

Testimony of John Smith, Director of Transportation for the
Northern Arapaho and Eastern Shoshone Tribes of the Wind River Indian Reservation
Presented Before the Senate Committee on Indian Affairs
United States Senate
April 22, 2015

Chairman Barrasso, Vice Chairman Tester and Honorable Members of the Senate Committee on Indian Affairs. My name is John Smith and I have the honor of being the Transportation Director for the Northern Arapaho and Eastern Shoshone Tribes of the Wind River Indian Reservation in Wyoming. I wear a few different hats, as I am also the Executive Director of Intertribal Transportation Association and have served on many task forces and panels dealing with transportation in Indian country. Although I am not authorized to speak on behalf of them, based on my recent meetings with tribes in Montana, Wyoming, North and South Dakota, I believe my thoughts are consistent with what I have heard from many others. I do want to express my appreciation to this committee and particularly to the Chairman and Vice Chairman for convening this hearing and inviting my testimony.

As you have heard over the years, Indian people are injured and killed in automobile accidents at rates far higher than any other group in the United States. There is much empirical data to this effect from various studies including a number by the Centers for Disease Control. We do have a problem with traffic safety on Indian reservations and you are to be commended for holding a hearing that focuses on this problem.

I have some charts that Mr. Waters and Mr. Lambert are now displaying that paint a disturbing picture. The data in this first chart is a little dated as it comes from 2009 but it shows Pedestrian Deaths on Public Roads by race. While there was some improvement from 2008 to 2009, you can see that even in the better year of 2009 that Indian pedestrians die at a rate that is nearly 80% higher than do non-Indians. Mr. Chairman, I have spent my life on Indian reservations and I can tell you why this rate is so much higher for our people. I can't remember the last reservation I was on that had sidewalks, but even more alarming are the numbers of roads in Indian country without adequate shoulders or perhaps any shoulders at all. The roads in Indian country are also often lacking in guardrails, crosswalks and overpasses. Why is that? Let me answer that question in a moment but first I would ask my friends to put up the next chart.

Whereas the first chart focused on pedestrians, this chart is a comparison of all manner of Motor Vehicle Deaths and what it shows is even worse. When it comes to motor vehicle deaths, Indian people die at more than double the rate than non-Indians do. In the Great Plains and Rocky Mountain regions, the data, is much worse, particularly among our Indian youth under the age of 19. Their deaths are three and a half to four times the national average for motor vehicle deaths, and four and a half to five times the national rate for pedestrian fatalities. The Wind River Reservation has the dubious distinction of having the highest rate of pedestrian deaths in the US. Nationally, two Indian people die every day in motor vehicle accidents and American Indian infants die at a rate that is eight times the national average for non-Indians.

Pedestrian deaths on the roadways of Indian country and death and injury of occupants of cars and trucks on those same roads have one thing in common: bad roads and, more often than not, unpaved roads. When you have narrow roads, with sharp curves, no medians and no shoulders, you are asking for trouble. Only 7% of the roads owned by Indian tribes are paved, the remaining 93% are gravel, earth or

primitive roads and only 26% of the roads owned by the Bureau of Indian Affairs are paved, the remaining 74% are gravel, earth or primitive.

Mr. Chairman on the Cheyenne River Sioux Indian Reservation in South Dakota, there is a road known simply as BIA Route 11. It leads to the Takini School, which houses Kindergarten through 12th grade students. Route 11 is hilly and has so many problems that during inclement weather, the bus driver stops at the bottom of steeper stretches of Route 11 and unloads the children. He then guns the bus to the top of the hill. The children walk up the hill and get back on the bus again and he repeats this same routine at the next hill. He doesn't do this because the bus lacks the power, he does it because he is fearful the bus will slide off the side of the road, a road with almost no shoulder and drop offs on either side. His theory is that if the bus slides off the road and flips over, it is better that he be the only passenger. In inclement weather, vendors often refuse to deliver their products – including food for lunches – to this school because they are fearful of driving on the road. On those days, they will leave their product in the town of Howes, which is 32 miles away, or the town of Faith, which is 40 miles away. School employees will then have to undertake a 64 or 80 mile round trip to retrieve vendors' products. So not only do the bad roads lead to death and injury among our Indian people, but they disrupt education, on bad days they make getting to work impossible, they greatly delay or prohibit emergency response vehicles from responding in a timely basis; they serve as a major disincentive to economic development and make it impossible to entice businesses to locate on such lands. We already are lacking in nearby hospitals or clinics throughout much of Indian country but when ambulances endeavoring to retrieve and deliver a person injured in an auto accident have to traverse roads like Route 11 – which in the best of circumstances greatly slows them down and in the worst circumstances makes access nearly impossible – you can imagine what effect that has on the ability to save a badly injured resident. Engineering estimates are that it will cost just under \$10 million to rebuild Route 11 to safe conditions. That is many times what the Tribe's total road budget is for the entire reservation. They have asked my advice and all I can recommend is to submit to DOT for a TIGER grant and pray that it gets funded. The odds are great that it won't be.

Indian tribal governments could also play a key role in reducing the death rates among passengers in motor vehicles by establishing codes and enforcing seat belt and child safety restraint use laws and regulations as the larger non-Indian community has. This is now happening more and more in recent years but tribes absolutely have some catching up to do in this regard. We also need education campaigns about the dangers of riding in the backs of pickup trucks, driving while under the influence of alcohol and distracted driving. I am glad to see that the Federal Highway Administration has been convening Tribal Safety Summits which are teaching tribal transportation planners such as me the latest on successful education campaigns that we can implement on our homelands.

Another problem that tribes face is that so many of our reservations were allotted during the ill-conceived Allotment Era and the land is checker-boarded with various governments having varying laws and regulations applicable on the same reservation. In those instances it is important for tribes, state and counties to coordinate on seat belt laws for instance. I for one am glad the Tribes on the Wind River Reservation are now coordinating much more with the state than we did just a few years ago and I am delighted to see my friend and colleague Del McOmie, the Chief Engineer of the Wyoming Department of Transportation (WYDOT), here today and on this panel.

Not only can tribes coordinate better on safety enforcement but on road construction as well. WYDOT and my department jointly undertook a major construction project when we rebuilt what is known as 17 Mile Road on the Wind River Reservation. This had been one of the most dangerous roads in the

country with many accidents and fatalities. It was a road that carried about 3,000 people a day including over 1,000 students. Not only did the construction of the road result in the creation of 130 jobs for tribal workers but we widened much of the road from 22 feet to 40 feet, we put up 28 miles of fence and installed cattle guards and replaced irrigation pipe running alongside the road. Since we opened it up in October 2013, we have only had an 84% reduction in injuries and only one major accident and unlike the pre-construction days, the car involved didn't roll over in the ditch next to the road as the ditch no longer exists. We have also instituted culturally geared traffic safety messaging that is in English as well as the Arapaho and Shoshone languages and we coordinated with the University of Wyoming to prepare a reservation-wide Traffic Safety Plan and are coordinating these initiatives with the state of Wyoming. Attached is a write up about our program including some of the safety messaging ads and billboards we are using.

Mr. Chairman, I must say that while driver education and safety orientation campaigns will definitely help and must receive more funding, the main problem we have is that both the Congress and the Administration (regardless of party affiliation) are so profoundly underfunding the road system in Indian country that we will never have safe roads unless they are properly built and maintained. If your roads are icy and full of dangerous curves and gigantic potholes because you don't have the money to maintain them and if you don't have proper signage and wide shoulders, you can educate people until the cows come home. You won't have safe roads.

Let's first examine the Bureau of Indian Affairs Road Maintenance Program. In 1992 the BIA Roads program was funded at \$41 million a year. That level of funding was, by all accounts profoundly less than was necessary for the maintenance that was needed on our roads. So what is the BIA's road maintenance budget this year, 23 years later? Mr. Chairman it is \$26 million! That is \$15 million LESS than we had two decades ago and of course that does not take inflation into account. If the appropriations in the BIA's road maintenance budget in the early 1990s had simply been allowed to grow at a normal rate and reflect need the budget for that program would be over \$110 million today. Instead it is \$26 million. You need not look any further than that one statistic alone to get a good idea why we have the problems we do on our roads. If you ask the BIA how they could possibly justify reducing the BIA Road Maintenance budget they will undoubtedly tell you that they did so when the TEA-21 highway bill became law which included a decent increase in funding for reservation roads. The problem with that argument is that the Congress specifically told the BIA, time and time again, that the increase in the DOT budget was for road construction and renovation and that the BIA was still the primary entity responsible for maintaining those roads. The Congress told the BIA not to reduce the maintenance budget in lieu of the increased funds being made available for construction and renovation. The BIA, undoubtedly pushed to do so by OBM, flatly ignored that directive and we have seen the results, a huge reduction in maintenance funds and the corresponding deterioration of roads on reservations, and the unnecessary deaths and injuries of untold numbers Indian people.

Mr. Chairman, there are 566 Indian tribes and 56 million acres of trust land. There are 31,400 miles of BIA roads and 26,000 miles of Tribal roads on those lands for a combined total of 57,400 miles of roads. These roads only get funds from the federal government for maintenance; they get no help from counties or states. \$26 million divided by 57,400 miles equates to \$452 per mile for maintenance. The BIA is more directly responsible for their roads than they are for tribal roads so the figure may be closer to \$600 per mile but whether it is \$400 or \$600, it should be compared to what state and counties spend per miles for road maintenance. This figure varies widely depending on what data is used and what study you rely on. The Federal Highway Administration (FHWA) says that over \$46 billion was spent on road maintenance by all units of government in 2010, and there are approximately 4 million

miles of road in the U.S. As this chart shows, that breaks down to about \$11,000 per mile. A study prepared by the Illinois Institute for Rural Affairs and Agricultural Economics Department at the University of Wisconsin indicated that counties are spending over \$16,000 and metropolitan counties are spending almost \$30,000 per mile. For the sake of argument, let's accept the lower \$11,000 figure. How can the BIA expect tribes to protect the lives of their citizens when it provides less than 5% of what the counties are spending on road maintenance? Mr. Chairman this is gross negligence and Indian people are paying for it with their lives. The chart being displayed now shows this disparity. You know it occurred to me that when tribes sued the BIA and IHS for non-payment of contract support costs they prevailed and now we are seeing realistic requests from the Administration for that program. When tribal trust lands were grossly mismanaged a number of tribes sued under what is known as the Salazar cases and received a multi-billion settlement. It is a sad commentary that apparently the only way the BIA and OMB will step up to the plate and request what is needed for road maintenance, is for the estates of Indian people killed or maimed on bad roads to sue them and get a court order or an out of court settlement requiring the agency to respond to this very serious problem. By the BIA's own admission, 83% of BIA system roads are deemed to be in an "unacceptable condition" yet their request to Congress for the past 19 years has stayed flat varying between \$24 to \$26 million. I find that incredible.

Because the BIA has been so negligent in maintaining the roads in Indian country the Congress and the FHWA reluctantly agreed that up to 25% of the Highway Trust Fund money that is supposed to be used for construction and renovation of Indian reservation roads, can be used for maintenance. This of course means there is that much less money available for new construction, improvement or reconstruction of roads. Among other things this means that dangerous and windy gravel roads will be less likely to be replaced with better designed, safer paved roads. In addition to the previously referenced 57,400 miles of BIA and Tribal roads there are also 101,000 miles of State and County roads that are part of the National Tribal Transportation Facility Inventory and that must be factored into the allocation system.

When Congress enacted MAP-21, they did make improvements to the allocation formula for distributing Highway Trust Fund dollars to Indian country, shifting the focus more toward on-reservation BIA and Tribal roads and away from county roads, proposed roads and access roads but they left the funding amount flat at \$450 million. This actually represents a decrease because SAFETEA-LU had funded the Indian Reservation Bridge program separately from 2008-2012 in the amount of \$14 million and MAP-21 simply told tribes to take the bridge money away from what is now called the Tribal Transportation Program (TTP), so the \$450 million actually represents a \$14 million loss. There are over 4,000 bridges in Indian country identified in the TTP and 25% of them have been rated structurally deficient or functionally obsolete. The cost to replace or rehabilitate those bridges is more than \$600 million so eliminating the separately funded bridge program in MAP-21 was a bit bewildering.

There are also a number of so called "take downs" that take money away from the \$450 million before it ever gets distributed to Tribes. In 2014 those takedowns were as follows: minus \$22.9 million (5.1%) for Obligation Limitation; minus \$9 million (2%) for Safety Program; minus \$9 million (2%) for Planning; minus \$9 million (2%) for Bridges and minus \$27 million (6%) for BIA and DOT Administration. These take-downs total \$76.9 million taken from the TPP before it is distributed through the formula. All of them should be funded separately and not taken out of the formula pot and we ask this committee to support the proposal to exempt the TPP from the Obligation Limitation. That \$23 million has a profound impact on the overall TPP but is such a small amount of the overall \$40.2 billion Federal Aid Program that it wouldn't even be missed. This would restore things to how they were before TEA-21 was enacted

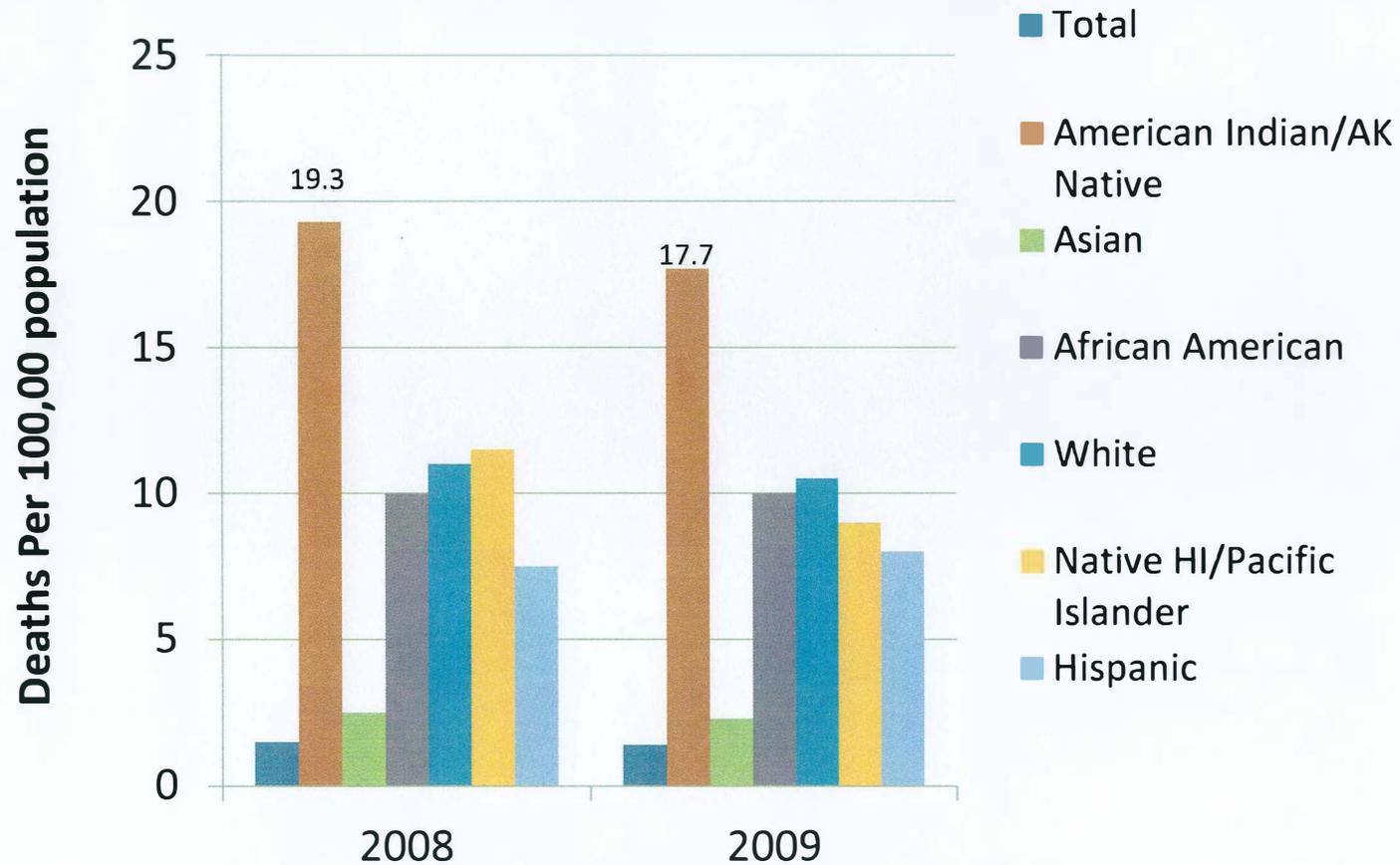
as that was the first time the Obligation Limitation was applied to the Indian Reservation Road Program (now TTP). MAP-21 also requires bridge inspections but it provides no funding we can use to undertake these expensive inspections. It is an unfunded mandate that needs to be addressed in a MAP-21 reauthorization.

There are a number of concrete and achievable things the Congress could do generally as outlined in the proposed Tribal Transportation Unity Coalition's recommendations for reauthorizing MAP-21, most importantly to increase the TTP to a level that will allow Indian country to address the multi-billion backlog of necessary road construction projects. The Tribal Transportation Unity Caucus (TTUC) recommends funding at the TPP at \$800 million in the first year of reauthorization. If that is not possible, a funding level of \$700 million would represent an amount that would allow us to address the backlog. The Indian Country Bridge program needs to be funded at a level of at least \$75 million independent of the TPP. We ask the members of this committee to introduce the draft legislation that has been provided by the TTUC as a means of laying down markers that we hope would influence the Senate EPW Committee as it works to reauthorize MAP-21. Among its other provisions, the draft legislation proposes to establish a 2% set-aside for tribes in the Highway Safety Improvement Program and increases NHTSA's Tribal Safety Program from 2% to 3.5%. With those funds, Indian tribes could undertake many initiatives that would increase traffic and pedestrian safety on Indian reservations.

Finally, Chairman Barrasso and Vice Chairman Tester, I ask you convene a meeting with the leadership of the Interior Appropriations Subcommittee, the Department of the Interior and OMB to address this crisis with the gravity that it deserves and determine a method so that over the course of the next two to three years that the BIA Maintenance budget be put on a glide path to \$150 million a year in funding. That is an extremely small amount of money relative to the tens of billions of dollars in increases for Defense and other programs that I understand are being discussed here in Congress this week but would absolutely save lives in Indian country.

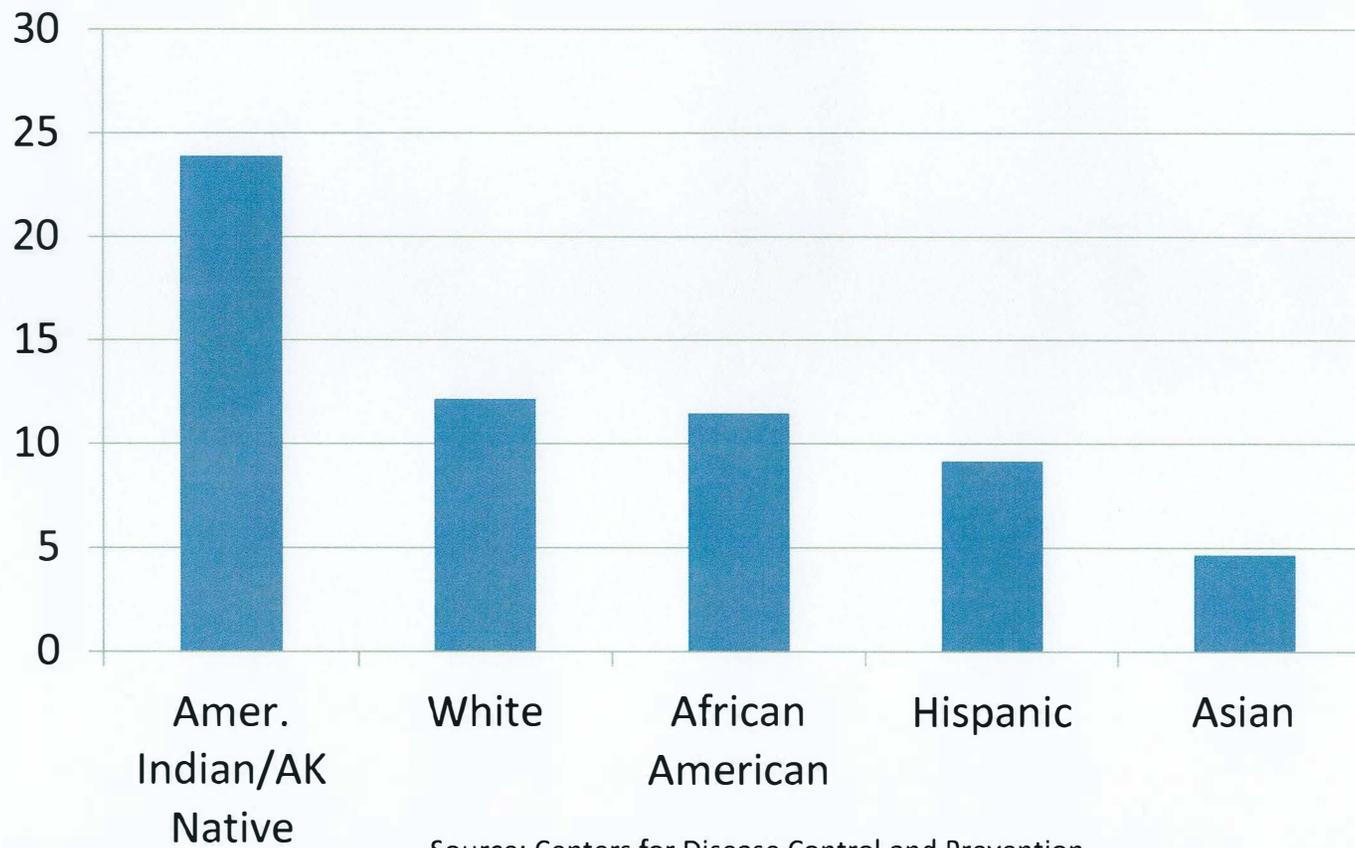
Thank you again for inviting me and for your consideration of my views.

Pedestrian Deaths on Public Roads by Race/Ethnicity 2008 – 2009



Source: National Congress of American Indians from National Highway Traffic Safety Administration data

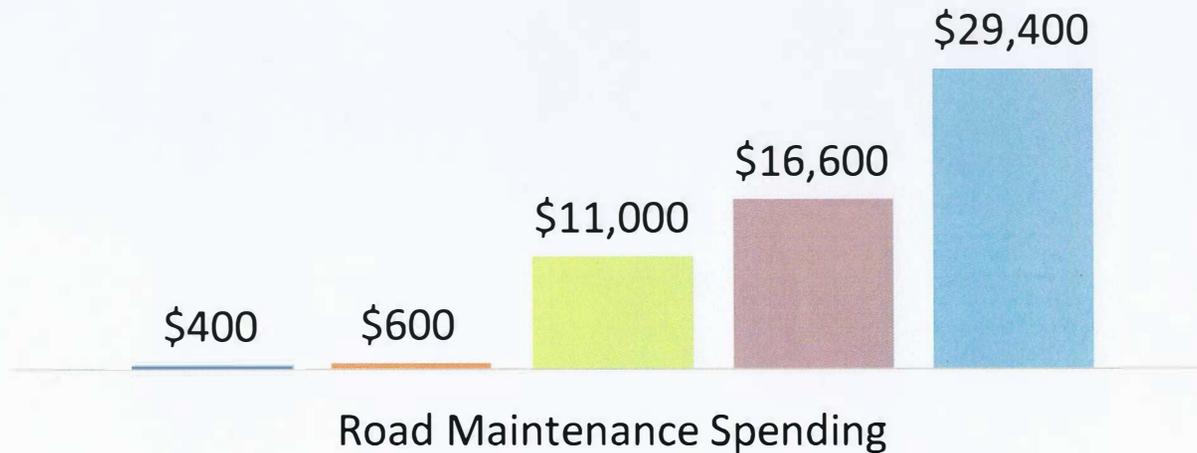
Motor Vehicle Death Fatality Rate by Race/Ethnicity in the U.S. in 2013 (per 100,000 population)



Source: Centers for Disease Control and Prevention

Road Maintenance Spending Per Mile

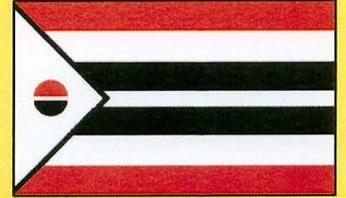
- BIA & Tribal Roads*
- BIA Roads Only*
- All Other Roads*
- Paved Roads - All Counties**
- Paved Roads - Metro Counties**



Sources: *Federal Highway Administration
**1997 USDA Report: Rural Roads and
Bridges – Financing Local Roads and Bridges
in Rural Areas



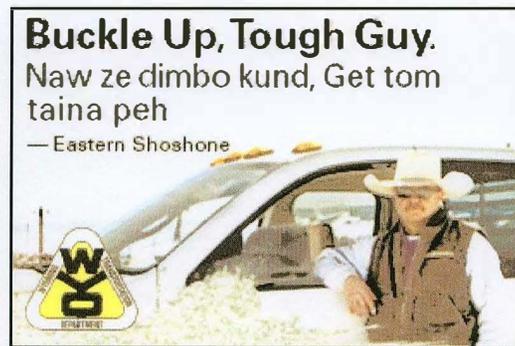
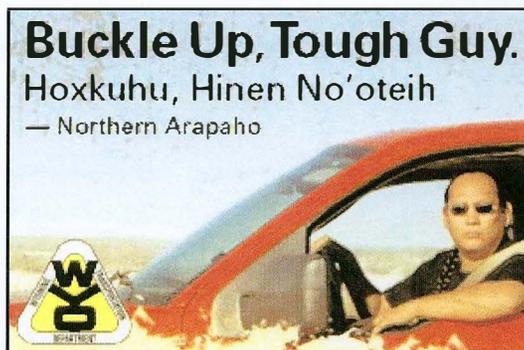
EASTERN SHOSHONE & NORTHERN ARAPAHO TRIBES OF THE



The Wind River Indian Reservation encompasses approximately 2,268,000 acres of land in Wyoming and is home to over 4,005 Eastern Shoshone and 8,600 Northern Arapaho tribal members. Each tribe elects its own tribal government and for many years a Joint Business Council has served to steward issues of mutual interest. To paint a portrait of the reservation, it is extremely rural, the roads that traverse it are sometimes dangerously winding, and adequate road safety enforcement is lacking. In Fort Washakie, the main hub of the community, there are very few safe pedestrian walkways to access services such as the schools, tribal offices, and the Hines General Store—yet there is a great deal of foot traffic. For many years, the community had suffered many pedestrian/vehicle injuries—with several resulting in death.

Despite this rather grim picture, strategic tribal investments in transportation have dramatically reduced unintentional injuries along the reservation's roads. As the Transportation Director of the Eastern Shoshone and Northern Arapaho Joint Business Council, "Big John" Smith has led the development of a comprehensive, culturally-informed and coordinated transportation safety program. Some of the highlights of the Tribes' efforts include: (1) The development of culturally-geared traffic safety messaging on reservation roadways; (2) The establishment of a Reservation Traffic Safety Plan; (3) Intergovernmental coordination; and (4) The successful completion of the 17-Mile Road.

With regard to the development of new safety messaging, the Eastern Shoshone and Northern Arapaho tribes partnered with Hispanidad (a National Highway Traffic Safety Administration approved marketing firm based in Denver, CO), to create a billboard and radio campaign to promote road safety. One theme was "Show Me Your Love, Buckle Me Up," which included images of children buckled up safely; another was the "Buckle Up, Tough Guy," which focused on increasing seatbelt use among Native men. These campaigns were entirely Native-created; even the messages are translated into the Shoshone and Arapaho languages.



Images Courtesy of Hispanidad

The tribes also partnered with researchers at the University of Wyoming in achieving the next accomplishment, which was the development of a Reservation Traffic Safety Plan. Through this process, the Wind River Indian Reservation implemented a methodology designed to assist tribes in identifying low-cost safety improvement on their roads.¹⁹ This approach included the examination of crash data, two levels of field evaluation and rankings using crash and roadway infrastructure scales, and cost-benefit analyses. Effective development of this plan required coordination across various agencies and led to the development of a comprehensive traffic safety plan, as well as a pedestrian and walkway long range transportation plan.²⁰

And in this vein of intergovernmental cooperation, Smith has raised awareness of and attention to priority transportation needs facing tribal communities by leveraging his leadership on tribal, regional, and national transportation organizations. His role as the Rocky Mountain Regional Representative on the Tribal Transportation Committee and as the Executive Director of the Intertribal Transportation Association have been essential in advocating for key infrastructural needs, developing targeted education campaigns, and fostering community action to promote road safety and prevent unintentional injuries and deaths. Specifically, he has helped to coordinate two reservation safety conferences that have fostered coordination and information sharing. Tribes in Alaska, Arizona, California, Minnesota, Montana, New Mexico, New York, Oklahoma, South Dakota, and Washington have also hosted Tribal Transportation Safety Summits since 2008.²¹

Finally, through data analysis, agency coordination, and priority identification, transportation leaders at Wind River successfully advocated for the completion of one of the most dangerous sections of highway in the state: the east section of the 17-Mile Road. Completed over six years at a cost of \$17.6 million dollars, funded in part through the TIGER grant program of the American Recovery and Reinvestment Act of 2009, the project employed over 130 tribal workers who earned over \$4.5 million in wages and helped to minimize the occurrence of car crashes along this road—each of which averaged \$74,000 in costs to the community. Once complete, the road was blessed with a cedaring ceremony, led by Transportation Planner Big John Smith, Nelson White, and Leonard Moss, as pictured below.



Cedaring ceremony for the 17-Mile Road. Image courtesy of WyoFile.

Wyoming Department of Transportation data from before and after the upgrades indicate that:

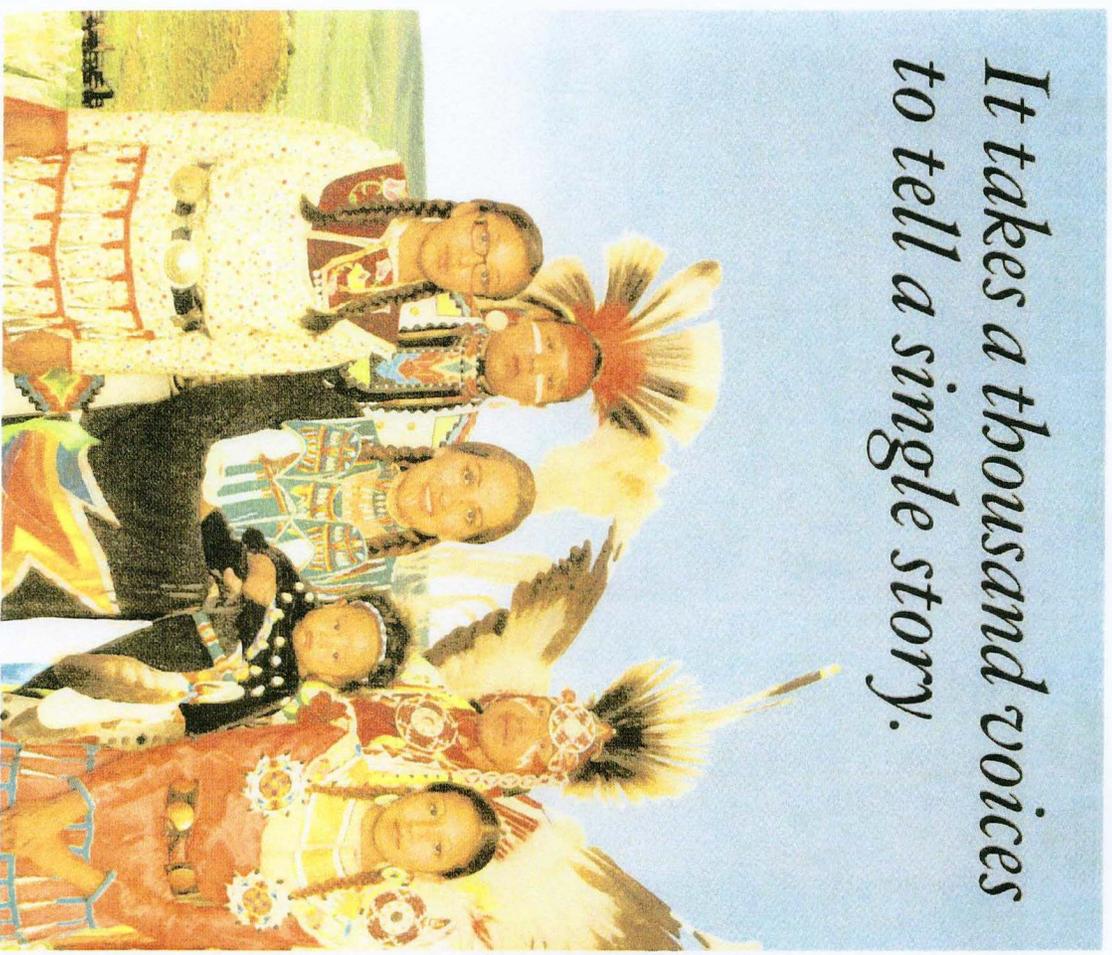
- 1) Fatalities declined from 4 to 1;
- 2) Injury Crashes declined from 25 to 7;
- 3) Injuries declined from 63 to 10; and
- 4) Total Crashes declined from 65 to 18 (an overall decrease of 72 percent).

This case illustrates how strategic investments and access to crucial resources (e.g. the TIGER grant) paired with a strong and culturally-driven vision for safety can prevent injury and death.

Contact Information:

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*It takes a thousand voices
to tell a single story.*



**We are family.
And we buckle up.**



HOLD ON...
for dear life.



Buckle up.



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DISCOUNT GLASS