

**STATEMENT OF
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OFFICE OF THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
OVERSIGHT HEARING ON
TRIBAL TRANSPORTATION IN INDIAN COUNTRY**

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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%) 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.