

**ENHANCING TRIBAL SELF-GOVERNANCE AND  
SAFETY OF INDIAN ROADS**

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**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS**

**UNITED STATES SENATE**

**ONE HUNDRED SIXTEENTH CONGRESS**

FIRST SESSION

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## **ENHANCING TRIBAL SELF-GOVERNANCE AND SAFETY OF INDIAN ROADS**

**WEDNESDAY, APRIL 3, 2019**

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:30 p.m. in room 628, Dirksen Senate Office Building, Hon. John Hoeven, Chairman of the Committee, presiding.

### **OPENING STATEMENT OF HON. JOHN HOEVEN, U.S. SENATOR FROM NORTH DAKOTA**

The CHAIRMAN. Good afternoon.

I call this oversight hearing to order.

Today, the Committee will examine transportation programs that affect Indian roads and bridges. Approximately 147,000 miles of roads and 930 bridges are located throughout Indian Country. These roads, highways and bridges are used by children going to their schools, emergency and first responders to reach those in need, and tribal members to reach their place of employment.

These roads also provide economic opportunity to tribes by providing access to and from Indian lands. However, many of these roads and bridges are in need of improvement. According to the Bureau of Indian Affairs, there is at least a \$280 million backlog of deferred maintenance of BIA roads with only 17 percent of the BIA roads considered to be in acceptable condition.

The conditions of these roads may be a reason why motor vehicle crashes are a leading cause of unintentional injury or death for Indians. In fact, according to the Centers for Disease Control and Prevention, the adult motor vehicle-related death rates for Native Americans are more than twice the national average.

Among Indian infants less than 1 year of age, the motor traffic death rate is eight times higher than the national average. This has to stop. Approximately every five years, Congress has the opportunity to reauthorize the Highway Transportation bill.

In 2015, the Fixing America's Surface Transportation Act, the FAST Act, was signed into law. It included programs for tribal highway maintenance, construction, and safety programs for Indian tribes. The FAST Act also authorized increases for the Tribal Transportation Program. This program is jointly administered by the Department of Transportation's Highway Administration Federal Lands Highway Office and the Bureau of Indian Affairs Divi-

sion of Transportation. Together, they administer over \$495 million of annual funding for transportation programs.

The FAST Act also directed the Secretary of Transportation to complete several reports to Congress regarding tribal transportation safety data. Some of the findings in these reports are very concerning.

For instance, according to the Department of Transportation, there is no uniform crash report form among the BIA law enforcement. Without a uniform crash report form, data and statistics cannot be shared among the 12 BIA regions and tribes.

Data is available to help prevent and address many causes for motor vehicle crashes and deaths. Very soon, I plan to introduce legislation that would enhance the safety of roads in Indian Country. This bill was drafted based on recommendations from the BIA, the Department of Transportation and Indian tribes.

Highlights of the bill include streamlining traffic safety projects at the BIA, creating uniform crash report forms for the use of tribes, modifying and increasing funding for tribal bridges and the Transportation Safety Fund, and increasing funding for the BIA Road Maintenance Program. I hope members of this Committee will support the bill.

Before we hear from witnesses, I want to turn to the Vice Chairman, Senator Udall, for his opening statement.

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, Chairman Hoeven, for scheduling today's hearing to discuss tribal transportation.

I would first like to welcome my good friend from New Mexico, Head Councilman Joe Garcia of Ohkay Owingeh Pueblo. It is good to see you here today, Joe.

Councilman Garcia wears many hats with his various leadership roles and brings a wealth of knowledge to our hearing, not only when it comes to transportation but also as a strong leader for self-governance, veterans, housing, economic development and many other matters across Indian Country. Councilman Garcia, I appreciate your being here and look forward to your testimony.

As Congress begins its work on reauthorizing the multi-year transportation bill set to expire in 2020, known as the FAST Act, we must begin by acknowledging what tribal communities across the Country know all too well. Indian Country lacks safe and adequate surface transportation infrastructure.

As the Government Accountability Office has determined, "Tribal transportation data does not accurately reflect road conditions or maintenance needs and associated costs" and consequently, stifles our ability in Congress to make informed funding decisions. The bottom line is that the Federal Government must do more to provide the necessary resources to ensure Native communities' transportation needs are addressed so that they can get to their jobs, homes, hospitals and schools. We need the data at the Federal, State and tribal levels to support those needs.

However, providing more funding to build and maintain basic infrastructure in Indian Country is only part of the story. Ensuring

tribal governments are able to make their own decisions to implement their own priorities is equally important.

The 2015 FAST Act authorized for the first time a 638 contracting authority for the Department of Transportation's Tribal Transportation Program. The primary goal of DOT's Tribal Transportation Self-governance Program is to deliver infrastructure projects faster and in a more cost-effective way to tribal communities. I am confident the program is on the road to success.

In addition to self-governance, road safety is a top priority for Indian Country, especially when it comes to student attendance. A 2015 GAO study found that poor road conditions on Indian lands contribute to higher absenteeism rates for Indian students than non-Indian students in large part because many Indian students' homes are only accessible by dirt and gravel roads that have become impassable during bad weather.

For example, tribal officials from the Cheyenne River Sioux Tribe recently reported to my staff that their students must get off the bus and wait by the side of the road so that the driver can traverse a particularly dangerous section of road without students onboard. Stories like this one are all too common in Indian Country.

Indian students already face a number of challenges gaining equitable access to educational opportunities. The last thing they should be worried about is their personal safety on their way to school. We must do better to break down these barriers.

Finally, the link between climate change and poor and deteriorating road conditions in Indian Country cannot be ignored. Indian Country's surface transportation infrastructure needs must include tools for ensuring climate resiliency so that tribal transportation inventory is built to last.

I look forward to hearing from today's witnesses and asking questions on these important topics. Again, thank you, Mr. Chairman, and thank you to the panel for being here today.

The CHAIRMAN. Thank you, Vice Chairman Udall.

At this point, we will proceed to our witnesses. Today, we have Mr. Timothy Hess, Associate Administrator, Federal Lands, Federal Highway Administration, U.S. Department of Transportation; Mr. Leroy Gishi, Chief, Division of Transportation, Bureau of Indian Affairs, U.S. Department of the Interior; The Honorable Stephen Roe Lewis, Governor, Gila River Indian Community, Sacaton, Arizona; and The Honorable Joe Garcia, Head Councilman, Ohkay Owingeh Pueblo Council, Ohkay Owingeh, New Mexico. Welcome to you all.

I want to remind witnesses that your full written testimony will be made a part of the official hearing record. Please keep your statements to five minutes so that we have time for questions.

With that, we will turn to Mr. Hess.

**STATEMENT OF TIMOTHY HESS, ASSOCIATE ADMINISTRATOR,  
FEDERAL LANDS, FEDERAL HIGHWAY ADMINISTRATION,  
U.S. DEPARTMENT OF TRANSPORTATION**

Mr. HESS. Chairman Hoeven, Vice Chairman Udall, and members of the Committee, thank you for the opportunity to appear before you today to discuss enhancing tribal self-governance and safety on Indian roads.

I am pleased to appear beside Mr. Leroy Gishi of the Bureau of Indian Affairs, Mr. Stephen Roe Lewis of the Gila River Indian Community, and Mr. Joe Garcia of the Ohkay Owingeh Pueblo Council.

The Federal Highway Administration has a long history of working closely with tribal governments and with the Bureau of Indian Affairs. I am proud of the relationships we have built.

We are committed to continued partnership with tribes to continue to address their transportation needs. Through funding and technical assistance, we are committed to delivering a transportation program that works for all tribes no matter their size.

I would like to take this opportunity to update you on the Department's work to establish the Tribal Transportation Self-governance Program. This program was created by the FAST Act and authorizes the Department to establish a new option for tribes to receive transportation funding via a compact and funding agreement with the Department of Transportation. The Department has been engaged with tribal leaders to develop to the maximum extent possible a consensus, self-governance regulation that adequately addresses the concerns of the Federal Government and tribal leaders.

I am pleased to report that we have made significant progress. In mid-2016, we convened a negotiated rulemaking committee comprised of 18 tribal and 7 Federal representatives. This Committee has met ten times, most recently just over two weeks ago, to develop recommendations and propose regulatory text for consideration by the Secretary. The Department is hopeful that the Committee will be able to finalize its work for the Secretary's consideration following the next meeting this June.

I would also like to address the Department's top priority, safety. The Federal Highway Administration is committed to enhancing transportation safety for tribal communities and will continue to work with our tribal partners, the BIA, Federal agencies, States and other public organizations to identify and implement solutions to address this vital issue.

Tribal transportation facilities are essential to providing safe and adequate transportation to and within tribal land. FHWA administers a number of programs that support these facilities. As one example, the Federal Highway Administration's largest Federal Lands Highway Program, the Tribal Transportation Program, TTP, provides funding to improve transportation for all 573 federally-recognized sovereign tribal governments.

We jointly administer this program with the BIA and work together to partner with tribes and provide training and technical assistance. In addition to providing general technical assistance on tribal transportation issues and training at various meetings and conferences, FHWA has a tribal coordinator assigned to each tribe that has a Tribal Transportation Program Agreement with FHWA. These tribal coordinators perform on-site visits to tribes to provide technical assistance on elements of the TTP as well as to help the tribes in developing transportation improvement plans for their tribal communities.

One component of the TTP is the TTP Safety Fund. The Tribal Transportation Program's Safety Fund makes funds available to tribes through a competitive discretionary program. The TTPSF



emphasizes safety and the development of transportation safety plans which are critical tools in determining how to best address tribal transportation safety needs.

Another component of the TTP is the Tribal Transportation Bridge Program. This program addresses the important issue of bridge safety by providing resources for bridge projects.

TTP funds provided through statutory formula are available to tribes for general tribal transportation needs but can also be used to address specific tribal transportation safety projects. For example, the Citizen Potawatomi Nation in Oklahoma, using TTPSF funds and Tribal Transportation Program tribal shares, designed and constructed a pedestrian pathway providing safety access between the tribal area and the nearby City of Shawnee. Safety is of paramount importance to the Federal Highway Administration and we appreciate Congress's recognition of the need to address tribal transportation safety.

Mr. Chairman, thank you again for the opportunity to appear before you today and your commitment to tribal self-governance and transportation safety.

I look forward to answering your questions.

[The prepared statement of Mr. Hess follows:]

PREPARED STATEMENT OF TIMOTHY HESS, ASSOCIATE ADMINISTRATOR, FEDERAL LANDS, FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Chairman Hoenes, Vice Chairman Udall, Members of the Committee, thank you for the opportunity to appear before you today to discuss enhancing Tribal self-governance and safety on Indian roads. The Federal Highway Administration (FHWA) has a long history of working closely with Tribal governments, and I am proud of the relationships that we have built. We are committed to partnering with Tribes to address their transportation needs. I would like to update you on a number of efforts we have underway.

#### **Tribal Self-Governance**

The Department of Transportation (Department) is working to establish the Tribal Transportation Self-Governance Program created by section 1121 of the Fixing America's Surface Transportation (FAST) Act. This program will establish a new option for Tribes to receive transportation funding via a compact and funding agreement negotiated between the Department and an eligible Tribe that elects to participate in the self-governance program. The Department of the Interior and the Indian Health Service already have self-governance programs. However, because the Department does not carry out services or activities on behalf of, or for the benefit of, Indian Tribes, the focus of the rulemaking to implement the program has been on eligibility, internal Departmental operations to provide flexibility and alleviate administrative burdens, and implementing those provisions of the Indian Self-Determination and Education Assistance Act that address self-governance, while acknowledging the Department's inherently Federal functions.

We have made significant progress in implementing this program, consistent with our goal to provide maximum participation of Tribes in the development and management of transportation programs on Tribal lands. To date, the Department has preliminarily identified a large number of formula-funded, discretionary, and competitive grant programs that may be included in a self-governance annual funding agreement. The Department recognizes the sovereignty of Tribal governments and respects Indian self-determination and Tribal self-governance. The Department is committed to upholding the Federal Government's unique trust responsibility by honoring the government-to-government relationship between the United States and federally recognized Indian Tribes. The Department's goal is to continue to engage Tribal leaders to develop, to the maximum extent possible, a consensus self-governance regulation that adequately addresses the concerns of the Federal Government and Tribal leaders.

### *Negotiations*

In mid-2016, the Department began to implement the congressional directive to promulgate regulations to carry out a Tribal transportation self-governance program by convening a negotiated rulemaking committee composed of 18 Tribal and seven Federal representatives. The rulemaking committee met five times in 2016, four times in 2018, and will meet twice in 2019 to develop recommendations and proposed regulatory text for consideration by the Secretary.

Following enactment of H.R. 6414 (Public Law 115-235), which extended the statutory deadlines for rulemaking, the Department engaged the services of facilitators from the Federal Mediation and Conciliation Service (FMCS) to assist the committee in its negotiations. The committee agreed to focus its efforts on discussing goals, intent, and concerns related to the program and its implementation, while charging a smaller, drafting work group to develop recommended language for consideration by the full committee. The FMCS is also facilitating the work of this drafting group. Most recently, the drafting group met in February 2019, and the committee has empowered the drafting group to develop the remainder of the rule using this process.

The drafting group will meet three times over the next two months to develop additional recommended language for the committee's consideration, and the proposals will be previewed for committee members following each drafting group meeting. There will be an additional plenary meeting in June 2019 to present revised proposals for consideration by the full committee. Pending the outcome of this meeting, the Department expects to issue a proposed rule later this summer.

The Department notes that following enactment of H.R. 6414 in August 2018, Congress extended to June 4, 2019, the statutory deadline for the Department to issue a proposed rule. The Department anticipates that, with the consent of the rulemaking committee, it may have to invoke a 180-day extension to issue the proposed rule. If that occurs, the Department will notify Congress.

### **Safety On Indian Roads**

Safety is the Department's top priority and I am committed to enhancing transportation safety for Tribal communities. As stated in the August 2017 *Tribal Transportation Strategic Safety Plan*, prepared by the Tribal Transportation Safety Management System Steering Committee, despite known underreporting, data from the Fatality Analysis Reporting System (FARS) showed 3,278 available fatality reports in Tribal areas during the five-year period from 2010-2014. This is not acceptable. We must improve transportation safety in Tribal areas. FHWA is committed to working with our Tribal partners, the Bureau of Indian Affairs (BIA) and other Federal agencies, States, and other public organizations to identify and implement solutions to address this important issue.

#### *FHWA Programs*

Tribal transportation facilities are essential to providing safe and adequate transportation to and within Tribal land. A number of FHWA programs support Tribal transportation. Some examples are detailed below.

#### **Tribal Transportation Program**

The *Tribal Transportation Program* (TTP) provides funding for projects to provide safe and adequate transportation and public road access to and within Indian reservations, Indian lands, and Alaska Native Village communities. The TTP provides funding to improve transportation for all 573 federally-recognized sovereign Tribal governments and is the largest Federal Lands Highway program. The program is jointly administered by FHWA and the BIA. We work together to partner with Tribes and provide robust training and technical assistance to support Tribes in enhancing Tribal transportation.

In addition to promoting safety, the TTP contributes to the economic development, self-determination, and employment of Indians and Native Americans. While the vast majority of TTP funds are distributed to Tribes via Tribal shares determined by statutory formula, the program includes a set-aside for the *TTP Safety Fund* (TTPSF), which makes funds available to Tribes through a competitive, discretionary program. The TTPSF supports the Department's safety priority and emphasizes the development of Transportation Safety Plans, which play a critical role in determining how to best address transportation safety needs. One example of the way TTPSF funds benefit Tribes is a project funded by the TTPSF and TTP Tribal shares. Using these funds, the Citizen Potawatomi Nation in Oklahoma designed and constructed a pedestrian pathway providing safety access between the Tribal area and the nearby city of Shawnee.

In addition to the TTPSF set-aside, the TTP includes a set-aside for the *TTP Bridge Program*, which addresses the important issue of bridge safety by providing

resources for planning, design, engineering, preconstruction, construction, and inspection of bridge projects. Tribes apply for these bridge funds, and, after a completed application package is received and accepted by FHWA, applications programmed for funding are placed in either a preliminary engineering or construction queue. Applications are ranked and prioritized based on established criteria and those applications not funded remain in the queue and carry over from fiscal year to fiscal year until funded.

The TTP also includes a set-aside for *Transportation Planning*, which funds Tribal transportation planning activities. The stated purpose of transportation planning is to fulfill goals by developing strategies, including strategies to address public safety, to meet transportation needs.

Not only has the TTP program improved safety, but it has also made infrastructure improvements in Tribal areas that are critical for survival. For example, the Gwich'in people who live in the Yukon Flats area of Alaska make a living from hunting and selling handicrafts. Their subsistence depends on these hunts, fishing, berry picking, and firewood gathering which was, just barely, facilitated by a bridge with a National Bridge Inventory (NBI) sufficiency rating of 4.8. The bridge was closed to all traffic in 2013, greatly impacting the Gwich'in people. However, because of an FHWA Accelerated Innovation Deployment grant and the TTP Bridge Program, it was replaced with a Geosynthetic Reinforced Soil bridge and reopened in October 2017.

#### Highway Safety Improvement Program

The *Highway Safety Improvement Program* (HSIP) is a strategic, data-driven program that improves safety on all public roads, including roads in Tribal areas. The program's purpose is to achieve a significant reduction in traffic fatalities and serious injuries. HSIP funds have been used for a number of safety-related projects in Tribal areas. For example, the Jamestown S'Klallam Tribe in Washington State made safety realignments to the intersection of US-101 and Chicken Coop-Zaccardo with a project that combined TTPSF funds and HSIP program funds.

#### Nationally Significant Federal Lands and Tribal Projects Program

The *Nationally Significant Federal Lands and Tribal Projects (NSFLTP) Program* provides funding for the construction, reconstruction, and rehabilitation of nationally-significant projects within, adjacent to, or accessing Federal and Tribal lands. The Department published a Notice of Funding Opportunity for this competitive program in October 2018 and is currently reviewing applications. Consistent with the statutory selection criteria established in the FAST Act, evaluation of applications for this program includes consideration of the extent to which the project furthers the goals of the Department, including safety.

#### Tribal Technical Assistance Program

In addition to the programs described above, the *Tribal Technical Assistance Program* (TTAP) provides centralized delivery of highway-related training, technical assistance, and technology transfer to Tribes. The TTAP operates five Virtual Centers of Excellence (CoE), each staffed with subject matter experts to provide training and technical assistance in their specialty areas. One of the five CoEs is specifically focused on safety. FHWA is committed to providing effective technical assistance to Tribes and is evaluating the centralized delivery model launched in 2018 over the course of a two-year pilot. Through February 2019, a total of 2,609 training hours have been delivered under the pilot. This is a 60 percent increase over the five-year average of training hours delivered from 2012 through 2016.

In addition to the programs described above, some Tribes have benefitted from State planning and investment decisions with a State's Federal-aid program funding. FHWA will continue to work with our Tribal partners as we administer these programs and work together to achieve enhanced safety for all Tribes.

#### *Tribal Transportation Safety Reports to Congress*

Congress recognized the need to address Tribal transportation safety in the FAST Act. Section 1117 of the FAST Act directed the Secretary to: (1) submit to Congress a report describing the quality of transportation safety data collected by States, counties, and Indian Tribes for transportation safety systems and the relevance of that data to improving the collection and sharing of data on crashes on Indian reservations, and (2) complete a study that identifies and evaluates options for improving safety on public roads on Indian reservations and submit to Congress a report describing the results of the study.

#### Tribal Governments & Transportation Safety Data

In order to evaluate the quality of transportation safety data, FHWA utilized a survey developed by the Tribal Transportation Safety Management Steering Committee (SMS Committee). FHWA has played a key leadership role in this committee, which it co-chairs with the BIA. The goal of the SMS Committee is to prevent and reduce fatalities and injuries associated with the use of Tribal transportation facilities. The SMS Committee members include representatives from Tribal governments and Federal agencies, including FHWA's Tribal Transportation Program, Office of Safety, and Resource Center.

The survey developed by the SMS Committee was made available to all federally-recognized Tribes and the States in which those Tribes are located. The survey responses were analyzed to evaluate the quality of existing Tribal transportation safety data, opportunities for improved data collection, options for paperless reporting, and uses of crash data. Based on that analysis, in May 2017, FHWA delivered to Congress the report required pursuant to section 1117(b) of the FAST Act: *Tribal Governments & Transportation Safety Data*.

As stated in the May 2017 report, many Tribes are not adequately represented in State and national crash databases that often drive policy, program, and project decisions because some crash data is not shared with State governments. Additionally, some incidents are undocumented. The report noted that Tribes and States identified several barriers inhibiting the sharing of crash data, including Tribal-State communication, resources required to collect and share crash data, and Federal policy for crash reports.

The May 2017 report included many actions DOT agencies would take to improve the quality and availability of safety data in Tribal areas. Consistent with these recommendations, FHWA continues to accept any form of crash data from Tribes when evaluating applications for TTPSF grants and has encouraged Tribes to conduct a self-assessment of traffic records and submit the assessment with their grant applications if formal documentation of crashes is not available. FHWA also provides assistance as requested to encourage Tribal involvement in performance measure establishment.

Additionally, in coordination with FHWA, NHTSA updated their Traffic Records Program Assessment Advisory to include multiple references to Tribal governments. This Advisory provides guidance on different assessment processes States may utilize to evaluate their State's highway safety data and traffic records system. The inclusion of references to Tribal governments in the Advisory will encourage new conversations about partnering with Tribes as States review their safety data systems. In addition to coordinating within the Department, FHWA is involved in ongoing coordination with the Department of the Interior (DOI) to address standardizing collection of crash data by DOI law enforcement and continues to work as part of the SMS Committee to improve Tribal transportation safety.

FHWA will continue its efforts and partnerships to improve collection and sharing of safety data so that Tribes are better able to address safety issues through strategic safety planning and implementation. Improved data collection and sharing also has the potential to afford Tribes improved access to funding opportunities, as analysis of information available via State and national crash databases can inform project decisions, such as the selection of roadway safety improvements through the Highway Safety Improvement Program (HSIP).

#### Options for Improving Transportation Safety in Tribal Areas

In August 2017, the SMS Committee published the *Tribal Transportation Strategic Safety Plan* (Safety Plan), addressing topics selected based on review of multiple data sources. Based on this plan, in January 2018, FHWA delivered to Congress the report required pursuant to section 1117(c) of the FAST Act: *Options for Improving Transportation Safety in Tribal Areas*. This report summarizes the topics addressed in the Safety Plan, separated into two categories: priority and additional topics. The priority topics are those which data indicates are national-level issues or which help establish data driven decisionmaking frameworks, while additional topics may be emerging issues or may be identified by a Tribe through analysis of incident history. The priority topics identified in the January 2018 report are: (1) Transportation Safety Decision Making Process; (2) Crash Data Collection, Sharing, and Analysis; (3) Occupant Protection, Child Passenger Seats, and Helmets; (4) Roadway Departure; (5) Impaired Driving; (6) Pedestrians; and (7) Availability of Public Safety Services. In addition to identifying these priority topics, the report discusses strategies identified in the Safety Plan that Tribes may utilize to improve transportation safety, and recognizes that a Tribe's unique incident history and local knowledge may identify other priority areas for which other strategies should be considered.

FHWA is promoting the priority topics identified in the January 2018 report at regional and national conferences and encouraging Tribes to consider these topics as they develop and update Tribal Transportation Safety Plans. FHWA is committed to finding additional ways to encourage and assist Tribes with these topics and intends to partner through the SMS Committee to identify additional ways this can be accomplished.

In addition to identifying priority topics and strategies to address them, the January 2018 report identifies general options for Federal agencies to improve transportation safety in Tribal areas. FHWA is already executing many of these recommended options, for example, by accepting the best available data when evaluating applications for TTPSF grants; fostering good relations and facilitating communication between Tribes and States; providing training, technical assistance, and resources to support Tribes in addressing safety issues; and continuing to actively collaborate with Tribal and Federal agency partners, including the BIA, in the SMS Committee. FHWA will continue to look for additional opportunities to partner with Tribes, the BIA and other Federal agencies, and other organizations to enhance Tribal transportation safety.

**Conclusion**

Thank you again for the opportunity to appear before you today. I would be happy to answer any questions you may have.

The CHAIRMAN. Thank you.  
Now we will hear from Mr. Gishi.

**STATEMENT OF LEROY GISHI, CHIEF, DIVISION OF  
TRANSPORTATION, BUREAU OF INDIAN AFFAIRS, U.S.  
DEPARTMENT OF THE INTERIOR**

Mr. GISHI. Good afternoon, Chairman Hoeven, Vice Chairman Udall and members of the Committee. Thank you for inviting the Department of the Interior to provide testimony at this oversight hearing on the topic of enhancing tribal self-governance and the safety of Indian roads.

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 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 delivery of 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 implementation of the Tribal Transportation Program.

The BIA and FHWA within the Department of Transportation jointly administer the TTP. The BIA oversees the BIA Road Maintenance Program with the maintaining of BIA roads and transportation facilities.

Since establishment of the Tribal Transportation Program in 1982, the total Federal construction authorization for tribal transportation has exceeded \$10 million. These investments have contributed greatly to the improvement of roads and replacement and rehabilitation of deficient bridges on or near tribal lands throughout Indian Country.

The National Tribal Transportation Facility inventory is a listing of transportation facilities eligible for Federal program assistance.

This inventory 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.

Over 62 percent of the eligible facilities are the responsibility of other public authorities. 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 on or near American Indian and Alaska Native communities.

Coordination among all new 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 the 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.

The BIA Road Maintenance Program is responsible for maintaining roads designated in the inventory as BIA-owned. Today, of the 145,000 miles of existing roads in the inventory, the BIA has responsibility for approximately 29,000 miles of roads.

In fiscal year 2018, the BIA distributed approximately \$32 million in tribal priority allocations for the administration and performance of road maintenance. BIA supports self-determination and the empowerment of tribes by contracting out a significant portion of the program with tribes.

Approximately 75 percent of the tribes with BIA system roads within their reservation boundaries currently carry out the BIA Road Maintenance Program through self-determination contracts and self-governance compacts. Approximately 17,000 miles of the BIA system are unimproved earth surface roads; 4,700 are gravel. The deferred maintenance in BIA roads is estimated at \$390 million.

The FAST Act was enacted in December 2015. The FAST Act has continued the statutory formula that was established under the previous MAP-21 authorization. Part of that authorization was determining a funding formula for tribal funding shares as well as planning.

In addition, a setaside was established for the replacement and rehabilitation of tribal bridges and safety projects. This has allowed more funding to be directed directly to tribal priorities.

The FAST Act formula continues to address the longstanding issues of competitive formula. There are still some implementation issues regarding application of certain data to calculation of tribal shares.

For example, approximately 11 tribes do not have a recorded population within the mandated American and Alaska Native population database. We believe the rationale for considering this information was to provide another data element that reflected relative need of the eligible tribes not to limit funding to those tribes

who do not have population data. Tribes with zero population as reported in the required database do not receive funding based on population, but can receive some consideration for funding under other elements of the formula.

The FAST Act also included provisions requiring data collection and program performance. This has been very helpful in helping us to be able to begin the process of identifying the type of projects and the extent to which projects are being prioritized by tribes, information that until now we did not have the opportunity to have.

This is reported on an annual basis. We do have reporting on that for fiscal year 2016 through 2018.

The BIA and the Department are committed to working with the Committee and members of Congress to address the transportation needs and share successes in Indian Country through our support of tribal transportation, road maintenance and other Title 23 programs.

Thank you for this opportunity to present testimony on these issues as an important part of infrastructure, road safety, employment, and economic development needs in Indian Country.

I will be happy to answer any questions, Mr. Chairman. Thank you.

[The prepared statement of Mr. Gishi follows:]

PREPARED STATEMENT OF LEROY GISHI, CHIEF, DIVISION OF TRANSPORTATION,  
BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

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 NTTFL, 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.

The CHAIRMAN. Thank you, Mr. Gishi.

Now we will turn to Governor Lewis.

#### **STATEMENT OF HON. STEPHEN ROE LEWIS, GOVERNOR, GILA RIVER INDIAN COMMUNITY**

Mr. LEWIS. [Greeting in Native language.] Good afternoon, Chairman Hoeven, Vice Chairman Udall, Senator McSally and distinguished members of the Committee.

I am Stephen Roe Lewis, Governor of the Gila River Indian Community. I want to thank you for the opportunity to testify today regarding ways to enhance tribal self-governance and safety on Indian Roads.

Tribal transportation is an important issue across Indian Country. I have made it a priority in my administration. These roads carry our tribal citizens, members of our local community, our

school children, our elders, law enforcement and emergency services, and patrons to our businesses.

The transportation programs at Gila Rive are representative of what you see across Indian Country. Our reservation is a 583 square mile, rural island, but our southern boundary borders the Phoenix metropolitan area.

The reservation contains a combination of BIA, tribal, county, township and State roads. This means our transportation needs are both rural and urban. Our location requires a great deal of collaboration, partnership and respect with the State and local counties.

The community took over Federal functions that were previously performed by the BIA and the Department of Transportation through self-governance compacts. Taking over those functions has allowed the community to build our own Department of Transportation that has grown to a staff of 45 which oversees the planning, realty and right-of-way, construction, engineering, road maintenance, and transit functions on the reservation's 420 miles of roads and 67 bridges.

This arrangement has allowed the community to exercise more self-governance and more sovereignty over its transportation priorities and planning but still requires a high level of coordination with the U.S. Department of Transportation, the BIA, State and counties.

One of the areas where that cooperation has been critical has been in addressing the community safety plans. The Gila River Indian community was the first tribe in Arizona to prepare a tribal safety plan framework.

To develop this plan, the community conducted workshops and included other stakeholders such as the Federal Highway Administration, the Arizona Department of Transportation, the BIA, the Intertribal Council of Arizona, the Maricopa Association of Governance, the Arizona Department of Public Safety, the Indian Health Service and community departments such as our police department, emergency services and injury prevention programs.

We have since also conducted a multi-modal pedestrian safety study. These studies have allowed the community to prioritize road construction, safety projects, work with external partners and create a long term plan to address the safety needs of our tribal citizens and those who use our roadways.

Another important component of our safety plan is sharing crash and safety data with the State. Arizona encourages all of the law enforcement agencies within the State to share data, including tribal law enforcement. This data sharing allows all of the governments, tribal, State, and county, to be more targeted in their funding requests and more strategic in their law enforcement prevention and educational outreach programs.

While collaboration with State and local governments is key, adequate funding is also required. Increases are critically needed in funding directly to tribes for transportation, safety, transit and road maintenance programs.

The community has 306 BIA roads within the reservation and receives funding of only \$3 million per year for maintenance of those roads. To put it directly, this is approximately \$9,771 per road for

maintenance which is wholly inadequate. That is just for the Gila River Indian Community.

The total deferred maintenance for BIA roads is nearly \$300 million and growing because of the poor condition of many of those roads. Senators, this is a strict government-to-government relationship priority that needs to be taken care of. This is also a fundamental responsibility, a trust responsibility the Federal Government has for all tribes throughout Indian Country.

The Community also recommends increased attention to tribal funding for large scale transportation infrastructure projects. The Community and State have recently reached agreement to work together to address the improvement needs of the 20 miles of Interstate 10 that runs through the reservation.

While the State and tribes are working together now, tribes are dependent on a willing partner in the State for projects of this size because, with few exceptions, funding goes directly to States for large scale, multi-jurisdictional projects with no money left over for critical tribal projects.

The Community recommends grants such as the Build grant contained in the Fast Act to include a specific allocation for tribal projects. In 2018, a total of \$1.5 billion in Build grant funding was awarded to 91 projects in 49 States and the District of Columbia. Out of those awards, only one, only one went to a tribe. That grant amount was \$15 million.

In 2018, 30 percent of Build grants were required to go towards rural projects. That amount increases to 50 percent in 2019. We recommend, we strongly recommend a certain percentage of those grants should be designated exclusively for tribal projects and applications where tribes, States and counties are working together on large scale projects.

Again, thank you for the opportunity to discuss the Gila River Indian Community's transportation program on enhancing self-governance and safety in tribal communities. This is a critical need in Indian Country.

I am happy to answer any questions you may have. Thank you.  
[The prepared statement of Mr. Lewis follows:]

PREPARED STATEMENT OF HON. STEPHEN ROE LEWIS, GOVERNOR, GILA RIVER INDIAN COMMUNITY

Chairman Hoenen, Vice Chairman Udall and Members of the Senate Committee on Indian Affairs, I want to thank you for holding this hearing on "Enhancing Tribal Self-Governance and Safety on Indian Roads." Safe and adequate transportation infrastructure is not only critical for members of the Gila River Indian Community ("Community") and others who utilize our roadways, but also for economic development and other governmental functions. We appreciate the Committee holding this hearing to ensure that tribal transportation needs are considered in the broader conversations occurring nationally around reauthorization of the Fixing America's Surface Transportation Act ("FAST Act") and infrastructure development.

**Background On Tribal Transportation**

The latest long-term surface transportation reauthorization, the FAST Act, was signed into law on December 4, 2015. This Act provides \$305 billion in funding for surface transportation infrastructure through fiscal year 2020, when it is set to expire. Specific to tribal transportation, the FAST Act reauthorized the Tribal Transportation program and provided for increased funding for that program from \$450 million in 2015 to \$465 million in 2016 with step increases of \$10 million per year, reaching \$505 million in fiscal year 2020. The FAST Act also placed a focus on tribal safety funding and reporting and allocated specific funding for tribal planning and

bridge maintenance. With this surface transportation reauthorization set to expire in 2020, there is a renewed focus on how to build on the gains in the last reauthorization and ensure that tribal governments have the resources they need to provide safe and efficient transportation for their members, residents of surrounding communities, and to promote development both on and off tribal lands.

#### **Gila River Indian Community Transportation Program**

The Community's Reservation abuts the southern boundary of the Phoenix Metropolitan Area, and is located in the first and third most populated counties in Arizona—Maricopa County (4.3 million), and Pinal County (430,000). The Community's Reservation is a 583.7 square mile rural island with the Phoenix-Metro to its north and Phoenix-Metro exurbs to its south and east. Approximately 15,000 of the Community's 23,000 members live on our Reservation. The Community's proximity to the sixth largest metropolitan area in the country, combined with a sizeable land base, require its transportation programs to address transportation needs associated with both a rural and a metropolitan area. This location also means that planning for tribal transportation programs and significant projects must be done in conjunction with the local municipalities and the state given that a 20 mile stretch of Interstate 10 crosses the Reservation and five state highway routes are located on the Reservation.

In 1997, the Community established the Gila River Indian Community Department of Transportation (GRIC DOT) which has grown to a staff of 45. GRIC DOT oversees the administrative, planning, engineering, surveying, rights-of-way, construction, operations and maintenance activities on the Reservation. GRIC DOT is responsible for the Community's road inventory which consists of approximately 420 miles of roads and 67 bridges. Of the 420 miles, the majority are Bureau of Indian Affairs (BIA) roads (306.7), with the rest tribal, county and township and state roads.

In 2003, the Community entered into a self-governance compact with the BIA to take over those functions that the BIA was performing. In 2009, the Community entered into an agreement with the U.S. Department of Transportation, Federal Highway Administration to take over roads activities for all BIA and Community-owned roads within the Reservation, including planning, research, design, engineering, construction and maintenance of highway, road, bridge, parkway or transit facility programs or projects located on the Reservation or which provide access to the Community's Reservation. This agreement still requires a level of coordination with the BIA, but allows the Community to determine its own priorities through its five-year transportation plan, which is approved by Council. In taking over those programs previously performed by the federal agencies, the Community has been able to be more strategic and purposeful in its transportation planning.

Although the majority of the Community's funding comes through the U.S. Department of Transportation, maintenance of the BIA roads within the Reservation is still funded through the BIA. The shortfall in maintenance funding for BIA roads nationwide is well documented with the current deferred maintenance estimated at nearly \$300 million. The Community also faces a maintenance backlog on the BIA roads within the Reservation. With approximately 307 BIA roads to maintain and an annual allocation of \$3 million, each mile of BIA road receives approximately \$9,771 for maintenance.

This level of funding is highly inadequate to maintain roads that are considered in good shape. Unfortunately, the BIA roads on the Community's Reservation have been neglected for decades. At the wholly inadequate current funding levels all the Community is able to do is maintain roads that are in poor shape. It is analogous to putting a band aid over a pothole and expecting it to create a safe mode of transportation for tribal and non-tribal citizens who utilize those roads.

GRIC DOT also operates Gila River Transit which is funded through tribal funds and Rural Transit Program funds administered by the Arizona Department of Transportation (ADOT). The transit staff includes five full-time employees—one administrator and 4 bus operators and provides shuttle services in Sacaton which serves District 3 and the West End which services Districts 6 and 7. Ridership in the transit program has steadily increased from the first grant year in 2016 with the Sacaton transit going from 7,800 riders in 2016 to 16,714 in 2018. The West End ridership increased from 2,277 in 2016 to 8,346 in 2018. In September of 2018, GRIC DOT received its second two year funding award from ADOT's rural transit program and receives approximately \$304,000 annual to operate the transit system. Given it takes approximately two to three years for a transit route to mature, the ridership numbers for these two routes is impressive.

The Community would like to continue to add more routes to its transit service, but limited funding directed towards tribal governments and increased competition

for rural transit funds can bring uncertainty when tribes are investing in much needed transit systems for their citizens.

### **Safety**

Transportation safety is a critical issue affecting tribal communities. Motor vehicle crashes are the leading cause of unintentional death for American Indians and Alaska Natives with fatalities more than twice that of other races for adults and eight times higher among infants less than one year of age.

In the FAST Act, 2 percent of the funding allocated for the Tribal Transportation Program is eligible to be used for tribal safety. The funds are allocated under a discretionary, competitive grant program for projects that will address prevention and reduction of transportation related activities such as motor vehicle crashes. These grants can also be used to develop and update transportation safety plans, improve collection of, assessment and analysis of crash data, and for infrastructure improvements. While this funding is a positive step forward, the amount remains seriously deficient for the safety needs in Indian Country. Despite acknowledging that tribal citizens are the most impacted population by motor vehicle crashes, lack of available and accessible data is often cited as the reason more funding is not available.

Therefore, the FAST Act required a report to Congress on Tribal Governments and Transportation Safety Data with the goal of improving data collection and sharing among tribes and other jurisdictions to improve transportation policies, funding and data collection systems. Some of the major recommendations were to bring increased coordination and consistency in how data is collected among tribes and federal entities.

In Arizona, the state encourages all of the law enforcement agencies within the state to share data, including tribal governments' law enforcement. The Community has been sharing crash data with the state and county for the past several years in an effort to ensure that those incidents that occur on, or near the Reservation are recorded. This allows the Community to identify those roadways and areas that require safety features and also offers the opportunity to ensure those safety projects are not only on the tribal transportation plan, but also have the data to show why the state should provide resources to improve safety.

One example of the Community benefiting from sharing safety data with state and local jurisdictions is the project on State Route 87 which runs through Districts 1, 2, and 4. This route was identified as needing additional safety infrastructure based on the number of fatalities that have occurred. Following a study of the safety needs, and in partnership with ADOT, additional turn lanes were constructed at 15 intersections on State Route 87 and other measures were taken including new signage, surface treatment, a centerline rumble strip and new pavement markings.

The continued collection of crash data determined that there are still three areas in need of additional safety measures—the intersections of State Route 87 and Gilbert, Sacaton & Olberg roads. These intersections are located within the Reservation and have been the site of a number of fatal and incapacitating intersection related crashes. ADOT has determined that this project is eligible for funding under the Highway Safety Improvement Program funding. Therefore, three traffic signals will be placed at these three intersections. This type of project is typical of those that require multi-jurisdictional cooperation based on state, county, federal, tribal and BIA roads all running through the Reservation, where the at-risk-site is on the Reservation, but must be on the State's Transportation Plan in order to receive funding approvals.

Aside from allowing for more targeted funding requests, the Community's decision to share data with the State also allows for more targeted law enforcement in those areas that are highest risk and for more strategic educational outreach to the Community on the effects of seat belt usage, speeding, drinking and driving, and impaired driving.

*Tribal Safety Plan*—The Community was the first tribe in Arizona to prepare a tribal safety plan framework. As of 2013, no tribe in Arizona had a safety plan which made it difficult for them to collaborate with ADOT and local municipalities on tribal safety. In conjunction with the Intertribal Council of Arizona, the Community developed a tribal safety plan framework that ultimately led to a Tribal Safety Plan approved by the Community Council.

To develop the Tribal Safety Plan Community workshops were conducted with other stakeholders including the Federal Highway Administration, ADOT, BIA, Intertribal Council of Arizona, Maricopa Association of Governments, Arizona Department of Public Safety, Indian Health Services, and Community departments such as the police department, GRIC DOT, emergency services and injury prevention program.

The Community also conducted a Multimodal Pedestrian Safety Study that evaluated the pedestrian safety needs on the Reservation including sidewalks/shared use paths, bus stops/turnouts, and other infrastructure. This study was used to provide data for potential funding sources and build a comprehensive safety plan for the Community and included input from external stakeholders such as federal officials, business, the general public and tribal departments such as the police department, housing, senior center, school transportation department, flood control management task force and the youth council. This study ultimately provided recommendations on issues such as locations for speed reduction, trails, crosswalks, lighting, sidewalks, signage, bike lanes and handicap access.

The safety plan made recommendations on responses to, and prevention of, crashes and locations deemed in need of safety measures, bicycle and ATV safety, a child safety seat program, seatbelt usage, and driving under the influence. The plan was approved by the Community Council in July of 2014.

Together these studies have created a roadmap for safety within the Community. This has allowed the Community to prioritize road construction and safety projects, work with external partners, such as the State and local municipalities, in a more collaborative manner and identify funding sources to address the safety needs of tribal citizens and non-tribal users of the Community's transportation infrastructure.

#### **Improvements To Interstate 10**

One of the issues facing the Community is working with other governments on planning and construction of large-scale transportation projects. In some cases, tribal governments are left out of the planning of large-scale infrastructure projects. This has been the Community's experience in the past as well. Recently, however, transportation planning and coordination between the Community and the surrounding governments, including the State, has improved significantly.

Late last year, ADOT reached out to the Community to participate in a design concept report and environmental study on the addition of lanes to I-10, along with improvements to existing interchanges. The study is required for federally funded projects and will have an accelerated timeline of 18 months. This study will take into account the strategy needed to improve traffic capacity along the I-10 and to account for growing needs based on current and future economic opportunities along the corridor. This is the kind of coordination and planning with tribal nations that is essential to ensuring major transportation projects can be completed in a timely and efficient manner, taking into account the needs of all the affected governments and communities. The Community believes that this cooperation is to be encouraged across the country.

As further evidence of the Community's growing collaboration with its surrounding governments, both ADOT and the Community will seek funding for the I-10 expansion project that traverses the Community's lands, including the required new interchanges. When projects of this size are contemplated, it is imperative that tribal governments, as equal partners, have access to the same type and level of funding that state and other governments have. There are few federal funding agreements that provide direct funding to tribes for projects of this scope and size. One grant that the Community recommends that Congress and Appropriators continue to support is the Better Utilizing Investments to Leverage Development ("BUILD") program.

The Community is looking into this program as one of the only feasible grants that can provide sufficient funding for projects such as the I-10 interchange project. This particular grant is a competitive grant for surface transportation projects and is open to state, local and tribal governments for projects like the I-10 that have a significant local or regional impact. These grants are split between rural and urban projects, but the Community recommends Congress also consider having a specific percentage of these grants designated for projects located on tribal lands. Despite overwhelming need, few tribal governments have been awarded these grants. In 2018 only one tribe received direct funding and the other project was a joint application with the state. For the Community, direct funding would allow us to begin working on this important interchange project. The State could also apply which would enable the tribe and state to work as partners on this regionally important project. I encourage Congress to maintain this program in the next reauthorization and to ensure that tribes are able to secure grants in the next phase of the allocation of this grant programs.

#### **Conclusion**

The FAST Act provided positive incremental improvements in the tribal transportation program. It will be important to take those gains to create even more signifi-

cant programmatic advances in the next reauthorization. Aside from increasing funding levels for surface transportation, transit and safety programs, Congress should create incentives for transportation and infrastructure projects that are multi-jurisdiction and have significant benefits both on, and off, the Reservation.

The CHAIRMAN. Thank you, Governor Lewis.  
Now I will turn to Councilman Garcia.

**STATEMENT OF HON. JOE GARCIA, HEAD COUNCILMAN,  
OHKAY OWINGEH PUEBLO COUNCIL**

Mr. GARCIA. First of all, greetings from New Mexico. All the Pueblo tribes give you greetings.

Thank you, Chairman Hoeven, Vice Chairman Udall and members of the Committee for the opportunity to provide testimony on the importance of surface transportation infrastructure for Indian Country.

My name is Joe Garcia. I am Head Councilman and former three-term Governor of Ohkay Owingeh, co-chair of the National Congress of American Indians, Intertribal Transportation Association Tribal Transportation Task Force, a former two-term President of NCAI, and Tribal Co-Chair of the Tribal Transportation Self-Governance Program Negotiated Rulemaking Committee.

I look forward to working with the members of this Committee to ensure that Federal transportation policies honor the Federal Government's treaty and trust responsibilities to tribal Nations.

This Committee, more than any other, understands the Federal Government's sacred obligation to tribal Nations. I ask you to educate your colleagues and carry forward Indian Country's message as Congress debates the next Surface Transportation reauthorization.

There are 573 sovereign tribal Nations with a formal nation-to-nation relationship with the United States. Tribal Nations tried to provide the necessary foundations for supporting the building of strong economies and ensuring the health and well being of their citizens.

Having safe, well maintained tribal lands, roads, bridges, and adequate public transportation is vital to this mission. The stakes are high for Indian Country. Numerous government reports address the severe under-investment in tribal infrastructure, the crumbling condition of Indian Country roads and the lack of sufficient transportation data and crash statistics.

The findings of these reports are striking. What is most startling is the toll on human life. According to the Centers for Disease Control and Prevention, motor vehicle crashes are the leading cause of unintentional injury or death for American Indians and Alaska Natives under the age of 20.

Additionally, vehicle-related death rates for American Indians and Alaska Natives ages 20 and older are more than twice that of non-Hispanic whites and the motor vehicle death rate for American Indian and Alaska Native infants is eight times higher than that of non-Hispanic whites. These numbers are unacceptable.

As Congress debates the future of Federal transportation policy, it is vital that Congress makes a significant investment in tribal roads and bridges, expands tribal access to national programs and provides new resources that will improve road safety in Indian

Country. This starts with ensuring the continued solvency of the Highway Trust Fund which funds the Tribal Transportation Program. The Tribal Transportation Program oversees approximately 161,000 miles of roads and trails in Indian Country and is essential for safe and adequate transportation systems for tribal Nations.

Congress must ensure that any solution to the Highway Trust Fund's insolvency provide adequate and stable funding for tribal Nations and does not impose undue financial burden on those living in Indian Country which is largely rural.

Congress should also increase the initial authorization for the Tribal Transportation Program and include larger step increases for each fiscal year that follows. Congress should do the same for the Tribal Transit Program, appropriate more funding for the BIA Road Maintenance Program and increase tribal access to other transportation programs by providing tribal set-asides, waiving matching requirements and tailoring program requirements to meet the unique needs of Indian Country.

I also want to highlight a few programs that deserve congressional attention. The Tribal Technical Assistance Program is the only program for tribal Nations to build capacity through training and technical assistance from experts who oversee and construct highways and roads in tribal communities.

The Federal Highway Administration recently centralized the seven TTAP offices into a single office without proper tribal consultation. This is very troubling and I ask this Committee to ensure that all future agency actions affecting tribal Nations include meaningful consultation.

The FAST Act created the Tribal Transportation Self-Governance Program, which extends the Indian Self-Determination and Education Assistance Act to the U.S. Department of Transportation. Tribal Nations and DOT representatives are engaged in negotiated rulemaking to put this important program into operation. I am the co-chair of that rulemaking committee.

Though there have been several delays on the Federal side, the tribal and Federal members of our Joint Negotiated Rulemaking Committee are aiming to finalize negotiations on a draft rule over the next several months.

DOT has recognized the need to streamline programs and requirements under self-governance. We have urged the Department to understand Congress's expansion of self-governance to DOT as a directive for DOT to use its authority to maximize tribal flexibility and decision-making. I ask this Committee urge DOT to do the same.

Thank you again for the opportunity to testify. I would be happy to answer any questions you may have.

[The prepared statement of Mr. Garcia follows:]

PREPARED STATEMENT OF HON. JOE GARCIA, HEAD COUNCILMAN, OHKAY OWINGEH  
PUEBLO COUNCIL

Thank you Chairman Hoeven and Vice-Chairman Udall and members of the Committee for the opportunity to provide testimony on the importance of surface transportation infrastructure for Indian Country. My name is Joe Garcia, and I am Head Councilman and former three term Governor of Ohkay Owingeh, a co-chair of the National Congress of American Indians-Intertribal Transportation Association Tribal Transportation Task Force, a former two term President of NCAI, and Tribal Co-



Chair of the Tribal Transportation Self-Governance Program Negotiated Rule-making Committee. I look forward to working with the members of this Committee and other members of Congress to ensure that federal transportation policies, including the next surface transportation reauthorization, honor the federal government's treaty and trust responsibilities to tribal nations.

### **Indian Country and Transportation Infrastructure**

There are 573 sovereign tribal nations with a formal nation-to-nation relationship with the United States. Two hundred and twenty-nine tribal nations are located in Alaska, while 344 are located in 34 other states. The total land mass under American Indian or Alaska Native jurisdiction is about 100 million acres, which would make Indian Country the fourth-largest state geographically in the U.S. Additionally, there are twelve tribal nations that have a larger land base than the state of Delaware, and the Navajo Nation alone would be the 42nd-largest state. According to the 2010 Census, 5.2 million people identified as American Indian/Alaska Native (AI/AN) alone or in combination with other races, which would make Indian Country the 22nd most populous state.

Like all other governments, tribal nations strive to provide the necessary foundations for supporting the building of strong economies and ensuring the health and wellbeing of their citizens. To this end, tribal nations construct, improve, and maintain transportation infrastructure and facilities that are used by tribal citizens and non-tribal citizens alike. Having safe, well-maintained tribal roads, bridges, and adequate public transportation is vital to public safety and commerce in tribal communities and benefits tribal citizens and those living in and around Indian Country.

According to the most recent National Tribal Transportation Facility Inventory (NTTFI), there are approximately 161,000 miles of roads and trails in Indian Country eligible for federal funding. Of those, tribal nations own and maintain 13,650 miles of roads and trails, of which only 1,000 (or 7.3 percent) are paved (the other 12,650 miles are gravel, earth, or primitive). Of the 29,400 miles owned and maintained by the Bureau of Indian Affairs (BIA), 75 percent are gravel, earth, or primitive. Altogether, the 42,000 miles of roads in Indian Country are still among the most underdeveloped, unsafe, and poorly maintained road networks in the nation, even though they are the primary means of access to American Indian and Alaska Native communities by Native and non-Native residents and visitors.

### **Lack of Federal Resources and Data**

There is great need for additional surface transportation funding and data in Indian Country. In December of 2018, the U.S. Commission on Civil Rights (USCCR) released its report, titled *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*, as an update to its 2003 *A Quiet Crisis* report.<sup>1</sup> The *Broken Promises* report emphasizes federal underinvestment in transportation and other infrastructure in Indian Country and discusses how the lack of investment causes significant safety concerns, interrupts the provision of tribal government services, and affects the overall health of tribal economies.<sup>2</sup> In addition to the chronic underinvestment in the physical infrastructure of tribal communities, the USCCR goes on to highlight the "severe lack of public transportation in Indian Country."<sup>3</sup>

Additionally, the BIA recently conducted a road maintenance survey that found that the total dollar value of deferred road maintenance for surveyed stakeholders is estimated at \$498 million. The survey also found that more funding was the number one priority of stakeholders, followed by equipment needs.<sup>4</sup> Data indicated that tribal nations are using Tribal Transportation Program (TTP) funds that could otherwise be used for road construction or improvement to backfill unmet road maintenance needs. The survey estimated that the expenditures for road maintenance in FY 2017 were more than double the allocated amount of funding for the BIA Road Maintenance program in FY 2017.<sup>5</sup> Borrowing funds from vital programs to backfill underfunded programs results in a drag on the construction, maintenance, and overall safety of roads throughout Indian Country.

In May 2017, the U.S. Government Accountability Office (GAO) conducted a study on tribal transportation data, road management, and student attendance. GAO

<sup>1</sup>U.S. Commission on Civil Rights, *Broken Promises: Continued Federal Funding Shortfall for Native Americans*, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*, citing U.S. Senator Byron L. Dorgan, Testimony before the Senate Committee on Indian Affairs, July 12, 2007, <https://www.gpo.gov/fdsys/pkg/CHRG-110shrg37860/html/CHRG-110shrg37860.htm>

<sup>4</sup>Tribal/Interior Budget Council, Roads Maintenance Subcommittee Presentation, November 15, 2018. [http://www.ncai.org/TIBC-Nov201\\_ROADS\\_Subcmte\\_Preso.pdf](http://www.ncai.org/TIBC-Nov201_ROADS_Subcmte_Preso.pdf)

<sup>5</sup>*Id.*

found that the NTTFI and Deferred Maintenance Reporting (DMR) systems contain incomplete and inconsistent road description and condition data that affect program efficiency and delivery. As a result, reports and budget submissions that rely on these datasets “may not accurately reflect road conditions or maintenance needs and associated costs, inhibit[ing] the ability of Congress” and the appropriate bureaus, offices, and agencies to make better-informed decisions about priorities and the transportation system as a whole.<sup>6</sup>

GAO also identified the significant practical impacts of poor tribal road conditions. The report concluded that road conditions on tribal lands pose challenges “in connecting people to education, employment, healthcare, and other essential services,” which are magnified during adverse weather due to remoteness and existing road conditions.<sup>7</sup> Additionally, GAO concluded that road conditions do affect student attendance<sup>8</sup> and rough road conditions can increase maintenance needs for school vehicles.<sup>9</sup>

The lack of consistent transportation data also extends to crash statistics in Indian Country that, in turn, affect the ability to make better-informed decisions and allocate resources to address road safety. As a requirement of the Fixing America’s Surface Transportation Act (FAST Act), the Federal Highway Administration (FHWA) produced a report on safety data collected in Indian Country. The purpose of this report was to “improve the collection and sharing of data of crashes on Indian reservations” and to “develop data that Indian tribes can use to recover damages to tribal property caused by motorists.”<sup>10</sup> FHWA’s report found that databases at the state and federal level that drive programmatic decisions are incomplete in tribal areas.<sup>11</sup> In its report, FHWA states that “[i]mproved collection and sharing of safety data, especially crash reports, in tribal areas would facilitate more effective transportation safety planning and would afford Tribes improved access to State and Federal funding opportunities to address transportation safety problems.”<sup>12</sup>

### Road Safety in Indian Country

Road safety remains a top priority for Indian Country and Congress must provide additional funding and resources to address road safety and behavioral issues that contribute to high rates of death and injury in Indian Country. According to FHWA, motor vehicle crashes caused an average of 655 fatalities each year in tribal areas.<sup>13</sup> Motor vehicle crashes are the leading cause of unintentional injury death for AI/ANs under the age of 20.<sup>14</sup> Additionally, motor vehicle-related death rates for AI/ANs ages 20 and older are more than twice that of non-Hispanic whites, and AI/AN infants have a motor vehicle death rate that is eight times higher than that of non-Hispanic whites.<sup>15</sup>

Despite these startling statistics, there is significant underfunding for tribal road safety, especially when compared to state funding. In FY 2018, State Departments of Transportation shared \$2.23 billion from the Highway Safety Improvement Program (HSIP) (23 U.S.C. § 402) under an allocation formula.<sup>16</sup> By comparison, tribal nations must compete for discretionary and competitive highway safety grants under BIA’s Indian Highway Safety Program (IHSP), 23 U.S.C. § 402 (2 percent of State apportionment); and the Tribal Transportation Program Safety Program, 23 U.S.C. § 202(e) (2 percent set-aside of annual TTP allocation). In FY 2018, tribal nations competed for \$8.89 million in TTP safety grants and had access to \$5.2 million from BIA’s Indian Highway Safety Program (IHSP). Despite motor vehicle fatalities occurring throughout Indian Country, only a select few tribal nations receive federal

<sup>6</sup>U.S. Government Accountability Office, *Tribal Transportation: Better Data Could Improve Road Management and Inform Indian Student Attendance Strategies*, GAO-17-432, p. 47 (May 22, 2017).

<sup>7</sup>*Id.*

<sup>8</sup>*Id.*

<sup>9</sup>U.S. Government Accountability Office, *Highlights of GAO-17-432*, <https://www.gao.gov/products/GAO-17-423>

<sup>10</sup>Pub. L. 114-94 § 1117(b)(2)(B).

<sup>11</sup>Federal Highway Administration, Report to Congress on Tribal Governments & Transportation Safety Data, p. 20, <https://flh.fhwa.dot.gov/programs/ttp/safety/documents/2016-tribal-governments-safety-data.pdf>

<sup>12</sup>*Id.*, p. 7.

<sup>13</sup>Federal Highway Administration, *Transportation Safety in Tribal Areas*, FHWA-HRT-18-004, Vol. 82 No. 2, <https://www.fhwa.dot.gov/publications/publicroads/18summer/02.cfm>

<sup>14</sup>CDC, *Tribal Road Safety: Get the Facts*, <https://www.cdc.gov/motorvehiclesafety/native/factsheet.html>

<sup>15</sup>*Id.*

<sup>16</sup>Federal Highway Administration, *Distribution of Highway Safety Improvement Program (HSIP) Funds Apportioned for FY 2018*, [https://www.fhwa.dot.gov/legsregs/directives/notices/n4510824/n4510824\\_t12.cfm](https://www.fhwa.dot.gov/legsregs/directives/notices/n4510824/n4510824_t12.cfm)

safety funds to address behavioral issues that factor into roadway accidents, injuries, and fatalities (DUI, seat belt use, child safety restraints, etc.) and to make highway safety improvements.

#### **Tribal Transportation Program**

TTP oversees approximately 161,000 miles of roads and trails in Indian Country, which are owned by the BIA, tribal nations, states, and counties, in order to provide safe and adequate transportation systems. These roadways and trails serve as the primary transportation thoroughfares for residents of and visitors to AI/AN communities, and funding for TTP is essential to safe and reliable road systems across Indian Country.

TTP is funded from the Highway Trust Fund and allocated through a statutory formula. As such, this important source of funding for Indian Country roads will be greatly impacted by the potential future insolvency of the Highway Trust Fund. Currently, several pilot projects are underway to examine alternatives to an increase in the federal fuel tax. As Congress considers how to address the future insolvency of the Fund, it must uphold its treaty and trust responsibilities by ensuring that any solution provides a stable, adequate source of funding for tribal transportation infrastructure and does not impose undue financial burdens on those living in Indian Country, which is largely rural.

The last surface transportation reauthorization, the FAST Act, authorized TTP funding starting at \$465 million in FY 2016 and increases funding at \$10 million per year through FY 2020 with a final year level of \$505 million. In light of the significant unmet need as evidenced by recent reports, Congress must support and enhance funding for this program in the next surface transportation reauthorization so that tribal nations can provide safe and acceptable transportation systems in Indian Country. Enhancements should include a significant increase to the overall authorization level for the initial year and larger step increases for each year that follows.

#### **Tribal Transit Program Funding**

The Public Transportation in Indian Reservations Program (Tribal Transit Program) enables tribal nations to use transit program funding for capital, operating, planning, and administrative expenses for public transit projects to meet the needs of public transportation in rural tribal communities. The Tribal Transit Program is a successful program for tribal nations to serve the community, including elders, those with disabilities, and Native youth; however, this program suffers from the same underinvestment that limits other transportation programs that benefit Indian Country.

The Tribal Transit Program is authorized by section 5311(j) of the FAST Act and currently consists of \$30 million in formula funding and \$5 million in competitive grant funding.<sup>17</sup> This program is critical to meeting the growing needs of tribal communities. Congress must support and enhance funding for the Tribal Transit Program in the next surface transportation reauthorization. Enhancements to this program should include an increase in formula funding levels and adoption of step increases in funding levels, similar to those found in the FAST Act for TTP funding. Step increases for the Tribal Transit Program should be greater than \$10 million per year to address the severe underinvestment in public transit in Indian Country.

#### **Access to Transportation Program Funding**

Several transportation and transit programs that provide funding to tribal nations consist of a formula funding component and a competitive grant component, while other funding opportunities are offered solely through competitive grant models that require tribal nations to compete against non-tribal applicants. Formula funding methods are generally preferable as they provide certainty for the planning and financing required to complete transportation construction, improvement, and maintenance projects. Competitive grants, on the other hand, are not as conducive to planning and require labor input and other planning expenses that may never be recovered even where a tribal applicant receives grant funding.

Additionally, competitive grant models can fail to address the unique needs of tribal communities, and their requirements often leave tribal nations effectively ineligible for programs where Congress intends tribal nation eligibility. Competitive grants with large dollar thresholds for project proposals effectively bar many tribal nations with shovel-ready projects from programs for which they otherwise appear eligible. Conversely, the complete absence of transportation infrastructure in certain

<sup>17</sup>Federal Transit Administration, *Public Transportation on Indian Reservations Program; Tribal Transit Program*, <https://www.transit.dot.gov/tribal-transit>

tribal communities generates much larger project funding needs. In these circumstances, matching requirements can prohibit tribal nations from having meaningful access to these competitive grant opportunities.

To help address the significant transportation needs in Indian Country, Congress should eliminate matching requirements for tribal applicants, provide significant tribal set-asides from national surface transportation programs, and ensure the application and programmatic requirements account for the unique needs of and circumstances in Indian Country.

#### **Tribal Technical Assistance Program**

The Tribal Technical Assistance Program (TTAP) is the only program for tribal nations to build capacity through training and technical assistance from experts who oversee and construct highways and roads in tribal communities. In Fall 2016, FHWA announced the restructuring of the TTAP and eliminated the seven TTAPs around the country that served all 573 federally-recognized tribal nations. In December 2017, the FHWA announced a two-year pilot program and centralized the TTAP at the University of Virginia, Center for Transportation Studies (CTS) in Virginia. The entire restructuring proceeded without proper tribal consultation, which is very concerning. The program remains an important resource to improve the technical expertise of tribal transportation officials. Accordingly, Congress should provide a \$5 million increase in TTAP funding.

#### **Bureau of Indian Affairs Road Maintenance Program**

Another federal transportation program that is vital to infrastructure in Indian Country is the BIA Road Maintenance Program, which is funded and authorized under the Department of the Interior. The BIA Road Maintenance Program covers the approximately 29,400 miles of BIA owned roads in Indian Country, including 900 bridges. As part of a recent survey conducted by the BIA, the deferred maintenance backlog throughout Indian Country is estimated in excess of \$490 million. In FY 2018, Congress appropriated \$34.6 million for BIA road maintenance and this funding level has remained roughly the same for several consecutive fiscal years, even though maintenance needs continue to increase. Congress should increase funding levels to at least \$50 million in FY 2020 to address the BIA roads maintenance backlog.

#### **Tribal Self-Governance at the Department of Transportation**

Over the past two decades, Congress has recognized that tribal communities have significant and unique transportation needs. Congress also has recognized that tribal governments are most effective in determining how to meet those needs. Congress has made additional federal transportation programs directly available to tribal nations and has expanded tribal authority and flexibility with respect to the administration of those programs. Most significantly, in the FAST Act Congress created the Tribal Transportation Self-Governance Program, which extends the Indian Self-Determination and Education Assistance Act to the U.S. Department of Transportation (DOT). The Indian Self-Determination and Education Assistance Act already has proven that federal funds are used most effectively and efficiently when administered at the local level by tribal nations themselves. Through this extension of Self-Governance to the DOT, tribal nations will be able to obtain all of their transportation funds (including not only their TTP funds, but also transit, federal-aid, and other DOT funds) under a single DOT self-governance agreement. Authorizing tribal nations to use these Self-Governance funding agreements for all their transportation activities means that the administrative procedures associated with the various DOT programs will be streamlined, resulting in a faster project delivery timeline. This means that tribal nations will be getting safe and reliable transportation infrastructure on the ground and into operation faster with more cost effectiveness than ever before.

Tribal nations and DOT representatives are engaged in a negotiated rulemaking to put this important program into operation. I am the Co-Chair of that rulemaking committee. Though there have been several delays on the federal side (including the recent government shutdown), the tribal and federal members of our joint negotiated rulemaking committee are aiming to finalize substantive negotiations on a draft rule over the next several months.

In our most recent meeting, the federal and tribal committee members have been able to identify their respective goals and intents with regard to the rule. The Committee aims to review drafts of substantive language in its next meeting in June. Our shared goal is to have a draft rule for public comment out by Fall 2019 and that the Committee will reconvene to review comments and finalize the rule by this time next year.

DOT has recognized the need to streamline programs and requirements under Self-Governance, and we have urged the Department to understand Congress' expansion of Self-Governance to DOT as a directive for DOT to use its authority to maximize tribal flexibility and decisionmaking. I ask that this Committee urge DOT to do the same.

#### **Conclusion**

Thank you again for the opportunity to testify at this important oversight hearing. Safe and reliable transportation infrastructure is vital to the enhancement of tribal economic development and to the wellbeing of tribal communities and surrounding non-tribal areas. I look forward to working with this Committee to ensure the next surface transportation reauthorization bill will improve the lives of tribal citizens across Indian Country.

The CHAIRMAN. Thank you Councilman Garcia. Thanks also for your military service. We truly appreciate it.

I am going to turn to the Vice Chairman first to start the questions.

Senator UDALL. Thank you, Chairman Hoeven.

Mr. Gishi and Mr. Hess, you are both aware that the GAO issued a report in 2017 about the potential link between road conditions and increased student absenteeism on tribal lands. I worked through the Interior appropriations process to direct the Department to use \$1 million to improve roads used by Indian students in fiscal year 2018. In the last Congress, I asked BIA and BIE about this issue but got a response with no details.

The GAO report also recommended that the Assistant Secretary for Indian Affairs coordinate with the Federal Highway Administration and tribal stakeholders to reexamine the current data collected, issue clarifying guidance to ensure consistent reporting and establish a process for timely corrections to missing or bad data.

Mr. Gishi, how has DOI used the additional \$1 million in fiscal year 2018 appropriations to improve the conditions of roads and bridges for school buses?

Mr. GISHI. Thank you, Vice Chairman.

The Bureau of Indian Affairs, with the funds provided not only in 2018 but also a specific earmark in 2017, addressed specifically the requirements in the conference report and directed those funds toward those tribes who had identified not only school bus routes but also were in those categories of earth roads, unpaved roads.

As I mentioned in our testimony, 75 percent of the road inventory on the BIA system is in that category of what we call unimproved earth or gravel roads. As many of you are aware, it does not take much in terms of weather to change roads in those conditions as opposed to surfaced, all-weather roads.

That is where our funds went and will continue to go. We support that in the process of what is in 2019 also.

Senator UDALL. Right. Thank you.

Mr. Gishi and Mr. Hess, are your agencies coordinating to address GAO's eight recommendations from 2017? Mr. Hess, why don't you start?

Mr. HESS. Thank you, Vice Chairman.

Yes, the Federal Highway Administration works very closely with BIA and the tribes in reference to the development of the transportation improvement plans that each tribe has to develop to receive funds.

We have tribal coordinators for every tribe that the Federal Highway Administration has entered into agreement with. We assign them a tribal coordinator. The tribal coordinator helps the tribe navigate through the programs and the funds available to that tribe.

We work with them and with the transportation planning funds to develop a transportation improvement plan. Given the needs of the tribes, the top priorities we have found are school bus routes and also safety. I would say almost all tribes rise to the top of the priority list. Those are the projects funded through the tribal shares that we provide to the tribes.

We provide funding through a statutory formula to each of the 573 nationally-recognized tribes to address these varied needs.

Senator UDALL. Mr. Gishi, would you like to add to that?

Mr. GISHI. Yes, please. Thank you.

We have been working with the Federal Highway Administration and tribes since the report was released, specifically looking at the data in the inventory, reexamining it and have actually been able to work with the Tribal Transportation Program Coordinating Committee. This Committee is a regulatory committee established for the purpose of specifically providing input and recommendations to the Secretary of Transportation and the Secretary of Interior.

It is through this process that we have been able to narrow down the inventory to those areas they feel are necessary and those they feel may be better off being eliminated. We continue to work with those tribal entities as well as the tribes themselves.

Senator UDALL. Mr. Chairman, I think I am going to yield to you since we are close here on the numbers.

The CHAIRMAN. That would be your choice if they call the vote. Do you want to finish your questions in case they call the vote?

Senator UDALL. Sure. Let me move on to safety and school attendance issues. Because the roads within Indian Country are unpaved and not regularly maintained, the schools on reservations have to pay more for school bus maintenance. These increased maintenance costs are not factored into the transportation funding formula for BIE schools meaning some schools have to scramble for resources to keep their buses running.

Councilman Garcia, you discussed the need for a stable and adequate source of funding for tribal transportation infrastructure to ensure Indian families are able to access health care, employment and educational opportunities for their children. Many of these families rely on school transportation to ensure that their children attend school but these children cannot attend school if there are no school buses available.

Councilman Garcia, do you know how maintenance costs for your school buses on Ohkay Owingeh compare to those of other schools?

Mr. GARCIA. Senator, I can speak for Ohkay Owingeh and other pueblos and tribes as well, that the maintenance cost goes up as the roadways are deteriorated or in bad condition. For instance, in our small community, we have a BIA tribally-controlled school so we only have basically one big bus.

When you talk about greater than \$8,000 for repairing and cost of one bus, it adds up when you include the Head Start facility. Re-

member that the communities also have other transportation issues like with the senior citizens. Their costs are high and they have a van they use as well as the transit program.

All of these entities are facing some great cost in terms of expenditures. The biggest one in New Mexico is the transportation cost for Santa Fe Indian School. They provide transportation all the way from Ohkay Owingeh to Santo Domingo and San Felipe. Many of those pueblos continue to have roadways were you would not want to go if you did not have to go there or travel on those routes.

I think the transportation costs for the maintenance of the buses is higher because of those roadways. The numbers continue to go up. The biggest one I see, a big issue for me, is the school in Death Valley, California. They transport students 52 miles one way on a dirt road to get those students to a school facility. That is every day, one way, 52 miles. That is uncalled for in the United States of America. That is a bad situation. It is the same way in a lot of rural communities, Senator.

Senator UDALL. Clearly Congress should ensure that school bus maintenance costs are considered in funding formulas. Thank you very much for that statement.

I yield back, Mr. Chairman.

The CHAIRMAN. Mr. Gishi, your written testimony indicated there are some issues with implementation of the FAST Act. Specifically, you stated, "The FAST Act addressed the longstanding issue of a competitive funding formula but there are still some implementation issues regarding application of certain data to the calculation of the tribal share of the funding."

What has the tribal response been regarding the calculation of the tribal share under the FAST Act and the Tribal Transportation Program?

Mr. GISHI. Thank you, Chairman Hoeven.

There have been some concerns from tribes that use the data associated with the formula primarily because the data is associated with a point in time. Many of the tribes felt this occurred at a time after which they began becoming part of the process of planning and being a part of the program. They feel information currently available them as part of their planning that they normally would prioritize projects by today is not being considered as part of the formula as it was developed.

Having said that, there are a number of tribes who welcome the formula because it provides the means to maintain some uniformity, an ongoing, year-to-year amount of funding made available for tribal shares for not only their construction needs but also other areas including the planning.

The CHAIRMAN. In the May 17 report to Congress, the Department of Transportation cited a lack of uniform standards in reporting crash data within BIA law enforcement. It found among the 12 BIA regions, each one uses a different crash report form.

How are you addressing that to have consistency and the concerns that have been raised by the Department of Transportation regarding that?

Mr. GISHI. BIA law enforcement is currently working within their incident management reporting system to try to find a way

of providing uniform reporting at least for the BIA portions that are identified in the 12 regions.

Keep in mind that the data from State to State also varies and the methodologies that are there. We are just one area that needs to have some improvement in crash data reporting.

The CHAIRMAN. Are you trying to standardize it?

Mr. GISHI. We are making an effort to try and standardize that.

The CHAIRMAN. Mr. Hess, each year, under the FAST Act, 2 percent of the available Tribal Transportation Program funds are set aside to address transportation safety issues for reservation roads. How beneficial has this been and how many of the tribes are actually being awarded funds?

Mr. HESS. Mr. Chairman, the 2 percent set aside in the statute sets aside 2 percent of the funds made available to the Tribal Transportation Program. This is a critical program for the Federal Highway Administration and the tribes.

We use the 2 percent of funds set aside primarily in two areas. The first area is for development of tribal transportation safety plans. We are pleased to report that for the last several years, any tribe that has requested funds for development of a tribal transportation safety plan, we have been able to fund that in full.

Once the plans are developed, the tribes use those plans, based upon crash data, to develop areas where infrastructure improvements dealing with safety are needed. Through statute, Congress has made available to the Federal Highway Administration almost \$10 million this year. Through the FAST Act, there was about \$9 million a year which has gone up to \$10 million. Those funds are awarded directly to tribes through competitive, discretionary grant programs.

We award the funds we receive to the tribes based upon applications they submit. Those funds are provided directly to tribes where they design and construct infrastructure safety improvements to address safety needs on tribal lands.

The CHAIRMAN. My next question is for both Governor Lewis and Councilman Garcia.

I am going to introduce a tribal transportation bill very soon. The bill would increase the money authorized for the Bureau of Indian Affairs' Road Maintenance Program from \$35 million to \$46 million, among other things.

These are some of the things it does. It reinstates the Tribal Transportation Bridge Program as a standalone program instead of a 2 percent carve-out of the Tribal Transportation Program.

It directs the Secretaries of Interior and Transportation to work with Indian tribes in developing a standard and uniform crash report form to be used by law enforcement officials. It increases money available for the Tribal Transportation Safety Fund from 2 percent to 4 percent. Those are some of the provisions.

I would ask your opinion and whether or not you feel you could support that legislation? Gentlemen?

Mr. LEWIS. Thank you, Mr. Chairman.

The Community would very much look forward to legislation such as you articulated. We would be happy to work with you on it as it goes through the Senate.



There are several key issues highlighted in my testimony I think you have addressed. They are: increased funding for the BIA Maintenance Program; doubling the percentage of the tribal transportation safety funding available to tribes; and reinstating the Tribal Transportation Bridge Program as a separate program with its own funding source.

The Community has found sharing data with the State in a consistent manner is helpful to ensure that we have the information we need to address these areas of safety in our Community's roads. This would also help with the serious under count that exists in Indian Country regarding data about serious injuries and fatalities for our Native people. I would say that works for the Gila River Indian Community.

I know it may be hard to have a one size fits all approach on data collection but adding consistency in how and when data is collected would help us to show the funding and programmatic safety needs throughout Indian Country which, in turn, could result in a more targeted, successful policy with positive results.

The CHAIRMAN. Thank you, Governor.  
Councilman Garcia?

Mr. GARCIA. Thank you for the question.

In terms of data, the way I understand, in a simple man's mind, is that the funding should follow the needs. The data is not adequate. The data is not correct. The data is not validated but comes from different sources. Then you have a mixture of data that comes to the people making budget and financial decisions.

Much like you do in business, you had better have good data if you are going to make a good business decision on how much funding you are providing. Whether the 2 percent set aside is enough is important, based on which data and what data you believe.

I think it is important that all the data sources really have to be researched. It does not take a whole lot to research to ensure it is valid data. There has to be a cross corollary. For instance, Hill River is in the same boat as Ohkay Owingeh in that we have four different jurisdictions in terms of crashes and accidents. That is our tribal law enforcement, the county, Rio Arriba, the State highway patrol and the City of Española police department.

When you investigate the data itself and look at that data, for one incident, you have four different versions of what happened and the data that goes into whichever database you use. If the databases cannot talk to each other, then you are in a world of hurt. I figure that is what is happening in Indian Country that there are several databases out there but which one is the right one, which is the correct one, which one is used to make financial decisions.

It is an important issue. I think the set aside ought to reflect the needs of Indian Country overall. It is worse in some cases where they have even more jurisdictions. I think Navajo might be one of those cases but some of the more remote areas in Montana and South or North Dakota, are in that same boat.

I think it is important. If we can reflect the true needs in Indian Country relative to safety and transportation for all members who traverse those roadways, that funding should be elevated to some level higher than 2 percent.

The CHAIRMAN. I thank both of you for your input. I appreciate it and I think it is very valuable.

Thanks to all the witnesses.  
Senator Cortez Masto.

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,  
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Thank you, Mr. Chairman.  
Thank you all for being here.

I have two letters here pertaining to an issue involving the Death Valley Shoshone Tribe in Nye County, Nevada. It is relevant to the hearing today.

The first letter is from the tribe to the Bureau of Land Management. It is dated February 27, 2017 regarding a land expansion that is mandated by the Nevada Native Nations Land Act. This letter is actually a follow up to multiple letters the tribe had already sent to the BLM.

The tribe has been waiting years now for the Bureau of Land Management to complete not only a land survey but also to respond to a request for a self-governance compact. It is very important and highly relevant to the hearing today. It is also the subject of a second letter.

I would like to ask the Chair that both letters be submitted for the record without opposition.

The CHAIRMAN. Without objection.

I would have been right on top of that but my outstanding staff assistant has me doing homework, so I apologize.

Senator CORTEZ MASTO. Thank you.

Mr. Hess or Mr. Gishi, are you either of you aware of this issue in Nevada with this particular tribe?

Mr. HESS. Senator, I am not aware of this specific issue.

Senator CORTEZ MASTO. Can I ask that you take a look at these letters? Would you get back to me with how we can timely respond to the tribe with respect to these issues? Would you be willing to do that?

Mr. HESS. Yes, Senator. The Department of Transportation would be glad to take a look at those letters. We will get back to you on that.

Mr. GISHI. Likewise, we will take those back also. Thank you.

Senator CORTEZ MASTO. Very quickly, I have one final question for you.

We are talking about infrastructure and our roads. It is also important to get broadband access to our tribal communities. I know recently, I think a year ago, Congress passed legislation directing the various State Departments of Transportation to lay the groundwork for a dig once.

In other words, as they are laying and paving road, they are also paving it for broadband and making sure we are bringing broadband to our communities. I think it is called a "dig once" program.

Mr. Hess, I am curious, are you aware of this policy and program, its implementation and how it is working? Do you know anything about it?

Mr. HESS. This specific program, not the specific issues but in terms of the right-of-way program, we have been working closely with BIA on the right-of-way issues.

Senator CORTEZ MASTO. The goal is to make sure we are only digging once so when we are working on infrastructure, we are also looking at how we lay the fiber along with that.

Mr. HESS. Yes.

Senator CORTEZ MASTO. Can you address that because it is the key to bringing broadband to all of these communities?

Mr. HESS. Yes, Senator, I am aware of those types of programs. They are available not only to States but also tribes. That is an emphasis with the States as well as the tribes that when roads are put in, to put broadband lines in as well.

Senator CORTEZ MASTO. Is that happening now?

Mr. HESS. To my understanding, yes, it is.

Senator CORTEZ MASTO. If you could give me a report to my office, that would be helpful. Just send an update on where we are.

Mr. HESS. Senator, we would be glad to get back with you and provide more information on the status of that program.

Senator CORTEZ MASTO. I appreciate that. Thank you very much. I have no further questions. Thank you.

The CHAIRMAN. Thank you, Senator.

At this time, I will turn to Senator McSally who would also like to do an introduction.

**STATEMENT OF HON. MARTHA McSALLY,  
U.S. SENATOR FROM ARIZONA**

Senator McSALLY. Thank you, Chairman Hoenen.

It actually is wonderful to have Governor Lewis of the Gila River Indian Community from Arizona here today as a witness. I am really grateful. Governor Lewis, you are such a leader in Arizona on so many issues. It is a real honor to have you here testifying today.

As a little about his background, he is an Arizona State University graduate and the JFK School of Government at Harvard, of which I am also a graduate. You have leveraged your education and experience to provide years of dedicated service.

You were elected Governor in 2014. Governor Lewis previously served as a Lieutenant Governor and in various leadership positions in gaming, telecommunications and health care. You also served as a board member of the National Indian Education Association and were a delegate to the White House conference on Indian education. As Governor, Governor Lewis has advocated for protection of the Community's water and promoted agricultural development vital to the Community's economy.

As we have visited many times recently, your leadership has played an integral role in the drought contingency plan just introduced in legislation yesterday. You were absolutely critical in helping getting that across the finish line in Arizona.

Your leadership has been noted by many and we are really grateful for your leadership in that regard. I appreciate everything you are doing on those issues. You are here today to talk about transportation.

Governor Lewis, you mentioned in your testimony that more than 40,000 cars travel on I-10 through your community every single day. That number is expected to rise. You mentioned the example of collaboration on I-10 projects being a better example of how collaboration could happen.

Your community sits at a very strategic and important location. These transportation issues are going to be vital for the State and your Community. That collaboration and consultation is really important.

I know in your written testimony, you spoke about it but can you elaborate a bit more on this project? It is a major project, larger than most of the funding opportunities discussed today but it is absolutely critical. What else can you share on it?

Mr. LEWIS. Thank you.

Senator McSally, thank you as well for your leadership in championing such an important piece of legislation in the DCP. Thank you very much.

Regarding the I-10, that is a main artery that not only cuts through the Gila River Indian Community but also is a main transportation artery for Arizona. It is critical that the Community works in collaboration with the State and all of the transportation entities. Tribes need to be at the table, especially when it deals with economics and infrastructure needs.

The strip that goes through the Gila River Indian Community has an acute safety need as well. A lot of accidents occur. The tribe's, our own, first responders, our fire departments, our police, and our EMTs answer those calls many times. In fact, we are one of the few entities I think throughout Indian Country acknowledged as an expert in hazardous materials training as well. You have all types of safety and transportation issues.

The Community, myself, Lieutenant Governor Stone, and our 17-member council are all very encouraged by the recent discussions with the State and working in a collaborative manner. I think that positively sets the table as we move forward in addressing these needs and concerns.

Senator MCSALLY. Thank you. The Gila River Indian Community is so critical in this project. It is good to hear that collaboration is there.

If there is anything else we can do to help with cooperation or collaboration, please let us know. I travel that road many times back and forth.

I know there have been other examples where you have been late to be consulted or not consulted at all. This example is one we could use moving forward. Is that fair to say?

Mr. LEWIS. I think the history has been inconsistent in regard to the proper respect due to a tribal sovereign such as the Gila River Indian Community. We are trying to work past that. We are looking toward the future now with all of our concerns and the needs of all our community members.

There is so much potential in regard to economic development and transportation issues not only for the Community but also for Arizona. That is a major traffic pathway. We want to be at the table, we want to collaborate, and we want to be a part of the solution for the future.

Senator MCSALLY. Thank you for your continued leadership in all of these issues. It is really an honor to have you here today. I look forward to continually partnering with you on many issues that affect your Community.

Mr. LEWIS. Thank you, Senator.

Senator MCSALLY. Thank you, Mr. Chairman.

Senator UDALL. [Presiding.] Senator Tester.

**STATEMENT OF HON. JON TESTER,  
U.S. SENATOR FROM MONTANA**

Senator TESTER. I guess this is a question for Mr. Lewis or Mr. Garcia.

In my town when I am driving down the State highways and I hit the line of one of the reservations, in most cases, the road is not in as good shape as the road I was on once I hit Indian Country.

Whose responsibility is it for maintenance, upkeep, resurfacing and I would say plowing snow but you guys do not do much of that, basic upkeep on the highways, a chip seal or that kind of stuff? Is that the responsibility of the State, the BIA, the tribe, or who?

Mr. GARCIA. Good afternoon, Senator.

Senator TESTER. How are you?

Mr. GARCIA. It is good to see you.

Senator TESTER. Good to see you.

Mr. GARCIA. I just said something about Montana but on roadways, I think it is the responsibility of leadership. In New Mexico, for instance, there is a tribal/State collaboration Act that we put in place I think in 2006 or some time like that.

The collaborative act is a partnership between the tribes of New Mexico and the State of New Mexico in terms of all of the resources available. Transportation is simply one of those but it includes education, health care and all the rest.

The partnership, I think, is the important piece of it. You must not count out the Federal Government in this case. That would be part of what the Bureau of Indian Affairs does but BIA is also limited in what resources they provide. Sometimes it cannot just be road maintenance; sometimes it has to be new roadways that are developed. Tear down the old and create a better new roadway and do it right so that it lasts a lot longer.

It is a responsibility of all governments. It is the tribe, the Federal Government and the State government. If we work together on it, we can find a solution but the funding has to come from somewhere.

Senator TESTER. I will let you off the hook. Mr. Gishi.

Mr. LEWIS. If I can also add, thank you.

At the Gila River Indian Community, we have over 306 roads. Those are the responsibility of the Bureau of Indian Affairs. We have only gotten \$3 million to maintain those roads.

Senator TESTER. Do you agree with that, Mr. Gishi?

Mr. GISHI. Yes, it is the responsibility of the Bureau, particularly if they have BIA roads.

Senator TESTER. That is good.

I know we are probably not here talking about the budget but we will be at some point in time. Is your budget going to reflect

the needs in Indian Country because I have to be honest with you. I have not been all over the Nation but I have been in Montana all over several times a year. The roads in Indian Country are noticeably worse. I will just tell you that.

They are usually narrower, not as wide a shoulder, and usually rougher. You can go down the list. They need work.

The question is going to be under your purview, are you going to ask for enough money to help get basic transportation for economic development done where we have poverty levels north of 50 percent and sometimes north of 80 percent in Indian Country?

Mr. GISHI. Addressing the needs as far as transportation in Indian Country is twofold. Not only does it require significant effort on the part of road maintenance, referenced here regarding maintenance of BIA roads, but we also have the larger part and that is maintaining and constructing roads which are in ownership of others.

We have approximately 62 percent of the road miles out there in Indian Country which are the responsibility of other entities, in this case, county, State, other Federal agencies. Part of the process is that the tribes are actually prioritizing those roads.

Senator TESTER. Of that twofold, what about your fold? Are you going to have enough money to do anything?

Mr. GISHI. We do publish on an annual basis the deferred maintenance report which identifies and assesses the need that is out there.

Senator TESTER. Who does that maintenance report?

Mr. GISHI. The Bureau of Indian Affairs does that deferred maintenance report. It is part of the criteria that we have on an annual basis for our performance measures.

Senator TESTER. I don't expect you to know this today but could you get back to me and tell me what the road maintenance report says about not gravel roads but highways in Indian Country and Montana?

I would love to know, just as a measuring stick, if they are in good shape by your road report or in bad shape.

Mr. GISHI. I don't have that information before me but I can provide that information.

Senator TESTER. I know the Ranking Member would love to have that information also, right?

Senator UDALL. Yes.

Senator TESTER. I am out of time.

Senator UDALL. Go ahead.

Senator TESTER. Congress is starting to work on the Surface Transportation Act and I know you want to give me five priorities, but I only want one. If you guys had a wish list and could wave a magic wand, what is your number one priority in the Surface Transportation Act, I would assume as it applies to Indian Country?

Mr. GARCIA. While it is not a single point answer but number one, I think the funding level has to be where it is in the neighborhood of greater than \$1 billion for funding. Along with that is what the FAST Act is all about, that the self-governance initiative for tribes is the way to go in terms of allowing the tribes or having the tribes take on that responsibility so that the funding is avail-

able so they meet the needs of their communities that they can provide the appropriate solutions for local level.

That is the way it is with all tribes. Self-governance is what we are working on. There will be solutions. Those are the one priority.

Senator TESTER. Mr. Lewis?

Mr. LEWIS. I can be very specific, Senator, for tribes to be treated the same and have the same access to funding as States.

Senator TESTER. Could you give me an idea of how much below they are right now per mile? You probably have not run those numbers.

Mr. LEWIS. I put in my earlier testimony that we are funded just over \$9,000 a year per road. That is below adequate for maintenance and upkeep of the roads, Senator.

Senator TESTER. Mr. Gishi.

Mr. GISHI. We continue to support the tribes in areas of their development. They are doing a lot of the planning. They are prioritizing the projects. From that standpoint, it is very clear that there is a very large need out there as indicated by the tribal testimony today.

Senator TESTER. Mr. Hess.

Mr. HESS. Senator, in reference to the reauthorization, safety is the Department of Transportation's top priority.

Senator TESTER. I just think if we got a bunch of different folds, twofold, threefold, fourfold, whatever it might be, on this Committee, we are going to deal with the Federal end of things. We need to make sure the Federal end of things is up to snuff.

We can advocate for the States and the tribes to be able to do their fair share too, but folks on this Committee do not have a lot of say over what goes on in tribal government, and we should not. It is the same with the States. We have legislators and governors who take care of that.

However, at this end of things, I think we need to make sure that the budget meets the needs because if we are going to deal with issues of jobs in Indian Country, it is not just about giving tax breaks to corporations to move on it. There is more important stuff than that like roads, transportation, schools, housing and good water, all that kind of stuff.

You get that and then you will be able to get businesses into Indian Country. You will be able to tackle some of these problems we have with unemployment and poverty which, by the way, if we ever get to a point we can do that, we will be saving money because the folks utilizing those programs will start becoming donators to the coffers that help build those roads.

Thank you all for being here today.

Senator UDALL. Thank you, Senator Tester.

I would join Senator Tester in his inquiry in terms of saying that we need equality when it comes to Native American roads. When you hit the reservation and start into the reservation, you should have the same kind of surface transportation you do off reservation.

We have to find a way to do it. I expect you all to submit the budgets and let people know there is not equality here.

I want to ask a question related to climate change, resiliency and planning. When we discuss surface transportation needs of Indian

Country, we are usually talking about the lack of basic infrastructure like paved roads and bridges.

We also need to plan for the future. More frequent and extreme flooding due to climate change is happening in Indian Country and across the Nation. To that end, the FAST Act included a provision, Section 1428, that gives authority to the Secretary of Transportation to encourage the use of durable, resilient and sustainable materials and practices and other innovative technologies.

Mr. Hess, how is the DOT utilizing this FAST Act authority and do you agree it is needed to plan ahead to address the threats posed by climate change?

Mr. HESS. Mr. Vice Chairman, yes, resiliency is part of our technical assistance programs at the Department of Transportation. As I mentioned earlier, we work closely with the tribes and with BIA to provide, not only funds to the tribes, but also technical assistance as they develop their transportation improvement plans.

When requested by a tribe, we work closely with them to provide innovative technologies to help them update their data, the design standards they use to ensure they use the most recent and applicable design standards to address hydraulic openings on culverts and bridges, as well as other things caused by what appears to be more frequent rain events than we have seen in the past.

Senator UDALL. Thank you.

Councilman Garcia, I understand the tribal transportation self-governance negotiated rulemaking process got off to a rocky start. After Federal mediators were brought in to facilitate, it sounds like negotiations are now back on track.

I am committed to working with you and others to ensure the self-governance program at DOT is a success. Would you mind giving us an update on the progress of the negotiations and do you believe any legislative changes are necessary prior to the reauthorization of the FAST Act?

Mr. GARCIA. Yes, sir.

First, we were not off to a rocky start. When the FAST Act team got together in 2016, we were off to a good start. It was in 2017 when things kind of went by the wayside and we lost a whole year in 2017.

After 2017, we had a rough time getting started. I think it was more of a learning experience for many of the Committee members but that is history now. I think in 2018, the full Committee decided that engaging facilitators may be a better approach rather than this coming on the facilitation by co-chairs and the co-chairs on the Federal side.

The Federal team engaged the facilitators. The first meeting we had was in December or November. I cannot remember, it has been so long. The meeting got off to a good start. We all were encouraged by the results of the first meeting. We went into 2019 encouraged by the activity in the meeting we had.

Then came the shutdown and then came the postponement of a couple of meetings we had planned had there been no shutdown. Be that as it may, we got fully engaged again just two weeks ago in Shawnee, Oklahoma.

At that time, the entire Committee was debating where we start because we kind of left off in November 2018 with a list of items



that we had not talked about together. I think the number was like 18 items. Up to that point, there was also discussion about which document do we use to start this new effort. We were calling it new effort.

We all agreed in two days in Shawnee, Oklahoma. That was pretty amazing. First, we agreed on which document we were going to use to start off the new discussion. Then we all agreed on the items that were left and how we were going to resolve all of those issues.

By the second day, the entire Committee was so engaged and the facilitators were running back and forth between the tribal caucus and the Federal caucus. Then we got to the full Committee. We all agreed and there was consensus on those 18 items, if my number is right, that were going to proceed.

The other strategy we had developed was we had the drafting people, representatives and attorneys from the tribal side and then the Federal attorneys on the DOT side, that they would do the drafting. The key decisions were made that these items were in concurrence and let us move forward.

We are hoping that we meet the first deadline for our proposed rule which is June 6. I am not going to say we are going to make it or not but I am hoping we will. There is good indication that even though the rocky road, talking about bad roads, but talking about rocky road, maybe that is the way it was supposed to be, we are on a new highway now. That new highway is a lot smoother than it was a few months ago.

I am encouraged by the activities we all have engaged in. The full Committee is acting like a negotiated rulemaking committee, as a full Committee. That is encouraging. I am sure the tribal representatives feel the same way. I am sure the Federal side, the DOT people, feels the same way.

If we are on that same road, then we are off to a good end when we get the rules published. Then we have to wait on the reauthorization. That is why we hope to see an increase in the reauthorization of transportation.

Senator UDALL. Thank you. That is a very encouraging report.

Senator Daines, if you are ready to go, please proceed. If not, I will ask another question.

**STATEMENT OF HON. STEVE DAINES,  
U.S. SENATOR FROM MONTANA**

Senator DAINES. Vice Chairman Udall, thank you for your patience with today's kind of crazy schedule in the Senate. I apologize to the witnesses for being in and out today.

Thanks for being here today. I much appreciate it.

I want to talk a moment about traffic safety. It is a critical issue, especially in my home State. In fact, Montana and North Dakota are tied for third place in the Country for the highest motor vehicle-related death rates for Native Americans, 56 deaths per 100,000 people. Tragically, nationwide, motor vehicle crashes are the leading cause of death for American Indian and Alaska Native children.

There are many factors that contribute to this problem, including alcohol-impaired driving, low seatbelt use, and low child safety seat use, but I would like to talk about a different aspect of road safety.

That is the dangers on roads posed by natural disasters such as flooding.

In fact, over the weekend, I spoke with Crow Chairman A.J. Not Afraid, Jr. In fact, earlier this week, he was in my office and we discussed the recent hardships they are facing. In March, the community of Crow Agency lost its entire supply of stored drinking water because of frozen pipes breaking. We had an unusually cold March.

In fact, when I was flying back to Washington on a Monday morning in March out of the Boozman airport, it was minus 40 degrees. That is not the wind chill; that is ambient temperature. De icing does not work until you get to minus 25. We had to wait for it to warm up to minus 25. It has been a tough February and March in Montana. Understandably, frozen pipes have broken. To this day, the people still lack access to clean drinking water on the Crow Reservation in many places.

Then, a fire erupted and burned down the tribal administrative office building. That oftentimes happens when it gets really, really cold. You have frozen pipes, you are trying to take extraordinary measures to keep things warm, possibly thaw some pipes, and fire risk can increase.

Then, to top it off, frozen pipes and fire, now we are hitting flooding. Heavy flooding has hit the region, combined with the cold winter, above normal snow packs, and rapidly rising temperatures and then we had heavy rain.

Chairman A.J. Not Afraid declared a state of emergency on March 23. The flooding effect was so bad that at one point, Interstate 90, one of the key east-west connectors in this Country which goes from Boston to Seattle running through Montana, had to be completely shutdown from Hardin, Montana to Sheridan, Wyoming. It is kind of a sad story today of what is going on out there in Indian Country.

Mr. Hess, how can the Department of Transportation better help keep roads safe in Indian Country when natural disasters strike like the severe flooding that recently hit the Crow Reservation?

Mr. HESS. Thank you, Senator.

The Department of Transportation works closely with the BIA and the tribes with reference to disaster funding. Funds are provided to the Federal Highway Administration. Once we receive those funds, they are available to tribes through BIA.

Once a tribe is in a disaster situation, a national declaration is not necessary. The President or the Governor does not have to declare a declaration. That has been delegated to the Federal Highway Administration and a transportation emergency is declared by the division administrator for that State.

Once a disaster has been declared a transportation emergency, that would allow the use of emergency relief funds. Funds specifically for ER for Federal agencies, what we call the ERFO funds, emergency relief funds for Federal organizations, are made available to BIA and are distributed to tribes if they are eligible.

It does have to be a disaster of a larger size. It has to meet a minimum requirement of \$700,000 to be eligible for disaster assistance through those funds made available to Federal Highway.

Senator DAINES. Thank you, Mr. Hess.

Mr. Gishi, I want to follow up with you. How can the BIA contribute in this respect? Can you highlight some of the interagency work you do with other emergency managers in the Federal Government, for example, FEMA?

Mr. GISHI. Thank you, Senator Daines.

One of the ways the BIA does engage is in working closely with not only our folks in the field and also the tribes. One of the first essential things is to assess the needs that are out there. Regardless of the roads that are out there, it is a cooperative effort in being able to sit down and meet not only with the tribe, but also if there are county and State people involved. The first step is being able to do that and addressing it.

In some cases, the situation may be something the Bureau of Indian Affairs can address locally. Other times, it may involve more coordination and cooperation. That is why the ERFO Program Mr. Hess mentioned is important because there are mechanisms in place to specifically address emergency needs, repairs and reconstruction.

Senator DAINES. I have had extensive conversations with various tribes. In fact, when I was a little boy, the Old Coyotes lived just down the street from us in Boozman. Mr. Old Coyote, the father, was one of the Crow Code Talkers in World War II. I used to walk to school with Rachel Old Coyote back in the 1960s. These are relationships that extend literally a couple of generations.

I know sometimes we have conversations with our tribes and sometimes get bureaucracies that collide instead of collaborate. That is the help we are looking for, to work together to most efficiently and effectively provide the help needed in times of crisis.

I am looking forward to continuing to see more progress in tribal self-governance and programs within DOT and BIA to enable that. I want to continue to work hard to promote safety on the roads in Indian Country and deal with some of these current crises.

Lastly, I want to point out that bison head up there was a gift from the Crow Tribe. It is here in this hearing room, Ranking Member Udall. We are grateful for the generosity of the Crow Tribe. They have given to this Committee hearing room literally and I am hoping we can be there to help them move through this time of need.

Thank you, Ranking Member Udall.

Senator UDALL. Thank you, Senator Daines.

Mr. Hess, the FAST Act authorized a program called The Nationally Significant Federal Lands and Tribal Projects Program. This program provides funding for nationally significant projects in or around Federal and tribal lands.

Tribal governments are eligible for the \$300 million in appropriated funding for this program but so are Federal agencies. My concern with this program is tribal governments are put in the awkward position of competing for grant opportunities with other Federal agencies.

How can DOT ensure that Indian tribes can compete for this funding on equal footing with Federal agencies?

Mr. HESS. Thank you, Senator.

The \$325 million in funds was provided for this important program. The Federal Highway Administration issued a notice of fund-

ing opportunity last October. In reference to that notice of funding opportunity, we have received applications from 39 different transportation entities with requests totaling \$2.7 billion.

The program is obviously much needed out there. The Department is currently reviewing applications. Once we are done with our process, we will provide a notice of awards. I am pleased to say of the 39 applicants, 8 of those applicants were tribal Nations. We are looking at those applications so tribes are able to compete.

The nature of the program is for projects greater than \$25 million. Smaller tribes would have trouble for this type of program. There are quite a few tribes out there that are able to compete for these types of funds and they have submitted applications for this program.

Senator UDALL. Great.

Governor Lewis, do you have thoughts or suggestions on tribes competing for these funds?

Mr. LEWIS. Senator, yes. It is acknowledged that this is a good program for the need for designated funding for large grants. Of course, the reality is that tribes compete with all other agencies for a small pool, \$100 million.

We, at the Gila River Indian Community, have a project that would be upwards of \$50 million. You can see that we need tribes to have the same access that States and other governmental entities have for meaningful funding. We see this as a trust responsibility. Access to funding is so critical to that, Mr. Chairman.

Senator UDALL. Thank you.

Councilman Garcia, the Tribal Transportation Program is primarily funded through the Highway Trust Fund. Revenue supporting the Highway Trust Fund comes primarily from excise taxes on gasoline and diesel fuel. Those rates have not been raised since 1993.

Unfortunately, the spending from the Highway Trust Fund has far exceeded revenues. We are now looking at a situation where the Federal Government is forced to transfer funding from the Treasury to make up the difference or must raise the excise gasoline taxes.

Given the high need for building and maintaining surface infrastructure in Indian Country, my guess is that reducing the spending from the Highway Trust Fund would not be a good option.

Do you believe Congress must consider raising the fuel tax in the next FAST Act reauthorization?

Mr. GARCIA. Mr. Chairman, to put it mildly, that would mean the people who need it the most are being asked to pay for the roadways they travel on. The rest of the Country would not have to worry about that because they can afford to pay for the metropolitan areas and rural communities not a big issue but if you are in a remote area, that means you are having to pay an extra few cents per gallon to provide for your own funding that comes back and is not a fair issue.

Taxing, I think, is not the solution. I think there are other ways to do that but it has to come from the bill itself and then the appropriations part of it.

Senator UDALL. Thank you for that answer. I think it really highlights how we need to look to our formulas in the future be-

cause we know we now have electric cars on the roads. They are using the roads but do not contribute obviously because they are not buying gasoline.

The formula we came up with was a formula that said if you used the roads and bought gasoline, then you are going to pay some taxes to help out and that would go into the Highway Trust Fund. I think we need to look at that formula and take into consideration rural areas and tribal areas whereas we have heard the testimony today and questioning from members that there is not equality. You drive on a road, you get to the line on the reservation and the road is in much worse shape.

Mr. GARCIA. Mr. Chairman?

Senator UDALL. Please, go ahead.

Mr. GARCIA. I wanted to make a point about Ohkay Owingeh. Highway 68 runs from New Mexico, Santa Fe, up to Taos. It is in the thoroughfare on tribal land. There are plans to improve Highway 68 from Española up to Taos.

This is the craziness of transportation. There is a portion that runs through Ohkay Owingeh, a ten-mile stretch. The State transportation department can afford to pave six miles of it but they say they cannot afford to pay for four miles of it. Unfortunately, the way the roadway is, there is a gap between where the road repair needs to be done. There is a four-mile gap right smack in the middle of Ohkay Owingeh's land base, so they are going to pave from here to here, leave that gap and then pave from here to there. What kind of sense does that make?

This is the dilemma many tribes, not just Ohkay Owingeh, are put in by States and some of them are even Federal highways, like interstates and what-not. I bring that story just to make the point that we have to work out better solutions.

Thank you, Senator.

Senator UDALL. That is a very good story to end on. I think it highlights the whole purpose of the hearing the Chairman called today.

If there are no more questions for today, members may also submit follow-up questions for the record. The hearing record will be open for two weeks.

I want to thank the witnesses for your time and testimony today.

This hearing is adjourned.

[Whereupon, at 4:08 p.m., the Committee was adjourned.]



# A P P E N D I X

PREPARED STATEMENT OF HON. JULIAN BEAR RUNNER, PRESIDENT, OGLALA SIOUX TRIBE

## **Introduction**

Thank you Chairman Hoeven, Vice Chairman Udall, and Members of the Committee for the opportunity to provide testimony on the importance of roads infrastructure for Indian Country. The improvement and safety of roads on our Pine Ridge Indian Reservation has consistently been a priority for our Oglala Sioux Tribe (Tribe or OST)—now more than ever given the disastrous effects of severe blizzards and historic flooding that hit our community this March of which we are still feeling the effects. This statement sets forth details about our Reservation roads infrastructure needs, including current needs resulting from the recent winter storm.

## **Background**

Our Reservation covers approximately 3 million acres (roughly the size of Connecticut) and our Tribe has more than 45,000 enrolled citizens. Our Tribe is one of 16 sovereign nations in the Great Plains Region. We are also a part of the Oceti Sakowin (Seven Council Fires, known as the Great Sioux Nation). Our treaty rights, the United States' obligations to us, and our unique political relationship with the United States are set forth in a series of treaties through 1868, including the Fort Laramie Treaty of 1851 (11 Stat. 749) and the 1868 Sioux Nation Treaty (15 Stat. 635). These treaties establish the United States' obligations to our Tribe.

Chronic underfunding of Indian Country programs and treaty obligations over the years, however, has taken an enormous toll on our Tribe, citizens, and Reservation. Extreme poverty and high unemployment plague our Reservation. We have a critical need for community development. We know we have tremendous untapped potential on our Reservation given our vast land base, abundant natural resources, and the strength of our people. Yet, we lack a critical element for success: adequate infrastructure. A reliable transportation network is needed to support our Reservation, meet citizens' needs, and facilitate on-reservation economic development and investment. As a tribal government, we strive to improve our citizens' lives. But, we cannot achieve this goal without the necessary infrastructure. A robust roads system is a key part of this effort.

Investing in infrastructure development is a classic method of boosting economic growth and creating jobs. We need a surge of roads infrastructure funding to promote economic development and job creation on our Reservation. Increased funding is also needed to ensure the safety of residents and visitors when traveling on our Reservation. The need is even more pressing today because of the serious flooding we experienced just weeks ago. The severe flooding and snowfall made roads impassable and cut off citizens' access to food, water, and medicine. Our roads, which have always been in poor condition, are now disastrous.

## **Roads Infrastructure Needs on the Pine Ridge Indian Reservation**

OST's Road Maintenance maintains 519 miles of Bureau of Indian Affairs (BIA) roads and bridges yet receives approximately \$565,000 in roads maintenance funding. This pales in comparison to the roads funding of state and local governments. Per the 22nd Annual Highway Report, the nationwide average maintenance disbursement per state controlled mile is \$25,996 and the average for South Dakota is \$6,458 per state controlled mile. The Tribe, however, receives only \$1,113 in BIA Road Maintenance funding per BIA roadway mile, which includes maintenance for BIA bridges on the National Bridge Inventory (NBI). \$1,113 is a small fraction of the weighted average that states receive and only 17.2 percent of what South Da-

kota receives.<sup>1</sup> The Tribe, thus, incurs significant costs in maintaining BIA roadways whose needs far exceed available federal funding. We also have approximately 1,900 miles of Tribal roads, not built by the BIA, for which we receive no federal funding for maintenance.<sup>2</sup> We have almost \$60 million in backlogged road maintenance needs.

Funding is so tight that routine bridge maintenance is not performed until it reaches a state of emergency. Consequently, our citizens face unsafe road conditions every time they travel within our Reservation. This includes every time our children step on a school bus to go to and from school. This is unacceptable. The BIA simply cannot address our road and bridge needs with its limited BIA Road Maintenance account. Our backlog continues to grow while we struggle to address immediate concerns.

Our Reservation is replete with treacherous and sometimes impassable roads, especially in winter with snowy and muddy conditions. Snow and ice removal can consume up to 65 percent of our annual budget each winter. Snowy and muddy conditions present dangerous conditions for our residents (including our students) and visitors, impact our children's school attendance, and increase our school bus maintenance costs because of the extreme wear and tear caused by our precarious road conditions.<sup>3</sup>

Roads are critical to connecting families, strengthening communities, and furthering economic development. We need the United States to partner with us to focus on developing a roads system on Pine Ridge that facilitates on-Reservation commerce and ease of transportation. Our citizens need safe and maneuverable roadways to get to work, school, medical appointments, their families, and stores. Potholes, mud-and snow-laden roads, and an inconvenient road system result in inordinate costs (in gas, car damage, and time) for our citizens and those doing business on our lands.

#### **Emergency Support Needed for Roads Following Severe Winter Storm**

Our Tribe suffered destructive flooding after a recent winter storm tore across our Reservation. We are still struggling to stem the flow of public safety and housing crises resulting from this disaster. Many citizens, for example, have been displaced from their homes by floodwaters, exacerbating the shortage of adequate housing that already existed on Pine Ridge before the storm.

One indisputable fact is that the storm and subsequent flooding has wreaked havoc on our already poor-conditioned roads. The OST Roads Department has almost depleted its FY 2019 Roads Maintenance funding allocation in responding to the storm and its aftermath. We need emergency funding immediately so that we can complete road repairs to make our roads passable again, this includes funding for immediate hires for roads maintenance crews so we can get the work done quickly and efficiently.

It is difficult to convey the severity of the storm and the scope of our roads funding needs through words alone. So that you can see some of the deplorable conditions of our roads post-storm, we are attaching a PowerPoint entitled, "Oglala Sioux Tribe Cyclone Bomb Blizzard." We have also attached *New York Times* and *Washington Post* articles on the flood and its aftermath.<sup>4</sup> We ask this Committee to support our efforts to receive emergency funding for our immediate needs.\*

<sup>1</sup> 22nd Annual Highway Report: The Performance of State Highway Systems, David T. Hartgen and M. Gregory Fields (Sept. 2016), available at [https://reason.org/wp-content/uploads/files/22nd\\_annual\\_highway\\_report.pdf](https://reason.org/wp-content/uploads/files/22nd_annual_highway_report.pdf).

<sup>2</sup> We also have a specific road issue: the Allen Road between Allen and Highway 18. The State receives funding for the road, but it is not maintaining it. A private citizen has been plowing this road in an effort to keep it safe for school buses. The Tribe compensates him what it can for his work because of the critical need to maintain the road for the buses. This is unacceptable. The Tribe should be provided adequate funding so that we can maintain this road; we stand ready to do the work provided we have the funding.

<sup>3</sup> GAO conducted a site visit at Pine Ridge to assess road conditions and their impact on student attendance and transportation. GAO found that excessive mud and snow conditions sometimes made roads impassable for students and that, further, some roads lack basic safety features such as guardrails that put students' physical safety at risk. See GAO-17-423, "Tribal Transportation: Better Data Could Improve Road Management and Inform Indian Student Attendance Strategies" (May 2017).

<sup>4</sup> The articles can also be accessed via these links: <https://www.nytimes.com/2019/03/24/us/midwest-flooding-pine-ridge.html> and [https://www.washingtonpost.com/national/impoverished-pine-ridge-reservation-braces-for-more-flooding/2019/04/09/a466ed62-5b04-11e9-98d4-844088d135f2\\_story.html?utm\\_term=.07acb35d93d9](https://www.washingtonpost.com/national/impoverished-pine-ridge-reservation-braces-for-more-flooding/2019/04/09/a466ed62-5b04-11e9-98d4-844088d135f2_story.html?utm_term=.07acb35d93d9)

\* The information referred to has been retained in the Committee files.



### **Pave the Way to Safety and Prosperity with Increased and Targeted Roads Funding**

Dire circumstances require bold solutions. One bold solution is a drastic increase in the BIA Road Maintenance account so that Tribes, such as ours, can receive a funding amount that is actually viable to get the much needed maintenance work done adequately. Another bold solution is to create a new roads maintenance account that targets backlogged road and bridge projects by taking mile inventory, remoteness, and weather conditions into consideration. An influx of funding for road construction, maintenance, and equipment would increase public safety, facilitate economic development, decrease Tribal costs, and alleviate the hardships our members currently endure.

We, therefore, urge Congress to provide increased and targeted roads funding to address these concerns. Specifically, we respectfully request that Congress allocate \$60 million to cover our backlogged roads maintenance needs and increase the overall BIA Roads Maintenance Account to begin to address the pressing needs of tribal communities across the country. We also urge Congress to provide an initial amount of \$15 million to establish a BIA roads improvement program for targeted projects that take into account a tribe's geographic size, location (and associated weather factors), and mile inventory.

Further, to diversify the federal toolbox of programs and funding sources targeting roads infrastructure, we urge Congress to re-establish and fund the Tribal High Priority Project Program within the Department of Transportation and create a Tribal Set-Aside from the Highway Safety Implementation Program. Both of these programs would offer tribes access to critical resources and funding for implementing tribal roads projects.

### **Priorities for Tackling Roads Issues in the Great Plains**

Please see the attached document entitled, "Land Based Tribes Coalition for Maintaining and Improving BIA and Tribal Roadways." This is an informative document that lays out seven priority solutions for addressing the severe tribal transportation needs in the Great Plains. We ask this Committee, and Congress overall, to take all necessary steps to implement these priorities.\*

### **Conclusion.**

Thank you for the opportunity to provide written testimony on this critical topic. We look to you to fulfill the treaty obligations of the United States to the Oglala Sioux Tribe, in part, by providing the necessary support to build a strong Tribal infrastructure. The Committee's hearing on this important topic is a good step in that direction. We look forward to working with Committee Members and staff toward repairing, improving, and maintaining our roads in a manner that is safe and facilitates much-needed infrastructure, community and economic development on our Reservation.

DUCKWATER SHOSHONE TRIBE  
*Duckwater, NV, March 29, 2019*

Senator Catherine Cortez Masto,  
Hart Senate Office Building,  
Washington, DC.

Dear Senator Cortez Masto,

We understand that on Wednesday, April 3, the Senate Indian Affairs Committee will be holding a hearing on enhancing tribal self-governance and safety of Indian roads. We would appreciate it if you could include this correspondence as part of the hearing record.

Our reservation is located in northern Nye County, east-central Nevada. In 2016, by federal statute (Public Law 114-232, the Nevada Native Nations Land Act) the Congress expanded our reservation by over 31,229 acres. Pursuant to this law, a federal survey of the boundary lines was to be completed within 6 months of enactment, April, 2017. The federal government has missed this deadline by almost two years already.

To proceed with this land expansion, we have asked the Bureau of Land Management (BLM) to complete a survey of the land. Despite repeated requests, the BLM has not completed this survey. Moreover, for the past several years, our Tribe has been seeking a self-governance contract with the BLM but the agency has not been

\*The information referred to has been retained in the Committee files.

responsive. We are asking for your support to ensure that the BLM responds to our request for a self-governance compact. This is important regarding road safety because the current primary road running through the reservation will also be passing through the expanded reservation area.

The Tribe is currently relying on 24 miles of unpaved and unsafe road (State Route 379) to reach distant communities where our members work, attend school, and visit family. Numerous accidents and fatalities have occurred over the years. There is no safe place to change a tire, which occurs often. When we encounter semi-trucks, we are forced to wait because the road is too narrow in most places.

Due to our remote location, this is an urgent issue because the limited access to our reservation through a poorly maintained and unpaved dirt road hampers our economic development. The most recent estimate for paving this dirt road from Duckwater, Nevada to Eureka, Nevada is approximately \$31.6 million.

Our Tribe's commitment to transportation safety is consistent with Nevada's "Zero Fatalities, Drive Safe Nevada" program aimed at reducing the risk of death and serious injuries that result from incidents within unsafe transportation systems such as our primary road, State Route 379. It is important for both the federal and state governments to partner with us to address this critical road safety problem.

For your easy reference we have attached a map outlining the road improvements proposed as well as our most recent application to the appropriate federal and state agencies.

We need the support of the U.S. Department of the Interior, the U. S. Department of Transportation and the Congress to ensure that safety improvements are made expeditiously.

Thank you for our consideration of your request.

Sincerely,

RODNEY MIKE; CHAIRMAN

DUCKWATER SHOSHONE TRIBE  
*Duckwater, NV, February 27, 2017*

Michael J. Herder; District Manager,  
Bureau of Land Management,  
Ely District Office,  
Ely, NV.

Dear Mr. Herder:

As we informed you in our correspondence dated July 25, 2016, in addition to the broad inherent sovereign authority of the Duckwater Shoshone Tribe, and the reserved rights of the Tribe contained in the 1863 Treaty of Ruby Valley, the Indian Self-Determination Education and Assistance Act (ISDEAA), codified at 25 U.S.C. Section 450, et seq., provides specific legal authority to the Tribe to propose to the BLM that the Tribe compact for programs currently carried out by the BLM.

Enclosed is the Tribe's proposed Self-Governance Compact, Self-Governance Funding Agreement, and Self-Governance Three-year budget from 2017. Also enclosed, you will find estimates that support the documentation, together with photographs taken at the proposed area for repair and/or replace.

With regard to our previous correspondences dated back to November 4, 2016, we have not heard from your office. We also submitted an MOU (Memorandum of Understanding) with regard to those items discussed at our first meeting on October 17, 2016. We look forward to hearing a favorable response with regard to our submissions, soon. Also attached is our Tribal Resolution, for your records.\*

Thank you.

Sincerely,

RODNEY MIKE; CHAIRMAN

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\*The information referred to has been retained in the Committee files.