



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

**U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON INTERIOR, ENVIRONMENT, AND RELATED AGENCIES**

May 17, 2017

Summary of Budget Requests

- 1. Funding for Interior's implementation of SAWRSA/AWSA water rights settlement***
 - 2. Increased funding for BIA Law Enforcement***
 - 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 34,000 members. The Tohono O'odham Reservation consists of more than 2.8 million acres in southern Arizona (one of the largest Indian reservations in the United States), and shares a 62-mile border with Mexico.

Thank you for the opportunity to testify about the Nation's federal funding priorities. The Nation appreciates the Subcommittee's dedication to providing Indian Country with much-needed resources in a challenging fiscal climate. My testimony focuses on the following priorities: funding to implement the Nation's 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 (FY) 2018 Budget Request contains no funding request 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"). As I testified last year before this Subcommittee, the Nation is facing a serious water crisis due to the federal government's ongoing failure, despite statutory fiscal authorization and clear direction, to fund this water settlement.

In SAWRSA, Congress created the Cooperative Fund to pay for water deliveries: Under SAWRSA, as amended by AWSA, the Nation gave up significant superior claims to ground water and surface

water in the Upper Santa Cruz Basin in Arizona. 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. 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 Congress in 1982 created the Cooperative Fund and authorized \$16 million in federal contributions toward the Fund. The settlement provided that the federal government can only use the interest (and not the principal) for the Nation's water delivery costs, making the contributions to Fund principle a critical component of the settlement.

Interior's repeated failure to capitalize the Fund, despite direction from Congress: The United States never made the \$16 million contribution to the Fund authorized by SAWRSA, thereby depriving the Nation of access to the interest such a contribution would have generated over the years. In recognition of this fact, in 2004 Congress doubled the promised federal contribution to \$32 million, and explicitly identified the Lower Colorado River Basin Development Fund as an additional source for this funding. SAWRSA as amended directs Interior to provide notice to Congress of the funding amounts necessary to carry out the United States' obligations under the Act. Despite repeated efforts to make Interior act, it has never requested any of the \$32 million authorized under SAWRSA, nor has Interior ever officially notified Congress of the Fund shortfall.

Failure to make federal contributions leaves the Cooperative Fund severely undercapitalized: Because these key federal contributions were never made, the Cooperative Fund is in jeopardy. Had Interior capitalized the Fund as Congress intended, it would be self-sustaining today; instead it is severely undercapitalized. Delivery costs chargeable to the Fund continue to rise with the increase in the cost of energy needed to deliver the Nation's CAP water, leading to a total depletion in Fund expendable interest in only a few years' time. The Nation continues to work with Interior on short term solutions aimed at shoring up expendable interest. But without the congressionally authorized contributions to Fund principle, the Fund will remain undercapitalized and the Nation will not receive the benefits of the substitute water supply promised to the Nation in the settlements.

If the Cooperative Fund runs out of interest, the consequences will be severe: Unless SAWRSA is funded as Congress has directed, the Nation may lose access to its water entitlements – resulting in closure of long-operating farms in which the Nation has invested 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 adequately capitalize the Cooperative Fund: The Nation respectfully requests that the Committee direct Interior to provide formal notice of the Cooperative Fund shortfall and that funding be included in the FY 2018 Budget for the Bureau of Indian Affairs. Without water, water settlements are meaningless, and we ask this Congress to ensure the agreement the United States made with the Nation is fully implemented.

II. Law Enforcement

The FY 2017 Omnibus bill contains \$385.7 million for public safety and justice programs in Indian Country, an increase of \$8.3 million over the FY 2016 enacted level. Although the Nation appreciates this funding increase, a dramatic increase is needed in FY 2018 to meet the unique and challenging public safety and justice needs in Indian Country.

The Nation faces significant and unique law enforcement challenges, in part because of its shared Mexican border: The location and size of the Nation's reservation presents unique law enforcement and border security issues. 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 a challenge, as interoperability is extremely

limited. Our reservation includes a 62-mile southern border with Mexico, the longest shared international border of any Indian tribe in the United States. There are fourteen O'odham communities with approximately 2,000 members located across the border. Drug trafficking, illegal immigration and border security also divert tribal police force resources. The Nation has been working with Customs and Border Protection (CBP) and other federal law enforcement agencies to facilitate enhanced border security measures. The Nation spends millions in tribal revenues annually to help meet the United States' border security responsibilities

Current funding is utterly inadequate to meet the public safety and justice needs in Indian Country: In a 2016 report to Congress, the BIA estimated that the need for Public Safety and Justice Programs in Indian Country is \$1 billion for Law Enforcement Programs; \$222.8 million for existing Detention Centers, and \$1 billion for Tribal Courts.¹ The need in these three categories for Arizona alone is nearly \$140 million. The Nation's unique law enforcement needs require even greater resources. In 2016 TOPD officers handled 107,691 calls for service – a 15.94% increase over 2015. During the same year, TOPD and CBP seized over 284,000 pounds of marijuana on the Nation. This has 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 135 inmates. Millions of dollars in additional funding is desperately needed to address improvements at the Corrections Center (\$2.1 million). Lastly, the expense to hire, equip, train, and purchase vehicles to support the increase of our sworn Officers (currently at 107), has only been eclipsed by the unfunded need to improve the aging structure and physical security of the primary police station (\$5.9 million).

The Nation strongly supports NCAI's funding recommendations: The Nation supports the National Congress of American Indians (NCAI's) request for Congress to fully fund tribal law enforcement and detention within the next five years by incrementally increasing funding each year, starting with a \$200 million increase in FY 2018.

III. Roads Funding

The FY 2017 Omnibus bill contains \$30.3 million for the BIA Road Maintenance Program, a \$3.6 million increase from the FY 2016 enacted level. The BIA Road Maintenance Program is responsible for approximately 29,400 miles of roads in Indian Country, and 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 damaged, poorly maintained roads: The 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. Maintaining the Reservation's vast road system is a major challenge. Our roads are in very bad condition, due largely to inadequate BIA funding for repair and maintenance and further exacerbated by heavy monsoon rains and flooding. The roads frequently have sink holes, pot holes, broken and cracked pavement, and weakened and washed-out bridges. During monsoon season, flooding often completely inundates the roads and making them impassable, stranding children on school buses, preventing access for emergency vehicles and isolating communities. A number of our people have been killed by flooding while traveling on these roads.

Bureaucratic red tape interferes with the repair of damaged roads: The Nation's deteriorated roads suffer further damage from heavy usage by CBP vehicles, which have increased dramatically in number on the reservation in response to border security concerns. The poor conditions of the

¹ BIA Office of Justice Services, Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country (Aug. 16, 2016).

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. Both the Nation and CBP need roads that are accessible and safe to travel, and ensure the safety and security of tribal citizens, TOPD law enforcement, and CBP patrol officers.

The Nation has been working with CBP and BIA for years to reach an agreement to fund repair of the roads, but BIA does not have adequate funding and CBP takes the position that it cannot spend its funds to repair the roads because BIA receives specific appropriations for that purpose. For that reason, we ask the Subcommittee to work with the Homeland Security Subcommittee to include the following language in both Appropriations bills, to make clear that both agencies have authority and responsibility to use their funding to repair and maintain the Nation's BIA roads that have been damaged by CBP vehicles:

MAINTENANCE OF CERTAIN INDIAN RESERVATION ROADS.

The Commissioner of U.S. Customs and Border Protection may use agency funds for construction, improvement, maintenance and repair of reservation roads that are part of the Bureau of Indian Affairs road system within the National Tribal Transportation Facility Inventory, as defined in 25 C.F.R. Part 170, on the condition that: (i) the Commissioner and the Director of the Bureau of Indian Affairs mutually agree that the primary user of the subject road is U.S. Customs and Border Protection, and (ii) U.S. Customs and Border Protection and the Bureau of Indian Affairs consult with the affected tribe regarding the primary user and any road construction, improvement, maintenance or repair prior to commencing any work.

The Nation strongly supports NCAI's funding recommendations: The Nation also strongly supports NCAI's recommendation that Congress provide \$40 million for the BIA Road Maintenance Program in FY 2018.

IV. Health Care

The FY 2017 Omnibus bill includes \$117.9 million for Indian Health Care Facilities Construction, an increase of \$12.9 million over the FY 2016 enacted level, but \$14.3 million below the FY 2017 request. According to the House Subcommittee on Indian, Insular, and Alaska Native Affairs, the cost of the remaining health facilities projects in the congressionally mandated Health Facilities Construction Priority System (HFCPS) totaled approximately \$2.2 billion as of April 2015.

The Tohono O'odham Nation Hospital that serves the Nation in Sells, Arizona is over fifty years old; one of the oldest IHS facilities: The Nation has taken over administration of the former IHS Sells Hospital under a self-governance compact. This gives the Nation more flexibility and control over services, but does not change the fact that the Sells Hospital 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 it on the priority list, totaling hundreds of millions of dollars. Even with the requested budget increase, the Sells Hospital will not likely be funded in the near future. This illustrates the desperate need for additional funding for Health Care Facilities Construction, so that IHS can work its way down the "priority list" and finally begin work on a replacement facility for the Nation.

We ask that the Committee provide substantial increases to the IHS Facilities construction budget. We support the NCAI FY 18 budget request for \$172.7 million over the FY 2017 request.