



Oglala Sioux Tribe

P.O. Box 2070, Pine Ridge, S.D. 57770
Direct: 605-867-8487 - Cell Phone: 605-407-1231
Fax: 605-867-6076
E-mail: kevink@oglala.org



Office of the President
Kevin Killer

April 21, 2021

**Written Testimony of Kevin Killer,
President of the Oglala Sioux Tribe for the
House Indigenous Peoples of the United States Subcommittee
"Infrastructure in Indian Country: Priorities for the American Jobs Plan"
Oversight Hearing**

Opening Remarks. Thank you Chairwoman Leger Fernandez, Ranking Member Young, and Members of the Subcommittee for the opportunity to provide testimony on infrastructure in Indian Country. Our position is that infrastructure must be defined broadly. Certainly, infrastructure includes roads and bridges, but it also includes broadband, water projects, housing, community development, education facilities, law enforcement and public safety, governmental capacity infrastructure, and other community components to make our homeland livable. Today, our testimony focuses on one aspect of infrastructure: the importance of roads infrastructure for building tribal economies under the American Jobs Plan. The improvement and safety of roads on our Pine Ridge Indian Reservation is a consistent priority for our Oglala Lakota Tribe—now more than ever given the revealing effects of the COVID-19 crisis on the vulnerabilities in our community. This testimony sets forth details about our Reservation roads infrastructure needs, including unmet needs resulting from chronic underfunding of the BIA Road Maintenance account, and the compounding effects of the pandemic and annual inclement weather events. Our Tribe firmly believes that well-maintained roads infrastructure is essential to a sustainable tribal and regional economy. Without a real and concerted federal investment in this area, such as through the American Jobs Plan, our people will continue to suffer undue harm.

I. Background and Unmet Needs on the Pine Ridge Reservation

Background. Our Reservation covers approximately 2.8 million acres (roughly the size of Connecticut) and our Tribe has more than 45,000 enrolled citizens. Our Tribe is part of the Oceti Sakowin (Seven Council Fires, known as the Great Sioux Nation). We are also one of 16 sovereign nations in the Great Plains Region. Our treaty rights, the United States' obligations to us, and our unique political relationship with the United States are set forth in a series of treaties through 1868, including the Fort Laramie Treaty of 1851 (11 Stat. 749) and the 1868 Sioux Nation Treaty (15 Stat. 635). These treaties establish the United States' obligations to our Tribe.

Chronic underfunding of Indian Country programs and treaty obligations over the years, particularly in the Great Plains Region, has taken an enormous toll on our Tribe. Our remote location also presents challenges for locally accessible job and educational opportunities for our people. Oglala Lakota County, which is entirely within our Reservation, is among the poorest counties in the United States with over 51.9% below the poverty line, per capita income around \$8,768, unemployment in the 80% range, and a high school dropout rate of over 60%. The lack of good roads, reliable telecommunication systems, and other necessary infrastructure further impedes economic development, job creation, and a good quality of life on our Reservation.

We know we have tremendous untapped potential on our Reservation given our vast land base, abundant natural resources, and the strength of our people. A modernized infrastructure would help realize this potential, expand our economy, and revitalize local opportunities for our people. As a tribal government, we strive daily towards these objectives. But we will never meaningfully succeed without the necessary infrastructure. A robust roads system is a key part of this effort.

Investing in infrastructure development is a classic method of boosting economic growth and creating jobs. An understanding that is reflected in the American Jobs Plan. We need a surge of roads infrastructure funding to promote economic development and job creation on our Reservation. Increased funding is also needed to ensure the safety of residents and visitors when traveling on our Reservation. The need is even more pressing today because of the compounding effects of diverting limited tribal resources to the COVID-19 response and recovery effort, as well as in covering the high annual costs of mitigating snowfall and flood events.

Roads Infrastructure Needs on the Pine Ridge Indian Reservation. Our Tribe's Road Maintenance Department maintains 560 miles of Bureau of Indian Affairs (BIA) roads and bridges yet receives approximately \$562,000 to \$580,000 per funding cycle. This pales in comparison to the roads funding of our State. Per the 25nd Annual Highway Report, the nationwide average maintenance disbursement per state controlled mile is \$15,952 and the average for South Dakota is \$4,020 per state controlled mile.¹ The Tribe, however, receives only \$890 in BIA Road Maintenance funding per BIA roadway mile, which includes maintenance for BIA bridges on the National Bridge Inventory. Our Tribe, thus, has roughly 1/64 of the amount of funding for our roads maintenance activities in comparison with the State. We must incur significant costs to maintain BIA roadways with needs that exceed available federal funding. We also have approximately 1,900 miles of tribal roads, not built by the BIA, for which we receive no federal funding for maintenance.² The result is that our Tribe is constantly operating on an emergency response basis. Our roads, which have always been in poor condition, are now disastrous. At the current rate of funding, it would take over 100 years to address our backlog of needs.

Our Reservation is replete with treacherous and sometimes impassable roads, especially in winter with snowy and muddy conditions. Snow and ice removal can consume up to 65% of our annual

¹ 25nd Annual Highway Report, Baruch Feigenbaum, Spence Purnell, and Joseph Hillman (Nov. 2020), available at <https://reason.org/wp-content/uploads/25th-annual-highway-report.pdf/>.

² We also have a specific road issue: the Allen Road between Allen and Highway 18. The State receives funding for the road, but it is not maintaining it. A private citizen has been plowing this road in an effort to keep it safe for school buses. The Tribe compensates him what it can for his work because of the critical need to maintain the road for the buses. This is unacceptable. The Tribe should be provided adequate funding so that we can maintain this road; we stand ready to do the work provided we have the funding.

budget each winter. Snow and mud present dangerous conditions for our residents (including our students) and visitors, impact our children's school attendance, and increase our school bus maintenance costs because of the extreme wear and tear caused by our precarious road conditions.³ Further, potholes, mud- and snow-laden roads, and an inconvenient road system result in inordinate costs (in gas, car damage, and time) for our citizens and those doing business on our lands. Our citizens need safe and maneuverable roadways to get to work, school, medical appointments, family members, community events, and stores.

Further, at its current funding levels, the existing BIA Road Maintenance program cannot account for funding inadequacies caused by national inflation rates. Diesel costs and the price of metal have skyrocketed. For example, to keep equipment running our Tribe must regularly purchase cutting edges for road graders and snowplow blades. 15 years ago we could buy a pair of cutting edges for \$60-70 in bulk, but today we are paying close \$300 dollars for a single a set. A set of edges lasts only 1-2 weeks in the face of our winter clearing needs, even with hardened steel blades. Without equipment we cannot maintain our transportation infrastructure; yet, the costs are so high and the annual federal funding so low that it is all but impossible to meet this demand. Something must change.

A sampling of our top roads and community development related needs include:

- Reconstruction of the Manderson Housing Street, which requires complete replacement of the underlying storm water drainage system. Estimated cost: \$6 million.
- Paving Kyle North Route, near Medicine Root. Estimated cost: \$4 million.
- Paving Cuny Table Road with 14 miles of asphalt for public safety as truck traffic has damaged and continues to damage the road. Estimated cost: \$8 million.
- We have a demonstrated need for 20 heavy equipment machines for roads maintenance; yet we only have nine currently.
- Tribal Research and Training Center to provide STEAM⁴ professionals to conduct data collection for supporting the Tribe's projects and efforts to improve infrastructure and quality of life on our Reservation. Estimated cost: \$10 million.
- Pre-engineering costs for community planning in the 56 communities of the nine districts of our Reservation at \$1 million per community. Estimated cost: \$56 million.

In addition to roads, funding is so tight that routine bridge maintenance is not performed until it reaches a state of emergency. There are not separate pots of funding for road and bridge costs in the BIA budget. Rather, bridge maintenance comes out of the roads maintenance appropriation. The stress that this places on an already limited funding source cannot be overstated. The average age of the 26 bridges on our Reservation is 75 years old. The average life expectancy of a bridge is 100 years; however, that presumes that the structures have been well-maintained over the span of their usefulness. That presumption does not hold on Pine Ridge. Consequently, our citizens

³ GAO conducted a site visit at Pine Ridge to assess road conditions and their impact on student attendance and transportation that remains pertinent today. GAO found that excessive mud and snow conditions sometimes made roads impassable for students and that, further, some roads lack basic safety features such as guardrails that put students' physical safety at risk. *See* GAO-17-423, "Tribal Transportation: Better Data Could Improve Road Management and Inform Indian Student Attendance Strategies" (May 2017).

⁴ STEAM stands for "Science, Technology, Engineering, Arts, and Math."

face unsafe transportation conditions every time they travel within our Reservation. This includes every time our children go to and from school. This is unacceptable. The BIA simply cannot address our road and bridge needs with its currently limited BIA Road Maintenance account. Our unmet needs continue to grow while we struggle to address immediate concerns.

It is critical to note that roads needs are not limited to the supplying of asphalt and concrete. It is a transportation *network* that must be funded on a comprehensive basis. By this, we mean that road maintenance calculations must take into account the equipment (pavers, graders, etc.), crews, supplies, vehicles, raw materials, engineering and design, and direct and indirect costs that all factor into the successful completion of a project. On average, equipment is replaced every three years due to the wear and tear of heavy construction and maintenance. These costs come from our annual roads funding. This, in turn, decreases the monies available for larger projects with compounding negative impacts over time on the quality of our roads network.

Targeted Roads Support Needed to Address Annual Inclement Weather Events. As a remote Tribe located in the Great Plains we must contend with the annual—and often unforgiving—weather events that characterize our homelands. According to the Third National Climate Assessment, our region "experiences multiple climate and weather hazards, including floods, droughts, severe storms, tornadoes, hurricanes, and winter storms. . . . These variable conditions in the Great Plains already stress communities and cause billions of dollars in damage; climate change will add to both stress and costs."⁵ Regrettably, we already have first-hand knowledge of the added stressors and financial burdens caused by severe inclement weather.

In July 2019, our Tribe suffered destructive flooding after a winter storm tore across our Reservation.⁶ The severe flooding and snowfall caused by the storm made roads impassable and cut off access to food, water, and medicine. Many citizens were also displaced from their homes by floodwaters, exacerbating the shortage of adequate housing that already existed on Pine Ridge before the storm. We are still struggling to stem the flow of public safety and housing crises resulting from this disaster. We have zero surplus housing available along with an unmet new construction need of 1,000 homes and over 4,000 home repairs. Building, renovating, and maintaining adequate shelter for our people is deeply complicated by the lack of transportation infrastructure for moving materials across our Reservation.

The 2019 storm is not an isolated event. Rather, we experience extraordinarily challenging weather events on a recurring and regular basis. According to the BIA-approved Road Maintenance Survey generated by the Oglala Sioux Tribe and the Great Plains Region in the Tribal-Interior Budget Council, the major work components for roads maintenance in the Great Plains, Rocky Mountain, and Northwest Regions include snow and ice control, interior pavement sealing, pavement maintenance, gravel maintenance, and remedial work on improved earth roads.

⁵ Chapter 19: Great Plains, *Third National Climate Assessment*, U.S. Global Change Research Program (2014), available at https://nca2014.globalchange.gov/downloads/low/NCA3_Full_Report_19_Great_Plains_LowRes.pdf.

⁶ The New York Times and Washington Post covered the devastation wrought by the 2019 storm in a series of articles available at: <https://www.nytimes.com/2019/03/24/us/midwest-flooding-pine-ridge.html> and https://www.washingtonpost.com/national/impooverished-pine-ridge-reservation-braces-for-more-flooding/2019/04/09/a466ed62-5b04-11e9-98d4-844088d135f2_story.html?utm_term=.07acb35d93d9.

Significantly, nineteen responses to the Survey from the Great Plains Region identified snow and ice removal as their top priority. We need to ensure each of these categories is adequately funded so tribal nations, like ours, can have sufficient road networks no matter the weather.

Broader Roads Issues in the Great Plains Region. Last, as a part of the Oceti Sakowin and as a Great Plains Tribal Nation we recognize that our needs do not exist in isolation. As such, we want to take this opportunity to draw the Subcommittee's attention to the common roads issues shared across the Great Plains Region. We ask that you see the addendum to our testimony entitled, "Land Based Tribes Coalition for Maintaining and Improving BIA and Tribal Roadways." This is an informative document that lays out seven priority solutions for addressing the severe tribal transportation needs in the Great Plains. We ask this Subcommittee—and the Administration and Congress overall—to take the necessary steps to incorporate these priorities into the developing American Jobs Plan going forward.

II. Recommendations for Improving Roads Infrastructure in Indian Country

Provide an Increase in Annual Funding for BIA Road Maintenance. Funding for the BIA Road Maintenance program has been under-resourced for several fiscal year cycles. In FY 2021, for example, the BIA received only \$36.79 million despite a deferred maintenance backlog exceeding \$60 million in the Great Plains Region and almost \$300 million nationwide. A steady increase in this line item appropriation is appropriate and necessary. We urge the Administration and Congress to prioritize a drastic increase in BIA Road Maintenance funding so that tribal governments can finally receive adequate allocations for roads maintenance projects. This would require action through the annual appropriations process—for which we recommend that not less than \$75 million be provided for the BIA Road Maintenance program in FY 2022.

We also request greater transparency in the funding formula used by the BIA for allocating funds through its Road Maintenance account. Our Tribe's requests for clarification on the existing funding formula used by the BIA have gone unanswered. It is also our understanding that the BIA's budget goal is to maintain 17% of tribal roads and 19% of tribal bridges in "acceptable condition" due to the lack of adequate funding to raise the quality of conditions across the board. If accurate, this would be a deeply disturbing disregard for public safety and Native lives. At best, it would show a heavily burdened federal agency that is desperately struggling, but failing, to carry out its charge. We call on Congress to take the necessary action to make these percentage goals 100%, where they should be.

Create a BIA Road Maintenance Sub-Account Targeting Backlogged Needs. Now is the time, as the Biden Administration recognizes, "to reimagine and rebuild a new economy."⁷ In this spirit of national innovation, we recommend that a new roads maintenance account be created that targets backlogged road and bridge projects by taking mile inventory, remoteness, and weather conditions into consideration. We believe that an initial amount of \$30 million for a new BIA Road Improvement Program would have long-term beneficial impacts in reducing the backlog of

⁷ The White House, Fact Sheet: The American Jobs Plan (March 31, 2021), *available at*: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/>.

road maintenance and construction needs in the Great Plains Region and across the United States. Annual appropriations to this new account in at least this amount will be needed.

Create a Permanent BIA Road Maintenance Emergency Weather Sub-Account. Congress should create a standing BIA emergency tribal set-aside for tribal nations that encounter inclement weather conditions. Tornadoes, snowstorms, flooding, hurricanes are all conditions that tribal nations annually face across the United States. Each emergency situation relies on roads infrastructure in some capacity, whether it is in moving manpower, conducting repairs, delivering community relief, or other activities. Using existing funds for these types of unplanned and unplannable events drains our tribal roads budgets even further. A standing, permanent BIA Road Maintenance Emergency Weather Fund would help alleviate this burden and streamline access to federal relief during times of crisis in Indian Country.

Provide Robust Dedicated Funding for Tribal Roads under the American Jobs Plan. Further, to advance the purposes of the American Jobs Plan in getting our national aspirations for economic growth off and running, we need robust and dedicated new funding for road construction, maintenance, and equipment in Indian Country. Such special appropriations would be put to immediate use to increase public safety, facilitate economic development, decrease costs, and alleviate the hardships our members currently endure. We would urge the Administration to engage with the BIA and tribal leaders on identifying accurate levels of unmet need and appropriate distribution formulas and methodologies for effectively allocating any such funds.

Require the BIA to Follow Through on Tribal Data-Driven Survey Results. The lack of locally-reflective and timely data on tribal roads maintenance needs is a chronic challenge. Data, as Congress well knows, is essential to the identification of problems and to their effective resolution. Such data is notoriously hard to locate in Indian Country. Our Tribe has taken initiative in addressing this issue by participating in a tribally-driven data survey. The Office of Management and Budget supported the survey, which received responses from approximately 157 tribal nations. Unfortunately, the BIA never provided a final compilation of the responses nor an analytical outcomes report. Congress should direct the BIA to release and then act on this tribal data to accurately report on local needs and advance implementation of the Road Maintenance program.

Allow for Direct Tribal Data Submissions under the Government Performance and Results Act (GPRA). GPRA is the central federal law for monitoring program performance to inform federal management decisions and the compilation of strategic plans and evaluative reports. Our Tribe has found, however, that the current reporting requirements under GPRA do not result in an accurate picture of our programs' performances. Tribal nations generate data and statistics that the GPRA system does not account for. As a result, a full understanding of how these programs are operating is impossible to convey. This unfairly harms our interests. GPRA's reporting process targets agency goals and challenges (i.e., benchmarks for actions within an agency's control). It does not gather information on program beneficiary goals and challenges (i.e., the need for more funding to complete a performance measure or for additional training or staff to fully implement a program). An OMB option for tribally-generated and directly submitted data would facilitate the accurate reporting on measurable, realistic, and attainable performance benchmarks for programs serving tribal communities. Armed with this information, programs would be better protected from

the erroneous reduction or elimination of federal funding caused by the inherent limitations of the current GPR system.

Authorize Tribal Access to Alternate Road Supplies through the GSA and Military Surplus.

Given the limitations on BIA Road Maintenance resources, we need to identify alternate ways of meeting tribal road and equipment needs. One way to do this is by expanding access to the General Services Administration (GSA). Direct access to the GSA system would enable us to make large purchases of vehicles, equipment, and other necessary supplies for the affordable maintenance of our transportation infrastructure. For example, we would be able to buy a road grader for a quarter of the price through the GSA than through a corporate dealer. These savings could be reinvested into our infrastructure. Additionally, access to military surplus would also benefit our Tribe, particularly at the District level, in addressing the backlog of maintenance and repairs. With access to such supplies our Districts would be more empowered to make purchases and timely respond to local transportation infrastructure needs.

Support and Fund Tribal Programs within the Department of Transportation. To diversify the federal toolbox of programs and funding sources targeting roads infrastructure, we urge Congress to re-establish and fund the Tribal High Priority Project Program within the Department of Transportation and create a Tribal Set-Aside from the Highway Safety Implementation Program. Both of these programs would offer tribal nations access to critical resources and funding for implementing tribal roads projects.

Conclusion. Thank you for the opportunity to provide testimony on the critical topic of roads infrastructure. Transportation networks connect families, strengthen communities, and further economic growth. At no time in our Tribe's and country's history has this been made clearer than in the ongoing pandemic. The lack of safe roads—the very foundation for community development and sustainability—has disconnected our people from one another and from the services they need to survive and thrive. The United States must partner with tribal leaders on developing roads systems that facilitate on-Reservation commerce and ease of transportation.

We believe the American Jobs Plan and the annual appropriations process provide vehicles for this partnership. Today's hearing on this important issue is a good step in that direction. We look forward to working with the Administration and Congress to build, improve, and maintain the infrastructure we need on our Reservation. As explained above, infrastructure is one of our priority issues since functioning, well-maintained infrastructure will facilitate economic and community development, which we urgently need to improve the lives of our citizens.

Again, it is our position is that infrastructure must be defined broadly. It is roads and bridges, but it so much more. It includes all components that make a community—in our case, our homeland—livable. Our testimony today focuses on roads and bridges infrastructure. We will follow up with additional infrastructure needs.

Please do not hesitate to contact me if have questions or would like additional information to assist you in this work. Thank you.



Land Based Tribes Coalition for Maintaining and Improving BIA and Tribal Roadways

BACKGROUND

The Indian Reservation Roads Program (IRR) was created as part of the Surface Transportation Assistance Act of 1982 and was administered by the Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA). The TTP program currently provides funding to the 567 Federally recognized Tribes and Alaska Native Villages.



Initially, the main focus of this program was on planning, design, and construction of BIA and Tribal roadways on Indian Reservations and Indian Lands.



In 2012, under the Moving Ahead for Progress in the 21st Century Act (MAP-21), the program was changed to the Tribal Transportation Program (TTP). Image- FAST Act MAP-21

PROBLEM: The federal funds that have been made available to support maintenance and improvements to BIA and Tribal roadways are not sufficient and are currently being diverted to improvements on roadways under other agencies' jurisdiction and to address maintenance needs. This is resulting in a deterioration of these federal roadways.

While the funding for the TTP program has increased in recent years to the \$495,000,000 that is allocated today, **the use and distribution of these funds has undergone a significant transformation.** These funds in the past were primarily used to maintain and improve BIA and Tribal Roadways. With the transition to the TTP Program, the routes in the official BIA National Tribal Transportation Field Inventory eligible for funding were opened to allow significant increases of roadways under other jurisdictions. **This resulted in the inventory ballooning to 162,000 miles of roadways of which only 31,386 miles are BIA and 27,466 are Tribal Roads, with the remaining being county, state, and local roads.** This change along with changes in the Congressionally Mandated Formula for how funds are distributed has led to a shift that has seen nearly all the increase in TTP funds going to locations with little or no BIA or Tribal road mileage, but rather significant county road mileage, higher traffic volumes, or higher documented population.



The TTP funds are the main, and in many cases the only funding available for BIA and Tribal routes and these changes have resulted in a lack of attention to the BIA Roadways that are part of the Federal Governments Trust Responsibility.

In addition to the Tribal Transportation Program not adequately funding the BIA and Tribal Roadways, the funding available from the Department of Interior that is specifically designated for BIA routes has grown minimally to \$34,000,000. This has resulted in a huge backlog of maintenance needs and forced large land-based tribes with significant BIA road miles to transfer larger portions of their TTP dollars to cover routine maintenance. This has further reduced their ability to fund preservation and improvement projects and led to Tribes falling significantly behind states in both overall spending and maintenance spending per mile.

As a result, TTP has had to supplement maintenance needs, meaning construction dollars are being spent on maintenance in the following amounts:

- FY2016: \$34M
- FY2017: \$47M
- FY2018: \$46M

SOLUTIONS

Priority #1: Increase TTP/IRR allocation annually.

- **FY2021** \$520M
- **FY2022** \$530M
- **FY2023** \$540M
- **FY2024** \$550M
- **FY2025** \$560M
- **FY2026** \$570M
- **FY2027** \$580M

Priority #2: Tribal Transportation Program Formula Reform (insert TTP/IRR definition and description)

This consortium of Tribes requests that a minimum of 80 percent of TTP/IRR funding be restricted to the construction and improvement of **BIA and Tribally owned roadways only**. The proposed restriction would not apply to the remaining 20 percent of distribution amounts, however, if these funds are distributed to non-Tribal and non-BIA roads, a requirement should be implemented that this must be done via cost share.

In addition to the new restriction on TTP funding expenditure, the proposed solution should also include **modifying the method in which funds are distributed through TTP** to include the cost to construct, inclusion in NTIFF, and the volume of BIA/Tribal roadway miles.

Since there are major discrepancies with Census on NAHASDA population numbers, these should not be a consideration in allocating funds. Recommendation: distribute TTP on the cost to construct for BIA\Tribal road miles, remove population and vehicle miles traveled numbers from the formula.

Funding available for the Tribal Safety Transportation Program Safety Fund should be increased from 2 percent to 5 percent.

Priority #3: Remove obligation limit for TTP/IRR and road maintenance. IRR used to be exempt from the obligation limit. This change would allow a greater share of the TTP allocation be distributed to Tribes.

Priority #4: Reinstate the Tribal Transportation Bridge Program/IRR as a standalone program instead of a 2 percent carve out in the Tribal Transportation Program and increase the amount in the standalone bridge program to be equivalent to 3 percent of the TTP. The standalone program should give priority to BIA/Tribally owned bridges.

Priority #5: Modify road maintenance distribution methods

To modify road maintenance distribution methods, \$46 million should be authorized for the Bureau of Indian Affairs (BIA) Road Maintenance Program, with increases of \$2 million per year to address the national maintenance backlog, which is currently nearly \$400M.

BIA road maintenance funding should continue to be distributed through United States Department of Interior as its own separate line item and exempt from the obligation limit.

Priority #6: Modify USDOT discretionary grant programs with a Tribally designated portion of funding Programs such as BUILD, INFRA, and Nationally Significant Federal Lands and Tribal Projects require significant engineering investment prior to grant request and matching funds that make it difficult for Tribes to compete. A Tribally designated portion of funds should be set aside for planning (i.e. environmental, right-of-way, engineering design) and construction, and the requirement of nonfederal investment should be excluded for Tribal projects.

Priority #7: Direct BIA law enforcement to use one standard crash report form, specifically TRAMS