



NATIONAL CONGRESS OF AMERICAN INDIANS

SENATE COMMITTEE ON INDIAN AFFAIRS FIELD HEARING: “TO EXAMINE TRIBAL TRANSPORTATION IN INDIAN COUNTRY”

October 15, 2010

On behalf of the National Congress of American Indians (NCAI), thank you for the opportunity to testify on tribal transportation in Indian Country. NCAI is the oldest and largest national organization in the United States and is steadfastly dedicated to protecting the rights of tribal governments to achieve self-determination and self-sufficiency. NCAI applauds the Senate Committee on Indian Affairs for examining the tribal transportation infrastructure. NCAI looks forward to working with members of this Committee to enhance investments in infrastructure development such as transportation.

Indian Reservation Roads comprise over 120,000 miles of public roads with multiple owners, including the Bureau of Indian Affairs, Indian tribes, states and counties. Indian Reservation Roads are the most underdeveloped road network in the nation¹—yet it is the primary transportation system for all residents of and visitors to American Indian and Alaska Native communities. Over 66 percent of the system is unimproved earth and gravel. Approximately 24 percent of Indian Reservation Roads Program (IRR) bridges are classified as deficient. These conditions make it very difficult for residents of tribal communities to travel to hospitals, stores, schools, and employment centers.²

In 2005, the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, authorized the U.S. Department of Transportation (USDOT) to administer and distribute billions of dollars of highway, transit and other transportation-related funding to federal, Tribal, state and local transportation departments. Included in SAFETEA-LU were several significant tribal provisions: providing an increase in funding for Indian Reservation Roads Program; creating a new specific funding set-aside to address the condition of bridges on tribal lands; initiating a new tribally-specific transit program that would provide much needed funding for tribes; and establishing within the office of the Transportation Secretary, a Deputy Assistant Secretary for Tribal Government Affairs to plan, coordinate, and implement the Department of Transportation policy and programs. In addition, SAFETEA-LU provided important changes in the IRR program. IRR funding can now be provided through a funding agreement in accordance with the Indian Self-Determination and Education Assistance Act as long as the requesting tribal government has satisfactorily demonstrated financial stability and financial management to the Secretary of Transportation.

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¹ Bureau of Indian Affairs, Transportation Serving Native American Lands: TEA-21 Reauthorization Resource Paper (2003).

² Statement of John Baxtor, Administrator of Federal Lands, FHWA, U.S. DOT, *Hearing on Transportation issues in Indian Country Before Senate Comm. on Indian Affairs*, 110th Cong. 1 (2007).

Transportation infrastructure development is critical to economic development, creating jobs, and improving living conditions for individuals and families in Indian Country. Construction of transportation systems that allows for safe travel and promotes economic expansion will help us strengthen our tribal communities while at the same time making valuable contributions to much of rural America. Surface transportation in Indian Country involves thousands of miles of roads, bridges, and highways. It connects and serves both tribal and non-tribal communities.

FUNDING

In SAFETEA-LU, tribal transportation programs within the Department of Transportation have received the following funding levels. Funding for the Indian Reservation Roads Program (IRR) was \$300,000,000 for fiscal year 2005, and steadily increased each fiscal year to \$450,000,000 for fiscal year 2009; funding for the IRR Bridge Program stayed at \$14 million for fiscal years 2005 through 2009; Public Transportation on Indian Reservations Section 5311(c), was funded at \$8,000,000 for fiscal year 2006, and gradually increased each fiscal year to \$15,000,000 for fiscal year 2009. These funding levels were maintained in FY 2010 for tribal transportation programs through DOT.

Indian Reservation Roads Program:

The officials at the Departments of Interior and Transportation have recognized that transportation systems within Indian Country are suffering from a nearly \$40 billion construction backlog. An equaling distressing deferred maintenance backlog exists for Tribal transportation facilities. Rising construction inflation rates continue to diminish the purchasing power of the limited federal funds currently provided to the IRR Program and other Tribal transportation programs. Even solid Tribal roads and bridges fall into disrepair and require costly reconstruction years before the end of their design life due to a lack of more cost-effective maintenance funding. Under any assessment, Tribal transportation programs remain severely underfunded and the construction and maintenance funding backlog will only get worse without significant funding increases during the next highway reauthorization period.

To address the deficiencies of road construction and maintenance in the upcoming reauthorization, we encourage this Committee to recommend to Congress an increase in the funding level for IRR Program to \$800,000,000 for fiscal year 2013; \$850,000,000 for fiscal year 2014; \$900,000,000 for fiscal year 2015; \$950,000,000 for fiscal year 2016; \$1,000,000,000 for fiscal year 2017; and \$1,050,000,000 for fiscal year 2018. For the IRR Bridge Program, NCAI recommends \$75,000,000 for fiscal year 2013; \$87,500,000 for fiscal year 2014; \$100,000,000 for fiscal year 2015; \$100,000,000 for fiscal year 2016; \$100,000,000 for fiscal year 2017; and \$100,000,000 for fiscal year 2018.

Public Transportation on Indian Reservations:

Since the enactment of SAFETEA-LU, the Transportation on Indian Reservations Section 5311(c), also known as the Tribal Transit Program, has been very successful. In the first year of operation, 63 tribes were awarded transit funding. This program brings severely needed transit services to

Indian Country so that tribes can provide much needed transportation access to employment, health services, education, and business opportunities for tribal members.

While tribal transit systems continue to develop and thrive, the funding authorized in SAFETEA-LU barely addresses the transit needs in Indian Country and tribal governments need additional funding to adequately address the transit services in Indian Country. NCAI recommends funding for the Tribal Transit Grant Program to be increased to \$35 million for fiscal year 2013 with continuing increases of \$10 million for every year thereafter to \$85 million. NCAI also recommends raising the cap for Transit Planning Grants to \$50,000. Currently, tribes are capped at \$25,000 to use for planning and design. This cap is a hindrance for tribes who do not possess the financial resources to initially establish a reliable transit system on their tribal land. SAFETEA-LU allowed Indian tribes to pursue improved public transportation for their tribal communities, however there continues to be significant need in Indian Country.

Tribal Technical Assistance Program (TTAP):

The TTAPs are the only technical assistance program that provides much needed education, research, and training to tribal governments. There are currently 7 TTAP centers located around the country that serve all the tribes in different regions. TTAP is funded by both the Federal Highway Administration (FHWA) and Bureau of Indian Affairs (BIA). Currently, each TTAP receives \$280,000 a year in total funding, which is comprised of \$140,000 from the Local Technical Assistance Program and \$140,000 from the IRR program. This totals about \$1.9 million for the overall TTAP funding each fiscal year to serve all 565 federally-recognized tribes.

To ensure that the TTAPs are able to meet the increased demand for their services as additional tribes assume responsibility for administering their transportation programs, NCAI recommends Congress to have the Department of Transportation institute a TTAP for each of the twelve BIA Regions. Additionally, NCAI recommends an increase to the overall funding of TTAPs from \$1.9 million to \$4.2 million each fiscal year. This much needed funding will assist each TTAP center to adequately address the increasing need for transportation technical assistances.

SAFETY

State governments spend between \$4,000 and \$5,000 per road mile on maintaining state roads and highways. While in Indian Country, by contrast, road maintenance funding is less than \$500 spent per road mile. Indian Country has an unmet immediate need of well over \$258 million in maintenance funding for roads and bridges, and \$310 million in unmet need for new roads and bridges projects.

Tribal members and communities are threatened by unsafe and often inaccessible roads, bridges and ferries. Indian people suffer from injury and death by driving and walking along reservation roadways at rates far above the national average. Data shows 5,962 fatal motor vehicle crashes were

reported on Indian reservation roads between 1975 and 2002 with 7,093 lives lost.³ The trend is on the increase, up nearly 25% to over 284 lives lost per year in the last five years of study. While the number of fatal crashes in the nation during the study period declined 2.2 percent, the number of fatal motor vehicle crashes per year on Indian reservations increased 52.5 percent. American Indians also have the highest rates of pedestrian injury and death per capita of any racial or ethnic group in the United States.

Tribal communities share many similar concerns and obstacles as rural communities in addressing how to improve the safety needs. NCAI has worked diligently with tribal governments to find solutions for improving the safety and infrastructure of Indian Country. Presently, tribes receive a two-percent set aside of the total allocation from the National Highway Traffic Safety Administration; the funding is then allocated to BIA where the BIA Highway Indian Safety Program administers the programs. The purpose of this program is to assist tribes with their proposed highway safety projects, which are intended to reduce traffic crashes and impaired driving crashes; increase occupant protection education; provide emergency medical service training; and increase police traffic services. The two percent set aside is equivalent to \$14 million annually, and it is a competitive grant process. NCAI has received concerns from tribal leaders about the inadequate effectiveness of the BIA Highway Indian Safety Program. In the past, there has been turnover of the directorship of the office and lack of guidance and support to tribes. For example, tribes have been denied the grant funding but they were not informed of the reasons for the denial, and tribes have contacted the office, and no one seems to be returning their phone calls.

NCAI recommends Congress assist in confronting the high injury and fatalities on tribal roadways and to resolve the concerns about the BIA Highway Indian Safety Program by establishing a 2% Tribal funding set-aside within the High Risk Rural Roads Program, and create a new Tribal Traffic Safety Program within the FHWA-Federal Lands Highways office and within NHTSA, each funded at \$50 million annually to dramatically reduce the incidence of death and injury on America's Indian reservation roads. The creation of these new programs would help to reduce the safety and behavioral problems that contribute to the high rates of death and injury on Indian reservation roads.

SAFE ROUTE TO SCHOOL

The Safe Route to School Program⁴ was created under SAFETEA-LU within the FHWA and is administered by State Departments of Transportation. Each State has its own administering guidelines for applying for Safe Routes to School program. This program received a total of \$612 million for the fiscal years of 2005 to 2009, and each State funding is formula based. The Safe Routes to School Program essentially provides funds to States to improve the ability for primary and

³ Fatal Motor Vehicle Crashes on Indian Reservations, 1975 – 2002, April 2004, DOT HS 809 727, U.S. Department of Transportation, National Highway Traffic Safety Administration,

⁴ Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. 109-59, § 1404, 119 Stat. 1228, 86-88 (2005)

middle school students to safely walk and bike to school. Furthermore, the program assists schools within a two-mile square radius, to plan, develop, and implement safety projects and activities to reduce traffic and fuel consumption; and encourage active lifestyles.

There are over 741 public schools located in American Indian and Alaskan Natives areas, with a total of 82,406 native students; and the Bureau of Indian Education serves approximately 50,155 native students at 181 elementary and secondary schools.⁵ Many of these schools are located in remote and rural areas, where students have to be bused for more than 50 miles.

NCAI is supportive of programs that promote safety and active healthy lifestyles of school students. However, NCAI is concerned about the inability to know the number of schools on tribal lands who have successfully applied and been awarded funding under the Safe Route to School program. Since each State Transportation Departments and their coordinators administered the program, it is difficult to determine who and how many public schools on Indian reservations have benefited from this program. In addition, the Bureau of Indian Education (BIE) schools are not eligible to receive this funding.

NCAI recommends this Committee consider amending the statutory language of the Safe Route School Program to enable BIE schools to be eligible to receive funding; to create a tribal set-aside for public, bureau, charter, impact-aid and grant schools on tribal lands to be able to participate in this program; and to increase two mile radius requirement. Naturally, this produces additional questions on the issue of who would administer this program for these schools, and the amount of funding. NCAI looks forward to working with this Committee on this matter.

GAS EXCISE TAX

To date, there are over 120,000 miles in the Indian Reservation Roads (IRR) system but yet it is the most underdeveloped road network in the nation⁶, and it is the primary transportation system for all residents of and visitors to American Indian and Alaska Native communities. Over two-thirds of the roads on the system are unimproved dirt or gravel roads, and less than 12 percent of IRR roads are rated as good.⁷ The condition of IRR bridges is equally troubling. Over 25 percent of bridges on the system are structurally deficient.⁸

Tribal economies, education systems, health care and social service programs are threatened by unsafe and often inaccessible roads, bridges and ferries. A recent Federal traffic safety study showed that Indian tribes suffer the highest per capita traffic fatality rate in the Nation, more than four times

⁵ IES National Center for Educational Statistical Common Core of Data, *Public and BIE elementary and secondary schools: number of schools and enrollment in the American Indian and Alaska Native Areas, 2005-06 and 2007-08*, Table 1, (2010), http://nces.ed.gov/ccd/tables/ccd07_aia_schools.asp

⁶ Bureau of Indian Affairs, *Transportation Serving Native American Lands: TEA-21 Reauthorization Resource Paper* (2003) (attached).

⁷ *Id.*

⁸ *Id.*

the national average.⁹ Each year, drivers on the IRR system travel over 2 billion vehicle miles on a system that is a clear health and safety hazard for our communities and an impediment to meaningful economic development.¹⁰

Funding for Tribal Transportation Systems:

The current scheme for funding surface transportation in the United States is based on a federal-state motor fuel taxation regime that precludes tribes from participating in the system on an equitable basis. While the system of using federal fuel tax revenue for road construction and state fuel tax revenue for maintenance has worked to dramatically improve roads in many parts of the nation, it has failed miserably in Indian Country.

Like states, Indian tribes receive some funding for road construction from the federal Highway Trust Fund, but the amount given to tribes is much less than what states receive. Currently, Indian Reservation Roads make up nearly three percent of federal roadways, but they receive less than 0.5 percent of total federal highway funding.¹¹ At the current funding levels, the IRR program receives only about half the amount per road mile that states receive.

The federal government also makes some funds available to tribes for IRR maintenance under the BIA Maintenance Program. This Program is also woefully inadequate. The BIA spends less than \$1000 per mile for road maintenance, compared to estimates of \$4000-\$5000 per mile used by states to fund non-IRR maintenance.¹² Moreover, the states, who receive federal funding for their own roads that fall within reservations, frequently shirk their obligation to improve or maintain these roads and instead siphon off the funds for use elsewhere.¹³

Faced with a severe inadequacy of funding from federal and state sources, tribal governments have looked for other sources of revenue, including levying their own motor fuel taxes. While tribes have the same authority as other governments to collect taxes, the ability of tribes to tax fuel on tribal lands has been severely diminished by the Supreme Court. The Court has upheld the authority of the states to reach onto tribal land to collect a state motor fuel tax. The dual taxation that would result if both states and tribes impose a motor fuel tax makes it impractical for tribes to generate revenue through motor fuel taxes. Although some tribes and states have been able to negotiate motor fuel tax revenue-sharing agreements, those cases are the exception rather than the rule. In most areas, the state governments' collection of motor fuel taxes in Indian country displaces the ability of tribal governments to collect motor fuel taxes.

NCAI encourages this Committee to explore alternate sources of revenue for reservations roads. Given the dire conditions of reservation roads, it is unconscionable that the IRR program does not

⁹ National Center for Statistics and Analysis, *Fatal Motor Vehicle Crashes on Indian Reservations: 1975-2002*, (2004)

¹⁰ BIA Paper, *supra* note 1.

¹¹ U.S. Dept. of Transportation, Federal Highway Administration, TEA-21, A Summary (1998).

¹² Brief of *Amicus Curiae* the Inter-tribal Transportation Association in *Wagnon v. Prairie Band of Potawatomi*, available at <http://www.narf.org/sct/richardsvpbp/TIA%20amicus%20final.pdf>.

¹³ *Id.*

enjoy parity with the amount given to other governments through the Highway Trust Fund. NCAI feels strongly that this inequity of distribution must be addressed in whatever new system is devised to fund transportation systems across the nation. In addition, if motor fuel taxes are to remain the primary source of funding for road construction and maintenance, we urge the Committee to recommend that Congress clarify authority of Indian tribes to collect this tax on tribal lands. Finally, if the Committee recommends a dramatic change to the way revenue is raised for transportation costs, NCAI recommends that any such system be devised in a manner that treats Indian tribal governments equitably and gives them the same authority as state and local governments to raise revenue to fund the costs associated with building and maintaining transportation infrastructure.

Conclusion:

NCAI is committed to working with tribal governments to improve and build upon the successes of the last authorization of SAFETEA-LU because transportation infrastructure is vital to the enhancement of Indian tribal governments. Strengthening tribal governments and their communities by providing safe and reliable transportation infrastructure is essential for communities to prosper.