

NATIONAL TRIBAL LEADERSHIP PAPER ON TRIBAL TRANSPORTATION POLICY

**FACILITATED BY THE NATIONAL CONGRESS OF AMERICAN INDIANS (NCAI) TEA-21
REAUTHORIZATION TASK FORCE**

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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 roads 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.

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 than \$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.