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PO Box 550, Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

SUPPLEMENTAL TESTIMONY OF
THE HONORABLE DARRELL G. SEKI, SR.
CHAIRMAN
THE RED LAKE BAND OF CHIPPEWA INDIANS

Regarding the U.S. House Committee on Natural Resources
Subcommittee for Indigenous Peoples of the United States

Hearing on Tribal Infrastructure: Roads, Bridges, and Buildings
July 11, 2019

On behalf of the Red Lake Band of Chippewa Indians, I want to express my appreciation to the House Committee on Natural Resources Subcommittee for Indigenous Peoples of the United States, and to Chairman Gellegos for convening this hearing. Thank you for your advocacy on behalf of Indian tribes. With all the other problems in our country today, infrastructure and transportation needs can easily be overlooked. We are grateful that you are taking a leadership role to address the most basic protection that we can afford our members today – adequate infrastructure and safe transportation on our lands. This supplemental testimony for the record focuses on funding inequities in the Tribal Transportation Program.

The Federal Lands Highway Program and the Tribal Transportation Program (TTP) provides funding for a coordinated program of public roads that serve Federal land transportation needs. For most Indian tribes, the TTP program is the sole source of funding through which the local Indian communities receive critically needed transportation improvements to facilitate better access to jobs, health services, educational opportunities, and economic development. This program is vital to the well being of all Native people living on Indian lands throughout the United States.

Background on the Red Lake Indian Reservation

The Red Lake Band of Chippewa Indians is a small-to-medium sized Tribe with more than 12,000 members, most of whom live on our relatively-large Reservation. The Red Lake Indian Reservation, with over 840,000 acres of Tribal trust land and water, is located in a rural area within the boundaries of the State of Minnesota. While over time our Reservation has been diminished from its original 15 million acres, it has never been broken apart or allotted to individuals and lost to non-Indians. Our Reservation is a contiguous block of solid Indian trust land held in common by and for our Tribal members.

The Red Lake Tribal government is responsible, in conjunction with the United States, to provide a full range of governmental services to Reservation residents. We administer

transportation, police, judicial, penal and fire protection services, natural resource protection and management, social services, health and other emergency services, economic development and planning, and many other governmental activities. The Red Lake Band is beginning its 23rd year of operating BIA-funded programs under self-governance authorities.

Approximately 7,500 Tribal members live on the Reservation and the majority of households have incomes below the federal poverty line. Forty percent of all Reservation households receive income from employment with our Tribal government, making Tribal government jobs the single most important source of income on our Reservation. Our Tribe employs approximately 2,400 workers in its governmental programs and enterprises for a total annual payroll nearing \$20.0 million. Many Tribal members survive on a traditional subsistence economy of fishing, hunting and small-scale timber harvesting.

Due in part to our location, which is far from centers of population and commerce, our Tribal members must travel long distances for food, clothing and other necessities. If our members work off-Reservation, they necessarily must travel often more than an hour to get to or from their jobs. While unemployment rates throughout Minnesota are low, the unemployment rate on the Red Lake Reservation lingers at approximately 50.0%. The chronic lack of good roads, communications infrastructure, and other necessary infrastructure continually derails our efforts to expand economic development and job opportunities on the Reservation. If our people are to secure and maintain steady work as responsible citizens we must, as a responsible government, provide adequate and safe transportation systems so that they can get to their jobs throughout all weather conditions.

Specific Information on Red Lake Roads and Bridges

The population of the Red Lake Indian Reservation continues to grow at a rate much faster than can be accommodated by the present infrastructure. Our infrastructure, especially our road system, is being "taxed" to its limits. The Red Lake road system consists of a total 556.9 miles included in the BIA road inventory system. This includes approximately 112.0 miles of paved roads, 73.4 miles of gravel surfaced roads and 371.5 miles of earth surfaced roads. We also have approximately 50 miles of state-owned roads on the Reservation. There are no county or township roads on the Reservation, however there are county and township roads that provide access to the Reservation. Of the 112.0 miles of paved roads, 60 % have surfaces that have outlived their design-life of 20 years. With our expanding population, new roads and streets have to be constructed in our expanding housing developments and our gravel and earth-surfaced roads require complete reconstruction to serve our residents.

The construction and maintenance of the majority of roads on the Red Lake Reservation is a Federal responsibility, guaranteed through Treaties negotiated with the United States. However, we are denied the full benefits of recent highway legislation by the unintended consequences of the "obligation limitation" provision in the legislation and by the Federal agencies' wrongful implementation of the intent of the congressionally mandated negotiated rules that were intended to govern the Indian Reservation Roads (IRR) program. Because the Bureau of Indian Affairs (BIA) has allowed many tribes to include thousands of miles of non-federal roads in their

inventory to generate funding, funding for tribes like Red Lake has dwindled to where we cannot meet the basic transportation needs of our members.

Devastating Effect of Statutorily Mandated Distribution Formulas in MAP-21 and FAST Acts

The funding distribution formula contained in the prior federal highway bill, known as MAP-21, and the current federal highway bill known as the FAST Act, is not fair and equitable and has proven to be harmful to many tribes. The funding formulas included in these two federal highway bills has reduced the annual funding allocation to many Tribes to the point where they are not able to address their basic transportation needs. Beginning with MAP-21, the Tribal Transportation Allocation Methodology (TTAM), which was based on the Relative Needs of each tribe, was replaced with a formula that is primarily based on population. This change reduced the allocation of roads funding to many tribes, and in fact left many small tribes ineligible for roads funding altogether. This inequity was continued in the current federal highway bill, the FAST Act. It is imperative that this inequity be corrected in the next highway bill.

Tribes Wrongly Blamed

Tribes have been wrongly blamed for being divided on the issue of the TTAM distribution formula, when in actuality the problems arose when the BIA and Federal Highway Administration arbitrarily chose to implement a distribution formula, which was contrary to the distribution formula developed and agreed to by consensus of all tribes that participated in a tribally driven negotiated rule making process.

Under the negotiated rule making process mandated by TEA-21 (an earlier federal highway bill), Indian Tribes and the Federal agencies negotiated new rules (25 CFR 170) by which the IRR program would operate. These rules provide the process by which Tribes and the BIA update the inventory of roads and bridges on the IRR system. The negotiated rulemaking process took four and one half years to complete and it took the BIA another two and one half years to publish a final rule. Upon implementation of the final rule, the BIA ignored critical language in the negotiated rule regarding the method by which transportation facilities were to be included into the IRR inventory. Contrary to the clear language in the new regulations, the BIA allowed certain Tribes to include thousands of miles of State, County and other Federal roads into the Indian Reservation Roads system and generate funding at 100%.

While SAFETEA-LU (an earlier federal highway bill) provided a significant increase in IRR funding, we were dismayed that the land based tribes, such as Red Lake, saw little increase or lost funding because of the misinterpretation and misapplication of the negotiated regulations by the BIA and FHWA. Historically the IRR program funding formula was an inventory-driven formula based on Relative Needs of all Tribes. The accuracy of the BIA's Road Inventory Field Data System (RIFDS) was paramount to ensuring the integrity of the IRR Program. The misinterpretation and misapplication by the BIA of the final rule resulted in the uncontrolled manipulation of the IRR road inventory update process. The BIA allowed certain tribes to flood the inventory with non-BIA and non-Tribal roads and streets that were the responsibility of other governments, (i.e. States and Counties).

Land based Tribes, including Red Lake, objected to the BIA allowing thousands of miles of non-federal roads into the IRR inventory just to generate maintenance and construction funding. Without standardized practices among the BIA Regions the integrity of the IRR program suffered to the point that the IRR inventory became an “arms race” to see who could generate the most funding regardless of who got harmed through the process. Some Tribes and Regions enjoyed a windfall of funding at the expense of other Tribes and Regions.

This resulted in a perceived notion that Tribes were divided on the TTAM distribution formula. To address this issue, Congress enacted the fatally flawed MAP-21 distribution formula, with disastrous results for most Tribes, and which was carried forward into the current federal highway bill (FAST Act).

We firmly believe that the Indian Reservation Roads Program was established for the benefit of Indians living on Indian Reservations. This is a Trust Responsibility of the Federal Government guaranteed by Treaties between Tribes and the Federal Government after Tribes gave up their land and were forced to live on Reservations.

Fair and Equitable Funding Distribution Formula

The current funding distribution formula is not fair and equitable and must be replaced. Since the perceived notion still exists that Tribes are divided on the Tribal distribution formula, we request that the following be considered in the next Highway reauthorization bill:

- Replace the existing unfair statutory funding distribution formula with a formula based on accurate road inventory data, land area, and service population.
- Restore the High Priority Project funding to the Highway Trust Fund.
- Exempt the TTP program from the FAHP Obligation Limitation.
- Restrict the funding eligibility to facilities that were included in the BIA Road Inventory prior to 2004.

Road Maintenance

The investment of federal funds in any type of infrastructure requires proper maintenance to maintain value and use. However, when it pertains to tribal facilities (Bureau of Indian Affairs and tribal roads and infrastructure) the maintenance system has been chronically under-funded and not provided with the tools necessary to succeed. This has caused safety hazards and premature failure of many roads vital to tribal communities. While most roads will have a 20-year design life, this is not the case for many reservation roads because of inadequate maintenance – leading to roads often lasting about half of their design life, requiring expensive reconstruction much sooner than needed. This is because the BIA – the agency responsible for maintaining reservation roads – does not provide adequate and responsive funding to properly maintain this system. This is especially problematic for large land-based tribes whom, as of 2019, maintain over 85-percent of eligible BIA and tribally-owned road miles that boast some of the highest maintenance costs in Indian country.

This program is included in the Tribal Priority Allocation (TPA) and must compete with other Tribal social programs for funding. The funding invested in Road and Bridge Construction

on Indian Reservations is being compromised due to inadequate maintenance funding. While funding for Road Construction has increased, Road Maintenance funding has remained woefully inadequate. The maintenance of these facilities is a Federal responsibility and the health and welfare of Tribal members who have to use these roads are at risk on most reservations.

The BIA receives approximately \$36 million per year for all road maintenance activities nationwide. The BIA currently estimates that \$390 million per year is actually what is needed to properly maintain roads on the BIA system. At present levels, the BIA spends less than \$1,000 in maintenance funding per mile; most state transportation departments spend approximately \$10,000 per mile each year on maintenance of state roads. Of course, states receive highway taxes based upon the sale of gasoline within that state. While users of tribal roads pay these same state highway fuel taxes, reservation roads receive no benefit from state fuel taxes.

Under recent highway bills, Tribes are allowed to supplement their road maintenance funding with their road construction funding. This option is not workable because it takes away scarce road construction funding. Also, this option shifts the responsibility of road maintenance away from the BIA and directly onto the shoulders of Tribes. A practical solution to this problem is to authorize the BIA road maintenance program to be funded out of the Highway Trust Fund, as a separate and additional funding allocation over and above the TTP allocation.

Conclusion

Despite the many great successes and accomplishments that Tribal transportation programs have achieved in past years, inequities in the existing distribution formula have caused great harm to Red Lake and many other Tribes. As Congress begins to consider a new Highway Bill, we hope that a new formula will be developed that will be fair and equitable to all tribes. And we hope that Congress will consider the suggestions we have outlined above.

On behalf of the Red Lake Band of Chippewa Indians, I thank the Committee for its attention to and support for the Tribal Transportation Program. We are confident that with your help, the TTP program will be restored to what it was originally intended - building and maintaining infrastructure on Tribal Lands. Thank you for allowing the Red Lake Band to present this testimony. We welcome the opportunity to further discuss with you any aspects of this testimony as well as the process of developing a new Transportation Bill.

Respectfully submitted,

Darrell G. Seki, Sr., Chairman
Red Lake Band of Chippewa Indians