

**United States Senate Committee on Indian Affairs**  
**Oversight hearing on “Setting New Foundations: Implementing the Infrastructure Investment and Jobs Act for Native Communities”**  
**Testimony of Harold C. Frazier, Chairman of the Cheyenne River Sioux Tribe and President of the Great Plains Tribal Chairmen’s Association**  
**May 4, 2022**

Chairman Schatz, Vice Chairman Murkowski and Honorable Members of the Senate Committee on Indian Affairs, I am Harold Frazier and I serve as both the Chairman of the Cheyenne River Sioux Tribe of South Dakota and as the President of the Great Plains Tribal Chairmen’s Association (GPTCA). The GPTCA is the coalition that represents all the Tribal Chairmen and Presidents of the 16 federally recognized tribes in the states of North Dakota, South Dakota, and Nebraska. We represent some of the largest reservations and largest populations of Indian people found in the United States. Unfortunately, our tribes also constitute some of the most impoverished tribes and populations of people found anywhere in this country.

For these reasons, we are pleased that the leaders of the Senate Committee on Indian Affairs have asked a representative of the GPTCA for testimony at today’s hearing. I am glad to see that the Committee has invited a diverse group of tribal witnesses for this hearing. The large land-based tribes of the Great Plains region represent a traditional perspective from the heart of Indian country.

I would also like to recognize Senator Mike Rounds, for his years of partnership and advocacy for South Dakota’s tribal nations.

Your invitation asked that I testify on the Implementation of the Infrastructure Investment and Jobs Act (often referenced as the Bipartisan Infrastructure Law or BIL), from the perspective of Native Communities.

While I believe I would be safe in saying that all of Indian County appreciates the advocacy that the leaders and members of this committee played in securing significant funding increases for Indian tribes in a number of the broader programs authorized by the BIL, it is likely still too early to say how it will ultimately impact tribes because the implementation of it at the federal departmental and agency level is still ongoing and in at least one case, the appropriation to implement a key section of the bill for the tribes I represent, fell far short of the amount authorized by the BIL.

**Roads Funding**

One of the reasons why we have such rampant poverty among most of the Great Plains tribes is because our reservations are still lacking in the most basic of infrastructure, not the least of which are roads. On the Cheyenne River Reservation for example, a large reservation of over 2.8 million acres, only 14 miles of the BIA and Tribal Roads are paved. At 2.8 million acres, our land base is larger than the state of Rhode Island and in between the size of Delaware and Connecticut. While some state and county roads are paved, they only constitute a small fraction of our total roads. Our people when they travel for work or other reasons, our children when they are in school buses and those residents in need of emergency response must deal with gravel and dirt roads that at best, tear up our vehicles and at worst are regularly flooded or so poorly maintained that they can be impassable. Honorable Committee members, how can we ever attract businesses and create good jobs when this most basic component of infrastructure is

lacking? While we were pleased to see that the BIL increased the authorization for funding for BIA Road Maintenance up to a level of \$50 million in 2022, escalating to \$58 million in FY 2026, that is still a fraction of what is needed as BIA roads alone have a backlog of over \$300 million to get them to an “acceptable” level of safety. However, even the \$50 million amount was not appropriated. The recently enacted FY 22 Interior spending bill only increased BIA road maintenance funding from \$36.8 million to \$37.4 million. By the BIA’s own admission, only 13% of the roads in Indian County are in good to excellent condition. A few years ago, the BIA said 16% of their roads qualified as good to excellent, so we are losing ground!

The BIL authorized an increase in the Tribal Transportation Program (TTP) at the Department of Transportation via the Highway Trust Fund (HTF), but those funds are allocated via a formula that is so broken that most of the tribes in the Great Plains benefit very little from it. At Cheyenne River, we get \$2.2 million a year in TTP dollars – this is the same amount we have gotten the past 12 years despite significant funding increases going to the TTP. In 2021 the TTP was funded at \$505 million. By comparison in 2019 Delaware received \$186 million in HTF dollars. Since our reservation gets so little from the BIA Road Maintenance program a year (about \$500,000) we must dip in our TTP dollars for basic maintenance to the 25% maximum allowed (\$600,000) which leaves \$1.4 million in TTP dollars remaining for road construction, not enough to allow us to undertake any of the critical road construction projects we have identified. So where does all the TTP money go, including the BIL increase? To those tribes who included state and county roads in their National Tribal Transportation Facility Inventory (NTTFI) including off-reservation “access” roads or “proposed” (aka “ghost”) roads. While I am sure the states and counties appreciate the subsidy they get from this program, those roads are eligible for state and county dollars. BIA and Tribal Roads have no other sources of funding. When federal dollars intended to benefit tribes are abused in this fashion, you can see the result. We could endeavor to place more roads in our NTTFI but it would be to no avail as the TTP formula is frozen since 2011 and will not generate more funding for us even if we could add those miles.

We are hopeful that the increase in bridge funding in the BIL will benefit tribes in our region and that could really happen if tribes could use some of the bridge funding for bridge maintenance. It is not clear to us whether that would be allowed. We are also hopeful that we can use our TTP funds as matching funds for some of the programs created or funded by the BIL, such as the Safe Streets and Roads for All program, but last week we heard that we might not be allowed use TTP funds as a match. We don’t have a casino (or 10 casinos as does a tribe in Oklahoma with no BIA or Tribal roads but who still gets six times the TTP funds that we do), so where do we come up with matching funds? We have just written the Secretary of Transportation asking that he use his discretion to allow us to use federal funds to match some BIL programs. The High Priority Projects Program should be used for projects deemed to be an emergency and should not be reserved arbitrarily for tribes who get less than \$1 million a year in roads funds. The DOT should also use its discretion and ensure we can use bridge money for culverts that essentially act as small bridges on our roads and that are now aged, falling apart, and washing away, causing very dangerous situation on many of our roads.

Tribes often seem to be caught in a catch 22 when DOT only considers shovel ready projects as eligible for its discretionary grant programs. This precludes many Tribes from even applying given the significant design and planning costs involved in preparing a competitive application. We need more flexibility – DOT should allow Tribes to use grant funds to cover costs for pre-construction activities including design and planning. TTP and other federal funds should always be allowed for Tribes to use toward their match requirements. These types of flexibility are especially critical for giving Tribes a fair shot at grant programs

that could help us tackle our largest projects including the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) program and the Mega Program (known statutorily as the National Infrastructure Project Assistance program).

### **Water Infrastructure**

As you might imagine, with a 2.8-million-acre reservation in a remote area with a harsh climate, we face many challenges in providing a safe and reliable water supply to our people. With help from several federal agencies and support from the South Dakota Congressional delegation over the years, we were able to complete a large project that is bringing water from the Missouri River (Lake Oahe) through an intake system then through an untreated water line, a water treatment plant and then a treated water line. This system is, at long last, delivering potable water to the town of Eagle Butte, which is the largest town on the Reservation and the location of Tribal headquarters (as well as other federal agency offices). The next step is to expand the delivery system to other towns and communities around this large Reservation, we are working on building distribution lines to get water from Eagle Butte north to Timberlake and west to Faith in Meade County. We have gotten some funding through grants and loans from USDA-Rural Development to help build the system north to Timberlake, but still need nearly \$55 million to complete the distribution system to our western border. Beyond this, additional funding will be needed to run water lines to individual homes and businesses. Many of the Great Plains Tribes have water projects of similar scale awaiting funding.

While there is funding for water programs at several agencies in the BIL, it is challenging for us to access and utilize this funding when each agency has different requirements on allowable uses, cost sharing and more. An additional challenge in pursuing new housing and other community development projects, are onerous requirements such as the long-standing prohibition on using Indian Health Service Sanitation Facilities Construction funds to hook up new homes constructed with funding through the Indian Housing Block Grant program at HUD. This needless prohibition is stifling housing development. While we are pleased that the BIL includes \$3.5 billion at the IHS for domestic and community sanitation facilities, and this will help us complete several small projects at Cheyenne River that have been awaiting funding for years, we would urge both the IHS and Congress to provide more flexibility to allow these funds to cover new development projects and not just those projects that are already identified on the existing IHS Sanitation Deficiency System (SDS) inventory. We hope that as agencies make funds available to Tribes they provide us the utmost flexibility to utilize funds for our unique water needs and to waive cost-sharing and other requirements to the maximum extent allowed.

### **Climate Resiliency and support for drought relief programs**

2021 presented one of the worst droughts in recent memory on the Cheyenne River Reservation and many of our neighbor tribes are facing similar conditions. According to the U.S. Drought Monitor, CRST was in a D3 drought (Extreme Drought) for most of the year. So far 2022 finds us to be in the second driest year we have experienced over the last 128 years. This presents immense challenges for the agriculture industry, which is the primary economic driver on our reservation. These current and extended drought conditions have presented two major problems for our producers. First, the lack of moisture has eliminated the ability to graze animals and our producers have been forced to provide high-cost feeds to their cattle and horses to get them through the winter, forcing some to sell their herds. Second, is a lack of available water for livestock to drink. Stock dams are extremely low or completely dry making it impossible to utilize grass when it is available. This situation leaves our Tribal producers struggling to gain

some stability and profitability given the drought and it compounds challenges they already face due to predatory lending practices and volatility in the markets. If relief is not brought soon many of our cattle ranchers will face the threat of sell downs and sell outs.

To help remedy this situation we have identified the need for over \$32 million in funding to combat the drought and provide relief to our native producers and help save our economy. This includes \$21 million for feed assistance including hay, grass, and corn and \$11 million for water assistance to extend pipelines and install water tanks. Due to the remote nature of our reservation hauling water to large cattle herds is ineffective and inefficient. We also request that all relevant federal agencies, including the U.S. Department of Agriculture and the Bureau of Indian Affairs take any and all necessary measures, including emergency water assistance for pumping water into stock dams or extending water lines off of existing water sources, as well as providing reimbursement for costs such as feed purchases and livestock transportation to feedlots to help sustain our producers.

While the BIL includes \$216 million in funding at the BIA for Tribal Climate Resilience and Community Relocation, we ask that the agency put the needs of Tribes addressing drought conditions on par with those utilizing other aspects of the Resilience funding. We would also request that Interior, USDA, and other relevant agencies work together to make BIL funding available to Tribes to address drought in an accessible manner.

#### **Funding for infrastructure needs not included in the BIL**

While the BIL includes a broad array of funding for infrastructure programs at agencies across the federal government that tribes appreciate, there are a few areas I would like to highlight that did not receive funding in the BIL despite urgent and significant needs in Tribal communities. Perhaps if there is further legislation this year, the Committee may want to advance these as priorities.

#### **Housing**

At Cheyenne River we have identified the need for at least 700 new housing units to be constructed to ensure that all our citizens have a safe place to live. In a 2017 report the U.S. Department of Housing and Urban Development (HUD) found that “the lack of housing and infrastructure in Indian Country is severe and widespread, and far exceeds the funding currently provided to tribes.” Unfortunately, the main source of federal funding for Tribal housing, the Indian Housing Block Grant (IHBG), has been mostly level-funded for the past 20 years, failing to even keep pace with inflation while housing needs continue to increase. The IHBG relies on an outdated formula that severely undercounts our population, robbing us every year of critical housing funds. The 2017 HUD report identified an immediate need for 68,000 units of new, affordable housing in Indian Country to replace substandard or overcrowded units. The unique status of trust land creates additional obstacles for our housing authority and citizens to access traditional mortgage products and financing for housing. While we appreciate the work of Chairman Schatz to increase funding for Native housing this year through his role leading the Appropriations subcommittee that oversees HUD funding, we would urge you to work to pass additional infrastructure legislation that provides supplemental funding to update existing housing and construct new housing on tribal lands.

#### **Bureau of Indian Education schools**

More than 85 BIE funded schools across the country are in poor condition. 24 of these schools are in the Great Plains region. Our Cheyenne Eagle Butte School (CEB), which is operated by the BIE and serves students in grades kindergarten through 12, is in desperate need of being replaced. The facility is over 60

years old and as early as 1993 the BIE has said that the school was unsafe and unfixable. Simply put, the school is crumbling and presenting a danger to our children, educators, and staff. Our children often attend school in the winter with heavy jackets on due to a deficient and malfunctioning heating system which results in many classrooms having a temperature below 50 degrees. Mold is a major health concern at CEB as it continues to grow in latent areas and there is also asbestos exposure due to failing walls, floors and ceilings and cracks in the foundation. There is also unrepaired water damage from flooding and leaking in the roof which results in dangerous electrical hot spots. The inadequate electrical system has prevented us from placing any additional computers in classrooms – this denies our students access to the technology that is needed to succeed in the today’s workforce. While we are currently working with the BIE on plans and identifying funds for a replacement school, with so many BIE schools in poor condition and only \$264 million provided for BIE construction nationally in FY2022, it will be decades if not longer before ours and other schools are replaced. Therefore, we would ask you to pass additional infrastructure funding for school construction.

### Public Safety and Justice

In 2018, the U.S. Commission on Civil Rights’ Broken Promises report found that there continues to be “systematic underfunding of tribal law enforcement and criminal justice systems, as well as structural barriers in the funding and operation of criminal justice systems in Indian Country” that undermine public safety. The Government Accountability Office (GAO) found that lack of detention space may force tribal courts “to make difficult decisions such as (1) foregoing sentencing a convicted offender to prison, (2) releasing inmates to make room for another offender who is considered to be a greater danger to the community, and (3) contracting with state or tribal detention facilities to house convicted offenders, which can be costly.”

The Cheyenne River Sioux Tribal Court System is housed in two buildings located approximately one mile apart. The Juvenile Court is housed with the Tribal Criminal Court and shares a courtroom. As a result, often hearings must be held in the Judge’s chambers, or rescheduled due to lack of space for hearings. In addition, staffing shortages in the current budget are exacerbated by the separate locations. Further compounding the issues and budget constraints facing the Justice system, the Prosecutor and Public Defender are housed in mobile homes located within walking distance of the criminal court. During the frequent winter conditions, this results in higher utility costs with so many different buildings to maintain, and heat, and in lost time travelling between buildings.

The original Civil Courthouse is the original jail constructed at Cheyenne River in the 1950s. It is deteriorating. It lacks sufficient storage space for records, and utility costs are very high. It only allows for one courtroom. The more recently constructed criminal court and criminal and juvenile court facilities were constructed over three decades ago when caseloads were less than half of what they are now. The tripling of drug related arrests in recent years, has left our courts unable to even schedule hearings timely let alone hear cases due in part to the inadequate facilities. With a caseload of over 5,900 annually our court facilities are simply unequipped to keep up.

Like the Courthouses and Prosecutor and Public Defender facilities, our Walter Miner Law Enforcement Center housing all detention facilities and the law enforcement department is simply inadequately sized to meet the needs of the current population, and law enforcement staffing. It was originally built over 35 years ago, with capacity to house 45 adults and 10 Juveniles. However, with annual arrests for drug related offenses alone exceeding 900 in 2016, the detention facility is wholly inadequate to protect public

safety, and the safety of those detained in the facility. In one five-month period alone in 2016 – 2017 there were 29 violent crime arrests including on homicide, 26 drug related arrests, and 26 DWIs. In addition, the facility lacks modern secure evidence storage facilities, and inadequate workspace for officers to complete reports or to meet. With the explosion of serious methamphetamine use and distribution, and increase in violent crimes associated with this problem, the law enforcement facilities have not kept pace with the needs of the community. Tragically, in recent years there have been several drug related homicides involving multiple suspects.

To address this need, and to ensure that the Tribe can provide safety for our people across the reservation, a modern Judicial and Justice center is needed. Our plans for this include 28,000 square feet of space to house our courts, prosecutor, and public defender offices and 90,000 square feet for new facilities housing detention and law enforcement. We estimate that the cost to construct this new justice complex to be around \$35 million, underscoring the need for large investments in tribal public safety and courts infrastructure.

In conclusion, one issue I would like to address is the funding formulas through which we see much of our infrastructure funding flow. Many of these formulas are outdated and have been manipulated over the years in a fashion that has been detrimental to large land-based tribes. The committee should take a hard look at this and devise policies that distribute funding in an equitable manner based on true need and current and agreed on data.

Thank you again for the opportunity to testify today on these critical issues and I look forward to answering any questions you may have.