



Written Statement for the Record

**Walter Richard (Richie) Beyer IV
County Engineer
Elmore County, Alabama**

**On behalf of the National Association of Counties
and
The National Association of County Engineers**

Impediments to the Effective Delivery of Federal Aid Projects

**Before the U.S. House Committee on Oversight and Government Reform
Subcommittee on Intergovernmental Affairs
Subcommittee on Interior, Energy and Environment**

**March 1, 2017
Washington, DC**

Chairman Palmer, Chairman Farenthold, Ranking Member Demings, Ranking Member Plaskett and distinguished members of the Subcommittee on Intergovernmental Relations and Subcommittee on Interior, Energy and Interior, thank you for holding today's hearing. I am honored to testify before you today on federal environmental impediments to project delivery on behalf of the National Association of Counties and National Association of County Engineers.

My name is Richie Beyer, and I serve as the County Engineer for Elmore County, Alabama. Elmore County serves a population of approximately 82,000 and is one of the fastest growing counties in our state. Located just north of our state's capitol, Montgomery, we are a destination for many who wish to live in a setting with abundant natural resources, a quality education system and a comfortable standard of living.

My experience in infrastructure development extends not only to Elmore County, but to the national level as well, as I am a past president of the National Association of County Engineers and currently serve as Vice-Chairman on the National Association of Counties' Transportation Steering Committee. I have served on various state and federal committees and working groups during my tenure with county government, many of which have focused on the effective delivery of projects and the effective use of federal funding.

Elmore County is responsible for over 1,000 public road miles and 127 public bridges within our boundaries. Our funding resources, however, are not sufficient to address what is needed to maintain our vast infrastructure. *The Silent Crisis*, a 2010 analysis of Alabama county roads and bridges, indicated Elmore County's surface infrastructure system operates on about one-third of the revenue needed to adequately maintain our road and bridges. Its important to note that this analysis did not take into account the capacity needs of the county, only the basic maintenance needs for our roads and bridges. With Elmore County's growing population as a burgeoning suburb of our state capital, our roads and bridges are experiencing more traffic than ever. As a result, our surface transportation infrastructure is under more increasing stress.

Counties face financial challenges because, in many cases, state legislatures limit our ability to raise revenue to fund critical infrastructure projects. The main general revenue sources for a great many counties are property and sales taxes. However, while counties in 45 states collect property taxes, they can only keep about a quarter (23.7 percent) of what is collected. Limitations like these that significantly impact counties' ability to effectively raise additional revenue to pay for services and infrastructure, especially unforeseen expenses such as emergency repairs. Due to these state and local funding constraints, counties such as Elmore depend on a strong state and federal partnership to deliver transportation investments that are critical to our communities and our national economy. Our nation's 3,069 counties build and maintain 45 percent of public road miles and 40 percent of bridges, as well as over one-third of the nation's transit systems and airports. Not only do county roads, bridges and highways connect our counties and states, they serve as a lifeline for rural counties and our citizens, playing a critical role in the movement of freight and other goods and services.

This situation is not unique to Elmore County. My county shares many similarities with counties across the nation who work every day to stretch the taxpayer dollars they are entrusted to manage to ensure their most effective and efficient use. Counties are innovators and in many cases must be to survive. The federal government can assist this innovation by providing a regulatory environment designed to empower project delivery, not hamper it. My remarks to this committee today will provide recommendations to strengthen this cooperation.

I am reminded of an observation made to me several years ago by someone that I have great respect for. He observed that, in most situations, lower levels of government inevitably believe that the higher levels of government have the funding to address issues, while the higher levels of government don't think that the lower levels of government have the expertise to properly manage the resources with which they are entrusted. Thus, we have an ongoing struggle between levels of government for control and an increased chance that our resources aren't going to be utilized in the most effective manner. In the words of Ralph Waldo Emerson, "*Our distrust is very expensive.*"

The infrastructure partnership between local, state, and the federal government is a key element in the success of our nation's economies. Local roads are the original arterial roadways; it is these roadways which connect to our state and federal highway system. All routes originate on these local roads. Finding the balance between regulation and reality is the key, to making this partnership productive for the American people. Today, I will highlight some of these challenges and provide recommendations for how Congress can help us tackle these issues.

I will also illustrate three areas where local government can accomplish faster project completion without sacrificing environmental oversight or project safety. Whether they be road or bridge projects or emergency repairs, local governments possess the capabilities to produce results in considerably less time and for less money.

Road and Bridge Challenges

When county projects utilize federal funding, higher project costs and longer delivery times are the norm. Bureaucratic red tape and duplicative or cumbersome environmental reviews slow projects down and drive labor costs up. Currently, counties are required to follow the same exhaustive federal requirements on a small sidewalk or preservation project as they would for mega-projects. This simply does not make sense.

Let's take a look at a simple resurfacing project in Elmore County. A county wants to place a treatment on a road that has reached its service life. The project would entail placing a 1 ½ inch thick wearing surface on a roadway and place new traffic stripes and markers. The road is wide enough to handle the traffic volumes it is experiencing, and there are no apparent safety issues. The work takes a contractor less than 30 days to complete.

Twelve to fifteen months in advance, the county must plan to begin the paperwork for this project. Between state requirements and federal regulations, the county will spend the better part of this time preparing required federal documentation to address whether the project has appropriate federal measures in place to address items such as safety, Americans With Disabilities Act (ADA) compliance, material selection, historical context and railroad involvement, just to name a few. By far the most cumbersome obstacles are those related to meeting environmental regulations.

By the time the documentation is complete and a project is deemed ready to accept bids, the county has spent over 13 percent of their allocated funding to pay the state for its federally mandated oversight of the project development process. It is important to note that these fees are not at the discretion of the state, but rather the Federal Highway Administration (FHWA) requires the charge to be applied if the state intends to charge overhead to any state-sponsored federally funded project. Once the project bids are accepted and awarded, the state must then begin to assess – per mandate by the federal government – construction, engineering and inspection (E&I) charges to the project as well. This can range from five to ten percent of the project cost and depends on project duration. The county would normally utilize about five percent or less of the project amount of E & I for quality control and assurance inspections.

Once the contractor completes the project, the county will have:

- a project file 20 times thicker than the overlay that was placed;
- paid **on average two times the cost** of a similar project funded solely with local funds (\$160,000 per mile federal vs \$80,000 per mile local only);
- spent nine to twelve months longer to get the project to construction than if it was funded with local funds only;
- **a road that is materially the same regardless of the funding source.**

Let me provide an example of what we have experienced in Elmore County as a result of the federal environmental review process. After years of working to secure federal funding for two areas of need in our rapidly growing county, we have been working to make intersection and corridor improvements at two different locations. The projects will have immense safety benefits to the public, yet small impacts to the few residents adjacent to the

improvements. As the project start times are separated by one year, we have been in the design and environmental approval phase of two projects for 15 and 30 months, respectively. Approvals on our federal environmental reviews ensuring adherence to National Environmental Protection Act (NEPA) have become stalled in the federal bureaucracy, and thus we cannot move to right-of-way acquisition or utility relocation to keep the project on track. Currently, we are on pace to deliver these projects to construction in another two years. Construction costs for these two projects are \$1,000,000 and \$3,000,000, respectively. This amount is exponentially more than it would cost without the delays resulting from federal interference in processes that can be handled at the state or local level.

So why do counties attempt projects under the federal aid program? In most areas of the country, it's a public safety issue. Road safety is among the greatest concerns for many counties, especially in rural America. The fatality rate on rural roads is nearly 2.5 times higher than on urban roads, according to the Federal Highway Administration's Office of Safety.

In 2012, 19 percent of the U.S. population lived in rural areas but rural road fatalities accounted for 54 percent of all road-related fatalities. In 2014, more than 16,000 people were killed on local roads across the U.S. — a fatality rate greater than 1.5 fatalities per 100 million vehicle-miles of travel, according to the National Highway Traffic Safety Administration. This is almost three times the fatality rate of the Interstate Highway System. In this same year, the overall cost of crashes on local roads was well over \$100 billion, accounting for fatalities, decreased quality of life due to injuries and economic costs (medical, insurance and property loss).

Recognizing this important issue, on July 13, 2015, Secretary of Transportation Anthony Foxx signed a resolution reflecting the need to improve safety on county-owned roads and affirming that the U.S. Department of Transportation will work with the National Association of Counties (NACo) to improve road safety in America's communities. This resolution underscores the important role that local elected officials play in improving road safety in their communities. Although the administration may have changed, the importance of ensuring communities are served by safe, reliable roadways has not. However, addressing critical rural road safety needs cannot be accomplished under the current landscape of cumbersome environmental red tape, which causes project delays and drives project costs way up. Plainly stated, these federal impediments hamper our ability to rehabilitate our infrastructure in a timely manner necessary to save lives.

Emergency Work Challenges

I would like to provide the committee of an example of the type of issues these federal impediments can create. On Christmas Day 2015, many Alabama counties, including Elmore County, were impacted by torrential rains which resulted in a 100-year flood event. A portion of the county sustained severe damage that closed several roads.

Our largest damage site was on Holley Mill Road in the northeast portion of the county. A fifty-plus year old, 14-foot equivalent diameter plate arch pipe failed under the immense water pressure generated by the storms. The failure created a chasm in the roadway, sending several hundred yards of roadbed downstream. After the road was properly blocked off and traffic control devices installed to warn the public of the closure, our county team began evaluating the necessary replacement to get the road back in service. Within days after the event, we had completed our hydraulic analysis of the site and ordered the appropriate size structure to make the necessary repair.

Our county team met with state and federal officials within two weeks of the disaster. After meeting with them we were made aware that the Federal Emergency Management Administration (FEMA) was not recognizing a provision placed in the 2015 surface transportation authorization bill, the Fixing America's Surface Transportation Act, or FAST Act, exempting emergency work from environmental reviews. That same day, we contacted the United States Fish and Wildlife Service (USFWS) and the United States Army Corp of Engineers (USACE). The

county received approvals and clearances from these two federal agencies the next day. By this time the pipe order had arrived on the county yard and was ready for installation. We were 22 days out from the disaster at this point.

On day 23, we were told that all of the information we sent to our state and federal emergency management administration partners, regardless of the clearances and approvals we had received, were going to have to go through a full FEMA review. No work could proceed without the county risking reimbursement for what we believed would be roughly a \$250,000 to \$300,000 repair. We were forced to immediately halt our project, despite the fact that it was vital to restoring services to our county.

On day 53 of the road closure resulting from this federally imposed delay, we were given approval to move forward with our work and a project worksheet was finalized another eight days later at a cost of approximately \$378,000. The county completed all of the work in 57 calendar days with our own forces at a final cost of near \$225,000.

You may be thinking, “Well, that’s fast for approvals compared to other environmental horror stories we hear”. The real issue is that every day we delayed work, our citizen’s economy and our environment were negatively impacted. Each day that passed without action to approve permits due to a protracted federal review process cost our county time and money, and our citizens had to spend detouring and avoiding the damaged site. Each day also resulted in more sediment washing downstream because federal clearance was not authorized for the work.

Simply put, the expedient response of local government to restore travel to the public in times of disaster should not be hampered by cumbersome federal reviews and approvals. This is especially true when all the work is being performed in existing rights-of-way and is replacing a preexisting structure. These interventions by the federal government impairs our ability to assist our residents at times when they are most vulnerable. This clearly should not be the case

Federal agencies should be true resource and partner to counties in working with local communities to recover after a disaster rather than imposing burdensome regulations on critical post-disaster repairs.

In 2013, the United States Government Accountability Office (GAO) found that inefficient use of federal funds can occur when the cost of complying with federal requirements is high relative to a project’s cost. While the Federal Highway Administration (FHWA) has taken steps to improve the efficiency of federal-aid projects, it has not explored or issued guidance targeted to local agencies on how they can maximize administrative flexibilities, despite internal and external recommendations to do so. Some local agency officials GAO interviewed stated they do not pursue federal funding for projects under certain dollar thresholds because the cost involved outweighs the benefits; however, others choose to do so due to a lack of funding alternatives. In times of emergencies, most counties are not afforded the luxury of deciding whether or not to request federal funds – they are a necessity.

Working through these issues and delays has given me the experience and perspective necessary to identify possible solutions to make this partnership more effective and less costly to local governments, while at the same time not sacrificing safety or established environmental protocols.

Potential Solutions- Establish Exemptions and Empower All Levels of Government

These examples point to some of the challenges we face in local government. I offer the following **two recommendations** for ensuring we can provide our citizens the best possible services given our limited resources.

The Moving Ahead for Progress in the 21st Century Act (MAP-21) set a precedent by identifying a category of low risk projects appropriate for Categorical Exclusions [23 CFR Part 771.117 (c) and/or (d)]. In addition, MAP-21 established financial thresholds categorically excluding projects from environmental reviews, provided that the projects receive less than \$5,000,000 in federal funds. The FAST Act reinforced these principles.

First, we would like to recommend that Congress build on the principles introduced in MAP-21 and furthered in the FAST Act by creating an exemption from all federal requirements if the project receives less than \$5,000,000 in federal funding. The state and local governments would apply the appropriate state or local standards and specifications to their projects and follow state law to bid for, award and execute their projects. State and local governments could also perform work under force account, provided there is a substantial cost savings to the public by doing so. No state or federal oversight would apply to these projects, which will ensure more funding makes it to tangible projects. Low risk projects as defined in the FAST Act could easily be grouped into this exemption, but strong consideration should be given to defining bridge replacement projects where no major relocation occurs as an exempt action as well.

What would be the impacts of this type of change?

First, more of our fuel tax will reach the public in the form of tangible road and bridge projects. Quite simply, we are currently seeing gas tax money go to meeting duplicative federal regulations as opposed to the project itself. While cutting out these duplicative regulations will not solve gas tax funding issues, this approach shows our citizens that we are doing everything possible to be efficient with the resources we have been entrusted to manage.

Second, local and state governments can best evaluate the needs of their communities and the appropriate project scope that provides the greatest benefit to the communities.

Third, the various federal agencies can focus their efforts on moving large scale highway projects through the process and refocus their efforts on being resources to the state and local governments to meet the needs of our communities.

Lastly, the public wins. More resources are directed to projects that they can see, use, and reap the benefits from through an improved quality of life – all while improving our transportation network, which serves as the backbone for our nation’s economy.

This only works if the federal government has enough faith in states and counties to ensure public safety for their citizens. While I have no doubt the intentions of the federal government are to protect the public, there must be a realization that states have that same interest.

The FAST Act and MAP-21 both included provisions exempting emergency repair work when federal assistance is involved, but they do not go far enough, as there are still a multitude of project types that are susceptible to review regardless of the scale of its undertaking. For example, the Holley Mill Road project mentioned above could have been completed quicker for less money. More importantly, the bureaucratic delays of this project placed lives in danger. **Creation of an exemption that removes all federal requirements from emergency repairs to any transportation facility damaged by a disaster would expedite restoration of services to our citizens, lower the costs of repairs and refocus federal resources to be available to support and assist with recovery efforts.**

Closing

In closing, counties stand ready to work with our federal partners to achieve our shared goals of strengthening transportation networks, improving public safety and advancing our economic competitiveness. We need a strong, reliable federal partner that allows us to practically address the needs of our constituents.

Thank you again, Chairmen. Ranking Members and members of the Subcommittees, for the opportunity to testify today. I would be pleased to answer any questions.