AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 110–251

TRANSPORTATION ISSUES IN INDIAN COUNTRY

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JULY 12, 2007

Printed for the use of the Committee on Indian Affairs

U.S. GOVERNMENT PRINTING OFFICE

37–860 PDF WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON INDIAN AFFAIRS

BYRON L. DORGAN, North Dakota, *Chairman*
LISA MURKOWSKI, Alaska, *Vice Chairman*

DANIEL K. INOUYE, Hawaii
KENT CONRAD, North Dakota
DANIEL K. AKAKA, Hawaii
TIM JOHNSON, South Dakota
MARIA CANTWELL, Washington
CLAIRE MCCASKILL, Missouri
JON TESTER, Montana

JOHN MCCAIN, Arizona
TOM COBURN, M.D., Oklahoma
JOHN BARRASSO, Wyoming
PETE V. DOMENICI, New Mexico
GORDON H. SMITH, Oregon
RICHARD BURR, North Carolina

SARA G. GARLAND, *Majority Staff Director*
DAVID A. MULLON JR. *Minority Staff Director*

CONTENTS

	Page
Hearing held on July 12, 2007	1
Statement of Senator Dorgan	1
Statement of Senator Murkowski	16
Prepared statement	17
Statement of Senator Tester	6

WITNESSES

Baxter, John R., Associate Administrator for Federal Lands Highways, Federal Highway Administration, Department of Transportation	10
Prepared statement	12
Forrest, Erin, Director of Public Works, Hualapai Nation	64
Prepared statement	66
Garrigan, James, Transportation Planner, Red Lake Band of Chippewa Indians	56
Prepared statement	59
Gidner, Jerry, Assistant Secretary-Designate; Deputy Bureau Director, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior; accompanied by Leroy Gishi, Division Chief, Division of Transportation	7
Prepared statement	8
Kashevaroff, Don, President, Seldovia Village Tribe	27
Prepared statement	30
Red Tomahawk, Pete, Transportation Director, Standing Rock Sioux Tribe; Chairman, Indian Reservation Roads Program Coordinating Committee	35
Prepared statement with attachments	38

APPENDIX

Board of Supervisors, Navajo County, Arizona, prepared statement	120
Dybdahl, Johanna, Chairperson, Southeast Tribal Department of Transportation Commission, prepared statement	121
Gila River Indian Community, prepared statement	97
Healy, Sr., C. John, President/Transportation Director, Fort Belknap Indian Community, prepared statement	104
His Horse Is Thunder, Ron, Chairman, Standing Rock Sioux Tribe, letter with attachment	123
Ho-Chunk Nation, prepared statement	102
Polston, JoAnn, First Chief, Healy Lake Traditional Council, prepared statement	100
Sinyon, Elaine, Tribal Administrator, Cheesh-na Tribal Council, letter with attachments	86
Smith, Chadwick, Principal Chief, Cherokee Nation, prepared statement	85
Written questions submitted by Hon. Byron L. Dorgan to:	
John R. Baxter	206
Jerry Gidner	208
Yellow Bird-Steele, John, President, Oglala Sioux Tribe, letter	94

TRANSPORTATION ISSUES IN INDIAN COUNTRY

THURSDAY, JULY 12, 2007

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

The Committee met, pursuant to notice, at 9:30 a.m. in room 485, Russell Senate Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. We will call the hearing to order. This is a hearing of the Indian Affairs Committee. We are here today to discuss transportation issues with respect to Indian Country. We will hear from both Federal and tribal representatives this morning.

As many of us prepared to travel to this hearing this morning, some short distances and some long distances, we might have wondered whether traffic was going to be good or bad, or if there was a delay in public transportation. But none of us would have probably worried very much about whether the roads to the Russell Senate Office Building would be impassable, unpaved, or difficult to traverse, like members of the Hoopa Valley Tribe in California encountered in the first photograph we will put up.

None of us worried that a bridge over the Potomac River might be washed away. We cross those bridges every morning easily. We don't worry that the bridge will be washed away like the bridge on the second photo. This is from the Potawatomi Reservation located in Kansas.

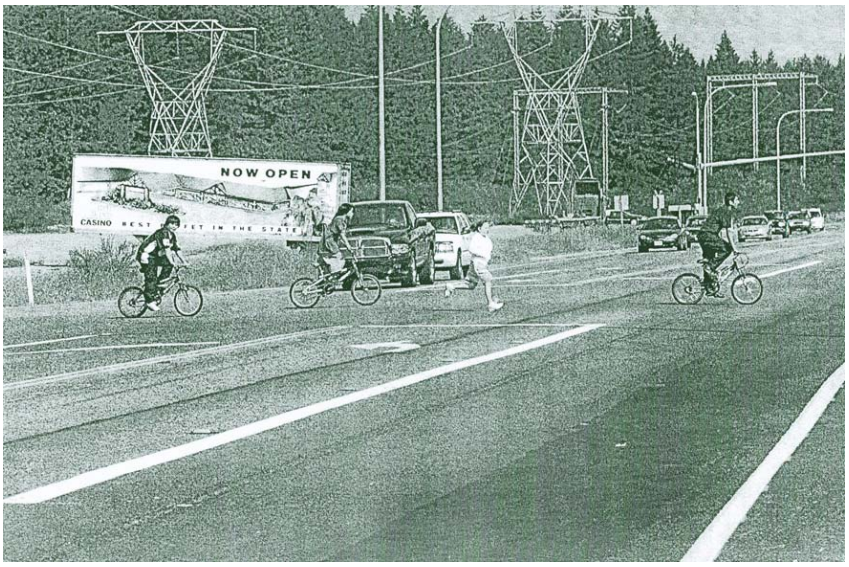
Additionally, even the fact that we have public transportation that we can count on is a luxury that is unheard of in many parts of Indian Country.

A transportation system is the lifeline for any community, making it possible for your children to go to school, families to travel and receive health care, attend jobs, get us readily to work. So a good transportation system allows the community to grow economically, and something that most communities throughout this Country take routinely for granted.

Regrettably, those in Indian Country are not able to do the same. The statistics are really quite alarming. Motor vehicle injuries are the leading cause of death of Native Americans ages 1 to 34, and the third leading cause of death overall for all Native Americans.

Death rates in motor vehicle accidents for American Indians are nearly twice as high as for other races. Given that tribal youth are particularly and especially at risk, I joined my colleagues last year in successfully securing tribal participation in the Safe Routes to Schools program. This program encourages children to walk or bicycle to school safely, and improves pedestrian safety in the vicinity of schools.

Equally disturbing is the fact that American Indians have the highest rate of pedestrian injury and death per capita of any racial or ethnic group in the United States. I have a photo, three that we will show. Let me show you this photo, in which children from the Nisqually Tribe in Washington State are forced to sprint between vehicles on a very busy highway to get to school.



This is one of the main highways running through the reservation. Located on one side of the highway are the largest retail enterprises, while almost all residences and government offices are on the other side. This photo demonstrates the desperate need of a pedestrian crossing to enable Indian tribal members and employees and children to safely cross and have safe access to services on the reservation.

The poor condition of Indian Country roads is equally distressing. It is a major contributing factor to these troubling statistics. Seventy-six percent of BIA and tribal roads are unimproved earth and gravel.

So how can you expect the community to thrive when basic infrastructure needs aren't being met? A South Dakota tribal leader told me an interesting story during a listening session that I had in Minneapolis, Minnesota a while back. He said that his tribe's roads were so full of potholes that drivers were forced to zig-zag and were getting used to zig-zagging all over the road. The way that a tribal police officer can tell if someone was driving drunk was if they were driving straight.

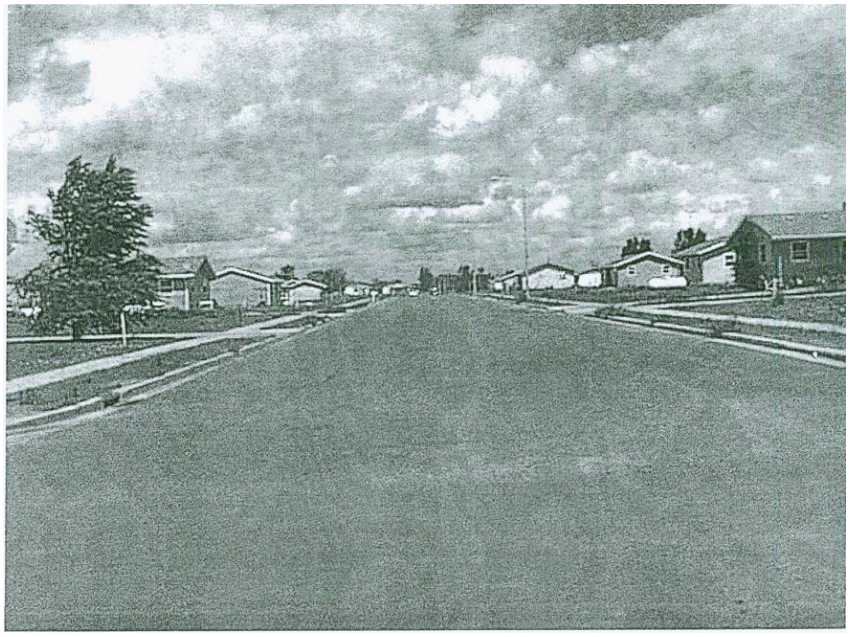
[Laughter.]

The CHAIRMAN. Road maintenance in Indian Country is grossly underfunded, estimated at less than $500 spent per road mile on Indian Country roads, compared to $4,000 to $5,000 spent by States. But you would not know that by looking at the Administration's budget request, which has fallen in the past several years, not to mention the Federal Government's trust responsibilities.

Thankfully, tribes have been working in creative ways, innovative ways to improve the situation.

I have one last photo. This is a before and after photo of a residential road on the Standing Rock Sioux Indian Reservation located in North and South Dakota. The before picture shows the typical quality of roads in most Standing Rock communities, and

the after picture shows what the community streets look like now thanks to the innovative flexible financing advanced construction agreement between the tribe and the BIA. This agreement allowed for the completion of a $27 million project in a few years, instead of taking 20 years under private pay as you go plans. Standing Rock was the first tribe in the Country to utilize this type of innovative financing.



So we hold hearings in this Committee. We hold hearings on improving housing and health care and education, economic development. What is essential to providing all of these necessities? What ties it together? Safe roads, good transportation, good infrastructure.

So we are holding a hearing today to discuss the current transportation issues in Indian Country, and to discuss innovative and practical ways to improve tribal transportation services.

I want to make one additional point. Indian Country is not a Third World country. It is part of the United States of America. But if you travel across this Country and go to Indian reservations, you too often see people living in Third World conditions. That has to stop. This Country has to do more to meet its trust responsibility. We talk about that in so many areas. Today, once again we talk now about infrastructure and roads. Once again, our Country has a responsibility and this Committee is going to do everything it can to see that our Country meets its responsibilities to the first Americans.

Let me call on my colleague, Senator Tester.

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

Senator TESTER. Thank you, Mr. Chairman. I also want to thank you for holding this hearing today on transportation, something that is critically important. You called it the lifeline, and I agree with that 100 percent.

You know, I have met with a lot of Native American groups in the last six and a half months, and there are a lot of needs out there, from health to housing to water, and roads and transportation are critically important. As we talk about economic development in Indian Country, where we have 50 percent, 85 or 90 percent unemployment, transportation is critically important, whether you are talking about pedestrian transportation or transportation for cars and trucks, or even access to rails. I think it is important that we focus on the things that will help drive those unemployment rates down and make Indian Country all it can be.

So Mr. Chairman, I really appreciate your efforts in this regard and I look forward to the hearing today.

The CHAIRMAN. Senator Tester, thank you very much.

Today, we have two panels. In the first panel, we will hear from Mr. Jerry Gidner, Assistant Secretary-designate, Deputy Director for the Office of Indian Services, the BIA. You may come forward, Mr. Gidner. He is accompanied by Mr. Leroy Gishi, Division Chief, the Division of Transportation of the BIA. Welcome.

Mr. John Baxter, Associate Administrator of the Federal Lands Highways, Federal Highway Administration, U.S. Department of Transportation, is with us. Mr. Baxter, welcome.

I would tell all of you that your entire statements will be made a part of the permanent record. We would ask you to summarize during your presentation, and then we will inquire of you. We will have a second panel following your presentation as well.

Mr. Gidner, you may proceed.

STATEMENT OF JERRY GIDNER, ASSISTANT SECRETARY–DESIGNATE; DEPUTY BUREAU DIRECTOR, OFFICE OF INDIAN SERVICES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY LEROY GISHI, DIVISION CHIEF, DIVISION OF TRANSPORTATION

Mr. GIDNER. Thank you, Mr. Chairman.

Senator Tester, Members of the Committee, I am Jerry Gidner. I am the Deputy Bureau Director for Indian Services within the Bureau of Indian Affairs. With me, as you mentioned, is Leroy Gishi, our Division Chief for Transportation.

I want to give just a brief overview of our program today, which has two major components: road construction and road maintenance. We manage these programs in close cooperation and in a very good relationship with both the Federal Highways Administration and with the Indian Reservation Roads Program Coordinating Committee. You will hear from Mr. Pete Red Tomahawk, who is the Chairman of that committee, in the next panel.

The construction part of our program is really driven by the inventory. Maintaining the roads inventory is one of the most important things that BIA does in relationship to this program. The inventory drives the distribution of the bulk of the Federal highways construction money. Of the $370 million appropriated this year for roads construction, $277 million of it is distributed in accordance with the formula that drives the inventory.

That inventory is growing rapidly. It has grown 23 percent since Fiscal Year 2000, although that number varies by region. In Alaska, for example, the inventory has increased by over 1,800 percent in the last 10 years. So there are a lot of miles of road being added to the inventory.

In Fiscal Year 2006, there were 82,000 miles in inventory under various ownership, with 27,000 miles of those BIA roads. As you mentioned, Mr. Chairman, approximately 76 percent of those roads are unpaved roads. For the next Fiscal Year, we expect inventories which we are finalizing right now for the next year's distribution, we expect the number of miles of roads to be in the 90,000 to 95,000 range.

The second part of the program is road maintenance. It is a very important program, as you mentioned. It is funded by BIA appropriations, rather than by dollars coming from the Federal Highway Trust Fund. We have a backlog of approximately $120 million for our road maintenance backlog. Funding has been flat or decreasing, and as you noted, many of the roads are unsafe and deteriorating.

We have many challenges in this program. The first challenge is that this has become a tribal shares program, which is a good thing, but it also raises some challenging issues. TEA–21, the precursor to SAFETEA–LU, required that we conduct a negotiated rulemaking on the distribution of these funds. What emerged is that the dollars that each tribe gets depends on various factors pertaining to the roads in the inventory.

We are seeing dramatic changes in the funding for the regions and tribes as regions and tribes get their inventory updated. Small tribes with fewer roads or tribes that have not updated their inventory are seeing relatively fewer dollars compared to other tribes,

and many of those tribes are calling for a change to the regulations.

We believe changing the regulations now would be premature. We believe over the next 2 to 3 years, the inventory will be essentially updated and then we will have a much better picture of where the distribution is going to be. We think at that time, it would be more appropriate to discuss any changes to the formula that drives the distribution. That would also coincide, by the way, with the timing for a SAFETEA–LU reauthorization.

The second challenge is that SAFETEA–LU imposes on us a 30 day limit to get dollars to the tribes once we receive them from Federal Highways. We certainly support that, but the dollars do have to go to tribes through contracts under the Self-Determination Act and the project does have to be on an approved transportation improvement plan, and those requirements can conflict.

We have worked very hard this year to streamline our processes from mundane changes, such as simplifying the accounting codes to make the transactions easier, to more aggressive changes. We have created a template for the funding agreements for the self-governing tribes which is now being used to simplify that process. My office is finalizing a template for the self-determination contracts to simplify that process. Unfortunately, tribes can still not use the money until there is a contract in place and the TIP has been approved.

The third challenge we mentioned before is road maintenance. Frankly, it is impossible to maintain the roads at safe levels with the tools that we currently have.

The fourth challenge is the inventory. There are many policy questions about what should be in the inventory, what roads should be allowed to be in it, and how they should contribute to the amount of dollars that each tribe receives based on that formula. We are working with the coordinating committee to resolve those issues and come up with a position. We hope that we will soon have a consensus position on that. If we don't, then BIA will just move to make a decision and decide what should be in the inventory and what should not.

Logistically, maintaining the inventory is a great deal of work. Because we do not have internet access, tribes do not have the ability to enter the data themselves, unless they come to one of our facilities to use our system. We are right now working on creating a duplicate system that will allow tribes to enter the data themselves, which will then be harmonized with our system on a daily basis. We plan to have that system available in Fiscal Year 2008. That will make the tribal data entry and the whole process much easier.

With that, Mr. Chairman, I will conclude and would welcome any questions.

[The prepared statement of Mr. Gidner follows:]

PREPARED STATEMENT OF JERRY GIDNER, ASSISTANT SECRETARY-DESIGNATE; DEPUTY BUREAU DIRECTOR, OFFICE OF INDIAN SERVICES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY LEROY GISHI, DIVISION CHIEF, DIVISION OF TRANSPORTATION

Good morning, my name is Jerry Gidner. I am the Deputy Bureau Director for Indian Services in the Bureau of Indian Affairs (BIA) at the Department of the Inte-

rior. With me today is LeRoy Gishi, the Division Chief of our Division of Transportation. We are pleased to be here today to provide you with an overview of the BIA's Road Maintenance Program and the Indian Reservation Roads (IRR) Program. The IRR is jointly administered by the BIA and the Federal Highways Administration (FHWA).

The BIA has been involved in the repair and reconstruction of roads on Indian Reservations since the 1920s. From 1950 until 1983, Congress appropriated annual construction and maintenance funds to the BIA to maintain, repair and construct reservation roads on Indian Reservations. Approximately $1.2 billion were provided during this time for both construction and maintenance. The Surface Transportation Assistance Act of 1982 created the Federal Lands Highways Program which established IRR as a category of public roads providing access to or within Indian reservations, lands, communities and Alaska Native villages. This funding has contributed to the improvement of roads and the replacement or rehabilitation of deficient bridges on or near reservations throughout Indian country. Shortly after the establishment of the IRR program under the Federal Lands Highways Program (Title 23 USC Chapter 2), only road maintenance funds were appropriated through the Department of the Interior. Since the establishment of the IRR Program, the Federal construction investment in BIA, tribal, state, county and local roads and bridges that comprise the IRR system has exceeded $4.5 billion.

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

The IRR comprises over 82,000 miles of public roads with multiple owners, including Indian tribes, the BIA, states and counties. Coordination among all of these owners is required to pool available resources.

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

Road Maintenance in the BIA

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

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

Road Maintenance Under SAFETEA–LU

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

agreement, the BIA does not maintain any information on the extent to which this may be occurring.

Indian Reservation Roads Inventory

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

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

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

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

Conclusion

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

The CHAIRMAN. Mr. Gidner, thank you very much.

Next, we will hear from Mr. Baxter. Mr. Baxter, you may proceed.

STATEMENT OF JOHN R. BAXTER, ASSOCIATE ADMINISTRATOR FOR FEDERAL LANDS HIGHWAYS, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Mr. BAXTER. Chairman Dorgan, Interim Vice Chairman Murkowski, Senator Tester and other Members of the Committee, thank you for the opportunity to testify today on tribal transportation, including the Indian Reservation Roads program and the Federal Highway Administration's implementation of related SAFETEA–LU provisions.

Improving safety on our roads is a national public health issue, particularly on tribal lands where the fatality rate is over four times the national average. More than two billion vehicle miles are

traveled annually on the Indian reservation road system, where over 66 percent of the 82,000 miles of roads is unimproved earth and gravel. Approximately 24 percent of the bridges are classified as deficient.

These conditions make it very difficult for residents of tribal communities to safely travel to hospitals, stores, schools and employment centers. The Administration is committed to providing safe, efficient transportation for Indian lands and Alaska Native villages, while protecting the environment and cultural resources.

SAFETEA–LU includes several provisions to improve the condition and safety of the Indian reservation road systems. SAFETEA–LU includes a substantial increase in the funding for the program, ranging from $300 million in Fiscal Year 2005 to $450 million in Fiscal Year 2009, for a total of $1.86 billion over the life of the Act.

SAFETEA–LU also provides a total of $70 million for an Indian reservation roads bridge program, resulting in a total amount of funding for the program of $1.93 billion. This is a 40 percent increase over the funding provided for a comparable period in TEA–21.

SAFETEA–LU strengthens the direct relationship between FHWA and the tribes, including the authority to enter into direct funding agreements with the tribes. In the past, the tribes worked directly with the BIA regional offices on our programs and projects, and BIA and FHWA administered the program with FHWA oversight.

Now, eligible tribes have the option to enter into a reference funding agreement directly with FHWA for their respective share of program funding. To date, five tribes have entered into these agreements with FHWA. We currently are in negotiations with two additional tribes, and letters of inquiry and interest have been received from several more tribes.

FHWA and the initial five tribes are working together for this first construction season, and together we and the respective tribes are dedicated to making these agreements successful.

SAFETEA–LU also requires FHWA to complete a comprehensive national Indian reservation road inventory of eligible transportation facilities. The purpose of the inventory is to assess the true need and cost for tribal transportation, to ensure that the data of the existing inventory is accurate, and to help streamline the procedures that tribes utilize for updating their inventory. The inventory is the most significant factor used to calculate the tribal shares of the IRR program funding.

FHWA, working with BIA, is nearing completion on the task of gathering and analyzing the data included in the current inventory, and verifying the accuracy of the data itself. It is our intent to continue to work with the BIA, the tribes, and the Indian Reservation Roads Coordinating Committee to improve the inventory annually and provide Congress a comprehensive report on the inventory.

The goal of this process will be to ensure that the national IRR inventory not only reflects the true needs of tribal transportation, but more importantly, is equitable and fair for all tribes.

We recognize that transportation is a critical tool for tribes to improve the quality of life in their communities. SAFETEA–LU pro-

vides tools and resources to improve tribal transportation and the department is actively implementing these provisions.

We are committed to providing safe and efficient transportation options for tribal lands and to building more effective day to day working relationships with Indian tribal governments, reflecting respect for the rights of self-government and self-determination based on principles of tribal sovereignty.

Mr. Chairman, Senators, thank you again for this opportunity. I will be pleased to answer any questions you may have.

[The prepared statement of Mr. Baxter follows:]

PREPARED STATEMENT OF JOHN R. BAXTER, ASSOCIATE ADMINISTRATOR FOR FEDERAL LANDS HIGHWAYS, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Chairman Dorgan and Members of the Committee, thank you for the opportunity to testify today on tribal transportation, including the Indian Reservation Roads (IRR) Program and the Federal Highway Administration's (FHWA) implementation of related SAFETEA–LU provisions.

Introduction

The IRR system provides access to and within Indian reservations, Indian trust land, restricted Indian land, eligible Indian communities, and Alaska Native villages. The IRR Program serves over 560 federally-recognized Indian Tribes and Alaska Native villages and currently consists of over 82,000 miles of road, 4,500 bridges, and other transportation facilities. These facilities link housing, schools, emergency services, and places of employment, as well as facilitate employment and resource use.

More than 2 billion vehicle miles are traveled annually on the IRR system, even though it is among the most rudimentary of any transportation network in the United States. Over 66 percent of the system is unimproved earth and gravel. Approximately 24 percent of IRR bridges are classified as deficient. These conditions make it very difficult for residents of tribal communities to travel to hospitals, stores, schools, and employment centers.

The poor road quality also affects safety. Recently, U.S. Secretary of Transportation Mary E. Peters announced that traffic deaths on U.S. roads were down slightly in 2006 according to preliminary figures, but far too many lives continue to be lost. The annual fatality rate on Indian reservation roads continues to be more than 4 times the national average. This is a very serious problem. The Administration is committed to providing safe, efficient transportation for both residents and visitors, for access to and within Indian lands and Alaska Native villages, while protecting the environment and cultural resources.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) includes several provisions to improve the IRR system, with a particular focus on safety. SAFETEA–LU also strengthens the direct relationship between FHWA and the Tribes, including the authority to enter into direct funding agreement with Tribes and the requirement for FHWA to conduct a National Indian Reservation Road Inventory.

Status of SAFETEA–LU Implementation

Funding

Indian Reservations Roads Program

As authorized under SAFETEA–LU, the Federal Lands Highways Program (FLHP) receives almost a 27 percent increase for the 5-year period of the Act compared to the last 5 years of Transportation Equity Act for the 21st Century (TEA–2l)—a total of approximately $4.5 billion over the life of the Act. Direct transfer of apportioned funds to a Federal agency, upon State request, is now allowed. FLHP funds also can be used as the State or local match for most types of Federal-aid highway or transit funded projects that provide access to or within Indian lands.

The IRR Program, in particular, received a substantial increase in funding. IRR Program levels range from $300 million in Fiscal Year (FY) 2005 to $450 million in FY 2009, for a total of $1.86 billion over the life of the Act. The funds are distributed according to a formula based on tribal shares, which was implemented through a negotiated rulemaking with tribal governments. Also, SAFETEA–LU increased

the eligible uses of the IRR Program funds by allowing a Tribe to utilize up to 25 percent of its share of funds for road and bridge maintenance activities.

SAFETEA–LU also replaces the previous set-aside with a separate authorization totaling $70 million ($14 million per year) for the IRR Bridge Program (IRRBP) to help design and rehabilitate deficient bridges in Indian Country. Under SAFETEA–LU, the total amount of funding for the IRR Program, including the IRRBP, is $1.93 billion. This is a 40 percent increase over the funding provided for a comparable period in TEA–21.

National Scenic Byways Program

Indian Tribes have participated in the National Scenic Byways Program since its inception under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). From 1992–2005 (prior to SAFETEA–LU), FHWA provided at least $3.4 million for projects on byways with direct tribal involvement or for byways crossing tribal lands. SAFETEA–LU amended section 162 of title 23, United States Code, to provide the Secretary of Transportation the authority to make grants directly to Indian Tribes and to allow Indian Tribes to nominate Indian roads directly to FHWA (without going through a State department of transportation) for possible designation as a National Scenic Byway or American Road.

FHWA has participated in tribal transportation conferences to inform Tribes of these changes to the National Scenic Byways Program. FHWA also has worked with the America's Byways Resource Center (Duluth, MN) to establish a tribal liaison position within the Resource Center. The liaison started work in May 2007, and will provide technical assistance to Indian Tribes in establishing tribal scenic byways programs and designating roads as Indian Tribe scenic byways.

In addition, FHWA has modified its grant application procedures so Indian Tribes may submit grant applications directly to FHWA and has included information on tribal participation in the National Scenic Byways Program. In FY 2006, Tribes submitted 5 applications directly to FHWA and 8 applications through the State departments of transportation, requesting a total of $1.3 million. The Department selected 12 of the projects, providing a total of $789,816. Nationwide, FHWA received 417 applications requesting $53.4 million, and $25.5 million was provided for 309 projects.

Public Lands Highway Discretionary Program

The Public Lands Highway Discretionary (PLHD) program provides funding to any project eligible under title 23, United States Code, that is within, adjacent to, or provides access to Federal public lands. For FY 2007, there are $87.3 million available for the PLHD program. In FY 2007, unlike the past several years, projects for PLHD program funding were not designated by Congress. Applications for the PLHD program are being evaluated based on whether the specific project meets the statutory criteria for the program and how well the project addresses the Department's priorities of improving safety and reducing congestion. For each application, we will consider the benefit of the safety improvement, the need for the safety improvement, and the likelihood of expediting implementation of the improvement. A similar analysis will be done for congestion relief. We are in the process of reviewing applications now, and will be announcing awards this summer.

Safety

Road Safety Audits

In recognition of the need to improve safety on Indian reservation roads, FHWA has conducted several road safety audits (RSA) with Tribes. An RSA is a formal safety performance examination of transportation systems within a reservation or Alaska Native village and is an effective tool for identifying existing safety issues and eliminating them through improved planning and design. To promote their benefits, FHWA sponsored training on RSAs and Road Safety Fundamentals with four Tribes this past year Tohono O'odham and Navajo Nations (in cooperation with the AZ DOT and others), Santa Clara Pueblo and Jemez Springs Pueblo (in cooperation with the NM DOT), and Standing Rock Sioux (in cooperation with ND and SD DOT). This training specifically targeted local and tribal transportation experts. A document summarizing the findings and lessons learned will be completed by the end of this year. Additional RSAs are planned for later this fiscal year.

Also, FHWA, with the help of the Tribal Technical Assistance Program (TTAP), continues to provide technical assistance and training to Tribes on conducting their own RSAs. For example, FHWA has provided funding and support to the Northern Plains Tribal Technical Assistance Program to sponsor a Road Safety Audit Outreach Coordinator, who has provided training and RSAs for the Spirit Lake Nation, the Winnebago Nation, and others.

Safe Routes to Schools

The Safe Routes to School program is a federally funded, but State managed and administered grant program established by section 1404 of SAFETEA–LU. Each State receives not less than $1 million each fiscal year to plan, design, and construct infrastructure-related projects that will improve the ability of students to walk and bicycle to school. Safe Routes to Schools funding also may be used for non-infrastructure-related activities to encourage walking and bicycling to school. FHWA has determined that federally recognized Tribes are eligible sub-recipients of this State administered program. Most States are in the early stages of implementing this new program. States with high tribal populations, such as those in the Southwest, are reaching out to tribal groups and encouraging them to apply for funding. For example, in Arizona, the Safe Routes to School coordinating committee includes tribal representatives from the Tohono O'odham and Navajo Nations.

High Risk Rural Road Program

SAFETEA–LU established a new safety program, funded as a set-aside at $90 million per year, known as the High Risk Rural Roads Program (HRRRP). This federally funded, State administered program is intended to reduce fatalities and injuries on small rural roads with above average crash rates. Tribal roads that meet the criteria for improvements are eligible for the funding. FHWA has undertaken extensive outreach to Tribes on the HRRRP, including developing and disseminating guidance and making presentations at a variety of conferences, including National and Regional Tribal Transportation Symposia, and Local Technical Assistance Program and TTAP meetings.

Other

Indian Reservation Road Program Changes

SAFETEA–LU made significant changes to the IRR Program and the Federal Transit Program that will greatly assist tribal transportation. Tribes meeting eligibility requirements now have the option of entering into IRR Program agreements directly with FHWA for their respective share of IRR Program funding. Section 1119 of SAFETEA–LU amended the IRRBP to allow funding for preliminary engineering activities for the replacement or rehabilitation of structurally deficient or functionally obsolete IRR bridges. As a result of the changes to the IRRBP, in consultation with the Indian Reservation Roads Coordinating Committee (IRRCC), FHWA issued a notice of proposed rulemaking (NPRM) on June 5, 2007. The NPRM proposes a number of changes, including an explanation of the priority process for both Bureau of Indian Affairs (BIA) and non-BIA owned bridges, separate queues for both construction and preliminary engineering, and a reduction in the funding ceiling for construction of non-BIA owned bridges.

Section 1119(k) of SAFETEA–LU allows Tribes and States to enter into road maintenance agreements for which the Tribes assume the maintenance responsibility for the State on Indian Reservation Roads. These Agreements are negotiated directly between the State and Tribe. FHWA has provided an annual report to both the Senate and the House in each of the past 2 years with the results of these agreements.

Deputy Assistant Secretary for Tribal Government Affairs

Section 1119(1) of SAFETEA–LU requires the Department of Transportation to have, within the Office of the Secretary, a Deputy Assistant Secretary for Tribal Government Affairs appointed by the President. The duties of the Deputy Assistant Secretary are to plan, coordinate, and implement the Department of Transportation policy and programs serving Indian tribes and tribal organizations and to coordinate tribal transportation programs and activities in all offices and administrations of the Department and to be a participant in any negotiated rulemaking relating to, or having an impact on, any projects, programs, or funding associated with the tribal transportation programs. Currently, the Deputy Assistant Secretary for Intergovernmental Affairs is carrying out the functions prescribed for the Deputy Assistant Secretary for Tribal Government Affairs, including coordinating tribal transportation programs within the Department.

Direct Funding Agreements With Tribes

In the past, Tribes worked directly with the BIA Regional Offices on IRR programs and projects, either through Direct Service Agreements, Self-Determination Act Contracts, or Self-Governance Agreements, and BIA and FHWA administered the IRR Program with FHWA oversight. Now, eligible Tribes are able to enter into Referenced Funding Agreements directly with FHWA for their respective share of IRR Program funding to carry out the Tribes' IRR programs or projects in accord-

ance with the Indian Self-Determination and Education Assistance Act. While the BIA has retained its program management and oversight role on a national and regional level, these agreements have increased the FHWA-Tribal government relationship on both a program and project level.

Under these direct agreements, the amount a Tribe receives equals the amount of funding that the Tribe would otherwise receive in accordance with the formula for distributing IRR Program funds, plus an amount, as determined by the Department of Transportation, that would otherwise be withheld by BIA for program or project administration. A Tribe assumes all powers, functions, and duties that the Secretary of Interior would have performed and that are not inherently Federal or cannot be transferred. The agreements identify the roles and responsibilities of each party, as well as the specific work that is to be performed with the funds being received. A Tribe is eligible to participate if it can provide conclusive evidence of financial stability and management capability during the preceding three fiscal years. Conclusive evidence exists if the Tribe had no uncorrected significant and material audit exceptions in their annual audits.

To date, five Tribes have entered into these agreements with FHWA—the Standing Rock Sioux Tribe from North and South Dakota, the Ramah Navajo Chapter from New Mexico, the Chickaloon Native Village from Alaska, the Assiniboine and Sioux Tribes of the Fort Peck Reservation from Montana, and the Oglala Sioux Tribe from South Dakota. We currently are in negotiations with two additional Tribes and letters of inquiry and interest have been received from several more Tribes. FHWA and the initial five Tribes are currently working together through this first construction season. Technical assistance with various phases of existing and new projects, as well as capacity building, is being provided by FHWA. Together, we and the respective Tribes are dedicated to making these agreements successful.

National Indian Reservation Road Inventory

SAFETEA–LU requires FHWA to complete a comprehensive national IRR inventory of eligible transportation facilities and report to Congress by November 2007 (23 U.S.C. 202(d)(2)(G)). The purpose of the inventory is to develop the true need and cost for tribal transportation, to ensure that the data in the existing inventory is accurate, and to help streamline the procedures that Tribes utilize for updating their inventory. The inventory is the most significant factor used to calculate the tribal shares of IRR Program funding. Hence, it is imperative that a Tribe's data shown in the inventory be as accurate as possible.

The inventory includes, at a minimum, all transportation facilities eligible for assistance under the IRR program that a Tribe has requested, including all facilities in the BIA inventory since 1992, facilities constructed or reconstructed with Highway Trust Fund dollars (other than the Mass Transit Account) under the IRR program since 1983, facilities owned by an Indian tribal government, primary access routes, and community streets or bridges within the boundary of a recognized Indian community or reservation or Alaska Native village.

FHWA is nearing completion on the initial task of gathering information for the inventory. This extensive activity has included reviewing existing data for completeness, carrying out onsite surveys of more than 400 individual sections of road throughout Indian Country to verify correctness of data, addressing and correcting regional and national structural and cost data of the inventory and working with the BIA and Tribes to eliminate the barriers that have caused rejection of data or restriction of tribal input to the existing system. FHWA, BIA, and the IRRCC have all worked together to eliminate roadblocks and inconsistencies in the current inventory system, to allow easier access to the system, and to develop clearer instructions on actual submission requirements. In addition, FHWA is working directly with Tribes, BIA, and other State and Federal agencies to collect data on established costs of other eligible facilities not yet included in the existing inventory that are eligible for use of IRR Program funds. Although these facilities currently are not included in the formula used to calculate the amount of funding that each Tribe receives annually, this data will help in the determination of the true national needs of the tribal transportation systems.

The fluidity and constant evolvement of the inventory makes this effort a "snapshot" in time and interim in its nature. For instance, a road may be in the inventory as a gravel surface road, but may be paved in the future. This change will require the inventory to be updated to reflect this new surface type and other changed conditions. FHWA plans on updating this national IRR inventory annually as part of a continuing effort of all parties involved to ensure that the national IRR inventory reflects the true needs of tribal transportation, but, more importantly, is equitable and fair for all Tribes.

Outreach

FHWA staff has visited tribal governments over the past several years to see firsthand the transportation infrastructure on reservations and also has met with individual Tribes during the annual National Tribal Transportation Conference. We have seen and heard about successes and partnerships between Tribes and States, but we also have seen roads and infrastructure that are not at an acceptable level. FHWA continues to work with numerous tribal and State transportation organizations, the IRRCC, as well as the BIA in carrying out informational meetings and presentations covering many transportation issues and potential funding opportunities in locations across the country. These meetings and visits give FHWA a valuable perspective on the state of tribal programs and help to identify program strengths and weaknesses.

TTAP continues to be a valuable and popular program with tribal governments. The purpose of our seven TTAP centers is to foster a safe, efficient, and environmentally sound surface transportation system by improving the skills and increasing the knowledge of local transportation professionals. This year FHWA re-competed and awarded new cooperative agreements for TTAPs for the California-Nevada and Alaska regions, since the prior agreements expired. FHWA awarded the California-Nevada region TTAP to the National Indian Justice Center in Santa Rosa, California, and the Alaska TTAP to the University of Alaska Fairbanks Interior-Aleutians campus. While some have expressed concerns about the change in the TTAP center for Alaska, FHWA is confident that the cooperative agreement will be beneficial for delivering training, technical assistance, and information to Alaska Native Tribes, villages and communities.

FHWA also participates in research and outreach efforts to gather and disseminate information important to tribal transportation. Recently, FHWA contributed to the Transportation Research Board's (TRB) study to provide information useful to tribal governments and Federal, State, and local agencies to help in determining the state of tribal transportation programs and the steps needed to assist Tribes in developing the capacity to perform and manage effectively transportation-related functions. This effort was authorized by the American Association of State Highway and Transportation Officials (AASHTO), through the National Cooperative Highway Research Program (NCHRP). TRB published the results of the study May 29, 2007, in a report entitled "NCHRP Synthesis 366, Tribal Transportation Programs: A Synthesis of Highway Practice."

Conclusion

Transportation is a critical tool for Tribes to improve the quality of life in their communities. The challenges facing us are to maintain and improve transportation systems serving Indian lands and Alaska Native villages in order to provide safe and efficient transportation options for residents and access for visitor enjoyment, while at the same time protecting environmentally sensitive lands and cultural resources. SAFETEA–LU provided tools and resources to improve tribal transportation and the Department is actively implementing these provisions. We are committed to building more effective day-to-day working relationships with Indian Tribes, reflecting respect for the rights of self-government and self-determination based on principles of tribal sovereignty.

Mr. Chairman, Senators, thank you again for this opportunity to testify. I will be pleased to answer any questions you may have.

The CHAIRMAN. Mr. Baxter, thank you very much.

We have been joined by the Vice Chair of this Committee, Ms. Murkowski. Would you wish to make an opening statement?

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. I will put my full comments in the record this morning, but appreciate the opportunity to listen to the testimony from both gentlemen this morning, and look forward to the comments from the other panel.

As you know, the issue of transportation and access and the IRR program is a huge concern for us in the State of Alaska. We continue to express our concerns and frustrations over some of the bumps in the road, so to speak, that we continue to face. I look for-

ward to being able to ask those present here today to respond to some of my questions.

[The prepared statement of Senator Murkowski follows:]

PREPARED STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Mr. Chairman. I want to thank you for bringing us today for this oversight hearing on the Indian Reservation Roads program—a vitally important program to end the third world conditions that plague many of our Native communities. A vitally important program for Alaska's Native Village's, nearly all of which are not connected to the North American road system.

In my State of Alaska, the Indian Reservation Roads program funds the construction and maintenance of roads and bridges within Alaska Native villages. In many cases these roads do not carry passenger vehicles but 4 wheelers and snow machines, which are the way that Alaska's Native people access subsistence resources and haul their subsistence food home. These roads form the link to the village airport which is the only way out during the winter.

This is not the first time that this Committee has taken testimony from the leaders of the Alaska Native community on the shortcomings of the Indian Reservation Roads program as it is implemented in Alaska.

On June 4, 2003, the Committee heard testimony from Loretta Bullard, Executive Director of the regional tribal consortium in Alaska's Bering Straits Region on this issue.

Loretta told the Committee that a complete inventory of roads eligible for IRR funding in Alaska has never been compiled. That the Bureau of Indian Affairs never surveyed our Alaska Native villages to identify the roads eligible for support. That tribes were given ambiguous guidance as to which roads could be submitted to the Alaska inventory. And that very few tribes had mileage in the inventory because of this omission.

When Alaska tribes learned about this omission which is costing them thousands and thousands in road funding, they attempted to submit inventory revisions to the BIA. They were first told that no matter how adequate their inventory submissions were—the BIA had arbitrarily limited the amount of new miles that could be included in the inventory. Then they were told that their submissions were not adequate.

This caused no shortage of concern among the road engineers in the BIA Alaska Region who contended that they could not get a straight answer from BIA Albuquerque about the requirements for an adequate submission. They would submit inventory that they thought was adequate and it would be rejected without a reasonable explanation. I understand that Alaska is not the only BIA Region that has this concern.

Alaska tribes that have miles in the inventory and are entitled to funds have fared no better. The Petersburg Indian Association, which had IRR funding sitting in the BIA, formulated a project to construct a road to a subsistence site. The city of Petersburg agreed to share the cost of constructing the road. But when it came time to construct the road, Petersburg could not get the money to which it was entitled out of the BIA. At the end of the Fiscal Year, the BIA turned Petersburg's money back to the Federal Highway Administration. It took nearly a year—and a fair amount of congressional casework and speeches—for them to finally obtain their money.

I would like to hear that all of the issues that this Committee identified at its 2003 hearing have been resolved. In response to concerns about the accuracy of the BIA inventory, the Congress through SAFETEA–LU placed the responsibility of compiling a new comprehensive national inventory in the Federal Highway Administration. I am hopeful that this new inventory will be equitable to Alaska. I look forward to hearing about the progress in compiling this new inventory.

The advance testimony suggests that there are still very significant problems with the Indian Reservation Roads program. I hope that this hearing will be a catalyst for much needed improvement in the program.

The CHAIRMAN. Thank you very much.

Mr. Gidner, let me first ask the question, tell me the history of budget requests for the road funds that are necessary and the road funds that are used in the BIA to address these issues.

Mr. GIDNER. For the road maintenance program?

The CHAIRMAN. Yes.

Mr. GIDNER. Well, the general history is that the requests have been declining for the road maintenance program.

The CHAIRMAN. And what is the purpose of that?

Mr. GIDNER. Well, as you are well aware, Mr. Chairman, when we develop a budget for a fiscal year, the Secretary is given the target budget to meet and the Assistant Secretary of Indian Affairs is given a target to meet, and we have to come in with a budget that meets that target.

Unfortunately, in an area where most of our programs are underfunded, we have to make priority decisions on what gets more requests and what gets reduced requests. We certainly agree that road maintenance is a very important program, but in that budget process it has to compete with the fact that we have some reservations that don't have 24 hour police coverage, or have woefully insufficient police coverage.

So the short answer is, road maintenance is not getting additional funding because, as important as it is, there are other programs that are even more important for the safety of the communities, and that is where the budget requests have been.

The CHAIRMAN. Yes, but the other programs are not getting adequate funding either. I mean, we just finished a hearing with respect to law enforcement and the desperate needs that exist in law enforcement, and the complaints about the lack of BIA funding and cooperation with respect to law enforcement.

The reason I am asking you about road funding is that you described, and I think accurately so, you have responsibility for 27,000 miles of roads, and I believe 76 percent are unpaved. You have seen the pictures. I have seen the pictures. You have driven on those roads. I have driven on those roads. Many of them are in desperately poor condition.

It is essential as we struggle to try to determine how we build some infrastructure and opportunity on Indian reservations that we invest in that infrastructure. I guess I don't understand a request for less money. On the maintenance account, the request has decreased, I guess it is the fifth straight years, isn't it, that is has decreased?

Mr. GIDNER. It may be. I am not sure of the 5-year history.

The CHAIRMAN. Are there discussions inside the agency that would say, you know, this doesn't make much sense. We have a crying need there, and why would we not try to find a way to increase some funding when you have a desperate need, rather than propose decreasing funding?

Mr. GIDNER. We do have those discussions. Again, I can only say, as I did before, road maintenance has to fight or compete for resources with other programs that affect safety such as law enforcement. We don't particularly like being in that situation ourselves, Mr. Chairman, but that is where we are.

The CHAIRMAN. But do you protest? I mean, is there a pretty aggressive debate inside before the President's budget comes out that says, you know what, we have responsibility for 27,000 miles of road here, and 76 percent of them unpaved, and many of them in desperate conditions with troubled bridges and so on, and we need to at least, if not keep even, we need to increase funding, and we

certainly don't want to decrease funding? What is happening behind the scenes?

Mr. GIDNER. I think using the word aggressive to describe our debate would be downplaying their intensity, to be honest. We have a lot of debates, and wide-ranging, and all the players in the room who have to fight for budgets for their programs. We brief that with the Assistant Secretary, and he briefs it with the Secretary. It is a fairly rigorous process, sir.

The CHAIRMAN. Mr. Baxter, you come at this from a slightly different perspective. You are over in DOT.

Mr. BAXTER. Yes, sir.

The CHAIRMAN. Describe for me again, in recent years the flow of funding to the reservations as a result of the various programs that you administer.

Mr. BAXTER. Well, as I mentioned, SAFETEA–LU actually resulted in about a 40 percent increase in the program compared to previous years. We have seen increases in the Indian reservation roads programs over the last several years, and a substantial increase in SAFETEA–LU comparatively with other programs in terms of overall growth of the program in the legislation. So we have seen an increase in the dollars.

There are always issues with having enough money for the basic needs that we have, but the program has been growing substantially.

The CHAIRMAN. When I use this statistic, road maintenance in Indian Country is grossly funded, it was talking about a maintenance account at $500 per road mile in Indian Country roads; $4,000 to $5,000 in equivalent miles spent by States. Are you familiar with those numbers?

Mr. BAXTER. I could not verify the numbers from a State DOT versus a tribal perspective, but I suspect there are substantial differences in the number per mile.

The CHAIRMAN. And that would obviously result in infrastructure that is in much less—let me frame it differently. That would result in roads that are not nearly as well maintained on Indian reservations as they are in the rest of the Country. Is that predictive?

Mr. BAXTER. That is probably fair to say. That is part of the reason that SAFETEA–LU also provided a provision to allow a percentage of the Indian reservation roads program for maintenance purposes.

The CHAIRMAN. We have testimony in the next panel from Pete Red Tomahawk, Director of Transportation Safety and Road Maintenance at Standing Rock. I have known Mr. Tomahawk for many, many years. He does an excellent job, but the fact is, the resources don't exist in sufficient quantity to make the improvements that are necessary in the roads.

What do you and Mr. Gidner think this Committee should do as an authorizing committee to try to continue to make recommendations to increase the funding opportunities for these roads? Do either of you have recommendations for the Committee? Mr. Gidner, I thought I heard you suggest that we not make significant changes at this point.

Mr. GIDNER. I suggested we not make significant changes in the distribution formula until that entire process has sort of equalized,

and then we can look at where the money is going and decide if that is equitable.

As far as the amount of money, I think we all understand that the amount of money is insufficient to meet the unmet need in Indian Country.

Mr. BAXTER. And from our perspective, I would suggest that this is a really appropriate time to have these discussions as we are heading into reauthorization over the next couple of years. This is an excellent opportunity to have those debates and discussions and formulate our positions as we go forward.

The CHAIRMAN. Ms. Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

It was a couple of years ago we had a transportation conference, their annual conference in Anchorage, and I had an opportunity to address those assembled from all across the State. I asked for their assistance. I said, you know, I am sitting on the Indian Affairs Committee, and want to know how we can help you with your transportation issues.

What I heard from those assembled from, whether it was Petersburg down in the southeastern part of the State or from those who reside far up north, was a great frustration in terms of how the funding was actually coming down to the tribes themselves, and the delays that they had encountered.

The Petersburg Indian Association was a perfect example and case. They had basically been told that the moneys were on the way. They had worked with the community of Petersburg, the city of Petersburg was going to contribute jointly to the road project. The funding didn't come. The funding didn't come. The funding didn't come. And so it caused some real problems within that community in terms of the promise that had been made that we are going to work on this jointly, and then we can't get the money out.

Now, the good news story on that is that the situation in Petersburg has been resolved, but it was resolved because it was brought to my attention at that meeting and we spent about a year with a little bit of Congressional intervention and pushing in order to break loose that funding.

You are going to hear from the Seldovia Village Tribe here today that they, too, have been denied money that has been rightfully awarded to them.

Why are the tribes coming to me and coming to those of us in Congress and telling us that the BIA is either unwilling or unable to part with the money that has been set aside for the Indian Reservation Roads programs?

Mr. GIDNER. Well, I would first of all start by saying we certainly are not unwilling. Our mission is to move that money to the tribes. I am not familiar with the Petersburg example that you mentioned, so I can't speak to the specifics of that.

We have had some problems over the past couple of years. For one thing, we can't move the money until we get it. This past year's continuing resolution delayed——

Senator MURKOWSKI. This was a couple of years ago. Seldovia also I don't think was caught in that same situation.

Mr. GIDNER. OK. We are working very hard to try to streamline the process. We have developed for self-governance tribes a funding

agreement template that can just be used with little or no negotiation, so that as soon as we get the money, it can be moved to the tribe.

We have developed, in my office, a similar template for the self-determination tribes, which will be final and in use in the very near future. We are doing these things to try to simplify the process. We are well aware of the requirement of SAFETEA–LU that we move the money to the tribes within 30 days of our receipt of it.

Senator MURKOWSKI. Are you able to do that? Are you able to comply with that?

Mr. GIDNER. Not 100 percent this year, no.

Senator MURKOWSKI. What causes that continued delay, then, in your opinion?

Mr. GIDNER. Well, it is a combination of factors. One is we can't get the money to the tribes until we have a contract with them. If we get the money on day one and a tribe hasn't submitted a proposal to us for a contract, or we haven't finished reviewing it and we haven't finished negotiating it with the tribe, we can't move the money until that contract is in place.

That is not saying anybody is at fault in that, it is just that we can't move the Federal money until there is a contract in place. We can do more as far as working in advance with tribes to make sure that we know what projects they intend to pursue, and we can have those contracts lined up. We can't finish a contract until we know how much money they are going to get, and that can't happen until the inventory is updated.

So there are a number of dates and moving parts that have to come together to get the money to the tribe. We think that these templates are going to advance that. We have created a mechanism we think will work for the self-determination tribes to essentially treat the money up front as a pre-award amount of money and can get it to the tribe more quickly while we work out the details of the agreement. But the bottom line is, because of other statutes, the tribes still cannot use the money until there is a contract in place.

Senator MURKOWSKI. How long does it typically take, would you say, to get a contract from the date of request to get the funding to the tribe?

Mr. GIDNER. I am not sure I know exactly how long that takes. I would have to get that information from somewhere else.

Senator MURKOWSKI. It sounds like that is probably the biggest hangup, is what you are saying.

Mr. GIDNER. Well, it is one big hangup. We are trying to change that so it is not a hangup, but this year that can be an issue.

Senator MURKOWSKI. Let me ask you about the inventory, because I have received many complaints that the regional offices are not receiving sufficient guidance from Albuquerque on what constitutes adequate inventory update. I know that within the Alaska region, we have tried to comply with the guidance that has been given, and what comes back is rejection after rejection.

I notice in your written testimony you indicate that not all the tribes have updated their inventory, and that only about 25 percent of the 562 tribes have updated a significant portion of their eligible

inventory. I can tell you that in Alaska, we are trying to do that, but we are not quite sure what those parameters might be. We get the rejection back, and it has been difficult to do those updates.

Can you tell me whether we are making any progress in terms of giving that guidance to the tribes so that they can complete their inventory?

Mr. GIDNER. I think we are making a lot of progress in making that process work better. I will acknowledge there have been some problems and there have been some rejections when there should not have been a rejection. That is true. We deal with that on a case by case basis as we hear about them.

I do want to say for the Alaska region in particular, the amount of increase in roads and inventory has gone up by over 1,800 percent in the last 10 years, which is far in excess of the nationwide average of 23 percent.

Senator MURKOWSKI. That is because ours weren't counted in the first place.

Mr. GIDNER. Well, that may be. I can't speak to that, I am afraid. I should say the acceptance rate for Alaska currently is about 82 percent. That means of the submissions that we get in, 82 percent of them go into the inventory. The remainder are rejected at some stage in the process for some reason.

Senator MURKOWSKI. Let me ask Mr. Baxter a very quick question, and then I will turn it over to Senator Tester.

One of the reasons that the Federal Highway Administration was charged by Congress to prepare this new inventory of the roads was that the tribes in Alaska didn't perceive, didn't feel that the inventory that had been prepared by BIA accurately portrayed the number of roads and the amount of roads in the State. What is Federal Highways doing to ensure that the new inventory that it is preparing will adequately represent the number of eligible road miles? Are you actually going out on the ground and counting?

Mr. BAXTER. We are. We actually have three teams in Alaska this month and in August, looking at the inventory issues and working with BIA and the tribes to remedy some of those situations. So we are working that very closely and actually currently have teams in Alaska.

Senator MURKOWSKI. Good. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Tester?

Senator TESTER. Thank you, Mr. Chairman.

I don't know who answers this question, either one of you can. It deals with a lot of the same stuff we have been talking about. Who assesses the adequacy in overall road conditions in Indian Country? Is it the Department of Transportation? BIA? Who does it?

Mr. GIDNER. It may be a joint responsibility. On a day to day basis, it is the BIA. We maintain the backlog on road maintenance. It is our people working with the tribal people in the field who would have that data.

Senator TESTER. OK. And so this contract that you talked about with Senator Murkowski, that includes deficiencies and overall road condition and need?

Mr. GIDNER. I am sorry. I don't understand.

Senator TESTER. The contract that you talked about, you can't distribute any money until the contract is signed. I would imagine that would contain things like overall road conditions.

Mr. GIDNER. Well, knowing the overall road condition is not a precursor of the contract. The contract will include, if the tribe wants that contract, funds for road maintenance.

Senator TESTER. OK. So it is strictly funding?

Mr. GIDNER. Funding.

Senator TESTER. And you have a template to determine how that is done?

Mr. GIDNER. Right.

Senator TESTER. Is a new contract required every year?

Mr. GIDNER. Not necessarily. A lot of them go for several years. It depends.

Senator TESTER. It depends on what?

Mr. GIDNER. It depends on how the contract was written and the status of it. If it is a mature contract, it rolls over. There are administrative things we have to do, but if it is an ongoing contract, it is easier. I think where you might be going, it is easier to have a contract in place if it is an ongoing contract than one starting from scratch.

Senator TESTER. OK.

Mr. Baxter, you started your testimony by saying the mortality rate was four times higher than the national average. Why?

Mr. BAXTER. I think there are a number of reasons. We had a good discussion with NHTSA at the last Indian Reservation Road Coordinating Committee, and they indicated to us that in Indian Country, seat belt usage is 55 percent, versus 81 percent nationally.

The belt usage in Indian Country is 55 percent, versus 81 percent nationally, and that has an impact on fatality rates. DUI, the percentage of fatalities is 65 percent versus 40 percent nationally in Indian Country. A predominant issue with pedestrian fatalities, speed is an issue in Indian Country.

So there are a number of factors. The rule of nature of fatalities, emergency medical response times, and obviously the condition of roads as well.

Senator TESTER. All right. How many dollars are dedicated toward pedestrian needs? Is it a set sum?

Mr. BAXTER. We have a national program for highway safety which actually was a major increase with SAFETEA–LU from about $650 million annually to $1.2 billion. Pedestrian safety is a part of that. It is not broken out separately as a different program funding category.

Senator TESTER. OK.

Mr. BAXTER. But those are national numbers.

Senator TESTER. OK. You also stated that I think about one in four bridges were deficient, or 24 percent, somewhere around that neck of the woods. I assume you are using the same standards throughout the Country, whether you are in Indian Country or off Indian Country.

Mr. BAXTER. Right.

Senator TESTER. That means every fourth bridge that I drive over when I am in Indian Country is not sufficient. How does that rank with off Indian Country?

Mr. BAXTER. I don't have the number for the national bridges. It is a higher number than what we see in the rest of the system. I don't have a specific number, though.

Senator TESTER. If you could get that, I would be interested to know if it is double or quadruple or what it is.

Mr. BAXTER. Yes, sir.

[The information referred to follows:]

> The following link provides a discussion of bridge deficiencies that is from the *2006 Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance* report.
>
> http://www.fhwa.dot.gov/policy/2006cpr/chap3.htm#bridge

Senator TESTER. And like you said before, you are using the same standards.

Mr. BAXTER. My understanding is that they do use the same standard to determine whether it is functionally obsolete or a deficient bridge.

Senator TESTER. OK. So the question I have for you, Mr. Gidner, you talked about the budget, you talked about money that you are competing for that may have to go to police or a myriad of other issues. But when you have situations like the testimony that you gave and the testimony that Mr. Baxter gave, it would seem to me that, especially when you have energy prices that are going up, which has an incredible impact on maintenance costs, that you ought to be screaming, screaming, screaming. Even maintaining the budget is not adequate.

I mean, we have testimony here that talks about the inadequacy of the roads and mortality rate and bridges and on and on we go. Are you told, are you directed by people above you to decrease the maintenance budget?

Mr. GIDNER. The overall DOI and Indian Affairs budgets, of course, the final decisions are made by the Secretary and the Assistant Secretary. Within the targets we are given, we fight very hard for the priorities that we want. Ultimately, they are the ones who have to make the decision.

Senator TESTER. So how much lower was the budget that actually got adopted than the budget you recommended for maintenance?

Mr. GIDNER. For this year, within our discussions, road maintenance was not given much discussion. Well, let me back up.

Senator TESTER. What I am saying is you must have come in with a figure. Let's say it was $100. I want $100 to maintain all the roads. And they came back and said, no, you are going to get X amount, $50, $25?

Mr. GIDNER. No, it didn't quite work like that. We worked it out within the Bureau of Indian Affairs ourselves on priorities. Let me back up again. The Bureau of Indian Affairs is given a target and we are told, for this year you have to come in 2 percent, for example, below what you had last year. That is the target budget. The Bureau of Indian Education is given the same sort of direction.

So within that, we talked about road maintenance. We talked about the need for road maintenance. We were not able to get road maintenance increases proposed.

Senator TESTER. Was 2 percent an accurate figure? You were told to come in 2 percent lower than the previous year?

Mr. GIDNER. It was around 2 percent, 1½ percent to 2½ percent.

Senator TESTER. OK. You know, in some cases you may be able to increase it 10 percent. In other cases, you might have to increase it 50 percent, because of maintenance issues, because of that first question I asked, and that is who assesses the condition of the roads. It seems to me that maintenance, there isn't anything so critically important. I mean, you could lose the resource and then it costs you a whole lot more.

Mr. GIDNER. It is, and within my jurisdiction, I have roads, I also have Indian children, and of course they are impacted by roads, but if I have to choose between suggesting more money for social workers to get children out of houses where they are being sexually abused versus more road maintenance, I will go with the children every time.

Senator TESTER. OK. And I don't mean to drag this on, Mr. Chairman.

So what you are saying is the road budgets are in direct competition with battered and abused children.

Mr. GIDNER. Yes, and lack of police officers. And everything else that we have to do.

Senator TESTER. OK. Thank you very much. I appreciate your testimony.

The CHAIRMAN. Senator Tester, your questions and the answers describe once again how desperately underfunded most of these accounts are. It is unbelievable to me. I was just saying to Senator Murkowski, the fact is, you should not, when you are driving around this Country in any State and drive onto an Indian reservation, you should not be able to see the difference in road quality. It ought to look the same, but it doesn't, unfortunately.

I remember driving from Comayagua to Tegucigalpa in Honduras and meandering all over the road trying to avoid all the potholes and all the problems. You drive in parts of this Country and drive onto an Indian reservation and you see Third World conditions with respect to their roads.

Now, I don't know what the labyrinth of programs are for road funding. I have most of them here on the charts. But all the talk in the world isn't going to solve the problem. What we need to do is describe a circumstance where when you are driving in this Country, if you are on an Indian reservation, you shouldn't be able to see the difference between the funding in the rest of that State for roads and the funding on that Indian reservation.

This describes once again how desperately short of money we are to do what is necessary to provide for the basic infrastructure on these reservations.

I know, Mr. Gidner, in response to Senator Tester's question, you don't make the final decision on these judgments. I understand and respect that, but we are trying to understand what is happening, what is the need, and how do we find new ways and new approaches to address the needs.

Mr. Baxter, we had an Assistant Secretary position that we had authorized, a Deputy Assistant Secretary for Tribal Government Affairs under the Secretary of Transportation. So we tried under SAFETEA–LU to put in place something that would provide some focus and a spotlight on this issue, establish a Deputy Assistant Secretary for Tribal Government Affairs in DOT. And 2 years after the passage of the Act, there is nobody there. What is going on?

Mr. BAXTER. Sir, Kerry O'Hare is the Deputy Assistant Secretary for Intergovernmental Affairs and is serving in that role. We understand that is a part-time position in the context of her other duties, and understand the issues that have been raised.

The CHAIRMAN. But why after 2 years has that not been filled? Is that not a priority?

Mr. BAXTER. Well, we do have that filled through this position.

The CHAIRMAN. On an acting basis.

Mr. BAXTER. Yes, sir.

The CHAIRMAN. But why have you not filled the position that Congress authorized and established that position? Has the Secretary of Transportation not decided that this is a priority?

Mr. BAXTER. It is a priority and we have filled the position through this interim position, but we certainly understand the concern that is being raised.

The CHAIRMAN. I understand you understand it. I guess my question is, is the Secretary actively searching for someone to fill this position? Have they been doing that for 2 years or are they satisfied with the part-time occupant?

Mr. BAXTER. I am not aware of the answer to that, but I can research that.

The CHAIRMAN. Would you provide that to the Committee?

Mr. BAXTER. Yes, sir.

The CHAIRMAN. All right.

[The information referred to follows:]

Kerry O'Hare, the Deputy Assistant Secretary for Intergovernmental Affairs, will continue to carry out the functions of the Deputy Assistant Secretary for Tribal Government Affairs position, in addition to her other duties. The Federal Highway Administration (FHWA) is committing significant resources to tribal issues. FHWA's Federal Lands Highway program has five individuals dedicated to the Indian Reservation Roads (IRR) program and the Office of Policy and Governmental Affairs has one individual working full time on tribal issues.

Let me thank both of you for coming. You know, it is my intention to be terribly disappointed in the lack of funding and resources for our road programs. We have asked you to come and explain what is happening. We appreciate your willingness to do that. We understand that you are not Secretaries of the two agencies, but your explanation is helpful to us so that we can then put together some approaches that might be able to address and solve these problems.

So I thank both of you for your time today and thank you for appearing before this Committee. Your entire statements will be made part of the permanent record.

Mr. BAXTER. Thank you.

Mr. GIDNER. Thank you, Mr. Chairman.

The CHAIRMAN. Next, we will call panel two, and panel two will be the Honorable Don Kashevaroff, the President of the Seldovia

Village Tribe in Seldovia, Alaska; Mr. Pete Red Tomahawk, the Director of Transportation, Safety and Road Maintenance, Standing Rock Sioux Tribe in Fort Yates, North Dakota; Mr. Erin Forrest, the Director of Public Works, Hualapai Nation, Peach Springs, Arizona; and Mr. James Garrigan, Transportation Planner at the Red Lake Band of Chippewa Indians of Minnesota in Red Lake, Minnesota.

Let me begin in this order. I will first ask the Honorable Don Kashevaroff to testify, and then I will ask Mr. Pete Red Tomahawk, followed by Mr. Garrigan and then Mr. Forrest.

Mr. Kashevaroff, thank you very much for being here. We will include the complete testimony that all of you have submitted. Mr. Tomahawk, I have read yours. It is extensive because you are chairman of the committee that is working on this for the tribes. But I would ask if each of you would try to summarize in about 5 minutes. Your total testimony will be part of the permanent record, and then we will inquire.

You may proceed.

STATEMENT OF DON KASHEVAROFF, PRESIDENT, SELDOVIA VILLAGE TRIBE

Mr. KASHEVAROFF. Thank you, Chairman Dorgan, and good morning to you and Vice Chairman Murkowski and the rest of the Committee.

Thank you, first, for holding this hearing on transportation issues in Indian Country. It is a very important topic, even though there are other important topics in Indian Country that we need to address, too, as you heard earlier. But transportation needs are vast in Indian Country, and of course the Federal dollars are limited. We need to make the best use of what is available.

In Seldovia, we have found that self-governance works. Through our healthcare system and our compacting with the Indian Health Service, we were able to redesign the healthcare system that was limited in resources—you ran out of money during the month under contract health care—to a system that we provide for everybody now. We don't run out of money. Everybody gets better care.

We are able to use the self-governance that we entered into to meet the needs of our people, to go out and ask and talk with the people to find out the unique situations they are in and accomplish our goals.

So when we looked at the IRR, we decided to assume it under self-governance, based on our experience with the Indian Health Service and the success that we have had with the Indian Health Service. Maybe we naively went into it thinking that it will be just as successful and just as uncomplicated to achieve as the Indian Health Service.

What we have done in the IRR program is we went out and found and looked at our situations. Seldovia is located south of Kachemak Bay, which is about 150 miles south of Anchorage. It is a beautiful little village. If you are ever in Alaska, please come and visit us. You will be amazed at how nice it is.

We unfortunately have a 13 mile bay between us and the road to Anchorage. This bay is breached by ferry boats. The State ferry

runs a couple of times a week, and by a lot of plane service, small Cessna 206s, one engine planes that go back and forth.

Unfortunately, if the weather picks up at all, the planes are grounded and you are basically stuck in Seldovia for the winter—a week or two sometimes if it starts snowing. So there are some fishing boats you can maybe catch a ride out if you need to. If you have to have a medevac for an emergency it is very hard to get the folks out of there if the weather is bad.

So in looking at this situation and the fact that Seldovia, because of our lack of access, our economic development has been slowing down. My tribe runs a small jam and jelly business. The cost of shipping the sugar in and the jars in, and then packaging it and shipping it all back out is too expensive. We can't actually compete with the folks just over at Homer. They can do it 20 cents a pound cheaper because they don't have that extra freight added on, even though they do have a cost of freight.

Access to jobs—we have a lot of folks that don't live there any more because of the jobs, even though we have a lot of jobs available. We decided that what we needed was a daily ferry system, such as they have down in the Seattle area and many other places in the Country, that you could have pretty much a for-sure way of getting back and forth across the bay. It is only 13 miles. It doesn't take very long, but even if the weather picks up, a ferry boat can handle it and people are used to the weather up there anyway on the water.

So we assumed the IRR program into our self-governance, that we have had with the BIA, with the idea that could take it in, design the best ferry—we are doing a design-build on the ferry—and we are well underway. We started a couple of years ago, and everything had gone good until we started negotiating our agreement with BIA. We found out that the bureaucratic system of delivering funds to us has caused a setback in achieving our outcome. It has been kind of hard to do.

First off, in our agreement we negotiated, it took over 9 months to negotiate the compact, an addendum with BIA, even though we have already compacted with them before. That was kind of inexcusable. We kind of presented it to them, and they took their time. It took about 9 months. When we finally got an agreement, it was before the end of the Fiscal Year. They never gave us the money. They instead sent it back to Federal Highways, saying it is too late in the year, even though it was only in August.

So the next year comes around and we go to get our money this time, and they said, oh, your agreement is no longer valid. You need a new agreement. So we said, OK, we will. That was kind of weird because I had an agreement saying we will get this money, and we are not getting it.

So we just changed the date and sent it back in, and they said, oh, no, no. Those agreements are not good anymore even though you already have an existing agreement. We need to have a template agreement. Templates are fine, but they really lose the government-to-government relationship that we enjoy on many of the other fronts, such as the Indian Health Service.

So to make a long story short on that, we still haven't gotten our money. We have signed an agreement. Two years have gone by.

Not only have we lost interest, but the cost of building a ferry has gone up substantially in 2 years. We are hoping that somewhere, sometime we are going to get some funding and try to get our ferry project going again.

Some of the other problems that we have is the BIA not giving out or meeting the 30 day deadline for distributing IRR funds. The problem, as you heard earlier there, is that they just don't do it. It is not that the tribe is sitting around saying, oh, we won't do our contract until the money arrives, so we are not going to get our money. No, the tribes are out there getting the contracts as soon as possible. It is BIA sitting on their hands and knees and waiting for a long time before the money gets here finally, just to respond to us. By then, we are never going to get that 30 days.

The tribes want the money. We are not the ones causing the problem. There is somebody to blame, and it is not the tribes. We need to get the money as soon as possible.

Some of the problems I just mentioned, it is just the whole idea of making you have a new agreement when you already had one. It is silly. We need to have the amendments to Title IV that have been proposed. We need to have those type of things implemented. We need final offer provisions in our self-governance agreements with the BIA, such as we have with IHS, in order to have some teeth behind what we are trying to propose. Right now, the BIA can just stall us as long as they want to and there is not much we can do.

I know that the Federal Highways can now do contracts, which is good. My understanding from a couple of tribes in Alaska is that they pay on time, which is great. We have not chosen to go that way because those contracts, even though Congress has said they should be using the ISDEAA, they are not. They are missing several key components. They say right in their contracts in the footnotes that they disagree; that they shouldn't be using the Indian Self-Determination.

By doing that, we are missing some things such as tort coverage, meaning that we have to buy extra insurance to cover the projects we are doing under IRR. That is kind of silly and is wasteful, too. For such a shortage of money, they should just say we are going to adopt the ISDEAA program.

One other issue we have was the population data. We found out that BIA actually counts the population based on HUD. They don't go out and count them themselves. They use the HUD formulas. Well, the HUD formulas don't recognize BIA compacts. They don't recognize the service areas that we provide in. They just recognize Alaska Native statistical village areas, which we are not quite sure where those come from. I guess the census department dreams them up.

So we have HUD using one formula, BIA using another formula, IHS doing a very good job of compacting. What we need is some consistency across the agencies in the department and Federal Highways. They need to all be using the same system or the same Indian Self–Determination Act, and they are not doing that.

So what I am hoping this Committee can do is give some guidance to the executive branch of the Federal Government to actually treat tribes the way they are supposed to be. Instead of trying to

stop tribes from being successful, they should be promoting tribes and getting them the money as fast as possible. They shouldn't have any reasons not to get money to the tribes.

Thank you very much.

[The prepared statement of Mr. Kashevaroff follows:]

PREPARED STATEMENT OF DON KASHEVAROFF, PRESIDENT, SELDOVIA VILLAGE TRIBE

Good morning Chairman Dorgan and Members of the Committee on Indian Affairs. It is an honor to appear before you this morning. My name is Don Kashevaroff and I am President of the Seldovia Village Tribe located on Kachemak Bay on the Kenai Peninsula in Southcentral Alaska. I also chair the Seldovia Native Association, Inc., an ANCSA corporation with land, resource and tourism ventures. While this is my first opportunity to testify on tribal transportation matters, I have testified before this Committee on the Indian Health Care Improvement Act in my capacity as Chairman and President of the Alaska Native Tribal Health Consortium, which provides health, sanitation and health facilities and other services for 125,000 Alaska Natives. I also chair the IHS Tribal Self Governance Advisory Committee and co-chair the IHS National Budget Formulation Committee.

I regret the circumstances under which this hearing was postponed. Please allow me to express my condolences to the family of Senator Thomas, his friends, colleagues and staff. We recognize and appreciate his service to his state and to the Nation.

The transportation needs of our communities are vast. The resources available, while growing, fall far short of what is necessary. Fortunately, over the past 30 years of implementation of the Indian Self-Determination Act and nearly two decades of Self-Governance, we have learned that by placing responsibility for addressing those needs in the hands of Alaska Native and American Indian tribal governments we can stretch those dollars to provide exceptional services with limited resources.

The Seldovia Village Tribe has assumed the Indian Reservation Roads (IRR) Program under its self-governance agreement with the Secretary of Interior. We took this step based on a conclusion we reached after many years of health care administration: self-governance works. Under self-governance, Seldovia reformulated the way health care was being delivered. We were aware of our community needs and fine tuned our programs by listening carefully to community concerns. We make funding go further by tailoring services to the unique conditions of our small rural Alaska community. By proper design, we provide needed services locally using innovative approaches sustained by diversifying the resources available to our programs—for instance, not just IHS, but other Federal agencies, state agencies and private partners. The result has been better care for our members and for non-Native residents of our region.

Using the program design skills Seldovia has developed in the health field, we have developed a transportation program suited to the unique circumstances of our community and the Kachemak Bay region. This experience has culminated in the development of a land and water based transportation system. In addition to the IRR Program for roads, Seldovia has designed the Kachemak Bay Ferry Program and through numerous discussions with State and local transportation departments, with our congressional delegation and with the FHWA and BIA, we have developed a transportation program that will benefit not only the Seldovia Village Tribe but also the entire region. We believe the process will provide lessons that will benefit tribes nationwide.

First, let me offer some context. Seldovia is located on the Southern end of Kachemak Bay and does not have road access to the state highway system. We currently access the state road system via the twice weekly State Marine Highway Ferry to the town of Homer (service in winter months is once a week). In this respect we have limited access to the hospital, medical clinics, pharmacies, college, and other services available in Homer. Freight costs for food are excessive. If you visit the area, the rich natural resources suggest economic opportunity. Unmet transportation needs, however, undermine viability of economic development.

To offer economic opportunity, access to jobs, and to provide for public health and safety and tourism, we decided to design and construct a daily ferry. The Kachemak Bay Ferry Program will not be used to carry hundreds of cars or require a large crew with the high cost of operation associated with the state highway system ferries. Rather, a smaller ferry providing daily freight and passenger service to five underserved communities will be administered under the Seldovia Ferry Authority and

operated by a four member crew to provide frequent and affordable access between communities.

As we learned through our direct administration of our health programs, effective transportation service delivery depends upon the ability to build a solid system from diverse resources. In the transportation arena, this calls for using our IRR Program funds for appropriate road improvements related to the ferry system. Meanwhile, we have sought and obtained funding from other Federal transportation programs, including the Public Land Discretionary Program, the Ferry Boat Discretionary Fund, and SAFETEA–LU High Priority Projects.

While Seldovia has been successful in designing an innovative program responsive to our local needs and in obtaining support from Federal, state and local authorities, inefficiencies in the Federal bureaucratic system for delivering program funds have caused setbacks in achieving our planned outcomes. Let me briefly mention some of these and offer some recommendations to the Committee.

The Need for Mechanisms Through Which FHWA and Other DOT Agencies May Provide Funding to Indian Tribes

For more than 2 years now, the BIA and FHWA have been unable to deliver $3.7 million in funding vitally needed for our ferry construction program. This experience shows not only flaws in BIA and FHWA administrative systems for delivering program funds but also that tribes' options for receiving Federal transportation funds are limited when the funding comes from outside the IRR Program. Seldovia had been awarded FY 2005 funding under the Federal Lands Highway Discretionary program. Yet, FHWA could not issue the funding directly to Seldovia, rather these funds could be transferred to Seldovia only through the State of Alaska or through BIA.

Seldovia opted for BIA, given that we had an existing self-governance agreement with BIA in place, which included the IRR Program. FHWA notified BIA of funding availability for the Kachemak Bay Ferry project and several other tribal projects on June 24, 2005. Seldovia prepared our self-governance ferry addendum and on November 10, 2005, requested negotiations, which were held on December 1, 2005. The agreement was not finalized, however, until August 30, 2006. With the fiscal year coming to a close, BIA, rather than transferring all ferry funds allocated to Seldovia in accordance with that addendum, returned those funds to FHWA. In order to have those funds transferred, Seldovia sent *five* letters to BIA and FHWA since January 16, 2007, has held frequent face-to-face, telephonic and email exchanges with Federal officials, and has had to negotiate a new ferry addendum, which was not signed until July 2, 2007.

We have been assured that these funds will be transferred in the coming days. Since May 2007, when OSG Director Sharee Freeman became directly involved in reviewing Seldovia's documents, the process has showed some improvement but much more needs to be done. These delays are unacceptable and should not be tolerated. Just counting the period since the Ferry Addendum was signed last August, Seldovia has been deprived of nearly a year's worth of interest, let alone the lost opportunities to advance efforts in the construction process. I have been assured by other tribes in Alaska and other self-governance tribes, as well as those tribes that were awarded Public Lands Highway Discretionary Funds that these delays are not unique to the Seldovia ferry.

Recommendation: Seldovia Village Tribe believes that legislation must be enacted as soon as possible that clearly and unambiguously authorizes DOT agencies, including FHWA to enter into ISDEAA agreements—including compacts of self-governance—for the direct transfer of funding to tribes. I discuss this recommendation in more detail below.

Failure to Meet 30-day Deadline for the Distribution of IRR Program Funds and the Need to Adopt Self-Governance Amendments containing Final Offer Provisions

The extensive delays in distributing Federal transportation funding are not limited to the ferry project. Seldovia has still not received our FY 2007 IRR Program funding, nor have most other tribes that have assumed the program under Self-Governance agreements even though, by statute, BIA has 30-days from the time funds become available from the FHWA to distribute those funds to tribes. This year, that 30-day deadline expired in mid-May. Now, 90 days later, tribes are still waiting for our IRR funds.

For tribes carrying out IRR Program activities under self-governance agreements, these delays may come to an end soon. For those tribes carrying out IRR Program activities under self-determination contracts, however, further delays are expected.

I refer the Committee to the testimony of Pete Red Tomahawk, which thoroughly addresses those self-determination contract Issues.

At a symptomatic level, the problem for self-governance tribes stems from agency mishandling and delays with the so-called "template" agreements. The problem, however, goes deeper: to the inadequacy of the negotiating process that BIA has implemented under Title IV of the Indian Self-Determination Act. But first, let me address the IRR "template" issue.

At the request of the Self-Governance Advisory Committee (SGAC) and upon agreement of Acting Assistant Secretary Jim Cason during the annual self-governance conference in May 2006, a Federal-tribal workgroup formed to prepare a "template" FY 2007 IRR Program Addendum that would guide Federal and tribal negotiators on terms for assuming the IRR Program under tribes' self-governance funding agreements.

That workgroup submitted a proposed template for agency review a year ago, in July 2006. The BIA provided a marked up version to the workgroup in January 2007. After review by the workgroup and IRR Program Coordinating Committee workgroups, and discussions with Federal officials, a revised workgroup version was produced in late March with the intent of producing a final version during the Coordinating Committee meeting in April 2007. During the April 23, 2007 meeting of the workgroup and BIA officials, the BIA rejected not only the tribal changes in the March 2007 draft, but reversed itself on several of its own positions from its January 2007 comments. A final "template" agreement was not approved and circulated by the agency until May 31, 2007.

The delays in the "template" process should be of concern to this Committee, to tribes and the agencies. More disconcerting, however, is how this "template" process has turned the Indian Self-Determination Act on its head. For FY 2007, Seldovia and many other tribes sought only to renew their funding agreements from prior years, without material changes to the scope or funding of the program. Indeed, when tribes submitted proposed FY 2007 IRR Addenda with all terms identical to their executed FY 2006 Addenda (except the calendar dates), they were advised by agency representatives that those proposals would be delayed (if accepted). They were instructed to resubmit new Addenda based on the "template".

Rather than providing negotiating guidance, the "template" became a set of non-negotiable terms and a format binding on all tribes. Renewal of agreements previously reached by the United States and the Seldovia Village Tribe under the Indian Self-Determination Act through government-to-government negotiations was rejected outright. Faced with the threat that the agency would delay yet again the distribution of IRR Program funding on which our program depends, we adopted the terms and format of the FY 2007 Addendum.

Recommendation. The process failures of the FY 2007 IRR Addendum provides further evidence as to why this Committee needs to enact up the amendments to Title IV of the ISDEAA as rapidly as possible. Among other things those amendments include Final Offer provisions that will provide tribes with the option of making a final offer in negotiations that the agency must respond to within a specific timeframe or have the final offer deemed approved. As the development of "template" agreements this year has demonstrated, tribes need legislative mechanisms to ensure that Congress' intentions in the ISDEAA are properly carried out in the face of Federal intransigence and delay.

FHWA Program Agreements, the ISDEAA, and the Need to Expand the ISDEAA to Other DOT Agencies

The Committee has long been aware of the BlA's problems administering the IRR Program in accordance with the ISDEAA. In 1998 Congress clarified the applicability of the ISDEAA to the IRR Program. SAFETEA–LU also went one step further and authorized FHWA to enter into direct agreements with tribes "in accordance with the ISDEAA." This language reflects Congress' intent for tribes to have the discretion to assume IRR Program and funding directly from the FHWA without having to proceed through BIA utilizing the provisions of the ISDEAA. Unfortunately FHWA has not read this provision in this manner and has only agreed to agreements with Tribes that do not include many of the core concepts that the ISDEAA addresses.

First, let me talk about some tribe's success in contracting directly with the FHWA. As Pete Red Tomahawk's testimony stresses and as the Chickaloon Village in Alaska has explained to me, entering into a relationship directly with the FHWA can be positive. Indeed, although both tribes' IRR Program funding distribution is from the same pool of funds authorized, appropriated and allocated by formula under the IRR Program regulations, unlike those of us working with the BIA, tribes with FHWA agreements apparently receive their funds in a timely manner.

However, the contracts that these tribes have entered into come with serious disadvantages from my perspective: they include footnotes indicating FHWA does not interpret the SAFETEA–LU-authorized agreements to incorporate important ISDEAA terms intended to enable tribes to make their share of Federal funding go further. Indeed, those footnotes express FHWA's interpretation that its IRR Program Agreements are *not* Indian Self-Determination Act agreements. This FHWA position raises a number of significant concerns. For example, an immediate concern for a program whose primary purpose is roads construction, this interpretation, if correct, will jeopardize applicability of the Federal Tort Claims Act (FTCA), which Congress extended to tribes and their employees carrying out ISDEAA Agreements.

As Seldovia's experience with the Kachemak Bay Ferry program has shown, tribal transportation needs and opportunities extend well beyond the IRR program. Tribes need the clear ability to rely on the ISDEAA to contract or compact directly with DOT-agencies, including, for example, the Federal Lands Highway Program (FLH), Federal Transit Administration (FTA), National Highway Traffic Safety Administration (NHTSA), and Federal Aviation Administration (FAA).

Recommendation. Congress needs to enact legislation that makes it absolutely clear that tribes can utilize the ISDEAA as a vehicle to contract or compact directly with all DOT agencies.

The Need for IRR Program Funding Formula Data to Accurately Reflect Need

A. Inventory Data for IRR Routes Eligible to Generate Funding

Indian Reservation Roads are public roads located within or providing access to Indian reservations or "Indian and Alaska Native villages, groups or communities in which Indians and Alaska Natives reside."[1] The Bureau of Indian Affairs (BIA) maintains a national database of such routes, the "IRR Inventory," which is used for the allocation of IRR funds and also determines where IRR funds can be used. State and county-owned roads comprise the majority of road miles within the IRR system. Indeed, over the past 2 years, the significant expansion of the IRR inventory has been fueled by the addition of state and county road miles at a substantially greater rate than that of Bureau of Indian Affairs (BIA) and tribal routes.[2]

By statute, all IRR Program funds must be allocated to tribes in accordance with the funding formula established by regulation. 23 U.S.C. § 202(d)(2)(A). The Final Rule implementing the IRR Program established the statutorily mandated formula that must be used to allocate IRR Program funds among tribes. *See* 25 C.F.R. Part 170, Subpart C.

The funding formula adopted in the IRR Program Final Rule reflected Congress's intent that the funding distribution method "balance the interests of *all* tribes and enable *all* tribes to participate in the IRR Program."[3] That balancing of interests called for avoiding substantial reallocations from the larger tribes while still addressing the central problem that had historically left smaller tribes out of the program: that the prior formula distributed funds based on an inventory limited to roads built and owned by the BIA.[4] The new formula broadened tribal participation by allowing the inclusion of state, county, and municipally owned IRR-eligible facilities in the inventory so that "actual IRR transportation needs [may] be counted for funding purposes."[5] Alaska's tribes promoted this change in the funding formula and were among the new formula's intended beneficiaries.

Now under the IRR Program regulations, formula data with respect to roads owned by public authorities other than the BIA or tribes are computed only at the

[1] *See* 23 U.S.C. § 101(a)(12); *see also* 25 C.F.R. § 170.5 [69 Fed. Reg. 43090, 43106 (2004)].

[2] *See* 69 Fed. Reg. 43,090 (2004) (stating that the IRR system is comprised of 25,000 miles of BIA and tribal roads, and 38,000 miles of state, county and local government roads). During the Alaska Tribal Transportation Conference in October 2006, BIA Division of Transportation Engineer Sheldon Kipp reported that the FY 2006 IRR consisted of 32,000 miles of BIA and tribal roads and 53,000 miles of state and county roads.

[3] Indian Reservation Roads, Proposed Rule, 67 Fed Reg. 51328, 51333 (2002) (emphasis added).

[4] Although this limitation to BIA-owned roads was BIA policy, in Alaska some state routes were included in the IRR Inventory prior to the Final Rule, and are still in the inventory. This was due to an appropriations rider by which Congress required the BIA to use its 1993 "Juneau Area Plan," a planning document, as the basis for the Alaska IRR Inventory. The Area Plan included projects identified by the tribes regardless of ownership. State routes included in the inventory at that time were simply treated as BIA routes.

[5] 67 Fed. Reg. at 51333–34.

local matching share rate (for Alaska, 9 percent).[6] However, the IRR regulations explicitly offer an exception whereby inventory data from non-tribal, non-BIA-owned routes may be counted at their full (100 percent) value: when a "public authority responsible for maintenance of the facility provides certification of its maintenance responsibility and its inability to provide funding for the project."[7] State certification is not required for a tribe to include a state-owned route in the IRR inventory for the purpose of generating funding at the non-Federal matching rate. However, the state must provide certification of maintenance responsibility and the inability to fund a project if a state-owned route is to be computed at 100 percent of its cost to construct (CTC) and usage (Vehicle Miles Traveled, VMT).

State governments and their transportation departments have recognized that by certifying their inability to provide funding for IRR-eligible roads in their respective states the IRR Program can generate more funding overall for transportation improvements in that state. As a result, many states routinely submit statements, letters or enter into agreements certifying such routes for the IRR inventory that generate funding at the 100 percent level. The State of Alaska has refused to do this, thereby limiting the ability of tribes to add state routes to their inventory for the purpose of generating funds. The State's approach is prejudicial to the tribes, adversely affects overall levels of transportation funding available to Alaska and undermines the intent of the IRR Program regulations. This year, Alaska has agreed to provide certification, but it is not yet clear whether BIA has accepted the form of certification Alaska has provided.

Recommendation. The Committee should encourage BIA to promote an equitable approach to resolving this Alaska certification issue in a manner consistent with the terms of the IRR Program regulations.

B. Population Data

Through negotiated rulemaking, tribes and the Federal Government agreed to an equitable funding formula that would enable all tribes to participate in the IRR Program. The fairness of that formula, however, depends upon the accuracy of the data used to calculate relative need. As the BIA and FHWA contemplate revisions to the IRR Program regulations, mechanisms, including the data appeals process need to be established to ensure accuracy of data underlying the funding formula.

For Alaska tribes, the funding formula's population component is inherently inaccurate due to its use of the American Indian and Alaska Native Service Population (developed by the Department of Housing and Urban Development (HUD)). In Alaska, HUD uses "Alaska Native Village Statistical Area" to determine a tribe's service population. Yet, a tribe or the BIA may provide housing services to members beyond that "statistical area" (as the Supreme Court addressed in *Morton v. Ruiz,* Indians living in an Indian community near a reservation are eligible for BIA social service programs). Seldovia's Compact with the Secretary of Interior defines our tribe's "Near Reservation Service Area" to include our members in the Town of Homer as well as Seldovia and outlying areas. HUD, however, has refused to count these members as part of our Tribe's service population, and rejected our formal administrative appeal to correct that population count. In rejecting our appeal, HUD chose not to accept the terms of our self-governance funding agreement as adequate to establish a "near-reservation" service area for purposes of the NAHASDA formula regulations. Rather, HUD issued a determination that the entire state is a service area, and that since there are no "reservations" in Alaska, Seldovia is a tribe without a reservation. Thus, our near-reservation service area, though recognized by Compact, does not exist for HUD.

Furthermore, the data appeals provisions of the IRR Program regulations (25 C.F.R. 170.231) contain several drafting problems that have undermined the intent and the utility of this appeals process. The drafting flaws in these sections of the regulations have been identified by the IRR Program Coordinating Committee and a Federal BIA workgroup as requiring technical correction. Such a correction will not likely be in place for another year or more.

Recommendation. Congress must exercise oversight authority to assure that the formula data used to allocate IRR Program funding are accurate. Congress should ensure that IRR Program regulation revisions correct the unfair use of HUD data to determine tribal population and that data appeal provisions provide appropriate procedures that allow tribes to correct inaccurate data contained in the IRR Program inventory in a timely manner.

---

[6] *See* 25 C.F.R. Part 170, Subpart C, Appendix C(lO); *see also* 25 C.F.R. § 170.223 (noting that Subpart C explains how the formula is derived and applied).

[7] 25 C.F.R. Part 170, Subpart C, Appendix C(10)(3).

Conclusion

I hope my comments this morning lead to productive action to improve the delivery of transportation services to Alaska Native and American Indian communities. I welcome your questions and look forward to continuing to work with you on these critical issues.

The CHAIRMAN. Thank you very much for your testimony.

Next, we will hear from Pete Red Tomahawk. He is of the Standing Rock Tribe. He is the Standing Rock Sioux Transportation Director, but he has also been the twice-elected Chairman of the Indian Reservation Roads Program Coordinating Committee, which is a tribal advisory body established by the BIA.

So Mr. Tomahawk, thank you very much for being with us today. We appreciate your work.

STATEMENT OF PETE RED TOMAHAWK, TRANSPORTATION DIRECTOR, STANDING ROCK SIOUX TRIBE; CHAIRMAN, INDIAN RESERVATION ROADS PROGRAM COORDINATING COMMITTEE

Mr. RED TOMAHAWK. Thank you, Mr. Chairman and Members of this Committee. My name is Pete Red Tomahawk. I am the Transportation Director for the Standing Rock Sioux Tribe and twice-elected Chairman of the IRR Coordinating Committee. I have worked in the transportation field for over 20 years.

I am honored to be here today. I want to thank you, Mr. Chairman, and this Committee for granting our letter of request for an oversight hearing on tribal transportation issues in Indian Country.

But before I get into that, Mr. Chairman, I want to express my condolences and the condolences of the Standing Rock Sioux Tribe to the family of Senator Craig Thomas and to this Committee. I was saddened to hear of the death of this admired man. Cancer has touched me and my family. Both of my brothers, Wilbur and I are cancer survivors. I have the highest respect for Senator Thomas's dedicated public service to the people of Wyoming and to this Country. He will be missed.

I am proud that the Chairman of the Senate Indian Affairs Committee is the North Dakota tribes' Senator. I thank you for supporting over 560 federally recognized Indian tribes and promoting Indian self-determination. You are a good friend of the Indian tribes, as is this Committee and its hard-working staff. I want to thank you and Congress for the passage of SAFETEA–LU and the funding increases you included for the IRR program.

The BIA road system is primarily a rural road system that is owned by the U.S. Government. What rural Indian communities need to succeed are safe roads that connect our communities, and roads that provide access to the national transportation system, and continuing the good working relationships tribes are building with State DOTs to ensure that State transportation improvement programs, the STIPs, reflect the transportation needs of Indian Country.

It is working well, Mr. Chairman. I commend this Congress and this Committee for promoting tribal-state consultation and coordination regarding transportation in SAFETEA–LU.

I want to begin by sharing some tribal successes made possible by Congress when it included provisions in SAFETEA–LU that benefited Indian tribes. Today, Indian tribes are taking greater responsibility for transportation planning, design, construction and road maintenance thanks to improvements Congress included in SAFETEA–LU, partnering with State Departments of Transportation and local governments on road construction projects, receiving their first tribal transit grant, working with tribal TERO offices to employ native labor to provide jobs in Indian Country; using innovative financing techniques to build and reconstruct, safe roads and community streets; and assuming the duties of the United States for the IRR program by contracting directly with the Federal Highway Administration as the Standing Rock Sioux Tribe has done.

Indian tribes are achieving these successes even though we operate on shoestring budgets. Tribes carry out identical transportation functions as States and local governments, yet have only a fraction of the resources. Indian tribes also achieve success by overcoming BIA's stubbornness, wedded to outdated practices.

I will cover just two of my written recommendations: road maintenance and road safety. Congress must link road maintenance with road safety. Road maintenance and road safety go hand in hand. Poor road maintenance is a silent killer. If tribes don't have adequate funds to maintain our roads, native people will continue to be killed or injured in traffic and pedestrian accidents in numbers well above the national average.

Invest in BIA road maintenance programs. The funding increases for the IRR program are working. More tribes are building more roads thanks to the increases Congress authorized in SAFETEA–LU.

On the other hand, the funding level of $26 million for the BIA road maintenance program is a national disgrace. Lack of proper road maintenance contributes to the appalling highway fatality statistics in Indian Country. I urge Congress to target Federal resources to where the need is greatest. Congress should increase funding for the BIA road maintenance program to at least $150 million annually.

The $26 million budgeted for the BIA road maintenance program is wholly inadequate. The majority of the funds in the BIA road maintenance program pay salaries. Very little is left for supplies and equipment. Tribes which choose to assume the BIA road maintenance program are forced to supplement it with tribal resources, and are now using up to 25 percent of their IRR program construction dollars to subsidize the BIA road maintenance program.

The Administration's use of the Program Assessment Rating Tool (PART) to justify reductions in funding for the BIA road maintenance program is misplaced. The PART evaluation of the BIA Road Maintenance Program shows that States and counties neither construct nor maintain routes serving Indian reservations.

So tribes must use what resources they have to patch and repair deteriorating roads. Highway fatalities and injuries in Indian Country document the need for more, not less, funding for the BIA Road Maintenance Program. A 1999 study estimated that the average annual cost to maintain a gravel road was $4,160 per year for

grading, resurfacing, including re-graveling. If Congress appropriates $4,160 for only the 34,885 miles of BIA and tribally owned roads included in the IRR program inventory, it would need to appropriate $145 million annually for the BIA Road Maintenance Program. In 1999, diesel gas was $1.40 per gallon. Today, it is over $3.00 per gallon.

If I leave you with one message today, Mr. Chairman, it is prevention. Congress cannot appropriate the millions of dollars needed to address all of the transportation needs of Indian Country, but I am asking Congress to make tribes directly eligible for highway safety programs that could make a difference in Indian Country. My recommendations for improving traffic safety in Indian Country are for Congress to create a 2 percent set-aside for tribes in the High-Risk Rural Road Program. Make tribes direct recipients of Safe Routes to School and Highways for LIFE Programs; provide funding to improve school bus routes in Indian Country; establish an Indian Reservation Road Safety program for Federal Lands Highway offices within the Department of Transportation, and fund it at $50 million to reduce the incidence of native deaths and injuries; make grant applications simple and easy to fill out so that more tribes apply for the funds.

Make the BIA reorganize the BIA Indian Highway Safety Program. That office is not working as it should. Tribes appreciate the increased funding Congress included in SAFETEA–LU for this program, but the BIA Indian Highway Safety Program has not coordinated nor consulted with Indian tribes and tribal organizations such as the Intertribal Transportation Association, ITA, NCAI, and the IRR Program Coordinating Committee regarding traffic safety in Indian Country. The National Highway Traffic Safety Administration and the BIA must ensure that this important BIA program works and promotes "best practices" in Indian Country.

My written testimony lists the appalling statistics that show that Native Americans suffer injury and death driving and walking along reservation roadways at a rate far above the national average. Motor vehicle injuries are the leading causes of death for Native Americans ages 1 through 34 for the Aberdeen, Billings, and Navajo areas, and had motor vehicle-related death rates at least three times greater than the national average.

On a personal side, Mr. Chairman, I lost my niece, my brother Wilbur's eldest daughter Nickie Red Tomahawk in a rollover accident 16 years ago. She wasn't wearing a seat belt. She was thrown from the car and died at the scene. She was 19. Unfortunately, I have not been able to shield other families from the grief my family has endured. I was asked by a gentleman, who is paying you to do this, Mr. Red Tomahawk, in looking at the advocacy for prevention? My comment was, if I could prevent one family from enduring the emotions that we have suffered due to this crash in taking our niece and our daughter, all the successes that we have done in prevention are worth it.

There is no "golden hour" on Indian reservations. Traffic fatalities and injuries take a terrible toll in Indian Country. We can prevent a serious accident through greater education, greater law enforcement, sobriety checkpoints, seat belts and child restraints, bet-

ter engineered roads, and increased funding for emergency medical services.

As you are well aware, Mr. Chairman, there is no golden hour coming from a rural town in a rural community which lack vehicles, staff, and training and supplies. These are the four E's. If Congress targets resources for these programs, Indian Country will see a decrease in what can only be described as alarming statistics.

In conclusion, Indian tribes are making gains in transportation, but there is so much more tribes could do to improve the condition of Indian reservation roads if the resources were there. This is a health and safety issue. We are losing lives and suffering injuries and measures needs to be taken to prevent this great loss and drain on our limited tribal resources.

I invite this Committee and its staff to come out to Indian Country and see what tribes have accomplished and what challenges still remain. I invite this Committee to also attend the meetings of the IRR Program Coordinating Committee to see how tribal representations are working to improve transportation programs in Indian Country.

Thank you, Mr. Chairman, and this Committee for inviting me to testify this morning.

[The prepared statement of Mr. Red Tomahawk follows:]

PREPARED STATEMENT OF PETE RED TOMAHAWK, TRANSPORTATION DIRECTOR, STANDING ROCK SIOUX TRIBE; CHAIRMAN, INDIAN RESERVATION ROADS PROGRAM COORDINATING COMMITTEE

I. Introduction

Good morning Mr. Chairman and Members of the Committee on Indian Affairs. My name is Pete Red Tomahawk. I am the Standing Rock Sioux Transportation Director. I am the twice-elected Chairman of the Indian Reservation Roads (IRR) Program Coordinating Committee, the Tribal advisory body established in 2005 by BIA regulations for the IRR Program to provide advice to the BIA and Federal Highway Administration (FHWA) regarding the IRR Program. I am also the Chairman of the Northern Plains Tribal Technical Assistance Program which represents 26 Tribes in North Dakota, South Dakota, Wyoming, Montana, and Nebraska, and the Native American Injury Prevention Coalition which distributed thousands of child car seats donated by Ford Motor Company to Indian families. I am also the former Co-Chairman of the joint Tribal-Federal Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Committee which drafted the BIA's regulations for the IRR Program before they were finalized by the Department of the Interior. I have worked in the Tribal transportation field for over 21 years.

I want to express my condolences and those of the Standing Rock Sioux Tribe to the family of Senator Craig Thomas and to this Committee. I was saddened to hear of the death of this admired man. Cancer has touched me and my family. Both my brother Wilbur and I are cancer survivors. I have the highest respect for Senator Thomas' dedicated public service to the people of Wyoming and to this country. He will be missed.

The Standing Rock Sioux Reservation straddles North and South Dakota. We have approximately 11,000 enrolled members, more than 2,500 miles of Indian Reservation Roads and a land base of 2.3 million acres. The Lewis and Clark Trail runs through the Communities of Cannon Ball, Fort Yates, Kenel and Wakpala, four of our eight districts. The Standing Rock Sioux Tribal Council and our Chairman, Ron His Horse Is Thunder, recognize the importance of transportation infrastructure as a key to our Tribe's future economic and social well being.

The Tribe is working with other transportation stakeholders, the States of North Dakota and South Dakota, county governments and the Federal Government, to improve our transportation system. For that reason, the Tribe has assumed responsibility for the Secretary of the Interior's IRR Program duties under an historic agreement with the FHWA as authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). In May 2007, the Tribal Council elected to assume the Secretary's duties for the BIA Road Mainte-

nance Program which the Tribe will carry out under an Indian Self-Determination Act (ISDA) contract beginning in FY 2008.

II. Key Recommendations to Improve Tribal Transportation Policies

Nearly 20 years ago, this Committee introduced legislation to overhaul the Indian Self-Determination Act. The legislation, which became P.L. 100–472, recognized the growing capability of Tribes to assume control over Federal programs. The Indian Self-Determination Act empowered Indian Tribes by transferring control to the Tribes and providing them the financial resources to succeed. The same thing must happen in the field of transportation. What this Committee said in 1987 is true in 2007:

> "The conditions for successful economic development on Indian lands are essentially the same as for any other predominantly rural community. There must be community stability, including adequate law enforcement and judicial systems and basic human services. *There must be adequate infrastructure including roads, safe water and waste disposal systems, and power and communications utilities.* When these systems are in place, Tribes are in the best position to implement economic development plans, taking into account the available natural resources, labor force, financial resources and markets." [1]

Our key recommendations to Congress and the Federal agencies to improve transportation policies in Indian country generally, and for the IRR Program in particular, which I elaborate upon more fully in my testimony, are as follows:

1. Fund the IRR Program for the next reauthorization in installments that increase annually by at least $25 million from $475 million in FY 2010 to $600 million in FY 2015, and restore the obligation limitation deduction exemption that existed for the IRR Program under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA); increase funding for the IRR Bridge Program from $14 million to $50 million in the next reauthorization with increases of at least $10 million annually;

2. Increase funding for the BIA Road Maintenance Program to at least $150 million annually to promote traffic safety and to ensure that the Federal and Tribal investment in transportation infrastructure is maintained;

3. Enforce the statutory requirement in SAFETEA–LU which mandates that the BIA must make IRR Program funds "immediately available" for the use of Indian Tribes within 30 days of the BIA's receipt of the funds from the FHWA;

4. Simplify the award process by which Federal transportation funds are distributed to Indian Tribes by creating uniform grant eligibility, application, and administration criteria;

5. Develop model funding agreements for use by the Department of the Interior and the Department of Transportation to facilitate the efficient transfer of transportation funding and program authority to Indian Tribes;

6. Insist that the BIA and FHWA complete the comprehensive national transportation facility inventory update authorized in SAFETEA–LU to properly document all Tribal transportation facilities and to protect the integrity of the IRR Program funding formula;

7. Encourage the President to fill the position of Deputy Assistant Secretary for Tribal Government Affairs established under SAFETEA–LU;

8. Increase the number of Department of Transportation programs which Tribes may participate in as direct funding recipients from the Federal Government rather than as sub-recipients through the States (e.g., Safe Routes to Schools Program, High Risk Rural Roads Program, and the Highways for Life Program);

9. Establish a Federal Lands Highways Safety Program for Indian Reservation Roads, establish a Tribal set aside for the High Risk Rural Road Program, and increase funding for the Federal Transit Administration's (FTA) Tribal Transit Grant Program to $50 million annually;

10. Increase funding to the successful Tribal Transportation Assistance Programs (TTAPs) to at least $2.5 million annually to increase technical training and promote awareness in Indian country of "best practices" in transportation planning, design, construction, maintenance, and highway safety measures;

11. Promote the use of innovative financing techniques in standard Indian Self-Determination contracts and self-governance compacts to provide Tribal governments with better tools to reduce their road construction backlog; and

---

[1] S. Rep. No. 100–274, 100th Cong., Sess., p.4.

12. Carry out right-of-way reform in Indian country to reduce costs and expedite the design, construction and reconstruction of Tribal roads and bridges.

The Indian Reservation Roads Program is predominantly a rural roads program. Congress should invest in highway and surface transportation projects in rural areas as well as metropolitan areas. If rural America and Indian country are to prosper, there must be rural connectivity and reliable access to the national transportation system.

III. Tribal Transportation Successes

Indian Tribes have achieved many successes in the transportation field over the last several years. More than ever before, Tribes are working in partnership with local government and State departments of transportation on mutually beneficial projects. With the enactment of SAFETEA–LU, Tribes are working on a government-to-government basis with the Federal Highway Administration (FHWA) and the BIA to improve transportation systems in Indian country. Indian Tribes have:

- taken greater control of transportation programs: five Indian Tribes, including the Standing Rock Sioux Tribe, negotiated historic IRR Program and funding agreements with FHWA, as authorized under SAFETEA–LU, to assume the Secretary of the Interior's duties for the IRR Program;
- assumed the authority to approve PS&E (plans, specification & estimate) packages, thereby maintaining better control over construction scheduling and cost;
- used the authority under SAFETEA–LU to allocate up to 25 percent of their annual IRR Program allocation for road maintenance needs to maintain Tribal infrastructure built with IRR Program funds;
- witnessed the joint Federal-Tribal initiation of SAFETEA–LU's Tribal Transit Grant Program which was a model of government-to-government relations. The Federal Transit Administration (FTA) consulted with Indian Tribes, responded favorably to Tribal recommendations, received applications from nearly 100 Indian Tribes, and awarded over 60 transit grants to eligible Tribal recipients in FY 2007;
- collaborated with Members of Congress and FHWA Administrator Capka to successfully reverse an FHWA policy that would have prevented Tribes from being eligible sub-recipients of SAFETEA–LU's Safe Routes to Schools Program grants. Tribal access to these funds will permit Tribes to contract with States to promote, develop and improve safe walking and bike routes to schools for elementary and middle-school children;
- collaborated with States on comprehensive highway safety and transportation and land use plans (NDDOT and Standing Rock), worked on cooperative ventures to improve traffic crash reporting on Indian reservations (SDDOT and the State's Indian Tribes); and jointly worked on construction, employment and materials testing (Eastern Shoshone and Northern Arapaho Tribes and Wyoming DOT);
- partnered with State DOTs on IRR Program highway projects funded through the Public Lands Highway Discretionary Grant Program which brings additional capital to Indian country by financing projects that otherwise could not be built by Tribal governments from other funding sources;
- instituted safety measures such as the child restraints and reduced infant and child deaths, cutting these rates dramatically; and
- brought third-party lenders to Indian country to help Tribes finance road construction projects which have saved Tribes money that would otherwise be consumed by inflation and additional mobilization expenses.

Indian Tribes celebrate these successes, and they want to see them repeated throughout the country. These examples can serve as "best practices" in transportation planning and government-to-government cooperation. Tribal governments are better positioned today to tackle problem areas in Tribal transportation than ever before, and they can save lives by intelligent planning, better design, implementing highway safety programs and conducting regular road maintenance and periodic road safety audits.

We just need adequate resources and sensible Federal transportation laws, regulations, and policies which aid, rather than hinder us, in getting the job done.

IV. Indian Reservation Roads Are Not Safe Roads

Despite this progress, we need Congress and the Administration to partner with Tribal governments to *dramatically* reduce highway injuries and fatalities that plague Indian communities at rates several times above the national average. My

grandchildren live on the Standing Rock Sioux Reservation. I want them and all Native American children to have a safe and healthy future. We must do more to keep them safe when they walk to school, ride a bus, or jump into their parents' cars and trucks. We must educate them early to buckle up and not to drink and drive so that when it is their turn to get behind the wheel, they will be responsible drivers. Tribal communities must also change bad behaviors and set a good example for our youth.

Congress and the Administration must also do their parts. Tribes are struggling to find the funds necessary to meet the tremendous transportation needs in Indian Country. Congress and the Administration must recognize that Indian Tribes have the most rudimentary transportation infrastructure in the country and lack the funds needed to maintain roadways in a safe condition. Tribal transportation programs have too few personnel to attend to required activities.[2] Indian Tribes should be treated as equal partners. The significant progress Tribes have made in the last two decades to assume direct responsibility for their transportation systems should be applauded and rewarded by giving Tribal governments the financial resources they need to build and maintain safe roads and save lives. Transportation planning, design, construction, and maintenance are not occasional occurrences, and Tribal governments must have the resources they need to carry out this core governmental function. No one else can do it better than the Tribes themselves.

Adequate funding levels are needed if we are to design safer roads with features such as guard rails, rumble strips, clearly visible signs, reflective markers, and wide, level shoulders. We must increase law enforcement patrols to enforce traffic laws and respond to accidents more quickly. We must provide adequate Emergency Medical Services and associated medical facilities so that prompt medial assistance is available to the injured within the critical "golden hour" after an accident. And we must adequately maintain routes in Indian country so that poor road maintenance does not continue to be a major contributing factor to traffic accidents in Indian country. Poor road maintenance is a silent killer that preys on the distracted mother, the sleep-deprived father, the inexperienced son or daughter, and the aunt or uncle who drive while impaired.

A. Grim Statistics

Our future goals, for safe, well maintained streets are clear, but the present reflects a grim reality. Native Americans suffer injury and death driving and walking along reservation roadways at rates far above the national average.

- Motor vehicle injuries are the leading cause of death for Native Americans ages 1–34, and the third leading cause overall for Native Americans;[3]
- The motor vehicle death rate for Native Americans is nearly twice as high as other races;[4] motor vehicle crashes were the leading cause of death among Native Americans age 1 to 19, and the Aberdeen, Billings, and Navajo Areas had motor vehicle-related death rates at least three times greater than the national rates;[5]
- Native Americans in South Dakota are *three times more likely* to be killed in a motor vehicle accidents than the rest the of State's non-Native population; from 2001 to 2005, over 25 percent of individuals who lost their lives in traffic accidents in South Dakota were Native American even though Native Americans comprise only 8.3 percent of the State's population;[6]
- The South Dakota Department of Transportation (SDDOT), working with ICF International, Inc., Interstate Engineering, Inc., and the State's Indian Tribes, in a recently published report, found that 737 accidents (or 64 percent of all motor vehicle accidents) on nine reservations in South Dakota in 2005 were *not* reported;[7]
- 123 North Dakotans were killed in traffic accidents in 2005, an increase of 23 percent over 2004; 4,360 North Dakotans were injured. Eighty-eight percent of

[2] "Transportation Planning on Tribal Lands," Melissa Savage, National Conference of State Legislatures, August 2006, p.1.

[3] "Safety Belt Use Estimate for Native American Tribal Reservations," National Highway Traffic Safety Administration, DOT HS 809 921, Final Report, October 2005, p. 1.

[4] *Id.*

[5] Center for Disease Control, Injury Center, Atlas of Injury Mortality Among American Indian and Alaska Native Children and Youth, 1989–1998, Executive Summary (www.cdc.gov/ncipc/pub-res/American_Indian_Injury_Atlas/05Summary.htm).

[6] "Improving Motor Vehicle Crash Reporting on Nine South Dakota Indian Reservations," South Dakota Department of Transportation, June 2007.

[7] *Id.*

the fatal accidents in North Dakota occurred in rural areas (nearly 9 out of every 10 fatalities);

- According to estimates by the National Safety Council, the economic cost in 2005 for each fatality in terms of lost wages, medical expenses, administrative expenses, motor vehicle and property damage, and employer costs, exceeded $1.14 million for each life lost and over $50,000 for every person injured. In 2005, *for North Dakota alone,* those figures translate to a cost of nearly $360 million for the State's 123 traffic fatalities ($140.2 million) and 4,360 traffic injuries ($218 million);[8]
- 5,962 fatal motor vehicle crashes were reported on reservation roads between 1975 and 2002 with 7,093 lives lost. The trend is on the increase, up nearly 25 percent to over 284 lives lost per year in the last 5 years of study;[9]
  - —76 percent of the fatalities were not seat belt or child safety seat restrained compared to 68 percent nationally;[10]
  - —Since 1982, 65 percent of fatal crashes occurring on reservations were alcohol related compared to 47 percent nationwide;[11]
- According to information presented by the Michigan Tribal Technical Assistance Program (Michigan Technological University), nearly three-quarters (73 percent) of Native American children under age 5 who died in traffic accidents were not in a child safety seat. *Less than 7 percent* were wearing a seat belt. More than half of these fatalities could have been prevented if these children had been restrained;[12]
- NHTSA data shows that approximately 3 out of every 4 fatalities on Indian reservations were not restrained at the time of the motor vehicle accident. In 2002, only 16 percent of motor vehicle fatalities on reservations were restrained;[13] and
- American Indians have the highest rates of pedestrian injury and death per capita of any racial or ethnic group in the United States.[14]

These statistics are shocking and bear witness to the consequences of maintaining the status quo concerning Federal Tribal transportation policies. I am troubled by the disparity between national traffic safety statistics and the statistics coming out of Indian country. According to the National Highway Traffic Safety Administration (NHTSA): "The Department has made transportation safety its highest priority. The Secretary has mandated an ambitious DOT-wide safety goal to reduce the traffic fatality rate to *no more than 1 fatality per 100 million vehicle miles traveled* (VMT) by the end of 2008."

We have over 11 million VMT in the IRR Program inventory, yet the average number of Native Americans killed in motor vehicle accidents annually throughout NHTSA's 28-year study was 213. While the number of fatal crashes in the Nation during the same period *declined* 2.2 percent, the number of fatal motor vehicle crashes per year on Indian reservations *increased* 52.5 percent.[15]

If Tribal governments, the Departments of the Interior and Transportation, and State DOTs are to reverse the traffic fatality rates among Native Americans, Congress will need to direct more resources to the many factors that contribute to highway fatalities than are presently available. Many traffic accidents that occur on reservation roads can be prevented through application of the four "Es":

1. Education;
2. Enforcement;
3. Engineering; and
4. Emergency Medical Services.

---

[8] "North Dakota Vehicle Crash Facts for 2005," North Dakota Department of Transportation, Crash Facts (www.nd.gov/dot/dlts.html).

[9] "Fatal Motor Vehicle Crashes on Indian Reservations 1975–2002," National Center for Statistical Analysis, National Highway Traffic Safety Administration, DOT HS 809 727, Technical Report, April 2004, p. 1.

[10] *Id.*

[11] *Id.,* p. 2.

[12] *See* "Race and Ethnicity in Fatal Motor Vehicle Traffic Crashes 1999–2004," National Center for Statistics & Analysis, DOT HS 809 956, Technical Report, May 2006, p. 14.

[13] "Safety Belt Use Estimate for Native American Tribal Reservations," NHTSA, DOT HS 809 921, October 2005, p. 1.

[14] "Pedestrian Safety in Native America," FHWA–SA–04–007 Technical Report, September 2004.

[15] "Fatal Motor Vehicle Crashes on Indian Reservations 1975–2002," p. 2.

B. Invest in Prevention

If I leave you with one message today, Mr. Chairman, it is "prevention." As much as I wish it, Congress will not appropriate the billions of dollars needed to redress all the unmet transportation needs in Indian country in next year's appropriations acts. But I am asking Congress to identify and fund those preventative measures that Federal, State and Tribal governments can take to reverse the consequences of years of neglect of Tribal transportation infrastructure, as well as to help us curb the societal behaviors which contribute to making Indian reservation roads the most dangerous roads in America.

But it must be a combination of resources to reconstruct and repair unsafe roads, provide law enforcement, emergency medical services, and educate Native American communities to make highway safety a priority. Any one component alone, without the support of the other components, will not be as effective.

I speak from experience regarding the damage that traffic fatalities cause to Tribal families. My niece Nickie (Nicole) Red Tomahawk, my brother Wilbur's eldest daughter, was killed 16 years ago in an automobile accident on the Reservation. She lost control of the SUV she was driving. It rolled over. She was thrown from the vehicle and died at the scene.

Nickie was 19. She had a bright future ahead of her: college, a job, marriage, and children. She would be 35 years old today with her own family. The accident is still fresh in our families' mind. Every day our family prays to the Great Spirit for her.

People ask me why I am so insistent on safety. If I can prevent a single motor vehicle fatality and save another family from experiencing the tragic loss we experienced then we are all successful. I believe in the four Es and want to share highway safety measures and road safety awareness with every Tribe. From 1996–2005, however, 71 residents of the Standing Rock Sioux Reservation were killed in motor vehicle accidents. It was the number one killer on our Reservation.

I now turn to the specific recommendations to improve the delivery of transportation services in Indian country.

V. Recommendations to Improve Federal Transportation Policies in Indian Country

Tribes are assuming greater responsibility for transportation planning, design, construction and maintenance. TEA–21, SAFETEA–LU, and the IRR Program regulations have created additional opportunities for Indian Tribes to interact with State Departments of Transportation on mutually beneficial transportation projects, to negotiate road maintenance agreements with State governments that prolong the useful life of IRR-financed routes without the approval of the Interior Secretary, to conduct long range transportation planning, hire their own engineers to finalize PS&E packages, and consult with Metropolitan Planning Organizations and Regional Planning Organizations on long-term transportation planning goals. Mr. Chairman, we must encourage these partnerships so that consultation is the norm and all governments work to achieve mutually agreed-upon transportation goals. This can be the future of the Indian Reservation Roads Program if Congress and the Administration will take the following actions:

1. Increase Funding for the IRR Program in the Next Highway Reauthorization Bill to Meet Tribal Transportation Needs of the 21st Century

The backlog of unmet transportation construction needs in Indian country is in the tens of billions of dollars. It hinders economic development, education, and the delivery of housing and health care to millions of Native Americans who reside on Indian reservations simply because it raises the cost of doing business on Indian reservations. Infrastructure should be a Tribal resource, but it is not. It is a hazard.

It is not exceptional for Indian Tribes to operate one- and two-person transportation departments. At Standing Rock, I and my assistant comprise the entire Transportation Department. While State Departments of Transportation, city and county governments and Metropolitan Planning Organizations (MPOs) are staffed with engineers and other professionals to plan transportation projects and work with stakeholders to prioritize transportation projects, Tribal governments do not have comparable resources to operate complimentary transportation programs.[16] Until the Federal agencies request and Congress appropriates more resources, Tribal governments will always be playing "catch up" with their State and local government counterparts. Indian country cannot be expected to rectify our *physical* transportation infrastructure needs if we do not also have the financial resources to prop-

[16] National Conference of State Legislatures, p. 2.

erly staff and operate Tribal government departments to be capable of coordinating with our Federal, State and local government counterparts.

According to data compiled by the Associated General Contractors of America (AGC), since 2004 the construction industry has been hit by a series of significant price increases impacting a variety of basic construction materials. It was AGC's estimate that a "realistic inflation target for construction materials appears to be 6–8 percent, with periods of 10 percent increases quite possible."[17] These cost increases outpaced consumer and producer price indices significantly. According to the AGC report, for the 12 months ending August 2006, the cost of inputs for highway and street construction was up 13.8 percent, the producer price index (PPI) for "other heavy construction" was up 10.3 percent, and the index for non-residential buildings was up 8 percent.[18] The report noted that: "The highway construction index is driven to a greater degree than the building construction indexes by the cost of steel bars . . . and plates (for bridges), ready-mixed concrete, asphalt, and diesel fuel, *all of which have experienced double-digit cost increases in the past 12 months.*"[19]

Congress authorized $450 million for the IRR Program for FY 2009. If Tribes are to maintain the positive gains made in TEA–21 and SAFETEA–LU and keep up with construction inflation which is running into double digits in many BIA Regions, we respectfully request that Congress authorize funding increases to the IRR Program in the next highway reauthorization bill of *at least* $25 million annually, combined with the restoration to the IRR Program of the obligation limitation exemption which existed prior to TEA–21. These funding increases for Indian reservation roads are the absolute minimum needed to keep up with inflation, let alone meet the growing needs of Indian country.

Congress must sustain and continue its commitment to improving transportation infrastructure on Indian reservations if the gains of the last few years are to be maintained. This commitment will spur economic development on Indian reservations more than any other single Congressional action.

2. Increase Funding for the BIA Road Maintenance Program Within the Interior and Related Agencies Appropriations Act

Funding for the BIA Road Maintenance Program is a national disgrace. The Administration's use of the Program Assessment Rating Tool (PART) Performance Measurements to justify annual reductions to the BIA Road Maintenance Program is shortsighted and fails to protect these valuable taxpayer-funded infrastructure investments. The Office of Management and Budget's road budget makes no economic sense and squanders taxpayer money. Failing to adequately budget for the BIA Road Maintenance Program also violates Federal law.

When, in SAFETEA–LU, Congress authorized Tribes to spend up to 25 percent of their IRR Program dollars for maintenance, Congress expressly stated that:

> "*The Bureau of Indian Affairs shall continue to retain primary responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations.* The Secretary [of Transportation] shall ensure that [IRR Program] funding made available under [section 204(c) of Title 23] for maintenance of Indian reservation roads for each fiscal year *is supplementary to and not in lieu of any obligation of funds by the Bureau of Indian Affairs for road maintenance programs on Indian reservations.*"

23 U.S.C. § 204(c), as amended.

The opposite of what Congress intended in SAFETEA–LU is occurring. As funding for the IRR Program goes up as authorized under SAFETEA–LU, the Administration submits budgets to Congress to reduce funding for the BIA Road Maintenance Program. Newly built or reconstructed roads must be maintained if they are to meet their design life and provide safe passage for people, goods and services.

Poorly maintained roads in the Dakotas have cracks from frost heave, rutted pavement from tire wear, prairie dog damage and faded and worn pavement markings. These compromised conditions contribute to traffic accidents by degrading the pavement surface and can contribute to a driver losing control in snow or rain and at high speeds.[20]

---

[17] "AGC's Construction Inflation Alert," Reported by AGC Chief Economist Ken Simonson, September 2006, *http://www.agcak.org/akancasn/doc.nsf/files/7DBB5CEFBE545B13872571FF0080B299/$file/AGCsConstructionInflationAlert.pdf.*

[18] *Id.,* p. 2

[19] *Id.*

[20] "Road Safety Audit for Improvements to Standing Rock Sioux Tribe Reservation Roads," Hamilton Associates, October 2005, pp. 10–11.

The BIA Road Maintenance Program is so poorly funded that there is no allowance for even emergency road maintenance needs to address life threatening circumstances that result from a "catastrophic failure or natural disaster." As stated in the IRR Program regulations, examples of emergency maintenance include "ice and snow control, traffic control, work in slide areas, repairs to drainage washouts, retrieving hazardous materials, suppressing wildfires, and repairing the ravages of other disasters." 25 C.F.R. § 170.812. Every BIA Region experiences emergency road and bridge maintenance needs yet lacks the resources to respond to them.

The following table illustrates the see-saw funding levels for the BIA Road Maintenance Program since 1980.

BIA Road Maintenance Funding as a Percentage of Appropriations for the DOI Construction/IRR Program Funding 1980-2008*
(data obtained from BIA's History of Road Construction and Maintenance Funds 1951-2004)

Year	BIA Rd Main. Appropriation (millions)	DOI Construction/IRR Program Appropriation (millions)	Combined Rd Main. and DOI Constr./IRR Appropriation (millions)	Rd Main. dollars as % of DOI Constr./IRR Program dollars
1980	$18.434	$66.5	$84.934	27.7%
1982	18.041	$47	65.041	38.3%
1986	22	100	122	22.0%
1990	30.598	81	111.598	37.7%
1992	41.0	159	200.0	25.7%
1994	29.772	191	220.772	15.5%
1998	25.373	225	250.373	11.2%
2000	26.437	293.3	319.737	9%
2002	35.6	275	310.6	12.9%
2006	28	330	358	8.4%
2007	29	370	399	7.8%
2008	26* (President's budget request)	420* (SAFETEA-LU authorized amount)	446* (projected)	6.1%

In recent years, the BIA Road Maintenance Program budget, as a percentage of the IRR Program appropriation for the same year, has fallen below 10 percent. In 1990, Congress appropriated $30.598 million which represented 37.7 percent of the combined maintenance and construction budgets. But by 2000, road maintenance as a percentage of available maintenance and construction funding had fallen to 9 percent and funding dropped to $26.437 million.

At its high watermark fifteen years ago, in 1992, the BIA Road Maintenance Program received $41 million and accounted for 25.7 percent of the combined road maintenance and construction appropriation allocation for the IRR Program. According to data in the Roads Inventory Field Data System (RIFDS), between 1996 and 2006, the IRR Program inventory grew nearly 74 percent, from 49,132 miles to 85,454 miles. If the Administration's FY 2008 funding request for the BIA Road Maintenance Program is approved by Congress, Road Maintenance funding will fall to $26 million, or 6.1 percent of total maintenance and IRR Program construction funds, its lowest percentage level in over 56 years.

To spend six cents of every dollar on road maintenance when other public authorities spend many times that amount does not protect the investment which the Unites States and Indian Tribes have made in transportation infrastructure. This funding gap also exacerbates the backlog of unmet construction need by cutting the useful life of roads in half and will lead to more traffic injuries and fatalities. The lack of adequate road maintenance funding hinders every other form of financial assistance to Indian country, thus making it more difficult for the United States and Indian Tribal governments to achieve their stated Indian policy goals.

a) The PART Performance Measurement of the BIA Road Maintenance Program Misses the Mark

The Administration's PART Performance Measurement acknowledged that state and county governments provide more resources per mile than the BIA. It noted that the majority of the BIA road system (⅔ of the system) is unimproved and earth surface (dirt) and, "therefore, requires far more extensive methods to maintain for public use."[21] The PART evaluation of the BIA Road Maintenance Program concedes that:

> "The problem is (1) local public entities are refusing to use their HTF [Highway Trust Funds] funding to reconstruct their roads/bridges when they have met their design life, forcing Tribes to redirect their IRR HTF funding to reconstruct these roads/bridges; and (2) local public entities do not maintain their roads adequately requiring these roads/bridges to be reconstructed more frequently. This results in ineffective use of BIA road maintenance resources and Tribal HTF resources."[22]

Is it any wonder that the BIA Road Maintenance Program is scored by OMB as not demonstrating results? But rather than recognizing that the poor performance ofthe BIA Road Maintenance Program is due in large part to insufficient funding, and requesting additional funding to address this problem, the Administration has used the poor PART Performance Measurement as a justification for seeking *less* funding for the BIA Road Maintenance Program. Recognizing that under Administration policies, funding is tied to the PART Assessment, the IRR Program Coordinating Committee, in January 2007, asked the BIA to have officials responsible for the PART Performance evaluation of the BIA Road Maintenance Program to brief the Committee on the evaluation, and identify ways to improve the Program's rating. The BIA has been unresponsive and *this briefing still has not occurred.*

It is the United States' statutory obligation under SAFETEA–LU and other Federal laws to maintain the IRR Program system of roads. Common sense dictates that if taxpayer dollars are used to finance a public road in Indian country, the United States should also ensure that funds are adequate to ensure that the full useful life of the public road is met. Are not the roads over which millions of Native Americans and others travel each day just as important to the Federal Government's trust responsibility to Tribal resources as the land over which the roads lie?

The authority granted Indian Tribes in SAFETEA–LU to use up to 25 percent of their annual IRR Program funds for maintenance purposes does not excuse the Interior Department of its statutory and moral obligation to keep IRR Program roads safe and adequately maintained.

b) Indian Reservation Roads Cost More to Maintain But Receive Less

In January 2007, the Coordinating Committee provided BIA officials with statistics (Caterpiller Performance Handbook, 1999) that showed that the typical 5-year cycle maintenance costs for a *gravel road*—the predominant road type in Indian country—is $4,160 per year per road mile for grading, resurfacing, and re-graveling.

To demonstrate how bad the shortfall in maintenance funding is, if Congress appropriated the 1999 estimate of $4,160 for the 34,885.3 miles of just the *BIA- and Tribally-owned routes* now included in the BIA's RIFDS, made no adjustment for inflation, and excluded funding for routes owned by States, counties, townships, etc., and appropriated an additional $20 million to maintain the approximately 1,200 BIA- and Tribally owned bridges included in the IRR Program inventory (which represent only 27.5 percent of the 4,301 IRR Bridges), the Road Maintenance Program budget would be $165.122 million for FY 2008 ($145.122 million + $20 million). *The Administration's FY 2008 Road Maintenance request of $26 million is only 15.75 percent of the $165.122 million figure.*

The road maintenance funding estimate I have proposed *excludes* any funding to maintain routes and bridges now included in RIFDS which are owned by public authorities other than the BIA and Tribes. But, as noted by OMB, many of these roads are being and frankly must be maintained by Tribal governments in order to provide critical access to Tribal communities.[23] In fact, as of today, there are 86,759 miles in RIDFS (51,873 miles of non-BIA and Non Tribally owned routes) and 4,301 bridges, owned by both Federal, Tribal, State, county, township, and other State subdivisions.

---

[21] See OMB's Program Assessment Rating Tool Performance Measurement for the BIA Road Maintenance Program (2004)(www.whitehouse.gov/omb/expectmore/detail/l0002352.2004.html).

[22] *Id.*

[23] *Id.*

If Tribes and the Federal Government invest taxpayer dollars to build and reconstruct roads in Indian country, it makes sense to adequately maintain these routes to improve their useful life. If *pennies* are spent on road maintenance, *dollars* will need to be spent on road reconstruction, and many more dollars on the societal cost of traffic fatalities and injuries.

NCAI and many Tribal leaders, including Standing Rock Sioux Chairman Ron His Horse Is Thunder, have requested at least a $100 million funding level for the BIA Road Maintenance Program. The BIA has acknowledged that it requires at least $120 million to annually maintain BIA-owned roads and bridges, $50 million per year for bridge rehabilitation and replacement, and $100 million per year for upgrading and expanding transit services and systems.[24]

Given the stark statistics discussed above, we respectfully request that Congress appropriate at least $150 million for the BIA Road Maintenance Program to maintain IRR Program roads and bridges to a minimally adequate standard.

3. The BIA Must Comply with SAFETEA–LU's Mandate to Distribute Available IRR Program Funds For the Use of Indian Tribes Within 30 Days of Receipt of the Funds

One of the biggest problems I have witnessed in the operation of the IRR Program is the unnecessary delay by the BIA in distributing IRR Program allocations among the 12 BIA Regions and, from these Regional Offices, to the Tribal governments that have chosen to contract the IRR Program and BIA Road Maintenance Program under the ISDA. Congress was clear in SAFETEA–LU when it amended the law to require that:

> "Not later than 30 days after the date on which funds are made available to the Secretary of the Interior under [section 202 of Title 23] funds shall be distributed to, and available for immediate use by, the eligible Indian Tribes, in accordance with the formula for distribution of funds under the Indian reservation roads program."

23 U.S.C. 202(d)(2)(E)(i)

The reality is that the BIA does not distribute IRR Program funds within 30, 60, or even 90 days of receipt from the FHWA. On the one hand, the BIA claims that it cannot transfer the IRR Program funds until it has self-determination contracts or self-governance compacts in place, and on the other hand, it has dragged its feet in finalizing mutually acceptable model funding agreements. It cannot have it both ways.

Contrary to this statute, each August, BIA Regions return tens of millions of dollars of IRR Program funds to BIA Headquarters because these funds were received too late in the fiscal year, while Tribes are practically begging for construction funds. Short construction seasons mean that priority road projects do not get built and the cost for building roads in Indian country continues to outpace funding.

The failure by the BIA to develop acceptable ISDA model contracts and Annual Funding Agreement addenda further compounds the problem Tribes are experiencing in delivering transportation services to their communities. That is one reason why the Standing Rock Sioux Tribal Council opted to enter into direct negotiations with FHWA in 2005 to contract the IRR Program under an agreement with FHWA rather than continue to negotiate ISDA construction contracts with the BIA. Under our IRR Program Agreement with FHWA, our Tribe receives its IRR Program allocations timely, even this year when Congress passed four continuing resolutions before the final FY 2007 joint resolution was enacted in February.

It is bad enough when an agency practice runs directly against its stated policies and hinders the efforts by Indian Tribes and BIA Regions to improve transportation systems in Indian country. It is worse when a law is enacted by Congress to facilitate the transfer of funds from the BIA to Tribal governments and the law is ignored or made irrelevant by agency inaction. The 30-day rule is the law. It promotes the objectives of the IRR Program. The BIA should obey it.

4. Simplify the Federal Grant and Contract Application and Award Process for Tribal Governments

Why are Tribal communities lagging so far behind the Nation in reducing fatal traffic accidents? It is as if national campaigns to reduce traffic accidents and deaths end at reservation boundaries. I am afraid that resources are not reaching reservation communities at the rate that they should. These shortfalls in funding

[24] "Transportation Serving Native American Lands," TEA–21 Reauthorization Resource Paper, BIA (May 2003), p. 32.

have a devastating effect on Native Americans who are dying and suffering injuries at unacceptable rates.

If Indian Tribes are eligible recipients of Federal transportation funding, for the programs to work in Indian communities, the money must reach the intended beneficiaries. That is not the case presently.

Part of the problem lies in the cumbersome, and wholly separate processes by which Indian Tribes must apply for Federal transportation, transit, and traffic safety grants administered by multiple Federal agencies (BIA, FHWA, NHTSA, FTA, Federal Aviation Administration (FAA), etc.) or Federal transportation grants administered through the States (Safe Routes to Schools, High Risk Rural Roads, Highways for Life, etc.).

We strongly recommend that agencies within the Department of Transportation (Federal Lands Highway, FTA, NHTSA, and FAA) develop a simplified contract document for Tribes. This will encourage more Tribes to apply for these grants and bring the benefits of the Federal programs to Indian communities where they are most needed. Direct Federal funding of Tribes through Tribally protective and appropriate government-to-government agreements streamlines Tribal access to Federal program funds by removing artificial barriers to these grant funds by eliminating the unnecessary, costly and time consuming process of requiring Tribes to contract with the States for receipt of Federal transportation dollars. The Safe Routes to School Program and High Risk Rural Roads Program are just two examples among many of the Federal programs that should be directly available to Indian Tribes.

As noted above and as discussed in the 2006 report by the National Conference of State Legislatures, most Tribal governments lack the personnel and resources to administer multiple Federal grants and contracts with widely varying terms and conditions. Complex, conflicting grant conditions and reporting requirements hinder efficient Tribal administration of transportation programs and projects. The agencies should develop a single grant application process with one annual deadline as Congress directed the Secretary of Transportation to do for the States in applying for Highway Safety Program grants under SAFETEA–LU. *See* 23 U.S.C. § 402(m), as amended, sec. 2002(d) of SAFETEA–LU, 119 Stat. 1521–1522.

Developing a simplified agreement, which takes into account the unique legal status of Tribes and respects Tribal sovereignty, will improve program performance and Tribal accountability.

Under SAFETEA–LU, Congress directed the BIA to also "establish a similar simplified process for applications for grants from Indian Tribes under [Chapter 4 of Title 23]" as well. *Id.* To date, I am not aware of any action taken by the BIA's Indian Highway Safety Program (IHSP) to consult with Indian Tribes, the Nation's Tribal Technical Assistance Programs (TTAPs), or the IRR Program Coordinating Committee concerning the development of a simplified single grant application process for Highway Safety Program grants. Despite numerous invitations to the former Program Administrator of the BIA's IHSP to attend an IRR Program Coordinating Committee meeting, no representative of that office has ever attended a Coordinating Committee meeting. This has occurred even though a number of our meetings were held in Albuquerque, New Mexico where IHSP offices are located.

I trust that the next Program Administrator will actively consult and work with Indian Tribes, the TTAPs, and the Coordinating Committee to implement SAFETEA–LU's mandate.

5. Implement Model IDSA Contracts and Agreements so that Indian Tribes May More Easily Assume the Secretary of the Interior's Duties for the IRR Program

Congress recognized the need for a standardized model contract in the self-determination context in 1994 and legislated, in P.L. 103–413 (1994), the content of a non-construction Indian Self-Determination Act (ISDA) contract. See 25 U.S.C. § 450*l*. This is known as the "model Section 108" ISDA contract. Similar model agreements should be developed to speed the distribution of Federal transportation dollars to Indian Tribes as direct recipients.

The IRR Program Coordinating Committee and other Tribal advocates provided a sample Title I Indian Self-Determination contract to BIA officials in the summer of 2006 for use in the IRR Program. To date, the BIA has not approved a sample ISDA contract for Indian Tribes. Only last month did the BIA's Office of Self-Governance issue a proposed Title IV Self-Governance Model Indian Reservation Roads Addendum for use by Self-Governance Tribes. Tribes are still waiting for the Interior Department's awarding officials and attorneys to provide a response to the Tribally proposed model Title I ISDA contract for the IRR Program.

Interior Department attorneys have incorrectly concluded that Tribes must negotiate a separate agreement if they wish to use innovative financing techniques to

pay for eligible IRR Program projects. This is shortsighted and legally unnecessary. It will hinder the use of innovative financing techniques by Tribes by raising the transactional costs associated with flexible financing arrangements.

Because of the Interior Department's intransigence on this issue, Tribes are being forced to use outdated, overly burdensome ISDA contracts that BIA Regional Office Awarding Officials are "used to" negotiating. These contracts do not reflect many ofthe hard won improvements to the IRR Program that Tribes negotiated with BIA and FHWA in the final IRR Program regulations, implemented in November 2004, and which Congress included in SAFETEA–LU. These improvements include Tribal approvals of Plans, Specifications & Estimate (PS&E) packages, full annual advance funding, and innovative financing techniques by which Tribal governments, if they choose, can leverage IRR Program funds to help finance road projects.

The delay in the award of IRR Program contracts hurts every Tribe's bottom line and reflects poorly on the BIA's administration of the IRR Program. Roads are not being built in a timely manner and present continuing safety risks. Construction seasons are limited in many BIA Regions. The ideal time to bid out construction jobs—to lower cost—is in the middle of winter, not in the spring or summer months when the BIA is now releasing the majority of IRR Program funds.

Delays in the ISDA contracting process, *a process that has been in place for over 30 years,* only make transportation construction more costly. Model IRR Program funding agreements will help bring the BIA into compliance with SAFETEA–LU's 30-day payment mandate and better serve Indian country.

It should be a goal of the Department of Transportation and Department of the Interior to lower the cost of doing business in Indian country. It will allow Tribes to put Federal funds into the roads and bridges that can improve the quality of life of our communities, not waste money serving a complicated bureaucracy. This goal cannot be met until the BIA approves and widely distributes to the BIA Regions acceptable model ISDA agreements.

6. The BIA and FHWA Must Complete a Comprehensive National Inventory of Transportation Facilities Eligible for Assistance Under the IRR Program

The inventory of the Indian Reservation Roads Program is growing at a dramatic rate. In 2005, there were 62,319 road miles in the BIA's RIFDS. In 2007, there are more than 85,000 road miles in RIFDS, an increase of more than 37 percent. BIA System roads, those dirt, gravel, and paved roads owned by the BIA, are only a subset of all eligible IRR Program routes. The entire IRR Program System of roads eligible for funding under the IRR Program is also comprised of routes owned by Tribes, States, counties, townships, and other Federal agencies.

The IRR Program formula, by which Federal funds are apportioned among the Nation's federally recognized Indian Tribes, places heavy emphasis upon road inventory miles. See 25 C.F.R. § 170.201 et seq. The integrity of the IRR Program is dependent upon accurate and complete information on each Indian Tribe's IRR Program inventory of eligible roads.

a) SAFETEA–LU Mandates a Comprehensive Update

When Congress passed SAFETEA–LU in 2005, Congress directed the Secretary of Transportation, in cooperation with the Secretary of the Interior, to complete by August 10, 2007, a "comprehensive national inventory of transportation facilities that are eligible for assistance" under the IRR Program. 23 U.S.C. § 202(d)(2)(G). The comprehensive inventory update was meant by Congress to be more than just a "snapshot" of the current IRR Program inventory. It was meant to identify and fill in the gaps between the existing incomplete IRR Program inventory and what the inventory would include if all eligible IRR routes were included.

Unfortunately, it is my understanding as Chairman of the IRR Program Coordinating Committee that a snapshot is all that Indian country and the Congress will get, unless Congress demands that the agencies conduct a comprehensive inventory update of the IRR Program as it so plainly directed in SAFETEA–LU.

The inventory assessment is intended to assist the agencies to identify Tribal transportation facilities and determine the relative transportation needs among Indian Tribes. Eligible routes, at a minimum, by law include:

i) routes included in the BIA system inventory receiving funding since 1992;

ii) routes constructed or reconstructed with funds from the Highway Trust Fund under the IRR Program since 1983;

iii) routes owned by an Indian Tribe;

iv) community streets or bridges within the exterior boundaries of Indian reservations, Alaska Native villages, and other recognized Indian communities (in-

cluding communities in former Indian reservations in Oklahoma) in which the majority of residents are American Indians or Alaska Natives;

v) "primary access routes" proposed by Tribal governments, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal termini, such as airports, harbors, or boat landings.

In addition, Congress directed in SAFETEA–LU that nothing shall preclude the Secretary of Transportation from including additional transportation facilities that are eligible for funding under the IRR Program "if such additional facilities are included in the inventory *in a uniform and consistent manner nationally.*" This has not occurred.

b) The BIA and FHWA Must Exercise Leadership

Regrettably, the IRR Program Coordinating Committee has not reached consensus, and the BIA and FHWA have not adopted, uniform guidelines on what routes are and are not eligible for inclusion in the IRR Program inventory for purposes of determining funding under the IRR Program formula (Tribal Transportation Allocation Methodology). How can the IRR Program Coordinating Committee, BIA, FHWA, or Congress accurately assess the fairness of the current formula for the IRR Program if the BIA and FHWA have not set clear guidelines on the types of routes that may be added to Tribal inventories or the process which Indian Tribes and BIA Regions must follow to place such routes into the RIFDS?

The impasse over establishing a "bright line" policy as to the types of routes eligible for inclusion in the IRR Program inventory, and the minimum data that Indian Tribes must include with every route submitted to the BIA for inclusion in their IRR Program inventory, has caused considerable delays, uncertainty, and frustration in the distribution of IRR Program funds. Challenges and appeals over the BIA's failure to include routes in the IRR Program inventory delay the BIA's full distribution of IRR Program funds, again contrary to Congress' 30-day payment mandate.

When the IRR Program Coordinating Committee cannot reach consensus on fair, reasonable and equitable rules for the inclusion of routes in the IRR Program inventory, it must fall to the BIA and FHWA to exercise leadership. The Coordinating Committee is an advisory committee to these agencies. I hope that the agencies will always accept the Committee's recommendations. Ultimately, however, it is for the BIA and FHWA to interpret and implement the law. But they must do so in a timely manner. The IRR Program must benefit all Indian Tribes, regardless of size. Every Indian Tribe has transportation needs. Large Indian Tribes have large road inventories and require the funds to maintain them, and replace them when they are worn. Smaller Tribes require funds to plan, design, build, and maintain their priority routes.

So long as the comprehensive update of the IRR Program, and the identification of eligible routes that are not yet included in the inventory, is incomplete, these additional routes are invisible to the IRR Program, to policy makers and appropriators. Inventory is a key component to funding and these agencies have a special obligation to Indian Tribes to identify all eligible routes and help Indian Tribes update their Tribal inventories.

c) Agencies Report to Congress

SAFETEA–LU requires the agencies to submit a report to Congress on the national Tribal transportation inventory not later than November 10, 2007, 90 days after the inventory is completed in August of this year. Mr. Chairman, we want what Congress mandated in SAFETEA–LU: a "comprehensive national inventory of transportation facilities that are eligible for assistance" under the IRR Program. By November 2007, more than 2 years after SAFETEA–LU was enacted, if all the BIA and FHWA report to Congress is that the IRR Program inventory is incomplete, and does not include all routes that are eligible under SAFETEA–LU for inclusion in the IRR Program inventory, the agencies will not be telling Congress or Indian Tribes anything new.

We ask that this Committee direct the BIA and FWHA to provide Congress and the Nation's Indian Tribes with a comprehensive review and report on the total IRR Program inventory of transportation facilities eligible for inclusion and funding under the IRR Program as directed in SAFETEA–LU.

7. Congress Should Encourage the President to Nominate a Candidate to Fill the Position of Deputy Assistant Secretary for Tribal Government Affairs within the Department of Transportation

Tribes worked very hard during the consideration of SAFETEA–LU to develop consensus positions to advocate before the Administration and Congress. This Committee knows how difficult it is to legislate in the field of Indian law and obtain a unified position from 564 sovereign Tribal governments. Our strategy was quite successful as is reflected in the many positive provisions contained in SAFETEA–LU. However, this success will not be realized if the Administration does not act on the legislative mandates.

For this reason, we are disappointed that the Administration has so far failed to nominate anyone to fill the position of Deputy Assistant Secretary for Tribal Government Affairs, as required by SAFETEA–LU. Tribes advocated, during Congress' consideration of SAFETEA–LU, for the creation of this position at the Assistant Secretarial level so that Tribal transportation issues would be more prominent before the Department and within the Office of the Secretary.

As it states in SAFETEA–LU: "in accordance with Federal policies promoting Indian self determination, *the Department of Transportation shall have, within the office of the Secretary a Deputy Assistant Secretary for Tribal Government Affairs appointed by the President to plan, coordinate, and implement the Department of Transportation policy and programs serving Indian Tribes and Tribal organizations and to coordinate Tribal transportation programs and activities in all offices and administrations of the Department* . . . ." 49 U.S.C. § 102(f)(1), as amended.

If a Deputy Assistant Secretary at DOT had been in place, perhaps the Department would have developed, in consultation with Indian Tribes, Tribal eligibility for the Scenic Byways program as authorized under SAFETEA–LU, and concluded that Indian Tribes are eligible sub-recipients for the State-administered Safe Routes to School Program, without requiring the intervention of Indian Tribes and the Congress, to overturn the Department's initial position.

We commend FHWA Administrator Rick Capka, former Associate Administrator Arthur Hamilton, and Office of Transit Programs Director Mary Martha Churchman, and their staffs, for their support of and advocacy for the IRR Program, Tribal Transit Grants, and Tribal transportation generally. The IRR Program is a small component of the Federal Highway Administration's Federal Lands Highways budget and jurisdiction. There is no substitute for an Assistant Secretary with primary responsibility for ensuring that all agencies within DOT coordinate their actions in a manner that best serves Indian country and the overall goals of the Department.

We ask the Committee to urge the Administration to fill the Deputy Assistant Secretary position at DOT at the earliest possible date. This appointment will help achieve the goals of Congress, the Administration, and Indian Tribes to improve the delivery of Tribal transportation programs at all levels within the Department of Transportation.

8. Increase the Number of DOT Programs Which Indian Tribes May Participate in as Direct Recipients

Indian Tribes have demonstrated that they possess the capacity to deliver successful transportation programs despite the many obstacles that stand in our way. We are separate sovereign governments and not subdivisions of the States. While Indian Tribes may be eligible sub-recipients of some State-administered programs financed by the U.S. Department of Transportation, such as the Safe Routes to Schools, High Risk Rural Roads Program, and Highways for Life, Indian Tribes do not typically receive their fair share of these program funds.

I hope my testimony today, and the statistics that I have referenced, drive home to you how great the transportation needs are in Indian country. A little assistance will go a long way because our statistics of traffic safety accidents and fatalities are so high. Congress should therefore increase the number of Department of Transportation programs that Indian Tribes may apply for directly rather than as sub-recipients through the States. In many instances, the forms of State contracts are too cumbersome, or are simply objectionable to Tribes, requiring Tribes to waive their sovereign immunity from suit, or appear in State courts. The result is that Tribes often do not even apply for these much needed grants.

9. Establish a Federal Lands Highways Safety Program for Indian Reservation Roads; Set Aside for the High Risk Rural Road Program; and Increase Funding for FTA's Tribal Transit Grant Program to $50 Million Annually

Under SAFETEA–LU, for FY 2008, Congress authorized $1.275 billion for the highway safety improvement program under section 148 of title 23 (High Risk Rural Road Program); and authorized nearly $700 million under Title II of SAFETEA–LU

for the Highway Safety Programs of chapter 4 of title 23. These funds include: for highway safety programs ($225 million); highway safety research and development ($107 million); occupant protection incentive grants ($25 million); safety belt performance grants ($124.5 million); State traffic safety information system improvements ($34.5 million); alcohol-impaired driving countermeasures incentive ($131 million); national driver register ($4 million); high visibility enforcement program ($29 million); motorcyclist safety ($6 million); and child safety and child booster seat safety incentive grants ($6 million).

SAFETEA–LU amended section 402(c) of title 23 to increase the set aside of appropriations for Highway Safety Programs to the Secretary of the Interior from ¾ of 1 percent to 2 percent annually, but this increase still provides less than $5 million dollars to be divided among all 564 federally recognized Tribes.

We must build on this success and establish an Indian Reservation Roads Safety Program for the Federal Lands Highways office within the Department of Transportation. In 2004 and 2005, Indian Tribes sought to establish a set aside for the IRR Program for the High Risk Rural Road Program during the Congress' consideration of SAFETEA–LU as well as a Federal Lands Highways safety program funded at $40 million annually. We currently recommend that Congress create a 2 percent set aside for the IRR Program for the High Risk Rural Roads Program, and create a Highway Safety Program for Indian reservation roads within the Federal Lands Highways with an appropriation amount of $50 million annually to dramatically reduce the incidence of death and injury on America's Indian reservation roads.

If Congress develops Tribal set asides for Department of Transportation safety programs, it would do so much to combat behavioral and safety issues that contribute to the high rates of death and injury on Indian reservation roads.

The Tribal Transit Program is a huge success and demonstrates the unmet need for more transit funding of Tribal transit programs. Our Reservation operates a transit program and it benefits so many of our members, including students attending Sitting Bull College. As noted above, nearly 100 Tribes submitted applications to FTA in the first year FTA announced the program. FTA was able to fund over 60 of the applicants. Due to the demonstrated high demand and proven results, Congress should increase the authorization for the Tribal Transit Grant Program to $50 million annually.

10. Increase Funding to the Successful Tribal Transportation Assistance Programs (TTAPs) to at least $2.5 Million Annually to Increase Awareness in Indian Country of "Best Practices" in Transportation Planning, Design, Construction, Maintenance, and Highway Safety Measures

Tribal Technical Assistance Programs (TTAPs) are the real unsung heroes in Tribal transportation policy. They work to educate Tribal officials on transportation issues, increase the technical capacity of Tribal governments in the transportation arena, and provide training in safety and equipment operation and maintenance. As a result of their efforts, Tribal governments are playing a greater, and more informed, role in the delivery of transportation services to their communities.

The TTAPs are 15 years old, having been created in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and is funded in part through FHWA's Office of Professional and Corporate Development (OPCD), and with IRR Program funds. Seven TTAPs assist Tribes throughout the country. Under SAFTEA–LU, the BIA is authorized to fund the TTAPs at $1.0 million annually. I recommend that Congress increase funding to the TTAPs to $2.5 million annually so that they may expand their valuable services to Indian Tribes.

11. Promote the Use of Flexible Financing Arrangements in Standard ISDA Contracts and Agreements

I have personally witnessed the benefits to be gained through the use of flexible financing techniques. Flexible financing or advance construction agreements allow Tribes to use a portion of their IRR Program funds to repay government bonds or commercial lenders the interest and principal for loans advanced to the Tribe to finance an IRR Program-eligible project. To be eligible, the project must be included on an FHWA-approved Transportation Improvement Program (TIP). Innovative financing is different than pay-as-you-go (paygo) arrangements in that an entire construction project may be bid out as a single project which creates economies of scale, reduces mobilization costs, and minimizes the negative effects that construction inflation would otherwise have on available funds that are saved by the Tribe over time.

The Standing Rock Sioux Tribe financed a $26.5 million reconstruction of community streets throughout our reservation in 2003–2006 using an advance construction agreement we negotiated with the BIA and FHWA. This project was a resounding

success. We are especially disappointed therefore that the Assistant Secretary—Indian Affairs informed the IRR Program Coordinating Committee in April 2007 that the BIA will not recognize advance construction authority through straight-forward Indian Self-Determination Act (ISDA) contracts and Self-Governance agreements. Instead, the BIA will only enter into an advance construction arrangement with a Tribe through negotiation of a separate agreement, under authority of 23 U.S.C. § 204, which is not included in or referenced by the ISDA contract or agreement.

The Assistant Secretary's letter does not explain the BIA's rationale as to why the ISDA contract, the contract document which Tribal governments are most familiar with and accustomed to negotiating with the BIA for over 30 years, is not an acceptable agreement for the use of flexible financing arrangements by Tribes. I enclose the Assistant Secretary's April 27, 2007, letter and the Coordinating Committee's original letter of February 14, 2007.

The BIA's decision will likely result in fewer Tribes using advance construction agreements in the future to finance eligible road construction projects. This decision will also make it harder for Tribes to obtain short term bridge loans to complete projects at the end of a Fiscal Year. This will mean unnecessary project closures and costly demobilizations and remobilizations. To mandate that Indian Tribes must negotiate a separate advance construction agreement is not sensible and raises the cost of doing business in Indian country. As the Assistant Secretary concedes in his letter, the "Federal Government does not act as a surety, guarantor, or project financier or request approval of a loan from any lending institution" under these agreements, so there is no reason to require the Tribes to enter into a separate entirely superfluous agreement, when the Self-Determination agreement can serve this same purpose.

By contrast, FHWA, in negotiating its IRR Program Agreement with five Indian Tribes in 2006, allowed the IRR Program Agreement to reference the IRR Program regulations' flexible financing provisions (25 C.F.R. 170.300 *et seq.*), and permit the Tribes, at their option, to direct a portion of their IRR Program funds to be paid from FHWA directly to the bond trustee or lending institution financing an eligible project under the IRR Program. This more sensible approach lowers transaction costs and provides incentives to lenders to do business with Tribal governments on transportation projects.

We encourage the Committee to either counsel the Department of the Interior to retract its unwarranted decision or clarify in future legislation that advance construction agreements may be included in the standard Title I ISDA contract and Title IV Self-Governance agreement.

12. Implement Right-of-Way Reform in Indian Country to Facilitate Reconstruction of Existing Roads and the Design and Construction of New Roads

Reservation areas are often a checkerboard of fee, allotted, and Tribal trust lands. Therefore, it is often time-consuming and expensive for Tribes and the Federal Government to obtain all ofthe necessary and appropriate rights-of-way before beginning construction or renovation of roadways, bridges, and other transportation infrastructure.

The BIA is responsible for maintaining records of rights-of-way in Indian Country. Unfortunately, BIA right-of-way records management is in a terrible state. IRR projects are often delayed by months—or even years—because the BIA realty officers cannot locate valid right-of-way records. Tribes are using their IRR Program funds, the only funds the BIA claims are available, to cure inaccurate or lost rights-of-way. Tribal and Federal funds are thus often wasted in re-acquiring valid rights-of-way simply because adequate BIA records have not been kept.

The Interior Department should undertake a major new initiative to organize, update, and computerize its BIA right-of-way records. It should make these records available to Tribal governments in an easy-to-access format such as a GIS/GPS mapping system. The Interior Department should also be more aware and protective of Tribal jurisdictional interests in the right-of-way acquisition and transfer process, in light of the U.S. Supreme Court's adverse right-of-way ruling in *Strate v. A–1 Contractors,* 520 U.S. 438 (1997) and subsequent cases.

The Federal Government should also work closely with Tribes to implement a proactive program of "corridor management." Through "corridor management," Tribally preferred corridors for transportation and other infrastructural elements—such as for electrical lines, water lines, and others—can be planned well in advance. In some instances, the easements for these corridors may be obtained in advance. Corridor management requires Tribal governments to think proactively about how they envision future development to occur on their reservations. Through corridor management, rights-of-way for all inter-related infrastructural development projects can

be obtained in a unified manner, speeding up design and construction once a specific project is authorized and funded.

The Federal Government should be an active and supportive partner in providing technical assistance to Tribes who wish to apply the principles of corridor management to their transportation programs and to general reservation development.

VI. Conclusion

Indian Tribes are coming into their own in the transportation field. Tribal governments are focusing on long-range transportation planning, assuming the Interior Department's duties for the IRR Program, partnering with States and county governments on mutually beneficial construction projects, and looking at innovative ways to finance the development of infrastructure on their reservations. These trends should be applauded and I wish to thank the Members of this Committee for the many beneficial legislative changes that you worked to include in SAFETEA–LU. Yet even with these successes, many challenges still remain. Congress and the Administration must recognize that if Indian Tribes are to overcome these challenges, Tribal governments must be given the resources to succeed.

I hope that as a result of this hearing Tribal governments, Tribal Technical Assistance Programs (TTAPs), and State DOTs, can work in greater concert with the BIA and Department of Transportation to improve transportation infrastructure in Indian country—from building and enhancing Tribal transportation departments to building and maintaining safer roads in Indian country.

Tribal communities will not suffer the traffic fatalities and injuries at the rates we are now seeing if we can interact on a more equal footing with States, to plan, design, build and maintain our inventory of roads, and implement traffic safety measures which States have shown to be successful in promoting highway safety. Pockets of best practices exist within the agencies which demonstrate that the manner by which Indian Tribes receive Federal funds and operate Federal transportation can be improved for the better. Tribes need the help of Congress to makes these best practices the rule, rather than the exception.

Tribal governments, Federal agencies, and Congress need to open a new dialogue where old habits and old ways of doing business are discarded for more efficient practices. We are making progress in Tribal transportation and I encourage this Committee and the Congress to work in partnership with Indian Tribal governments. Indian Tribes are ready to do our share to improve the safety of our communities for ourselves and our children's future.

Thank you for giving me the opportunity to present testimony regarding Tribal transportation issues on behalf of the Standing Rock Sioux Tribe.

Attachments

INDIAN RESERVATION ROADS COORDINATING COMMITTEE
Albuquerque, NM, Meeting—February 14, 2007

Hon. JAMES CASON,
Associate Deputy Secretary,
U.S. Department of the Interior,
Washington, DC.

Dear Associate Deputy Secretary Cason

Thank you for meeting with the Tribal members of the IRR Program Coordinating Committee on January 25, 2007. We value the productive discussions we had with you, Mr. Ragsdale, Mr. Gidner, and your staff concerning the state of the IRR Program and our recommendations to improve it.

We write to follow up on the issue of flexible financing. It is an important issue for two reasons. First, flexible financing/advance construction techniques are tools which Indian tribes have used successfully to raise private capital to finance much needed road construction projects that they could not otherwise afford to construct using the traditional pay-as-you-go finance method. Second, flexible financing is an allowable activity under Title 23 United States Code (23 U.S.C. § 204(b)) and the IRR Program regulations (25 C.F.R. Part 170.300 *et seq.*).

Since our meeting of January 25th, we learned that an Attorney Advisor in the Minneapolis Field Solicitor's Office issued a memorandum to the Great Plains Region Branch of Roads Engineer on December 21, 2006, in which the Regional engineer was informed that the Solicitor's Office in Washington, D.C. has advised the BIA that no further flexible financing agreements are to be entered into between the BIA and Indian tribes, whether under authority of the Indian Self-Determination Act, P.L. 93–638 or under authority of 23 U.S.C. § 204. The Attorney Advisor advised the Great Plains Region Branch of Roads Engineer that until further notice,

tribes interested in flexible financing provisions should seek agreements with the Federal Highway Administration (FHWA).

The BIA entered into an Advance Construction Agreement with the Standing Rock Sioux Tribe in 2004 for a $26.5 million reconstruction of community streets. This agreement was approved by Interior Department's Office of the Solicitor. The project was an overwhelming success. In 2006, FHWA signed five agreements with Indian tribes under authority of SAFETEA–LU and "in accordance with the Indian Self-Determination Act." All of these agreements authorize the use of advance construction financing at the discretion of the tribe.

The Attorney Advisor's memorandum, which we enclose with this letter, offers no explanation why existing authorities, under 23 U.S.C. § 204 or 25 C.F.R. § 170.300 *et seq.*, are not adequate to support the incorporation of advance construction provisions in an appropriate agreement.

Flexible financing techniques: (1) are authorized by Federal law and regulations, (2) have been approved by the Department in prior agreements, (3) have a proven track record of success, (4) provide jobs, spur economic development and make reservation roads safer, (5) bring private financing to Indian country, and (6) advance Tribal and Federal goals to address the horrendous state of reservation infrastructure in Indian country.

We do not want the Solicitor's Office to issue an opinion that would deprive Indian tribes of a financing tool available to every State and which is authorized by law. We do, however, ask that you ascertain the Department's objections to this financing technique and provide the Committee with a reasoned and understandable explanation of why the Solicitor's Office has put a stop to this authorized activity.

We look forward to your earliest possible response to this matter.

Sincerely,

PETE RED TOMAHAWK, *Chair*; Royce Gchachu, *Vice-Chair*.

cc: Mr. Patrick Ragsdale; Mr. Jerry Gidner; Mr. LeRoy Gishi; Office of the Solicitor; Mr. Robert Sparrow; and Vivian Philbin, Esq.

United States Department of the Interior

OFFICE OF THE FIELD SOLICITOR
U.S. Department of the Interior
Bishop Henry Whipple Fed. Bldg.
1 Federal Drive, Room 686
Twin Cities, MN 55111-4030

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:

TO: Gerry Foell
BIA/GPRO/Roads
Facsimile:
Phone:

Date: December 21, 2006

cc: Regional Director Bill Benjamin (via fax at

FROM: Sharon Pudwill
Attorney-Advisor

TOTAL PAGES: 1
(including cover page)

RE: Flexible Financing Agreement for Advance Road Construction
Cease Entering into these Agreements!

This fax confirms our conversation this morning, advising you that the Bureau of Indian Affairs should not enter into any more of the flexible financing agreements for advance construction like the agreements entered into with the Standing Rock Sioux Tribe and the Lower Brule Sioux Tribe. As you know, the Inspector General is looking into the validity of these agreements.

The Solicitor's Office in Washington D.C. has advised that no further agreements be entered into until further notice. In the interim, tribes may pursue flexible financing and advance construction through the Federal Highway Administration.

Please feel free to call me at if you have any questions.

U.S. DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY
Washington, DC, April 27, 2007

Mr. MATTHEW S. JAFFE,

Sonoksy, Chambers, Sachse, Endreson & Perry,
Washington, DC.

Dear Mr. Jaffe:

Thank you for faxing me a copy of the letter of February 16, 2007, to Associate Deputy Secretary James Cason, from Chairman Pete Red Tomahawk and Vice Chairman Royce Gchachu, Indian Reservation Roads Program Coordinating Committee ("the committee") regarding their concern with flexible financing agreements.

We share the committee's view that flexible financing affords tribes advantages in meeting their transportation infrastructure needs. Our participation to date has been in developing advance construction agreements and project agreements designed to help foster this capacity building for tribes. An advance construction agreement is specifically designed to allow a tribe to utilize a portion of its IRR program funds to repay commercial financing instruments by acknowledging the project, and agreeing to transfer the negotiated amount into the tribe's special bank account and include the project in the tribe's IRR Transportation Improvement Program (TIP). The Federal Government does not act as a surety, guarantor, or project financier or request approval of a loan from any lending institution. As of this date, tribes have only utilized flexible or innovative financing to advance approved projects. The use of this flexible financing methodology has been strictly between the tribe and the lender and has not involved the BIA.

The lending institutions may have a sense of comfort in knowing that advance construction agreements are in place, but the agreements offer nothing more than an acknowledgement of available IRR program funding that may be used by the tribe to pay either principal or interest for any lending agreements for the projects.

The authority granted under 23 U.S.C. § 204 is that the Secretary may enter into construction contracts and other appropriate contracts (other than P.L. 93–638 contracts and agreements) with an Indian tribe. This section authorizes the Secretary to enter into the advance construction agreements based on the criteria stated above.

We will continue to support tribes in advancing projects and improving Indian Reservation Roads, regardless of the road owner. After review by both the BIA and the Solicitor's Office, we have determined to continue to allow advance construction agreements and project agreements, where applicable, based on the following criteria:

1. That all advance construction agreements will be reviewed and approved by the Office of the Solicitor before execution.

2. That all project agreements, when BIA roads are specifically identified to be advance constructed, will be reviewed and approved by the Office of the Solicitor before execution.

3. That all (advance construction and project) agreements will be entered into as separate agreements based on 23 U.S.C. § 204(b)(2)(B) and not included in or referenced in P.L. 93–638 contracts or agreements.

Thank you for your interest and support of the Indian Reservation Roads program. If you have additional questions, please contact LeRoy Gishi, Division of Transportation at (202) 513–7711 or Sabrina McCarthy, Office of Solicitor at (202) 219–2139.

Sincerely,

CARL J. ARTMAN,
Assistant Secretary—Indian Affairs.

The CHAIRMAN. Mr. Red Tomahawk, thank you again for appearing, and thanks for your many decades of work on these issues.

Next, we will hear from Mr. Jim Garrigan. He is Transportation Planner for the Red Lake Band of Chippewa Indians in Red Lake, Minnesota. Mr. Garrigan, welcome, and you may proceed.

STATEMENT OF JAMES GARRIGAN, TRANSPORTATION PLANNER, RED LAKE BAND OF CHIPPEWA INDIANS

Mr. GARRIGAN. Thank you.

Good morning, Mr. Chairman, Vice Chair Murkowski, and Members of this Committee. My name is James Garrigan, Transportation Planner for the Red Lake Band of Chippewa Indians.

On behalf of Chairman Jourdain, the Red Lake Tribal Council, and the people they represent, I thank you for the opportunity to provide testimony concerning transportation issues in Indian Country.

The Red Lake Band of Chippewa Indians has long been at the forefront in efforts to reform Federal transportation programs to better serve the needs of Indian reservations and communities. Although great strides have been made in improving the IRR program under TEA–21 and SAFETEA–LU, several issues have arisen that are negatively affecting the full implementation of the provisions of these Acts as intended by Congress.

One of the main issues of concern is the IRR inventory process that is threatening to undo some of the significant gains Indian tribes have made through TEA–21 and SAFETEA–LU. Under the negotiated rulemaking process required by TEA–21, Indian tribes and Federal agencies negotiated new rules, as contained in 25 CFR 170, by which the IRR program would operate. These rules provide the process by which tribes and the BIA update the inventory of roads and bridges on the IRR system.

The negotiated rulemaking process took four and a half years to complete, and it took the BIA another two and a half years to publish the final rule. Upon publication of the final rule, we were dismayed to discover that the BIA unilaterally left out or changed critical language affecting the inventory that was included in the proposed rule.

The BIA has never explained why it decided without consultation or involvement of the tribes to remove or change regulatory provisions proposed by the tribal negotiating team that would improve the integrity of the inventory system. It is our understanding that the Indian Reservation Roads program was established by Congress primarily to fund the construction of roads and bridges on Indian reservations due to the fact that these roads and bridges are considered Federal roads, and it is the Federal Government's responsibility to construct and maintain these facilities on Indian reservations.

We believe that the IRR program should primarily address the construction and improvement needs of roads that are located within or provide primary access to Indian lands and that are not eligible for other Federal, State and county funding sources.

While Congress and the Administration have substantially increased the IRR funding, the number of roads that are eligible for funding has been increased at the same time. Some of these roads are eligible for substantial sources of other funding. As a result, the roads for which the only source of funding is IRR funding are receiving a smaller slice of the bigger funding pie.

The unilateral BIA decision on the final rule favors those tribes that are located near urban areas, where transportation needs are the shared responsibility of tribes and their neighboring governments, and where the Indians are overwhelmingly outnumbered by non–Indian users of these roads. The BIA system on reservation roads has a documented construction backlog of $13 billion. In the face of that need, the BIA's unilateral final rule has resulted in siphoning off scarce IRR dollars from areas where the greatest need exists.

A couple of other issues that I would like to touch on that were touched on previously, I would just like to expand on those, Mr. Chairman. That is the need for the tribal transportation facility inventory that is truly comprehensive. The Federal Highway Administration has failed to meet the intent of section 1119(f) of SAFETEA–LU regarding the conduct of a comprehensive national tribal transportation facility inventory. Despite the mandatory nature of this statutory requirement, FHWA has decided to conduct merely a "windshield" survey sampling of IRR roads. This approach and methodology falls far short of the statutory requirement. We urge the Congress to insist that FHWA complete the comprehensive inventory of the IRR system as intended. This may require an extension of the time limit stipulated in SAFETEA–LU.

One other issue that has generated a lot of discussion here this morning is road maintenance. Protection of the investment in any type of infrastructure requires proper maintenance. Historically, the IRR maintenance system has been chronically underfunded, which has caused safety hazards and premature failure of many roads on the IRR system. Roads usually have 20 year design life, but because of inadequate maintenance, many of the IRR system roads last only about half their design life and have to be reconstructed much sooner.

The BIA is responsible for maintaining the IRR system. However, the funding BIA provides is approximately 25 percent of what is required to properly maintain the system. The IRR maintenance situation has become even more critical with the increase of IRR funding through SAFETEA–LU. While IRR construction funding is increasing, BIA road maintenance is declining.

The BIA receives approximately $25 million per year as part of its lump sum appropriations for IRR road maintenance activities. BIA now estimates that $120 million per year is actually what is needed to properly maintain roads on the BIA system. At present levels, the BIA spends less than $500 in maintenance funding per mile. Most State transportation departments spend approximately $4,000 to $5,000 per mile each year on maintenance of State roads.

Of course, States receive highway taxes based upon the sale of gasoline within the State. While users of the tribal roads pay these same State highway fuel taxes, tribal roads receive little or no benefit from State fuel taxes. Tribes are unable to impose gas taxes in addition to or in lieu of those imposed by surrounding States.

The only practical solution we see for this problem is that since roads on the BIA system are considered Federal roads, the BIA road maintenance program should be provided extra funds out of the Highway Trust Fund as are other Federal Lands Highway program roads.

Mr. Chairman, we, too, have some success stories, and I have outlined those in my written testimony, so I won't touch on those now. Like I say, they are outlined in my written testimony.

In conclusion and on behalf of the Red Lake Band, I thank the Committee for its attention to and support of the Indian Reservation Roads program. We have attempted to provide the Committee with a few examples of what tribes can do for themselves when Federal law is reformed to give us the opportunity and authority.

We thank this Committee for its support of our endeavors over the years to become self-sufficient and self-governing. We look forward to working closely with the Committee in the future to further the cause of tribal self-governance and self-sufficiency, and the preservation of government-to-government and sacred trust responsibilities owed to us.

Thank you for inviting the Red Lake Band to present this testimony, and if we can answer any questions now or sometime in the future, please do not hesitate to ask.

Thank you.

[The prepared statement of Mr. Garrigan follows:]

PREPARED STATEMENT OF JAMES GARRIGAN, TRANSPORTATION PLANNER, RED LAKE BAND OF CHIPPEWA INDIANS

Introduction

Good morning, Mr. Chairman and Members of this Committee. My name is James Garrigan, Transportation Planner for the Red Lake Band of Chippewa Indians. I am also a member of the Indian Reservation Roads Coordinating Committee formed by various Indian Tribes to help shape Federal policy and practice in this area.

On behalf of our Chairman, the Honorable Floyd Jourdain, and the Tribal Council of the Red Lake Band of Chippewa Indians, I wish to convey our sadness at the loss of Senator Thomas last month and our sympathy to his family and colleagues here. He was a great friend of Indian Tribes and will be missed.

On behalf of Chairman Jourdain, the Red Lake Tribal Council, and the people they represent who reside on the Red Lake Indian Reservation in Northern Minnesota, I thank you for this opportunity to provide testimony concerning Transportation Issues in Indian Country.

The Federal Lands Highway Program and the Indian Reservation Roads Program represents for us a major avenue through which the U.S. Government fulfills its trust responsibilities and honors its obligations to the Red Lake Band and to other Indian Tribes. This program is vital to the well being of all Native people living on or near Indian lands throughout the United States. Because of its great importance, reform of the Indian Reservation Roads Program has become a top legislative priority for many Indian Tribes.

Background on the Red Lake Indian Reservation

Compared to other Tribes, Red Lake is a medium-sized Tribe with more than 9,500 enrolled members, most whom live on our Reservation. The Red Lake Indian Reservation is located in a rural area within the boundaries of the State of Minnesota. Our Reservation has over 840,000 acres of tribal land and water held in trust for our Tribe by the United States. While over time it has been diminished from its original 15 million acres, our Reservation has never been broken apart or allotted to individuals and lost to non-Indians. Nor has our Reservation ever been subjected to the criminal or civil jurisdiction of the State of Minnesota. Consequently, our Tribal Government has a large land area over which our Tribe exercises full and exclusive governmental authority and control in conjunction with the United States. At the same time, due in part to our location far from centers of population and commerce, we have few jobs available on our Reservation. While the unemployment rate in Minnesota is only at 4 percent, unemployment on our Reservation remains at an outrageously high level of 74 percent. The lack of adequate transportation facilities, communications, and other necessary infrastructure continues to significantly impair economic development and job opportunities.

The IRR Program and the Indian Self-Determination and Education Assistance Act

The Red Lake Band of Chippewa has long been at the forefront in efforts to reform Federal transportation programs to better serve the needs of Indian reservations and communities. Although great strides have been made in improving the IRR program under TEA–21 and SAFETEA–LU, several issues have arisen that that are negatively affecting the full implementation of the provisions of these Acts as intended by Congress.

Nine years ago Red Lake led tribal lobbying efforts to shape TEA–21 to allow Indian Tribes greater opportunity to assume and administer the Indian Reservation Roads (IRR) Program pursuant to the Indian Self-Determination and Education As-

sistance Act (ISDEAA or P.L. 93–638). The tribal TEA–21 reform effort aimed at removing many obstacles that hampered past attempts by Tribes to administer the IRR Program under P.L. 93–638 Self-Determination or Self-Governance Agreements. In response, Congress added express language to TEA–21 authorizing Tribes to assume all roads programs, functions, services and activities under P.L. 93–638 agreements. But this congressional intent was thwarted by a Bureau of Indian Affairs (BIA) engineering bureaucracy reluctant to transfer operational power and responsibility to Tribes. I know this for a fact. In a previous life, I worked within the BIA bureaucracy. I left it to go work for my Tribe. There was no good reason why my Tribe and tribal staff could not do what the BIA and BIA staff had done. But trying to pull that money out of the BIA bureaucracy was an exercise in futility for years.

The Wasteful "Six Percent" Problem

For years, the BIA leadership persuaded congressional appropriators to add a rider to annual funding bills that reserved 6 percent of the Indian roads/bridges appropriations for BIA administrative and programmatic expenses. Increasingly, more and more Tribes like Red Lake argued that the BIA activities being paid for with these 6 percent funds were duplicative and unnecessary, and were siphoning off dollars to support a Federal bureaucracy rather than to construct roads critically needed on Indian reservations.

When Congress drafted SAFETEA–LU, it adopted most of the provisions sought by tribal leaders. But unknown to the Tribes, the BIA quietly persuaded the Senate to add in Section 1119(e) a new provision, codified at 23 U.S.C. 202(d)(2)(F)(i), which allocates $20 million for FY 2006, $22 million for FY 2007, $24.5 million for FY 2008, and $27 million for FY 2009 to the BIA "for program management and oversight and project-related administrative expenses." This is nearly 6 percent of the Indian roads funds. The BIA cannot justify continuing to consume these funds in an era of self-determination and self-governance. The BIA workload should be going down, not rising. We ask that this Committee work to repeal that subparagraph (F)(i) as soon as possible.

Red Lake has steadily bargained year after year, successfully taking more and more of its 6 percent money back from the BIA. But Red Lake is only one of a handful of Indian Tribes who have succeeded in obtaining nearly 100 percent of their funding from the BIA. Most other Tribes continue to see their roads and bridges project and program funding reduced by 6 percent or more to fund the BIA bureaucracy and unnecessarily duplicated services. This *carte blanche* funding guarantee for the BIA bureaucracy should be stripped out of the law and forever banned. It serves no public policy purpose and cannot be justified on grounds of anything other than the status quo and avoiding necessary reorganization and restructuring of the BIA bureaucracy.

Need to Move the Money

Red Lake and other Tribes who initially assumed the IRR program under Self-Governance worked closely with Interior's Office of Self-Governance to design a financial system that provided Tribes with an efficient way to track their revenues and expenditures of IRR funds. This system worked exceptionally well. Tribes entered and tracked expenditures, and were able to efficiently prepare financial reports in real time on a project by project basis. This system gave both tribal and Federal officials useful monitoring and management information. Inexplicably, the BIA 2 years ago deemed this system unacceptable. It directed the OSG to stop using it and the BIA then reassumed all financial reporting responsibilities through its Federal Finance System (FFS). Since then Tribes no longer have the same degree of access to the roads finance system nor do they receive regular financial reports.

Indian Reservation Roads Inventory and Its Impact on Funding

Under the negotiated rulemaking process required by TEA–21, Indian Tribes and the Federal agencies negotiated new rules (25 CFR 170) by which the IRR program would operate. These rules provide the process by which Tribes and the BIA update the inventory of roads and bridges on the IRR system. The negotiated rulemaking process took 4½ years to complete and it took the BIA another 2½ years to publish a final rule. Upon publication of the final rule, we were dismayed to discover that the BIA unilaterally left out or changed critical language affecting the inventory that was included in the proposed rule. The BIA has never explained why it decided, without consultation or involvement of the Tribes, to remove or change regulatory provisions proposed by the tribal negotiation team that would improve the integrity of the inventory system.

The final rules allow Tribes to include State and County roads in their inventory if the routes are located within or provide primary access to Reservations or Indian

lands. The proposed rules negotiated by Tribes likewise allowed these routes to be included in the inventory, but did not include these routes in the cost to improve calculations. The proposed rule asked the question—*"Which Roads Are Included in the Cost to Improve Calculations?"* The answer was very specific—*"Existing or proposed roads in the BIA system which are considered to have a construction need by Indian tribes are included in the cost to improve calculations. Tribes must adhere to certain guidelines in the selection of those roads. Those roads must: (1.) be on the Indian Reservation Road system; (2.) not belong to or be the responsibility of other governments (i.e. States or counties) . . .."* BIA removed this language from the final rule and the BIA is now allowing Tribes to include Interstate Highways, National Highway System roads, State and County roads that are in the inventory to generate tribal shares of IRR funding at the same cost to improve rates that fund roads that are the sole responsibility of the BIA.

It is our understanding that the Indian Reservation Roads Program was established by Congress primarily to fund the construction of roads and bridges on Indian reservations due to the fact that these roads and bridges are considered Federal Roads and it is the Federal Government's responsibility to construct and maintain these facilities on Indian reservations. We believe that the IRR program should *primarily* address the construction and improvement needs of roads that are located within or provide primary access to Indian lands *and that are not eligible for other Federal, State, or County funding sources.* The final rule makes a lot more Federal, State and County supported roads eligible for IRR funding, if an Indian Tribe timely submits the data information required to place a highway on the IRR inventory system. While Congress and the Administration have substantially increased IRR funding, the number of roads that are eligible for funding has been increased at the same time. Some of these roads are eligible for substantial sources of other funding. As a result, roads for which the only source of funding is IRR funding are receiving a smaller slice of the bigger funding pie. This is compounded by the fact that many Tribes have yet to submit their expanded inventory data under the final rules; meanwhile, other Tribes have added their expanded data. The result is that those Tribes with expanded inventory data realize an increase in their relative share of IRR roads funding while those Tribes who lag behind in data entry suffer a drop in funding.

When Congress enacted Section 1115 (k) of P.L. 105–178 (TEA–21), we believe it intended that non-BIA or non-Tribal roads within or accessing an Indian reservation were to be included in the Indian Reservation Road Inventory to generate only part of the funding needed to improve those roads. Otherwise, the County, State and other Federal highway budgets would get a windfall. The law is quite specific: " . . . [F]*unds authorized to be appropriated to carry out the Federal lands highways program under section 204 may be used to pay the non-Federal share of the cost of any project that is funded under section 104 and that provides access to or within Federal or Indian lands.*" 23 U.S.C. 120(k). We believe this means IRR funds can only be used to pay the non-Federal share on a state or county route is if it is project funded under 23 U.S.C. 104 and that it is a designated IRR project.

The unilateral BIA decision on the final rule favors those tribes who are located near urban areas, where transportation needs are the shared responsibility of tribes and their neighboring governments and where the Indians are overwhelmingly outnumbered by non-Indian users of these roads. The BIA system for on reservation roads has a documented construction backlog of $13 billion. In the face of that need, the BIA's unilateral final rule has the result of siphoning off scarce IRR dollars from areas where the greatest need exists.

Rural Tribes, including large land-based Tribes, have expressed their concerns in writing to the BIA and the IRR Coordinating Committee regarding changes to the final rule that have altered the intent of the negotiated rulemaking process. To date, they have received no responses addressing their concerns.

Need for a Tribal Transportation Facility Inventory That is Truly "Comprehensive"

The Federal Highway Administration (FHWA) has failed to meet the intent of Section 1119(f) of SAFETEA–LU regarding the conduct of a "comprehensive" National Tribal Transportation Facility Inventory. Despite the mandatory nature of this statutory requirement, FHWA has decided to conduct merely a "windshield survey" sampling of IRR roads. This approach and methodology falls far short of the statutory requirement. We urge the Congress to insist that FHWA complete a "comprehensive" inventory of the IRR system as intended.

Road Maintenance

Protection of the investment in any type of infrastructure requires proper maintenance. Historically, the IRR maintenance system has been chronically under-funded which has caused safety hazards and premature failure of many roads on the IRR system. Roads usually have a 20 year design life but, because of inadequate maintenance, many of the IRR system roads last only about half of their design life and have to be reconstructed much sooner. The BIA is responsible for maintaining IRR system roads; however the funding BIA provides is approximately 25 percent of what is required to properly maintain the system. The IRR maintenance situation has become even more critical with the increase of IRR funding through SAFETEA–LU. While IRR construction funding is increasing, BIA road maintenance funding is declining.

The BIA receives approximately $25 million per year as part of its lump sum appropriation for IRR road maintenance activities. BIA now estimates that $120 million per year is actually what is needed to properly maintain roads on the BIA system. At present levels, the BIA spends less than $500 in maintenance funding per mile; most state transportation departments spend approximately $4,000 to $5,000 per mile each year on maintenance of state roads. Of course, states receive highway taxes based upon the sale of gasoline within that state. While users of tribal roads pay these same state highway fuel taxes, tribal roads receive little or no benefit from state fuel taxes. Tribes are unable to impose gas taxes in addition to, or in lieu of, those imposed by the surrounding states.

The only practical solution we see for this problem is that since the roads on the BIA system are considered Federal roads, the BIA road maintenance program should be provided extra funds out of the Highway Trust Fund as are other Federal Lands Highway Programs roads.

Red Lake Decision to Stay With BIA/OSG and Postpone FHWA Agreement

After much deliberation in 2006, Red Lake decided not to contract directly with Federal Lands Highway Administration for our 2007 roads program. As you know, one of the signature reforms in SAFETEA–LU was express authority for Tribes to choose to by-pass the BIA and contract directly with FHWA. We negotiated with FHWA staff but at the end decided to defer the decision to a later year because of several issues. We were unable to negotiate agreement language to our satisfaction by the time we needed to conclude an agreement for 2007 without causing disruptions to our program. FHWA had only a draft agreement and appeared to be requiring a uniformity that subjected any proposed change to broad review with every other tribe actually or potentially in negotiation. FHWA and BIA had not yet persuaded us the two Federal agencies had worked out an efficient process by which the funds due Red Lake would be identified and transferred to Red Lake; we did not want to risk missing a construction season because of late or disrupted new funding streams. At the same time, it appeared from statements made by then Acting Assistant Secretary Jim Cason, that BIA would move the financial management authority for self-governance roads programs back under the Office of Self Governance and utilize the financial management and reporting system that Red Lake and other Tribes had developed. This system expedites the transfer of funds and gives us the ability to enter program expenditures by project, making tracking and reporting expenditures much more easy and useful.

Moreover, the Department of Transportation still has not appointed the Deputy Assistant Secretary for Tribal Government Affairs that the SAFETEA–LU Act requires to be established by the President within the Office of the Secretary. This new office is supposed to "plan, coordinate, and implement the Department of Transportation policy and programs serving Indian tribes and tribal organizations and to coordinate tribal transportation programs and activities in all offices and administrations of the Department and to be a participant in any negotiated rulemaking relating to, or having an impact on, projects, programs, or funding associated with the tribal transportation program." The Administration's failure to timely fill this FHWA position has given the Red Lake Band pause about establishing a direct relationship with that agency. We choose to avoid any possible entanglement which might disrupt our own administration of our tribal roads program.

All this is to explain why we did not jump in 2007 to contract directly with FHWA. Red Lake remains very interested in doing so in the future.

Tribal Success Stories

Operating the IRR Program under Self-Governance. The Red Lake Band will soon be entering its tenth year of operating the IRR program under Title IV of P.L. 93–638, the Self-Governance Act. Self-governance has provided the Tribe the ability to deal with State agencies on a government-to-government basis and to leverage fund-

ing for projects that are of mutual interest to both the Tribe and the State. After years of expensive and strenuous negotiating, we can now say we've reduced the BIA administrative funding holdback to nearly zero. During this time, of course, we have been doing all of the work. The Tribe makes the day to day decisions in all phases of the program including review and approval of construction plans, specification and estimate of road construction projects. The Tribe uses its own procurement guidelines in contracting construction projects from the letting of bids, negotiating contracts, to close out of projects. Our relationships with Minnesota Department of Transportation have improved to the point where the State has enacted special legislation to contract directly with all Tribes in the State. The Tribe has also been successful in collaborating with other Federal agencies including working with the Department of Defense, HUD and the Tribe's own construction company to complete a $10 million Walking Shield housing development project which resulted in over 50 homes for tribal members on our Reservation. Our flexible authority under self-governance permitted us to apply some of our roads funding to develop roads for this tribal priority project. Weare thankful that the Congress has recognized that Tribes are very capable of operating their own programs for the benefit of their people without the BIA bureaucracy.

Tribal Transit. Many tribal governments place a high priority on building transit systems that can transport their members who do not have access to cars to get to work, commerce, recreation, or healthcare facilities. Thanks to SAFETEA–LU, Tribes recently became eligible to receive direct grants from the Federal Transit Administration (FTA) for the operation of public transit programs to serve Indian Reservations. While the new program is small compared to other transit programs, Red Lake is grateful to be selected to participate in the first ever direct grant to Indian Tribes and will continue to work to expand this program for the benefit of others. Since 2001, the Red Lake Band has been operating a Public Transit program funded with FTA grants through the Minnesota Department of Transportation and supplemented with IRR funds. This program started with one, 20-passenger, transit bus and now has expanded to four busses. We were recently notified that we were awarded a direct grant from the FTA in the amount of $198,000. These funds will be used to replace the IRR program funds that we sorely need to address the backlog of road construction needs on our Reservation.

Flexible Financing. The Red Lake Band of Chippewa was among the first Tribes to utilize the authority granted by TEA–21 and 25 CFR 170.300 to secure a short term loan from a commercial lending agency to complete a high priority roads project on our Reservation. We closed on the loan last year. That enabled us to complete our project and immediately meet an urgent need on the Reservation. Because we kept it a short-term loan, we did not encounter some of the complications other Tribes experienced. The loan will be paid back with IRR funding from within the years authorized under SAFETEA–LU.

Conclusion

On behalf of the Red Lake Band, I thank the Committee for its attention to and support for the Indian reservation roads program. We have attempted to provide the Committee with a few examples of what Tribes can do for themselves when Federal law is reformed to give us the opportunity and authority. We thank this Committee for its support in our endeavors over the years to become self sufficient and self-governing and we look forward to working closely with this Committee in the future to further the cause of tribal self-governance, self-sufficiency, and the preservation of the government-to-government and sacred trust relationship owed to us. Thank you for inviting the Red Lake Band to present this testimony. If we can answer any questions, now or at some future date, please do not hesitate to ask.

The CHAIRMAN. Mr. Garrigan, thank you very much.

Finally, we will hear from Mr. Erin Forrest, who is with the Hualapai Nation of Peach Springs, Arizona.

Is it Hualapai or Hualapai?

Mr. FORREST. Hualapai.

The CHAIRMAN. Hualapai. I apologize.

Mr. Forrest, thank you for joining us, and you may proceed.

STATEMENT OF ERIN FORREST, DIRECTOR OF PUBLIC WORKS, HUALAPAI NATION

Mr. FORREST. Good morning, Mr. Chairman and Members of the Committee. My name is Erin Forrest, and I am the Director of Public Works for the Hualapai Nation. I have held that position for about 4 years. The job responsibilities are to maintain the public roads, maintain the public buildings and the public utilities.

The Hualapai Tribe has about 2,042 enrolled members, of which about 1,300 live on the reservation. The reservation is about 1 million acres in size, and is located in northern Arizona and lies between Flagstaff and Kingman, for those who are familiar with Arizona. Kingman is the closest center to provide goods and services to the Hualapai Tribe and lies about 50 miles away.

There are 660 miles of roads to maintain on the reservation, of which 72 miles are paved; 236 miles are improved gravel; and 352 miles are considered unimproved. The Bureau of Indian Affairs had the responsibility of maintaining those roads until about 15 years ago. The tribe through a self-determination 638 contract took over the road maintenance responsibilities at that time.

The BIA then transferred their maintenance budget over to the tribe to maintain those roads. During the last 4 years, the road maintenance budget has decreased and the roads are falling into disrepair. In fact, we are being told to expect another decrease in next year's budget. The cost of fuel, labor and equipment and road materials is growing annually, and the tribe cannot provide proper maintenance for the roads with declining funding levels.

About half of the 72 miles of paved road are located within the community of Peach Springs itself. These roads were paved in the 1970's. There has not been any preventive maintenance such as overlays, seal coats, chip sealing or crack sealing in over 30 years.

The other paved road on the reservation is Route 18, which is also known as the Supai Road. This road crosses the Hualapai Nation and it is also the only viable access to the Supai Reservation. This road was paved in 1971 and has not received any overlays or chip sealing in 36 years.

Both of the above roads are now experiencing pavement failures such as extreme alligatoring that now allows moisture into the subgrade and can cause total pavement failure. I have a couple of pictures of the Supai Road. In it, you can see almost total failure along the center line, along the pavement seams, and excessive alligatoring and patching in the driving lanes.

I might turn it around and show the audience. That is the Supai Road that crosses the Hualapai Nation. This is very typical along that route.

Also on the reservation we have 236 miles of roads on the reservation that are gravel, including the heavily traveled Diamond Creek Road. This road provides the only vehicle access to the Colorado River in the Grand Canyon between Lee's Ferry and Lake Mead, which is about a distance of 200 miles. This road is used for transporting river rafters and is essential to tribal tourism enterprises.

Starting in Peach Springs, this 18 mile long road drops from an elevation of 4,500 feet to 1,500 feet at the Colorado River. This road washes out an average of three times per year from flash

floods. Due to the importance of the road to tourism, it is a very high priority to reopen the road after it has washed out. This effort usually takes the Hualapai road crew about 3 days to open it back up and in extreme instances it can take up to a week to open this road up.

I have some pictures of this particular road, which is again the only access to the Colorado River for over 200 miles. The first one I think shows where you are going down the wash, and it shows the boulders and what not, and the wash bottom. The second picture shows where the walls of the canyon are starting to encroach.

If you look up to the upper left portion of that picture, you can see the high walls of the canyon getting higher and higher above you. At the time it enters into the canyon excuse me, by the time it gets to the river, it is about 4,000 feet deep. It also shows a stream that goes down the middle of the road with the walls enclosing on each side.

I might note that these pictures were taken a couple of weeks ago. That area is in a 12 year drought. The creek is much lower than normal. It is usually at this time of year running more full, but when a storm event occurs, when we get a thunderstorm in the summertime, the water is stretched from wall to wall.

I think the next picture shows it further downstream, about a half mile actually from the Colorado River, and the walls are again steeper and enclosing more along the road. The road now is the creek bottom. There is no way to get the road away from the creek. It will get washed out every time we get a storm event upstream.

As the primary Western Region member of the IRR Coordinating Committee, it is my responsibility to bring to your attention the IRR program issues affecting the Western Region and the program as a whole. My testimony is organized by six categories, my written testimony, which includes finance, safety, road maintenance, congestion, tribal consultation and safety project successes.

At this time, I will review only the recommendations. We have nine recommendations. One is to increase annually funding levels for the IRR road program to expand the purchasing power and to attend to the numerous unmet needs. I might note that during the SAFETEA–LU process, Congress—and we thank you very much—gave an increase of about 10 percent per year during that funding cycle.

I might also note to you that in the State of Arizona, that due to the very high growth rate and increasing costs of asphalt and concrete and construction materials, the inflation rate for road construction in the State of Arizona rose at a rate of about 15 percent a year. So even with your generous increases, we are still falling behind the curve in road construction.

The next line we have is to reinstate full authorization for the IRR road program by eliminating the "lop off" for obligation limitation. We feel that the "lop off" doesn't make sense in Indian Country. We are not getting enough money as it is. It may make sense when you deal with States, but it does not make sense in Indian Country.

We would like to establish and provide a $20 million startup fund for an IRR loan program similar to the State Infrastructure Banks. We would like to institutionalize a process for the reliable

collection of data to quantify road maintenance needs. We would like to develop and implement a safety management system for the IRR program.

We would like to streamline a process between the BIA Division of Transportation, BIA Highway, Safety Office and the BIA Law Enforcement to manage transportation safety. We would also like to increase the funding level for the BIA Road Maintenance Program to meet the safety needs and to protect the IRR investments.

We would like to require any federally funded transportation project on tribal lands to be included in the Tribal Transportation Improvement program. And last, we would like to expand the tribal consultation requirements for the States and metropolitan planning organizations to include consultations on all federally funded projects, in addition to statewide planning and programming, and the long-range transportation plan.

Mr. Chairman, this concludes my testimony. I know my time is up, but I would like to make just one more point if I could. I have only worked in Indian Country for 4 years. I worked in a consulting practice as an engineer for 20 years. I was a city engineer at the city of Pasco, Washington for 4 years, and I worked for the Port of Bellingham in the State of Washington for 10 years.

When I worked at the port, there were many avenues for revenue that we had, that was available to the port to provide for infrastructure improvements. We were in a totally preventive maintenance program. We did a lot of overlays every year and the infrastructure was in very good shape.

When I was a city engineer at the city of Pasco, basically we divided up the city road miles. We divided by 20 and we overlaid one-twentieth of the roads every year. Again, they had B&O tax, they had property tax, they had transportation impact fees. They had good sources of revenue to help maintain their roads.

I might note that since I have worked for the tribe, the only source of revenue is directly from the tribe itself and/or the Federal Government. It is like working in a Third World country. I feel like I am working in the Peace Corps or something. There is not enough money.

With that, I will concluded and would be pleased to answer any questions from the Committee.

[The prepared statement of Mr. Forrest follows:]"

PREPARED STATEMENT OF ERIN FORREST, DIRECTOR OF PUBLIC WORKS, HUALAPAI NATION

I. Introduction

Good morning. My name is Erin S. Forrest. I have been employed as the Director of Public Works for the Hualapai Tribe for nearly 4 years. I am responsible for maintaining the public utilities, public buildings and the public road system for the Hualapai Tribe.

The Hualapai Tribe has 2,042 enrolled tribal members with approximately 1,300 residing on the reservation. The one million acre reservation is located in northwestern Arizona, midway between the cities of Flagstaff and Kingman. Kingman is the closest center of services and is 50 miles to the west. 108 miles of the reservation borders the Colorado River.

Hualapai Tribal Road Maintenance Program

660 miles of roads on the Hualapai Reservation need to be maintained on a regular basis. According to the Indian Reservation Roads (IRR) Inventory, 72.5 miles

or 11 percent of the roads are paved; 236 miles or 36 percent of the roads are gravel; and the remaining 352 miles remain unimproved.

The Bureau of Indian Affairs (BIA) was responsible to maintain these roads. However, about 15 years ago, the Hualapai Tribe entered into a Public Law 93–638 self-determination contract with the BIA to maintain the roads. The BIA has transferred to the Hualapai Tribe the road maintenance responsibilities and annual maintenance funds to service the roads. During recent years, the BIA road maintenance budget has decreased and the roads are slowly falling into disrepair.

Over half of the 72 miles of paved roads on the Hualapai Reservation are in the town of Peach Springs, the remaining miles are on the IRR Route 18 to Supai. The roads in Peach Springs were paved in the 1970's. IRR Route 18 was paved in 1971. None of these roads have received any preventive maintenance, such as overlays, chip seals, or crack sealing. Therefore, the roads are now experiencing pavement failure, such as extreme alligatoring that allows moisture into the sub-grade and causes total pavement failure.

The following three photos were recently taken to document the road conditions on IRR Route 18.

Hualapai Reservation. Example of deteriorated road pavement conditions. Provided courtesy of the Hualapai Tribe.

Hualapai Reservation. Example of deteriorated road pavement conditions. Provided courtesy of the Hulapai Tribe.

Hualapai Reservation. Example of potholes in the roadway. Provided courtesy of the Hualapai Tribe.

Diamond Creek Road

Over 236 miles of roads on the reservation are gravel, including the heavily traveled Diamond Creek Road. This road provides the only vehicle access to the Colorado River in the Grand Canyon between Lee's Ferry and Lake Mead (distance of over 200 miles). This road is used for transporting river rafters and is essential to tribal tourism enterprises.

Starting in Peach Springs, the l8-mile road drops from an elevation of 4,500 ft. to 1,500 ft. at the Colorado River. This road washes out an average of three times per year from flash floods. Due to the importance of the road to tourism, it is a high

priority to reopen the road after it has washed out. This effort usually requires all the Hualapai road maintenance personnel over 3 days work to open it back up.

The following four photos show the gravel road conditions on Diamond Creek Road.

With the cost of fuel, labor and materials growing annually, the Tribe cannot provide maintenance of their roads with the declining funding levels. The lack of funding is a hardship for the Tribe and affects the economic, social and physical well being of the Tribe. Hindrances include the transport of goods and services; bus routes for the youth; transport of the elderly and sick; and the increased emergency medical services response time. These are all great concerns to the tribal leaders who are trying to provide for their people.

As the primary Western Region (WR) member of the IRR Program Coordinating Committee, it is my responsibility to bring to your attention the IRR Program issues affecting the WR and the program as a whole. My testimony is organized by six categories—finance, safety, road maintenance, congestion, tribal consultation and safety project successes. Recommendations, with supporting statements, have been provided for each topic. Examples are from Arizona, one of three state areas in the WR. At this time, I will review only the recommendations.

II. Recommendations

As tribal governments in Arizona work to improve the transportation network on tribal lands, numerous matters related to finance, safety, road maintenance, congestion and tribal consultation are being encountered. Infrastructure systems support society. The tribal transportation system plays a key role in the economy, security and the safety of the public at large. Recommendations to improve the IRR program are:

- Increase, annually, funding levels for the IRR program to expand the purchasing power and to attend to the numerous unmet needs.
- Reinstate full authorization for the IRR program by eliminating the "lop off" for obligation limitation.
- Establish and provide $20 million start-up funds for an IRR loan program, similar to the State Infrastructure Banks.

- Institutionalize a process for the reliable collection of data to quantify road maintenance needs.
- Develop and implement a Safety Management System for the IRR program.
- Streamline a process between the BIA Division of Transportation, BIA Highway Safety Office and BIA Law Enforcement to manage transportation safety.
- Increase the funding level of the BIA Road Maintenance Program to meet the safety needs and to protect the IRR investments.
- Require any federally funded transportation project on tribal lands to be included in the Tribal Transportation Improvement Program.
- Expand the tribal consultation requirements for the States and Metropolitan Planning Organizations (MPO) to include consultation on all federally funded projects, in addition to statewide planning and programming, and the Long Range Transportation Plan.

A. Finance

Purchasing Power

- Increase, annually, the funding levels for the IRR program to expand the purchasing power and to attend to the numerous unmet needs.

All governmental transportation programs have been losing purchasing power. Even with the increased funding level from the Safe Affordable Flexible Efficient Transportation Equity Act: A Legacy for Users, the tribal governments, utilizing the IRR program funds, cannot meet their responsibilities.

The American Association of State Highway and Transportation Officials (AASHTO) published a report entitled, *Transportation: Invest in Our Future,* to assist the National Surface Transportation Policy and Revenue Study Commission. The Commission was charged to study the needs of America's surface transportation system and sources of revenue for at least the next 30 years. The following paragraph is a quote from the AASHTO report describing the challenge:

> Commodity prices for steel, concrete, petroleum, asphalt, and construction machinery increased dramatically from 2004 to 2007. As a result it is estimated that between 1993, the year in which Federal fuel taxes were last adjusted, and 2015, construction costs will have increased by at least 70 percent. To restore the purchasing power of the program, Federal highway funding will have to be increased from $43 billion in 2009 to $73 billion by 2015. To restore the purchasing power of the transit program, Federal funding would have to be increased from $10.3 billion in 2009 to $17.3 billion in 2015.

Lopping off for Obligation Limitation

- Reinstate full authorization for the IRR program by eliminating the "lop off" for obligation limitation.

The appropriations process has been the traditional process for controlling annual Federal expenditures. However, for transportation spending, a budgetary control mechanism, referred to as Obligation Limitation, has been imposed.

Within the larger, national transportation program, the IRR program is a relatively small program. The portion of funds for the IRR program is less than 1 percent of the annual total in guaranteed obligation authority for the surface transportation program, which is approximately $50 billion.

Prior to the enactment of the Transportation Equity Act for the 21st Century (TEA–21), the IRR program was exempt from Obligation Limitation. The lopping off of 9 to 14 percent from the current IRR program for obligation limitation is a significant reduction of spending authority for tribal transportation, which is already severely underfunded. Limited funds are directly impacting the safety and wellbeing of the general public, as well as American Indian citizens.

Innovative Finance

- Establish and provide $20 million start-up funds for an IRR loan program, similar to the State Infrastructure Banks (SIB).

Similar to states governments, tribal governments are dealing with limited resources and inflation issues. The annual inflation costs in Arizona for labor and materials are estimated between 10 to 25 percent. Therefore, tribal governments are beginning to view low-interest loans and construction advancement as viable strategies for efficiently planning and completing transportation projects.

SIB operate similar to banks, offering financial assistance thru loans or credit enhancements for eligible projects. As the loans are repaid, the SIB is replenished,

moneys re-loaned, leading to the SIBs' sustainability. Thirty-two states have active SIB, although all may create them.

An IRR SIB could provide assistance in two ways: (1) loan guarantee program—a pool of money that the state SIB could access in case of defaults and/or (2) loan program—a source of funds to lend to tribal governments. Tribal governments could use the IRR tribal allocations and other sources to repay the loans. More importantly, the BIA would be ensured of repayment, because IRR tribal allocations could be withheld, if the tribal government defaulted on payments.

In 1998, the Arizona SIB, Highway Expansion and Extension Loan Program (HELP), was established to bridge the gap between transportation needs and available revenues. Tribal governments are eligible borrowers for the low-interest loans.

However, four HELP requirements have proved challenging for full tribal participation. The topics of tribal concern have been: (1) waiver of sovereign immunity, (2) dispute resolution in state court, (3) creation of transportation authorities or limited liability corporations (LLC), and (4) disclosure of tribal government assets. In addition, Federal and Arizona laws specify that the Federal SIB dollars are intended to improve the Federal Aid System, State Routes, the National Highway System, and the State Highway System, and not the BIA or tribal road systems.

Tribal solvency is a major issue for Arizona Department of Transportation (ADOT). In the case of local governments, ADOT provides them revenue from the vehicle fuel sales. These funds can be withheld, should a local government default on a loan payment. Unlike local governments, tribal governments are not eligible to receive revenue from the sales of vehicle fuel in Arizona. Therefore, ADOT requires the tribal establishment of LLC. Although, the LLC can be established under tribal codes, ADOT prefers state-chartered corporations, because disputes would then be resolved in state courts, not tribal courts.

Tribal members and governments are eligible to receive reimbursements for only vehicle fuel taxes. Three tribal governments in Arizona have negotiated agreements with ADOT. However, a portion of the remaining tribal governments has not applied because there are no gas stations on the reservations or the negotiations have not delivered results.

It is quite unfortunate that SIB exist, and yet are not structured to benefit all governments with low interest loans. Some tribal governments in Arizona have negotiated loans from banks where tribal funds are deposited. The Inter Tribal Council of Arizona is assisting the tribal governments and the Arizona Commerce and Transportation agencies to explore alternatives to replace the current requirements.

B. Safety

Arizona has been recognized as an "opportunity state" by the Federal Highway Administration, U.S. Department of Transportation. A state that has had a motor vehicle crash (MVC) mortality rate consistently higher than the national MVC mortality rate and has the "opportunity" to make strides in transportation safety.

American Indians in Arizona are a population at risk for injuries and fatalities associated with MVC. Young American Indian men, between the ages of 15 and 35 years, are most at-risk. In Arizona, MVC injury and mortality rates for American Indians have been consistently higher than the statewide rates over the last 25 years.

The 1998–2005 estimated economic losses for American Indian in Arizona totaled approximately $904,431,000. This estimate is based on combined information from the National Safety Council (for fatality estimates) and the Arizona Department of Health (for the number of American Indian MVC fatalities for a select portion of Tribes). Unintentional injuries sustained from MVC are one of the top five causes of death for American Indians in Arizona.

One of the greatest tribal challenges in Arizona has been the automation and analyzation of tribal crash data. To help tribal governments manage MVC issues requires capacity-building programs involving adequate multi year funding and local technical assistance.

In Arizona, tribal crash data are contained in manual environments. This type of system significantly hinders data accessibility and analyses. A manual data system may be inexpensive to maintain, but the labor for extracting and organizing the data is expensive. In depth crash analyses, identifying high crash locations and causation, are not being completed on a regular basis. The BIA Highway Safety Office (BIAHSO) documented the needs in the 2005 final report prepared after the first national assessment of tribal traffic records. The Indian State Traffic Records Assessment report stated:

> Not only must the crash data be accurate, timely and complete, it must also be analyzed thoroughly. This means that the data must be accessible. In general, the more difficult the data are to access, the less likely the crash data will

be studied or analyzed in depth. It did not appear that in depth crash data analyses were conducted by the tribes.

For Arizonans and American Indians, the overall trends in mortality rates due to MVC have decreased over time. However, Figure 1 shows the MVC mortality rates for American Indians have remained much higher than the MVC mortality rates for the general population in Arizona.

The MVC mortality rate for American Indians in the U.S. is nearly twice the rate for general population. The MVC mortality rate for American Indians in Arizona is about four times the rate for the general population in the U.S. Figure 2 illustrates the public safety disparity.

Figure 1: Motor Vehicle Crash Mortality Rates

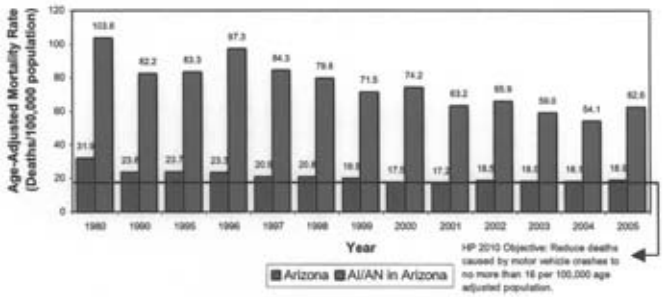


Fig 1: Data Source: Bureau of Public Health Statistics, Arizona Department of Health Services. Arizona Health Status and Vital Statistics Report, 2005.

Figure 2: Motor Vehicle Death Rates, United States and Arizona: American Indians/Alaska Natives and All Races, 1999-2004

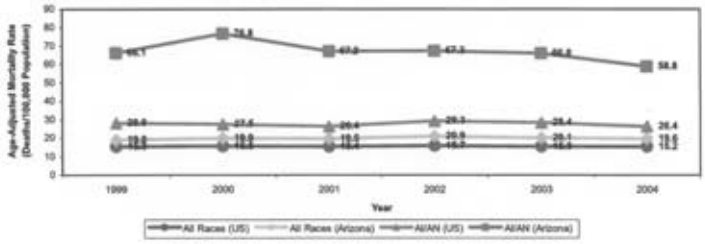


Fig. 2 Data Source: Centers for Disease Control and Prevention, National Center for Injury Prevention and Control. Web-based Injury Statistics Query and Reporting System (WISQARS) [online]. (2005) [cited 2007 Jun 19]. Available from URL: www.cdc.gov/ncipc/wisqars

Reliable Collection of Data to Quantify Road Maintenance Needs

- Institutionalize a process for the reliable and standardized collection of data to quantify road maintenance needs.

The maintenance of roads is a critical transportation safety issue. Sufficient resources are needed for safety improvements, such as: warning and speed signage, pavement marking improvements, roadside vegetation removal for clear zones, effective cattle guards, maintained fencing, nighttime retro reflectivity inspections, scheduled traffic counts, roadway preservation and pothole filling. In Arizona, adequate maintenance resources to complete low cost safety improvements are key to the success of the road safety audits and eliminating roadway and roadside hazards on tribal lands.

Not all BIA regions and agencies or tribal governments that have contracted or compacted maintenance responsibilities are utilizing a standardized maintenance management system. The BIA needs funds to advance the use of this technology and to make it a requirement of the maintenance program.

Tribal governments and the BIA Division of Transportation (BIADOT) prepared with data could document and justify the need for additional staff, equipment, fuel and materials to the Departments of Interior and Transportation and the Office of Management and Budget. To collect maintenance data in the WR, the BIADOT has completed two equipment studies and initiated a maintenance management system. However, full participation by all agencies and tribal governments responsible for road maintenance is not occurring. Limited data hampers not only the maintenance program, but also diminishes support for transportation safety decisions, such as quantifying issues, determining priorities, and targeting resources.

Safety Management System (SMS) for the IRR Program

- Develop and implement a SMS for the IRR program.

Tribal governments need data assistance from BIADOT and the Federal Lands Highway Office to reduce the number of fatalities, injuries and property damage related to MVC on tribal lands. A systematic approach, in conjunction with adequate resources, would greatly improve (1) the coordination and safety related activities of education, enforcement, engineering, emergency medical services (EMS) and injury surveillance; (2) the collection, maintenance and analyses of traffic records; (3) the examination and prioritization of issues or emphasis areas; and (4) the implementation and evaluation of countermeasures.

As states advance improvements to their safety plans, traffic records, and safety programs, the tribal governments, who face the greatest challenges, also need sufficient resources and the program flexibility to protect the public. BIADOT needs to proceed to implement this safety management tool and the rules published in February 27, 2004.

BIA Management of Transportation Safety

- Streamline a process between the BIADOT, BIAHSO and BIA Law Enforcement to manage transportation safety.

Nationally, MVC are one of the leading causes of fatalities and injuries for American Indians. The causation of MVC involving American Indians can be linked to a backlog of unsafe roads, as well as driver and passenger behavior.

In Arizona, many MVC occurring on tribal lands involve single vehicles leaving the roadway, rolling over and smashing into fixed objects along the roadside. Skewed intersections and unattended roadside vegetation limit sight distance for the drivers. Wild and domestic animals on the roadway, lack of retro reflectivity from the signage and pave markings, and inconsistent or non-existent signage are factors contributing to crashes on two-lane rural roads.

Opportunities to establish or broaden tribal safety projects and programs exist thru the Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA), agencies of the U.S. Department of Transportation. The BIADOT receives funds thru the FHWA and NHTSA funds the BIAHSO. However, critical leadership from and coordination between these two BIA offices needs to occur. BIA Law Enforcement and Indian Health Service also play major roles in transportation safety and coordination with these two agencies is essential.

Many programs and funding opportunities are not being promoted to the tribal governments, departments and safety coalitions, including work with EMS, courts, law enforcement, injury surveillance, transportation, education, and substance abuse services. Administratively, BIA is contributing to this public health disparity. Transportation safety needs to be a priority for the BIA.

C. Infrastructure Maintenance

- Increase the funding level of the BIA Road Maintenance Program to meet the safety needs and to protect the IRR investments.

Maintenance funding levels continue to decrease. The tribal transportation and BIA agency staff in the WR have been informed that performance results are not being demonstrated by the BIA, so funding levels have been cut. However, staff are not familiar with the processes being used by the Federal Government to assess and improve agency performance and how this process determines the maintenance funding.

According to the 2004 Program Assessment Rating Tool (PART), the BIA operation and maintenance of roads rating was decided on:

1) States, counties and local governments constructed over 38,000 miles of roads on reservations, but many refused to use their Highway Trust Funds to reconstruct these roads and bridges or provide adequate maintenance; and

2) The program lacks adequate information on the conditions of the reservation roads and bridges.

The Government Performance and Results Act of 1993 (GPRA) Strategic Plan of the Department of the Interior for Fiscal Years (FY) 2007–2012 includes a goal to advance quality communities for Tribes and Alaska Natives. Public safety was incorporated. The two transportation indicators were acceptable levels (according to the Service Level Index) of (17 percent) roads and (51 percent) bridges in 2012.

The operation of BIA roads was evaluated almost 4 years ago. Assessing road and bridge conditions, encouraging states and local governments to meet their road responsibilities and scheduling independent program evaluations does not appear to offer immediate outcomes for the remediation of the maintenance needs or result in sufficient funding levels to address these serious issues.

In FY 2006, the Department of Interior appropriated $4.135 million to the BIA WR to maintain 5,405 miles of BIA roads and 215 BIA bridges. The WR expended $4,178,722 and still didn't have sufficient funds to address all areas of maintenance.

According to BIADOT, the default value for optimum road maintenance is $14,000 per mile. The WR is spending less then $700 per mile. In 2006, maintenance per mile costs averaged $636 for paved roads; $510 for gravel roads; and $65 for improved earth roads. Unimproved earth roads are not maintained.

The IRR bridges within the WR were last inspected in 2005. The inspection identified approximately $3,674,150 of urgent (safety) bridge maintenance needs and another $1,415,299 of non-urgent (routine) bridge maintenance needs. Few bridge needs have been addressed.

Much of the tribal lands within the WR are expansive and the IRR are isolated. Staff travel expenses, including fuel and non-productive time, to and from the work sites are expensive. $256,239 was spent, in 2006, to get employees to and back from the job sites.

According to a 2005 assessment and inventory of WR equipment, one-third is nonnfunctional; one-third is in fair condition; and one-third is operable, but aging equipment. Much of the maintenance equipment is 20–30 years old, parts are difficult to acquire or non-existent, and the operating costs per hour are escalating. In FY 2006, $455,067 was expended by the WR on equipment operations, but no procurement of new equipment.

Signage installation per sign has been averaging $250 to $350, depending on the grade. Raised reflective pavement markers average $6.50 to $7.50 each. To be effective, markers are needed at 30-foot intervals, especially in unlit areas. Signs and raised pavement markers are only being placed or replaced during a construction project. On average, staff salaries have accounted for 62–66 percent of the total WR maintenance budget. In FY 2006, 1.2 percent of the budget was expended on staff training.

2003 WRO Road Maintenance Equipment Inventory

Example of Condition Codes "Scrap" and "Salvage". Property has some value, but repair or rehabilitation is impracticable. Provided courtesy of the BIA Western Regional Office (WRO).

Example of Condition Codes "Repairable" and "Fair". Property requires overhaul and repairs are estimated to range from 16-40% of the original acquisition cost. Provided courtesy of the BIA WRO.

Example of Condition Codes "Priority issue" and "Used poor". Property has less than 3 months shelf life remaining and major repairs will soon be required. Provided courtesy of the BIA WRO.

Example of Condition Codes "Issueable with qualifications" and "Used poor". Property is considerably deteriorated with a 3 to 6 month remaining shelf life. Provided courtesv of the BIA WRO.

There are 13 agencies within the WR. Seven have full time BIA maintenance operations and the remaining six have BIA and/or tribal maintenance operations. All agencies experience severe funding issues and cannot maintain their responsibilities. Following is a description of one of the agencies, as an example of what all WR agencies are encountering.

Fort Apache Agency Road Maintenance Program

The agency is concerned about the level of service being provided to the tribal government, especially in case of snow removals and fire or flood emergencies. Over 50 road maintenance activities are the Agency's responsibilities and are in jeopardy of not being accomplished with the current operating budget. Examples include:

- Equipment will not be repaired, leading to further deterioration.
- Fuel for equipment operations cannot be purchased.
- Safety road signs will not be replaced.
- Road striping will not be done.
- No after-hour emergency response or assistance will be available.
- No road patching material will be available.

- Customer service will be inadequate.
- No coverage for other needs (Salt River Canyon, etc.) will be available.
- Due to a lack of maintenance, reconstruction of roads will accelerate.
- Snow and ice removal response will only take place during regular hours.

In FY 2007, the road maintenance program was funded $475,539 compared to the FY 2006 funding level of $514,035. The program had been operating on an annual average budget of $800,000 in the 1980's.

In 2006, the agency researched the resources available to an ADOT maintenance program located on the reservation. The comparison is charted in the following table.

Topics	BIA	ADOT
Miles of roads to maintain	885.3	128.9
Percentage of total public roads, 1014.2 miles	87%	13%
Annual snow removal expenditures	$42,000	$325,000
Equipment	2-snow plows	5-snow plows
	0-loaders	2-loaders
	1-grader	1-grader
	0-snow plow equipped truck	1-snow plow equipped truck
	0-de-icing truck	1-de-icing truck
	0-snow blower	1-snow blower
	1 backhoe	0-backhoe
Equipment purchase pool: rotation off the inventory when it reaches its service life.	NO	YES
Separately funded striping program	NO	YES
Separately funded signage program	NO	YES
Separately funded bridge maintenance program	NO	YES

Fort Apache Reservation. Example of debris, mud and water on a roadway that resulted from a normal 2004 monsoon. Provided courtesy of BIA Fort Apache Agency.

Fort Apache Reservation. Example of routine snow removal in 2004. Provided courtesy of BIA Fort Apache Agency.

Fort Apache Reservation. Example of a reconstructed street due to lack of routine maintenance. Provided courtesy of BIA Fort Apache Agency.

Fort Apache Reservation. Example of a striping project. Provided courtesy of BIA Fort Apache Agency

D. Congestion and Hyper-Growth

- Require any federally funded transportation project on tribal lands to be included in the Tribal Transportation Improvement Program.

Arizona is one of the fastest growing states in the Nation. Due to an influx of population in concentrated areas of the state and travel demands, tribal governments located in traditionally rural agricultural and forest areas are being impacted by residential, commercial and retail development, as much as the local and State governments.

To alleviate congestion on the arterial access routes, developers, adjacent communities and the state desire to spread the traffic over all the transportation networks. As a result of the expanded growth, the tribal governments are subject to encroachment, unwanted traffic, road widening and safety issues. The external circumstances are affecting tribal resources. The Tribes' IRR program funds are stretched to address numerous demands beyond building BIA-owned roads. Tribal governments are dealing with numerous external meetings, land use plans, economic development, noise, air quality and archaeological resources encroachment.

In an effort to squeeze more homes into residential master planned areas, developers are requesting waivers on buffer zone requirements. Some developers are encroaching upon existing rights of way for roadways, as well as reservation boundaries. One example involves 7,500 homes to be constructed on 2,179 acres adjacent to the tribal lands and the tribal headquarters. Travel demands, under build-out

conditions, are expected to exceed the current two-lane road capacity, so the nearby city has proposed a six-lane arterial roadway in their transportation study.

The map below, provided by the MPO, Maricopa Association of Governments, depicts the Arizona population density for the year 2000 compared to the estimated density for year 2050. The red areas represent population growth and the light grey areas signify the Indian reservations.

E. Tribal Consultation

- Expand the tribal consultation requirements for the States and Metropolitan Planning Organizations (MPO) to include consultation on all federally funded projects, in addition to statewide planning and programming, and the Long Range Transportation Plan.

The traditional Federal approach to achieving a national surface transportation system has been the operation, maintenance and preservation of roads. This has largely been accomplished by fostering the Federal-State relationships and dedicating the majority of resources toward States. The hierarchical system is arranged so States are responsible for working with the tribal and local governments on the statewide transportation programming and planning.

Planning is a major transportation function. However, the typical planning process is expanding beyond the preparation of road projects to transportation management and decision-making for areas, such as air quality, congestion, and the management of safety, access, incidents, vegetation, data, etc.

Involvement from both tribal and local governments is crucial for the development of these types of activities. However, at these levels, the transportation functions and responsibilities vary by jurisdiction, depending on available resources, size, transportation priorities, state constitutional arrangements, and responsiveness to the political agendas. The States need to appreciate these differences and consider the resource limitations, as the consultation processes are developed.

Largely to engage the local governments, the ADOT has structured working and financial arrangements with the MPO and regional councils of governments (COG) to conduct regional planning functions. Tribal government in Arizona may not be paid member of these associations. A small number of tribal staff participate on MPO and COG transportation technical committees. Tribal reasons for not joining the associations vary the association priorities may not align with the tribal priorities, tribal votes don't impact the majority voting outcome, tribal lands may be located in several association areas, etc.

In 2006, ADOT established a tribal government-to-government consultation policy. Since the policy is new, the consultation process is being addressed case-by-case. This has been problematic because tribal governments are either not being consulted or being consulted late in the process. ADOT outsources many activities and the contracts need to be explicit about the tribal consultation process.

Neither sufficient time nor moneys have been designated in the projects' budgets to ensure input for 22 tribal governments. Therefore, the recommendation is being made to expand the current State and MPO consultation and cooperative requirements to include tribal consultation on all projects that are federally funded to ensure that States and MPO follow thru with the consultation requirements.

III. Project Collaboration to Improve Tribal Transportation Safety

Beginning in 2001, the Inter Tribal Council of Arizona, Inc. (ITCA) has persistently pursued resources from various agencies in Arizona to reduce MVC on tribal lands. Due to limited funding, all of the demonstration projects have been supplemented with ITCA and tribal moneys. The projects have been useful for all involved and have served to initiate tribal activities.

However, tribal governments are in need of more than sporadically funded projects. They are in need of ongoing, sustainable programs.

If tribal governments are to comprehensively address the significant loss of lives, they need resources to build capacity. This program approach requires multi-year funding and ongoing technical assistance.

Hualapai Tribe Occupant Protection Goals

A Hualapai Traffic Safety Committee was established to work with ITCA staff to analyze the crash data collected by the tribal police. The analysis helped the Committee to determine four emphasis areas to reduce MVC injuries and fatalities. A work plan was created to structure the goals, objectives and activities for occupant protection, priority one.

No one tribal department administered a traffic safety program, so tribal, Federal and state in-kind services were combined to initiate the occupant protection goals. A FY 2007 grant was awarded by the BIAHSO to employ an officer to coordinate the occupant protection implementation tasks.

White Mountain Apache Tribe (WMAT) and San Carlos Apache Tribe (SCAT) Seatbelt Focus Groups with Young Men

The WMAT and SCAT staff collaborated with ITCA to convene four meetings with young American Indian men, ages of 15 to 25 years. The meeting discussions focused on the young men's perceptions of seatbelt usage and non-usage.

Since young American Indian men are most vulnerable to being injured or killed in MVC, the project concentrated on acquiring their advice to improve seatbelt usage. The project was funded by the ADHS and overseen by a multi-disciplinary advisory committee, including BIA and IHS. The outcome assisted the tribal government staff to develop two different seatbelt approaches to reach their community members.

WMAT and SCAT Seatbelt Campaigns

The WMAT and SCAT, with assistance from ITCA, each established diverse safety coalitions to create seatbelt promotional campaigns appropriate to their tribal membership. Members were recruited from police, fire, EMS, health, housing, transportation, Indian Health Service and the BIA Fort Apache Agency. Each coalition cooperated to design the logos, select appropriate promotional materials and to complete the following activities.

Activities included combined seatbelt and sobriety checkpoints, seatbelt surveys, a community safety night, mock crashes at the high schools, distribution of child restraint systems, newspaper articles and advertisements, radio public service announcements, observational seatbelt studies, citation monitoring and the design and distribution of promotional materials. The roads program at the BIA Fort Apache Agency designed and installed "Buckle-Up" signage on the Fort Apache Reservation.

Tohono O'odham Nation (TON) Road Safety Audit (RSA)

The TON with ITCA's assistance utilized the RSA methodology to identify hazardous roadway issues and to increase interaction with a MPO, Pima Association of Governments (PAG), to reconstruct a safer intersection. The TON RSA project was the first ADOT-sponsored RSA project to be conducted.

The BIADOT Western Region, the BIA Papago Agency, and ADOT Tucson District, assumed responsibilities for the low-cost roadway improvements—pavement markings, signage, vegetation removal, slope reduction, and a cattle guard replacement. TON will be responsible for the enforcement of parking and speeding near the intersection and paying the utility charges for a new street light. To address sight distance, shoulders and turn lanes, the ADOT, BIA, PAG and the TON will work toward a $2 million reconstruction project.

Skewed intersection at IRR Route 15 and State Route 86. Source of the aerial photo is Google Earth.

IRR Route 15 looking southbound. Photo taken by ITCA. Provided courtesy of the TON.

State Route 86 looking eastbound. Photo taken by ITCA. Provided courtesy of TON.

State Route 86 looking east and north. Photo taken by ITCA. Provided courtesy of TON.

Mr. Chairman, this concludes my testimony. I would be pleased to answer questions from the Committee.

The CHAIRMAN. Mr. Forrest, thank you very much.

I think all four of you have described something similar to the Committee, and that is a determination to try to make a difference in improving roads and infrastructure, and yet a lack of resources. All of you have described the planning that you have gone through, the work you have been talking about this morning. We continue to get other information from the agencies to try to determine what they are doing. Right at the moment, for example, we are on the floor of the Senate debating a $640 billion—that is with a B—$640

billion defense authorization bill, with substantial increases in that piece of legislation.

It certainly is a priority to fund the needs of our soldiers and to take on the terrorist fight and all of those issues. But it also remains a priority to take care of things here at home inside this Country. What we are discovering is substantial proposed cuts in many of the domestic spending accounts. We have to try to figure out on this Committee, both from an authorizing standpoint and also recommendations to appropriators, how we come up with different approaches and additional funding to try to address the needs.

So I don't have a lot of questions for you. All of you have submitted substantial statements. I think your contribution today is very important.

Mr. Kashevaroff, you described a circumstance south of Anchorage with a substantial bay. Of course, every time we talk about something here in the Congress, somehow Alaska is different because it is so unbelievably big.

Senator MURKOWSKI. It is different.

[Laughter.]

The CHAIRMAN. It is different, yes. It is very different. Lack of roads, you describe a bay. How large is the bay that you have to cross in order to get to, would you call it getting to the mainland? Tell me the circumstances.

Mr. KASHEVAROFF. It is 13 miles across the bay to get to a paved road that will take you to Anchorage in 4 hours. So to make it from Seldovia to Anchorage, you have to hop on a plane or take a boat, and then drive four more hours.

The CHAIRMAN. And you can't circumnavigate the bay? It is too large for that?

Mr. KASHEVAROFF. Yes. My wife wants a road that takes 60 or 70 miles over mountains to get to the road. So a ferry is what we really need.

The CHAIRMAN. Every part of our Country has different, unusual, unique needs. Alaska in virtually every subject we cover on this Committee, whether it is dentists or roads, they have unique and different needs because it is such an unusual State in its geography.

In North Dakota, Mr. Red Tomahawk, your reservation spans two States, North and South Dakota. How many acres exist on your reservation or square miles, whichever you prefer?

Mr. RED TOMAHAWK. It covers 2.3 million acres.

The CHAIRMAN. And how many miles of roads?

Mr. RED TOMAHAWK. We have over 200 miles of BIA System and Tribally-owned roads and hundreds of miles of state and county routes.

The CHAIRMAN. I have driven a lot of your roads, Mr. Red Tomahawk. I can confirm your concern about the lack of funding, but I also know that the Standing Rock Sioux Tribe has aggressive efforts to try to address them. I appreciate your efforts.

Mr. Garrigan, how many miles of roads exist on your reservation?

Mr. GARRIGAN. Approximately 550 miles, and of that there are only about 54 miles of other roads like State. There are no county

roads on the Red Lake Reservation. There are two State roads that traverse the reservation.

The CHAIRMAN. Mr. Forrest, what is the size of your reservation in square miles or acres?

Mr. FORREST. The reservation is right at one million acres. It fronts along the Colorado River about 108 miles, so a lot of it is just really steep cliff areas. It is a really very beautiful reservation, but a lot of it is very inaccessible.

The CHAIRMAN. Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

And thank you all for your testimony. It has been very important to listen to the facts on the ground, the realities of what you deal with. While the discussion has been about the lack of money and the need for more, certainly toward maintenance, just for general safety and upkeep of the roads, I think Mr. Kashevaroff, you pointed out a real glaring problem that we have with the system, that even when there might be the money there, even when the money is promised, that there are still delays that confound the ability to move forward with a project.

As you described, you are 2 years behind in getting anything moving in providing access for the people of the Seldovia Tribe.

In my mind, that is something that we ought to be able to deal with. If it is a bureaucratic snarl, if there is a problem with getting the money from A to B, we need to be able to figure out how we make that happen in a more efficient manner.

So it is particularly frustrating for me after our experience with the Petersburg Tribe to now see Seldovia in the similar situation. So it is not always about the need to plus-up the budget. It is making sure that the dollars that are available actually get on the ground to make the roads, to make these connections happen.

I am not going to doubt your testimony, but I have never been able to make that trip from Homer to Anchorage in 4 hours. You must be a faster driver than I am, but we won't put you on the hot seat for that.

[Laughter.]

Senator MURKOWSKI. Let me ask you just very quickly whether or not, Mr. Kashevaroff, you believe that the new IRR funding formula that was published back in 2004, do you think that it equitably funds the Alaska tribes? Do you think it is fair?

Mr. KASHEVAROFF. I think that there could be improvements. It really comes down to, as you said, to how it interacts with BIA. When we put roads on our system and then have BIA tell us, no, you can't do that; or a lot of the roads that the villages in Alaska do have might be owned or maintained by the State. Those are the access points we have, and we need to be able to put those roads on the system. Up until at least this year, the State and the BIA have not come to terms on an agreement to add those roads to our system.

So when you hear that the State of Alaska roads increased by 1,800 percent, which is a huge increase in the last decade, but a decade ago very few villages in Alaska were putting anything on the system. We weren't really accessing IRR. Only recently we decided that we realized that we could be accessing IRR, so we started trying to get our inventory on.

Senator MURKOWSKI. Well, it was in 2003. It was June 4. We had Loretta Bullard here before the Committee testifying on this same issue. She told the Committee that a complete inventory of the roads had never been compiled; that the BIA had never surveyed our villages to identify the roads that were eligible for support. That was just in 2003.

So yes, we should be seeing a big step up in terms of the number, because up until 2003, we had not even been registered as far as that goes.

Let me ask just one more question of you. We have this high priority project program that allows for more competitive grants, a process for competitive grants, to help out the funding for the smaller tribes. Is this something that Seldovia has taken advantage of? Are you familiar with this particular program?

Mr. KASHEVAROFF. I don't think we have taken advantage of it yet. Through the ferry project, we have been leveraging funds from Congress and Federal Highways, from BIA, from the State of Alaska. We have been trying to through our self-governance leverage a lot of different funds. So any type of programs like the one you just mentioned are of interest to us.

What we found is, though, that the various pots of money have so many different rules and so many different ideas, even though Congress has said, you know, Federal Highways, you shall treat IRR like ISDEAA or self-governance, we can't actually get them to say, yes, we will recognize it as self- governance funds.

Even the BIA, they will recognize it as self-governance, but they won't deal with us in a government-to-government trustful manner that we could expect. When you negotiate things, you have to have reasonable people on the other side of the table that want to achieve something similar to yourself. I think the culture that we are faced with is a culture of not seeing Indians achieve things, but it is maybe a 1907 culture of, you know, the BIA is going to run the shop for you; we don't care if you want self-governance or not.

As a matter of fact, I have a letter I need to deliver to Senator Dorgan, Chairman Dorgan and you, from the Cheesh-Na Tribe in Alaska who in 2003 had a signed agreement with the BIA for their money, and they haven't gotten it until just recently. They were supposed to get almost $1 million, and they have already started the project, and BIA gave them $35,000 and said, oh, this is all you are supposed to get, even though we had told you we were going to give you almost one million dollars.

I mean, 4 years later they come and cut the budget by a huge percent. That is crazy. They just have this mentality there in the BIA, at least in Alaska, that we are not going to have roads; we are not supposed to be in business.

And so when we are not on the road system, when we are not on the inventory, it is because we have this roadblock. We really need Congress to sit down and tell BIA to get with the program to help the tribes out, instead of trying to hinder the tribes all the time.

Senator MURKOWSKI. Hopefully, some of the testimony that we have had this morning will allow for further discussion with the BIA as to how we move forward and make sure that the funds that are available get on the ground to the tribes to make the difference,

and that we can continue to work to provide for the needs within Indian Country when it comes to transportation and to provide for the health and safety of those that are traveling on the roads.

I couldn't agree with the Chairman more when he says it shouldn't make a difference when you cross over that boundary into a reservation, into Indian Country, that you shouldn't be able to see the change in the conditions. It ought to be seamless. It is not. We have a lot of work on.

I appreciate the Chairman's attention.

The CHAIRMAN. Senator Murkowski, thank you very much.

Once again, let me thank all of you for traveling some distance to be with us. We will benefit greatly from your testimony. It will be one of those issues that we will continue to work on very aggressively here.

Yes, Mr. Red Tomahawk? Do you wish to make one additional comment?

Mr. RED TOMAHAWK. Yes, Mr. Chairman. I want to share with you, I have a letter from the Oglala, Sioux Tribe to you, that I wanted to share for the record, on your issue regarding the comprehensive roads inventory.*

The CHAIRMAN. Without objection.

We will keep the record open for 2 weeks. Any additional testimony that will be submitted, and we would invite submissions from across the Country and from Indian tribal leaders, will be included as part of the permanent record.

This hearing is adjourned.

[Whereupon, at 11:15 a.m., the Committee was adjourned, to reconvene at the call of the Chair.]

*The information referred to has been printed in the Appendix.

A P P E N D I X

PREPARED STATEMENT OF CHADWICK SMITH, PRINCIPAL CHIEF, CHEROKEE NATION

Thank you Mr. Chairman, Ranking Member, and Members of the Committee. I am Chad Smith, Principal Chief of the Cherokee Nation. I appreciate this opportunity to provide you with testimony. I would also like to offer my condolences to the Committee for the passing of Senator Craig Thomas, who committed his time and effort to Indian issues throughout his tenure in the U.S. Senate.

The Cherokee Nation has 270,000 citizens living in almost every state of the Union. Approximately 100,000 Cherokee citizens reside in the 14 county jurisdiction of northeastern Oklahoma. Of these 14 counties, 13 are predominantly rural communities hampered by limited access to vital services and unpaved or inadequate roads. The Cherokee Nation's Roads Department is charged with handling over 1,500 miles of roadway. Because of the disparity between needs and funding, the Council of the Cherokee Nation has appropriated an extra $2 million per year to assist with unmet needs. The Cherokee Nation works with Federal, state, and other tribal entities to collaborate on construction, which is an effective and efficient use of resources. The Nation dedicates a significant amount of its own tax revenues toward joint tribal-state projects, and cooperates with the state on project planning, survey, and execution.

The support of this Committee during the highway reauthorization process was pivotal. You raised the level of awareness of needs in Indian Country, which ultimately helped to increase the level of funding for the Indian Reservation Roads (IRR) program in the "Safe, Accountable, Flexible, Efficient, Transportation Equity Act—A Legacy of Users" (SAFETEA–LU). However, even within Indian Country, little is known about the unique IRR needs of the Cherokee Nation and other tribes in Oklahoma. Therefore I believe it imperative that the Committee have a full understanding of why the IRR program is critical to our future success as tribal nations.

For many tribal members in Oklahoma, a safe and decent transportation system is not a luxury we enjoy. Too frequently I hear of needless and deadly accidents because of unsafe roads. Too often I speak to citizens who cannot retain a job because their vehicles are inoperable. In April 2006, the *Tulsa World* reported that traffic accidents are the leading cause of death among Oklahoma residents under 25 years old. In fact, 38 of the 100 most dangerous roads lie in northeastern Oklahoma within the Cherokee Nation. The highest concentration of fatal and serious-injury crashes in the state was in Cherokee, Ottawa, and Rogers counties—on our lands.[1] Poor visibility, sharp curves, and narrow shoulders are all common within the Cherokee Nation, and are all *fixable conditions.* They can be remedied by safety features such as reflective markers, guard rails, and rumble strips. Increased law enforcement and emergency medical services can decrease unnecessary fatalities. The unique status of Indian land in Oklahoma has prevented the BIA thus far from adequately addressing these issues and adding necessary safety measures.

One of our major concerns has been the reluctance of the BIA to define Cherokee Nation roads as roadways covered by IRR funding. The BIA has previously argued that the Cherokee Nation must own all its lands to receive its funding. *As this Committee saw during the Law Enforcement Hearing, Indian country is a checkerboard of restricted, trust, and non-tribal land—an arrangement that has caused jurisdictional confusion in the past.* However, the close proximity between different categories of land should not preclude IRR funding. The definition of an Indian Reservation Road is one that provides access to all Indians and Indian lands, not just reservations. The Cherokee Nation's transportation system in Oklahoma clearly falls within this definition, and therefore merits IRR funding under SAFETEA–LU. Proper interpretation of the IRR program's application would allow the Nation to

[1] Angel Riggs, "State traffic deaths top U.S. average," *Tulsa World,* April 13, 2006, sec. A, p. 1.

more adequately address the road conditions I described earlier. The current interpretation harms our citizens and other Oklahomans, and also hinders our ability to prosper economically in rural areas.

Another concern is the division between two types of *Federal funding:* construction funding and maintenance funding. The BIA allocates funds for roadway *construction,* but not for *maintenance.* This failure to properly fund road maintenance has prevented the Cherokee Nation from preserving its roads over time. This requires more frequent reconstruction of roads, which is not an efficient use of Federal resources.

We believe that with the help of Congress, the Cherokee Nation will have the power to implement key safety features that will reduce the cause of death. Today, we are experiencing greater volumes of traffic on our roadways than ever before. Commercial expansion has helped us to become more self-sufficient while also producing a greater strain on existing transportation routes. *With the attention of the IRR program and the addition of maintenance funding, the goals of SAFETEA–LU will be realized on our roadways.*

Thank you for this opportunity to present written testimony on behalf of the Cherokee Nation.

CHEESH-NA TRIBAL COUNCIL
Chistochina, AK, July 12, 2007

Hon. BYRON L. DORGAN,
Chairman,
Senate Committee on Indian Affairs,
Washington, DC.

Dear Honorable Dorgan:

In light of the Senate Committee on Indian Affairs hearing on transportation issues, I write this letter to request your assistance in addressing egregious problems with the Bureau of Indian Affairs' (BIA) administration of the Indian Reservation Roads (IRR) Program funds of the Cheesh-na Tribal Council.

Cheesh-na Tribal Council has planned, designed and begun construction on a significant road impovement project serving our community, which we implemented pursuant to our Self-Governance agreements with the Secretary of Interior under the Indian Self-Determination and Education Assistance Act (ISDEAA). In order to make this project feasible, Cheesh-na has sought and received Federal support in addition to the annual allocation of IRR Program funds. For instance, we received support from the Army Corps of Engineers and competed for and received a grant from the IRR High Priority Project fund. Yet, a key funding component for our project is still missing: approximately $815,000 in IRR Program funding obligated for the project from the BIA in FY 2003.

This funding has been the subject of numerous conversations and assurances from BIA that these funds would be distributed to Cheesh-na in our FY 2007 IRR Program Addendum (*see, e.g.,* the attached March 19 letter to LeRoy Gishi and Peggy Exendine). Indeed, this $815,000 in FY 2003 funds is expressly identified as an amount due to Cheesh-na in our FY 2007 IRR Program Addendum (please see attached IRR Program Addendum to Cheesh-na's FY 2007 Funding Agreement, page 2, footnote 2, which identifies the cost codes and total amounts due under that Agreement).

Based on these assurances from BIA and the terms of FY 2007 agreement with the Secretary, Cheesh-na has engaged contractors to complete construction of the road project this summer. We have received our first bill in the amount of $700,000. Meanwhile, when BIA transferred funding to Cheesh-na this week purportedly pursuant to our FY 2007 IRR Program Addendum, the amount we received was only $35,632.06. We have sought clarification from the BIA Division of Transportation Chief LeRoy Gishi, but have not received a response.

Cheesh-na must receive the full amount of IRR Program funding set forth in our agreement immediately in order for this critical project to proceed. Given the extreme urgency of the situation, Don Kashevaroff has agreed to raise our concerns in his testimony before the Committee. We urge your assistance in overseeing BIA's proper administration of its agreement with the Cheesh-na Tribal Council.

Sincerely,

ELAINE SINYON,
Tribal Administrator.

cc: Senator Lisa Murkowski; Cheesh-na Tribal Council.

Attachments

HOBBS, STRAUS, DEAN & WALKER, LLP
Washington DC, March 19, 2007

Mr. LEROY GISHI,
Chief, Division of Transportation,
Bureau of Indian Affairs,
Washington, DC.

Ms. PEGGY EXENDINE,
Transportation Director,
Juneau Area Office,
Bureau of Indian Affairs,
Juneau, AK.

RE: CHEESH-NA TRIBAL COUNCIL FY 2003 POO FUNDS

Dear Mr. Gishi and Ms. Exendine:

This letter is to confirm our telephone conversations regarding the distribution of road construction funding obligated to the Cheesh-na Tribal Council (Christochina) ("Cheesh-na") in FY 2003 will be distributed in the coming weeks. Based on those conversations, we understand that roads construction funds in the amount of $814,257 (from FY 2003 Point of Obligation (POO) funds listed below) will be provided to Cheesh-na when the Bureau of Indian Affairs (BIA) distributes remaining balances of prior year Indian Reservation Roads (IRR) Program funds (the "August distribution" funds). We understand that the BIA is currently reconciling accounts and that in the coming days or weeks, BIA Central Office will distribute those funds to the BIA Regions, which will then re-allocate those funds to the tribes.

Each of you confirmed in our conversations that the BIA has established mechanisms and processes so that the amount of funds due to Cheesh-na from 2003, will be included as part of the funding distributed to Cheesh-na in FY 2007. We further understand that these funds will be made available to Cheesh-na under its IRR Addendum to its self-governance agreement through the Office of Self-Governance. The amount of FY 2003 funds that will be made available to Cheesh-na in FY 2007 is $814,257. This amount represents the total of two FY 2003 obligations to Cheesh-na for its roads construction project that were previously identified as follows:

2003 POO Funds: $296,675.00 (E00450/2003/F3109/E0210700/252i)
2003 POO Funds: $517,582.00 (E00450/2003/F3110/E0210700/252i)
Total: $814,257.00

This funding is absolutely necessary for Cheesh-na to carry out its planned road construction project this year. Cheesh-na looks forward to receiving these funds as soon as possible. Thank you for your assistance.

Sincerely,

HOBBS, STRAUS, DEAN & WALKER, LLP
By: F. Michael Willis

cc: Ken Reinfeld, OSG

INDIAN RESERVATION ROADS (IRR) PROGRAM ADDENDUM TO THE FY 2007 ANNUAL FUNDING AGREEMENT BETWEEN THE CHEESH-NA TRIBAL COUNCIL AND THE UNITED STATES OF AMERICA

Section 1. Authority

This Addendum to the Annual Funding Agreement ("AFA") is entered into by and between the Cheesh-Na Tribal Council ("Tribe") and the United States of America ("United States"), acting through the Secretary of the Interior or an authorized designee ("Secretary"), pursuant to the authorities set forth in the Tribal Self-Governance Act of 1994, Title IV of Public Law 93-638, as amended, ("Act"); Title 23 of the United States Code, as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users ("SAFETEA-LU"), Public Law 109-59, 119 Stat. 1144 (August 10, 2005); 25 C.F.R. Part 170; and 25 C.F.R. Part 1000. Except where otherwise noted herein, this Addendum is subject to all provisions of the Tribe's AFA and the Compact of Self-Governance between the Tribe and the Secretary ("Compact").

Section 2. Effective Date

This Addendum shall become effective as of the date of its execution by authorized representatives of the Tribe and the Secretary and shall remain in effect until terminated or renegotiated by mutual agreement of the Parties.

Section 3. Purpose

The Tribe's AFA and this Addendum transfer to the Tribe all the funding and the responsibility for its share of the Indian Reservation Roads Program, including all highway and bridge programs authorized to be assumed under the Act; 25 C.F.R. Part 170; and Chapter 2 of Title 23 of the United States Code, as amended, (hereafter collectively referred to as the "IRR Program"), including those programs, functions, services, and activities, or portions thereof (collectively, "PFSAs") which that are specifically or functionally related to the administration of the IRR Program and are otherwise provided by the Secretary to the Tribe. In the event of a conflict between this Addendum and the Tribe's AFA, the provisions of this Addendum shall control solely with respect to the PFSAs authorized to be assumed under this Addendum.

Section 4. Use of Tribal Facilities and Purchase of Equipment

Subject to a Transportation Improvement Program approved by the Federal Highways Administration ("FHWA-approved TIP"), the Tribe may make available facilities and equipment that it owns, at industry standard lease or rental rates, in order to

carry out the purposes of this Addendum. The Parties agree that, subject to an FHWA-approved TIP, the Tribe shall be permitted to utilize IRR Program and other FHWA funds awarded under the Tribe's AFA to pay such lease/rental rates and to maintain such equipment when performing PFSAs under this Addendum. For purposes of this Addendum, in those cases where the Tribe reasonably determines that the purchase of equipment is more cost effective than the leasing of equipment, the Parties agree that, subject to an FHWA-approved TIP, the purchase of equipment shall be an allowable cost to the Tribe. The purchase of road maintenance equipment shall be subject to the twenty-five percent (25%) limitation on the use of IRR Program funds set forth in 23 U.S.C. § 204(c), as amended by SAFETEA-LU § 1119(i).

Section 5. Limitation of Costs

The Tribe shall not be obligated to continue performance that requires an expenditure of funds in excess of the amount of funds awarded under the Tribe's AFA to perform the PFSAs authorized under this Addendum.

Section 6. Time and Method of Payment

The total amount of estimated funding provided under this Addendum is identified below:

IRR Program Funds:	FY 2007 (prior)[1]	FY 2007
IRR Construction Funds	$ TBD[2]	$ TBD
Population Adjustment Factor Funds	$ TBD	$ TBD
Transportation Planning Funds	$ TBD	$ TBD
High Priority Project Funds	$ TBD	$ N/A
Total Addendum Funding Amount:	$ TBD	$ TBD

In accordance with 23 U.S.C. § 202(d)(2), as amended by SAFETEA-LU § 1119(c)(2), the Secretary, acting at the option of the Tribe through the Office of Self-Governance ("OSG") as sub-allottee, shall pay to the Tribe or its designee, through an electronic fund transfer in a single annual lump sum, all the IRR Program and related

[1] Redistributed prior year funds.

[2] This number is made up of Cheesh-na's undistributed construction allocation from prior years. In addition to undistributed amounts from FY 2006, this amount shall include approximately $815,000 in Point of Obligation funds carried forward from the following costs codes and in the following approximate amounts:

(E00450/2003/F3109/E0210700/252i)	$296,675.00
(E00450/2003/F3110/E0210700/252i)	$517,582.00
Total:	$814,257.00.

transportation program funds identified in the Tribe's AFA within 30 days after the funds are made available to the Secretary from the FHWA. Upon the receipt of funds from the FHWA, the Secretary shall notify the Tribe or its designee in writing that the funds are available for payment.

The total funds awarded under the Tribe's AFA for PFSAs authorized to be performed under this Addendum will be adjusted to reflect all funding in the IRR Program authorized by SAFETEA-LU and any eligible appropriations made available to the Secretary or passed through to the BIA from the FHWA for transportation projects identified for the Tribe. In addition, the Tribe will receive:

(1) all supportive administrative funds in accordance with 23 U.S.C. § 202(d)(3)(B) and

(2) special allocations attributable to any IRR Program and IRR Bridge Program funds, IRR High Priority Project funds, or Population Adjustment Factor funds identified for the Tribe if any such funds become available during the effective term of this Addendum.

The Tribe shall be eligible to receive additional IRR Program funds on the same basis as other Indian tribes according to the Tribal Transportation Allocation Methodology set forth in 25 C.F.R. Part 170, as well as other eligible funds available to the Tribe on a competitive, formula, or other basis.

Section 7. Contract Support Costs

Pursuant to 25 C.F.R. §§ 170.607-170.608, Contract Support Costs ("CSCs") are an eligible item out of a tribe's IRR Program allocation and need to be included in a Tribe's program budget. The Parties acknowledge that no additional IRR Program funds are available to pay CSCs to the Tribe with regard to the PFSAs assumed under this Addendum.

Section 8. Use of Funds and Flexible Financing

A. Payments to the Tribe shall be subject to the availability of the appropriation of funds by the Congress of the United States. Pursuant to 23 U.S.C. § 202(d)(3) and 25 U.S.C. § 450j-1(a)(1), all funds shall be paid to the Tribe without regard to the organizational level at which the Department of the Interior has previously carried out the PFSAs involved.

B. The Tribe shall use the IRR Program funds advanced under the Tribe's AFA to perform eligible PFSAs authorized under 23 U.S.C. § 202(d) and 25 C.F.R. Part 170, as amended by SAFETEA-LU, other applicable laws, and as authorized under this Addendum. The Tribe reserves the right to reprogram funds among the eligible projects identified on an FHWA-approved IRR Transportation

Improvement Program (IRRTIP), so long as such funds are used in accordance with Federal appropriations law.

C. The Tribe may use IRR Program funds provided under the Tribe's AFA for flexible financing as provided in 23 U.S.C. § 122, 25 C.F.R. §§ 170.300-170.303, and other applicable laws, provided that the Tribe enters into an Advance Construction Agreement and Project Agreement, when applicable.

D. The Tribe may issue bonds or enter into other debt financing instruments under 23 U.S.C. § 122 with the expectation of payment of IRR Program funds to satisfy the instruments. The Parties acknowledge that this Addendum does not create a commitment, guarantee, or obligation on the part of the United States to provide for payment of debts of the Tribe to third parties for loan principal or interest on any debt financing instrument that the Tribe may enter into, nor does this Addendum create any right of a third party against the United States for payment under any debt financing instrument that the Tribe may enter into.

E. The Tribe may use IRR Program funds awarded under the Tribe's AFA to meet matching or cost participation requirements for any Federal or non-Federal transit grant or program.

Section 9. Reporting

The Tribe will provide the Secretary with an annual financial status report within 90 calendar days after the end of the fiscal year. This report, which may consist of an electronic entry to the OSG database, will contain a recording of obligations and expenditures for the work accomplished to date, based on activity.

Section 10. Buyback of Services and Retained Funds

A. Buyback of Services: The United States may, at its option, accept and utilize funds returned by the Tribe as a payment for services rendered or through some other funding arrangement as a buy back of services to perform PFSAs for the benefit of the Tribe. In the event that the buy back of services option is employed, the Secretary shall, upon written request from the Tribe, promptly report to the Tribe in writing on the accomplishments of the Secretary and the obligation/expenditure of the funds and return to the Tribe's any unobligated or unexpended funds.

B. Retained Funds: Through the Tribe's AFA or reprogramming documents, the Tribe and the Secretary may negotiate and agree to an amount of funds to be retained by the Secretary to perform any PFSAs identified in writing.

1. Upon written request, the Secretary shall provide the Tribe with a project/program accounting and accomplishment report for the PFSAs performed.

2. Upon written notice, the Tribe may choose to perform any or all PFSAs previously identified for performance by the Secretary. The Secretary will provide a project/program accounting to the Tribe and immediately return any unobligated or unexpended funds to the Tribe.

3. ~~No later than 60 days after the end of the fiscal year, the Secretary shall reconcile all of its expenditures incurred on behalf of the Tribe through the end of the fiscal year and estimate its projected expenditures on behalf of the Tribe through the end of the Federal fiscal year. In the event that unexpended retained funds are projected to remain at the end of the Federal fiscal year, the Secretary shall return the projected unexpended funds to the Tribe no later than 90 days after the end of the fiscal year.~~

Section 11. Obligations of the Tribe

The PFSAs covered by this Addendum are:

- Transportation Planning;
- Program Management and Administration;
- Project Development, including, but not limited to, Plans, Specifications and Estimates (PS&E) Development and Approval;
- Construction;
- Construction Management;
- Construction Engineering; and
- Transportation Facility Maintenance.

In carrying out the responsibilities and obligations of the Tribe pursuant to this Addendum, Title IV of the Act and Title 23 of the United States Code, and within available IRR Program funding, the Tribe:

A. Agrees to carry out a transportation planning process for the BIA to maintain an inventory of roads and bridges for the Tribe, and to support funding, prioritization, and programming of IRR Program projects by implementing a current Control Schedule and Transportation Improvement Program (TIP); and

B. Assures the Secretary that it will meet or exceed applicable health and safety standards related to the administration, planning, design, and construction PFSAs assumed under this Addendum. To this end, and within available funding, the Tribe will provide all necessary qualified personnel (including licensed engineers to perform the design phase), equipment, materials, and services necessary to

administer the PFSAs in compliance with 25 C.F.R. Part 170, as modified by SAFETEA-LU. In the event that the above-cited regulatory provisions conflict with the provisions of SAFETEA-LU, the provisions of SAFETEA-LU shall govern. The Tribe may, at its option, choose to apply certain other guidelines upon prior written notice to the Secretary, including but not limited to, the October 28, 1987 draft or the most recent revision of 57 BIAM; the Program Agreement between the BIA and FHWA; and other Federal directives, program memoranda or regulations (including Federal Acquisition Regulations). Additionally, the Tribe may, at its option, develop Tribal policies, procedures, program guidelines and memoranda which meet or exceed federal standards to facilitate operation of any aspect of the IRR Program assumed by the Tribe under this Addendum; and

C. Agrees to perform all Plan, Specification and Estimate (PS&E) review and approvals for projects developed under this Addendum in accordance with 23 U.S.C. § 202(d)(2), as amended by SAFETEA-LU § 1119(e), and provide a file copy of the approved PS&E to the BIA or the facility owner, in full compliance with the statutory and quality assurance requirements made applicable under this Addendum; and

D. Agrees to obtain all right-of-way and utility agreements necessary for construction. The Tribe further agrees to prepare all environmental and archaeological documents necessary for approval in accordance with applicable laws. Nothing in this Addendum, or performed pursuant to this Addendum, shall act to diminish the inherent sovereign governmental authority and jurisdiction of the Tribe over its members and trust, restricted, or allotted land within its territory. At the option of the Tribe, all recorded deeds or other instruments transferring title to real property acquired in whole or in part with Addendum funds shall include a written statement that the deed or other instrument shall not be construed to diminish the Tribe's inherent sovereign governmental authority and jurisdiction over its members and trust, restricted, or allotted land within its territory; and

E. Assures the United States that all IRR Program projects constructed under this Addendum will comply with the approved PS&E and the construction standards set forth in this Addendum.

Section 12. Obligations of the United States

The Secretary shall:

A. Administer this Addendum in compliance with the Act, SAFETEA-LU, 25 C.F.R. Part 1000 and 25 C.F.R. Part 170. In event that the above-cited regulatory provisions conflict with the provisions of SAFETEA-LU, the BIA and OSG shall comply with the provisions of SAFETEA-LU; and

B. Through the BIA, participate in a final inspection of construction projects, in accordance with 25 C.F.R. § 170.473; and

C. Upon the request of the Tribe, promptly advise the Tribe of the status of the BIA's updates of the IRR Inventory and the IRRTIP approval process and make copies of this information available to the Tribe; and

D. Through the BIA, satisfactorily perform all retained functions as follows: None.

CHEESH-NA TRIBAL COUNCIL

James Pence, Vice-President — Date 6/4/07

UNITED STATES OF AMERICA

for Assistant Secretary—Indian Affairs or Delegate — Date JUL 0 2 2007

OGLALA SIOUX TRIBE—OFFICE OF THE PRESIDENT
Pine Ridge, SD, July 10, 2007

Hon. BYRON L. DORGAN,
Chairman,
Senate Committee on Indian Affairs,
Washington, DC.

RE: INDIAN RESERVATION ROADS (IRR) FUNDING BEING USED FOR STATE AND COUNTY ROAD CONSTRUCTION PROJECTS

Honorable Senator Dorgan:

The Oglala Sioux Tribe is writing this letter to inform you of a funding situation that ultimately reduces the amount of annual appropriations our Tribe and that the majority of other large lands based Tribes receive from the Indian Reservation Roads Program for construction. A very large share of these dollars is going to construct roads under the jurisdiction of State and County governments.

There was a Final Rule published in the Federal Register on July 19, 2004 for the Indian Reservation Roads (IRR) Program. Inside that rule 25 CFR Part 170.226 establishes the need for Tribes to *expand their inventories for funding purposes.* CFR 25 Part 170.442 specifies that Tribes, Reservations, BIA, Agency, Region, Congressional District, State and County roads can be placed on each Tribes inventory. Prior to Public Law 109–59 Safe, Accountable Flexible, Efficient, Transportation equity Act—A Legacy for Users (SAFETEA–LU) and 25 CFR, Part 170 there was an annual 2 percent cap on the amount of added inventory items each Tribe could claim. This cap no longer exists and Tribes are allowed to place any number of roads including "proposed roads that don't even exist yet" on their inventories. Since 25 CFR Part 170.442 plays a key role in allowing Tribes to include any amount of State and County roads on their IRR inventory, it has proven disastrous for the Oglala Sioux Tribe and for many other large land base Tribes throughout the country including the Navajo Nation. In the Great Plains Region alone, we lost approximately $4 million and are anticipating losing similar amounts for FY07. This is devastating for our region in terms of funding for road construction projects.

During Transportation Equity Act of the Twenty First Century (TEA–21) Tribes divided an annual fund nationally budgeted at $275 million using a Relative Need Distribution Formula (RNDF). The Oglala's share of IRR Program funds was at $5,036,000.00. With the passage of SAFETEA–LU and 25 CFR Part 170 all Tribes should have seen an increase of funds due to the annual step increase in appropriations from $275 million in FY04 to $450 million by FY09. This is not the case due to the specific language in 25 CFR Part 170.442 allowing each Tribe to add State and Country roads and in effect drastically modify their Relative Need. Our Tribe has lost nearly $2 million last year and is facing another loss of approximately the

same amount for this year. We were funded at around $3.1 million for FY06. We are looking at even less numbers for FY07. For those 2 years the Oglala Sioux Tribe is losing in the neighborhood of $4 million for road construction. We already have more than a $66 million backlog for road construction under TEA–21 and since we are forced to add State and County roads under SAFETEA–LU to our system as well, we are now facing a $360 million construction backlog. A very large majority of Tribes all across America are experiencing the same problem. This can be directly related to an unfair advantage that some Tribes have taken to update their inventory. I do not wish to target a specific Tribe or State however data has shown that the Eastern Oklahoma Tribe has been reaping huge and unfair benefits in terms of funding from the changes in the most recent Transportation Bill. They have far exceeded their Relative Need by many times. *Eastern Oklahoma Tribes are undoubtedly financing County and State road construction projects with a windfall of Indian Reservation Roads construction funds. These State and County road systems are normally and traditionally being fully funded through another source. Yet, the language in SAFETEA–LU and 25 CFR Part 170 allows State and County road systems to be supplemented with Indian Reservation Roads dollars.* The land base and need within Oklahoma prior to CFR 25 Part 170 and SAFETEA–LU is extremely small compared to the Oglala Sioux or Standing Rock Sioux or Rosebud Sioux or Cheyenne River Sioux or the Navajo Nation. To my knowledge, the Oklahoma Tribes do not have any Indian Reservation Roads listed on their inventory. In other words, they have "zero" miles of IRR roads. But due to the changes in the Transportation law, it has been said that they are receiving in the neighborhood of $8 million to construct State and County roads. Nothing goes to IRR roads because they do not have any IRR roads. If you review the attachment I have provided, I have highlighted language in PL 109–59, "including communities in former Indian reservations in Oklahoma" and further, "which the majority of residents are American Indians." With that particular language, how does the entire State become involved? Because we are only talking about "where the majority of residents are American Indian." the entire State is obviously not made up of a large community consisting of only American Indians! For example, are they suggesting that the entire city of Tulsa is made up of an Indian community? That is very unlikely.

The Great Sioux Nation still recognizes the 1868 Treaty with the United States where in Article 2 it basically states that everything west of the east bank of the Missouri River in South Dakota has been set apart for the absolute and undisturbed use and occupation of Sioux Tribes. If any Tribes in the Great Sioux Nation laid claim to the FY 2006 road system within the 1868 territory as defined in Article 2 of that Treaty, they would be potentially increasing their inventories by incredible amounts. The State of South Dakota was established in 1889. This was 21 years after the signing of the 1868 Treaty with the Great Sioux Nation. Which brings up the question of how was South Dakota and its Counties established within an Indian Territory? Since State governments do not have jurisdiction on Indian Reservations why are County governments allowed to exercise authority on Indian Reservations? This leads to the questions of why do Tribes have to get certifications from State and County governments in Indian Territory? If Oklahoma Tribes are claiming the entire State of Oklahoma as Indian Territory, then why can't the Great Sioux Nation claim all of South Dakota and increase their road inventories accordingly? This is an issue that the Tribal Chairmen's Association in the Great Plains Region should address. Additionally, we are in the middle of adding all the Mni Wiconi pipe line access roads to the IRR system. As you know this is the largest pipe line in the world and the Oglala's own it. At my direction, my Transportation staff is taking the inventory all the way to Ft. Pierre, SD. Roads leading to drinking water sources are eligible to be included in the IRR invt(ntory.

On the subject of how to calculate the Cost to Construct (CTC) and Vehicle Miles Traveled (VMT), in 25 CFR Part 170, Appendix C to Subpart C(10)(see the entire citation below), contains guidance on how to claim 100 percent CTC and VMT on added inventories.

- *10. Do all IRR Transportation Facilities in the IRR Inventory Count at 100 Percent of their CTC and VMT?* No. The CTC and VMT must be computed at the non-Federal share requirement for matching funds for any transportation facility that is added to the IRR inventory and is eligible or funding for construction or reconstruction with Federal funds, other than Federal Lands Highway program funds.
- However, if a facility falls into one or more of the following categories, then the CTC and VMT factors must be computed at 100 percent:

- (1) The transportation facility was approved, included, and funded at 100 percent of CTC and VMT in the IRR Inventory for funding purposes prior to the issuance of these regulations.
- (2) The facility is not eligible for funding for construction or reconstruction with Federal funds, other than Federal Lands Highway programs funds; or
- (3) The facility is eligible for funding for construction or reconstruction with Federal funds, however, the public authority responsible for maintenance of the facility provides certification of maintenance responsibility and its inability to provide funding for the project.

Initially, there was confusion in the legal interpretation of this language and most BIA regions were requiring Memorandums of Understanding (MOU's) between Tribes, States and Counties to increase the inventory. The Oglala Sioux was one of the Tribes who interpreted the citation to mean that the Tribes needed certification letters from States and County's rather that MOU's. Tribes eventually received clarification to that question through a policy on minimum attachments letter dated June 15, 2006 and authored by Mr. Ragsdale who is the Director of the Bureau of Indian Affairs. That letter recognized that Tribes had an option to enter into MOU's with States and Counties for an "Acknowledgement of Public Authority" but it was *not required.* The letter also clarified the language in 25 CFR Part 170, Appendix C to Subpart C, that Tribes must get a certification letter from States and Counties acknowledging that the "public authority responsible for maintenance of the facility provides certification of maintenance responsibility *and its inability to provide funding for the project*." The first part of the quotation is optional and the second part (italicized) is required. Combined with 25 CFR, Part 170.442, this is where the root of the problem lies. Mr. Ragsdale's interpretation is correct but the citation is devastating to most Tribes. At the risk of sounding repetitious, due to this language some Tribes are unfairly taking advantage of adding State and County roads of their systems causing an unfair increase in funding for those Tribes and a total disruption of the Relative Need. Another question that needs to be answered is why should a Tribe have to get this certification when State law requires counties to maintain their road system? We have an issue with Jackson County who refuses to sign certification letters. This is causing the Oglala's to lose funding because we cannot get this document (as required in the above citation) placed in a package for submittal and ultimate approval by BIADOT. Since all county roads are on the States inventory, we are going to ask the State of South Dakota to provide the certification letter for the counties and possibly get around this issue.

The Oglala Sioux Tribe is also questioning BIADOT's interpretation of counting added road inventories at 20 percent vs. 100 percent when State and County governments do not sign certifications. In 25 CFR Part 170.444(f) BIA Regional Office certifies the data that was submitted by the Tribes then forwards it to BIADOT. BIADOT then approves those submissions before they are included in the National IRR Inventory. Once again and in the Oglala Sioux Tribes case, Jackson County did not sign certifications. We submitted data with the Counties road miles anyway with a letter explaining that the County refused to cooperate. The BIA Regional office accepted the data and letter then forwarded it to BIADOT. BIADOT returned the data to the Regional Office as unacceptable because of the lack of a County Certification letter. Because BIA Regional Office accepted the data and letter from the Oglala Sioux Tribe explaining the situation our Tribe should have been able to count the added County miles as 100 percent CTC or at the very least at 20 percent because of the language in Appendix C to Subpart C, which I will briefly cite that *CTC and VMT can be counted at the non-Federal share requirement for matching funds for any transportation project that is added to the IRR inventory and is eligible or funding for construction or reconstruction with Federal funds, other than Federal Lands Highway program funds.* The issue to acceptance of the updated inventory is between BIA Regional Office and BIADOT as the Tribes data has already been accepted by BIA. BIADOT simply will not enter the needed data for the Oglala Sioux Tribe into the National IRR inventory because the County did not submit a certification letter. This has the direct affect of causing the Oglala's to lose more funding for road construction.

BIA representatives are anticipating the fluctuations in funding to level out in a few years as other tribes update their inventories but some Tribes cannot get their respective counties to sign certifications. Those Tribes who cannot update their inventories by adding county roads because they are lacking cooperation with certain County governments will remain under funded. As mentioned before, even if certifications were signed, the new inventories have a potential of being so lopsided that some Tribes will never be able to recover what they had prior to SAFETEA–LU. The counties who do not sign certifications are actually holding Tribes IRR funding hos-

tage and allowing funding, which was more fairly distributed prior to the enactment of 25 CFR Part 170, to be redistributed elsewhere. Then the opposite exists for those States and Counties who have already signed certifications, large amounts of IRR road construction funds are going to be used to construct State and County roads.

Because of the language in CFR 25 Part 170, and even though all Tribes update their inventories to their maximum potential, most Tribes can only sit by and watch as their funding continues to dwindle while within the Midwest Region and the entire State of Oklahoma takes advantage of a fund that should rightfully belong to all the Indian Tribes rather than State and Counties governments.

25 CFR Part 170.155 established the Indian Reservation Roads Program Coordinating Committee. The committee consists of 12 primary members from Indian Tribes (one from each region), 12 alternate members from Indian Tribes and 2 nonvoting Federal representatives, one being from FHWA and the other from BIA. They are basically charged with providing input and making recommendations on most of the items within the Final Rule (25 CFR Part 170). A few and I would like to re-iterate the word "few," of those members are very crafty and are utilizing the 25 CFR Part 170 to gain a very distinct advantage over other Tribes in terms of increasing the road inventory to gain additional funds for their respective State and County road systems. At this point they can rightfully do so because it is allowed in the law. All members on the Coordinating Committee can literally be considered experts in the field of Indian Reservation Roads and Transportation facilities. Which leads to the age old saying, "If you put a fox in the henhouse to watch the hens, who is watching the fox?"

25 CFR Part 170.4 poses the question of "What is the effect of this part on existing Tribal rights?" In (c) of that section the answer is; *"This part does not terminate or reduce the trust responsibility of the United States to Tribes or individual Indians."* The Oglala Sioux Tribe is recommending and requesting a congressional investigation into the funding of State and County road systems using Indian Reservation Roads dollars. We desire to expose the very wide and very negative impact this issue has taken against the majority of large land based Indian Tribes all across the Nation. We believe that this law, although it has corrected much of the underfunding of roads for Tribes, also insidiously diminishes the sovereignty of Tribes by mandating them to create agreements with States/State entities in order to receive funding which is a trust responsibility of the Federal agencies. Our recommendation is to remove the language in 25 CFR Part 170 allowing Tribes to include State and County roads in their inventories and to immediately remove any and all State and County road systems that have been placed on the BIA Indian Reservation Road Inventory under that rule.

If you have any further questions on this subject, please contact my office.

Sincerely,

JOHN YELLOW BIRD-STEELE,
President, Oglala Sioux Tribe.

cc: Pete Red Tomahawk, Chairman, IRRPCC

PREPARED STATEMENT OF THE GILA RIVER INDIAN COMMUNITY

The Gila River Indian Community (the "Community") desires to present this statement for the record in the hearing on tribal transportation issues in Indian Country. As an integral part of creating, improving and planning transportation routes within reservation lands, rights-of-way are a significant factor in any discussion of transportation issues. The Community presents issues of rights-of-way within the Gila River Indian Reservation ("Reservation") that it has encountered.

I. Introduction

The Reservation was established by an Act of Congress in 1859. From 1876 to 1915, seven Executive Orders of the President increased the size of the Reservation to its current size of 372,022 acres. The Reservation is homeland to the Akimel O'odham (Pima) and the Pee-Posh (Maricopa) Tribes. The Reservation is located in south central Arizona, and is the largest reservation in the Phoenix metropolitan area. The Reservation land base is split into seven districts that span over two counties, Maricopa and Pinal. Ninety-four thousand acres of the Reservation is allotted land.

In 1939, the Community was formally established by adoption of its own Constitution. Currently, the Community has over 19,000 enrolled members with approximately 12,000 residing within the Reservation.

Due to the location of the Reservation, the Community is a pivotal player that the State of Arizona and local governrnents must work with as transportation

routes are planned. The Community is surrounded by the rapidly growing cities of Maricopa, Casa Grande, Chandler, and Coolidge. See attached Map. As of July 2006, Pinal County had nearly 300,000 residents, amounting to a 67 percent increase over 6 years.[1]

Pinal County's growth is not expected to slow anytime soon. The population is projected to reach one million residents in the next twenty years.[2] Inevitably, residents of the surrounding communities must travel through the Reservation, posing a serious and growing problem for the Community. The Community Council is consistently asked to respond to overtures from the State of Arizona and local governments inquiring about the Community's willingness to improve, expand, and build new roads through the Reservation.

Key issues that continually surface include (1) whether a right-of-way was established for existing paved and unpaved roads; (2) the ability of the Community to work with the United States and allottees to obtain rights-of-way over allotted land; (3) budgeting for the time and additional resources needed to address highly fractionated allotments; (4) obtaining accurate valuations of rights-of-way over Reservation lands; and (5) creating a comprehensive Reservation-wide land use plan that will meet the needs of the Community while addressing external influences. The Community is in a position to actively participate in a State-wide transportation planning, however the Community's position is often jeopardized by these important issues.

II. The Role of the United States

The Secretary of the Interior ("Secretary") must approve all rights-of-way through Indian Country.[3] To date, the Community is aware of seventy-three rights-of-way through the Reservation. However, that does not equate to the number of paved and unpaved thoroughfares crossing the Reservation. Rights-of-way established prior to 1948 only required the allottee's consent and the Secretary's signature to secure a right-of-way over allotted land. The Secretary could independently grant rights-of-ways over tribal lands without the Community's consent.[4]

Prior to 1997, the Bureau of Indian Affairs (BIA) held the responsibility for all road inventory, maintenance and construction for the Community. In 1997, the Community's Department of Transportation ("GRICDOT") was formally established. In 2000, under a P.L. 93–638 contract, the Community assumed management and operation of all BIA road maintenance programs on the Reservation. The divisions of GRICDOT are: (1) Planning and Rights of Way, (2) Road Construction and Surveying, (3) Road Maintenance, and (4) Fleet Management.

GRICDOT has assumed the responsibility of establishing rights-of-way as needed. This includes obtaining consent from the Community as well as any allottees owning parcels of land the right-of-way will pass through; however, there are various problems with this process. One major complication is finding and contacting each allottee owning land in the planned-project area in order to obtain the requisite consent for a right-of-way. Incomplete wills add to allotment fractionalization, which further enhances the difficulty of getting numerous allottees to agree to a right-of-way and then to agree to waive compensation. In addition, the BIA does not have an efficient system for tracking allottees; therefore, GRICDOT must expend countless resources to get the job done. This complicated process delays road projects and increases costs over time due to inflation. Moreover, because BIA funding for right-of-way acquisition is non-existent, these moneys come out of right-of-way construction funds. Finally, valid documentation of an established right-of-way is often difficult to find due to BIA's flawed recordkeeping over the years. Although the Community is administering existing roads within the Reservation, GRICDOT is limited in its ability to engineer and plan transportation systems that are currently proposed to address a growing external population and its impact on the Community.

III. Rights of Way

In 2005, evidence surfaced of a previously unknown 1933 right-of-way signed by the First Assistant Secretary to Pinal County. In 1933, the Pinal County Board of Supervisors desired to construct Signal Peak Road on the Reservation as a means for farmers to access a major thoroughfare. The right-of-way straddles land within Pinal County and the Reservation boundary and consists of allotted and Community land. The damages to allottee land were deemed nominal; however the United

---

[1] Morrison Institute for Public Policy, *The Future at Pinal: Making Choices, Making Places* 9 (2007), *http://www .asu.edu/copp/morrison/PinalReport.pdf.*

[2] *Id.*

[3] Rights-of-Way Through Indian Lands, 25 U.S.C. §§ 311–328 *et seq.*

[4] *See* Rights-of-Way Over Indian Lands, 25 C.F.R. § 256 (1938).

States waived damages across Community land. In present day, the right-of-way will no longer be used by farmers but by residents of a soon to be built 11,000 home subdivision adjacent to the Reservation. A paved and improved thoroughfare would grant access to an already congested thoroughfare running through the Reservation.

Rights-of-way granted prior to 1948 without Community involvement often negatively impact the Community in the present day. First, the BIA lacks detailed records of existing rights-of-way to provide the Community with notice. Second, the Community desires a structured process for determining the status of all rights-of-way; a process that will allow for consultation between the Community and the United States, and in turn will streamline the notice and consent process with allottees when creating, improving, or expanding any right-of-way. Third, the Community has a strong desire to regulate and participate in activities that affect the Community's land base regardless whether of it is Community or allotted lands and suggests Federal resources to assist in notification and planning a Reservation-wide transportation system.

IV. Recommendations

The Community desires to protect and wisely utilize its land base. As a steward of its most precious resource, the Community needs to make informed and timely decisions regarding land while addressing the Community's pressing transportation issues. In order to effectively construct and maintain roads on the Reservation, the Community has to work within an outdated, incomplete transportation structure. The Community would like BIA to implement right-of-way reform that includes the following elements:

A. Comprehensive Right of Way System

The Community encourages BIA to create a comprehensive right-of-way system that provides current information regarding (1) existing rights-of-way, including the duration, scope, and transferability, etc.; and (2) allottees' interests in land, including a system for communicating with allottees for the purpose of obtaining consent as required in a timely manner.

B. Records Management

Many rights-of-way that were granted in the distant past conveyed long term interests to the grantee. In many instances, these rights were granted for little or no compensation to the tribe or its members. The records to verify the intent of parties and the extent of the rights conveyed as expressed in conveyance and supplemental documents are often non-existent, lost or otherwise unavailable. Even in cases where documents are available, the Community has to request the documents and then wait indeterminate periods of time before receiving anything.

C. Communication

The Community expects written and timely information from BIA regarding any and all right-of-way issues that could potentially impact the Community, including, but not limited to:

a) information regarding third parties' interests in rights-of-way implicating any land within the exterior boundaries of the Reservation;

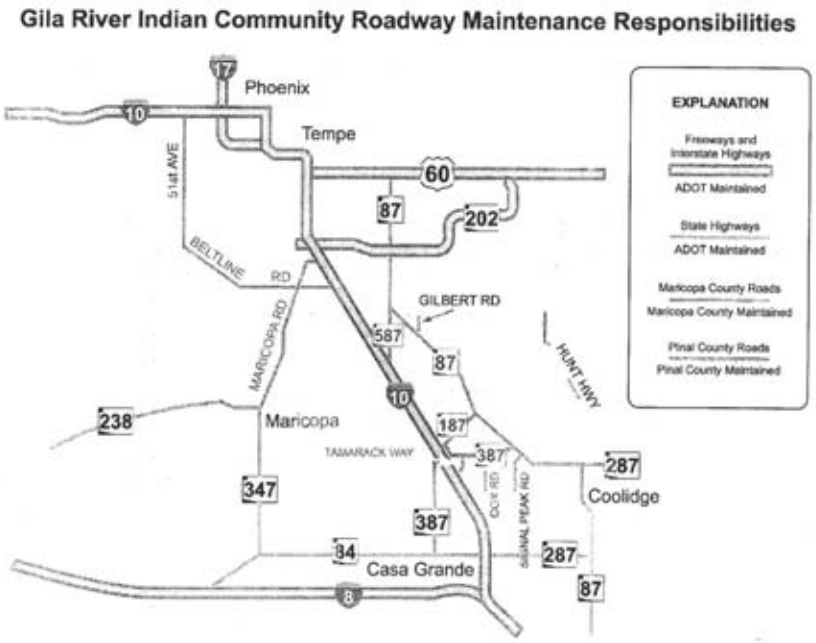
b) timely response to the Community's right-of-way inquiries, and

c) frank, open minded discussions with BIA regarding specific right-of-way issues.

V. Conclusion

The Community is initiating planning for its long term transportation needs as well as responding to the transportation needs of the communities surrounding it. Addressing future transportation needs requires partnering with other local governments and considering innovating ways to address transportation needs. The Community is open to suggestions and discussion regarding right-of-way issues, or any transportation issue, affecting the Reservation's land base.

Thank you for the opportunity to submit comments on this highly complex subject. The Community looks forward to collaborating with Federal, state, and local governments on these significant issues.



PREPARED STATEMENT OF JOANN POLSTON, FIRST CHIEF, HEALY LAKE TRADITIONAL COUNCIL

I. Introduction

Mr. Chairman, and Members of the Committee on Indian Affairs. My name is JoAnn Polston. I am the First Chief of the Healy Lake Traditional Council, and a member of the MENDAS CHA~AG Tribe in Alaska. I have served on the Tribal Council for over 10 years, and I was elected First Chief in October 2005. I work closely with the Healy Lake Transportation Department on issues pertaining to transportation within the Council's jurisdiction. I am also the alternate on the Indian Reservations Roads Program Coordinating Committee for the Alaska Region.

I thank the Committee for giving the MENDAS CHA~AG Tribe an opportunity to share some of its concerns about transportation issues affecting its lands and members. While there have been many improvements in recent years, there is still much work to be done. My testimony will be focused on four specific topics.

II. Delays in the TIP Approval Process Impact Road Construction Projects

The Tribe would like to see the Transportation Improvement Program (TIP) approval process reviewed and streamlined so that projects can be approved and put on the TIP in a timely manner. I can provide an example of how delay in getting routes approved can significantly impact a project.

In August 2006, the Healy Lake Traditional Council entered into a Memorandum of Understanding (MOU) with the Alaska Department of Transportation and Public Facilities for the design and construction of a road to connect the Village of Healy Lake to the State of Alaska road system. Although the MOU was executed almost a year ago, the project still has not been approved on the Current TIP. If the Tribe had to rely on its "tribal share" of Indian Reservation Roads (IRR) funds to fund construction of this project; the Tribe would be unable to use those funds until the road was on the TIP. Fortunately for the Healy Lake Traditional Council, the funds for this project were part of a separate protected section of the SAFETEA–LU appropriation, and the Tribe has been able to proceed.

Other Tribes have not been as fortunate, and the length of time it takes for projects to be approved under TIP prevents many Tribes from moving forward with transportation projects. Road construction costs are rising at unprecedented rates; when Tribes are forced to postpone projects the purchasing power of their already

limited IRR Program funds decreases. Moreover, a simple delay in the TIP approval process can have a profound impact on transportation improvements, impacting not only Tribal members' safety, but also the economic opportunities in villages and communities.

III. Management of the Alaska Tribal Transportation Assistance Program Was Changed Without Tribal Consultation

The Federal Highway Administration (FHWA) provides assistance to Tribes through Tribal Transportation Assistance Programs (TTAP). The TTAPs provide technical assistance to Tribal transportation officials and work with these officials to increase the capacity of Tribal governments to administer transportation programs. The TTAPs provide important training resources for Tribal transportation officials and serve as information clearing houses.

Until very recently, the Tribal Transportation Assistance Program in Alaska (AK TTAP) was managed under a cooperative agreement between the Federal Highway Administration (FHWA) and the Eastern Washington University (EWU). Without consulting with Alaska Tribes, the FHWA recently re-competed the Alaska TTAP and entered into a cooperative agreement with the University of Alaska—Fairbanks (UAF).

We are concerned about this change for two reasons.

First, there was no Tribal consultation during the process. The FHWA did not seek input from Tribes concerning their transportation needs, their satisfaction with the services provided by the EWU TTAP, or their long-term goals for their transportation programs. As a result, Alaska tribes have no assurances that the UAF understands or will be responsive to the needs of Tribal governments. For instance, we understand that UAF intends to focus on "on-the-ground training" for individuals in equipment operation, road maintenance, dust control, and airstrip maintenance. This approach is a departure from that taken by the EWU TTAP and does not correspond with the current needs of Alaska Tribal governments. The highest priority for the AK TTAP should continue to be (1) providing training and a clearinghouse for information about contracting and compacting and all aspects of the IRR Program; and (2) for direct service Tribes, educating them on how to have the BIA accomplish the Tribe's goals. Tribes in Alaska simply do not need technical "on-the-ground" training at this stage in the process.

Second, we are also concerned that FHWA, in selecting UAF to host the AKTTAP, did not take into account the fact that the Alaska Supreme Court has ruled in other circumstances that operating programs for Alaska Natives violates the Alaska Constitution equal protection standards. We are therefore concerned about whether UAF, a State-run institution, can operate an "Indian" program such as TTAP. The result could be a shift in services away from tribal governments to services that support State Department of Transportation projects or the waste of valuable resources defending a lawsuit in State Court. This would defeat the purpose of the TTAP program.

Given that UAF has already received the contract with FHWA, we will work with UAF to receive transportation assistance. However, we note that the award of the contract without Tribal consultation violates longstanding DOT policy as stated in DOT Order 5301.1 (November 16, 1999) to "consult with Indian tribes before taking any actions that may significantly or uniquely affect them." Had the DOT complied with its own policy and consulted with Alaska Tribes *before* awarding (or even soliciting) the TTAP contract, Tribes would have had the opportunity to describe their needs and express their concerns regarding a State-run TTAP program before the FHWA made its decision.

IV. Tribes are Not Receiving IRR Funding in a Timely Manner

Tribes must be able to count on IRR Program funds being available in a timely manner. Delays in distributing IRR Program funds to the Alaska Region and delays in those funds getting distributed to Tribes can prevent Tribes from designing and constructing projects. Timely access to funding is especially critical in Alaska, because the construction season is often 5 months and sometimes less.

For instance, Alaska Tribes only recently received the "notice of availability of funds" in Alaska associated with their Fiscal Year 2007 tribal shares. The notices came to Tribes within the past few weeks, with instructions to Tribes to get their budgets for these amounts prepared and sent in to the Alaska Region. Tribes are told that funds will be swept up and returned to FHWA by August 10, 2007. In other words, Tribal transportation departments are given a few short weeks in the height of the construction season to prepare and submit proposed budgets or else they risk their tribal shares being swept up for another year.

Given the short construction season, untimely receipt IRR Program funds can result in a project not being started 1 year as planned and being rescheduled for the next construction season. The cost of labor, materials, and fuel increase each year, increasing the cost of delayed projects, and requiring changes to project estimates and budgets (causing additional engineer costs).

Timely distribution of funds to the Alaska Region and then to Tribes will allow Tribes to better prepare its projects, and in the end will save on project costs.

V. Additional Funds are Needed for Road Maintenance

Currently, the only source of funding available to most Alaska Tribes for road maintenance is money received through the IRR Program. Tribes can use up to 25 percent of their tribal share for road maintenance. Of course, if these funds are used for maintenance, they cannot be used on other needs, such as designing and constructing safer roads.

Another source of maintenance funding is the BIA Road Maintenance Program. The BIA has taken the position that it is only obligated to maintain facilities owned by the BIA. *Department of the Interior Indian Affairs Budget Justifications Fiscal Year 2008* at IA–CED–4. Because there is only one reservation in Alaska, there are very few BIA-owned transportation facilities. As a result, the entire Alaska region is only allocated a very small share of the total BIA Road Maintenance funds. Alaska has 40 percent of the Nation's Tribes, and it is a very large state with many unsafe roads. Very few Alaska Tribes have access to the BIA Road Maintenance Program funds.

The BIA's policy is not in accord with the regulations that implement the BIA Road Maintenance Program. Under these regulations BIA Road Maintenance funds may be used to maintain not only BIA and Tribally-owned transportation facilities, but may also be used to maintain non-BIA facilities, "if the tribe served by the facility feels that maintenance is required to ensure public health, safety, and economy, and if the tribe executes an agreement with the owning public authority within available funding." 25 C.F.R. § 170.803(a)(2). We ask that the Committee work with us to ensure that the BIA follows its own regulations and allocates funding to the Alaska region on par with the allocations received by the other BIA regions.

We join the Tribes in the rest of the lower forty-eight States in advocating for a significant increase in funding for the BIA Road Maintenance Program. These funds are necessary not merely to safeguard the Federal investment in road construction; more importantly, to safeguard our lives and the lives of future generations. We stress, however, that these funds must be available to Alaska Tribes—as required by regulations—as well as to Tribes with facilities that are owned by the BIA.

VI. Conclusion

Thank you for allowing the MENDAS CHA~AG Tribe to present testimony to this Committee. We appreciate the opportunity to share our concerns about transportation issues in Alaska and the effect of unmet transportation needs on Alaska Natives and all Tribes.

PREPARED STATEMENT OF THE HO-CHUNK NATION

Introduction

The Ho-Chunk Nation of Wisconsin would like to thank the Committee for the opportunity to voice its opinion regarding the Indian Reservation Roads (IRR) Program. The Nation is relatively new in its experience with the IRR Program. It has only been within the last 2 years that the Nation has begun to realize any significant funding from the program and the corresponding benefits. With the assistance from this program, the Ho-Chunk Nation has been able to provide tangible solutions to safety and access problems that have plagued tribal members for many years.

The Nation has only recently been able to more fully participate in the IRR Program because of the relatively recent changes in Federal Code governing this program. These changes have allowed historically underserved tribes to finally access greatly needed funding.

The Ho-Chunk Nation is one of the few tribes in the contiguous 48 states that does not have a single situs reservation, and for purposes of the IRR Program is categorized as a tribe without defined boundaries. This is significant because only until recently, only roads within a reservation were able to receive funding. These changes rectified an inherent discrimination in the program by recognizing that our tribal members faced the same transportation challenges as those who live on a reservation.

The Nation is grateful for its ability to participate in the program and would like to address two issues for consideration by the Committee. We would like to encourage the Committee to first, increase overall funding for the program upon reauthorization, and second, do what it can to maintain the current funding formula at least until all tribes have updated their road inventories.

Overall Funding

As much of the other testimony has pointed out, funding for transportation construction needs in Indian country is still inadequate. The Nation fully supports the recommendation of Mr. Pete Red Tomahawk regarding increasing the funding for the IRR Program by at least $25 million annually in the next highway reauthorization bill.

Not only are construction costs rising, but as more tribes update their individual inventories, more miles will be added to the overall inventory. In fact, thousands of miles of roads have been added to the inventory in recent years. This has reduced some tribe's relative share of funding and created a certain level of animosity between tribes. All tribes have legitimate transportation needs, and deserve adequate funding. It is imperative to ensure adequate funding levels for the program in order to avoid this very counterproductive competition for scarce resources.

Funding Formula

The Ho-Chunk Nation agrees with the position of the Bureau of Indian Affairs, as stated in Mr. Gidner's testimony, that there should be no changes to the current funding formula until all tribes have significantly updated their inventory. The IRR Coordinating Committee has submitted recommendations for modifications of the funding formula to the Secretary. These recommendations would be devastating to a number of tribes in the Midwest region. The Nation believes that once tribes update their inventories, any perceived inequities will self-correct.

The Nation believes the formula should not be changed for the following reasons:

I.) The IRR Program Is Working Just as Congress Intended it to Work

Beginning with the passage of the Transportation Equity Act for the 21st Century (TEA–21) in 1998, Congress has modified the IRR Program so that the funding distribution would balance the interests of all tribes and enable all tribes to participate in the program. In TEA–21, Congress changed the allocation method and included more roads eligible for funding. The old funding formula was changed in order to include smaller and historically underserved tribes. The inventory of roads was expanded to include tribally owned public roads and other IRR eligible transportation facilities identified by tribes to more accurately measure transportation assistance needs and to match the projects on which IRR Program funding is spent.

More recently, Congress passed a law that defined what roads are eligible for inclusion in the IRR Program, clearly identifying an expansion of the inventory. Under the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Congress added language to 23 U.S.C. § 202 to include:

> (IV) community streets or bridges within the exterior boundary of Indian reservations . . . and other recognized Indian communities . . .
>
> (V) primary access routes proposed by tribal governments, including roads between villages, . . .

This expansion of the roads intended to be included in the IRR Program is punctuated by further language from this subsection that directs the Secretary of the DOT that this definition is just a *"minimum"* of what is to be included. Language in the section goes on to say that:

> (iv) Nothing in this subparagraph shall preclude the Secretary from including additional transportation facilities that are eligible for funding under the Indian reservation roads program in the inventory used for the national funding allocation if such additional facilities are included in the inventory in a uniform and consistent manner nationally.

The Nation believes that Congress clearly intended the IRR Program to include more roads that are eligible for funding in order to reflect what the true transportation needs of Indian tribal members are. It is the responsibility of the Department of Interior along with the Department of Transportation to carry out the wishes of policy makers as codified by a law, passed by both houses of Congress, and signed by the President of the United States. The proposed modifications to the Federal regulations currently being contemplated by the IRR Program Coordinating Com-

mittee severely restrict the types and mileage of roads in the program. This is counter to the express intent as stated by Congress and should not be adopted.

II.)Tribes Have Simply Followed the Rules and Should Not Be Penalized for It

The Federal Highway Administration's own "Planning Glossary" updated December 1, 2006, includes an operational definition of IRR Inventory as:

> An inventory of roads which meet the following criteria: . . . (b) public roads that provide access to lands, to groups, villages, and communities in which the majority of residences are Indian, (c) public roads that serve Indian lands not within reservation boundaries, and (d) public roads that serve recognized Indian groups, villages, and isolated communities not located within a reservation.

The Ho-Chunk Nation has been instructed by the Federal Government that this is the rule to follow with regards to what roads can be included in the IRR Program. The Ho-Chunk Nation has been very successful at getting roads included into the eligible inventory. Some of the proposed regulation modifications being considered by the IRR Program Coordinating Committee would retroactively prohibit roads already approved as eligible from receiving any funding. This would be a travesty. It would be completely unfair to the Ho-Chunk Nation and other tribes to have gone through all the required work only to have roads pulled from consideration for funding. *Those modifications must not be adopted.*

Conclusion

The Nation would again like to thank the Committee for holding this hearing and for the opportunity to express our opinion on these issues. We look forward to working with the Committee over the next few years as we all try to address the major transportation needs of tribes.

PREPARED STATEMENT OF C. JOHN HEALY, SR., PRESIDENT/TRANSPORTATION DIRECTOR, FORT BELKNAP INDIAN COMMUNITY

I. Introduction

Mr. Chairman and Members of the Committee on Indian Affairs. My name is John Healy. I am the Transportation Director for the Fort Belknap Indian Community located in North Central Montana. I am also the recently elected President of the Intertribal Transportation Association (ITA), I am also on the Advisory Board for the Northern Plains Tribal Technical Assistance Program which represents 26 Tribes in North Dakota, South Dakota, Wyoming, Montana, and Nebraska. I was also on the joint Tribal-Federal Transportation Equity Act for the 21st Century (TEA–21) Negotiated Rulemaking Committee which drafted the BIA's regulations for the IRR Program before they were finalized by the Department of the Interior. I have worked in the Tribal transportation field for over 13 years.

On behalf of the ITA and member tribes I would like to submit the following comments.

The original concept of ITA was to represent member tribes in the Transportation Area on a National Level. ITA provides a network and forum to discuss vital tribal transportation issues, this is even more important now under SAFETEA–LU.

The Fort Belknap Indian Community Council which is the governing body for the Gros Ventre and Assiniboine Nations on the Fort Belknap Indian Reservation in Montana. The Fort Belknap Indian Reservation is located in the north central part of Montana. It falls approximately forty miles south of the Canadian border from the Providence of Saskatchewan, and twenty miles north of the Missouri River from Robinson Bridge. It is bordered on the east and west by survey lines established when the reservation was created. The reservation encompasses an area of 724,147.6 acres; it is rectangular in shape with an average width of 28 miles wide and 40 miles in length, and has an enrolled membership of 5,256 people. Our on reservation population is approximately 4,000, with approximately 500 miles of Indian Reservation Roads.

The Fort Belknap Indian Community Council and our Chairperson, Julia Doney, recognize the importance of transportation infrastructure as a key to our Tribe's future economic and social well being.

II. Key Recommendations to Improve Tribal Transportation Policies

Nearly 20 years ago, this Committee introduced legislation to overhaul the Indian Self-Determination Act. The legislation, which became P.L. 100–472, recognized the growing capability of Tribes to assume control over Federal programs. The Indian Self-Determination Act empowered Indian Tribes by transferring control to the Tribes and providing them the financial resources to succeed. The same thing must

happen in the field of transportation. What this Committee said in 1987 is true in 2007:

> "The conditions for successful economic development on Indian lands are essentially the same as for any other predominantly rural community. There must be community stability, including adequate law enforcement and judicial systems and basic human services. *There must be adequate infrastructure including roads, safe water and waste disposal systems, and power and communications utilities.* When these systems are in place, Tribes are in the best position to implement economic development plans, taking into account the available natural resources, labor force, financial resources and markets." [1]

Our key recommendations to Congress and the Federal agencies to improve transportation policies in Indian country generally, and for the IRR Program in particular, which I elaborate upon more fully in my testimony, are as follows:

1. Fund the IRR Program for the next reauthorization in installments that increase annually by at least $25 million from $475 million in FY 2010 to $600 million in FY 2015, and restore the obligation limitation deduction exemption that existed for the IRR Program under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA); increase funding for the IRR Bridge Program from $14 million to $50 million in the next reauthorization with increases of at least $10 million annually;

2. Increase funding for the BIA Road Maintenance Program to at least $150 million annually to promote traffic safety and to ensure that the Federal and Tribal investment in transportation infrastructure is maintained;

3. Enforce the statutory requirement in SAFETEA–LU which mandates that the BIA must make IRR Program funds "immediately available" for the use of Indian Tribes within 30 days of the BIA's receipt of the funds from the FHWA;

4. Simplify the award process by which Federal transportation funds are distributed to Indian Tribes by creating uniform grant eligibility, application, and administration criteria;

5. Develop model funding agreements for use by the Department of the Interior and the Department of Transportation to facilitate the efficient transfer of transportation funding and program authority to Indian Tribes;

6. Insist that the BIA and FHWA complete the comprehensive national transportation facility inventory update authorized in SAFETEA–LU to properly document all Tribal transportation facilities and to protect the integrity of the IRR Program funding formula;

7. Encourage the President to fill the position of Deputy Assistant Secretary for Tribal Government Affairs established under SAFETEA–LU;

8. Increase the number of Department of Transportation programs which Tribes may participate in as direct funding recipients from the Federal Government rather than as sub-recipients through the States (*e.g.,* Safe Routes to Schools Program, High Risk Rural Roads Program, and the Highways for Life Program);

9. Establish a Federal Lands Highways Safety Program for Indian Reservation Roads, establish a Tribal set aside for the High Risk Rural Road Program, and increase funding for the Federal Transit Administration's (FTA) Tribal Transit Grant Program to $50 million annually;

10. Increase funding to the successful Tribal Transportation Assistance Programs (TTAPs) to at least $2.5 million annually to increase technical training and promote awareness in Indian country of "best practices" in transportation planning, design, construction, maintenance, and highway safety measures;

11. Promote the use of innovative financing techniques in standard Indian Self-Determination contracts and self-governance compacts to provide Tribal governments with better tools to reduce their road construction backlog; and

12. Carry out right-of-way reform in Indian country to reduce costs and expedite the design, construction and reconstruction of Tribal roads and bridges.

The Indian Reservation Roads Program is predominantly a rural roads program. Congress should invest in highway and surface transportation projects in rural areas as well as metropolitan areas. If rural America and Indian country are to prosper, there must be rural connectivity and reliable access to the national transportation system.

---

[1] S. Rep. No. 100–274, 100th Cong., 1st Sess., p. 4.

III. Tribal Transportation Successes

Indian Tribes have achieved many successes in the transportation field over the last several years. More than ever before, Tribes are working in partnership with local government and State departments of transportation on mutually beneficial projects. With the enactment of SAFETEA–LU, Tribes are working on a government-to-government basis with the Federal Highway Administration (FHWA) and the BIA to improve transportation systems in Indian country. Indian Tribes have:

- taken greater control of transportation programs: five Indian Tribes, negotiated historic IRR Program and funding agreements with FHWA, as authorized under SAFETEA–LU, to assume the Secretary of the Interior's duties for the IRR Program;
- assumed the authority to approve PS&E (plans, specification & estimate) packages, thereby maintaining better control over construction scheduling and cost;
- used the authority under SAFETEA–LU to allocate up to 25 percent of their annual IRR Program allocation for road maintenance needs to maintain Tribal infrastructure built with IRR Program funds;
- witnessed the joint Federal-Tribal initiation of SAFETEA–LU's Tribal Transit Grant Program which was a model of government-to-government relations. The Federal Transit Administration (FTA) consulted with Indian Tribes, responded favorably to Tribal recommendations, received applications from nearly 100 Indian Tribes, and awarded over 60 transit grants to eligible Tribal recipients in FY 2007;
- collaborated with Members of Congress and FHWA Administrator Capka to successfully reverse an FHWA policy that would have prevented Tribes from being eligible subbrecipients of SAFETEA–LU's Safe Routes to Schools Program grants. Tribal access to these funds will permit Tribes to contract with States to promote, develop and improve safe walking and bike routes to schools for elementary and middle-school children;
- collaborated with States on comprehensive highway safety and transportation and land use plans, worked on cooperative ventures to improve traffic crash reporting on Indian reservations; and jointly worked on construction, employment and materials testing (Eastern Shoshone and Northern Arapaho Tribes and Wyoming DOT);
- partnered with State DOTs on IRR Program highway projects funded through the Public Lands Highway Discretionary Grant Program which brings additional capital to Indian country by financing projects that otherwise could not be built by Tribal governments from other funding sources;
- instituted safety measures such as the child restraints and reduced infant and child deaths, cutting these rates dramatically; and
- brought third-party lenders to Indian country to help Tribes finance road construction projects which have saved Tribes money that would otherwise be consumed by inflation and additional mobilization expenses.

Indian Tribes celebrate these successes, and they want to see them repeated throughout the country. These examples can serve as "best practices" in transportation planning and government-to-government cooperation. Tribal governments are better positioned today to tackle problem areas in Tribal transportation than ever before, and they can save lives by intelligent planning, better design, implementing highway safety programs and conducting regular road maintenance and periodic road safety audits.

We just need adequate resources and sensible Federal transportation laws, regulations, and policies which aid, rather than hinder us, in getting the job done.

IV. Indian Reservation Roads Are Not Safe Roads

Despite this progress, we need Congress and the Administration to partner with Tribal governments to *dramatically* reduce highway injuries and fatalities that plague Indian communities at rates several times above the national average. We must do more to keep our children safe when they walk to school, ride a bus, or jump into their parents' cars and trucks. We must educate them early to buckle up and not to drink and drive so that when it is their turn to get behind the wheel, they will be responsible drivers. Tribal communities must also change bad behaviors and set a good example for our youth.

Congress and the Administration must also do their parts. Tribes are struggling to find the funds necessary to meet the tremendous transportation needs in Indian Country. Congress and the Administration must recognize that Indian Tribes have the most rudimentary transportation infrastructure in the country and lack the

funds needed to maintain roadways in a safe condition. Tribal transportation programs have too few personnel to attend to required activities.[2] Indian Tribes should be treated as equal partners. The significant progress Tribes have made in the last two decades to assume direct responsibility for their transportation systems should be applauded and rewarded by giving Tribal governments the financial resources they need to build and maintain safe roads and save lives. Transportation planning, design, construction, and maintenance are not occasional occurrences, and Tribal governments must have the resources they need to carry out this core governmental function. No one else can do it better than the Tribes themselves.

Adequate funding levels are needed if we are to design safer roads with features such as guard rails, rumble strips, clearly visible signs, reflective markers, and wide, level shoulders. We must increase law enforcement patrols to enforce traffic laws and respond to accidents more quickly. We must provide adequate Emergency Medical Services and associated medical facilities so that prompt medial assistance is available to the injured within the critical "golden hour" after an accident. And we must adequately maintain routes in Indian country so that poor road maintenance does not continue to be a major contributing factor to traffic accidents in Indian country. Poor road maintenance is a silent killer that preys on the distracted mother, the sleep-deprived father, the inexperienced son or daughter, and the aunt or uncle who drive while impaired.

A. Grim Statistics

Our future goals, for safe, well maintained streets are clear, but the present reflects a grim reality. Native Americans suffer injury and death driving and walking along reservation roadways at rates far above the national average.

- Motor vehicle injuries are the leading cause of death for Native Americans ages 1–34, and the third leading cause overall for Native Americans;[3]
- The motor vehicle death rate for Native Americans is nearly twice as high as other races;[4] motor vehicle crashes were the leading cause of death among Native Americans age 1 to 19, and the Aberdeen, Billings, and Navajo Areas had motor vehicle-related death rates at least three times greater than the national rates;[5]
- Native Americans in South Dakota are *three times more likely* to be killed in a motor vehicle accidents than the rest the of State's non-Native population; from 2001 to 2005, over 25 percent of individuals who lost their lives in traffic accidents in South Dakota were Native American even though Native Americans comprise only 8.3 percent of the State's population;[6]
- The South Dakota Department of Transportation (SDDOT), working with ICF International, Inc., Interstate Engineering, Inc., and the State's Indian Tribes, in a recently published report, found that 737 accidents (or 64 percent of all motor vehicle accidents) on nine reservations in South Dakota in 2005 were not reported;[7]
- 123 North Dakotans were killed in traffic accidents in 2005, an increase of 23 percent over 2004; 4,360 North Dakotans were injured. Eighty-eight percent of the fatal accidents in North Dakota occurred in rural areas (nearly 9 out of every 10 fatalities);
- According to estimates by the National Safety Council, the economic cost in 2005 for each fatality in terms of lost wages, medical expenses, administrative expenses, motor vehicle and property damage, and employer costs, exceeded $1.14 million for each life lost and over $50,000 for every person injured. In 2005, *for North Dakota alone,* those figures translate to a cost of nearly $360

[2] "Transportation Planning on Tribal Lands," Melissa Savage, National Conference of State Legislatures, August 2006, p. 1.

[3] "Safety Belt Use Estimate for Native American Tribal Reservations," National Highway Traffic Safety Administration, DOT HS 809 921, Final Report, October 2005, p. 1.

[4] *Id.*

[5] Center for Disease Control, Injury Center, Atlas of Injury Mortality Among American Indian and Alaska Native Children and Youth, 1989–1998, Executive Summary (www.cdc.gov/ncipc/pub-res/American_Indian_Injury_Atlas/05Summary.htm).

[6] "Improving Motor Vehicle Crash Reporting on Nine South Dakota Indian Reservations," South Dakota Department of Transportation, June 2007.

[7] *Id.*

million for the State's 123 traffic fatalities ($140.2 million) and 4,360 traffic injuries ($218 million);[8]

- 5,962 fatal motor vehicle crashes were reported on reservation roads between 1975 and 2002 with 7,093 lives lost. The trend is on the increase, up nearly 25 percent to over 284 lives lost per year in the last 5 years of study;[9]
  - —76 percent of the fatalities were not seat belt or child safety seat restrained compared to 68 percent nationally;[10]
  - —Since 1982, 65 percent of fatal crashes occurring on reservations were alcohol related compared to 47 percent nationwide;[11]
- According to information presented by the Michigan Tribal Technical Assistance Program (Michigan Technological University), nearly three-quarters (73 percent) of Native American children under age 5 who died in traffic accidents were not in a child safety seat. *Less than 7 percent* were wearing a seat belt. More than half of these fatalities could have been prevented if these children had been restrained;[12]
- NHTSA data shows that approximately 3 out of every 4 fatalities on Indian reservations were not restrained at the time of the motor vehicle accident. In 2002, only 16 percent of motor vehicle fatalities on reservations were restrained;[13] and
- American Indians have the highest rates of pedestrian injury and death per capita of any racial or ethnic group in the United States.[14]

These statistics are shocking and bear witness to the consequences of maintaining the status quo concerning Federal Tribal transportation policies. I am troubled by the disparity between national traffic safety statistics and the statistics coming out of Indian country. According to the National Highway Traffic Safety Administration (NHTSA): "The Department has made transportation safety its highest priority. The Secretary has mandated an ambitious DOT-wide safety goal to reduce the traffic fatality rate to *no more than 1 fatality per 100 million vehicle miles traveled* (VMT) by the end of 2008."

We have over 11 million VMT in the IRR Program inventory, yet the average number of Native Americans killed in motor vehicle accidents annually throughout NHTSA's 28-year study was 213. While the number of fatal crashes in the Nation during the same period *declined* 2.2 percent, the number of fatal motor vehicle crashes per year on Indian reservations *increased* 52.5 percent.[15]

If Tribal governments, the Departments of the Interior and Transportation, and State DOTs are to reverse the traffic fatality rates among Native Americans, Congress will need to direct more resources to the many factors that contribute to highway fatalities than are presently available. Many traffic accidents that occur on reservation roads can be prevented through application of the four "Es":

1. Education;
2. Enforcement;
3. Engineering; and
4. Emergency Medical Services.

B. Invest in Prevention

IfI leave you with one message today, Mr. Chairman, it is "prevention." As much as I wish it, Congress will not appropriate the billions of dollars needed to redress all the unmet transportation needs in Indian country in next year's appropriations acts. But I am asking Congress to identify and fund those preventative measures that Federal, State and Tribal governments can take to reverse the consequences of years of neglect of Tribal transportation infrastructure, as well as to help us curb

---

[8] "North Dakota Vehicle Crash Facts for 2005," North Dakota Department of Transportation, Crash Facts (www.nd.gov/dot/dlts.html).

[9] "Fatal Motor Vehicle Crashes on Indian Reservations 1975–2002," National Center for Statistical Analysis, National Highway Traffic Safety Administration, DOT HS 809 727, Technical Report, April 2004, p. 1.

[10] *Id.*

[11] *Id.,* p. 2.

[12] *See* "Race and Ethnicity in Fatal Motor Vehicle Traffic Crashes 1999–2004," National Center for Statistics & Analysis, DOT HS 809 956, Technical Report, May 2006, p. 14.

[13] "Safety Belt Use Estimate for Native American Tribal Reservations," NHTSA, DOT HS 809 921, October 2005, p. 1.

[14] "Pedestrian Safety in Native America," FHWA–SA–04–007 Technical Report, September 2004.

[15] "Fatal Motor Vehicle Crashes on Indian Reservations 1975–2002," p. 2.

the societal behaviors which contribute to making Indian reservation roads the most dangerous roads in America.

But it must be a combination of resources to reconstruct and repair unsafe roads, provide law enforcement, emergency medical services, and educate Native American communities to make highway safety a priority. Anyone component alone, without the support of the other components, will not be as effective.

I speak from experience regarding the damage that traffic fatalities cause to Tribal families. My brother Jay, was killed 7 years ago in an automobile accident on the Reservation.

Specific recommendations to improve the delivery of transportation services in Indian country.

V. Recommendations to Improve Federal Transportation Policies in Indian Country

Tribes are assuming greater responsibility for transportation planning, design, construction and maintenance. TEA–21, SAFETEA–LU, and the IRR Program regulations have created additional opportunities for Indian Tribes to interact with State Departments of Transportation on mutually beneficial transportation projects, to negotiate road maintenance agreements with State governments that prolong the useful life of IRR-financed routes without the approval of the Interior Secretary, to conduct long range transportation planning, hire their own engineers to finalize PS&E packages, and consult with Metropolitan Planning Organizations and Regional Planning Organizations on long-term transportation planning goals. Mr. Chairman, we must encourage these partnerships so that consultation is the norm and all governments work to achieve mutually agreed-upon transportation goals. This can be the future of the Indian Reservation Roads Program if Congress and the Administration will take the following actions:

1. Increase Funding for the IRR Program in the Next Highway Reauthorization Bill to Meet Tribal Transportation Needs of the 21st Century

The backlog of unmet transportation construction needs in Indian country is in the tens of billions of dollars. It hinders economic development, education, and the delivery of housing and health care to millions of Native Americans who reside on Indian reservations simply because it raises the cost of doing business on Indian reservations. Infrastructure should be a Tribal resource, but it is not. It is a hazard.

It is not exceptional for Indian Tribes to operate one- and two-person transportation departments. At Fort Belknap, myself and my Transportation Planner comprise the entire Transportation Department. While State Departments of Transportation, city and county governments and Metropolitan Planning Organizations (MPOs) are staffed with engineers and other professionals to plan transportation projects and work with stakeholders to prioritize transportation projects, Tribal governments do not have comparable resources to operate complimentary transportation programs.[16] Until the Federal agencies request and Congress appropriates more resources, Tribal governments will always be playing "catch up" with their State and local government counterparts. Indian country cannot be expected to rectify our *physical* transportation infrastructure needs if we do not also have the financial resources to properly staff and operate Tribal government departments to be capable of coordinating with our Federal, State and local government counterparts.

According to data compiled by the Associated General Contractors of America (AGC), since 2004 the construction industry has been hit by a series of significant price increases impacting a variety of basic construction materials. It was AGC's estimate that a "realistic inflation target for construction materials appears to be 6–8 percent, with periods of 10 percent increases quite possible."[17] These cost increases outpaced consumer and producer price indices significantly. According to the AGC report, for the 12 months ending August 2006, the cost of inputs for highway and street construction was up 13.8 percent, the producer price index (PPI) for "other heavy construction" was up 10.3 percent, and the index for non-residential buildings was up 8 percent.[18] The report noted that: "The highway construction index is driven to a greater degree than the building construction indexes by the cost of steel bars . . . and plates (for bridges), ready-mixed concrete, asphalt, and

[16] National Conference of State Legislatures, p. 2.

[17] "AGC's Construction Inflation Alert," Reported by AGC Chief Economist Ken Simonson, September 2006, *http://www.agcak.org/akancasn/doc.nsf/files/7DBB5CEFBE545B13872571FF0080B299/$file/AGCsConstructionInflationAlert.pdf*

[18] *Id.,* p. 2

diesel fuel, *all of which have experienced double-digit cost increases in the past 12 months.*" [19]

Congress authorized $450 million for the IRR Program for FY 2009. If Tribes are to maintain the positive gains made in TEA–21 and SAFETEA–LU and keep up with construction inflation which is running into double digits in many BIA Regions, we respectfully request that Congress authorize funding increases to the IRR Program in the next highway reauthorization bill of at least $25 million annually, combined with the restoration to the IRR Program of the obligation limitation exemption which existed prior to TEA–21. These funding increases for Indian reservation roads are the absolute minimum needed to keep up with inflation, let alone meet the growing needs of Indian country.

Congress must sustain and continue its commitment to improving transportation infrastructure on Indian reservations if the gains of the last few years are to be maintained. This commitment will spur economic development on Indian reservations more than any other single Congressional action.

2. Increase funding for the BIA Road Maintenance Program within the Interior and Related Agencies Appropriations Act

Funding for the BIA Road Maintenance Program is a national disgrace. The Administration's use of the Program Assessment Rating Tool (PART) Performance Measurements to justify annual reductions to the BIA Road Maintenance Program is shortsighted and fails to protect these valuable taxpayer-funded infrastructure investments. The Office of Management and Budget's road budget makes no economic sense and squanders taxpayer money. Failing to adequately budget for the BIA Road Maintenance Program also violates Federal law.

When, in SAFETEA–LU, Congress authorized Tribes to spend up to 25 percent of their IRR Program dollars for maintenance, Congress expressly stated that:

> "*The Bureau of Indian Affairs shall continue to retain primary responsibility, including annual funding request responsibility, for road maintenance programs on Indian reservations.* The Secretary [of Transportation] shall ensure that [IRR Program] funding made available under [section 204(c) of Title 23] for maintenance of Indian reservation roads for each fiscal year *is supplementary to and not in lieu of any obligation of funds by the Bureau of Indian Affairs for road maintenance programs on Indian reservations*."

23 U.S.C. § 204(c), as amended.

The opposite of what Congress intended in SAFETEA–LU is occurring. As funding for the IRR Program goes up as authorized under SAFETEA–LU, the Administration submits budgets to Congress to reduce funding for the BIA Road Maintenance Program. Newly built or reconstructed roads must be maintained if they are to meet their design life and provide safe passage for people, goods and services.

Poorly maintained roads in the Dakotas have cracks from frost heave, rutted pavement from tire wear, prairie dog damage and faded and worn pavement markings. These compromised conditions contribute to traffic accidents by degrading the pavement surface and can contribute to a driver losing control in snow or rain and at high speeds. [20]

The BIA Road Maintenance Program is so poorly funded that there is no allowance for even emergency road maintenance needs to address life threatening circumstances that result from a "catastrophic failure or natural disaster." As stated in the IRR Program regulations, examples of emergency maintenance include "ice and snow control, traffic control, work in slide areas, repairs to drainage washouts, retrieving hazardous materials, suppressing wildfires, and repairing the ravages of other disasters." 25 C.F.R. § 170.812. Every BIA Region experiences emergency road and bridge maintenance needs yet lacks the resources to respond to them.

The following table illustrates the see-saw funding levels for the BIA Road Maintenance Program since 1980.

---

[19] *Id.*

[20] "Road Safety Audit for Improvements to Standing Rock Sioux Tribe Reservation Roads," Hamilton Associates, October 2005, pp. 10–11.

BIA Road Maintenance Funding as a Percentage of Appropriations for the DOI Construction/IRR Program Funding 1980-2008* (data obtained from BIA's History of Road Construction and Maintenance Funds 1951-2004)				
Year	BIA Rd Main. Appropriation (millions)	DOI Construction/IRR Program Appropriation (millions)	Combined Rd Main. and DOI Constr./IRR Appropriation (millions)	Rd Main. dollars as % of DOI Constr./IRR Program dollars
1980	$18.434	$66.5	$84.934	27.7%
1982	18.041	$47	65.041	38.3%
1986	22	100	122	22.0%
1990	30.598	81	111.598	37.7%
1992	41.0	159	200.0	25.7%
1994	29.772	191	220.772	15.5%
1998	25.373	225	250.373	11.2%
2000	26.437	293.3	319.737	9%
2002	35.6	275	310.6	12.9%
2006	28	330	358	8.4%
2007	29	370	399	7.8%
2008	26* (President's budget request)	420* (SAFETEA-LU authorized amount)	446* (projected)	6.1%

In recent years, the BIA Road Maintenance Program budget, as a percentage of the IRR Program appropriation for the same year, has fallen below 10 percent. In 1990, Congress appropriated $30.598 million which represented 37.7 percent of the combined maintenance and construction budgets. But by 2000, road maintenance as a percentage of available maintenance and construction funding had fallen to 9 percent and funding dropped to $26.437 million.

At its high watermark fifteen years ago, in 1992, the BIA Road Maintenance Program received $41 million and accounted for 25.7 percent of the combined road maintenance and construction appropriation allocation for the IRR Program. According to data in the Roads Inventory Field Data System (RIFDS), between 1996 and 2006, the IRR Program inventory grew nearly 74 percent, from 49,132 miles to 85,454 miles. If the Administration's FY 2008 funding request for the BIA Road Maintenance Program is approved by Congress, Road Maintenance funding will fall to $26 million, or 6.1 percent of total maintenance and IRR Program construction funds, its lowest percentage level in over 56 years.

To spend six cents of every dollar on road maintenance when other public authorities spend many times that amount does not protect the investment which the Unites States and Indian Tribes have made in transportation infrastructure. This funding gap also exacerbates the backlog of unmet construction need by cutting the useful life of roads in half and will lead to more traffic injuries and fatalities. The lack of adequate road maintenance funding hinders every other form of financial assistance to Indian country, thus making it more difficult for the United States and Indian Tribal governments to achieve their stated Indian policy goals.

a) The PART Performance Measurement of the BIA Road Maintenance Program Misses the Mark

The Administration's PART Performance Measurement acknowledged that state and county governments provide more resources per mile than the BIA. It noted that the majority of the BIA road system (⅔ of the system) is unimproved and earth surface (dirt) and, "therefore, requires far more extensive methods to maintain for

public use."[21] The PART evaluation of the BIA Road Maintenance Program concedes that:

> "The problem is (1) local public entities are refusing to use their HTF [Highway Trust Funds] funding to reconstruct their roads/bridges when they have met their design life, forcing Tribes to redirect their IRR HTF funding to reconstruct these roads/bridges; and (2) local public entities do not maintain their roads adequately requiring these roads/bridges to be reconstructed more frequently. This results in ineffective use of BIA road maintenance resources and Tribal HTF resources."[22]

Is it any wonder that the BIA Road Maintenance Program is scored by OMB as not demonstrating results? But rather than recognizing that the poor performance of the BIA Road Maintenance Program is due in large part to insufficient funding, and requesting additional funding to address this problem, the Administration has used the poor PART Performance Measurement as a justification for seeking less funding for the BIA Road Maintenance Program. Recognizing that under Administration policies, funding is tied to the PART Assessment, the IRR Program Coordinating Committee, in January 2007, asked the BIA to have officials responsible for the PART Performance evaluation of the BIA Road Maintenance Program to brief the Committee on the evaluation, and identify ways to improve the Program's rating. The BIA has been unresponsive and *this briefing still has not occurred.*

It is the United States' statutory obligation under SAFETEA–LU and other Federal laws to maintain the IRR Program system of roads. Common sense dictates that if taxpayer dollars are used to finance a public road in Indian country, the United States should also ensure that funds are adequate to ensure that the full useful life of the public road is met. Are not the roads over which millions of Native Americans and others travel each day just as important to the Federal Government's trust responsibility to Tribal resources as the land over which the roads lie?

The authority granted Indian Tribes in SAFETEA–LU to use up to 25 percent of their annual IRR Program funds for maintenance purposes does not excuse the Interior Department of its statutory and moral obligation to keep IRR Program roads safe and adequately maintained.

b) Indian Reservation Roads Cost More to Maintain But Receive Less

In January 2007, the Coordinating Committee provided BIA officials with statistics (Caterpiller Performance Handbook, 1999) that showed that the typical 5-year cycle maintenance costs for a *gravel road*—the predominant road type in Indian country—is $4,160 per year per road mile for grading, resurfacing, and re-graveling.

To demonstrate how bad the shortfall in maintenance funding is, if Congress appropriated the 1999 estimate of $4,160 for the 34,885.3 miles of just the *BIA- and Tribally-owned routes* now included in the BIA's RIFDS, made no adjustment for inflation, and excluded funding for routes owned by States, counties, townships, etc., and appropriated an additional $20 million to maintain the approximately 1,200 BIA- and Tribally-owned bridges included in the IRR Program inventory (which represent only 27.5 percent of the 4,301 IRR Bridges), the Road Maintenance Program budget would be $165.122 million for FY 2008 ($145.122 million + $20 million). *The Administration's FY 2008 Road Maintenance request of $26 million is only 15.75 percent of the $165.122 million figure.*

The road maintenance funding estimate I have proposed *excludes* any funding to maintain routes and bridges now included in RIFDS which are owned by public authorities other than the BIA and Tribes. But, as noted by OMB, many of these roads are being and frankly must be maintained by Tribal governments in order to provide critical access to Tribal communities.[23] In fact, as of today, there are 86,759 miles in RIDFS (51,873 miles of non-BIA and Non Tribally owned routes) and 4,301 bridges, owned by both Federal, Tribal, State, county, township, and other State subdivisions.

If Tribes and the Federal Government invest taxpayer dollars to build and reconstruct roads in Indian country, it makes sense to adequately maintain these routes to improve their useful life. If *pennies* are spent on road maintenance, *dollars* will need to be spent on road reconstruction, and many more dollars on the societal cost of traffic fatalities and injuries.

ITA, NCAI and many Tribal leaders have requested at least a $100 million funding level for the BIA Road Maintenance Program. The BIA has acknowledged that

---

[21] See OMB's Program Assessment Rating Tool Performance Measurement for the BIA Road Maintenance Program (2004) (www.whitehouse.gov/omb/expectmore/detail/10002352.2004.html).

[22] *Id.*

[23] *Id.*

it requires at least $120 million to annually maintain BIA-owned roads and bridges, $50 million per year for bridge rehabilitation and replacement, and $100 million per year for upgrading and expanding transit services and systems.[24]

Given the stark statistics discussed above, we respectfully request that Congress appropriate at least $150 million for the BIA Road Maintenance Program to maintain IRR Program roads and bridges to a minimally adequate standard.

3. The BIA Must Comply with SAFETEA–LU's Mandate to Distribute Available IRR Program Funds For the Use of Indian Tribes Within 30 Days of Receipt of the Funds

One of the biggest problems I have witnessed in the operation of the IRR Program is the unnecessary delay by the BIA in distributing IRR Program allocations among the 12 BIA Regions and, from these Regional Offices, to the Tribal governments that have chosen to contract the IRR Program and BIA Road Maintenance Program under the ISDA. Congress was clear in SAFETEA–LU when it amended the law to require that:

> "Not later than 30 days after the date on which funds are made available to the Secretary of the Interior under [section 202 of Title 23] funds shall be distributed to, and available for immediate use by, the eligible Indian Tribes, in accordance with the formula for distribution of funds under the Indian reservation roads program."

23 U.S.C 202(d)(2)(E)(i).

The reality is that the BIA does not distribute IRR Program funds within 30, 60, or even 90 days of receipt from the FHWA. On the one hand, the BIA claims that it cannot transfer the IRR Program funds until it has self-determination contracts or self-governance compacts in place, and on the other hand, it has dragged its feet in finalizing mutually acceptable model funding agreements. It cannot have it both ways.

Contrary to this statute, each August, BIA Regions return tens of millions of dollars of IRR Program funds to BIA Headquarters because these funds were received too late in the Fiscal Year, while Tribes are practically begging for construction funds. Short construction seasons mean that priority road projects do not get built and the cost for building roads in Indian country continues to outpace funding.

4. Simplify the Federal Grant and Contract Application and Award Process for Tribal Governments

Why are Tribal communities lagging so far behind the Nation in reducing fatal traffic accidents? It is as if national campaigns to reduce traffic accidents and deaths end at reservation boundaries. I am afraid that resources are not reaching reservation communities at the rate that they should. These shortfalls in funding have a devastating effect on Native Americans who are dying and suffering injuries at unacceptable rates.

If Indian Tribes are eligible recipients of Federal transportation funding, for the programs to work in Indian communities, the money must reach the intended beneficiaries. That is not the case presently.

Part of the problem lies in the cumbersome, and wholly separate processes by which Indian Tribes must apply for Federal transportation, transit, and traffic safety grants administered by multiple Federal agencies (BIA, FHWA, NHTSA, FTA, Federal Aviation Administration (FAA), etc.) or Federal transportation grants administered through the States (Safe Routes to Schools, High Risk Rural Roads, Highways for Life, etc.).

We strongly recommend that agencies within the Department of Transportation (Federal Lands Highway, FTA, NHTSA, and FAA) develop a simplified contract document for Tribes. This will encourage more Tribes to apply for these grants and bring the benefits of the Federal programs to Indian communities where they are most needed. Direct Federal funding of Tribes through Tribally protective and appropriate government-to-government agreements streamlines Tribal access to Federal program funds by removing artificial barriers to these grant funds by eliminating the unnecessary, costly and time consuming process of requiring Tribes to contract with the States for receipt of Federal transportation dollars. The Safe Routes to School Program and High Risk Rural Roads Program are just two examples among many of the Federal programs that should be directly available to Indian Tribes.

---

[24] "Transportation Serving Native American Lands," TEA–21 Reauthorization Resource Paper, BIA (May 2003), p. 32.

As noted above and as discussed in the 2006 report by the National Conference of State Legislatures, most Tribal governments lack the personnel and resources to administer multiple Federal grants and contracts with widely varying terms and conditions. Complex, conflicting grant conditions and reporting requirements hinder efficient Tribal administration of transportation programs and projects. The agencies should develop a single grant application process with one annual deadline as Congress directed the Secretary of Transportation to do for the States in applying for Highway Safety Program grants under SAFETEA–LU. *See* 23 U.S.C. § 402(m), as amended, sec. 2002(d) of SAFETEA–LU, 119 Stat. 1521–1522.

Developing a simplified agreement, which takes into account the unique legal status of Tribes and respects Tribal sovereignty, will improve program performance and Tribal accountability.

Under SAFETEA–LU, Congress directed the BIA to also "establish a similar simplified process for applications for grants from Indian Tribes under [Chapter 4 of Title 23]" as well. *Id.* To date, I am not aware of any action taken by the BIA's Indian Highway Safety Program (IHSP) to consult with Indian Tribes, the Nation's Tribal Technical Assistance Programs (TTAPs), or the IRR Program Coordinating Committee concerning the development of a simplified single grant application process for Highway Safety Program grants. Despite numerous invitations to the former Program Administrator of the BIA's IHSP to attend an IRR Program Coordinating Committee meeting, no representative of that office has ever attended a Coordinating Committee meeting. This has occurred even though a number of our meetings were held in Albuquerque, New Mexico where IHSP offices are located.

I trust that the next Program Administrator will actively consult and work with Indian Tribes, the TTAPs, and the Coordinating Committee to implement SAFETEA–LU's mandate.

5. Implement Model IDSA Contracts and Agreements so that Indian Tribes May More Easily Assume the Secretary of the Interior's Duties for the IRR Program

Congress recognized the need for a standardized model contract in the self-determination context in 1994 and legislated, in P.L. 103–413 (1994), the content of a non-construction Indian Self-Determination Act (ISDA) contract. *See* 25 U.S.C. § 450*l*. This is known as the "model Section 108" ISDA contract. Similar model agreements should be developed to speed the distribution of Federal transportation dollars to Indian Tribes as direct recipients.

The IRR Program Coordinating Committee and other Tribal advocates provided a sample Title I Indian Self-Determination contract to BIA officials in the summer of 2006 for use in the IRR Program. To date, the BIA has not approved a sample ISDA contract for Indian Tribes. Only last month did the BIA' s Office of Self-Governance issue a proposed Title IV Self-Governance Model Indian Reservation Roads Addendum for use by Self-Governance Tribes. Tribes are still waiting for the Interior Department's awarding officials and attorneys to provide a response to the Tribally proposed model Title I ISDA contract for the IRR Program.

Interior Department attorneys have incorrectly concluded that Tribes must negotiate a separate agreement if they wish to use innovative financing techniques to pay for eligible IRR Program projects. This is shortsighted and legally unnecessary. It will hinder the use of innovative financing techniques by Tribes by raising the transactional costs associated with flexible financing arrangements.

Because of the Interior Department's intransigence on this issue, Tribes are being forced to use outdated, overly burdensome ISDA contracts that BIA Regional Office Awarding Officials are "used to" negotiating. These contracts do not reflect many of the hard won improvements to the IRR Program that Tribes negotiated with BIA and FHWA in the final IRR Program regulations, implemented in November 2004, and which Congress included in SAFETEA–LU. These improvements include Tribal approvals of Plans, Specifications & Estimate (PS&E) packages, full annual advance funding, and innovative financing techniques by which Tribal governments, if they choose, can leverage IRR Program funds to help finance road projects.

The delay in the award ofIRR Program contracts hurts every Tribe's bottom line and reflects poorly on the BIA' s administration of the IRR Program. Roads are not being built in a timely manner and present continuing safety risks. Construction seasons are limited in many BIA Regions. The ideal time to bid out construction jobs—to lower cost—is in the middle of winter, not in the spring or summer months when the BIA is now releasing the majority of IRR Program funds.

Delays in the ISDA contracting process, *a process that has been in place for over 30 years,* only make transportation construction more costly. Model IRR Program funding agreements will help bring the BIA into compliance with SAFETEA–LU's 30-day payment mandate and better serve Indian country.

It should be a goal of the Department of Transportation and Department of the Interior to lower the cost of doing business in Indian country. It will allow Tribes to put Federal funds into the roads and bridges that can improve the quality of life of our communities, not waste money serving a complicated bureaucracy. This goal cannot be met until the BIA approves and widely distributes to the BIA Regions acceptable model ISDA agreements.

6. The BIA and FHWA Must Complete a Comprehensive National Inventory of Transportation Facilities Eligible for Assistance Under the IRR Program

The inventory of the Indian Reservation Roads Program is growing at a dramatic rate. In 2005, there were 62,319 road miles in the BIA's RIFDS. In 2007, there are more than 85,000 road miles in RIFDS, an increase of more than 37 percent. BIA System roads, those dirt, gravel, and paved roads owned by the BIA, are only a subset of all eligible IRR Program routes. The entire IRR Program System of roads eligible for funding under the IRR Program is also comprised of routes owned by Tribes, States, counties, townships, and other Federal agencies.

The IRR Program formula, by which Federal funds are apportioned among the Nation's federally recognized Indian Tribes, places heavy emphasis upon road inventory miles. *See* 25 C.F.R. § 170.201 *et seq.* The integrity of the IRR Program is dependent upon accurate and complete information on each Indian Tribe's IRR Program inventory of eligible roads.

a) SAFETEA–LU Mandates a Comprehensive Update

When Congress passed SAFETEA–LU in 2005, Congress directed the Secretary of Transportation, in cooperation with the Secretary of the Interior, to complete by August 10, 2007, a "comprehensive national inventory of transportation facilities that are eligible for assistance" under the IRR Program. *See* 23 U.S.C. § 202(d)(2)(G). The comprehensive inventory update was meant by Congress to be more than just a "snapshot" of the current IRR Program inventory. It was meant to identify and fill in the gaps between the existing incomplete IRR Program inventory and what the inventory would include if all eligible IRR routes were included.

Unfortunately, it is my understanding that a snapshot is all that Indian country and the Congress will get, unless Congress demands that the agencies conduct a comprehensive inventory update of the IRR Program as it so plainly directed in SAFETEA–LU.

The inventory assessment is intended to assist the agencies to identify Tribal transportation facilities and determine the relative transportation needs among Indian Tribes. Eligible routes, at a minimum, by law include:

i) routes included in the BIA system inventory receiving funding since 1992;

ii) routes constructed or reconstructed with funds from the Highway Trust Fund under the IRR Program since 1983;

iii) routes owned by an Indian Tribe;

iv) community streets or bridges within the exterior boundaries of Indian reservations, Alaska Native villages, and other recognized Indian communities (including communities in former Indian reservations in Oklahoma) in which the majority of residents are American Indians or Alaska Natives;

v) "primary access routes" proposed by Tribal governments, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal termini, such as airports, harbors, or boat landings.

In addition, Congress directed in SAFETEA–LU that nothing shall preclude the Secretary of Transportation from including *additional* transportation facilities that are eligible for funding under the IRR Program "if such additional facilities are included in the inventory *in a uniform and consistent manner nationally.*" This has not occurred.

b) The BIA and FHWA Must Exercise Leadership

Regrettably, the IRR Program Coordinating Committee has not reached consensus, and the BIA and FHW A have not adopted, uniform guidelines on what routes are and are not eligible for inclusion in the IRR Program inventory for purposes of determining funding under the IRR Program formula (Tribal Transportation Allocation Methodology). How can the IRR Program Coordinating Committee, BIA, FHWA, or Congress accurately assess the fairness of the current formula for the IRR Program if the BIA and FHW A have not set clear guidelines on the types of routes that may be added to Tribal inventories or the process which Indian Tribes and BIA Regions must follow to place such routes into the RIFDS?

The impasse over establishing a "bright line" policy as to the types of routes eligible for inclusion in the IRR Program inventory, and the minimum data that Indian Tribes must include with every route submitted to the BIA for inclusion in their IRR Program inventory, has caused considerable delays, uncertainty, and frustration in the distribution of IRR Program funds. Challenges and appeals over the BIA's failure to include routes in the IRR Program inventory delay the BIA's full distribution of IRR Program funds, again contrary to Congress' 30-day payment mandate.

When the IRR Program Coordinating Committee cannot reach consensus on fair, reasonable and equitable rules for the inclusion of routes in the IRR Program inventory, it must fall to the BIA and FHWA to exercise leadership. The Coordinating Committee is an advisory committee to these agencies. I hope that the agencies will always accept the Committee's recommendations. Ultimately, however, it is for the BIA and FHWA to interpret and implement the law. But they must do so in a timely manner. The IRR Program must benefit all Indian Tribes, regardless of size. Every Indian Tribe has transportation needs. Large Indian Tribes have large road inventories and require the funds to maintain them, and replace them when they are worn. Smaller Tribes require funds to plan, design, build, and maintain their priority routes.

So long as the comprehensive update of the IRR Program, and the identification of eligible routes that are not yet included in the inventory, is incomplete, these additional routes are invisible to the IRR Program, to policymakers and appropriators. Inventory is a key component to funding and these agencies have a special obligation to Indian Tribes to identify all eligible routes and help Indian Tribes update their Tribal inventories.

c) Agencies' Report to Congress

SAFETEA–LU requires the agencies to submit a report to Congress on the national Tribal transportation inventory not later than November 10, 2007, 90 days after the inventory is completed in August of this year. Mr. Chairman, we want what Congress mandated in SAFETEA–LU: a "comprehensive national inventory of transportation facilities that are eligible for assistance" under the IRR Program. By November 2007, more than 2 years after SAFETEA–LU was enacted, if all the BIA and FHWA report to Congress is that the IRR Program inventory is incomplete, and does not include all routes that are eligible under SAFETEA–LU for inclusion in the IRR Program inventory, the agencies will not be telling Congress or Indian Tribes anything new.

We ask that this Committee direct the BIA and FWHA to provide Congress and the Nation's Indian Tribes with a comprehensive review and report on the total IRR Program inventory of transportation facilities eligible for inclusion and funding under the IRR Program as directed in SAFETEA–LU.

7. Congress Should Encourage the President to Nominate a Candidate to Fill the Position of Deputy Assistant Secretary for Tribal Government Affairs Within the Department of Transportation

Tribes worked very hard during the consideration of SAFETEA–LU to develop consensus positions to advocate before the Administration and Congress. This Committee knows how difficult it is to legislate in the field ofIndian law and obtain a unified position from 564 sovereign Tribal governments. Our strategy was quite successful as is reflected in the many positive provisions contained in SAFETEA–LU. However, this success will not be realized if the Administration does not act on the legislative mandates.

For this reason, we are disappointed that the Administration has so far failed to nominate anyone to fill the position of Deputy Assistant Secretary for Tribal Government Affairs, as required by SAFETEA–LU. Tribes advocated, during Congress' consideration of SAFETEA–LU, for the creation of this position at the Assistant Secretarial level so that Tribal transportation issues would be more prominent before the Department and within the Office of the Secretary.

As it states in SAFETEA–LU: "in accordance with Federal policies promoting Indian self determination, *the Department of Transportation shall have, within the office of the Secretary a Deputy Assistant Secretary for Tribal Government Affairs appointed by the President to plan, coordinate, and implement the Department of Transportation policy and programs serving Indian Tribes and Tribal organizations and to coordinate Tribal transportation programs and activities in all offices and administrations of the Department . . . .*" 49 U.S.C. § 102(f)(1), as amended.

If a Deputy Assistant Secretary at DOT had been in place, perhaps the Department would have developed, in consultation with Indian Tribes, Tribal eligibility for the Scenic Byways program as authorized under SAFETEA–LU, and concluded that

Indian Tribes are eligible sub-recipients for the State-administered Safe Routes to School Program, without requiring the intervention of Indian Tribes and the Congress, to overturn the Department's initial position.

We commend FHWA Administrator Rick Capka, former Associate Administrator Arthur Hamilton, and Office of Transit Programs Director Mary Martha Churchman, and their staffs, for their support of and advocacy for the IRR Program, Tribal Transit Grants, and Tribal transportation generally. The IRR Program is a small component of the Federal Highway Administration's Federal Lands Highways budget and jurisdiction. There is no substitute for an Assistant Secretary with primary responsibility for ensuring that all agencies within DOT coordinate their actions in a manner that best serves Indian country and the overall goals of the Department.

We ask the Committee to urge the Administration to fill the Deputy Assistant Secretary position at DOT at the earliest possible date. This appointment will help achieve the goals of Congress, the Administration, and Indian Tribes to improve the delivery of Tribal transportation programs at all levels within the Department of Transportation.

8. Increase the Number of DOT Programs Which Indian Tribes May Participate in as Direct Recipients

Indian Tribes have demonstrated that they possess the capacity to deliver successful transportation programs despite the many obstacles that stand in our way. We are separate sovereign governments and not subdivisions of the States. While Indian Tribes may be eligible sub-recipients of some State-administered programs financed by the U.S. Department of Transportation, such as the Safe Routes to Schools, High Risk Rural Roads Program, and Highways for Life, Indian Tribes do not typically receive their fair share of these program funds.

I hope this written testimony and the statistics that I have referenced, drive home to you how great the transportation needs are in Indian country. A little assistance will go a long way because our statistics of traffic safety accidents and fatalities are so high. Congress should therefore increase the number of Department of Transportation programs that Indian Tribes may apply for directly rather than as sub-recipients through the States. In many instances, the forms of State contracts are too cumbersome, or are simply objectionable to Tribes, requiring Tribes to waive their sovereign immunity from suit, or appear in State courts. The result is that Tribes often do not even apply for these much needed grants.

9. Establish a Federal Lands Highways Safety Program for Indian Reservation Roads; Set Aside for the High Risk Rural Road Program; and Increase Funding for FTA's Tribal Transit Grant Program to $50 Million Annually

Under SAFETEA–LU, for FY 2008, Congress authorized $1.275 billion for the highway safety improvement program under section 148 of title 23 (High Risk Rural Road Program); and authorized nearly $700 million under Title II of SAFETEA–LU for the Highway Safety Programs of chapter 4 of title 23. These funds include: for highway safety programs ($225 million); highway safety research and development ($107 million); occupant protection incentive grants ($25 million); safety belt performance grants ($124.5 million); State traffic safety information system improvements ($34.5 million); alcohol-impaired driving countermeasures incentive ($131 million); national driver register ($4 million); high visibility enforcement program ($29 million); motorcyclist safety ($6 million); and child safety and child booster seat safety incentive grants ($6 million).

SAFETEA–LU amended section 402(c) of title 23 to increase the set aside of appropriations for Highway Safety Programs to the Secretary of the Interior from percent of 1 percent to 2 percent annually, but this increase still provides less than $5 million dollars to be divided among all 564 federally recognized Tribes.

We must build on this success and establish an Indian Reservation Roads Safety Program for the Federal Lands Highways office within the Department of Transportation. In 2004 and 2005, Indian Tribes sought to establish a set aside for the IRR Program for the High Risk Rural Road Program during the Congress' consideration of SAFETEA–LU as well as a Federal Lands Highways safety program funded at $40 million annually. We currently recommend that Congress create a 2 percent set aside for the IRR Program for the High Risk Rural Roads Program, and create a Highway Safety Program for Indian reservation roads within the Federal Lands Highways with an appropriation amount of $50 million annually to dramatically reduce the incidence of death and injury on America's Indian reservation roads.

If Congress develops Tribal set asides for Department of Transportation safety programs, it would do so much to combat behavioral and safety issues that contribute to the high rates of death and injury on Indian reservation roads.

The Tribal Transit Program is a huge success and demonstrates the unmet need for more transit funding of Tribal transit programs. Our Reservation operates a transit program and it benefits so many of our members, including students attending Sitting Bull College. As noted above, nearly 100 Tribes submitted applications to FTA in the first year FTA announced the program. FTA was able to fund over 60 of the applicants. Due to the demonstrated high demand and proven results, Congress should increase the authorization for the Tribal Transit Grant Program to $50 million annually.

10. Increase Funding to the Successful Tribal Transportation Assistance Programs (TTAPs) to at Least $2.5 Million Annually to Increase Awareness in Indian Country of "Best Practices" in Transportation Planning, Design, Construction, Maintenance, and Highway Safety Measures

Tribal Technical Assistance Programs (TTAPs) are the real unsung heroes in Tribal transportation policy. They work to educate Tribal officials on transportation issues, increase the technical capacity of Tribal governments in the transportation arena, and provide training in safety and equipment operation and maintenance. As a result of their efforts, Tribal governments are playing a greater, and more informed, role in the delivery of transportation services to their communities.

The TTAPs are 15 years old, having been created in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and is funded in part through FHWA's Office of Professional and Corporate Development (OPCD), and with IRR Program funds. Seven TTAPs assist Tribes throughout the country. Under SAFTEA–LV, the BIA is authorized to fund the TTAPs at $1.0 million annually. I recommend that Congress increase funding to the TTAPs to $2.5 million annually so that they may expand their valuable services to Indian Tribes.

11. Promote the Use of Flexible Financing Arrangements in Standard ISDA Contracts and Agreements

Flexible financing or advance construction agreements allow Tribes to use a portion of their IRR Program funds to repay government bonds or commercial lenders the interest and principal for loans advanced to the Tribe to finance an IRR Program-eligible project. To be eligible, the project must be included on an FHWA-approved Transportation Improvement Program (TIP). Innovative financing is different than pay-as-you-go (paygo) arrangements in that an entire construction project may be bid out as a single project which creates economies of scale, reduces mobilization costs, and minimizes the negative effects that construction inflation would otherwise have on available funds that are saved by the Tribe over time.

We are disappointed that the Assistant Secretary—Indian Affairs informed the IRR Program Coordinating Committee in April 2007 that the BIA will not recognize advance construction authority through straight-forward Indian Self-Determination Act (ISDA) contracts and Self-Governance agreements. Instead, the BIA will only enter into an advance construction arrangement with a Tribe through negotiation of a separate agreement, under authority of 23 U.S.C. § 204, which is not included in or referenced by the ISDA contract or agreement.

The Assistant Secretary's letter does not explain the BIA's rationale as to why the ISDA contract, the contract document which Tribal governments are most familiar with and accustomed to negotiating with the BIA for over 30 years, is not an acceptable agreement for the use of flexible financing arrangements by Tribes.

The BIA's decision will likely result in fewer Tribes using advance construction agreements in the future to finance eligible road construction projects. This decision will also make it harder for Tribes to obtain short term bridge loans to complete projects at the end of a fiscal year. This will mean unnecessary project closures and costly demobilizations and remobilizations. To mandate that Indian Tribes must negotiate a separate advance construction agreement is not sensible and raises the cost of doing business in Indian country. As the Assistant Secretary concedes in his letter, the "Federal Government does not act as a surety, guarantor, or project financier or request approval of a loan from any lending institution" under these agreements, so there is no reason to require the Tribes to enter into a separate entirely superfluous agreement, when the Self-Determination agreement can serve this same purpose.

By contrast, FHWA, in negotiating its IRR Program Agreement with five Indian Tribes in 2006, allowed the IRR Program Agreement to reference the IRR Program regulations' flexible financing provisions (25 C.F.R. 170.300 *et seq.*), and permit the Tribes, at their option, to direct a portion of their IRR Program funds to be paid from FHWA directly to the bond trustee or lending institution financing an eligible project under the IRR Program. This more sensible approach lowers transaction

costs and provides incentives to lenders to do business with Tribal governments on transportation projects.

We encourage the Committee to either counsel the Department of the Interior to retract its unwarranted decision or clarify in future legislation that advance construction agreements may be included in the standard Title I ISDA contract and Title IV Self-Governance agreement.

12. Implement Right-of-Way Reform in Indian Country to Facilitate Reconstruction of Existing Roads and the Design and Construction of New Roads

Reservation areas are often a checkerboard of fee, allotted, and Tribal trust lands. Therefore, it is often time-consuming and expensive for Tribes and the Federal Government to obtain all of the necessary and appropriate rights-of-way before beginning construction or renovation of roadways, bridges, and other transportation infrastructure.

The BIA is responsible for maintaining records of rights-of-way in Indian Country. Unfortunately, BIA right-of-way records management is in a terrible state. IRR projects are often delayed by months—or even years—because the BIA realty officers cannot locate valid right-of-way records. Tribes are using their IRR Program funds, the only funds the BIA claims are available, to cure inaccurate or lost rights-of-way. Tribal and Federal funds are thus often wasted in re-acquiring valid rights-of-way simply because adequate BIA records have not been kept.

The Interior Department should undertake a major new initiative to organize, update, and computerize its BIA right-of-way records. It should make these records available to Tribal governments in an easy-to-access format such as a GIS/GPS mapping system. The Interior Department should also be more aware and protective of Tribal jurisdictional interests in the right-of-way acquisition and transfer process, in light of the U.S. Supreme Court's adverse right-of-way ruling in *Strate v. A-1 Contractors,* 520 U.S. 438 (1997) and subsequent cases.

The Federal Government should also work closely with Tribes to implement a proactive program of "corridor management." Through "corridor management," Tribally preferred corridors for transportation and other infrastructural elements—such as for electrical lines, water lines, and others—can be planned well in advance. In some instances, the easements for these corridors may be obtained in advance. Corridor management requires Tribal governments to think proactively about how they envision future development to occur on their reservations. Through corridor management, rights-of-way for all inter-related infrastructural development projects can be obtained in a unified manner, speeding up design and construction once a specific project is authorized and funded.

The Federal Government should be an active and supportive partner in providing technical assistance to Tribes who wish to apply the principles of corridor management to their transportation programs and to general reservation development.

VI. Conclusion

Indian Tribes are coming into their own in the transportation field. Tribal governments are focusing on long-range transportation planning, assuming the Interior Department's duties for the IRR Program, partnering with States and county governments on mutually beneficial construction projects, and looking at innovative ways to finance the development of infrastructure on their reservations. These trends should be applauded and I wish to thank the Members of this Committee for the many beneficial legislative changes that you worked to include in SAFETEA–LU. Yet even with these successes, many challenges still remain. Congress and the Administration must recognize that if Indian Tribes are to overcome these challenges, Tribal governments must be given the resources to succeed.

I hope that as a result of this hearing Tribal governments, Tribal Technical Assistance Programs (TTAPs), ITA and State DOTs, can work in greater concert with the BIA and Department of Transportation to improve transportation infrastructure in Indian country—from building and enhancing Tribal transportation departments to building and maintaining safer roads in Indian country.

Tribal communities will not suffer the traffic fatalities and injuries at the rates we are now seeing if we can interact on a more equal footing with States, to plan, design, build and maintain our inventory of roads, and implement traffic safety measures which States have shown to be successful in promoting highway safety. Pockets of best practices exist within the agencies which demonstrate that the manner by which Indian Tribes receive Federal funds and operate Federal transportation can be improved for the better. Tribes need the help of Congress to makes these best practices the rule, rather than the exception.

Tribal governments, Federal agencies, and Congress need to open a new dialogue where old habits and old ways of doing business are discarded for more efficient

practices. We are making progress in Tribal transportation and I encourage this Committee and the Congress to work in partnership with Indian Tribal governments. Indian Tribes are ready to do our share to improve the safety of our communities for ourselves and our children's future.

Thank you for giving me the opportunity to provide this written testimony regarding Tribal transportation issues on behalf of the Intertribal Transportation Association.

PREPARED STATEMENT OF THE BOARD OF SUPERVISORS, NAVAJO COUNTY, ARIZONA

The Board of Supervisors of Navajo County, Arizona thank Chairman Dorgan, Acting Vice Chair Murkowski, and the esteemed Members of this Committee, including Arizona's own Senator John McCain, for this opportunity to provide a different kind of local perspective—a County perspective—on transportation issues in Indian Country. Specifically, we wish to raise to this Committee's attention the crucial yet often overlooked issue of the maintenance of Indian Reservation Roads. As a local jurisdiction whose boundaries include large portions of the White Mountain Apache, Hopi and Navajo reservations, Navajo County is committed to assuring that county residents who happen also to be tribal members living on their reservations have all weather access to all of the roads within our County, whether on reservation or off.

Background

Too often, counties are overlooked in discussions about Federal policies in Indian Country because so much attention is given to the Federal and state government-to-government relations with tribes. The fact is, counties are very often the local government with whom tribes share members/residents and infrastructure. For example, when the dirt roads on the reservations wash out due to bad weather, which happens several times each year, Navajo County is asked to bring its own equipment and personnel to make repairs to Indian Reservation Roads (IRR) so that our county residents do not remain stranded while they wait for the Bureau of Indian Affairs (BIA) to show up.

Today, most of the roads on the Indian reservations in Navajo County are still entirely unpaved, looking pretty much like they did before there were automobiles. Under normal circumstances, these roads are difficult to pass due to poor or nonexistent road maintenance. During seasonal weather events—including rain, snow, mud and sand storms—these roads become protracted public health, safety and education emergencies because BIA does not have the apparent ability to provide either regular or emergency maintenance.

Ironically, most of the off-reservation roads within our county are also dirt, yet provide all weather access because we maintain them. Our county government could never get away with providing the kind of inadequate service to its residents that BIA subjects reservation residents. It is our position that the people who live on the reservations within Navajo County are county residents to whom we are obligated to provide public access. For this reason, we not only are often the first responders to help people trapped by washed out BIA roads, but also are subsidizing the Navajo Area Office with cash, equipment, material and personnel, to the tune of at least $3.5 million over the last 3 years.

The Problem With Road Maintenance Policy

BIA prioritizes maintenance of paved roads over maintenance of unimproved roads to protect the Federal investment in the IRR program. This perspective makes sense to a Federal agency accountable to the Government Performance and Results Act. The problem is that in the context of Indian Country, where few of the roads are paved, this makes no sense at all and renders BIA totally unaccountable to the very people it is mandated to serve.

Moreover, BIA's definition of road maintenance precludes improvement of dirt roads and prohibits making them all weather access. Section 170.4 of the IRR Rule defines maintenance as, "preservation of the entire highway, including surface, shoulders, roadsides, structures and such traffic control devices as are necessary for the safe and efficient utilization of the highway." Section 170.808 prohibits the improvement of the surface condition of any road.

As a practical matter, from the perspective of those who use them, all roads are local, which is why the Federal agency's maintenance priorities should reflect local priorities. In Navajo County, whether on or off the reservation, the highest local priority is maintenance of school bus routes. Congress has already acknowledged the import of providing all weather access to federally funded schools by withholding funds from a state that does not maintain federally funded highways (Title 23, Sec-

tion 116). We respectfully wonder why Congress does not hold BIA to this same standard.

Local Solutions

The Navajo Nation Department of Transportation (NDOT) is leading an exciting effort to bring road maintenance into the 21st century and Navajo County is proud to be a part of this initiative. In 2006, NDOT convened a working group of road engineers from every jurisdiction within the exterior borders of Navajo and Hopi—including BIA, the State of Arizona, multiple counties and the Navajo and Hopi tribes—to promulgate new guidelines for the maintenance of unimproved IRR roads. The result is the "Navajo Nation Road Standards and Engineering Specifications for Earth/Dirt and Gravel Roads." This locally generated road engineering standard for maintenance (which will soon be codified into Navajo law) preserves the Federal floor of all applicable statutes and regulations (*i.e.* NEPA, Clean Water Act, Endangered Species, etc.) while constructing a regulatory scheme that makes sense for local conditions.

There are two key differences between these new, locally generated maintenance guidelines, and BIA policy. First, the definition of road maintenance is broadened to allow improvement for all weather access, meaning that rather than only allowing IRR roads to be bladed, maintenance crews would also be allowed to add gravel and create drainage. Currently, maintenance of IRR dirt roads is limited to annual or semiannual blading, which only lasts for hours or days and ultimately creates a surface that acts like a trench and fills up with, rather than drains, water. Second, the "Navajo Nation Road Standards and Engineering Specifications for Earth/Dirt and Gravel Roads" prioritizes school bus routes before any other kind of road because our communities value our children's education above all else.

The Dependable Indian Rural Transportation (DIRT) Project is a road maintenance partnership between the Navajo Nation and Navajo County to improve the all weather accessibility of unpaved roads through implementation of the Navajo Nation Road Standards and Engineering Specifications for Earth/Dirt and Gravel Roads. This partnership recognizes how mutual tribal and county participation in transportation projects of shared interests will benefit our common purpose to protect public health, safety and welfare of our tribal and county residents.

Through the DIRT Project, Navajo County will provide unimproved road maintenance training and technical assistance to the Navajo Nation in order to help Navajo assume responsibility for their own transportation function from the BIA. Tribes already maintain discretion to allow other jurisdiction's to supersede BIA's administration of road programs (IRR Rule Section 170.4 (d)). Toward this end, both the Navajo Nation and Navajo County are poised to commit $7.5 million over the next 5 years for this effort. However, in order to tackle this situation across the reservation, the DIRT Project will need $27 million over the next 5 years.

Navajo County and NDOT hope the DIRT Project can serve as a national model for using local partnerships and expertise to finally make IRR maintenance a reality for the vast majority of tribes whose transportation infrastructures do not consist of paved roads. The innovation the DIRT Project has to offer is its locally driven two prong approach that creates (1) a Tribal and County Road Maintenance Partnership and (2) Local Road Maintenance Standards and Priorities. Navajo County urges Congress to authorize the DIRT Project as a pilot project for export throughout Indian Country through the next reauthorization of the Federal highway bill (SAFETEA–LU reauthorization).

Conclusion

While it is no secret that the BIA has little funding for road maintenance within its budget, the real issue is not money but policy, and that is a problem this Committee can begin addressing immediately. Navajo County invites this Committee to visit the DIRT Project to better understand the daily struggle that BIA's road maintenance creates for anyone traveling on IRR roads, the majority of which on the IRR inventory are dirt. By helping to change BIA's current policy, this Committee can give the American taxpayer the biggest bang for their buck by making most roads in Indian County safe and accessible.

PREPARED STATEMENT OF JOHANNA DYBDAHL, CHAIRPERSON, SOUTHEAST TRIBAL DEPARTMENT OF TRANSPORTATION COMMISSION

Before I move into my testimony I want to express my condolences and those of the Southeast Tribal Department of Transportation to the family and friends of Senator Craig Thomas, and to this Committee. My own sister is stricken with cancer and sadly for my family has elected to cease treatment.

Thank you for the opportunity to provide written testimony on the IRR Program. The Southeast Tribal Department of Transportation (SE TDOT) is a consortium of 7 tribes from southeast Alaska that have joined together under the Central Council Tlingit & Haida Indian Tribes of Alaska's Compact with the Assistant Secretary of Indian Affairs. We have done this to: economize on the costs associated with operation of a tribal transportation program; develop expertise in the Indian Reservation Roads (IRR) Program; access other transportation programs available to tribal governments; and to work cooperatively with the State and local governments on projects of mutual priority.

We have benefited from the changes to the IRR Program throughout the years both legislative and through the negotiated regulations (25 CFR 170 IRR Program Regulations). The ability to assume the IRR Program and manage it directly is perhaps the greatest benefit for us. Not only does it give us direct access to our IRR funds, but it allows us to manage our funds in a manner that benefits the whole community as well as providing employment to tribal members. In the past we had little or no access to Interiors BIA Road Maintenance funds, so the changes to Title 23 United States Code authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) that allow us to use up to 25 percent of our IRR funds for transportation facilities maintenance is another significant benefit. We have seen an increase in IRR Program funding to some of our members through updates of their IRR Inventories.

We strongly support:

1. The continuation of and increases in funding to the Indian Reservations Roads Program.

2. The continuation of the BIA Road Maintenance Program and recommend that it be funded at a level that provides for an appropriate level of funding to support viable preventive maintenance and needed snow removal. And we urge that it be funded to address the needs for transportation facility maintenance for all tribes, not just those that have roads owned by the BIA.

3. An increase to the Federal fuel tax to allow for needed increases in the Highway Trust Fund.

4. A scientific evaluation of the impact of roadway and airstrip dust on heath and subsistence activities. As well as studies that determine the methods of dust control that provide the greatest benefits with the least impact to the environment.

5. Filling the position of Deputy Assistant Secretary for Tribal Government Affairs identified within SAFETEA–LU.

6. Expansion of ferry services within Alaska. We have seen a decrease in the number of ferries and not only support increasing the existing service, but recommend expansion to provide services to other villages and communities around Alaska.

7. Continuation of and Increases in funding to the Federal Transit Administration's Tribal Transit Program authorized by SAFEATEA–LU.

8. Continuation of and increases in Tribal Transportation Assistance Programs (TTAPs). We also encourage Congress to provide Congressional Direction that requires appropriate tribal consultation and preferable participation when TTAPs are selected.

9. Expand direct participation by Tribes and the U.S. Department of Transportation, so that Tribes may participate directly with the U.S. DOT and its administrations and not be subject to working through their respective State governments.

10. Authorize and fund a Highway Safety Program to address safety issues on transportation facilities identified within the National Tribal Transportation Inventory identified within SAFETEA–LU.

11. Giving the Department of Interior Congressional Direction that allows for innovative financing techniques in Indian Self-Determination Contracts and Self-Governance Compacts.

12. Modification to statutory language and providing Congressional direction on statutes that have been used to prevent reasonable progress and construction within Indian Country. Laws that impact the acquisition of transportation facility rights-of-ways, environmental and archaeological approvals. Too often important tribal projects that impact health and safety of tribal members have been held hostage to individuals following the letter of the law rather than the intent, and the influence of outside interest groups that have little regard for the human needs of the tribes and their members.

There are two issues that have been particularly problematic to us and we believe the other tribes within Alaska, as well as we the tribes across the country.

A. Indian Reservation Roads Program Inventory

We believe that the current IRR Inventory, the Inventory used to generate the Relative Need Distribution Formula is riddled with errors. Data regarding the conditions of transportation facilities is incorrect, and in many cases data regarding the ownership of transportation facilities is in error. In addition, we believe there have been data submission errors through either coding errors or difficulty in understanding the coding guidelines. For instance roads that fall under the jurisdiction of other governments may be generating funding outside of the respective State's local match requirements as required by the IRR Program Regulations. Additionally, the Bureau of Indian Affairs has instituted policies that are outside of either Statute or Regulation that has caused the process for updating IRR Inventories to be excessively cumbersome and costly.

The IRR Inventory is meant to identify 80 percent of the transportation need of the tribes; the other 20 percent is based on tribal population. Though we believe the funding formula could be used with an accurate and fair inventory for this purpose, we have strong reservations regarding the accuracy of the data in the current Inventory, and while many tribes have updated their IRR Inventories, there continues to be a significant number of tribes across the country that have not yet had their IRR Inventories updated either through non-action by the Tribe or difficulty in having their submission accepted.

The IRR Program is meant to be jointly administered by the Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA). SAFETEA–LU gave significant authority to the FHWA on the IRR Inventory, but we have seen a total lack of commitment on the part of FHWA to step up and help address the problems identified above. Congress gave direction in SAFETEA–LU on what is to be included in the IRR Inventory. To date, we have observed no action on this Congressional direction.

B. Tribal Technical Assistance Program

An issue of grave importance to the tribes within Alaska is the selection process used by FHWA to select our Tribal Technical Assistance Program (TTAP). We had benefited greatly from the previous 5-year cooperative agreement between the FHWA and the Eastern Washington University (EWU). The Process for selection was spelled out in the IRR Program Regulations. We believe the FHWA made no effort to consult with the tribes, had no tribal participation in the selection process, and in many ways acted with bias in their process. A large number of Alaska Tribes were very happy with the work of the AK TTAP under the operation of the EWU. We were stunned when we learned that the award of the current 5-year cooperative agreement was given to the University of Alaska—Fairbanks. We reviewed the FHWA's selection criteria and could find no justification for the selection. We consider this action by FHWA a harmful action toward the tribes within Alaska. We have learned that FHWA had issues with the high level of tribal advocacy provided by EWU, and that they had no intent of awarding a cooperative agreement to them. We believe that had FHWA advised the tribes in Alaska of their concerns as part of a consultation, AK tribes and tribal organizations would have applied in response to the solicitation. As IRR Program funds are used to fund a portion of the TTAP we believe there was a complete and utter failure on the part of FHWA to follow their own policies on tribal consultation.

Regardless of our concerns with the IRR Program, it is a very good government program. One that needs to continue as it is of great benefit to the tribes. This past year my Tribe, the Hoonah Indian Association, was able to use its IRR funds to working cooperatively with the city of Hoonah to complete a city street paving project. Though we didn't generate very many dollars, the SE TDOT was able to use our FY 2005 and FY 2006 funds to enter into a cooperative agreement with the City. This made it possible for the City to complete the project as originally planned.

Thank you for providing this opportunity for tribes to weigh in and testify on tribal transportation issues.

STANDING ROCK SIOUX TRIBE
Fort Yates, ND, July 26, 2007

Hon. BYRON L. DORGAN,
Chairman,
Senate Committee on Indian Affairs,
Washington, DC.

Dear Chairman Dorgan:

I want to thank you for convening the Senate Committee on Indian Affairs on July 12, 2007, to conduct an oversight hearing on transportation issues in Indian country and for inviting Standing Rock Sioux Tribe Transportation Director Pete Red Tomahawk to testify concerning the state of transportation on Indian reservation roads. From every indication, the attention your hearing has brought to the deplorable state of Indian reservation roads and bridges—and the threat to public safety that such transportation systems pose to the traveling public—highlights the need for increased resources for rural road safety, road construction, and road maintenance on America's Indian reservation roads. Thank you for serving the Standing Rock Sioux Tribe and Indian country so well.

I am also writing you to request that a South Dakota Department of Transportation report which Mr. Red Tomahawk referenced in his written testimony to the Committee be included in full in the official record of the July 12, 2007 oversight hearing. The report, entitled: "Improving Motor Vehicle Crash Reporting on Nine South Dakota Indian Reservations," Study SD2005–14, Final Report, May 2007, prepared by ICF International, Inc., details the lack of consistent crash report data, the barriers to better crash reporting on tribal lands, and suggested remedies to ensure that improvements are made to the gathering of motor vehicle accident reporting in Indian country. I enclose a copy of the SD DOT Final Report with this letter.

It is our view that the SD DOT study and recommendation made in the report have broad application throughout Indian country. Improving the ability of Indian tribes to accurately document motor vehicle accidents, identify accident-prone roads, make safety repairs where possible, and ensure that the BIA maintains a central repository of Indian reservation road crash statistics, will improve road safety in Indian country.

Thank you again for shedding light on this often neglected subject. I look forward to working with you and your staff to build on the success of the Committee's oversight hearing and make meaningful improvements to the safety of Indian reservation roads.

Sincerely,

RON HIS HORSE IS THUNDER,
Chairman.

cc: The Honorable Tim Johnson; The Honorable John Thune; The Honorable Stephanie Herseth; Tribal Council; Mr. Pete Red Tomahawk; and Mr. David Huft.

South Dakota DOT
Connecting South Dakota and the Nation

South Dakota
Department of Transportation
Office of Research

U.S. Department
of Transportation
Federal Highway
Administration

SD2005-14-F

Improving Motor Vehicle Crash Reporting on Nine South Dakota Indian Reservations

Study SD2005-14
Final Report

Prepared by
ICF International, Inc.
9300 Lee Highway
Fairfax, VA 22031

May 2007

DISCLAIMER

The contents of this report reflect the views of the authors who are responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the South Dakota Department of Transportation, the State Transportation Commission, the South Dakota Highway Patrol, or the Federal Highway Administration. This report does not constitute a standard, specification, or regulation.

ACKNOWLEDGEMENTS

This work was performed under the direction of the SD2005-14 Technical Panel:

Zane Arpan ..... Cheyenne River Sioux Tribe
Myrna Buckles ..... Indian Health Service
Roger Campbell..... Tourism & State Development
Maj. J. C. Carpenter ..... SD Highway Patrol
Gina Espinosa... NHTSA Rocky Mountain Region
Gerry Foell .....Bureau of Indian Affairs
Elmer Four Dance .....Bureau of Indian Affairs
Gary Gaikowski.....Sisseton-Wahpeton Oyate
June Hansen..... SDDOT Office of Legal Counsel
Paula Hill..... Cheyenne River Sioux Tribe
David Huft.....SDDOT Office of Research
Dennis Johnson .....SDDOT Office of Research
Sharon Johnson . Federal Highway Administration
Robert Long ..... Rosebud Sioux Tribe
Roy Meyer.....SD Dept. of Public Safety
Col. Dan Mosteller .....SD Highway Patrol
Ben Orsbon..... SDDOT Office of the Secretary
Pete Red Tomahawk....Standing Rock Sioux Tribe
Ray Red Wing.....Flandreau Santee Sioux Tribe
Genevieve Ribitsch .....Oglala Sioux Tribe
Scott Shields.....Crow Creek Sioux Tribe
Sam Sully .....Yankton Sioux Tribe
Dennis Trusty ..... Northern Plains TTAP
John Weaver..... Indian Health Service
Toni Wells..... Lower Brule Sioux Tribe
Patsy Winters .....SD Dept. of Public Safety

The work was performed in cooperation with the United States Department of Transportation Federal Highway Administration.

TECHNICAL REPORT STANDARD TITLE PAGE

1. Report No. SD2005-14-F	2. Government Accession No.	3. Recipient's Catalog No.
4. Title and Subtitle Improving Motor Vehicle Crash Reporting on Nine South Dakota Indian Reservations		5. Report Date May 21, 2007 6. Performing Organization Code
7. Author(s) Polly Quick, Linda Bailey		8. Performing Organization Report No.
9. Performing Organization Name and Address ICF International, Inc. 9300 Lee Highway Fairfax, VA 22031 Interstate Engineering, Inc. 408 South Coteau Pierre, SD 57501-1039		10. Work Unit No. 11. Contract or Grant No.
12. Sponsoring Agency Name and Address South Dakota Department of Transportation Office of Research 700 East Broadway Avenue Pierre, SD 57501-2586		13. Type of Report and Period Covered Final Report February 2006 to May 2007 14. Sponsoring Agency Code 310964
15. Supplementary Notes An executive summary is published separately as SD2005-14-X.		

16. Abstract

Crash report rates from tribal lands in South Dakota are generally low relative to the number of crashes estimated for those areas. This study sought to quantify the number of actual crashes on tribal lands in South Dakota for 2005, describe the barriers to better crash reporting from tribal lands, and suggest remedies. The research team visited all nine reservations and worked with law enforcement agencies to retrieve crash data for 2005 as available. A total of 737 crashes were documented in some fashion by tribal and BIA law enforcement agencies, though only 52 were reported with enough detail to be included in the South Dakota Accident Reporting System.

After visiting the law enforcement offices for each reservation, the research team held a meeting with tribal and BIA law enforcement officials to discuss possible solutions. Three major ideas emerged from these discussions. The first was training for law enforcement officers on the crash forms and crash reporting process for South Dakota. The second concerned software solutions for internal tribal data processing and making the crash report form easier to complete. Thirdly, the political issues involved in crash reporting represent a serious barrier to improvement, and are tied primarily to the overall relationship between tribes and the State of South Dakota.

Based on the information gathered as part of the study, the research team made five recommendations to the State of South Dakota that would improve crash reporting from tribal lands. Recommendations center on working with tribal councils to agree on how crash reporting will be done from tribal lands, and providing support and incentives for crash reporting improvements at tribal and BIA law enforcement agencies.

17. Keywords Safety, Data, Native American		18. Distribution Statement No restrictions. This document is available to the public from the sponsoring agency.	
19. Security Classification (of this report) Unclassified	20. Security Classification (of this page) Unclassified	21. No. of Pages 71	22. Price

TABLE OF CONTENTS

DISCLAIMER ____ II
ACKNOWLEDGEMENTS ____ II
TECHNICAL REPORT STANDARD TITLE PAGE ____ III
TABLE OF CONTENTS ____ V
LIST OF FIGURES ____ VII
LIST OF TABLES ____ VII
ABBREVIATIONS USED ____ VIII
EXECUTIVE SUMMARY ____ 1
PROBLEM DESCRIPTION ____ 1
RESEARCH OBJECTIVES ____ 1
SIGNIFICANT FINDINGS ____ 2
RECOMMENDATIONS ____ 5
PROBLEM DESCRIPTION ____ 9
OBJECTIVES ____ 11
TASK DESCRIPTIONS ____ 14
FINDINGS AND CONCLUSIONS ____ 20
LEGAL FRAMEWORK ____ 20
CRASH DATA: IMPORTANCE AND USE ____ 21
Safety Planning ____ 23
Injury Prevention: Solving Identified Problems ____ 23
Transportation Planning ____ 24
Insured drivers: How Crash Data are Used ____ 25
CRASH REPORTING ON TRIBAL LANDS ____ 25
Current Status ____ 26
Primary Collection: Barriers to Reporting ____ 26
Data Processing: Barriers to Reporting ____ 27
DATA COLLECTED ON TRIBAL LANDS FOR 2005 ____ 29
Overview ____ 29
RESULTS OF ANALYSIS OF 2005 CRASH DATA ____ 31
IMPROVING CRASH REPORTING: TRIBE BY TRIBE ANALYSIS ____ 35
BEST PRACTICES ____ 47
Primary Collection Phase: South Dakota Tribes ____ 47
Data Processing Phase: South Dakota Tribes ____ 48

Other Tribal Crash Reporting Improvement Efforts 48
PILOT PROJECTS: FIRST STEPS TO OVERCOMING BARRIERS TO CRASH REPORTING 50
PATHWAYS TO FULL CRASH REPORTING 51
Paper-Based System 52
Specialized Software System 53
TraCS Software System 54
IMPLEMENTATION RECOMMENDATIONS 55
ANALYSIS OF RESEARCH BENEFITS 58
APPENDIX A—SAFETY GRANT SOURCES FROM NHTSA AND FHWA 59
APPENDIX B— DRAFT MEMORANDUM OF AGREEMENT FOR MOTOR VEHICLE CRASH REPORTING 61

LIST OF FIGURES

FIGURE 1: MOTOR VEHICLE CRASHES FOR 2005, BEFORE AND AFTER STUDY, WITHIN RESERVATION BOUNDARIES AS DEFINED BY 2000 CENSUS 3

FIGURE 2: SOUTH DAKOTA INDIAN RESERVATIONS 11

FIGURE 3: MOTOR VEHICLE FATALITY RATE IN SOUTH DAKOTA, 2001 – 2005 RELATIVE TO NATIVE AMERICAN AND WHITE/OTHER POPULATIONS 22

FIGURE 4: OVERVIEW OF CRASH REPORTING PROBLEMS BY TRIBE 25

FIGURE 5: TRIBAL CRASH REPORTING PROCESS WITH COMPLETE TRIBAL DATA SYSTEM 26

FIGURE 6: MOTOR VEHICLE CRASHES FOR 2005, BEFORE AND AFTER STUDY, WITHIN RESERVATION BOUNDARIES AS DEFINED BY 2000 CENSUS 32

FIGURE 7: COMPARISON OF PURDUE STUDY PREDICTIONS AND 2005 DATA REPORTED AND COLLECTED FOR SELECTED COUNTIES 33

FIGURE 8: FATAL INJURY CRASHES AS A SHARE OF TOTAL CRASHES, BEFORE AND AFTER INCLUDING STUDY DATA COLLECTION 34

FIGURE 9: MAP OF CRASHES ON LOWER BRULE RESERVATION 36

FIGURE 10: EAGLE BUTTE CRASHES, BEFORE AND AFTER STUDY DATA COLLECTION 38

FIGURE 11: MAP OF CRASHES ON CHEYENNE RIVER RESERVATION 39

FIGURE 12: CRASH MAP, TOWN OF PINE RIDGE, PINE RIDGE RESERVATION 42

FIGURE 13: CRASH MAP, OGLALA SIOUX TRIBE, PINE RIDGE RESERVATION 43

LIST OF TABLES

TABLE 1: NATIVE AMERICANS AS A PERCENTAGE OF ALL MOTOR VEHICLE FATALITIES IN SOUTH DAKOTA 1

TABLE 2: INTERVIEWEES AT NINE RESERVATIONS 14

TABLE 3: NATIVE AMERICANS AS A PERCENTAGE OF ALL MOTOR VEHICLE FATALITIES IN SOUTH DAKOTA 22

TABLE 4: CRASH DATA COLLECTED FOR 2005 FROM TRIBES IN SOUTH DAKOTA 29

TABLE 5: 2005 CRASH DATA IDENTIFIED PRIOR TO AND DURING STUDY 34

ABBREVIATIONS USED

BIA: Bureau of Indian Affairs

COPS: Community Oriented Policing Services

FHWA: Federal Highway Administration

MOA: Memorandum Of Agreement

NHTSA: National Highway Traffic Safety Administration

SDDOT: South Dakota Department of Transportation

SDDPS: South Dakota Department of Public Safety

TraCS: Traffic and Criminal Software

EXECUTIVE SUMMARY

PROBLEM DESCRIPTION

The motor vehicle fatality rate among Native Americans in South Dakota is more than three times the rate of others in South Dakota. Total fatalities among Native Americans account for over a quarter of all traffic crash fatalities in South Dakota from 2001-2005.[1] At the same time, full crash reports are often not collected on reservation lands, making it difficult to address roadway hazards, education and enforcement needs.

Table 1: Native Americans as a Percentage of all Motor Vehicle Fatalities in South Dakota

Year	Native American	White	Other	Total	Percent Native American
2001	38	129	4	171	22.2%
2002	43	133	4	180	23.9%
2003	58	138	7	203	28.6%
2004	63	134	0	197	32.0%
2005	45	138	3	186	24.2%
Total 5 Years	**247**	**672**	**18**	**937**	**26.4%**

Source: Fatality Analysis Reporting System,
National Highway Transportation Safety Administration.

Tribal and state government agencies have a strong interest in improving traffic crash reporting from tribal lands in the state. Improved crash data would enable the state and the tribes to apply more successfully for funds from the Bureau of Indian Affairs (BIA), the Federal Highway Administration (FHWA), and the National Highway Traffic Safety Administration (NHTSA), and to make the appropriate investments in safety improvements. Some tribes are also concerned with the difficulty of making insurance claims when BIA records must be requested through the Freedom of Information Act, which is the case on four reservations in South Dakota.

Three areas of problems were identified: tribal law enforcement capacity for reporting; standardization of reporting methods; and issues of tribal-state relations.

RESEARCH OBJECTIVES

Five objectives were identified for this study:

Objective 1. To describe and evaluate crash reporting practices used on the nine Indian reservations with lands in South Dakota.

Objective 2. To identify barriers to complete and accurate reporting of crashes on reservations.

Objective 3. To recommend practical ways to improve the completeness and accuracy of future crash reporting on reservations.

[1] Fatality Analysis Reporting System (FARS), maintained by National Highway Transportation Safety Administration.

Objective 4. To improve the completeness and quality of crash data reported to the South Dakota Department of Public Safety (SDDPS) from the nine reservations in calendar year 2005.

Objective 5. To facilitate agreements between tribal governments and the South Dakota Department of Transportation (SDDOT) on crash reporting.

The study team visited all nine Indian reservations in South Dakota during the summer of 2006. The team conducted interviews with tribal and BIA law enforcement staff and others, to identify the central barriers to better crash reporting on each reservation. In addition, a meeting was held in Aberdeen in September 2006, in conjunction with BIA Law Enforcement, to have a full discussion of some of the issues involved in crash reporting.

While visiting reservations, the study team collected crash data from calendar year 2005 to fulfill objective 4. The crash data collected was not always complete, but in the end the study added 52 crashes to the South Dakota Accident Reporting System (SDARS) for the year.

In order to accomplish objective 5, the study team suggested a pilot project to draft a Memorandum of Agreement (MOA) that would form the basis for crash data sharing between the tribes and the state. The draft MOA is discussed in more detail below, under Recommendations.

SIGNIFICANT FINDINGS

The research team collected a total of 737 crash reports, though most were not in a form that could be input to the South Dakota Accident Record System (SDARS) for 2005. Nevertheless, as an estimate, this data collection showed that crashes on tribal lands had been underreported by approximately 64 percent (737 out of 1,150 had gone unreported). The results by tribe are shown below, in Figure 1.

In discussions with tribal law enforcement officers and others, it was clear that each tribe is in a unique situation in regards to crash reporting. However, some common themes emerged. Problems fell into two phases of the crash reporting process: the collection phase, and the data processing phase. In the collection phase, the team's research found that full crash reports, with all the details about crash causation and circumstances, were often not filled out properly or in a timely manner.

In the data processing phase, the team found that most tribes were dissatisfied with their internal data processing. Software problems, hardware problems, and general lack of procedures for keeping accurate crash records were found. In the data processing phase, the final transfer of crash reports to the South Dakota Department of Public Safety is key to a complete data set at the state level. One or two tribal councils were reported to be explicitly opposed to data sharing with the state, but this was not the central barrier to reporting at most tribes.

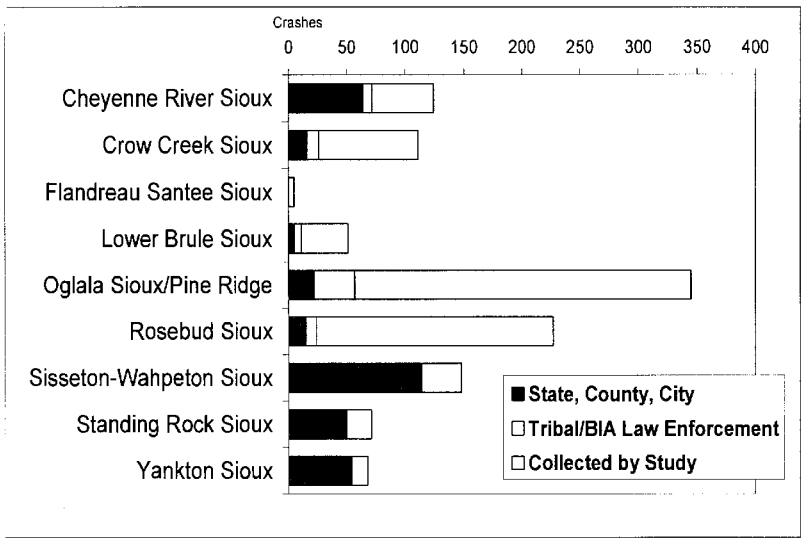


Figure 1: Motor Vehicle Crashes for 2005, Before and After Study, Within Reservation Boundaries as Defined by 2000 Census
Source: South Dakota Accident Reporting System (SDARS) data, summarized geographically by ICF, and Tribal/BIA Law Enforcement data collected during the study.

The team discussed these issues and options for improving the crash reporting at a meeting of tribal law enforcement officials and others in Aberdeen in September 2006. Three major ideas emerged from this meeting. The first was training for law enforcement officers on the crash forms and crash reporting process for South Dakota. The second concerned software solutions for internal tribal data processing and making the crash report form easier to complete. Thirdly, the political issues involved in crash reporting represent a serious barrier to improvement, and are tied primarily to the overall relationship between tribes and the State of South Dakota.

In order to explore the ideas of the Aberdeen meeting, the interim report suggested two pilot projects, which took the form of subcommittees of the technical panel. The first pilot project focused on training for law enforcement officers on tribal lands, and resulted in a description of the appropriate training for tribal or BIA law enforcement officers on crash reporting:

> Training in the proper completion of the accident report form will be provided by the State of South Dakota. This training will be provided in two formats, one being on-site and the other as a train the trainer program depending on the needs of the tribal authority. The training will be at no cost to the tribe and will be

approximately three hours in length. The Department of Public Safety will be responsible for the delivery of the report curriculum.[2]

The second pilot project created a draft memorandum of agreement (MOA) on crash reporting between a tribe and the State of South Dakota. The draft MOA, as developed by SDDOT, is an agreement to exchange crash data between the tribe and the state to improve highway safety. The goal of the agreement as currently drafted is to support engineering solutions to hazardous areas of the roadway, and the agreement specifies that the crash data submitted will be used to address roadway hazards. The draft MOA is a five-year document that would commit the tribal council to sharing data, while the state would agree to provide training and technical assistance to law enforcement agencies submitting data.

For tribes interested in improving their crash reporting, the general principles are:

- officers should fill out reports as soon as a crash has occurred;
- supervisors should check the forms for completeness; and
- the tribe should both maintain an internal file of all crash reports and send copies to both BIA and SDDPS.

Three different pathways to better reporting are described in detail in the report, based on best practices among tribes in South Dakota, tribes in other areas of the U.S., and other states' experiences.

The first pathway is a short-term solution, using paper filing and basic data tracking methods. Law enforcement officers fill out a crash report on site, using a paper form. The tribal or BIA law enforcement office keeps a copy of the crash report form, keeps a tally or a list of all crashes in a central ledger, and sends a copy of the report form to the SDDPS and the BIA. Several tribes are already using some permutation of this process, sometimes listing crashes in a spreadsheet to keep count and to be able to perform basic analysis. SDDPS can also provide reports to tribes based on the crash reports sent in.

The second and third options involve computerized solutions. Tribes have the option of purchasing and using an off-the-shelf software package for tracking crashes, such as the Cisco, Global, New World, and CRIS software that tribes already use in South Dakota. A key to using this software is to budget for technical support, because several law enforcement agents said that although they had software, it was not always working properly. Alternatively, tribes can choose to use the Traffic and Criminal Software (TraCS) package, a software tool for motor vehicle crash reporting that will soon be available from the SDDPS. One of the main advantages to TraCS over other software is that staff at SDDPS, the Highway Patrol, and others will be trained on the software, and SDDPS will be able to provide technical assistance directly to tribes that use the software. Tribes may need to check the compatibility between TraCS and other software

[2] Approved text from discussions among three South Dakota agencies: Highway Patrol, Department of Public Safety, and Department of Criminal Investigation. Provided by Pat Winters of SDDPS on December 6, 2006.

systems they are using for computer-aided dispatch, citations, and other parts of the criminal justice system.

RECOMMENDATIONS

The study team made five recommendations to South Dakota agencies at the end of the research.

1. **The South Dakota Department of Public Safety should expand its training on crash reports for all tribal and BIA law enforcement officers, tailored to tribal law enforcement.**

   Individual training needs at each tribe should be assessed and the standard state curriculum should be tailored as much as possible to improve tribal and BIA law enforcement officers' knowledge of the South Dakota crash report form. In addition, the state should focus on the details about each crash that are required under the Model Minimum Uniform Crash Criteria (MMUCC)[3]. This will help tribes to work with the internal data processes they develop, while producing the crash details that are needed for SDARS.

   The training may take the form of one-on-one training with South Dakota Highway Patrol officers, or a "train-the-trainer" model for each reservation. The Highway Patrol is currently working with some tribal police officers at Oglala Sioux Tribe, and future training programs should build on this experience. SDDPS could alternatively develop software that would guide law enforcement officers on tribal lands through the crash reporting form.

   Training needs, including incentives for law enforcement officers, should be discussed individually with each tribe. Training is already available to tribal and BIA law enforcement officers, free of charge, from the SDDPS Department of Criminal Investigation, and promoting awareness of this training for tribal and BIA police could be helpful in itself.

2. **The South Dakota Department of Transportation should work directly with tribal councils to establish crash reporting as a priority for law enforcement on tribal lands.**

   The state should meet with tribal councils to establish memoranda of agreement with tribes describing the crash data that should be submitted, and the limits on its use once it reaches the state. Staff at the SDDOT have already prepared a draft MOA that commits tribes to sharing crash reports with the state in a compatible format to be agreed on. In return, the state would commit to providing technical support and training for the use of the crash report forms, and to maintaining the confidentiality of the data insofar as possible. The MOA covers a five-year period as currently drafted.

[3] MMUCC are a voluntary set of guidelines that help states collect consistent, reliable crash data that are more effective for identifying traffic safety problems, establishing goals and performance measures, and monitoring the progress of programs. (National Highway Traffic Safety Administration, Accessed at: http://www-nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/MMUCC.html)

The MOA should be signed with notification to the tribal or BIA law enforcement agency, with the awareness that tribal councils set policy for law enforcement on reservations. While only a few tribes have explicit policies against reporting crash data to the state, data collection on crashes tends to have a low priority, even for internal uses. Passing a tribal resolution that crash data should be collected at the tribe would improve the reporting process.

A major concern for tribes has been double jeopardy, whereby an offender could be cited both by tribal or BIA police, and by State police after a crash report is submitted. This concern should be addressed directly in the MOA to assure tribal members that they will not be cited both in tribal and in the state criminal system.

SDDOT should pursue MOAs with tribes within the larger context of transportation improvements, emphasizing the fact that crash data will bolster the case for making roadways safer. SDDOT is currently conducting consultation meetings with each tribe on transportation issues, and crash reporting could be woven into those meetings. Alternatively, SDDOT staff could visit tribal governments specifically to address crash data sharing agreements. However, putting the crash data agreements in a larger framework of transportation issues is still important in this context.

3. **The South Dakota Department of Public Safety should encourage and facilitate grant applications from tribes to support tribal efforts to institute more effective internal processes to record and track crash data.**

The state data system will benefit from a better internal data collection system at each tribe. Improvements should be explicitly encouraged under a grant program administered by the SDDPS. The grants could be provided for each tribe to institute or improve its own crash data processing system including procedures, staffing, and a tracking system, potentially using software. It could also be a thorough filing system for paper with records kept in a ledger or a well-maintained spreadsheet. Some reservations already use software for this purpose, as discussed above, and others may benefit from instituting software or improving their training on it. The SDDPS grant program would support the development of an action plan at each tribe that will achieve specific goals for its data processing system, starting from the current status of crash reporting on that reservation.

NHTSA provides funds through its 408 program specifically to improve traffic records. This is a possible funding source for this recommendation. A successful application for 408 funding would require a 20 percent match from the tribe or the Indian Highway Safety office, and buy-in from BIA and FHWA. This funding has been approved only for the purpose of improving state data systems, so tribal improvements would have to be tied to SDARS. SDDPS may be able to locate other funding sources for this recommendation as well.

4. **The South Dakota Department of Public Safety should make reporting as easy as possible for tribes.**

   The SDDPS can ease the transfer of data by implementing various technological and personnel measures. For example, if a tribe has a complete data processing system on site, such as the Cisco system, the SDDPS can work to accept electronic data exported from those files. In the course of the research, Cisco expressed an interest in developing a report that would essentially mirror the SD crash report form. The state may also benefit from devoting information technology staff time to working with law enforcement assistants and other staff at tribes who work with crash data systems.

   For tribes with privacy concerns, accepting crash reports without personal identifiers will be vital to the data submission process. Crash reports would still contain all other details about the people involved in the crash (date of birth, sex, etc.), and could simply use a generic name ("Jane/John Doe"). Tribal concerns about privacy are a significant barrier for some tribes, and SDDPS can build trust with those tribes by focusing on the safety issues and relaxing personal identifier requirements.

5. **The South Dakota Department of Transportation should motivate crash reporting by actively facilitating the identification of rural hazards on tribal lands and by funding improvements.**

   By focusing on rural roadway hazards on tribal lands, the South Dakota DOT can strengthen the motivation for tribes to improve their crash reporting systems. The Hazard Elimination Program, part of the federal Highway Safety Improvement Program, is a potential source of funding for this. A requirement for the application process for these funds would be a crash analysis of the location where the safety measure will be implemented. The DOT can clarify the process of applying for this set-aside by outlining clearly the type of information required in the application.

   Road safety audits should be conducted to supplement crash data in identifying roadway hazards, since low traffic can mask serious safety problems on rural roads. As a model for this type of program, the Thurston Regional Planning Council (Washington) created a set-aside for rural areas from their federal Surface Transportation Program funds. In this program, smaller places were not matched up against large cities in competing for roadway improvement funds[4] (FHWA 2006).

[4] FHWA 2006. Case study: "Thurston County, Washington: Partnership between Tribes and an MPO" accessed at: http://www.fhwa.dot.gov/hep/tribaltrans/ttpcs/washington.htm

PROBLEM DESCRIPTION

This problem description below comes from the request for proposals issued by the technical panel for the project. The problems found in the field in the course of the research were generally consistent with these suggested factors.

Tribal and state government agencies have an acute need to improve traffic crash reporting to the South Dakota Department of Public Safety (SDDPS) from tribal lands in the state. Improved crash data would enable the state and the tribes to apply more successfully for funds from the Bureau of Indian Affairs (BIA), the Federal Highway Administration (FHWA), and the National Highway Traffic Safety Administration (NHTSA), and make the appropriate investments in safety improvements. Some tribes are also concerned with the difficulty of making insurance claims when BIA records must be requested through the Freedom of Information Act, which is the case on four reservations in South Dakota.

A 2005 study by Purdue University researchers, commissioned by the South Dakota Department of Transportation, had estimated actual crashes on tribal lands in South Dakota, and had shown that their estimates were much higher numbers total crashes reported to the SDDPS. For example, in Shannon County, 72 crashes were report for 2003; the Purdue study estimated the actual total number at somewhere between 152 and 314 for that year.[5]

Some possible factors in the under-reporting were identified before the study was conducted, and are listed below in three categories.

Factors in Crash Reporting

Tribal Law Enforcement Capacity for Reporting

- a shortage of experienced law enforcement staff, resources, and training
- lack of clarity or understanding of state reporting requirements
- limited availability of electronic databases and other information technology

Standardization of Reporting Methods

- varying crash reporting policies among tribal administrations
- conflicting requirements by the State of South Dakota and the Bureau of Indian Affairs
- differences in crash investigation and reporting protocols

[5] Purdue University's Center for the Advancement of Transportation Safety (2005). "Factors Contributing to South Dakota Crash and Fatality Rates," Final Report SD2003-15, for the South Dakota Department of Transportation Office of Research. Pages 108-127.

Issues of Tribal-State Relations

- concerns about ultimate uses of crash data and potentially negative impacts to tribal members
- concerns about driver privacy
- poorly established networks of communication among agencies
- inadequate institutional arrangements between state and tribal agencies

The three categories described above illuminate the central barriers to improved reporting, each with potential solutions. The first category, *Tribal Law Enforcement Capacity,* is a barrier internal to tribes that the state may overcome through increased assistance to the tribes, in the form of staff time, funding, and technological assistance. The second category of barriers, *Standardization of Reporting Methods,* could be overcome through a review of reporting methods to establish a process for bringing reporting into a single standardized form. The third category of barriers, *Issues of Tribal-State Relations,* is possibly the most important because it forms a part of the barriers in the other two categories as well, in that a tribe must have a good working relationship with the state in order to bring its capacity and reporting methods into line with the needs of state crash reporting.

These barriers stand in the way of improved traffic crash reporting, but more importantly, they prevent the state and tribes from addressing roadway conditions that contribute to crashes, injuries, and fatalities on tribal lands.

OBJECTIVES

The project's technical oversight panel defined five objectives for this study:

Objective 1. To describe and evaluate crash reporting practices used on the nine Indian reservations with lands in South Dakota.

This objective was necessary to understand the current state of crash reporting on tribal lands, and to understand in what way the current practice can be improved.

The ICF Team visited each of the nine reservations in South Dakota, shown on the map below, and talked with tribal and BIA staff, who described the current practice at each tribe. The results of these visits have been reported to the technical panel, and are described below under Findings.

Figure 2: South Dakota Indian Reservations
Source: U.S. Department of the Interior. *National Atlas*. Accessed at: http://nationalatlas.gov/printable/fedlands.html#list.

Objective 2. To identify barriers to complete and accurate reporting of crashes on reservations.

Despite recent efforts to include tribes in the statewide crash reporting system, most tribes in South Dakota do not report crashes fully. A key part of the study was to identify the reasons for the under-reporting.

Barriers to better crash reporting were a major topic of discussion, both in site visits and in meetings of the technical panel[6]. In addition, a meeting was held in Aberdeen, SD in September 2006. The meeting, hosted by the Bureau of Indian Affairs Law Enforcement division, was attended by six chiefs of police and several other tribal staff.

Objective 3. To recommend practical ways to improve the completeness and accuracy of future crash reporting on reservations.

The nine reservations in South Dakota are each unique in terms of governing structure, size, and internal coordination. An important aspect of the study was to find a fitting approach for each of the tribes to consider.

The current status of computer systems, general reporting systems, and staffing was assessed as part of the field visits. Participants also talked explicitly about what would be most helpful with law enforcement officials at the September meeting in Aberdeen.

Objective 4. To improve the completeness and quality of crash data reported to the South Dakota Department of Public Safety from the nine reservations in calendar year 2005.

Prior to the study, the data that had been reported to the South Dakota Department of Public Safety for 2005 were meager for some reservations. During the field visits, the ICF team attempted to retrieve full crash data on as many crashes as possible from tribal records. This was only possible on one reservation. On the other reservations, unless they had already been submitted, full crash reports were incomplete, missing, or held in confidentiality by law enforcement officials.

While full crash reports were not available, the team did collect incident reports, which contain a few facts about each motor vehicle crash. The incident reports allowed the team to assess the number of crash reports that should have been collected for each tribe in calendar year 2005. It is unclear whether the true number of reportable crashes is actually higher or lower than the number of crashes collected on incident reports. Some of the incident reports may have been for incidents under $1,000 in damage, and with no injuries, that are not reportable under South Dakota statute. The dollar value of property damage was typically not available in incident reports. On the other hand, some crashes may have gone completely unreported, even on incident reports. Thus, the number of crashes collected on incident reports should serve as a rough baseline for future year crash data collection.

Objective 5. To facilitate agreements between tribal governments and the South Dakota Department of Transportation on crash reporting.

One of the potential barriers identified by the technical panel in its problem statement was political opposition to reporting crashes from tribal lands. This arises from various motivations, described in greater detail in Findings, below.

[6] Panel members are listed in the Acknowledgements section on page ii.

In its interim report, the team recommended that a group be convened to draft a Memorandum of Agreement for the state and tribal governments. The draft was conceived as a starting point for negotiations between the state and each tribe.

TASK DESCRIPTIONS

Task 1: Review Scope and Work Plan

Meet with the project's technical panel to review the project scope and work plan.

The scope and work plan were reviewed as part of the project kickoff meeting, held in Pierre in March 2006 with members of the technical panel. Attendees at the meeting discussed some of the issues that would come up during visits to reservations, and made suggestions about visits and the material to be covered. Panel members pointed out that personal identifiers would be an issue with some tribes.

The kickoff meeting was attended by Linda Bailey and Polly Quick of ICF, and Dan Painter and Vernon Shelton from Interstate Engineering.

Task 2: Interviews and Site Visits

Conduct interviews and site visits with staff of tribal offices, the Bureau of Indian Affairs, the Indian Health Service, the South Dakota Office of Highway Safety, and the South Dakota Department of Transportation to identify crash data needs and to describe current crash reporting practices.

The ICF team, including Vern Shelton from Interstate Engineering, made visits to each of the nine reservations in South Dakota in May and June 2006. Dave Huft from South Dakota Department of Transportation (SDDOT) also attended most of the tribal visits. In most cases, interviews and data collection were conducted on the same visit, but some visits were broken up.

Table 2: Interviewees at Nine Reservations

Tribe	Interviewees
Cheyenne River Sioux Tribe	Zane Arpan, Tribal Transportation Planner Charles Festus Fischer, Chief of Police Rose Mandan, Law Enforcement Assistant
Crow Creek Sioux Tribe	Scott Shields, BIA Law Enforcement Officer (Chief of Police)
Flandreau Santee Sioux Tribe	Ken James, Chief of Police Ray Red Wing
Lower Brule Sioux Tribe	Toni Rouillard, Economic Development Travis Thompson, BIA Law Enforcement Officer
Oglala Sioux Tribe (OST)	Genevieve Ribitsch, OST Department of Transportation Connie Johnson, OST Department of Public Safety
Rosebud Sioux Tribe	Captain Marlin Enno, Rosebud Tribal Police Sgt. Sedlmajer, Highway Safety Officer
Sisseton-Wahpeton Sioux Tribe	Gary Gaikowski, BIA Law Enforcement Officer (Chief of Police)
Standing Rock Sioux Tribe	Pete Red Tomahawk, Transportation Planner Gerald White, BIA Law Enforcement, Criminal Investigator David Thompson, BIA Law Enforcement, Criminal Investigator
Yankton Sioux Tribe	Gerald Farmer, BIA Law Enforcement Officer (Chief of Police)

Tribal staff and BIA law enforcement officers spoke about issues surrounding traffic crash reporting with the research team. In each case, interviewees at law enforcement agencies, whether tribal or BIA, were asked about their experiences in collecting and using crash data. Internal agency procedures, problems with data collection, and problems with sending data to the state were discussed. The research team brought up issues surrounding staff time, training needs, and political issues with traffic crash reporting. Interviewees were also asked to comment on the usefulness of improved reporting. Often, existing software at the law enforcement offices was discussed in terms of how easily officers could use it and access reports on crash hot spots. At one tribe, a highway safety officer funded through the Indian Highway Safety office was also interviewed (Rosebud Sioux Tribe).

The team was also able to meet with some tribal government officials, and with other tribal staff. Dave Huft, of the Office of Research, participated in most of the site visits.

In addition to the visits to Tribal and BIA Law Enforcement offices, the research team met with Pat Winters of SDDPS, and John Weaver and Myrna Buckles of the Indian Health Services. These meetings provided background, history, and perspective to the crash data collection efforts in South Dakota. Together with Dave Huft of SDDOT, the research team also met with the BIA Special Law Enforcement Agents in Aberdeen, Elmer Four Dance and John Long.

The results from the site visits were summarized for the technical panel in a technical memorandum in June 2006.

Task 3: Preliminary Assessment of Crash Data from Reservations

From results of the interviews and site visits, make a preliminary assessment of the availability, quality, and usability of crash data from the nine Indian reservations with lands in South Dakota.

The ICF team entered into computer files all of the data collected by hand from tribal and BIA law enforcement files during the site visits. A preliminary assessment of the crash data was completed and submitted to the Department of Public Safety for review and comment. The crash data collected on site were generally found to have too few details to be included in the South Dakota Accident Reporting System, with the exception of crash forms from Cheyenne River Sioux Tribe reservation.

One of the most important things found in this initial assessment was that most data collection problems happened in the first phase of data collection, rather than data processing. Most details from crashes were not fully described on the reports that existed when the research team visited law enforcement agencies. For example, some of the incident reports found showed alcohol involvement or weather, but many did not. In addition, the crashes were often not described in enough detail to determine whether they were reportable crashes, that is, whether property damage only exceeded $1,000.

Although this initial assessment gave a good first overview of the data collected, the research team was aware at the time that there would be some duplication between the data collected and

crashes already reported to the state. The final numbers reported in this report, therefore, are the definitive crash data figures and should be used to describe the actual number of crashes on tribal lands in South Dakota for 2005.

Task 4: Identify Best Practices in Reporting and Barriers

From the results of the interviews and site visits, identify best crash reporting practices as well as barriers to complete and accurate crash reporting.

The research team conducted telephone research with other states, tribes, and organizations identified by the South Dakota Department of Transportation's Office of Research to identify best practices in crash reporting from tribal lands in other areas. In addition, the team identified best practices among tribes within South Dakota. The results of the best practices outreach were presented in the Interim Report on the project, and are presented below under Findings.

Overall, the research team found that crash reporting to the state from tribal lands is an issue in most states with significant tribal lands. The relationship between a given tribe and the state in question seemed to be the most important factor. Despite the difficulties, officials at tribes, state and federal agencies in other areas were able to provide good information on data reporting plans that seem to be effective.

Among the nine tribes with lands in South Dakota, several had exemplary practices in one or more areas of crash data collection and processing, and those results are also presented below under Findings.

Task 5: Prepare Technical Memorandum for Review

Prepare a technical memorandum and meet with the project's technical panel to review results of Tasks 2-4.

The team prepared an interim report that functioned also as a technical memorandum on the data collected to date, the interviews conducted, and the status of the study. The research team also recommended two pilot projects as part of this technical memorandum, one on training for law enforcement officers, and the other to draft a sample memorandum of understanding (MOU) that could be used to establish a reporting relationship between each tribe and the state. After the panel meeting to review this report, smaller groups were established to meet and implement the two projects.

June Hansen of the SDDOT Office of Civil Rights has the draft MOU currently. The training discussion resulted in a description of training to be offered that would be inserted directly into the MOU. Existing training opportunities with the South Dakota Highway Patrol were also discussed and are described in the Findings below.

Task 6: Estimate Current Crash Reporting Rates

From the examination of available crash reports and databases available on each of the nine reservations, develop estimates of current reporting rates and rates that might be achieved through improved procedures.

The team conducted an analysis of the crash data collected from reservations in South Dakota. The analysis was descriptive, not a statistical prediction. The research team consulted with the project manager and decided that a statistical prediction similar to those presented in the 2005 Purdue Study would not be significantly better, since the underlying data would not have improved through the study.

Despite the simple nature of the analysis, the research team was still able to establish that crashes were under-reported by approximately 64 percent overall for 2005. In some tribal areas, no crashes were left unreported by law enforcement; in others, crashes were under-reported by up to 89 percent.

These figures are based on the crashes reported to the state within the Census 2000 boundaries of tribal lands. It is important to note that some state roadways cross within these boundaries, and the crashes on those roadways would be counted here as within those boundaries. The Census 2000 boundaries were an improvement over the use of complete counties, which was the method used by the 2005 Purdue Study. While imperfect, they provided a good estimate of total crashes on tribal lands, especially those that are not contiguous with county boundaries.

Task 7: Identify and Submit Unreported Calendar Year 2005 Crashes on Reservations

From crash reports and databases available on each of the nine reservations, identify calendar year 2005 crash reports that could be, but which have not yet been, submitted to the South Dakota Office of Highway Safety. In cooperation with local authorities, prepare a supplemental submission of that data to the South Dakota Office of Highway Safety.

During data collection, the team found that several tribal law enforcement agencies did not have complete crash data on file. Generally, the law enforcement files contained incident reports, which have a brief narrative description of each crash, but not a full crash report. One exception was the Cheyenne River Sioux Tribe, where the tribal police department shared approximately 70 full crash reports with the study. Some of the crash reports were not reportable under the state definitions, but 52 were entered into the South Dakota Accident Reporting System (SDARS). No other crash reports could be filed in SDARS because the officers had not collected complete data on the scene.

Although collecting full data for each crash would have been preferable, the research team would not have been able to reconstruct most of the crashes, especially those with no injury and little property damage, from officers' memory. Reconstructing 685 crashes, those for which tribes did not have full data, would have been outside the scope of the project.

Two tribes, the Rosebud Sioux Tribe and the Yankton Sioux Tribe, told the research team that they had full data on crashes, but did not share the data. These data would presumably have been entered into SDARS if the tribes had been willing to share them.

Task 8: Develop Procedure Change Recommendations

Develop recommendations for practical changes in procedures, protocols, cooperative agreements between agencies, staff levels, training, information technology, and any other significant factors to improve the completeness and accuracy of future crash reporting on reservations. Estimate the resource requirements and cost of recommended changes.

The team held a special meeting in Aberdeen in September 2006 to gather input from tribal and BIA law enforcement officers on procedure changes to improve crash reporting. Tribal and BIA law enforcement officers and assistants from seven tribes in South Dakota attended, including four chiefs of police. The following tribal law enforcement agencies were represented by their chiefs of police: Rosebud Sioux Tribe; Oglala Sioux Tribe; and Cheyenne River Sioux Tribe. The following BIA law enforcement offices were represented: Sisseton-Wahpeton (chief of police); Yankton (officer); Lower Brule (officer); and Standing Rock (assistant). In addition, several tribal government staff were in attendance, from Lower Brule Sioux Tribe and Yankton Sioux Tribe. Staff from the Indian Health Service, South Dakota Department of Transportation, and South Dakota Department of Public Safety (SDDPS) also attended.

The two recurring themes from the meeting were training for law enforcement officers, and overcoming political resistance to sharing data. Training emerged as such a significant issue that the research team recommended a training-related pilot project in the interim report. Several chiefs of police described political resistance from tribal councils, and said that outside roadway safety experts, including staff from the state, might be able to help them in presenting a case for crash reporting to the councils. Roy Meyer, who attended from SDDPS, also described a grant program he hoped to implement. The program could set aside approximately $20,000 per tribe to improve crash reporting.

There was also a long discussion of different software options available to tribes for collecting and storing crash data. The Chief of Police for the Rosebud Sioux Tribe discussed the Cisco software system that the tribe currently uses. A representative of Cisco was also present at the meeting.

Task 9: Prepare a Final Report

In accordance with the Guidelines for Performing Research for the South Dakota Department of Transportation, prepare a final report summarizing the research methodology, findings, conclusions, and recommendations.

The research team submitted a draft final report in February, 2007. Review comments received from the project's technical panel were addressed in this final report, submitted in April, 2007. Although the entire technical panel had an opportunity to comment, the only significant comments received on the report came from SDDOT and SDDPS.

Task 10: Present Findings

Make an executive presentation to the South Dakota Department of Transportation's Research Review Board and the Aberdeen Area Tribal Chairmen's Health Board at the conclusion of the project.

Presentations to the Research Review Board and the technical panel were held on February 13, 2007. The presentation was provided in a Microsoft Powerpoint format, and can be used for further presentations after the end of the research project.

The meeting for the Aberdeen Area Tribal Chairmen's Health Board will be attended by representatives of the project panel rather than the consultant, since the next meeting fell beyond the timeframe of the project. In addition, the research team has prepared a fact sheet for distribution to tribes and other interested parties at the state to spread awareness of the study and the issue.

FINDINGS AND CONCLUSIONS

LEGAL FRAMEWORK

Tribes, as sovereign nations, are not like other jurisdictions geographically contained in the State of South Dakota. They generally do not fall under the jurisdiction of state law, and cannot be compelled to submit crash reports as other jurisdictions would. As sovereign nations, the tribes in South Dakota have a formal relationship with the Federal government, not the state. Consequently, the motivation for tribes to work with other jurisdictions below the federal level must be mutual benefit.

On all nine reservations, all law enforcement services are supported by the Bureau of Indian Affairs (BIA). However, five tribes have contracted to provide law enforcement services under Public Law 96-638 (generally known as a "638 contract"). In these cases, the tribe administers its own law enforcement directly. On four reservations, the BIA provides law enforcement directly. This distinction has an effect on crash reporting. BIA law enforcement agencies are federal offices, and any crash reports they collect cannot be given to private citizens without a Freedom Of Information Act (FOIA) request. These agencies are also one step removed from tribal councils. In contrast, the tribal law enforcement offices are employed by the tribal council and can sell copies of crash reports directly to the public. Also, BIA law enforcement officers are required to go through training at the Indian Police Academy in Artesia, New Mexico. Although many tribal law enforcement officers also go through the Indian Police Academy, some are trained at the South Dakota Division of Criminal Investigation in the Office of the Attorney General.

The South Dakota Department of Public Safety (SDDPS) collects all crash reports for the state under state statute. Other jurisdictions within the state, such as counties and cities, are required to use the South Dakota crash report form (DPS-AR1 12/11/03), submit the report to the state within three days, and include identification of all drivers involved in each crash. Instructions for the South Dakota crash report form are available from the SDDPS Office of Accident Records.

South Dakota statutes limit the ability of SDDPS to make departures from standard procedures. Three major and interrelated issues for working with tribes are:

1. Can the SDDPS accept crash reports without names?
2. If the SDDPS does receive names in reports, could it keep crash records off drivers' license records, if tribes request this? Could it keep crash records otherwise confidential?
3. Is there a verifiable firewall between crash data at SDDPS and information (such as alcohol involvement) used for criminal prosecution by other state and local jurisdictions?

Under current South Dakota statute, anyone involved in a crash must submit personal identification and vehicle registration to an officer. The officer must provide a report of the crash

to the state, and the crash report cannot be held confidential. The relevant statute is quoted below:

> SDCL §32-34-13: *Accident reports not privileged--Fees for locating and furnishing reports.* Reports pursuant to §§ 32-34-7 to 32-34-12, inclusive, and the information contained in such reports is not privileged and may not be held confidential.

As stated above, tribes are not obligated to abide by state statute in their crash report submissions. However, in order to realize some of the benefits of the crash reporting system, personal identifiers would be needed. For example, insurance reports can only be requested and received if personal identifiers are included in a crash report.

Tribal, BIA and state law enforcement agencies already cooperate on many issues in South Dakota. Law enforcement interests often cross tribal boundaries, and whether the issue is "hot pursuit" or drug smuggling and manufacture, law enforcement officers have benefited from a cooperative approach. The same can be said for motor vehicle crashes, which relate to many other enforcement issues in addition to engineering concerns.

Currently, the Standing Rock tribe has an agreement with Sioux County in North Dakota that allows for cross-deputization of BIA law enforcement officers. This allows them to enforce laws with non-tribal members on tribal lands, acting with the same authority as the County Sheriff.

Conflicts between tribal and state law are another major issue for crash reporting. Some tribes do not require driver licenses or vehicle registration, so a tribal member involved in a crash may not be able to provide this identification for a crash report. In this case, tribal law would have to change to allow for complete reporting. Law enforcement officers did not indicate that this was a frequent issue but, unless addressed, the standard procedures for crash reporting will have exceptions on those tribal lands with differing laws.

A major concern for tribal members is double jeopardy, whereby someone cited by tribal police could also be cited by the state, for example for reckless driving. South Dakota Highway Patrol officers who attended meetings said, however, that this is not a real concern. Citations for traffic violations must be issued "at the time," and cannot be issued in retrospect based on a crash report. This fact was not widely known among project participants.

CRASH DATA: IMPORTANCE AND USE

Traffic crashes claim a disproportionate number of lives on reservations in South Dakota. An analysis of fatality data from 2001 through 2005, shown in Figure 3, shows that in South Dakota, Native Americans have a per capita motor vehicle fatality rate three times higher than whites and other groups in the state.[7] Public health officials, safety officials, and transportation planners are

[7] Fatality Analysis Reporting System, accessed at http://www-fars.nhtsa.dot.gov/. Census population estimates by race were accessed at http://www.census.gov/popest/datasets.html. Analysis by ICF.

all interested in lowering the crash rate on tribal lands in South Dakota for the sake of those killed and injured in crashes.

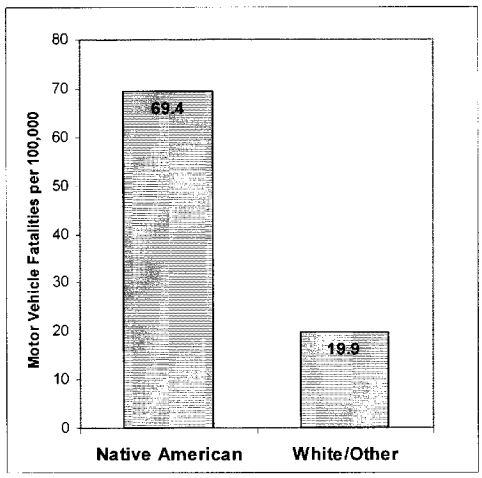


Figure 3: Motor Vehicle Fatality Rate in South Dakota, 2001 – 2005 Relative to Native American and White/Other Populations

Source: Census population estimates, Fatality Analysis Reporting System. ICF Analysis.

Native American fatalities accounted for over a quarter of all motor vehicle fatalities in South Dakota between 2001 and 2005, as shown in the table below.[8] Improving traffic safety on roads on and near tribal lands would have a significant influence on overall traffic fatality rates for the state.

Table 3: Native Americans as a Percentage of all Motor Vehicle Fatalities in South Dakota

Year	Native American	White	Other	Total	Percent Native American
2001	38	129	4	171	22.2%
2002	43	133	4	180	23.9%
2003	58	138	7	203	28.6%
2004	63	134	0	197	32.0%
2005	45	138	3	186	24.2%
Total 5 Years	**247**	**672**	**18**	**937**	**26.4%**

Source: Fatality Analysis Reporting System, National Highway Transportation Safety Administration.

[8] Fatality Analysis Reporting System, accessed at http://www-fars.nhtsa.dot.gov/. Census population estimates by race were accessed at http://www.census.gov/popest/datasets.html. Analysis by ICF.

SAFETY PLANNING

Most fatal crashes on tribal lands are currently tracked by the state. Even when they are not reported to the South Dakota Department of Public Safety (SDDPS) by law enforcement agencies, the department is able to use records from hospitals and other sources to record these crashes. However, information from all crashes (not just fatal crashes) would allow safety planners to better pinpoint hazards. An intersection with one fatal crash may have had 8 non-fatal crashes in the same year, but without full information, the location of one fatal crash could seem unremarkable.

Reduction in lives lost, injuries, and damages is the goal for everyone working in traffic safety today. However, NHTSA, FHWA, and other agencies that fund safety improvements and programs now require evidence that their funds are making a difference in traffic safety. Without past crash data, safety improvement needs are hard to prove and therefore hard to fund. Past years' data allows transportation planners to set a baseline and over time measure improvements that can be correlated to a corrected problem.

The BIA Office of Indian Highway Safety funds highway safety officers on several of the reservations in this study. These officers are trained in safety-related enforcement activities, and often have special training in crash reconstruction and reporting. In order to continue these grants, officers are required to report on their enforcement activities and on other safety measures, such as number and severity of crashes.

NHTSA also funds safety-related work, such as seatbelt campaigns, child restraint education, and anti-DUI campaigns. NHTSA funds this work mainly through what is known as the 402 safety program, with other funding available for specific tasks. Tribes can apply for these funds through the State of South Dakota.

Three main safety fund sources and the type of projects they can fund are outlined in Appendix A.

INJURY PREVENTION: SOLVING IDENTIFIED PROBLEMS

Public health workers in a community need data to guide their interventions on injury prevention. In the past, the Indian Health Service has provided most of the traffic crash data analysis on tribal reservations in South Dakota. Having several years of crash data provides an invaluable baseline for interventions on drinking and driving, seatbelt use, child restraint use, and other safety issues.

Once an intervention has been made, showing that the intervention made a difference is crucial for public health workers. A project begun in 1991 in the Navajo Nation was able to show a 52 percent reduction in the fatality rate from motor vehicle accidents over a five-year period, and a 50 percent reduction in motor vehicle-related hospital discharges. This highly successful

program received the 1996 NHTSA Administrator's Highway Safety Program of Excellence Award.[9]

TRANSPORTATION PLANNING

Crash data allow transportation planners to pinpoint crash hotspots that can be addressed, and also allow them to estimate and then measure the results of improvements. For example, a dangerous curve can be improved by clearing sight distance, posting signs that warn drivers of an upcoming curve, installing centerline and shoulder rumble strips, improving shoulders, or providing skid-resistant pavement surfaces, to cite a few possibilities. Planners use a Crash Reduction Factor (CRF) for each type of improvement to decide whether it meets a cost-benefit analysis, that is, whether it will reduce crashes enough to be worth the investment.[10]

To make the best decisions in safety improvements, planners need to know more than just location. Other contributing factors—such as the driver's age, whether the driver was sober, the weather, and the lighting—must be assessed. This drives the need for all of the details about the crash circumstances that are on a full crash report form. Once hazardous locations have been found, the state prioritizes improvements through its Roadside Safety Improvement Program each year. The South Dakota Department of Transportation has several sources of funds for safety improvements, one of which is the FHWA. In fiscal year 2007, the SDDOT set aside $10.9 million for roadway safety improvements in the Statewide Transportation Improvement Program, including several small projects for signing and delineation, and a handful of larger projects involving reconstructed roadway.[11]

FHWA funds several safety grant programs that are administered by the state. The largest is called the Highway Safety Improvement Program. This program was funded at just over $1.2 billion nationally in Fiscal Year 2006. South Dakota received a $10 million apportionment under this program for FY 2006. The majority of the Highway Safety Improvement Program fund is available for safety improvements on any public roadway selected in the State Transportation Improvement Plan (STIP). The Federal transportation act from 2005, the *Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU), also requires a strategic highway safety plan that builds on crash data to address roadway hazards.

Generally, FHWA funds are set aside for constructing roadway improvements. However, once the state has put a strategic highway safety plan in place, 10 percent of the funds available under the Highway Safety Improvement Program are eligible for education, enforcement, and emergency medical services.

---

[9] Traffic Safety Digest, Fall 1998. Navajo Nation Seat Belt/Community Traffic Safety Program. Accessed at: **http://www.nhtsa.dot.gov/people/outreach/safedige/fall1998/n5-108.html**.

[10] Bonneson, J. and D. Lord (2005). "Role and Application of Accident Modification Factors in the Highway Design Process." Texas Transportation Institute. Accessed at: **http://tti.tamu.edu/documents/0-4703-2.pdf**.

[11] Statewide Transportation Improvement Program 2007 – 2011, South Dakota Department of Transportation. Accessed at: http://www.sddot.com/pe/projdev/docs/20072011FundingCatSTIPCompleteApproved.pdf.

Insured drivers: How Crash Data are Used

The first time most people see a crash report is when they request a copy for insurance purposes. Insurance companies require this report from law enforcement to substantiate insurance claims. On reservations where the BIA provides law enforcement services directly, crash reports are considered confidential and cannot be issued from the police station directly to individuals. Individuals have to request a copy under the Freedom of Information Act (FOIA), as discussed above. This has caused some significant delays for people on reservations who need to make an insurance claim.

The State of South Dakota issues crash reports to individuals for a $4 fee. Insurance companies also request crash reports directly from the state.

Crash Reporting on Tribal Lands

During the summer of 2006, the research team visited the nine reservations in South Dakota to collect information about current crash reporting procedures and to collect crash reports from 2005. Each tribe is unique in its operations and in how well its crash data collection is working, but the team found some commonalities in terms of the general process used to track crashes.

Following a description of the current status of crash reporting on tribal lands, possible improvements are discussed for each tribe. Because reservations range in size, the staff available at their law enforcement agencies, and their computer capabilities, specific improvement plans for the short and long term are described for each tribe.

Figure 4 gives an overview of the issues at each of the reservations in South Dakota, based on the results of this study. Each problem area is discussed in more detail below, followed by a discussion by tribe.

	Full Crash Report	Law Enforcement Office Capacity	Tribal Data System	Data Sharing - South Dakota DPS
Cheyenne River				
Crow Creek	(sometimes)			
Flandreau Santee				
Lower Brule	(sometimes)			
Oglala Sioux	(sometimes)			
Rosebud Sioux				
Sisseton-Wahpeton	(SDHP)			
Standing Rock	(old)			
Yankton	(N/A)			

Figure 4: Overview of Crash Reporting Problems by Tribe

CURRENT STATUS

There are two major phases in the crash reporting process (Figure 5). The first phase is primary collection. Through the dispatcher, an officer visits the scene of a crash and fills out one or more reports on the crash. In talking with law enforcement officers, and collecting reports from tribal and BIA law enforcement agencies, we found that many of the problems with tribal crash reporting originated in the primary collection stage.

In the second phase, the data processing phase, either the officer or a law enforcement assistant enters the information into the data storage system. Some tribal law enforcement offices have software systems, such as Cisco or the Criminal Records Information System (CRIS), to record crash data electronically. Others keep crash reports or copies of each crash report in a paper file. Some tribal law enforcement offices do not keep copies of full crash reports, and simply submit those that are collected to the Department of Public Safety. Each tribe maintains a dispatch log and incident reports, which have some of the information on the full crash report.

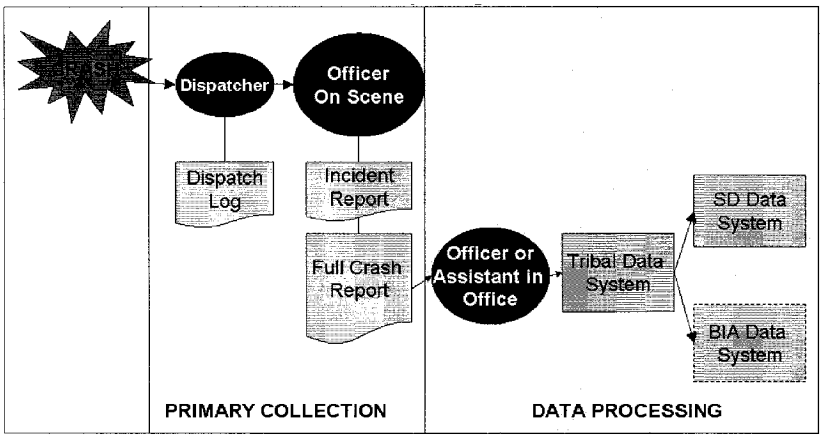


Figure 5: Tribal Crash Reporting Process with Complete Tribal Data System

There are problems in both phases at many tribes. Barriers to crash reporting associated with each phase are listed below.

PRIMARY COLLECTION: BARRIERS TO REPORTING

Training

A major source of barriers is the disconnect between law enforcement offices on tribal lands, state law enforcement, and SD Department of Public Safety (SDDPS) staff. This disconnect begins with separate training for officers who plan to work on reservations through the BIA, and

continues through the lack of communication about new forms and procedures in place at the SDDPS. This disconnect means that law enforcement officers on tribal lands are sometimes unfamiliar with the South Dakota crash forms. It also means that personal ties between tribal or BIA officers and state officials, which could otherwise improve crash reporting, may be missing. This can be remedied in part through training, and in part through extended outreach from the SDDPS and from tribal and BIA law enforcement.

Vehicles Moved

Removal of a vehicle from a crash scene in order to avoid documentation is a common problem for law enforcement across the U.S. While law enforcement officers cannot prevent this from happening, a general public awareness of the need to preserve a crash scene may help.

Law Enforcement Understaffed

Understaffing is a wide-reaching problem in law enforcement. Officers who are short of time may put off writing reports because of other pressing needs. Agencies without enough officers to staff shifts will find it difficult to train officers on new forms or provide supervisory assistance with reports. Some grant programs, for example from the Indian Highway Safety Program, are available specifically to fund staff positions to work on roadway safety with law enforcement agencies.

Crash Reports Not Standard Practice at BIA

The BIA does not currently require full crash reports, although it does require incident reports. Crash reconstruction and reporting are covered during Indian Police Academy training, but it is not specific to South Dakota forms. However, the BIA law enforcement division in Aberdeen has expressed support of full crash reporting. BIA law enforcement officials told the research team that they would support sharing data between reservation agencies and the SDDPS. While only four reservations in South Dakota have BIA law enforcement services, the other tribes are under contract to BIA for law enforcement services and could be required to provide crash reports to the state within that contract.

Data Processing: Barriers to Reporting

Feedback on Forms

Some reservations reported that when officers complete crash reports and send them to the SDDPS, they sometimes did not receive feedback on incomplete or incorrectly completed forms. Law enforcement assistants who work on crash reports could also benefit from additional feedback about how forms are filled out and the data used.

Electronic Data Systems Not Compatible

Software systems for crash records do not conform to a standard across the United States, although there are several efforts underway to create a more uniform data standard. Most notable

are the Model Minimum Uniform Crash Criteria, or MMUCC.[12] Software for crash systems is usually purchased together with other modules for tracking dispatch calls, citations, and other types of infractions. While SDDPS will soon be providing TraCS as alternative software for tracking crashes, compatibility with these other criminal justice databases will be key to creating data files that can be transferred directly. This is not a problem isolated to tribes or to South Dakota. Wisconsin DOT is currently working on a compatibility project with 49 types of software used by tribes, cities, and counties across Wisconsin.

Tribal Data Systems Inadequate

Most tribal and BIA law enforcement agencies reported dissatisfaction with their hardware and software systems. A frequently mentioned problem was a lack of technical support for the software that had been purchased. They also sometimes lacked trained personnel to work with the software, and many did not have a routine for data entry. Data reporting was reported to be working best at Rosebud Sioux Tribe, where a highway safety officer monitors the crash data entry and makes sure that officers have filed their reports. Having trained personnel and established procedures has helped the Rosebud law enforcement agency to maintain a good tribal data system for its own use. Other tribes often lacked both.

Political Concerns

Tribal sovereignty is a major concern in law enforcement. On one site visit, law enforcement officials said that the South Dakota Highway Patrol had been banned from the reservation by the tribal council because of a traffic stop. Historically in South Dakota, statistical data have sometimes been used to support criticism of tribal governments and members. Tribes may need assurance that the only use of crash data collected on tribal lands will be to improve traffic safety, not to criticize accident rates or to support criminal investigation or any other effort.

The political barriers are worsened because of an indistinct relationship between reporting crash data and improving traffic safety. While the South Dakota Department of Transportation (SDDOT) funds hazard elimination in cities and counties directly, some tribes have not received state funds to fix hazardous locations. Tribal and law enforcement staff at several tribes said that in some cases they had tried to establish the need for a signal or other improvement, but could not show crash data to indicate a problem.

Tribes are not under the same obligations as cities and counties to report crashes to the South Dakota Department of Public Safety (SDDPS). To stimulate better reporting from tribes, the SDDPS may need to explain how its crash data collection system can benefit tribes.

[12] MMUCC are a voluntary set of guidelines that help states collect consistent, reliable crash data that are more effective for identifying traffic safety problems, establishing goals and performance measures, and monitoring the progress of programs. (National Highway Traffic Safety Administration, Accessed at: http://www-nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/MMUCC.html) http://www.mmucc.us/.

On some issues, tribal governments differ significantly from one another. Several tribal representatives have stated that their tribal councils will not support submitting crash reports with personal identification of the people involved. On the other hand, representatives from the Lower Brule Sioux Tribe have said they would like to shorten the wait for crash reports for insurance purposes by having the reports go to the state. They understand that names and other personal identification would have to be included for this purpose.

DATA COLLECTED ON TRIBAL LANDS FOR 2005

OVERVIEW

It is important to note that data collection for this study could only address information accessible in the *data processing* part of the normal process shown in Figure 5. This section describes the data the team was able to collect, and discusses how the barriers described above in the section above affected the data collection effort.

Tribal law enforcement officers were asked to provide access to data on crashes from 2005 at each reservation. These data were input to a database for analysis in this study. Where crash data were available on South Dakota crash forms, the information was forwarded to the South Dakota Department of Public Safety with permission from the tribe.

Primary collection problems hindered crash data collection for this project. On many reservations, crashes were not reported on crash forms, even for internal tribal use. In many cases, officers filled out an incident report, but not a full crash report. Table 3 shows an overview of the data collected for 2005 as part of the study.

Table 4: Crash Data Collected for 2005 from Tribes in South Dakota

	Crash Reports	Incident Reports	Dispatcher Log	Other - Tribe Internal
Cheyenne River	YES			
Crow Creek			YES	
Flandreau Santee	(already submitted to DPS)			
Lower Brule		YES		
Oglala Sioux				YES
Rosebud Sioux				YES - INCOMPLETE
Sisseton-Wahpeton			YES	
Standing Rock	SOME	SOME		
Yankton				YES

The table shows clearly that full crash reports, the ideal form of crash reports for entry into the South Dakota Accident Reporting System (SDARS), were often not completed at the time of the crash and were not available for collection. The other types of reports collected generally did not have the same details about each crash as the South Dakota form, and so are not compatible with SDARS.

While the Rosebud Sioux Tribe has a tribal data system using Cisco software, it did not share its complete crash data with the study. The Rosebud crash files would be a good test case for sharing data electronically with SDDPS, since tribal law enforcement officers collect many of the same details on each crash but input them using their own software (without a paper form).

One reason for the lack of full crash data collection on many reservations is that the BIA has previously only required an incident form to be filled out for each crash. These incident forms are not tailored to crashes. The same form is used for burglaries, assaults, and other incidents. However, BIA staff interviewed by the study team say that the agency is not opposed to requiring the use of the South Dakota crash form.

One tribe, the Yankton Sioux Tribe, stated that while they had an internal file of full crash reports, they could not share those full reports with the study for political reasons.

Mapping the crash data is of special interest to this study because of the role that roadway engineering has in crashes. The study team has made a special effort to collect location information from each tribe, but this process is incomplete. The team collected location information about crashes from the Oglala Sioux Tribe, Lower Brule Sioux Tribe, Standing Rock Sioux Tribe, and Sisseton-Wahpeton Sioux Tribe.

Current Data Processing Systems at Tribes

The data processing phase is problematic for most tribes in South Dakota. In interviews, representatives of most tribal and BIA law enforcement agencies in South Dakota said they would like to improve their internal data processing and tracking effort. Each agency in South Dakota has some form of internal data processing for every call that officers go out to address, including crashes. Most of the data systems do not track all of the details about crashes that could be useful for crash analysis, although some are more effective than others.

In all of the tribal and BIA law enforcement offices visited, the most complete list of crashes was found in the log kept by the dispatcher. Dispatch logs typically recorded the type of crash, whether anyone was injured, and the location, time and date of the crash.

Incident reports on crashes are typically kept on file with other incident reports at the law enforcement offices, either by date or by officer. If a crash report is filled out, or if other investigations are made, those reports are filed with the incident report. The reports at most tribes are entered into an electronic record-keeping system, but most of these systems only record the information from the incident report. At some tribes, law enforcement assistants or other staff members also keep a separate spreadsheet to record all incidents by type or all crashes with more detail.

Several software packages—including CRIS, Global, Cisco, and New World—are in use at tribes for data tracking. Software support and hardware support are lacking or insufficient for some tribes. Internet access is also difficult for some or, for BIA law enforcement agencies, prohibited. While some tribes have a data system specialist to work with the software, several do

not. They rely on long-distance help from a software provider or from BIA information technology support.

None of the electronic data tracking systems at tribes in South Dakota are currently compatible with SDARS. Rosebud Sioux Tribe, where law enforcement officers expressed satisfaction with the Cisco software system, is currently working to create an interface with SDARS. This interface would allow the tribe to submit crash reports without filling out a South Dakota crash report in addition to putting the crash data into the Cisco system.

RESULTS OF ANALYSIS OF 2005 CRASH DATA

The State of South Dakota had not received complete crash data from reservations for 2005 prior to this study, with the exception of Flandreau Santee Sioux. In the course of the study, the team attempted to retrieve crash data in person from each of the nine reservations in South Dakota. At six reservations, the study team retrieved data from files under the supervision of law enforcement agents and assistants. In two cases, the Rosebud Sioux Tribe and the Yankton Sioux Tribe, a list of crashes was provided by the law enforcement agency. At Flandreau Santee Sioux, all data had been provided to the state previously, and was reviewed on site by the study team.

The data collected from each tribe was checked for duplication against the South Dakota state files. Crashes that were evidently non-reportable (for example, in parking lots and not in the public right-of-way) were also removed. The total number of crashes collected is shown in Figure 6 by tribe.

The number of crashes reported from "before" the study, shown in Figure 6, represent crashes occurring within reservation boundaries, as defined by the Census 2000 boundary files. These crashes represent both those that were reported by tribal and BIA law enforcement, as well as crashes reported by other agencies, such as the South Dakota Highway Patrol.

Prior to the actual data collection, another team of researchers from Purdue University had estimated the total crash numbers for South Dakota counties with Indian reservations[13]. The results of their calculations are shown in Figure 7, in comparison to the data collected as part of this study for 2005. Note that the Purdue study estimated county-wide crash numbers, and some reservations coincide more neatly with county boundaries than others. While the Purdue study focused on counties, the ICF team extracted only crash data from reservation lands.

[13] Purdue study, pages 102-121.

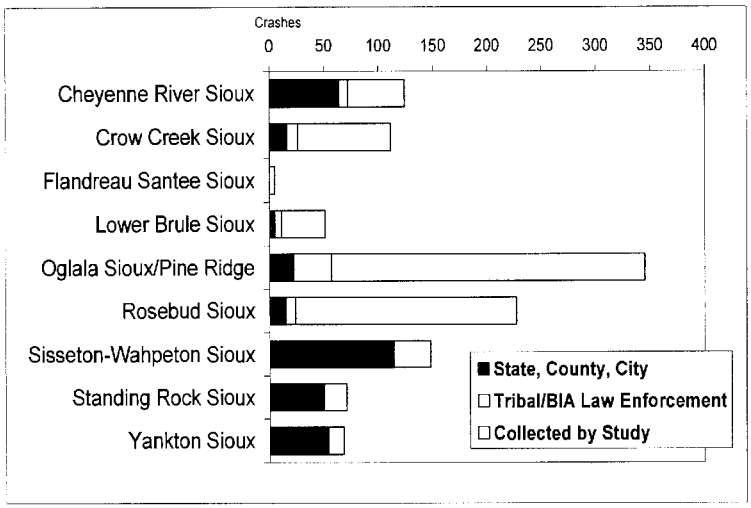


Figure 6: Motor Vehicle Crashes for 2005, Before and After Study, Within Reservation Boundaries as Defined by 2000 Census
Source: South Dakota Accident Reporting System (SDARS) data, summarized geographically by ICF, and Tribal/BIA Law Enforcement data collected during the study.

The results from this study are closer to those from the Purdue study in counties where the reservation lands dominate, such as Jackson, Shannon, and Todd Counties. In counties where the reservation jurisdiction is limited, such as Charles Mix County, the additional crashes added from Tribal and BIA law enforcement agencies does not change the total significantly.

One of the remarkable things resulting from the lack of complete crash data on tribal lands was the high percentage of fatality crashes included in the database. As shown in Figure 8, fatal crashes only represent 1 percent of all reported crashes in South Dakota. Including the crashes collected from tribes, which were all injury or property-damage-only crashes, reduces the dominance of fatality crashes significantly.

It is probable that even with improved data processing from tribes, as shown with the crashes collected by the study, all crashes are not captured. This is partially because not all crashes are reported by those involved. Still, with the additional data on crashes, the share of fatal crashes on Pine Ridge, for example, falls to approximately six percent, much closer to the statewide average.

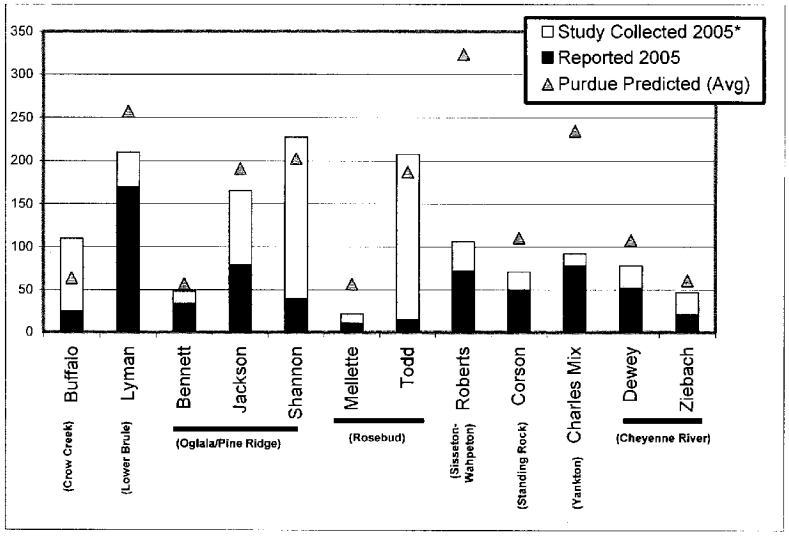


Figure 7: Comparison of Purdue Study Predictions and 2005 Data Reported and Collected for Selected Counties

Note: The Purdue study predictions cover six years for the counties they identified as having a high percentage of Native American population. [14]

*Crashes collected for 2005 from reservation lands covering multiple counties are assigned to counties roughly by geographic area.

Table 5 shows a breakdown of the crash data reported to SDDPS prior to the study and those collected directly from Tribal and BIA Law Enforcement agencies as part of the study.

In addition to tabulating the crash data for tribal lands, the team mapped crashes on reservations where information was available about crash location. Maps are shown below by tribal reservation.

[14] Purdue study, pages 115-120.

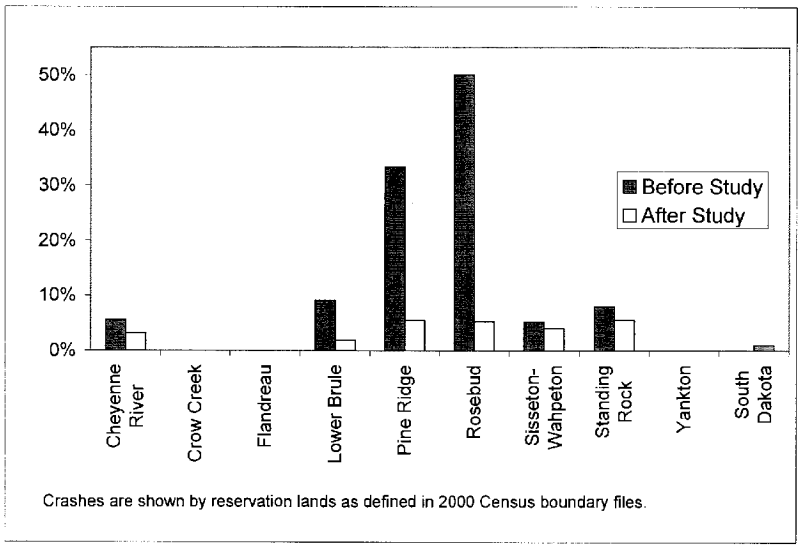


Figure 8: Fatal Injury Crashes as a Share of Total Crashes, Before and After Including Study Data Collection

Table 5: 2005 Crash Data Identified Prior To and During Study

Tribal Area	Reported to State	Collected by Study	Total
Cheyenne River Sioux	72	52	124
Crow Creek Sioux	26	85	111
Flandreau Santee Sioux	5	0	5
Lower Brule Sioux	11	40	51
Oglala Sioux/Pine Ridge	57	288	345
Rosebud Sioux	24	203	227
Sisseton-Wahpeton Sioux	114	34	148
Standing Rock Sioux	50	21	71
Yankton Sioux	54	14	68
Total	413	737	1,150

IMPROVING CRASH REPORTING: TRIBE BY TRIBE ANALYSIS

Lower Brule Sioux Tribe

Format	Paper – incident report Paper – some SD reports; Software - CRIS
Filing Procedure	Paper file, by date, with other incident reports
Data Summaries	None
Data Mapping	None
Law Enforcement	BIA

At Lower Brule Sioux Tribe, the BIA law enforcement agency worked with the research team to pull reports on traffic crashes from paper records. The search did not turn up any full crash report forms, but a total of 40 new crashes were found on incident reports. Adding those crashes to those that had been previously submitted to the state, a total of 51 traffic crashes were identified on the Lower Brule Reservation in 2005. All crashes are shown below, on a map in Figure 9. Most crashes occurred in the town of Lower Brule.

The Lower Brule Sioux Tribe law enforcement officers expressed an interest in improved software to track crashes on the reservation. The law enforcement office, which is a BIA agency, currently uses Criminal Records Information System (CRIS) software. Lack of technical support has been a major problem with CRIS for the agency, and officers are not always able to use it. The agency is also hampered by a lack of Internet access due to the status of the Cobell v. Kempthorne lawsuit, under which the BIA has been disallowed from using the Internet since 2001.

The law enforcement agency is also interested in training for the South Dakota crash reporting form. While officers are somewhat familiar with the form, not all officers are using it frequently enough to be at case with it.

The paper filing system at Lower Brule's law enforcement offices is very thorough, but it does not single out traffic crashes in a separate file. The agency had not kept a copy of the South Dakota crash forms that had been sent in to the SDDPS. There is no on-site tabulation of traffic crashes, although the CRIS software would theoretically be able to track them, if it were working properly.

Of the incident reports retrieved during the study, not all may be reportable under the South Dakota definition. For example, some may have had damages less than $1,000. At the meeting in Aberdeen in September 2006, some law enforcement officials expressed interest in tracking all traffic crash records, not just reportable crashes. This would require the tribes to maintain their own databases in addition to SDARS.

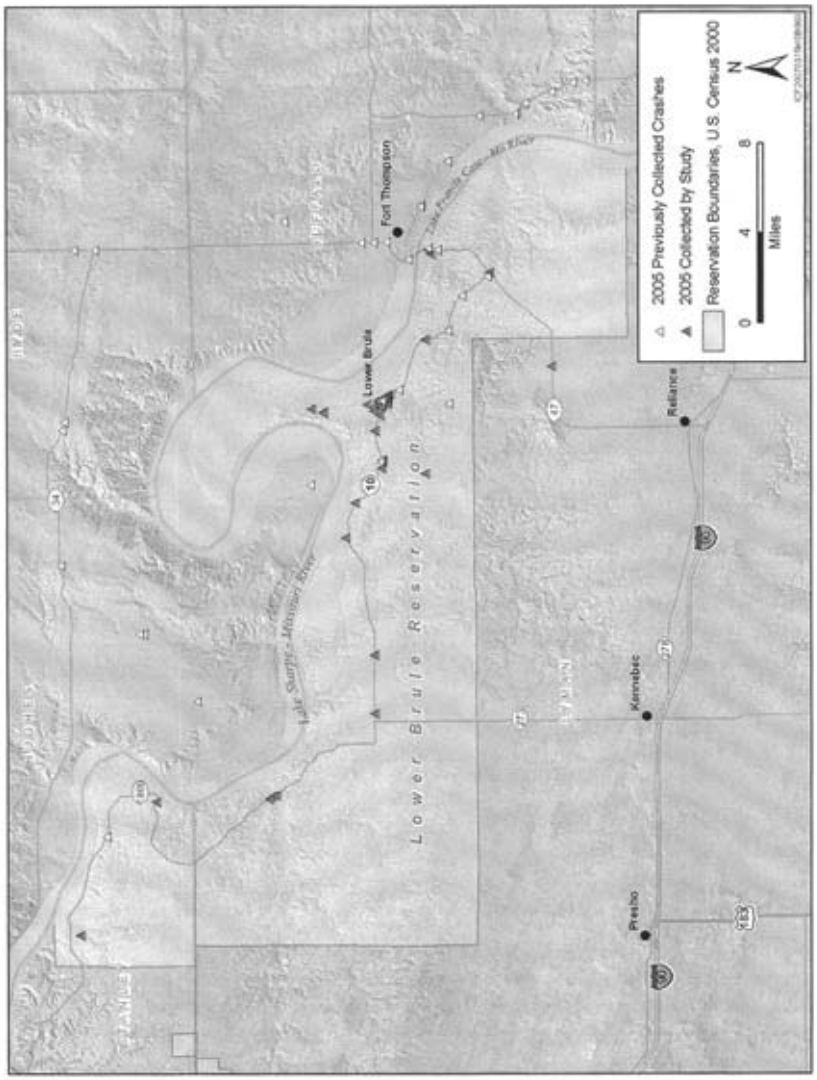


Figure 9: Map of Crashes on Lower Brule Reservation

Crow Creek Sioux Tribe

Format	Paper – Dispatcher Logs
Filing Procedure	Dispatcher logs kept on file by date
Data Summaries	None
Data Mapping	None
Law Enforcement	BIA

Crow Creek reservation has a BIA law enforcement agency. The officers are trained at the Indian Police Academy in Artesia, NM. The officers use the South Dakota state form to report some, but not all, crashes. The law enforcement agency works closely with the Buffalo County Sheriff, and with South Dakota Highway Patrol. The Highway Patrol typically does reconstruction if there is a serious motor vehicle crash, in which case they also file the crash report.

Staffing was a major concern for law enforcement officials at Crow Creek, where only three officers are currently working at the agency. The tribe is currently working on a law enforcement grant to fund more full-time positions.

Electronic data systems would be welcome at the law enforcement offices. The dispatch system is an older version, and the agency does not have any electronic data tracking systems. The law enforcement agency sends crash reports to the state to avoid the need for a FOIA request for insurance purposes.

Crashes were not mapped at Crow Creek because of a lack of information.

Cheyenne River Sioux Tribe

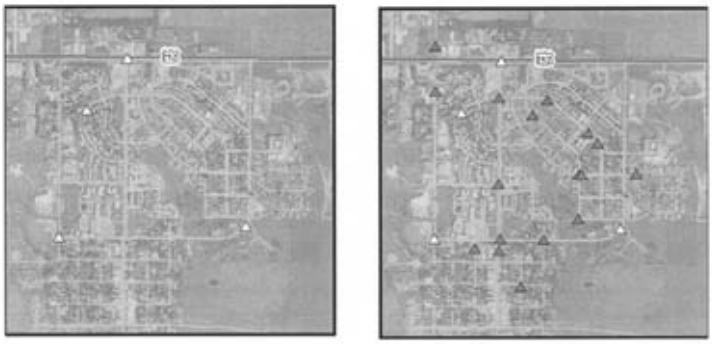
Format	Paper – SD crash report forms Paper – other report forms
Filing Procedure	Law enforcement assistant manages files and data entry Six officers are trained on the software system Tribal law enforcement agency currently moving to Cisco software for data tracking
Data Summaries	Built in reports from Cisco
Data Mapping	None
Law Enforcement	Tribal (Under PL 96-638)

Cheyenne River Sioux Tribe law enforcement worked with the research team and staff from the South Dakota DOT's Office of Research to extract crash reports from their paper files. In the process, they were able to identify 52 erashes that could be included in the SDARS for 2005. The research team also submitted 18 other crash reports from Cheyenne River reservation, but those were not reportable under state definitions, or were incomplete. Some of the crash reports that had not been submitted were the result of a misunderstanding about the criteria for reportable

crashes. The law enforcement officers had thought that the state was only interested in crashes that happened on primary state roadways.

The maps in Figure 10 and Figure 11 show the difference for Eagle Butte when all crashes are included.

Traffic Crashes in Eagle Butte
Cheyenne River Indian Reservation



2005 Previously Collected Crashes 2005 Collected by Study

Figure 10: Eagle Butte Crashes, Before and After Study Data Collection

The internal tribal crash reporting system is maintained by a law enforcement assistant who works directly with the crash reports and inputs them to the system. The agency recently switched from Global software to Cisco, and was in the process of getting the new system working at the time of the research team visit in summer 2006. The Global software system did not track property-damage-only crashes. The software is supported by the BIA Indian Highway Safety office, and the tribe is currently sending crash data extracted from the system to the BIA office in Albuquerque on CD-ROM each month.

At the time of the site visit, the Cheyenne River tribal police agency was 3 months into an Indian Highway Safety program, with funding for two dedicated highway safety officers in the police force. The safety officers are required to spend time doing radar, traffic stops, and prevention programs, and to report the total number of crashes to BIA every month. The grant also went toward the implementation of the Cisco crash reporting system.

Crash forms are generally filled out by the responding officer, unless the crash is serious. In those cases, one of the highway safety officers is called to the scene of the crash. The agency now has one officer trained in full crash reconstruction, made necessary in part because the tribal council does not currently allow South Dakota Highway Patrol officers onto the reservation for collaboration.

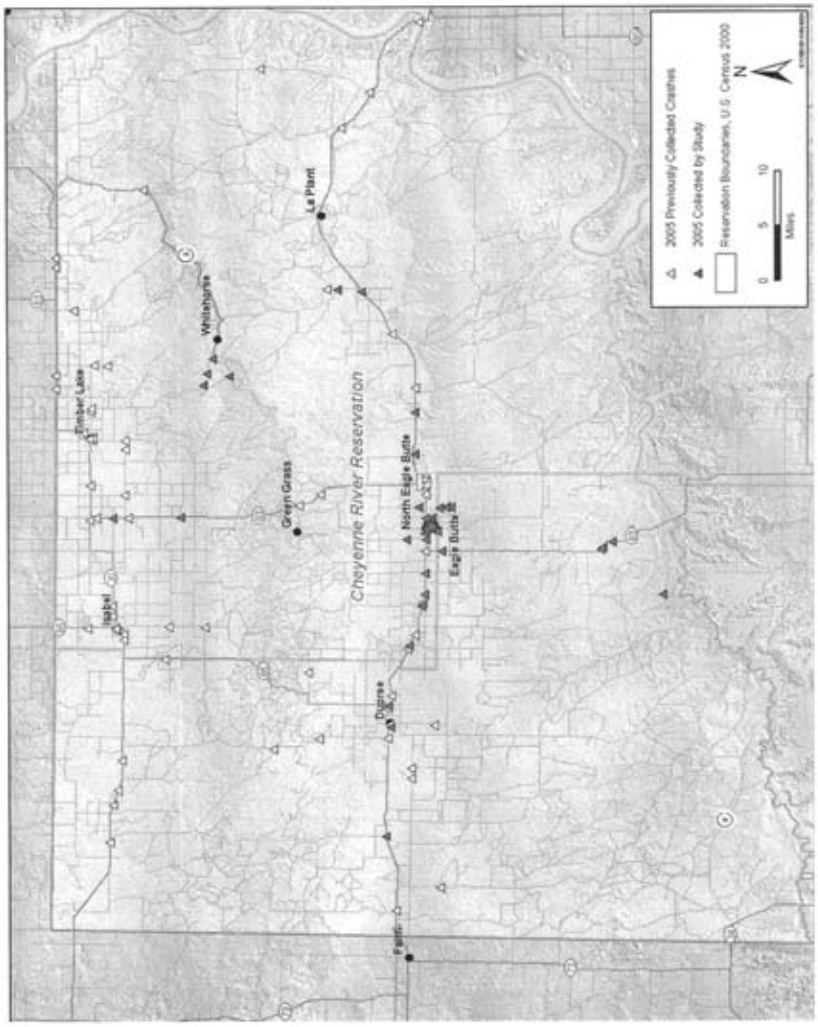


Figure 11: Map of Crashes on Cheyenne River Reservation

Flandreau Santee Sioux Tribe

Format	SD crash report forms
Filing Procedure	Copy on file at tribe; one copy to SDDPS
Data Summaries	Tally kept by law enforcement assistant in MS Excel
Data Mapping	None
Law Enforcement	Tribal (Under PL 96-638; shared with City of Flandreau)

The Flandreau Santee Sioux Tribe has a special circumstance, in that it currently works with the City of Flandreau to fund a single police force. The officers on this police force are cross-deputized and function as tribal police officers when they are on tribal lands, and as city police officers elsewhere. Law enforcement officers are generally trained at the South Dakota Department of Criminal Investigations and are trained on the state crash report form.

There was no indication on the visit that any crashes were going unreported on the Flandreau Santee Sioux reservation, but the research team did discover that the officers were not properly coding their agency type when they filled out forms for crashes on tribal lands. There is a checkbox on the back of the crash report form for "agency type," and because officers function both as city and tribal police, they did not realize they should check off "tribal" for reports of crashes on tribal lands.

Oglala Sioux Tribe

Format	Electronic – Excel sheet Paper – SD crash report forms (some)
Filing Procedure	Crash reports submitted by district police offices to Oglala Sioux Tribe Department of Public Safety (OST DPS) in Pine Ridge OST DPS collects crash reports and passes reports to SDDPS, and feedback to tribal officers
Data Summaries	OST DPS keeps an Excel table listing crashes even if no full crash report was filed by the officer
Data Mapping	None
Law Enforcement	Tribal (Under PL 96-638)

The Oglala Sioux Tribe law enforcement agency has shrunken dramatically in the past several years, and the nine districts of the reservation have trouble covering all the law enforcement needs with the current size of the force. The Oglala Sioux Tribe Department of Public Safety (OST DPS) reported that officers often do not complete crash report forms, and the OST DPS pursues crash reports from sergeants and other officers at the district police stations. Crash reporting is generally driven by insurance claims, so if the people involved in the crash do not have insurance, officers do* not fill out a crash report.

The OST DPS currently maintains an internal record of traffic crashes in addition to those that are reported on SD crash report forms to the state. Staff at OST DPS have created a spreadsheet system for tracking crashes with several details on crashes. The Excel spreadsheet records do not match the South Dakota crash form categories or codes, but they allow the OST DPS to track its own crashes internally.

Crash reports can be filled out on paper, using Mobile software, or on a PDF file that can be emailed to OST DPS. Most crash reports are filled out on paper and hand-carried by the district sergeant to the Pine Ridge OST DPS office, who makes a delivery at least once a week. Only a portion of the OST districts have Mobile software capability.

OST DPS currently uses New World software, but the staff members do not use it for traffic crash reports. The dispatch does use the software regularly. The OST DPS had experienced difficulties with the software, and were considering options for improving the software when the research team visited in Summer 2006.

The crashes collected as part of the study were mapped with the assistance of OST DPS, as much as possible. Figure 12 shows the town of Pine Ridge, and Figure 13 shows the entire Pine Ridge Reservation area.

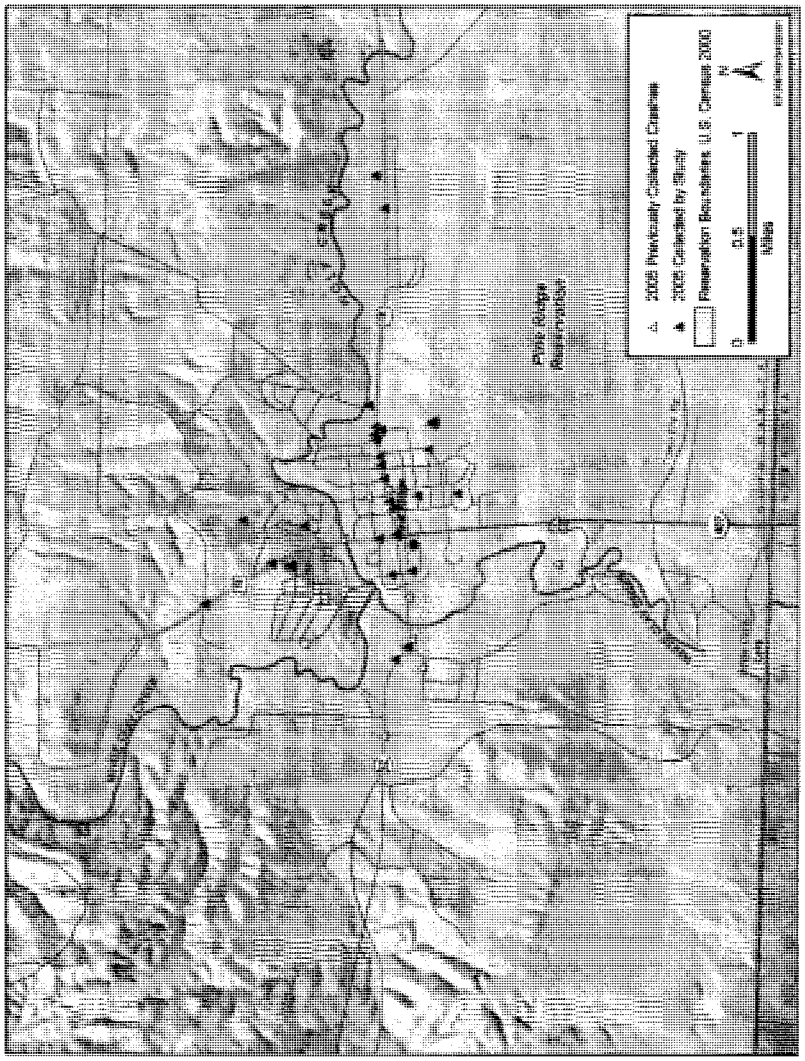


Figure 12: Crash Map, Town of Pine Ridge, Pine Ridge Reservation

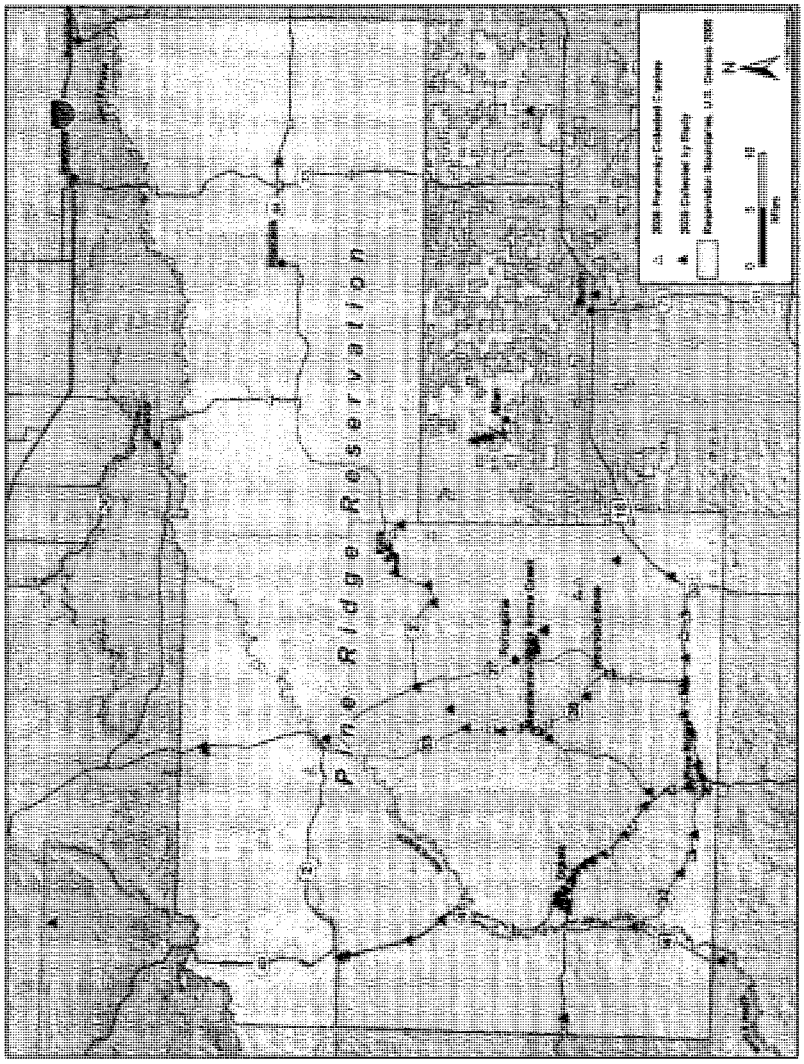


Figure 13: Crash Map, Oglala Sioux Tribe, Pine Ridge Reservation

Rosebud Sioux Tribe

Format	Electronic – Cisco software
Filing Procedure	Information entered by each officer at the end of shift into the Cisco system directly; Highway Safety officer checks data input periodically
Data Summaries	Built-in reports from Cisco software
Data Mapping	None
Law Enforcement	Tribal (Under PL 96-638)

Rosebud Sioux Tribe law enforcement is a tribal agency. The tribe has been working under a grant from the Indian Highway Safety office for several years, and has implemented the Cisco software system to track crash data, in addition to computer-aided dispatch and other modules. The law enforcement office has entered crashes into the Cisco system since 2002, and it reported general satisfaction with the software.

Quality control on crash reporting has been strengthened at Rosebud by the Indian Highway Safety specialists on staff, who check over crash reports that are submitted by other officers. Despite this, officers still often fill out crash reports incompletely, and this remains a minor issue.

The two major issues for crash data collection from Rosebud reservation are political resistance and data compatibility. The Rosebud Sioux tribal council has not approved data sharing with the SDDPS, although fatality crash data were reported in most cases. Rosebud law enforcement does not fill out paper crash report forms, and there is currently no transfer mechanism between the Cisco system and the SDARS. The crash details on both systems are close to the Minimum Model Uniform Crash Criteria (MMUCC), so transfer should be possible.

Rosebud law enforcement has had difficulties creating maps of crashes because of gaps in its 911 Rural Addressing system. The tribal agency is currently working on this issue. The SDDPS has plans to complete rural addressing throughout the state, which could provide support to improving crash reporting on Rosebud Sioux Reservation as well.

Standing Rock Sioux Tribe

Format	Paper – Incident reports Paper – old South Dakota crash report forms
Filing Procedure	Kept in a paper file on site Law enforcement assistant processes reports and sends them to the respective state (ND or SD) CRIS software tracks incident reports
Data Summaries	None
Data Mapping	None
Law Enforcement	BIA

The Standing Rock Sioux law enforcement agency is directly operated by the BIA. The officers are generally trained at the Indian Police Academy in Artesia, NM. Officers are required to fill out crash reports, which are sent to either North or South Dakota, depending on the location of the crash. A law enforcement assistant sends the reports into the appropriate state.

For North Dakota, the Standing Rock agency currently uses an electronic form that officers can fill in from their patrol cars. The South Dakota form that the agency had on file when the research team visited was outdated and several of the crash reports retrieved from its files were on that form. The Standing Rock BIA Law Enforcement office did not share crash reports with the research team on the original visit, but after a discussion at the September meeting with BIA regional law enforcement personnel, 21 crash reports were shared.

Crash reports are typically maintained by the BIA, unless there is a court case associated with the crash. In that case, the crash report is forwarded to the tribal court. Individuals seeking a crash report to collect insurance have to file a Freedom Of Information Act (FOIA) request for the report from the BIA, unless it was sent to the tribal court.

The Standing Rock law enforcement officers are cross-deputized to work in Sioux County, ND. This allows the BIA officers to act as county sheriffs as well as reservation law enforcement officers. Cross-deputization in the South Dakota portion of the reservation has been a topic of discussion, but has not come to be.

The crash data collected from the agency for the South Dakota portion of the reservation was not detailed enough for SDARS, but was tabulated as part of this study. The study team was not able to map the data because of limited information.

Sisseton-Wahpeton Sioux Tribe

Format	Paper – dispatcher logs Paper – SD crash reports for fatal and serious injury crashes
Filing Procedure	Paper files in storage room
Data Summaries	None
Data Mapping	None
Law Enforcement	Tribal (Under PL 96-638), with one BIA officer

The Sisseton-Wahpeton Sioux law enforcement agency is run under contract by the tribe, with the exception of one criminal investigator who works directly for the BIA. The agency completes full crash reports for fatal and serious injury crashes, but generally not for other crashes. The tribe reports that cooperation between the tribal law enforcement and other law enforcement agencies in the area is working well, and the agency often calls in Highway Patrol or other officers to deal with traffic crashes.

When the research team visited, the law enforcement agency was working on a grant to buy data tracking software through the Justice Department's Community Oriented Policing Services (COPS) program. At that time, the agency was considering a similar system to the Cisco software in use at Rosebud Sioux Tribe.

Because the Sisseton-Wahpeton Sioux tribe operates its law enforcement agency, it is free to use the Internet and would prefer an electronic data submission system to submit crashes to the state.

The main barriers to crash reporting at Sisseton-Wahpeton law enforcement related to training on reportable crashes and the crash forms required. Officers had not been filling out crash forms for crashes with property damage only, or with minor injuries. Another problem was the lack of any centralized data review and summarization process. The crash reports and incident logs were not reviewed by supervisors, and there was no central file of crash reports.

Yankton Sioux Tribe

Format	Paper – SD crash report forms Paper – incident log
Filing Procedure	Some crashes entered into Excel file Others kept on paper file
Data Summaries	Excel file
Data Mapping	None
Law Enforcement	BIA, with some Tribal officers under PL 96-638

The Yankton Sioux tribe law enforcement agency is managed by BIA directly, but is partially staffed by officers paid directly by the tribe. Some officers are trained at the Indian Police Academy in New Mexico, while others attend the South Dakota Police Academy.

The chief of police at the Yankton law enforcement agency reported that the agency keeps crash records on the South Dakota crash report form, but the agency was unable to provide copies of the records. Two reasons contributed to the inability to share records. The first is that the tribal council was opposed to sharing data with the state, even in statistical form. The second is that the agency is governed by the BIA rules on data access and could not allow anyone from the research team into the records room. The agency was planning to send crash records to the Indian Highway Safety office as part of a grant beginning in Fall 2006.

A law enforcement assistant pulled crash records from the incident log for the use of the study. Unfortunately, the records pulled did not indicate many details about the crashes. The records did allow the research team to estimate the total number of crashes on the reservation for 2005.

BEST PRACTICES

This section first provides best practices for South Dakota, followed by practices reported for other states.

PRIMARY COLLECTION PHASE: SOUTH DAKOTA TRIBES

The first step to full crash reporting is high-quality data collection at the scene of the crash. Law enforcement officers must be trained in basic crash reconstruction; supervisors must prioritize and make time for forms to be filled out; and BIA must implement full crash reporting as part of its mission in reservation law enforcement.

In South Dakota, the Flandreau Santee Sioux Tribe fully reports its crashes to the state. The tribal police force operates under special circumstances, however. The tribe and the City of Flandreau have formed a combined police department that provides law enforcement services to both the city and the reservation. Because of these unique circumstances, the law enforcement officers are trained at the South Dakota Police Academy operated by the Division of Criminal Investigation in the Office of the Attorney General. By undergoing training that is specific to South Dakota law enforcement, the officers are more familiar with the state's crash report form.

Several tribes in South Dakota have received grants from the Indian Highway Safety office of the BIA. These grants generally provide funds for a highway safety officer who has special training in crash reconstruction and reporting. At the Cheyenne River Sioux Tribe, the highway safety officer is certified in full crash reconstruction. These officers have multiple duties but, at several tribes, they are responsible for crash reporting when they are on duty. At the Rosebud Sioux Tribe, the highway safety officer also reviews crash reports made by other police officers.

Some tribes in South Dakota have law enforcement assistants whose main assignment is to process data, including crash data. These dedicated staff persons sometimes assist in the data collection process by reminding police officers that reports must be filled out.

Data Processing Phase: South Dakota Tribes

The Rosebud Sioux Tribe expressed the most satisfaction with its internal crash processing software, Cisco. This system is user-friendly and has a number of built-in reports that have helped the tribe in applying for grants, making safety plans, and tracking progress on safety measures. The tribe has also received software support from Cisco, which has been helpful in the implementation of the system.

The Flandreau Santee Sioux Tribe has an internal tracking system that is less sophisticated, but still effective for some uses. A law enforcement assistant maintains a spreadsheet that lists all of the incidents, including crashes, by type.

The Oglala Sioux Tribe Department of Public Safety also maintains records through a spreadsheet format. Staff members who work regularly with crash reports enter information about crashes into the spreadsheet, which is typically more complete than the reports filed by officers. This allows the OST Department of Public Safety to keep full records of reported crashes even though problems with data collection remain.

Interviews did not reveal high satisfaction with most software products in use. The major complaints were difficulty of use, hardware problems (system breakdowns), and lack of support for software or hardware.

Other Tribal Crash Reporting Improvement Efforts

Navajo Nation

The Navajo Nation has a successful crash reporting system with three states—New Mexico, Arizona, and Utah. According to contacts at the tribal offices, all crashes are reported fully to each state. The tribe also maintains its own database of crashes, after filling out a state form on paper to send in to the respective state. The database is accessible at each of the seven districts of the Navajo Nation lands. Officers enter data directly into the data storage system, with technical support from the Navajo Nation Department of Public Safety.

The Navajo Nation has been submitting personal identifiers on crash reports since the 1980s. However, the tribe and the states are working currently to resolve disagreements about reporting driving under the influence (DUI) cases. Details of DUIs, such as blood alcohol content levels, are omitted from the state crash report forms. The state of New Mexico is currently withholding funds for safety initiatives until the tribe releases the DUI-related information. The tribal council and the tribal courts oppose sharing the DUI information with the state.

State of Montana

The Montana Department of Transportation and the Montana Division of the Federal Highway Administration have been working to improve crash data collection and processing for eight years. The Montana Highway Patrol has conducted several training sessions on the Montana crash report form, and has a standing offer to come and work with tribal law enforcement

officers at their request. Originally, the Highway Patrol conducted centralized training, and then did follow-up training at tribal and BIA law enforcement offices.

The Montana efforts to improve crash reporting from tribal lands are now focused on enabling tribes to track their crash data internally. Of the seven tribes with land in Montana, four are currently using Cisco software to track their crash data internally. The state is working to set up a system for electronic data submission. The Cisco data format is currently not compatible with the state's internal data system. Montana is considering purchasing the Cisco software so it can manipulate the data it receives from the tribes' in-house systems.

The Montana experience to date has not been completely successful, because some tribes require more support for their hardware and software systems. Tribes have become interested in having more crash data available, however, and some have worked to input data from past years into the Cisco system.

The Cisco installation at the four tribes has been funded and supported by the Indian Highway Safety office in Albuquerque. The original plan was to have tribes submit data to Indian Highway Safety, who would then share it with Montana. This has not been successful to date. The state is now planning to retrieve data directly from the Cisco systems at each of the tribes.

Inter-Tribal Council of Arizona

The Inter-Tribal Council of Arizona (ITCA) has been working with tribes to improve crash reporting among several member tribes. The ITCA has had limited success to date. The focus of the efforts has been on crash data collection and tribal systems for tracking the crash data. Submitting data to the State of Arizona has not been a priority for the project.

Generally, the tribes involved in the efforts are more interested in human factors in crashes, such as seatbelt use, speeding, and driving under the influence. Identifying hazardous locations, which would be helpful for tribal transportation improvement plans, has not emerged as a primary focus.

Many of the problems identified in the crash data collection and data processing phases in Arizona are similar to those found in South Dakota. Law enforcement offices do not have the staff time to devote to data collection. Officers dislike filling in reports, and their supervisors do not necessarily require them to do so.

Sending data to the State of Arizona has continued to be problematic. Some tribes do not submit any data with personal identifiers attached, and Arizona has been willing to accept the crash records without personal identifiers. In spite of this acceptance, tribes have not been submitting data regularly to the state, in part because of the staff time demands it represents. Staff have to black out identifiers, fax the reports to the state, and re-file them. Some miscommunications have also been discovered. One tribe was faxing reports to the wrong fax number at the Arizona Department of Transportation, and those reports were not filed. The tribe never received word that the reports were not going through.

State of Wisconsin

In Wisconsin, tribes are required to report full crash data to the state because of Public Law 280[15]. The Menominee Indian Tribe is the only tribe that does not fall under Public Law 280, and it does not submit crash reports to the state because the state will not accept crash reports without personal identifiers. The tribe is concerned about double jeopardy, whereby offenses would be actionable both under tribal and state law.

Training on crash reporting processes has been an issue in Wisconsin. The state recently moved to offer dedicated training on crash report forms and process to tribal law enforcement officers. The training will be offered at a tribal technical college in northern Wisconsin.

Tribes in Wisconsin can either use TraCS to report to the state, or a standard paper form. Cisco was described as an incompatible software system. Officers can fill out forms on paper in their car, or with a laptop in their patrol car, if they have one. In order to maintain their software and hardware, the state is working to provide information technology support staff for multiple jurisdictions, including tribes, in each region.

Wisconsin is in the process of bringing all software used in all jurisdictions in the state into compatibility with the state's TraCS software. They currently have grants to create interfaces between TraCS and 49 different types of software, because the different software generally does not use a compatible data format.

PILOT PROJECTS: FIRST STEPS TO OVERCOMING BARRIERS TO CRASH REPORTING

Two central issues came out of discussions about improving crash reporting: training tribal law enforcement officers to report crashes so that it is easier, and creating a political agreement to share data between the state and the tribal authorities. These were each addressed through pilot projects after the interim report.

Training was addressed in the course of the project specifically because of its centrality to collecting high-quality data from the site of the crash. The result of the pilot project was a brief description of training from the South Dakota Division of Criminal Investigation, the law enforcement academy:

> Training in the proper completion of the accident report form will be provided by the State of South Dakota. This training will be provided in two formats, one being on-site and the other as a train the trainer program depending on the needs of the tribal authority. The training will be at no cost to the tribe and will be

[15] Public Law 280 (P.L. 280) transferred Federal criminal jurisdiction over tribes to six states, including Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin in 1953. Some other states also opted to take on jurisdiction over tribal lands for a few tribes. In P.L. 280 states, law enforcement on the affected reservations is under the jurisdiction of the state, meaning among other things that the state can require crash reporting. Because of tribal resistance and confusion over jurisdiction in many of the P.L. 280 states, 30 tribes have since returned to federal jurisdiction. Tribes have not generally supported P.L. 280, and no additional states may take over jurisdiction under this law.

> approximately three hours in length. The Department of Public Safety will be responsible for the delivery of the report curriculum.[16]

Elements of this description are reflected in the draft Memorandum of Agreement (MOA), which came out of the second pilot project. While many tribal councils have not explicitly refused to share data with the state, at least two have done so, and on some other reservations, law enforcement personnel interviewed had the impression that the tribal council would prefer them not to share data with the state. The draft MOA, as developed by SDDOT, is an agreement to exchange crash data between the tribe and the state to improve highway safety. The goal of the agreement as currently drafted is to support engineering solutions to hazardous areas of the roadway, and specifies that the crash data submitted will be used to address roadway hazards. The agreement is set for a five-year period, during which the tribal council commits to sharing crash reports with the state, while the state would agree to provide training and technical assistance to law enforcement agencies submitting the reports. Appendix B contains the full text of the draft MOA.

PATHWAYS TO FULL CRASH REPORTING

The research team presents several pathways to full crash reporting for tribes in this section, along with a discussion of the benefits of each path. Whatever the system, all crash reporting must go through the following steps to be complete and accurate:

Primary Collection Phase

1. Officer on scene: Fill out crash report.
2. Supervisor: Check over crash report.
3. Officer: Correct/fill in crash report.

Data Processing Phase

4. Assistant: File a copy in a crash file in the local law enforcement office.
5. Assistant: Send copy to SDDPS contact; send copy to BIA Indian Highway Safety.
6. Assistant: Record crash report in central table, either electronically or on paper.
7. Supervisor: Check monthly reports from law enforcement assistant against SDDPS monthly report.

The supervisor's role in the process is key. Checking reports after they are filled out will reinforce the training that officers receive and motivate them to complete reports quickly and accurately. Checking totals will ensure that the reporting is complete, and will also make supervisors aware of current traffic safety problems on the reservation.

[16]Approved text from discussions among three South Dakota agencies: Highway Patrol, Department of Public Safety, and Department of Criminal Investigation. Provided by Pat Winters of SDDPS on December 6, 2006.

Of the different format options for reporting, some are more focused on short-term completion, while others would likely take longer to implement. The three main pathways are:

1. paper-based system with paper or computer spreadsheet-based crash tracking at tribal/BIA law enforcement agency (short-term achievable);
2. specialized software for crash tracking, such as Global, New World, or Cisco, tailored for tribal needs (medium-/long-term achievable); and
3. TraCS software for crash reporting, integrated with other tribal data tracking needs (medium-/long-term achievable).

Because the paper-based system is easier to implement in the short term, it can be combined with a long-term plan to acquire software for a computerized crash data tracking system, whether through commercially available specialized software or with the South Dakota TraCS software.

PAPER-BASED SYSTEM

Format	Paper – SD report forms
Filing Procedure	Copies in separate crash file, by date
Data Summaries	[Options] Computer spreadsheet maintained by dispatcher Tally by crash factors on paper Reports from SDARS tailored for tribe
Crash Mapping	[Options] Paper map with markers Map from SDARS tailored for tribe
Requirements	Training on SD crash report form Training on crash file maintenance and analysis

In the short term, the law enforcement agency would improve data collection and processing internally with common desktop software and staff resources. The law enforcement agency would focus on training for law enforcement officers and assistants, both on the crash report form and on crash file maintenance and analysis.

With the support of the tribal council and BIA law enforcement, a copy of each full crash report collected by the agency would also be sent to the South Dakota Department of Public Safety. A SDDPS-generated report describing the crashes on the reservation based on the data sent to the state would help with grant applications, traffic safety planning, and transportation planning on the reservation. The standard reports from SDDPS summarize crashes by type of crash, contributing factors, vehicle type, and animal involvement. SDDPS can also generate maps showing crash locations for the use of tribal transportation planners.

In addition to the data maintained at SDDPS, each law enforcement agency should maintain its own records and tallies of crashes. This will enable the agency to target corrective actions, whether through education, signage, or other safety improvement measures.

SPECIALIZED SOFTWARE SYSTEM

Format	[Options] Electronic entry through in-car terminals Paper crash report at scene of crash
Filing Procedure	Electronic entry and checking by officer or assistant at station
Data Summaries	Automatic output from software
Crash Mapping	Automatic output from software
Requirements	Software for multiple computers, depending on agency size Hardware for patrol cars and office Training on crash file maintenance and analysis Technical support

A software system can be implemented at tribal law enforcement offices for tracking crashes. In some cases, this would require additional computers and other hardware. Some tribes already have such a system in place (see above, in tribe-by-tribe analysis). Using specialized software, the BIA or tribal law enforcement agency is able to manage its own data internally. These packages usually come with data summaries built into the software. The mapping function of the Cisco software does not currently work on the Rosebud Sioux reservation because of a lack of rural addressing data, and this issue should be examined when tribes consider different software options.

Software selection is one of the most difficult aspects of this pathway. No agency will want to commit funds, time, and training dollars to software that will soon be replaced. Cisco is currently working with the Indian Highway Safety program on a pilot of the software on Montana reservations, and using Cisco could allow tribes to benefit from this expertise. On the other hand, law enforcement agencies that are already using other software should consider compatibility issues with other functions, such as computer-aided dispatch and citations.

While talking with law enforcement agencies about their current software experiences, the research team learned that a lack of technical support is a major problem for several tribes already using specialized software. Consistent technical support should be built into financial plans for software system acquisition.

For reporting to the SDDPS when personal identifiers are an issue, tribes that use Cisco can benefit from the work that Cisco has already done with Indian Highway Safety. The software package has been tailored to provide crash reports without personal identifiers to the Albuquerque BIA office. This work is being done together with the FHWA Montana Division

office, and the Montana DOT plans to use the same crash data without personal identifiers as the software is fully implemented.

TRACS SOFTWARE SYSTEM

Format	Electronic entry through in-car terminals
Filing Procedure	Electronic entry and checking by officer or assistant at station
Data Summaries	SDARS reports
Crash Mapping	SDARS mapping output
Requirements	Software for multiple computers, depending on agency size Hardware for patrol cars and office Training on SDARS analysis options Technical support

This solution pathway is very similar to a general solution for specialized software. The main advantage for tribes interested in the Traffic and Criminal Software (TraCS) is the large body of free technical support provided for this software, both through the SDDPS and through other public agencies. TraCS software will be available for use in South Dakota free of charge, and it will be tailored for South Dakota Highway Patrol and for SDDPS use. The Highway Patrol will be trained in the software and will be able to pass on that training easily to tribal and BIA law enforcement officers. TraCS is expected to be ready for use across South Dakota in 2007.

The one limitation of this software is that it works mainly as a data input tool, although the SDDPS can also provide reports and analyses to tribes. Tribes considering this software should also consult with the state on the format that reports will be stored in, so that they can ask their software providers about compatibility with the other databases and information that tribes are tracking through their law enforcement agencies.

This software will be tailored for data submission to the SDARS system. Tribes that do not want to submit personal identifiers may need to establish special protocols to submit data without actual personal identifiers, and the state will have to work with the tribes on how that data is submitted and whether it will be accepted.

IMPLEMENTATION RECOMMENDATIONS

Five key recommendations for the state have emerged from this study. They address the role of the State of South Dakota as well as the nine tribes in South Dakota in improving crash reporting. A brief discussion of each recommendation describes its implementation.

1. **The South Dakota Department of Public Safety should expand its training on crash reports for all tribal and BIA law enforcement officers, tailored to tribal law enforcement.**

   Individual training needs at each tribe should be assessed and the standard state curriculum should be tailored as much as possible to improve tribal and BIA law enforcement officers' knowledge of the South Dakota crash report form. In addition, the state should focus on the details about each crash that are required under the Model Minimum Uniform Crash Criteria (MMUCC)[17]. This will help tribes to work with the internal data processes they develop, while producing the crash details that are needed for SDARS.

   The training may take the form of one-on-one training with South Dakota Highway Patrol officers, or a "train-the-trainer" model for each reservation. The Highway Patrol is currently working with some tribal police officers at Oglala Sioux Tribe, and future training programs should build on this experience. SDDPS could alternatively develop software that would guide law enforcement officers on tribal lands through the crash reporting form.

   Training needs, including incentives for law enforcement officers, should be discussed individually with each tribe. Training is already available to tribal and BIA law enforcement officers, free of charge, from the SDDPS Department of Criminal Investigation, and promoting awareness of this training for tribal and BIA police could be helpful in itself.

2. **The South Dakota Department of Transportation should work directly with tribal councils to establish crash reporting as a priority for law enforcement on tribal lands.**

   The state should meet with tribal councils to establish memoranda of agreement (MOAs) with tribes describing the crash data that should be submitted, and the limits on its use once it reaches the state. Staff at the SDDOT have already prepared a draft MOA that commits tribes to sharing crash reports with the state in a compatible format to be agreed on. In return, the state would commit to providing technical support and training for the use of the crash report forms, and to maintaining the confidentiality of the data insofar as possible. The MOA covers a five-year period as currently drafted.

[17] MMUCC are a voluntary set of guidelines that help states collect consistent, reliable crash data that are more effective for identifying traffic safety problems, establishing goals and performance measures, and monitoring the progress of programs." (National Highway Traffic Safety Administration, Accessed at: http://www-nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/MMUCC.html)

The MOA should be signed with notification to the tribal or BIA law enforcement agency, with the awareness that tribal councils set policy for law enforcement on reservations. While only a few tribes have explicit policies against reporting crash data to the state, data collection on crashes tends to have a low priority, even for internal uses. Passing a tribal resolution that crash data should be collected at the tribe would improve the reporting process.

A major concern for tribes has been double jeopardy, whereby an offender could be cited both by tribal or BIA police, and by State police after a crash report is submitted. This concern should be addressed directly in the MOA to assure tribal members that they will not be cited both in tribal and in the state criminal system.

SDDOT should pursue MOAs with tribes within the larger context of transportation improvements, emphasizing the fact that crash data will bolster the case for making roadways safer. SDDOT is currently conducting consultation meetings with each tribe on transportation issues, and crash reporting could be woven into those meetings. Alternatively, SDDOT staff could visit tribal governments specifically to address crash data sharing agreements. However, putting the crash data agreements in a larger framework of transportation issues is still important in this context.

3. **The South Dakota Department of Public Safety should encourage and facilitate grant applications from tribes to support tribal efforts to institute more effective internal processes to record and track crash data.**

The state data system will benefit from a better internal data collection system at each tribe. Improvements should be explicitly encouraged under a grant program administered by the SDDPS. The grants could be provided for each tribe to institute or improve its own crash data processing system including procedures, staffing, and a tracking system, potentially using software. It could also be a thorough filing system for paper with records kept in a ledger or a well-maintained spreadsheet. Some reservations already use software for this purpose, as discussed above, and others may benefit from instituting software or improving their training on it. The SDDPS grant program would support the development of an action plan at each tribe that will achieve specific goals for its data processing system, starting from the current status of crash reporting on that reservation.

NHTSA provides funds through its 408 program specifically to improve traffic records. This is a possible funding source for this recommendation. A successful application for 408 funding would require a 20 percent match from the tribe or the Indian Highway Safety office, and buy-in from BIA and FHWA. This funding has been approved only for the purpose of improving state data systems, so tribal improvements would have to be tied to SDARS. SDDPS may be able to locate other funding sources for this recommendation as well.

4. **The South Dakota Department of Public Safety should make reporting as easy as possible for tribes.**

   The SDDPS can ease the transfer of data by implementing various technological and personnel measures. For example, if a tribe has a complete data processing system on site, such as the Cisco system, the SDDPS can work to accept electronic data exported from those files. In the course of the research, Cisco expressed an interest in developing a report that would essentially mirror the SD crash report form. The state may also benefit from devoting information technology staff time to working with law enforcement assistants and other staff at tribes who work with crash data systems.

   For tribes with privacy concerns, accepting crash reports without personal identifiers will be vital to the data submission process. Crash reports would still contain all other details about the people involved in the crash (date of birth, sex, etc.), and could simply use a generic name ("Jane/John Doe"). Tribal concerns about privacy are a significant barrier for some tribes, and SDDPS can build trust with those tribes by focusing on the safety issues and relaxing personal identifier requirements.

5. **The South Dakota Department of Transportation should motivate crash reporting by actively facilitating the identification of rural hazards on tribal lands, and funding improvements.**

   By focusing on rural roadway hazards on tribal lands, the South Dakota DOT can strengthen the motivation for tribes to improve their crash reporting systems. The Hazard Elimination Program, part of the federal Highway Safety Improvement Program, is a potential source of funding for this. A requirement for the application process for these funds would be a crash analysis of the location where the safety measure will be implemented. The DOT can clarify the process of applying for this set-aside by outlining clearly the type of information required in the application.

   Road safety audits should be conducted to supplement crash data in identifying roadway hazards, since low traffic can mask serious safety problems on rural roads. As a model for this type of program, the Thurston Regional Planning Council (Washington) created a set-aside for rural areas from their federal Surface Transportation Program funds. In this program, smaller places were not matched up against large cities in competing for roadway improvement funds[18] (FHWA 2006).

FHWA 2006. Case study: "Thurston County, Washington: Partnership between Tribes and an MPO" accessed at: tp://www.fhwa.dot.gov/hep/tribaltrans/ttpcs/washington.htm

ANALYSIS OF RESEARCH BENEFITS

In this study, the research team was able to collect some information on an estimated 737 traffic crashes on tribal lands that had gone unreported for the year 2005. This collection shows that the previous totals for tribal lands in 2005 underestimated the number of crashes by 64 percent. This quantification of the under-reporting problem will allow states and tribes to also measure some of the benefits that improvements could bring.

Improving crash reporting would benefit everyone who uses roadways on tribal lands. Hazardous locations on the roadways could be identified and corrected, reducing the number of crashes, the number of injuries, and the property damage costs from motor vehicle crashes. Reducing traffic crashes has a significant effect on the local economy and on public health. Because of the urgency behind improving roadway safety, the study identified some quick fixes for crash reporting from tribal lands. Training opportunities for tribal and BIA law enforcement officers have been identified, and suggestions for providing the training are made in the recommendations. A model Memorandum of Agreement was developed (Appendix B), and ongoing meetings between SDDOT will provide a possible venue for discussing an MOA and other crash reporting issues.

A "how-to" outline was also provided for tribes who want to improve their crash reporting in the short term. The main components to this are timely reporting by officers, data review by supervisors, and a system for both recording the crash data at the tribe and sending a copy of the crash report to the SDDPS. Further discussion of potential software fixes showcases the potential and the pitfalls of relying on software solutions. Many of the problems with the crash reporting currently happen before reports would go into a system – when an officer fills out the report (or not) at the scene of the crash.

In addition to the crash reports retrieved, the research team made important contacts with tribal and BIA law enforcement officials who will be working with crash reports in the future. At the September 2006 meeting in Aberdeen, four police chiefs and two officers from tribal and BIA law enforcement agencies discussed the importance of training and of cooperative work between the South Dakota Department of Public Safety and tribes. Following on the September meeting, the South Dakota Highway Patrol and the Division of Criminal Investigation both offered training for crash reporting, including crash reconstruction at the Division training facilities.

Collaboration between the state and each tribe is an issue that extends beyond crash reporting, and agreements on improving crash reporting to improve safety could promote trust and collaboration in other areas. Native Americans in South Dakota have a mortality rate from motor vehicle crashes that is over four times the national average, 69.4 deaths per 100,000, as compared to 14.6 in the U.S. population. Traffic safety is a major concern for reservations in South Dakota, and could be significantly impacted by the improvements to crash reporting suggested in this report.

APPENDIX A—SAFETY GRANT SOURCES FROM NHTSA AND FHWA

Program	Funding Requirements	Funding
Federal Highway Administration Highway Safety Improvement Program (HSIP)	Funds to be used for the following: **Planning**: collecting and maintaining data, establishing project priorities, conducting engineering studies, identification of hazardous locations and elements **Implementation**: scheduling and implementing projects **Evaluation**: determining the effect of safety improvements	The Federal share is 90 percent, subject to the sliding scale adjustment, except that the Federal share is 100% for certain safety improvements listed.
National Highway Traffic Safety Administration (NHTSA) *State and Community Highway Safety Grants Program*(Section 402)	Funding must be used to support State highway safety programs designed to reduce traffic crashes and resulting deaths, injuries, and property damage. A State may use these grant funds only for highway safety purposes.	Ninety five percent of the funds apportioned to the Secretary of the Interior shall be expended by Indian tribes to carry out highway safety programs within their jurisdictions. In FY 2006, NHTSA's estimated Section 402 obligation to South Dakota was $1,155,000.
National Highway Traffic Safety Administration (NHTSA) *State Traffic Information System Improvements Grants*(Section 408)	Funding must be used to adopt and implement data improvement programs: - to improve the timeliness, accuracy, completeness, uniformity, integration, and accessibility of State data; - to evaluate the effectiveness of these efforts; - to link these State data systems, including traffic records, with other data systems within the State; and - to improve the compatibility of the State data system with national data systems and data systems of other States to improve the ability to observe and analyze national trends in crash occurrences, rates, outcomes, and circumstances.	The Federal share of programs funded this section shall not exceed 80 percent.

For more Information on Safety Grant Programs:

FHWA, Highway Safety Improvement Program (HSIP)
http://www.fhwa.dot.gov/tfhrc/safety/pubs/81218/intro.htm (Accessed 2/2/07)

FHWA, Fact Sheet on Highway Provisions
http://www.fhwa.dot.gov/safetealu/factsheets/hsip.htm (Accessed 2/2/07)

23 USC Sec. 402 (2006) **http://nhtsa.gov/nhtsa/Cfc_title49/HighwaySafety.html** (Accessed 2/2/07)

23 USC Sec. 402(i)(2) **http://frwebgate2.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=44713011396+0+0+0&WAISaction=retrieve** (Accessed 2/2/07)

NHTSA, 2006, Highway Traffic Safety Grants, Distribution of NHTSA Section 402
http://www.nhtsa.dot.gov/nhtsa/whatis/BB/2006/pages/DistributionSec402.htm (Accessed 2/2/07)

23 USC Sec.408 (2006) **http://nhtsa.gov/nhtsa/Cfc_title49/HighwaySafety.html** (Accessed 2/2/07)

DRAFT

APPENDIX B— DRAFT MEMORANDUM OF AGREEMENT FOR MOTOR VEHICLE CRASH REPORTING

This agreement is between the South Dakota Department of Transportation (the "DOT"), the South Dakota Department of Public Safety (the "DPS") and the [*Tribe Name]* Tribe (the "Tribe").

The DOT, DPS and the Tribe believe it is mutually beneficial to enter into this agreement for the safety of the traveling public and improvement of highway systems that lie within the exterior boundaries of the [*Reservation Name]* Reservation.

The parties agree as follows:

1) The success of this agreement is predicated upon all parties acting in accord with the following principles:

   a) All parties state that they are interested in:
      i) ensuring that the motor vehicle crash data will be used for data nalysis and generating supporting documentation for highway improvements only,
      ii) providing reports and data analysis,
      iii) eliminating high hazard areas on the highway system within the reservation.

   b) Compliance is a responsibility of all parties and all activities in this regard will be conducted with mutual respect for each other's responsibilities. To this end, neither party will impose additional requirements or standards without giving advanced notice to the other parties and do encourage informal resolution of problems involving all interested parties.

   c) The Tribe agrees to the following:
      i) provide motor vehicle crash reporting data on the DPS report form or compatible reporting format with the DPS system,
      ii) agree that no other motor vehicle crash reporting form other than the DPS format or compatible system will be used to report motor vehicle crash reporting data
      iii) will provide motor vehicle crash reporting data on a monthly basis to DPS or more frequently if there is a high number of motor vehicle crashes in a time period,

iv) provide complete motor vehicle crash reports and follow the standards and requirements for reporting established by DPS

d) The DPS agrees to the following:
   i) collect all motor vehicle crash reporting data and will only use the information for analysis of motor vehicle crash analysis and reporting purposes.
   ii) provide reports and data collected to Tribe on a quarterly basis and as requested,
   iii) provide training to Tribal law enforcement and support personnel on motor vehicle crash reporting,
   iv) provide technical support to Tribal law enforcement and support personnel on motor vehicle crash report,
   v) maintain highest levels of confidentiality of motor vehicle crash reporting data received.

e) The DOT agrees to the following:
   i) analyze motor vehicle crash reporting data and use information to support adding projects to the Five-Year STIP to improve highway safety within the reservation boundaries,
   ii) conduct research projects and other technical analysis of motor vehicle crash data,
   iii) provide reports and technical analysis to Tribe,
   iv) provide technical assistance to Tribal planning and/or highway departments,

2) To provide for stability and predictability in the motor vehicle crash reporting analysis all parties agree to maintain this agreement through the term specified below. Modifications or changes in the agreement [*or any of the attachments*] therein can be made through mutual consent and will be effective after being reduced to writing and signed by officials for each party.

3) It is the intent of all parties that this agreement shall be implemented on a cooperative basis without regard to jurisdictional issues. It is further agreed that all parties will encourage informal resolution of problems prior to instituting litigation. It is also agreed that nothing herein shall prevent the Tribe, DOT or DPS from instituting any litigation pertaining to any jurisdictional issue with regard to motor vehicle crash reporting or any other matter.

By signature below, the [*Tribe Name]* Tribe, the State of South Dakota, Department of Transportation, and the State of South Dakota, Department of Public Safety agree to adhere to this agreement and *[the attached documents]:*

Attachment #1 –

The Tribe, DOT, BIA, and DPS further agree *[the above-referenced attachments and]* this agreement shall be applicable for the period of March 1, 2007 to December 31, 2012.

[*Tribe Name]* TRIBE

_____
[*Tribal President/Chairman Name]*
Tribal Chairman/President
[*Tribe Name]*Tribe

Date _____

STATE OF SOUTH DAKOTA

_____
Tom Dravland
Secretary
Department of Public Safety

Date _____

_____
[*BIA Representative]*
[*Title]*
Bureau of Indian Affairs

Date _____

_____
[*Name*]
Secretary
Department of Transportation

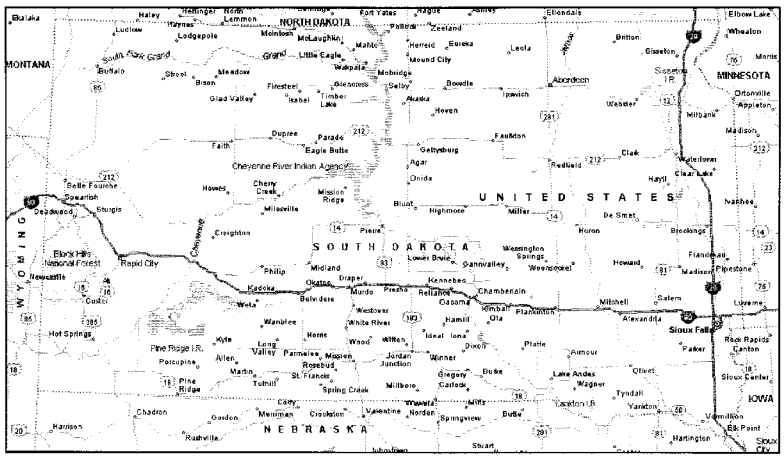
Date _____

South Dakota DOT
Connecting South Dakota and the Nation

South Dakota
Department of Transportation
Office of Research

U.S. Department
of Transportation
Federal Highway
Administration

SD2005-14-X



Improving Motor Vehicle Crash Reporting on Nine South Dakota Indian Reservations

Study SD2005-14

Executive Summary

Prepared by
ICF International, Inc.
9300 Lee Highway
Fairfax, VA 22031

May 2007

DISCLAIMER

The contents of this report reflect the views of the authors who are responsible for the facts and accuracy of the data presented herein. The contents do not necessarily reflect the official views or policies of the South Dakota Department of Transportation, the State Transportation Commission, the South Dakota Highway Patrol, or the Federal Highway Administration. This report does not constitute a standard, specification, or regulation.

ACKNOWLEDGEMENTS

This work was performed under the direction of the SD2005-14 Technical Panel:

Zane Arpan ..... Cheyenne River Sioux Tribe
Myrna Buckles ..... Indian Health Service
Roger Campbell..... Tourism & State Development
Maj. J. C. Carpenter .....SD Highway Patrol
Gina Espinosa... NHTSA Rocky Mountain Region
Gerry Foell .....Bureau of Indian Affairs
Elmer Four Dance .....Bureau of Indian Affairs
Gary Gaikowski.....Sisseton-Wahpeton Oyate
June Hansen..... SDDOT Office of Legal Counsel
Paula Hill..... Cheyenne River Sioux Tribe
David Huft.....SDDOT Office of Research
Dennis Johnson .....SDDOT Office of Research
Sharon Johnson . Federal Highway Administration
Robert Long ..... Rosebud Sioux Tribe
Roy Meyer.....SD Dept. of Public Safety
Col. Dan Mosteller.....SD Highway Patrol
Ben Orsbon..... SDDOT Office of the Secretary
Pete Red Tomahawk....Standing Rock Sioux Tribe
Ray Red Wing.....Flandreau Santee Sioux Tribe
Genevieve Ribitsch .....Oglala Sioux Tribe
Scott Shields.....Crow Creek Sioux Tribe
Sam Sully .....Yankton Sioux Tribe
Dennis Trusty .....Northern Plains TTAP
John Weaver..... Indian Health Service
Toni Wells.....Lower Brule Sioux Tribe
Patsy Winters .....SD Dept. of Public Safety

The work was performed in cooperation with the United States Department of Transportation Federal Highway Administration.

TECHNICAL REPORT STANDARD TITLE PAGE

1. Report No. SD2005-14-X	2. Government Accession No.	3. Recipient's Catalog No
4. Title and Subtitle Improving Motor Vehicle Crash Reporting on Nine South Dakota Indian Reservations		5. Report Date May 21, 2007 6. Performing Organization Code
7. Author(s) Polly Quick, Linda Bailey		8. Performing Organization Report No.
9. Performing Organization Name and Address ICF International, Inc. 9300 Lee Highway Fairfax, VA 22031 Interstate Engineering, Inc. 408 South Coteau Pierre, SD 57501-1039		10. Work Unit No. 11. Contract or Grant No.
12. Sponsoring Agency Name and Address South Dakota Department of Transportation Office of Research 700 East Broadway Avenue Pierre, SD 57501-2586		13. Type of Report and Period Covered Executive Summary February 2006 to May 2007 14. Sponsoring Agency Code 310964

15. Supplementary Notes
An complete final report is published separately as SD2005-14-F.

16. Abstract

Crash report rates from tribal lands in South Dakota are generally low relative to the number of crashes estimated for those areas. This study sought to quantify the number of actual crashes on tribal lands in South Dakota for 2005, describe the barriers to better crash reporting from tribal lands, and suggest remedies. The research team visited all nine reservations and worked with law enforcement agencies to retrieve crash data for 2005 as available. A total of 737 crashes were documented in some fashion by tribal and BIA law enforcement agencies, though only 52 were reported with enough detail to be included in the South Dakota Accident Reporting System.

After visiting the law enforcement offices for each reservation, the research team held a meeting with tribal and BIA law enforcement officials to discuss possible solutions. Three major ideas emerged from these discussions. The first was training for law enforcement officers on the crash forms and crash reporting process for South Dakota. The second concerned software solutions for internal tribal data processing and making the crash report form easier to complete. Thirdly, the political issues involved in crash reporting represent a serious barrier to improvement, and are tied primarily to the overall relationship between tribes and the State of South Dakota.

Based on the information gathered as part of the study, the research team made five recommendations to the State of South Dakota that would improve crash reporting from tribal lands. Recommendations center on working with tribal councils to agree on how crash reporting will be done from tribal lands, and providing support and incentives for crash reporting improvements at tribal and BIA law enforcement agencies.

17. Keywords Safety, Data, Native American		18. Distribution Statement No restrictions. This document is available to the public from the sponsoring agency.	
19. Security Classification (of this report) Unclassified	20. Security Classification (of this page) Unclassified	21. No. of Pages 14	22. Price

TABLE OF CONTENTS

DISCLAIMER ____ II
ACKNOWLEDGEMENTS ____ II
TECHNICAL REPORT STANDARD TITLE PAGE ____ IV
TABLE OF CONTENTS ____ VI
LIST OF FIGURES ____ VI
LIST OF TABLES ____ VI
ABBREVIATIONS USED ____ VII
EXECUTIVE SUMMARY ____ 8
PROBLEM DESCRIPTION ____ 8
RESEARCH OBJECTIVES ____ 8
SIGNIFICANT FINDINGS ____ 9
RECOMMENDATIONS ____ 12

LIST OF FIGURES

FIGURE 1: MOTOR VEHICLE CRASHES FOR 2005, BEFORE AND AFTER STUDY, WITHIN RESERVATION BOUNDARIES AS DEFINED BY 2000 CENSUS 10

LIST OF TABLES

TABLE 1: NATIVE AMERICANS AS A PERCENTAGE OF ALL MOTOR VEHICLE FATALITIES IN SOUTH DAKOTA 8

ABBREVIATIONS USED

BIA: Bureau of Indian Affairs

COPS: Community Oriented Policing Services

FHWA: Federal Highway Administration

MOA: Memorandum Of Agreement

NHTSA: National Highway Traffic Safety Administration

SDDOT: South Dakota Department of Transportation

SDDPS: South Dakota Department of Public Safety

TraCS: Traffic and Criminal Software

EXECUTIVE SUMMARY

PROBLEM DESCRIPTION

The motor vehicle fatality rate among Native Americans in South Dakota is more than three times the rate of others in South Dakota. Total fatalities among Native Americans account for over a quarter of all traffic crash fatalities in South Dakota from 2001-2005.[1] At the same time, full crash reports are often not collected on reservation lands, making it difficult to address roadway hazards, education and enforcement needs.

Table 1: Native Americans as a Percentage of all Motor Vehicle Fatalities in South Dakota

Year	Native American	White	Other	Total	Percent Native American
2001	38	129	4	171	22.2%
2002	43	133	4	180	23.9%
2003	58	138	7	203	28.6%
2004	63	134	0	197	32.0%
2005	45	138	3	186	24.2%
Total 5 Years	**247**	**672**	**18**	**937**	**26.4%**

Source: Fatality Analysis Reporting System,
National Highway Transportation Safety Administration.

Tribal and state government agencies have a strong interest in improving traffic crash reporting from tribal lands in the state. Improved crash data would enable the state and the tribes to apply more successfully for funds from the Bureau of Indian Affairs (BIA), the Federal Highway Administration (FHWA), and the National Highway Traffic Safety Administration (NHTSA), and to make the appropriate investments in safety improvements. Some tribes are also concerned with the difficulty of making insurance claims when BIA records must be requested through the Freedom of Information Act, which is the case on four reservations in South Dakota.

Three areas of problems were identified: tribal law enforcement capacity for reporting; standardization of reporting methods; and issues of tribal-state relations.

RESEARCH OBJECTIVES

Five objectives were identified for this study:

Objective 1. To describe and evaluate crash reporting practices used on the nine Indian reservations with lands in South Dakota.

Objective 2. To identify barriers to complete and accurate reporting of crashes on reservations.

Objective 3. To recommend practical ways to improve the completeness and accuracy of future crash reporting on reservations.

[1] Fatality Analysis Reporting System (FARS), maintained by National Highway Transportation Safety Administration.

Objective 4. To improve the completeness and quality of crash data reported to the South Dakota Department of Public Safety (SDDPS) from the nine reservations in *calendar year 2005.

Objective 5. To facilitate agreements between tribal governments and the South Dakota Department of Transportation (SDDOT) on crash reporting.

The study team visited all nine Indian reservations in South Dakota during the summer of 2006. The team conducted interviews with tribal and BIA law enforcement staff and others, to identify the central barriers to better crash reporting on each reservation. In addition, a meeting was held in Aberdeen in September 2006, in conjunction with BIA Law Enforcement, to have a full discussion of some of the issues involved in crash reporting.

While visiting reservations, the study team collected crash data from calendar year 2005 to fulfill objective 4. The crash data collected was not always complete, but in the end the study added 52 crashes to the South Dakota Accident Reporting System (SDARS) for the year.

In order to accomplish objective 5, the study team suggested a pilot project to draft a Memorandum of Agreement (MOA) that would form the basis for crash data sharing between the tribes and the state. The draft MOA is discussed in more detail below, under Recommendations.

SIGNIFICANT FINDINGS

The research team collected a total of 737 crash reports, though most were not in a form that could be input to the South Dakota Accident Record System (SDARS) for 2005. Nevertheless, as an estimate, this data collection showed that crashes on tribal lands had been underreported by approximately 64 percent (737 out of 1,150 had gone unreported). The results by tribe are shown below, in Figure 1.

In discussions with tribal law enforcement officers and others, it was clear that each tribe is in a unique situation in regards to crash reporting. However, some common themes emerged. Problems fell into two phases of the crash reporting process: the collection phase, and the data processing phase. In the collection phase, the team's research found that full crash reports, with all the details about crash causation and circumstances, were often not filled out properly or in a timely manner.

In the data processing phase, the team found that most tribes were dissatisfied with their internal data processing. Software problems, hardware problems, and general lack of procedures for keeping accurate crash records were found. In the data processing phase, the final transfer of crash reports to the South Dakota Department of Public Safety is key to a complete data set at the state level. One or two tribal councils were reported to be explicitly opposed to data sharing with the state, but this was not the central barrier to reporting at most tribes.

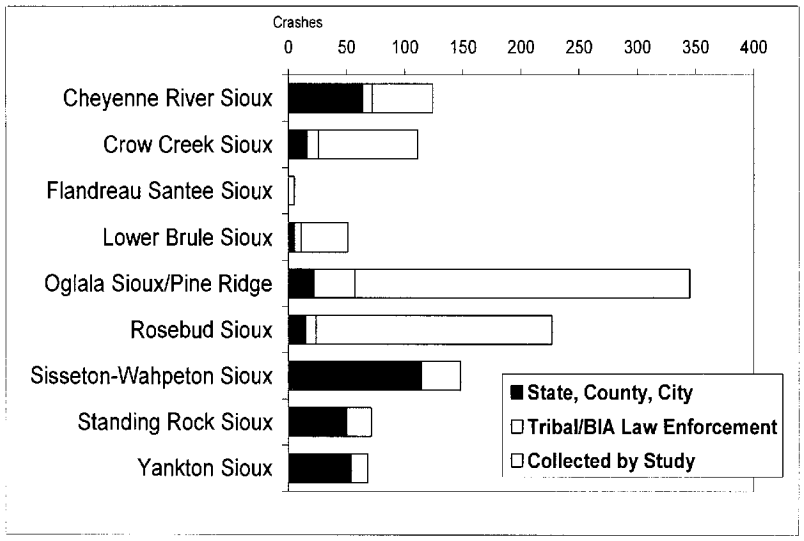


Figure 1: Motor Vehicle Crashes for 2005, Before and After Study, Within Reservation Boundaries as Defined by 2000 Census
Source: South Dakota Accident Reporting System (SDARS) data, summarized geographically by ICF, and Tribal/BIA Law Enforcement data collected during the study.

The team discussed these issues and options for improving the crash reporting at a meeting of tribal law enforcement officials and others in Aberdeen in September 2006. Three major ideas emerged from this meeting. The first was training for law enforcement officers on the crash forms and crash reporting process for South Dakota. The second concerned software solutions for internal tribal data processing and making the crash report form easier to complete. Thirdly, the political issues involved in crash reporting represent a serious barrier to improvement, and are tied primarily to the overall relationship between tribes and the State of South Dakota.

In order to explore the ideas of the Aberdeen meeting, the interim report suggested two pilot projects, which took the form of subcommittees of the technical panel. The first pilot project focused on training for law enforcement officers on tribal lands, and resulted in a description of the appropriate training for tribal or BIA law enforcement officers on crash reporting:

> Training in the proper completion of the accident report form will be provided by the State of South Dakota. This training will be provided in two formats, one being on-site and the other as a train the trainer program depending on the needs of the tribal authority. The training will be at no cost to the tribe and will be

approximately three hours in length. The Department of Public Safety will be responsible for the delivery of the report curriculum.[2]

The second pilot project created a draft memorandum of agreement (MOA) on crash reporting between a tribe and the State of South Dakota. The draft MOA, as developed by SDDOT, is an agreement to exchange crash data between the tribe and the state to improve highway safety. The goal of the agreement as currently drafted is to support engineering solutions to hazardous areas of the roadway, and the agreement specifies that the crash data submitted will be used to address roadway hazards. The draft MOA is a five-year document that would commit the tribal council to sharing data, while the state would agree to provide training and technical assistance to law enforcement agencies submitting data.

For tribes interested in improving their crash reporting, the general principles are:

- officers should fill out reports as soon as a crash has occurred;
- supervisors should check the forms for completeness; and
- the tribe should both maintain an internal file of all crash reports and send copies to both BIA and SDDPS.

Three different pathways to better reporting are described in detail in the report, based on best practices among tribes in South Dakota, tribes in other areas of the U.S., and other states' experiences.

The first pathway is a short-term solution, using paper filing and basic data tracking methods. Law enforcement officers fill out a crash report on site, using a paper form. The tribal or BIA law enforcement office keeps a copy of the crash report form, keeps a tally or a list of all crashes in a central ledger, and sends a copy of the report form to the SDDPS and the BIA. Several tribes are already using some permutation of this process, sometimes listing crashes in a spreadsheet to keep count and to be able to perform basic analysis. SDDPS can also provide reports to tribes based on the crash reports sent in.

The second and third options involve computerized solutions. Tribes have the option of purchasing and using an off-the-shelf software package for tracking crashes, such as the Cisco, Global, New World, and CRIS software that tribes already use in South Dakota. A key to using this software is to budget for technical support, because several law enforcement agents said that although they had software, it was not always working properly. Alternatively, tribes can choose to use the Traffic and Criminal Software (TraCS) package, a software tool for motor vehicle crash reporting that will soon be available from the SDDPS. One of the main advantages to TraCS over other software is that staff at SDDPS, the Highway Patrol, and others will be trained on the software, and SDDPS will be able to provide technical assistance directly to tribes that use the software. Tribes may need to check the compatibility between TraCS and other software

[2] Approved text from discussions among three South Dakota agencies: Highway Patrol, Department of Public Safety, and Department of Criminal Investigation. Provided by Pat Winters of SDDPS on December 6, 2006.

systems they are using for computer-aided dispatch, citations, and other parts of the criminal justice system.

RECOMMENDATIONS

The study team made five recommendations to South Dakota agencies at the end of the research.

1. **The South Dakota Department of Public Safety should expand its training on crash reports for all tribal and BIA law enforcement officers, tailored to tribal law enforcement.**

   Individual training needs at each tribe should be assessed and the standard state curriculum should be tailored as much as possible to improve tribal and BIA law enforcement officers' knowledge of the South Dakota crash report form. In addition, the state should focus on the details about each crash that are required under the Model Minimum Uniform Crash Criteria (MMUCC)[3]. This will help tribes to work with the internal data processes they develop, while producing the crash details that are needed for SDARS.

   The training may take the form of one-on-one training with South Dakota Highway Patrol officers, or a "train-the-trainer" model for each reservation. The Highway Patrol is currently working with some tribal police officers at Oglala Sioux Tribe, and future training programs should build on this experience. SDDPS could alternatively develop software that would guide law enforcement officers on tribal lands through the crash reporting form.

   Training needs, including incentives for law enforcement officers, should be discussed individually with each tribe. Training is already available to tribal and BIA law enforcement officers, free of charge, from the SDDPS Department of Criminal Investigation, and promoting awareness of this training for tribal and BIA police could be helpful in itself.

2. **The South Dakota Department of Transportation should work directly with tribal councils to establish crash reporting as a priority for law enforcement on tribal lands.**

   The state should meet with tribal councils to establish memoranda of agreement with tribes describing the crash data that should be submitted, and the limits on its use once it reaches the state. Staff at the SDDOT have already prepared a draft MOA that commits tribes to sharing crash reports with the state in a compatible format to be agreed on. In return, the state would commit to providing technical support and training for the use of the crash report forms, and to maintaining the confidentiality of the data insofar as possible. The MOA covers a five-year period as currently drafted.

[3] MMUCC are a voluntary set of guidelines that help states collect consistent, reliable crash data that are more effective for identifying traffic safety problems, establishing goals and performance measures, and monitoring the progress of programs. (National Highway Traffic Safety Administration, Accessed at: http://www-nrd.nhtsa.dot.gov/departments/nrd-30/ncsa/MMUCC.html)

The MOA should be signed with notification to the tribal or BIA law enforcement agency, with the awareness that tribal councils set policy for law enforcement on reservations. While only a few tribes have explicit policies against reporting crash data to the state, data collection on crashes tends to have a low priority, even for internal uses. Passing a tribal resolution that crash data should be collected at the tribe would improve the reporting process.

A major concern for tribes has been double jeopardy, whereby an offender could be cited both by tribal or BIA police, and by State police after a crash report is submitted. This concern should be addressed directly in the MOA to assure tribal members that they will not be cited both in tribal and in the state criminal system.

SDDOT should pursue MOAs with tribes within the larger context of transportation improvements, emphasizing the fact that crash data will bolster the case for making roadways safer. SDDOT is currently conducting consultation meetings with each tribe on transportation issues, and crash reporting could be woven into those meetings. Alternatively, SDDOT staff could visit tribal governments specifically to address crash data sharing agreements. However, putting the crash data agreements in a larger framework of transportation issues is still important in this context.

3. **The South Dakota Department of Public Safety should encourage and facilitate grant applications from tribes to support tribal efforts to institute more effective internal processes to record and track crash data.**

The state data system will benefit from a better internal data collection system at each tribe. Improvements should be explicitly encouraged under a grant program administered by the SDDPS. The grants could be provided for each tribe to institute or improve its own crash data processing system including procedures, staffing, and a tracking system, potentially using software. It could also be a thorough filing system for paper with records kept in a ledger or a well-maintained spreadsheet. Some reservations already use software for this purpose, as discussed above, and others may benefit from instituting software or improving their training on it. The SDDPS grant program would support the development of an action plan at each tribe that will achieve specific goals for its data processing system, starting from the current status of crash reporting on that reservation.

NHTSA provides funds through its 408 program specifically to improve traffic records. This is a possible funding source for this recommendation. A successful application for 408 funding would require a 20 percent match from the tribe or the Indian Highway Safety office, and buy-in from BIA and FHWA. This funding has been approved only for the purpose of improving state data systems, so tribal improvements would have to be tied to SDARS. SDDPS may be able to locate other funding sources for this recommendation as well.

4. **The South Dakota Department of Public Safety should make reporting as easy as possible for tribes.**

   The SDDPS can ease the transfer of data by implementing various technological and personnel measures. For example, if a tribe has a complete data processing system on site, such as the Cisco system, the SDDPS can work to accept electronic data exported from those files. In the course of the research, Cisco expressed an interest in developing a report that would essentially mirror the SD crash report form. The state may also benefit from devoting information technology staff time to working with law enforcement assistants and other staff at tribes who work with crash data systems.

   For tribes with privacy concerns, accepting crash reports without personal identifiers will be vital to the data submission process. Crash reports would still contain all other details about the people involved in the crash (date of birth, sex, etc.), and could simply use a generic name ("Jane/John Doe"). Tribal concerns about privacy are a significant barrier for some tribes, and SDDPS can build trust with those tribes by focusing on the safety issues and relaxing personal identifier requirements.

5. **The South Dakota Department of Transportation should motivate crash reporting by actively facilitating the identification of rural hazards on tribal lands and by funding improvements.**

   By focusing on rural roadway hazards on tribal lands, the South Dakota DOT can strengthen the motivation for tribes to improve their crash reporting systems. The Hazard Elimination Program, part of the federal Highway Safety Improvement Program, is a potential source of funding for this. A requirement for the application process for these funds would be a crash analysis of the location where the safety measure will be implemented. The DOT can clarify the process of applying for this set-aside by outlining clearly the type of information required in the application.

   Road safety audits should be conducted to supplement crash data in identifying roadway hazards, since low traffic can mask serious safety problems on rural roads. As a model for this type of program, the Thurston Regional Planning Council (Washington) created a set-aside for rural areas from their federal Surface Transportation Program funds. In this program, smaller places were not matched up against large cities in competing for roadway improvement funds[4] (FHWA 2006).

[4] FHWA 2006. Case study: "Thurston County, Washington: Partnership between Tribes and an MPO" accessed at: http://www.fhwa.dot.gov/hep/tribaltrans/ttpcs/washington.htm

---

WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO JOHN R. BAXTER*

Deputy Assistant Secretary for Tribal Government Affairs

Question 1. If the Department of Transportation has not filled the position of Deputy Assistant Secretary for Tribal Government Affairs, how does the Department co-

*Responses to written questions were not available at the time this hearing went to press.

ordinate tribal concerns among the various agencies and offices? Where is the Department in filling this position that has been vacant for nearly two years?

Comprehensive National Tribal Transportation Facility Inventory

SAFETEA–LU requires that by August 10, 2007, the Secretary of Transportation and the Secretary of the Interior must complete a "comprehensive national inventory of transportation facilities that are eligible for assistance under the Indian reservation roads program."

SAFETEA–LU lists some of the transportation facilities that are eligible for assistance under the IRR Program.

Question 2. Does the Departments' comprehensive national tribal transportation facility inventory include *all* roads and bridges that are *eligible for inclusion* in the inventory?

Question 3. Does the inventory reflect Tribal transit systems?

Question 4. Are the procedures to include eligible routes in the IRR Program inventory employed *uniformly* across the country in each of the 12 BIA Regions?

Question 5. What improvements do you suggest to the inventory update process?

Question 6. What is the average amount of time required to update a Tribe's road inventory from the time the route is submitted by a Tribe to the time the facility is actually included on the inventory?

Question 7. What is the average amount of time for the BIA and FHWA to implement recommendations of the IRR Program Coordinating Committee from the time a recommendation is made by that advisory body to the time the Departments implements the recommendation as agency policy for the IRR Program?

Road Maintenance

The motor vehicle fatality and injury statistics in Indian country are appalling and unacceptable with death rates twice and in some times three-times the national average.

Question 8. What role does road maintenance play in transportation safety in Indian country?

Question 9. What is the current deferred Road Maintenance backlog amount for BIA and Tribally-owned routes?

Question 10. Is the Department of Transportation satisfied that the BIA is requesting sufficient funds to properly maintain IRR Program facilities? If it is not satisfied, what does the Department plan to do about it?

Question 11. Are traffic accidents underreported in Indian Country?

Question 12. Is there a uniform process by which the Department of the Interior and the Department of Transportation collect traffic accident data on Indian reservations and share that data with Tribes, States, and one another?

Question 13. What affect does the present funding level for the BIA Road Maintenance Program have on the useful life of roads and bridges built and reconstructed with IRR Program funds?

Question 14. Why did the Indian Highway Safety Office not publish a notice of grant availability for FY 2007 with respect to the two percent of Highway Safety funds set aside under SAFETEA–LU for the Department of the Interior to award to Tribes to carry out highway safety programs? How did the Department expend these funds?

Question 15. What is the cost to update BIA-owned and Tribally-owned Road Maintenance equipment that is purchased or maintained with BIA Road Maintenance Program funds?

Question 16. What action has the Department of Transportation taken to ensure that State and local governments build and reconstruct State- and county-owned routes that are located on or provide access to Indian reservations?

Question 17. What is the long term impact to the IRR Program authorizing Tribes to use 25 percent of road construction funds to address road maintenance needs that the BIA Road Maintenance Program cannot remedy?

Funding Level for the IRR Program

According to the National Highway Traffic Safety Administration (NHTSA), the motor vehicle death rate for Native Americans is twice, and in some cases, three times the national average with motor vehicle injuries the leading cause of death for Native Americans aged 1–34.

Based on the pre-existing unmet need for construction of roads and bridges in Indian country, Congress, in SAFETEA–LU, increased funding for the IRR Program

from $275 million per year under TEA–21 to $300 million, rising to $450 million by FY 2009.

Question 18. Are the resources available to the Departments adequate to address transportation infrastructure needs in Indian country and reduce traffic fatalities and injuries among Native Americans?

Question 19. How would you characterize the overall state of roads and bridges in Indian country?

Question 20. Has the *backlog* of unmet construction need for IRR Program roads and bridges gone down since SAFETEA–LU was enacted?

Question 21. Are the present funding levels authorized under SAFETEA–LU for the IRR Program and IRR Bridge Program keeping pace with construction inflation and satisfying the need for transportation infrastructure in Indian country?

Question 22. Is the IRR Program subsidizing deferred road maintenance needs for IRR Program routes that cannot be paid for with BIA Road Maintenance funds alone?

Question 23. What is the Departments' estimate of the cost to remedy the unmet need for construction of transportation system roads and bridges in Indian country?

Timely Approval of Tribal Transportation Improvement Programs

In order to ensure that federal highway funds are spent only for IRR projects that have been approved by the BIA and the FHWA, the IRR Program regulations require each Tribe to prepare a Tribal Transportation Improvement Program (TTIP) which must be approved first by the BIA, and then by the FHWA and ultimately included on the IRR Transportation Improvement Program (IRRTIP). Under the regulations, Tribes may only expend funds for projects that are included on the FHWA-approved IRRTIP. 25 C.F.R. § 170.116(e). Tribes have expressed frustration that the BIA takes an inordinately long time to approve and update Tribal TIPs and to submit them to the FHWA for inclusion on the IRRTIP. As a result Tribes with self-determination contracts often cannot expend their IRR Program funds, because their projects have not been included on the IRRTIP. In one BIA Region for example, in FY 2006 the BIA only approved the TIPS of approximately 10 percent of Tribes with ISDA contracts with the result that the remaining Tribes have been unable to expend their IRR Program funds.

Question 24. How long does it take on average for the BIA and FHWA to approve and include a Tribal Transportation Improvement Program in the IRR Program-TIP after the Tribe has submitted it to the agency?

Question 25. What mechanisms has your Agency adopted or proposed to speed this process?

Question 26. Do the BIA and FHWA permit Tribes to submit TTIPs via the internet and to track progress of the TTIP approval process on-line?

WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO JERRY GIDNER *

Comprehensive National Tribal Transportation Facility Inventory

SAFETEA–LU requires that by August 10, 2007, the Secretary of Transportation and the Secretary of the Interior must complete a "comprehensive national inventory of transportation facilities that are eligible for assistance under the Indian reservation roads program."

SAFETEA–LU lists some of the transportation facilities that are eligible for assistance under the IRR Program.

Question 1. Does the Departments' comprehensive national tribal transportation facility inventory include *all* roads and bridges that are *eligible for inclusion* in the inventory?

Question 2. Does the inventory reflect Tribal transit systems?

Question 3. Are the procedures to include eligible routes in the IRR Program inventory employed *uniformly* across the country in each of the 12 BIA Regions?

Question 4. What improvements do you suggest to the inventory update process?

Question 5. What is the average amount of time required to update a Tribe's road inventory from the time the route is submitted by a Tribe to the time the facility is actually included on the inventory? Provide the written instructions and guidelines provided by the BIA to Indian Tribes to implement an inventory update submittal.

---

* Responses to written questions were not available at the time this hearing went to press.

Question 6. What is the average amount of time for the BIA and FHWA to implement recommendations of the IRR Program Coordinating Committee from the time a recommendation is made by that advisory body to the time the Departments implements the recommendation as agency policy for the IRR Program?

Road Maintenance

The motor vehicle fatality and injury statistics in Indian country are appalling and unacceptable with death rates twice and in some times three-times the national average.

Question 7. What role does road maintenance play in transportation safety in Indian country?

Question 8. What is the current deferred Road Maintenance backlog amount for BIA and Tribally-owned routes?

Question 9. Are traffic accidents underreported in Indian Country?

Question 10. Is there a uniform process by which the Department of the Interior and the Department of Transportation collect traffic accident data on Indian reservations and share that data with Tribes, States, and one another?

Question 11. What affect does the present funding level for the BIA Road Maintenance Program have on the useful life of roads and bridges built and reconstructed with IRR Program funds?

Question 12. Has the BIA Indian Highway Safety Office developed a simplified process for Tribes to apply for traffic safety grants as required under SAFETEA–LU?

Question 13. Why did the Indian Highway Safety Office not publish a notice of grant availability for FY 2007 with respect to the two percent of Highway Safety funds set aside under SAFETEA–LU for the Department of the Interior to award to Tribes to carry out highway safety programs? How did the Department expend these funds?

Question 14. What is the cost to update BIA-owned and Tribally-owned Road Maintenance equipment that is purchased or maintained with BIA Road Maintenance Program funds?

Question 15. What amount of funding does the BIA estimate that it needs annually to maintain IRR Program facilities owned by the BIA and Indian tribes and currently reflected in the IRR Program inventory?

Question 16. What is the rationale for cutting the BIA Road Maintenance Program budget at a time when the IRR Program inventory is growing?

Question 17. The 2004 Program Assessment Rating Tool (PART) evaluation of the BIA Road Maintenance System indicated that the program results were not demonstrated. What actions has the BIA taken since 2004 to produce and demonstrate results for the BIA Road Maintenance Program?

Question 18. What is the long term impact to the IRR Program authorizing Tribes to use 25 percent of road construction funds to address road maintenance needs that the BIA Road Maintenance Program cannot remedy?

Funding Level for the IRR Program

According to the National Highway Traffic Safety Administration (NHTSA), the motor vehicle death rate for Native Americans is twice, and in some cases, three times the national average with motor vehicle injuries the leading cause of death for Native Americans aged 1–34.

Based on the pre-existing unmet need for construction of roads and bridges in Indian country, Congress, in SAFETEA–LU, increased funding for the IRR Program from $275 million per year under TEA–21 to $300 million, rising to $450 million by FY 2009.

Question 19. Are the resources available to the Departments adequate to address transportation infrastructure needs in Indian country and reduce traffic fatalities and injuries among Native Americans?

Question 20. How would you characterize the overall state of roads and bridges in Indian country?

Question 21. Has the *backlog* of unmet construction need for IRR Program roads and bridges gone down since SAFETEA–LU was enacted?

Question 22. Are the present funding levels authorized under SAFETEA–LU for the IRR Program and IRR Bridge Program keeping pace with construction inflation and satisfying the need for transportation infrastructure in Indian country?

Question 23. Is the IRR Program subsidizing deferred road maintenance needs for IRR Program routes that cannot be paid for with BIA Road Maintenance funds alone?

Question 24. What is the Departments' estimate of the cost to remedy the unmet need for construction of transportation system roads and bridges in Indian country?

Question 25. At the close of FY 2004, did the BIA have any unobligated IRR Program funds from FY 2004 or prior years? If so: (i) what was the amount of those funds? (ii) how were those funds expended? And (iii) how much funding remains unobligated?

Standardized Contracts and Funding Agreements to Eliminate Delays in Disbursing IRR Program Funds

Indian tribes have expressed frustration at the length of time the BIA takes to disburse appropriated IRR funds to Tribes that are eligible to enter into contracts under the Indian Self-Determination Act, especially in places that have very short construction seasons. The BIA will not disburse funds until the Tribe enters into an ISDA contract, but Tribes have reported that the contracting process is overly antagonistic and that BIA contracting officials often refuse to incorporate important provisions of SAFETEA–LU and the 2004 IRR Program regulations into contracts. Many Tribes have requested that the BIA adopt a simple uniform model ISDA contract to facilitate the contracting process, improve the timeliness of the disbursal of funds, and ensure that the contracts used to transfer funds comply with current (rather than now-outdated) laws and regulations.

Question 26. Why has it taken over a year for the Interior Department to develop a simple, uniform, Indian Self-Determination Act contract model?

Question 27. What training schedule and resources does the BIA have to train Regional Office personnel, Tribal officials and Tribal Technical Assistance Programs (TTAPs) in the use of the model ISDA contract to make the contracting process less confrontational?

Question 28. What measures have the Departments put in place to simplify and speed the process of moving IRR and BIA road maintenance funds from the agencies to BIA Regions and Tribes?

Question 29. What does the BIA perceive to be the legal obstacles, if any, to include provisions permitting innovative financing techniques in Title I Indian Self-Determination Act contracts and Title IV Self-Governance Agreements as authorized under 25 C.F.R. § 170.300 *et seq.*?

Timely Approval of Tribal Transportation Improvement Programs

In order to ensure that federal highway funds are spent only for IRR projects that have been approved by the BIA and the FHWA, the IRR Program regulations require each Tribe to prepare a Tribal Transportation Improvement Program (TTIP) which must be approved first by the BIA, and then by the FHWA and ultimately included on the IRR Transportation Improvement Program (IRRTIP). Under the regulations, Tribes may only expend funds for projects that are included on the FHWA-approved IRRTIP. 25 C.F.R. § 170.116(e). Tribes have expressed frustration that the BIA takes an inordinately long time to approve and update Tribal TIPs and to submit them to the FHWA for inclusion on the IRRTIP. As a result Tribes with self-determination contracts often cannot expend their IRR Program funds, because their projects have not been included on the IRRTIP. In one BIA Region for example, in FY 2006 the BIA only approved the TIPS of approximately 10 percent of Tribes with ISDA contracts with the result that the remaining Tribes have been unable to expend their IRR Program funds.

Question 30. How long does it take on average for the BIA and FHWA to approve and include a Tribal Transportation Improvement Program in the IRR Program-TIP after the Tribe has submitted it to the agency?

Question 31. What mechanisms has your Agency adopted or proposed to speed this process?

Question 32. Do the BIA and FHWA permit Tribes to submit TTIPs via the internet and to track progress of the TTIP approval process on-line?

Amending the Part 170 Regulations

SAFETEA–LU is almost two years old and yet the Interior Department has not promulgated draft regulations to implement the many provisions Congress included in that Act to improve the IRR Program and transportation infrastructure in Indian country.

Question 33. When does the Department of the Interior plan to issue *final* regulations that amend the Part 170 IRR Program regulations to reflect the many positive provisions of SAFETEA–LU?

Question 34. What guidelines or regulations has the Department adopted (or does it plan to adopt) to help Tribes take advantage of their eligibility under SAFETEA–LU for the National Scenic Byways Program, the Alternative Transportation in Parks and Pubic Lands Program and the Transportation, Community, and System Preservation Program?

○