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MEMORANDUM

SCIA Convenes Infrastructure Roundtable; Provides Opportunity for Comments

On March 15, 2017, the Senate Committee on Indian Affairs (SCIA) convened a Roundtable Discussion on "Building Native America Together: Infrastructure Innovation and Improvements for the New Administration and Indian Country." The Roundtable consisted of panels on the following four topics: *Transportation*; *Water*; *Broadband and Connectivity*; and *Community Development*, which were moderated by Professor Carl Artman. Mr. Artman currently serves as the Director of the Economic Development in Indian Country Program at the Arizona State University College of Law. Chairman Hoeven (R-ND); Vice Chairman Udall (D-NM); Sen. Carper (D-DE); Sen. Franken (D-MN); and House Natural Resources Subcommittee on Indian, Insular and Alaska Native Affairs Ranking Member Torres (D-CA) attended. Staff from the SCIA were present, as were staff from the Senate Environment and Public Works Committee, the House Natural Resources Committee and the House Transportation and Infrastructure Committee. Please let us know if you would like assistance submitting a statement for the Roundtable record to: bnatroundtable@indian.senate.gov by close of business March 29, 2017, or to Committee leadership and your congressional delegation, which can be submitted at any time.

Opening Statements

Chairman Hoeven framed the discussion as follows, "Roads promote economic development and help tribes provide good governmental services. In addition, modernizing the way tribes access financing to build schools, healthcare facilities, and mitigate flooding impacts on tribal lands are essential for healthy and vibrant tribal communities. So today it's all about not only discussing the needs, but also finding innovative approaches, incentivizing private investment, reducing regulatory barriers and taking other steps that we can in this effort. Those solutions that work best are those that come from you, in Indian country, who understand what the needs are."

Vice Chairman Udall said that given the dire state of infrastructure in Indian Country, he hoped that the discussion would be the first of many that Congress holds on this topic. He emphasized that Indian Country must be part of any discussion on infrastructure investments. He said that inadequate infrastructure has hindered economic development and deprived communities of basic necessities. Vice Chairman Udall described his work to secure a \$20 billion set aside for tribal and federal lands in the Senate Democrats' \$1 trillion infrastructure proposal. He said that the federal government must live up to its responsibility to fund basic needs in Indian Country. He

spoke to the urgent need for broadband access in Indian Country: it is critical for business, healthcare and education. We cannot let the digital divide continue to grow, he said. Vice Chairman Udall went on to describe the digital divide for tribes in New Mexico: 96 percent of urban dwellers have access to broadband, compared with 59 percent of those who live on tribal lands, compared with only 20 percent of those who live on tribal lands in New Mexico, a situation he described as "absolutely unacceptable." He specifically noted that at the Pueblo of Acoma, the library keeps the WiFi on 24/7 so that tribal members can drive to the parking lot and still access the Internet after hours.

Sen. Franken described the critical, interconnected role that housing plays in community safety, security and wellness. It is difficult for children to succeed in school if they are living in unsafe, overcrowded housing. Also he explained that in order to attract professionals such as doctors to serve in tribal communities, there need to be good schools and good housing options. He also urged Member of Congress to join him in finding funding for the Indian Energy loan guarantee program which was authorized in 2005 but remains unfunded. Under this program, \$11 million could leverage \$90 million in economic activity.

House Natural Resources Subcommittee on Indian, Insular and Alaska Native Affairs Ranking Member Torres explained that Public Private Partnerships cannot be the only way to invest in infrastructure—there must be direct federal spending as well. She said that infrastructure is most badly needed by tribal communities and by rural communities—places that have often been left behind. For example, the average age of a hospital in Indian Country is 40 years old while the average age is 10 years old across the rest of the Nation. At the current rate of replacement, it will take 400 years to replace all of the IHS-funded hospitals. Further, some tribal communities lack access to basic water and wastewater infrastructure; BIE-funded schools are in substandard condition and need and estimated \$1.3 billion for school replacement; and many tribal families live in overcrowded and substandard housing. Stating that, "Indian Country has been left behind," she asked, "What is the federal government going to do about this?"

Panel Discussions

Transportation Panel

Mr. Delbert Rexford, Special Assistant and Advisor to the President of Ukpeaġvik Iñupiat Corporation (UIC), Barrow, AK said that because the construction season is so short in Alaska, projects need to be carefully planned, permitted and funded—any delay can create escalating costs, potentially derailing a project. UIC's priorities are for new ports, roads and airports. He asked that the Trump Administration: promote Artic tourism; facilitate public private partnerships to funds ports; allow IUC to access their own gravel pits for use in infrastructure projects; and roll back the Obama Administration's regulations that restrict drilling in the Arctic.

The Honorable Edward Manuel, Chairman, Tohono O'odham Nation, Sells, AZ noted that the Tohono O'odham has a reservation the size of the State of Connecticut with over 800 miles of Bureau of Indian Affairs (BIA) roads. Some of these roads run along the border with Mexico and are in very poor condition because of substantial wear and tear from U.S. Border Patrol use. Because BIA has the primary responsibility for these roads, other federal agencies assert that they are restricted from providing this funding. Chairman Manuel asked that this be changed.

The Honorable Leslie Shakespeare Councilman, Eastern Shoshone Tribe of the Wind River Reservation, Fort Washakie, WY urged that any infrastructure package, rather than creating new programs, simply provide more funding through the existing formula for the Tribal Transportation Program and more funding for TIGER grants. Recently, the Tribe successfully partnered with neighboring tribes and the federal, state, and local governments to combine TIGER grants with other sources of funding in order to fix a road with unusually high fatalities. In addition to saving lives, he added, investments in infrastructure help create community stability and a more conducive environment for businesses development.

Discussion. Mr. Artman inquired about examples of partnerships creating faster results and asked for ideas on ways the federal government can, using existing authorities, improve project delivery. Councilman Shakespeare said that coordination among federal offices, and tribal, state, and local governments is vital for big projects to be completed, so any changes that facilitate this would be welcome.

Water Panel

The Honorable James Floyd Principal Chief Muscogee (Creek) Nation, Okmulgee, OK explained that in Oklahoma, the legacy of the Allotment Act means that researching and securing the rights of way for projects that cross different types of land (tribal, state, county, private) can significantly delay a project. For example, when trying to complete permitting for a project in Oklahoma, one must take into account the historic status of land and contend with overlapping jurisdictions—it is even difficult to determine the location of certain records. The Nation also faces high utility bills for tribal members. To this end, they hope to create either a tribal utility company or utility authority in order to better serve their tribal members and to have a seat at the table when dealing with neighboring utility companies.

Mr. William Rudnicki, Tribal Administrator, Shakopee Mdewakanton Sioux Community of Minnesota, Prior Lake, MN said that his tribe has the key elements needed for successful project delivery and development: stable tribal leadership; professional staff; active tribal members and strong finances. His tribe began with using wells and septic systems, transitioned to hooking up homes and businesses to the municipal water

and wastewater system, and finally, through a partnership with Environmental Protection Agency, was able to create their own waste and water treatment facilities. This is key, because now, any expansion plans that they have are not hindered by needing to wait for permission from the municipal water and sewer system authority.

Mr. Ryan Rusche Tribal Attorney, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Pablo, MT framed infrastructure as a pathway to self-determination, saying that adequate water is the "life-blood" of communities. He suggested that one way to address the dearth of water infrastructure in Indian Country is for the federal government to address Indian water settlements and to "pair that with self-governance." Such an undertaking would eliminate federal liability, save taxpayers litigation expenses, repair vital water infrastructure such as dams and irrigation systems and create jobs. Mr. Rusche explained that there are a great deal of "high hazard dams" in Indian Country, which, if they were to fail, could result in loss of life and property—an expensive liability for the federal government. Further, he explained that improvements in irrigation systems would result in the more efficient use of water. Mr. Rusche concluded that empowering tribes, through the use of self-determination type contracts to manage these projects, would save the federal government additional money.

Discussion. Mr. Artman inquired about the existence of regulatory roadblocks that tribes run into when attempting to enter into partnerships with federal agencies. Panelists explained that the permitting process for both the Environmental Protection Agency and the U.S. Army Corps of Engineers can be time consuming and require resources to master. However; once tribes gain experience, they are able to complete the process more quickly. Also, tribes have found it helpful to work proactively with federal agencies in the early stages of projects in order to identify any potential sticking points. Panelists urged that federal funds be appropriated for tribal training and technical assistance so that tribes can gain proficiency in the permitting and inspection processes.

Broadband and Connectivity Panel

Ms. Belinda Nelson, Chairperson, Gila River Telecommunications, Inc., Chandler, AZ discussed the success of the Gila River Tribe in providing telecom services to their tribal members. The Tribe created their own telecom initially using USDA Rural Utilities Service (RUS) funds and a public private partnership with a private telecom. The Tribe recently paid off their RUS loan and now owns 100 percent of the telecom that provides service to all tribal schools, libraries, hospital, tribal administration buildings and public safety departments. She noted that all Americans must have access to high-speed broadband and identified economic development, health care, and education as specific areas that require high-speed broadband. She urged the Committee to ensure that any infrastructure bill includes Indian Country and appropriates funding with accountability measures to close the digital divide in Indian Country and rural America. She also noted difficulties faced by the Tribe when seeking Eligible Communications

Carrier status that is required before accessing Universal Service Funds that are necessary to subsidize the buildout into rural areas and recommended streamlining the Federal Communication Commission (FCC)'s regulations.

Mr. Derek Dyson, Attorney (Duncan, Weinberg, Genzer, & Pembroke), Navajo Tribal Utility Authority, Washington, DC noted the success that the Navajo Nation has had in bringing wireless coverage to some, but not all, parts of the Navajo Reservation. The Tribe is facing difficulties getting the larger carriers to meet with the Tribe to discuss increased access for tribal members and allowing tribes to access the spectrum that is currently licensed to carriers who are not utilizing it for the benefit of tribes. He suggested requiring carriers to sub-license spectrum to tribes if requested and to funnel any new broadband funding through the USDA RUS because the RUS already has the programs and accountability metrics in place to distribute the funds quickly.

Discussion. The witnesses also suggested that streamlining National Environmental Policy Act and Bureau of Indian Affairs (BIA) Rights-of-Way (ROW) regulations and/or the development of "HEARTH Act-type legislation" for ROW's could encourage the carriers to deploy broadband at an accelerated schedule. Other suggestions include developing funding to enable tribes to purchase the telecom exchange in their area from the large telecom carriers and lowering the percentage of owners required to approve ROW for telecoms.

Community Development Panel

The Honorable Darrell Shay, Vice Chairman, Shoshone-Bannock Tribes, Fort Hall, ID explained that because federal funding is always in short supply, his tribe has been forced to be innovative in order to complete a single project. For example, in order for his tribe to be able to build their justice center, they cobbled together funding from many different sources, including: their recent water settlement; the Department of Justice; the Department of Housing and Urban Development; the USDA; a loan from the Native American Bank; and some Recovery Act funding. The next project they will attempt is a wellness center. Having a tribal planning department has significantly helped his tribe plan for new projects and more successfully obtain grants and financing to complete these projects. Vice Chairman Shay also urged that tribes should have direct access to New Markets Tax Credits and the Low Income Housing Tax Credits to finance projects and that Congress should reconsider the Administration's proposed cuts to the FY 2018 domestic discretionary federal budget.

Mr. Jon Whirlwind Horse, Facilities Manager, Oglala Sioux Tribe Education Agency, Kyle, SD reminded the Committee that Native people have given up their lives and their land for their treaties, and these treaties must be honored. To this end, federal funding for tribal programs must be mandatory, not discretionary. He said that if tribes are given the resources they were promised to build good schools for their children, then

there will be less need for jails. Mr. Whirlwind Horse explained that for many tribes, the school is the hub of their community. He asked that the Bureau of Indian Education (BIE) remove the current restriction on schools being used after hours for community events. He also expressed significant concern about the Bureau of Indian Affairs (BIA)'s ability to manage funding for school construction. For example, federal funding was appropriated to pay for the construction of a new school. The BIA kept asking for more information and doing more studies. At the end of the process, there was \$10 million less left to construct the school. Finally, he urged that the Tribal Economic Development Bonds, which were authorized in a limited fashion in the Recovery Act, be continued.

Mr. Jeff Seidel Senior Vice President, Dougherty & Company, LLC, Minneapolis, MN is an investment banker. He explained that there are a variety of financing mechanisms available to tribes which can be used to bring projects on line. He described the BIE's management of funding as "atrocious." He said one of the benefits of using bond financing for projects is that the project funds are held in an escrow account which is not touched by the BIE. Under this system, all of the funds are accounted for. Mr. Seidel explained that a number of public schools have been successfully brought on line using this process and suggested that there should be a pilot project for BIE schools. He also suggested that there are unused Recovery Act tax credits, the use of which should be explored.

Mr. Stephen Hockins, Strategic Planner, Mississippi Band of Choctaw Indians, Choctaw, MS described the Tribe's successful effort to build and staff a hospital using the Indian Health Service (IHS) Joint Venture program. Under this program, a tribe constructs the health facility while the IHS provides the funding for staffing for 20 years. In order to construct this facility, the Tribe made use of the USDA Rural Development's Community Facility Funding program. The Tribe worked with USDA's field, state and Washington, DC headquarters offices. Mr. Hockins described it as "a complicated process" because the IHS and USDA do not always know how to work with one another, but one which was ultimately worth it. Combing the IHS Joint Venture program with a combination of financing and funding from USDA means that more hospitals and health facilities are built and the tribes who are not able to finance such facilities are able to move up the waiting list. In addition, tribes can also use this financing method to develop specialty clinics.

Discussion. In terms of financing options for projects, panelists asserted that BIA loan guarantees work. They also asserted that while the New Markets Tax Credit and the Low Income Housing Tax Credit are helpful, a direct tribal set aside is needed in order fully realize their potential to help tribes. Further, they emphasized that in order for any Public Private Partnership to truly work for tribes, there must be a tribal set aside. Panelists also continued to express concern about the BIA's and BIE's ability to manage project funds, rather they suggested, the funds might be more safely held during the term of the project by the Treasury Department. The most appropriate role for BIA and BIE,

they suggested, is for them to be involved throughout the project to ensure that the constructed facilities conform to relevant building and safety codes and that the completed building is eligible for operations

