the Tribes.

8) Increase the number of DOT Programs which Tribes may participate in as direct funding recipients from the Federal Government, rather than as sub recipients through the States.

9) Establish a Federal Lands Highway Safety Program for Indian reservation roads, establish a Tribal set aside for the High Risk Rural Road Program, Increase funding to the TTAP's to at least 2.5 million annually.

10) Promote the use of innovative financing techniques in standard Indian Self-Determination contracts and self governance agreements to provide Tribes with better tools to reduce their road construction backlog.

11) Carry out Right of Way reform in Indian Country to reduce costs and expedite the design, construction and reconstruction of Tribal roads and bridges.

**Indian Reservation Roads (IRR), Issue**

Various Tribal Organizations such as Council of Large Land Based Tribes, MT–WY Tribal Leaders Council, Transportation Sub-committee, & the Great Plains Tribal Chairman's Association have voiced their view on several issues/concerns regarding the implementation of Question #10 of 25 CFR Part 170, Subpart C, Indian Reservation Roads Program over the last several years (since 2006).

ITA has membership from small, medium and large Tribes, therefore we have been very careful in our comments, we would however like to offer our assistance in this matter in the way of facilitating meetings to come up with solutions to the matter. This also falls within our Strategic Plan.

The large land-based and rural Tribes are losing millions of dollars because the BIA is misinterpreting the provisions of SAFETEA–LU. Dollars continue to hemorrhage from our reservations and people to those BIA Regions that have included countless miles of state and county roads. With this, the IRR program has become a program dominated by state and county roads within the inventory that drives the funding formula.

Over the past four years Large Land Based Tribes have expressed their concerns with regard to the "uncontrolled implementation" of the IRR Inventory system due to a misapplication and/or erroneous interpretation of 25 CFR 170 on numerous occasions with little or no response. This correspondence also included language which provided recommended solutions to the misapplication of the regulations.

This has proven to be detrimental to large land-based Tribes. There are critical issues the BIA and FHWA must address in order to arrest the uncontrolled implementation of inventory data that is allowing non-BIA and non-Tribal roads to generate enormous formula amounts.

Tribes have been told the only way to fix the problem is when reauthorization of the Federal Highway Bill is being considered.

**The Time Is Now**

Tribes have been very frustrated in attempting to get some action, much less even a response to our concerns. The issue of uncontrolled inventory updates, the issue remains urgent to large land-based Tribes since they deal with massive on-reservation vehicular transportation needs. Needs arise from Tribal and BIA roads, and meeting them *relies primarily on IRR funding.* The *geographic isolation* of most large land-based Tribes prohibit them from competing in a system of adding Interstates/NHS highways, State and County roads onto the IRR system just to reap the inflated formula amounts. Also most large land-based Tribes' priorities are not others' interstate or state roads, but the very roads they must travel to get the basic medical and educational services. On the BIA system alone, there is a documented backlog of $13 Billion just to improve the system to a safe and adequate standard. At present funding levels, and without further deterioration of the system, it would take 28 years to address this need. Allowing State and County roads into the IRR system simply to generate funding is siphoning off critical road construction funding for Tribes whose only source of funding is the IRR program.

The direct nature of the Tribes comments is a reflection of the frustration the Tribes have experienced over the last several years attempting to elevate this issue, however it is in no way intended as an indictment of any Tribal entity or of the BIA/FHWA itself. In fact we are confident that this problem can be solved and that 25 CFR 170 is workable regulation.

Increased IRR funding three and four fold by inappropriately applying the regulations regarding generation of funding on state, county, and proposed routes that have been added to the IRR Inventory.

*The core issues* regarding the uncontrolled implementation of the IRR Inventory. The heart of this issue is threefold and includes; *relaxing the protocol which requires minimum attachments supporting each update; inconsistent interpretation of the Program regulations at 25 CFR 170 and in defining an "Indian Reservation Road"; and allowing an uncontrolled expansion of the IRR system.*

**Solution**

Minimum Attachments must be required. Explicitly defined Attachments were originally required in the IRR road inventory update process to substantiate each request. These requirements provide a fundamental tool to the BIA for quality assurance of each update. In order to concur with a recommended update, BIA officials must at least be assured that the facility exists (section photo), that the documented physical attributes of the facility are accurately reflected in the database (represent-

ative section photo), that facility ownership is confirmed and post-improvement maintenance responsibility is acknowledged (MOA Owner Agreement), and that each facility is incorporated into the Tribal Long Range Transportation Plan (LRTP). It is inconceivable to think that waiving the requirement of these fundamental tools results in an adequate, representative IRR database. In fact, this measure is counterproductive, at the least requiring more in-depth, time-consuming inquiries at the Regional/BIADOT level, or, more likely, simply disregarding the confirmation process and approving unverified records.

*It is also recommended* that surface condition ratings be supplemented by a wearing surface calculation worksheet along with representative photo to verify published indices. Being somewhat subjective by nature, backup documentation will result in more accurate, objective results in incorporating SCI into the crucial CTC calculation.

An Indian Reservation Road "providing access to an Indian reservation or Indian trust land" must be interpreted consistently. Vague, inconsistent interpretations of IRR roads have resulted in gross misrepresentation of the relative need across Indian country. Refining the regulations did not redefine the definition. We recommend that federal officials provide written guidance and direction in defining precisely what qualifies as an IRR and provide training to all BIA Regional Road Engineers and BIA/DOT personnel to ensure uniformity and consistency in the interpretation and application of the update process.

Many reservations possess a network of Tribal roads which provide public rural local access to remote Tribal lands within the exterior boundaries of the reservation. These routes are included on the IRR system as construction need miles to support the economic development of large land-based Tribes. In order to promote Tribal self determination through economic development as it was intended, these facilities must be enhanced. Contesting, or otherwise rejecting these routes from inclusion as a Rural Local road, regardless of the surface type, prevents the LLBT's from quantifying their relative need, which is ultimately reflected in the distribution of Program funds.

Large land-based Tribes are generally located in remote/rural areas in which a majority of the public access roads are BIA or Tribally owned. In order to enhance public health and safety on these facilities, we are solely reliant on IRR Program funds. As funds are shifted to roads owned by state and local governments, the trust responsibility of the federal government is severely compromised, in turn jeopardizing the general health and welfare of the traveling public on these facilities.

There are thousands of miles of non-BIA/Tribal routes on the IRR inventory that are not in compliance with 25 CFR 170. By regulation, at 25 CFR 170 Appendix C to Subpart C, under no circumstances should any non-BIA/Tribal route generate 100 percent funding. Likewise, National Highway System/Interstate highways should never generate funding. County-owned facilities which meet the precisely established criteria (as recommended above) of an IRR road shall generate at the federal sliding scale percentage, however state-owned facilities, which meet the precisely established criteria of an IRR road, shall *not* generate funding unless a project exists for said route, and then only at the non-federal share until construction of the facility. NonBIA/Tribal roads, particularly state-owned roads, are adequately maintained and funded through 23 USC and state-owned roads were never intended to be included in ascertaining the relative need of Indian Tribes.

The IRR Inventory has experienced an unprecedented growth rate in the past 3 years. Of particular significance is the expansion of the very definition of an IRR road. Inconsistent determinations of IRR eligible facilities have resulted in a skewed system which is detrimental to those Tribes who rely solely on the IRR Program to address public health and safety on public roads within Indian reservations. BIA must limit the growth rate of the Program to a respectable, realistic level.

Proposed roads have had a major impact on the funding distributions in the IRR Program. These forever funded facilities include numerous miles which will never be built, but are simply added to the database to generate funding. A well-established justification in the LRTP must be submitted with each update to assure that these proposed roads are in fact included in the future development plans of the respective Tribe(s) as a project. Further, proposed roads should only generate funding for up to five years, at which time inactivity results in CTC = 0 VMT = 0.

In order to assure that Road Inventory Field Data System (RIFDS) records portray the spirit and character of the IRR Program, a review team consisting preferably of Tribal officials or an outside, impartial review team should be employed to assess the interpretation of BIADOT and assure each submitted record lies within the scope of the regulations.

In accordance with 25 CFR 170.444(f), the BIA provides each Tribe with copies of the Relative Need Distribution Factor (RNDF) distribution percentages by August

15 of each year. Providing this information allows Tribes to plan and prepare the IRR Program for the upcoming fiscal year, including preparing budgets and funding Agreements; procuring materials, equipment, and manpower for upcoming projects; and identifying projects to be including onto the Tribal Transportation Improvement Program (TTIP). However, the FY 2008 distribution percentages were not published until July 2008. This situation creates an extreme burden on the Tribes in their efforts to deliver an efficient, productive Program from year to year.

**Issue**

Another concern which is directly related to the funding issues, is the BIA DOT review and approval of RIFDS records. The Program regulations, at 25 CFR 170.444, explicate the process by which the IRR inventory is updated. In order to provide the RNDF distribution percentages by August 15th.

**Solution**

Action must be taken on the inventory update submittals, i.e. they must be approved or rejected, and discharged within this timeframe. There has been no consistency in this process since the promulgation of the Final Rule in 2004. Communication is obviously the missing element in delivering this process with efficiency and accuracy, particularly in providing feedback to the Regional offices regarding the records submitted by the Tribes. The BIA must correct this process and take action on RIFDS records in order that these overriding issues do not continue to trickle down to the Tribal programs, hindering our abilities to function efficiently and productively.

The Montana/Wyoming Tribal Leaders Council have identified many issues and shared with

Mike Black, Director Of The Bureau Of Indian Affairs on April 30, 2010

Regulations governing the Indian Reservation Roads program are having a negative effect on how funding is calculated for Land Based Tribes and Tribes seek to rectify those issues through the administrative process. Issues that were brought to Mr. Black's attention were as follows:

- Bogus data being allowed into the IRR inventory:

Surface Condition Ratings require a visual inspection of the road surfaces and a mathematical calculation to determine the Pavement Condition Index (PCI). Many of the paved surfaces of roads owned by Agencies other than the BIA or Tribes are given a rating of exactly 60 or below. It is theoretically impossible to derive a pavement rating of 60 when applying the many components of field data that must be considered in the calculation of the pavement rating.

Field observations of surface conditions were not conducted and actual calculations were not made on thousands of miles included in the IRR inventory.

**Solution**

All non-BIA system roads included in the IRR inventory be reviewed for accuracy and all routes that do not have evidence of an actual computation of the PCI be removed from the system.

- Tribes are allowed to include roads in the inventory that are not located within or provide access to the reservation or trust lands.

25 CFR 170.5 defines an Indian Reservation Road as "a public road that is located within or provides access to an Indian reservation or Indian trust land, or restricted Indian land that is not subject to fee title alienation without the approval of the Federal government, or Indian or Alaska Native Villages, groups, or communities in which Indians and Alaska Natives reside, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians."

The BIA is allowing Tribes to include State (including Federal Highway System roads) and County roads into their IRR inventory that are not located within nor do they provide access to the reservation or trust lands. In several cases, these routes are allowed to generate IRR funding at 100 percent.

It is our understanding that a road that provides access to an Indian reservation or trust lands must physically connect to the reservation or trust land. We know of a Region that is allowing State and County roads into the system that are 10 to 15 miles away from the reservation.

We are requesting that all routes that do not physically connect to the Reservation or Trust lands be removed from the system.

• Certain Tribes are allowed to generate funding on State and County roads included in the inventory without evidence that a project will ever be constructed on the route.

The 3rd category of Question 10 of Appendix C to Subpart C, 25 CFR 170, stipulates that "The facility is eligible for funding for construction or reconstruction with Federal funds, however, the Public Authority responsible for maintenance of the facility provides certification of maintenance responsibility and its inability to provide funding for the *Project*.

23 USC 101(a) definition of a project is as follows: The term "project" means and undertaking to *construct* a particular portion of a highway, or if the context so implies, the particular portion so constructed or any other undertaking eligible for assistance under this title."

The same Section defines Construction as follows: The term "Construction" means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a highway.

There are thousands of miles of roads owned by others (States and Counties) that are included into IRR inventory and generating funding, (many miles generating at 100 percent) without any evidence that a project or any type of construction is planned on the route. The BIA is encouraging and allowing Tribes to include routes owned by others into the IRR inventory only to generate funding.

We are requesting that all non-BIA system routes that do not have a project agreement in place with the owning agency be removed from the system.

• Some Tribes are allowed to generate funds over and above the local match/non-Federal Federal share amount.

Tribes in certain Regions are allowed to generate IRR funding at 100 percent on State and County routes. On approved projects, Tribes can coop a project with another Public Authority, however the funding they provide for the project is limited to the non-Federal share or local match.

23 U.S.C. states: "Before approving as a project on an Indian reservation road any project eligible for funds apportioned under section 104 or section 144 of this title in a State, the secretary must determine that the obligation of funds for such project is supplementary to and not in lieu of the obligation, for obligation of funds for such project is supplementary to and not in lieu of the obligation, for projects on Indian reservation roads, of a fair and equitable share of funds apportioned to such State under section 104 of this title."

We are requesting that all non-BIA routes that are generating IRR funds over and above the non-Federal share be removed from the system.

• Other Issues

We are also requesting to begin start a dialog on the following issues:

- Definition of Access
- Definition of Indian Reservation Road
- Legality of Question 10
- Definition of Project
- Proposed Roads
- Road Maintenance
- Establishment of and Inventory Oversight Committee
- Comprehensive Inventory by Federal Highway Administration

On June 3–4, 2009 I was honored to attend several meetings in our nation's capitol with a delegation of Tribal leaders from the Rocky Mountain Region.

As we were leaving the U.S. Capitol Building and walking through the Rotunda I couldn't help but to think about the history of the United States. More specifically the history of the Native American relative to transportation as many of the highways that exist to this day are built over the path of a hunting trail or path the Native American traveled. This gave me a renewed strength to advocate for the interest of the ITA Executive Committee and member Tribes. I believe these DC trips were beneficial for ITA and our member Tribes.

It was with the people in mind that ITA was formed on that blustery day in May of 1993 in Polson, Mt. Formed so we may go forth into the future with one thought in mind, with one ideal in mind, and with service to the people in our heart.

I think we can all agree that to build strong Tribal nations, Indian Tribes must build a transportation infrastructure that permits safe travel and promotes economic expansion. Connecting people within Tribal communities and Tribal communities to the surrounding area means greater economic development and improved delivery of Tribal government services. Yet many Indian reservation roads and

bridges are known more for their impassable condition than for their use as a safe means of transportation. The poor condition of many Tribal roads and bridges jeopardizes the health, safety, security and economic well-being of our Tribal members. Tribal roads and bridges are often in such disrepair that children are prevented from attending school, sick and injured people are prevented from reaching hospitals and emergency responders are delayed in providing timely assistance to people in need.

It is with that thought in mind that we must move on and be persistent in our efforts to continue the educational process for our people.

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.

The CHAIRMAN. Thank you very much, Mr. Healy, for your testimony.

This question is for both of our witnesses. One of the recommendations the Committee has heard throughout the years is that Tribes need direct access to more transportation programs. And we would like to pursue that line. So my question to both of you is, in your view, do your members have the capacity to carry out safety and other programs now handled through the States? Mr. Keel?

Mr. KEEL. Thank you, Mr. Chairman, for that question. The answer is yes, there are some Tribes that have the capacity to carry out all those programs, safety, planning, engineering, event the architecture. There are some Tribes that simply do not, because of their infrastructure and their Tribal structure itself.

But the transit program, having access to more of those programs, in fact, the Jobs Act, the Jobs bill, included in that Jobs bill was $310 million, I believe, for the Indian Reservation Roads and Tribal transportation. Of that, there is only $7 million that was provided for the transit program, which is a competitive grant program.

So $7 million doesn't go very far when you have 565 Tribes competing for those dollars. So we would ask that that be increased, so that those Tribe that do have the capacity for planning and taking some of those programs could access those funds and thereby help greatly.

Additionally, there are Tribes that have a good working relationship with the State departments of transportation. Those Tribes do a very good job of managing those programs and working in partnership with them. There are some Tribes who do not, and who do not enjoy that same level of cooperation.

I hope that answers your question.

The CHAIRMAN. Thank you very much. Mr. Healy?

Mr. HEALY. Thank you. Yes, I believe many Tribes out there do have the capacity. We hear success stories all the time about Tribes working with States and/or counties on their particular projects. Most recently, there has been a lot of success in Tribes working with the Public Lands Highway discretionary grants. Of course, those were supposed to go through the State as well.

But with some of the new direct funding agreements that have been created over the last few years, the Tribes do get direct funding. I believe they do have the capacity to administer these projects.

The CHAIRMAN. Thank you. I would like to extend a further question to both of you. Can you describe the impact the road condition and lack of adequate infrastructure have on a Tribe's ability to create jobs and attract economic development to Native communities? Mr. Keel?

Mr. KEEL. Thank you, Mr. Chairman.

Once again, there are Tribes that have the capacity, as I said, to develop, have economic development within their areas. It is very difficult to attract businesses to the reservation or to our areas when the infrastructure is seemingly not very well maintained or unkempt or in disarray.

So the answer is, a well-maintained transportation system is vital to economic development in Indian Country or anywhere else, for that matter.

The CHAIRMAN. Thank you. Mr. Healy?

Mr. HEALY. Thank you. I would agree with that. Many businesses, when they want to locate to a reservation, one of the first things they research is your transportation system and how they can move their goods and services from Point A to Point B. Of course, sometimes they make a site visit. If in their mind they feel the transportation infrastructure system, roads, are not up to their standard, they may go down the road and go somewhere else, which of course affects economic development initiatives.

So yes, I believe maintaining a good, safe transportation system is vital, not only to economic development but for the safety of our children. As was mentioned, safety is a key issue for Indian Country, as well as the ambulances traveling these roads, school buses. So yes, I do believe it is very important. Thank you.

The CHAIRMAN. Thank you, thank you very much.

And now I would like to call on Senator Hoeven for any comments or questions he may have for our witnesses.

**STATEMENT OF HON. JOHN HOEVEN,**
**U.S. SENATOR FROM NORTH DAKOTA**

Senator HOEVEN. Thank you, Mr. Chairman. I would like to thank both of these gentlemen for being here with us today. I will start by asking Mr. Keel to just talk a little bit about what he perceives as both the real needs in terms of transportation on the reservations and how we can most effectively address it.

Mr. KEEL. Well, as has already been stated, the needs in Indian Country on particularly our reservation roads, because of the bridges that are structurally deficient, it affects not only the safety or our ability to attract businesses to our communities, but the fact of the matter is that many of our people depend on those roads. Some of our citizens don't have adequate transportation to get to and from work.

So the needs there are multiplied by the fact that when a bridge or road washes out, for instance, or we have a natural disaster, we don't have the funding to maintain or repair those roads in a timely manner. Those needs then are exacerbated. So the need cannot be understated.

I would like to point out also that last week, the President proposed in the American Jobs Act the establishment of a national infrastructure bank. We believe that a Tribal infrastructure bank

would work, thereby giving the Tribes the ability to leverage dollars that we receive. We would propose a $10 million bank, which is relatively small in terms of a bank. But for Indian Country, it would be significant in that we could take that and leverage those dollars and make some improvements, necessary improvements that we have.

I hope that answers your question.

Senator HOEVEN. And I would just follow up with a question actually to both of you gentlemen. In addition to Federal funds for roads, do you have any other funding sources, are there any local or State funding sources that any of the Tribes receive to help on their roads?

Mr. HEALY. For Tribes in the rural areas, the IRR program is the only funding source. So being from a rural area, in Montana, the IRR program is very key to our sustainability as a Tribe, as a nation, as a people. It is very key to our livelihood.

Senator HOEVEN. Mr. Keel, are you aware of any other? Have any of the Tribes developed any other funding sources that you are aware of?

Mr. KEEL. Many of the Tribes today supplement the funding that they receive, even through the Indian Reservation Roads program. There are Tribes that have a good relationship, as I stated earlier, with their State departments of transportation and local county commissioners. And they are able to repair, make repairs locally in some cases. But not necessarily from funding, they simply supplement the funding that they receive.

Senator HOEVEN. The reason I ask is, in the State of North Dakota, one of the things we have done is that the State gas tax, the portion that is collected on the reservations goes back to the reservations. So they have that as a funding source in our State. I am just wondering if other States and other Tribes have developed some funding sources to help, given the pressure on Federal dollars. Particularly when we are talking about some of the rural reservations, where you have so many miles of road and not a large number of people. It is a real challenge to maintain those roads.

So that is why I was just looking for any other ideas at the local, State, or Tribal level. Are there any other ideas that either of you might be aware of to help fund roads, in addition to the Federal funds?

Mr. KEEL. Yes, in fact, there is very limited funding. In the State of Oklahoma, for instance, there is an agreement, or compacts, there are several Tribes that have compacts with the State in terms of collecting the Federal gasoline tax, for instance. Those funds are then returned to the Tribes and they can use that for a variety of things. But they are very specific in what they can be used for, health, education and in some cases transportation and safety.

Senator HOEVEN. Right. That is exactly the kind of thing I was referring to. I was just wondering if there are any others that either one of you had run cross.

Mr. KEEL. I am not aware of any.

Senator HOEVEN. Okay, thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Hoeven.

I want to thank this panel very much. I have further questions that I will send to you and other members may have that, too. So I thank you so much, because we are trying to put this together and deal with the problem of transportation mainly, and with that, of course, jobs for the Tribes. So we look forward to keeping in close contact with you and continuing to work with you on this.

So thank you very much, panel two.

I would like to invite the third panel to the witness table. Serving in our third panel is the Honorable Charles W. Murphy, Chairman of the Standing Rock Sioux Tribe; the Honorable Wes Martel, Co-Chairman of the Joint Business Council for the Shoshone and Arapaho Tribes of the Wind River Indian Reservation; also Mr. Paulson Chaco, Director of the Division of Transportation for the Navajo Nation; and Ms. Jacque Hostler, Chief Executive Officer of the Cher-Ae Heights Indian Community of the Trinidad Rancheria.

Mr. Murphy, will you please proceed with your testimony?

**STATEMENT OF HON. CHARLES W. MURPHY, CHAIRMAN, STANDING ROCK SIOUX TRIBE; ACCOMPANIED BY PETE RED TOMAHAWK, TRANSPORTATION DIRECTOR**

Mr. MURPHY. Thank you, Mr. Chairman.

My name is Charles Murphy. I am the Chairman of the Standing Rock Sioux Tribe. I want to thank you, Senator, for paving the way for jobs and safety for Native communities.

I heard testimony earlier, but what I would like to say, Mr. Chairman, is that I live on a reservation where we deal with several emergencies each day. One of them is that the Corps did not mange the water properly going into the community or headquarters of Fort Yates, North Dakota. Fort Yates is a community that takes care of eight districts within our 2.3 million acres.

What happened is if that road should wash out, we would lose emergency, health needs, water needs to several of our district people. Number one is that roads is the number one thing for our reservation. They play a big part within Standing Rock.

Because our reservation is so large, we have to use snow plows in the winter time to take the ambulance out to bring our people into the hospital into Fort Yates, which sometimes may be a round trip of 180 miles.

The other thing, Mr. Chairman, is that we have bridges that are over 50 years old. Because of the high floods, high water, we had knocked the pillars down or the joists. We had to have our kids walk across the bridge so that way we do not have anything happen to our kids, so we can get our kids to school and back from school.

Mr. Chairman, if there is any way that we could get funding directly to the Tribes without going through all the other branches I think that we would have a better and safer place to live within our reservations and also create more jobs within our reservation. We have, again, we have dialysis people that we have to worry about, not only in the summer time, but in the winter time. Like I stated earlier, if that road should wash out, we would have been, and Bismarck would not have been able to take those 64 people that were on dialysis, too. So there was no way for us to get them off this island.

So with that, Mr. Chairman, I have written testimony and I support what was said earlier about direct funding to Tribes. And we need more infrastructure on our reservation. Thank you.

[The prepared statement of Mr. Murphy follows:]

PREPARED STATEMENT OF HON. CHARLES W. MURPHY, CHAIRMAN, STANDING ROCK SIOUX TRIBE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Increase funding for Tribal Transportation Programs: Support modest, but important, increases to federal transportation programs serving Indian country such as President Obama's proposal for increase funding to $600 million for a consolidated IRR Program, IRR Bridge, Tribal Transit and Tribal safety programs and to set a floor below which IRR Program funding for BIA-owned and Tribally-owned roads will not fall, or increase federal transportation programs serving Indian tribes to the levels requested in the NCAI-ITA Joint Task Force's proposed "Tribal Reauthorization of Indian Programs ("TRIP");

3. Increase the BIA Road Maintenance Program: Congress undermines our reservation infrastructure and makes our roads unsafe by keeping the BIA Road Maintenance Program flat at $25 million for the last 20 years. Appropriate $100 million annually as recommended by the BIA so that Tribes and BIA Regions can make heavy equipment purchases to replace obsolete equipment and pay for routine road maintenance work (pot hole repairs, chip seals, overlays, re-graveling, and mowing) and address road maintenance emergencies (snow and ice removal, flood prevention and repairs, etc.) to extend the useful life of road and bridge projects and keep our public roads safe and in good condition;

4. Provide Tribal Set-Asides for Safety and Planning: Build capacity in Indian country for comprehensive transportation planning, safety and economic development by appropriating more funds for tribal planners, law enforcement and highway safety officers so that tribal governments can fulfill our roles as public authorities and transportation stakeholders. Existing grant programs are not reaching Indian tribes. These funds can and will make a difference and help save lives; and

5. Streamline the delivery of transportation programs for Indian tribes: Support budget neutral proposals that streamline the delivery of federal transportation programs for Indian tribes. These include:

- Make tribes direct recipients of FHWA's ERFO Program, DHS's FEMA grants, and NHTSA's and FHWA's many safety grant programs (e.g., Highways for Life and Safe Routes to Schools) Current regulations require Tribes to request ERFO assistance from, and receive ERFO funding through, the BIA. This makes no sense and delays our receipt of these emergency funds;

- Lower the dollar thresholds for tribes for TIGER grants and Transportation Infrastructure and Finance Innovation Act (TIFIA) program eligibility; and

- Create simple award instruments for State DOT-Tribal transfers of Federal-aid (e.g., Highway Safety Improvement Program (HSIP) and Transportation Enhancement funds) and other Federally-appropriated but state-administered highway improvement and safety programs (eliminate the need for waivers of sovereign immunity, recourse to State courts and application of state procurement, management systems, and other federal laws which do not apply to Indian tribes).

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

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

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

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

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

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

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

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

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

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

The CHAIRMAN. Thank you very much.

Senator Hoeven?

Senator HOEVEN. Mr. Chairman, if I may, I have a meeting of our appropriations committee at the same time, and the subcommittee of which I am ranking member has to present subcommittee budget for legislative branch, which, Mr. Chairman, you know that is pretty important, so that we address that. Since I will have to leave in a few minutes, if I could, take just a minute to say a few words about Chairman Murphy.

The CHAIRMAN. Please proceed, Senator Hoeven.

Senator HOEVEN. Thank you.

I want to welcome all of our guests, but I would like to say just a few words about Chairman Murphy. I think that Chairman Murphy is now serving his sixth term as the Chairman of the Standing Rock people. I have had the wonderful good fortune to work with him for over a decade now.

It is very appropriate that he is here talking about transportation today, because he was an absolute leader in our State of North Dakota in transportation. And he is right, his reservation used to be Fort Yates, now it is Standing Rock Reservation, which covers a big part of two States, both in North Dakota and in South Dakota. So geographically, it is very, very large, and the Missouri River runs through the area they serve, so there are many challenges geographically.

And one of the things that Chairman Murphy did is that he was instrumental in putting together an agreement with the individual who was governor before I was Governor Schafer, that really provided a collaborative working agreement between the reservation, the Tribe and the counties throughout the entire area. So that

when it came to maintaining roads, plowing roads, getting snow off the roads, and addressing a lot of these issues, they had a cooperative agreement so that they could work together on the roads, both on-reservation and off, which was frankly a very cost-effective way to do it.

It was his leadership in setting up those types of agreements that really led us to gas tax agreements with all the Tribes in North Dakota. And we have parts, or all, of five reservations in our State, and many Tribes. It was that leadership that led to resources going not only to his own people at Standing Rock, but to all of the Tribes, because it was the model of the cooperative road maintenance agreement that we followed.

Chairman Murphy is a Vietnam veteran. He is somebody who has been a leader not just to his people on his reservation in North Dakota and South Dakota, but a State leader in North Dakota. So when we talk about somebody who has great respect, Chairman Murphy has great respect. When he is here talking about transportation issues, he is somebody who isn't just here talking about them, he is dealing with them every single day, between floods, tornadoes, and fires. We have been out there fighting fires with Blackhawk helicopters and pulling water out of the Missouri River.

And here he is again, although he is a young man still in his sixth term, again leading the Standing Rock Sioux and doing a great job. So it is wonderful to have you here.

Mr. MURPHY. Thank you.

Senator HOEVEN. I know one of the points that you are going to make, and I would like to emphasize it as well, Mr. Chairman. We have to do everything we can with the dollars we have. It is hard right now, because we are in a financially difficult situation.

So every dollar we use, we have to use as effectively as we can. I think one of the ways to use them most effectively is exactly what you and I talked about last week when I was home, and I know you will be here talking about it today, and I hope, Chairman Akaka, that you have an opportunity to hear more from Chairman Murphy. We have to make sure those dollars get to the local leaders like Chairman Murphy, so that they can use them for best effect on the reservation.

So we have challenges with dollars, and of course we have so many miles of road in areas that are not heavily populated. In our case we also have energy impacts, where we have a lot of traffic and big trucks running on these roads that put ruts in them and can make them more dangerous. Both from a traffic standpoint and from a wear on the roads standpoint, it is really important that we get these dollars to the local leaders like Chairman Murphy.

Any way we can work to do that and streamline the process through Interior and through BIA to get those dollars down to the local leaders is very important. I think there may be some ways we can work on that, and I look forward to working with you on it. Chairman Murphy, I hope as you have time to present more testimony that you are able to go into that a little bit. I think it is a very good idea. It is an idea that you brought to me and I very much agree with, and I want to help you to do all we can in that regard.

It is certainly true in transportation, it is true in other areas, too, health services and so forth. But certainly transportation, if we can get those dollars to the local level. And then too, following up on the question I asked the earlier panel, leverage those dollars. For example, where you have been able to bring in local gas tax dollars and work with the State and the counties to leverage those dollars, I think you have really been a leader there and I hope we can do more of those things.

Thank you for being here, Chairman Murphy. Thank you to our other panel members for being here. Mr. Chairman, thank you for letting me present for just a minute.

The CHAIRMAN. Senator Hoeven, thank you for being here, and thank you for your comments. I have to say, thank you for your sound advice. It is for sure that we need to try to use whatever funds we have as wisely as we can. And I think this is a point in time when we can do that. So we have to do it together. I look forward to working with Senator Hoeven and our other members and with also you and the Tribes. So thank you very much for your comments.

Now let me go on to our next witness, Mr. Martel, for your testimony, please.

**STATEMENT OF HON. WES MARTEL, VICE CHAIRMAN, EASTERN SHOSHONE BUSINESS COUNCIL; ACCOMPANIED BY JIM SHAKESPEARE, CHAIRMAN, NORTHERN ARAPAHO BUSINESS COUNCIL, JOHN P. SMITH, TRANSPORTATION DIRECTOR, SHOSHONE AND ARAPAHO TRIBES, AND JIM GARRIGAN, TRANSPORTATION PLANNER, RED LAKE BAND OF CHIPPEWA INDIANS**

Mr. MARTEL. Good afternoon, Mr. Chairman and members of the Committee. My name is Wes Martel and I am the Co-Chairman of the Eastern Shoshone Tribe, Wind River Reservation, in Wyoming.

On behalf of the Joint Business Council of the Eastern Shoshone Tribe and the Northern Arapaho Tribe of the Wind River Reservation, I thank you for this opportunity to provide testimony concerning transportation issues in Indian Country. I also am pleased that Chairman Jim Shakespeare, from the Northern Arapaho Tribe, is accompanying me today, as is John Smith and Jim Garrigan, who are our transportation technical support team.

I am pleased that our Senator Barrasso and his keen understanding of our issues and concerns helps provide input and dialogue between the Tribe and the Select Committee. I will now summarize my remarks.

The Federal Lands Highway Program and 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 Wind River Tribes 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 Tribes.

While Congress has been responsive, it is painful for me to tell you that the manner by which the BIA allocates money through the IRR system has become a disaster. For our 2.2 million acre res-

ervation, it is not doing what Congress intended to do when you enacted SAFETEA–LU. We pray that the leaders of this Committee, who have helped pass highway bills for the benefit of Tribes will once again weigh in and help fix the formula problems that the BIA seems incapable of fixing itself.

BIA officials have turned a blind eye to the fact that millions and millions of IRR funds are being diverted, sometimes through illegal and fraudulent fashion, to non-BIA and non-Tribal roads. These actions are also contrary to the trust responsibility the BIA owes my Tribes.

For the past six years, the Council of Large Land-Based Tribes has been attempting to correct the misinterpretation and misapplication by the BIA and the Federal Highway Administration of the enacted regulation of the Indian roads program as contained in 25 C.F.R. 170. This misinterpretation and misapplication manifested itself as the uncontrolled implementation of the road inventory update process which is used to generate formula shares for all Tribes.

Because of this uncontrolled implementation of the inventory update process, that part of the inventory which generates formula shares amounts for the land-based Tribes has been reduced significantly from 76 percent in 2006 to less than 20 percent in 2011, and is declining at an alarming rate.

Mr. Chairman, I ask you to consider the implications of this incredible situation. Only 20 percent of the money Congress appropriates for Indian Reservation Road program is being used on BIA and Tribal reservation roads. Surely this is not what Congress intended.

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

Roads on Indian reservations are considered Federal roads due to the fact that the Indian reservations are considered Federal lands and the Federal Government is responsible for constructing and maintaining these roads. State and county roads are not considered Federal roads, and they have separate funding sources and should not be siphoning off critical funding meant for Indian reservations.

To allow the diversion of funds away from land-based reservations to continue is a travesty, and land-based Tribes will never be able to reduce the tragic statistics that are discussed in previous testimony and testimony that we will be submitting in our written presentations. Allowing State and county roads into the IRR system simply to generate funding is siphoning off critical road construction funding for Tribes whose only source of funding is the IRR program.

Based on the above, the Wind River Tribes have identified several items that must be incorporated into a new reauthorization bill in order to make 25 C.F.R. 170 a usable rule. Replace the Tribal Transportation Allocation Methodology, TTAM. The Tribal Transportation Allocation Methodology, TTAM, as contained in 25 C.F.R. 170, has been so misconstrued by BIA, TTAM, that it favors only those direct service Tribes whose trust lands are surrounded by high volume State and county roads, and it has resulted in pitting Tribes against Tribes.

The most fair and equitable solution to the problem is for the Secretary of Interior to suspend 25 C.F.R. 170 until it be corrected to reflect the actual intent of Congress. The previous rule should be temporarily put into effect during the time period that the existing rule is scrutinized.

Define access. The current statute and regulation does not define access, nor does it place any limit onto what extent the route can be included in the IRR inventory. Because of this ambiguity, the Bureau of Indian Affairs is allowing tens of thousands of non-BIA miles or non-Tribal system routes into the IRR inventory. These routes include interstate highways, national highway system roads, State, county and township roads, Federal forest roads and proposed roads. Most of these routes are not located within nor do they provide access to Indian or Native lands, with some even roadless and wilderness areas. Some BIA regional road engineers are allowing this abuse and others are prohibiting it as they believe such annexing is not allowed.

Restrict proposed roads into IRR inventory. Proposed roads are being added indiscriminately to the IRR system. The BIA and the Federal Highway Administration are allowing thousands of miles of proposed roads into the IRR inventory only to generate huge funding amounts.

Establish an IRR inventory oversight committee. From the uncontrolled and indiscriminate manner in which inventory is being added into the IRR inventory, 33 plus thousand miles in 2004, now in 2011 that is 140,000 miles, it is obvious that neither the BIA nor the Federal Highways are providing any quality control or quality assurance of the inventory data that is being used to calculate funding for IRR distribution.

An inventory oversight committee made up of Tribal transportation officials must be established to monitor the inventory data that is being submitted. This committee will review all inventory data and will decide what data is eligible to be included into the official inventory.

The CHAIRMAN. Mr. Martel, will you please summarize your statement?

Mr. MARTEL. It seems inevitable, the only practical solution we see for this problem is that since the roads on the BIA system are considered Federal roads, we must look at other options to get that funding in there. We want to work with Congress any way we can to get that in place.

Thank you for inviting us to give testimony. If we can answer any questions, we will be glad to do that.

[The prepared statement of Mr. Martel follows:]

PREPARED STATEMENT OF HON. WES MARTEL, VICE CHAIRMAN, EASTERN SHOSHONE BUSINESS COUNCIL

***Introduction***

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

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

The Federal Lands Highway Program and the Indian Reservation Roads Program represents for us a major avenue through which the United States Government fulfills its trust responsibilities and honors its obligations to the Eastern Shoshone and other Indian tribes. This program is vital to the well being of all Native people living on Indian lands throughout the United States. Because of its great importance, reform of the Indian Reservation Roads Program has become a top legislative priority for many Indian Tribes.

***Background on the Wind River Indian Reservation***

The Wind River Indian Reservation is located in a rural area within the boundaries of the State of Wyoming. Our Reservation has over 2.2 million acres of tribal land held in trust for our Tribes by the United States. While over time it has been diminished from its original 3.3 million acres, our Reservation has never been broken apart or allotted to individuals and lost to non-Indians. Nor has our Reservation ever been subjected to the criminal or civil jurisdiction of the State of Wyoming. Consequently, our Tribal Government has a large land area over which our Tribe exercises full and exclusive governmental authority and control in conjunction with the United States. At the same time, due in part to our location far from centers of population and commerce, we have few jobs available on our Reservation. While the unemployment rate in Wyoming is at approximately 11%, unemployment on our Reservation remains at outrageously high levels, many times the state or national average. The lack of adequate

transportation facilities, communications, and other necessary infrastructure continues to significantly impair economic development and job opportunities.

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

***Reauthorization of Tribal Transportation Programs***

The Wind River Tribes are grateful for the leadership role this committee has taken to support the Tribal initiatives in the upcoming reauthorization of SAFETEA-LU. Under this leadership we are certain that the issues and concerns of all tribes will be considered in the reauthorization of SAFETEA-LU. We are thankful for the opportunity to comment on the reauthorization of this important legislation.

IRR funding serves a crucial need in Indian country. While Congress has increased IRR allocations in recent years, the funding continues to lag far behind an even faster-growing need. However, when BIA officials abuse their powers and arbitrarily divert IRR funds to non-BIA system or non-Tribal facilities, we fall farther behind.

We firmly believe that the Indian Reservation Roads Program was established for benefit of Indians living on Indian Reservations. This is a Trust Responsibility of the Federal Government guaranteed by Treaties between Indian Tribes and the Federal Government when Indian Tribes gave up their land and were forced to live on Reservations.

For the past six years the Council of Large Land Based Tribes has been attempting to correct the misinterpretation and misapplication by the Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA) of the recently enacted regulation of the Indian Roads Program as contained in 25 CFR 170. This misinterpretation and misapplication manifests itself as the uncontrolled implementation of the road inventory update process which is used to generate formula shares for all tribes. This uncontrolled implementation of the inventory continues to go unchecked and is having a devastating effect on Land Based Tribes located in Montana, Wyoming, Arizona, New Mexico, Utah, the Dakotas and some tribes in Minnesota.

Because of this uncontrolled implementation of the inventory update process, that the existing BIA road mileage which generates formula share amounts for the Land Based Tribes has been significantly reduced from76% in 2006 to 15% in 2011 and is still declining (see enclosed charts). Mr. Chairman I ask you to consider the implications of this incredible situation. How can existing BIA road mileage make up only 15% of the total IRR inventory mileage? These roads are the life lines of rural reservations and funding has a direct correlation to mileage. Surely this is not what Congress intends.

This presents an even worsening condition to Land Based Tribes like the Eastern Shoshone and Northern Arapaho Tribes whose only source of funding is from the Indian

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

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

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

A study conducted by the National Center for Statistics and Analysis (NCSA) and sponsored by the National Highway Traffic Safety Administration found that 5,962 fatal motor vehicle crashes occurred on roads under the jurisdiction of Indian reservations between 1975 and 2002, an average of 213 fatal crashes per year. In 2002, the number of crashes on reservations reached a new high of 276, representing a 4.5% increase over the previous recorded high of 264 crashes in 1996 and a 52.5% increase over the 181 crashes in 1975. Over the years, these crashes have resulted in the loss of 7,093 lives of which 3,322 were drivers, 2,717 were passengers and 1,001 were pedestrians.

The objective of the study was to examine the characteristics of fatal motor vehicle crashes that occurred on federal lands, specifically, those lands that have been designated as Indian reservations. Using data from 1975 – 2002 NCSA's Fatality Analysis Reporting System (FARS), characteristics of these crashes were examined to better understand the circumstances that are involved in these particular types of crashes.

Roads on Indian reservations are considered Federal roads due to the fact that Indian reservations are considered Federal lands and the Federal Government is responsible for constructing and maintaining these roads. State and County roads are not considered Federal roads and they have separate funding sources and should not be siphoning off critical funding meant for Indian Reservations. To allow the diversion of funds away from Land Based Reservation to continue is a travesty and Land Based Tribes will never be able to reduce these tragic statistics.

Rural Tribes, including large land-based Tribes, have expressed their concerns in writing to the BIA and the IRR Coordinating Committee regarding changes to the final rule that have altered the intent of the negotiated rulemaking process. To date, they have received no responses addressing their concerns.

This issue remains urgent to land based tribes since we deal with critical on-reservation vehicular transportation needs. Our needs arise from tribal and BIA roads.

and meeting them relies primarily on IRR funding. The geographic isolation of most land based tribes prohibit us from competing in a system of adding high volume Interstates/NHS highways, State and County roads onto the IRR system just to reap the inflated formula amounts of high traffic roads. Also most land based tribes' priorities are not others' interstate or state roads, but the very roads they must travel to get the basic medical and educational services. On the BIA system alone, there is a documented backlog of $13 Billion just to improve the system to a safe and adequate standard. At present funding levels, and without further deterioration of the system, it would take 28 years to address this need. Allowing State and County roads into the IRR system simply to generate funding is siphoning off critical road construction funding for tribes whose only source of funding is the IRR program.

Based on the above, our Tribes have identified several critical items that must be incorporated into a new reauthorization bill in order to make 25 CFR 170 a useable rule that is not biased against Land Based Tribes constrained by reservation boundaries and geographical locations. We feel that these issues are the root cause of the rapid decline in funding for the Land based Tribes and must be corrected in the Reauthorization Bill in order to return this program to what Congress intended it to be. Those items are as follows:

- *Replace the Tribal Transportation Allocation Methodology (TTAM)* – The Tribal Transportation Allocation Methodology (TTAM), as contained in 25 CFR 170, has been so misconstrued by Bureau of Indian Affairs (BIA) TTAM that it favors only those tribes whose trust lands are surrounded by high volume State and County Roads and has resulted in pitting Tribes against Tribes. The most fair and equitable solution to this problem is for the Secretary of the Interior to suspend 25 CFR 170 until it can be corrected to reflect the actual intent of Congress. The previous rule should be temporarily put into effect during the time period that the existing rule is scrutinized. A distribution methodology that consists of Tribal Trust Land and Population (80% Land Area and 20% Population) would be more fair and equitable to the land based Tribes.

- *Define Access* – The current statute and regulation does not define "access" nor does it place any limit on to what extent the route can be included in the IRR inventory. Because of this ambiguity, the Bureau of Indian Affairs is allowing tens of thousands of non-BIA miles or non-Tribal system routes into the IRR inventory. These routes include Interstate Highways, National Highway System Roads, State, County and Township Roads, Federal Forest Roads, and proposed roads. Most of these routes are not located within nor do they provide access to Indian or Native lands with some even being located in designated Roadless and Wild areas. Some BIA Regional Road Engineers are allowing this abuse and others are prohibiting it as they believe such annexing is not allowed.

- *Restrict Proposed Roads in the IRR Inventory* - Proposed roads are being added indiscriminately to the IRR Inventory System. The BIA and FHWA are allowing thousands of miles proposed roads into the IRR inventory only to generate huge funding amounts. The manner in which the BIA is allowing proposed roads into the system is inconsistent whereby certain BIA Regions are allowing it and other Regions are not.

- *Establish an IRR Inventory Oversight Committee* - From the uncontrolled and indiscriminate manner in which inventory data is being added into the IRR Inventory, (33+ thousand miles in 2004 to 140+ thousand miles in 2011) it is obvious that neither the BIA nor the FHWA are providing any quality control or quality assurance of the inventory data that is being used to calculate funding for IRR distribution. See the February 1, 2010 Interior Inspector General's report on this point. Or worse, the quality control of the data is disparate or discriminating and is not applied consistently across all tribal data. This is evidenced by the fact that Tribes in certain Regions are being allowed to input fraudulent data only to generate funding. The owning agency has no intentions of doing a project on the route, yet the tribe can put it on their inventory and generate funding indefinitely. The Congress cannot allow this to continue. The DOI leadership should fix this on their own because they should not give countenance to fraud but despite the fact that we pointed this out to senior leaders of DOI and FLHA a year ago, very little has been done to end the fraudulent actions.

  An Inventory Oversight Committee made up of Tribal Transportation Officials must be established to monitor the inventory data that is being submitted. This committee will review all inventory data and will decide what data is eligible to be included into the official inventory.

***Road Maintenance***

Protection of the investment in any type of infrastructure requires proper maintenance. Historically, the IRR maintenance system has been chronically 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 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.

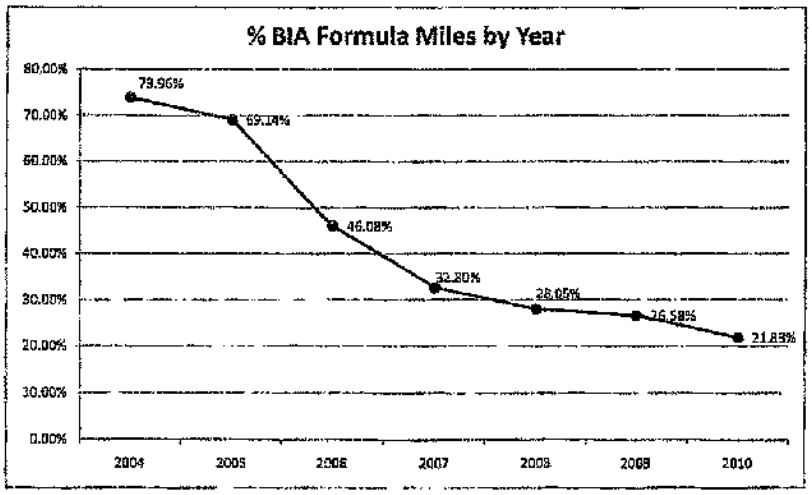
The only practical solution we see for this problem is that since the roads on the BIA system are considered Federal roads, the BIA road maintenance program should be provided extra funds out of the Highway Trust Fund as are other Federal Lands Highway Programs roads.

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

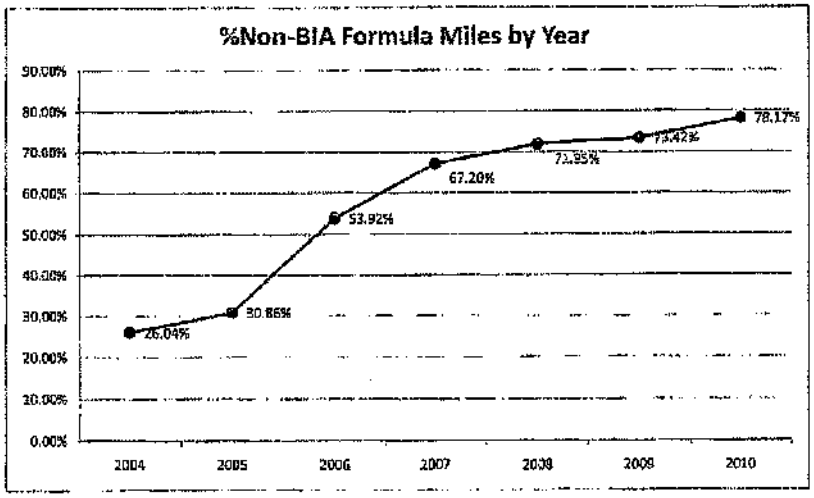
***Conclusion***

On behalf of the Eastern Shoshone and Northern Arapaho Business Councils, I thank the Committee for its attention to and support for the Indian Reservation Roads program. We have attempted to provide the Committee with a few examples of what is happening with the current interpretation by the BIA and FHWA that is having negative impact on the funding for Land Based Tribes. We are confident that with your help, the IRR program will be restored to what it was originally intended - building and maintaining infrastructure on Indian Lands. Thank you for inviting the Joint Business Council to present this testimony. If we can answer any questions, now or at some future date, please do not hesitate to ask.

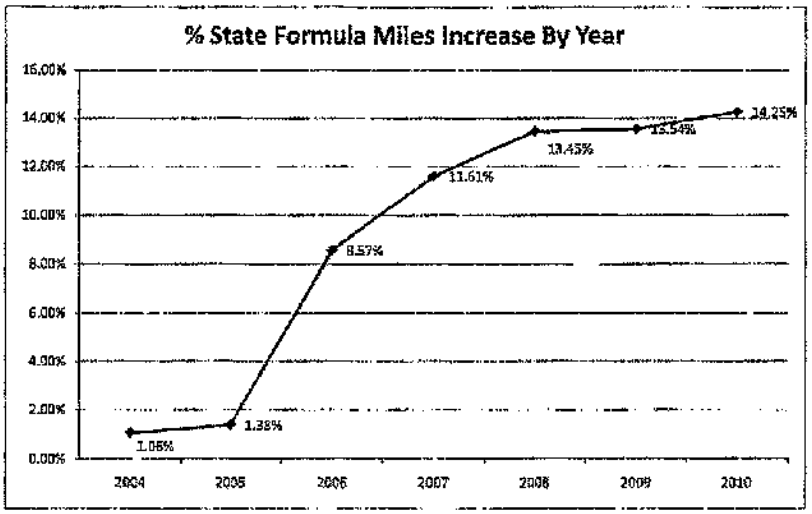
## Attachments



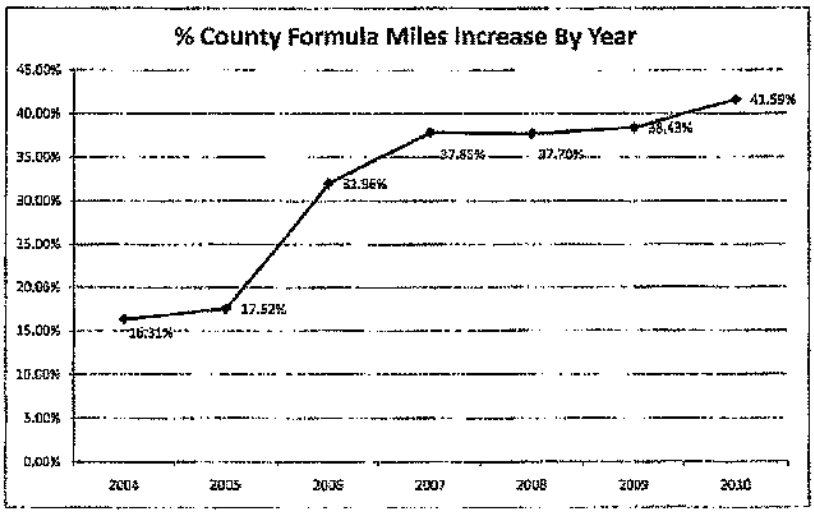

Note: This shows the percentage of the Indian Reservation Road miles that were going to On-Reservation BIA and Tribal Roads in 2004 (74%) and how those miles have decreased every year since. The latest 2011 figures indicate the line continues to descend now to 15.31%) Included in this total are 8,710 miles of "proposed" roads (sometimes called ghost roads). These are roads that are proposed but most are never built. Yet they generate huge funds, year after year, to those tribes adding them to their inventories. The IRR now receives $450 million a year. While the funding formula is complex it significantly correlates with miles of roads in the inventory. If only 15% of the mileage is for BIA and Tribal roads, the funding allocations are following a similar trend.




Note: This shows how non-BIA roads now dominate the IRR inventory and by correlation are receiving the vast majority of the Indian Reservation Road funds. These are state, county and federal roads that certain tribes in certain BIA Regions are simply listing in their inventories so that they can game the system and its formula by listing as many miles of roads as is possible. Even though dollars are received for such roads, much of the time money is not actually spent on them.




Note: This shows the percent of the increase of State owed roads that tribes have added to their IRR inventories over the past six years. Again, more often than not, work is not actually performed on such roads rather, by adding them to their inventory with the BIA's approval (and this is only happening in certain regions); tribes who are gaming the system are able to increase the total number of miles in their respective inventories and therefore their share of the total IRR funding pie. One of the keys elements of the IRR formula is the number of vehicles that use the road per day. High traffic volume (such as that found on state highways and particularly those found near urban areas) profoundly increase the formula shares of a tribe claiming such roads. This then leaves much less for large land based rural tribes who have no other funding source other than IRR dollars to meet their needs. IRR funds are certainly not the only funding source available for State roads. By allowing this to happen, the BIA is allowing tribal and BIA roads to become unsafe, endangering our members and shirking its legal trust responsibility.




Note: This shows the percent of the increase for County owned roads that tribes have added to their IRR inventories over the past six years. Again, work is often not actually performed on such roads rather, by adding them to their inventory with the BIA's approval; tribes who are gaming the system are able to increase the total number of miles in their respective inventories and therefore their share of the total pie.

The CHAIRMAN. Thank you. All of your full statements will be placed in the record.

Mr. Chaco, will you please proceed with your testimony.

**STATEMENT OF PAULSON CHACO, DIVISION DIRECTOR, NAVAJO NATION DIVISION OF TRANSPORTATION**

Mr. CHACO. Good afternoon, Mr. Chairman and esteemed members of the Committee.

My name is Paulson Chaco and I am the Director for the Navajo Nation Division of Transportation. Today I would like to speak with you about four major concerns of Navajo Nation transportation.

First, I will discuss the issue of direct funding, followed by job creation and road maintenance. And briefly ending with the Navajo Nation's great concern with Question 10 of 25 C.F.R., Part 170, regarding the definition of Indian Reservation Roads.

The Navajo Nation has gone to great measures over the years to create a sophisticated level of government and ensure quality public service for the Navajo people and everyone who may be guests on Navajo land. As a people and a nation, we continue to grow and progress, continually looking forward to the emerging global economy to pave a path for the Navajo people.

However, in 2011, our Nation finds itself being held to a different set of standards. And in many regards, second class citizens. While the United States has made great strides to foster a more positive

relationship with Tribal nations, there are still improvements to be made.

Perhaps the greatest issue facing the Navajo Nation is access to direct funding. Many programs, such as the TIGER grants, transit, emergency relief for federally-owned roads and safety grants are not truly available to Tribes unless we have partnered with a State. We ask the question, why is this?

The Navajo Division of Transportation is a sophisticated and quality public service. There is no reason we should not have the ability to apply for all the same funding as any State in the Union. Allowing the Navajo Nation access to direct funding will allow for greater oversight in planning and management. Additionally, the decision where the funding is to be utilized will rest in the hands of the Navajo Nation, allowing for more services to be provided in the areas not of interest to any particular State Government.

My division is tasked with the construction and maintenance of roads. Many of these roads are the only access our people may have for public service and basic human necessities. Yet today we find ourselves at the mercy of other departments of transportation. This is an issue that clearly needs to be addressed through legislation, so that the Navajo Nation and other Tribal nations can begin to acquire direct access to transportation funding.

Job creation is an integral part of the Navajo's current agenda, just as it is across the entire Nation. Unlike the majority of the Country, Navajo and other rural or large land-based Tribes have a unique problem. Tribal members lack access to job opportunities because of inadequate roadways. For 2011, the Navajo Nation used ARRA funding for eight separate road projects on the Navajo Nation, including Western Agency, Eastern Agency, Fort Defiance and Shiprock. All funding was used within the allotted time frame and to date, all projects are completed.

This funding was instrumental not only in creating Navajo construction jobs, but secondary industries as well, specifically merchants and food vendors saw an increase in revenue from our presence, and the creation of roads allowed more people more efficient access to job opportunities throughout the Navajo Nation.

Additionally, many of the social ills that plague Native American communities are a direct result of unemployment and lack of job opportunities. As roads are created and employment and access to opportunities increases, we have a greater ability to curtail these countless social problems that have hurt so many of our community members.

While road creation does assist the Navajo people in accessing employment opportunities, receiving all forms of public service and obtaining basic human necessities, it is only half the battle. Once the roads are built, the question for the Navajo Nation and all Tribes is, how do we maintain them? Currently the transportation funding received by the Navajo Nation is never specifically for road maintenance, meaning that the roads can be built, but not maintained. This is a major obstacle for the Navajo Nation.

Unlike State governments that have an array of methods for generating revenue to assist in road maintenance, the Navajo Nation is not so fortunate. This is not a problem unique to the Navajo, but is a reality across Indian Country and stems from systematic in-

equalities in taxation, taxation methods, economic development. Until the underlying issues are addressed, discretionary transportation funding needs to also include road maintenance.

Mr. Chairman, it is common knowledge throughout Indian Country that there is a growing great concern over the definition of Indian Reservation Roads for transportation. Funding purposes specifically proposed an access road as described in 25 C.F.R. Part 170. While I will not go into great length on this issue, I will state that the Navajo Nation does firmly believe that the roads which are continuously and systematically maintained by the State and county governments should be excluded from the definition of true Indian reservation roads.

In conclusion, Mr. Chairman, I would like to reiterate that the Navajo Nation hopes to see greater access to direct funding which in turn allows for greater employment opportunities and job creation. Additionally, it is essential to allow separate funding based on total number of BIA and Tribal road miles and bridges for the road maintenance, and there must be legislation addressing the definition of Indian Reservation Roads under 25 C.F.R. Part 170.

I would like to thank you, Mr. Chairman Akaka and other esteemed members of the Committee for inviting me here to speak. The Navajo Nation understands that this is a difficult economy. Many hard decisions have to be made that will affect the great citizens of this great Country.

However, when it comes to transportation issues, it is important to remember that in order to grow and progress, there must be a path for people to follow. Without this path, there is no greater destination for the people than the circumstances in which they currently live. Thank you.

[The prepared statement of Mr. Chaco follows:]

PREPARED STATEMENT OF PAULSON CHACO, DIVISION DIRECTOR, NAVAJO NATION DIVISION OF TRANSPORTATION

Good Afternoon Mr. Chairman and esteemed members of the Committee;

My name is Paulson Chaco and I am the Division Director for the Navajo Nation Division of Transportation. Today I would like to speak to you about four major concerns that the Navajo Nation has regarding transportation. First, I will discuss the issue of Direct Funding, followed by Job Creation and Road Maintenance, and briefly ending with the Navajo Nation's concerns with question 10 of 25 CFR part 170 regarding the definition of Indian Reservation Roads.

The Navajo Nation has gone to great measures over the years to create a sophisticated level of government and ensure quality public services for the Navajo people and everyone who may be guests on Navajo Land. As a people and a Nation we continue to grow and progress, continually looking forward in this emerging global economy to pave a path for the Navajo people. However, in 2011, our Nation still finds itself being held to a different set of standards and in many regards as second—-class citizens. While the United States has made great strides to foster a more positive relationship with Tribal Nations there are still improvements to be made.

**Direct Funding**

Perhaps the greatest issue that faces Navajo Transportation is access to direct funding.

Many programs such as TIGER GRANTS, TRANSIT, EMERGENCY RELIEF FOR FEDERALLY OWNED ROADS and SAFETY GRANTS are not *truly* available to Tribes unless they have partnered with a State. Why is this? The Navajo Nation Division of Transportation is a sophisticated and quality public service. There is no reason that we should not have the ability to apply for all the same funding as any state in the union. Allowing the Navajo Nation access to direct funding will allow

for greater oversight in planning and management of funding. Additionally, the decision of where the funding is to be utilized will rest in the hands of the Navajo Nation, allowing for more services to be provided in areas not of interest to any particular state government.

My Division is tasked with the construction and maintenance of Navajo roads. Many of these roads are the only access our people may have for public services and basic human necessities. Yet today, we still find ourselves at the mercy of other departments of transportation. This is an issue that clearly needs to be addressed through legislation so that the Navajo Nation and other Tribal Nations can begin to acquire direct access to Transportation funding.

**Job Creation**

Job creation is an integral part of the Navajo Nation's current agenda, just as it is across the entire Nation. Unlike the majority of the Country, Navajo and other rural or large land-based Tribes have a unique problem: Tribal member access to job opportunities because of inadequate roadways.

For 2011, the Navajo Nation used A.R.R.A funding for eight separate road projects in the Western Agency, Eastern Agency, Fort Defiance and Shiprock. All funding was used within the allotted timeframe and to date all projects are completed. This funding was instrumental in not only creating Navajo construction jobs but in secondary industries as well. Specifically, merchants and food vendors saw an increase in revenues from our presence and the creation of roads allowed people more efficient access to job opportunities throughout the Navajo Nation. Additionally, many of the social ills that plague Native American communities are a direct result of unemployment and lack of opportunity. As roads are created, and employment and access to opportunities increase, we have a greater ability to curtail these countless social problems that have hurt so many in our community.

**Road Maintenance**

While road creation does assist The Navajo Nation people in accessing employment opportunities, receiving all forms of public services and obtaining basic human necessities, it is only half the battle. Once the roads are built the question for the Navajo Nation, and all Tribes, is "how do we maintain them?"

Currently, transportation funding received by the Navajo Nation is never earmarked for road maintenance, meaning that the roads can be built but not maintained. This is a major obstacle for the Navajo Nation. Unlike State Governments that have an array of methods for generating revenue to assist in road maintenance, the Navajo Nation is not so fortunate. This is not a problem that is unique to the Navajo, but is a reality across Indian Country and stems from systematic inequalities in taxation methods and economic development. Until those underlying issues are addressed, discretionary transportation funding needs to also include road maintenance.

**Defining Indian Reservation Roads Under Question 10 Of 25 CFR Part 170**

It is common knowledge throughout Indian Country that there is a growing concern over the definition of an "Indian Reservation Road" for Transportation funding purposes, specifically proposed and access roads as described in 25 CFR Part 170. While I will not go into great length on this issue—I will state that the Navajo Nation does firmly believe that roads, which are continuously and systematically maintained by State and County governments, should be excluded from the definition of a *true* "Indian Reservation Road."

**Conclusion**

In conclusion, I would like to reiterate that the Navajo Nation hopes to see greater access to direct funding, which in turn allows for greater employment opportunities and job creation. Additionally, it is essential to allow separate funding based on the total number of BIA and Tribal road miles and bridges for Road Maintenance *and* there must be legislation addressing the definition of Indian Reservation Roads under 25 CFR Part 170.

I would like to thank Chairman Akaka and the other esteemed members of the Committee for inviting me here to speak today. The Navajo Nation understands that in this difficult economy many hard decisions are to be made that will affect all citizens of our great Country. However, when it comes to Transportation issues it is important to remember that in order to grow and progress there must be a path for people to follow. Without this path, there is no greater destination for them than the circumstances in which they currently live. Thank you.

The CHAIRMAN. Thank you very much, Mr. Chaco, for your testimony.

Ms. Hostler, will you please proceed with your testimony?

**STATEMENT OF JACQUE HOSTLER, CHIEF EXECUTIVE OFFICER, CHER–AE HEIGHTS INDIAN COMMUNITY OF THE TRINIDAD RANCHERIA**

Ms. HOSTLER. Thank you, Senator Akaka. It is my extreme honor and pleasure to be here today. My name is Jacque Hostler. I am the Chief Executive Officer of the Cher-Ae Heights Indian Community of the Trinidad Rancheria in Northern California.

I am honored to present this testimony on behalf of my Tribal chairman, who sends his greetings, the Honorable Garth Sundberg, and the Tribal council of the Trinidad Rancheria, as well as the Northern California Tribal Chairmen's Association, representing 11 Tribes.

My testimony is informed by my experience in the construction industry as well as my experience in building capacity and infrastructure in Indian Country for Tribal governments and my family, who are Hoopa Tribal members. My testimony honors my deceased husband today, who was a Hoopa Tribal councilman. He began the first transit program for his Tribe in 1987. Today the Hoopa Tribe, the Yurok Tribe and the Karuk Tribe partner with a local provider to provide transportation to Tribal members that cover an area of approximately 150 miles spanning three reservations and three rivers. This is one of the numerous success stories, due to perseverance and the determination of SAFETEA–LU.

Lives are lost in Northern California on roads, as well, that are not maintained and safety issues are not addressed. Services are over one and two hours away to medical facilities. We need your understanding and help, as well. We need your commitment to work with us to protect the Tribal transportation gains made in the last seven years. As we continue to address the critical issues across Indian lands, both large and small land-based Tribes. We understand that.

As the Committee is well aware, the unmet transportation needs have been discussed, the $69 billion unmet transportation infrastructure need in Indian Country, while the IRR program receives $454 million per year. Through SAFETEA–LU's funding, increases to the Indian Reservation Roads program and program enhancements, Tribes have been able to build lasting improvements that have positively impacted Indian Country. The IRR program, in conjunction with other Federal transportation programs, has enabled Indian Tribes to build critical capacity and deliver major projects that have improved the safety of Tribal communities and have brought jobs to Tribal members and the local community.

California has one of the largest Native American populations in the Nation and is home to over 110 Tribes. Tribal governments have learned to maximize IRR dollars. I am sorry that Senator Hoeven is not here. Because we have had to go into our local communities where there have been no monies. California's unratified treaties checkerboarded the lands. County and State roads do bisect our reservations that the lands were taken. We have no con-

trol over that. But we still have the duty to provide for safe communities for our Tribal members and families.

The economic indicators, we have all talked about that. Nearly one quarter of Native Americans live in poverty compared to a national average of 11.6 percent. And in Trinidad Rancheria, we are located on a remote north coastline. We have struggled for some time with a loss of jobs in the logging and forest products industry and commercial fishing industry. With the Recovery Act, we were able to develop capacity and deliver projects. We have a North Coast Tribal Transportation Commission that is home to 11 Tribes. And my full testimony talks about what those Tribes have accomplished.

A joint Yurok Tribal-Humboldt County project utilizing multiple funding sources including Recovery Act funding, I can go on and on. One of the major projects we have been working on is a regional marine facility, a pier for Trinidad Rancheria, that promotes the economy. We are driving piles as we speak.

By working together, Tribal programs are leveraging their internal capacity. And by coordinating with State and regional agencies, we are able to leverage our funding resources and plan projects that are mutually beneficial. Separately, we cannot be effective. Together, we cross over and leverage our funds, save lives, create jobs and improve our communities.

On the North Coast, the Tribal transportation commission has provided technical support to all of the Tribes in our region. I have four specific ways I am recommending to improve and build upon the successes in SAFETEA–LU, which are, increase funding for Tribal transportation, authorizing direct access to a broader range of Federal funded programs, to maximize the Federal investment and reduce bureaucratic red tape. There are ways to save dollars in streamlining the Federal investment and also streamlining the environmental review and permitting process.

On behalf of the Trinidad Rancheria, the Northern California Tribal Chairmens Association, the California Tribes and my Hoopa family, we thank the Committee for this opportunity to provide testimony. We look forward to the Committee's continued effort to build upon this success in the coming transportation reauthorization. And for your dedication, Senator Akaka, and your fellow Committee members, to improve the lives of Tribal people.

May God bless you, may God bless the Tribal nations, and may God bless America.

[The prepared statement of Ms. Hostler follows:]

PREPARED STATEMENT OF JACQUE HOSTLER, CHIEF EXECUTIVE OFFICER, CHER-AE HEIGHTS INDIAN COMMUNITY OF THE TRINIDAD RANCHERIA

Good afternoon Mr. Chairman and honorable members of the Committee on Indian Affairs. My name is Jacque Hostler, and I am the Chief Executive Officer of the Cher-Ae Heights Indian Community of the Trinidad Rancheria (referred to herein as the "Tribe" or "Trinidad Rancheria"). I am honored to present this testimony on behalf of the Tribe, and I bring the greetings of the Tribal Council and Tribal Chairman and thank the Committee for this opportunity. While I am providing testimony today solely in my capacity as a representative of the Trinidad Rancheria, my testimony is informed by my experience serving as the Representative for the Pacific Region and Vice-Chair of the Indian Reservation Road Program Coordinating Committee, a representative on the Caltrans Tribal Advisory Committee, the Chair-

person of the North Coast Tribal Transportation Commission, and my previous experience as a Tribal transportation coordinator and construction manager.

The Trinidad Rancheria would like to commend the Committee for holding this important and timely hearing and for your continued attention to Tribal transportation issues. As reflected in the title of today's hearing, Tribal transportation is a critical component of Tribal economies and Tribal government. Although Indian Tribes continue to suffer disproportionately from substantial unmet transportation and infrastructure needs, the Indian Reservation Road (IRR) Program, as implemented under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), has been an important success. The IRR Program in conjunction with other federal transportation programs in which Tribes directly participate has enabled Indian Tribes to build critical Tribal capacity and deliver major transportation projects that improve safety of Tribal communities, bring jobs to Tribal members and the community at large, support Tribal economic development and enhance the delivery of government services. For many Tribes, SAFETEA–LU's funding increases and program enhancements have allowed Tribes to build lasting improvements that serve the Tribal community in all these sectors. Congress' investment in Tribal transportation and infrastructure produces solid and meaningful returns and constitutes a critical way for Congress to fulfill its unique trust obligations to Indian Tribes.

The achievements Indian Tribes have generated through SAFETEA–LU 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. We cannot afford any steps backwards.

**The Cost of Existing Tribal Transportation and Infrastructure Deficiencies**

As the Committee is well aware, there are tremendous unmet transportation and infrastructure needs in Indian country. In order to consider how to improve Tribal transportation and infrastructure, we must first recognize the current condition of transportation facilities on the IRR System and the adverse impacts these unmet transportation and infrastructure needs cause to Tribal communities.

Indian Tribes rely on the roads on the IRR System to travel within our communities, to commute to work and school, to access health care. Our livelihood and welfare depend on these roads, yet an assessment prepared by the Bureau of Indian Affairs (BIA) described the IRR System as the most underdeveloped road network in the United States. The BIA has further estimated that the backlog of improvement needs for selected State and local Indian reservation roads exceeds $11.8 billion for BIA-owned roads and 9.1 billion for State, Tribal, and locally owned roads. In previous testimony before this Committee, John Baxter, Associate Administrator for Federal Lands for the Federal Highway Administration (FHWA), observed that these conditions make it very difficult for residents of Tribal communities to travel to hospitals, stores, schools, and employment centers.

The BIA further determined that the IRR System is a clear health and safety hazard for Tribal communities and an impediment to meaningful economic development. A federal traffic safety study shows that Indian Tribes suffer the highest per capita traffic facility rates in the United States—more than four times the national average. A report prepared by the National Highway Traffic Safety Administration observed grimly that, although the number of traffic fatalities is declining nationally, the number of fatal crashes on Indian reservations has increased by 52.5 percent. Data indicate that American Indians also have the highest rates of pedestrian injury and death per capita of any racial group in the United States. As alarming as these statistics are, they do not adequately convey the true human and economic toll, which Tribal communities know too well.

Economic indicators underscore the need for job creation on Indian reservations, and Tribal transportation projects can bring not only construction jobs but also spur economic growth within Tribal communities. Nearly one-quarter of Native Americans live in poverty compared to a national average poverty rate of 11.6 percent. The BIA's Indian Labor Force Report also calculates that 49 percent of the total Indian labor force living on or near reservations was unemployed. The economic situation faced by the Trinidad Rancheria reflects these statistics. We are located on the remote north coast of California, which has struggled for some time with the loss of jobs in the logging and forest products industry and the commercial fishing industry. Unemployment for the Tribe is 52 percent, and bringing jobs to this economically distressed areas is a top priority for the Tribe.

*Achievements Realized Under SAFETEA–LU*

Expanding Access and Building a Foundation

Prior to SAFETEA–LU, the IRR Program was a smaller program that served a relatively narrow slice of the national Tribal transportation needs. Many Tribes, expecially in California, were not able to participate directly in the IRR Program and their transportation needs were not addressed through the program. Congressional action in TEA–21, the IRR Program negotiated rulemaking and funding increases in SAFETEALU have opened participation in the IRR Program to all Tribes, with funding to be allocated according to relative need and construction challenges. The Indian Reservation Road System (IRR System) was similarly opened up to include all public roads that provide access to Indian reservations and Indian and Alaska Native communities, regardless of road ownership.

These changes have enabled Tribes throughout the United States to develop transportation programs to plan and deliver projects that tackle long-standing transportation and infrastructure needs. For example, on the Trinidad Rancheria, the annual funding we receive from the IRR Program has enabled the Tribe, for the first time, to establish a Tribal roads department, conduct a thorough inventory of the roads eligible for the IRR System, assess the Tribe's transportation and infrastructure needs, and develop a Tribal plan to address these needs. Thanks to SAFETEA–LU, the Tribe has developed the capacity to administer its own roads program through a direct program agreement with the FHWA, and, as discussed below, it has allowed us to develop major transportation projects and leverage the additional funds necessary to deliver these projects. We are also better able to coordinate with federal, state and regional transportation agencies.

**Planning and Building Projects and Delivering Jobs**

SAFETEA–LU authorizes Tribes to identify their transportation needs, develop a Tribal transportation improvement program, and plan and deliver transportation infrastructure projects. Indian Tribes have used this authority to develop their capacity to carry out these functions, and the records maintained under the American Recovery and Reinvestment Act (ARRA) demonstrates the internal capacity Tribes have established.

In 2009, Congress appropriated $310 million to the IRR Program (the "ARRA IRR Program"), above the annual IRR Program funding for FY 2009. The BIA and the FHWA have reported that 99 percent of the ARRA IRR Program funds were obligated on 518 projects and that 94 percent of these funds were obligated through contracts or compacts with Indian Tribes. Under the ARRA IRR Program, Indian Tribes developed and submitted the ARRA transportation improvement plans to fund 20 bridge projects, 1,300 road construction projects covering 1,300 miles of road, 17 transit projects, 60 road maintenance projects, and 320 design projects. The success of the ARRA IRR Program shows that not only is there a great unmet transportation infrastructure need, but that Indian Tribes have the capacity to plan and deliver these transportation projects.

The Trinidad Rancheria is pleased to report that the Tribe has recently commenced construction of a major transportation infrastructure project to replace a deteriorating transportation facility—the Trinidad Pier. This project, which is funded through a combination of federal, state, and Tribal funds (including the IRR Program and the IRR High Priority Program), is currently providing significant construction jobs and supporting the employment of local and regional suppliers. Moreover, the reconstructed pier will anchor the Tribal and local regional economy by supporting the jobs of commercial fishermen, recreational fishing businesses, various harbor businesses operated by the Tribe (e.g., a restaurant, tackle shop, and boat maintenance facilities), and the local hospitality industry. Additionally, the project will benefit the unique marine environment in Trinidad Harbor and help develop employment in the growing environmental tourism industry.

Below are examples of transportation projects several member Tribes of the North Coast Tribal Transportation Commission have delivered, or are in the process of delivering, which provide jobs and address the significant transportation needs:

- The Yurok Tribe's Bald Hill Road Paving Project was a joint Yurok Tribe- Humboldt County project utilizing multiple funding sources, including Recovery Act funding.
- The Karuk Tribe receives its IRR funding though a direct agreement with the FHWA. Construction on Itroop Road became a top priority when surface cracks on that road increased to more than 8" wide and threatened the viability of this sole access route for residents of a multi-unit single family Tribal housing community.

- The Smith River Rancheria conducted one of the first Tribally-led Road Safety Audit/Value Engineering (RSA/VE) study in which a state DOT, county government and FHWA fully participated. The study involved on-site field visits and inspections at all hours and in different weather conditions in order to experience, first hand, the road traffic and safety conditions at play.
- In the absence of public transit services in its region, the Blue Lake Rancheria Tribe, working closely with CalTrans, the California Highway Patrol, local hospitals and other groups, made public transit a reality. Thanks to funding from FTA's Tribal Transit Program, by 2010, the Tribe was providing 17,000 one way rides a year.
- The Hoopa Valley Tribe has implemented the Bald Hill Stabilization Project to prevent closure of an emergency exit from the Reservation and avoid a lengthy detour for residents, extended Redwood Grove Road for residential development, and developed a project study to provide crosswalks, sidewalks and medians on the Reservation.
- To enhance safety, the Elk Valley Rancheria has designed underpasses and trail corridors to accommodate pedestrians and cyclists crossing highway 101 and is coordinating with a wildlife scientist to incorporate elk crossing features.

These examples represent a small sample of transportation projects being delivered by Indian Tribes. They all highlight the ability of rural Tribes to deliver major projects to economically distressed areas.

**Partnering and Coordination**

Partnerships and coordination among Tribes and between Tribes and state and local agencies are a necessity for many Tribes, especially in California where the IRR Program funding is relatively limited. SAFETEA–LU has provided Tribes with the resources necessary to develop such relationships. By working together, Tribal programs are leveraging their internal capacity, and by coordinating with state and regional agencies, we are able to leverage our funding resources and plan projects that are mutually beneficial. On the North Coast of California, we have formed the North Coast Tribal Transportation Commission, which has eight member Tribes who work together on common interests, provide mutual technical assistance, and coordinate with the local regional transportation agencies and the California Department of Transportation. Our Tribal transportation commission has successfully built a number of productive partnerships. The Commission's successful collaboration has been recognized by the Director of the California Transportation Commission and received a Federal Highways Exemplary Human Service Award.

**Improving and Building Upon SAFETEA–LU**

While SAFETEA–LU has advanced important policy and program opportunities, in many respects it has showed us how much remains to be done. Indeed, experience has shown that the funding and scope of Tribal programs in SAFETEA–LU are insufficient to make sufficient progress addressing transportation needs on the ground. In order to more fully address the unmet infrastructure and safety needs of Indian Tribes we need to build upon the progress made in SAFETEA–LU.

For several years a broad cross section of Indian Tribes have worked with the National Congress of American Indians (NCAI) and the InterTribal Transportation Association (ITA) joint task force to develop a consensus set of Tribal priorities for the reauthorization of SAFETEA–LU. These consensus priorities are set forth in the National Tribal Leadership Paper on Tribal Transportation Priorities ("White Paper"), which has been adopted by both NCAI and ITA. The Committee on Indian Affairs clearly recognizes the significance of such a broad interTribal consensus on these issues, and, in 2009, the Committee Chairman released draft legislation which largely tracked these provisions. Below are some of the key priorities identified in White Paper.

*Funding*

While we understand that it is a difficult time to increase funding for any government program and that many programs are facing budget cuts. However, there is a strong justification providing an increase to the IRR Program. In addition to the unmet need, Indian Tribes have suffered from historical funding inequities. Although Indian Reservation Roads make up nearly three percent of the federal roadways, they receive less than 0.5 percent of the total federal highway funding. The funding inequities are even sharper when the funding for Tribal programs is compared to the funding provided to states. For example, at the current funding levels, the IRR Program receives only about half the amount per road mile that states receive. Moreover, there is evidence that states, who receive federal funding for their

own roads that fall within reservations, do not fulfill their obligation to improve or maintain these roads.

Any reduction to the IRR Program funding would seriously impair the ability of Indian Tribes to deliver actual projects on the ground. Under the SAFETEA–LU funding levels for FY 2009, Tribes with relatively small transportation programs must coble resources together from a number of sources and over several years to carry out solely the design and permitting phase of a major project. If IRR Program funding is not increased or even diminished, many Tribes may be precluded from delivering major projects. Not only would this breach Congress' trust obligation to Tribes, it would undermine the Tribal government capacity which has been built under SAFETEA–LU.

*Direct Access to a Broader Range of Federally Funded Programs*

Transportation safety is DOT's highest priority, yet the data clearly indicates that Congress and the Administration have not succeeded in reducing the appalling rate of traffic fatalities in Indian country. Under SAFETEA–LU Congress authorized $1.275 billion in FY 2008 alone for State-administered High Risk Rural Road Program, and nearly $700 million for the NHTSA-administered Highway Safety Programs. However, Tribal governments, who face the greatest growing highway safety problem, have not been able to access these programs. To effectively combat the factors that contribute to highway accidents in Indian country, Tribes must be provided direct access to these programs, and to accomplish this the White Paper recommends establishing a two (2) percent Tribal funding set aside within the High Risk Rural Roads Program and creating new Tribal traffic safety programs with FHWA and the National Highway Transportation Safety Administration (NHTSA).

*Maximize the Federal Investment*

There is general agreement within Congress and the Administration of the need to reduce bureaucratic hurdles that impair efficient program administration and to increase program flexibility. This is particularly important for Indian Tribes, which have extremely limited program budgets. The Indian Self-Determination and Education Assistance Act (ISDEAA) has a proven record as an effective and accountable way to reduce administrative costs and studies show that programs administered under ISDEAA have become engines for economic growth in their communities. Congress has sought to extend greater authority to Tribes to carry out the Indian Reservation Roads (IRR) Program under ISDEAA agreements with the Bureau of Indian Affairs and direct program agreements with the Federal Highway Administration. By increasing the scope of the programs that can be included in ISDEAA agreements, Congress can maximize federal investment in roads infrastructure and to put more people to work.

In particular, we support extending the ISDEAA agreements to all Department of Transportation (DOT) programs serving Tribes, including programs administered by the Federal Highways Administration (FHWA), FHWA-Federal Lands Highway, Federal Transit Administration, National Highway Traffic Safety Administration and other federal transportation agencies. The FHWA has successfully implemented direct program agreements with Tribes, and the program has grown quickly over the last two years. Based on this experience, we believe that DOT would be able to establish and implement a successful Tribal transportation program under the ISDEAA and we support extending such a program to DOT.

*Streamline Environmental Review and Permitting Processes*

The Administration and Congress have noted that it takes far too long to deliver a transportation project and have indicated support for streamlining the environmental review and permitting processes for transportation projects. The Trinidad Rancheria wholeheartedly agrees. Because many Tribal projects depend on both federal and state funding, or involve transportation facilities located on state rights of way, Tribes must often comply with overlapping federal and state environmental review and permitting requirements, which can delay projects for years and result in significant additional costs for even modest projects. The Tribe supports the protection of environmental resources and we have undertaken several projects to reduce existing impacts to the environment. However, there must be balance, and we respectfully urge the Committee to work with the Senate Environment and Public Works Committee to ensure that Indian Tribes benefit equally from any efforts to streamline these requirements for state projects. Additionally, Tribal projects should not be burdened with any additional state requirements or costs that are not imposed on projects implemented by state or local government agencies.

**Conclusion**

On behalf of the Trinidad Rancheria, I thank the Committee for your continued attention to Tribal transportation issues. Tribal transportation is a critical component of Tribal economies and Tribal government. The opportunities created by SAFETEA–LU and the Recovery Act have led to numerous important successes in which Tribes have improved safety of Tribal communities, brought jobs to Tribal members and the community at large, supported Tribal economic development and enhanced the delivery of government services. We look forward to the Committee's continued effort to build upon these successes in the coming transportation reauthorization.

The CHAIRMAN. Thank you very much, Ms. Jacque Hostler, for your testimony. I want to thank this panel for your testimony today.

As we heard today, and this question is for the entire panel, as we heard today, many of the Tribes have had a number of natural disasters over the years, which have had significant impacts on Tribal roads and bridges. We have heard that from other witnesses.

My question to you is, what recommendations do you have for ensuring that Tribes are able to repair and restore their roads after natural disasters?

Mr. MURPHY. Mr. Chairman, for the record, can I have Mr. Pete Red Tomahawk answer that for our Tribe, the Standing Rock Sioux Tribe? Because we have had several of them, and we talked about this. I will let him explain that.

The CHAIRMAN. Yes. Thank you. Will you please give your name and position?

Mr. RED TOMAHAWK. Thank you, Mr. Chairman. My name is Pete Red Tomahawk. I am a member of the Standing Rock Sioux Tribe. [Greeting in Native tongue]. Good afternoon.

The CHAIRMAN. Good afternoon.

Mr. RED TOMAHAWK. I see on your bio your birthday is coming up. I want to wish you a happy birthday.

The CHAIRMAN. Mahalo, thank you very much.

Mr. RED TOMAHAWK. Mr. Chairman, we have been experiencing a lot of disasters. First, we deal with the snow issue, and then we get a lot of snow, 18, 20 feet of snow. Our road maintenance can't handle that snow.

We go to the BIA and the BIA, when Mike Black was the regional director, he contacted the Rocky Mountain Region, their regional director. What they were able to do was contact the Tribes within their region. They came together like the Blackfeet, Fort Belknap, Fort Peck, the Assiniboine Sioux, the Crow, the Northern Cheyenne and all these Tribes came together and they brought equipment. And they came down and they helped us, not only Standing Rock, but Cheyenne River. We were in dire, dire need of help and they came and they helped us. They helped us open the roads.

And them next comes the floods. As soon as the snow melts, then we have a lot of water. This year was really bad, because of the melted snow. It affected the whole Missouri River. This is the first time there is dams on the Missouri River with Fort Peck Garrison Dam, the Walhee Dam and Pier, Big Bed in Fort Thompson, Fort Randall, the Gavins Point and looking at all these dams here. This is the first time, with the Garrison Dam, there are 28 spillways.

And with the 28 spillways, this is the first time all 28 spillways were open

There were 285,000 CFSs of water coming through the spillways. As the water, it was just overwhelming all the houses and looking at the community that Senator Hoeven comes out of, looking at all that, it was just terrible. And one of the Tribes, the Lower Brule Sioux Tribe, they experienced death where the water went over the road, and there were two elderly ladies thinking that the water just went over the road. And it created a huge tunnel underneath and the ladies lost their lives. Later on there was another accident that took four more.

So this flood is really bad, and we are going into the fire next. So we have back to back disasters on Standing Rock. That is where it is at, Mr. Chairman. Thank you.

The CHAIRMAN. Mr. Martel?

Mr. MARTEL. Mr. Chairman, I would like to call on my transportation director to update us, but before I do, last year we had probably a thousand year flood on our reservation. For some reason we got all this rain and snow, and we had a real warm spring and all the snow melted at once and wiped out one of our major bridges through the main thoroughfare on our reservation, destroyed a lot of roads, threatened a lot of homes. We were fortunate that we didn't lose any lives but we utilized a lot of our local resources, FEMA was there to help us. We are one of the reservations that has a pretty decent relationship with the Wyoming Department of Transportation. They lent their assistance and their expertise to us. But I would like to ask our transportation director to give you a little more detail on that.

Mr. SMITH. Hapa. That is hello, friend. As far as our opportunity this year, like Pete, it is our second year of floods. In 2010, we experienced over $2.2 million worth of damage to our roads and our bridges. As the Federal agency, the emergency Federal aid that was provided to the Tribes, was calculated to absorb two bridges that we have suffered huge damages with and we have lost one total bridge between our two reservation communities, which is the direct access for goods and services. I think their Wal-Mart took a big hit last year, because we weren't able to get down and have a lot of people.

And the bridge is passable at this time. Just as we were reshaping up our roads and our bridges from last year, because the money came in in December and January, where you can't work in Wyoming very well, when the ice is flowing and so forth, that we were just now cleaning up from the previous year's flood damage and we got hit again.

But several good things have happened with our technology that we also use, it is satellite technology and GIS–GPS surveying. So we knew where our danger spots were, so we shored those up. To this year's damages, we are in the range of $300,000. So even though we had more water, we were able to absorb a lot of the damages.

But the unfortunate thing is, as Mr. Red Tomahawk can attest, we get the money, but in order to get the money you have to spend your existing IRR money. So that doesn't let you build many projects that you had planned for in the years ahead to get your

money back and put those funds back into the system. So it really hinders, a double whammy, so to speak, on your road projects.

So we are very limited in projects we could perform this year, because we do not have the allocation or the funds available. And with the present system of funding as has been dribbled out to us in appropriations in a segment process that really defeats our long-term process of being able to complete our projects. That is a real hindrance, Mr. Chairman. Thank you. If I could answer any questions, I will be happy to.

The CHAIRMAN. Thank you very much.

Mr. Chaco?

Mr. CHACO. Thank you, Mr. Chairman and members of the Committee. The question is, what recommendation. For Navajo, we have our testimony, which is related to direct funding. Direct funding for basically one is a streamlining of reimbursement processes from FEMA. Secondly is the ability for the nations to declare their own emergencies. The other one is the ability to move the minimum funding requirements within FEMA. Normally what happens, I came from a small Tribe, worked for a small Tribe. In that case, we literally had to include several Tribes in order to meet the qualifications under FEMA regulations.

So those are the recommendations that I pose forward.

The fourth is funding in road maintenance. Road maintenance is funded under the Department of Interior budget. As other Tribes have indicated, that has to be shored up in order to maintain our roads, and includes road maintenance and washouts. Right now, on Navajo, I have over 50 washouts of culverts as we speak. The photos that you see on the pictures here is recent rains and recent washouts that we have. We have families that can't get across the washout.

So those are my recommendations, Mr. Chairman. Thank you.

The CHAIRMAN. Thank you so much, Mr. Chaco.

Ms. Hostler?

Ms. HOSTLER. Senator Akaka, I managed over two emergencies in the Hoopa Tribe for over three years. It took over a year to get funding flowing in. And all of these gentlemen are exactly correct: the biggest need is that direct access for immediate emergency funds to come into the reservation.

Currently we have to wait for the Federal Highways representative to make it to the reservation. Sometimes that takes months. Then we have to wait for the partnership with the Federal Highways representative and the regional road engineer. That also takes weeks at times. Then we have to expend our own maintenance funds, and oftentimes by the winter, those funds are already expended. So in order to open roads and to have safe passage we have to use any construction funding that may be available, which oftentimes is not reimbursed for over a year.

So I concur with all of my colleagues.

Additionally, those contracts that come through the BIA are 93–638 contracts and take months to initiate. It is a cost reimbursable contract, most of the time. So all of those bureaucracies add to the pain and suffering of the Tribal members on the reservation.

The timing of the delivery of funding and again, Mr. Chaco just mentioned the BIA maintenance money. If the roads have not been

maintained properly for any reason, whether it is lack of funds or lack of time, those roads are not eligible. Because they say, if the maintenance would have been done, those roads would be eligible and those assessments can move forward. If I didn't have funding to manage 300 miles of roads on the Hoopa Tribe, I was only funded at 11 percent of need, then I could not, I was not eligible for those roads to be reimbursed for emergencies.

So there is a series of things that need to be corrected in coordination with the agencies and that direct access to the Tribe. Thank you.

The CHAIRMAN. I thank you very much for your testimonies and your responses. And again, I want to express my mahalo to the witnesses at today's hearing. The testimony we have heard today is very valuable and the Committee will consider it as we move forward to draft Tribal transportation legislation.

I am looking forward to working with my colleagues on the Indian Affairs Committee and the other Senate committees that deal with transportation issues to make sure that Tribal priorities are considered as the Senate moves forward with surface transportation reauthorization. So this is what we are trying to get into before we arrive there.

So your responses have been very valuable. Again, mahalo, thank you very much. This hearing is adjourned.

[Whereupon, at 4:10 p.m, the Committee was adjourned.]

# A P P E N D I X

PREPARED STATEMENT OF MICHAEL HOFFMAN, VICE PRESIDENT, ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS (AVCP)

**Introduction**

I wish to thank the Committee, and especially Chairman Akaka and Vice Chairman Barrasso, as well as our wonderful Senator on this Committee, Lisa Murkowski, for the time and attention the Committee is giving to the crucial topic of transportation in Indian Country.

**Background**

The Association of Village Council Presidents (AVCP), headquartered in Bethel, Alaska, is a Native organization providing social, economic and educational services to 56 separate Tribal governments in the Yukon-Kuskokwim Delta. Our 56 member Tribes are scattered throughout the YK-Delta in an area that is approximately 59,000 square miles and roughly the size of the state of Oregon. Our villages are not connected by road to one another nor to the rest of Alaska. Our unique geography poses great challenges to our efforts to provide safe access to basic essential services.

**Summary Points—Safety and Access**

AVCP has made it a top Tribal priority to maximize its utilization of the authority granted to it in SAFETEA–LU so that our citizens can have access to basic services and safe passage on par with the rest of America. Access and safety is our goal. For decades, AVCP and the rest of Native Alaska were left behind the rest of Indian Country when it came to federal support for building transportation systems. As a result, our unmet need became overwhelmingly huge. We have begun, however, to make significant efforts toward meeting some of that unmet need in the past five or six years. SAFETEA–LU has made that possible, by placing Alaska Native Tribes at the table with our fellow Tribes throughout Indian Country and offering us the opportunity to meet the same rules and regulations that applied to other Tribes. Accordingly, we have been able to begin to address critical issues that impact the health and safety of our people. We strongly urge this Committee to ensure that your colleagues do not alter the basic framework that was put in place in SAFETEA–LU. We ask that you do everything within your power to leverage additional resources to Indian Country because all of our unmet needs for access to basic essential services and traffic safety make a compelling case for a larger share of federal funding when compared to the rest of America.

**Funding Formula**

In recent months, the funding formula that is required by SAFETEA–LU has come under attack by some who believe that it has reallocated funding away from true need. We believe the attack is without a basis in fact. The funding distribution formula has resulted in an increased pool of Indian Reservation Roads (IRR) funding that more precisely identifies and addresses actual need for safety and access throughout all of Indian Country.

An example of this is the eligibility of remotely located Native villages who, until SAFETEA–LU, had no access to IRR funding for basic access to essential health, education and work resources as well as important cultural sites. Maintaining the existing statutory and regulatory authority for proposed and primary access roads is an extremely crucial issue for us, and we urge the Committee to resist all calls to alter that framework that has begun to work for all corners of Indian Country, especially those in its most remote locations.

**Unity is Key**

As we have urged our Tribal leader colleagues in forum after forum, we believe it is in all of our best interests to join together to seek, in unity, a greater share of the federal funding resources based upon our combined unmet need for safe ac-

cess to essential services, which need is far greater than the needs of nearly every other group in America.

Indian Country is, for the most part, located far from the services most Americans take for granted. Safe and reliable access to basic health care, education, commerce, and employment are a huge challenge for most of Indian Country, and together, we can make the best case for a greater share of federal resources. When this issue of "access to basic services" is combined with the issue of how unsafe are the transportation systems in much of Indian Country, we should have an overwhelming claim to federal resources. Access and safety each implicate life and death challenges that daily confront Native communities throughout all of Indian Country. Access and safety should be the rallying cry for all Indian Tribes and Native communities. We urge this Committee to urge its colleagues to strengthen SAFETEA–LU rather than weaken it.

**Feasibility and Survival**

Any effort to impose a "feasibility" standard or other length limitation on eligibility is a proposal to forsake entire Native communities and thwart Indian self-determination and the right to preserve our own ways of life. Writing off entire communities simply because they are home to "too few" people or are "too remote" for some urbanites' notions of what is "inhabitable" is an affront to Native culture and way of life and a direct and repulsive threat to our future. We urge the Committee to resist calls to change SAFETEA–LU's basic framework of eligible funding distribution formulas and inventory eligible for funding. Any effort to place a length limitation on a remotely Native village is to once again rule out their participation in the IRR program and impede our progress to address critical safety issues in our region.

**Proposed and Primary Access Routes**

We wish to re-emphasize to the Committee the importance that proposed and primary access intermodal routes play in Alaska's very underdeveloped transportation infrastructure; especially across the large Native land areas that are not served by state or federal road systems. Under SAFETEA–LU, we are delivering critical transportation plans, projects, and programs to "undeveloped" and "underdeveloped" rural Alaska. We are providing primary access routes that connect our people to basic health, education, safety, and employment resources that are absolutely vital to the survival of many Tribal citizens who struggle to survive across a vast Native land base.

We oppose the various suggestions that have been proposed that would limit funding, including setting a defined mileage length, after which a route would generate no funding under the IRR formula. Tribes in Alaska collectively have a very unique land base. Any proposed solution to any national Tribal issue that is based on land boundaries would be fundamentally unworkable in Alaska. For example, one suggestion has been to limit funding only to roads that extend no more than 15 miles from a reservation boundary or Native village or corporation boundary. Such boundaries in Alaska do not correspond with transportation needs. They are far removed from population centers and have no resemblance to reservation boundaries in the Lower 48. In Alaska, where the federal and state highway system is virtually nonexistent in most areas, and the unique landscape and land ownership is diverse from Tribe to Tribe and region to region, trying to implement such a radical proposal in a fair manner would be impossible.

**Transportation and Access to Services**

Notably, for purposes of service delivery, the BlA has long considered the entire State of Alaska to be a single service delivery area without boundaries, with nearly 80,000 Tribal members of 229 Tribes residing in communities throughout a large land area that is over twice the size of Texas and larger than the combined area of the 22 smallest states. Likewise, the IHS has long considered the entire State of Alaska to be one Contract Health Services Delivery Area for purposes of providing health care to American Indians and Alaska Natives. In providing federal support for transportation services, the federal government uses the same approach it uses to provide support for BIA and IHS services. Indeed, transportation without boundaries throughout all of Alaska is absolutely necessary in order for SAFETEA–LU to be of use in Alaska. It would be a callous and craven federal policy to offer IHS and BIA services without boundaries but then deny the supposed beneficiaries transportation access to those services.

**Relative Need**

We object to any effort to cap a Tribe's proposed routes by limiting the proposed miles funded to no more than 2 percent of the miles already built in the Tribe's in-

ventory each year. Such a proposal, if implemented, would have a destructive effect on all Tribes who, like most of those in Alaska, have only recently become eligible to participate in the IRR program under the new authority provided in SAFETEA–LU. Before SAFETEA–LU, Alaska Tribes were unable to secure much funding because of the way BIA distributed funds. With SAFETEA–LU, and its focus on proposed and primary access roads, Alaska Tribes now have authority and funding to begin address to decades of neglect and isolation from basic human services.

While most Tribes in the Lower 48 states are likewise relatively neglected and isolated, the BIA IRR program and surrounding state and county transportation programs have been addressing their transportation needs for at least four decades. In Alaska, however, Tribes are much further behind not only the rest of America, but also, much further behind the Tribes in the Lower 48 states, having had only a few years of participation in the IRR program under SAFETEA–LU.

**Alaska Offers Opportunity**

By adhering to SAFETEA–LU authority, and by following the rules promulgated under it, Alaska regional Tribes and Tribal organizations have begun to make great strides toward improving safe and reliable access of their citizens to essential services. We are rebuilding access to villages for citizens who were forcibly removed by the United States decades ago. We are rebuilding access to small, remote villages whose way of life deserves to be preserved not abandoned.

Until SAFETEA–LU, the IRR program allocated very little funding to address the staggering transportation needs of Tribes in Alaska. After SAFETEA–LU and its Relative Needs Formula that was produced by a negotiated rulemaking process in which everyone participated, Alaska Tribes in the last several years began to receive a long overdue relative needs share of the underfunded IRR program. The increases to meet relative needs in Alaska have been lawfully allocated, in compliance with the tools and authorities in SAFETEA–LU that are available to all Tribes wherever situated. We urge the Committee to resist all calls to weaken the SAFETEA–LU statute and instead ask the Committee to reauthorize the law so that it can work as intended for everyone.

**Conclusion**

Transportation needs in Indian Country for safe access to basic essential services are much more acute than in the rest of America, and the federal funding to meet those needs has been far from sufficient. The increases in funding that accompanied SAFETEA–LU were the product of a unified voice and approach from all of Indian Country that compared the relative needs of Indian Country, including safe access to health and other basic services, with the rest of America. We ask the Committee to focus on this in its efforts to direct a greater portion of federal transportation funding in Indian Country.

We thank you for this opportunity to speak on this very critical issue. There is a lot at stake for us and our Tribal members. Safe access to basic services is critical to our survival as a people. We hope our diverse voices today will help inform your decisions on reauthorization of SAFETEA–LU.

JOINT PREPARED STATEMENT OF JULIA F. DORRIS, PRESIDENT AND LOREEN J. STEEVES, VICE PRESIDENT, VILLAGE OF KALSKAG TRADITIONAL COUNCIL

Introduction. I wish to thank the Committee, and especially Chairman Akaka and Vice Chairman Barrasso, as well as our wonderful Senator on this Committee, Lisa Murkowski, for the time and attention the Committee is giving to the crucial topic of transportation in Indian Country.

Background. The Village of Kalskag Traditional Council is situated in the AVCP (Association of Village Council Presidents) region on the Yukon- Kuskokwim Delta. We are one of the 56 Tribes scattered throughout the YK-Delta, an area that is approximately 59,000 square miles and roughly the size of the state of Oregon. The villages are not connected by road to one another nor to the rest of Alaska. Our unique geography poses great challenges to our efforts to provide safe access to basic essential services.

Summary points – Safe Access. Access and safety is our goal; safe access/safe passage to basic services on par with the rest of America. For decades our Tribe, along with other Tribe's of Alaska were left behind the rest of Indian Country when it came to federal support for building transportation systems. As a result, our unmet need became overwhelmingly huge. We have begun, however, to make significant efforts toward meeting some of that unmet need in recent years. SAFETEA-LU has made that possible, by placing Alaska Native Tribes at the table with our fellow Tribes throughout Indian Country and offering us the opportunity to meet the same rules and regulations that applied to other tribes. Accordingly, we have been able to begin to address critical issues that impact the health and safety of our people.

We strongly urge this Committee to ensure that your colleagues do not alter the basic framework that was put in place in SAFETEA-LU. We ask that you do everything within your power to leverage additional resources to Indian Country because all of our unmet needs for access to basic essential services and traffic safety make a compelling case for a larger share of federal funding when compared to the rest of America.

Funding Formula. In recent months, the funding formula that is required by SAFETEA-LU has come under attack by some who believe that it has reallocated funding away from true need. We believe the attack is without a basis in fact. The funding distribution formula has resulted in an increased pool of Indian Reservation Roads (IRR) funding that more precisely identifies and addresses actual need for safety and access throughout all of Indian Country.

Maintaining the existing statutory and regulatory authority is an extremely crucial issue for us, and we urge the Committee to resist all calls to alter that framework that has begun to work for all corners of Indian Country, especially those in its most remote locations.

Unity is Key. We believe it is in all of our best interests to join together to seek, in unity, a greater share of the federal funding resources based upon our combined unmet need for safe access to essential services, which need is far greater than the needs of nearly every other group in America.

Feasibility and Survival. Any effort to impose a "feasibility" standard or other length limitation on eligibility is a proposal to forsake entire Native communities and thwart Indian self-determination and the right to preserve our own ways of life. Writing off entire communities simply because they are home to "too few" people or are "too remote" for some urbanites' notions of what is "inhabitable" is an affront to Native culture and way of life and a direct and repulsive threat to our future.

We urge the Committee to resist calls to change SAFETEA-LU's basic framework of eligible funding distribution formulas and inventory eligible for funding. Any effort to place a length limitation on a remotely Native village is to once again rule out their participation in the IRR program and impede our progress to address critical safety issues in our region.

Proposed and Primary Access Routes. We wish to re-emphasize to the Committee the importance that proposed and primary access intermodal routes play in Alaska's very underdeveloped transportation infrastructure; especially across the large roadless Native land areas that are not served by state or federal road systems. Primary access routes are imperative in connecting our Tribal members to basic health, education, safety, and employment resources that are absolutely vital to the survival of many Tribal members who struggle to survive across a vast Native land base.

We oppose the various suggestions that have been proposed that would limit funding, including setting a defined mileage length, after which a route would not generate funding under the IRR formula. Tribes in Alaska collectively have a very unique land base. Any proposed solution to any national tribal issue that is based on land boundaries would be fundamentally unworkable and unfair in Alaska since land ownership is diverse from Tribe to Tribe.

Transportation and Access to Services. The BIA has long considered the entire State of Alaska to be a single service delivery area without boundaries, with nearly 80,000 Tribal members of 229 Tribes residing in communities throughout a large land area that is over twice the size of Texas and larger than the combined area of the 22 smallest states. Likewise, the IHS has long considered the entire State of Alaska to be one Contract Health Services Delivery Area for purposes of providing health care to American Indians and Alaska Natives. In providing federal support for transportation services, the federal government uses the same approach it uses to provide support for BIA and IHS services. Indeed, transportation without boundaries throughout all of Alaska is absolutely necessary in order for SAFETEA-LU to be of use in Alaska. It would be a callous and craven federal policy to offer IHS and BIA services without boundaries but then deny the supposed beneficiaries transportation access to those services.

Relative Need. We object to any effort to cap a Tribe's proposed routes by limiting the proposed miles funded to no more than 2% of the miles already built in the Tribe's inventory each year. Such a proposal, if implemented, would have a destructive effect on the Village of Kalskag who, like most of those in Alaska, has only recently become eligible to participate in the IRR program under the new authority provided in SAFETEA-LU.

Alaska Offers Opportunity. By adhering to SAFETEA-LU authority, and by following the rules promulgated under it, the Village of Kalskag Tribe, along with other Alaska region Tribes and tribal organizations have begun to make great strides toward improving safe and reliable access for our Tribal members' access to essential services.

SAFETEA-LU and the IRR program are working for our Tribe and our Tribal members are benefiting from the program. Why change a program that is successfully performing and producing the results it was meant to?

Until SAFETEA-LU, the IRR program allocated very little funding to address the staggering transportation needs of Tribes in Alaska. After SAFETEA- LU and its Relative Needs Formula that was produced by a negotiated rulemaking process in which everyone participated, Alaska Tribes in the last several years began to receive a long overdue relative needs share of the underfunded IRR program. The increases to meet relative needs in Alaska have been lawfully allocated, in compliance with the tools and authorities in SAFETEA-LU that are available to all Tribes wherever situated. We urge the Committee to resist all calls to weaken the SAFETEA-LU statute and instead ask the Committee to reauthorize the law so that it can work as intended for everyone.

Conclusion. Transportation needs in Indian Country for safe access to basic essential services are much more acute than in the rest of America, and the federal funding to meet those needs has been far from sufficient. The increases in funding that accompanied SAFETEA-LU were the product of a unified voice and approach from all of Indian Country that compared the relative needs of Indian Country, including safe access to health and other basic services, with the rest of America. We ask the Committee to focus on this in its efforts to direct a greater portion of federal transportation funding in Indian Country.

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JOINT PREPARED STATEMENT OF ZECHARIAH C. CHALIAK, SR., PRESIDENT AND WASSILIE PLEASANT, SECRETARY, NATIVE VILLAGE OF NUNAPITCHUK (IRA COUNCIL) TRIBE

Introduction. I wish to thank the Committee, and especially Chairman Akaka and Vice Chairman Barrasso, as well as our wonderful Senator on this Committee, Lisa Murkowski, for the time and attention the Committee is giving to the crucial topic of transportation in Indian Country.

Background. The Native Village of Nunapitchuk (IRA COUNCIL) Tribe is situated in the AVCP (Association of Village Council Presidents) region on the Yukon- Kuskokwim Delta. We are one of the 56 Tribes scattered throughout the YK-Delta, an area that is approximately 59,000 square miles and roughly the size of the state of Oregon. The villages are not connected by road to one another nor to the rest of Alaska. Our unique geography poses great challenges to our efforts to provide safe access to basic essential services.

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We strongly urge this Committee to ensure that your colleagues do not alter the basic framework that was put in place in SAFETEA-LU. We ask that you do everything within your power to leverage additional resources to Indian Country because all of our unmet needs for access to basic essential services and traffic safety make a compelling case for a larger share of federal funding when compared to the rest of America.

Funding Formula. In recent months, the funding formula that is required by SAFETEA-LU has come under attack by some who believe that it has reallocated funding away from true need. We believe the attack is without a basis in fact. The funding distribution formula has resulted in an increased pool of Indian Reservation Roads (IRR) funding that more precisely identifies and addresses actual need for safety and access throughout all of Indian Country.

Maintaining the existing statutory and regulatory authority is an extremely crucial issue for us, and we urge the Committee to resist all calls to alter that framework that has begun to work for all corners of Indian Country, especially those in its most remote locations.

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Feasibility and Survival. Any effort to impose a "feasibility" standard or other length limitation on eligibility is a proposal to forsake entire Native communities and thwart Indian self-determination and the right to preserve our own ways of life. Writing off entire communities simply because they are home to "too few" people or are "too remote" for some urbanites' notions of what is "inhabitable" is an affront to Native culture and way of life and a direct and repulsive threat to our future.

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We oppose the various suggestions that have been proposed that would limit funding, including setting a defined mileage length, after which a route would not generate funding under the IRR formula. Tribes in Alaska collectively have a very unique land base. Any proposed solution to any national tribal issue that is based on land boundaries would be fundamentally unworkable and unfair in Alaska since land ownership is diverse from Tribe to Tribe.

Transportation and Access to Services. The BIA has long considered the entire State of Alaska to be a single service delivery area without boundaries, with nearly 80,000 Tribal members of 229 Tribes residing in communities throughout a large land area that is over twice the size of Texas and larger than the combined area of the 22 smallest states. Likewise, the IHS has long considered the entire State of Alaska to be one Contract Health Services Delivery Area for purposes of providing health care to American Indians and Alaska Natives. In providing federal support for transportation services, the federal government uses the same approach it uses to provide support for BIA and IHS services. Indeed, transportation without boundaries throughout all of Alaska is absolutely necessary in order for SAFETEA-LU to be of use in Alaska. It would be a callous and craven federal policy to offer IHS and BIA services without boundaries but then deny the supposed beneficiaries transportation access to those services.

Relative Need. We object to any effort to cap a Tribe's proposed routes by limiting the proposed miles funded to no more than 2% of the miles already built in the Tribe's inventory each year. Such a proposal, if implemented, would have a destructive effect on Native Village of Nunapitchuk(IRA COUNCIL) Tribe who, like most of those in Alaska, has only recently become eligible to participate in the IRR program under the new authority provided in SAFETEA-LU.

Alaska Offers Opportunity. By adhering to SAFETEA-LU authority, and by following the rules promulgated under it, Native Village of Nunapitchuk (IRA COUNCIL) Tribe, along with other Alaska region Tribes and tribal organizations have begun to make great strides

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We thank you for this opportunity to speak on this very critical issue. There is a lot at stake for our Tribal members. Safe access to basic services is critical to our survival as a people. We hope our diverse voices today will help inform your decisions on reauthorization of SAFETEA-LU.

PREPARED STATEMENT OF JON GREENDEER, PRESIDENT, HO-CHUNK NATION

Dear Chairman Akaka & Committee Members:

I am writing in order to respond to testimony that was presented to the Committee at the Oversight Hearing on Tribal Transportation on September 15th. Testimony from several witnesses contained some rather severe accusations, and contained information that was inaccurate and blatantly untrue. It is my desire to set the record straight.

In general, the testimony given by the Rocky Mountain Region, the Great Plains Region and the Intertribal Transportation Association (ITA) representing large land-based tribes describes a scenario where these tribes have lost millions of dollars in funding due to a number of factors. **The reality is that these two regions have seen overall funding increases of between 50 and 80 percent since the implementation of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) in 2005.** For example, in 2009 the Great Plains Region had an increase in funding of 70% compared to 2005 and in 2011 had an increase of 80% compared to 2005. The Rocky Mountain Region increased funding in 2009 by 80% compared to 2005 and by 50% in 2011. To state that the tribes in these regions have lost money is disingenuous at best. It might be more accurate for them to say they did not receive as big of an increase as they would have liked.

The main factor cited by these regions for the "loss" of funding appears to be what they characterize as the proliferation of non-tribal and non-BIA owned roads in the inventory for the program. This is an interesting fact for them to take because these regions rely so heavily on non-tribal and non-BIA owned roads for their own funding. **In fact, over 82% of the roads in the inventory for the Great Plains Region and almost 50% of the roads in the inventory for the Rocky Mountain Region are owned by a State, County or Township and not by a tribe or the BIA.** It is unclear how, or if, the large land-based tribes would distinguish roads owned by States, Counties or Townships in their inventories versus the roads owned by those entities in currently proposed changes to the program and please, continue to allow all tribes the ability to participate in the program.

I hope this information sheds some light on these issues and you find it useful. Thank you for your consideration in this matter.

Introduction. I wish to thank the Committee, and especially Chairman Akaka and Vice Chairman Barrasso, as well as our wonderful Senator on this Committee, Lisa Murkowski, for the time and attention the Committee is giving to the crucial topic of transportation in Indian Country.

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Relative Need. We object to any effort to cap a Tribe's proposed routes by limiting the proposed miles funded to no more than 2% of the miles already built in the Tribe's inventory each year. Such a proposal, if implemented, would have a destructive effect on Native Village of Nunapitchuk(IRA COUNCIL) Tribe who, like most of those in Alaska, has only recently become eligible to participate in the IRR program under the new authority provided in SAFETEA-LU.

Alaska Offers Opportunity. By adhering to SAFETEA-LU authority, and by following the rules promulgated under it, Native Village of Nunapitchuk (IRA COUNCIL) Tribe, along with other Alaska region Tribes and tribal organizations have begun to make great strides

PREPARED STATEMENT OF TEX HALL "RED TIPPED ARROW", CHAIRMAN, MANDAN, HIDATSA, ARIKARA, THREE AFFILIATED TRIBES, GREAT PLAINS TRIBAL CHAIRMAN'S ASSOCIATION

Dear Chairman Akaka, Vice Chairman Barrasso and Committee Members,

I hereby submit this cover letter and the attached two resolutions and I respectfully request this letter and the resolutions be made a part of the official record for your hearing of September 15, 2011 entitled, "Tribal Transportation: Paving the Way for Jobs, Infrastructure and Safety in Native Communities." These resolutions were unanimously adopted on September 9, 2011 at a meeting of the Great Plains Tribal Chairman's Association meeting in Bismarck, North Dakota. I am the Chairman of that organization.

Senators, a startling fact has just come to my attention. **It is that only 15% of the roads in the Indian Reservation Road (IRR) Inventory are now in fact on-reservation BIA and Tribal roads.** The attached resolution references the figure as 20% but with more recently released facts, including the massive number of "proposed" roads added to the inventory we now understand that figure has dropped another five percent. Gentlemen, I must ask how this is possible? How can a program created by Congress to serve the dangerous and dilapidated roads of our nation's Indian reservations allow 85% of the roads in its inventory to be off-reservation state, county, federal and proposed roads? Are you aware that a road can be proposed, receive IRR money year after year after year and never be built? Are you aware that the BIA has been presented with incontrovertible evidence of Indian tribes in certain states submitting fraudulent data about the rating of state roads they were claiming as a part of their inventory? Are you aware that there is even a move to change title from Indian Reservation Roads to dilute even further the intent of Congress? Are you aware that tribes have added thousands and thousands of off-reservation roads to their inventories and that no work is actually required to be undertaken on those roads, rather the tribe can merely add it as a means of boosting its inventory road miles?

At the hearing Chairman Akaka indicated that one in every four BIA bridges is structurally deficient and that the annual fatality rate on IRR roads is three times (300%) the nation's average. He continued to correctly point that these are the roads that our children must use to get to school, that our emergency responders must use and that our people travel on to get to work. The roads generating these sad facts are those on Indian reservations. This data does not come from state or county or proposed roads but from BIA and tribal reservation roads. This data comes from the dangerous roads that our people are dying on, yet as I said above, due to manipulations of data -- including adding off-reservation roads near urban areas so that the Vehicle Miles Traveled (VMT) part of the IRR formula can be elevated – only 15% of the inventory is now tribal and BIA roads. It is the inventory and its relative need funding formula that generates the dollars. Being aware of these facts I was surprised to just read a report about the hearing from one of Washington, DC's largest Indian law firms that included the following sentence, "*Chairman Akaka said no changes would be made to the relative needs funding formula structure, despite calls from some corners of Indian County to make such changes.*" Mr. Chairman, I watched the hearing and did not hear you make such a statement and I therefore hope it is not true. What is true is that this law firm and the other major DC Indian law firms have done quite well helping tribes in certain regions creatively add thousands and thousands of miles to their IRR inventories and it is they who want to make sure the formula is not changed, so they can continue with this lucrative practice.

As to the "corners" of Indian County referenced above (implying that only a small number of tribes have these concerns) what I know is that tribes in South Dakota, North Dakota, Montana, Minnesota, Eastern Washington, Utah, Wyoming, Arizona and New Mexico have seen their IRR dollars decreased in recent years while the IRR overall pot has increased from $275 million to $450 million. These Tribes are Treaty Tribes and encompass the largest reservations and hold the largest Trust Land interest in the United States. Such Tribes as Navajo Nation and Oglala Sioux Tribe have thousands of miles of roads to maintain over vast areas of land larger than some of the States. I am pretty sure that does not constitute a "corner" of Indian Country.

Mr. Chairman, Mr. Vice Chairman and Committee Members, I hope you will take the time to read the enclosed resolutions and that you will work to correct this very serious problem. Our resolutions offer tangible proposals that will fix the IRR formula and ensure it treats tribes equitably. I am fully aware of the politics of this matter but also believe that no Senator could condone the manipulation of the system and the terrible impact it is having on so many tribes some of whom constitute the poorest in this Nation. I also hope you will read the Interior Inspector General's report of February, 2010 on this matter. You will find it quite instructive.

In watching the hearing I heard the Federal witnesses tell you that the changes to Question 10 of the IRR formula being proposed by the BIA and the FHWA were going to fix the problems I have discussed herein. I do not know one single tribal road expert who attended the Q 10 briefings who shares that view. Over the course of the past year while the Q 10 issue has been discussed, another 11,000 miles of road has been added to the IRR inventory, with no quality control or checks involved at all. You were also told that the existing regulations were the product of negotiating rulemaking that the tribes had a role in. What you were not told was that key changes were unilaterally made at the BIA after the rulemaking committee submitted its draft. You were told that the Indian Reservation Road Program Coordinating Committee (IRRPCC) was meeting regularly and helping the BIA to resolve these matters. What you were not told is that the IRRPCC only operates on a 100%

consensus basis. Tribes who are on the Committee and who share the concerns stated in this letter and in the attached resolutions have been beating their heads against the wall at one IRRPCC meeting after the next, year after year, and have gotten nowhere because tribes who are gaming the system have seats on the IRRPCC and they have steadfastly refused to consider any changes. No consensus, no change. Change is absolutely needed and if the Congress continues to ignore this, you will continue to see grim statistics presented relative to death rates on our roads and you will continue to see record levels of unemployment as businesses won't locate where there is no decent infrastructure.

The Tribal Nations of the Great Plains Tribal Chairman's Association stand ready to work with you on correcting his problem for the betterment of our People.

Attachments

**Resolution No. 20-9-9-11**

**GREAT PLAINS TRIBAL CHAIRMAN'S ASSOCIATION (GPTCA)**

**Support for creating a priority within the funding formula for the Indian Reservation Roads Program for safe roads within the Indian reservations of the United States**

**WHEREAS,** the Great Plains Tribal Chairman's Association (GPTCA) is composed of the 16 elected Chairs and Presidents or their duly appointed representatives of the sovereign Indian Tribes and Nations recognized by Treaties entered into with the United States that are within the Great Plains Region of the Bureau of Indian Affairs; and

**WHEREAS,** the Great Plains Tribal Chairman's Association was formed to promote the common interests of the Great Plains sovereign Indian Tribes and their members in the states of ND, SD and NE; and

**WHEREAS,** the United States has recognized the sovereign status of Tribal Nations through the U.S. Constitution, treaties and by numerous federal statutes; and

**WHEREAS,** Infrastructure improvements within Indian reservations in North Dakota remains a key to economic development for Tribal Nations within the Great Plains and Rocky Mountain Regions, providing access for many Tribal citizens to home, businesses, schools, government offices, and health care facilities, among other things; and

**WHEREAS,** Roads that are within the Indian reservations, and not designated as county, state or Federal highways, are BIA roads, and are of fundamental importance to the communities of the Tribal Nations in the Great Plains and Rocky Mountain Regions; and

**WHEREAS,** Safe reservation roads are critical for our children, and at present, our reservation roads programs within our Tribal Nations in the Great Plains and Rocky Mountain Regions have suffered drastic cutbacks in funding under the Indian Reservation Roads (IRR) program administered by the Bureau of Indian Affairs (BIA); and

**WHEREAS,** conditions are such that a major accident with a school bus costing the lives of many children can be anticipated if roads are not adequately repaired for use in our difficult winter months where subzero temperatures, icy conditions and low visibility can create extremely hazardous conditions on our reservation roads; and

**WHEREAS,** the BIA can, and must, allocate sufficient roads funds within the next fiscal years (FY 2012 and beyond) to alleviate the dangerous conditions of our roads within the boundaries of our Indian reservations and our Tribal nations.

**NOW THEREFORE BE IT RESOLVED,** that the Great Plains Tribal Chairman's Association hereby requests and implores the U.S. Secretary of Interior and the Assistant Secretary of Interior for Indian Affairs to adjust the IRR formula to provide critically needed road maintenance, improvement and construction funds for the reservation roads within the boundaries of the Indian reservations in North Dakota and the Great Plains and the Rocky Mountain Regions, so as to improve the safety of those roads and secure a future for ourselves and our children; and

**BE IT FURTHER RESOLVED,** that the U.S. Senators and Congressmen representing the states within the Great Plains and Rocky Mountain Regions thoroughly ensure, as much as possible, that the Secretary of Interior and the Assistant Secretary of Interior take the steps necessary to adjust the IRR funding formula to provide the much needed funding for maintenance, construction and improvements to the reservation roads systems within these Regions; and

**BE IT FINALLY RESOLVED** that this resolution shall be the policy of the Great Plains Tribal Chairman's Association until otherwise amended or rescinded, or until the policy objective of this Resolution is accomplished.

**CERTIFICATION**

**This resolution was enacted at a duly called meeting of the Great Plains Tribal Chairman's Association held at Bismarck, North Dakota on September 9, 2011 at which a quorum was present, with 9 members voting in favor, 0 members opposed, 0 members abstaining, and 7 members not present.**

**Dated this 9th day of September, 2011.**

**Secretary,**
**Great Plains Tribal Chairman's Association**

**Attest:**

**Chairman, Tex Hall, Chairman, Mandan, Hidatsa and Arikara Nations (Three Affiliated Tribes)**
**Great Plains Tribal Chairman's Association**

**Resolution No. 21-9-9-11**

**GREAT PLAINS TRIBAL CHAIRMAN'S ASSOCIATION (GPTCA)**

**Support for an amendment to the Continuing Resolution or other final funding bill for the U.S. Department of Transportation for FY 2012 being considered by the United States Congress that would create a fair funding formula for the Indian Reservation Roads program**

**WHEREAS,** the Great Plains Tribal Chairman's Association (GPTCA) is composed of the 16 elected Chairs and Presidents or their duly appointed representatives of the sovereign Indian Tribes and Nations recognized by Treaties entered into with the United States that are within the Great Plains Region of the Bureau of Indian Affairs; and

**WHEREAS,** the Great Plains Tribal Chairman's Association was formed to promote the common interests of the Great Plains sovereign Indian Tribes and their members in the states of ND, SD and NE; and

**WHEREAS,** the United States has recognized the sovereign status of Tribal Nations through the U.S. Constitution, treaties and by numerous federal statutes; and

**WHEREAS,** Infrastructure improvements within Indian reservations in the Great Plains remains a key to economic development for Tribal Nations the Great Plains and Rocky Mountain Regions, providing access for many Tribal citizens to home, businesses, schools, government offices, and health care facilities, among other things; and

**WHEREAS,** Roads that are within the Indian reservations, and not designated as county, state or Federal highways, are BIA roads, and are of fundamental importance to the communities of the Tribal Nations throughout the Great Plains and the Rocky Mountain Regions; and

**WHEREAS,** Funding for construction, improvements and maintenance of such roads comes from the Indian Reservation Roads (IRR) program, part of the highway bill that is passed from time to time by the U.S. Congress that authorizes funding for the surface highway transportation system of the United States; and

**WHEREAS,** the purpose of the IRR program is to provide funding for roads within the Indian reservations of the United States, primarily those roads that are solely managed by the Bureau of Indian Affairs or the Tribes though the Indian Self-Determination and Education Assistance Act (ISDEA); and

**WHEREAS,** the funding formula for the program divides the funds among the federally recognized Indian Tribes based on various factors, including miles traveled and user population, among other things; and

**WHEREAS,** In Fiscal Year 2006, 76% of the BIA's IRR budget went to Tribal and BIA Roads and the remaining 24% percent went to State and County roads, Forest Service, Park Service, and other roads which have an independent source of funding, as well as "planned" roads, many of which will in fact never be constructed, but by 2008 the percent of the BIA IRR budget going for Tribal and BIA roads had declined to 28% of the total, and for FY 2011 the figure has dropped to 20%; and

**WHEREAS,** the consequence for Tribes with substantial reservation roads, solely dependent on IRR funding, has been very significant, as reservation roads programs for tribes with many miles of reservation roads that solely depend on the IRR funds have suffered severe budget cuts and have been unable to keep up with basic maintenance, improvement and new construction needs, including the Tribes in the Great Plains and the Rocky Mountain Regions; and

**WHEREAS,** the trend of the BIA to provide IRR funding for non-reservation roads or roads hat receive funding from other sources is endangering the lives of Tribal citizens who must travel on bad roads, especially our children who must travel on unsafe roads in winter conditions where ice, snow and temperatures well below zero provide dangerous conditions for school buses and parents transporting their children, and this trend is completely unacceptable to our Tribal Nations in the Great Plains and the Rocky Mountain Regions; and

**WHEREAS,** the Tribal Transportation Allocation Methodology (TTAM) funding mechanism now in place pursuant to the IRR program act forth in 25 CFR Part 170 needs to be modified legislatively to more equitable allocate IRR funds throughout Indian country; and

**WHEREAS,** an amendment is being proposed to any funding bill that would continue funding for the Federal highway program and for the IRR program in FY 2012 that would: 1) require that a minimum of 75% of the funds appropriated for the IRR program be allocated to BIA owned or Tribally owned roads;
2) require that no more than 20% of the funds appropriated for the IRR program go to roads that provide access to Indian reservations;
3) require that any proposed roads can only receive funding from the IRR program if Project Specifications and Estimates for those roads have been completed and approved by state highway engineer;
4) require that IRR program funds may not be provided to roads for which States have committed to maintain under present requirements of the Federal highway act; and
5) require that state roads added to the IRR inventory in the last 10 years pursuant to state certifications of inability to provide funding must be deleted from the IRR Inventory.

**NOW THEREFORE BE IT RESOLVED,** that the Great Plains Tribal Chairman's Association (GPTCA) hereby supports the proposed amendments to any bill providing funding for the Federal highway program as outlined above; and

**BE IT FURTHER RESOLVED** that GPTCA further supports that a specific funding formula be placed within the legislation authorizing an IRR program with factors set out as follows, consistent with the broad parameters laid out above:
1) the component of Vehicle Miles Traveled (VMT) shall be 10% of the factors that provide for allocation of the IRR funds;

2) the amount of trust lands of any Tribe, including trust lands held by the citizens of that Tribe, shall be valued in proportion to the total trust acreage of lands held by Tribes and Tribal citizens nationally at 20% of the allocation formula;
3) The Cost to Construct component be 50% of the allocation formula; and
4) the Population Adjustment Factor shall be 20%; and

**BE IT FURTHER RESOLVED** that GPTCA further requests that the Secretary of Interior and Congress conduct a thorough and vigorous investigation of the abuses of the IRR program that have occurred in recent years; and

**THEREFORE BE IT FURTHER RESOLVED** that GPTCA hereby requests that the U.S. Senators and Representatives representing the Tribes of the Great Plains and the Rocky Mountain Regions support the proposed amendments to the IRR program as outlined herein, and that the Senate Committee on Indian Affairs support the amendments proposed by introducing appropriate legislation; and

**NOW THEREFORE BE IT FINALLY RESOLVED** that this resolution shall be the policy of the Great Plains Tribal Chairman's Association until otherwise amended or rescinded or until the goal of this Resolution has been accomplished.

**CERTIFICATION**

**This resolution was enacted at a duly called meeting of the Great Plains Tribal Chairman's Association held at Bismarck, North Dakota on September 9, 2011 at which a quorum was present, with 9 members voting in favor, 0 members opposed, 0 members abstaining, and 7 members not present.**

**Dated this 9th day of September, 2011.**

**Secretary,**
**Great Plains Tribal Chairman's Association**

**Attest:**

**Chairman, Tex Hall, Chairman, Mandan, Hidatsa and Arikara Nations (Three Affiliated Tribes)**
**Great Plains Tribal Chairman's Association**

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