

**Statement of John R. Baxter**  
**Associate Administrator for Federal Lands**  
**Federal Highway Administration**  
**U.S. Department of Transportation**  
**Field Hearing on Tribal Transportation Issues**  
**Before the**  
**Committee on Indian Affairs**  
**United States Senate**

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Chairman Dorgan, Senator Tester, and Members of the Committee, thank you for the opportunity to testify today regarding transportation issues facing Native American communities and programs administered by the Federal Highway Administration (FHWA) that provide support to Tribes for addressing these issues.

President Obama's meeting in November 2009 with tribal leaders from across the Nation signaled the start of a new and stronger relationship between the Tribes and the Federal government. The President made very clear that Native Americans will not be forgotten by this Administration, and he gave his strong commitment to addressing tribal issues and concerns. By establishing an Office of Tribal Liaison within the White House, the President has made sure that Native Americans will have a seat at the table when issues, including the economy, education, health care, and the environment, are being discussed—issues which can all involve transportation.

Secretary LaHood shares President Obama's commitment to addressing tribal issues and concerns. This past spring, the Secretary spoke before the National Congress of American Indians, emphasizing the Department's commitment to improving existing tribal transportation programs by seeking tribal input on important regulations, providing timely technical assistance, and ensuring tribes are given ample opportunities to compete for grants. The Department also finalized its Tribal Consultation Plan, a detailed plan of action the agency will take when developing, changing, or implementing policies, programs, or services with tribal implications.

In addition, Secretary LaHood has made livability a key objective for transportation. This initiative is not a one-size-fits-all approach—we recognize that transportation needs for tribes are often different than what we see needed elsewhere in the U.S. transportation network. In much of this country, we take for granted that roads and highways will be there for children to reach their schools, for emergency vehicles to reach those in need of medical care, and for members of the community to get to work. But, in Indian Country, you cannot always make that assumption. Moreover, tribal communities need good roads to support their economic development.

FHWA has a long history of supporting tribal governments' rights to self-determination and working directly with Tribes in a government-to-government relationship. FHWA's top leadership continues to meet directly with tribal government elected officials and transportation

staff, and is committed to delivering a transportation program that works for all Tribes whether they are large or small.

FHWA has sought to improve the state of tribal transportation by working directly with tribal governments to improve Tribes' technical capacity, to improve safety on reservations and native communities, and to foster partnerships between tribal governments, Federal agencies, and State DOTs.

The Indian Reservation Roads (IRR) program, administered by FHWA in partnership with the Bureau of Indian Affairs (BIA), is critical to tribal communities to support tribal transportation needs. In many cases, it is the only source of revenue for transportation improvements. In working through FHWA's partnership with the Tribes and the BIA, the IRR program seeks to balance transportation mobility and safety goals with the environmental and cultural values of tribal lands. FHWA also works with the Federal Transit Administration and the National Highway Traffic Safety Administration (NHTSA) in coordinating transportation programs that focus on planning, safety, and construction of roads and transit services to and on reservations and serving Alaska Native villages.

## **OVERVIEW**

The IRR system of roads provides access to and within Indian reservations, Indian trust land, restricted Indian land, eligible Indian communities, and Alaska Native villages. The IRR system consists of more than 120,000 miles of roads which link housing, schools, emergency services, places of employment, and facilitate tourism and resource use. Almost eleven 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. More than 60 percent of the system is unpaved. If only BIA and tribal roads of the IRR system are considered, this number increases to over 80 percent. Within the system, there are more than 8,000 bridges and approximately 24 percent of these 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 most basic needs for a livable community.

The poor road quality on tribal lands also affects safety. Last year, Secretary LaHood announced that the number of traffic deaths on U.S. roads reached a record low. Despite the gains we have made on other systems, the annual fatality rate on Indian reservation roads continues to be more than three times the national average. Safety continues to be the Department's top priority, and FHWA is working closely with tribes, the BIA, NHTSA, and others to address this disproportionate level of fatalities on tribal roads.

The IRR program, established in section 204 of title 23, United States Code, is the largest Federal Lands Highway (FLH) program, and it is unique due to the relationship with Federally-recognized Indian Tribal Governments under the program. The IRR program serves over 560 Federally-recognized Indian Tribes and Alaska Native villages in 32 States. FHWA co-administers the IRR program with the BIA under an agreement originating in 1948 and a Stewardship Plan from July 1996.

IRR program funding has grown significantly under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), from a program size of \$275 million annually under the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) to \$450 million annually today. This equates to a total of \$2.42 billion over the life of SAFETEA-LU, including the recent extensions through the end of this calendar year. These funds have been distributed according to a tribal shares formula, which was developed through a negotiated rulemaking with tribal governments. SAFETEA-LU also increased the eligible uses of IRR program funds by allowing a Tribe to use up to 25 percent of its share of funds for road and bridge maintenance activities. This change allowed Tribes to supplement the funding they receive annually from the Department of the Interior (DOI) for maintenance activities. It allowed the Tribes to address critical safety, snow removal, and pavement preservation issues that otherwise could not be addressed. The increased funding and programmatic changes provided in SAFETEA-LU for the IRR program, along with an additional \$310 million provided by the American Recovery and Reinvestment Act of 2009 (Recovery Act), discussed below, have provided tools and resources to substantially improve tribal transportation. Despite progress, however, much work remains.

## **SAFETY PROGRAMS**

Safety remains a significant issue in Indian Country. Native Americans are overrepresented in several fatality categories—including individuals under the age of 35, unbelted drivers, and individuals driving under the influence of alcohol. Seven State-based summits have been held in the past two years to focus on the subject and to bring the many safety partners together to discuss the safety issues affecting them. FHWA and NHTSA will continue these summits in the future to promote safety strategies across the four E's of safety—engineering, enforcement, education, and emergency medical services. Strategies such as Road Safety Audits and community based enforcement are proving to be effective tools for reducing fatalities.

### ***Highway Safety Improvement Program***

The Highway Safety Improvement Program (HSIP) was established by SAFETEA-LU with the overall purpose of achieving a significant reduction in traffic fatalities and serious injuries on all public roads through the implementation of infrastructure-related highway safety improvements. Since the program's inception, HSIP funding has been utilized for tribal lands projects across the country.

In Montana, for example, two HSIP construction projects totaling \$1.88 million provided improvements such as the installation of Variable Message Signs on US 2 on the Blackfoot Reservation and the addition of a left-turn bay on US 93 on the Flathead Reservation.

A \$107,650 HSIP project in North Carolina along US 74 from the Haywood County line to NC 28 (North), in Cherokee Nation, funded the installation of milled rumble strips on the median and outside shoulders.

In North Dakota, two HSIP projects totaling \$300,000 provided improvements along State highways within reservation boundaries of Standing Rock Reservation and Fort Berthold Reservation. Such improvements included the installation of shoulder and centerline rumble strips along State Highways 23 and 24.

In Wisconsin, a \$316,000 HSIP project was undertaken by the Wisconsin DOT along with the Forest County Potawatomi Tribe to improve a Tribal owned intersection at Everybody's Road and USH 8 in Forest County. The intersection project was combined with \$900,000 BIA funds and \$74,000 Tribal funds to construct a newly relocated intersection and frontage road (Everybody's Road) that leads to the Tribal headquarters offices and Tribal Community Center.

### ***Safe Routes to School***

The Safe Routes to School (SRTS) 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 fund planning, design, and construction of infrastructure-related projects that will improve the ability of students to walk and bicycle to school. A portion of each State's SRTS funding must also be used for non-infrastructure-related activities to encourage walking and bicycling to school. Federally-recognized Tribes are eligible sub-recipients of this State administered program.

Several States are working with Tribes to promote the SRTS program. For example, the Montana DOT provided \$51,823 in SRTS funds to the City of Ronan for the design and construction of approximately 400 lineal feet of hard-surfaced bicycle and pedestrian path, lighting, and installation of 8 bike racks at the Ronan elementary school within the Flathead reservation. The Washington DOT provided SRTS funds to the Taholah School District, serving the Quinault Indian Nation, for infrastructure, enforcement and education activities. In South Dakota, the DOT provided \$15,815 in SRTS funds to the Sisseton-Wahpeton Oyate's Enemy Swim Day School for a trail to the school.

### ***Section 402 State and Community Highway Safety Grant Funds***

NHTSA provides safety grant funds to the Secretary of the Interior to save lives, prevent injuries, and reduce economic loss due to motor vehicle related crashes on Tribal land. The BIA administers the funds, known as the Section 402 State and Community Highway Safety Grant Funds. NHTSA provides technical assistance to Tribes through partnership with BIA.

## **SAFETEA-LU FUNDING FOR TRIBAL TRANSPORTATION**

Although the IRR program is the principal funding source for tribal roads, these roads are eligible to receive funding under other SAFETEA-LU programs as well.

### ***Indian Reservation Roads Bridge Program (IRRBP)***

The Indian Reservation Roads Bridge Program (IRRBP) was established under TEA-21 and funded through a \$13 million takedown from the primary IRR Program. The program's

purpose was to provide funding for reconstruction or rehabilitation of structurally deficient or functionally obsolete IRR bridges. SAFETEA-LU amended the IRRBP by establishing it as an independently funded program, authorized at \$14 million per year, and allowing design activities to be funded. FHWA coordinated with the Indian Reservation Roads Program Coordinating Committee to implement these legislative changes. Since its inception in TEA-21, the IRRBP has provided more than \$165 million in funding to nearly 300 different bridge projects in Indian Country.

### ***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). SAFETEA-LU authorized the Secretary of Transportation to make grants from this program directly to Indian Tribes and to allow 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 an All-American Road.

FHWA has participated in tribal transportation conferences to inform Tribes of these changes to the National Scenic Byways Program. FHWA also worked with the America's Byways Resource Center (in Duluth, Minnesota) to establish a tribal liaison position within the Resource Center to provide technical assistance to Indian Tribes for 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. In fiscal year 2009, Tribes submitted 10 applications directly to FHWA and two applications through the State departments of transportation, requesting a total of \$1.85 million. The Department selected seven of the projects, providing a total of \$945,232 in funding.

### ***Public Lands Discretionary Program***

The Public Lands Highway Discretionary program provides funding to any project eligible under title 23, United States Code, which is within, adjacent to, or provides access to tribal or Federal public lands. It is another source of funding that is available to Tribes for their transportation needs. During SAFETEA-LU, nearly \$480 million dollars was made available through this program. Of the \$480 million, \$52 million was provided for 62 tribal related transportation projects.

## **FHWA IMPLEMENTATION OF SAFETEA-LU REQUIREMENTS FOR TRIBAL TRANSPORTATION**

In addition to increased funding, SAFETEA-LU brought about many changes in how the IRR program is administered and to the roles and responsibilities of all parties involved in transportation delivery to tribal communities. Prior to SAFETEA-LU, FHWA's role was to provide stewardship and oversight to the IRR program from a national perspective, and the BIA's role was to work with the Tribes by delivering the funds and providing technical

assistance. With the passage of SAFETEA-LU, Tribes now have the option to enter into IRR Program Funding Agreements and work directly with FHWA for their IRR Program share as long as they meet financial audit and management capacity requirements. The number of Tribes electing this option has grown from three the first year to more than 75 Tribes today, with several more Tribes expressing an interest to FHWA.

In response to this increase in the number of Tribes, and increased stewardship and oversight responsibilities, the Federal Lands Highway (FLH) Office, which has direct responsibility for administering the IRR program, has increased staffing and worked closely with the Tribes to develop program guidance. In addition to carrying out numerous face-to-face meetings with each Tribe and conducting outreach and training through webinars, regional conferences, and organized classes, FLH developed a new program manual for all Tribes, States, counties, and Federal agencies that communicates program expectations, roles and responsibilities, and best practices.

### ***National Indian Reservation Road Inventory***

SAFETEA-LU directed FHWA to complete a comprehensive national inventory of IRR eligible transportation facilities and submit a Report to Congress. The purpose of the inventory study was 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; thus, it is critical that data in the inventory be as accurate as possible.

FHWA completed and delivered the required Report to Congress in 2008. The Report outlined our assessment of the inventory process, including its accuracy and consistency of application. The Report included the identification of more than 100,000 miles of road as well as recommendations for improvement and additional study areas. Since issuance of the Report, the inventory has grown to more than 125,000 miles of road. As a result of the Report and issues that have arisen from the Question 10 series of consultations, FHWA and BIA will work together to review more than 75 percent of the inventory data this coming year. This work will clarify programmatic definitions and correct inventory errors and omissions to produce a more accurate data system. Ultimately, the inventory will reflect the needs of tribal road transportation and serve as an important tool to help make the program fair and equitable for all tribes.

## **OUTREACH AND CAPACITY BUILDING**

### ***Road Safety Audits and Safety Trainings***

Strategies such as Road Safety Audits (RSAs) and community based enforcement are proving to be effective tools for reducing fatalities on tribal lands. The FHWA Office of Safety sponsors training on Road Safety Fundamentals and RSAs, and works with State and local jurisdictions and tribal governments to integrate RSAs into the project development process for new and existing roads and intersections.

RSAs examine the safety performance of an existing or future road or intersection by an independent, multidisciplinary team. They estimate and report on potential road safety issues and identify opportunities for improvements in safety for all road users. RSAs enable localities and Indian tribes with little or no safety data to get an expert assessment on how to improve the safety of their roads.

RSAs were funded by FHWA's Office of Safety from the Surface Transportation Research Development and Deployment Program for the following tribal organizations—Tohono O'odham and Navajo Nations in Arizona; Santa Clara Pueblo and Jemez Springs Pueblo, New Mexico; Standing Rock Sioux, North Dakota; the Eastern Band of Cherokee Indians, North Carolina; the Navajo Nation, Utah; and Red Cliff Band of Lake Superior. These RSAs were carried out in cooperation with State DOTs.

### ***Research and Development***

FHWA has launched a cross-functional initiative to address tribal transportation safety problems through research and practical applications. The project will support the development and adoption of the Tribal Safety Management System, which has been identified by a multi-agency committee as a key strategy to assist Native American Tribes in addressing transportation safety problems. The initiative will develop and implement comprehensive safety program templates that Tribes can use and tailor to their specific needs. The initiative also includes a pilot program in 3 tribal nations, the results of which will be included in a report showing the benefits, challenges, and lessons learned from the implementation of highway safety programs.

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

Tribes report that education and training remain significant challenges. Many Tribes do not have a sustainable level of transportation expertise, given their size and resources. The FHWA supports a tribal transportation assistance program with seven centers serving Indian Country. These Tribal Technical Assistance Program (TTAP) centers provide a variety of training and professional development programs, technology updates, and technical assistance to enhance road management and safety. They are a key resource for basic services and to help many Tribes become self-sufficient as sovereign nations in transportation delivery. 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.

FHWA, through the TTAPs, 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 TTAP to sponsor a Road Safety Audit Outreach Coordinator, who has provided training and RSAs for the Spirit Lake Nation, the Winnebago Tribe of Nebraska, and others.

While FHWA has remained focused on implementing SAFETEA-LU since its enactment, the Agency has also been recently hard at work ensuring that Tribes use the much needed supplemental resources provided by the Recovery Act.

## **AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

In addition to SAFETEA-LU funding, the Recovery Act has supplemented funding for tribal communities by providing an additional \$310 million for the IRR program. Since the Recovery Act was signed into law by President Obama on February 17, 2009, FHWA and BIA have worked diligently to ensure that the funds for these projects are distributed quickly, wisely, and with unprecedented transparency and accountability. The Federally-recognized Tribes were eligible to receive Recovery Act funding based on the IRR formula, which takes into account the highway projects' estimated construction cost, volume of traffic along the route, and the Tribe's current population. Much of the IRR portion of the Recovery Act has been dedicated to improving roads that provide critical links between tribal residences and vital community services such as schools and health care facilities. More than 99.9 percent of these Recovery Act were obligated.

In the summer of 2009, the Blackfeet Indian Tribe awarded a project for \$916,068 to improve a 14-mile segment of road known as the Starr School Road. This nearly-completed project will provide for a safer facility for school buses and other school traffic through sign replacement, new right of way fences, and new roadway striping. Drainage and pavement improvements will extend the life of the facility.

On February 17, 2010, the one-year anniversary of the Recovery Act, Secretary LaHood announced \$1.5 billion in Transportation Investment Generating Economic Recovery (TIGER) Grant awards for 51 projects nationwide. The Department could provide awards to fewer than 3 percent of the more than 1,400 applicants, who submitted more than \$60 billion in applications for this \$1.5 billion program.

TIGER funds are being used for an important project in the Mission Valley in Lake County, Montana which overlays most of the Flathead Indian Reservation. This \$12 million project is to upgrade city and county roads and increase the safety and transportation options in this predominantly rural area. Road paving and construction will improve connectivity and create a safer and more convenient transportation system for residents of the county and the Flathead Indian Reservation, including the Confederated Salish and Koontenai Tribes. The project also includes vital improvements to Skyline Drive, a road near the city of Polson, which the Montana DOT identified as a safety risk.

FHWA, along with BIA and with input from Tribes, developed a process that described the requirements for Tribes to receive and obligate their share of Recovery Act funding and focused on assuring obligation of the majority of the \$310 million before the end of this past fiscal year. FHWA and BIA developed guidance to ensure a fair and transparent process to redistribute funds for cases where funds would otherwise not get obligated. The redistribution of more than \$22.5 million to approximately 25 Tribes nationwide helped ensure the efficient and effective use of Recovery Act funds.



## **CONCLUSION**

Transportation is a critical tool for Tribes to improve the quality of life in their communities. The challenges 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. The Department is committed to improving transportation access to and through tribal lands through stewardship of Federal Lands Highway programs by providing balanced, safe, and innovative roadways that blend into or enhance the existing environment; and by providing technical services to the transportation community. We are also 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.

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

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