



**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 10, 2018

Summary of Budget Requests

- 1. Funding for Interior's implementation of SAWRSA/AWSA water rights settlement***
 - 2. Increased funding for BIA Law Enforcement and Border Security***
 - 3. Increased funding for BIA Roads Maintenance and Repair***
 - 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, the longest shared international border of any Indian tribe in the United States.

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 what is a challenging fiscal climate. My testimony focuses on the following priorities: funding to implement the Nation's 1982 water rights settlement, public safety including law enforcement and border security, roads and health care.

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

For the past several years, I have raised in my testimony before this Committee the concerns of the Nation regarding the United States' failure to meet its obligations under the Southern Arizona Water Rights Settlement Act of 1982, P. L. 97-293 (SAWRSA), as amended by the Arizona Water Rights Settlement Act, P. L. 108-451 (AWSA). A key part of the congressional authorization to resolve this component of the Nation's water claims is a commitment by the United States to provide replacement water to the Nation from the Central Arizona Project (CAP). The

costs of delivery of the CAP water is to be met through a Cooperative Fund, which was reauthorized under AWSA. The Nation's concern is that, despite congressional authorization (including \$16 million under SAWRSA, an amount doubled through AWSA), the Department has failed to fully capitalize the Cooperative Fund in a manner sufficient to address CAP delivery costs on a long term basis, and as a result, the Fund is currently being depleted at an unsustainable rate.

Since my testimony last year, the Department of the Interior, acting through the Bureau of Reclamation, has identified a potential path forward to address the shortfall in the Cooperative Fund. It is a creative solution and we appreciate Reclamation's efforts. We wish to be clear, however, that this potential path forward is not a permanent solution, and, very importantly, will require action by other entities outside of the control of both Reclamation and the Nation. Consequently, there still is uncertainty over whether the Cooperative Fund will continue to work as authorized by Congress, and while the engagement by Reclamation is a welcome change from previous years, the United States' obligation to capitalize the Cooperative Fund remains unfulfilled, leaving a key part of our water settlement under SAWRSA, as amended by AWSA, unmet. We therefore will continue to be vigilant regarding this process and our water rights and look forward to reporting back to the Committee as this potential solution with Reclamation continues to unfold.

II. Law Enforcement and Border Security

The FY 2018 omnibus package contained \$405.5 million for public safety and justice programs in Indian Country, an increase of \$19.8 million over the FY 2017 enacted level. Although the Nation appreciates this funding increase, a much greater increase is needed in FY 2019 to meet the 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 present many unique law enforcement and border security issues. There are fourteen O'odham communities with approximately 2,000 members across the border in Mexico. 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 particularly challenging, as interoperability is extremely limited. Drug trafficking, illegal immigration and border security also require substantial TOPD resources -- more than a third of the TOPD budget is expended on border security. The Nation has longstanding working relationships with Customs and Border Protection (CBP) and other federal law enforcement agencies to secure the border. But federal funding for border security on the Nation's reservation remains scarce. Available funding also is often passed through the State, rather than provided directly to tribes, and is subject to inflexible federal oversight standards that do not reflect the Nation's border security needs. As a result, the Nation spends in excess of \$3 million in tribal revenues annually to help meet the United States' border security responsibilities. For example, TOPD regularly investigates immigrant deaths, including providing funding for autopsies, with no assistance from CBP. The Nation absorbs all costs to reclaim damage to its natural resources, including the removal of vehicles used and abandoned by smugglers and costs to control wildland fires attributed to cross-border illegal activity.

Current funding is totally inadequate to meet the public safety and justice needs in Indian Country: In a 2016 report to Congress, 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 Recent appropriation levels generally have allowed BIA to fund tribal law enforcement at about 20 percent of estimated need and tribal detention at about 40 percent of estimated need.² In FY 2017, 101,227 total law enforcement incidents were handled by TOPD. The current average mileage of the TOPD police fleet is over 200,000 miles per unit. While marijuana seizures have remained flat over the past two years, in FY 2017, the TOPD-led NATIVE High Intensity Drug Trafficking Area (HIDTA) Task Force produced a 300% increase in heroin seizures, a 53% increase in firearms seized in drug-related crimes, and seized over 20,000 doses of Fentanyl. The capacity of the Nation's correctional facility remains inadequate to meet the Nation's public safety needs with the Nation consistently forced to house detainees in correctional facilities out of state.

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 centers within the next five years by incrementally increasing funding each year, starting with a \$200 million increase in FY 2019.³

III. Roads Funding

The FY 2018 omnibus package contained \$34.6 million for the BIA Road Maintenance Program, a \$4.3 million increase from the FY 2017 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 severely inadequate for many years. According to NCAI, the current deferred maintenance backlog for BIA roads is approximately \$290 million.⁴ According to a May 2017 GAO Report, entitled Better Data Could Improve Road Management and Inform Indian Student Attendance Strategies, BIA has long been unable to provide adequate information to tribes on road maintenance, such as maintenance cost estimates. We were pleased to see that BIA recently announced that it will conduct a survey of road maintenance needs in Indian country, and the Nation will be responding to the survey. Funding for the BIA Road Maintenance Program to ensure access to accurate data is absolutely crucial to address deferred maintenance for BIA roads.

The Nation has hundreds of miles of damaged, poorly maintained roads: 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 dirt and gravel roads that are regularly used by the Nation's members, as well as by the Border Patrol. The Nation also has the sixth largest total BIA road mileage in Indian country with 734.8 miles of BIA roads on its reservation. Maintaining the Reservation's enormous road system is a significant challenge for the Nation. As a result of severely inadequate BIA funding for road repair and maintenance, our roads are in extremely poor condition. Our roads have sink holes, pot holes, broken and cracked pavement, and weakened and washed-out bridges. During monsoon season, flooding often completely washes out the roads making them impassable, stranding children on school buses, preventing access for emergency vehicles and isolating communities. A number of our members have been killed by flooding while traveling on these roads. There must be a significant increase in funding for BIA reservation roads.

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).

² National Congress of American Indians, Fiscal Year 2019 Budget Request: Honoring the Promises, Building Strong and Prosperous Nations at 30.

³ NCAI FY 2019 Budget Request at 31.

⁴ NCAI FY 2019 Budget Request at 126.

Transfer of funds from Customs and Border Protection to repair the Nation's roads: The Nation worked with CBP and BIA for years to reach an agreement to fund the repair of roads on the Nation's reservation that were damaged by CBP vehicles, but BIA did not have adequate funding and CBP took the position that it could not spend its funds to repair the roads because BIA receives specific appropriations for that purpose. The FY 2018 omnibus package included language allowing CBP to transfer funds to BIA to fix roads damaged by CBP vehicles on Indian reservations. We would like to express our sincere gratitude to the Committee for addressing this critical funding issue. The Nation is working with CBP and BIA to undertake the necessary road repairs.

The Nation strongly supports NCAI's funding recommendations: The Nation strongly supports NCAI's recommendation that Congress provide \$35 million for the BIA Road Maintenance Program in FY 2019.⁵

IV. Health Care

The FY 2018 omnibus package provided \$243.5 million for Indian Health Care Facilities Construction, an increase of approximately \$125.5 million over the FY 2017 enacted level. Although the Nation appreciates this substantial increase, the facilities constructions backlog still remains significant. On average, IHS facilities are over 40 years old, almost four times as old as U.S. hospitals with an average age of 10.6 years.⁶ Outdated facilities are a direct threat to adequate patient care and must be updated as soon as possible. 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. We also are concerned more generally that Tribes are not eligible grantees for many health care funding programs⁷, and even when Tribes are eligible, funding for many of those programs is being cut or merged into block grants through states, rather than providing direct funding to Tribes, such as the REACH (Racial and Ethnic Approaches to Community Health) program.

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 now administers the former IHS Hospital at Sells under a self-governance compact. This has given 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 numerous projects ahead of it on the priority list, requiring hundreds of millions of dollars in funding. Even with the increase for FY 2018, the Sells Hospital will likely not be funded until at least 2020. The Sells Hospital illustrates the desperate need for additional funding for Health Care Facilities Construction, so that IHS can work through 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 2019 budget request for a \$280.4 million increase in IHS facilities construction funding for FY 2019.⁸

⁵ NCAI FY 2019 Budget Request at 128.

⁶ NCAI FY 2019 Budget Request at 63.

⁷ E.g., Alcohol and Substance Abuse and Mental Health Services (SAMSHA) block grants, and the Public Health Emergency Preparedness Cooperative Agreement and Hospital Preparedness Cooperative Agreement Programs.

⁸ NCAI FY 2019 Budget Request at 63.