

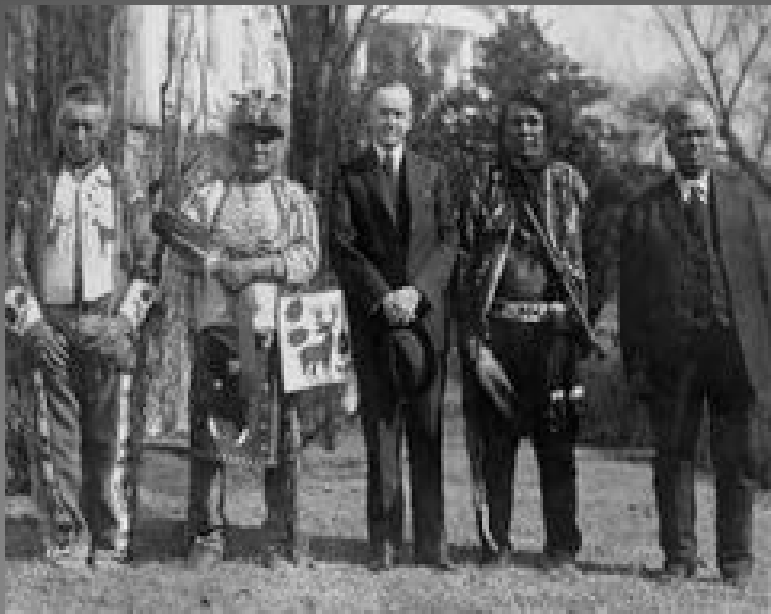
# Tribal Transportation in the Next Highway Bill – A Reality Check *Moving Forward or Left Behind?*

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# Basis of Tribal Transportation Authority

Tribal nations and the federal government have exchanged treaties, passed laws and entered into government-to-government agreements to protect sovereign rights of Tribal self-governance.



Pres. Coolidge Meets with Osage Chiefs    Pres. Obama meets with Tribal leaders

# Basis of Tribal Transportation Authority

“Indian tribes ceded millions of acres that make the United States what it is today; in return, tribes received the guarantee that the federal government would protect the tribes' right to govern their own people and their reservations as homelands for tribal cultures, religions, languages, and ways of life.” –

*National Congress of American Indians brief on Tribal Self Governance*

# Tribal Governments are Transportation “Public Authorities”

Federal statutes and regulations recognize Tribal nations as “public authorities” with the authority to finance, build, operate, and maintain public roads, bridges, transit systems and other toll or toll-free facilities. 23 U.S.C. § 101(23), see also 25 CFR § 170.5.



Yurok Nation’s  
Tribal Scenic  
Byways Project,  
Northern  
California

# Reality Check-The Good News

Over the last four decades, Tribal nations have increasingly established their capacity to deliver high quality transportation programs for the benefit of their citizens and others using their roadways.



**Native American Scenic Byway, North Dakota and South Dakota.**

**Connecting the Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe and the Lower Brule Sioux Tribe.**

# Reality Check-The Good News

Tribes have managed over \$2.4 billion in SAFETEA-LU and ARRA economic stimulus funds, created thousands of jobs and improved roads, bridges, transit facilities and traffic safety on tribal roadways.



Over 6,500 ARRA Jobs Created



Minto Native Village IRR Project, AK

# Improved Tribal Capacity to Deliver Successful Transportation Projects



**Before**



**After**

**Shoshone-Bannock Tribes Ariwite Road Project**

# Improved Tribal Capacity to Deliver Successful Transportation Projects



**Oglala Sioux Nation Transit Facility**

# Reality Check – The Good News

Federal, state and local government agencies increasingly recognize that they must partner and consult with Tribal nations – not only the Bureau of Indian Affairs – on transportation planning and project development matters.



**Humboldt County CA Tribal  
Tribal Transportation Commission**



**Native Village of Eyak Vice-President &  
FHWA-FLH Associate Administrator**

# Increasing Tribal-Federal Consultation



President Obama and Tribal leaders at Tribal Nations Conference

# Increasing Tribal-State Consultation



**Wisconsin Governor and Tribal leaders Announce  
Wisconsin's New Tribal Consultation Policy**

# How Tribes Succeeded in the Past

Tribal leaders and advocates worked closely with Congress and the Administration in the development of the federal surface highway legislation to put Tribes –not the BIA or FHWA - in charge of tribal transportation systems and substantially increased funding levels for tribal transportation programs.

Tribal nations were largely united in the legislative proposals they supported and delivered a clear message of job creation, economic empowerment and ending the tragedy of traffic fatalities in Indian Country.



# How Tribes Succeeded in the Past

Tribal leaders and advocates built alliances with other transportation organizations and identified the key members of Congress who were most likely to influence the final form of the highway legislation in a manner favorable to Indian Country.

*Tribal unity and a clear, consistent and persuasive message equals legislative success!*

# What Tribes Achieved in Previous Highway Bills

## The Intermodal Surface Transportation Efficiency Act (ISTEA), Pub. L. 102-240 (1991):

- Increased funding for the IRR Program to \$191 million per year.
- Created the Tribal Technical Assistance Program (TTAP) to provide training and technical resources to increase Tribal governmental capacity in the transportation area.
- Required state transportation departments to consult with Tribal governments in the development of transportation improvement plans (TIPs).

# What Tribes Achieved in Previous Highway Bills

The Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), Pub. L. 105-178 (1998):

- Increased IRR Program funding to \$275 million per year.
- Mandated that the BIA transfer IRR Program functions to Tribal nations under self-determination contracts and self-governance compacts.

*Under TEA-21, Tribes completed the first successful negotiation of IRR Program self-governance agreements and Tribal transportation innovative financing agreements.*

# What Tribes Achieved in Previous Highway Bills

**Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59 (2005):**

- Increased IRR Program funding to \$450 million, with a separate IRR Bridge Program funded at \$14 million per year.
- Established a Tribal Transit Grant Program funded at \$15 million per year.
- Authorized direct IRR Program agreements with FHWA-Federal Lands Highway Program (FHWA-FLH).
- Created new Tribal Transit and Scenic Byways Programs.
- Authorized Tribes to approve their own plans, specifications and estimates (PS&E) packages and direct IRR Program funding to road maintenance purposes.

# What Tribes Achieved in Previous Highway Bills

SAFETEA-LU permitted more federal dollars to go directly to Tribes, rather than be funneled through the BIA or States. Tribes now successfully compete for transit, traffic safety, public lands discretionary, livability and even TIGER grant funds, and often receive these funds directly from USDOT.

*Tribal governments now manage over 90% of all IRR Program funds.*



Standing Rock Sioux Tribe IRR Bridge Project, North Dakota

# Reality Check – The Bad News

While overall IRR Program funding increased substantially in SAFETEA-LU, many Tribes have seen their annual IRR Program funding shares decrease. Tribal nations are now deeply divided over the fairness and accuracy of the IRR Program Inventory and funding formula (the so-called TTAM formula), and this has become the major focus of most Tribal advocacy on the next surface highway bill.

# Reality Check – The Bad News

Many Tribal nations did not support the Senate Indian Affairs Committee's draft Tribal Reauthorization of Indian Programs ("TRIP") Act even though it proposed substantially increased annual funding for the IRR Program, the IRR Bridge Program, Tribal transit and traffic safety programs to over \$1.3 billion by FY 2015 and included many of the NCAI-ITA tribal transportation proposals for direct funding set asides, new Tribal traffic safety programs and other program improvements. Such large Tribal transportation funding increases seem nearly impossible to achieve in the current Congress, which is now focused on balancing the budget.

# Reality Check – The Bad News

Members of Congress who wish to help achieve Tribal priorities in the next highway bill often hear directly opposing views from Tribal leaders with an overwhelming focus on the funding formula. The message is not often about the need to increase funding and make program improvements to allow Tribes to create jobs, reduce traffic fatalities and improve Tribal economic development.

Most national Tribal organizations and tribal law/lobbying firms are unable to take sides in the tribal funding formula dispute so they are not able to effectively advocate for tribal transportation priorities or help to craft a clear, consistent and effective message when working with members of Congress and the Administration.

# Reality Check – The Bad News

The result is that the Senate Environment and Public Works Committee's recently passed "MAP-21" bill includes step increases to the State-administered federal-aid highway programs to \$39.143 billion in FY 2012 and \$39.806 billion in FY 2013 (nearly a \$700 million yearly increase and a \$4 billion increase from FY 2010 funding levels).

Unfortunately, the new Tribal Transportation Program receives a decrease from current funding levels in MAP-21 because the \$450 million provided eliminates \$14 million per year in separate funding for the IRR Bridge Program, while keeping the \$2.2 million Lake Tahoe deduction and the \$30 million+ obligation limitation deduction and adding in several new funding "take downs."

# Reality Check – The Bad News

The “MAP-21” bill includes a major rewrite of the IRR Program funding formula which many Tribes will welcome, but other Tribes will strongly oppose. This could lead to a legislative stalemate because controversial provisions are often dropped from bills in the House-Senate conference.

MAP-21 also eliminates the Tribal Scenic Byways Program, the Public Lands Discretionary Program, the IRR High Priority Projects Program and many of the USDOT grant programs that Tribes were just beginning to access successfully. The bill fails to address Tribal traffic safety in a significant way and includes almost none of the NCAI-ITA Tribal transportation proposals.

# Key Upcoming Events in Congress

- The Senate Indian Affairs Committee may soon introduce its own Tribal transportation bill.
- The Senate Finance Committee must figure out how to pay for MAP-21's \$12 billion Highway Trust Fund (HTF) shortfall.
- The Senate Banking Committee must pass the transit portion of the bill (Tribal Transit Grant Program funds).
- The Senate Commerce Committee must pass the traffic safety portion of the bill (NHTSA and tribal traffic safety program funds).

# Key Upcoming Events in Congress

- The Senate two-year version of the surface highway bill (MAP-21) must be reconciled with a House version of the highway bill.
- Only broad outlines of the House version of the highway bill have been released, but House Transportation and Infrastructure Committee Chairman John Mica (R-FL) and Republican leaders have said they want to pass a six-year bill financed with new revenue from oil and gas exploration.
- House T&I Committee Ranking Member Nick Rahall (D-WV) has held listening sessions with Tribal leaders, and his staff have been working on tribal priorities, but it is still unclear how many tribal priorities will be included in the House version of the highway bill.

# Key Upcoming Events in Congress

- The full House and the Senate must pass their versions of the highway bill and then resolve any differences through a House-Senate conference committee.
- The Congressional Budget Office will release new HTF funding projections in January 2012.
- The current SAFETEA-LU extension will end on March 31, 2012.
- Congress must also pass FY 2012 appropriations. The current continuing resolution is set to expire in just a few days, but an FY 2012 transportation appropriations bill is expected to pass Congress this week.

# A Reasonable Way Forward

- Even as Tribes may continue to disagree over the IRR Program funding formula, they should seek to unite behind a common set of Tribal transportation proposals – perhaps the new bill that the Senate Indian Affairs Committee is working on and/or the NCAI-ITA tribal transportation proposals.
- Even in an era of budget cutting, Tribes should fight for reasonable funding increases, perhaps based on President Obama' FY 2012 budget proposals of \$600 million with step increases to \$749 million.

# A Reasonable Way Forward

- Tribes should identify funding offsets (such as the loss of \$100 million in Public Lands Discretionary funds) to help pay for the tribal funding increases.
- Tribes should seek direct funding set-asides in some of the new MAP-21 programs as well as tribally-appropriate grant conditions based on Tribal self-determination and self-governance standards.
- Tribes should consider authorizing national tribal organizations and tribal law/lobbying firms to advocate on their behalf for these consensus priorities even if they are unable to take sides in the IRR Program funding formula dispute.

# A Reasonable Way Forward

- Tribes leaders should consider asking the BIA, FHWA, NCAI, ITA and other national Tribal organizations to sponsor a National Tribal Transportation Summit (much like the one held in Washington, D.C. prior to SAFETEA-LU) to permit Tribal leaders to discuss these issues and work toward consensus recommendations for Congress.
- There is still time for Tribal leaders and tribal advocates to influence the final form of the next surface highway legislation, but the bill is now taking shape with little tribal input.
- Tribes should strive to become more united and present a clear, consistent and persuasive message to Congress.



Questions?