



NATIONAL CONGRESS OF AMERICAN INDIANS

Testimony of the National Congress of American Indians House Committee on Transportation & Infrastructure “Improving and Reforming our Nation’s Surface Transportation Programs”

March 29, 2011 Hearing

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

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 nation —yet it is the primary transportation system for all residents of and visitors to American Indian and Alaska Native communities. Over eight billion vehicle miles are traveled on Indian Reservation Roads (IRR) Program system annually. Road conditions on Indian reservations are unsafe, inequitable and are a primary barrier to economic development and improvement of living conditions. For example, more than 60 percent of the system is unimproved earth and gravel, and approximately 24 percent of IRR bridges are classified as deficient. American Indians have the highest rates of pedestrian injury and vehicle deaths per capita of any racial or ethnic group in the United States. These conditions make it very difficult for residents of tribal communities to travel to hospitals, stores, schools, and employment centers.

Transportation infrastructure development is critical to economic development, job creation, and improvement of living conditions for individuals and families throughout Indian Country. Construction of transportation systems that allow for safe travel and promote economic expansion will help us strengthen our tribal communities while at the same time making valuable contributions to much of rural America.

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: (1) providing an increase in funding for IRR; (2) creating a new specific funding set-aside to address the condition of bridges on tribal lands; (3) initiating a new tribally-specific transit program that would provide much needed funding for tribes; and (4) 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 U.S. Secretary of Transportation.

FUNDING

In SAFETEA-LU, tribal transportation programs within the U.S. Department of Transportation have received the following funding levels:

- Funding for IRR was \$300 million for fiscal year 2005 and steadily increased each fiscal year to \$450 million for fiscal year 2009;
- Funding for the IRR Bridge Program stayed at \$14 million for fiscal years 2005 through 2009; and
- Public Transportation on Indian Reservations Section 5311(c) was funded at \$8 million for fiscal year 2006 and gradually increased each fiscal year to \$15 million for fiscal year 2009.

These funding levels were maintained in FY 2010 for tribal transportation programs through the U.S. Department of Transportation.

Indian Reservation Roads Program:

Officials at the U.S. Departments of the Interior and Transportation have recognized that transportation systems within Indian Country are suffering from billions of dollars in 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 maintained 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 growing maintenance funding backlog will only worsen without sizeable funding increases during the next highway reauthorization period.

With the mounting deficiencies and ongoing need to bring tribal transportation infrastructure to a safe and modernized system, we encourage this Committee to recommend to Congress an increase in the funding level for IRR Program to \$800 million for fiscal year 2013; with increments of \$50 million for each fiscal year through the next six cycles. For the IRR Bridge Program, NCAI recommends \$75 million for fiscal year 2013; \$87 million for fiscal year 2014; \$100 million for fiscal year 2015; \$100 million for fiscal year 2016; \$100 million for fiscal year 2017; and \$100 million 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 Grant 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. 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 Tribal Technical Assistance Program (TTAP) is the only technical assistance program that provides much needed education, and training to tribal governments, particularly in the transportation planning needed to for any successful roads project. There are currently seven TTAP centers located around the country. TTAP is funded by both the U.S. Federal Highway Administration (FHWA) and U.S. 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 and as additional tribes assume responsibility for administering their own transportation programs, NCAI recommends Congress to have the U.S. 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

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. The trend is on the increase, up nearly 25 percent, 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.

State governments spend between \$4,000 and \$5,000 per road mile on state road and highway maintenance. In contrast, road maintenance spending in Indian Country is less than \$500 per road mile. Indian Country has an unmet immediate need of well over \$258 million in maintenance funding for roads and bridges.

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 (NHTSA); 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 listened to the concerns from tribal leaders about the inadequate effectiveness of the BIA Highway Indian Safety Program. In the past, there has been significant employee and leadership turnover within the BIA office. This has created a lack of guidance and support to tribes. For example, tribes have been denied competitive grant funding, but were not informed of the reasons for the denial. As a result, tribes contacted the office for a rationale for denial but were not provided assistance nor a return phone call.

NCAI recommends that this Committee and 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 (1) establishing a two percent Tribal funding set-aside within the High Risk Rural Roads Program, (2) creating a new Tribal Traffic Safety Program within the FHWA-Federal Lands Highways office, and (3) funding each NHTSA, 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.

DIRECT TRIBAL AGREEMENTS

One of the biggest obstacles for efficient and cost-effective transportation infrastructure development in Indian Country is the myriad and conflicting grant conditions and contract requirements that are tied to various federal and state sources. Economic development and transportation infrastructure improvements in Indian Country rely upon the enhancement of a simplified, uniform direct funding agreement that respects tribal sovereignty and are modified to the unique legal status of tribal governments.

To maximize federal transportation funding by reducing transaction costs, the Indian Self-Determination and Education Assistance Act (ISDEAA), should be extended to all Federal transportation programs serving tribes – including programs administered by Federal Highway Administration (FHWA), FHWA-Federal Lands Highway, Federal Transit Administration, National Highway Traffic Safety Administration and other Federal transportation agencies. In Section 108 of ISDEAA, Congress created by statute a model contract that was specifically drafted to eliminate counterproductive bureaucratic practices and to improve tribal administration of these Federal programs. Under these model agreements, tribes may receive and administer funds for all Bureau of Indian Affairs and Indian Health Service programs using a single streamlined, tribally-appropriate agreement. This allows tribal governments to adopt uniform and more cost-effective accounting, management, and procurement systems to successfully operate these programs. For example, by submitting just a single agency audit for all covered programs and utilizing the same procurement and financial management procedures, tribal governments are able to spend less money on program administration and more money providing direct services to program beneficiaries. Through the ISDEAA, Congress recognized the need and benefit of model self-determination agreements to facilitate negotiations and provide for uniform reporting.

Extending ISDEAA to the U.S. Department of Transportation and its modal administrations will streamline the negotiation, execution, and implementation of grant, contract and funding agreements for federal transportation program funding available to tribes and more effectively target program dollars to the improvement of our nation's transportation system. Streamlining these direct tribal agreements would be very beneficial to tribal governments because most tribal governments do not have sufficient staff or resources to negotiate different terms and conditions to make these agreements more compatible with tribal-specific legal and policy considerations. Tribal governments also do not have the staff capacity to administer a wide range of disparate contract and grant conditions. By extending the ISDEAA and its terms for negotiation and implementation of funding agreements combined with the other program improvements outlined below will help develop more successful tribal transportation departments, reduce wasteful transaction costs, and permit tribes to focus their limited funding resources on more productive transportation infrastructure, maintenance, and traffic safety improvement efforts.

SAFE ROUTE TO SCHOOL

The Safe Route to School Program was created under SAFETEA-LU within the FHWA and is administered by State Departments of Transportation. Each state has its own administering guidelines for eligibility and requirements for the Safe Routes to School program. This program received a total of \$612 million for fiscal years 2005 to 2009, and each state receives funding via a formula. The Safe Routes to School Program essentially provides funds to states to improve the ability for primary and 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 Alaska Natives areas, with a total of 82,406 Native students. The Bureau of Indian Education (BIE) serves approximately 50,155 Native students at 181 elementary and secondary schools. It is difficult to assess how many of these schools on tribal lands have been awarded Safe Routes to School Program since each state administers the program differently. Also, many of these schools are located in remote and rural areas where students have to be bused for more than 50 miles. Therefore, the current program requisite of assisting schools within a two-mile radius generates a problem for tribal and rural schools to plan, develop, and implement safety projects for their students.

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 for and been awarded funding under the Safe Routes to School program. Since each state transportation departments and their coordinators administer the program, it is difficult to determine how many public schools on American Indian reservations have benefited from this program. In addition, BIE schools are not eligible to receive this funding. Due to the fact that BIE schools are funded and regulated by the federal government, it does not meet the current eligibility recipient requirement for Safe Routes to School Program.

NCAI recommends this Committee consider amending the statutory language of the Safe Routes 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

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 one percent of total federal highway funding. 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 \$1,000 per mile for road maintenance, compared to estimates of \$4,000-\$5,000 per mile used by states to fund non-IRR maintenance. 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.

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 U.S. 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 reservation roads. Given the dire conditions of reservation roads, it is unconscionable that the IRR program does not 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 this Committee and tribal governments to improve and build upon the successes from the last transportation authorization. Indian tribes recognize that transportation infrastructure is vital to the enhancement of Indian tribal economic development and to provide safe and reliable transportation infrastructure to tribal communities and surrounding non-tribal areas.