

**TESTIMONY
OF
JERRY GIDNER
DEPUTY DIRECTOR, OFFICE OF INDIAN SERVICES
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
OVERSIGHT HEARING ON
TRANSPORTATION ISSUES IN INDIAN COUNTRY**

JULY 12, 2007

My name is Jerry Gidner. I am the Deputy Director for Indian Services in the Bureau of Indian Affairs' (BIA) at the Department of the Interior. With me today is LeRoy Gishi, the Division Chief of our Division of Transportation. We are pleased to be here today to provide you with an overview of the BIA's Road Maintenance Program and the Indian Reservation Roads (IRR) Program. The IRR is jointly administered by the BIA and the Federal Highways Administration (FHWA).

The BIA has been involved in the repair 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 reservation roads on Indian Reservations. Approximately \$1.2 billion were provided during this time for both construction and maintenance. The Surface Transportation Assistance Act of 1982 created the Federal Lands Highways Program which established IRR as a category of public roads providing access to or within Indian reservations, lands, communities and Alaska Native villages. This funding has contributed to the improvement of roads and the replacement or rehabilitation of deficient bridges on or near reservations throughout Indian country. Shortly after the establishment of the IRR program under the Federal Lands Highways Program (Title 23 USC Chapter 2), only road maintenance funds were appropriated through the Department of the Interior. Since the establishment of the IRR Program, the federal construction investment in BIA, tribal, state, county and local roads and bridges that comprise the IRR system has exceeded \$4.5 billion.

Despite these efforts, there is still a great need for improving the transportation system in Indian country. We view this as a joint responsibility not only of federal agencies but a shared responsibility of state and local governments with transportation investments on or near Indian and Alaska Native communities. Improved transportation systems provide increased public safety and economic opportunities in these communities. Transportation networks in Indian and Alaska Native communities are critical for economic development stimulus by providing access to markets. In addition, safe roads are important when transporting people in rural areas to schools, local hospitals, and for delivering emergency services.

The IRR comprises over 82,000 miles of public roads with multiple owners, including Indian

tribes, the BIA, states and counties. Coordination among all of these owners is required to pool available resources.

The BIA transportation program currently implements both the Department of Transportation's highway trust funded IRR program as well the Department of the Interior's funded Road Maintenance Program.

Road Maintenance in the BIA

The road maintenance program traditionally has been a responsibility of the owner agency. Of the 82,000 miles of IRR, the BIA has a responsibility for 27,000 miles of roads designated as BIA system roads. The BIA receives tribal priority allocation (TPA) funding annually through the Department of the Interior's appropriations for the administration of the road maintenance program for those roads. Approximately 30 percent of the tribes with BIA roads currently contract the road maintenance program under a self-determination contract or agreement. The annual amount of BIA road miles has increased by 23 percent since FY 2000. Of the 27,000 miles of Indian reservation roads, 20,450 miles or 76 percent are unpaved roads and 6,550 miles or 24 percent are paved roads.

During the past 5 years, an annual average of \$26 million has been appropriated for the road maintenance program. Periodic condition and deferred maintenance assessments are conducted to assess the maintenance needs in Indian country. Maintenance activities include patching, crack sealing, and striping of paved road surfaces, sign repair, culvert cleaning, snow and ice removal, and other emergency repair not eligible under the Highway Trust Fund emergency relief program.

Road Maintenance under SAFETEA-LU

Provisions under the Safe, Accountable, Flexible, Efficient Transportation Equity: A Legacy for Users (SAFETEA-LU) now allow the use of up to 25 percent of a tribe's IRR program funds for the maintenance of any eligible Indian reservation road. These funds can be used for the maintenance of roads and bridges as well as the purchase of equipment upon approval of the BIA and the FHWA. This is in the second year of implementation. There were no requests to maintain IRR roads in the first year of SAFETEA-LU. It is important to note that the eligible roads are all IRR and not only BIA or tribal roads and bridges. Under these provisions, the tribes may elect to use the funds for the maintenance of non-BIA roads. Although state and local roads are the responsibility of the respective state and local governments and have specific funds to maintain these roads, if these roads are not maintained, tribal governments may utilize a portion of the IRR funds to maintain these roads. Because this occurs within a unique tribal and state or local government agreement, the BIA does not maintain any information on the extent to which this may be occurring.

Indian Reservation Roads Inventory

Since November 2004, the current formula for distributing IRR program funds based on tribal shares was implemented through negotiated rulemaking with tribal governments. This formula utilizes data associated with the cost of constructing roads to an adequate standard, the usage of roads or traffic and the population of the tribe served. The data associated with the cost and the usage is maintained in a national database called the IRR inventory. The IRR inventory is a database of all public roads that meet the definition of an Indian reservation road. The IRR inventory is also used in the calculation of the shares of funding to be allocated to a tribe in a given year. The formula is described in detail within the IRR program regulations found at Title 25 of the Code of Federal Regulations, Part 170 (25 CFR 170). Each year, the inventory may be updated by tribes to reflect the transportation needs which are ranked against the relative needs of other tribes.

The national inventory and how it is used in the formula changed with the implementation of the regulations in November 2004 and the enactment of SAFETEA-LU in August 2005. These changes allowed Tribes to use all of the IRR data in the formula calculation to generate their annual funding. Under the old formula, not all of the data was used to generate each Tribe's funding. Those tribes with an active program for updating inventory data increase or maintain their relative share of the IRR funding. Not all tribes have updated their inventory; those that have not may have seen a reduction in their relative share of funding under the new formula. Tribes can receive training on how to update their inventories through the Tribal Technical Assistance Program (TTAP) centers established through the Intermodal Surface Transportation Equity Act (ISTEA) of 1991.

In order to expedite Tribes' ability to update their inventories, BIA is taking steps to make a duplicate IRR database available for Tribes to access and update information electronically. BIA hopes to have this system available in FY 2008.

Because of new provisions in SAFETEA-LU, regulations and policy guidance are necessary so that uniform procedures are implemented for all tribes. The BIA is working closely with the IRR Program Coordinating Committee (Committee), established by regulation, on the implementation of the funding formula and the challenges in the inventory update process. The Committee responsibilities include providing input and recommendation to both the BIA and the FHWA for the IRR Program. Along with the FHWA, we have been working with the Committee and tribes on addressing the tribal concerns of the program through an update of the regulations. Until most of the tribes have updated their portion of the IRR inventory, any significant changes to the formula in regulation would be premature. It is estimated that only about 25 percent of the 562 federally recognized tribes have updated a significant portion of their eligible inventory.

Conclusion

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