

**TESTIMONY OF MARY BETH CLARK  
PRESIDENT, INTERTRIBAL TRANSPORTATION ASSOCIATION (ITA)  
BEFORE THE HOUSE TRANSPORTATION AND INFRASTRUCTURE  
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT REGARDING  
“ASSESSING THE TRANSPORTATION NEEDS OF TRIBES, FEDERAL LAND  
MANGEMENT AGENCIES, AND U.S. TERRITORIES”  
February 6, 2020**

**I. Introduction**

Good morning Chair Norton, Ranking Member Davis, and Members of the Subcommittee. Thank you for inviting me to testify today concerning Tribal transportation construction, transit, and highway safety needs. My name is Mary Beth Clark, I am an enrolled Nez Perce on my father’s side and Klamath on my mother’s side. I reside in Lapwai, Idaho located on the Nez Perce Reservation, where the Tribe’s governmental and administrative offices are located, about 10 miles from the Idaho-Washington State border along the Snake River.

I speak to you today as the newly elected President of the Intertribal Transportation Association (ITA), a non-profit Tribal advocacy association that first met in Polson, Montana in 1993. ITA represents the transportation interest of the Tribal nations, and was created to foster the development, operation, and maintenance of transportation systems that serve the American Indian and Alaska Native peoples. There are great unmet transportation construction, transit, and highway safety needs in Indian country. ITA issued a reauthorization proposal last summer. I am pleased that the Senate Environment and Public Works Committee in its reauthorization measure, S. 2302, included a number of ITA’s recommendations. At our December meeting, ITA passed Resolution 2019-01 in support of S. 2302’s Tribal provisions and we urge Congress to support and build on the Senate measure’s Tribal provisions.

ITA exists to assist every Tribe develop their transportation systems, keep Tribes informed on legislative/Federal actions, assist in coordinating training, and facilitate the government-to-government relationship between the United States government and the Indian Nations so that Tribal voices and Tribal viewpoints are shared and heard by Federal agency officials, Members of Congress and your staff. ITA, like so many other Tribal organizations, is here to inform you that the level of Federal appropriations often spells the difference between the success or failure of federal programs enacted for the benefit of Indian tribes. Please keep this in mind as you draft the reauthorization measure for the Nation.

ITA welcomes the opportunity to share our Tribal members’ views and recommendations with the Subcommittee today as you assess the transportation needs of Tribes and draft the next reauthorization bill, a measure every American hopes will recommit the United States to the business of transportation infrastructure. Infrastructure is the greatest catalyst to accelerate economic development and growth, especially in rural America where most Tribal members live.

For the last twelve years, I have been the Transportation Manager for the Nez Perce Tribe. I have a BA and Master’s degree in Urban and Regional Planning from Eastern Washington University. I have worked in Indian Affairs for over 25 years, including a dozen years as the Economic Development Planner, Planning Manager for the Confederated Tribes of

the Colville Reservation in Washington State, and two years as the Senior Tribal Policy Advisor for the Environmental Protection Agency Region 10. I am the Affiliated Tribes of Northwest Indians (ATNI) Co-Chair of the Transportation Committee, the Northwest representative on the Tribal Transportation Program Coordinating Committee (a joint Tribal-Federal regulatory body making recommendations to the Federal Highway Administration (FHWA) and Bureau of Indian Affairs (BIA) concerning the Tribal Transportation Program), the Northwest representative on the Department of Transportation's Tribal Transportation Self-Governance Program Negotiated Rulemaking Committee, and the Palouse RTPO Advisory Committee member. I have been active in Tribal transportation issues for decades.

I thank Chairman DeFazio and Ranking Member Graves, Chair Norton and Ranking Member Davis, and the entire Committee for your advocacy and support on behalf of Tribes. As a representative of my Tribe and Region who has participated in the negotiated rulemaking to extend Tribal Self-Governance to the Department of Transportation since 2016, I am proud that Congress, and this Committee in particular, supports the aspirations of the Indian Nations and Tribal citizens to improve transportation infrastructure on our reservations and make our communities safer and prosperous, so that we may maintain our culture, languages, and values and pass them down to our children and grandchildren. The rulemaking is nearly complete. We hope that you will support Tribes in our request to the Department to establish an Office of Self-Governance this year when the regulation takes effect.

The Nez Perce Reservation is about three-quarters of a million acres in size, with 3,543 Tribal citizens, and approximately 1,800 miles of public roads representing the Tribe's "Tribal Transportation Facility" system. Of that amount, only 95 miles (5%) are BIA-System and Tribally-owned routes and routes that qualify for funding under the TTP. In FY 2019, with an authorization of \$495 million for the Tribal Transportation Program, the Nez Perce Tribe received about \$525,000 as our TTP funding allocation and \$12,000 for transportation planning, for a total FY 2019 award of \$537,000.

The Tribe also receives \$45,000 in BIA Road Maintenance Program funds under an Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, contract between the Tribe and the BIA that permits us to assume the duties of the Secretary of the Interior for road maintenance on the reservation. Under our BIA contract, we receive less than \$472 to maintain a mile of road. States and counties have far more resources to maintain State and county routes. That is why our TTP funds, under this Committee's jurisdiction, are so important.

Tribal governments are "public authorities" responsible for the construction and maintenance of transportation systems to serve Tribal citizens and all residents, Indian and non-Indian. They are the partners of the Federal government, States, counties, boroughs and townships and have the capacity and capability to put Federal appropriations to good use for the benefit of their Tribal citizens and residents. Invest in Tribes as you invest in the States.

With regard to your deliberations this Congress over how to pay for a robust reauthorization measure for the Nation, whether it be Vehicle Miles Traveled (VMT) or an increase to the Federal fuels tax, please keep Tribes in mind in any solution you develop. If VMT is used as a means to finance highway construction, transit, and safety programs, Tribes

must have a means to receive and use a share of such revenues for VMTs that are generated on Tribal lands in order for Tribes to maintain their transportation facilities. Too often, State-owned and county-owned routes that cross Indian reservations are not properly maintained by the facility owner, and BIA system and Tribal routes don't receive the federal support they require. Overweight trucks and heavy traffic wears out such routes. Tribes cannot repair such public routes without recurring Federal funds. Poorly maintained routes have shortened useful lives and are hazards to all motorists. Infrastructure worth having is worth paying for.

## **II. The Challenge Tribes and the United States Face Together**

Roads and bridges in Indian country today are known for their poor maintenance (paved, gravel, or dirt), great distances to trauma centers, few first responders, lack of highway safety features, and sun-bleached and wind-worn signage. But too often, Federal appropriations are insufficient to the needs of Tribes. The resulting harm to American Indian and Alaska Natives from too few Federal appropriations, and the consequential poor condition of Indian country roads, bridges, ferries, and transit systems, is tragic. According to the Centers for Disease Control:

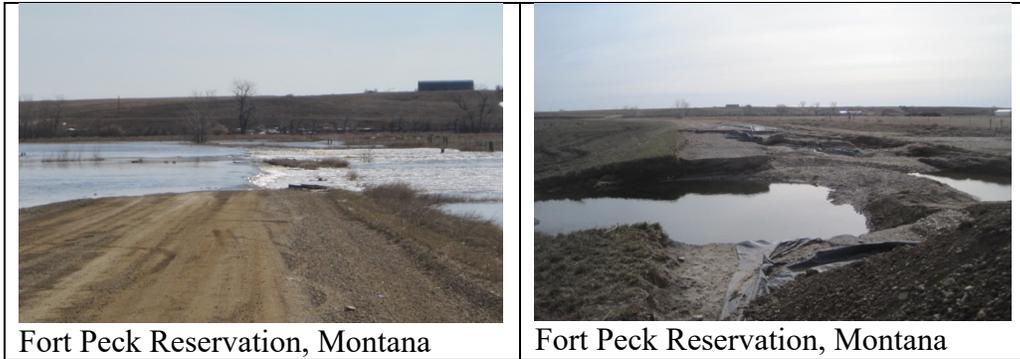
- Motor vehicle crashes are a leading cause of unintentional injury death for American Indian/Alaska Natives (AIANs). Among adult AIANs, motor vehicle-related death rates are more than twice that of non-Hispanic Caucasians or African Americans;
- Among AIANs aged 1 to 19, motor vehicle crashes are the leading cause of unintentional injury death;
- Among AIAN infants less than one year of age, motor vehicle traffic death rates are eight times higher than that of non-Hispanic Caucasians.

These statistics cry out for more Federal resources.

Decades ago, when considering amendments to the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, Congress acknowledged that the needs of Indian country and rural America were the same. The conditions for successful economic development on Indian lands are founded on community stability that begins with infrastructure. There must be adequate law enforcement and judicial systems and basic human services, including roads, safe drinking water, wastewater, power and communication utilities. When these systems are in place, Congress understood that Tribes are in the best position to implement economic development opportunities, empower their Tribal citizens, and build the economies of their reservations.<sup>1</sup> Without such basic infrastructure, community stability becomes uncertain as young professionals and families seek better opportunities elsewhere.

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<sup>1</sup> S. Rep. No. 100-274, 100<sup>th</sup> Cong. 1<sup>st</sup> Sess., p. 4.



Fort Peck Reservation, Montana

Fort Peck Reservation, Montana

As you can see from the above photos, roads in Indian country don't look like roads in metropolitan areas like Washington, D.C. If the route is a school bus route, elementary school children, with long bus rides, must find alternate routes to school, and endure longer rides. Rurality, the lack of EMS services and trauma centers, the condition of Tribal roads and bridges, the lack of proper routine and emergency road maintenance, and the ills of poverty, combine to make Tribal transportation facilities some of the most dangerous roads in America.

In FY 2017, the last budget justification submitted to Congress by the Administration that detailed the program performance level of funding for the BIA Road Maintenance Program (Interior, Environment and Related Agencies appropriations), the Administration noted that at a funding level of \$27 million, the BIA Road Maintenance Program – carried out by BIA and Indian Tribes – could provide “sufficient maintenance” to classify *only* 16% of BIA-owned roads as *acceptable* in terms of surface condition (fair or better as measured by the Service Level Index (1-5, with fair being Level 3), and provide “sufficient maintenance” to classify *only* 62% of the BIA-owned bridges in “acceptable” condition based on the Service Level Index. This means that 84% of BIA-owned roads are in *less than* fair condition (Level 4 (poor) or Level 5 (Failing), along with 38% of BIA-owned bridges. There are 29,400 miles of BIA-owned roads, of which *only* 7,150 miles are paved, and 900+ bridges. I cannot think of another Federal program that sets so low a bar for recurring funding (16%) to achieve the agency's mission. Leaving 84% of 29,400 miles of BIA System roads in poor and failing condition is unacceptable. The solution to having so few BIA System roads paved is to fund the reconstruction of gravel and dirt roads, especially school bus routes. It is costly to maintain dirt and gravel roads. Regardless of how much money you spend to maintain a dirt or gravel road, it is still a dirt or gravel road.



Indian Country route in Arizona

The above photo is typical in Indian country. A sign, listing the speed limit and warning of an upcoming curve, is obstructed by overgrown vegetation. Notice that the road has no

shoulder. At night, the obscured signs, on a road with few safety features, may contribute to a motor vehicle crash that may cause injury or death to a motorist and passengers.

Due to the unmet needs in the BIA Road Maintenance Program, Tribes must divert their Tribal Transportation Program (TTP) design and construction funds (Highway Trust Fund dollars), under this Subcommittee's jurisdiction, to supplement insufficient Federal appropriations for the BIA Road Maintenance Program. Most Tribes contract the Road Maintenance Program from the BIA under the Indian Self-Determination Act, Pub. L. 93-638, knowing that the Federal appropriation is insufficient for routine and emergency maintenance. As a result of this fund transfer, authorized by Federal law (23 U.S.C. 202(a)(8)), Tribes receive and have less funds available to plan, design, reconstruct or build a new road or bridge, undertake a safety improvement project, or perform environmental studies. This is a drain on the Tribal Transportation Program (TTP). Please take this fund transfer into account as you consider the authorized funding level for the Tribal Transportation Program in reauthorization.

The National Highway Traffic Safety Administration (NHTSA) captures the important aspects of successful traffic safety in the expression "the Four Es" which stand for:

- Engineering;
- Enforcement and regulation;
- Education and information; and
- Emergency response.

There is another principle known as the "Golden Hour." Simply stated, if a victim of a motor vehicle crash can reach a trauma center within 60 minutes and receive medical care, there is a higher likelihood that they will survive and not die from their injuries, and that their recovery will be faster and less costly. Unfortunately, there is seldom a "Golden Hour" in Indian country when motorists or pedestrians are involved in a serious motor vehicle crash. Few first responders, too great a distance to a well-equipped medical trauma center. As a Nation, we must do better by Indian Tribes and think comprehensively about how to target these conditions to make Tribal roads safer.

### III. ITA Recommendations for Reauthorization

Here are key recommendations ITA wishes to share with the Subcommittee:

1. Significantly increase the authorization funding level for the **Tribal Transportation Program (TTP)**, and include generous stepped increases for each year of the reauthorization so that Tribes can address our unmet transportation needs;
  - a) Restore a **Tribal High Priority Projects (HPP) Program**, funded with Highway Trust Funds, to benefit small and large Tribes with a high priority project that a Tribe could not otherwise finance, or to fund disaster relief for key transportation infrastructure to restore the route (see S. 2302, § 1101(a) and § 1129);
2. Restore the *exemption* that once existed for the Indian Reservation Roads (now Tribal Transportation Program) from the **obligation limitation deduction** that permanently

removes Federal funds from the Tribal Transportation Program; there is no “August redistribution” of withheld funds under the Program resulting from the obligation limitation deduction as there is with the State Federal-Aid Highway Program funds;

3. By legislation, direct the Department of Transportation to establish an **Office of Self-Governance** at the Department to oversee the Tribal Transportation Self-Governance Program (TTSGP), and to create a Tribal-Federal **Self-Governance Advisory Committee** (such as the successful TTP Coordinating Committee which provides Tribal input and recommendations to FHWA and BIA regarding the TTP (25 CFR §§ 170.135-170.137)), to help implement the TTSGP at the Department, and authorize appropriations to the Department to finance both entities (See S. 2302, § 4009);
4. Since SAFETEA-LU was enacted in 2005, Tribes can use 25% of their TTP funds, or \$500,000, whichever is greater, to carry out **road maintenance** on public roads in the Tribe’s TTP inventory (23 U.S.C. § 202(a)(8)). Tribes make this choice to maintain such routes due to shortfalls in the BIA Road Maintenance Program (Interior, Environment and Related Agencies appropriation). Please take this *reality* into account when setting the authorization levels for the Tribal Transportation Program;
5. Make the **Tribal Transportation Facility Bridge Program** (23 U.S.C. § 202(d)) a stand-alone program, funded with Highway Trust Funds, and include authorization for the design and construction of *new* bridges (see S. 2302, § 1119 (amending 23 U.S.C. § 124(p))).
6. To improve highway safety for every Indian Tribe:
  - a) Significantly increase the authorization level for FTA’s **Public Transportation on Indian Reservations (5311(c)) Tribal Transit Program**; the Tribal Transit Program is woefully underfunded at \$30 million (formula) and \$5 million (competitive grants) and provides an important link for Tribal members and other residents to get to work, healthcare services, other governmental services, colleges, and commercial businesses in remote rural communities;
  - b) Increase or establish **Tribal set-asides** in important USDOT competitive and discretionary grant programs (e.g., BUILD grants) so that Tribes are direct recipients and actually receive Federal supplemental funds (See e.g., S. 2302, § 1119(a) (NSFLTP Program), § 1125(b) (Wildlife Crossing Safety program), and § 1407 (PROTECT grants program));
  - c) As “public authorities” (23 U.S.C. § 101(a)(31)), **make Tribes direct recipients** for all Department of Transportation competitive and discretionary grants rather than sub-recipients of States or other eligible grantees;
  - d) Lower **dollar thresholds** for federal grant eligibility requirements for Tribes or rural communities, and **increase the federal share to 100%** for Tribal grant recipients (see S. 2302, § 1129 concerning the NSFLTP Program);

- e) Restore the pre-MAP-21 authority under the Highway Safety Improvement Program (§ 148) and TTP Safety Grant Program (23 U.S.C. § 202(e)), to permit the use of grant funds for **education purposes** “to promote the awareness of the public and educate the public concerning highway safety matters” (see S. 2302, § 1111). This will save lives in Indian Country as Tribes lacks funds to correct poorly designed roads, pave dirt and gravel routes, or add safety features; and
  - f) Facilitate environmental studies, such as categorical exclusions under NEPA required for highway safety improvement projects (see S. 2302, § 4002 and § 4003);
- 7. Elevate the position of Deputy Assistant Secretary for Tribal Government Affairs at the Department of Transportation to an Assistant Secretary level and fund the position (see S. 2302, § 4009), to ensure that Tribal transportation needs are well understood at the Department, and that the Department’s many resources are marshalled effectively and efficiently to best serve Indian communities (see S. 2302, § 4009); and
  - 8. Support the many other positive, pro-Tribal measures included in the Senate Environment and Public Works (EPW) Committee’s S. 2302, including title IV.

#### **IV. Tribal Transportation Successes**

Despite limited resources, Tribes are making headway. With growing capacity and confidence, Tribes are working hand-in-hand with States and other local governments, MPOs and RPOs to coordinate on projects of mutual concern. The majority of Tribes today assume, under a variety of Federal award instruments, the duties of the Secretary of the Interior and the Secretary of Health and Human Services for federal programs enacted for the benefit of Tribes. By June 1, 2020, the Department of Transportation will publish the final rule for the Tribal Transportation Self-Governance Program (49 CFR Part 29) and open a new chapter at the Department for Tribes to streamline the delivery of federal transportation, transit, and highway safety programs to their citizens and residents, reduce regulatory burdens, and save money.

The recurring Federal formula programs at the Department of Transportation – Tribal Transportation Program and Tribal Transit Program – allow Tribes to plan and budget based on known appropriation levels to address their transportation priorities. But make no mistake, with sufficient Federal appropriations and outreach by our Federal partners, Tribes can do more.

In conclusion, Tribes are willing and capable partners with the Federal government, States and local governments and are determined to break down the decades of transportation barriers that have held us back from taking the fullest advantage of our peoples, resources, and opportunities to improve our communities. With sufficient resources, we can grow our economies, reach new markets, retain our Tribal citizens, and realize the dream of our ancestors to perpetuate our culture, hold our lands, protect our water and air, and pass down to our children and grandchildren the rich heritage that is our legacy and the legacy of this great Nation.

Give Tribes and Tribal Organizations the tools for success and we will achieve great things together. Thank you for the opportunity to present the views of ITA.