



**THE TOHONO O'ODHAM NATION OF ARIZONA
TESTIMONY OF THE HONORABLE EDWARD D. MANUEL**

**HOUSE COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES**

March 18, 2016

Summary of Budget Requests

- 1. Funding for Interior's implementation of SAWRSA / AWSA water rights settlement.*
 - 2. Increased funding for BIA Law Enforcement programs.*
 - 3. Increased funding for BIA Roads Maintenance.*
 - 4. Increased funding for Indian Health Service Facilities Construction.*
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Introduction & Background

Good afternoon, Chairman Calvert, Ranking Member McCollum and distinguished Members of the Subcommittee. My name is Edward Manuel and I am the Chairman of the Tohono O'odham Nation, a federally recognized tribe with more than 32,000 members. The Tohono O'odham Reservation consists of more than 2.8 million acres in the Sonoran Desert, shares a 75-mile border with Mexico, and is one of the largest Indian reservations in the United States.

Thank you for the opportunity to testify about the Nation's federal funding priorities. Let me begin by saying that the Nation appreciates the Subcommittee's dedication to providing Indian Country with much-needed resources in a very challenging fiscal climate. My testimony will focus on the following priorities: funding to implement our 1982 water rights settlement, law enforcement, roads, and health care.

I. Funding to Implement the Nation's 1982 Water Rights Settlement

The President's Fiscal Year 2017 Budget Request contains no request for funding to implement the Nation's historic water settlement, the Southern Arizona Water Rights Settlement Act of 1982, Pub. L. 97-293 ("SAWRSA"), as amended in 2004 by the Arizona Water Settlements Act, Pub. L. 108-451 ("AWSA"). The Nation is facing a serious water crisis because of the United States' continued failure to fund this water settlement, despite statutory authorization and clear direction to Interior to do so. Under SAWRSA, as amended through the AWSA, the Nation gave up significant superior claims to ground water and surface water in the Upper Santa Cruz Basin. In

exchange for releasing these claims, the United States promised that the Nation would receive reliable, affordable and long-term access to Central Arizona Project (CAP) water.

In SAWRSA, Congress created the Cooperative Fund to pay for water deliveries: The parties to the settlement recognized there would be costs associated with the delivery of the Nation's CAP water. To address these ongoing delivery charges in 1982 Congress created the Cooperative Fund and authorized \$16 million in federal contributions toward the Fund. But in fact, the United States has never made this contribution to the Fund. In 2004, Congress doubled the United States' promised contribution to \$32 million, and explicitly identified the Lower Colorado River Basin Development Fund as an additional source for this funding. SAWRSA as amended provides that Interior must provide notice to Congress of the funding amounts necessary to carry out the United States' obligations under the Act. However, despite repeated efforts to spur the Department into action, Interior has never requested any of the \$32 million authorized under SAWRSA.

Failure to make federal contributions leaves the Cooperative Fund severely undercapitalized: The settlement provided that the federal government can only use the interest (and not the principal) for the Nation's water delivery costs. Had the two \$16 million federal contributions been deposited as intended, the principal and accrued interest on these deposits would total more than \$90 million today. Instead, as of March 4, 2016, there is only \$34,393,003 in the Fund, less than \$14 million of which is expendable interest. Again, despite repeated efforts to urge the Department to act, Interior has never officially notified Congress of the Fund shortfall.

Federal projections show that the Cooperative Fund will run out of interest within three years: Because these key federal contributions were never made, the Cooperative Fund is in jeopardy – Interior modeling shows that the Fund will run out of expendable interest within three years if the Nation uses the CAP water entitlement guaranteed by its settlements. At present, the delivery costs chargeable to the Cooperative Fund are approximately \$4.5 million per year. These delivery costs continue to rise with the increase in the cost of energy needed to deliver the CAP water. In the absence of swift action to rectify the implementation problems under SAWRSA and AWSA, the Nation will not be able to receive the benefits of the substitute water supply promised to the Nation in the settlements.

If the Cooperative Fund runs out of interest, the Nation will be unable to take delivery of its CAP replacement water, and the consequences will be severe: Unless SAWRSA is funded as Congress has authorized and directed, the Nation will not receive the benefit of its bargain and may lose access to its water entitlements – resulting in the closure of long-operating farms in which the Nation has invested tens of millions of tribal dollars, layoffs for dozens of employees, default on crop loans, and the breach of related water settlement agreements.

Interior must act to begin to adequately capitalize the Cooperative Fund: The Nation respectfully requests that this Committee direct Interior to provide formal notice of the Cooperative Fund shortfall and that funding be included in the Fiscal Year 2017 Budget for the Bureau of Indian Affairs. Without water, water settlements are meaningless, and we ask the Congress to ensure the agreement the United States made with the Nation is fully implemented.

II. Law Enforcement

The President's Fiscal Year 2017 Budget requests \$341 million for Bureau of Indian Affairs Law Enforcement, which is a decrease of over \$6 million from the Fiscal Year 2016 enacted level. The Nation requests that Congress increase funding for BIA law enforcement, not decrease it.

The Nation faces significant and unique law enforcement challenges: The location and size of the Nation's reservation presents unique and difficult law enforcement challenges. The Tohono

O’odham Police Department (TOPD) must cover a huge geographic area, including many remote and isolated areas that are difficult to access. Communication among law enforcement agencies is also a challenge. In addition, our reservation includes a 75-mile southern border with Mexico, which is the longest shared international border of any Indian tribe in the United States. In addition, there are fourteen O’odham communities with a population of 1,800 members located across the border. These tribal members living in Mexico present unique border issues and challenges for the Nation. Because of the Nation’s location at the border, drug trafficking, illegal immigration and border security divert tribal police force resources. The Nation spends millions of dollars annually from tribal revenues to help meet the United States’ border security responsibilities.

Current funding is utterly inadequate to meet the needs of tribal law enforcement: As NCAI has noted, “The Bureau of Indian Affairs recently conducted an analysis of law enforcement needs pursuant to the Tribal Law and Order Act, and found that current funding meets only 42 percent of the need for law enforcement, and an additional \$337 million is needed to bring staffing up to median county government law enforcement levels based on population.” (NCAI Budget Request FY17). The Nation’s unique law enforcement needs require even greater resources. In 2015 TOPD officers handled 92,887 calls for service – a 5.26% increase in calls over 2014 figures. During the same year, TOPD and Customs and Border Protection (CBP) seized over 368,000 pounds of marijuana on the Nation. These increased law enforcement needs have led to significant capacity challenges at the Nation’s Corrections Center, where a facility with a rated capacity of 107 beds serves an average daily population of 140 inmates. Millions of dollars in additional funding is desperately needed to address improvements at the Corrections Center (\$2.1 million) and to hire and train officers, purchase vehicles, and to improve the security of the police station (\$5.9 million).

The Nation strongly supports NCAI’s funding recommendations: The National Congress of American Indians (NCAI) recommends an increase in funding for BIA law enforcement by at least \$200 million over the FY 2015 funding level of \$328 million (*the FY 2016 enacted level was \$347.9 million*), including an increase in funds for officer recruitment and training and for tribal detention facilities operations and maintenance. The Tohono O’odham Nation strongly supports and concurs in that request.

III. Roads Funding

For Fiscal Year 2017 the President has requested \$26.8 million for BIA Road Maintenance, an increase of only \$90,000 from the Fiscal Year 2016 enacted level. NCAI has advocated for a significantly greater funding level, at \$40 million.

The BIA Road Maintenance Program is responsible for maintaining approximately 29,400 miles of roads in Indian Country, and the funding for that program has been woefully inadequate for years. According to NCAI, the current deferred maintenance for BIA roads is in the neighborhood of \$300 million.

The Nation has hundreds of miles of poorly maintained roads: The Tohono O’odham Nation’s reservation encompasses over 4,500 square miles. There are hundreds of miles of roads on the Nation, including approximately 500 miles of arterial and collector roads (roads with significant traffic and higher speed limits), plus many more local and dirt and gravel roads used by the Nation’s members. Maintaining the Reservation’s vast road system is a major challenge. Our roads are in very bad condition, due in large part due to inadequate BIA funding for repair and maintenance. The poor condition of the roads is further exacerbated by heavy monsoon rains and flooding. The roads are marred by sink holes, pot holes, broken and cracked pavement, and weakened and washed out bridges. During monsoon season, the flooding often completely inundates the roads and makes them impassable; it also washes out bridges, isolating communities, stranding children on school

buses and preventing access for emergency vehicles. A number of our people have been killed by flooding while traveling on these roads.

Bureaucratic red tape further exacerbates road damage: The Nation's already deteriorated roads suffer further damage from heavy usage by CBP vehicles, which have increased dramatically in number on the Nation's reservation in response to border security issues. The poor conditions of these roads negatively affects CBP's and TOPD's ability to respond to emergencies and support mission critical operations, and tribal members' ability to undertake simple day-to-day activities like driving to the grocery store or doctor's office. Both the Nation and CBP need roads that are accessible and safe to travel, and that ensure the safety and security of tribal citizens, TOPD law enforcement, and CBP patrol officers.

The Nation has attempted to work with CBP to repair these damaged roads, but BIA objects to these repairs because of liability concerns while at the same time acknowledging that the BIA does not have the funding to repair them. Despite years of discussion, BIA and CBP have not been able to reach agreement on how they can use their existing appropriations and authorities to fund the repair of the roads damaged by CBP vehicles -- effectively endangering the safety of both CBP and the Nation's citizens using those roads.

We ask that the Subcommittee work with the HSGAC Subcommittee to make clear in both Appropriations bills that both agencies have authority and responsibility to use their funding to repair and maintain the Nation's roads that have been damaged by CBP vehicles.

The Nation strongly supports NCAI's funding recommendations: In sum, the Nation strongly supports NCAI's recommendation that Congress provide \$40 million for the BIA Road Maintenance Program -- as NCAI has made clear, this is the minimum amount needed "to begin to address the most critical maintenance needs of BIA roads in Indian Country." (NCAI Budget Request 2017).

IV. Health Care

The President's Fiscal Year 2017 Budget Request includes \$132 million for Health Care Facilities Construction, an increase of \$27 million from the Fiscal Year 2016 enacted level. The increase will provide an additional \$11.4 million for construction projects from the Health Care Facilities Construction Priority List. This will provide funding for the six Health Care Facilities Construction projects in FY 2017, none of which are on the Nation.

The Indian Health Service Unit that serves the Nation in Sells, Arizona is over fifty years old and one of the oldest facilities within IHS: The Sells IHS Unit can handle only minor medical issues, and is completely inadequate to serve the Nation's needs. The Sells replacement hospital has been on the IHS facilities construction list for more than twenty years. There are several projects ahead of the Nation's Sells IHS Unit on the priority list, totaling hundreds of millions of dollars. Even with the requested budget increase, the Sells Unit still will not be funded, although it will be closer to being funded. This illustrates the need for additional funding for Health Care Facilities Construction. Additional funding is needed for IHS to work its way down the "priority list" and eventually begin work on a replacement facility for the Nation.

We ask that the Committee provide substantial increases to the IHS Facilities budget.