

RED LAKE BAND of CHIPPEWA INDIANS

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Questions for the Record by Democratic Members

Questions from Rep. Matt Cartwright for Chairman Seki:

Question: *In your written testimony you detail Red Lake Nation's issues with the FAST Act's alteration of road construction funding formulas. Can you explain why tribal road construction funds can be diverted away from tribally-owned roads and funneled towards states, counties, and other non-tribal entities?*

ANSWER: Under previous highway bills, the BIA misinterpreted the clear language in Question 10 of 25 CFR 170 published in 2004 as a result of true, tribal-federal negotiated rulemaking. Question 10 prohibited the inclusion of state and county roads in the inventory (with the exception of Alaska and Oklahoma). This misinterpretation of the regulation allowed for thousands of miles of State and County Roads, which prior to 2004 were not eligible to be included in the inventory, to now be included into the BIA road system inventory which were then funded at 100% or at the non-Federal share. This resulted in State and County roads receiving more funding than BIA and Tribal roads. This scenario continued thru the life of MAP-21 and was not corrected until enactment of the FAST Act in 2016, whereby road miles were restricted to BIA and Tribal Roads only. However, the damage was already done because of a clause in the FAST Act which froze the funding at the 2011 levels, when State and County Roads were still included in the formula. This had the effect of allowing many Tribes to maintain their artificially high funding levels based on the inclusion of State and County roads. This means Tribes with State and County roads included in their inventory are still enjoying their funding windfalls to this day.

a. QUESTION: *How has your community been impacted by the population-based formula rather than a needs-based formula?*

ANSWER: The policies embodied in the Moving Ahead for Progress in the 21st Century Act (MAP-21) from 2012 to 2015, and continued in the Fixing America's Surface Transportation Act (FAST Act), have had a significant negative impact on the administration of transportation infrastructure serving large land-based federally recognized Indian reservations. This statutory formula's primary driving factor is population which accounts for 39% of the formula. A Tribe like Red Lake with a NAHASDA population of 7,214 cannot compete with Tribes with large population numbers like the Cherokee Nation with a population figure of 120,093, the Muscogee

Nation with a population of 86,221, the Choctaw with a population of 46,800, or the Chickasaw with 37,398.

If the primary driving factors included trust land and reservation road miles, as in previous distribution formulas, then in terms of the above example, Red Lake should come out at the top of the funding allocation and not near the bottom. This is the real negative result of having population as the primary driving factor.

Red Lake owns nearly 60% of the federal Indian trust land in the entire BIA Midwest Region of 37 federally recognized tribes and also has most of the reservation road miles in the Region.

Since 2013, when the MAP-21 formula was implemented, Red Lake's Tribal share of road construction funding decreased from \$2,337,008 in 2013 down to \$2,251,303 in 2018 (a 4% decline) despite the fact that the overall TTP funding allocation increased from \$395,208,000 to \$426,800,000 in the same period (an 8% increase).

Most of our roads are along school bus routes. Our funding cuts have resulted in dangers to our children. Due to the high cost of reconstruction projects, and insufficient funding to undertake them, our roads continue to deteriorate and are becoming more unsafe each year. The poor condition of our roads has contributed to high safety concerns as well as high maintenance cost to member's vehicles and school buses.

The distances between our reservation communities is greater than 40 miles. On a daily basis our Tribal members have to travel this distance, or greater, just to get to work. Emergency services including police, fire, and ambulance must traverse these distances 24/7. Traveling these long distances on roads that are not maintained because of insufficient funding pose a constant threat to human life, including school children and emergency services personnel.

b. QUESTION: What should Congress do about this?

ANSWER: The only solution is a change in the funding distribution formula in the next highway bill which funds BIA and Tribal roads as the priority, and is not based primarily on population or other factors which would allow State and County roads to receive funds intended for reservation roads. We request Congress include language in the next highway bill that requires a tribally-driven negotiated rulemaking process, as was done in TEA-21, to develop a new distribution formula that is fair and equitable to all tribes, and addresses the true relative need, and is primarily based on reservation road miles and land area, and less on population and partisan decision making.