

TESTIMONY OF
GOVERNOR MARY V. THOMAS
ON BEHALF OF THE
GILA RIVER INDIAN COMMUNITY
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS

October 20, 1999

Good Morning, Mr. Chairman and members of the Committee. I would like to thank you for the opportunity to provide testimony on a very important issue - that of Indian Roads and the implementation of TEA-21, the highway bill authorized by the Congress last year.

My name is Mary Thomas and I am currently completing my second term as the Governor of the Gila River Indian Community. The Gila River Indian Community (the "Community") is comprised of both the Akimel O'Otham and Pee-Posh nations. Our reservation was created by Executive Order in 1859 and covers 372,000 acres, or approximately 590 square miles in south central Arizona. Our Community is composed of approximately 20,000 enrolled members, 13,000 of whom live within the boundaries of the Gila River Indian Reservation (the "Reservation").

Our Community is in a period of dramatic change. Over the last five years our reservation population has grown by nearly 44%, due in part to the increased economic and employment opportunities on the Reservation for our members. Not only is our reservation population growing, but it is also getting younger. Of those members who reside on the Reservation, over 51% are under the age of 21. As the northern boundary of

our Reservation forms the southern boundary of the Phoenix metropolitan area, our Community has experienced tremendous growth that mirrors that of Phoenix. As a result, there has been a great urgency to keep pace with the growing infrastructure demands within our Community.

Unfortunately, there remains a significant amount of work to be done in order to meet these growing demands. For example, of the 457 miles of road within the Reservation, only 256 miles are paved. The remaining 200 miles are largely unimproved, dirt roads. Given the rapid population growth and increased traffic activity throughout the Reservation (due to the close proximity of the Phoenix metropolitan area) our Community urges the Congress and the Administration to jointly work on the expeditious implementation of the TEA-21 legislation. We believe that the funding formulas of TEA-21 will help address the growing backlog of reservation roads construction needs.

Mr. Chairman, I would like to focus my remarks on the following areas:

1. Problems experienced by our Community in the current allocation of funds by the BIA for Indian Reservation Roads
2. Expanded Self-Determination Contracting and Self-Governance Compacting Opportunities for Indian Tribes under TEA-21
3. Expeditious Implementation of TEA-21
4. Overall funding of the IRR program

Problems experienced by our Community in the current allocation of funds by the BIA for Indian Reservation Roads

Mr. Chairman, you are aware how, for several years, our Community has been deeply concerned with the current funding distribution mechanism utilized by the BIA, specifically the BIA Phoenix Area Office, for identifying and funding tribal road projects.

Prior to enactment of TEA-21, the law under the Intermodal Surface Transportation Efficiency Act (the "ISTEA") mandated that the BIA allocate funding based on a Relative Need Formula (the "RNF"). The purpose of utilizing the RNF formula was to protect smaller tribes while at the same time providing certainty to other tribes that they would receive a certain level of funding each year. Unfortunately, it has been the Community's experience that, contrary to clear Congressional intent, the BIA Phoenix Area Office has applied its own "arbitrary" flat percentage formula. As a result, our Community's road projects have been underfunded by approximately \$2.5 million for the period of 1992-1997.

In uncovering this "funding shortfall", our Community requested an audit by the Federal Highway Administration (the "FHA") of the BIA Phoenix Area Office to determine the reasons for annual funding discrepancies in the Phoenix Area. The FHA audit revealed that the Phoenix Area Office never fully implemented the RNF funding formula as dictated by ISTEA. Rather, they have been utilizing a "Fair Share" formula to track the annual aggregate amount of funding for each Indian tribe in the Phoenix Area. The FHA Audit report found that the Phoenix Area Office had not changed its allocation methodology since 1983. Each Indian tribe in the Phoenix Area received that same flat percentage of roads funding for the last sixteen years! It has been only in the last year that the Phoenix Area Office updated its base statistics for each Indian tribe (ie., population growth since 1983, reservation roads constructed since 1983, increased land base, etc.).

Mr. Chairman, we cannot wait another sixteen years before the allocation formula of TEA-21 is implemented in the Phoenix Area.

Moreover, although the Phoenix Area Office purported to allocate roads funding pursuant to its "Fair Share" formula, in practice the Area Roads Engineer has exercised absolute discretion in which tribal projects get built and which projects do not. In establishing his priorities, the roads engineer is able to reallocate reservation roads monies among the Phoenix Area Indian tribes regardless of the "Fair Share" formula and thereby "rob Peter to pay Paul." This practice not only resulted in our Community being

underfunded by approximately \$2.5 million, but more importantly, it seriously undermines the ability of tribal governments to plan for future reservation roads needs.

Given the long hours of Congressional debate and deliberation that went into crafting the formulas to allocate funds among the 50 states and Indian tribes under ISTEA and TEA-21, it is inconceivable that the Phoenix Area Office can continue to ignore these formulas and leave funding allocations to the unbridled discretion of its roads engineer. Yet when our Community raised its concerns with the Phoenix Area Office, the response we received from the Area Office stated that “there can be no rigid allocation of construction monies” due to the cost of roads projects, and when asked to justify their actions, they responded that funding is, “spread out over the years and averaged,...all tribes are treated fairly.”

The FHA Audit Report also identifies other problem areas:

- The Area Office does not provide adequate enforcement of quality assurance and quality control on road construction projects due to lack of qualified BIA staff at the construction site.
- The transportation planning function is being carried out in a fragmented and inefficient manner by the BIA Phoenix Area Office due to a lack of organization, staffing and disjointed allocation of planning responsibilities.
- Phoenix Area Office personnel do not provide Technical Assistance to the Phoenix Area tribal governments.
- Phoenix Area Office fails to communicate with Phoenix Area tribal governments which creates serious misunderstandings about the IRR program.
- The current Area office Certification Acceptance Plan is outdated and is not functioning according to the requirements of TEA-21.

The FHA Audit Report highlighted several problem areas within the Phoenix Area Office Roads Program that in our experience have resulted in the continued deterioration of reservation roads throughout the Phoenix Area. For example, the Phoenix Area Roads Engineer does not regularly communicate with the Phoenix Area tribal governments. In fact, the Area Roads Engineer notified the Phoenix Area tribal governments only once a year regarding the amount of roads funds appropriated that year. The Phoenix Area

Office has done little to assist tribal governments in planning for future reservation roads needs and to complete an area wide roads inventory. In 1992, our Community provided the Phoenix Area Office with a resolution that described the Community's road construction priorities for the next five (5) years. The BIA Phoenix Area Office has yet to complete these projects.

Finally, despite the overwhelming backlog of road construction needs in the Phoenix Area, last year the Phoenix Area Office advised the Community that it was returning to BIA Headquarters the unallocated amount of \$12 million. Money that could have been efficiently spent for construction projects! We are expecting similar news this year.

Expanded Self-Determination Contracting and Self-Governance Compacting Opportunities for Indian Tribes under TEA-21

Mr. Chairman, the days of the Indian Agent are long over. The universally accepted Federal policies of Indian Self-Determination and Self-Governance require each Indian tribal government to be able to wrest control from these mid-level bureaucrats and directly administer these programs for the benefit of their members.

Our Community has four (4) Title I contracts and one (1) Title IV compact under the Indian Self-Determination and Education Assistance Act (the "ISDEA"). Three of the Title I contracts are with the Indian Health Service for Hospital, Public Health, and Sub Part J (Code of Federal Regulations) construction services. One Title I contract is with the Bureau of Indian Affairs for Law Enforcement Services. The Title IV compact is with the Bureau of Reclamation for the Central Arizona Project, Indian Distribution Division services. The Community is a "mature contractor" having continuously operated 638 contracts for three or more years with no significant audit exceptions. As a mature contractor, the Community would qualify as an applicant for a compact under Title IV.

Given our experience with Phoenix Area Office Roads Program, we are extremely interested in compacting the programs, functions, services, and activities associated with Indian Reservation Roads. In our view, compacting reduces agency interference and administrative costs imposed by the agency. It is critical that the Indian Reservation Roads Program maintain a formula funding allocation based on clear and objective criteria and that incorporates the most current data about each respective reservation.

To suggest that reservation roads funding be provided as nothing more than a simple estimate so that the Area Roads Engineer can recall or reallocate these monies to other tribes upon his discretion is folly. Just like each of the 50 States, funding for Indian tribal governments should be based on clear and objective criteria and should be available directly to the tribal governments under 638 contracts or compacts. Any formula allocation should necessarily be assumed to be the allocation for a tribal government, dollar-for-dollar. By providing a firm allocation of funds (ie., not subject to alteration by the Area Office), each tribal government would be able to plan future road construction and more importantly, to rely on a predictable allocation methodology to schedule multi-year roads construction projects.

Given our history of dealing with the Phoenix Area Office, the Community would prefer to compact, or even contract, directly with the Federal Highway Administration (FHA) for Indian Reservation Roads funds. Not only does this comport with the spirit of Indian Self-Determination but it is consistent with the idea that the Federal government's trust responsibility flows to all departments and agencies in the government not just the BIA. Further, by contracting directly with FHA Indian tribal governments would reap the benefits of eliminating suffocating layers of BIA bureaucracy and "red tape." Not only do Indian tribes feel the administrative "bite" at BIA Headquarters but the Area and Agency offices also take their share of administrative costs out of tribal roads monies. By contracting with FHA directly, Indian tribal governments would maximize the amount of Indian roads funding that actually reaches the reservation.

Expeditious Implementation of TEA-21

Finally, it is our understanding that the Negotiated Rulemaking Committee established under TEA-21 will take yet another two years to promulgate a final rule implementing TEA-21. The original statute required the negotiated rulemaking to be completed by April 1999. The Committee did not meet until March of 1999.

Mr. Chairman, our Community cannot wait through another two years of BIA foot-dragging to be able to take direct control of our roads programs and begin to address our growing backlog of need. For that reason, our Community is pursuing efforts to be included in the Indian Roads Demonstration Program that would allow the Community to receive its roads funding allocation directly. Unfortunately, the BIA is currently limiting participation in this Demonstration Program to Indian tribes with existing self-governance compacts.

Therefore, I would like to make the following recommendations to this Committee:

- Mandate that the BIA eliminate the authority of the Area Roads Engineer to reallocate funds among Area tribal governments without the notice and consent of the affected tribal government.
- Require the BIA Area Offices to provide an accurate accounting of prior years' Indian Reservation Roads funding distributions.
- Direct the BIA to regularly (annually) update any statistics used in the Indian Reservation Roads funding formula.
- Mandate that the BIA ensure that each Area Office expeditiously implements (during that same funding year) the RNF formula or the funding formula developed under TEA-21.
- Direct the BIA to conduct a national Indian Reservation Roads Inventory.

Overall Funding of the IRR Program

Finally Mr. Chairman, I was delighted to read that the President signed into law the transportation appropriation bill for FY 2000. As you know under TEA-21, the IRR program is authorized at \$275 million through FY 2003. I would like to express my appreciation to yourself and the other members of this Committee who supported full funding for the IRR program. In addressing the overwhelming need for better roads, Senator Domenici summarized it best when he outlined that state of Indian Roads in New Mexico. He indicated that of the nearly 22,000 miles of BIA roads that serve tribal lands, only 11% of those are paved roads and nearly 90% are unimproved roads. In my view, there could not be a better reason to continue to advocate full funding for TEA-21 in the coming years.

In conclusion, Mr. Chairman, I would like to thank you for conducting this timely hearing on this very important issue. Our Community has high hopes that under the watchful eye of this Committee, tribal governments will be able to rollback the many years of neglect and fully realize Indian country's vision for the future by ensuring that safe and well-maintained roads do not end at the reservation boundary.