S. HRG. 108–122

INDIAN RESERVATIONS ROAD PROGRAM

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

S. 281, S. 725, S. 1122, S. 1165

PROPOSALS TO AMEND THE INDIAN RESERVATIONS ROAD PROGRAM

JUNE 4, 2003
WASHINGTON, DC

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PROPOSALS TO AMEND THE INDIAN RESERVATIONS ROAD PROGRAM: S. 281, INDIAN TRIBAL SURFACE TRANSPORTATION IMPROVEMENT ACT OF 2003; S. 725 AND S. 1122, TRIBAL TRANSPORTATION PROGRAM IMPROVEMENT ACT OF 2003; S. 1165, AMERICAN INDIAN RESERVATION TRANSPORTATION IMPROVEMENT PROGRAM ACT

WEDNESDAY, JUNE 4, 2003

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m. in room 485, Senate Russell Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Johnson, Thomas, Domenici, and Murkowski.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The Committee on Indian Affairs will be in session.

Senator Inouye will be along shortly, but we will go ahead and get started.

Welcome to the committee's hearing on various legislative proposals to reauthorize the Indian Reservation Roads program; 60 percent of roads in the IRR system remain unpaved, which has obvious impacts on the tribes' ability to improve their economies. Rural Indian communities having paved roads often means the difference between life and death in terms of fire and police protection, ambulance service, and our growing concern with homeland security.

As of this past Monday, four Indian roads bills are pending before the committee: S. 281, which I introduced, S. 725, which Senator Bingaman introduced, S. 1122, by Senator Johnson, and S. 1165, by Senator Domenici. Today we will hear from Federal and tribal witnesses to determine how best to reform the IRR program. I will tell the members that it is my intention to report a bill by the end of June as part of the larger TEA–21 reauthorization which will be on the Senate floor in July.

[Text of S. 281, S. 725, S. 1122, and S. 1165 follow:]

II

108TH CONGRESS
1ST SESSION

S. 281

To amend the Transportation Equity Act for the 21st Century to make certain amendments with respect to Indian tribes, to provide for training and technical assistance to Native Americans who are interested in commercial vehicle driving careers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2003

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To amend the Transportation Equity Act for the 21st Century to make certain amendments with respect to Indian tribes, to provide for training and technical assistance to Native Americans who are interested in commercial vehicle driving careers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Indian Tribal Surface Transportation Improvement Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—INDIAN TRIBAL SURFACE TRANSPORTATION

Sec. 101. Short title.
Sec. 102. Amendments relating to Indian tribes.

TITLE II—TRAINING AND TECHNICAL ASSISTANCE FOR NATIVE AMERICANS

Sec. 201. Short title.
Sec. 202. Purposes.
Sec. 203. Definitions.
Sec. 204. Commercial vehicle driving training program.

TITLE I—INDIAN TRIBAL SURFACE TRANSPORTATION

SEC. 101. SHORT TITLE.

This title may be cited as the ''Indian Tribal Surface Transportation Act of 2003''.

SEC. 102. AMENDMENTS RELATING TO INDIAN TRIBES.

(a) OBLIGATION LIMITATION.—Section 1102(c)(1) of the Transportation Equity Act for the 21st Century (23 U.S.C. 104 note; 112 Stat. 116) is amended—

(1) by striking ''Code, and'' and inserting ''Code,''; and

(2) by inserting before the semicolon the following: '', and for each of fiscal years 2003 and 2004, amounts authorized for Indian reservation roads under section 204 of title 23, United States Code''.

(b) DEMONSTRATION PROJECT.—Section 202(d)(3) of title 23, United States Code, is amended by adding at the end the following:

"(C) FEDERAL LANDS HIGHWAY PROGRAM DEMONSTRATION PROJECT.—

"(i) IN GENERAL.—The Secretary shall establish a demonstration project under which all funds made available under this title for Indian reservation roads and for highway bridges located on Indian reservation roads as provided for in subparagraph (A) shall be made available, on the request of an affected Indian tribal government, to the Indian tribal government for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), contracts and agreements for the planning, research, engineering, and construction described in that subparagraph.

"(ii) EXCLUSION OF AGENCY PARTICIPATION.—In accordance with subparagraph (B), all funds for Indian reservation roads and for highway bridges located on Indian reservation roads to which clause

(i) applies shall be paid without regard to the organizational level at which the Federal lands highway program has previously carried out the programs, functions, services, or activities involved.

"(iii) SELECTION OF PARTICIPATING TRIBES.—

"(I) PARTICIPANTS.—

"(aa) IN GENERAL.—For each fiscal year, the Secretary shall select 12 geographically diverse Indian tribes from the applicant pool described in subclause (II) to participate in the demonstration project carried out under clause (i).

"(bb) CONSORTIA.—Two or more Indian tribes that are otherwise eligible to participate in a program or activity to which this title applies may form a consortium to be considered as a single tribe for the purpose of becoming part of the applicant pool under subclause (II).

"(cc) FUNDING.—An Indian tribe participating in the pilot program under this subparagraph shall receive funding in an amount equal to the sum of the funding that the Indian tribe would otherwise receive in accordance with the funding formula established under the other provisions of this subsection, and an additional percentage of that amount equal to the percentage of funds withheld during the applicable fiscal year for the road program management costs of the Bureau of Indian Affairs under subsection (f)(1).

"(II) APPLICANT POOL.—The applicant pool described in this subclause shall consist of each Indian tribe (or consortium) that—

"(aa) has successfully completed the planning phase described in subclause (III);

"(bb) has requested participation in the demonstration project under this subparagraph through the adoption of a resolution or other official action by the tribal governing body; and

"(cc) has demonstrated financial stability and financial management capability in accordance with subclause (III) during the 3-fiscal year period immediately preceding the fiscal year for which participation under this subparagraph is being requested.

"(III) CRITERIA FOR DETERMINING FINANCIAL STABILITY AND FINANCIAL MANAGEMENT CAPACITY.—For the purpose of subclause (II), evidence that, during the 3-year period referred to in subclause (II)(cc), an Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe's self-determination contracts or self-governance funding

agreements with any Federal agency shall be conclusive evidence of the required stability and capability.

"(IV) PLANNING PHASE.—

"(aa) IN GENERAL.—An Indian tribe (or consortium) requesting participation in the demonstration project under this subparagraph shall complete a planning phase that shall include legal and budgetary research and internal tribal government and organization preparation.

"(bb) ELIGIBILITY.—A tribe (or consortium) described in item (aa) shall be eligible to receive a grant under this subclause to plan and negotiate participation in a project described in that item.".

(c) ADMINISTRATION.—Section 202 of title 23, United States Code, is amended by adding at the end the following:

"(f) ADMINISTRATION OF INDIAN RESERVATION ROADS.—

"(1) CONTRACT AUTHORITY.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, for any fiscal year, not more than 6 percent of the contract authority amounts made available from the Highway Trust Fund to the Bureau of Indian Affairs under this title shall be used to pay the administrative expenses of the Bureau for the Indian reservation roads program (including the administrative expenses relating to individual projects that are associated with the program).

"(B) AVAILABILITY.—Amounts made available to pay administrative expenses under subparagraph (A) shall be made available to an Indian tribal government, on the request of the government, to be used for the associated administrative functions assumed by the Indian tribe under contracts and agreements entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

"(2) HEALTH AND SAFETY ASSURANCES.—Notwithstanding any other provision of law, an Indian tribe or tribal organization may commence road and bridge construction under the Transportation Equity

Act for the 21st Century (Public Law 105–178) that is funded through a contract or agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) if the Indian tribe or tribal organization has—

"(A) provided assurances in the contract or agreement that the construction will meet or exceed proper health and safety standards;

"(B) obtained the advance review of the plans and specifications from a licensed professional who has certified that the plans and specifications meet or exceed the proper health and safety standards; and

"(C) provided a copy of the certification under subparagraph (B) to the Director of the Bureau of Indian Affairs.

"(g) SAFETY INCENTIVE GRANTS.—

"(1) SEAT BELT SAFETY INCENTIVE GRANT ELIGIBILITY.—Notwithstanding any other provision of law, an Indian tribe that is eligible to participate in the Indian reservation roads program under subsection (d) shall be deemed to be a State for the purpose of being eligible for safety incentive allocations under section 157 to assist Indian communities

in developing innovative programs to promote increased seat belt use rates.

"(2) INTOXICATED DRIVER SAFETY INCENTIVE GRANT ELIGIBILITY.—Notwithstanding any other provision of law, an Indian tribe that is eligible to participate in the Indian reservation roads program under subsection (d) shall be deemed to be a State for the purpose of being eligible for safety incentive grants under section 163 to assist Indian communities in the prevention of the operation of motor vehicles by intoxicated persons.

"(3) FUNDING PROCEDURES AND ELIGIBILITY CRITERIA.—

"(A) IN GENERAL.—The Secretary, in consultation with Indian tribal governments, may develop funding procedures and eligibility criteria applicable to Indian tribes with respect to allocations or grants described in paragraphs (1) and (2).

"(B) PUBLICATION.—The Secretary shall ensure that procedures or criteria developed under subparagraph (A) are published annually in the Federal Register.".

TITLE II—TRAINING AND TECHNICAL ASSISTANCE FOR NATIVE AMERICANS

SEC. 201. SHORT TITLE.

This title may be cited as the ''Native American Commercial Driving Training and Technical Assistance Act''.

SEC. 202. PURPOSES.

The purposes of this title are—

(1) to foster and promote job creation and economic opportunities for Native Americans; and

(2) to provide education, technical, and training assistance to Native Americans who are interested in commercial vehicle driving careers.

SEC. 203. DEFINITIONS.

In this title:

(1) COMMERCIAL VEHICLE DRIVING.—The term ''commercial vehicle driving'' means the driving of—

(A) a vehicle that is a tractor-trailer truck; or

(B) any other vehicle (such as a bus or a vehicle used for the purpose of construction) the driving of which requires a commercial license.

(2) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the

Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(3) NATIVE AMERICAN.—The term ''Native American'' means an individual who is a member of—

(A) an Indian tribe; or

(B) any people or culture that is indigenous to the United States, as determined by the Secretary.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Labor.

SEC. 204. COMMERCIAL VEHICLE DRIVING TRAINING PROGRAM.

(a) GRANTS.—The Secretary may provide grants, on a competitive basis, to entities described in subsection (b) to support programs providing training and certificates leading to the licensing of Native Americans with respect to commercial vehicle driving.

(b) ELIGIBILITY.—To be eligible to receive a grant under subsection (a), an entity shall—

(1) be a tribal college or university (as defined in section 316(b)(3) of the Higher Education Act (20 U.S.C. 1059(b)(3)); and

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(c) PRIORITY.—In providing grants under subsection (a), the Secretary shall give priority to grant applications that—

(1) propose training that exceeds proposed minimum standards for training tractor-trailer drivers of the Department of Transportation;

(2) propose training that exceeds the entry level truck driver certification standards set by the Professional Truck Driver Institute; and

(3) propose an education partnership with a private trucking firm, trucking association, or similar entity in order to ensure the effectiveness of the grant program under this section.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this title.

○

II

108TH CONGRESS
1ST SESSION

S. 725

To amend the Transportation Equity Act for the 21st Century to provide from the Highway Trust Fund additional funding for Indian reservation roads, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 27, 2003

Mr. BINGAMAN (for himself, Mrs. FEINSTEIN, Mr. DAYTON, and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To amend the Transportation Equity Act for the 21st Century to provide from the Highway Trust Fund additional funding for Indian reservation roads, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Tribal Transportation Program Improvement Act of 2003''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) because many Indian tribes are located in remote areas, transportation is particularly important to the basic quality of life and economic development of Indian tribes;

(2) safe roads are essential for—

(A) Indian children to travel to and from school;

(B) sick and elderly individuals to receive basic health care and medical treatment; and

(C) food and other necessities to be delivered to shops and consumers;

(3) transportation is critical to the efforts of Indian tribes to—

(A) sustain robust economies; and

(B) attract new jobs and businesses;

(4) most Indian tribes lack the basic transportation systems that other people in the United States take for granted;

(5) Indian communities continue to lag behind the rest of the United States in quality of life and economic vitality;

(6) unemployment rates in Indian country frequently exceed 50 percent, and poverty rates often exceed 40 percent;

(7) the limited availability of housing and jobs on Indian reservations forces people to commute long distances each day to travel to work or school, obtain health care, take advantage of basic government services, go shopping, or even obtain drinking water;

(8) the Indian reservation roads system established under title 23, United States Code, comprises more than 50,000 miles of roads under the jurisdiction of the Bureau of Indian Affairs and tribal, State, county, and local governments;

(9) more than ⅔ of those roads are not paved, and many resemble roads in third-world countries;

(10) as of the date of enactment of this Act, approximately 140 of the 753 bridges under the jurisdiction of the Bureau of Indian Affairs are rated as being deficient;

(11) The Indian reservation roads system serves both Indians and the general public and is part of a unified national road network;

(12) even though the Indian reservation roads system is perhaps the most rudimentary of any transportation network in the United States, more than 2,000,000,000 vehicle miles are traveled annually on the system;

(13) the poor quality of so many Indian reservation roads has a serious impact on highway safety;

(14) according to the Federal Highway Administration, the highway fatality rate on Indian reservation roads is 4 times the national average highway fatality rate on all roads;

(15) automobile accidents are the primary cause of death for young Indian individuals; and

(16) the Federal Highway Administration estimates the backlog of improvement needs for Indian reservation roads at approximately $6,800,000,000.

(b) PURPOSE.—The purpose of this Act is to reauthorize, expand, and streamline the Indian reservation roads program to improve transportation safety and better meet the needs of Indian individuals and other members of the traveling public.

SEC. 3. INDIAN RESERVATION ROADS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 1101(a)(8)(A) of the Transportation Equity Act for the 21st Century (112 Stat. 112) is amended by striking ''of such title'' and all that follows and inserting ''of that title—

''(i) $225,000,000 for fiscal year 1998;

"(ii) $275,000,000 for each of fiscal years 1999 through 2003;

"(iii) $350,000,000 for fiscal year 2004;

"(iv) $425,000,000 for fiscal year 2005; and

"(v) $500,000,000 for each of fiscal years 2006 through 2009.".

(b) OBLIGATION CEILING.—Section 1102(c)(1) of the Transportation Equity Act for the 21st Century (23 U.S.C. 104 note; 112 Stat. 116) is amended—

(1) by striking "distribute obligation" and inserting the following: "distribute—

"(A) obligation";

(2) by inserting "and" after the semicolon at the end; and

(3) by adding at the end the following:

"(B) for any fiscal year after fiscal year 2003, any amount of obligation authority made available for Indian reservation road bridges under section 202(d)(4), and for Indian reservation roads under section 204, of title 23, United States Code;".

(c) INDIAN RESERVATION ROAD BRIDGES.—Section 202(d)(4) of title 23, United States Code, is amended—

(1) in subparagraph (B)—

(A) by striking ''(B) RESERVATION.—Of the amounts'' and all that follows through ''to replace,'' and inserting the following:

''(B) FUNDING.—

''(i) RESERVATION OF FUNDS.—Notwithstanding any other provision of law, there is authorized to be appropriated from the Highway Trust Fund $15,000,000 for each of fiscal years 2004 through 2009 to carry out planning, design, engineering, construction, and inspection of projects to replace,''; and

(B) by adding at the end the following:

''(ii) AVAILABILITY.—Funds made available to carry out this subparagraph shall be available for obligation in the same manner as if the funds were apportioned under chapter 1.''; and

(2) in subparagraph (D)—

(A) by striking ''(D) APPROVAL REQUIREMENT.—'' and inserting the following:

''(D) APPROVAL AND NEED REQUIREMENTS.—''; and

(B) by striking ''only on approval of the plans, specifications, and estimates by the Secretary.'' and inserting ''only—

''(i) on approval by the Secretary of plans, specifications, and estimates relating to the projects; and

''(ii) in amounts directly proportional to the actual need of each Indian reservation, as determined by the Secretary based on the number of deficient bridges on each reservation and the projected cost of rehabilitation of those bridges.''.

(d) FAIR AND EQUITABLE DISTRIBUTION.—Section 202(d) of title 23, United States Code, is amended by adding at the end the following:

''(5) FAIR AND EQUITABLE DISTRIBUTION.—To ensure that the distribution of funds to an Indian tribe under this subsection is fair, equitable, and based on valid transportation needs of the Indian tribe, the Secretary shall—

''(A) verify the existence, as of the date of the distribution, of all roads that are part of the Indian reservation road system; and

''(B) distribute funds based only on those roads.''.

(e) INDIAN RESERVATION ROAD PLANNING.—Section 204(j) of title 23, United States Code, is amended in the first sentence by striking ''2 percent'' and inserting ''4 percent''.

SEC. 4. FEDERAL LANDS HIGHWAY PROGRAM DEMONSTRATION PROJECT.

Section 202(d)(3) of title 23, United States Code, is amended by adding at the end the following:

''(C) FEDERAL LANDS HIGHWAY PROGRAM DEMONSTRATION PROJECT.—

''(i) IN GENERAL.—The Secretary shall establish a demonstration project under which all funds made available under this title for Indian reservation roads and for highway bridges located on Indian reservation roads as provided for in subparagraph (A) shall be made available, on the request of an affected Indian tribal government, to the Indian tribal government for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), contracts and agreements for the planning, research, engineering, and construction described in that subparagraph.

"(ii) EXCLUSION OF AGENCY PARTICIPATION.—In accordance with subparagraph (B), all funds for Indian reservation roads and for highway bridges located on Indian reservation roads to which clause (i) applies shall be paid without regard to the organizational level at which the Federal lands highway program has previously carried out the programs, functions, services, or activities involved.

"(iii) SELECTION OF PARTICIPATING TRIBES.—

"(I) PARTICIPANTS.—

"(aa) IN GENERAL.—For each fiscal year, the Secretary shall select 12 geographically diverse Indian tribes from the applicant pool described in subclause (II) to participate in the demonstration project carried out under clause (i).

"(bb) CONSORTIA.—Two or more Indian tribes that are otherwise eligible to participate in a program or activity to which this

title applies may form a consortium to be considered as a single tribe for the purpose of becoming part of the applicant pool under subclause (II).

"(cc) FUNDING.—An Indian tribe participating in the pilot program under this subparagraph shall receive funding in an amount equal to the sum of the funding that the Indian tribe would otherwise receive in accordance with the funding formula established under the other provisions of this subsection, and an additional percentage of that amount equal to the percentage of funds withheld during the applicable fiscal year for the road program management costs of the Bureau of Indian Affairs under subsection (f)(1).

"(II) APPLICANT POOL.—The applicant pool described in this sub-

clause shall consist of each Indian tribe (or consortium) that—

"(aa) has successfully completed the planning phase described in subclause (III);

"(bb) has requested participation in the demonstration project under this subparagraph through the adoption of a resolution or other official action by the tribal governing body; and

"(cc) has demonstrated financial stability and financial management capability in accordance with subclause (III) during the 3-fiscal year period immediately preceding the fiscal year for which participation under this subparagraph is being requested.

"(III) CRITERIA FOR DETERMINING FINANCIAL STABILITY AND FINANCIAL MANAGEMENT CAPACITY.—For the purpose of subclause (II), evidence that, during the 3-year period referred to in subclause (II)(cc), an

Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe's self-determination contracts or self-governance funding agreements with any Federal agency shall be conclusive evidence of the required stability and capability.

"(IV) PLANNING PHASE.—

"(aa) IN GENERAL.—An Indian tribe (or consortium) requesting participation in the demonstration project under this subparagraph shall complete a planning phase that shall include legal and budgetary research and internal tribal government and organization preparation.

"(bb) ELIGIBILITY.—A tribe (or consortium) described in item (aa) shall be eligible to receive a grant under this subclause to plan and negotiate participation in a project described in that item.".

SEC. 5. TRIBAL TRANSPORTATION SAFETY PROGRAM.

(a) IN GENERAL.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following:

"§ 412. Tribal Transportation Safety Program

"(a) DEFINITION OF INDIAN TRIBE.—In this section, the term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"(b) PROGRAM.—

"(1) IN GENERAL.—The Secretary shall carry out a program to provide to eligible Indian tribes (as determined by the Secretary) competitive grants for use in establishing tribal transportation safety programs on—

"(A) Indian reservations; and

"(B) other land under the jurisdiction of an Indian tribe.

"(2) USE OF FUNDS.—Funds from a grant provided under paragraph (1) may be used to carry out a project or activity—

"(A) to prevent the operation of motor vehicles by intoxicated individuals;

"(B) to promote increased seat belt use rates;

"(C) to eliminate hazardous locations on, or hazardous sections or elements of—

"(i) a public road;

"(ii) a public surface transportation facility;

"(iii) a publicly-owned bicycle or pedestrian pathway or trail; or

"(iv) a traffic calming measure;

"(D) to eliminate hazards relating to railway-highway crossings; or

"(E) to increase transportation safety by any other means, as determined by the Secretary.

"(c) FEDERAL SHARE.—The Federal share of the cost of carrying out the program under this section shall be 100 percent.

"(d) FUNDING.—Notwithstanding any other provision of law, there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section—

"(1) $10,000,000 for each of fiscal years 2004 and 2005;

"(2) $20,000,000 for each of fiscal years 2006 and 2007; and

"(3) $30,000,000 for each of fiscal years 2008 and 2009.".

(b) CONFORMING AMENDMENT.—The analysis for chapter 4 of title 23, United States Code, is amended by inserting after the item relating to section 411 the following:

"412. Tribal Transportation Safety Program.".

SEC. 6. INDIAN RESERVATION RURAL TRANSIT PROGRAM.

Section 5311 of title 49, United States Code, is amended by adding at the end the following:

"(k) INDIAN RESERVATION RURAL TRANSIT PROGRAM.—

"(1) DEFINITION OF INDIAN TRIBE.—In this subsection, the term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"(2) PROGRAM.—

"(A) IN GENERAL.—The Secretary of Transportation shall establish and carry out a program to provide competitive grants to Indian tribes to establish rural transit programs on reservations or other land under the jurisdiction of the Indian tribes.

"(B) AMOUNT OF GRANTS.—The amount of a grant provided to an Indian tribe under

subparagraph (A) shall be based on the need of the Indian tribe, as determined by the Secretary of Transportation.

"(3) FUNDING.—Notwithstanding any other provision of law, for each fiscal year, of the amount made available to carry out this section under section 5338 for the fiscal year, the Secretary of Transportation shall use $20,000,000 to carry out this subsection.".

SEC. 7. SENSE OF CONGRESS REGARDING INDIAN RESERVATION ROADS.

(a) FINDINGS.—Congress finds that—

(1) the maintenance of roads on Indian reservations is a responsibility of the Bureau of Indian Affairs;

(2) amounts made available by the Federal Government as of the date of enactment of this Act for maintenance of roads on Indian reservations under section 204(c) of title 23, United States Code, comprise only 30 percent of the annual amount of funding needed for maintenance of roads on Indian reservations in the United States; and

(3) any amounts made available for construction of roads on Indian reservations will be wasted if those roads are not properly maintained.

(b) SENSE OF CONGRESS.—It is the sense of Congress that Congress should annually provide to the Bureau of Indian Affairs such funding as is necessary to carry out all maintenance of roads on Indian reservations in the United States.

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II

108TH CONGRESS
1ST SESSION

S. 1122

To provide equitable funding for tribal transportation programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 22, 2003

Mr. JOHNSON (for himself and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To provide equitable funding for tribal transportation programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Tribal Transportation Program Improvement Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purpose.

TITLE I—INDIAN RESERVATION ROADS

Sec. 101. Funding for Indian reservation roads.
Sec. 102. Federal lands highways program demonstration project.
Sec. 103. Right-of-way agreements.
Sec. 104. Indian reservation road program efficiency improvements.
Sec. 105. Bureau of Indian Affairs and Federal Highway Administration program management funding.
Sec. 106. Deputy Assistant Secretary for Tribal Government Affairs; Indian Reservation Roads Coordinating Committee.
Sec. 107. Regulations.

TITLE II—ADDITIONAL TRIBAL TRANSPORTATION PROGRAMS

Sec. 201. Tribal scenic byways.
Sec. 202. Tribal transportation safety program.
Sec. 203. Indian reservation rural transit program.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) because many Indian tribes are located in remote areas, transportation is particularly important to the basic quality of life and economic development of Indian tribes;

(2) safe roads are essential for—

(A) Indian children to travel to and from school;

(B) sick and elderly individuals to receive basic health care and medical treatment; and

(C) food and other necessities to be delivered to shops and consumers;

(3) transportation is critical to the efforts of Indian tribes to—

(A) sustain robust economies; and

(B) attract new jobs and businesses;

(4) most Indian tribes lack the basic transportation systems that other people in the United States take for granted;

(5) Indian communities continue to lag behind the rest of the United States in quality of life and economic vitality;

(6) unemployment rates in Indian country frequently exceed 50 percent, and poverty rates often exceed 40 percent;

(7) the limited availability of housing and jobs on Indian reservations forces people to commute long distances each day to travel to work or school, obtain health care, take advantage of basic government services, go shopping, or even obtain drinking water;

(8) the Indian reservation roads system established under title 23, United States Code, comprises more than 50,000 miles of roads under the jurisdiction of the Bureau of Indian Affairs and tribal, State, county, and local governments;

(9) more than ⅔ of those roads are not paved, and many resemble roads in third-world countries;

(10) as of the date of enactment of this Act, approximately 140 of the 753 bridges under the ju-

risdiction of the Bureau of Indian Affairs are rated as being deficient;

(11) The Indian reservation roads system serves both Indians and the general public and is part of a unified national road network;

(12) even though the Indian reservation roads system is perhaps the most rudimentary of any transportation network in the United States, more than 2,000,000,000 vehicle miles are traveled annually on the system;

(13) the poor quality of so many Indian reservation roads has a serious impact on highway safety;

(14) according to the Federal Highway Administration, the highway fatality rate on Indian reservation roads is 4 times the national average highway fatality rate on all roads;

(15) automobile accidents are the primary cause of death for young Indian individuals; and

(16) the Federal Highway Administration estimates the backlog of improvement needs for Indian reservation roads at approximately $6,800,000,000.

(b) PURPOSE.—The purpose of this Act is to reauthorize, expand, and streamline the Indian reservation roads program to improve transportation safety and better

meet the needs of Indian individuals and other members of the traveling public.

TITLE I—INDIAN RESERVATION ROADS

SEC. 101. FUNDING FOR INDIAN RESERVATION ROADS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 1101(a)(8)(A) of the Transportation Equity Act for the 21st Century (112 Stat. 112) is amended—

(1) by striking ''For'' and inserting the following:

''(i) IN GENERAL.—Subject to clause (ii), for''; and

(2) by striking ''of such title'' and all that follows and inserting ''of that title—

''(I) $225,000,000 for fiscal year 1998;

''(II) $275,000,000 for each of fiscal years 1999 through 2003;

''(III) $550,000,000 for fiscal year 2004,;

''(IV) $625,000,000 for fiscal year 2005; and

''(V) $725,000,000 for each of fiscal years 2006 through 2009.''; and

(3) by adding at the end the following:

"(ii) MAINTENANCE.—Of the amounts made available for each fiscal year under subclauses (III) through (V) of clause (i), not less than $100,000,000 shall be used—

"(I) to maintain roads on Indian reservations in the United States; and

"(II) to maintain tribal transportation facilities serving Indian reservations and other tribal communities in the United States.".

(b) OBLIGATION CEILING.—Section 1102(c)(1) of the Transportation Equity Act for the 21st Century (23 U.S.C. 104 note; 112 Stat. 116) is amended—

(1) by striking "distribute obligation" and inserting the following: "distribute—

"(A) obligation";

(2) by inserting "and" after the semicolon at the end; and

(3) by adding at the end the following:

"(B) for any fiscal year after fiscal year 2003, any amount of obligation authority made available for Indian reservation road bridges under section 202(d)(4), and for Indian res-

ervation roads under section 204, of title 23, United States Code;''.

(c) INDIAN RESERVATION ROAD BRIDGES.—Section 202(d)(4) of title 23, United States Code, is amended—

(1) in subparagraph (B)—

(A) by striking ''(B) RESERVATION.—Of the amounts'' and all that follows through ''to replace,'' and inserting the following:

''(B) FUNDING.—

''(i) RESERVATION OF FUNDS.—Notwithstanding any other provision of law, there is authorized to be appropriated from the Highway Trust Fund $15,000,000 for each of fiscal years 2004 through 2009 to carry out planning, design, engineering, construction, and inspection of projects to replace,''; and

(B) by adding at the end the following:

''(ii) AVAILABILITY.—Funds made available to carry out this subparagraph shall be available for obligation in the same manner as if the funds were apportioned under chapter 1.''; and

(2) by striking subparagraph (D) and inserting the following:

"(D) APPROVAL AND NEED REQUIREMENTS.—

"(i) PRELIMINARY ENGINEERING.—Funds for preliminary engineering for Indian reservation road bridge projects under this subsection may be made available by the Secretary on receipt of a request from—

"(I) an Indian tribe; or

"(II) the Secretary of the Interior.

"(ii) CONSTRUCTION.—Funds for construction of Indian reservation road bridge projects under this subsection shall be made available by the Secretary only—

"(I) after approval by the Secretary of plans, specifications, and estimates relating to the projects; and

"(II) in amounts directly proportional to the actual need of each Indian reservation, as determined by the Secretary based on the number of deficient bridges on each reservation and the projected cost of rehabilitation of those bridges.".

(d) INDIAN RESERVATION ROAD PLANNING.—Section 204(j) of title 23, United States Code, is amended in the first sentence by striking ''2 percent'' and inserting ''5 percent''.

SEC. 102. FEDERAL LANDS HIGHWAYS PROGRAM DEMONSTRATION PROJECT.

Section 202(d)(3) of title 23, United States Code, is amended by adding at the end the following:

''(C) FEDERAL LANDS HIGHWAY PROGRAM DEMONSTRATION PROJECT.—

''(i) IN GENERAL.—The Secretary shall establish a demonstration project under which all funds made available under this title for Indian reservation roads and for highway bridges located on Indian reservation roads as provided for in subparagraph (A) shall be made available, on the request of an affected Indian tribal government, to the Indian tribal government for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.), contracts and agreements for the planning, research, engineering, and construction described in that subparagraph.

"(ii) EXCLUSION OF AGENCY PARTICIPATION.—In accordance with subparagraph (B), all funds for Indian reservation roads and for highway bridges located on Indian reservation roads to which clause (i) applies shall be paid without regard to the organizational level at which the Federal lands highway program has previously carried out the programs, functions, services, or activities involved.

"(iii) SELECTION OF PARTICIPATING TRIBES.—

"(I) PARTICIPANTS.—

"(aa) IN GENERAL.—For each fiscal year, the Secretary shall select 12 geographically diverse Indian tribes from the applicant pool described in subclause (II) to participate in the demonstration project carried out under clause (i).

"(bb) CONSORTIA.—Two or more Indian tribes that are otherwise eligible to participate in a program or activity to which this

title applies may form a consortium to be considered as a single Indian tribe for the purpose of becoming part of the applicant pool under subclause (II).

"(cc) FUNDING.—An Indian tribe participating in the pilot program under this subparagraph shall receive funding in an amount equal to the sum of the funding that the Indian tribe would otherwise receive in accordance with the funding formula established under the other provisions of this subsection, and an additional percentage of that amount equal to the percentage of funds withheld during the applicable fiscal year for the road program management costs of the Bureau of Indian Affairs under subsection (f)(1).

"(II) APPLICANT POOL.—The applicant pool described in this sub-

clause shall consist of each Indian tribe (or consortium) that—

"(aa) has successfully completed the planning phase described in subclause (III);

"(bb) has requested participation in the demonstration project under this subparagraph through the adoption of a resolution or other official action by the tribal governing body; and

"(cc) has demonstrated financial stability and financial management capability in accordance with subclause (III) during the 3-fiscal year period immediately preceding the fiscal year for which participation under this subparagraph is being requested.

"(III) CRITERIA FOR DETERMINING FINANCIAL STABILITY AND FINANCIAL MANAGEMENT CAPACITY.—For the purpose of subclause (II), evidence that, during the 3-year period referred to in subclause (II)(cc), an

Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe's self-determination contracts or self-governance funding agreements with any Federal agency shall be conclusive evidence of the required stability and capability.

"(IV) PLANNING PHASE.—

"(aa) IN GENERAL.—An Indian tribe (or consortium) requesting participation in the demonstration project under this subparagraph shall complete a planning phase that shall include legal and budgetary research and internal tribal government and organization preparation.

"(bb) ELIGIBILITY.—A tribe (or consortium) described in item (aa) shall be eligible to receive a grant under this subclause to plan and negotiate participation in a project described in that item.".

SEC. 103. RIGHT-OF-WAY AGREEMENTS.

Section 202(d) of title 23, United States Code, is amended by adding at the end the following:

"(5) RIGHT-OF-WAY AGREEMENTS.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, an Indian tribe or tribal organization shall not be subject to part 169 of title 25, Code of Federal Regulations (or a successor regulation), in carrying out an Indian reservation road under this title in accordance with a contract or agreement entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.).

"(B) CRITERIA.—The Secretary shall establish criteria for right-of-way agreements developed by an Indian tribe or tribal organization under this subsection in accordance with regulations promulgated under section 153.".

SEC. 104. INDIAN RESERVATION ROAD PROGRAM EFFICIENCY IMPROVEMENTS.

(a) TRIBAL FLEXIBILITY AND INNOVATIVE FINANCING.—Section 115 of title 23, United States Code, is amended by adding at the end the following:

"(d) TRIBAL RECEIPT OF ADVANCE CONSTRUCTION FUNDS.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, an Indian tribe or tribal organization that is eligible to participate in an Indian reservation road program under section 202(d) shall be eligible to receive advance construction funds for the programs identified in subsection (a) for use for projects on the Indian reservation road program system.

"(2) STATUS.—An eligible Indian tribe or tribal organization described in paragraph (1) shall be considered to be a State for the purpose of this section.".

(b) EMERGENCY FUNDS.—Section 125(e) of title 23, United States Code, is amended—

(1) by striking "(e) The Secretary" and inserting the following:

"(e) EMERGENCY FUNDS.—

"(1) IN GENERAL.—The Secretary"; and

(2) by adding at the end the following:

"(2) APPLICATIONS FOR EMERGENCY FUNDS.—

"(A) IN GENERAL.—Notwithstanding any other provision of law—

"(i) an Indian tribal government may submit directly to the Secretary an application for emergency funds for the repair or

reconstruction of Indian reservation roads and other tribal transportation facilities; and

"(ii) the Secretary shall process the application in the same manner in which similar applications from Federal agencies are processed.

"(B) CRITERIA.—The Secretary shall develop criteria for emergency funds applications under this subsection in accordance with regulations promulgated in accordance with section 135.".

(c) PAYMENTS ON FEDERAL-AID PROJECTS UNDERTAKEN BY A FEDERAL AGENCY OR INDIAN TRIBE.—Section 132 of title 23, United States Code, is amended—

(1) in the first sentence, by striking "Where" and inserting the following:

"(1) IN GENERAL.—If";

(2) in the second sentence, by striking "Upon" and inserting the following:

"(2) ADJUSTMENT.—On";

(3) in the last sentence, by striking "Any" and inserting the following:

"(3) CREDITING OF FUNDS.—Any"; and

(4) by adding at the end the following:

"(d) DIRECT PERFORMANCE OF DESIGN ON CONSTRUCTION ACTIVITIES.—

"(1) IN GENERAL.—If the Federal-aid project affects a tribal transportation facility, the State shall consult with the affected Indian tribe to determine whether the Indian tribe is interested in directly performing design or construction activities on all or a portion of the Federal-aid project.

"(2) DEPOSIT WITH OR PAYMENT TO FEDERAL AGENCY.—If an agreement is reached between the State and the affected Indian tribe, the State shall make a deposit with or payment to the appropriate Federal agency to permit the Indian tribe to carry out design or construction activities on the Federal-aid project in accordance with a funding agreement authorized under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

"(3) FEDERAL SHARE.—If the State elects to directly perform design or construction activities under paragraph (1), the Federal share payable for the Federal-aid project shall be 100 percent.".

(d) SURFACE TRANSPORTATION PROGRAM.—Section 133(c) of title 23, United States Code, is amended by inserting "are a tribal transportation facility or" after "unless such roads."

(e) SCOPE OF AUTHORITY.—Section 202(d)(3)(B) of title 23, United States Code, is amended—

(1) by striking ''(B) EXCLUSION OF AGENCY PARTICIPATION.—Funds for'' and inserting the following:

''(B) EXCLUSION OF AGENCY PARTICIPATION.—

''(i) IN GENERAL.—Funds for''; and

(2) by adding at the end the following:

''(ii) ASSUMPTION OF RESPONSIBILITY.—In accordance with this subparagraph, and notwithstanding any other provision of law, an Indian tribe or tribal organization may assume responsibility for any program, function, service, or activity under this subsection (other than any program, function, service, or activity that, as determined by the Secretary, is inherently Federal and cannot be legally transferred) in accordance with a contract or agreement under title I or title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.).

''(iii) DISPUTE OVER TRANSFERABILITY.—In the event of a disagreement

between the Secretary and an Indian tribe or tribal organization over whether a particular program, function, service or activity may be lawfully transferred in accordance with clause (ii), the Indian tribe or tribal organization may pursue all alternative dispute resolution and appeal procedures authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.).''.

(f) ADVANCE FUNDING AND USE OF SAVINGS.—Section 202(d) of title 23, United States Code, (as amended by section 103) is amended by adding at the end the following:

''(6) ADVANCE FUNDING.—Notwithstanding any other provision of law (including an interagency agreement), all funds made available to an Indian tribal government or tribal organization under paragraph (3) shall be provided as advance payments, in the form of annual or semiannual installments at the discretion of the Indian tribe or tribal organization.

''(7) USE OF SAVINGS AND PROGRAM INCOME.—Notwithstanding any other provision of law (including an interagency agreement), all funds made available to an Indian tribal government or

tribal organization in accordance with paragraph (3) for a fiscal year that are unexpended at the end of the fiscal year, including any program income earned by the Indian tribe or tribal organization as a result of carrying out the contract or agreement—

"(A) shall be used by the Indian tribe or tribal organization to provide additional services or benefits under the contract or agreement; and

"(B) shall not be a basis for reducing the amount of funds provided to the Indian tribe or tribal organization in future years.".

(g) APPROVAL OF PLANS, SPECIFICATIONS, AND ESTIMATES.—Section 202 of title 23, United States Code, is amended by adding at the end the following:

"(f) APPROVAL OF PLANS, SPECIFICATIONS, AND ESTIMATES.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, an Indian tribe or tribal organization may approve plans, specifications, and estimates, and commence road and bridge construction under this section, that are funded through a contract or agreement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.), if the Indian tribe or tribal organization—

"(A) provides assurances in the contract or agreement that the construction will meet or exceed applicable health and safety standards;

"(B) obtains the advance review of the plans and specifications from a licensed professional who has certified that the plans and specifications meet or exceed applicable health and safety standards; and

"(C) provides a copy of the certification under subparagraph (B) to the Assistant Secretary for Indian Affairs.

"(2) CONTRACT TO SERVE AS STEWARDSHIP AGREEMENT.—Notwithstanding any other provision of law, an Indian tribe or tribal organization may carry out any program, function, service, or activity of an Indian reservation road program under this section, including any program, function, service, or activity that, before the date of enactment of this subsection, was the subject of a stewardship agreement executed in accordance with the terms of a contract or agreement entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.).".

(h) TRANSPORTATION IMPROVEMENT PROGRAM.—Section 204(a) of title 23, United States Code, is amended by striking paragraph (3) and inserting the following:

"(3) APPROVAL OF TRANSPORTATION IMPROVEMENT PROGRAM.—

"(A) IN GENERAL.—To be effective, the transportation improvement program developed as a part of the transportation planning process under this section shall be approved by the Secretary.

"(B) FREQUENCY OF UPDATES.—The Secretary of the Interior shall provide to the Secretary an updated tribal transportation improvement program—

"(i) on a quarterly basis; or

"(ii) more frequently, as necessary.

"(C) MODIFICATIONS.—If an Indian tribe requests a modification of the tribal transportation improvement program of the Indian tribe, the Secretary of the Interior shall complete any pending update under subparagraph (B) not later than 45 days after the date of receipt of the request, except in unusual circumstances, as determined by the Secretary of the Interior.".

(i) ELIGIBILITY; CONTRACT SUPPORT FUNDING.—Section 204 of title 23, United States Code, is amended by striking subsection (c) and inserting the following:

"(c) APPROVAL OF PROJECTS.—

"(1) IN GENERAL.—Before approving as a project on an Indian reservation road in a State any project eligible to receive funds apportioned under section 104 or 144, the Secretary shall determine that the obligation of funds for the project is—

"(A) supplementary to, and not in lieu of, the obligation for projects on Indian reservation roads; and

"(B) a fair and equitable share of funds apportioned to the State under section 104.

"(2) SET-ASIDE FOR SHORTAGES.—

"(A) IN GENERAL.—Of the amounts made available for each fiscal year from the Highway Trust Fund for Indian reservation road programs under this section, not more than $10,000,000 may be used to mitigate the shortage in amounts available for obligation by contracting or compacting Secretaries under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.) to provide contract support cost funding to Indian tribes

and tribal organizations with respect to the administration by the Indian tribes and tribal organizations of services, functions, and activities, of Indian reservation road programs under self-determination contracts and self-government agreements.

"(B) REPORT.—For each fiscal year, the Secretary of the Interior shall submit to Congress a report that describes the total amount of funds made available under subparagraph (A) for the fiscal year that were used to mitigate the shortages described in subparagraph (A).

"(3) ROAD SEALING PROJECTS.—

"(A) IN GENERAL.—Notwithstanding any other provision of this title, the Bureau of Indian Affairs, in carrying out a tribal transportation program under the jurisdiction of the Bureau of Indian Affairs, may expend not more than 15 percent of the funds apportioned for the tribal transportation program from the Highway Trust Fund for each fiscal year to carry out road sealing projects.

"(B) RESPONSIBILITY.—The Bureau of Indian Affairs be responsible for road mainte-

nance programs on Indian reservations, including the responsibility to make annual funding requests.''.

SEC. 105. BUREAU OF INDIAN AFFAIRS AND FEDERAL HIGHWAY ADMINISTRATION PROGRAM MANAGEMENT FUNDING.

Section 202 of title 23, United States Code (as amended by section 104(g)), is amended by adding at the end the following:

''(g) TRIBAL TRANSPORTATION.—

''(1) BUREAU OF INDIAN AFFAIRS.—Notwithstanding any other provision of law, the Secretary shall not deduct from any apportionment of funds made available for tribal transportation purposes to an Indian tribe or tribal organization under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b et seq.), any administrative expenses incurred by the Bureau of Indian Affairs relating to individual projects carried out by the Indian tribe or tribal organization in accordance with a contract or agreement under that Act.

''(2) PROGRAM MANAGEMENT AND ADMINISTRATIVE EXPENSE REPORTS.—Not later than November 30, 2004, and annually thereafter, the Assistant Secretary for Indian Affairs and the Director of the

Federal Highway Administration shall submit to Congress a report that describes, for the fiscal year preceding the fiscal year in which the report is submitted, line item and narrative summaries of the use, by each of the Bureau of Indian Affairs and the Federal Highway Administration, of funds associated with the program management and administrative expenses of Indian reservation road programs.''.

SEC. 106. DEPUTY ASSISTANT SECRETARY FOR TRIBAL GOVERNMENT AFFAIRS; INDIAN RESERVATION ROADS COORDINATING COMMITTEE.

(a) IN GENERAL.—Chapter 3 of title 23, United States Code, is amended by adding at the end the following:

''§ 325. Deputy Assistant Secretary for Tribal Government Affairs

''(a) ESTABLISHMENT OF POSITION.—

''(1) IN GENERAL.—There is established in the Office of the Secretary of Transportation the position of Deputy Assistant Secretary for Tribal Governmental Affairs (referred to in this section as the 'Deputy').

''(2) APPOINTMENT.—The Deputy shall be appointed by the Secretary.

"(b) RESPONSIBILITIES.—The Deputy shall—

"(1) plan, coordinate, and implement policy and programs of the Department of Transportation that serve Indian tribes and tribal organizations;

"(2) coordinate Indian reservation road programs and activities in all branches and administrations of the Department of Transportation;

"(3) participate in any negotiated rulemaking relating to, or having an impact on, projects, programs, or funding associated with the Indian reservation roads program; and

"(4) serve as a member of the Joint Indian Reservation Roads Coordinating Committee established under section 326(a).

"§ 326. Indian Reservation Roads Coordinating Committee

"(a) IN GENERAL.—Using funds made available to the Secretary and the Secretary of the Interior under this title, not later than 180 days after the date of enactment of this section, the Secretary and the Secretary of the Interior shall establish a Joint Indian Reservation Roads Coordinating Committee (referred to in this section as the 'Committee').

"(b) PURPOSE.—The Committee shall assist the Secretary in carrying out the goals and purposes of this title with respect to Indian reservation roads.

"(c) COMPOSITION.—The Committee shall be composed of—

"(1) the Deputy Assistant Secretary for Tribal Governmental Affairs appointed under section 325(a)(2); and

"(2) such other members as the Secretary may appoint after consultation with interested Indian tribes through the negotiated rulemaking committee established under section 202(d)(2)(B).".

(b) CONFORMING AMENDMENT.—The analysis for chapter 3 of title 21 is amended by inserting after the item relating to section 324 the following:

"325. Deputy Assistant Secretary for Tribal Government Affairs.
"326. Indian Reservation Roads Coordinating Committee.".

SEC. 107. REGULATIONS.

Section 202(d)(2) of title 23, United States Code, is amended—

(1) by striking subparagraphs (B) and (C);

(2) by redesignating subparagraph (D) as subparagraph (H); and

(3) by inserting after subparagraph (A) the following:

"(B) REGULATIONS.—The Secretary and the Secretary of the Interior shall promulgate joint regulations governing the Indian reservation road programs carried out under this subsection by establishing a negotiated rulemaking committee in accordance with sections 563(a) and 565(a) of title 5.

"(C) NEGOTIATED RULEMAKING COMMITTEE.—In establishing a negotiated rulemaking committee under subparagraph (B), the Secretary of the Interior and Secretary of Transportation shall—

"(i) apply the procedures established under subchapter III of chapter 5 of title 5 in a manner that reflects the unique government-to-government relationship between the Indian tribes and the United States; and

"(ii) ensure that membership of the committee includes only representatives of—

"(I) the Federal Government; and

"(II) geographically diverse small, medium, and large Indian tribes.

"(D) EXPIRATION OF RULEMAKING AUTHORITY.—The authority of the Secretary and the Secretary of the Interior to promulgate regulations under subparagraph (B) terminates on the date that is 20 months after the date of enactment of the Tribal Transportation Program Improvement Act of 2003.

"(E) ADVISORY ENTITIES.—Notwithstanding any other provision of law, the Secretary and the Secretary of the Interior may jointly establish and fund such interagency committees or other interagency entities (including advisory entities comprised of tribal representatives) as are appropriate to carry out this paragraph.

"(F) FUNDING PROCEDURES AND ELIGIBILITY CRITERIA.—Not later than 180 days after funds are made available for fiscal year 2004 to carry out Indian reservation road programs under this subsection, the Secretary and the Secretary of the Interior shall jointly, in consultation with Indian tribal governments—

"(i) develop funding procedures and eligibility criteria applicable to Indian tribes and tribal organizations with respect to allocations and grants authorized under this title; and

"(ii) publish in the Federal Register a description of the procedures and criteria.

"(G) COORDINATION OF INDIAN INTERMODAL TRANSPORTATION PROGRAMS.—In promulgating regulations to carry out section 204 and other applicable provisions of law, the Secretary may coordinate and centralize the administration of Indian intermodal transportation programs to ensure that the purposes of the programs are achieved.".

TITLE II—ADDITIONAL TRIBAL TRANSPORTATION PROGRAMS

SEC. 201. TRIBAL SCENIC BYWAYS.

(a) IN GENERAL.—Section 162(a) of title 23, United States Code, is amended by adding at the end the following:

"(4) TRIBAL SCENIC BYWAYS COMPONENT.—

"(A) DEFINITION OF NATIVE VILLAGE.—In this paragraph, the term 'Native village' has the meaning given the term in section 3 of the

Alaska Native Claims Settlement Act (43 U.S.C. 1602).

"(B) ESTABLISHMENT.—In recognition of roads and highways that provide access to, or possess significant cultural, historical, recreational, or scenic value within, Indian communities and Native villages, the Secretary shall carry out a tribal scenic byways component within the national scenic byways program.

"(C) DESIGNATION OF TRIBAL SCENIC BYWAYS.—The Secretary shall designate as tribal scenic byways roads or bridges that—

"(i) have been nominated for designation as a National Scenic Byway or All-American Road by the Secretary of the Interior, in consultation with affected tribal governments; and

"(ii) as determined by the Secretary—

"(I) qualify as tribal transportation facilities, as determined by the Secretary; and

"(II) possess outstanding cultural, historical, recreational, or scenic qualities within Indian communities and Native villages.

"(D) INCLUSION AS NATIONAL SCENIC BYWAYS OR ALL-AMERICAN ROADS.—After designation of a road or bridge as a tribal scenic byway under subparagraph (C), the Secretary may accept a road or bridge for inclusion in the registry of National Scenic Byways or All-American Roads.

"(E) FUNDING AGREEMENTS.—Notwithstanding any other provision of law, an Indian tribe or tribal organization that receives a grant or technical assistance under subsection (b) for a tribal scenic byway may administer that grant or assistance in accordance with a funding agreement between the Indian tribe or tribal organization and the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) that is in effect as of the date of provision of the grant or assistance.".

(b) CONFORMING AMENDMENTS.—

(1) Section 162(b) of title 23, United States Code, is amended—

(A) in paragraph (1), by striking "States to—" and inserting "States and Indian tribes to—"; and

(B) in paragraph (2)—

(i) in subparagraph (B), by striking ''and'' at the end;

(ii) in subparagraph (C), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(D) each eligible project that qualifies as a tribal transportation facility, as determined by the Secretary.''.

(2) Section 162(c) of title 23, United States Code, is amended—

(A) in paragraph (3), by inserting ''tribal scenic byway,'' after ''State scenic byway,''; and

(B) by adding at the end the following:

''(9) An activity relating to the planning, design, construction or development of a tribal scenic byway program or project.''.

SEC. 202. TRIBAL TRANSPORTATION SAFETY PROGRAM.

(a) IN GENERAL.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following:

"§ 412. Tribal transportation safety program

''(a) DEFINITION OF INDIAN TRIBE.—In this section, the term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

''(b) PROGRAM.—

''(1) IN GENERAL.—The Secretary shall carry out a program to provide to eligible Indian tribes (as determined by the Secretary) competitive grants for use in establishing tribal transportation safety programs on—

''(A) Indian reservations; and

''(B) other land under the jurisdiction of an Indian tribe.

''(2) USE OF FUNDS.—Funds from a grant provided under paragraph (1) may be used to carry out a project or activity—

''(A) to prevent the operation of motor vehicles by intoxicated individuals;

''(B) to promote increased seat belt use rates;

''(C) to eliminate hazardous locations on, or hazardous sections or elements of—

''(i) a public road;

''(ii) a public surface transportation facility;

"(iii) a publicly-owned bicycle or pedestrian pathway or trail; or

"(iv) a traffic calming measure;

"(D) to eliminate hazards relating to railway-highway crossings; or

"(E) to increase transportation safety by any other means, such as—

"(i) building wider shoulders;

"(ii) providing additional signage; or

"(iii) carrying out any other appropriate activity, as determined by the Secretary.

"(c) FEDERAL SHARE.—The Federal share of the cost of carrying out the program under this section shall be 100 percent.

"(d) FUNDING.—Notwithstanding any other provision of law, there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $50,000,000 for each of fiscal years 2004 through 2009.".

(b) CONFORMING AMENDMENT.—The analysis for chapter 4 of title 23, United States Code, is amended by inserting after the item relating to section 411 the following:

"412. Tribal transportation safety program.".

SEC. 203. INDIAN RESERVATION RURAL TRANSIT PROGRAM.

Section 5311 of title 49, United States Code, is amended by adding at the end the following:

"(k) INDIAN RESERVATION RURAL TRANSIT PROGRAM.—

"(1) DEFINITION OF INDIAN TRIBE.—In this subsection, the term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"(2) PROGRAM.—

"(A) IN GENERAL.—The Secretary of Transportation shall establish and carry out a program to provide competitive grants to Indian tribes to establish rural transit programs on reservations or other land under the jurisdiction of the Indian tribes.

"(B) AMOUNT OF GRANTS.—The amount of a grant provided to an Indian tribe under subparagraph (A) shall be based on the need of the Indian tribe, as determined by the Secretary of Transportation.

"(3) FUNDING.—Notwithstanding any other provision of law, for each fiscal year, of the amount made available to carry out this section under sec-

tion 5338 for the fiscal year, the Secretary of Transportation shall use $20,000,000 to carry out this subsection.''.

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II

108TH CONGRESS
1ST SESSION

S. 1165

To amend the Transportation Equity Act for the 21st Century to provide from the Highway Trust Fund additional funding for Indian reservation roads, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 2, 2003

Mr. DOMENICI (for himself, Mr. INOUYE, Mr. CAMPBELL, and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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A BILL

To amend the Transportation Equity Act for the 21st Century to provide from the Highway Trust Fund additional funding for Indian reservation roads, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''American Indian Reservation Transportation Improvement Program Act''.

SEC. 2. INDIAN RESERVATION ROADS.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 1101(a)(8)(A) of the Transportation Equity Act for the

21st Century (112 Stat. 112) is amended by striking ''of such title'' and all that follows and inserting ''of that title—

''(i) $225,000,000 for fiscal year 1998;

''(ii) $275,000,000 for each of fiscal years 1999 through 2003;

''(iii) $330,000,000 for fiscal year 2004;

''(iv) $360,000,000 for fiscal year 2005;

''(v) $390,000,000 for fiscal year 2006;

''(vi) $420,000,000 for fiscal year 2007;

''(vii) $450,000,000 for fiscal year 2008; and

''(viii) $480,000,000 for fiscal year 2009.''.

(b) ADDITIONAL AUTHORIZATION OF CONTRACT AUTHORITY FOR STATES WITH INDIAN RESERVATIONS.—Section 1214(d)(5)(A) of the Transportation Equity Act for the 21st Century (23 U.S.C. 202 note; 112 Stat. 206) is amended by inserting before the period at the end the following: '', $3,000,000 for each of fiscal years 2004 and

2005, $4,000,000 for each of fiscal years 2006 and 2007, and $5,000,000 for each of fiscal years 2008 and 2009''.

(c) INDIAN RESERVATION ROAD BRIDGES.—Section 202(d)(4)(B) of title 23, United States Code, is amended—

(1) by striking ''(B) RESERVATION.—Of the amounts'' and all that follows through ''to replace,'' and inserting the following:

''(B) FUNDING.—

''(i) RESERVATION OF FUNDS.—Notwithstanding any other provision of law, there is authorized to be appropriated from the Highway Trust Fund $15,000,000 for each of fiscal years 2004 through 2009 to carry out planning, design, engineering, preconstruction, construction, and inspection of projects to replace,''; and

(2) by adding at the end the following:

''(ii) AVAILABILITY.—Funds made available to carry out this subparagraph—

''(I) shall be available for obligation in the same manner as if the funds were apportioned under chapter 1; and

"(II) shall not be used to pay any administrative costs.".

SEC. 3. INDIAN RESERVATION RURAL TRANSIT PROGRAM.

Section 5311 of title 49, United States Code, is amended by adding at the end the following:

"(k) INDIAN RESERVATION RURAL TRANSIT PROGRAM.—

"(1) DEFINITIONS.—In this subsection:

"(A) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"(B) RESERVATION.—The term 'reservation' means—

"(i) an Indian reservation in existence as of the date of enactment of this subsection;

"(ii) a public domain Indian allotment; and

"(iii) an Indian reservation in the State of Oklahoma that existed at any time before, but is no longer in existence as of, the date of enactment of this subsection.

"(C) SECRETARY.—The term 'Secretary' means the Secretary of Transportation, acting

through the Administrator of the Federal Highway Administration.

"(2) PROGRAM.—The Secretary shall establish and carry out a program to provide competitive grants to Indian tribes to establish rural transit programs on reservations or other land under the jurisdiction of the Indian tribes.

"(3) COOPERATION.—The Secretary shall—

"(A) establish and maintain intra-agency cooperation between the Federal Highway Administration and the Federal Transit Administration in—

"(i) administering tribal transit programs funded by the Federal Highway Administration; and

"(ii) exploring options for the transfer of funds from the Federal Highway Administration to the Federal Transit Administration for the direct funding of tribal transit programs; and

"(B) establish and maintain working relationships with representatives of regional tribal technical assistance programs to ensure proper administration of ongoing and future tribal

transit programs carried out using Federal funds.

"(4) FUNDING.—Notwithstanding any other provision of law, for each fiscal year, of the amount made available to carry out this section under section 5338 for the fiscal year, the Secretary shall use $20,000,000 to carry out this subsection.".

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The CHAIRMAN. With that, Senator Johnson, did you have any opening comments before we start?

Senator JOHNSON. Yes; just briefly, Mr. Chairman.

Thank you for holding this important hearing today. I appreciate your leadership on this. I have a full statement I would like to submit for the record.

The CHAIRMAN. Without objection, it will be included in the record.

STATEMENT OF HON. TIM JOHNSON, U.S. SENATOR FROM SOUTH DAKOTA

Senator JOHNSON. I want to thank you as well as Senator Bingaman for work in this important area. I also want to express appreciation to the NCAI and my own Standing Rock Sioux Tribe for their leadership on tribal transportation issues. The tribes, in conjunction with the NCAI put a lot of time and effort into developing ideas that can be incorporated into legislation. It is important that these ideas were developed by the very people who have to implement these programs to deal with transportation challenges every day.

My bill, S. 1122, is the result of the work of the tribes in the NCAI. It is a comprehensive effort. I know that you, Mr. Chairman, and Senator Bingaman, have put a great deal of effort into transportation bills. This has been designed to be a comprehensive and ambitious effort. I think it is important that we get all the issues out on the table.

Just very quickly, S. 1122, in addition to obviously increasing the amount of funding for the IRR funding, beefs up the Tribal Transportation Safety Program, providing more funds for purposes such as widening shoulders, and more guardrails.

Second, it assures that tribes can apply for scenic byways status through the Federal system.

Third, it assures that tribes can derive direct funding from the Federal Government rather than having the programs be implemented through the States.

Fourth, it takes a hard look at the maintenance issue. It makes no sense to me that we should put significant expenditures into the building of roads if we are not going to provide enough funding to keep those roads properly maintained.

Fifth, it explores the idea of having a high-ranking person at DOT who can assist the tribes in their navigation through the system.

Over the past 2 weeks I have spent a great deal of time traveling around South Dakota, including travels throughout our Indian reservations, including the Pine Ridge Reservation. Frankly, the conditions of some of these roads is horrible. It is a public safety menace. It is a detriment to economic development. It is simply its own fare to tribal people. The Federal Government has fallen down on its treaty and trust obligations. It has enormous consequences in Indian country.

Mr. Chairman, I thank you for this hearing. I look forward to the testimony. I hope that as we go on through this year that we can merge a lot of these ideas together in a way that will be construc-

tive and which will significantly enhance the quality of transportation and the safety of transportation in Indian country.

The CHAIRMAN. Thank you. I agree with you. I think there are important provisions in each of the four bills. Hopefully we will be able to merge those and come out with a composite that is in the best interest of Indian people.

Senator Thomas.

STATEMENT OF CRAIG THOMAS, U.S. SENATOR FROM WYOMING

Senator THOMAS. Thank you, Mr. Chairman.

I, too, appreciate your having this hearing. Certainly it is very important. Indian country is part of the concerns that we have about highways. We need to have more transportation support there.

I have an unique involvement here in that I am on the Finance Committee that has jurisdiction over the taxes paid. I am also on the Committee on Environment and Public Works, which is reauthorizing TEA–21. I understand the importance of that investment. I am interested in hearing about Senator Bingaman's bill.

I do want to caution my fellow members that we need to remember that TEA–21 includes a number of very important programs. We must be careful that we are not disproportionate of one over another. We have significant increases in the Reservation Road Program. Where is that funding coming from? Are we going to increase taxes? Are we going to reduce State highway funding? If we double that, we are going to have to find some other additional sources.

I did a little checking. I think certainly it is important that we do this. Reservation roads have some Indian Reservation Road Program money in there as well as the Department of Transportation, the county road funding, and the State gas tax. So we need to look at the balance of how we do this. It is going to be a challenge. There is a great deal of discussion about the donors and the recipients in the gas tax proposition. There are some opportunities to raise the gas tax. Most people are not in favor of that.

I guess what we are looking for is a fair distribution of these dollars that are available. I think this is an excellent hearing. I am glad you are having it. Thank you.

The CHAIRMAN. Thank you.

Senator Domenici, did you have any comments before we start?

Senator DOMENICI. Mr. Chairman, I was here either as a member or as a witness, whichever the Chair prefers, with reference to the highway funding bill, which I have introduced, along with four or five other Senators. Thank you.

The CHAIRMAN. With that, we will go ahead and start.

Senator Bingaman, welcome to the Committee.

Senator Domenici, do you also want to testify on S. 1165?

Senator DOMENICI. No; I have a separate bill.

The CHAIRMAN. Okay. We will start with Senator Bingaman.

STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Senator BINGAMAN. Mr. Chairman, let me join with all the other members in thanking you for holding the hearing on this important issue.

As you pointed out, there is a bill that you have introduced, S. 281. Senator Domenici's bill is S. 1165 that he has introduced. Senators Johnson and Daschle have introduced S. 1122. I have introduced S. 725. There are many bills before the committee for consideration. I think we are fortunate today that President Joe Shirley of the Navajo Nation is here as well as Mark Maryboy of the Tribal Council, to testify. The Navajo Nation is the largest tribe with the largest land area. Their voice in this issue is extremely important.

The point that Senator Thomas made about trying to decide how to allocate the funds that are available for highways is exactly the right issue for us to concentrate on. In that regard, there is one statistic I want to cite to the Committee because I think it is important. The IRR program is currently authorized for $275 million per year. This level represents less than 1 percent of the annual Federal funding for road construction and rehabilitation. However, the 50,000 miles in the IRR system represent about 5 percent of the Nation's 957,000 miles of Federal-aid highways. In my view, if you are looking at a fair allocation, we are not providing that today with the current authorized level. We need to increase that.

The main trust of the bill I have introduced, along with Senators Feinstein and Leahy is to increase that authorization and to do so in a way that will allow some of the real problems in this road construction to be dealt with. The BIA now estimates the backlog in transportation needs at almost $10 billion, up from $6.8 billion just 4 years ago.

I was disappointed, as I am sure all of you were, that in the appropriations process this year we reduced the level of funding available for the Indian Reservation Roads Program by $40 million, from $280 million last year to about $240 million this year. Last month there were 15 Senators, some of you included, who signed a letter to the Appropriations Committee requesting a $350-million appropriation for the program in this upcoming year, in 2004.

Funding for tribal transportation programs needs to be one of our top priorities as we go into this reauthorization of TEA–21. The bills that you have before you, I think, give you a very good basis upon which to report out constructive legislation on this subject. As I understand it, the tribes' single highest priority transportation issue is adequate funding.

The goal of the bill that I introduced is to improve basic transportation and promote the independence and self-determination of Indian people. It is essential that Indian country be heard in this reauthorizing process. I think this hearing is a major step in that direction.

I appreciate the chance to speak briefly. I know you have many witnesses here who will give you great insight into the needs and the justification for some of these bills. Thank you again, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Bingaman.

Senator Domenici, would you like to say a few words about S. 1165?

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Thank you, Mr. Chairman.

It has been 30 years or more since we started this set-aside out of the Highway Trust Fund. Before that, it was just hit or miss, and get what we could. I was very pleased to be part of the very first bill with Senator Patrick Moynihan. Each time since we have had an opportunity to introduce a bill. Each time we have substantially increased the amount, knowing full well, the increased needs.

The bill that I have introduced, which you have cosponsored along with three other Senators, including Senator Bingaman, I believe is the minimum amount that we should proceed with. It increases the amount of the request to $330 million in the first year and a $30-million increase each year thereafter.

In addition to that, however, it does two or three things that are very much needed. First of all, it is important that the moneys that are set aside for the building of bridges, that the Indian people be allowed to use that money for planning and engineering purposes. This bill gives them that authority. Otherwise, we find a hiatus; the money is there for the building but the money is not there for the planning and the design. In addition, we increase the contract authority substantially. That, too, is very much needed and was requested specifically in negotiations with the Navajo Nation.

All in all, Mr. Chairman, I believe that S. 1165, the American Indian Reservation Transportation Improvement Act, is an excellent bill. I have more detail regarding it in a statement and a summary. It also creates for the first time an Indian reservation rural transit program. It authorizes $20 million each year for that purpose. That is the program as compared with the highways.

I think it is very important that we start by having every entity in our country that manages and has roads to have a program surrounding it with professionals. The creation of that would be very important.

Thank you for letting me spend just a few moments. Senator Inouye has joined me in my bill, as have you. I thank him and you for that. I urge not only that you move expeditiously to pick the best bill, but that we collectively pursue with some degree of vigor the committee of jurisdiction, and thereafter as suggested by Senator Bingaman, that we pursue the appropriators so that we do not have our Indian people expecting a high level, to find that the appropriations process has reduced it substantially.

Since we have begun this rather significant set-aside process under the name and nomenclature of an Indian set-aside for roads, we have made significant gains, especially in Navajo lands where it is quite obvious that the open spaces require roads. When you finally see them built, it is quite obvious that they are links that are heavily used for many purposes by the Navajo people to improve their daily lives. I thank you for that, Mr. Chairman. It is a pleasure to be with the President of the Navajo Nation. I wish him the best in his new job as leader of the Navajo people.

Thank you very much.

The CHAIRMAN. Thank you. I look forward to working with you, Senator Bingaman, and Senator Johnson in trying to make a composite bill that takes the best features of all of them. Hopefully we can move it through as quickly as we can.

Thank you, Senator Bingaman.

We will now begin with our first panel. That will be Arthur Hamilton, Associate Administrator for Federal Lands Highway, Federal Highway Administration, Department of Transportation, Washington, DC. We will also hear from Terry Virden, Director, Bureau of Indian Affairs [BIA] Department of the Interior, Washington, DC.

Your complete written statements will be included in the record. If you want to abbreviate your statement, you are welcome to do so.

We will go ahead and start with Mr. Hamilton since I introduced him first.

STATEMENT OF ARTHUR E. HAMILTON, ASSOCIATE ADMINISTRATOR FOR FEDERAL LANDS HIGHWAY, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, WASHINGTON, DC

Mr. HAMILTON. Thank you, Mr. Chairman.

I am honored to testify on two legislative proposals for amending the Indian Reservation Road Program now before this committee. I would also like to highlight some provisions in the Administration's bill, SAFETEA, that address tribal transportation needs.

Secretary Mineta has described transportation as the critical tool for economic development and quality of life in a community. The Administration is committed to providing safe and efficient transportation, for both residents and visitors, for access to and within Indian lands and Alaska Native villages, while protecting the environment and cultural resources.

We want to work with this committee, with tribes, and with the BIA to improve the Indian Reservation Road Program, and to increase tribal participation in the overall Federal aid program.

SAFETEA proposes a funding increase for the IRR program of almost 25 percent over the TEA–21 authorized level, nearly $2 billion total over a 6-year period. SAFETEA would provide the IRR program with obligation authority equal to contract authority, as also proposed by Senators Campbell and Bingaman. We believe that with full OA, the funding increase proposed in SAFETEA can make a substantial contribution toward meeting IRR program needs, and is sustainable based on current estimates of Highway Trust Fund revenues.

The Administration's proposal has also built in new opportunities for tribes to access Federal funding beyond the IRR program, including training and technical assistance. Tribes must be involved at all stages of the transportation planning process.

Our proposed planning capability initiative should facilitate this involvement. One of its objectives is to enhance tribal capacity to conduct joint transportation planning. Increased tribal participation in metropolitan and statewide planning for the Federal-Aid Program can lead to leveraging funds between tribes and States on projects of mutual benefit.

As you are aware, safety is a major problem on IRR roads the fatality rate on Indian reservation roads is four times higher than the national average. Secretary Mineta made improving safety and reducing highway fatalities the focus of the Department's reauthorization proposal, and overall funding for highway safety would more than double under SAFETEA. Included would be a new dedicated safety funding category under the Federal Lands Highway Program, funded at $40 million per year with 15 percent of the funds allocated to BIA for Indian Reservation Roads. The funds would be in addition to the 402 program funds which are also available.

A proposed new core Federal-aid program, the Highway Safety Improvement Program, can be especially important for increasing the State focus on tribal transportation facilities. The new program calls for State strategic goals that address all roadways in the State and focus on the areas of greatest need. To take full advantage of the funding flexibilities in this new program, a State would have to develop, through a collaborative process, a data-based strategic highway safety plan. In States with extensive Indian lands, and high crash statistics on Indian Reservation Roads, tribes or their representatives would be considered major stakeholders in developing the plan.

SAFETEA also proposes a major consolidation of highway safety grant programs, including incentives for safety belt use and prevention of impaired driving. BIA would be eligible for grants. The National Highway Traffic Safety Administration will continue partnering with the Indian Health Service to develop culturally specific programs to address impaired drivers and occupant protection, and to expand tribal participation in upcoming safety belt and impaired driving initiatives.

In conclusion, while the Administration has concerns about certain aspects of these two bills, primarily related to our responsibility for stewardship of highway trust fund dollars, we support many of the provisions and have similar proposals in SAFETEA.

I would like to work with this Committee, our tribal partners, and the BIA on ways to better meet tribal transportation needs.

Mr. Chairman, again thank you for the opportunity to testify. I would be happy to answer questions you or other members may have. I would ask that my prepared statement be inserted in the record in its entirety.

The CHAIRMAN. Without objection, so ordered.

[Prepared statement of Mr. Hamilton appears in appendix.]

The CHAIRMAN. Thank you.

Mr. Virden.

STATEMENT OF TERRY VIRDEN, DIRECTOR, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC, ACCOMPANIED BY LEROY GISHI, CHIEF, DIVISION OF TRANSPORTATION

Mr. VIRDEN. Mr. Chairman and members of the committee, I am pleased to be with you today to provide the Department's views on S. 281 and S. 725.

Since enactment of TEA–21, the Federal investment in the BIAs' Indian Reservation Roads [IRR] Program has exceeded $1.6 billion.

This has allowed us to improve over 900 miles of road and replace or rehabilitate 76 bridges, during this period.

Despite these efforts, as has been mentioned previously, there is still a great need for improving the transportation system in Indian country. Improved transportation systems are vital to improving public safety and increasing economic opportunities in Indian and Alaska Native communities.

The Department supports the objectives of S. 281 to improve roads on Indian reservations, but we do have some concerns regarding certain provisions. We would like to work with the committee in suggesting some clarifications in the bill.

We strongly support the provision eliminating the impact of the obligation limitation. The Administration's bill, SAFETEA, would provide obligation authority equal to contract authority so that IRR funds authorized can be obligated. Under TEA–21, the Indian Reservation Roads Program received a proportional reduction of obligation limitations for new funds using the same ratio as that applied to States, resulting in a partial loss of authorized funds. Enactment of this provision would make available as much as an 11-percent increase in transportation-related services to Indian country.

We support the efforts to increase tribal involvement in the transportation programs, but have some concerns with the language authorizing the demonstration project.

First, the legislative language does not explicitly state that the Department of Transportation is eligible to contract with tribes pursuant to the Indian Self-Determination and Education Assistance Act, Public Law 93–638. This is necessary for the successful implementation of this provision.

Second, the demonstration project does not clarify which agency would be the owner agency. Currently, the BIA is the facility owner and responsible agency for approximately 25,000 miles of the 60,000 miles in the Indian Reservation Roads system. If the committee moves forward with these provisions, we ask that you clarify which agency would be responsible for health and safety, and liability for any roads, bridges, or other related projects built under this project.

As proposed, this bill would change the law to cap the BIA to no more than 6 percent for administration and oversight of both non-project-related and project-related management and oversight. This would have the effect of drastically reducing resources available for direct service tribes.

Under the current law, the BIA has the responsibility for oversight of the entire IRR program as well as certain specific responsibilities regarding individual road projects. The BIA has consistently used less than the 6 percent allowed to perform non-contractible, non-project-related functions, such as budget formulation, review of legislative proposals, and processing transportation improvement programs [TIP's] for the submission to Federal Highways Administration, preparing annual funding agreements, defending contract dispute actions, and providing technical assistance to tribes. This also includes project-related administration oversight for health and safety for direct service Public Law 93–638 tribes that depend on the BIA for road projects.

Non-project-related work includes non-contractible activities such as the final inspection of completed road projects, processing payments to contracting tribes, reviewing environmental, archeological, and historic preservation activities relating to contracted road projects; processing rights-of-way acquisitions, preparation for road construction, reviewing plans, specifications and estimates, and conducting engineering and design activities where applicable.

In fiscal year 1999, the BIA obligated $43 million for project-related functions for all tribes. Of this amount, 75 percent was obligated for direct-service tribes for engineering design, environmental compliance, historic preservation compliance, acquisition of rights-of-way, and assuring compliance with construction standards as required by title 23. Of the 887 Indian Reservation Roads projects requiring engineering design, 660, or approximately 75 percent, were designed by the BIA on behalf of direct service tribes.

The proposed changes in the law in S. 281 would require the BIA to perform a similar number of engineering and design projects for direct service tribes with drastically reduced funding. The proposed change is not necessary because the BIA uses the 6 percent program management funds in a manner that ensures that all of the BIA's inherent Federal functions are completed, and that direct service tribes are serviced from their project funds.

Thus, it is only appropriate for the BIA to use project funds for oversight of Self-Determination Tribal Indian Reservation Road projects and to carryout BIA's responsibilities. As the General Accounting Office noted in its letter to this committee dated August 14, 2000, the BIA uses the funds consistent with the law and, in fact, the BIA, over the last 3 years, has responsibly limited the amount of funding for non-project program management to an amount less than the 6 percent.

Currently the BIA reviews and approves plans, specifications, and estimates for Indian Reservation Roads projects to ensure that construction of the projects will not jeopardize health and safety. This is not uncommon in road construction for several reasons.

First, title 23 requires that approved plans and specifications are necessary before any project authority may proceed to construction. The facility owner has the responsibility to approve plans and specifications for the projects within its jurisdiction.

The concern of the BIA has been that approval authority for the 37,000 miles of roads and bridges that are not the responsibility of the Secretary should be coordinated with those respective facility owners—county, State, or other local governments.

In the last year the BIA has worked with tribes on individual contracts and agreements to provide tribal approval of plans, specifications, and estimates [PS&ES] on BIA roads. The BIA believes that this provision is unnecessary as changes within the soon-to-be-published final Indian Reservation Roads regulations will help clarify the tribes' roles, and provide tribes under Public Law 93–638 contracts and agreements the ability to approve PS&Es.

We support tribal eligibility for seat belt safety and intoxicated driver safety programs as proposed in the Administration's bill. SAFETEA calls for the consolidation of these programs under the National Highway Traffic Safety Administration's Section 402 program. The BIA will work with this committee and the Secretary of

Transportation on implementing any such provisions that support the success of these safety-related measures.

S. 281 establishes the Native American Commercial Driving, Training, and Technical Assistance Program for tribal colleges. The intent of this program is to encourage economic opportunities for tribal members.

In addition, this training program would be conducted by tribal colleges and universities and provide them with value-added educational programs for their students. We support additional training programs for Native Americans.

We have some of the same concerns for the demonstration projects in S. 725 as I mentioned in S. 281. S. 725 creates a tribal-specific transportation safety grant program that emphasizes intoxicated driver safety, the promotion of increased seat belt use, and the elimination of hazardous locations. The new program established under S. 725 would supplement existing safety grant programs in the Indian Highway Safety Program under section. 402 of Title 23.

S. 725 establishes an Indian reservation rural transit program designed to provide competitive grants to Indian tribes to establish rural transit programs on reservations or other land under the jurisdiction of the tribes.

The Department supports the development of rural transit programs in Indian and Alaska Native communities. However, we feel the provisions in SAFETEA better address tribal needs in the current economic environment.

With that, I thank you for allowing me to testify today on behalf of the Department. I would ask that my prepared statement be inserted in the record in its entirety.

The CHAIRMAN. Without objection, so ordered.

[Prepared statement of Mr. Virden appears in appendix.]

The CHAIRMAN. Thank you.

I have several questions. I am sure Senator Johnson has questions, too.

I was disappointed to note the Administration's proposal, SAFETEA, that the incentive grants in the areas of seat belts and intoxicated drivers are being combined in the National Highway Traffic Safety Administration.

Mr. Hamilton, why is the BIA is the only eligible grantee for this funding and Indian tribes are not available for direct funding?

Mr. HAMILTON. I do not have that information with me today, Senator. I would like to provide an answer to you for the record.

The CHAIRMAN. I wish you would. We give direct funding to the States and to many other agencies within State governments. I do not know why the tribes should not be eligible for direct funding.

If you would give us that information, I would appreciate it.

Mr. HAMILTON. Certainly.

[Material to be supplied follows:]

The current State highway safety grants process under the Transportation Equity Act for the 21st Century (TEA–21) is complex and time-consuming, consisting of eight programs with varying qualification and administrative requirements. Therefore, the Administration has proposed restructuring and consolidating the highway safety grant programs. The new approach simplifies grant administration by first, reducing the number of grant programs, and second, streamlining the process to administer and to qualify for grant funds. All TEA–21 highway safety grant resources,

including section 157 ("Safety incentive grants for use of seat belts") and section 163 ("Safety incentives to prevent operation of motor vehicles by intoxicated drivers") grant programs would be consolidated within the National Highway Traffic Safety Administration (NHTSA). States predominantly have used these flexible funds for highway safety purposes. Moving these funds into the NHTSA account will streamline grant management.

Section 402(i) of Title 23, United States Code, designates the Secretary of the Interior as the coordinating entity for the purpose of application of the highway safety program for Indian tribes. The Secretary of the Interior has delegated this authority to the Bureau of Indian Affairs [BIA] to administer the federally funded highway safety program on behalf of the tribes. Indian tribes are eligible to apply for grants in the highway safety program through application to the BIA, just as local governmental entities participate through their State Highway Safety Offices. This process has served the program well, as the BIA contracts with individual Indian tribes meeting specific criteria. The BIA serves in the capacity of a govenor's highway safety representative in managing, providing technical assistance, and monitoring the section 402 highway safety program. Under the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 [SAFETEA], the BIA would administer the consolidated highway safety grants as they have grants under TEA–21 and other previous authorizations.

The CHAIRMAN. How does a tribal road-building company, or an engineering firm, or a surveying firm, get into the procurement list to be considered for road building contracts?

Mr. HAMILTON. Under the Federal Lands Highways Program, we procure design services and construction services. We basically solicit through the bidding process, using the low bidding process. We open the door for any company within the area that the project is located.

The CHAIRMAN. One of the problems that I think we have had with contracting and getting into the bidding process with tribally-owned firms is a lot of times they do not know they are eligible, or they do not know the exact process of how to get in. Do you have a system in place to notify them, educate them, and help them?

Mr. HAMILTON. Yes; we do. I was not aware that there had been some concerns. We do have a system in place where we can work through the Tribal Transportation Assistance [TTAP] centers to help provide that information to the tribes.

The CHAIRMAN. Your testimony mentions that the demonstration project in S. 281 would duplicate DOT technical assistance programs. Mr. Virden also mentioned something about the demonstration project also.

Do you know how many Native Americans are trained through the DOT program? Is any of the training located on tribal lands?

Mr. Virden, maybe you might know the answer to that.

Mr. VIRDEN. Yes; please bear with me for 1 minute. There is one tribal college participating. That would be the United Tribes Technical College in Bismarck, ND. As far as the number of students that are currently in the program, I do not know. We can provide that at a later date.

The CHAIRMAN. What kind of training do they go through at United Tribes; do you know?

Mr. VIRDEN. It is training for certification for commercial driving.

The CHAIRMAN. The American Trucking Association tells me that normally they are short about 300,000 drivers every year. I would think that that program needs to be expanded considerably. In fact, I had a bill in to do something like that, giving the Department of Labor grants to schools that would start driver training programs. It did not go anywhere last year, but it is now part of S. 281. You

might want to look at the bill. I think it is a bill that could be of great help.

Mr. Hamilton, does the Administration's proposal have any programs in which tribes have direct access to Federal funding, like the States do?

Mr. HAMILTON. No; we do not, Senator. We do not have any programs right now that have direct funding to the tribes.

The CHAIRMAN. Why is that?

Mr. HAMILTON. Normally, title 23 requires that the funds either be sent through the State Department of Transportation or, within the Federal Highway Program, the funds are allocated to the BIA.

The CHAIRMAN. Mr. Virden, as I understand it, about 6 percent of IRR funding is used for administrative expenses. In some areas that is considered high. Also, as I understand it, 6 percent is set statutorily. Could you explain why the administrative expenses are over 6 percent?

Mr. VIRDEN. Historically, as I mentioned, in the last three years we have stayed under that 6 percent.

The CHAIRMAN. Your information is different than mine.

Mr. VIRDEN. There are some legitimate costs for administration which really should not be tied to projects. They are not related. Examples of some of these expenditures are as follows: These figures are from last year, the Tribal Transportation Assistance Centers, $980,000; Council of Tribal Advisors for the Lewis and Clark Bicentennial; inspection of the BIA bridges; regulatory negotiations with tribes; and supporting the National Tourism Conference for Native Americans.

The CHAIRMAN. All right.

In 1998 I had an amendment to TEA–21 that made it clear that all funds—not some funds—are available to Indian tribes for contracting under the Indian Self-Determination Act. Do you know how many contracts are in existence? Which tribes have those contracts for highway construction?

Mr. VIRDEN. I do not know how many exactly. I do have Mr. Leroy Gishi, my Division Chief for the Division of Transportation with me today. He may have that figure.

The CHAIRMAN. Please come up to the table, Mr. Gishi, and give the committee those numbers, if you have them.

Mr. GISHI. Mr. Chairman, just to clarify, the amount of funds associated with the IRR programs in the past, consistently over the last three to 4 years, has been about 45 to 47 percent for self-determination contracts or self-governance agreements. I say the amount of funding, because the bulk of contracting or compacting tribes does not represent 47 percent of those tribes. There are a number of them that have a significant amount of program dollars based on the formula that is initiated and that is based on the need.

If you look at it from that standpoint, that represents anywhere from about 50 to 70 tribes that are contracting work under the new self-determination act.

The CHAIRMAN. Thank you.

I have one last question before I ask Senator Johnson for his questions.

I understand the Bureau keeps a list of road consultants who are pre-qualified and get most of the contracts to build the roads in Indian country. Of the list of pre-qualified people, are any of them Indian-owned firms?

Mr. GISHI. Yes; as a matter of fact, the primary procedure in the procurement and the contracting process that the BIA uses in the Indian Reservation Roads Program is to, first of all, provide the right of first-refusal to tribes to give them the opportunity to contract the work if, in fact, that is what they want to do. Some do portions of it. Some just do the construction. Some do the design or the historic preservation portions.

After that, we follow the Buy-Indian Act. We advertise and seek competition among Indian contractors. If there are no Indian contractors available, then we advertise in the open market for all contractors.

The CHAIRMAN. Very good. Thank you for your testimony. I have no further questions.

Senator Johnson, do you have any questions?

Senator JOHNSON. Just briefly. Thank you, Mr. Chairman. Thank you to the panel.

Much of my concern, frankly, is going to come down simply to the overall level of funding and the allocations involved here. Clearly, as I think Senator Bingaman very ably noted, the amount of funding available for roads in Indian country is far less than what the miles suggest ought to be case. We need to address that.

I am particularly distressed of an actual decline in funding available for the IRR program this year. This is an utterly unacceptable circumstance.

Let me ask Mr. Hamilton. One of the issues—and Chairman Campbell has touched on this as well—that does not get a lot of attention because it is so unique to Indian country, is the whole question of the tribe's preference of working directly with the Federal Government rather than to have to go to their respective States for highway funds, whether it be maintenance, safety, scenic byway, transit funding, and so on.

The tribes, as they remind me on a regular basis—and rightfully so—are sovereign entities. The tribes are not administrative subunits of States at all. My legislation does address that issue. I would hope that you would work with us to see that we can perfect a better mechanism to implement that. This is a matter of great practical and philosophical import to our sovereign tribes. It is long overdue that we finally correct this and quit treating them as though they were a county, or some sort of administrative subset. They are not. We need to work with you to see if we can correct that.

Mr. HAMILTON. We would be happy to work with you, Senator. Right now, title 23 and other program legislation requires that funds this be sent through the State Highway Departments. We work jointly with BIA to administer the Federal Lands program. But otherwise we have no choice, because of title 23, other than to work directly with State DOTs.

Senator JOHNSON. We need to address that. I am hopeful that as we put together legislation, we can do that. The circumstances of the tribes are widely varying in their size and their ability to work

with the Federal Government and with the States. But the relationships between the tribes and the States is highly variable as well. In some places it is fairly good, and in other places, it is not. In all circumstances, they are not entities of the State. I hope working with you and with the Chairman, we can finally begin to deal with the tribes on their proper status.

Mr. HAMILTON. One of the things that we are proud of is our transportation planning capacity program under SAFETEA, which we think will provide an opportunity for the tribes to be able to work a lot closer with State DOTs in the planning process, which is really needed. They need to be at the table during the Statewide planning, or the metropolitan planning process, which would open up more avenues of funding for the tribes.

Senator JOHNSON. Cooperation and coordination is one thing. We are all for that. But tribes should not have to go hat-in-hand to the State as though it were up to the State to choose unilaterally about these projects. That is the only thing I wanted to share with you.

Mr. Chairman, I have a conflicting obligation, as is so often the case. I am going to have to excuse myself. This is a very valuable hearing. I thank you for chairing this. I look forward to working very closely with you and our colleagues to make some very serious progress on Indian road circumstances in the Nation this year.

The CHAIRMAN. We might be able to work with the EPW through Senators Inhofe and Jeffords to change Title 23. I think there is some confusion. Often people think that the Bureau is the tribes. It is not. If we really believe in self-determination, we have to give more access to the tribes to deal directly with the Federal Government.

Senator JOHNSON. While a lot of the IRR money comes through the BIA, there is a lot of money that just flat out goes to the various States.

The CHAIRMAN. It does not filter down.

Senator JOHNSON. I think that we need to readdress that.

The CHAIRMAN. Thank you.

We thank this panel very much for being here.

Our next panel will be Joe Shirley, president, of the Navajo Nation; Chad Smith, chairman, the Cherokee Nation; Richard Milonovich, chairman, Agua Caliente Band of Cahuilla; James Garrigan, transportation planner, Red Lake Band of Chippewa Indians of Minnesota; and Loretta Bullard, executive director, Kawerak.

While you are being seated, we are going to take a 5-minute break.

[Recess taken.]

The CHAIRMAN. The committee will come to order.

As with the last panel, if you would like to submit your complete written testimony, it will be included in the record. You are welcome to abbreviate your testimony.

We will start in the order that I mentioned your name. We will start with Joe Shirley, Jr., president of the Navajo Nation.

STATEMENT OF JOE SHIRLEY, JR., PRESIDENT, THE NAVAJO NATION, WINDOW ROCK, AZ, ACCOMPANIED BY MARK MARYBOY, CHAIRMAN, NAVAJO TRANSPORTATION AND COMMUNITY DEVELOPMENT COMMITTEE, THE NAVAJO NATION COUNCIL

Mr. SHIRLEY. Thank you, Chairman Campbell. My name is Joe Shirley, Jr. I am president of the Navajo Nation.

Chairman Campbell, Vice Chairman Inouye, and members of the committee, it is my honor to appear before you on behalf of the Navajo people to address your proposals to amend the Indian Reservation Roads Program. I am joined by Mr. Maryboy, chairman of the Transportation and Community Development Committee of the Navajo Nation Council whose recommendations are reflected in legislation before you.

The issue before you today is how to build travel transportation systems that will enable Indian people to go from Third World conditions, which tend to squash human potential to First World conditions, which tend to make it easier for the best within us to become a reality.

Transportation is essential to the basic quality of life and economic development of tribal communities. There are approximately 9,826 miles of public roads on the Navajo Nation which itself is about the size of West Virginia. While West Virginia has 18,000 miles of paved roads, the Navajo Nation has only 2,000 miles of paved roads; 78 percent of our roads are dirt. On a regular basis, businesses explore the possibility of locating to the Navajo Nation, but they do not once they realize the lack of paved roads. Bad roads in Indian country not only mean the difference between poverty and prosperity, but they also mean the difference between life and death.

Health clinics on the Navajo Nation are few and far between. Tribal members, including the elderly, the children, and the disabled, often must travel hundreds of miles to receive specialized care. Dirt roads, deteriorating paved roads, and treacherous bridges, make their long journeys that much more difficult. It is no coincidence that automobile accidents are the number one cause of death among young American Indians. The annual fatality rate on Indian reservation roads is more than four times the national average.

Our children's education is also threatened by dirt roads that become so bad that they are impassable to school buses. As you know, the BIA school buses alone travel over 15 million miles a year to transport Indian children on what is often a one-lane dirt road, lacking any basic safety features such as shoulders or guard rails.

I want to read two letters from two Navajo children who attend the Pine Springs Bureau of Indian Affairs Elementary School within the Navajo Nation in Pine Springs, AZ.

Their words say more than I ever could about how the 12-mile dirt road, which is the only way to access their school, impacts their education.

Dear Roads Task Committee. Hi. My name is Jonathan. I go to school at Pine Springs School. I want the road graded because some people drive slow because the road is too bumpy and rough because there are too much rocks sticking out of the ground. Please pave the road north of Pine Spring Road. Please, because it is

bumpy, too. Please do not let the kids get hurt on the bus. The kids get hurt because the kids get cut on the bus. That is really dangerous for the kids. The milk and grocery truck comes up here every week. They do not like the rough road, too. Let our safety come first. Kids come first above all. We have a real nice school and we enjoy it very much. Jonathan Smith.

The second letter, Mr. Chairman, reads as follows:

Dear Roads Task Committee. Hello. My name is Marcario Betoney. I go to school at Pine Springs School. I hate the road up here because we get flat tires and the buses get broken down. Then the buses do not come right on time when school starts. When people drive really fast the rocks jump up and hit the windshield. Then the windshield cracks. Then they have to take the car and truck to the shop to get it fixed. People get into car crashes when they are going too fast on the bumps that are on the road. Sometimes we have name games. Sometimes we have home games over here. Parents do not like to come to the games because of this road. My family do not like the road because of the rocks and bumps. Our trucks and cars are getting rocks into the tires. Then it gets flat. Can you please fix the road for us. Please? Thank you. Marcario Betoney.

Indian reservation roads are not an Indian problem. The Indian Reservation Roads Program impacts all people—tribal and non-tribal alike. Tribal lands provide vitally needed access within and between States, and support a multitude of economic interests, including tourism, agriculture, energy production, manufacturing, mineral extraction, and timber harvesting.

Indian reservation roads represent 2.65 percent of all Federal lands highways, yet receive less than 1 percent of the Federal surface transportation budget. In fact, last year tribes received even less than the year before. In fiscal year 2003, the Indian Reservation Roads Program was slashed $40 million below the 2002 level, while States received an increase.

I respectfully urge this committee to ensure that equity actually means something in the reauthorization of the Transportation Equity Act of the 21st century.

Thank you. I would ask that my prepared statement be inserted in the record in its entirety.

The CHAIRMAN. Without objection, so ordered.

[Prepared statements of Mr. Shirley and Mr. Maryboy appear in appendix.]

Mr. SHIRLEY. Attached to my written testimony, Chairman Campbell and members of the committee, are some photos for your perusal. It is very typical of what roads are like on Navajo land.

The CHAIRMAN. Thank you.

Mr. SHIRLEY. Chairman Campbell, can you give my council delegate, Mark Maryboy, some time? Maybe you can just make his written testimony part of the record.

The CHAIRMAN. His testimony is included with yours and has been made a part of the record.

As you know, I live down in the Four Corners area near you. I travel on some of those roads myself when I go see friends and cross the Navajo Reservation. I know what most people on the committee do not know is that during the winter time that some of your roads are impassable. The difficulty is that people who have to leave their cars on a paved road miles and miles away from where they live. In fact, sometimes the winters get so bad we have had to provide air drops of food for children because people cannot get into the community to be able to get food. I am very aware of that.

I was looking at the pictures you provided for the committee. This one looks like the bottom of a bridge with rotting planking. Are these structures old oil drilling pipes that are holding that bridge up?

Mr. SHIRLEY. I think those are metal pipes. They are all rusted and corroded. It is very dangerous.

The CHAIRMAN. It also looks to be.

We also have written testimony by Mr. Maryboy.

Mark, years ago were you a county commissioner in Utah?

Mr. MARYBOY. Yes.

The CHAIRMAN. That was you. I met you years ago. I just have not seen you for a long time. I am glad you are still active in public policy with the tribe. You did a fine job as a county commissioner, too, by the way.

Mr. MARYBOY. Thank you.

I have served as a county commissioner for the last 16 years. I retired last year. I remember you and I were riding broncos in Dorado, CO.

The CHAIRMAN. That is right. We were both chasing the horses. That has been a long time ago. I am glad to see you here. I am glad you have been active all these years. [Laughter.]

We will now go to Chairman Smith.

STATEMENT OF HON. CHADWICK SMITH, CHAIRMAN, THE CHEROKEE NATION, TAHLEQUAH, OK, ACCOMPANIED BY JACKIE BOB MARTIN, CHAIRMAN, RESOURCES COMMITTEE, CHEROKEE NATION TRIBAL COUNCIL, AND HARLEY BUZZARD, DIRECTOR OF ROADS, CHEROKEE NATION TRIBAL COUNCIL

Mr. SMITH. Good morning, Mr. Chairman, and members of the committee. My name is Chad Smith. I am the principal chief of the Cherokee Nation. Joining me are Jackie Bob Martin, chairman of the Resources Committee of the Cherokee Nation Tribal Council; and Harley Buzzard, director of our Roads Program.

I testify today in strong support of the tribally-developed transportation program improvements reflected in the bill before this committee, not only for the Cherokee Nation but also for the 500,000 tribal citizens of the Cherokee, Seminole Creek, Choctaw, and Chickasaw Nations.

I am pleased to see the common sense ideas, innovative proposals, and the increased funding in your bill, Mr. Chairman, as well as those in Senator Bingaman's bill, and in Senator Johnson's bill.

My brief remarks will focus on four issues I believe are critical to any tribal transportation reauthorization bill: Economic development, safety, funding equity, and program efficiency. The Cherokee Nation has more than 237,000 tribal citizens, nearly one-half of whom live within our 7,0900 square mile jurisdictional area, which is basically Northeastern Oklahoma.

According to the 2000 Census, our jurisdictional area is home to 462,000 American citizens who benefit from the jobs, infrastructure improvements, and business opportunities that the Cherokee Nation brings to Northeastern Oklahoma. It is very clear that roads benefit Indians and non-Indians alike.

The 2000 Census Report indicates that 13 percent of the families and 16 percent of the individuals live below the poverty line in our area. This reauthorization provides Congress an unique opportunity to jump-start the economy in Eastern Oklahoma. I have seen the economic health, safety, and societal benefits that come when our transportation systems are improved and our infrastructures properly maintained.

As you know, every dollar invested in transportation infrastructure yields a sixfold increase in the Nation's economy, generating many new and desperately needed jobs. This investment is especially important for the tribes. By making a modest financial investment and other common sense improvements to Federal transportation laws, Congress can help tribes turn areas that are too often pockets of poverty into engines of economic growth.

We applaud the Administration's reauthorization proposal which focuses on transportation safety and security. We also support your proposal, Mr. Chairman, and Senator Bingaman's, and Senator Johnson's, to provide tribes with direct access to Federal transportation safety funds. The statistics on traffic injuries and fatalities on tribal roadways are truly appalling.

This committee's own report in 2000 concluded that the unsafe conditions on many IRR roads and bridges have led to an annual fatality rate on the IRR system of more than four times that of the national average. While statistics are important to make a point, they cannot adequately capture the grief of a Cherokee citizen who lost a loved one in a preventable traffic accident a few years ago. Gerald Blackbear, a full blood Cherokee, lost his life in a car crash on the Fairview/Eucha Bridge in the northern part of the Cherokee Nation.

This bridge is situated on a roadway which provides access to health clinics, shopping, and employment, and is also a bus route for the local school. I have a photograph of that actual bridge. I would ask permission to pass this picture to the committee.

The CHAIRMAN. Please do.

Mr. SMITH. Here is the original one-lane bridge with no guard rails and no safety to it. He drove off in the rain. It was several hours before his body was recovered. You see to the right of that photograph a bridge that has now been completed under the IRR program. This shows you the success and the critical need for this endeavor.

With the committee's permission, I will circulate these.

The bridge was a small one-lane roadway that had dangerous turns and no guard rails. While the Nation has received funding since to replace the bridge, it was soon enough to prevent the unnecessary death of Gerald Blackbear. We can and must do better.

Mr. Chairman, we all realize the budget restraints facing Congress, but the Indian Reservation Roads Program has been underfunded for far too long. Tribes need and deserve funding equity. Two statistics prove my point. I believe the committee is well aware of these.

Although the IRR system comprises 2.63 percent of the Federal aid system, it receives less than 1 percent of the surface highway funding out of the National Highway Trust Fund. According to the

BIA and transportation experts, the current IRR construction backlog is between $11 and $25 billion.

The Cherokee Nation faces similar challenges in budgeting scarce resources but we have determined roads and infrastructure to be a high priority when allocating substantial tribal funds to supplement our IRR allocation.

Of course, Congress should increase the funding for IRR and reinstate the program's exemption from the obligation limitation deduction. For States, the obligation limitation is a temporary delay in full funding. But for tribes, obligation limitation is a permanent loss which removes $35 million annually. That is about 13 percent of the IRR Federal budget loss.

Restoring the exemption from the obligation limitation is a no-cost way of increasing annual funding to the IRR program. Unlike the States who ultimately get the obligation limitation back, the tribes obligation limitation is basically forfeited. In the alternative, we would request the obligation limitation funds to be directed back to the tribes and not to the State.

In terms of program efficiency, when the Federal aid highway system was developed in the mid-1950's, Federal Indian policy supported termination of the trust responsibility and elimination of Federal recognition for tribal governments. During that period, Federal transportation laws enabled money, intended for the tribal transportation systems, to be funneled to the State and BIA.

While the termination era has long since passed, the funding mechanism for tribal transportation systems remains the same. The result is an inefficient program that cost Federal, State, and tribal officials countless hours and many millions of dollars in needless transaction costs. Moreover, this funding structure does not support tribal self-determination or self-governance.

I would have disagree with my colleague, Mr. Virden, about the 6 percent BIA Administration set-aside, we believe it is unnecessary for self-governance tribes. For example, when we design a road, we have a professional engineer design that road. He stamps the plans. Those plans are submitted to a second professional engineer under our guidelines who approves those plans. Then, under the current system, those plans are again submitted to the BIA who have their own professional engineer to stamp those plans a third time.

Under the demonstration program with the Red Lake Band of Chippewa Indians have demonstrated that that is unnecessary duplicity of bureaucracy. The professional engineers' reputation in that disciple provides insurance of quality work.

As one of the first tribes in the country to bring self-governance principles to the IRR program, we have seen first hand the positive benefits that can be brought to our people in our communities. We recognize that funding is limited, and request that we be given the tools to maximize those limited resources.

Simply, elimination of the exemption for the tribes' obligation limitation and elimination of the BIA Administration's 6 percent cost, would mean 20 percent more funding for actual construction of roads. We are hopeful that you and members of this committee will work closely with Senator Inhofe to develop a tribal transpor-

tation reauthorization bill that has the broadest support of all possible tribal governments.

Finally, Mr. Chairman, when you introduced your bill in 2000, you stated for Indian communities an efficient Federal roads financing construction system holds the key to healthier economies and higher standards of living for their members. I could not agree with you more. I urge the committee to adopt your proposals as well as those of Senator Johnson and Senator Bingaman.

Thank you, Mr. Chairman, and members of the committee, for the opportunity to testify in strong support of this important legislation. I would be happy to answer any of your questions. I would ask that my prepared statement be inserted in the record in its entirety.

The CHAIRMAN. Without objection, so ordered.

[Prepared statement of Mr. Smith appears in appendix.]

The CHAIRMAN. Thank you.

We will now move to Chairman Milonovich.

Before you start, Richard, I would like to tell you that Senator Allen and I really enjoyed our visit with you last week in your home lands. He still talks about the terrific interaction you have with the local community and county government. He has told me several times he wants to come back and go for a horseback ride up in that beautiful canyon you showed up with that tribal park. You can look forward to both of us coming back when we have the time.

You can go ahead and proceed.

STATEMENT OF RICHARD MILONOVICH, CHAIRMAN, AGUA CALIENTE BAND OF CAHUILLA, PALM SPRINGS, CA

Mr. MILONOVICH. Thank you, sir. I appreciate that.

Mr. Chairman, thank you for the opportunity to share our views with you that highlight the solutions to the transportation challenges that are faced by Indian tribes and the members of the Agua Caliente Band Indians on a reservation headed in Palm Springs, CA.

Our transportation issues and challenges, however, are largely a result of our existing checkerboard land ownership patterns in the growth of these communities around our reservation. Today my testimony will address three subjects:

First, our innovative proposal for tribal road bonding; second, the current Indian Reservation Road Program, including proposed modifications of that program; and, third, specific road projects that we are working on independently and within the city of Palm Springs.

First, we have put forward an innovative financing proposal for tribal roads. our tribal roads bonding proposal supplements the current IRR program. It draws on the growing financial sophistication and where-with-all of many tribes. Our proposal works like this.

When a tribe or tribes cooperatively, wish to build a road to service their reservation, the design and plans for the road are developed. The road is included on the tribal transportation plan, or any other existing transportation plan. The tribe takes that design and plan to the Department of Transportation who check to see that all

is in order with the design, and that costs are in line. We can, but are not required, to make a tribal contribution toward the project. If we contribute, however, 25 percent of the project costs, then the tribe's project is eligible for one-half of the money available under the bonding program.

When DOT approves the project, it issues a commitment to pay the remaining costs of the project over a period of years. The tribe takes the commitment and then issues a bond to cover the cost of the project. From the proceeds of the bond it builds the project in that year rather than waiting.

Then each year the tribe gets payment from the Department of Transportation and, in turn, pays the bondholder. The money comes from the Highway Trust Fund. Our idea is patterned after the existing DOT program that allow States to use some of their regularly flowing highway dollar revenues from their annual allotment to pay for road bonds. This style of financing for roads is how all long-term assets should be financed, especially roads.

The second topic I will cover today is the existing Reservation Roads Program. It is a good program, and I am glad that the BIA, after 7 years, finally has a package of regulations for the program. I am also glad that there are some modifications, including increased funding, that have been proposed legislatively. We support these modifications.

Under this program, our tribe has received approximately $90,000 for road planning activities during the last 3 years. The current funding level does not address the needs of small tribes, particularly those in California. That is why we are proposing an innovative finance bonding program. That is why we support the modifications to the current IRR program.

I have the following recommendations regarding the existing IRR program. At the very least, the BIA IRR formula should reflect the $100,000 base funding per tribe right off the top takedown. The base funding is needed to meet the minimum planning for intermodal transportation.

California tribes should receive a minimum of 9.2 percent of the BIA IRR funds, which is the minimum guaranteed rate that California receives from the Federal Highway Trust Fund. My point is that we have received plenty of money for the current program, but we have not received road money. We have needed to self-finance important road projects.

My third topic is to discuss our current transportation priorities. As one of the few tribes in the United States who inhabit a large urban area, our transportation needs are somewhat different than those of most tribes. Agua Caliente has developed a list of transportation requests that not only benefit tribal members, but also our neighbors within the Coachella Valley.

We have three cities as well as the county of Riverside which are located on or near our reservation. We are now seeking Federal funds for three priority projects: First, road and bridge improvements to South Palm Canyon Drive and the Indian Canyons access road; second, replacement of the Indian Canyon/Interstate 10 interchange; and, third, construction of the Mid-Valley Intermodal Transportation Center.

South Palm Canyon Drive is the only road into the Indian Canyons Nature Preserve and Agua Caliente Cultural Museum site. It also provides access to numerous residential developments, businesses, and the Agua Caliente Tribal Government Building.

The tribe has requested $7.2 million in Federal funding to complete improvements on South Palm Canyon Drive. The funding will complete realignment and pavement of existing roads, replacing inadequate bridge structure over the Arenas South Drainage Channel, and construct an intermodal transportation center providing additional access to Indian Canyons Cultural site and the Agua Caliente Museum.

Currently 90,000 vehicles per day travel I–10 through the Indian Canyon Interchange, while some 19,000 vehicles per day travel this section of Indian Canyon Drive. The Agua Caliente, in partnership with the city of Palm Springs, has identified the Indian Avenue interchange as a top priority for the highway bill reauthorization. We have requested $15.3 million to replace the existing two-lane I–10 Indian Canyon Drive interchange constructed in 1956 with a six-lane interchange and accompanying access ramps and service roads.

Enhancing existing roads and building new roads is only one part of the long-term program solution to our traffic issues. We must also improve access to mass transit. Currently, very few people arrive in the Coachella Valley by rail. The only passenger rail service provided to the Palm Springs area is one daily, late-night stop by Amoral.

The Agua Caliente and other governmental organizations in the Coachella Valley have long desired a passenger rail service connection to Los Angeles. To bring passenger rail service to the Coachella Valley, we must have the infrastructure in place to support the service.

Knowing that the highway bill reauthorization will emphasize enhancement of intermodal centers, we have requested $4.2 million to construct the Mid–Valley intermodal Center. The funds will allow for construction of a terminal building parking structure, a park-and-ride facilities, 500-foot double track passenger platforms, and pedestrian under-crossing for enhanced passenger safety and convenience.

The Agua Caliente are serious about the opportunity for a Mid–Valley intermodal station and have supported the Coachella Valley Association of Governments, which includes nine cities, two tribes, and the county, and have purchased 11 acres of land, at a substantial cost, where the rail station and park-and-ride facility will be located.

To sum up, we are requesting the committee's assistance with all three of the issues presented today. We appreciate the time and the attention of the committee to these important issues. We ask that you address these issues in the reauthorization of the highway bill.

Thank you. I would ask that my prepared statement be inserted in the record in its entirety.

We welcome you back again as soon as you can get there.

The CHAIRMAN. Without objection, so ordered.

[Prepared statement of Mr. Milonovich appears in appendix.]

The CHAIRMAN. Thank you very much.

I will have some questions for you in 1 minute.

Senator Murkowski, did you have an opening statement?

Senator MURKOWSKI. No, Mr. Chairman; I would rather just listen to the witnesses.

The CHAIRMAN. Okay.

We will now move to Mr. Garrigan. Please go ahead and proceed.

STATEMENT OF JAMES GARRIGAN, TRANSPORTATION PLANNER, RED LAKE BAND OF CHIPPEWA INDIANS OF MINNESOTA, RED LAKE, MN

Mr. GARRIGAN. Good morning, Mr. Chairman, and members of this Committee. My name is James Garrigan, Transportation Planner, for the Red Lake Band of Chippewa Indians.

On behalf of our chairman, William G. King, and the tribal council, I thank you and other distinguished members of this committee for the opportunity to provide testimony concerning proposed amendments to the Indian Reservation Roads Program, as contemplated under S. 281 and S. 725. Although only recently introduced and referred to the committee, I would like to take this opportunity to provide the committee with some initial feedback on S. 1122 as well.

Before I comment on the subject bills, I would like to provide the committee for the record a brief synopsis of the recently completed TEA–21 negotiated rulemaking process for the IRR program. While I appreciate the opportunity to represent the tribal caucus as a tribal cochair on the Federal Tribal Negotiating Rulemaking Committee, I was disappointed with what I, along with the majority of the tribe representatives on the committee, viewed as a blatant disregard for Congressional intent by the Federal representatives on the committee.

While the committee's tribal caucus met every challenge and every imposed deadline, the BIA delayed the committee process for months at every juncture. Because of the long delays by the BIA, the tribes felt that they did not have sufficient time to properly negotiate key items that are important to tribes. As a result, there are 13 major disagreement items that did not get properly addressed.

Although this was supposed to be a tribally-driven process, it was far from it. The proposed rule was published with Federal language in place on the disagreement items. It appears that the final rule will be published likewise. Many tribal committee members feel that because of this, the entire negotiated rulemaking process was a travesty.

The legislative reform effort by Congress 6 years ago was aimed at removing many obstacles that hampered tribes in the past and their attempt to administer the IRR program under self-determination or self-governance.

Again, despite the tribal reform language that exists in TEA–21, we believe that it is necessary for the Congress to even more explicitly mandate that the Federal roads bureaucracy facilitate the complete transfer of all authority and responsibility for the administration of the IRR program to those tribes so requesting, and to legislatively enforce full tribal autonomy in the operation of the program formerly operated by the U.S. Government.

Unless Congress does this by statute, certain Federal agencies will never appreciate, and Indian tribes will never realize, the true meaning of self-determination and self-governance.

The Red Lake Band is in general favor of S. 281 and S. 725. S. 281 contains provisions which hopefully will finally achieve what Congress has intended for Indian tribes since the enactment of the Indian Self-Determination and Education Assistance Act of 1975.

Passage of this bill would stop the loss of IRR program funding that resulted with the application of the obligation limitation. S. 281 would also allow tribes to deal directly with the Federal Highway Administration on a government-to-government basis.

While the Red Lake and all Indian tribes throughout the country appreciate the increased funding for the IRR program that Congress made available under TEA–21, the program is still critically under-funded. The application of the obligation limitation requirement to these funds offset much of the benefit Indian tribes were to receive through the increased funding.

Passage of this bill would help ensure that all funding allocated for the IRR program remain available for distribution to Indian tribes, a goal Red Lake fully endorses. The Red Lake Band has been a strong advocate for Indian tribes having a direct relationship with the Federal Highway Administration. S. 281 would provide a vehicle to make this happen under a demonstration project.

The Red Lake Band has been at the forefront in demonstrating that Indian tribes can deliver on programs that Congress has provided to further promote self-determination and self-governance. Red Lake was one of the first tribes in the Nation to assume the entire IRR program under Title IV of Public Law 93–638, as amended. The documented success of this program serves as a model for other tribes to follow.

Red Lake will also be at the forefront in demonstrating that Indian tribes can independently coexist with the Federal Highway Administration without the involvement of the BIA. Red Lake also supports the safety incentive grants as proposed in S. 281.

Moving on to S. 725, the Red Lake Band supports the provisions of this bill that increases the amount of funding available for the IRR. We feel that the increase in funding for the IRR program and removing the obligation limitation will provide greater opportunities for jobs on Indian reservations. The Red Lake Band also supports the Indian rural transit program provisions in this bill.

Recently, another bill has been introduced by Senator Johnson and Senator Daschle, S. 1122. This bill contains several provisions that closely mirror those in S. 281 and S. 725. However, in the short time between introduction of S. 1122 and the development of this testimony, the Red Lake Band has not had an adequate opportunity to fully analyze and assess S. 1122.

Our initial impression, however, is that S. 1122 touches upon a variety of transportation issues that are important to Indian country, but requires further refinement to ensure that the successful gains in Indian program administrations are not adversely impacted unintentionally.

The Red Lake Band would also like to take this opportunity to propose to the committee for consideration as part of the IRR program amendments a concept that we believe would help foster eco-

nomic development in Indian country. While a number of Indian tribes receive IRR services either directly from the Federal Government, or through contracts or agreements under the Indian Self-Determination and Education Assistance Act Authority, the BIA continues to use a substantial portion of IRR funding to procure IRR-related services from non-tribal contractors located far from Indian communities.

As a result, the full benefit of this Federal funding often eludes tribal communities because outside contractors deliver the referred benefit or product on reservation but conduct most of the economic activity off reservation so that little, if any, ancillary benefit is derived by tribal communities.

We are proposing that Public Law 93–638 authority be expanded to include that if a beneficiary tribe chooses not to contract under the Indian Self-Determination and Education Assistance Act, to carryout an IRR function, and the BIA chooses not to provide the function through direct services, then an Indian tribe having the resources to perform the function would be eligible to contract the work under the Indian Self-Determination and Education Assistance Act prior to the BIA offering the work to non-tribal contractors.

We believe that this provision would enable Indian country to more fully benefit from Federal program funds.

In conclusion, Mr. Chairman, I was dismayed by some of the previous testimony I heard when the witnesses referred to the Federal Government as owners of the roads in Indian reservations. That ownership is beneficial ownership. The tribes actually own those roads. Tribal governments are governments. They are elected governments and they are public authorities.

I was happy to hear Senator Johnson say that we need to amend title 23 to correct this. Red Lake would be happy to assist your staff in crafting some language to clear this up so we can move on.

I would ask that my prepared statement be inserted in the record in its entirety.

The CHAIRMAN. Without objection, so ordered.

[Prepared statement of Mr. Garrigan appears in appendix.]

The CHAIRMAN. Hopefully we might make some improvements, including some of your suggestions, such as allowing tribes that have road building expertise to contract with other tribes. I think that would be a constructive amendment.

I have to tell you that I do not blame you for being somewhat frustrated with how long it takes to get some things changed within the Bureau. In TEA–21, it was my amendment that required the negotiated rulemaking authority. It has taken the Bureau over four years to even get their rules in order from that.

In some cases they have two speeds over there: slow and stop. Those are the two to choose from.

The danger with roads just keeps going on. Hopefully we can fix some of the inequities of the last TEA–21 in this bill.

Thank you. Now we will proceed with Ms. Bullard.

STATEMENT OF LORETTA BULLARD, PRESIDENT, KAWERAK, INCORPORATED, NOME, AK

Ms. BULLARD. Thank you, Chairman Campbell and Senator Murkowski. Thank you for the opportunity to testify. My name is Loretta Bullard and I am president of Kawerak, which is a regional tribal consortium in Northwest Alaska. We have 20 federally-recognized tribes in our consortium. I also serve on the Alaska Federation of Natives' Board of Directors.

Collectively, Alaska Natives own 44 million acres in the State of Alaska, or just about 11 percent of the State. We have 229 widely dispersed communities across the State. We have very few roads. Much of our land was selected by the Native corporations for its economic development potential. We need access to those resources.

Just to give you an idea of the size that we are dealing with, in our service area it is 1 hour and 10 minutes north by a twin engine plane, and 1 hour and 10 minutes west by plane, and 1 hour and 10 minutes south by plane. That is our service delivery area, which is about 45,000 square miles. We have very few roads.

Our ground transportation system is very undeveloped in comparison to the rest of the United States. Most of our village streets are no more than unimproved dirt paths. I have included color photographs for the committee. We have very little snow removal in our communities. We use snow machines in between our villages during the winter time as well as small airplanes because there are no roads. We also use boats during the summer time.

While this hearing is being held to solicit recommendations and comments on S. 725 and S. 281, I also want to speak to the NCAI draft bill and S. 1122. We wanted to express our support for the language contained in the NCAI draft bill that would change the name of the Indian Reservation Roads Program throughout Title 23 to the Tribal Transportation Program. We feel that the language better reflects the wide scope of the program.

We strongly support the appropriations as outlined in S. 1122. We support excepting the IRR program from the obligation limitation, and support the increased appropriation for the bridge program. One of the bridges in our area, just to give you an idea of how old it is, used to cross the Panama Canal. It is one of those unbolt them and move them kind of bridges. It used to be the Cushman Street Bridge in Fairbanks. Then when they replaced that bridge, they moved it to our area.

We want to speak to the language in S. 725 that would require the Secretary to verify the existence of all roads that are part of the IRR system and to distribute funds based only on those roads. We oppose that language because we feel that it would just continue to allocate funds based on the existing road mileage and those areas without roads would continue to receive little, if any, funds.

We support the language that would establish a minimum of $35,000 base per tribe for tribal transportation planning and bump the 2 percent planning allocation to 4 percent. Using our Bering Straits Region Tribes as an example, in March 2002 our tribes were informed that they were eligible to apply for $1,125 as their share of the Alaska 2 percent planning money. Bumping that to a 5-percent increase would bump their tribal transportation planning

dollars to $2,812. That is enough for a round-trip ticket to Anchorage, plus some per diem.

I am not going to speak to all the areas that we support. I have that in my written testimony, but I did want to mention areas that we are suggesting be changed. We are suggesting that section 106 of S. 1122, whereby it requires the Secretaries to establish a joint IRR Coordinating Committee. We suggest that you need to add language there that would give that Committee some teeth beyond being purely advisory.

It has been really frustrating contracting with the BIA for the roads program for the last 5 or 6 years. It is just about impossible to get things done, or make changes to the system. It is very frustrating.

We oppose the language contained in S. 1122, sections 202 and 203 which directs the secretary to make competitive grants available to establish tribal transportation safety programs. We think it is a good idea, but the current language makes funds available only to those tribes on Indian reservations, or who have land under the jurisdiction of the tribe. In the NCAI draft bill there was language that made funds available to Indian tribes and tribal organizations to establish tribal transportation safety programs. It is not necessarily tied to your land base.

In the last 5 years in our area we have had about 12 deaths due to tribal transportation issues. We do have some safety concerns that we would like to address.

In terms of some Alaska specific issues, we want to speak to our inventory problems. One of the major problems with the existing IRR program is that the funding formula used to distribute funds nationally is based primarily on the inventory of IRR routes. For Alaska, we have never had a true inventory. We have been working on it for these last 2 or 3 years through funds that were made available through the administrative capacity building funds, but we are finding it extremely difficult to get our routes into the BIA inventory. We have been finding that the information that you need to submit or that the areas identified in the BIA manual keep being reinterpreted to require different data sets or information that needs to be included.

We have been working very hard on this for the past 2 years. There are 189 tribes in the State of Alaska that have contracted to do their inventory developments. We have been very limited in our ability to get that information into the system. We feel that needs to be addressed.

One example of how they are changing the rules is this. The latest road inventory checklist purports to require that a tribe have an approved long-term transportation plan in effect before the inventory changes are made. We are still developing our inventory. We do not have a long-term transportation plan that is going to support the need to tweak the inventory.

We are also concerned that the BIA, since 1993, has had a 2-percent policy that limits the ability of areas to increase the inventory by 2 percent over any given year. Alaska has never had a good inventory to start with. In 1993 the villages in the State were asked to identify their number one project. That was all they were asked to identify. One-third of the villages did not even respond. There

are about 150 villages that identified their single priority project. That became the Juneau Area Transportation Plan.

That is not an inventory. That is not a true reflection of need. We encourage Congress to enact language that would direct the BIA to include our village streets and primary access roads. We have not even been able to get those into the inventory.

We are also suggesting that regional tribal transportation authorities be developed for Alaska. It is such a huge State. We recognize the need to work together. We are suggesting some language that would create some regional transportation authorities under the guidance of the tribes or the regional corporations, as decided by people within the area.

I want to close by saying that we do support the road bonding that was proposed by the Agua Caliente Band provision.

Thank you for this opportunity to testify. I would ask that my prepared statement be inserted in the record in its entirety.

The CHAIRMAN. Without objection, so ordered.

[Prepared statement of Ms. Bullard appears in appendix.]

The CHAIRMAN. Thank you.

I have a lot of questions. I am going to submit those to you. If you would put answers to those and submit them to the committee, I would appreciate it.

I would like to ask a few questions at this time.

Ms. Bullard, I guess it has been about 3 years ago I went with Senator Stevens to Alaska to visit some villages. We went to some larger towns. One of the places we went to was Barrow. As I remember, they told us there were only 12 miles of road around Barrow. All the fuel and automobiles that were in town had to be brought in by a barge. There was no road to go anywhere out of Barrow. When you mentioned that a third of the villages did not respond to the last request you had for an inventory, I can see that if Barrow was considered one of the larger ones, some of the villages must have real problems with transportation. Now, in those small villages, there must be many of them that do not have roads to get to any outside main road. Is that correct or not?

Ms. BULLARD. That is correct. The majority of the communities in the State do not have access to roads. Nome probably has 300 miles of road.

The CHAIRMAN. So they have to fly in or fly out, or go by snow mobile, barge, or some other way. Okay, thank you.

President Shirley, several of the members have talked a little bit about bonding for roads. With the Navajo having almost 10,000 miles of roads, mostly unpaved and many of them unimproved, if you rely strictly on Federal IRR funding, it is going to take forever to get the job done.

Would you be supportive of that area of tribal road construction bonds to leverage additional road building capital?

Mr. SHIRLEY. Yes; we would, Chairman Campbell. We are doing what we can right now to even at that on our own. There is every possibility of doing that.

The CHAIRMAN. That would bring up another question, then. Those Indian communities that have access to a steady income stream, they are going to be better able to repay those bonds, to

pay off the bond holders, how would you envision the Navajo Tribe paying off bond holders?

Mr. SHIRLEY. We are trying to do what we can to put some money aside to do just that, some of the general revenues that come in from coal royalties, or gas royalties, to set some of that aside so that when we do bonds, that we would have a revenue stream to pay on the bonds.

We also have a fuel excise tax that the Nation's Council also put into force. We are also looking at that as a revenue stream to pay the bonds that we might float to do roads.

The CHAIRMAN. To Chief Smith, and maybe to Chairman Milonovich, in many cases the success of the IRR program is, in part, due to the ability of the tribes to partner with respective States to build roads together. In fact, when I was out visiting with the Agua Caliente Band, Chairman Milonovich showed us one road and bridge that they were interested in getting some Federal help for, but I assume there is going to be some partner with the local communities, too.

Chief Smith, have you attempted to work with the State of Oklahoma on any reservation road projects?

Mr. SMITH. Yes; we have. We have had a very innovative program to work with the counties and cities. We actually use funds that we derive from a compact with the State in the issuance of our own automobile tags, to provide material for local counties. They come back and do the labor. We have investigated many innovative ways to work with local communities and with the State of Oklahoma.

The CHAIRMAN. With the case of Oklahoma, you have a very strong Indian presence in your legislature with Kelly Haney and a few other senior members there. I would think that you have a really good voice in your legislature. In many States tribes do not have that strong voice in their legislature.

In the case of the Agua Caliente Band, Richard, you mentioned one area that is an interchange. Was that the area that you showed us, the bridge and the widening of that road. Is that the same place when we were out there.

Mr. MILONOVICH. No; the other was more to north of the city. It is right on the interstate.

The CHAIRMAN. Oh, I see. It is right on the interstate. Okay. Thank you.

Mr. MILONOVICH. We are working together with the city of Palm Springs as well as the Coachella Valley Association of Governments consisting of nine cities, two tribes, and the county working together on transportation issues which affect the entire Coachella Valley. We are working quite closely with everyone.

The CHAIRMAN. I know that you do that very well with your tribe. I am always an admirer of how well you work with local county and city governments.

Mr. Garrigan, you talked somewhat about the BIA soaking up a lot of the funding for administrative costs. Someone, and perhaps it was Mr. Smith, mentioned that they do the engineering themselves and they have it approved by the next level, and it goes through two or three approvals. Then it has to be submitted to the Bureau for their approval. Then, of course, they are keeping 6 per-

cent. Basically all they are doing is rubber stamping all of the work that you already did. Has that been your experience, too?

Mr. GARRIGAN. Yes; it has. We have all of our work done by licensed professional engineers. The second level review is also done by a licensed professional engineer.

The CHAIRMAN. What do you suppose the Bureau does for 6 percent?

Mr. GARRIGAN. Give it a cursory review. They take a look at it and say, "Okay, we will stamp it."

The CHAIRMAN. All right. Thank you. I have no further questions.

Senator Murkowski, do you have any questions? You have one of your constituents here today.

Senator MURKOWSKI. Just very briefly.

Mr. Chairman, it is tough to see in this corner here. I appreciate the testimony. I particularly appreciate your providing copies of some of the pictures. I think the pictures are quite compelling.

One of the difficulties that we have in Alaska is just educating folks on our lack of a transportation system. When you have indicated that many villages did not submit comments as to their plan, it is because if you are a community that does not have roads, if you are a community that is connected by a boardwalk, and you go everywhere by snow machine or a four wheeler or a river boat, you do not need to submit a transportation road plan because there is no recognized road system. That is one of the huge difficulties that we have as a State.

I also appreciate your comments about the inventory and the lack of an inventory in Alaska and how essentially we are shortchanged on that process. Mr. Chairman, I would just like to indicate for the record that I would certainly support the appropriations funding for the roads and the increase in the funding for the Indian roads, but would urge the BIA to work with the State of Alaska on this inventory issue to make it work.

The question I would ask to you, Ms. Bullard, is, as it relates to the inventory, is there anything that you can suggest or propose that we can do to make that process work for us right now?

Ms. BULLARD. One thing that we have requested is a definitive description of what needs to be included in the inventory. Every time we turn around, the requirements keep changing. I think that would help. But I think the other thing that needs to be done is that a requirement that our basic infrastructure in our villages be included in the BIA roads inventory. By limiting us to 2 percent of what has been previously in the system, there has never been a complete inventory in the State. We are trying to do that. We have identified many roads that should be in the inventory, but they are not being put in because there is a two percent limitation on increases. We feel that is very unfair to the State of Alaska and does not reflect the true need of our communities.

Senator MURKOWSKI. We would like to work with you on that and make it work.

Mr. Chairman, I appreciate the opportunity to ask the question and to hear the testimony of the witnesses today. Thank you.

The CHAIRMAN. Thank you.

I have one more question of Ms. Bullard. These pictures that you submitted for the record for us, but one just came to mind here. One is a picture of the main street of Wales, AK, and one picture of the main street of Shishmaref. It looks to me that that snow is clear up to the top of the roof; is that right?

Ms. BULLARD. Yes; in many of the houses there you actually have to dig tunnels to get into the homes. They do not do any snow removal during the winter time.

The CHAIRMAN. That was going to be my next question. How the heck do you move that much snow? The automobiles in that town just sit there during the winter.

Ms. BULLARD. They sit during the winter. They use snow machines and four wheelers during the winter time.

Just to use an example of that. I think it was in 1998 that the Assistant Secretary for Indian Affairs at that time, Kevin Gover, had gone to Shishmaref. Then we took him to Wales. On the day we took him to Wales, people were going from Wales to Diomede which is 40 miles off the mainland, because there are no ferries. There are no large boats. They do not bring any freight barges into that community. People actually run snow machines and four wheelers between Wales and Diomede in small 20 to 25 foot boats.

The day we were going there, they lost an entire boatload of individuals that were trying to travel between Wales and Diomede. They had been sitting in Wales waiting for the weather for about 3 weeks. They decided to go ahead and go because there is no commercial transportation in their community.

The CHAIRMAN. How do you get from Wales to Shishmaref. Is that through a barge?

Ms. BULLARD. You can take an airplane between Wales and Shishmaref.

The CHAIRMAN. How far is that?

Ms. BULLARD. I would say that is about 50 or 60 miles.

The CHAIRMAN. How did you get Kevin there?

Ms. BULLARD. We flew him in a twin. But between Wales and Diomede, the only way to get into Diomede is they have once-a-week helicopter service. There is no airport in the summer time. It is a winter sea-ice air field.

The CHAIRMAN. Big problems.

Senator MURKOWSKI. Mr. Chairman, if I could, I would just ask Ms. Bullard.

The CHAIRMAN. Certainly.

Senator MURKOWSKI. Do you have any idea of how many vehicles you actually have on Wales?

Ms. BULLARD. In Wales. I do not know. I have not been to Wales recently.

Mr. MILONOVICH. My experience has been that you get out to these remote communities that are on islands and you have 1 dozen vehicles.

Ms. BULLARD. In some of the communities, yes. But they do all have four wheelers and snow machines.

Senator MURKOWSKI. Which is the primary means of getting around.

Ms. BULLARD. There are getting to be more and more vehicles in the villages.

The CHAIRMAN. Thank you.

We will submit some questions for the rest of the committee. If you can, get those back to us by June 18 because we want to use our bill as part as an amendment to the new TEA–21 bill.

We will hold the record open for 2 weeks.

Thank you for appearing.

The Committee is adjourned.

[Whereupon, at 11:47 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF MARK MARYBOY, CHAIRMAN, NAVAJO TRANSPORTATION AND COMMUNITY DEVELOPMENT COMMITTEE

My name is Mark Maryboy and I am the chairman of the Navajo Transportation and Community Development Committee. I would like to begin by thanking this committee for all of their hard work on this issue. My remarks today are limited to S. 281 and S. 725. However, the Navajo Nation sincerely appreciate all of the bills that have been introduced and look forward to working with you to promote the final bill that is passed out of this Committee.

I would like to begin my comments about S. 281 by saying that the Navajo Nation is working very hard on its own economic development. We have much to overcome. The unemployment rate on the Navajo Nation currently ranges seasonally from 36 percent to 50 percent. Our per capita income averages $6,123, which is less than one third of that in Arizona or New Mexico.

The commercial vehicle driving training program proposed in S. 281 could greatly help develop the Dine workforce. With a land base that is larger than the states of Connecticut, Delaware, Maryland, Massachusetts and Rhode Island combined, the Navajo Nation is long-haul territory. In fact, it would be difficult to make a commercial delivery from any place west of Durango, CO to any place east of Flagstaff, AZ without going through Navajoland. The Navajo people are used to driving great distances and might as well get paid for it.

Like S. 281, S. 725 reflects the Navajo Nation's goal to promote self-determination. Both bills authorize a demonstration project that would enable tribes to apply directly to the Federal Highway Administration for Indian Reservation Road funding so tribes could take care of their own roads and bridges without relying upon the BIA. While this is an approach that the Navajo Nation has not yet decided to pursue, we support the desire of other tribes to do so. Both bills create an opportunity that should exist for tribes.

In addition, S. 725 contains key provisions that would help achieve our fundamental goal of making the IRR Program more fair and effective. Section 3 contains the five changes the Navajo Nation believes are essential to improving the IRR:

No. 1. Increase funding. We understand the current constraints on the Federal budget. That is why we support an incremental increase over the next 6 years. We believe that such an approach is a judicious way to begin dealing with what BIA estimates to be more than $9.8 billion of unmet transportation needs in Indian Country.

No. 2. Exempt tribes from the obligation limitation. Since the passage of TEA–21, which applied the obligation limitation to tribes, the IRR Program lost $200 million it was otherwise authorized to receive. That capital leakage is staggering when you consider that $200 million is roughly equivalent to the Program's total annual funding in 1998. While their unmet needs make tribes the least able to bear the burden of the obligation limitation, Native Americans and Alaskan Native Villages are experiencing a disproportionate brunt of its effect.

No. 3. Create a tribal bridge program. Tribes must currently decide whether a bridge or a road project is their higher priority in order to receive funding. That is a choice no community should have to make. On Navajo, we have 173 bridges, 27 of which need complete replacement and 24 of which need major rehabilitation. A separate IRR bridge program that includes funding for pre-construction is essential for us to get a handle on these major safety concerns.

No. 4. Fair and Equitable Distribution. TEA–21 is a road construction program. The Navajo Nation strongly believes that Federal lands highway dollars should therefore be spent on actual road miles. We understand that our friends in Alaska are currently having a difficult time getting a fair accounting of their road mile inventory and we encourage this Committee to develop a special project to remedy that situation.

No. 5. Increase Planning Moneys. The Navajo Nation believes that planning is an essential predicate to capacity building. Transportation planning on Indian reservations is needed more now than ever because of growing populations and new homeland security concerns. The Navajo Nation supports increasing the percentage of allocated funds tribes can use for transportation planning from the current level of 2 percent to 4 percent.

Finally, S. 725 provides authorization for two programs that are essential for tribal transportation departments to be able to more effectively protect their reservation's people and environment. The Tribal Transportation Safety Program in Section 5 would authorize funding for tribes to launch buckle-up campaigns, anti-drunk driving initiatives and projects to eliminate traffic hazards. Given the fact that reservation roads have long been known to be the most hazardous in the country, this proposal is long overdue.

The Tribal Transit Program is also essential for us to be able to help people on the reservation get where they need to go and improve or preserve air quality by reducing vehicle traffic. The current obstacle to developing mass transportation on reservations is the fact that tribes must go through the states to get funding. Section 6 of S. 725 would remedy this situation by enabling tribes to apply directly to the Federal Transit Administration.

I would like to conclude by thanking you for your commitment to helping improve the IRR Program. We look forward to partnering with the members of this Committee to ensure that IRR legislation is included as quickly as possible in the Federal transportation legislation that is now winding its way through Congress.

TESTIMONY OF
LORETTA BULLARD, PRESIDENT OF KAWERAK, INC.
BEFORE THE
UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS

JUNE 4, 2003

Thank you Senator Campbell, Senator Murkowski and members of the committee for the opportunity to testify. My name is Loretta Bullard and I am President of Kawerak, Inc. Kawerak is a regional Native non-profit corporation and consortium of 20 federally recognized tribes in the Bering Straits Region of northwestern Alaska. I also serve on the Alaska Federation of Natives Board of Directors.

Thank you for giving us this opportunity to present our needs and recommendations. We're pleased that Congress is focusing attention on Native American transportation issues.

Kawerak is one of the few tribal organizations nationally – and the only tribal consortium – which has contracted to perform the entire Bureau of Indian Affairs "Indian Reservation Roads" (IRR) program under the Indian Self-Determination and Education Assistance Act. There is a distinct difference between contracting to construct a particular Transportation project and compacting to provide the entire IRR Program. Basically, when you compact the entire program, the compactor is responsible for the full spectrum of the program, from planning, inventory and long-term transportation plan development, to project selection, design, scheduling and construction. Kawerak contracted the entire IRR program in 2001. Effective in 2003, we rolled the IRR program into our self-governance compact.

I served as one of Alaska's tribal representatives to the national negotiated Rule-making Committee for the IRR program. This committee was tasked to develop program rules and a funding formula. We just completed the final meeting in late March, 2003 and anticipate the final regulations will be published in time for the FY 04 BIA IRR fund distribution.

Alaska's ground transportation system is very undeveloped in comparison to the rest of the United States. Most villages in rural Alaska are not connected to the highway system. By noting this, however, we are not suggesting that the leading transportation need in rural Alaska is for large-scale connecting routes between villages (though the need may exist in some areas). Rather, we see the greatest need in the area of basic infrastructure development at the village level.

Many rural Alaska village streets are no more than unimproved dirt paths, and are third world compared to similarly sized communities in the Lower 48 states. Virtually any development a village wants to do, whether it is new housing units, a new landfill, or bulk fuel tanks, access to a water source, a new sanitation lagoon or gravel site, requires road development. Unimproved village streets with no winter snow removal – not

uncommon in our smaller villages – turn into impassable quagmires during the spring. Once the roads/beaten paths dry out, the mud turns to dust. Dust from traffic on gravel and unimproved streets fouls subsistence meat racks, berries and other vegetation and is a major health hazard for children and the elderly in many of our villages. I have attached photos of "streets" in our villages – just to give you a sense of what is actually on the ground in rural Alaska.

Because there are no roads between communities, snow machines are routinely used for inter-village long distance winter travel. There is a huge need in Alaska for winter trail staking. Each year lives are lost due to snow machiners simply losing the trail, falling through river or sea ice, or freezing to death in arctic blizzard conditions.

Unfortunately, our small city governments have little tax base and our tribal governments have none at all. Capital improvements are dependent on outside funding. Village road projects are rarely constructed by the State DOT, because in many instances, villages are not able to meet the match requirement.

IRR funding, when it is available, is an ideal funding source for village Alaska because it can be used for a local match to leverage other funding sources. IRR funds and projects can also be administered through Indian Self-Determination Act contracts, which means that Native hire rules apply and the project can be run locally. However, there are many unresolved problems with the IRR program, not the least of which is insufficient funding and unequal access to the program.

The IRR Negotiated Rulemaking Committee worked very hard to develop rules that would correct some of the problems in the program, including inventory problems. However, we were not able to address all the problems in the negotiated rule-making process. On behalf of Kawerak and the Alaska Federation of Natives, we respectfully request your assistance to help our villages develop local infrastructure and to literally get us out of the mud and into the 21st century. Following are our recommendations.

Indian Reservation Roads Issues

S. 1122, S.725, S. 281

While this hearing is being held to solicit recommendations and comments on S.725 and S.281, I will also speak to the NCAI draft bill and S. 1122, the most recent bill introduced in the Senate addressing Tribal Transportation Issues. We commend Senator Bingaman, Senator Johnson, Senator Campbell, other sponsoring Senators and their staff, for the work they've done in order to introduce bills S. 725 and S. 1122.

To start, we wanted to express our support for the language contained in the NCAI draft bill, which would change the name of the Indian Reservation Roads Program throughout title 23, to the Tribal Transportation Program. This would better reflect the broad scope of the program.

Appropriations. Kawerak strongly supports increasing the national IRR appropriation as outlined in S. 1122 including the set-aside for maintenance within the larger appropriation.

The IRR program is seriously under-funded. The BIA's data identifies the IRR construction need across the country at $10.8 billion, yet under TEA-21, the IRR authorization level was $275 million annually. It would take about 40 years to meet the need at that rate.

Poor maintenance of IRR routes is a critical problem. Both Federal Lands Highways and BIA have a responsibility to ensure that projects constructed with IRR funds are adequately maintained. On most IRR facilities, the responsible party for maintenance is the BIA. But the BIA road maintenance program is funded nationally at only $26-27 million per year. In Alaska very few communities even have access to these maintenance funds. Road Maintenance is in the Tribal Priority Allocation (TPA) part of the DOI budget, which means that it is effectively buried within the overall BIA budget.

Obviously, the construction need for IRR roads is never going to go down if they are not being adequately maintained. Nationally the IRR construction program, which should be at least partially for new road construction, ends up being spent on reconstruction projects that would not be necessary if maintenance was adequate. It is for this reason that we support increases targeted specifically for maintenance.

We are very supportive of the language contained in S. 1122 and S. 725 that would except the IRR program from the obligation limitation and restore the IRR Program to 100% of funding.

We encourage Congress to go with the language proposed in the NCAI draft bill that would provide $50 million dollars annually for a bridge program. Just in the Bering Straits Region, we've identified 3 bridges that need replacement or major repairs. $15 million dollars isn't enough funding to address the bridge planning, engineering and construction needs on the IRR system. Current IRR bridge program is a $13 million take-down from IRR construction programs and funding can't be used for design. The technical correction that would allow expenditures on design is very important.

We wanted to speak to language contained in S. 725, Section 3(d)(5)(A-B) that would require the Secretary to verify the existence of all roads that are part of the IRR system and to distribute funds based only on those roads. We oppose this language. Not so much the language verifying the existence of roads, but the language that directs IRR funds to be distributed based only on the roads currently existing. Under this scenario, those reservations/tribal communities with extensive roads would receive all the funds. Those communities without roads (but who badly need them) would receive little if any funding. This provision would just lock in place all the historic inequities in the way the BIA has allocated roads funding.

We encourage Congress to go with the language contained in the NCAI draft bill that would establish a $35,000 base per tribe for Tribal Transportation Planning and bump the 2% planning allocation to 4%. Using our Bering Straits Region Tribes as an example, we were notified in March of 2002 that our tribes were eligible to apply for $1,125 as their share of the 2% planning funds. Even if the allocation were bumped to 5%, their annual allocation of transportation planning funds would only increase to $2,812.50. This simply is not enough funding to do comprehensive transportation planning. %. Increasing the planning allocation to 5%, by itself, doesn't make planning funds available to under-served tribes, because planning funds are allocated based on a % of a region's construction funds.

We strongly support the language contained in S 1122, the NCAI draft bill, S. 281 and S.725, all of which would:

- Establish a pilot program to enable tribal contractors to contract directly with the Federal Highways Administration rather than through BIA. We strongly support this, simply because it would eliminate a "middle man" and reduce the bureaucratic processes necessary to get things done.

- Clarify that the IRR program is fully subject to PL 93-638 contracting on the same basis as other BIA programs. This should not be necessary after TEA-21, but it still is because the BIA continues to take the policy position that it can simply label certain functions as beyond the reach of PL 93-638 contracting without going through the analysis of whether the activity in question really has to be performed by a federal employee. Normally under PL 93-638, a function or activity of the BIA is subject to tribal contracting unless it is inherently federal for constitutional or statutory reasons.

Of the bills introduced thus far in Congress, in my estimation, S. 1122 is the most thorough in addressing the broad range of Tribal Transportation issues. We are very supportive of the language contained in Sections 104 & 105 of S. 1122 bill with one exception - noted below. We support the language that:

- authorizes advance funding for construction activities;
- authorizes tribes to directly submit ERFO requests to the Secretary of Transportation;
- requires states to consult with affected Tribes to determine interest in performing federal aid projects, allows for agreements whereby funds could be made available to the tribes to do the work under the ISDEAA at 100% federal share;
- makes clear tribes may assume responsibilities for all non-inherently federal PFSA's and provides for avenues of appeal;
- clarifies that normal 638 rules regarding advance payment and use of savings apply to IRR funds under 638 contract;
- allows tribes to assume PS&E approval authority without necessarily having separate stewardship agreement with FHWA;

- authorizes up to $10 million be spent out of Highway Trust funds to meet the contract support needs of Indian Tribes when contracting to provide the Secretary's responsibilities and obligations and directs the Secretary to report on funds made available for that purpose.
- makes clear that the Secretary shall not deduct administrative expenses incurred by BIA relating to individual projects – from funds made available to Tribes for Tribal Transportation purposes;
- creates a Deputy Assistant Secretary for Tribal Government Affairs in the Office of the Secretary of Transportation, defines the Deputy Assistant Secretary's responsibilities and provides for Secretarial appointment.

Section 106 ss.326 of S. 1122 requires the Secretaries to establish a joint IRR Coordinating Committee to help assist the Secretary(ies) in carrying out the goals and purposes of the this title and the IRR Program. We recommend that this section be amended to give the IRR Coordinating Committee some "teeth" to help address ongoing issues - beyond being purely advisory. Over the years, we've brought numerous IRR related concerns to BIA DOT or the office of the Assistant Secretary for Indian Affairs, and had very little response. It's a black hole. Because transportation issues are complicated, we've found the powers that be in BIA - do not give the systems issues the time and attention necessary to fix the system. The problem with being advisory, is staff within the Department are free to ignore advice

We support Section 107 though we suggest the language be tweaked in order to identify a date by which the negotiated rule-making committee be established and then provide the committee 20 months from that date to develop the draft regulations. The current language states that the Secretarial authority to promulgate regulation expires 20 months after passage - the concern being that if the committee is not pulled together timely, members would have very limited time to develop draft regulations.

We oppose the language in section 104 (h)(3)(B) of S. 1122 that would <u>require</u> quarterly IRR TIP updates. We recommend that the language be tweaked to require TIP updates annually – or more often if necessary. Our concern is that the requirement for quarterly updates will be passed on to the tribal contractors.

We support the language contained in Section 201 of S. 1122 that would set in place a process for designating tribal scenic byways for inclusion in the registry of National Scenic Byways or All-American Roads and authorize tribes to administer Tribal Scenic Byway grants under the ISDEAA. There is however, an inconsistency in the definition of tribes in Alaska in Section 201 and Sections 202-203 of this draft bill. In Section 201, Alaska Native villages are defined as in the Alaska Native Claims Settlement Act – whereas in Sections 202-203, Indian tribes are as defined in the ISDEAA.

We oppose the language contained in S. 1122, sections 202 and 203, that directs the Secretary to make competitive grants available - to establish Tribal Transportation Safety Programs and Indian Reservation Rural Transit Programs – only to those tribes on

Indian Reservations or who have land under the jurisdiction of the tribe. The language as presently drafted, could be interpreted to exclude Alaska Tribes from participating. We definitely have safety issues that we would like addressed.

We encourage this committee to go with the language as contained in the NCAI draft bill which states that "the Secretary of Transportation shall establish and carry out a program to provide grants to Indian Tribes and tribal organizations to establish tribal transportation safety programs (and Tribal Transit Programs) on Indian reservations and other tribal communities."

Alaska Specific Issues

Inventory Issues

One of the major problems with the existing IRR program is that the funding formula used to distribute funds nationally is based primarily on an inventory of IRR routes, and the inventory has gaping holes. For Alaska villages, a true inventory has never been prepared. Alaska's "inventory" comes from a 1993 BIA Area Plan, which was a planning document compiled from project requests submitted by the villages. At the time, the villages were told to identify one needed project. About 70 villages were not even included in the 1993 Area Plan. In addition to missing entire Native communities, the BIA's inventory data has other flaws such as simply not having complete or current construction cost data for large parts of Alaska.

We were not able to reach consensus at Negotiated Rule-making on major changes to the IRR funding formula, but one of our successes was that for the years FY 2000 through 2002, additional funds were made available to tribes for planning, capacity building, and related transportation activities. This was $32,500 per tribe in 2000 and $35,000 in 2001 and 2002. The Reg-Neg committee felt this would help level the playing field in preparation for the new federal highway reauthorization bill. There are many, many tribes in Alaska and in the lower 48 who have never had the resources to develop a true inventory or a long-range transportation plan. The BIA inventory is particularly important as it drives funding. Prior to this allocation, Alaska Native Villages received less than $3,000 per year to do transportation planning from the 2% Tribal Transportation Planning funding pool, which wasn't enough to do much of anything.

This influx of funding meant our villages were finally able to begin participating in the IRR program - most villages that received the funds used them to develop their first true inventory of roads and transportation needs. Kawerak did this collectively for 19 of our 20 villages, but many other villages hired consultants or did the work themselves. By our count 189 tribes in Alaska - either individually or through their regional non-profit - contracted to develop the inventory updates and long term transportation plans.

However, very little of this work product has actually been accepted by the BIA. Once inventory updates began to be submitted to BIA on a large scale, we found that the

BIA was applying a "2%" limit to inventory increases. Having made funds available specifically for inventory updates and transportation planning activities, the BIA DOT applied a 10 year old policy to accept only 2% of the submitted inventory increases, calculated annually on a per BIA Region basis. In Alaska we were limited to 365 miles in the 2001 update (2% accumulated from 1993), and since then, it is about 45 miles per year.

Further, many of the inventory submittals made were simply not acted upon or were returned for various reasons. Imagine the frustration of the villages in Alaska that used these funds to update their inventories - as they were supposed to - only to learn after months of waiting that their inventory submissions had not even been processed.

We've found the inventory updating process to be a nightmare. BIADOT has changed the rules every year, and has imposed requirements over and above what's contained in their own guidance manuals. Kawerak and many other tribes in Alaska were doing inventory updates pursuant to P.L. 93-638 contracts, and our contracts referenced the required documents, in essence the 57 BIAM. We have checked the BIAM, and many of the requirements applied in 2003 are simply not in the 57 BIAM, nor are they consistent with the negotiated rule. Kawerak first learned of changes to rules for the 2003 submittals a little more than a month before the June 1 deadline, after we had already done most of the work. Changes in policy cannot arbitrarily be imposed upon PL 93-638 contractors/compactors, yet Kawerak and many tribes in Alaska essentially have had to redo the same work over and over again to get the routes into the system – and in many cases have still not succeeded.

There are serious legal and contracting problems with BIADOT's process. The 2003 submittals are extremely important, since they are likely to form a base year for funding under the new highway reauthorization act.

I will give one example of the problem. The latest Road Inventory Certification Checklist purports to require that a tribe have an approved Long Range Transportation Plan (LRTP) in effect before inventory changes are made. This is inconsistent with the FHWA tribal transportation planning guide, the BIAM, and the proposed regulations. Developing the inventory is part of the LRTP; having a full-blown LRTP has never been a prerequisite to submitting inventory updates. Logically, a tribe needs to identify its basic existing inventory before it can develop a meaningful long- range plan.

The current formula and inventory system is based on an implicit BIA policy decision made more than 10 years ago which concluded the basic BIA road system had already been built and that future IRR funds would be used to improve the existing system. The system was defined as a "BIA" system rather a tribal system. The premise was false, since many Alaska villages had never received IRR funding or construction at all, much less had their basic road needs identified or addressed. Alaska Native village were just as eligible by law for IRR services as any tribe in the Lower 48 states, but had barely been served at all. We are concerned that, while we specifically excluded incorporating the 2% policy into the draft IRR regulations, BIA will continue to apply the

policy, therefore, limiting Alaska to receiving funds based on an extremely incomplete and inaccurate inventory.

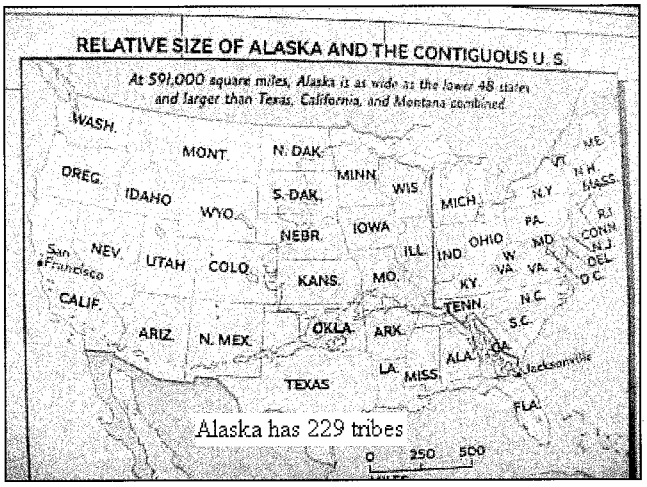
We encourage Congress to enact language that would direct the BIA to include Alaska village streets and primary access routes in the BIA inventory, with a limitation on access routes such that only the route segments within the village corporation boundaries be included. We believe this is necessary to put Alaska on an equal footing with tribes in other areas. In the Lower 48 states, the basic inventory of most tribes has been developed. In Alaska it was not – and the application of the 2% policy, limit unfairly limits our villages to a miniscule representation of actual need.

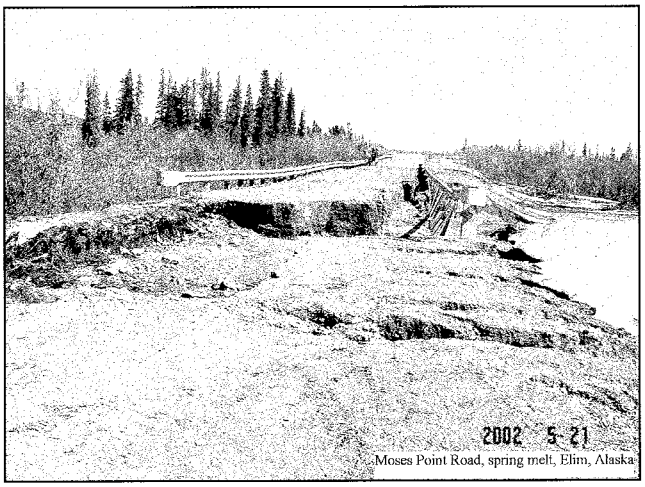
Because Alaska is such a huge state, with varying climates, topography, cost to construct, we would like to see regional tribal transportation authorities developed. We would like to see a bill pass Congress that would:

- Establish Native transportation authorities in each of the 12 ANCSA regions, which could be the existing regional for profit or non-profit corporations or a new regional tribal entity. The regional transportation authorities would develop regional transportation plans and prioritize projects;
- Establish a statewide Native transportation commission made up of appointees from each of the regional transportation authorities that would determine funding allocations among the regions and coordinate transportation planning among the regions and other government entities;
- Make funds available to be administered by FHWA, but subject to PL 93-638 contracting rules, which would include Native hire, the ability to match funds, etc.
- Authorize up to 15% of funds for construction projects could be retained for future maintenance.

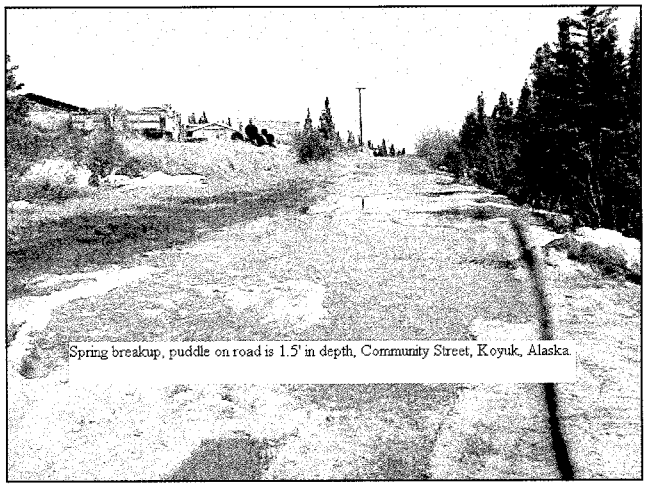
Although the creation of regional transportation authorities and a statewide commission may seem cumbersome, we feel that this is a realistic balance between the need to spread funding to different parts of the state, the huge size and differing topography and climate of the state, the need to preserve local control and decision-making, while still effectively prioritizing funds and retaining economies of scale.

In conclusion, thank you for the opportunity to testify. If we can further explain our recommendations, please feel free to call on us at any time. Thank you.



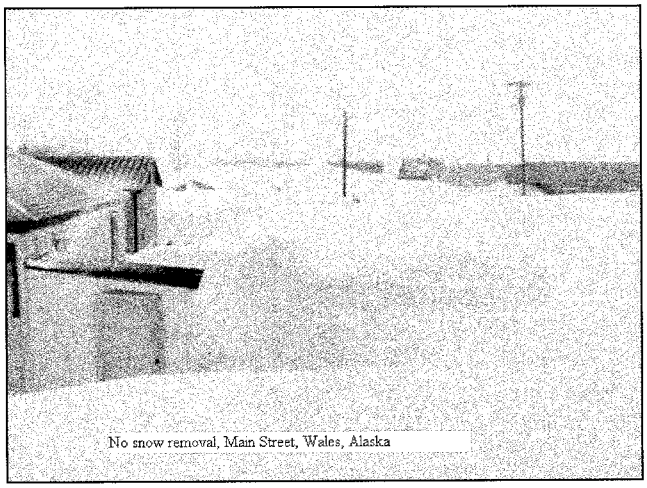


Moses Point Road, spring melt, Elim, Alaska

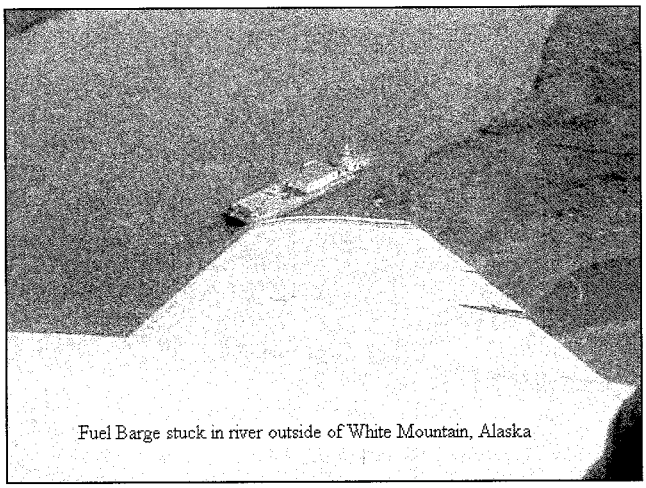


Spring breakup, puddle on road is 1.5' in depth, Community Street, Koyuk, Alaska.

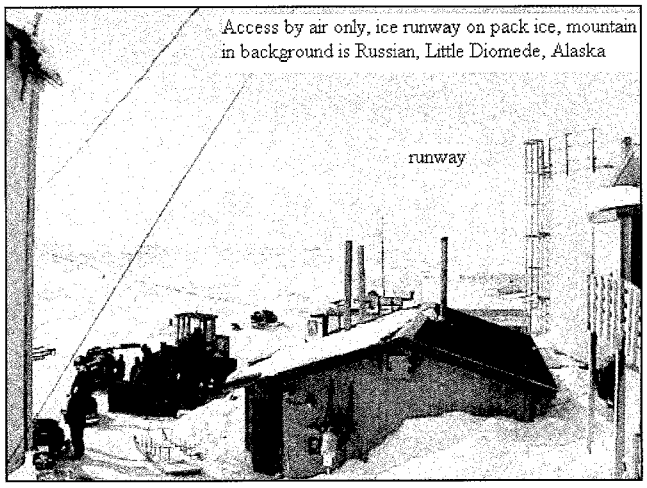
Spring Breakup, Main Street, Shishmaref, Alaska

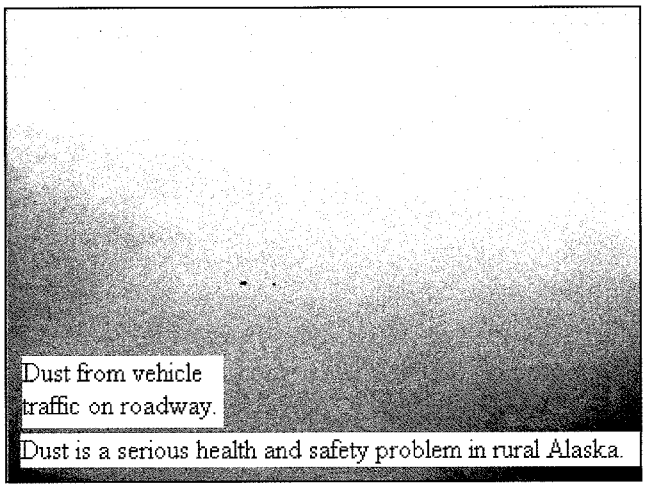


No snow removal, Main Street, Wales, Alaska



Fuel Barge stuck in river outside of White Mountain, Alaska


Access by air only, ice runway on pack ice, mountain in background is Russian, Little Diomede, Alaska
runway


Dust from vehicle traffic on roadway.
Dust is a serious health and safety problem in rural Alaska.

TESTIMONY OF THE RED LAKE BAND OF CHIPPEWA INDIANS

PRESENTED BY JAMES GARRIGAN, TRANSPORTATION PLANNER

RED LAKE BAND OF CHIPPEWA INDIANS

Before the U.S Senate Committee on Indian Affairs
June 4, 2003

Hearing on Proposals to Amend the Indian Reservation Roads Program

S. 281, the Indian Tribal Surface Transportation Improvement Act of 2003
And
S. 725, the Tribal Transportation Program Improvement Act of 2003
And
S. 1122, the Tribal Transportation Program Improvement Act of 2003

Good morning, Mr. Chairman, Mr. Vice Chairman, and Members of this Committee. My name is James Garrigan, Transportation Planner of the Red Lake Band of Chippewa Indians.

On behalf of our Chairman, the Honorable William G. King, and the Tribal Council, I thank you and other distinguished members of the Committee for this opportunity to provide testimony concerning proposed amendments to the Indian Reservation Roads Program as contemplated under Senate Bills S. 281 and S. 725. Also, although only recently introduced and referred to the Committee, I would like to take this opportunity to provide the Committee with some initial feedback on S. 1122 as well.

On behalf of Red Lake Tribal Council, and the people they represent who reside on the Red Lake Indian Reservation in northern Minnesota, we respectfully submit that the Federal Lands Highway Program and the Indian Reservation Roads Program represent for us a major avenue through which the United States government fulfills some of its trust responsibilities and honors its obligations to the Red Lake Band of Chippewa and to other Indian tribes. This program is vital to the well being of all native people living on or near Indian lands throughout the United States. Because of its great importance, reform of the Indian Reservation Roads Program has become a top legislative priority for Indian Nations throughout Indian Country.

Background on the Red Lake Indian Reservation

Compared to other tribes, Red Lake is a medium-sized Tribe with more than 9,500 members, most of whom live on our Reservation. The Red Lake Indian Reservation is located in a rural area within the boundaries of the State of Minnesota. Our Reservation has over 840,000 acres of tribal land and water held in trust for our Tribe by the United States. While over time it has been diminished from its original 15 million acres, our Reservation has never been broken apart or allotted to individuals and lost to

non-Indians. Nor has our Reservation ever been subjected to the criminal or civil jurisdiction of the State of Minnesota. Consequently, our Tribal Government has a large land area over which our Tribe exercises full and exclusive governmental authority and control in conjunction with the United States. At the same time, due in part to our location far from centers of population and commerce, we have few jobs available on our Reservation. While the unemployment rate in Minnesota is only 4%, ours remains at an outrageously high level of 60%. The lack of adequate transportation facilities, transit options, communications, and other necessary infrastructure continues to significantly impair our Reservation economic development and job opportunities.

Red Lake's Involvement in the Indian Reservation Roads Program and the Negotiated Rule Making Process

The Red Lake Band of Chippewa has always been at the forefront in national transportation matters as they relate to the Indian reservations. This is evidenced by our participation in successful lobbying efforts six years ago to ensure that TEA-21 and Title 23 of the United States Code afforded Indian tribes the opportunity to assume and administer the Indian Reservation Roads ("IRR") Program pursuant to the Indian Self-Determination and Education Assistance Act. We also were one of the first Tribes in the Nation to successfully negotiate with the U.S. Department of the Interior our assumption and administration of the IRR Program under a Self-Governance Agreement pursuant to this authority. The legislative reform effort by Congress six years ago was aimed at removing many obstacles that hampered tribes in the past in their attempts to administer the IRR Program under Self-Determination or Self-Governance Agreements.

Following the enactment of TEA-21, I was personally involved in the legislatively-mandated negotiated rule making process for the IRR Program. While I appreciated the opportunity to represent the Tribal Caucus as a Tribal Co-Chair of the Federal-Tribal Negotiated Rulemaking Committee, I was disappointed with what I, along with a majority of the tribal representatives on the Committee, viewed as a blatant disregard for Congressional intent by the federal representatives on the Committee.

From the beginning, the Bureau of Indian Affairs ("BIA") ignored the deadlines mandated by TEA-21 and failed to form the Negotiated Rulemaking Committee and provide for an initial meeting of the Committee until just a handful of days before the arrival of the statutory deadline to produce proposed regulations. While the Committee's Tribal Caucus met every challenge and every imposed deadline, the BIA delayed the Committee process for months at every juncture. Because of the long delays by the BIA, the tribes felt that they did not have sufficient time to properly negotiate key items that are important to the tribes. As a result, there are 13 major disagreement items that did not get properly addressed. Although this was supposed to be a tribally driven process, it was far from it. The proposed rule was published with the federal language in place on the disagreement items and it appears that the final rule will be published likewise. Many Tribal Caucus Committee members feel that because of this, the entire negotiated rulemaking process was a travesty. It now appears that the BIA is blaming the tribes for the delays.

As we testified at a previous hearing before this Senate Committee, the pattern of conduct of the BIA throughout the negotiated rule making process remained unchanged through successive administrations. We found the past five years to be most disheartening, because it appears that the federal bureaucracy has thus far prevailed in thwarting full tribal assumption of the administration of the IRR Program. Real and meaningful reform of the IRR Program will be accomplished only through detailed legislative mandates and direct and active congressional oversight and involvement in its implementation.

Red Lake's Position on Proposed Amendments

The Federal Lands Highway Program provides funding for a coordinated program of public roads that serve Federal land transportation needs. The Federal Lands Highway Program funds five categories or roads, including Indian Reservation Roads. The IRR Program is administered cooperatively by the Federal Highway Administration ("FHWA"), the BIA, and the Indian tribes that have self-determination contracts and self-governance funding agreements in place for the administration of IRR Program functions and funds. For many Indian tribes, the IRR Program is the sole source of funding through which the local Indian communities receive critically needed transportation improvements to facilitate better access to jobs, health services, and educational and economic development opportunities.

Again, despite the tribal reform language that exists in TEA-21, we believe it is necessary for the Congress to even more explicitly mandate that the federal roads bureaucracy facilitate the complete transfer of all authority and responsibility for the administration of the IRR Program to those tribes so requesting, and to legislatively enforce full tribal autonomy in the operation of programs formerly operated by the United States government. Unless the Congress does this by statute, certain federal offices will never appreciate, and Indian tribes will never realize, the true meaning of Tribal Self-Determination and Self-Governance.

The Red Lake Tribal Council is in general favor of S. 281 and S. 725 and offers the following testimony on the provisions of the proposed amendments along with some suggestions for improvement.

S. 281, The Indian Tribal Surface Transportation Improvement Act of 2003

This bill contains provisions which, hopefully, will finally achieve what Congress has intended for Indian tribes since the enactment of the Indian Self-Determination and Education Assistance Act (ISDEAA), P.L. 93-638 in 1975: curbing the BIA bureaucracy and supporting tribal autonomy. Passage of this bill would stop the loss of IRR Program authority that resulted with the application of the obligation limitation to IRR Program funds for the first time in 1998 under TEA-21. Through the obligation limitation, and the Secretary of Transportation's "distribution of obligation authority" for amounts authorized for the IRR Program under TEA-21, the amount of funding identified in TEA-

21 for the IRR Program did not come to fruition—it was reduced and redirected for other purposes. S. 281 would also allow tribes to deal directly with the FHWA on a government-to-government basis without the unnecessarily heavy-handed and financially wasteful oversight of the BIA. Despite the clear direction from Congress in the 1994 amendments to the ISDEAA and the clear language in TEA-21, the BIA continues to create obstacles that prevent tribes from full autonomy when it comes to operating the IRR Program under P.L. 93-638, as amended.

OBLIGATION LIMITATION

While Red Lake and all Indian tribes throughout the country appreciate the increased funding for the IRR Program that Congress made available under TEA-21, the Program is still critically under-funded. The application of the obligation limitation requirement to these funds off-set much of the benefit Indian tribes were to receive through the increased funding. Passage of this bill would help ensure that all funding allocated for the IRR Program remains available for distribution to Indian tribes—a goal that Red Lake fully endorses.

We note, however, that the approach taken in the bill is to amend TEA-21, which we understand will expire at the close of fiscal year 2003. For this reason, and because the next transportation authorization cycle covers fiscal years 2004 through 2009, it is possible that the effect of the bill would be temporary or perhaps even negated upon the expiration of TEA-21. We, therefore, recommend that the Committee consider the addition of "stand alone" language to Title 23 of the United States Code that would have the intended effect and we would be happy to work with the Committee in crafting this language.

DEMONSTRATION PROJECT

The Red Lake Band of Chippewa Indians has been a strong advocate for Indian tribes having a direct relationship with the FHWA. S. 281 would provide a vehicle to make this happen under a "Demonstration Project". The Red Lake Band has also been at the forefront in demonstrating that Indian tribes can deliver on programs that Congress has provided to further promote Self-Determination and Self-Governance of Indian tribes. Red Lake was one of the first tribes in the Nation to assume the entire IRR Program under Title IV of P.L. 93-638, as amended, and the documented success of this program serves as a model for other tribes to follow. Red Lake will also be at the forefront in demonstrating that Indian tribes can independently co-exist with the FHWA in the administration of the IRR Program without the involvement of the BIA.

We respectfully request that the Committee consider eliminating the requirement in the current draft that Indian tribes undergo a "planning phase." The legal and budgetary research that was appropriate a decade ago when the broader self-governance demonstration program under Title III of the ISDEAA was enacted, no longer appears to

be needed in the IRR context and would divert critically-short IRR funds for unnecessary "planning grants" for this "planning phase."

SAFETY INCENTIVE GRANTS

The Red Lake Band strongly supports the "Safety Incentive Grants" section of the bill. Injury and death rates related to highway crashes on Indian reservations are the highest in the Nation. The inclusion of Indian tribes as eligible to receive allocations on the same basis as States to promote increased seat belt use under section 157 of Title 23 and to assist Indian communities in the prevention of the operation of motor vehicles by intoxicated persons under section 163 of Title 23, will go a long way in preventing unnecessary injury and death on reservation roads. This bill would assist in long overdue reservation education on seat belt use and the prevention of the operation of motor vehicles by intoxicated persons.

COMMERCIAL VEHICLE DRIVER TRAINING PROGRAM

The Red Lake Reservation is located far from centers of population and commerce and has relatively few jobs available in our community. Our 60% Reservation unemployment rate far exceeds the 4% State-wide rate. While the Commercial Vehicle Driving Training Program may foster and promote job creation and economic opportunities for Native Americans who are interested in commercial vehicle driving careers in other areas of the country, we fail to see where it will ease our unemployment dilemma. We feel that increased funding for road and bridge construction on Indian reservations will go a lot farther in easing excessive unemployment rates in Indian country.

S. 725, The Tribal Transportation Program Improvement Act of 2003

While the provisions of this bill closely mirror the provisions of S. 281, we feel that the above testimony serves both bills with the exception of the funding schedules as proposed in Section 3, and the Indian Reservation Rural Transit Program in Section 6, of S. 725.

AUTHORIZATIONS OF APPROPRIATIONS

The Red Lake Band strongly supports the provisions of this bill that would increase the amount of funding available for the IRR Program. We feel that increasing the funding for the IRR Program to $500 million annually and removing the reduction in IRR Program funding resulting from the application of the obligation limitation will provide greater opportunities for jobs on Indian Reservations. The inclusion of planning and engineering as permissible uses of bridge set-aside funding will also allow more tribes to participate in the bridge rehabilitation and replacement program, and to tackle the backlog of deficient bridges. Under the present structure of the TEA-21 bridge

program, many smaller tribes cannot participate because they do not have the resources to plan and design deficient bridges on their reservations.

TRIBAL TRANSPORTATION SAFETY PROGRAM

While this portion mirrors S. 281, the Red Lake Band supports the funding level increases incorporated in S. 725.

INDIAN RESERVATION RURAL TRANSIT PROGRAM

Transportation of Indian people, who do not have access to other modes of transportation to get to work, commerce, recreation, or health care facilities, is of vital concern to most tribal governments. Tribes do not receive funding from the Federal Transit Authority and funding for transit systems on Indian reservations has to come from either a state transit program or IRR construction funds. Historically, tribes have not been too successful in obtaining state transit funds when competing with cities, counties and other public entities. Using funds from the IRR Program sharply reduces the already scarce IRR road construction funds. The Red Lake Band is the only Tribe in Minnesota that operates a Transit Program. While this program is quite successful, our service is limited because of the above reasons. Implementation of this bill would allow expanded transit service as well as provide more employment to Band members.

S. 1122, The Tribal Transportation Program Improvement Act of 2003

This bill contains several provisions that closely mirror those included in S. 281 and S. 725. However, in the short period of time between the introduction of S. 1122 and the development of this testimony, the Red Lake Band has not had an adequate opportunity to fully analyze and assess S. 1122. Our initial impression, however, is that S. 1122 touches upon a variety of transportation issues that are important to Indian country, but requires further refinement to ensure that the successful gains in Indian program administration are not adversely impacted unintentionally. Here are some of our initial concerns:

- *Road maintenance.* The Red Lake Band supports the need for sufficient funding for road maintenance activities and believes that the amount identified in S. 1122 for this purpose would be beneficial to Indian country. However, we would not support the use of IRR Program funds for road maintenance activities if such use would reduce the total amount of IRR Program funding available for construction below the $275 million level currently available under TEA-21.

- *Project vs. Program.* The Red Lake Band supports bill language that promotes full application of the ISDEAA to the IRR Program. However, the language

currently employed in S. 1122 appears to indicate that tribes may only assume individual IRR *projects*, rather than also assume IRR Program administration.

- *IRR Bridge Construction Funding.* The Red Lake Band fully supports an increase in the amount of funding available for bridge construction activities. However, language in S. 1122 would appear to require the Secretary of Transportation to allocate this funding "in amounts directly proportional to the actual need of each Indian reservation, as determined by the Secretary" based on certain factors. Bridge deficiency is relative from bridge to bridge and this language could have the unintended consequence of allocating bridge funding to reservations with more bridges and away from reservations with the most deficient bridges.

- *Inherently Federal Functions.* The Red Lake Band fully supports simplifying the administration of the IRR Program, but doubts whether a provision giving the Secretary of Transportation the sole authority to determine whether an IRR function is inherently federal would be productive. The BIA and FHWA federal representatives' approach during the TEA-21 Negotiated Rule Making Committee process was to unilaterally "declare" without supporting legal analysis—and over the strong objection of the Tribes—that certain functions were "inherently Federal" and thus not available for tribal assumption under the ISDEAA by rule. This will be given effect in the TEA-21 final rule and would have the effect under S. 1122 of allowing what should be a pro-self-determination provision to be interpreted by the agencies in a manner that is inconsistent with the congressional intent in enacting the ISDEAA.

A Tribal Procurement Contracting Proposal

The Red Lake Band would also like to take this opportunity to propose to the Committee for its consideration as part of the IRR Program amendments language that we believe would help to foster economic development in Indian country through the federal procurement process. While a number of Indian tribes receive IRR services either directly from federal employees to tribes or through contracts and agreements with Indian tribes under the ISDEAA authority, the BIA continues to use a substantial portion of the IRR funding to procure IRR-related services from non-tribal contractors located far from Indian communities. As a result, the full benefit of this federal funding often eludes tribal communities because "outside contractors" deliver the required benefit or product on-reservation but conduct most of their economic activity off-reservation so that little if any ancillary benefit is derived by tribal economies.

If a beneficiary tribe chooses not to contract under the ISDEAA to carry out an IRR program or function, and BIA chooses not to provide the program or function through "direct services" (delivered by federal employees), then BIA procures the deliverable from a private sector company, typically located in an urban setting far from tribal economies. The economics of tribal communities would receive far greater benefit

if federal-Indian appropriations like those of the IRR Program were all spent within tribal communities by tribal operations.

Increasing numbers of Indian tribes have established service delivery, construction, and engineering organizations as arms or departments of their tribal governments. For example, the Red Lake Band of Chippewa Indians has a robust Tribal Engineering Department that actively solicits federal contracting activity throughout Indian country. The ISDEAA as well as the IRR program authority should be amended to *require* BIA to contract with tribally owned and controlled organizations who apply to do the work when a beneficiary tribe chooses not to contract for itself and the BIA chooses to procure the deliverable from outside the BIA.

This proposal could be implemented either through amending the ISDEAA provisions found in Title 25 of the United States Code or in amending Title 23 of the United States Code. The language would provide as follows:

> FOSTERING TRIBAL PROCUREMENT CONTRACTING AND RESERVATION DEVELOPMENT—.
>
> (a) Upon the written request of an Indian tribe to provide certain services or deliverables which the Secretary of the Interior would otherwise procure from a private sector entity, and absent a request to contract those services or deliverables pursuant to 25 U.S.C. 450f made by the tribe or tribes to be directly benefited by said services or deliverables, the Secretary of the Interior is directed to contract for such services or deliverables through the requesting Indian tribe pursuant to 25 U.S.C. 450f, Provided, That the requesting tribe assures the Secretary that the principal beneficiary of the contracted services remains the tribe or tribes originally intended to benefit from the services or deliverables.
>
> (b) The requesting tribe shall enjoy no less than the same rights and privileges in executing and administering the contract as would the beneficiary tribe if the beneficiary tribe exercised its rights to contract for these services or deliverables under 25 U.S.C. 450f. If at any time the beneficiary tribe (or tribes) seeks to contract services or deliverables being provided by the requesting tribe, the beneficiary tribe (or tribes) shall give the requesting tribe and the Secretary of the Interior no less than 180 days notice.

We believe that this provision would enable Indian country to more fully benefit from federal program funds.

We would also like to take this opportunity to provide the Committee with specific language covering several of the issues we have touched upon. To this end, we

are attaching proposed language to this testimony. This language also incorporates our tribal procurement contracting proposal.

Thank you for inviting the Red Lake Band to present this testimony to the Committee today. The Red Lake Band and its staff have been working with many of the other tribes from around Indian Country and we believe our testimony to be largely representative of their concerns as well.

And special thanks to you, Senator Campbell, and to your able staff, for your long and steadfast leadership in attempting to increase congressional scrutiny of the federal roads bureaucracy and your consistently strong support for legislative reform of the IRR Program. Many people in Indian country know of your work on their behalf and are very appreciative of it.

ATTACHMENT TO TESTIMONY OF JAMES GARRIGAN, TRANSPORTATION PLANNER, RED LAKE BAND OF CHIPPEWA INDIANS

SEC. XXX. AMENDMENTS RELATING TO INDIAN TRIBES.

(a) TRIBAL SELF-DETERMINATION AND SELF-GOVERNANCE PILOT PROGRAM.—Section 202(d)(3) of title 23, United States Code, is amended by adding at the end the following:

"(C) FEDERAL LANDS HIGHWAY PROGRAM TRIBAL SELF-DETERMINATION AND SELF-GOVERNANCE DEMONSTRATION PROJECT.—

"(i) IN GENERAL.—Notwithstanding any other provision of law, regulation or interagency agreement, the Secretary shall establish a demonstration project under which all funds made available under this title for Indian reservation roads and for highway bridges located on Indian reservation roads as provided for in subparagraph (A) shall be made available, upon the request of an Indian tribe involved, to the Indian tribe for use in carrying out, in accordance with the Indian Self-Determination and Education Assistance Act, as amended (25 U.S.C. 450 et seq.), contracts and agreements for the planning, research, engineering, and construction described in that subparagraph.

"(ii) EXCLUSION OF AGENCY PARTICIPATION.—In accordance with subparagraph (B), all funds for Indian reservation roads and for highway bridges located on Indian reservation roads to which clause (i) applies, shall be paid directly to the Indian tribe by the Secretary without regard to the organizational level at which the Federal lands highway program has previously carried out the programs, functions, services, or activities involved, and without any take-down by or allocation of funds to the Secretary of the Interior.

"(iii) FUNDING.—An Indian tribe participating in the pilot program under this subparagraph shall receive funding in an amount equivalent to the funding that the Indian tribe would otherwise receive in accordance with the funding formula established under section 202(d) of title 23, United States Code, plus an additional amount equivalent to its attributable share of the percentage of funds that would otherwise have been withheld by the Secretary of the Interior during the fiscal year involved for the road program management costs of the Bureau of Indian Affairs under section 202(f)(1) of title 23, United States Code.

"(iv) SELECTION OF PARTICIPATING TRIBES.—

"(I) PARTICIPANTS.—

"(aa) IN GENERAL.—Beginning in fiscal year 2005, the Secretary shall select 12 geographically diverse Indian tribes from the applicant pool described in subclause (II) to participate in the demonstration project carried out under clause (i). In addition to those Indian tribes participating in the demonstrating project, the Secretary shall select 18 additional Indian tribes in each of fiscal years 2007 and 2009 from the applicant pool to participate, unless an insufficient number of Indian tribes remain in the applicant pool, in which case those remaining Indian tribes shall be selected to participate.

"(bb) CONSORTIA.—Two or more Indian tribes that are otherwise eligible to participate in a program or activity to which this title applies may form a consortium to be considered as a single tribe for purposes of becoming part of the applicant pool under subclause (II).

"(II) APPLICANT POOL.—The applicant pool described in this subclause shall consist of each Indian tribe (or consortium) that—

"(aa) has requested participation in the demonstration project under this subparagraph through the adoption of a resolution or other official action by the tribal governing body; and

"(bb) has, during the 3-fiscal year period immediately preceding the fiscal year for which participation under this subparagraph is being requested, demonstrated financial stability and financial management capability through a showing of no material audit exceptions by the Indian tribe during such period.

"(III) CRITERIA FOR DETERMINING FINANCIAL STABILITY AND FINANCIAL MANAGEMENT CAPACITY.— For purposes of this subparagraph, evidence that, during the 3-year period referred to in subclause (II)(bb), an Indian tribe had no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe's self-determination contracts or self-governance funding agreements with any Federal agency shall be conclusive evidence of the required stability and capability."

(b) ADMINISTRATION.—Section 202 of title 23, United States Code, is amended by adding at the end the following:

"(f) ADMINISTRATION OF INDIAN RESERVATION ROADS.—

"(1) CONTRACT AUTHORITY.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, not more than 6 percent of the contract authority amounts made available from the Highway Trust Fund to the Bureau of Indian Affairs shall be used to pay the administrative expenses of the Bureau for the Indian reservation roads program (including the administrative expenses relating to individual projects that are associated with that program).

"(B) AVAILABILITY.—All amounts made available to pay administrative expenses under subparagraph (A) shall be made available to an Indian tribe, upon the request of the Indian tribe, to be used for the associated administrative functions assumed by the Indian tribe under contracts and agreements entered into pursuant to the Indian Self-Determination and Education Assistance Act, as amended (25 U.S.C. 450 et seq.).

"(2) HEALTH AND SAFETY ASSURANCES.—Notwithstanding any other provision of law, an Indian tribe may commence road and bridge construction that is funded through a contract or agreement under the Indian Self-Determination and Education Assistance Act, as amended (25 U.S.C. 450 et seq.) if the Indian tribe has—

"(A) provided assurances in the contract or agreement that the construction will meet or exceed proper health and safety standards;

"(B) obtained the advance review of the plans and specifications from a licensed professional who has certified that the plans and specifications meet or exceed the proper health and safety standards; and

"(C) provided a copy of the certification under subparagraph (B) to the Director of the Bureau of Indian Affairs.

"(3) CONTRACT OR AGREEMENT TO SERVE AS STEWARDSHIP AGREEMENT.—An Indian tribe may perform any program, function, service, or activity, or portion thereof, associated with the Indian reservation roads program, wherever performed, including any program, function, service, or activity, or portion thereof, that heretofore has been

the subject of a stewardship agreement, in accordance with the terms of a contract or agreement entered into under the Indian Self-Determination and Education Assistance Act, as amended (25 U.S.C. 450 et seq.).

"(g) INDIAN RESERVATION ROADS PROGRAM, SAFETY INCENTIVE GRANTS.—

"(1) SEAT BELT SAFETY INCENTIVE GRANT ELIGIBILITY.—Notwithstanding any other provision of law, an Indian tribe that is eligible to participate in the Indian reservation roads program under subsection (d) shall be deemed to be a State for purposes of being eligible for safety incentive allocations under section 157 to assist Indian communities in developing innovative programs to promote increased seat belt use rates.

"(2) INTOXICATED DRIVER SAFETY INCENTIVE GRANT ELIGIBILITY.—Notwithstanding any other provision of law, an Indian tribe that is eligible to participate in the Indian reservation roads program under subsection (d) shall be deemed to be a State for purposes of being eligible for safety incentive grant funding under section 163 to assist Indian communities in the prevention of the operation of motor vehicles by intoxicated persons.

"(3) GRANT FUNDING PROCEDURES AND ELIGIBILITY CRITERIA.—

"(A) IN GENERAL.—The Secretary, in consultation with Indian tribes, may develop funding procedures and eligibility criteria applicable to Indian tribes with respect to allocations or grants described in paragraphs (1) and (2).

"(B) PUBLICATION.—The Secretary shall ensure that procedures or criteria developed under subparagraph (A) are published annually in the Federal Register."

(c) TRIBAL TRANSPORTATION PLANNING.—Section 204(j) of title 23, United States Code, is amended in the first sentence by striking "2 percent" and inserting "4 percent".

(d) TRIBAL FLEXIBLE FINANCING.

(1) Section 115 of title 23, United States Code, is amended by adding at the end the following:

"(d) TRIBAL TRANSPORTATION.—Notwithstanding any other provision of law, an Indian tribe that is eligible to participate under section

202(d) of this title shall be deemed a state for purposes of this section and shall be eligible for advance construction funds for the programs identified in subsection (a) of this section for projects on Indian reservation roads."

(2) Section 202(d) of title 23, United States Code, is amended by inserting at the end thereof the following:

"(5) ADVANCE FUNDING.—Notwithstanding any other provision of law, regulation or interagency agreement, all funds made available to an Indian tribe pursuant to subsection 202(d)(3) shall be provided as advance payments in the form of annual or semi-annual installments in the discretion of the Indian tribe. The annual installment or initial semi-annual installment shall be provided within 45 days of apportionment of the fiscal year appropriation by the Office of Management and Budget to the Secretary.

"(6) USE OF SAVINGS AND PROGRAM INCOME.—Notwithstanding any other provision of law, regulation or interagency agreement, all funds made available to an Indian tribe pursuant to subsection 202(d)(3) that remain at the end of the fiscal year, including any program income earned by the Indian tribe as a result of carrying out the contract or agreement--

"(a) shall be used by the Indian tribe to provide additional services or benefits under the contract or agreement; and

"(b) shall not be a basis for reducing the amount of funds provided to the Indian tribe in future years."

(3) ELIGIBLE ACTIVITIES; CONTRACT SUPPORT FUNDING.—Section 204(c) of title 23, United States Code, is amended to read as follows:

"(c) (1) Before approving as a project on an Indian reservation road any project eligible for funds apportioned under section 104 or section 144 of this title in a State, the Secretary must determine that the obligation of funds for such project is supplementary to and not in lieu of the obligation, for projects on Indian reservation roads, of a fair and equitable share of funds apportioned to such State under section 104 of this title.

"(2) The Secretary of the Interior shall, within 45 days after receipt from an Indian tribe of a proposed use of funds made available under this title for Indian reservation roads and for highway bridges located on Indian reservation roads, approve the proposed use

unless the Secretary of the Interior provides written notification to the Indian tribe that contains a specific finding that clearly demonstrates, or that is supported by a controlling legal authority, that the proposed use of such funds is prohibited by a specific statute.

"(3) Up to $10 million of the funds made available for Indian reservation roads for each fiscal year shall be made available to supplement any shortfall in the obligation of the contracting or compacting Secretary under the Indian Self-Determination and Education Assistance Act, as amended, to provide full contract support costs funding to Indian tribes with respect to their administration of Indian reservation roads programs, services, functions, and activities, or portions thereof, under self-determination contracts and self-governance agreements. The Secretary of the Interior shall report annually to Congress the total amount of Indian reservation roads funds made available under this title that were used to supplement any such shortfall.

"(4) Notwithstanding any other provision of this title, Indian reservation roads under the jurisdiction of the Bureau of Indian Affairs of the Department of the Interior shall be eligible to expend not more than 15 percent of funds apportioned for Indian reservation roads from the Highway Trust Fund for the purpose of road sealing projects. The Bureau of Indian Affairs shall continue to retain responsibility, including responsibility for annual requests for sufficient funding, for road maintenance programs on Indian reservations."

(e) EMERGENCY RELIEF.—Section 125(e) of title 23, United States Code, is amended by adding to the end the following: "Notwithstanding any other provision of law, policy or guideline, Indian tribes may submit directly to the Secretary of Transportation applications for emergency relief funding for the repair or reconstruction of Indian reservation roads and the Secretary shall process such applications in the same manner in which similar applications from federal agencies are processed."

(f) IMPLEMENTATION.—Section 202 of title 23, United States Code, is amended by deleting subsections 202(d)(2)(B) and 202(d)(2)(C) and inserting in lieu thereof the following:

"(B) REGULATIONS.—The Secretary of the Interior and Secretary of Transportation shall issue joint regulations governing the Indian reservation roads program by establishing a negotiated rulemaking committee as provided in sections 563(a) and 565(a) of title 5.

"(C) NEGOTIATED RULEMAKING COMMITTEE.—The Secretary of the Interior shall establish and cause to be organized a negotiated rulemaking committee within 90 days of the date of enactment of this Act. In establishing a negotiated rulemaking committee to carry out subparagraph (A), the Secretary of the Interior and Secretary of Transportation shall-

"(i) apply the procedures under subchapter III of chapter 5 of title 5 in a manner that reflects the unique government-to-government relationship between the Indian Tribes and the United States; and

"(ii) ensure that membership of the committee includes only representatives of the Federal Government and of geographically diverse small, medium, and large Indian Tribes.

"(D) EXPIRATION OF RULEMAKING AUTHORITY.—The authority to promulgate regulations shall expire if final regulations are not promulgated within 20 months from the date of enactment of this Act.

"(E) CONFLICTING REGULATIONS.—The Secretary of Interior and the Secretary of Transportation are authorized to repeal any regulation inconsistent with the provisions of this chapter.

"(F) ADVISORY COMMITTEES.—Notwithstanding any other provision of law (including any regulation), the Secretary of the Interior and the Secretary of Transportation are authorized to jointly establish and fund such interagency committees or other interagency bodies, including advisory bodies comprised of tribal representatives, as may be necessary or appropriate to carry out the provisions of this Act."

(g) CONFORMING AMENDMENTS.—

(1) Section 101 of title 23, United States Code, is amending by adding the following definitions, and renumbering accordingly:

(A) INDIAN TRIBE.—The term "Indian tribe" means an "Indian tribe" as that term is defined in the Indian Self-Determination and Education Assistance Act, as amended (25 U.S.C. 450b(e)), and includes a tribal organization authorized by an Indian tribe to plan, conduct, and administer programs, or portions thereof, pursuant to the provisions of 25 U.S.C. 450f(a)(1).

(B) TRIBAL ORGANIZATION.—The term "tribal organization" means a "tribal organization" as that term is defined in the Indian Self-Determination and Education Assistance Act, as amended (25 U.S.C. 450b(l)).

(2) The term "Indian tribal government" is deleted and replaced with "Indian tribe" wherever it appears in subsections 135(d)(2), 140(c), 202(d)(3), and 204(j) of title 23, United States Code.

(3) The terms "Indian tribal governments" and "tribal governments" are deleted and replaced with "Indian tribes" wherever they appear in subsections 135(e)(2)(C), 135(f)(1)(B)(iii), 140(b), 140(d), 204(j), 402(b)(1)(C), 504(b)(2)(A), 504(b)(2)(D)(ii), and 504(b)(2)(E) of title 23, United States Code.

(h) OBLIGATION LIMITATION.—For each of fiscal years 2004 through 2009, the Secretary shall not distribute obligation authority for amounts authorized for Indian reservation roads under sections 202 and 204 of title 23, United States Code.

(i) FOSTERING TRIBAL PROCUREMENT CONTRACTING AND RESERVATION DEVELOPMENT.—Section 450e of title 25, United States Code, is amended by adding at the end the following

"(d)(1) Upon the written request of an Indian tribe to provide certain services or deliverables which the Secretary of the Interior would otherwise procure from a private sector entity, and absent a request to contract those services or deliverables pursuant to 25 U.S.C. 450f made by the tribe or tribes to be directly benefited by said services or deliverables, the Secretary of the Interior is directed to contract for such services or deliverables through the requesting Indian tribe pursuant to 25 U.S.C. 450f, Provided, That the requesting tribe assures the Secretary that the principal beneficiary of the contracted services remains the tribe or tribes originally intended to benefit from the services or deliverables.

"(2) The requesting tribe shall enjoy no less than the same rights and privileges in executing and administering the contract as would the beneficiary tribe if the beneficiary tribe exercised its rights to contract for these services or deliverables under 25 U.S.C. 450f. If at any time the beneficiary tribe (or tribes) seeks to contract services or deliverables being provided by the requesting tribe, the beneficiary tribe (or tribes) shall give the requesting tribe and the Secretary of the Interior no less than 180 days notice."

STATEMENT OF
ARTHUR E. HAMILTON
ASSOCIATE ADMINISTRATOR FOR FEDERAL LANDS HIGHWAYS
FEDERAL HIGHWAY ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
HEARING ON PROPOSALS TO AMEND THE INDIAN RESERVATION ROADS PROGRAM -- S. 281, THE INDIAN TRIBAL SURFACE TRANSPORTATION IMPROVEMENT ACT OF 2003 and S. 725, THE TRIBAL TRANSPORTATION PROGRAM IMPROVEMENT ACT OF 2003
JUNE 4, 2003

Mr. Chairman and Members of the Committee, thank you for the opportunity to discuss S. 281, "The Indian Tribal Surface Transportation Improvement Act of 2003" and S. 725, "The Tribal Transportation Program Improvement Act of 2003." I also appreciate the opportunity this hearing affords to provide a brief background on the Department of Transportation's (DOT) Indian Reservation Roads (IRR) program of the Federal Lands Highways Program (FLHP), and an overview of provisions affecting Indian tribes and the IRR program in the "Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003" (SAFETEA), S. 1072, which President Bush sent to Congress on May 14.

Introduction

The IRR system provides access to and within Indian reservations, Indian trust land, restricted Indian land, eligible Indian communities, and Alaska Native villages. These roads link housing, schools, emergency services, and places of employment, and facilitate tourism and resource use. An adequate system of roads and bridges is a key element of economic development and critical to the quality of life of Native Americans. The IRR program seeks to create the best tribal transportation system possible in balance with the environmental and cultural values of tribal lands and Alaska Native villages.

More than 2 billion vehicle miles are traveled annually on the IRR system, although it is among the most rudimentary of any transportation network in the United States. Over 66 percent of the system is unimproved earth and gravel and approximately 24 percent of IRR bridges are classified as deficient (functionally obsolete and/or structurally deficient). These conditions make it very difficult for residents of tribal communities to travel to hospitals, stores, schools, and employment centers.

The poor road quality--including design, road surface, and safety appurtenances--also affects safety. The annual fatality rate on Indian reservation roads is more than four times the national average. This is a very serious problem, and one which we have attempted to address in SAFETEA. As you know Secretary Mineta has made saving lives on the nation's roads and highways the guiding concern of our reauthorization proposal.

SAFETEA would reaffirm the Federal Government's commitment to providing safer and more efficient transportation for Indian lands by authorizing nearly $2 billion in funding for the IRR program for fiscal years (FY) 2004 through 2009. This is a substantial increase over the authorized funding under the Transportation Equity Act for the 21st Century (TEA-21)--an increase of almost 25 percent. The Administration's funding proposal for Indian reservation roads is responsible, responsive, and sustainable.

The Administration's reauthorization proposals would also strengthen the commitment of the Federal Government to increasing the involvement of Native Americans in transportation programming and planning, not only through amendments to the FLHP, but under several other provisions of SAFETEA as well.

Safety Funding

SAFTEA more than doubles the amount of funding available for highway safety. It creates a new core safety program, the Highway Safety Improvement Program (HSIP), with $7.5 billion in funding authorized over six years. HSIP provides funds directly to the States for infrastructure safety improvements. This new proposed safety program contains flexibility and collaborative provisions that provide opportunities for tribal governments or their representatives to influence State infrastructure safety investments.

States have the flexibility to use HSIP funds on any public road, including roads on Indian reservations. A State could choose to use funds on a transportation facility on reservation land and could contract with the tribe to carry out the project. The new program also calls for State strategic and performance-based goals that address all roadways within the State and focus on areas of greatest need. Given the high fatality rates and condition of many Indian reservation roads, their safety needs should be considered in developing a data-driven highway safety improvement program that sets priorities for funding and future investment.

States are also encouraged to develop a comprehensive and collaborative strategic highway safety plan based on crash data. The plan would address the roadway, the driver, the vehicle, and emergency response needs. It would also be the product of a collaborative process that includes the State DOT, the Governors' Highway Safety Representative, the State rail safety administrator, and other State and local safety stakeholders. Indian tribes or their representatives would be considered major stakeholders in developing a strategic highway safety plan. This is particularly true in States with extensive Indian lands and high crash statistics on Indian reservation roads and bridges. While the Federal Highway Administration (FHWA) would not approve a State's strategic highway safety plan, FHWA and the National Highway Traffic Safety Administration (NHTSA) are required to certify that the plan meets the collaborative requirements in SAFETEA. To satisfy the requirement, tribal governments or their representatives would be expected to participate in developing a strategic highway safety plan in States with high crash rates on reservation roads and bridges. This is important in addressing Indian highway safety needs because strategic highway safety plans would serve as blueprints for future investment and set priorities for funding under the new safety program.

Intergovernmental Relationships

Intergovernmental consultation with tribes remains a top priority for this Administration and for FHWA. Last year, during American Indian Heritage Month, President Bush proclaimed his commitment "to honor tribal sovereignty by working on a government-to-government basis with American Indians and Alaska Natives." He further committed to "honor the rights of Indian tribes and work to protect and enhance tribal resources" and to work "to increase employment and expand economic opportunities for all Native Americans." Clearly, safe and efficient transportation access to and within tribal lands is essential to improving the quality of life for Indian and Alaska Native families and communities, and to fulfilling the Administration's pledge.

Under the Indian Self-Determination and Education Assistance Act (ISDEAA), tribal governments can, and do, carry out planning and construction related activities under the IRR program, either through self-determination contracts or self-governance agreements. In fact, almost half of such activities are carried out by tribes. FHWA continues to learn about the unique needs of tribes and how best to provide assistance for programs that range from the large programs of the Navajo and Cherokee Nations to small tribes and villages just beginning to develop transportation expertise. We are committed to working with tribal governments to build and expand capacity needed to administer transportation programs just as we have, over the years, worked with State DOTs for capacity building.

However, even as Indian tribes develop and expand their capacity to undertake transportation projects and programs under ISDEAA, there remains an oversight and stewardship role at the Federal level. Improving accountability in the expenditure of Federal funds is of great consequence to Secretary Mineta and another important focus of our reauthorization proposal. Appropriate Federal oversight is still needed for IRR funded projects regardless of which level of government--tribal, State, county, or the Bureau of Indian Affairs (BIA) of the Department of the Interior (DOI)--executes the project.

Increasing Tribal Involvement

While the IRR program has for many years been the primary source for funding transportation improvements on Indian lands, FHWA has encouraged tribal governments to take advantage of transportation resources that are available beyond the IRR program. These resources include technical assistance and training, as well as funding. One of the most important things that FHWA can do is to make sure tribal governments are part of overall agency programs.

In 1999, FHWA issued a publication on IRR transportation planning procedures and guidelines that explains how Indian tribes can successfully participate in the transportation planning process and work with other transportation agencies. The FHWA Federal-aid division offices have consulted with tribal governments on FHWA programs, National Environmental Policy Act (NEPA) requirements, and historic preservation. In some States, tribal/State Transportation summits and workshops have been held with the objective of improving

intergovernmental relations and increasing tribal governments' capacity to manage transportation projects and programs. In addition, FHWA has a Native American Program Coordinator who works with FHWA headquarters and field offices and Indian tribes on a broad range of transportation issues.

SAFETEA provides a number of opportunities for Indian tribes to participate in Federal-aid highway programs and program funding, in addition to resources provided by the IRR program. For example, tribes can use IRR planning funds to participate in metropolitan and statewide planning procedures for the Federal-aid program. Such participation can lead to cooperative approaches and leveraging funds between tribes and States on projects of mutual benefit.

SAFETEA proposes allowing a State to transfer apportioned Highway Trust Funds to a Federal agency, which could then administer a project under its procedures. This provision would make it possible for a State to electronically transfer apportioned funds to BIA. BIA could then contract with an Indian tribe under the ISDEAA.

Under SAFETEA, as under TEA-21, tribes have the opportunity to benefit from funding for programs such as Transportation Enhancements and Scenic Byways. A refined Transportation, Community, and System Preservation Program, that would be codified in a new section 167 of title 23, United States Code, provides that States shall make funds apportioned under the program available to Federally-recognized Indian tribes, among other identified recipients, for the broad range of activities eligible under the program.

Planning. SAFETEA would consolidate the FHWA and Federal Transit Administration (FTA) Metropolitan and Statewide Planning provisions in a new chapter 52 of title 49, United States Code. The consolidated planning chapter would continue the requirements that each State, at a minimum, consider the concerns of Indian tribal governments in carrying out statewide planning and develop the statewide transportation plan and statewide transportation improvement program (STIP) in consultation with tribal governments.

SAFETEA would also establish a new Planning Capacity Building Initiative, funded at $20 million per year. One of the primary objectives of this initiative would be to enhance tribal capacity to conduct joint transportation planning under chapter 2 of title 23. Funds authorized for the program could be used for research, program development, information collection and dissemination, and technical assistance. The Secretary would be authorized to make grants to, and enter into contracts with, Indian tribal governments or consortia, among others, to carry out this program.

Tribal Technical Assistance Program (TTAP). As part of our TEA-21 implementation efforts to improve transportation for tribal lands while increasing tribal involvement in the process, FHWA renewed four TTAP centers and established three new ones. The TTAP centers are a part of a larger network of Local Technical Assistance Program centers (LTAP) that operate throughout the United States. Each State and Puerto Rico has an LTAP center. TTAP centers are in California, Colorado, Michigan, North Dakota, Oklahoma, and Washington State. The Washington State TTAP also serves the tribes in Alaska and has a permanent employee in Anchorage. The centers have been strategically located in those States and areas with large

Native American and Alaska Native populations. The centers are funded from amounts authorized for research and education under chapter V of title 23 and IRR program management funds.

The TTAP/LTAP centers are the most direct, hands-on method FHWA and its partners have for moving innovative transportation technologies out of the lab, off the shelf, and into the hands of people who maintain our tribal, local, and rural roads and streets. The national LTAP/TTAP mission is to foster a safe, efficient, environmentally sound transportation system by improving skills and knowledge of local transportation providers through training, technical assistance, and technology transfer, including institutional and program building activities. This is accomplished by providing the centers flexibility to tailor programs to provide technology services, technical assistance, training, products, advice, and educational resources to meet the varied needs of the local transportation workforce. This is particularly true in the operation of the TTAP centers. The LTAP/TTAP centers directly serve Indian tribes by helping them tap into new technologies and innovations, information, and training so they can improve their transportation operations. TTAP centers develop transportation training curriculum based on the needs of their tribal partners, including such courses as "IRR Rules of the Game," "Multi-jurisdictional Transportation Planning and Programming," "Highway Finance for Tribal Roads," and "Developing a Tribal Transportation Department." These centers are making a significant contribution to administrative capacity building in a number of areas, including development of planning programs and safety management systems.

During TEA-21, FHWA recognized the need to continue full Federal funding for the TTAP centers as was provided under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), without requiring Secretarial waivers. SAFETEA would continue funding eligibility for the centers, and would enhance the tribes' ability to utilize the program by establishing the Federal share of the cost of activities under the program at 100 percent. We believe that by eliminating the match requirement the TTAP centers will have more flexibility to better advance their programs.

IRR Bridge Program

Indian Reservation Roads Bridge Program (IRRBP). TEA-21 directed the Secretary of Transportation, in cooperation with the Secretary of the Interior, to establish a Nationwide Priority Program for improving or replacing deficient Indian Reservation Road bridges, using a set-aside of not less than $13 million of IRR funds per year. SAFETEA would continue this program and would expand eligibility and allow IRRBP funds to be used for design as well as construction.

After soliciting comments on project selection and fund allocation procedures, through meetings with tribal representatives and a Federal Register Notice, FHWA developed guidance for the Bridge Program that was published as an interim final rule in July 1999. We followed up with training sessions on the IRRBP in cooperation with BIA and the TTAP centers, and have been working with BIA and tribal governments to maximize the number of bridges participating in the program.

On May 8, 2003, FHWA published a final rule that adopted the interim final rule, establishing a nationwide priority program for improving deficient IRR bridges and also establishing the project selection and fund allocation procedures to ensure uniform application. Almost four years have passed since publication of the interim final rule and we feel this has provided ample opportunity to observe its effectiveness and assess the appropriateness of the funding level. Since publication of the interim final rule, 76 deficient bridges have been approved for participation in the IRRBP and funded at approximately $40.8 million. In FY 2003, 66 bridge plan, specification, and estimates (PS&Es) are slated for completion and will require roughly $39.7 million in IRRBP construction funds. To date, all eligible bridge projects submitted for processing have been funded.

The IRRBP Final Rule identifies two categories of bridges covered under the IRR Bridge program (those owned by BIA and those owned by a State, county, or other public authority) and retains the $1.5 million limitation on IRRBP funding for non-BIA owned bridges. The IRRBP is intended to provide a national program to address the large number of deficient IRR bridges. Approximately 23 percent of the 779 bridges owned by BIA are deemed deficient, as are 27 percent of the 3,006 State and locally owned non-BIA bridges. The $1.5 million cap allows a greater number of bridges to receive funding. These IRR funds are intended to be supplemental to and not in lieu of other funds appropriated to the States. The States currently have access to Surface Transportation Program funds and Highway Bridge Replacement and Rehabilitation funds that can be used on deficient non-BIA owned IRR bridges. The transfer provision proposed in SAFETEA should facilitate improvement of State-owned bridges on reservations and, as discussed above, could be carried out by the tribes under ISDEAA contracts.

Highway Bridge Program. Other changes proposed by SAFETEA for the Highway Bridge Program, under section 144 of title 23, could also provide benefits for facilities on tribal lands. Systematic preventive maintenance would be added as an eligible use of funds, and would include preventive maintenance on off-system bridges as well. In addition, the 35 percent cap on funding for off-system bridges is eliminated.

Negotiated Rulemaking

TEA-21 directed the Secretary of the Interior to develop an Indian Reservation Roads fund distribution formula and program procedures, using negotiated rulemaking with Indian tribes. A committee consisting of 29 tribal representatives, 10 Department of Interior representatives, and 3 FHWA representatives met between March 1999 and December 2001. Considerable time was spent in agreeing on one IRR funding distribution formula. A Notice of proposed rulemaking (NPRM) that resulted from the extended period of negotiations was published by DOI on August 7, 2002, in the Federal Register, with the comment period closing on October 7, 2002. The comment period was then extended by 30 days.

Federal and tribal committee members conducted 12 informational meetings on the proposed program procedures and fund distribution formula during the comment period. After close of the comment period, the Committee met a number of times to evaluate the more than

1500 comments received.

Although the vast majority of questions and answers relative to IRR program policies and procedures were agreed to by both the Federal and tribal representatives on the Committee, there were a number of major disagreement items discussed in the preamble of the NPRM. While many of these prior disagreement items in the NPRM were resolved, a few disagreement items remain, including: use of IRR program management and oversight funds; content of annual funding agreement; contract support costs; profits/savings; advance payments; updating of the IRR transportation improvement program; IRR project audits; acceptance of completed projects; alternative dispute resolution procedures; and right-of-way procedures.

The Committee recommended a number of changes to the NPRM, and BIA is in the process of drafting the final rule.

S. 281, "The Indian Tribal Surface Transportation Improvement Act of 2003" and S. 725, "The Tribal Transportation Program Improvement Act of 2003"

S. 281 and S. 725, introduced earlier this year, and currently under review in this Committee, would make changes in the IRR program and in the amount and administration of Federal funding for transportation infrastructure on tribal land and in Alaska Native villages. While the Administration has concerns regarding certain aspects of these bills, this Administration is in agreement with Senators Campbell and Bingaman that the significant tribal transportation needs must be better addressed to foster greater economic development and provide a higher quality of life for people living in these communities. We strongly support a number of the provisions in the bills. Indeed, SAFETEA advances several similar proposals. The Department is anxious to work with this Committee to refine existing IRR provisions and craft new initiatives where appropriate for equitable and effective delivery of the IRR program.

Obligation Limitation. Between FY 1983 and FY 1997, Federal Lands Highways programs received 100 percent obligation authority each year equal to their new and carryover funds, but this was changed under TEA-21. Under section 1102 of TEA-21, these programs, including the IRR program, now receive a proportional reduction of obligation limitation for new funds using the same ratio that is applied to State programs. To comply with section 1102(f), the amount of contract authority for the IRR program in excess of the available obligation limit is pooled with other similar funds and redistributed to the States. Even with the increased resources provided in TEA-21, the partial loss of authorized funds has had a significant impact on the IRR program.

Both Senator Campbell's and Senator Bingaman's bills have provisions returning 100 percent obligation authority to the IRR program. SAFETEA would also provide obligation authority for the IRR program equal to contract authority so that all IRR funds authorized can be obligated. For each fiscal year, SAFETEA would set aside obligation authority equal to the amount of funding authorized for that year for the programs allocated under the FLHP, including the IRR program.

Authorizations. We agree with Senator Bingaman that there are substantial unmet transportation needs for Indian lands and for Alaska Native villages, just as there are for the States. However, the increases in funding proposed by Senator Bingaman could not, we believe, be sustained by the Highway Trust Fund (HTF) over the reauthorization period without substantial cuts in other program areas. Any such cuts would ultimately have negative impacts on tribal transportation as well as State programs. We believe that the funding increase of almost 25 percent over TEA-21 as proposed in SAFETEA for the IRR program, together with full obligation authority, can make a substantial and responsible contribution toward meeting IRR program needs--and is sustainable.

Indian Reservation Road Bridges. Senator Bingaman would restore and increase separate funding for the IRRBP. Again, we believe that the HTF could not sustain the funding increase proposed and, as discussed above, our experience under TEA-21 indicates that the current funding of $13 million per fiscal year is working well. We do agree with Senator Bingaman that preliminary engineering (PS&E) should be made eligible for IRRBP funds. SAFETEA proposes adding this eligibility.

Senator Bingaman would also add a restriction on how the bridge funds would be distributed, requiring distribution in proportion to the number of deficient bridges on each reservation and the projected cost of rehabilitation.

The program is administered as a competitive national program and currently distributes funds based on a first ready, first served basis, not allocated to reservations based on need. In other words, projects are funded in the order in which bridge construction plans are received. The goal of the nationwide program is to fix as many deficient bridges as quickly as possible.

We want to work with Senator Bingaman and this Committee to improve the IRRBP, and we would like to discuss ways of distributing funds that could be fair and effective.

Fair and Equitable Distribution of IRR Program Funds. Senator Bingaman has proposed that the Secretary verify the existence of all roads in the Indian Reservation Road system. Currently the system contains about 2,500 miles (5 percent) of proposed roads. About half of these proposed roads are located in the BIA Alaska region. Another 25 percent are located in the BIA Midwest region. Adding this provision would negatively impact smaller tribes that need new roads and do not have a current inventory, as well as disparately impacting certain regions. It would also undermine an agreement made during the IRR program negotiated rulemaking. We feel it is important to consider proposed roads in the IRR fund distribution formula.

Indian Reservation Road Planning. Senator Bingaman's proposed increase in the percent of IRR funds setaside for tribal transportation planning from 2 percent to 4 percent would double the largest tribe's funding to $2.6 million, while the smallest tribes would still have only a nominal sum for planning. While we support providing transportation planning funds for tribes, we do not support an increase that relies on using the IRR construction fund distribution formula. We do not believe that this formula provides a fair distribution of planning funds to many of the tribes. The need for more transportation planning funds for small tribes was a point of

contention during the negotiated rulemaking. We would like the opportunity to discuss this issue further with Senator Bingaman.

Improving Safety.

S. 281. Senator Campbell's bill would make Indian tribes that are eligible to participate in the Indian reservation roads program also eligible for grants under title 23, sections 157 ("Safety incentive grants for use of seat belts") and 163 ("Safety incentives to prevent operation of motor vehicles by intoxicated persons").

Motor vehicle injuries are the leading cause of death for American Indians and Alaska Natives between the ages of one through 44. Indeed, motor vehicle fatality rates are nearly 75 percent higher for Indians and Alaska Natives as for non-Indians. Greater safety belt use would substantially contribute to reducing these fatalities. In 2001, 78 percent of Native American passenger vehicle occupant fatalities were unrestrained, compared to 60 percent for the population overall. Also in 2001, 63 percent of Native American passenger vehicle occupant fatalities were alcohol-related, compared to 41 percent for the population overall.

Under current law, authorizations for the section 157 and section 163 grant programs, together with other TEA-21 safety incentives, expire at the end of FY 2003. In formulating SAFETEA, the Department took a new approach to addressing the Nation's safety belt use and impaired driving problems. To streamline the highway safety grant programs and make them more performance-based, SAFETEA proposes a major consolidation of these programs under NHTSA's section 402 program. BIA would be eligible for grants under the consolidated section 402 program.

Section 402(i) of title 23 designates the Secretary of the Interior as the coordinating entity for the purpose of application of the highway safety program for Indian tribes. The Secretary of the Interior has delegated this authority to BIA to administer the Federally funded highway safety program on behalf of the tribes. Indian tribes participate in the highway safety program through BIA, just as local governmental entities participate through their State Highway Safety Offices. This process has served the program well, as BIA contracts with individual Indian tribes meeting specific criteria. BIA serves in the capacity of a Governor's Highway Safety Representative in managing and monitoring the section 402 highway safety program.

TEA-21 increased section 402's highway safety funding formula for Indian tribes to ¾ of 1 percent from ½ of 1 percent of the total apportionment for the section. Under provisions of SAFETEA, BIA would continue to receive an annual formula grant apportionment of not less than ¾ of 1 percent of the program's total apportionment. Any or all of this apportionment could be used for increasing safety belt use and prevention of impaired driving. Over SAFETEA's 6-year authorization period, $7.875 million would be available to BIA in Basic Formula Grants alone.

Moreover, the States, territories, and BIA would be able to participate in special grant programs for data improvements and emergency medical services. The data improvement grants, in particular, will enable BIA to improve its highway safety data and traffic records and target programs to the areas of greatest needs. Additionally, data improvements will facilitate BIA's participation in SAFETEA's performance-based incentive grant programs for increasing safety belt use and preventing impaired driving.

S. 725. Senator Bingaman's bill would establish a Tribal Transportation Safety Program to provide competitive grants to tribes for establishing transportation safety programs, promoting safety belt use, hazard elimination, and other safety improvements, and would fund the program at $120 million over 6 years.

We agree that transportation safety for Native Americans is a tremendous problem. In SAFETEA, as discussed above, overall funding for safety is more than doubled. Included in the additional safety funding, we propose a new dedicated safety funding category under the FLHP. Fifteen percent of the $40 million per fiscal year authorized for FLHP safety funding would be allocated to BIA. The funds would be available for a variety of safety improvement activities including data collection and highway safety education programs. Contracts for the safety projects could be carried out by tribes under ISDEAA. The Federal share is 100 percent. These funds would supplement the ¾ of 1 percent from the section 402 safety funds.

Demonstration Project. Both Senator Campbell's bill and Senator Bingaman's bill would amend section 202 of title 23 to authorize a demonstration project under the FLHP to allow, each fiscal year, up to 12 tribes or consortia of tribes to receive IRR funding directly from FHWA, rather than through the BIA. Upon request, FHWA must provide directly to an Indian tribal government or consortium selected for the project the amount of IRR program funding the tribe or consortium would otherwise receive under title 23 or a provision of the bill and, in addition, the percentage of such funds that would have been withheld for BIA management costs. The tribal government could then enter into contracts and agreements with FHWA in accordance with the ISDEAA. While both proposed demonstration projects require a tribe selected to have financial stability, unlike previous demonstration projects under ISDEAA, these projects do not define goals nor require a report to Congress.

The Department maintains that Federal oversight is necessary and desirable when taxpayer funds are invested in infrastructure projects through the Federal-aid highway program. Though Congress made clear in section 204(j) of title 23, that it is the sovereign right of an Indian tribe to determine which projects shall be Federally funded, FHWA has a history of working to develop competent, capable transportation organizations prior to delegation of program responsibilities. In section 302 of title 23, Congress required that States participating in the Federal-aid highway program must have suitably equipped and organized departments to carry out the duties required under title 23. We believe that it would be wise to assure that any Indian tribe selected for participation under the demonstration project should also have established a suitably equipped and organized department. Unlike the applicant pool requirements in the ISDEAA, the proposed demonstration project applicant pool requirements in S. 281 and S. 725 would not require a tribe to have any experience in the IRR Program, to have successfully completed one or more IRR projects or contracts, or to have any experienced staff.

Currently, there are 10 Self Governance Annual Funding Agreements which contain IRR addendums authorizing the Self Governance tribe or consortium of tribes to assume many of the projects, functions, services, activities, and responsibilities of the IRR program. The first two agreements began as pilots with the Red Lake Band of Chippewa Indians in Minnesota in FY 1999 and with the Cherokee Nation of Oklahoma in FY 2000. Subsequent Agreements are no

longer pilot agreements. However, these agreements do include provisions allowing FHWA and/or BIA to review the quality of the work performed, monitor health and safety, and provide technical assistance when needed. The results of these two pilots provided some direction concerning tribal project oversight, along with identifying any unforeseen operation or process problems.

FHWA believes that these Self Governance activities already underway can accomplish much of what is proposed in S. 281 and S. 725.

Administration of Indian Reservation Roads. Senator Campbell's bill would place a cap of 6 percent on the total amount of IRR funds that BIA and tribes can use for administrative expenses. This limit would apply to all general IRR program administrative expenses and individual project expenses as well.

S. 281 further states that such administrative funds are to be made available to Indian tribal governments, upon request, to be used for the associated administrative functions assumed by the Indian tribe pursuant to the ISDEAA.

Unlike most of the Indian programs funded under the DOI annual appropriations acts, Congress does not provide additional funding beyond the IRR program's authorization to fund BIA program management activities in the IRR program but, instead, directs that up to 6 percent of the IRR program funding can be used for these activities. BIA and FHWA have entered into a memorandum of agreement (MOA) under which the BIA provides assistance to more than 560 tribes including: fostering capacity building; providing training, technical assistance, and oversight; participating in planning with State DOT's and other Federal agencies; and providing 50 percent of the funding for the FHWA TTAP centers. BIA services are especially critical to smaller tribes. These BIA services are otherwise unfunded.

Based on the current amounts needed for program management and project administrative costs, including BIA costs of negotiating and administering ISDEAA contracts and agreements, this provision could result in reduced service to tribes and reduced program and project oversight. Through the MOA, BIA assists FHWA in providing appropriate stewardship of Federal funds. If this provision is enacted, FHWA would have to increase its IRR program and project oversight activities to meet its oversight responsibilities.

S. 281 would also limit the Federal government's ability to review construction plans and specifications to check for health and safety considerations. This would affect all Federally-funded IRR construction projects performed by tribes under the ISDEAA. Indian tribes would be able to assure that proposed construction is in accordance with health and safety standards without requiring concurrence or approval by the transportation facility's owner. About 96 percent of Indian reservation roads are not owned by tribes. Because the majority of the improvements funded under the IRR program involve BIA-owned roads and bridges, BIA assumes the trust responsibilities and accompanying liabilities. Thus, FHWA believes it is necessary for BIA to retain an appropriate oversight role and have available sufficient administrative funds to fulfill its oversight and stewardship responsibilities for the IRR program and for ISDEAA.

Finally, the overall administration of the Indian Reservation Road program will be modified as a result of the Negotiated Rulemaking Process and some aspects of the S. 281

proposals, including PS&E approval, are likely to be implemented through the pending regulations.

Training and Technical Assistance for Native Americans. Title II of Senator Campbell's bill, the "Native American Commercial Driving Training and Technical Assistance Act," would establish a grant program to provide training to Native Americans who are interested in obtaining commercial driver's licenses (CDLs) and is intended to expand employment opportunities for Native Americans. The program would be administered by the Secretary of Labor. Grants would be made on a competitive basis to tribal colleges and universities to conduct the training programs. Such sums as necessary to carry out the program are authorized from the General Fund.

Although the Department supports the objectives of title II, and is always interested in increasing commercial vehicle driver training and safety, it is not clear that additional new training programs are the best way to achieve these aims. There are many driver training programs now in operation, both in junior colleges and proprietary vocational schools, and all of them are open to Native Americans. I know of no evidence that these schools are unable to meet current demand for driver training. Furthermore, the expenses incurred in starting new programs at tribal colleges or universities could raise their per capita training costs well above those of existing schools. That would be especially likely if the number of student drivers enrolled in each tribal program remained small.

Moreover, TTAP centers, discussed above, have also been providing CDL training as part of their tribal transportation capacity building. The training is specifically targeted to qualify Native Americans to successfully complete the driving and written tests for various types of CDLs. Not only does this training increase workforce skills for self-determination contracting, but also opens job opportunities on State and local highway construction projects. The centers offer the training when requested and find that, while demand for training is steady in the early stages of tribal capacity building, demand later tends to become more cyclical in response to need for additional CDL drivers. S.281, if enacted, would duplicate some of the TTAP programs.

Indian Reservation Rural Transit Program. S. 725 would establish a program to provide direct funding to tribes from FTA for rural transit programs on reservations or other land under tribal jurisdiction. The new competitive grants program would be funded at $20,000,000 per year as a takedown from FTA's authorizations under 49 U.S.C. 5338. The amount of any grant provided to an Indian tribe would "be based on the need of the Indian tribe," as determined by the Secretary.

By contrast, section 3010 of SAFETEA would create a program under which States would provide grants to Indian tribes to establish, operate, and maintain transit services on Indian reservations and other lands under the jurisdiction of Indian Tribes. This Indian Reservation Rural Transit Program would be funded at $10,000,000 per year in fiscal years 2004 through 2009, of which $9.5 million would be available to States based on formulas; the other $500,000 would be available to the Secretary to provide technical assistance to States and tribes through grants, contracts, and other arrangements. The program would be funded as a takedown from 49 U.S.C. 5338, and any remaining funds available three years following the fiscal year in which

they were apportioned would be reapportioned to the States.

The Department believes that the funding level proposed in SAFETEA is the appropriate level for a start-up program. In addition, we believe it is preferable to award grants to the States, in order that: tribal transit services are coordinated with other public transportation services that will be funded under section 5311; tribes have full access to the training and technical assistance available to other subrecipients under section 5311; funds are distributed equitably across the United States; and any remaining funds are available for reapportionment.

Conclusion

The Department of Transportation is committed to building more effective day-to-day working relationships with Indian tribes reflecting respect for the rights of self-government and self-determination, based on principles of tribal sovereignty. We are also committed to working with Congress, with the tribes, and with BIA to improve delivery of the Indian Reservation Road program. Transportation is a critical tool for tribes to improve the quality of life in their communities. The challenges facing us are to maintain and improve transportation systems serving Indian lands and Alaska Native villages, in order to provide safe, sufficient transportation options for residents and access for visitor enjoyment, while at the same time protecting the environmentally sensitive lands and cultural resources. Innovative and creative solutions will be required to address these challenges, and the solutions must involve all Federal, tribal, State, and local stakeholders.

We take very seriously the concerns regarding the IRR program voiced by tribal representatives at earlier hearings before this Committee, and in other forums, and we will continue to do our best to meet tribal expectations. In doing so, we will consider alternative ways of doing business that can improve our program delivery. On behalf of the Department of Transportation, I look forward to working with you to find solutions for improved mobility and safety to and within Federal and tribal lands.

Mr. Chairman, I again thank you for the opportunity to testify today. I will be pleased to answer any questions you may have.

The INTER-TRIBAL COUNCIL of the FIVE CIVILIZED TRIBES

Organized February 3, 1950

Reauthorize the Transportation Equity Act for the 21st Century (TEA-21)

The Inter-Tribal Council supports reauthorizing the Transportation Equity Act for the 21st Century and the Indian Reservation Roads program in the 108th Congress. This paper outlines the Inter-Tribal Council's legislative priorities for that reauthorization.

Background & Overview

The Transportation Equity Act for the 21st Century (TEA-21) granted federally-recognized Indian tribes the authority to operate their own Indian Reservation Roads (IRR) programs. However, despite access to federal highway funds, tribes still face a number of obstacles in providing transportation solutions in their communities. The Inter-Tribal Council seeks continued funding of the IRR program as well as greater program flexibility and streamlining opportunities. Many of the recommendations in this paper were included in S. 344, the Indian Tribal Surface Transportation Act of 2001, that was introduced in the 107th Congress.

Recommendations

Increase IRR funding from $275 to $500 million per year. The IRR program is currently funded through the Federal Lands Highway program, which is designed to provide improved access within Indian reservations, lands, and communities. Presently, there are approximately 60,000 miles of Indian Reservation Roads across the nation, most of which are unimproved and pose tremendous safety hazards. According to the Bureau of Indian Affairs (BIA), the unimproved portion of the IRR system equates to $2 billion dollars in annual transportation needs. A recent GAO report indicates that urban roads receive 4.5 times as much federal funding as do rural roads even though rural roads account for 60% of all auto accidents. To make matters worse, the IRR program receives less than 1% of the total highway funding, but Indian tribes and the BIA are responsible for over 2.6% of all federally owned roads. Given the safety concerns and disproportionate share of available highway dollars, the Inter-Tribal Council strongly supports an overall increase in IRR funding from $275 to $500 million per year.

Restore full funding to the IRR program by removing the obligation limitation. To describe an issue that has been characterized by Congress as a "technical oversight," the obligation limitation imposed by TEA-21 has been *disastrous*. Prior to TEA-21, the IRR program received 100% of the

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Seminole Nation

GREGORY E. PYLE
Chief
Choctaw Nation

funds authorized by Congress and was exempt from this limitation; however, this "technical oversight" while cost the IRR program roughly $180 million by the end of FY2003. Moreover, these badly needed funds are transferred to state highway departments and no longer available to the IRR program. The Inter-Tribal Council strongly supports restoration of full funding to the IRR program by removing the obligation limitation.

Clarify that all IRR funding is subject to contracts and agreements under the Indian Self-Determination and Education Assistance Act, including BIA's 6% administrative funds. As Senator McCain testified in 1994, Congress had intended for the IRR program to be subject to the ISDEAA requirements in the same manner as all other federal programs available to Indian tribes. In 1998, Senator McCain again testified that the TEA-21 amendments specifically made all IRR funds subject to the ISDEAA, including the 6% administrative funds withheld by BIA. Despite congressional intent and the plain language in the statute, the BIA continues to withhold the 6% and in some cases even more. As a result, tribes are left operating the IRR program without the benefit of administrative cost. In cases where a tribe has contracted or compacted the entire program, the BIA continues to be paid for functions that are performed by the tribe. Thus, the Inter-Tribal Council strongly supports clarifying language that makes all IRR funding available to Indian tribal contracts and agreements.

Clarify that the IRR Bridge program includes the cost of engineering. TEA-21 changed the 1% funding set aside for IRR Bridges and required that all future rehabilitation and replacement of bridges come from within the IRR program itself. The net effect of this change reduced the overall IRR Bridge allocation by $13 million per year. Moreover, TEA-21 eliminated the cost of engineering as an eligible expense. This posed a significant shift from IRR Bridges funded under ISTEA, which included the cost of both engineering and construction. Because of the TEA-21 requirements, tribes are forced to utilize scarce IRR roadway dollars to foot the cost of engineering for every bridge project. For this reason, the Inter-Tribal Council strongly supports clarifying language that includes the cost of engineering as an eligible expense for IRR Bridge funding.

Provide Indian tribes with direct access to other federal-aid highway funding, transit, and other inter-modal transportation programs. Since the inception of federal-aid highway funding, a large portion of the transportation system has been built away from Indian reservations, lands, and communities. As a result the average travel time to work for Indians is much higher than other races and the proximity to economic development is virtually non-existent. Secondly, tribes do not have access to a multitude of planning, transit, and other inter-modal resources enjoyed by state highway departments. The net affect is that Indian tribes are non-participants outside of the IRR program, which in turn negatively impacts economic development initiatives and government-to-government cooperation. Therefore, the Inter-Tribal Council strongly supports tribal access to other federal-aid highway funding, transit, and other inter-modal transportation programs.

Clarify that Indian tribes can ensure heath and safety under the ISDEAA. In the self-governance amendments to the ISDEAA, Indian tribes are required to include proper health and safety standards in agreements that include construction programs. Unfortunately, the BIA has interpreted "the assurance of health and safety" as an inherent federal function. Nevertheless, under a recent demonstration project, two self-governance tribes (Red Lake Band of Chippewa and the Inter-Tribal Council) have shown that this function can be performed successfully by an Indian tribe. The BIA, however, is proposing to take this function away, as evidenced in the August 7, 2002, Notice of Proposed Rulemaking for the IRR program, which means that Indian tribes will not be allowed to approve engineering plans, specifications, and estimates for the IRR program. The Inter-Tribal Council strongly supports clarifying language that gives Indian tribes the authority to ensure health and safety for IRR construction programs assumed under the ISDEAA.

Clarify that the IRR program does not apply to 25 U.S.C. §450e-2, which pertains to school construction projects only. In 1997, a little known clause was added to the Department of Interior Appropriations Act that determines how excess funding resulting from construction projects administered by tribes under ISDEAA contracts and agreements could be used. Contrary to popular belief, this provision did not amend the ISDEAA but was added as a permanent statute in Title 25 of the U.S.C. for the sole purpose of recapturing large amounts of excess funding resulting from school construction projects. As evidenced in the August 7, 2002, Notice of Proposed Rulemaking, the BIA is attempting to apply this provision to the IRR program. Any such action by the BIA is completely unreasonable and eliminates the opportunity for tribes to contract or compact their rightful share of IRR program funding. Moreover, the ISDEAA and subsequent regulations clearly establish that savings are to be carried over in order to provide additional services to which the funds were appropriated. The Inter-Tribal Council strongly supports clarifying language that eliminates the applicability of 25 U.S.C. §450e-2 regarding the IRR program.

Conclusion

The Inter-Tribal Council recognizes that all Oklahomans drive on tribal roads. Nearly all roads built with IRR funds within the jurisdictional boundaries of the Five Tribes are transferred to county governments under cooperative agreements. Accordingly, reauthorizing TEA-21 *and* IRR is good for Indians and non-Indians. Expanding the number of programs available to tribes and allowing for greater program flexibility will enable tribes to provide better transportation systems in their communities. Safer, more dependable transportation networks in Indian Country will further tribal economic development and access to services.

Committee on Indian Affairs
United State Senate

Hearing on Indian Transportation
Wednesday, June 4, 2003

Testimony of Mr. Richard Milanovich
Chairman of the Agua Caliente Band of Cahuilla Indians

Mr. Chairman and Members of the Committee. Thank you for the opportunity to share ideas with you that highlight the solutions to the transportation challenges that are faced by Indian Tribes nationwide the 392 members of the Agua Caliente Band or Chuuilla Indians on our Reservation in Palm Springs, California.

Our reservation is somewhat unique. When it was created in 1868 our Tribe received every even section of land in part of what is Palm Springs, Palm Desert, and Rancho Mirage and Riverside in the Coachella Valley. In the mid-1950s, our reservation was distributed to tribal members in allotments. We have an active program of repurchasing allotment interests when they become available.

Our transportation issues and challenges, however, are largely a result of our existing checkerboard land ownership patterns and the growth of the communities around our Reservation.

Today my testimony will address three subjects: (1) our innovative proposal for tribal road bonding; (2) the current Indian Reservation Road program, including proposed modifications of that program; (3) specific road projects that we are working on independently and with the City of Palm Springs.

First, we have put forward an innovative finance proposal for Tribal roads. A copy of it is attached to my testimony. Our Tribal Road Bonding Proposal supplements the current IRR program. It draws on the growing financial sophistication and wherewithal of many tribes and it allows us to assist other tribes by bringing them into the world of modern bonding finance.

This comes, I might add, at a time where our tribe is just receiving its first bond rating, something we are quite proud about.

Our proposal works like this. When a Tribe, or Tribes cooperatively, wish to build a road to service their reservation, the design and plans for the road are developed. The road is included on the Tribal Transportation Plan or any other existing transportation plan.

The Tribe takes that design and plan to the Department of Transportation who check to see that all is in order with the design and costs are in line. We can, but are not

required, to make a Tribal contribution towards the project. If we contribute twenty-five percent of the project cost, then the Tribe's project is eligible for one-half of the money available under the bonding program. The total available in the first year under our proposal is $100,000,000, so that would mean $50,000,000 is available for tribes that put up at least 25 percent. The remainder is available for joint proposals and on a first-come, first-served basis.

When DOT approves the project, it issues a commitment. The commitment is to pay the remaining cost of the project over a period of years. The tribe takes the commitment and then issues a bond to cover the cost of the project. From the proceeds of the bond, it builds the project in that year.

Then, each year, the Tribe gets a payment from the Department of Transportation, and it in turn, pays the Bond holder. The money comes from the Highway Trust fund. Our idea is patterned after the existing DOT program that allows states to use some of their regularly flowing highway dollar revenues from their annual allotment to pay for road bonds. This style of financing for roads is how *all* long term assets should be financed, especially roads.

The second topic I will cover today is the existing Indian Reservation Roads Program. It is a good program and I am glad that the BIA, after 7 years, finally has a package of regulations for the program. I am also glad that the there are some modifications, including increased funding, that have been proposed legislatively. We support those modifications.

Under this program, our tribe has received about $90,000 for road planning activities during the last three year. We have a good transportation survey and plans. We know what we need. Now is the time where we actually need money to implement the plan.

The current funding level does not address the needs of small tribes, particularly those in California. That is why we are proposing an innovative finance bonding program and that is why we support the modifications to the current IRR program. With additional funding, the following could be achieved:

Match state and local funds to construct projects; allow the tribes to apply for loans for transportation needs; use the funds as leverage to apply for other transportation grants (most small tribes do not have the revenue for the cash match usually required); allow tribes the capacity to participate in the State planning and programming process; promote the continuing, collaborative, and comprehensive planning adopted by other governing bodies in the nation.

The current IRR funding formula allocates 80% of the total IRR funds to 10% of the federally recognized tribes in the nation. Historically, small tribes, especially those in California, have been grossly under funded. This has resulted in several inequities including the lack of inventories needed to add roads to the IRR system. Therefore, these

roads never receive the appropriate funding for safety, maintenance, or construction funds for increased capacity needs.

The capacity of the IRR roadways is estimated to be over 40,000,000,000 average daily trips traveled with the level of service ranging from A to E. At the current funding levels, it will take tribes in California 55 years to fund currently identified projects, which does not account for the any future growth.

California is one of the fastest growing states in the nation, with more than 34 million people, representing 12.5 percent of the entire United States population. The Tribal Governments in California must have adequate transportation funds to meet the challenges imposed by this growth.

Considering growth factors, and the number of air quality, non-attainment areas in California, transit and other intermodal planning is necessary for safe, reliable and flexible alternatives for its citizens. The present IRR program does not include or promote intermodal transportation.

California has the largest population of Native Americans in the nation (320,000+), and second to Alaska with the largest number of Tribal Governments (109).

California contributes 12% of the total revenue in the Federal Transportation budget. However, the tribes in California only receive approximately 2% of IRR funds; a total of $5 million for construction projects, $670,000 for maintenance, and $150,000 for planning for all 109 tribes. Some tribes only receive as little as $2 a year for planning, and must wait an average of 10 years for a construction project to be prioritized.

California and Tribal Governments within California lose an estimated $20 million each year from the inequity of the current levels of funding.

I have the following recommendations regarding the existing IRR program:

At the very least, the BIA IRR formula should reflect a $100,000 base funding per tribe right off the top as the first take down. The base funding is needed to meet the minimum planning for intermodal transportation. 1/

California Tribes should receive a minimum of 9.2% of the BIA IRR funds, which is the minimum guaranteed rate that California receives from the Federal Highway Trust Fund. The California Transportation Commission issued a report to the State Legislators in 2000 supporting this initiative. 2/

My point is that we have received planning money for the current program, but we have not received road money. We have needed to self-finance important road projects.

My third topic is to discuss our current transportation priorities.

As one of the few tribes in the United States who inhabit a largely urban area, our transportation needs are somewhat different than those of most tribes. We not only seek assistance for traditional road and bridge construction but also funding for improvements to the Coachella Valley's intermodal transportation system.

In conjunction with the City of Palm Springs, other local jurisdictions, the Coachella Valley Association of Governments, and the California Department of Transportation (CALTRANS), these governmental entities and the Agua Caliente have developed a list of transportation requests that not only benefit tribal members but also our neighbors within the Coachella Valley.

We are now seeking federal fund for three priority projects: 1) Road and bridge improvements to South Palm Canyon Drive and the Indian Canyons access road, 2) Replacement of the Indian Canyon/Interstate 10 interchange; and 3) Construction of the Mid-Valley Intermodal Transportation center.

South Palm Canyon Drive/ndian Canyons Access Improvement Project

South Palm Canyon Drive is the only road into the Indian Canyons Nature Preserve and Agua Caliente Cultural site. It also provides access to numerous residential developments, businesses, and the Agua Caliente Tribal Government Building.

South Palm Canyon will also serve as the only access road to the Agua Caliente Museum that is currently being constructed adjacent to the Agua Caliente Cultural site. When completed and open to the public, the museum is expected to attract 150,000 visitors per year. This will be in addition to the tribal members and thousands of local residents and tourists who already visit the Agua Caliente ancestral lands and the Indian Canyons area to view three of the world's largest natural stands of California palms, 3000 year old petroglyphs, grinding holes and other religious and cultural sites.

New development and dangerous driving conditions during seasonal flooding have made improvements to South Palm Canyon drive essential. In anticipation of the increased traffic associated with the construction of the museum, the Agua Caliente have already spent over $2 million in enhancements to the lower sections of South Palm Canyon Drive.

The Tribe has requested $7.2 million in federal funding to complete improvements to South Palm Canyon Drive. The funding will complete realignment and paving of the existing road, replace an inadequate bridge structure over the Arenas South drainage Channel, and construct an intermodal transportation center providing additional access to the Indian Canyons Cultural site and the Agua Caliente Museum.

I-10 and Indian Canyon Drive Interchange

Interstate 10 is a major east/west thoroughfare and is the critical surface connection of the Agua Caliente Indian lands to the nation and, in particular, the Los

Angeles metropolitan area. Agua Caliente tribal lands are accessed from I-10 by five interchanges of which Indian Canyon Drive is one of the most important. While four of the five interchanges are in desperate need of replacement, Indian Canyon is critical to both the needs of the Tribe and the City of Palm Springs.

Currently, 90,000 vehicles per day travel I-10 through the Indian Canyon Interchange, while some 19,000 vehicles per day travel this section of Indian Canyon Drive. By year 2020, these numbers are expected to reach 158,000 and 33,000 respectively. At peek times, back ups can run for miles in all directions on Indian Canyon Drive and I-10 and cost commuters hours that they could be spending with their family, working, or relaxing. The cost of the delays and traffic congestion to The Tribe and other residents of the valley is huge.

However, the Agua Caliente in partnership with the City of Palm Springs, has identified the Indian Avenue interchange as a top priority for the highway bill reauthorization. We have requested $15.3 million to replace the existing 2-lane I-10/Indian Canyon Drive Interchange constructed in 1956 with a 6-lane interchange and accompanying access ramps and service roads.

Mid-Valley Intermodal Transportation Center

Enhancing existing roads and building new roads is only one part of the long-term solution to our traffic problem. We must also improve access to mass transit. Currently, very few people arrive in the Coachella Valley by rail. The only passenger rail service provided to the Palm Springs area is one daily, late-night stop by Amtrak.

The Agua Caliente and other governmental organizations in the Coachella valley have long desired a passenger rail service connection to Los Angeles. Recently, the Riverside County Transportation Commission and the Coachella Valley Association of Governments, which includes the Agua Caliente, requested the California Department of Transportation take the necessary steps to bring Southern California Regional Rail Authority service (METROLINK) from its current terminus in Riverside to the Coachella Valley.

To bring passenger rail to the Coachella Valley, we must have the infrastructure in place to support the service. In 2001 the Coachella Valley Association of Governments and the Tribe commissioned a Rail Station Feasibility Study and found that it will take three rail stations to properly service the valley -- Eastern Coachella Valley, Mid-Valley and Western Valley. California's long range Transportation Master Plan also calls for three rail stations in the Valley-West Palm Springs,, Mid-Valley, and East Indio.

Knowing that the highway bill reauthorization will emphasize enhancement of inter-modal centers, we have requested $4.2 million to construct the Mid-Valley Intermodal Center. The funds will allow for construction of a terminal building, parking structure, a park and ride facility, 600 foot double track passenger platforms, and pedestrian under crossing for enhanced passenger safety and convenience.

The Agua Caliente are serious and excited about the opportunity for a Mid-Valley inter-modal station and have supported the Coachella Valley Association of Governments with the purchase of 11 acres of land, at a substantial cost, where the rail station and park and ride facility will be located.

To sum up, we are requesting the Committee's assistance with all three of the issues presented today. We appreciate the time and the attention of the committee to these important issues and we ask that you address these issues in the reauthorization of the highway bill. Thank you.

Notes:

1/ The National Congress of American Indians supported a minimum of $35,000 per Tribe for planning, passed by resolution on November 15, in San Diego. However the current NCAI transportation white paper, and the bills that have been introduced, do not reflect this support. Instead, support is given to increase the planning dollars from 2% to 4%, California's share will be minimal, and fall short of the $35,000 per Tribe. Example: If a tribe currently receives $2 a year, now they will get $4 a year.

2/ The Transportation Equity Act of the 21st Century (TEA-21) required the formation of a Negotiated Rule Making Committee; to evaluate the current distribution formula used by the Bureau of Indian Affairs, Indian Reservation Roads (BIA, IRR) Program, and was to negotiate a more equitable formula for all tribes. The NRMC included representatives from the federal government and tribal governments; two tribal representatives were from California. This process lasted approximately 2 years, with little change in funding for California Tribes. In addition, the BIA established policy to restrict the amount of additional roads that can be added to the IRR system- - thereby excluding these additional roads for the distribution of funds.

1 #113580 v6

2 PROPOSED AMENDMENT

3 *Drafted in the form of an amendment to the Transportation Equity Act for the 21st*

4 *Century:*

5

6 **Section 1101(a)(8)(A) is amended by**—

7 (1) inserting "(i)" before "For" and

8 (2) inserting the following after clause (i)—

9 "(ii) For the Indian Road Bond Program established under section

10 1120 of this Act, $100,000,000 for fiscal year 2004, $150,000,000 for

11 fiscal year 2005, and $200,000,000 for each of fiscal years 2006 through

12 2014."

13 (3) inserting the following new Section 1120 after Section 1119—

14 **"SEC. 1120 INDIAN ROAD BOND PROGRAM.**

15 (a) FINDINGS. – Congress finds that a well-developed, modern system of roads,

16 bridges and related infrastructure projects on and adjacent to Indian reservations is

17 critical to the economic well-being and advancement of Indian Tribes and that such

18 roads, bridges and projects are an important and essential governmental function of

19 Indian Tribes, but that financing of such roads, bridges and projects is difficult.

20 (b) ESTABLISHMENT OF INDIAN ROAD BOND PROGRAM. – There is

21 hereby established in the Department of Transportation an Indian Road Bond Program to

22 provide Federal financing assistance for Indian roads, bridges, and related transportation

23 infrastructure projects described under subsection (d)(2) financed by qualified debt

1 financing instruments issued by Tribes. Such program shall have the following
2 features—
3 (1) Application. For each fiscal year, an Indian Tribe may submit an
4 application to the Secretary for allocation commitments for eligible projects under
5 subsection (d)(2) to be made by the Secretary in such fiscal year for a period of
6 not more than ten years. The application shall include all necessary engineering,
7 design, and development documentation for the eligible project or projects.
8 (2) Tribal Share. All applications under paragraph (1) shall provide that a
9 minimum of 10 percent of the total project costs shall be funded from Tribal
10 sources other than the proceeds of any qualified debt financing instrument.
11 (3) Maximum Project Cost. For each Indian Tribe, the maximum eligible
12 project costs that may be financed with the proceeds of a qualified debt financing
13 instrument shall not exceed $10 million per fiscal year.
14 (4) Allocation Commitments. Beginning on October 1 of each fiscal year,
15 the Secretary shall make allocation commitments from the amounts authorized
16 under section 1101(a)(8)(A)(ii) to Indian Tribes that submit applications under
17 paragraph (1).
18 (5) Allocation Commitment Criteria. For each fiscal year—
19 (i) 50 percent of the total allocation commitments for such fiscal
20 year shall be reserved for Indian Tribes that provide for at least 25 percent
21 of project costs to be paid from sources of funds other than proceeds of
22 qualified debt financing instruments, and such allocation commitments

1 shall be awarded in the order complete applications are submitted, but in
2 no case less than 60 days after such application is submitted;
3 (ii) 10 percent of the total allocation commitments shall be
4 reserved for Indian Tribes that submit joint applications with other Indian
5 Tribes for related or unrelated projects, and such allocation commitments
6 shall be awarded in the order complete applications are submitted, but in
7 no case less than 60 days after such application is submitted; and
8 (iii) 40 percent of the total allocation commitments shall be
9 awarded to Indian Tribes in the order complete applications are submitted.
10 If for any fiscal year allocation commitments have not been made by the
11 Secretary 60 days prior to the end of a fiscal year, then all remaining
12 allocation authority shall be distributed to Indian Tribes in the order
13 complete applications are submitted.
14 (c) PLANNING AND APPLICATION REQUIREMENTS. – The project or
15 projects applied for under subsection (b)(1) shall be included in a surface transportation
16 plan of the Indian Tribe. If the application is for a project or projects that are not on
17 reservation land, then the portion of the plan relating to such projects shall be developed
18 in cooperation with the related State or local government where such project is to be
19 located. Each application shall include a financial analysis of –
20 (1) the total costs of the project over the life of the project and the sources
21 of funds to be used to pay for such costs (including proceeds of any qualified debt
22 financing instrument), and

1 (2) the sources of funds expected to repay any qualified debt financing
2 instrument or any other debt with respect to the project, including commitment
3 amounts applied for under this section.
4 (d) ELIGIBLE PROJECTS AND ELIGIBLE PROJECT COSTS—
5 (1) Eligible Projects. Eligible projects under this section include roads,
6 bridges, and related infrastructure projects (including project expenditures
7 described in subparagraph (2) below) that are located on the reservation of the
8 Indian Tribe or on land adjacent to the reservation which serve to connect
9 reservation roads or bridges, or enhance reservation access to, significant public
10 roads and highways, provided that in no event shall such project extend more than
11 50 miles from the reservation.
12 (2) Eligible Project Costs. The following costs of eligible projects may be
13 financed from the proceeds of a qualified debt financing instrument—
14 (i) construction, reconstruction, rehabilitation, resurfacing,
15 restoration, and operational improvements relating to roads and bridges
16 described in (1) above;
17 (ii) related infrastructure improvements, including parking areas
18 associated with roads financed by this section;
19 (iii) capital and operating costs for traffic management, monitoring
20 and control and related facilities;
21 (iv) amounts paid or incurred for development phase costs,
22 including but not limited to costs of planning for the eligible project,
23 engineering and design studies, design studies, environmental studies,

1 obtaining any required permits and consulting, financing fees and legal
2 fees; or
3 (v) any other project costs approved by the Secretary.
4 (e) PAYMENTS TO INDIAN TRIBES FOR BOND OR OTHER DEBT
5 INSTRUMENT FINANCING
6 (1) Definition. – In this section, the term –
7 (A) "qualified debt financing instrument" means a bond or other
8 debt financing instrument, including a note, certificate, mortgage, or lease
9 agreement, issued by an Indian Tribe or Tribes, or an entity formed to
10 issue qualified debt financing instruments on its or their behalf, the
11 proceeds of which are used to finance eligible project costs under this
12 section.
13 (B) "reservation" includes any Indian reservation, or Indian trust
14 land or restricted Indian land that is not subject to fee title alienation
15 without the approval of the Federal Government, or Indian and Alaska
16 Native villages, groups, or communities in which Indians and Alaskan
17 natives reside.
18 (2) Payment of Amounts Relating to Allocation Commitment Amounts. –
19 In each fiscal year for which a Tribe has received an allocation commitment, the
20 Secretary shall provide for payment of such amount to the Tribe (or a trustee or
21 other assignee) for the following expenses and costs--
22 (i) interest payments under an qualified debt financing instrument;

1 (ii) the payment of principal of an qualified debt financing
2 instrument;
3 (iii) the cost of the issuance of an qualified debt financing
4 instrument;
5 (iv) the administrative costs of carrying the qualified debt
6 financing instrument;
7 (v) the costs of insurance for an qualified debt financing
8 instrument;
9 (vi) any other cost incidental to the sale of or the carrying or
10 repayment of, an qualified debt financing instrument; and
11 (vii) any other costs relating to the qualified debt financing
12 instrument or the related project approved by the Secretary.
13 (3) Statutory Construction. – Notwithstanding any other provision of law,
14 the eligibility of a qualified debt financing instrument for reimbursement under
15 subsection (b) shall not–
16 (i) constitute a commitment, or direct or indirect guarantee or
17 obligation, on the part of the United States to provide for payment of
18 principal or interest on the qualified debt financing instrument; or
19 (ii) create any right of a third party against the United States for
20 payment under the qualified debt financing instrument.".
21

NATIONAL TRIBAL LEADERSHIP PAPER ON TRIBAL TRANSPORTATION POLICY

FACILITATED BY THE NATIONAL CONGRESS OF AMERICAN INDIANS (NCAI) TEA-21 REAUTHORIZATION TASK FORCE

NOVEMBER 14, 2002

DEVELOPMENT OF TRIBAL LEADERSHIP POSITION ON TEA-21 REAUTHORIZATION

Every four to six years Congress prepares transportation legislation to authorize the United States Department of Transportation (USDOT) to distribute billions of dollars in highway, transit and other transportation-related funding to federal, tribal, state and local transportation departments. The current transportation authorization, the Transportation Equity Act for the Twenty-First Century (TEA-21), will expire in fiscal year 2003. Congress is now holding hearings to prepare the next transportation reauthorization bill which will distribute nearly $220 billion dollars. Because of its great importance to Indian nations and Indian people, TEA-21 reauthorization is a top legislative priority of the National Congress of American Indians (NCAI). NCAI established the TEA-21 Reauthorization Task Force to spearhead this effort.

The task force has met with high-level officials of the U.S. Department of Transportation and the Bureau of Indian Affairs (BIA), Congressional staffers, the Intertribal Transportation Association (ITA) and regional tribal organizations such as United South and Eastern Tribes (USET), Affiliated Tribes of Northwest Indian (ATNI), the Great Plains and Rocky Mountain Tribes Transportation Planners Association and representatives of the Navajo Nation and many Alaska Native Villages.

After the Tribal leadership establishes its transportation goals for the next reauthorization, the NCAI Task Force will work in cooperation with ITA to keep the NCAI Executive Board informed of on-going developments as we work with members of Congress, the Bush Administration and other transportation interest groups to promote the legislative proposals endorsed by NCAI for inclusion in Congress' reauthorization of TEA-21.

BACKGROUND ON TEA-21 REAUTHORIZATION

To build strong tribal nations, Indian tribes must build a transportation infrastructure that permits safe travel and promotes economic expansion. Connecting people within tribal communities and tribal communities to the surrounding area means greater economic development and improved delivery of tribal government services. Yet many Indian reservation roads and bridges are known more for their impassible condition than for their use as a safe means of transportation. The poor condition of many tribal roads and bridges jeopardizes the health, safety, security and economic well being of our tribal members. Tribal road and bridges are often in such disrepair that children are prevented from attending school, sick and injured people are prevented from reaching hospitals and emergency responders are delayed in providing timely assistance to people in need.

The Indian Reservation Roads (IRR) Program and other tribal transportation programs are funded from federal transportation reauthorization acts. By working to improve the content of the next reauthorization bill, Indian tribes can help improve their tribal transportation infrastructure. If Indian tribes do not seize this opportunity, tribal roads and bridges will continue to deteriorate, risking the lives of our tribal members and limiting the progress of our tribal governments.

TRIBAL TRANSPORTATION PRIORITIES FOR TEA-21 REAUTHORIZATION

The NCAI TEA-21 Reauthorization Task Force has developed recommendations for legislative amendments and policy proposals to increase transportation funding for tribes and better promote and protect the sovereign interests of American Indians and Alaska Natives in the delivery of transportation services to their tribal membership. To reflect that tribal transportation needs are more than just roads and bridges and include all modes of transportation, the Task Force proposes that the Indian Reservation Roads program (IRR) be renamed the "Tribal Transportation Program (TTP)."

The Task Force recommends that annual funding for the IRR Program and other tribal transportation programs be calculated by identifying the actual transportation needs of all Indian tribes and spreading this unmet needs cost over the years of the next reauthorization, taking into account the actual funds available in the Highway Trust Fund and the proportion of IRR roads and bridges on the national highway system. As trustee for Indian tribes, the BIA must provide technical support, data and other assistance to tribal governments in this effort before the next reauthorization since many Indian tribes lack sufficient planning funds to perform this vital needs assessment.

All transportation issues identified by the task force are vital to Indian Country. However, the NCAI tribal leadership must prioritize the task force's legislative proposals to ensure that the most urgent needs of all Indian nations are met. The legislative proposals set out below are listed in the order of each issue's importance to the NCAI TEA-21 Reauthorization Task Force. Our goal is to develop a unified national tribal position for the TEA-21 reauthorization to carry these priorities forward.

KEY RECOMMENDATIONS

1. SECURE EQUITABLE FUNDING FOR TRIBAL TRANSPORTATION PRIORITIES.
   - Increase Highway Trust Fund authorization to Indian Reservation Roads (IRR) Program to no less than $500 million annually with a step increase to $1 billion annually by the end of the reauthorization.
   - Increase annual Interior appropriations to IRR Road Maintenance program to no less than $127 million in a manner, which does not reduce appropriations to other BIA programs.
   - Augment BIA Road Maintenance appropriations with $420 Million from the Highway Trust Fund over the life of the reauthorization.
   - In addition to IRR Program funds, increase funding for IRR bridge program to a minimum of $50 million annually to address the more than 1000 deficient IRR bridges.
   - Return IRR program to 100% funding authorization (remove obligation limitation deduction and hold IRR Program harmless from impact of negative RABA.)
   - Develop Tribal funding set-asides within all USDOT modal Administrations.
   - Increase Transportation planning dollars to a minimum base level of funding for all Indian tribes to ensure that every tribe can perform tribal transportation planning.
   - Augment the IRR program with an additional $100 million annually from the Federal Transit Administration (FTA) for transit-related construction, acquisition, operation and maintenance.
   - Require an appropriate percentage of discretionary funds distributed to States from the Highway Trust Fund (Federal Aid, NHTSA, and FTA) be used on IRR transportation facilities (to encourage States to develop federally funded transportation projects that provide critical access to Indian communities).

2. **Improve Program Efficiencies and Accountability.**
   - Clarify that the IRR Bridge program includes the cost of research, planning, design, project engineering, and construction for new and existing IRR bridges.
   - Correct problems in IRR Bridge Program interim regulations through a Negotiated Rulemaking process.
   - Require full annual disclosure of federal administrative functions and program costs, takedowns, and clarify those functions that Indian tribes may contract or compact under the Indian Self-Determination Act, P.L. 93-638.
   - Create a tribal liaison position directly under the Assistant Secretary for Governmental Affairs in the USDOT.
   - Employ a tribal coordination official in each USDOT modal administration.
   - Clarify that the IRR Maintenance funds are to be made available for IRR transportation facilities regardless of ownership.

3. **Enhance Tribal Self-Determination in Transportation.**
   - Develop greater transportation partnerships and consultation among Tribal, Federal, State, and local governments.
   - Extend P.L. 93-638 to USDOT.
   - Provide direct Tribal access to all USDOT funding sources under P.L. 93-638 in all USDOT modal Administrations.

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1) Tribal Transportation Program Funding: The IRR program receives less than 0.6% of Federal highway funds, while the IRR system makes up more than 2.6% of federal roadways. The Task Force estimates that the current IRR construction need is over $25 billion. Based on available data, the NCAI Task Force recommends no less then $500 million in annual funding for the Tribal Transportation Program increasing to $1 billion by FY 2008.

2) Maintenance Funding: TEA-21 mandates that roads and bridges constructed with Highway Trust Fund dollars be adequately maintained to protect the public investment. The IRR system has historically received only $26 million per year in Department of Interior (DOI) maintenance funding, less than one-tenth (1/10) of the funding per lane mile that States have available to maintain their roadways. This funding inequity causes tribal roads and bridges to deteriorate years before their time. Based on available data, the NCAI Task Force has determined that a minimum of $197 million ($127 million from DOI and $70 million from DOT) per year is required to maintain the existing IRR system. The Task Force recommends that such increases to the BIA road maintenance program not be to the detriment of other BIA funded programs.

3) Tribal Transportation Bridge Program: The NCAI Task Force strongly recommends that the IRR Bridge Program be funded at $50 million annually from the Highway Trust Fund; that legislation expand the authorized use of IRR bridge program funds to include new bridges as well as clarify that such funds can also be used for planning, construction engineering, and design of new and existing bridges. Provide for tribal contracting/compacting of the IRR bridge inspection program under P.L. 93-638 by region. The current system of a single national bridge inspector, now based in Florida, does not allow sufficient opportunity for tribal governments to monitor and use this vital service. Bridge inspections by region serve the goal of tribal self-determination and self-governance, without compromising the integrity of this important safety function.

4) Obligation Limitation Deduction: Prior to TEA-21, the IRR Program was not subject to the obligation limitation deduction. Under TEA-21, the obligation limitation deduction has diverted over $150 million from the IRR Program to State transportation programs. The NCAI Task Force recommends that the IRR Program

be restored to 100% funding authorization and that it also be held harmless during periods of negative RABA (i.e. when federal gas tax receipts are lower than Congress anticipated). The task force supports the approach used in S.344 and S.2971, to correct the obligation limitation problem and also recommends that the negative RABA protection be addressed in this legislation.

5) **BIA and FHWA Program Management (PMO) Funding:** Because of the Administration's current interpretation of TEA-21, the reauthorization legislation must clarify that Indian tribes and tribal organizations may contract or compact for federal administrative functions under P.L. 93-638 and receive an appropriate share of Program Management funds. The NCAI Task Force recommends that reauthorization legislation require a full annual disclosure of federal program management expenditures by the BIA and FHWA.

6) **Transportation Planning Funds:** Proper transportation planning is the first step toward improving tribal transportation systems. The Task Force recommends increasing tribal transportation planning funds from two percent to four percent and establishing a base minimum level of $35,000 for each federally recognized tribe to enable them to carry out the planning process.

7) **Transit Funding:** Tribal governments receive no FTA funding despite the overwhelming, well-documented transit needs of Indian people. The Task Force recommends that the IRR program be augmented with an additional $100 million annually from the FTA.

8) **Establish Funding for Tribal Governments in all USDOT Modal Administrations:** A major goal in the next reauthorization is to establish that tribal governments are the most appropriate and efficient government providers of federal transportation services on tribal lands. Indian tribes should comprehensively perform this function on tribal lands just as State transportation departments (State DOTs) perform this function on State lands. To accomplish this important change in the way tribal governments are used to deliver federal transportation services, the NCAI Task Force recommends that appropriate funding set-asides be established within all USDOT modal administrations (e.g., Tribal Transportation Safety and Tribal Scenic Byways). To promote a more efficient system, Indian tribes should have direct access to these federal funding sources and should not be required to use the current inefficient system of requesting such funds from State DOTs. The NCAI Task Force supports the approach used in S.344 on this subject with regard to impaired driver and seatbelt safety grants, but we recommend that this same approach be used for all federal transportation funding sources.

9) **Demonstration Program to Extend P.L. 93-638 Authority to USDOT:** To further improve the efficiency of tribal transportation programs and encourage tribal self-determination and self-governance, the task force supports the concept of a new demonstration program to extend to the Secretary of Transportation the authority to enter into contracts and agreements under P.L. 93-638. The Task Force recommends that the demonstration program be open to Indian tribes and tribal organizations eligible under the mature contract criteria provisions of P.L. 93-638.

10) **Improve Tribal Partnerships with Federal, State and Local Governments:** Relatively minor, "no cost" changes to 23 U.S.C. can help further the development of true transportation partnerships and consultation among Tribal, Federal, State, and local governments in areas such as transportation planning, maintenance, innovative financing and tribal contracting of federal-aid projects. Indian tribes, State DOTs and the FHWA are currently engaged in innovative, positive discussions to create better government-to government transportation partnerships to improve transportation systems for all people residing in or near Indian communities. Some laws are already being used to good effect, while other parts of TEA-21 limit, rather than enhance, these government-to-government partnerships. Among other things, the NCAI Task Force recommends the following:

- Require that states adopt and implement written consultation protocols (i.e. Memoranda of Understanding, MOUs, and Memoranda of Agreement, MOAs), which will be monitored by the FHWA and FTA prior to certifying and releasing federal funds to states and MPOs.
- Improve 23 U.S.C. 132, which permits the transfer of State federal-aid funds to the BIA and then to Indian tribes under P.L. 93-638.
- Reflect that IRR facilities are eligible to receive STP funds regardless of their functional classification.
- Allow tribal representatives to serve as full voting members in State MPO/RPO.
- Change the name of the IRR Program to the Tribal Transportation Program to reflect the intermodal nature of Indian transportation needs.
- Establish Tribal Government Liaisons in all USDOT modal Administrations.
- Establish Tribal Desk under the USDOT Assistant Secretary for Governmental Affairs.
- Increase funding for Tribal Technical Assistance Program (TTAP) and improve delivery of TTAP services to the tribes.
- Require FHWA to publish a Notice of Funding Availability (NOFA) within ten days of funding apportionment to permit P.L. 93-683 tribes to receive timely funding for their transportation programs and projects.
- Ensure that tribal governments are full partners in emergency mobilization, contingency plans, and other matters related to Homeland Security and defense.
- Increase the flexibility of tribal governments to use innovative financing methods to provide matching funds for transportation-related projects.

11) Tribal Transportation Program Coordinating Committee: The NCAI Task Force recommends that reauthorization legislation statutorily endorse a Tribal Transportation Coordinating Committee, using the same structure developed by the Tribal Caucus during the IRR TEA-21 Negotiated-Rulemaking process. This tribally administered Committee should be funded with BIA Program Management Funds. Many of tribal governments have become dissatisfied with the BIA and FHWA's direct administration of the IRR Program. Our experience has shown that only direct tribal involvement will ensure that the IRR Program properly serves the interests of Indian nations and Indian people, not the interests of the federal bureaucracy.

12) Other IRR Neg-Reg Preamble Issues: The task force recommends that the TEA-21 reauthorization legislation resolve the "disagreement" items raised during the IRR TEA-21 Negotiated-Rulemaking process in a manner that supports the Tribal Caucus' positions. For example, the "advance funding" position of the Tribal Caucus makes economic sense and will save taxpayers money by growing these federal funds for the benefit of tribal transportation. The Emergency Relief of Federally Owned Roads (ERFO) eligibility issue can also be resolved in favor of the tribal position since the current federal members of the IRR TEA-21 Negotiated-Rulemaking Committee seem unwilling to correct this problem through the rulemaking process.

CONCLUSION

Indian tribal governments and tribal transportation organizations are better positioned than ever before to help shape the TEA-21 reauthorization legislation in ways that greatly benefit the long-term interests of Indian tribes and their tribal members. The TEA-21 reauthorization effort will be difficult given the many competing interest groups involved, but by working together, Indian tribes can speak in a single, powerful voice before Congress and the Administration to ensure that we accomplish this important task.

RESERVATION TRANSPORTATION AUTHORITY

"A Consortium of Southern California Indian Tribes"
28860 Old Town Front St., Suite C-1
Temecula, CA 92590 2892
(909) 308-1442
Fax (909) 308-1272

Executive Board:
Kevin Siva
Chairperson
Robert Smith
Vice Chairperson
Roger Simpson
Secretary
Ben Magante
Treasurer
Edward Arriso
Member at Large

Member Tribes:
Agua Caliente
Barona
Cahuilla
Campo
Capitan Grande
Inaja & Cosmit
Jamul
La Posta
Los Coyotes
Mesa Grande
Pala
Pauma
Ramona
San Pasqual
Santa Rosa
Santa Ynez
Sycuan
Torres-Martinez
Viejas

Staff:
Patricia Ockert
General Manager
Tanya Kingsley
Finance Manager

June 16, 2003

Senate Committee on Indian Affairs
838 Hart Senate Building
Washington, D. C. 20510

Written Testimony in support of Proposals to Amend the Indian Reservation Roads Program, S.281 the Indian Tribal Surface Transportation Improvement Act of 2003 and S.725, the Tribal Transportation Program Improvement Act of 2003.

Mr. Chairman and Members of the Committee, I thank you for this opportunity to voice our support for the above referenced bills which proposes to amend the Transportation Equity Act for the 21st Century and provide from the Highway Trust Fund additional funding for Indian reservation roads.

The Reservation Transportation Authority (RTA) is a consortium consisting of 18 Southern California member tribes, a model Public Law 93-638 contracting entity and the only one of its kind in the nation. The RTA is supported by and works with the Bureau of Indian Affairs, the U.S. Department of Transportation, U.S. Forestry Service California Department of Transportation (Caltrans), and the Riverside and San Diego County governments. Although, only five years in operation, the RTA has developed creditably with transportation agencies in Washington and Sacramento due to the great strides achieved by providing high quality comprehensive transportation services, from planning and accessing funds to building and repairing reservation roads. The tribes have taken this unique opportunity to develop their own transportation future planning, and resolve issues within their communities.

Members of the RTA are deeply committed to seeking an adequate and fair distribution of transportation funding and participate in many organizations such as the Indian Reservation Roads Negotiated Rule Making Committee, the Native American se

June 16, 2003
Senate Committee on Indian Affairs
Page 2

Advisory Committee established in 1996 by Caltrans Director Jeff Morales; these are only a few of the many organizations where we voice our concerns, opinions and pro Resolutions. However, transportation funds for reservations remain inadequate.

Gentlemen, I am sure you are well aware of these issues that have been presented, discussed and considered for decades. We cannot and will not continue to be disadvantaged people, because of poor transportation. We know what we need and we know the IRR funding reduction for 2003 is about $36 million, a devastating blow to tribes. The RTA, in our effort to assist with transportation issues supports the Proposals to Amend the Indian Reservation Roads Program, S.281 the Indian Tribal Surface Transportation Improvement Act of 2003 and S.725, the Tribal Transportation Program Improvement Act of 2003.

Respectfully submitted,

Patricia J. Ockert, General Manager
PJO:hs

REVISED WRITTEN TESTIMONY OF THE NAVAJO NATION

STATEMENT OF PRESIDENT JOE SHIRLEY, JR.
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON
THE INDIAN RESERVATION ROADS PROGRAM

June 4, 2003

Introduction

Chairman Campbell, Vice Chairman Inouye and Members of the Committee, it is my honor to appear before you on behalf of the Navajo people to address your proposals to amend the Indian Reservation Roads Program. I am joined by Mr. Mark Maryboy, Chairman of the Transportation and Community Development Committee of the Navajo Nation Council, whose recommendations are reflected in legislation before you.

Issue

The issue before you today is how to build tribal transportation systems that will enable Indian people to go from third world conditions, which tend to squash human potential, to first world conditions, which tend to make it easier for the best within us to become a reality.

Transportation is essential to the basic quality of life and economic development of tribal communities. There are approximately 9,826 miles of public roads on the Navajo Nation, which is itself about the size of West Virginia. While West Virginia has 18,000 miles of paved road, the Navajo Nation has only 2,000 miles of paved road. Seventy-eight percent of our roads are dirt. On a regular basis, businesses explore the possibility of locating to the Navajo Nation, but don't once they realize the lack of paved roads.

Bad roads in Indian Country not only mean the difference between poverty and prosperity; they also mean the difference between life and death. Health clinics on the Navajo Nation are few and far between. Tribal members, including the elderly, children, and disabled, often must travel hundreds of miles to receive specialized care. Dirt roads, deteriorating paved roads, and treacherous bridges make their long journeys that much more difficult. It is no coincidence that automobile accidents are the number one cause of death among young American Indians and the annual fatality rate on Indian Reservation Roads is more than four times the national average.

Our children's education is also threatened by dirt roads that become so bad they are impassable to school busses. As you know, BIA school buses alone travel over 15 million miles a year to transport Indian children on what is often a one lane dirt road lacking any basic safety features, such as shoulders or guard rails. I want to read two letters from two Navajo children who attend the Pine Springs Elementary BIA School within the Navajo Nation in Pine Springs, Arizona. Their words say more than I ever

could about how the 12 mile dirt road, which is the only way to access their school, impacts their education.

Conclusion

Indian Reservations Roads are not an Indian problem. The Indian Reservation Roads Program impacts all people, tribal and non-tribal alike. Tribal lands provide vitally needed access within and between states, and support a multitude of economic interests, including tourism, agriculture, energy production, manufacturing, mineral extraction and timber harvesting. Indian Reservation Roads represent 2.65% of all federal lands highways yet receive less than 1% of the federal surface transportation budget. In fact, last year tribes received even less than the year before. In fiscal year 2003, the IRR Program was slashed $40 million below the 2002 level while states received an increase. I respectfully urge this Committee to ensure that equity actually means something in the reauthorization of the Transportation Equity Act of the 21st Century. Thank you.

Jonathan
May 7, 2002

Dear Roads Task Committee

Hi, My name is Jonathan, I go to School at Pine Spring School. I want the road grated, because some people drive slow because the road is to bumpy and roff because there are too much rocks sticking out of the ground. And please pave the road North of Pine Spring road please Because it is bumpy too. Please don't let the Kids get hurt on the bus. The Kids get hurt, because the Kids get out on the bus. That is really dangersus for the Kids. The milK and grocery truck come up here every weeK and they don't liKe the the rough road too. Let our safety come first. Kids come first above all. We have a real nice school and we enjoy it veey much.

from:
Jonathan Smith

Torrance, CA #PV41958

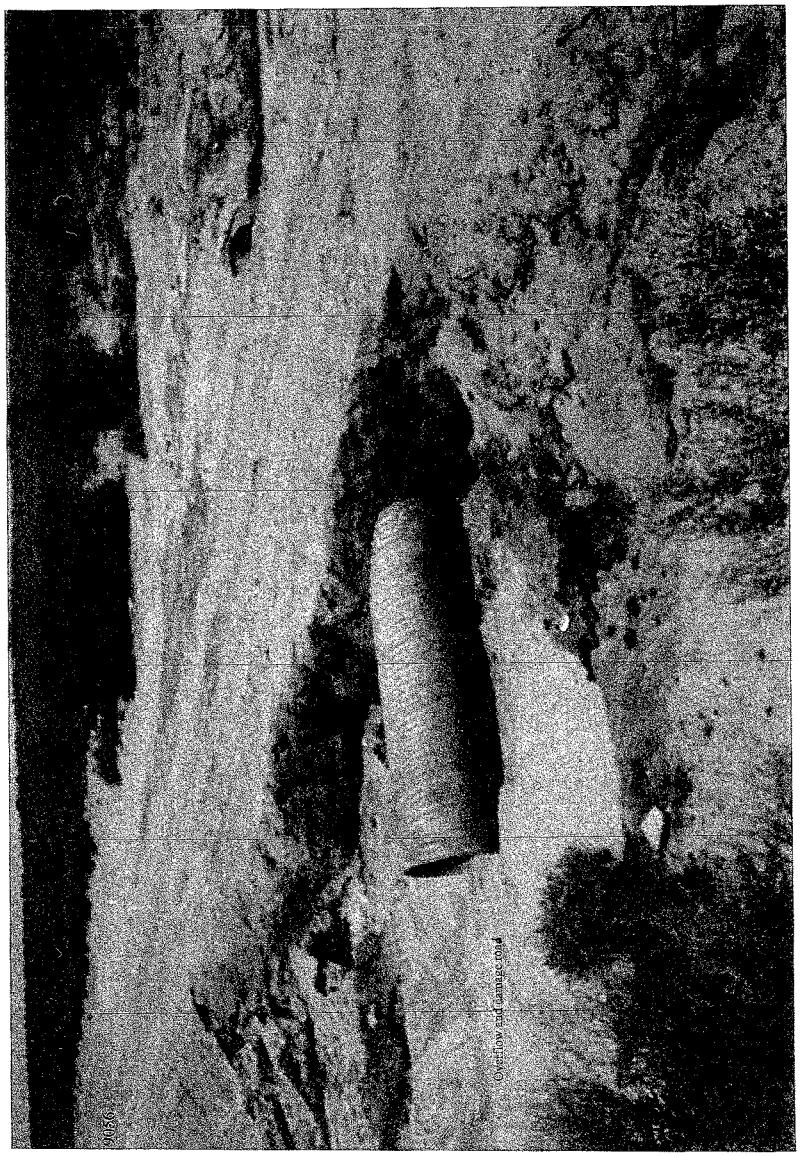
May 7, 2002

Dear Roads Task Comittee,

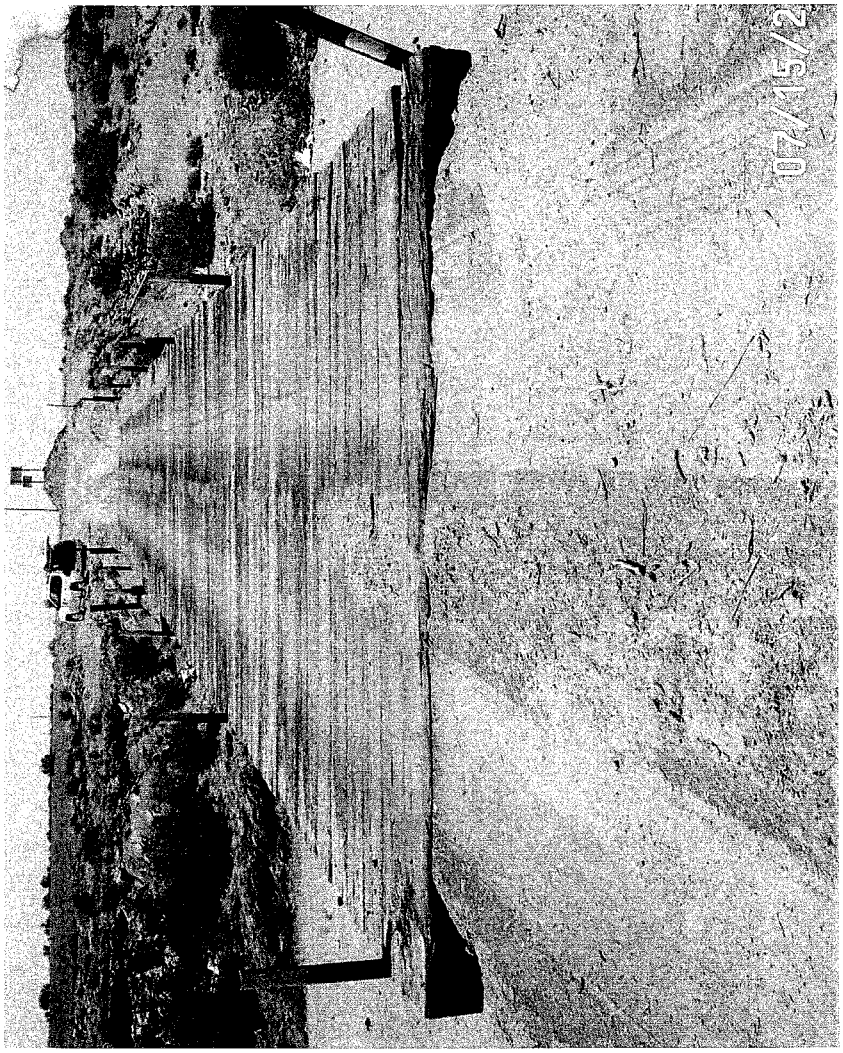
Hello! My name is Marcario Betoney and I go to school at Pine Springs School. I hate the road up here because we get flat tires and the buses get broken down then the buses don't come right on time when school start. When people drive really fast the rocks jump up and hit the windshield then the windshield cracks then they have to take the car and truck to the shop to get it fix. People get into car crash when they are going to fast on the bumps that are on the road. Sometimes we have home games over here and parents don't like to come to the game because of this road. My family don't like the road because of the rocks and bumps and our trucks and cars are getting rocks into the tires then it gets flat. Can you please fix the road for us please!

Thank You

Marcario Betoney



Overflow and damage road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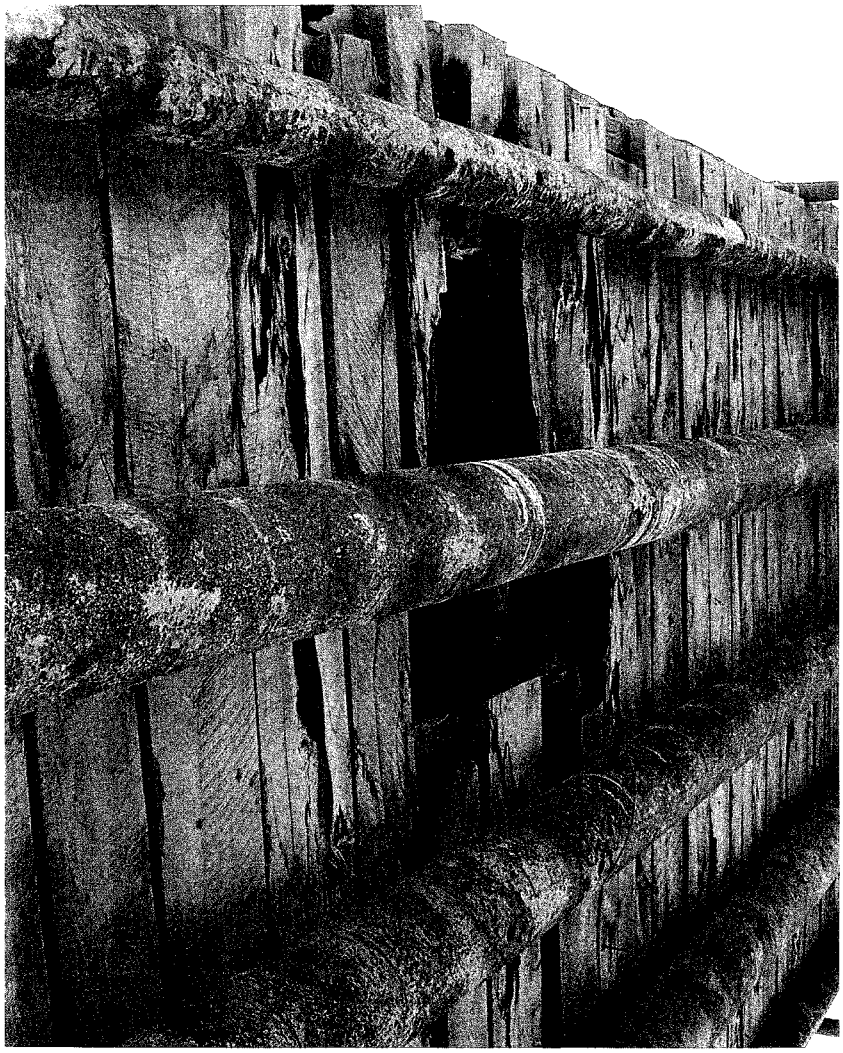
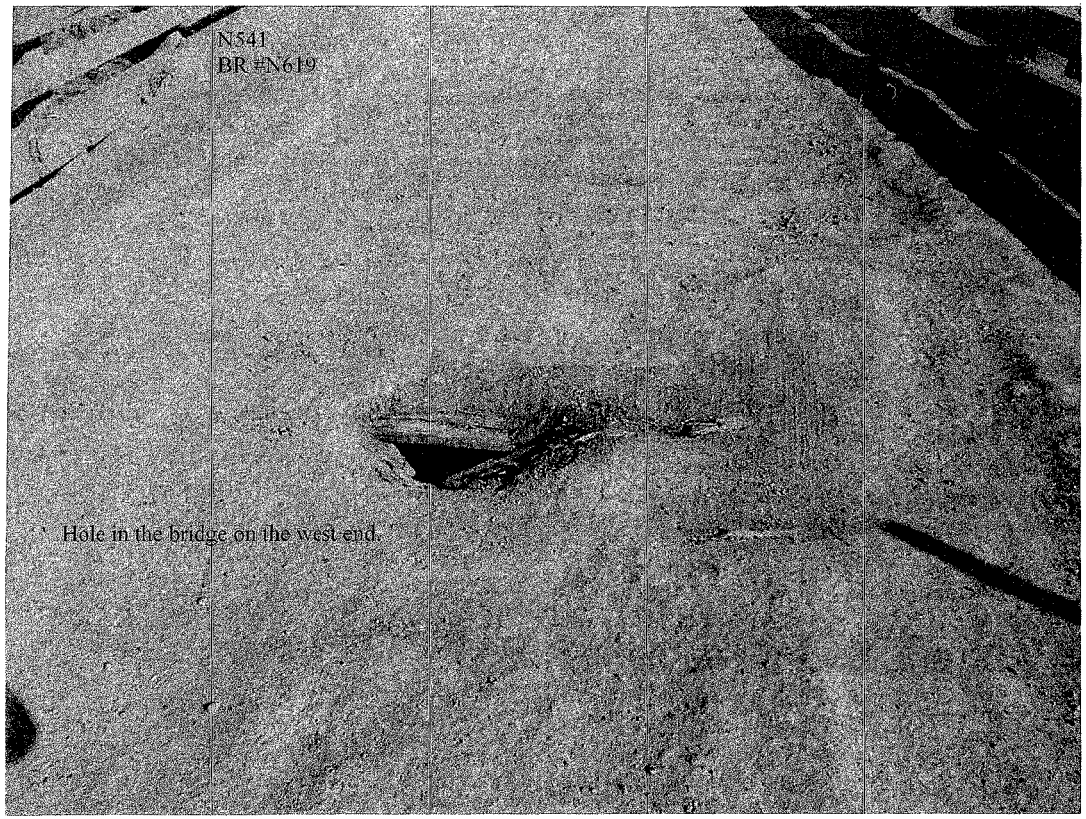
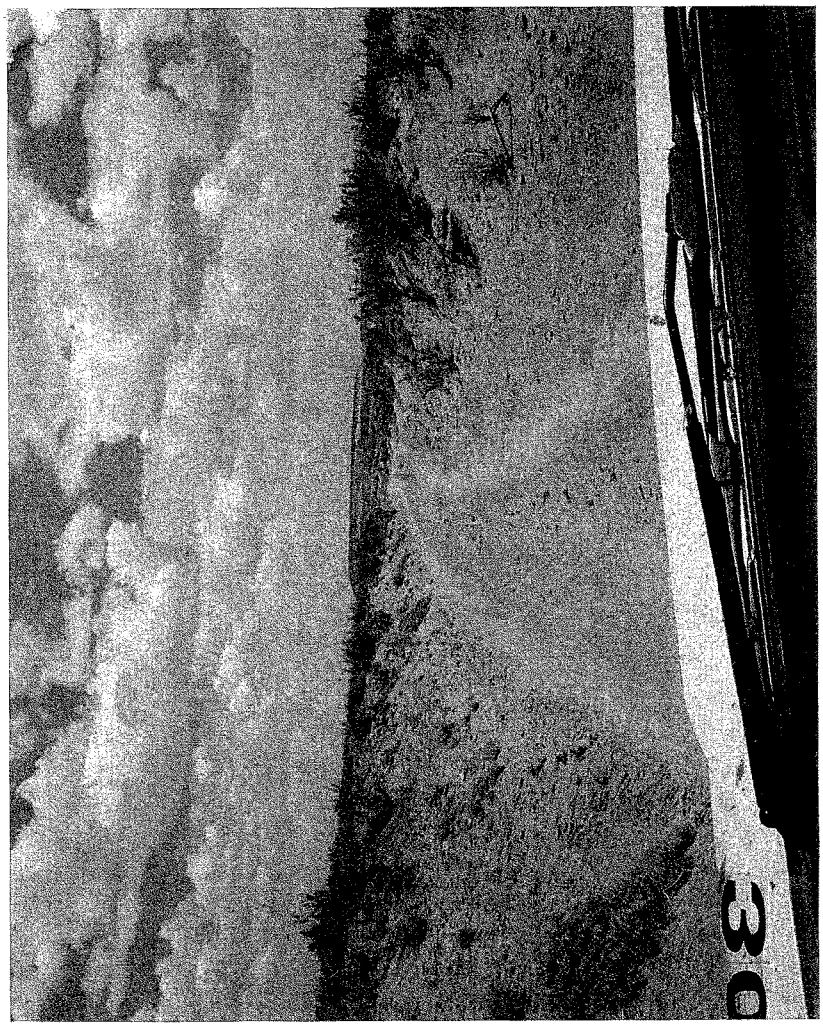




Hole in the bridge on the west end.

7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TESTIMONY OF THE HONORABLE CHADWICK "CORNTASSEL" SMITH
PRINCIPAL CHIEF OF THE CHEROKEE NATION
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
HEARING ON
THE INDIAN RESERVATION ROADS (IRR) PROGRAM
AND THE SURFACE HIGHWAY REAUTHORIZATION LEGISLATION

June 4, 2003

Good morning Mr. Chairman and Members of the Committee, my name is Chadwick Smith, and I am the Principal Chief of the Cherokee Nation. With me are Jackie Bob Martin, Chairman of the Resources Committee of the Cherokee Nation Tribal Council, Harley Buzzard, Director of Roads, and Casey Sixkiller, Legislative Officer in our Washington Office. We appear here on behalf of the Cherokee Nation to express our strong support for the tribally-developed transportation innovations and improvements reflected in the many Tribal transportation bills currently under consideration by this Committee. We are pleased to see common sense ideas, innovative proposals and the promise of greater funding reflected in your bill Mr. Chairman, S. 281, the "Indian Tribal Surface Transportation Improvement Act of 2003," Senator Bingaman's S. 725, the "Tribal Transportation Program Improvement Act of 2003," as well Senator Johnson's "Tribal Transportation Program Improvement Act of 2003." We urge the members of this Committee to work closely with your colleagues in the Environment and Public Works, Banking and Commerce Committees to ensure that our mutual goals for the IRR Program are carried forward into the Senate's broader surface highway reauthorization legislation.

I realize this Committee will hear from many witnesses today so I will keep my remarks brief. I want to focus on the four issues I believe are most crucial in developing this reauthorization legislation: economic development, safety, funding equity and program efficiency. While I will only touch on the high points of these issues, I have appended to this testimony reports and other data to support my remarks, and ask that they be made a part of the Hearing record. I also respectfully ask all Members of this Committee and your staffs to continue working with our tribal transportation experts to refine the reauthorization legislation so that it delivers on its promises and avoids unintended consequences.

Economic Development

The Cherokee Nation represents over 237,000 tribal citizens, nearly half of whom live within our 7,000 square mile jurisdictional area. According to the 2000 census, the Cherokee Nation jurisdictional area is home to 462,327 American citizens. Whether or not these residents are also citizens of the Cherokee Nation, all these people benefit from the jobs, infrastructure improvements and business opportunities that the Cherokee Nation has brought to our corner of Northeastern Oklahoma. Through our successful business ventures, we are now the number one employer in our region. The Honorable Larry E. Adair, Speaker of the House in the Oklahoma State Legislature, has recognized the impact of the Nation's infrastructure building in Oklahoma. I have a copy of his letter and ask that it be included in the record.

Despite these positive advances, there is still far too much poverty in our area. According to the 2000 census, thirteen percent of families and over sixteen percent of individuals live below the poverty line. Like many Tribal leaders, I have seen the great economic, health, safety and societal benefits that come when our transportation systems are improved and our infrastructure is properly maintained, as well as the great hardships that occur when our transportation systems and infrastructure are neglected. Like you, we believe the reauthorization process is one of the most important legislative tasks facing this Congress. It provides a unique opportunity to help jump-start our faltering economy. We have all seen the statistics developed by the United States Department of Transportation that every dollar invested in transportation infrastructure yields a six-fold increase in the Nation's economy and helps generate many new jobs. This is especially relevant for Tribes.

Because our Tribal transportation infrastructure has been so badly neglected and has hampered Tribal economies for far too long, there can be no doubt that the targeting of additional financial resources, innovative financing techniques and greater Tribal control over transportation programs will yield even greater results in Indian country. Perhaps Secretary Mineta said it best in his testimony to the Senate Committee on Environment and Public Works last year. He noted a lesson he learned as Mayor of San Jose, California three decades ago, saying:

> I learned that the tool that made the most difference in my community was transportation. Nothing else had as great an impact on our economic development, growth patterns, and quality of life. What I have found in the years since is that this is true not just locally, but also nationally. A safe and efficient transportation system is essential to keeping people and goods moving and cities and communities prosperous.

According to every measure, including the testimony of the Bureau of Indian Affairs ("BIA") and Federal Highway officials and this Committee's own report on the state of Tribal transportation in 2000, transportation infrastructure in Indian country continues to lag far behind the rest of the Nation:

- Over two-thirds of the BIA road system remains dirt roads;
- Nearly one-quarter of the 779 IRR bridges are rated in an unsafe, deficient condition;
- IRR roads and bridges must also be reconstructed well in advance of their design life due to a lack of adequate maintenance funds;
- The BIA receives a paltry $26 million per year to address the maintenance needs of all 562 federally recognized Tribes, covering nearly 100 million acres of Indian lands.

These are not my statistics; they come from the Federal officials responsible for implementing the IRR Program and from this Committee's own reports. According to

BIA and Tribal transportation experts, more current information puts the IRR construction backlog at somewhere between $11 billion to $25 billion and growing.

Under these conditions, it is not surprising that Tribes have a difficult time attracting businesses, jobs and other investments to their Territories. We must already overcome the myths and prejudices that some people have about doing business in Indian country. Our job is made all the more difficult when prospective investors are justifiably concerned they will have to put up with Third World-type transportation infrastructure just to get their goods and services to market. But with a relatively modest financial investment and common sense improvements to federal transportation laws, Congress and the Administration can help Tribes turn areas that are often pockets of poverty into tremendous engines of economic growth. This is particularly true in rural America. Infrastructure improvements made by Tribes benefit Indians and non-Indians alike. And unlike most rural areas in America, rural Indian communities are growing rapidly according to the 2000 Census. If rural areas cease to function as vital economic centers, we will only see increased congestion and greater concentration of populations in urban areas. As we have seen in our own part of Northeastern Oklahoma, Tribal governments can help stimulate rural economies, which is good for the long term economic health of our Nation.

Transportation Safety

The Administration's reauthorization bill, SAFETEA, properly focuses on reducing traffic injuries and fatalities and increasing transportation security on our Nation's roadways. We applaud the Administration's focus on transportation safety and security, as well as its proposal to create a new BIA safety component within the Federal Lands Highway Program. However, much more can and should be done to improve transportation safety and security in Indian country. We support the proposals made by Chairman Campbell, as well as Senators Bingaman and Johnson, to provide Tribes with direct access to federal transportation safety funds. It is past time for the Federal government to make better use of Tribal governments to help solve this traffic safety crisis. The statistics on traffic injuries and fatalities on Tribal roadways are truly appalling. This Committee's own report in 2000 concluded that the "unsafe condition" of many IRR roads and bridges has led to an "annual fatality rate on the IRR system [of] more than four times [that of] the national average." Likewise, a recent General Accounting Office report found that while urban roads receive the lion's share of federal transportation funding, more people travel and are killed on rural roads. The Report states that "[w]hen adjusted for miles traveled, the fatality rate from traffic accidents on rural roads was nearly 2.5 times greater than the fatality rate from accidents on urban roads."

While statistics are important to make our point, they cannot adequately capture the grief of a Cherokee citizen who has lost a loved one in a preventable traffic accident. A few years ago, a full-blood Cherokee named Gerald Blackbear lost his life in a car crash on Fairview/Eucha Bridge in the northern portion of the Cherokee Nation. This

bridge is situated on a vital roadway that provides access to health clinics, shopping, and employment, and is a school bus route for the local school. The road and bridge was a small, two-lane roadway that had dangerous turns and no guardrails. While the Nation has since received funding to replace the Eucha Bridge, it was not soon enough to prevent the unnecessary death of Gerald Blackbear. We can and must do better.

In these frightening and turbulent times, we must do all we can to protect *all* our citizens. Many Cherokee Nation and Native American veterans have paid the ultimate price to protect our freedoms and our security. Most recently, the whole country mourned the tragic death of Lori Piestewa, the first American woman to be killed while serving in combat, and a member of the Hopi Nation. Given these new dangers and the many billions we are spending to counter them, targeting $50 million dollars a year to help Tribal governments reduce thousands of needless deaths on our Nation's roadways seems like a small price to pay to accomplish such a great good for our country. In my opinion, nothing in this Reauthorization legislation is more important.

Funding Equity

It has been said, "Great nations, like great men, keep their promises." As I see it, Congress and the Administration have overlooked and underfunded tribal transportation infrastructure development, transportation safety programs, transit systems and maintenance programs for too long. According to this Committee's own 2000 report, the IRR system comprises 2.63% of the Federal-Aid system but receives less than 1% of the surface highway funding out of the National Highway Trust Fund. We are asking for equity. Tribes currently receive almost nothing at all from the Highway Trust Fund and the Transit Fund to cover their safety, transit or maintenance activities. We have already discussed how this funding disparity prevents Tribes from reaching their highest economic potential, to the detriment of Indians and non-Indians alike. But simple fairness is also a consideration that should be kept in mind when this Committee marks up its Tribal Reauthorization legislation. Time and again Indian Nations have been asked to give up our lands and resources for the good of the Country, in exchange for the Federal government's promises to look out for our best interests as our trustees. Too often those promises were not kept.

The members of this Committee are well aware that the IRR system is woefully underfunded, both for construction and for maintenance. As reflected in the bills currently before this Committee, the funding levels for the IRR Program, as well as for the proposed Tribal safety, transit and maintenance programs only begin to redress this funding inequity. Given the great unmet transportation needs in Indian country, even the Tribal funding proposals are quite modest by any reasonable measure. For example, even if the Congress dedicated $1 billion per year for Tribal transportation programs, out of the total $300-400 billion reauthorization package, we would only begin making a dent in the huge construction and maintenance backlogs that everyone recognizes exists in Indian Country. But at these higher funding levels, we would at least stop losing ground. While I recognize the current budget constraints facing Congress, I believe the transportation

funding increases proposed by the Tribal proposals and several members of this Committee are modest in comparison with the need and are an appropriate step in the right direction. Cherokee Nation itself faces a similar challenge in budgeting scarce resources, but has determined roads and infrastructure to be a high priority by allocating substantial tribal funds to the program every year to supplement the IRR program. While this is evidence of our commitment to safer roads and bridges, it is a long way from addressing the backlog for transportation construction.

Likewise, Congress should return the IRR Program's exemption from the obligation limitation deduction, as had always been the case prior to the passage of TEA-21. Tribes throughout the country, the Inter-Tribal Council of the Five Civilized Tribes, the National Congress of American Indians and many other regional tribal organizations all strongly support this recommendation. While for States the obligation limitation is a temporary delay in full funding, the obligation limitation for IRR *permanently* removes $30-$35 million annually from the program, which is ultimately expended for programs other than IRR. The Cherokee Nation therefore urges the Members of this Committee to help fulfill the promises our Nation has made to Indian people and bring our Tribal transportation systems up to the minimum level of other road systems in this country. Restoring the IRR Program's exemption from the obligation limitation is one no-cost way of increasing annual funding to the program.

Program Efficiency

When the Federal-Aid highway system was first developed in the 1950s, the Federal government's official Indian policy supported the termination of the trust responsibility and the elimination of federal recognition for Tribal governments. During this disastrous period, federal transportation laws completely overlooked sovereign Tribal governments and instead funneled money intended to improve tribal transportation systems through to the States and the BIA. While this approach may have had some logical basis in the 1950s, it certainly no longer makes sense given the current federal policy of promoting Tribal self-determination and self-governance in the administration of Federal programs serving Indians. Yet, the consequence of maintaining the old funding structure has cost Federal, State and Tribal officials countless hours and many millions of dollars in needless transaction costs. It has also created great frustration on all sides because the laws too often do not allow outcomes that all parties seek. This Committee has an important opportunity in this legislation to bring our federal transportation laws in line with current Indian policy.

More than thirty years ago, Congress and the Administration embarked on a bold policy of promoting Indian self-determination and self-governance, while continuing to maintain and strengthen the federal trust responsibility. Rather than seeking the termination of Tribal governments, Congress and the Administration recognized that respecting and strengthening Tribal governments would better serve the country. Without doubt, this has been the most successful federal Indian policy in our Nation's history, and many Indian tribes have moved from abject poverty to become strong, vital governments.

We successfully administer hospitals, schools, police forces, emergency services, tribal courts, and *yes* - transportation departments.

Tribal governments have accomplished this amazing turnaround through the vision and dedication of their leaders, the hard work of their members and, *no less important*, the wise policy choices of leaders of Congress and the Administration. Without Congress - and the Administration's decision to enact the Indian Self-Determination and Education Assistance Act, and later the Self-Governance amendments, it would have been far more difficult for most Tribal governments such as the Cherokee Nation to achieve the governmental capacity we now possess. Likewise, your efforts in passing the Intermodal Surface Transportation Efficiency Act ("ISTEA") and TEA-21 to recognize and support Tribal governments' important role in statewide transportation planning have helped spur a vast improvement in our Tribal capacity to deliver transportation services to the Indian and non-Indian residents in our jurisdictional area.

The Cherokee Nation, along with the Red Lake Band of Chippewa Indians, spent six years – and dedicated significant financial resources – first conceiving of the idea of an IRR Self-Governance Demonstration Project, and then working with the BIA and the Federal Lands Highway program to make our vision a reality. We spent years in meetings, discussions and negotiations with BIA and Federal Lands Highway officials simply to get these federal agencies to do what we believe the law clearly required them to do all along: provide tribes with their fair share of the federal resources and the authority necessary to administer the IRR program directly for the benefit of their own members. In so doing, we never asked for more than our share, and we never sought to remove the BIA or the Federal Lands Highway program from their proper role as our partners or as overseers of the larger IRR program. Still, we too often faced delays and foot-dragging.

We have experienced similar problems during the four-year odyssey of the IRR Program Negotiated Rulemaking Committee and the recent publication of the IRR Bridge Program regulations. Despite unified Tribal recommendations for improving the IRR Program - through such common sense recommendations as using "advance funding" innovative financing techniques to "grow" total program funding and dedicate tribal savings to provide additional IRR Program services - federal officials have so far refused to accept these Tribal proposals in the final regulations. Likewise, despite a coordinated and time-consuming effort by Tribal transportation experts to develop detailed Tribal comments to the proposed IRR Bridge Program regulations, the Federal Lands Highway Program waited for nearly four years and then simply published final regulations that were nearly identical to the initial proposed regulations issued in 1999. In the process, Tribal comments and recommendations were ignored altogether. These and many other examples have convinced us that more direction is needed from Congress before we will be able to break the logjam with some Administration officials. Our goal is to streamline the IRR Program and make it more efficient. The legislative proposals reflected in the Campbell, Bingaman and Johnson bills are based in large measure on the hard fought experience of our Tribal transportation experts and planners. Thank you for listening to

us. We recognize that our funding is limited and therefore ask that we at least be provided the tools to maximize those limited resources. We fully support these IRR Program and surface transportation program efficiencies and ask all Members of Congress to carry them forward in the broader reauthorization legislation.

Conclusion

The Cherokee Nation is proud to be a leader in the nationwide Tribal effort to reform the Indian Reservation Roads (IRR) Program in order to make it more efficient and more responsive to the needs of all Tribal communities. As one of the first two Tribes in the country to bring self-governance principles to the IRR Program, we have seen firsthand the positive benefits these grass roots Tribal proposals can bring to our people and our communities. It is now time to move forward during this next reauthorization period to unleash the true productive power of the First Nations of this country. We need sensible investments in our transportation infrastructure and a greater commitment to the principles of Tribal self-determination and self-governance in the delivery of transportation programs. I am confident that the Members of this Committee trust in the ability of Tribal governments to carry out coordinated intermodal tribal transportation programs. Your equal commitment to reforming the federal laws that hamper our ability to carry out these federal transportation programs will redound to the great benefit of our Nation as a whole.

The time has since long passed when the BIA or the States should be allowed to make transportation planning decisions for Tribes, or dole out scarce resources on a costly and inefficient project-by-project basis. Under the current transportation funding structure and laws, far too much time and money is wasted on unproductive transaction costs because we are forced to jump through too many bureaucratic hoops. The inefficient triangular funding structure that requires Tribes to go through the States to access federal funds also creates unnecessary tensions between State and Tribal governments. State laws typically are not well suited to transfer federal funds to Tribes on a truly government-to-government basis. Rather, State contracting laws most often treat Tribes not as sovereign governments, but as subordinate subcontractors answerable in State courts for the administration of these federal funds.

It is problems like these that led Tribal leaders and transportation experts from around the country to form a nationwide Tribal Reauthorization Task Force. The Tribal Task Force has developed and proposed legislative solutions - many of them no-cost technical fixes - to address these problems in the next reauthorization legislation. As reflected in the attached chart, the Cherokee Nation supports nearly all of these Tribally-developed proposals, and we commend all the Senators who have incorporated these ideas into their own reauthorization bills. We are hopeful that Chairman Inhofe and Chairman Campbell will work closely together to ensure that their two Committees develop tribal reauthorization legislation that will have the broadest support possible of all Tribal governments.

As the Cherokee Nation has shown, Tribes are often far better equipped to administer transportation programs for the benefit of our own people. Just as there are no Republican roads or Democratic bridges, there has always been bipartisan support on this Committee and in the Congress for the principle that sovereign local governments, whether State or Tribal, are much more knowledgeable about local conditions and much more accountable to their citizens than any federal bureaucrat sitting behind a desk in Washington, no matter how hard working or well-meaning that federal official may be.

The Cherokee Nation applauds this Committee's effort to ensure that the many positive benefits of the Indian Self-Determination Act apply with full force to the IRR Program. When Congress and the Administration have trusted Tribal governments to deliver top quality government services - and have passed laws to help them do just that (often despite the resistance of a intransigent federal bureaucracy) - Tribal governments have always responded positively to each new challenge, to the great benefit of our Nation as a whole. In this time of crisis, if Congress, the Administration, States and Tribal governments take their responsibilities seriously, conduct themselves with respect and truly honor the government-to-government relationship, we will become an even greater example to the rest of the world, showing that *many* sovereign governments can peacefully coexist within a single central government on the basis of self-determination, self-governance, mutual respect *and* mutual responsibility.

Chairman Campbell and Members of the Committee, we hope to work closely with you and your staff as you mark up the many tribal legislative proposals for the next surface highway reauthorization legislation. We hope to build on the successful government-to-government transportation partnerships that were the innovative hallmarks of the ISETEA in 1991 and of TEA-21 in 1997.

We have operated our own Tribal Transportation program since 1994. When TEA-21 first passed, Congress clarified that there is nothing special or different about the IRR Program that suggests Tribes cannot be trusted to act prudently when building and maintaining our roadways. Chairman Campbell, when you first introduced your Tribal transportation bill in 2000, as S. 2283, you explained that "for Indian communities, an efficient federal roads financing and construction system holds the key to healthier economies and higher standards of living for their members." I could not agree more and therefore urge the Committee to adopt your proposals as well as those reflected in the tribal reauthorization bills introduced by Senator Johnson and Senator Bingaman.

Thank you Mr. Chairman and Members of the Committee for the opportunity to testify in strong support of this important legislation.

U.S. Census Bureau American FactFinder

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DP-1. **Profile of General Demographic Characteristics: 2000**
Data Set: Census 2000 Summary File 2 (SF 2) 100-Percent Data
Geographic Area: **United States**
Race or Ethnic Group: **Cherokee alone**

NOTE: For information on confidentiality protection, nonsampling error, and definitions see http://factfinder.census.gov/home/en/datanotes/expsf2.htm.

Subject	Number	Percent
Total population	**281,069**	**100.0**
SEX AND AGE		
Male	139,098	49.5
Female	141,971	50.5
Under 5 years	18,426	6.6
5 to 9 years	21,670	7.7
10 to 14 years	23,126	8.2
15 to 19 years	23,532	8.4
20 to 24 years	20,320	7.2
25 to 34 years	40,432	14.4
35 to 44 years	49,360	17.6
45 to 54 years	42,135	15.0
55 to 59 years	13,836	4.9
60 to 64 years	9,518	3.4
65 to 74 years	11,834	4.2
75 to 84 years	5,340	1.9
85 years and over	1,540	0.5
Median age (years)	33.3	(X)
18 years and over	203,526	72.4
Male	99,526	35.4
Female	104,000	37.0
21 years and over	189,963	67.6
62 years and over	23,977	8.5
65 years and over	18,714	6.7
Male	8,234	2.9
Female	10,480	3.7
RELATIONSHIP		
Population	**281,069**	**100.0**
In households	275,625	98.1
Householder	105,809	37.6
Spouse	50,385	17.9
Child	86,676	30.8
Own child under 18 years	67,473	24.0
Other relatives	15,877	5.6
Under 18 years	7,698	2.7
Nonrelatives	16,879	6.0
Unmarried partner	7,724	2.7
In group quarters	5,444	1.9
Institutionalized population	2,695	1.0
Noninstitutionalized population	2,749	1.0
HOUSEHOLDS BY TYPE		
Households	**105,809**	**100.0**
Family households (families)	73,963	69.9
With own children under 18 years	38,403	36.3

Subject	Number	Percent
Married-couple family	52,577	49.7
With own children under 18 years	25,220	23.8
Female householder, no husband present	15,511	14.7
With own children under 18 years	9,751	9.2
Nonfamily households	31,846	30.1
Householder living alone	24,411	23.1
Householder 65 years and over	5,122	4.8
Households with individuals under 18 years	43,328	40.9
Households with individuals 65 years and over	14,889	14.1
Average household size	2.67	(X)
Average family size	3.15	(X)
HOUSING TENURE		
Occupied housing units	105,809	100.0
Owner-occupied housing units	65,217	61.6
Renter-occupied housing units	40,592	38.4
Average household size of owner-occupied unit	2.78	(X)
Average household size of renter-occupied unit	2.48	(X)

(X) Not applicable
When a race or ethnic group is selected, the data in this table refer to the race, Hispanic or Latino origin, American Indian or Alaska Native tribe of the person or householder.
Source: U.S. Census Bureau, Census 2000 Summary File 2, Matrices PCT3, PCT4, PCT8, PCT9, PCT10, PCT11, PCT14, PCT18, PCT19, PCT23, PCT26, HCT2, and HCT5.

DP-1. **Profile of General Demographic Characteristics: 2000**
Data Set: Census 2000 Summary File 2 (SF 2) 100-Percent Data
Geographic Area: **United States**
Race or Ethnic Group: **Cherokee alone or in any combination**

NOTE: For information on confidentiality protection, nonsampling error, and definitions see http://factfinder.census.gov/home/en/datanotes/expsf2.htm.

Subject	Number	Percent
Total population	729,533	100.0
SEX AND AGE		
Male	350,269	48.0
Female	379,264	52.0
Under 5 years	51,164	7.0
5 to 9 years	57,180	7.8
10 to 14 years	62,759	8.6
15 to 19 years	63,491	8.7
20 to 24 years	50,582	6.9
25 to 34 years	97,517	13.4
35 to 44 years	123,026	16.9
45 to 54 years	110,312	15.1
55 to 59 years	37,314	5.1
60 to 64 years	25,646	3.5
65 to 74 years	32,123	4.4
75 to 84 years	14,737	2.0
85 years and over	3,682	0.5
Median age (years)	33.2	(X)
18 years and over	519,339	71.2

Subject	Number	Percent
Male	243,904	33.4
Female	275,435	37.8
21 years and over	483,754	66.3
62 years and over	64,693	8.9
65 years and over	50,542	6.9
Male	21,516	2.9
Female	29,026	4.0
RELATIONSHIP		
Population	729,533	100.0
In households	715,594	98.1
Householder	273,930	37.5
Spouse	122,656	16.8
Child	238,423	32.7
Own child under 18 years	183,550	25.2
Other relatives	41,226	5.7
Under 18 years	20,838	2.9
Nonrelatives	39,359	5.4
Unmarried partner	18,423	2.5
In group quarters	13,939	1.9
Institutionalized population	6,159	0.8
Noninstitutionalized population	7,780	1.1
HOUSEHOLDS BY TYPE		
Households	273,930	100.0
Family households (families)	184,524	67.4
With own children under 18 years	93,769	34.2
Married-couple family	125,931	46.0
With own children under 18 years	58,252	21.3
Female householder, no husband present	44,337	16.2
With own children under 18 years	27,405	10.0
Nonfamily households	89,406	32.6
Householder living alone	70,140	25.6
Householder 65 years and over	14,672	5.4
Households with individuals under 18 years	106,308	38.8
Households with individuals 65 years and over	41,355	15.1
Average household size	2.60	(X)
Average family size	3.12	(X)
HOUSING TENURE		
Occupied housing units	273,930	100.0
Owner-occupied housing units	162,974	59.5
Renter-occupied housing units	110,956	40.5
Average household size of owner-occupied unit	2.72	(X)
Average household size of renter-occupied unit	2.42	(X)

(X) Not applicable
When a race or ethnic group is selected, the data in this table refer to the race, Hispanic or Latino origin, American Indian or Alaska Native tribe of the person or householder.
Source: U.S. Census Bureau, Census 2000 Summary File 2, Matrices PCT3, PCT4, PCT8, PCT9, PCT10, PCT11, PCT14, PCT18, PCT19, PCT23, PCT26, HCT2, and HCT5.

TESTIMONY
OF
TERRY VIRDEN
DIRECTOR BUREAU OF INDIAN AFFAIRS
ON THE
S. 281, INDIAN TRIBAL SURFACE TRANSPORTATION IMPROVEMENT ACT
AND THE
S. 725, TRIBAL TRANSPORTATION PROGRAM IMPROVEMENT ACT OF 2003
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

JUNE 4, 2003

Good morning, Mr. Chairman, Vice-Chairman and members of the Committee. I appear before you today to provide you with the Department's view on S.281, the "Indian Tribal Surface Transportation Act of 2003" and S. 725, the "Tribal Transportation Program Improvement Act of 2003".

Since enactment of Transportation Equity Act of the 21st Century (TEA-21), the federal investment in Bureau of Indian Affairs (BIA), tribal, state, county and local roads and bridges that comprise the Indian Reservation Roads (IRR) system has exceeded $1.6 billion. This funding has contributed to the improvement of over 900 miles of roads and the replacement or rehabilitation of 76 deficient bridges on reservations per year.

Despite these efforts, there is still a great need for improving the transportation system in Indian country. Improved roads and bridges provide increased public safety and economic opportunities in Indian and Alaska Native communities. As this Committee is well aware, transportation networks in Indian and Alaska Native communities are critical for economic development stimulus by providing access to markets. In addition, safe roads are important when transporting people in rural areas to schools, local hospitals, and for delivering emergency services.

The IRR road system comprises over 60,000 miles of public roads with multiple owners, including Indian tribes, BIA, States and counties. Coordination among all of these owners is required to pool available resources.

The Administration's bill, S. 1072, the "Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2003." (SAFETEA), authorizes nearly $2 billion in funding for the IIR program over the next 6 years. The Department of Transportation worked very closely with us to accommodate our needs through this piece of legislation.

S. 281

S. 281 would amend the Transportation Equity Act for the 21st Century (TEA-21). The Department supports the objectives of S. 281 to improve roads on Indian reservations, but has

concerns regarding certain aspects of this bill and would like to work with the Committee and suggest clarifications to the bill.

Obligation Ceiling

We strongly support eliminating the impact of the obligation limitation on the IRR program. The Administration's bill, SAFETEA, would provide obligation authority equal to contract authority so that all IRR funds authorized can be obligated. Under TEA-21, the IRR program received a proportional reduction of obligation limitation for new funds using the same ratio that is applied to State programs, resulting in a partial loss of authorized funds. Enactment of the SAFETEA provision would make available as much as an eleven percent increase in transportation related activities within the IRR program.

Demonstration Project

We support efforts to increase tribal involvement in the transportation programs, however the Bureau has some concerns with the language authorizing the demonstration project. First, this legislative language does not explicitly state that the Department of Transportation is eligible to contract with tribes pursuant to the Indian Self-Determination and Education Assistant Act. Explicit language clarifying (DOT) eligibility is necessary for implementation of this provision. Second, the demonstration project does not clarify which agency would be the "owner agency". Currently, the BIA is the facility owner and responsible agency for approximately 25,000 miles of roads identified on the IRR system. If the Committee moves forward with these provisions, we ask that you clarify which agency would be responsible for health and safety, and liability for any roads, bridges or other related projects built under this project.

Administration of Indian Reservation Roads

Under the current law, BIA has responsibility for oversight of the entire IRR program as well as certain specific responsibilities regarding individual road projects. The BIA has consistently used less than the 6% of IRR funding currently available to perform non-contractible, non-project related functions such as: developing and reviewing budgets and legislative proposals; processing all tribes' Transportation Improvement Programs (TIPs) for submission to the FHWA; preparing annual funding agreements; defending contract dispute actions; and providing technical assistance to all tribes, especially for project related administration and oversight including health and safety for direct service and ISDEAA tribes that depend on the BIA for all road activities.

The proposed change in the law would cap the BIA to no more than 6% for administration and oversight of *both* non-project related and project-related management and oversight. This would have the effect of drastically reducing resources available for direct service tribes.

Non-Project Related

The BIA has used program funds (not the 6%) to fund non-contractible project-related activities, such as: inspecting and accepting completed road projects (as required under PL 93-638); processing payments to contracting tribes; reviewing environmental, archeological and historic preservation activities relating to contracted road projects; processing right-of-way acquisitions in preparation for road construction; reviewing PS&Es and conducting engineering and design activities where applicable, especially for direct service tribes.

Project Related

To illustrate, in FY 1999, the BIA obligated approximately $43 million (about 25% of available IRR construction dollars) for project-related functions for all tribes, and of this amount about $31 million was obligated for direct service tribes for engineering design, environmental compliance, historic preservation compliance, acquisition of rights-of-way, and assuring compliance with construction standards as required by Title 23. Of the 887 IRR projects requiring engineering design, 660 (75%) were designed by the BIA on behalf of direct service tribes. The proposed changes to the law in S. 281 would require the BIA to perform a similar number of engineering and design projects for direct service tribes with drastically reduced funding.

We think the proposed change is not necessary, because the BIA uses the 6% program management funds in a manner that ensures that all the Bureau's inherently federal functions are completed, and that direct service tribes are serviced from their project funds. Thus, it is only appropriate for the BIA to use project funds for oversight of ISDEAA tribal IRR projects to carry out BIA's responsibilities. As the GAO noted in its letter to this Committee dated August 14, 2000, the BIA uses the funds consistent with the law and, in fact, the BIA over the last three years has responsibly limited the amount of funding for non-project program management to an amount less than the allowed six percent.

Health and Safety Assurances

Currently, the BIA reviews and approves plans, specifications and estimates (PS&E's) for IRR projects to ensure that construction of the projects will not jeopardize public health and safety. This is not uncommon in road construction for several reasons: 1) Title 23 U.S.C. requires that an approved PS&E is necessary before any public authority may proceed to construction, 2) the facility or the road owner has the responsibility to approve plans and specifications for the projects within it's jurisdiction. The concern of the BIA has been that approval authority for the 37,000 miles of roads and bridges that are not the responsibility of the Secretary should be coordinated with those respective facility owners (county, state and other local government). In the last year, the BIA has worked with tribes within the individual contracts and agreements to provide for tribal approval of PS&E's on BIA roads (25,000 miles). The BIA believes this provision is unnecessary as changes within the soon to be published final IRR regulations will

help to clearly define the roles and provide tribes under contracts or agreements the ability to approve plans, specifications and estimates.

Tribal Safety Incentive Grants and Transportation Safety Program

We support tribal eligibility for seat belt safety and intoxicated driver safety programs, as proposed in the Administration's bill. SAFETEA, calls for the consolidation of these programs under the National Highway Traffic Safety Administration's (NHTSA) section 402 program. The BIA will work with this Committee and the Secretary of Transportation on implementing any such provisions to support the success of these much needed safety initiatives.

Training and Technical Assistance for Native Americans

S. 281 establishes a Native American Commercial Driving Training and Technical Assistance Program for tribal colleges. The intent of this program is to encourage economic opportunities for tribal members. In addition, this training program would be conducted by tribal colleges and universities and provide them with value-added educational programs for their students. We support training programs for Native Americans and, as the Department of Transportation points out, such training is available. In fact, the United Tribes Technical College in Bismark, North Dakota participates in such a program.

S. 725

The Tribal Transportation Program Improvement Act of 2003 (S. 725) would improve delivery of services to the IRR program. S. 725 would authorize annual increases in the level of funding for the IRR program, with the ultimate funding amount at $500 million. The Department supports the Administration's bill, which authorizes $330 million annually for the IRR program. As previously discussed, the Department strongly supports eliminating the impact of the obligation limitation from the IRR program.

In addition S. 725 authorizes additional funding for the Indian Reservation Bridge Program. The Department, however, supports the funding of $330 million annually provided for the IRR program, including the Indian Reservation Bridge Program, in SAFETEA.

Demonstration Project

We have the same concerns for the demonstration projects in S. 725 as we do for S. 281.

Tribal Safety Program

S. 725 creates a tribal specific transportation safety grant program that emphasizes intoxicated driver safety, the promotion of increased seat belt use, and the elimination of hazardous locations. The new program established under S. 725 would supplement existing safety grant

programs and the IRR maintenance program. Under SAFETEA, NHTSA's section 402 programs would be consolidated and the BIA would be eligible for these types of safety grants under the consolidated section 402 program.

Indian Reservation Rural Transit Program

S. 725 establishes an Indian Reservation Rural Transit Program designed to provide competitive grants to Indian tribes to establish rural transit programs on reservations or other land under the jurisdiction of the Indian tribes. The Department supports the development of rural transit programs in Indian and Alaska Native communities, however we feel the provisions in SAFETEA better address tribal needs in the current economic environment.

Conclusion

Thank you for the opportunity to present the views of the Administration on this important issue. I will be happy to answer any questions you may have.

United States General Accounting Office
Washington, DC 20548

July 16, 2001

The Honorable Frank R. Wolf
House of Representatives

Dear Mr. Wolf:

Subject: Federal Highway Funding by Program and Type of Roadway, With Related Safety Data

The National Association of Counties has raised concerns about the safety of rural roads and contends that these roads do not receive an adequate level of federal funding that could be used to make these roads safer. Rural local roads,[1] which account for more than half of the 8.2 million miles of roadways in the United States, had the highest rate of fatalities per vehicle mile traveled of all types of roadways—over six times that of urban interstates. As a result of these concerns, you asked us to examine federal highway funding on a state-by-state basis for fiscal years 1992 through 2000, by (1) individual federal highway program and (2) type of roadway. We have also provided relevant highway fatality data by type of roadway. All of the information presented in this letter was developed from Department of Transportation (DOT) data. We did not contact any states to determine how they decide to spend their federal highway funds nor did we determine how and where states spend their own highway funds. Furthermore, we did not analyze the relationship between the federal highway funding and fatality data presented in this report.

Results in Brief

From fiscal years 1992 through 2000, the Federal Highway Administration (FHWA) provided over $201 billion (or an average of over $22 billion per year) to the 50 states and other entities for roadway construction and improvement. Over these 9 years, 13 distinct federal highway programs and 3 related funding adjustment accounts administered by FHWA provided states and other entities with most of these federal highway funds. In fiscal year 1999, for example, these programs and related adjustment accounts provided about 80 percent of the federal highway funds that FHWA distributed to the states. The four largest of these programs—the Surface Transportation, National Highway System, Interstate Maintenance, and Bridge Replacement Programs—provided on average about 61 percent of this funding. For the most part, state highway departments have considerable discretion in selecting specific highway projects for funding under these programs and determining how to allocate these funds among the various construction and improvement projects they have identified. In many cases, states also have the flexibility to transfer funds made available through one program to another program. Nevertheless, there are limitations on the types of roadways that can be funded by certain programs. For example, Interstate Maintenance funds cannot be spent on local roads.

[1]Local roads primarily serve traffic over short distances and provide access to adjacent land.

FHWA classifies roadways according to their use. It has defined 12 functional highway classifications, constisting of types of interstates, arterials, and local roads under two broad categories—urban roads and rural roads. Urban roads represent about 23 percent of all lane miles in the United States and rural roadways about 77 percent of all lane miles. For fiscal years 1992 through 2000, states spent about 59 percent of the federal highway program funds distributed by FHWA on urban roads and the remaining 41 percent on rural roads. States generally spent the largest portion of their federal highway dollars on interstates, freeways, expressways, and principal arterials and the smallest portion on minor and local roads in both urban and rural areas. On a per-mile basis, states spent the highest amounts on urban freeways, about $80,900 in fiscal year 1999 and the lowest on rural local roads about $100 in fiscal year 1999.

Although only about 40 percent of all vehicle miles are traveled on rural roads, about 60 percent (25,107 of 41,611) of the traffic accident fatalities that occurred in 1999 took place on rural roads. When adjusted for miles traveled, the fatality rate from traffic accidents on rural roads was nearly 2.5 times greater than the fatality rate from accidents on urban roads.

Background

FHWA provides funding to states, territories, and other entities for roadway construction and improvement projects through various programs and related adjustment accounts. Most of the funding for these programs is derived from highway user taxes such as excise taxes on motor fuels (gasoline, gasohol, diesel, and special fuels), tires and the sales of trucks and trailers, and taxes on the use of heavy vehicles. These highway user tax receipts are accounted for through the Highway Trust Fund. The Highway Trust Fund was established in 1956 and was divided into the highway account and the mass transit account in 1983.

Most highway program funds are distributed to states through annual apportionments according to statutory formulas. Once apportioned, funds are available to each state for eligible projects in its transportation improvement program, subject to statutory provisions requiring that specified amounts be applied to particular purposes or further distributed within the state. For example, ten percent of the funds apportioned to each state under the Surface Transportation Program are to be used for the elimination of hazards, including hazards at railway-highway crossings on any public road. Other funds are allocated among the states for qualifying projects under criteria provided in law. For example, under the discretionary bridge program, funds are provided for rehabilitation or replacement projects with costs exceeding specified amounts. In some cases, the Congress directs how certain allocated funds are to be distributed by requiring that particular projects receive specific amounts of funding. In addition, FHWA implements statutory adjustments to overall state funding levels to ensure an equitable distribution of funds to the states. For example, FHWA implements the minimum guarantee provisions of the Transportation Equity Act for the 21st Century (TEA-21) to ensure that each state receives at least 90.5 percent of its percentage share of contributions to the highway account of the Highway Trust Fund. Similar provisions, including the donor state bonus and the 90-percent minimum allocation programs were used under prior authorizing legislation to adjust funding levels. We refer to these three allocation adjustment programs as adjustment accounts.

Funds provided under each of the various programs may be obligated for eligible activities during their periods of availability. For example, states may use Interstate Maintenance Program

funds for resufacing, restoring, rehabilitating, and reconstructing routes on the Interstate system during a 4-year period of availability. Nevertheless, states have considerable discretion in selecting specific highway projects for funding and determining how to allocate available federal funds among the various construction and improvement projects they have selected. In many cases, states also have the flexibility to transfer funds made available through one federal program to another federal program. The responsibility for choosing the projects to fund generally rests with the state departments of transportation and local metropolitan planning organizations (MPO).[2] States and MPOs undertake wide-ranging planning initiatives to rank highway construction projects and determine the amount of federal funding each project should receive, subject to statutory limitations on the federal share payable. Federal planning requirements provide for states and MPOs to carry out a process for considering projects and strategies to increase the safety and security of the transportation system, among other things.

FHWA has developed criteria for classifying all roadways into 12 functional classifications according to use that include two broad categories—urban roads and rural roads. Urban roads consist of roads that are located near densely populated urban areas, defined as having total populations of 5,000 or more. Rural roads are roads that are located in areas not considered urban. Functional categories include interstate, arterial, collector, and local roads. Interstates and arterials allow the highest traffic speeds and often have multiple lanes and a degree of access control. Collector roads are designed for lower speeds and shorter trips. They are typically two-lane roads that extend into residential neighborhoods. Local roads are any roads below the collector system.

The 12 functional classifications of roadways are

- urban interstates;
- urban freeways/expressways;
- urban other principal arterials;
- urban minor arterials;
- urban collectors;
- urban local roads;
- rural interstates;
- rural other principal arterials;
- rural minor arterials;
- rural major collectors;
- rural minor collectors; and
- rural local roads.

Federal Funding by Highway Program

FHWA is responsible for distributing funds to states and other entities for highway construction and improvement projects through various programs collectively referred to as the Federal-aid Highway Program. Thirteen of these programs plus the three adjustment accounts mentioned previously accounted for the majority of the federal funds obligated during fiscal years 1992 through 2000. For example, in fiscal year 1999, 80 percent of such funds were provided through

[2]For further information on MPOs and the planning process, see GAO's report: *Urban Transportation: Metropolitan Planning Organization's Efforts to Meet Federal Planning Requirements*, (GAO/RCED-96-200, Sept. 17, 1996.)

these 16 programs and adjustment accounts. The amount of funding derived from any one source varies from year to year, but the relative magnitude of each source has generally remained the same. Most notably, four programs—the Surface Transportation, National Highway System, Interstate Maintenance, and Bridge Replacement Programs—provided states with more funding than all other funding categories combined. From fiscal years 1992 through fiscal year 2000, 52 to 65 percent (or an average of 61 percent) of the federal highway funding was obligated through these four programs alone. Table 1 shows the percentage of funding obligated through each of these 16 programs for fiscal years 1992 through 2000.

Table 1: Percentage of Federal Highway Funding Obligated Through Federal Highway Programs and Funding Adjustment Accounts, Fiscal Years 1999 through 2000[a]

	1992	1993	1994	1995	1996	1997	1998	1999	2000	Average
Highway programs										
Surface Transportation Program	17%	24%	23%	25%	29%	31%	24%	22%	19%	24%
National Highway System	19%	19%	16%	17%	14%	12%	17%	18%	14%	16%
Interstate Maintenance	12%	12%	12%	13%	10%	10%	14%	12%	11%	12%
Bridge Replacement	10%	9%	10%	10%	10%	8%	10%	9%	7%	9%
Congestion Mitigation and Air Quality Improvement	2%	3%	5%	5%	4%	3%	3%	4%	2%	3%
Interstate	8%	6%	4%	3%	3%	1%	1%	0%	0%	3%
Projects Mandated by ISTEA[a]	2%	4%	5%	4%	3%	4%	2%	1%	1%	3%
Emergency Relief	1%	2%	4%	2%	3%	2%	2%	1%	0%	2%
Interstate Highway Substitute	2%	1%	1%	1%	1%	0%	0%	0%	0%	1%
Metropolitan Planning	1%	1%	1%	1%	1%	1%	1%	1%	0%	1%
Projects Mandated by TEA-21[a]	0%	0%	0%	0%	0%	0%	0%	2%	3%	1%
Intelligent Vehicle Highway System	0%	0%	1%	1%	0%	0%	0%	0%	0%	0%
Planning and Research	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Other highway programs[b]	21%	13%	12%	10%	17%	23%	16%	20%	34%	18%
Adjustment accounts										
Minimum Guarantee	0%	0%	0%	0%	0%	0%	7%	9%	7%	3%
Ninety Percent Minimum Allocation	4%	5%	5%	6%	3%	2%	2%	1%	0%	3%
Donor State Bonus	2%	2%	2%	2%	2%	1%	1%	0%	0%	1%

Notes: (1) This analysis includes only highway funds obligated for state projects. It does not include funds that were obligated for projects in U.S. territories or for other purposes, or funding provided by state and local governments. The fiscal year represents the year that projects were authorized. (2) Zero values include values where funds were obligated, but have been rounded to zero.

[a]These categories include projects often referred to as "exempt," "demo," "high priority" and other similar projects.

[b]This category includes federal highway funds that were not obligated under one of the other categories, such as funds for Indian reservations, a state infrastructure bank pilot program, and advance construction. None of these programs individually provided greater than 1 percent of available federal highway funds.

Source: FHWA's Fiscal Management Information System and *Highway Statistics*, 1992-2000

Our complete analysis of federal funding provided through major highway programs to the 50 states and the District of Columbia appears in Enclosure 1.

Federal Funding by Type of Roadway

For fiscal years 1992 through 2000, states spent 59 percent of all federal funds on urban roads and the remaining 41 percent on rural roads. States generally spent the largest portion of their federal highway program funding on interstates and principal arterials and the smallest portion on minor and local roads in both urban and rural areas. Interstates, urban freeways and expressways, and principal arterials generally received the highest levels of funding. Minor roads—minor collectors, minor arterials, and local roads—typically received the lowest levels of funding. Table 2 shows the percentage of funding obligated for each functional class of roadway for fiscal years 1992 through 2000.

Table 2: Percentage of Federal Highway Funding Obligated by Functional Class

Functional class	1992	1993	1994	1995	1996	1997	1998	1999	2000	Average
Urban roads										
Urban interstates	26%	25%	26%	19%	24%	23%	18%	16%	16%	21%
Urban principal arterials	15%	15%	16%	16%	16%	16%	17%	18%	19%	16%
Urban freeways and expressways	7%	7%	7%	10%	11%	8%	10%	13%	10%	9%
Urban minor arterials	6%	6%	6%	8%	7%	6%	7%	6%	6%	6%
Urban collectors	2%	3%	3%	4%	3%	3%	3%	3%	3%	3%
Urban local roads	1%	2%	2%	2%	2%	2%	1%	2%	2%	2%
Total urban	**57%**	**57%**	**61%**	**60%**	**63%**	**60%**	**55%**	**58%**	**55%**	**59%**
Rural roads										
Rural principal arterials	16%	16%	14%	17%	15%	18%	21%	19%	21%	17%
Rural interstates	11%	11%	11%	8%	7%	8%	8%	8%	9%	9%
Rural minor arterials	7%	7%	6%	6%	6%	7%	8%	7%	8%	7%
Rural major collectors	6%	5%	5%	6%	6%	5%	5%	6%	5%	5%
Rural local roads	2%	3%	3%	3%	3%	2%	2%	2%	2%	3%
Rural minor collectors	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%
Total rural	**43%**	**43%**	**39%**	**40%**	**37%**	**40%**	**45%**	**42%**	**45%**	**41%**

Note: Numbers may not add precisely due to rounding. This analysis includes only highway funds obligated for state projects. It does not include funds that were obligated for projects in U.S. territories or for other purposes, or funding provided by state and local governments. The fiscal year represents the year that projects were authorized.

Source: FHWA's Fiscal Management Information System.

The levels of funding obligated varied during fiscal years 1992 through 2000. The difference between urban and rural road obligations was largest during 1996, when urban roads received 63 percent of funding and rural roads received 37 percent. The gap has narrowed since that time and was smallest (55 percent to 45 percent) during fiscal years 1998 and 2000. Enclosure 2 provides a detailed analysis of highway program funding on a state-by-state basis by functional classification of roadway.

In addition to tracking funding for highway construction and improvement projects, FHWA also collects data on highway characteristics and usage, including information on the length of the nation's highways. Lane miles are computed by multiplying roadway length by the number of lanes in the roadway. For example, one mile of four-lane highway equals four lane miles. Table 3 shows highway program funding per lane mile by functional classification during fiscal year 1999.

Table 3: Comparison of Average Federal Highway Funding to Lane Miles by Functional Class, Fiscal Year 1999

Functional class	Fiscal Year 1999 (millions)	Lane miles (thousands)	Dollars per lane mile
Urban roads			
Urban freeways and expressways	$3,358.4	41.5	$80,900
Urban interstates	4,051.3	73.3	55,300
Urban principal arterials	4,547.8	184.9	24,600
Urban minor arterials	1,508.8	224.0	6,700
Urban collectors	836.9	186.3	4,500
Urban local roads	430.0	1,186.0	400
Total urban	**$14,733.2**	**1,895.9**	**$7,800**
Rural roads			
Rural principal arterials	$4,711.7	252.5	$18,700
Rural interstates	2,002.8	134.2	14,900
Rural minor arterials	1,692.8	286.9	5,900
Rural major collectors	1,410.1	870.6	1,600
Rural minor collectors	216.0	543.4	400
Rural local roads	537.2	4,194.5	100
Total rural	**$10,570.6**	**6,282.0**	**$1,700**
Total	**$25,303.8**	**8,178.0**	**$3,100**

Note: This analysis includes only funding administered by FHWA and does not include funding from other federal agencies, state and local governments, or other sources. Fiscal year 1999 is the most current published data available from FHWA. Figures may not total precisely due to rounding.

Source: FHWA's Fiscal Management Information System and *Highway Statistics*, 1999.

Overall, urban roads received over 4.5 times more funding per lane mile than rural roads during 1999. On average, urban freeways and expressways received the highest level of funding per lane mile in fiscal year 1999, about $80,900 per lane mile of roadway, followed by urban interstates, which received about $55,300 per lane mile. Rural principal arterials received the highest level of funding of all rural roads—about $18,700 per lane mile on average. Rural local roads received

the lowest level of funding overall, about $100 per lane mile. Rural local roads also account for the relatively low overall average of $1,700 per rural lane mile because these roads account for about two-thirds of all rural lane miles—and received by far the lowest level of federal funding per lane mile.

The National Highway Traffic Safety Administration (NHTSA) maintains data on fatal traffic accidents in its Fatality Analysis Reporting System (FARS), and FHWA maintains information on vehicle miles traveled (VMT) in its Highway Performance Monitoring System (HPMS). Table 4 shows the vehicle miles traveled and the fatality rates for each functional class of roadway for fiscal year 1999.

Table 4: Fatalities and Fatality Rates by Highway Functional Classification, Fiscal Year 1999

Functional classification	VMT (millions)	Fatalities	Fatalities per 100 million VMT
Urban roads			
Urban other principal arterial	392,721	5,003	1.27
Urban local road	234,886	2,917	1.24
Urban minor arterial	313,936	3,172	1.01
Urban freeway/expressway	171,563	1,354	0.79
Urban collector	131,613	1,023	0.78
Urban interstate	382,986	2,347	0.61
Total urban	**1,627,705**	**15,816**	**0.97**
Rural roads			
Rural local road	125,545	4,758	3.79
Rural minor collector	57,617	1,754	3.04
Rural major collector	206,936	5,816	2.81
Rural minor arterial	169,378	4,263	2.52
Rural other principal arterial	243,950	5,280	2.16
Rural interstate	260,204	3,236	1.24
Total rural	**1,063,630**	**25,107**	**2.36**
Unknown		688	
Total	**2,691,335**	**41,611**	**1.55**

Sources: FARS, 1999, NHTSA; *Highway Statistics*, 1999, FHWA.

Although only about 40 percent of all vehicle miles are traveled on rural roads, about 60 percent (25,107 of 41,611) of the traffic accident fatalities that occurred in 1999 occurred on rural roads. When adjusted for miles traveled, the fatality rate from traffic accidents on rural roads was nearly 2.5 times greater than the rate on urban roads. In particular, all rural roads other than interstates had a relatively high number of accident fatalities when adjusted for miles traveled. Conversely, urban interstates had the lowest fatality rate of all of the functional classes of roads. While more than three times more miles were traveled on urban interstate highways than on rural local roads, rural local roads had a fatality rate over six times greater than that of urban interstates.

Conclusions

About 59 percent of all federal highway funds available to states during fiscal years 1992 through 2000 were spent on urban roads. Although about 60 percent of all vehicle miles are traveled on urban roads, there are about three times more lane miles in rural areas. Furthermore, about 60 percent of all traffic fatalities occur on rural roads and the fatality rate per mile traveled is almost 2.5 times higher for rural roads than for urban roads.

Agency Comments

We provided a draft of this letter to DOT for review and comment. We met with FHWA officials who suggested several technical changes throughout the report, which we incorporated as appropriate. In addition, these officials also emphasized that, although state officials have considerable discretion over where federal highway dollars are spent, some federal highway programs place limits on what types of roads may be funded. For example, Interstate Maintenance program funds cannot be spent on local roads. They also noted that federal law requires that 10 percent of the funds apportioned under the Surface Transportation Program be spent on safety-related improvements that can be made on any public road.

Scope and Methodology

In order to identify data sources and to gather background information, we met with officials from FHWA and the National Association of Counties. We obtained a copy of FHWA's Fiscal Management Information System (FMIS) database for all highway projects that received funding during fiscal years 1992 through 2000. We also obtained a description of the FMIS data and a record layout of the database. We coordinated with FHWA officials as we conducted our analysis of the data to ensure that our analysis was accurate and complete. We shared the results of our analysis with FHWA officials for their review and comment and incorporated their comments into our methodology and the letter where appropriate.

In order to analyze federal funding by highway program, we used information from the FMIS database. We used information on obligations by fiscal year and arrayed them on a state-by-state basis and by highway program. Values were assigned to the fiscal year that the construction projects were authorized. Because you asked us to analyze funding by state, we excluded obligations to U.S. territories and other entities from our analysis. We selected 16 major highway programs and adjustment accounts by using those programs routinely reported in FHWA's *Highway Statistics* report. We calculated the funding obligated for each state and computed the percentage of each state's funding that was derived from each highway program and adjustment account. In addition, we developed an average percentage that represents a comparison of all 50 states and the District of Columbia. Data arrayed state by state appear in enclosure 1.

In order to analyze funding by functional classification of roadway, we used information from the FMIS database. We used information on obligations by fiscal year and arrayed them state-by-state and by functional classification of roadway. Values were assigned to the fiscal years during which project construction began. For the purposes of this analysis, we again excluded funding provided to U.S. territories and other entities. We calculated the funding obligated for each state and computed the amount of funding applied to each functional class. In addition, we developed

an average percentage that represents a comparison of all 50 states and the District of Columbia. Data arrayed state by state appear in enclosure 2.

We did not perform a data reliability assessment of FHWA's data primarily due to time constraints. The FMIS database contained nearly 450,000 records for fiscal years 1992 through 2000. While we did not perform a reliability assessment of the entire data set, we performed several validity checks for the data that we used in our analysis. Where records were not valid, we excluded them from our analysis. Enclosures 1 and 2 show the results of our analysis and include a discussion of the data that were excluded.

There are certain limitations to the analyses presented in this report. It is not possible to compare the data arrayed by program with those arrayed by functional classification. Our analysis attempted to include the maximum number of valid records; however, some data were missing or incomplete. Each enclosure includes information on the number of records that we were unable to classify. Depending on the availability of data, a project may be included in one analysis and excluded from another. For example, in some instances, data on a project's functional classification were missing or invalid while data on the source of funding were valid. Each enclosure contains further detailed information on data limitations, missing or incomplete data, and our analysis methods. In addition, we did not contact any states to determine how they decide to spend their federal highway funds nor did we determine how and where states spend their own highway funds. Furthermore, we did not analyze the relationship between the federal highway funding and fatality data presented in this report.

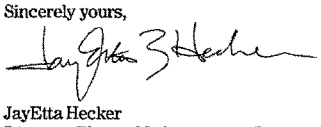
It is not possible to make direct comparisons between the data presented here and the data published in FHWA's annual report, *Highway Statistics*. FHWA publishes *Highway Statistics* using the most current data available at the time the report is published. However, over time, the information contained in FMIS may change as a result of construction project scope changes or because funds may be deobligated.

We performed our work from March 2001 through July 2001 in accordance with generally accepted government auditing standards.

We are sending copies of this letter to congressional committees with responsibilities for the activities discussed in this report; the Honorable Norman Y. Mineta, Secretary of Transportation; the Honorable Mitchell Daniels, Director of the Office of Management and the Budget; and Vincent F. Schimmoller, Deputy Executive Director, Federal Highway Administration. We will make copies available to others upon request.

If you or your staff have any questions regarding the contents of this letter, please call me or Ron Stouffer on (202) 512-2834. Other key contributors to this report were Helen Desaulniers and David Lehrer.

Sincerely yours,



JayEtta Hecker
Director, Physical Infrastructure Issues

Enclosures

Nez Perce
TRIBAL EXECUTIVE COMMITTEE
P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

June 24, 2003

The Honorable Ben Nighthorse Campbell, Chairman
Senate Committee on Indian Affairs
Washington, D.C. 20510
Fax: 202-221-5429

The Honorable Daniel K. Inouye, Vice Chairman
Senate Committee on Indian Affairs
Washington, D.C. 20510
Fax: 202-228-2589

Re: Tribal Transportation Bill

Dear Senators:

The Nez Perce Tribe supports the efforts of the Indian Affairs Committee to reauthorize TEA-21 and provide funding for the Indian Reservation Roads Program. The Tribe previously supported the Tribal Transportation Program Improvement Act of 2003 (S.1122) introduced by Senator Johnson. However, it is our understanding the Senate Indian Affairs Committee combined four tribal transportation bills into one draft bill to send to the Environmental and Public Works Committee. The Nez Perce Tribe supports most of the programs contained within the Indian Affairs Committee's proposal (including reauthorization of TEA-21 and funding for the Indian Reservation Roads Program), however, a few modifications are needed. Funding in the new bill is not adequate to meet the needs of Indian country, and in the case of the Indian Reservation Roads Program, is less than that provided in S.1122. Additionally, the draft proposal contains an unnecessary program while omitting others that are desperately needed.

The Nez Perce Tribe thanks you for your efforts on these important issues, and requests the following modifications to the Indian Affairs Committee's proposal:

1) Increase funding for the Indian Reservation Roads Program from $330 million for FY04-05 to $550 million, from $425 million for FY06-07 to $625 million, and from $550 million for FY08-09 to $725 million.

2) Increase funding for Indian Reservation Roads maintenance, from $50 million per year to $100 million per year, to be allocated from the Highway Trust Fund rather than IRR funds.

3) Increase funding for Indian Reservation Roads Bridges: from $15 million a year to $50 million a year.

4) Increase funding for Indian Reservation Road Planning: from 2% of construction funds to 5%, with base-level funding of $35,000 per year to Tribes that receive less than that in their 5% funds.

5) Increase funding for Tribal Transportation Safety Program: from $6 million for FY04-05 and $9 million for FY06-09 to $50 million per year.

6) Make the BIA responsible for the Tribal Transportation Safety Program and make the program available for contracting under P.L. 93-638. States should not be responsible for tribal transportation safety programs.

7) Delete the provision that provides for a separate transportation commission to be created for coordinating Alaska tribal transportation. This was not included in the NCAI task force approved recommendations and it is unclear where the funds for the commission's operation and activities would come from. We also understand that Alaska Tribes have concerns about the scope and structure of such a commission.

8) Retain the Tribal Transportation for Indians provisions that provide for advanced construction funds, clarification for emergency funds applications, adjustments to the federal-aid projects, advance funds and use of savings, extension of plan, specification, and estimates conclusion to tribe.

9) Increase funding for Indian Reservation Rural Transit Programs from $15 million to $100 million per year.

10) Include language to enable Tribes to compete for scenic byways funds.

Thank you for your consideration of these requests. With a few modifications, the Senate Indian Affairs Committee bill can be the much needed legislation that will provide Tribes access to programs and funding for improving transportation and roads in Indian country.

Sincerely,

Anthony D. Johnson
Chairman