

**TESTIMONY OF
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DEPARTMENT OF THE INTERIOR
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
FIELD HEARING
ON
"Enhancing Tribal Self-Governance and Safety of Indian Roads."**

APRIL 3, 2019

Good morning Chairman Hoeven, Vice Chairman Udall, and members of the Committee. Thank you for inviting the Department of the Interior (Department) to provide testimony at this oversight hearing on the topic of "Enhancing Tribal Self-Governance and Safety of Indian Roads." My name is LeRoy Gishi, and I am the Chief of the Division of Transportation for the Bureau of Indian Affairs (BIA) at the Department.

Transportation infrastructure continues to be a critical part of the well-being of tribal and rural communities. One of the many barriers to economic development in Native Communities is the lack of physical infrastructure. The Department and the BIA remain committed to improving and adequately maintaining transportation systems to provide increased public safety and economic development opportunities in Indian communities. Safe roads are important when transporting people in rural areas to and from schools, to local hospitals, and for delivering emergency services. I appreciate this opportunity to share with the Committee some of our accomplishments and also our concerns for tribal transportation as we work with tribal, local and federal stakeholders in the implementation of the tribal transportation program.

Overview

The BIA and the Federal Highway Administration within the Department of Transportation (FHWA) jointly administer the Tribal Transportation Program (TTP). The BIA alone oversees the BIA Road Maintenance Program (RMP) for the maintenance of BIA roads and transportation facilities.

Tribal Transportation Program

The Surface Transportation Assistance Act of 1982 established the Indian Reservation Roads (IRR) Program funded within FHWA's Federal-aid account. Since the establishment of the IRR Program, which is now called the Tribal Transportation Program (TTP) and subsequent transportation authorizations, the total Federal construction authorization for Tribal Transportation has exceeded \$10 billion. These investments have contributed greatly to the improvement of roads and the replacement or rehabilitation of deficient bridges on or near tribal lands throughout Indian Country.

We have provided updated information on the National Tribal Transportation Facility Inventory (NTTFI) in previous testimony before this Committee. The NTTFI consists of over 156,000 miles of public roads with multiple owners, including Indian tribes, the BIA, states, counties and local governments, as well as

other Federal agencies. Of this amount, approximately 10,800 miles are planned or proposed roads of varying surface types and uses. There remains a great and continuing need to improve the transportation systems throughout Indian Country. We believe Congress has viewed this as a joint responsibility including not only Federal agencies, but also state and local governments with transportation investments in or near American Indian and Alaska Native communities. Coordination among all of these stakeholders is required in order to maximize available resources to address regional transportation needs. Tribes continue to invest their resources in transportation projects that are primarily the responsibility of other public authorities. This creates jobs and contributes to the economy of local businesses that provide services and materials. Strengthening existing partnerships will continue to support the local economy and bring improved infrastructure to communities on or near Indian reservations and lands. An investment in tribal transportation is truly an investment in the local economy.

NATIVE Act

During our response to the highway legislation, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), we recognized the importance of our Nation's transportation infrastructure to recreational travel, tourism and trade, and our ability to compete in the global marketplace. The work with ISTEA was an opportunity for BIA and the tribes to participate in the dialog and have a say in the execution of transportation programs. This participation is crucial to developing economic growth, as it is closely tied to access to transportation and related infrastructure. Building on the ISTEA, the Native American Tourism and Improving Visitor Experience Act (NATIVE Act) became law in September 2016. It requires federal agencies with recreational travel or tourism functions to update their management plans and tourism initiatives to include Indian tribes, tribal organizations, and Native Hawaiian organizations.

The Department, through the BIA, is recognized along with the Department of Commerce (Commerce) as a lead in the coordination with federal agencies. In September 2018, the BIA, Commerce and the American Indian and Alaska Native Tourism Association (AIANTA) signed an historic memorandum of understanding outlining the roles of each in the implementation of the NATIVE Act. Over the last several months, the BIA and AIANTA have entered into a cooperative agreement to further develop American Indian Alaska Native and Native Hawaiian tourism. For over 20 years, the BIA has invested resources toward the development of technical assistance and training for tribal tourism development through the establishment of the American Indian Tourism Conference in 1999 and AIANTA. AIANTA has become a voice for Indian Country to the tourism industry and is successfully helping tribal communities to realize their potential in the global tourism industry. Tribes deserve the ability to provide visitors with reasonable transportation access and safety to their rural homelands and to share their history and culture with the travelling public through transportation enhancements such as context sensitive design, interpretive signage, informational kiosks, and scenic byways.

BIA Road Maintenance

Unlike the TTP, which is funded by the Department of Transportation and jointly administered by BIA and FHWA, the BIA Road Maintenance Program is funded by the Department of the Interior and overseen by BIA alone. The BIA Road Maintenance Program has traditionally been responsible for maintaining only roads designated as BIA-owned. Today, of the 145,400 miles of existing roads in the NTTFI, the BIA has responsibility for approximately 29,100 miles of roads designated as BIA system

roads. For FY2018 the BIA distributed approximately \$32.6 million in Tribal Priority Allocation (TPA) funding for the administration and the performance of the road maintenance program.

BIA supports self-determination and the empowerment of tribes by contracting out a significant portion of the program with tribes. Approximately 75 percent of tribes with BIA system roads within their reservation boundaries currently carry out the BIA Road Maintenance Program through self-determination contracts or self-governance compacts. Approximately 17,130 miles of the BIA system roads are unimproved and earth surface roads, and 4,720 roads are gravel according to the FY 2020 BIA Congressional Budget Justification released earlier this month. The FY2018 deferred maintenance for BIA roads was estimated at \$392 million.

FAST Act

Fixing America's Surface Transportation Act, P.L. 114-94 (FAST Act), was enacted on December 4, 2015, with retroactive effect to the beginning of FY2016. The FAST Act continued the new statutory formula established under the Moving Ahead for Progress in the 21st Century Act, P.L. 112-141 (MAP-21) for determining tribal shares and transportation planning shares for tribal governments. In addition, a set-aside was established for the replacement and rehabilitation of deficient tribal bridges and for safety projects for applying tribes. The statutory funding formula was carried forward in the FAST Act with authorized amounts starting at \$465 M in FY2016 to \$505 M in FY2020. This has allowed more funding to be directed to tribal priorities.

The FAST Act formula has addressed the long standing issue of a competitive formula, but there are still some implementation issues regarding the application of certain data to the calculation of tribal shares. As an example, approximately 11 tribes do not have a recorded population within the statutorily mandated American Indian and Alaska Native population within each Indian tribe's American Indian/Alaska Native Reservation or Statistical Area, as computed under the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996 (25 U.S.C. 4101 et seq.). We believe the rationale for considering this information was to provide another data element that reflected relative need due to tribal population of the eligible tribes, not to limit funding to those tribes who do not have population data. The use of default minimum or alternate data such as the BIA Labor Force Report in addition to the NAHASDA based values to make allocations would help to provide some equality to tribes that are currently disadvantaged by use of the NAHASDA statistic.

Tribes with zero population, as reported in NAHASDA, do not receive funding based on population but they do receive some consideration for funding under the other elements of the formula including total eligible road mileage as of 2004, and the ratio of the average of the share percentage from fiscal years 2005 through 2011 as compared to the amount for all tribes within the particular BIA Region. Tribes that have recently been federally recognized and any tribes recognized in the future may receive little or no funding because they do not have a population recorded in the NAHASDA database nor will they have any eligible miles recorded in the 2004 inventory or the 2012 inventory update. Additionally, these tribes do not have a history of funding as required by the third element of the formula. This combination of data deficiencies generally results in no funding being made available for their transportation needs.

The FAST Act also included new provisions at 23 USC 201 (c)(6)(C) requiring data collection on program performance. Regardless of contract or agreement type, within 90 days of the end of each fiscal year all entities carrying out the TTP must submit data identifying the names, description and status of projects and activities, along with the number of jobs created and jobs retained as result of the reported projects and activities.

Conclusion

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

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