S. HRG. 106–639

INDIAN TRIBAL SURFACE TRANSPORTATION ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

S. 2283

TO AMEND THE TRANSPORTATION ACT FOR THE 21st CENTURY TO MAKE CERTAIN AMENDMENTS WITH RESPECT TO INDIAN TRIBES

JUNE 28, 2000
WASHINGTON, DC

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INDIAN TRIBAL SURFACE TRANSPORTATION ACT

WEDNESDAY, JUNE 28, 2000

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

The committee met, pursuant to notice, at 2:31 a.m. in room 485, Russell Senate Office Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senator Campbell.

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

The CHAIRMAN. The committee will be in session.

Today, we had planned on doing a markup but unfortunately, Senator Inouye is not feeling well today. So we will not have another Senator here today to second any of the motions. We are going to postpone that markup until our next business meeting, and proceed directly with testimony on S. 2283, the Indian Tribal Surface Transportation Act of 2000.

I introduced this bill on March 23, 2000, along with Senators Johnson and Inouye, after the committee conducted an oversight hearing in October 1999.

Physical infrastructure is one of the fundamental features of any community, so that law enforcement and the emergency services can be provided, and to transport goods, services, and people, too. A solid infrastructure also serves as a key factor in the investment decisions of Indians and non-Indians, and can be the difference in determining whether capital and jobs are made available or not.

In Native communities, the infrastructure backlog is huge, and the quality of life of Native people is being harmed as a result. Congress enacted TEA–21 to improve highways and highway safety, protect the environment and stimulate economic growth.

The Federal Highway Administration, in conjunction with the Bureau of Indian Affairs [BIA] is charged with administering the Indian Reservation Roads and Bridges Program.

At the October hearing, the witness brought out many troubling aspects of the way the Indian Roads Program is being managed, and the bill was introduced as a result of that hearing.

The legislation that we will discuss today will accomplish four goals. First, it will remove the obligation limitation from the Indian

Roads Program, to ensure the full amount of appropriations that Congress authorized is, in fact, made available to tribes.

Second, it will launch a pilot project whereby 12 tribes can contract directly with the Federal Highways Administration, and remove the BIA as an intermediary agency.

Third, it will clarify that the BIA can not absorb more than 6 percent of the TEA–21 funds for administrative costs related to the IRR program. I know this is somewhat controversial.

Fourth, it will remove the current redundancy of having both the BIA and the tribal engineers certify health and safety standards are being met.

[Text of S. 2283 follows:]

II

106TH CONGRESS
2D SESSION

S. 2283

To amend the Transportation Equity Act for the 21st Century to make certain amendments with respect to Indian tribes.

IN THE SENATE OF THE UNITED STATES

MARCH 23, 2000

Mr. CAMPBELL (for himself, Mr. JOHNSON, and Mr. INOUYE) 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 make certain amendments with respect to Indian tribes.

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 "Indian Tribal Surface Transportation Act of 2000".

SEC. 2. AMENDMENTS RELATING TO INDIAN TRIBES.

(a) OBLIGATION LIMITATION.—Section 1102(b) of the Transportation Equity Act for the 21st Century (23 U.S.C. 104 note) is amended—

(1) in paragraph (7), by striking "and" at the end;

(2) in paragraph (8), by striking the period and inserting "; and"; and

(3) by adding at the end thereof the following:

"(9) under section 1101(a)(8)(A).".

(b) 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 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, upon request of the Indian tribal government involved, to the Indian tribal government for contracts and agreements for the planning, research, engineering, and construction described in such subparagraph in accordance with the Indian Self-Determination and Education Assistance Act.

"(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.—The Secretary may select not to exceed 12 Indian tribes in each fiscal year 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 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 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, 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) PLANNING PHASE.—An Indian tribe (or consortium) requesting participation in the project under this subparagraph shall complete a planning phase that shall include legal and budgetary research and internal tribal government and organization preparation. The tribe (or consortium) shall be eligible to receive a grant under this subclause to plan and negotiate participation in such project.".

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

"(f) INDIAN RESERVATION ROAD, ADMINISTRATION.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, not to exceed 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 and the administrative expenses related to individual projects that are associated with such program. Such administrative funds shall be made available to an Indian tribal government, upon the request of the government, 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.

"(2) HEALTH AND SAFETY ASSURANCES.—Notwithstanding any other provision of law, an Indian tribe or tribal organization may commence construction that is funded through a contract or agreement under the Indian Self-Determination and Education Assistance Act only 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 Bureau of Indian Affairs.".

○

The CHAIRMAN. I look forward to the testimony of the witnesses. For the Administration witnesses, we usually give a little more latitude than other witnesses.

It appears that we are going to have a couple of votes, somewhere during this hearing. So I may have to run out and come back, but we will go as far as we can.

We will start with Kevin Gover, my friend from the Bureau, and the Assistant Secretary of Indian Affairs of the Department of the Interior; and Ken Wykle, Administrator of the Federal Highway Administration, also from the Department of Transportation.

With that, Kevin, you may go ahead and proceed.

STATEMENT OF KEVIN GOVER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. GOVER. Thank you, Mr. Chairman. It is always a pleasure to appear before the committee.

Let me move directly to the issues that are before us. Like the committee, we are anxious to see the opportunity to put into Indian Country the full amount that was authorized in TEA–21.

We do have some concerns about the particular methodology used by the committee. But I think this is one of those issues where, if we work together on the obligation limitations, we are going to be able to find common ground, because we both agree that the need is vast in Indian Country, and that we are anxious to move forward in that regard.

As you know, the President has put forward a similar proposal in the fiscal year 2001 budget. So obviously, we are anxious to work with the committee to resolve what seems to be a relatively minor difference between us.

On the issue, Mr. Chairman, of the 6-percent funds, I have really shared the committee's concern, when I first arrived at the Bureau. Yet, the more I have learned about it, the more I realize that there are good reasons why the Bureau has to retain at least some of the responsibility of the United States and the liability of the United States. Therefore, we need to be able to continue to certify the safety of the roads. Now if we are going to do that, then obviously, we some people to be able to do it.

Now we have gone through the 6-percent money. What we find is we spent something less than the entire 6 percent, at least for the last 2 fiscal years under TEA–21. It is not a lot less, frankly.

I think in fiscal year 1998, we spent about 5.9 percent, as opposed to 6. In fiscal year 1999, we spent about 5.5 percent. In each case, I have reviewed the expenditures myself, and we would be happy to make those available to the committee. I just do not find anything there that is really out of line.

I have, I would not say, a terribly lean staff; but certainly no more than is really needed to do the job. We also compare favorably to what the States take when they administer highway trust funds and execute their roads programs. So we actually feel pretty good about the quality of the expenditures that are being made.

We do support the program in other ways, through our administrative overhead accounts and such. So we do not actually charge the Roads Program for every penny that it costs us to administer.

We are not looking for more. We would just like not to have to do with less.

As I say, I would be happy to make the details of the expenditures available to the committee at your request. We really keep a very tight accounting on that.

The CHAIRMAN. As a matter of course, if you would make that available to the committee, I am sure we would appreciate it.

Mr. GOVER. We will do so, Mr. Chairman.

So those are our primary concerns with the bill. As it currently stands, the Administration opposes the bill. But I think that, as I say, a number of these issues would be relatively easy for us to work through, since we do share a common goal of making more funding available to the tribes to carry out this program.

Let me talk briefly, Mr. Chairman, and even seek your guidance, about the negotiate rulemaking process. We have now been at this for over 1 year, about 15 months. There have been monthly meetings of the Negotiated Rulemaking Committee. They have made very considerable progress in each of the four work groups that they have established.

I have two thoughts about the Negotiated Rulemaking Committee. The first is, it is costing us about $1 million a year to do it. Now that money comes out of the 6-percent money. That $1 million could just as easily be translated into construction projects. So there is some point at which we should bring this to an end.

Second, we now have sort of hit the wall, in terms of the difficulty of the issues, because we are down to the funding formula at the committee. As you can imagine, the way we set up the committee, we had representatives from each of the 12 BIA regions represented, along with, of course, the Federal agencies involved, and even different programs within the Department of the Interior.

I am beginning to think that we are not likely to see a resolution of the funding formula program come out of the committee. It is easy enough to understand. They are playing a zero sum game. Any change that increases funding for one region, necessarily reduces it for another. I think we may have given them an impossible chore, to all agree upon a funding formula.

We could let this go on, and there is some value to continuing to refine the issue. I am inclined to say to the committee that we are going to thank you for your work, take all that you have done, and make some of these final decisions, ourselves. Because I just do not think we are going to reach an end to it.

I am not anxious to do that, obviously. We would have preferred that the committee resolve the matter. I would not do so if I thought there were a realistic opportunity for the committee, itself, to make that resolution.

On the other hand, frankly, I do not feel so strongly about it that I would not yield to the wishes of the committee in that regard.

So what I am saying is, if you want us to stop and just make some of the decisions, and get these regs out, we will do that. If you believe that there is continuing value to the operation of the negotiated rulemaking committee, I am content enough with that to do that, as well. So we would look to the committee for some guidance on what you think we ought to do at this point.

Let me, at the same time, commend the members of the committee. They have been very diligent. They have been very faithful in showing up, meeting after meeting, and working day after day after day. So we certainly can not fault their effort. But it does reflect, I think, the enormity and difficulty of the task they faced, to have brought it as far as they have.

So with that, Mr. Chairman, I appreciate, again, the committee's time. I would be happy to answer questions, and to yield to my colleague from the Federal Highway Administration.

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

The CHAIRMAN. Okay, you may go ahead, Mr. Wykle. By the way, all of your complete written testimony will be included in the record, so you can abbreviate, if you want to.

STATEMENT OF KENNETH R. WYKLE, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, WASHINGTON, DC

Mr. WYKLE. Sure, thank you, Mr. Chairman. I certainly appreciate the opportunity to be here today, and testify on the Indian Tribal Surface Transportation Act of 2000, S. 2283.

I also appreciate the opportunity to update you on our progress in implementing the provisions in TEA–21, affecting the Indian Reservation Road Program.

Certainly, you and the other members of the committee are to be commended for focusing attention on increasing the resources available for transportation programs for Native Americans.

An adequate system of roads and bridges is key to the safety and economic development of tribal lands. TEA–21, as you know, authorized $1.6 billion for funding the IRR program, over the 6 years of the bill. TEA–21 also strengthened the commitment of the Federal Government to increasing the involvement of Native Americans in transportation, programming, and planning.

The FHWA and BIA, in consultation with the tribal governments, developed a transportation planning procedures and guidelines pamphlet last fall. We issued those in October 1999. Between October and March of this year, we have held 10 different training sessions across the country, for BIA tribal personnel.

These guidelines will form the basis, then, of a proposed regulation, required by TEA–21. Getting to the points that you mentioned, Mr. Chairman, first on the provision for the obligation ceiling, if you add the Indian Reservation Road Program to the list of programs exempt from the obligation limitation imposed on the Federal Highways Aid Program, then it is going to impact other programs, outside of the Highway Trust Fund, the way that we currently read that. So we would certainly support giving the full amount.

We would like to work with you and the committee in finding perhaps a different way to do that, from the regulatory standpoint and the legal standpoint. Because as we see it, it would increase additional mandatory spending and reduce the budget surplus, or impact on other programs, since an offset has not been identified.

To increase resources for the IRR program, the Administration did propose in its fiscal year 2001 budget that the IRA program be

included among the Federal Aid Highway Programs for which obligation limit is set aside.

So that proposal would return 100 percent funding to the IRA program, by reducing funding available for other Federal aid highway components, but it would not affect non-highway programs.

We also propose, in our submission, a request for $75 million additional for the IRR programs. As you know, that was not supported in Congress.

But we do support and continue to support the provision in the Senate Transportation Appropriations Bill for this year, that would add $33.6 million, which roughly equals the obligation ceiling, as it currently exists.

The second issue would authorize a demonstration project for which the Secretary of Transportation could select up to 12 tribes. FHWA and BIA have authorized two self governance pilots with the tribal governments. These pilots are being conducted with the Cherokee Nation and the Red Lake Band of Chippewa Indians.

We believe that these existing pilot activities can accomplish many of the goals of the pilot program proposed in your bill.

The third item, section 2(c) would limit the Government's ability to review construction plans and specifications to check for health and safety considerations. Because the majority of the improvements funded under the IRR program involve roads and bridges under the jurisdiction of BIA, we believe that it is necessary that BIA have concurrences, and that proposed construction meets all health and safety standards prior to the use of these IRR funds.

Both of our current agreements include provisions allowing either FHWA or BIA to review the quality of the work performed, monitor health and safety, and provide technical assistance when needed. The results of these pilots will provide directions concerning tribal project oversight, along with identifying any unforeseen operation and process problems.

In conclusion, we are working to implement the IRR provisions of TEA–21 as quickly and effectively as possible, and we are committed to working the Indian tribal governments and the BIA to improve program delivery.

The administration of the IRR program is likely to change as a result of the TEA–21 required negotiated rulemaking, currently targeted for completion originally in 2001. But after listening to my colleague's comments here, perhaps we are going to need to make a decision fairly soon as to which way to proceed on that. But also, the experience we gain from the two pilots, I think, will help us as we move forward.

So again, Mr. Chairman, we certainly thank you for this opportunity to testify. We look forward to working with you and other members of the committee to work out these issues that have been raised.

I will be glad to answer any questions that you may have.

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

The CHAIRMAN. All right, I thank you for that testimony. Because we might be pulled out to vote at any time, I am going to just ask maybe one or two questions, and followup by submitting some to you in writing, if you would both get back to us.

Let me just ask one of Assistant Secretary Gover. Tribal contracting, in regards to that, I proposed an amendment in 1997, to allow tribes to contract for all roads, all the funds under the Self Determination Act. So I think my intent was pretty clear to me.

In fact, let me quote some of the language from that amendment.

Notwithstanding any other provision of law, all funds made available under this title for Indian reservation roads shall be made available at the request of the Indian tribal government to the Indian tribal government in accordance with the Self Determination Act.

So my question is, what was unclear about that word "all funds?" Was not that intent pretty clear?

Mr. GOVER. I have to apologize. I am not familiar with that language. What I have seen in the language that specifically authorizes the Bureau to withhold up to 6 percent of the funds for its own administration. I believe that that is what we do.

Now in terms of the contracting to the tribes, I am not aware that we do not make available all of the project funds. But if that is so, I will find out and report to the committee.

The CHAIRMAN. Okay, that language is included in TEA–21, by the way.

Mr. GOVER. Right.

The CHAIRMAN. Did I understand your testimony to say that now your administration takes less than 6 percent? You mentioned, 5.5, 1 year. But you are under that, anyway; so the 6 percent is not needed.

Mr. GOVER. Let me restate the numbers. In fiscal year 1998, and I misspoke earlier, the number was actually 5.75 percent. In fiscal year 1999, it was 5.95 percent. But, of course, that included the cost of the negotiated rulemaking. So we would expect that to fall back by about $1 million, once the negotiated rulemaking is over.

So yes, Mr. Chairman, we take less than 6 percent; not a lot less, but less.

The CHAIRMAN. And that included the $1 million you talked about per year, the cost to do the negotiated rulemaking?

Mr. GOVER. Yes, Mr. Chairman; in fiscal year 1999, only.

The CHAIRMAN. Mr. Wykle, TEA–21 was enacted in 1998, and authorized the IRR programs from 1998 to 2003. The Rulemaking Committee has not completed its work, and that time frame is almost up. It is going on 2002 in a few more months.

You state that S. 2283 should be deferred until the Rulemaking Committee has finished its work. But we are hearing from tribes, obviously, that this is dragging out too long. Would you like to comment on that?

Mr. WYKLE. Well, TEA–21, as you indicate, required through negotiated rulemaking, the formula being developed for the distribution of the funds to the various tribes.

So we are indicating, in terms of being able to execute that portion of the bill, that we need to wait until negotiations are finished.

The CHAIRMAN. What takes them so long?

Mr. WYKLE. Well, as was mentioned here, there is sometimes difficult, I guess, in terms of the tribes agreeing on the distribution of the dollars, because it is a zero sum game.

So for one tribe to get more, proportionately, someone else has to give it up. So they are having great difficulty in resolving that issue.

The CHAIRMAN. Well, I understand that. But from the standpoint of the general purpose of negotiated rulemaking, that is one of the things that we have heard for years and years from tribes, that they are left out of the equation. They are left out. They have not been talked to. They have not been asked about it. They need to participate.

It might a little clumsy. That is the way it works. The more people you involve, the clumsier it gets, and the longer it takes. I understand that. But I just wanted you to know that we are also hearing from the tribes that there is an unnecessary timeframe that is being delayed more than it needs to be.

Let me ask you one other question here. This bill that we are speaking about today provides that when a tribe requests the IRR funding be made available through the contract, it has to be provided.

Health care in the Bureau programs, financial administrative capacity, things of that nature, under the Self Determination Act, require the tribe first demonstrate some financial and administrative capacity, before the contract is entered. After it is entered, the tribe is subject to a single audit act.

If this bill, S. 2283, were amended to make those requirements clear, as they are in other instances of law, would the Department be more supportive of it?

Mr. WYKLE. Well, I believe we would, sir. The one thing we would want to work with you on is making sure that we understood, in terms of the health and safety issue. Because, by law, we do have a Federal oversight responsibility for the Federal funds, and we currently work with the States to do that.

The States certainly prioritize their projects. They select the projects. But we have the option of verifying, on a random basis, the quality of the work to ensure that it meets safety standards.

If we could work something like that out in conjunction with BIA, since they are the owner, then certainly we would be amenable to working with you on that.

The CHAIRMAN. You state in your testimony that the two tribe pilots that you have will accomplish pretty much the same goal as S. 2283. But as I mentioned to the Assistant Secretary, in 1997, when that amendment was proposed by me, it made it clear, or at least I thought, that all funds should be made available for contracting purposes.

What language in TEA–21 can you refer to that limits the tribal contracting opportunities to just two tribes?

Mr. WYKLE. Well, certainly, sir, the way that is written in terms of all funds, it is very broad. So our interpretation is to certainly subtract from all funds the 1.5 percent that the Federal Highway gets, the 6 percent that the BIA gets, the training dollars, those types of things. That brings you down to a number.

Then again, on all funds, we are interpreting that to mean Indian Reservation Road Funds. We are further interpreting that to mean that portion for that particular tribe. But as currently writ-

ten, one could interpret all funds to mean the entire $235 million, going to one tribe.

So we want to work with you on that particular language, to make sure we reach your intent, in terms of doing that.

The CHAIRMAN. Okay.

Mr. GOVER. And if I might, Mr. Chairman, we have only done the two pilot projects with Cherokee and Red Lake. That was my determination.

The CHAIRMAN. You picked the tribes?

Mr. GOVER. Really, it was more that they self-selected, rather than I picked them.

The CHAIRMAN. I see.

Mr. GOVER. And the reason that we did that is, we have an ongoing Self Governance rulemaking under way, as well.

In trying to interpret the interplay between the Self Governance Law and TEA–21, while I was willing to do these pilot projects and sort of see how it worked, I did not want to remove the incentive to complete either the Self Governance rules or the road rules, both of which are negotiated rulemakings; both of which are underway now. So I take the responsibility for that determination.

But is certainly our intent that at the point those rules are made, that every Self Governance tribe, every Self Determination tribe that wants to contract these programs are free to do so.

The CHAIRMAN. Okay, well, I thank you for your testimony. I will submit some further questions. Senator Inouye may also have some, too. But thank you for appearing here.

You will probably be running. But when you can, if you would contact the staff about that other issue that we talked about, I would appreciate.

Mr. GOVER. We will do so.

The CHAIRMAN. We will now go to our second panel. That will be Rodger Vicenti of the Jicarilla Apache Tribe; Pete Red Tomahawk, the transportation director from the Standing Rock Sioux Tribe; David Whitener, senior member of the Negotiated Rulemaking Committee; and Pat Ragsdale, director, Government Services of the Cherokee Nation of Tahlequah, OK.

If you folks would take your seats up at the table, there, we can start in the order that I spoke about: Mr Vicenti, then Mr. Red Tomahawk, Mr. Whitener, and Mr. Ragsdale.

Let me start by telling you, as I did the other panel, we may be called to vote any time. So we are going to use the timer up here.

All of your written testimony will be included in the record. If we have two or three votes, you will not have to stay here for 1 hour until I come back.

So if you could abbreviate orally and submit all of your written testimony, I would appreciate it.

President Vicenti, go ahead.

STATEMENT OF RODGER VICENTI, PRESIDENT, JICARILLA APACHE TRIBE, DULCE, NM, ACCOMPANIED BY MARK WRIGHT, TRIBAL ENGINEER

Mr. VICENTI. Good afternoon, Mr. Chairman. I know that the vice chairman is not here, but I would like to first congratulate him on his receipt of the Congressional Medal of Honor. I would have

liked to tell him, personally, but I would like you to get that message to him.

Members of the committee, I am Rodger Vicenti, president of the Jicarilla Apache Tribe. I appreciate the opportunity to testify on the Indian Reservation Roads issues.

With me is Mark Wright. He is our tribal engineer. He works for our Contract Roads Department. He is also a member of the TEA–21 Negotiated Rulemaking Committee. He has an understanding of the BIA roads 638 contracting.

My main issue is obligation limitation that is imposed by the TEA–21 legislation, and some of the funding on the Indian Reservation Roads Program. In addition, I will briefly discuss the TEA–21 negotiated rulemaking process.

Two years ago, the Jicarilla Apache Tribe, along with other tribes, worked hard to convince Congress to increase funding for Indian roads and bridges during the ISTEA reauthorization process, which resulted in the TEA–21 legislation. The inadequate and unsafe conditions of our roads provided the necessary justification for doubling the funding for Indian reservation roads.

We also urged Congress to make all roads funds available to tribes at the beginning of the fiscal year in the form of advanced funding, so that project planning and development could occur with maximum flexibility at the local level. Congress agreed and included this provision in TEA–21.

Although we received far less than what we needed, we are grateful for the work of this committee and others, especially Senator Domenici, to secure increased funding from approximately $191 million a year to $275 million, and to authorize the advance funding for the Indian Reservation Roads Program.

Unfortunately, the new cuts were imposed on the Indian Reservation Roads funding through what is known as obligation limitation.

The deal on this here is that when the Federal Highway Administration received the funds, they were supposed to get 10 percent of the Indian roads obligation back. When the money was redistributed, most of the money was redistributed to the states. When this process happened, the tribes were left out of that process. So, you know, the thing about it is, we are losing funding, and we should be included in this process.

The loss that Indian Country has taken because of this obligation limitation is $25 million of the $225 million that we were promised for fiscal year 1998, and $32 million of the $275 million that we promised for fiscal year 1999. We stand to lose even more for fiscal year 2000.

Further, the 1 percent set aside or approximately $13 million of additional funding for Indian bridges in ISTEA was removed from TEA–21, and Indian bridge funding now must come out of the Indian reservation roads funding.

While we are grateful for the increased funding and expanded advanced funding authority under TEA–21, the obligation limitation and the loss of the bridge set aside funding has resulted in a mere $12.4 million increase to the Indian Reservation Roads Construction Program, nationwide.

This was an unintended result that is not only unfair to Indian Country, but also inconsistent with the trust relationship between the United States and the Indian tribes.

The Jicarilla Apache Tribes objects to the withholding of Indian Reservation Roads funds. We believe, at the very least, that any withheld Indian reservation roads funds should be redistributed back to the Indian Reservation Roads Program.

A legislation change is necessary to exempt Indian Reservation Roads funds from the obligation limitation. S. 2283, introduced by Chairman Campbell, Vice Chairman Inouye, and others, would address the obligation limitation problem, as well as other Indian Reservation Roads Program related issues.

Senators Domenici and Bingaman also introduced S. 2093, which solely addresses the obligation limitation problem. These bills would assure that the Indian Reservation Roads Program is funded at the full authorized level of $275 million for the remaining 3 years of TEA–21.

The proposed legislation would also exempt from the obligation limitation any additional Indian reservation roads funding increases that Congress may appropriate. The estimated impact on all other TEA–21 programs would be only about 0.1 percent.

Although this amounts to a reduction of roughly $250,000 to the State of New Mexico, the New Mexico Transportation Department supports S. 2093, recognizing the overall funding increases that would flow in the State. This amounts to approximately $8 million. I also have a letter from Pete Rhonde addressing that issue.

We also have a resolution from the tribe that supports this S. 2093, and the obligation limitation that is now imposed on the IRR funding.

The CHAIRMAN. Those addendums that you have will be included in the record, the resolutions from the tribal council.

Mr. VICENTI. Okay, thank you.

If you have any questions I have Mr. Wright here with me. He has been on the Negotiating Rulemaking Committee, so we can ask him some questions.

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

The CHAIRMAN. All right, did you have a separate testimony, Mr. Wright, or are you here as a resource person?

Mr. WRIGHT. I have a separate testimony.

The CHAIRMAN. All right, we will go ahead to Mr. Red Tomahawk, since that was the way I listed them.

STATEMENT OF PETE RED TOMAHAWK, TRANSPORTATION DIRECTOR STANDING ROCK SIOUX TRIBE, FORT YATES, ND

Mr. RED TOMAHAWK. Thank you, Mr. Chairman.

Mr. Chairman, I am Pete Red Tomahawk, the Transportation Director for the Standing Rock Sioux Tribe of Naraton, SD.

I also serve as one of the cochairs for the Indian Reservation Roads Negotiating Rulemaking Committee. This is a congressional mandate committee, tasked with the responsibilities of improving the management and operation of the IRR Program. Through these efforts, tribes hope to improve tribal roads and transportation programs.

I would also like to thank this committee for its support for the Negotiated Rulemaking Committee. On behalf of Chairman Murphy and the tribal council of the Standing Rock Sioux Tribe, thank you for inviting us to testify on a pressing need to enact S. 2283, as well as the Indian Reservation Roads issues facing Indian Country.

With your leadership and the continuing support of this committee, we are confident that this Congress can improve the lives of Indian people by ensuring that greater IRR resources reach the reservation communities, and our roads, which are a vital part of our tribes' reservation infrastructure and are key to economic and social well being, are safely constructed and properly maintained.

S. 2283 is a step in the right direction. For that reason, the Standing Rock Sioux Tribe fully supports its enactment. The enactment of this bill would address some of the overwhelming needs faced by tribes for greater transportation funding.

On our reservation, we are faced with urgent improvements of community streets. On my reservation alone, we have more than a $70 million backlog in road construction needs. The current system is not working and needs repair.

I would like to highlight a number of areas in need of correction: First, eliminate the obligation limitations; second, increase TPA funding for road maintenance to $50 million, which will permit tribes to properly maintain roads, prolonging their useful life, saving lives, and saving taxpayer dollars by engaging in greater preventative maintenance; third, make Indians eligible for State DOT Highway Safety Seat Belt and Impaired Drivers Grants; fourth, increase funding for the Tribal Technical Assistant Programs, as tribes have achieved significant successes in areas of training in the transportation field; and fifth, utilize the resources and knowledge of the Inter-Tribal Transportation Association.

This is the only Indian organization dedicated to representing tribal transportation interests at the national level. I commend ITA for its continuing efforts to identify important transportation issues for all Indian people. I urge this committee and the Administration to utilize ITA as a source for information.

We fully support the provisions in S. 2283. It would exempt the IRR Program from the obligation limitation, which currently robs tribes of $34 million of limited funds, appropriated by Congress for the IRR program.

Tribes are not currently eligible to receive redistributed highway funds withheld under the obligation limitations. We can not afford to lose a dime in IRR funds, no less than $34 million.

On maintenance funding, we recognize that maintenance funding can not be address in S. 2283, but we can not emphasize enough the frustration caused by the lack of road maintenance dollars.

Existing roads are not properly maintained, due to the lack of funds, a common situation regarding our roads on the reservation. All tribes require great construction and maintenance funds. Preventative maintenance extends the roads' useful lives. Please extend the life of IRR funds by appropriating at least $50 million for road maintenance.

I will conclude my remarks with highway safety. Tribes are currently ineligible to apply for state DOT highway grants under

TEA–21. Because tribes are excluded from the States, State highways criss-cross Indian Country, and data compiled is currently used by State DOTs.

Tribes can not access section 157 or section 163, grants providing funding for the Seat Belt Initiative, and the Impaired Drivers Incentive Program.

We urge the committee to amend S. 2283 to include Indian tribes within the definition of States. Tribal population and road data are included in the formation of State funding. Tribes, like States, should be equally eligible to receive Highway Safety Grants to benefit the residents they serve.

Like any government, our priorities are different from those of counties and State governments. Currently, the death rate for motor vehicle accidents among Indian people is higher than non-Indian populations. The death rate from seat belt and alcohol-related motor vehicle deaths for Indians is more than double the national average.

Death from auto accidents is one of the highest causes of death in Indian Country. Recent data compiled by the North Dakota DOT indicates that up to 26 percent of the total automobile fatalities will occur on Indian reservations within the state.

Every life is precious. This is especially true on reservations, due to our small numbers. We must do all in our power to prevent injury and death, which could have been prevented through drivers' training programs, lighting, signs, seat belt enhancements, drunk driving and road improvements; all programs under the Highway Safety Grant.

Thank you, Mr. Chairman, for allowing the Standing Rock Sioux Tribe the opportunity to present its views.

[Prepared statement of Charles W. Murphy, appears in appendix.]

The CHAIRMAN. Thanks for that testimony. I am not on the Transportation Authorizing Committee, so I was not aware that under TEA–21, that tribes were not eligible for certain kinds of safety grants. We will look into the possibility of adding a technical amendment to this bill that maybe can correct that.

Mr. RED TOMAHAWK. Mr. Chairman, a prime example is looking at the State of North Dakota DOT, and looking at the tribes, to waive the tribe's sovereign immunity, in order to get the Safety Grant dollars.

The CHAIRMAN. That is not good. We can do better than that. Thanks.

Mr. Whitener, you may proceed.

STATEMENT OF DAVID WHITENER, SR., MEMBER, NEGOTIATED RULEMAKING COMMITTEE, SHELTON, WA, ACCOMPANIED BY DAVID FREY, SENIOR PLANNER, SQUAXIN ISLAND TRIBE

Mr. WHITENER. Thank you, Mr. Chairman.

I am Dave Whitener, member of the Squaxin Island Tribe from the State of Washington. We are one of two tribes in the country whose reservation is an island, unless you count Hawaii.

I am here to speak on S. 2283. Specifically, we were asked to comment on the amendment to clarify the 6-percent limitation on program and project administrative costs. I will also discuss obliga-

tion limitation and the pilot program. I want to give my perspective on the progress of TEA–21 rulemaking, as a member of the committee.

On the 6-percent limitation, in the past 5 years, Squaxin Island has received good service from BIA's regional program 6 percent expenditures on things like training, technical assistance, project design, coordination with other government agencies.

Prior to 1995 is a different story. To make matters worse, the northwest regional allocation has been cut in half from 11 percent of the total in 1991, to 5½ percent in fiscal year 2000. Squaxin Island Tribe, along with other tribes, has concerns about the expenditure process.

Before 1995, the BIA completed two projects for us. One was one-tenth of 1 mile of road in 1982, and the chip seal process in 1992.

S. 2283 refers to administrative expenses for programs and projects, as does the resolution from the Affiliated Tribes of Northwest Indians [ATNI]. We understand that project oversight expenses are administrative expenses included within the 6 percent. But individual project costs, such as project development or construction engineering, would not be considered part of the 6 percent. If we are wrong about that, we feel like that can not be done within the 6-percent limitation.

A summary of our first IRR projects since 1982 points out the frustration that we have with project administration. In 1990, we developed a project and put it on our transportation plan to rebuild an 80-year old county bridge. The project was identified in 1997, but through a series of delays and miscues, it was mid-1998 before the project was included on the BIA control schedule.

That paperwork went from Portland to Albuquerque, back to Portland, back to Albuquerque, then to Washington, DC, until an error was found, causing it to return to Portland, and start the process anew. Several more months of delays followed in the BIA and Federal Highways budget reconciliation process.

Funds are now obligated for the project. It is contracted for 2001, more than 10 years after the tribe approved the project and 5 years after the county agreed to do it. It is likely there will be further delays.

Of note, a fatal collision occurred on a curve on this road, between the bridge and the reservation. I came upon that accident, shortly after it happened, and can still hear the wife calling her husband's name, and he could not hear her.

On the pilot programs, S. 2283 exemplifies the philosophy of Self Governance and Self Determination, and Squaxin Island Tribe is ready to participate. We were among the first 30 tribes involved in the 1994 Self Governance pilot.

We have experience in compacting. For example, we compact Indian health service, education, natural resources, and law enforcement, among other things. We recommend the adoption of those provisions, for obvious reasons.

On obligation limitation, there is a national consensus among tribes, as you have heard, and the Squaxin Island Tribe supports that the IRR program should be exempt from limitation on obligations.

This provision has transferred $91 million from the IRR program to the states, between 1998 and the year 2000. It is following increased authorization to the states of 40 percent under TEA–21. Although the IRR authorizations increased by 20 percent for tribal road construction, the costs have escalated by 26 percent, and there is a real decline in the funding.

Remember, IRR roads comprise 2.63 percent of the public highway system, but receive less than 1 percent of the funding, and road maintenance lags even further behind. As long as tribes receive one-tenth of what States receive per mile for maintenance, Indian reservation roads will continue to deteriorate rapidly.

On progress for negotiated rulemaking, in many ways, progress has been good. Still, there are several Federal representatives and some tribal representatives who wish to continue to support the old roads needs formula.

Many tribal leaders have spoken at length regarding the importance of the tribally-driven process, and tribes have taken the initiative. The question that haunts me is, what does it matter? What does it matter if a consensus of the full committee can be ignored by the BIA, as it was in the matter of the supplemental $18.3 million appropriation?

The full committee consensus placed emphasis on getting the supplemental funds to under-served tribes. The full committee consensus also was to fund ongoing projects at 50 percent, while the interim rule was drafted. Once it got out of the hands of the committee, it was turned upside down.

We will continue to work to complete the work. We will continue to negotiate, because we have faith. We have faith in each other, and we have faith in those with whom we negotiate, that they will honor the outcomes of the negotiations.

Thank you, Mr. Chairman.

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

The CHAIRMAN. Okay, thank you.

Mr. Ragsdale, as I remember, you have appeared a number of times before this committee, Pat. It is nice to see you hear, again

STATEMENT OF PAT RAGSDALE, DIRECTOR, GOVERNMENT SERVICES, CHEROKEE NATION OF OKLAHOMA, TAHLEQUAH, OK, ACCOMPANIED BY JACKIE BOB MARTIN, CHAIRMAN, TRIBAL RESOURCES COMMITTEE AND MELANIE KNIGHT, SELF GOVERNANCE ADMINISTRATOR

Mr. RAGSDALE. Thank you, Mr. Chairman. It is good to be back.

My name is Pat Ragsdale. I am the director of Government Services for the Cherokee Nation. I represent Principal Chief Chad Smith to testify to the Cherokee Nation's strong support for these amendments, as proposed in S. 2283.

With me are Councilman Jackie Bob Martin, the gentleman in the red shirt in the front row. Mr. Chairman, he has your job, with our tribal legislature. He oversees us.

The CHAIRMAN. Good luck. [Laughter.]

Mr. RAGSDALE. Also with me is Melanie Knight, who is our Self-Governance Administrator.

With the help of counsel, Jackie, Bob, and other staff, they have prepared the testimony. We appreciate the committee taking it into the record.

I am going to be really brief, Mr. Chairman, since you have our full statement, and I know the committee's time is valuable. I will simply speak to the three issues of the amendments.

There does not appear to be any disagreement among the Administration or tribal leaders with regards to the obligation limitation addressed by your bill. So hopefully, it will be enacted without any controversy.

I would just point out and echo what the other tribal leaders have said, that for the last 3 years, the Indian Reservations Roads Program has lost approximately over $30 million per year to the system, because of this program.

With regards to the Cherokee Nation, our backlog of roads is 557 miles and an estimate of $418 million. So you can see how far we are, as other Indian tribes are, as well.

With regards to the 6-percent administration fund, Mr. Chairman, as you know, I am not a roads engineer. I am not any kind of engineer. But I believe in our program officials at the Cherokee Nation and other tribal leaders that have been involved in this.

Although I respect and, indeed, have a whole lot of sympathy for Secretary Gover in the administration of Indian affairs, having been there myself, I do believe the tribal leaders, when they tell me, and our program officials tell us, that in the Rules Committee process, they are not considering negotiating the 6 percent issue in good faith.

I believe that is a problem. I think that part of the problem, having been on the Federal side, is that the management system in the roads system has been managed on a project by project basis, nationwide. With Self Governance and tribes taking over greater control, you are moving the Roads Program into a program which is more sensitive to people's needs, naturally.

Now the BIA does have a problem making that switch. Other issues are involved. The program officials of the Cherokee Nation that tell me that it is not just the 6 percent funding issue. It is that we have had a number of negotiations with regards to the BIA, with regards to taking so-called project administration funds.

The officials at the Cherokee Nation are more than reasonable, and want the BIA to be able to do a good job. But the point I am trying to make is, there does not appear to be any flexibility on the BIA position, with regards to the 6 percent and their desire to seek more administrative fees for the conduct of the overall Roads Program.

Now having said that, there has been great strides and progress with regards to funding this program. When I was an administrator in the BIA, 20 or 30 years ago, we had a program of around $20 million, nationwide. So we are in much better shape today. But there are a lot of things that we still need to do.

Finally, with regards to the health and safety issue, I was around when the Self Governance Act and the Self Determination Act was enacted. I was a youngster. I taught those rules, and was involved with the committees in Congress.

We said that the most sacrosanct function that the Federal Government has is the trust function. We said that some of the most important things, with regards to the administration of Indian affairs programs, was educating our children, putting in proper school facilities, and so on and so forth.

Indian tribes have more than demonstrated that they are capable of administering the trust functions, the construction of schools, and the operation of human-sensitive programs, nationwide, and they have done a pretty good job at it.

So, I mean, I just do not understand why with the Roads Program, and the so-called inherent Federal function, we can not work out agreements that ensure that the Federal Government maintains its Federal responsibility, while at the same time, allowing the Indian tribes to carry on the function.

With regards to the Roads Program, the BIA can stop a project any time they want. The position of the Cherokee Nation is, we want people to look over our shoulder, but we do not want the duplication of administrative backlogs that necessitate the delay of construction on projects, that drive the costs up, and further delay progress in Indian Country.

Thank you very much, Mr. Chairman, and I would be happy to answer any questions.

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

The CHAIRMAN. Thank you, Pat.

Since you were last, let me ask you first, you focused quite a bit on the 6-percent figure. In your Self Governance negotiations with the Bureau, it was revealed that the Bureau routinely withholds that 6-percent funding in both construction funds and project-related administrative funds. Some people call that double dipping. Do you see that as a form of keeping money twice?

Mr. RAGSDALE. Yes, sir; without seeing what the BIA's backup is, it appears to me that that is not appropriate.

The CHAIRMAN. They also withheld 6 percent for administrative funds associated with the two Self Governance tribes. What rationale would they have for doing that with Self Governance tribes? Do you have any idea?

Mr. RAGSDALE. If I may, let me let Melanie Knight address that, if it is all right with the Chair.

The CHAIRMAN. Melanie, please come up a little closer to the microphone, so that we can have it on tape.

Mr. RAGSDALE. She is our Self Governance Administrator.

The CHAIRMAN. All right.

Ms. KNIGHT. Good afternoon. Mr. Chairman, in our Self Governance negotiations, the Bureau was asked by us to justify retaining the 6 percent, and what functions were being performed for the 6 percent.

In fact, we went through a very detailed functional analysis, which showed what was being transferred to the tribe and what was being retained by the Bureau.

Although functions were shown as being transferred to the tribe for administration, no funds followed that transfer, unfortunately. So while they retained the entire 6 percent, it was evident that some significant administrative functions were being transferred to the tribe in its operation of the program.

The CHAIRMAN. Without the money forthcoming.

Ms. KNIGHT. Exactly.

The CHAIRMAN. Does that 6 percent exist in other Self Governance Programs?

Ms. KNIGHT. To my knowledge, yes, that is a routine withholding, the 6 percent. It is also my understanding that in other regional offices, additional construction funds are retained, as well, for administrative purposes.

The CHAIRMAN. Okay, thank you for appearing.

David, let me ask you a little bit about your land base. I understand that to get to the island now, there is a ferry used. Is that correct?

Mr. WHITENER. No, sir; you have to go by boat.

The CHAIRMAN. You have to go by boat? So do those boats also carry automobiles, or not?

Mr. WHITENER. No; there is no public system at all.

The CHAIRMAN. Is there a bridge, at all, to the mainland?

Mr. WHITENER. No.

The CHAIRMAN. There is no bridge at all?

Mr. WHITENER. We do have a headquarters on the mainland.

The CHAIRMAN. I see.

Mr. WHITENER. We have purchased some property, about 300 acres.

The CHAIRMAN. Is most of your tribe's land based on the mainland, or on the island?

Mr. WHITENER. Most of it is on the island.

The CHAIRMAN. We talked a little earlier about the delay, and what some tribes regard as kind of foot dragging in the negotiated rulemaking. It has been almost 3 years, as I mentioned earlier, since TEA–21 was enacted. Two years later there has still been no formula.

Has there been any consequences of that delay to your tribe, if I can use that word, the foot dragging of that rulemaking authority?

Mr. WHITENER. I would like to defer that question, if I could, to our senior planner, who is also here today, David Frey.

The CHAIRMAN. Where is he?

Mr. WHITENER. Right here.

The CHAIRMAN. If you would just go ahead and identify yourself, for the record.

Mr. FREY. My name is David Frey. I am the Senior Planner with the Squaxin Island Tribe.

I would say, yes, for the Squaxin Island Tribe, as for some 350 tribes in the Nation, that really have not fully participated in the IRR Program, the delay in the negotiated rulemaking process does cost. We want to participate in this program. That is why we are participating in the rulemaking process.

We think there is foot dragging by the BIA. It is not a process that they want to proceed with. I think they are trying to frustrate the process.

The current IRR program really benefits about 150 tribes in the Nation. As part of their frustration of the process, in identifying the committee, the Secretary of the Interior, we think, stacked the

committee. He was directed to have representation from small, medium, and large tribes.

The CHAIRMAN. So you think it benefits large tribes, first?

Mr. FREY. I believe so. There were 45 tribes in 1999 that received at least $1 million from the IRR Program. They are about 60 percent represented on the committee.

The Squaxin Island Tribe is probably about 250th; or so, we are not even that. We are probably about in the middle. We are probably the smallest tribe represented on the committee. There are only a couple of representatives from probably the smallest 350 tribes in the Nation.

That is just one effort that the Interior Department has made in frustrating this process. They do not want to do it.

We would like to see it proceed, and we would like to see it continue. We think that the tribes are working together, coming to some tough decisions, and reaching agreement. But we need the assistance of Congress to force the Bureau of Indian Affairs to make sure that the process proceeds.

The CHAIRMAN. I see. Thank you.

Let me ask Mr. Red Tomahawk, if a pilot program for direct contracting with the Federal Lands Highway Administration becomes law, would your tribe apply to participate in the program? Do you believe you would use it?

Mr. RED TOMAHAWK. As the program director, I would make the recommendation that we do it.

Mr. RED TOMAHAWK. Mr. Chairman?

The CHAIRMAN. Yes; please.

Mr. RED TOMAHAWK. You know, on your last question, I sit as one of the tribal cochairs for the Negotiated Rulemaking Committee. Presently, even as I am speaking, the Negotiated Rulemaking Committee is in Green Bay, where we are going to be meeting all of tomorrow and Friday.

But it needs to be understood that when we started the negotiated rulemaking, that was last March of last year. The legislation of the law said that there would be a rule on April 1 of that same year.

So you know, we have started backwards. As far as the committee, it has been 1 year, this last March. It is rather a short timeframe. Yet, in comparison with other rulemaking committees, the months have been shorter than other rulemaking committees that have been around.

The CHAIRMAN. Well, that is your rationale for recommending that there is an extended date for the rulemaking process. Is that correct?

Mr. RED TOMAHAWK. Well, we believe that we are going to be able to have, I believe, a rule that is going to be proposed at the end of July, next month.

The CHAIRMAN. You know, extending the rulemaking process, the date, may be the right thing to do. I do not know. But in some respects, I wonder if it just will not drag it out longer.

Mr. RED TOMAHAWK. With all due respect, Mr. Chairman, I disagree with that. You know, the committee is comprised of the 12 geographical areas. They are very knowledgeable in the Indian Reservation Roads Program.

So with all respects to the tribes, coming from these different areas, and looking at the issues that they are faced with, they are all different issues.

You know, for our tribe, we are faced with the freeze and a thaw of the winter months, and what it does to our road system, every year. It is different for each geographical area of tribes on the committee.

Mr. RAGSDALE. Mr. Chairman, the Cherokee Nation would concur with that. I mean, even though there are problems with the process, because of the positions that we have already talked about, my staff advised me that there are a lot of other issues that they are making progress on. So they would not want to abandon it. If we abandon it now, we already know what the Federal position is going to be.

The CHAIRMAN. Yes; I understand.

President Vicenti, given that the health and safety approval process can somewhat be repetitive or redundant with tribes, and the Bureau often does the same thing twice, did you read and do you support the health and safety language of this particular bill, S. 2283?

Mr. VICENTI. Well, I have not read that part of it.

The CHAIRMAN. Okay.

Mr. VICENTI. But we are kept aware of the issues on things that should be put into that. There are a lot of highways that go through our reservation, and there are a lot of safety factors involved. Currently, we have a lot of construction going on.

One of the points that I would like to make is, all of the issues that we have dealt with, as far as the BIA or anybody else is concerned, every time there is a policy that is put in place, we are always left out of the issue.

Like what was said earlier, we were not included in this process until at the end of the process, when everything had already been said. So I think that we need to be a little more instrumental in how this process is set up, because we are the ones getting affected by the process.

The CHAIRMAN. Certainly, yes, that is one of the concerns that we have heard a good number of times.

Well, I appreciate everybody's being here. I am sorry that we will have to move on, because our votes will be up pretty soon. But other members of the committee may wish to submit some questions.

Senator Inouye, I am sorry to say, is a little bit under the weather today and could not be here. As you probably know, he was honored with America's greatest honor the other day, receiving the Medal of Honor for his heroism in World War II, as part of the 442d Nisei Battalion, which was the most decorated battalion of World War II.

Perhaps the excitement of all that might have gotten to him a little bit for the day. But we wish him a very speedy recovery. I will look forward to his questions of you, also.

With that, we will keep the record for the next 2 weeks. So if you have any additional comments, any written testimony, or other things that you would like to submit, we will include that in the record.

With that, the committee is adjourned.

[Whereupon, at 3:34 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF KENNETH R. WYKLE, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, WASHINGTON, DC

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today to testify on S. 2283, "The Indian Tribal Surface Transportation Act of 2000." The Administration has serious concerns regarding several provisions of this bill, which I will discuss. However, 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 update on our progress in implementing provisions in the Transportation Equity Act for the 21st Century (TEA–21) affecting the IRR program.

The IRR system provides access to and within Indian reservations, Indian trust land, restricted Indian land, and Alaska Native villages. These roads link Native American housing, schools, emergency services, and places of employment., An adequate system of roads and bridges is a key element of economic development on tribal lands.

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 26 percent of IRR bridges are 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 also affects safety. The annual fatality rate on Indian Reservation Roads is more than four times the national average.

TEA–21 reaffirmed the Federal Government's commitment to providing safe and efficient transportation for Indian lands by authorizing $1.6 billion in funding for the IRR program for fiscal years 1998–2003. TEA–21 also strengthened the commitment of the Federal Government to increasing the involvement of Native Americans in transportation programming and planning. For example, TEA–21 clarified that funds under the IRR program shall be available to tribal governments from the Bureau of Indian Affairs (BIA) for direct contracting of transportation projects. TEA–21 also required the development of an IRR program funding formula and regulations through a negotiated rulemaking procedure that reflects the unique government-to-government relationship between the Indian tribes and the United States.

The Department of Transportation is committed to building more effective day-to-day working relationships with Indian tribal governments reflecting respect for the rights of self-government and self-determination, based on principles of tribal sovereignty.

A DOT Order delineating policy for working with tribal governments was issued on November 16, 1999, during Native American Heritage Month. This Order implements President Clinton's Memorandum on Government-to-Government Relationships with Native American Tribal Governments and his Executive Order No. 13084, "Coordination and Consultation with Indian Tribal Governments." The Order

is to ensure that the DOT's programs, policies, and procedures are responsive to the needs and concerns of American Indians, Alaska Natives, and Tribes. The Order emphasizes communication with tribes and tribal representation in relevant DOT activities.

The Federal Highway Administration (FHWA) and the BIA, in consultation with tribal governments, have developed the "Indian Reservation Roads Program Transportation Planning Procedures and Guidelines" (TPPG). The TPPG has been widely distributed to the tribes as guidance on transportation planning. Currently, FHWA is drafting a regulation consistent with this guidance for IRR transportation planning procedures and management systems, as required in 23 U.S.C. section 204(a)(2).

The TPPG clarifies policies related to funding issues and eligible activities and defines the relative transportation planning roles and responsibilities of the BIA and Indian tribal governments. The TPPG is a valuable tool for tribes entering into planning activities with other tribes, as well as with State and local governments.

There are two categories of bridges covered under the IRR Bridge program-BIA and non-BIA owned. Approximately 23 percent of the 779 bridges owned by the BIA are deemed deficient, as are 27 percent of the 3,006 State and locally owned non-BIA bridges. Section 1115 of TEA–21 amended title 23, U.S.C., to require the Secretary to establish a nationwide priority program for improving deficient IRR bridges, using a set-aside of not less than $13 million of IRR funds per year.

An Indian Reservation Roads Bridge Program (IRRBP) Federal Register Notice was published on February 12, 1999, soliciting comments on project selection and fund allocation procedures. An Interim Final Rule (IFR), delineating the project selection and final allocation procedures for the IRRBP and requesting comment, was published on July 19, 1999. FHWA will operate under the IFR, but will continue to evaluate the comments received and the operation of the program set forth in the IFR.

During fiscal year 1999, 11 deficient IRR bridge projects were submitted. All 11 were found eligible and were funded, using approximately $8.9 million of the IRRBP funds. An unspent balance from fiscal years 1998 and 1999 of approximately $17 million in bridge funding was carried over into fiscal year 2000. In fiscal year 2000, $1.5 million of bridge funding has been allocated thus far for 6 eligible deficient IRR bridges.

In cooperation with the BIA and the Tribal Technical Assistance Program (TTAP) Centers, FHWA conducted 11 training sessions on the IRR bridge program procedures from October 1999 to May 2000. Indian tribal governments were encouraged to develop plans, specifications, and estimates (PS&Es) for deficient IRR bridges and to apply for funding for rehabilitation or replacement. The BIA is using approximately $4.2 million of fiscal year 2000 supplemental IRR funds toward design work for the rehabilitation or replacement of 127 deficient IRR bridges. When these bridge projects are completed and funded, they will account for the unobligated IRR Bridge program funds.

Section 1115 of TEA–21 required the Secretary of the Interior to establish an IRR funding formula and IRR program regulations using negotiated rulemaking with Indian tribal governments. After early initial meetings with the FHWA, the BIA: (1) hired the Federal Mediation and Conciliation Service to facilitate the rulemaking; (2) established a process for selecting tribal representatives for the committee; (3) developed an agenda for an informational meeting with Indian tribal governments; and (4) established the 42-member rulemaking committee. Secretary Slater designated three FHWA employees to serve on the rulemaking committee and work groups. Six full committee meetings have been held since the October 20, 1999, Senate Indian Affairs Committee Hearing, and the committee is meeting this week in Green Bay, WI. In addition, all of the four work groups of the committee have held additional meetings. Although the committee has not yet completed its work, most of the issues have been analyzed and regulations drafted in "question and answer" format. The formula work group is currently working on various fund distribution formulas. The Department of Transportation remains fully committed to providing the necessary staff and IRR funding for this rulemaking and is looking forward to its successful completion.

With this overview of the IRR program, I now would like to turn to S. 2283. The bill contains three significant provisions under section 2 that raise serious concerns.

Section 2(a). This provision adds the Indian Reservations Road program to the list of programs exempt from the Obligation Limitation imposed on Federal-aid highway programs in section 1102 of TEA–21. We do not support exempting IRR funds from the obligation limitation and thereby creating additional mandatory spending. Taking these funds outside the TEA–21 guarantees would raise total

highway spending and reduce the budget surplus unless there is an offset. We do not support amending TEA–21 to undo the TEA–21 guarantee.

To increase resources for the IRR program, the Administration, in its fiscal year 2001 budget, proposed that the IRR program be included among the programs under section 1102(c)(1) of TEA–21 for which obligation limitation is set aside in order to provide 100 percent of the funding authorized for the program. This proposal would return 100 percent funding to the IRR program, and offset the increased funding availability for the IRR program with reduced funding availability for other Federal-aid highway program components, It would not affect the funding for non-highway DOT programs. Moreover, in its fiscal year 2001 budget, the Administration proposed that an additional $75 million be made available to the IRR program from Revenue Aligned Budget Authority (RABA) funds, in addition to formula RABA funds.

We note the Senate fiscal year 2001 DOT Appropriations bill provides an additional $33.6 million for the IRR program from funds appropriated for the FHWA administrative expenses. We support the Senate provision.

Between fiscal year 1983 and fiscal year 1997, the FLHP received 100 percent obligation limitation each year equal to its new and carryover funds. The impact of obligation limitation on the IRR program was changed by TEA–21. Under section 1102 of TEA–21, the IRR program now receives obligation limitation for new funds using the same ratio that is applied to other allocated 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. Approximately $91 million total of IRR contract authority was redistributed for fiscal years 1998, 1999, and 2000. Even with the increased resources provided in TEA21, the partial loss of authorized funds-potentially a loss of in excess of $192 million over the life of TEA–21-has a significant impact on the IRR program.

Section 2(b). Another provision of S. 2283 would amend section 202 of title 23 by authorizing a demonstration project for which the Secretary of Transportation may select up to 12 tribes. The intent of this amendment is not completely clear, but could be interpreted to mean that upon request of a tribe selected, the Federal Lands Highway Program could be required to make funds for the Indian Reservation Roads program directly available to the tribe. The tribal government could then enter into contracts in accordance with Public Law 93–638, the Indian Self-Determination and Education Assistance Act (Self-Determination Act).

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 145 of title 23., U.S.C., that the sovereign rights of States to determine which projects shall be federally funded are protected, the FHWA has a history of working to develop competent, capable organizations prior to delegation of program responsibilities. In section 302 of title 23, U.S.C., Congress required that States participating in the Federal-aid highway program must have a "suitably equipped and organized" department to carry out the duties required under title 23. We believe that it would be wise to assure that any tribe selected for participation under the pilot program should also have established a "suitably equipped and organized" department. Unlike the applicant pool requirements in Title III of the Self-Determination Act, the proposed demonstration project applicant pool requirements in S. 2283 would not require a tribe to have any experience in the IRR Program nor to have successfully completed one or more IRR projects or contracts.

Currently, the FHWA and the BIA have authorized two Self Governance agreement pilots with tribal governments. The pilot being conducted with the Red Lake Band of Chippewa Indians in Minnesota began in fiscal year 1999 and the pilot with the Cherokee Nation in Oklahoma in fiscal year 2000. Both pilot agreements include provisions allowing FHWA/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 will provide direction concerning tribal project oversight, along with identifying any unforeseen operation or process problems.

FHWA believes that these Self Governance pilot activities we already have underway can accomplish many of the same goals of the pilot program proposed in S. 2283.

With the entire administration of the Indian Reservation Road program subject to change as a result of the Negotiated Rulemaking Process stipulated in TEA–21, we believe that proposed changes to the program contained in S. 2283 should be deferred until the Negotiated Rulemaking process is completed. Any change in the distribution of funds could harm the development of the formula for IRR funds. The current target date for issuance of the final rule is early calendar year 2001.

Section 2(c). A third major provision of S. 2283 would place cap of 6 percent of the contract authority amounts made available from the Highway Trust Fund to the BIA, for its administrative expenses related to the IRR program and to individual projects. This subsection further states that such administrative funds are to be made available to tribal governments upon request to be used for the associated administrative functions assumed by the Indian tribe pursuant to the Self-Determination Act.

Section 2(c) 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 construction projects performed by tribes under the Self-Determination Act. Under section 2(c), tribes would be able to assure that proposed construction is in accordance with health and safety standards without requiring concurrence or approval by the agency with jurisdiction for the road or bridge. This provision is requiring the Federal Government to "trust" but not be able to "verify" the safe design and construction of highways, bridges, and other facilities serving Indian lands and communities.

Because the majority of the improvements funded under the HM program involve roads and bridges under the jurisdiction of BIA, FHWA believes it is necessary to have BIA concurrence that the proposed construction meets all health and safety standards prior to the use of IRR funds.

To conclude, we are working to implement the IRR provisions of TEA–21 as quickly and effectively as possible, and are committed to working with Indian tribal governments and the BIA to improve program delivery. We recognize that transportation is a critical tool for tribes to improve the quality of life in their communities and that there are still many challenges to overcome. That is why we are urging appropriators to provide the full $350 million we requested in the President's fiscal year 2001 budget submission for transportation services to Native Americans. We take very seriously the concerns regarding the IRR program voiced by tribal representatives at the hearing last October 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 Congress on these important issues.

Mr. Chairman, thank you for the opportunity to present this testimony. I will be glad to answer any questions you or other committee members may have.

PREPARED STATEMENT OF RODGER VICENTI, PRESIDENT, JICARILLA APACHE TRIBE

Good morning, Mr. Chairman, Mr. Vice Chairman, and members of this committee. I am Rodger Vicenti, President of the Jicarilla Apache Tribe. I appreciate the opportunity to testify on Indian Reservation Roads issues.

With me is Mark Wright, our Tribal Engineer who directs our Contract Roads Department. He is also a member of the TEA–21 Negotiated Rule-Making Committee and has an informed understanding of operating the BIA roads program through 638 contracting.

My testimony primarily will address the "obligation limitation" imposed by the TEA–21 legislation on funding for the Indian Reservation Roads (IRR) Program. In addition, I will briefly discuss the TEA–21 negotiated rulemaking process.

The Jicarilla Apache Tribe is a federally recognized Indian Nation with over 3,000 enrolled members, most of whom reside on the Jicarilla Reservation. Our Reservation is located in northwestern New Mexico and has over 980,000 acres of tribal land. Although our Reservation is substantially smaller than our original 50 million acre homeland, it has never been broken apart or subjected to the disastrous allotment policy.

The Jicarilla Apache tribal government exercises sovereign authority over our territory and our members. We provide a full range of governmental services to all who reside on or near the Reservation. We also operate several BIA programs through 638 contracts, including Roads, Forestry, and Natural Resources departments. Our Tribe funds 90 percent of our governmental operations from our oil and gas revenues and other economic activity. However, the lack of good roads, an adequate water system, communications and other necessary infrastructure on our Reservation interferes with additional economic development and job opportunities.

Our Contract Roads Program administers over 1,000 miles of BIA roads on our Reservation with an annual budget of $2.4 million. The hundreds of miles of our gravel and earth-surfaced roads will require complete construction to serve our residents. These roads make up approximately 70 percent of the roads on the Jicarilla

Apache reservation. This funding is inadequate given the fact that roads on the Reservation cost $ 1 million per mile to build.

Two years ago, the Jicarilla Apache Tribe along with other tribes worked hard to convince Congress to increase funding for Indian roads and bridges during the ISTEA re-authorization process which resulted in the TEA–21 legislation. The inadequate and unsafe conditions of our roads provided the necessary justification for doubling the funding for Indian Reservation Roads.

We also urged Congress to make all roads funds available to tribes at the beginning of the fiscal year in the form of advance funding, so that project planning and development could occur with maximum flexibility at the local level. Congress agreed and included this provision in TEA–21.

Though we received far less than what we needed, we are grateful for the work of this Committee and others, especially Senator Domenici, to secure increased funding from approximately $191 million a year to $275 million and to authorize advance funding for the IRR Program.

Unfortunately, new cuts were imposed on the IRR funding through what is known as the "obligation limitation" in TEA–21. In years past, IRR funds were exempt from the obligation limitation. As I understand the obligation limitation, the Federal Highway Administration (FHWA) is required to withhold a certain percentage, or approximately 10 percent of the total IRR "obligation authority" amount at the beginning of each fiscal year to be redistributed near the end of that fiscal year to recipients with projects that are immediately ready for funding. However, in expanding the obligation authority Congress failed to include Indian tribes. As a result, tribes are barred from sharing in the redistribution, and therefore money authorized and appropriated for reservation roads is diverted to states for their general purposes.

As a result of the obligation limitation, Indian country lost approximately $25 million of the $225 million we were promised for fiscal year 1998 and about $32 million of the $275 million we were promised in fiscal year 1999. We stand to lose even more in fiscal year 2000. Furthermore, the 1 percent set aside or approximately $13 million additional funding for Indian bridges in ISTEA was removed from TEA–21, and Indian bridge funding now must come out of the IRR funding. While we are grateful for the increased funding and expanded advanced funding authority under TEA–21, the obligation limitation and the loss of the bridge set aside funding has resulted in a mere $12.4 million increase to the IRR construction program nationwide.

This was an unintended result that is not only unfair to Indian country but also inconsistent with the trust relationship between the United States and the Indian tribes. The Jicarilla Apache Tribe objects to the withholding of IRR funds and we believe, at the very least, that any withheld IRR funds should be redistributed back to the IRR program.

A legislative change is necessary to exempt IRR funds from the obligation limitation. S. 2283 introduced by Chairman Campbell, Vice Chairman Inouye and others would address the obligation limitation problem as well as other IRR Program related issues. Senators Domenici and Bingaman also introduced S. 2093, which solely addresses the obligation limitation problem. These bills would assure that the IRR Program is funded at the fall authorized level of $275 million for the remaining 3 years of TEA–21. The proposed legislation would also exempt from the obligation limitation any additional IRR funding increases that Congress may appropriate. The estimated impact on all other TEA–21 programs would be only about 0.1 percent. Although this amounts to a reduction of roughly $250,000 to the State of New Mexico, the New Mexico Transportation Department supports S. 2093, recognizing the overall funding increases that would flow into the state. This amounts to approximately $8 million.

The Jicarilla Apache Tribal Council by resolution supports S. 2093 to eliminate the obligation limitation that is now imposed on the IRR funding. This resolution also supports issues contained in S. 2293, such as clarifying that the "up to 6 percent" administrative funds must be made available to Indian tribes in accordance with Public Law 93–638, and establishing an IRR Pilot Program to allow tribes to enter into agreements directly with the FHWA under Public Law 93–638. I request that this resolution to be part of the record.

With regard to the Negotiated Rulemaking process, we strongly believe that TEA–21 must be amended to extend the deadline for completing the funding distribution formula to April 2003. I am informed that this on-going process will require additional time to complete regulations that Indian country will be bound by for the next generation. Our representative on the Negotiated Rule-Making Committee is prepared to answer any specific questions you may have regarding the committee's work.

Thank you again for the opportunity to provide this testimony. Both Mr. Wright and I are available to answer any questions you may have.

Supplemental Comments

On behalf of the Jicarilla Apache Tribe, I would like to submit supplemental testimony for the record regarding the Indian Reservation Roads hearing held on Wednesday, June 28, 2000.

With regard to the Negotiated Rulemaking process, we continue to strongly support the extension of the TEA–21 deadline to April 2003 for completing the funding distribution formula and regulations for the IRR program. The Negotiated Rulemaking Committee is very close to finalizing the funding formula and with additional time will be able to make informed decisions that will affect Indian country for years to come. Our representative on the Negotiated Rulemaking Committee reports that, considering the length of time that the Negotiated Rulemaking Committee has met, it has made considerable progress. Previous rulemaking committees (Public Law 93–638, self-governance, and NAHASDA) have taken longer than 2 years to complete their work. The TEA–21 Negotiated Rulemaking Committee has extensive and complex issues to negotiate within a very large committee, which extends the time needed to arrive at a fair and equitable solution.

We are concerned over the conflict arising between the tribes and the Bureau of Indian Affairs. The Negotiated Rulemaking Committee has identified 250 issues that need to be addressed, including, among others, indefinite-term contracting and acceptable standards for design, construction and funding. The workgroups have reached consensus and developed draft language on all but eight of these issues, which are now ready for consideration by the full committee. The tribes are concerned that if the Bureau of Indian Affairs steps in at this late date and takes control over these regulations, it is subverting the negotiated rulemaking process. It is imperative to Indian tribes that they maintain control over the use of funds that are received for Indian Reservation Roads. We disagree with Assistant Secretary Gover's testimony that the tribes are at an impasse and that the tribes will not be successful in completing this work. We believe that the progress the committee is making is the best way to resolve these issues and we ask for support in extending this deadline to allow the committee to continue its extremely important work and come to a successful solution for Indian country.

TESTIMONY OF KEVIN GOVER
ASSISTANT SECRETARY - INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON S. 2283

June 28, 2000

Good morning, Mr. Chairman and Members of the Committee. I am pleased to be here today to provide you with the Department of Interior's views on S. 2283, the "Indian Tribal Surface Transportation Act of 2000"and its impact on the current Indian Reservation Roads (IRR) program as jointly administered by the Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA). The Department opposes S. 2283.

HISTORY

The IRR program was established on May 26, 1928, by Public Law 520, 25 U.S.C. 318(a). The partnership with the BIA and the FHWA began in 1930 when the Secretary of Agriculture was authorized to cooperate with the state highway agencies and the Department of the Interior (Interior) in the survey, construction, reconstruction, and maintenance of Indian reservation roads serving Indian lands.

The first Memorandum of Agreement between the BIA and the FHWA was executed in 1948. In 1958, the laws relative to highways were revised, codified, and reenacted as Title 23, U.S.C. by Public Law 85-767. The new title contained a definition of IRR and bridges and a section devoted to Indian reservation roads.

Since the passage of the Surface Transportation Assistance Act of 1982 (Public Law 97-424), which incorporated the Indian Reservation Roads program into the Federal Lands Highway Program (FLHP) and provided funding from the Highway Trust Fund, the IRR program has enjoyed an expanded partnership with the FHWA and increased transportation opportunities for Indian tribal

governments.

With the enactment of the TEA-21, the program changed to include a Nationwide Priority Program for improving IRR deficient bridges, and negotiated rulemaking with Indian tribal governments required for IRR program procedures and the "relative need" funding formula.

INDIAN RESERVATION ROADS PROGRAM

The IRR program is authorized under the FLHP, 23 U.S.C. 204. The use of IRR funds is also defined in 23 U.S.C. 204. The authorized funding level by TEA-21 was $225 million in 1998 and $275 million for each of fiscal years 1999 through 2003. The program is jointly administered by the BIA Division of Transportation (BIADOT) and the Federal Lands Highway (FLH) of the FHWA.

The purpose of the IRR program is to provide safe and adequate transportation and public road access to and within Indian reservations, Indian lands and communities for Native Americans, visitors, recreationists, resource users and others while contributing to economic development, self-determination, and employment of Native Americans.

Currently, the IRR system consists of approximately 41,430 kilometers (25,700 miles) of BIA and tribally owned roads and 41,270 kilometers (25,600 miles) of state, county and local government public roads with one (1) ferry boat operation (Inchelium-Gifford Ferry of Washington).

From the yearly authorization, the FHWA reserves up to 1.5 percent for their administration of the funds. The BIADOT and the FLH develop a plan for using the remaining funds. This plan includes operating expenses for the Federal Lands Highway Coordinated Technology Implementation Program (CTIP); the Local Technical Assistance Program (LTAP) centers for tribal governments; and BIA administration (not to exceed 6 percent, as authorized in the annual Interior Appropriations Act since 1984). The BIADOT administers transportation planning studies for the reservations, bridge inspections, and the updating of the road inventory. In addition, activities such as public

outreach to tribes and the negotiated rulemaking are funded and managed by the BIA. An additional 2 percent of the IRR funds are set-aside for transportation planning by tribal governments.

TRANSPORTATION EQUITY ACT (TEA-21) REGULATORY NEGOTIATIONS

Beginning in March 1999, the Secretary of the Interior (Secretary) established a negotiated rulemaking committee to begin developing program procedures and a funding formula for the IRR program. To date, approximately 14 meetings have been held in at various locations around the country. The committee is composed of 29 tribal representatives and 13 representatives of the federal government. In addition to completing work on the regulations and the formula, the committee is also tasked with providing a mechanism to distribute funding in FY 2000.

TEA-21 funding in FY 2000 could not be distributed without an authorized funding formula. In addition, approximately $18.3 million were provided by the FY 2000 Department of Transportation Appropriations Act. As part of this committee consensus to distribute the critically needed funding to projects and awaiting tribal transportation needs, the committee made recommendations to the Secretary on the distribution of FY 2000 funding. They recommended a mechanism to distribute the additional $18.3 million to the tribes with inadequate transportation planning and to reservations with deficient IRR bridges. Following this direction the Secretary published a Notice for public comment recommending that the FY 2000 IRR funding be distributed in accordance with the Relative Needs allocation formula. As an emergency measure, one half of the FY 2000 funds were distributed upon publication of the temporary rule of February 15, 2000. After receiving and reviewing comments from this first notice the Secretary published a second temporary rule on June 16, 2000, to distribute the remaining FY 2000 IRR funds. The second rule also addressed and corrected the distribution data affecting two states in which no data was provided.

The goal of the committee is to publish a Notice of Proposed Rulemaking by the end of this calendar year. Adjustments will need to be made on the implementation of the rules and the funding formula. The committee has made noticeable progress in the last 6 months.

CONCERNS WITH S. 2283

S. 2283 proposes the following additions and changes to Title 23, Highways. First, the bill proposes to make the IRR program an exception to the obligation ceiling. In fiscal years 1998, 1999 and 2000, approximately $91 million of the IRR contract authority affected by the obligation limitation and was not available for the IRR program. The BIA is in favor of a provision that will provide 100 percent obligation limitation for the IRR program, as was the case between fiscal years 1983 and 1987 when the IRR program became part of the Federal Land Highway program until the enactment of TEA-21. The FY 2001 President's Budget proposed to provide the IRR program with 100 percent obligation limitation. However, we oppose making this program mandatory. The impact to the program has been such that since the enactment of TEA-21, approximately 341 more miles of improved earth roads or 270 more miles of paved surface roads could have been constructed based on the approved Transportation Improvement Program (TIP). This impact to tribal projects is that approximately 169 more tribes could have had their projects funded through the end of FY 1999.

Second, S. 2283 proposes to establish a pilot program within the FHWA-FLH program. We currently have two pilot projects initiated under the Office of Self-Governance. These demonstration projects were advanced as pilots to assist the participating tribes in fully implementing provisions of the law in the absence of revised regulations for the IRR program (25 CFR 170) which are currently being addressed in the negotiated rulemaking. We have participated with the FHWA in the negotiations of these pilots. The establishment of direct pilots, as proposed by S. 2283, with FHWA does not address the involvement of the facility owner. In the case of the IRR, approximately one half of the IRR system is 'owned' by the United States. As the facility owner, the responsibility for these systems remains with the BIA, not the FHWA or the tribes. For non-BIA systems on the IRR, a similar condition exists wherein the local public authority will be responsible for those roads. As the responsible "facility owner", it is necessary for the BIA to review and approve the performance of functions such as the environmental and historic preservation activities as well as approval of the plans, specifications and the engineer's estimate.

The use of these roads is not exclusive to tribes, they are public roads. As a local public authority,

tribes can plan, participate and prioritize projects with the other public authorities, but the final approval of road improvements remains with the facility owner. This view of project involvement and the approval of improvements is shared by the FHWA. It is not clear what the Secretary's Trust Responsibility is in the FHWA pilots.

Third, S. 2283 proposes to limit the amount of funding available for the BIA to perform all program management and project functions within the amount available as "not to exceed 6 percent of the contract authority available from the Highway Trust Fund".

During the debate regarding TEA-21, the states argued that they should be given the flexibility to spend some of the trust fund money for management costs. The states argued that in 1994 they spent an amount comparable to about 5.5 percent of their own state funds managing all Highway Trust funded programs. In response to arguments, when Congress enacted TEA-21, it decided to go beyond the appropriations process and create a permanent fix in Section 302 of Title 23 which addresses management costs for states and agencies.

To limit the BIA or any highway agency to a fixed amount like 6 percent will impact the delivery of services provided by the program management arm as well as the engineering (preconstruction and construction) arm of the BIA to projects not contracted by tribes under the Indian Self-Determination and Education Assistance Act, as amended. The recent passage of TEA-21 also repealed the long standing provision in 23 U.S.C. 106(c) which limited the amount of construction engineering to 15 percent of the construction costs. Since 1994, we have found that the average cost per year of engineering alone on both contracted functions as well as within the BIA transportation workforce, that the cost of preconstruction engineering (PE) and construction engineering (CE) associated with individual projects was about 20.5 percent combined (13 percent for PE and 7.5 percent for CE). We are opposed to any provision that limits the amount of funding for program management; and project related preconstruction and construction engineering costs to a fixed amount of 6 percent.

Our final concern with S. 2283 is language within Section 2 (c) which proposes that an Indian tribe or tribal organization may advance a project to construction if the tribe provides assurances that the construction will meet or exceed proper health and safety standards. Under Section 403(e)(2)of the Act it states "In all construction projects performed pursuant to this title, the Secretary shall ensure that proper health and safety standards are provided in the funding agreement".

Mr. Chairman, I would like to take a few minutes to relate some Tribal views we've heard from several negotiated rulemaking meetings. One view is that the Secretary may carry out his existing responsibility under Section 403(e)(2) of the Act by delegating this health and safety responsibility to the tribes. The difficulty with this view is that the Secretary cannot ensure health and safety since the tribe is performing the health and safety function and the Secretary is not monitoring performance during the design and construction process. Thus, under this scenario, the Secretary has no responsibility for the outcome of the construction project involved during the design and construction process.

A second view, as reflected in S. 2283, is that the tribe will provide health and safety assurances, for the construction, in the plans and specifications and that the plans are approved by a licenced professional engineer. This only covers the health and safety prior to actual construction. It also appears to eliminate the Secretary's health and safety responsibility during the actual construction process and does not provide authority for the Secretary to (1) monitor the construction process to ensure that health and safety standards are met; (2) ensure before construction begins the adequacy of the tribal inspection system, including licensed engineers; (3) review major change orders to ensure that a safe facility is constructed; (4) if necessary decline proposals that are unsafe or suspend construction that does not meet health and safety standards until corrective measures are proposed; and, if necessary, (5) decline major change orders that do not meet health and safety requirements.

Either of these views assumes that the Secretary can ensure health and safety without any authoritative involvement in the design and construction of the project. It would be unfair and unreasonable to assume that the Secretary has a trust or any other responsibility for safe construction

under either of these approaches. We are also concerned that the Secretary would not have the ability to (1) identify construction that does not meet the plan or specification requirements, which may result in an unsafe or poorly constructed facility that would require removal(demolition) or major reconstruction, and (2) to identify hazards that could subject construction workers and the traveling public to unsafe conditions during actual construction.

Another view is that the ability of ensuring health and safety is covered under the government's trust responsibility. Any statutory amendment giving total control of construction to the tribes, as in S. 2283, should clearly provide that the United States has no trust or any other responsibility for the outcomes of the construction. Otherwise, S. 2283 should be amended to allow the Secretary authority to monitor construction, similar to Section 403(e)(2) of the Act.

Furthermore, the health and safety provisions of S. 2283 appears to change Title I, which applies to hospital construction for the Indian Health Service, irrigation projects for the Bureau of Reclamation, school construction for the BIA and dam safety construction, among others. This would appear to remove Secretarial monitoring for health and safety for all Title I and Title IV construction, as weil.

CONCLUSION

In conclusion, the Department can and does support providing 100 percent obligation limitation to the IRR program as was proposed in the President's FY 2001 budget. However, the Department does not support the first provision that would make the program mandatory. We do not support the three provisions of S. 2283 that would limit the ability of the BIA to adequately meet its responsibility for the proper management, design and construction of Indian reservation roads. This concludes my prepared statement. I will be happy to answer any questions you may have.

Insert on page 7, line 2

Summary of Obligations for FY1998 and FY1999

Category	FY1998		FY1999	
	$ in 000s	% Contract Authority	$ in 000s	% Contract Authority
Project Construction	$153,325	70.4	$192,641	73.7
Pre-Construction and Construction Engineering (Project Related Management)	$45,911	21.0	$42,926	16.5
6% Program Management and Oversight or Non-Project Related Program Management	$12,342	5.7	$15,001	5.7
Tribal Transportation Planning	$4,169	1.9	$4,203	1.6
TOTAL	$215,747	99.0	$254,771	97.5

- Project Construction: Actual "on the ground" costs for
  - Construction Materials
  - Construction Labor and Equipment Usage

- Project Related Management: Non-Construction costs for activities directly related to a specific project such as
  - Preliminary Engineering and Contract Administration
  - Construction Engineering and Contract Administration

- Non-Project Related Program Management: Costs not directly related to any one project but necessary to the program, such as
  - Developing and approving design standards
  - Maintaining the bridge inventory database
  - Funding BIA's Division of Transportation Central Office operations

- Tribal Transportation Planning: Planning by Indian Tribal Governments including activities such as
  - Tribal Transportation Improvement Program
  - Measurement of traffic
  - Transit Planning
  - Public Involvement

Source: BIA010 Report, Federal Finance System

BUREAU OF INDIAN AFFAIRS, OBLIGATIONS FOR PROGRAM MANAGEMENT, FY1998 AND FY1999

Insert on page 7, line 2

REGION CODE	REGIONAL OFFICES	FY1998 PROGRAM MANAGEMENT OBLIGATIONS	FY1999 PROGRAM MANAGEMENT OBLIGATIONS
A	Great Plains	509,324.01	504,829.97
B	Southern Plains	345,155.36	415,207.90
C	Rocky Mountain	795,817.68	819,011.01
E	Alaska	1,282,324.68	814,760.20
F	Midwest	499,251.54	548,214.88
G	Eastern Oklahoma	709,941.37	906,809.67
H	Western	1,036,653.36	1,572,336.15
J	Pacific	310,446.56	290,493.95
K	Central Office	2,630,033.33	4,427,322.11
M	Southwest	482,401.91	597,981.52
N	Navajo	2,809,474.63	3,138,234.78
P	Northwest	655,139.23	666,177.34
S	Eastern	276,130.31	300,000.01
TOTAL	OBLIGATIONS	12,342,093.97	15,001,379.49

Source: BIA010 Report, Federal Finance System

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TESTIMONY OF
CHARLES W. MURPHY, CHAIRMAN
STANDING ROCK SIOUX TRIBE
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
HEARING ON S. 2283
A BILL TO AMEND
THE TRANSPORTATION EQUITY ACT FOR THE 21st CENTURY
June 28, 2000

I. Introduction

I am Charles W. Murphy, Chairman of the Standing Rock Sioux Tribe. I would like to thank the Committee for the opportunity to testify in strong support of S. 2283. This bill is critical to address the infrastructure needs of our communities. The Standing Rock Reservation consists of more than 847,000 acres in the States of North Dakota and South Dakota and a population of almost 9,000 people.

At this time I would like to take this opportunity to commend my Tribe's Transportation Director, Pete Red Tomahawk. Mr. Red Tomahawk has been a leader in Transportation for many years. Most recently, Mr. Red Tomahawk serves as a Co-Chair for the Indian Reservation Roads Negotiated Rulemaking Committee. This is a Congressionally mandated committee tasked with the responsibility of improving the management and operation of the IRR Program. Through these efforts tribes hope to improve tribal roads and transportation programs. I would also like to thank this Committee for its support of the Negotiated Rulemaking Committee. Mr. Red Tomahawk serves as Secretary and Treasurer of the Intertribal Transportation Association (ITA). He also serves as Chairman for the Northern Plains Tribal Technical Assistance Program (TTAP), located at the United Tribes Technical College (UTTC) in Bismark, North Dakota.

II. Overwhelming Need

A. Road Construction

On the Standing Rock Reservation, we are faced with dire improvement of community streets, which are paved and not properly maintained because of the lack of maintenance funds. This

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is a common situation regarding road construction on the Standing Rock Reservation. We are requesting more road construction funding.

The IRR road system consists of more than 50,000 road miles. Nearly everyone agrees this figure is significantly understated because of the lack of an updated and adequate IRR roads inventory system. However, even using this admittedly low figure, it is estimated that tribal roads constitute 2.63% of all public roads eligible for TEA-21 funding. Yet, the IRR program receives less than 1% of the funds available under TEA-21 for its entire operation, whether for transportation planning, road design, road construction or simple administration of the IRR program. **On my Reservation alone, we have over a million-dollar backlog in road construction needs.**

B. IRR Maintenance

IRR maintenance funding is in dire need of increased funding for tribal/BIA contracts. Since 1982, the IRR maintenance funding decreased. significantly. And tribal/BIA maintenance has been able to use a band aid effect for our roads. The BIA receives only $25.5 million per year for IRR road maintenance. Mr. Robert Baracker, testifying for the BIA, noted that this figure works out to be less than $500 per year for each mile of BIA-owned road, compared to $4,000 to $5,000 per mile of road spent annually by most state transportation departments to maintain state roads. The BIA estimates that $100 million per year is needed to maintain BIA owned roads adequately. Increased funding for IRR road maintenance is not only the *fair* thing to do, it is the *smart* thing to do. The tribes recognize recognize that it is unwise to spend millions of dollars in federal funds to construct IRR roads and bridges only to see them fall into disrepair and lose years of useful life due to a lack of adequate maintenance. The current $25.5 million dollar appropriation for IRR road maintenance must be increased.

D. Highway Safety

The Standing Rock Sioux Tribe has been a true leader among the 550 tribes in advancing highway safety on our Reservation. Here are a few of our successes:

- Establishing the first Native American Injury Prevention Coalition, located at UTTC in Bismark North Dakota.
- Establishing the first Native American Injury Prevention college associates degree program.
- Establishing the Northern Plains Technical Assistance Program (TTAP).

Finally, associated both with new construction and road maintenance, is the critical need for additional resources for highway safety. Currently, the death rate from motor vehicles accidents among Indian people is 6% more than the non-Indian population. The death rate from alcohol related motor vehicle deaths for Indians is more than double that of the rest of the population. In fact, death as a result of automobile accidents is one of the highest causes of mortality in Indian

country. The National Safety Council estimated that in 1994, motor vehicle crashes cost the United States $169 billion in lost wages, medical expenses and administrative costs. More important, these crashes have cost Indian communities our people.

Tribes have limited access to most of the highway safety funds available under TEA-21. For example, incentive grant moneys for TEA-21 Section 157, the Seat-Belt Incentive grant, and Section 163, impaired driver incentive grants, each providing $500 millions are only available to States. Chapter 1 of Title 23, where these sections appear, does not include Indian nations in the definition of "States." Therefore, we strongly believe, that additional resources must be directed to tribal highway safety programs, including vitally need road improvements, driver training, lighting, signs, seat belt enhancement and drunk driving prevention programs.

III. Obligation Limitation

It is because the needs in this area are so great that the Standing Rock Tribe strongly supports S. 2283. Specifically, Congress must amend TEA-21 to correct the obligation limitation applicability to the IRR Program. We are joined in this position by the states of North and South Dakota. I enclose and wish to be made part of the Record letters from Governor Janklow and Governor Schafer supporting this effort. As you know, while TEA-21 increased the authorized federal funding for the IRR program from $190 million per year to $275 million per year, it also made the "obligation limitation" applicable to IRR funds for the first time. Thus, the promised increase Congress intended has never been realized. The Standing Rock Sioux Tribe realized this error due to the fact that the 1991 ISTEA waived obligation limitation for the IRR program. The Standing Rock Sioux, along with the States of North and South Dakota, request that this error be corrected.

As you know, the "obligation limitation" requires the FHWA to withhold a certain percentage of FHWA program funds authorized to be spent from the Federal Highway Trust Fund so that they can be redistributed to high priority FHWA projects or eligible program participants at the end of the fiscal year. Some federal highway programs, such as the Emergency Relief Program and the Minimum Guarantee Program, are statutorily exempt from this process. Unfortunately, TEA-21 did not continue the IRR program's traditional exemption from the obligation limitation. By all accounts, this highly significant and *costly* change to the IRR program was not a deliberate policy choice by Congress; rather, it was a simple drafting oversight. Compounding this error, TEA-21 does not include Indian tribes among the list of FHWA program participants eligible to receive redistributed highway funds withheld under the obligation limitation. As a result, the IRR program is losing approximately $31 million annually. Thus, while states and even other federal highway programs are reaping the benefits of TEA-21, the IRR program has been left in dire need.

In trying to develop a new and fair equitable formula to distribute IRR funds, it has become apparent that there are simply not enough funds to meet all of the needs of Indian country in this area. Even when Congress corrects this mistake and restores the approximately $31 million that was intended to go to the IRR Program, it will not be enough. However, it will be a start. The key to

community and economic development is good infrastructure of which roads are a critical part. If Congress wants to strengthen Indian communities, fixing this problem is one important beginning.

The Standing Rock Tribe's support for the removal of the obligation limitation is a position shared among tribes and Indian people throughout the United States, as has been well-documented through the efforts of the Intertribal Transportation Association ("ITA"), the only Indian organization dedicated to representing tribal transportation interests at the national level. The Standing Rock Sioux Tribe is a proud member of this organization. In 1998 and 1999, ITA conducted a series of five town hall meetings in order to compile information regarding transportation needs in Indian country and recommendations for the improvement of tribal transportation systems. More than 400 individuals participated, including representatives from 160 tribes, the Federal Highway Administration, the Bureau of Indian Affairs, state and local governments, and other transportation-related organizations. Removal of the obligation limitation was the consensus recommendation of each and every tribal transportation town hall meeting conducted by ITA. I commend ITA for its continuing efforts to identify important tribal transportation issues for all Indian people and urge this Committee and the Administration to utilize ITA as a source for information related thereto, including of course, the overwhelming support for removal of the obligation limitation provision of TEA-21 from Indian Reservation Roads funding.

IV. Tribal Technical Assistance Programs

The Standing Rock Sioux Tribe, along with the Cheyenne River Sioux Tribe and the Three Affiliated Tribes of the Fort Berthold Reservation worked together to bring the Tribal Technical Assistance Program – TTAP – to the United Tribes Technical College in Bismark (UTTC). This program, first authorized under ISTEA, was established to assist tribal governments in extending their technical capabilities regarding transportation opportunities, grants and programs. There are now six TTAPs throughout the country. In addition to enhancing tribes' access to various transportation resources and programs, these offices serve as an important liaison between the Federal Department of Transportation and the State Departments of Transportation. Because TTAPs have been so successful in reaching out to tribal communities and educating Indian people about transportation issues, the Standing Rock Sioux Tribe asks Congress to increase funding for this important program.

In light of the significant role that this program plays in building and sustaining tribal transportation programs, we urge the Committee to support this program and the need for increased funding for it.

V. Conclusion

On behalf of the Standing Rock Sioux Tribe, I would like to thank you for the opportunity to provide this testimony on this important issue. We look forward to working with the Senate Committee on Indian Affairs to identify and address the transportation needs of all Indian tribes.

SQUAXIN ISLAND TRIBE

TESTIMONY OF
DAVID WHITENER, SR, CHAIRMAN (1984-1987; 1996-1999)
OF THE SQUAXIN ISLAND TRIBE

BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
JUNE 28, 2000

HEARING ON SENATE BILL 2283
TO AMEND THE TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY
TO MAKE CERTAIN AMENDMENTS WITH RESPECT TO INDIAN TRIBES

The Squaxin Island Tribe of Washington State thanks the Senate Committee on Indian Affairs for the opportunity to testify regarding S.2283 and the Indian Reservation Roads Program. Having served two terms as Chairman of the Squaxin Island Tribe and in other elective positions over two decades, as an educator for 35 years, as a participant in numerous tribal negotiations since 1981, and currently as the Transportation Policy Representative for the Squaxin Island Tribe and a Member of the TEA-21 Negotiated Rulemaking Committee, I come to speak to you this afternoon about the importance of the TEA-21 amendments to the Squaxin Island Tribe and throughout Indian country.

Summary of Testimony:

The amendments to TEA-21 proposed in S. 2283 would:

1. Exempt the Indian reservation roads program from the limitation on obligations specified at Section 1102(f) of TEA-21.
2. Establish a pilot program for direct funding and oversight by FHWA. Up to 12 Indian tribes per year would be selected to participate in demonstration projects under P.L. 93-638 contracts and agreements at the request of the Indian tribes.
3. Clarify that "not to exceed 6 percent" relates to all IRR Program funds available to the BIA for program and project administration and that such amounts are made available to Indian tribal governments at their request under P.L. 93-638 contracts and agreements. Further, the amendment would stipulate that an Indian tribe or tribal organization may commence construction that is funded through a P.L. 93-638 contract or agreement only if the Indian tribe or tribal organization has provided proper health and safety assurances.

The following testimony relates to these provisions of S.2283 and to progress to date on the IRR negotiated rulemaking required by TEA-21.

6-Percent Limitation for Program and Project Administration

The Squaxin Island Tribe, along with tribes across the nation, have been frustrated by the failure of the Bureau of Indian Affairs to satisfactorily explain how they expend the "not to exceed 6 percent of contract authority" for program management and oversight. If this were not the case,

the majority of tribal statements submitted to the Committee during your oversight hearing on TEA-21 implementation would not have recommended audit of BIA 6-percent expenditures or assumption of the IRR Program by FHWA.

The Squaxin Island Tribe has benefited from project management and oversight expenditures by the Northwest Regional Office over the past five years. Prior to 1995 though, the Tribe received virtually no benefit. The Northwest Regional Office uses administrative funds to provide program training opportunities, technical assistance, road inventory updates, design services, and coordination with state and local transportation agencies.

Prior to 1995, the only projects completed by the BIA for the Squaxin Island Tribe were to construct one-tenth mile of road in 1982 and chip seal the same road section in 1992. Since then, the Tribe has received funding for transportation planning and in 1999 for bridge rehabilitation and to construct another two-tenths mile of road. The Tribe is currently trying to secure IRR funding to design and build a half-mile access road to a planned 36-unit housing development. Layers of federal agency oversight and bureaucratic delays threatens to cost the Tribe more than $2 million in lost federal, state, and Tribal funding commitments for the project.

Northwest tribes have watched their share of the IRR national allocation decline from 11% of the total IRR construction program in 1992 to 5.5% for FY 2000. This has resulted for a number of reasons including BIA changes to the allocation formula, a de-emphasis on inventory early in the decade, special treatment by Congress for some regions, and arbitrary use of price indices. The relationship between the Northwest decline and BIA expenditures for project management and oversight is unclear.

Until such time that the BIA can satisfactorily demonstrate to Congress how the Bureau's expenditures for administration of the IRR Program benefits tribes, total administration expenses for the IRR Program should be held within 6 percent consistent with Senate Bill 2283. The Assistant Secretary for Indian Affairs reported to the Committee in December 1999 that the Bureau used an average of 1/6 of its available administrative funds for construction projects over the last seven years. Perhaps the Bureau requires 5 percent rather than 6 percent for program administration, especially in light of the $3.5 to $4.0 million of new contract authority the Bureau receives from TEA-21.

S. 2283 specifies payments for administrative expenses of the IRR Program and the administrative expenses related to individual projects. This is consistent with Resolution No. 00-25 of the Affiliated Tribes of Northwest Indians (attached) that was supported by the Squaxin Island Tribe. Our understanding is that administrative expenses as they relate to individual projects are for contract or compact oversight only and not for those project-specific costs such as project development or construction engineering. It is unlikely that these costs could be constrained within 6%, whether the BIA or an Indian tribal government performs the function.

The Squaxin Island Tribe concurs that 6-percent administrative funds are contractible or compactable upon assumption of program or project administrative functions by an Indian tribal government or tribal organization under P.L. 93-638. As a self-governance tribe, the Squaxin Island Tribe has the capability to perform some of these transportation-related functions. (See discussion under Pilot Program)

The Squaxin Island Tribe concurs with the language of Senate Bill 2283 that Indian tribal governments should have the opportunity to assume the first level of review and certification that project plans and specification meet or exceed proper health and safety standards. Requiring both BIA and FHWA to approve PS&E documents does not increase the likelihood that health and safety standards are met. Final approval of PS&E documents is the responsibility of FHWA unless and until they delegate that function to BIA or an Indian tribal government.

BIA Program/Project Administration – A Case History

During FY 1999, the Squaxin Island Tribe saw its first IRR project since 1982 reach the point of obligation. The project for $250,000 was to rehabilitate an 80-year old functionally obsolete county bridge on the primary access route to the residential area of the Squaxin Island Reservation. The Tribe (not the BIA) first requested that the route be included in the county Transportation Improvement Program in 1994. The county agreed to complete project plans, specifications, and estimates for the bridge. They also agreed to pay the construction cost balance, maintain the bridge, and reconstruct one mile of old highway at a cost of $1 million.

The BIA proposed to use FY 1997 HBRRP carryover funds to replace the bridge although it was not deficient. FHWA had to require that the project be submitted for rehabilitation. This inter-agency dialogue delayed the project. Finally, in late FY 1998, after more than one year of advising the Tribe and the county that funds for the project were available, the Bureau requested that the county execute a contract with the BIA before year-end. The Bureau then submitted its Bridge TIP to FHWA too late for their review and approval. FHWA required the Bureau to resubmit the Bridge TIP for FY 1999. Nothing happened for more than one year and the county was eventually informed that the "contract was lost." The BIA later determined that it was more appropriate to process the project under a grant.

Once the project was approved, Portland sent a control schedule to Albuquerque for data verification. It was then returned to Portland for signatures and back to Albuquerque as a signed TIP. Albuquerque approved the TIP and forwarded it to the BIA Central Office in Washington, D.C. where it languished for months. After "final" approval by BIA, the TIP was forwarded to FHWA in D.C. where apparent calculation errors were identified and the TIP was returned to Portland to start the process anew. Once the TIP was finally approved by FHWA in D.C. it was hung up for several months more until the two agencies could reconcile the TIP with budgets for the carry over amounts from FY1997. BIA said there were funds and FHWA disagreed.

At last, early in FY2000 (the last year in which the funds could be obligated), FY1997 funds for the project that was effectively ready to go from the county's perspective in 1998 were made available to the Northwest Region to obligate. Because of the delays other county projects moved ahead of this one, and construction now will now begin in summer 2001.

This is just one example of how the bureaucratic dysfunction of two federal agencies delays Indian reservation roads projects and drives up their costs. Such inefficiency is symptomatic of wasteful use of 6 percent administrative funds and does nothing to contribute to health and safety of users of the IRR System. During this process within the past year there was a fatal collision on one dangerous curve that was to be corrected by this project.

Pilot Program for Agreements between Indian Tribes and FHWA

Senate Bill 2283 exemplifies the philosophy behind self-governance and self-determination. The Squaxin Island Tribe was one of the first 30 tribes in the nation to partake in the self-governance pilot program with the Bureau of Indian Affairs by executing our first annual funding agreement in 1994. In 1996, the Tribe included funding for Indian Health Services programs under a self-governance compact. The program has allowed the Squaxin Island Tribe to truly exercise governance over its programs and more effectively use scarce federal resources.

There are many similarities between the Squaxin Island Tribe's current compacted programs and the IRR Program. At one time, natural resource management, law enforcement, education, and Indian health programs were all BIA administered programs within the Department of the Interior. Indian health services were moved to the Public Health Service within the Department of Health and Human Services. Indian Health Services programs are now compacted by the Squaxin Island Tribe. The Tribe's natural resources programs, law enforcement, and education are currently compacted under self-governance.

Under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), housing funds are now distributed to Indian tribal governments or their designated housing entities as block grants. There are parallels between the Indian Reservation Roads Program and the Indian Housing Block Grant Program that causes us to wonder whether the IRR Program could be more effective if TEA-21 incorporated more NAHASDA-like provisions. Our early steps in managing our own Tribal housing program lead us to believe that we could manage a road construction program with equal effectiveness.

The Squaxin Island Tribe believes that the proposed pilot program within Senate Bill 2283 will promote tribal contracting and compacting directly with the FHWA Federal Lands Highway Program in accordance with P.L. 93-638. It would allow tribes to more fully exercise self-governance and self-determination. The Squaxin Island Tribe recommends adoption of these provisions.

Exemption from Obligation Limitation for the Indian Reservation Roads Program

Under TEA-21, appropriations for the IRR Program have been reduced by nearly $91 million between FY 1998 and FY 2000 due to the imposition of obligation limitation. The unused funding authorization is redistributed from the IRR Program to the states by TEA-21 Section 1102(f) at the beginning of each fiscal year. The states are generally able to capture their unused funding authorization in subsequent appropriations. The net effect of the change for obligation limitation between ISTEA and TEA-21 was that funding for state highway programs increased by 40% while the increase for Indian reservation roads was limited to 20%. During this period the national composite index for road construction increased by 26% from 108.3 to 136.5. In real dollars, the IRR program was actually funded at a lower level in 1999 than in 1993. (See attached "Federal Funds Apportionment & Obligation Authority Interplay Issue Paper")

There is a national consensus within Indian country for removing application of the obligation limitation to the Indian Reservation Roads Program. Several states have joined with Indian tribes and tribal organizations in requesting that Congress remove the obligation limitation from the Indian Reservation Roads Program. The following attachments are submitted in support of the removal of obligation limitation from the Indian Reservation Roads Program:

- State of Washington Transportation Commission letter and Resolution No. 600.
- Resolution No. 99-23 of the Affiliated Tribes of Northwest Indians.
- Resolution No. 00-25 of the Affiliated Tribes of Northwest Indians recommending amendments to Public Law 105-178, Transportation Equity Act for the 21st Century.

Senate Bill 2283 would exempt the Indian Reservation Roads Program from the obligation limitation provisions of TEA-21. The Squaxin Island Tribe fully supports this amendment to TEA-21.

Progress on the TEA-21 Negotiated Rulemaking for the IRR Program

In October 1999, the Squaxin Island Tribe submitted written testimony to the Committee regarding the implementation of TEA-21. At that time, the tribe was concerned that the Secretary of Interior had "failed to establish a process leading to meaningful negotiation or that will ever deliver a funding formula and regulation for Indian reservation roads." Although the Rulemaking Committee has made significant progress in the past eight months, the Tribe retains its concerns regarding the final outcome of the process and the intentions of some participants. The status of the concerns and recommendations we expressed in October 1999 are as follows:

1. The Bureau abandoned its intent to distribute FY 2000 funds in the same manner as in 1998 and 1999. The tribes negotiated a recommendation to distribute funding for FY 2000 based on the pre-existing relative need formula, dedicating $18.3 million in special appropriations for small tribe capacity building and IRR bridges, and correcting problems with the BIA's use of price indexes in the formula for non-reporting states, Alaska and Washington.

2. There is still a prevalent attitude among many of the federal officials that they can continue to use the fiscal year 1999 formula to allocate funding for the IRR Program rather than develop a new formula. This attitude could be no more evident than at a meeting of the funding formula work group in June 2000 at which seven of the twelve BIA Regional Roads Engineers continued to push for use of the existing formula. No other group involved in the negotiations has a greater vested interest in the existing formula than the Regional Roads Engineers.

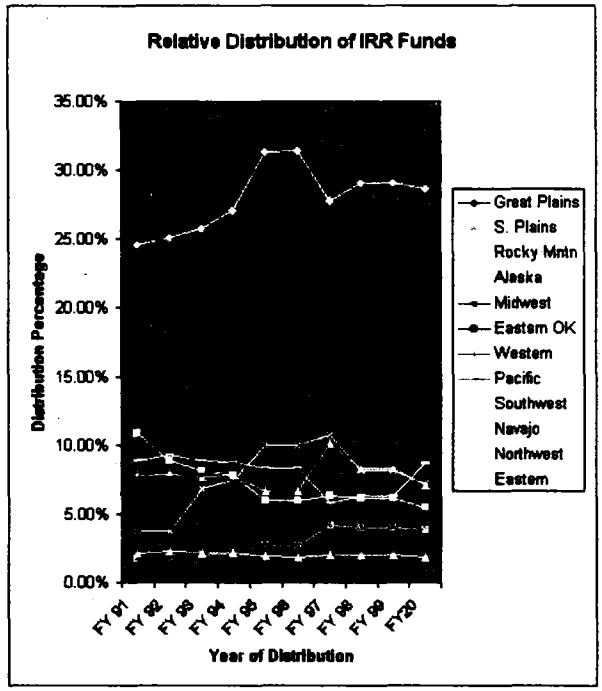
3. At the beginning of the TEA-21 negotiations, tribal representatives expressed a strong sense of concern and indignation at the process of developing Organizational Protocols for the Committee that the federal representatives were not participating with the authority to negotiate or make final decisions on behalf of the federal agencies. The tribes were concerned that the BIA and FHWA would not accept the product of negotiations if it strayed to far from what the agencies envisioned for the program. Then in May 2000 in announcing a proposed distribution of FY 2000 funds, the BIA chose to ignore a Tribal Caucus recommendation for correcting the price index for non-reporting states. Also, this recommendation was supported by the federal representatives in Full Committee. The BIA proposed to use a methodology developed by the BIA for the correction and that did not have consensus support of the Tribal Caucus. The impact on the Northwest Region's allocation of funds was a reduction of $1 million. This follows a steady decline in funding for the Northwest from 11% of the IRR funding in 1992 to 5.5% for FY 2000. No other region of the country has sustained such a severe reduction in the share of funding as the Northwest.

4. In October 1999, the Squaxin Island Tribe expressed concern that the makeup of the rulemaking committee was inconsistent with the requirements of TEA-21. While this concern continues to prevail in regard to consensus agreement on a final regulation and formula, the existing Committee has demonstrated that it can negotiate, compromise, and reach consensus on some important aspects of the regulation.

5. Indian reservation roads comprise 2.63% of the public highway system in the nation, yet these roads continue to receive less than one percent of the annual highway allocation. An increase in actual funding for TEA-21of 20% failed to keep pace with a rate of inflation of 26% for a composite of all road construction costs. The transportation authorization's failure to keep the IRR program even with state programs was primarily the result of the first-time application of obligation limitation to the IRR Program. Had this not occurred, the IRR Program would have grown at the same rate as state programs; although, the Program would have moved no closer to parity with state programs.

6. Road maintenance funding for IRR continues to lag even further behind that of the states which results in a disproportionately high share of IRR construction funding going toward deferred maintenance rather than new construction. The IRR system will continue to deteriorate rapidly in relation to state and local roads, as long as state programs continue to receive up to ten times more funding per mile for road maintenance as does the IRR Program.

Either the Interior appropriation for road maintenance needs to be increased or an alternative funding source developed.



7. If the Bureau of Indian Affairs continues to frustrate the process of negotiated rulemaking or fails to adopt consensus recommendations for the regulation and formula, it continues to be the recommendation of the Squaxin Island Tribe that the IRR Program be transferred to the Federal Highways Administration for funding and oversight. We would propose that any new transportation authorization act for the IRR Program be patterned even more closely after the Native American Housing Assistance and Self-Determination Act of 1996 than it is under TEA-21. NAHASDA is working extremely well for housing construction and an equivalent measure could work equally well for road construction.

FEDERAL FUNDS APPORTIONMENT & OBLIGATION AUTHORITY INTERPLAY ISSUE PAPER

PURPOSE:

The purpose of this paper is to explain how apportioning federal funds to the states, allocating funds to federal programs, and setting obligation (expenditure) limits are related.

DISCUSSION:

This issue paper was prepared due to the interest by the Indian tribes in Washington State to reverse a change made in the Transportation Equity Act for the 21st Century (TEA-21) that withholds authorized funds from the Indian Reservation Roads (IRR) Program and redistributes those funds to state transportation programs. The Federal Lands Highway Office within FHWA and the Bureau of Indian Affairs administer the IRR Program. Under TEA-21, authorized funding is "lopped off" of IRR Program allocations due to obligation limitation and redistributed to the states in the form of increased Surface Transportation Program (STP) apportionment. Section 1102(f) of TEA-21 authorizes the "lop off" and redistribution of funds authorized to be appropriated. While Washington State's STP apportionment increases, there is no increased obligation authority at that time of this redistribution. However, near federal fiscal year end, FHWA requests that states identify any additional amount that they could obligate by the end of the year. Through this process, Washington State generally receives a minor increase in total obligation authority (expenditures) allowed across all apportionment categories (STP, IM, CMAQ, etc.) during the last month of the federal fiscal year.

Apportionment is determined by the formulas and processes provided in the most recent transportation program authorization act (currently TEA-21) and Title 23 USC. TEA-21 establishes the obligation authority, while moneys from the Highway Trust Fund are reserved to reimburse states and federal agencies for their payments made against prior obligations through the annual appropriations process in Congress.

Washington State Department of Transportation was notified on October 26, 1998 of its Federal Fiscal Year 1999 (October 1, 1998 through September 30, 1999) apportionment as follows:

Interstate Maintenance	$79,016,919
National Highway System	88,522,227
Surface Transportation Program	113,031,096
Bridge Replacement & Rehabilitation	104,408,196
Congestion Mitigation & Air Quality	22,257,061
Recreational Trails	781,298
Metropolitan Planning	3,627,977
High Priority Projects	29,781,150
Minimum Guarantee	28,610,467
State Planning and Research	8,894,815
TOTAL APPORTIONMENT	$478,931,208

On November 4, 1998 WSDOT was notified that obligation authority for FFY 1999 would be 88.3% of the earlier apportioned amount or $388.6 million.

On November 4,1998 WSDOT was notified that an additional $4.3 million of funds "authorized to be appropriated" but "not available for obligation in FFY 1999" was distributed to the state under Section 1102(f) to be used for STP purposes. The letter states that "no new obligation authority is distributed with these funds. However, the letter also states that "these funds are available for obligation until September 30, 2002," allowing the state to capture this obligation authority in subsequent years. Of the amount of the additional funds, WSDOT estimates that 13.65% ($586,950) can be directly attributed to having come from the IRR Program. We are working with FHWA to confirm the calculation of this amount.

On August 11, 1999, WSDOT notified FHWA that the state could obligate $107.6 million for additional projects. On September 2, 1999, FHWA advised the state that the total requested in additional obligation authority was $4.4 billion, but only $137 million was available for redistribution from other states' highway programs. The Washington State share was determined to be $2.997 million, which was then obligated by WSDOT in September 1999.

The following table summarizes the foregoing discussion:

FFY 99 Original Apportionment	$478.9 million	FFY 99 Original Obligation Authority	$388.6 million
FFY 99 Added Apportionment from Lop-Off	$ 4.3 million	FFY 99 Redistributed Obligation Authority	$ 3.0 million
TOTAL	$483.2 million		$391.6 million

Although $91.6 million of apportioned funding authorization was unavailable to the state for obligation during FFY 1999, the state is able to obligate against this apportionment for three additional years before lapsing. By rolling the funding authorization forward from year to year, the state is generally able to capture all funding authorization before it lapses. This does not add to the total obligation authority during the authorization period. However, each subsequent highway reauthorization act establishes funding authorization and obligation limits higher than the preceding act. For example, the annual obligation limitation for Federal-aid highways under ISTEA for FFY 1993 through FFY 1997 averaged $18.3 billion. This increased to $25.1 billion in FFY 1999 under TEA-21. The $6.8 billion of increased obligation authority was available in FFY 1999 and could be applied against ISTEA funding authorizations from FFY 1996 and FFY 1997. Under ISTEA from FFY 1992 through FFY 1997, Washington State's total apportionment was $2.282 billion and the total obligation authority used was $2.133 billion. The remaining $149.4 of funding authorization from ISTEA is captured by rolling the apportionment forward and applying obligation authority from TEA-21. The only time that the state would be unable to capture prior funding authorization would be if the subsequent reauthorization act did not increase obligation limits sufficiently to do so or if Congress rescinded the original funding authorization, something it has done only three times since 1966.

By:

Tom Hanson, Washington State Department of Transportation
David Frey, Squaxin Island Tribe Department of Community Development

February 17, 2000

STATE OF WASHINGTON
TRANSPORTATION COMMISSION
Transportation Building, PO Box 47308 • Olympia, Washington 98504-7308 • (360) 705-7070
Fax (360) 705-6802 • E-Mail: transc@wsdot.wa.gov • http://www.wsdot.wa.gov/commission

February 18, 2000

The Honorable Slade Gorton
United States Senator
Senate Transportation Appropriations Subcommittee
730 Hart Senate Office Building
Washington, D.C. 20510-4701

Attn: Mr. Brett Hale

Dear Senator Gorton:

The Washington State Transportation Commission has adopted enclosed Resolution No. 600 supporting Resolution # 99-23 of the Affiliated Tribes of Northwest Indians (ATNI). The Commission joins with ATNI in recommending that the United States Congress remove the obligation ceiling limitation requirement of TEA-21 from the Indian Reservation Roads (IRR) Program.

This is an issue of vital concern to all tribes of Washington State, and it is an issue of fundamental fairness. When Congress enacted the Transportation Equity Act for the 21st Century (TEA-21) on June 9, 1998, it changed the way in which obligation limits were set for the IRR Program. Instead of having limits set at 100% of authorized levels as they were under previous highway acts, limitation for the IRR Program is now calculated similar to states. For tribes, the change has removed $90 million from their total authorization in the past three years, and an additional $120 million is expected to be lost during the remainder of the authorization period. While the total authorization for the state of Washington is similarly reduced, states have the opportunity to carry over unused authorizations to subsequent years. On the other hand, the authorized amounts deducted from the IRR Program are redistributed to states rather than back to the program. For the state of Washington, there is a net outflow of funding. More is lost from the IRR Program than the state receives back in redistributed authorization.

Thank you for considering this request of such great impact to the tribes of our state. If you have any questions, please call me at (425) 252-5438.

Sincerely,

Connie Niva

Connie Niva
Chair

cc The Honorable Gary Locke, Governor
Sid Morrison, Secretary of Transportation
Sherwin Racehorse, Transportation Committee Chair,
Affiliated Tribes of Northwest Indians

RESOLUTION NO 600

WHEREAS, the Washington State Transportation Commission serves as the board of directors of the Washington State Department of Transportation, providing oversight to ensure the Department delivers quality transportation facilities and services in a cost-effective manner; and,

WHEREAS, the Washington State Transportation Commission also proposes policies, plans and funding to the legislature which will promote a balanced, inter-modal transportation system which moves people and goods safely and efficiently; and,

WHEREAS, it is a policy objective of the Washington State Transportation Commission to cooperate and coordinate with public and private transportation partners so that systems work together cost effectively; and,

WHEREAS, there are 28 Indian tribal governments recognized by the federal government within the state of Washington; and,

WHEREAS, these tribal governments develop and improve the road systems for their communities with funding provided under the federal Indian Reservation Roads program; and,

WHEREAS, many state highways and local roads are linked directly to tribal road systems, providing access to Indian reservations, and recognized by the Bureau of Indian Affairs as public roads within the Indian Reservation Roads Program; and,

WHEREAS, it has been brought to the attention of the Commission that under the Intermodal Surface Transportation Efficiency Act of 1991, funding apportioned from the Highway Trust Fund to the Indian Reservation Roads Program was not subject to a limitation on obligations as is the case with distributions to states from the fund; and,

WHEREAS, the Commission further understands that funding authorized under the Transportation Equity Act for the 21st Century now subjects distributions to the Indian Reservation Roads Program to a limitation on obligations; and,

WHEREAS, as a result of this change in law, some $90 million in obligation authority vitally needed to reverse the deplorable condition of Indian Reservation Roads has been lost to Indian tribal governments than would otherwise have been distributed; and,

WHEREAS, this change in law adversely impacts the Indian Reservation Roads Program within the state of Washington; and,

WHEREAS, the Affiliated Tribes of Northwest Indians has by resolution, recommended removal of the obligation ceiling limitation requirement for the Indian Reservation Roads Program.

NOW, THEREFORE, BE IT RESOLVED, that Washington State Transportation Commission joins with the Affiliated Tribes of Northwest Indians in recommending removal of the obligation ceiling limitation requirement of TEA-21 from the Indian Reservation Roads Program.

NOW, THEREFORE, BE IT FINALLY RESOLVED, that the Washington State Transportation Commission supports Resolution #99-23 of the Affiliated Tribes of Northwest Indians, adopted February 10, 1999, at their 1999 Winter Conference in Portland, Oregon.

ADOPTED this 17th day of February, 2000

WASHINGTON STATE TRANSPORTATON COMMISSION

CONNIE NIVA, Chair

ED BARNES, Vice-Chair

TOM GREEN, Member

AUBREY DAVIS, Member

GEORGE KARGIANIS, Member

A. MICHÈLE MAHER, Member

CHRIS MARR, Member

ATTESTED:

CHRIS ROSE, Administrator

APPROVED AS TO FORM:

Assistant Attorney General

RESOLUTION NO 600

Affiliated Tribes of Northwest Indians

1999 Winter Conference
Portland, Oregon

RESOLUTION # 99-23

"RECOMMENDING REMOVAL OF THE OBLIGATIONAL CEILING LIMITATION REQUIREMENT FOR THE INDIAN RESERVATION ROADS PROGRAM FROM THE FY 2000 AND SUBSEQUENT DEPARTMENT OF TRANSPORTATION APPROPRIATIONS ACTS"

PREAMBLE

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific Tribal concerns; and

WHEREAS, the Affiliated Tribes of Northwest Indians is a regional organization comprised of American Indians in the states of Washington, Idaho, Oregon, Montana, Nevada, northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of Affiliated Tribes of Northwest Indians; and

WHEREAS, transportation impacts virtually every aspect of a community, such as economic development, education, healthcare, travel, tourism, planning, land use and employment opportunities; and

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WHEREAS, the Affiliated Tribes of Northwest Indians is aware that the Transportation Equity Act for the 21st Century (TEA-21) has been signed into law by the U.S. President and limits the obligation of Indian Reservation Road (IRR) funding to 90%; and

WHEREAS, the obligation ceiling limitation thus far has eliminated over $58 million from the IRR program which will lose another $31 million if the limitation is not removed in the FY 2000 appropriations Act; and

WHEREAS, this limitation is inconsistent with all prior transportation Acts, and seriously impacts the ability of Indian Tribes and the Bureau of Indian Affairs to provide the American Indian people with safe and decent access to health care, education, employment, tourism, and economic development; now

THEREFORE BE IT RESOLVED, the Affiliated Tribes of Northwest Indians strongly recommends the U.S. Congress remove the obligation limitation contained in TEA-21 for the IRR program in its deliberations for the FY 2000 and subsequent Department of Transportation Appropriations Acts.

CERTIFICATION

The foregoing resolution was adopted at the 1999 Winter Conference of the Affiliated Tribes of Northwest Indians, held at the Jantzen Beach Double Tree in Portland, Oregon on February 10, 1999 with a quorum present.

Ernest L. Stensgar
Ernest L. Stensgar, President

Mary E. Gentry
Mary E. Gentry, Secretary

Affiliated Tribes of Northwest Indians

2000 Winter Conference
Portland, Oregon

RESOLUTION #00-25

"RECOMMENDED AMENDMENTS TO PUBLIC LAW 105-178 TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY"

PREAMBLE

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific Tribal concerns; and

WHEREAS, the Affiliated Tribes of Northwest Indians is a regional organization comprised of American Indians in the states of Washington, Idaho, Oregon, Montana, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of Affiliated Tribes of Northwest Indians; and

WHEREAS, the current back log of needed improvements to Indian reservation roads, of which only one-third are paved, now stands at $7.2 billion; and

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WHEREAS, limitation on obligations reduced authorizations for the Indian Reservation Roads Program by $90.6 million from FY 1998 through FY 1999 and $210 million is the estimated limitation through 2003 and such obligation authority is distributed to the states; and

WHEREAS, the general limitation for the total of obligations for Federal-aid highways and highway safety construction programs increased by 39% from $18.3 billion under ISTEA in FY 1997 TO $25.5 billion under TEA-21 in FY 1999; and

WHEREAS, limitation for the total of obligations for Indian Reservation Roads Program design and construction increased by 21% from $167.25 million under ISTEA in FY 1997 to $203.06 million under TEA-21 in FY 1999; and

WHEREAS, this disparate increase in funding for the Indian Reservation Roads Program is due entirely to the first-time application of the obligation ceiling limitation to the IRR Program under TEA-21; and

WHEREAS, had an obligation limitation in the amount of $31.69 million not applied to the IRR Program in FY 1999, total funding for construction and design of Indian reservation roads would have been $232.2 million in FY 1999, a 39% increase over FY 1997 funding levels, and an increase comparable to that enjoyed by the Federal-Aid Highways Program; and

WHEREAS, Indian tribes seek to assume IRR program responsibilities to the full extent permitted under TEA-21 and the Indian Self-Determination and Education Assistance Act, including administrative functions; however, the Bureau of Indian Affairs interprets the word "all" in Section 1115 of TEA-21 to exclude the "up to 6%" administrative funds that Congress made available under TEA-21 for Indian roads and bridges; and

WHEREAS, the Bureau of Indian Affairs consistently expends well beyond the 6% cap imposed by Congress in TEA-21 by charging administrative expenses to individual projects; and

WHEREAS, both BIA and FHWA currently review and approve plans, specifications, and estimates before federal funds are obligated for a project, resulting in substantial delay and additional project cost, under the BIA justification that such costly, paternalistic and unnecessary duplication is necessary to assure that public health and safety are protected; and

WHEREAS, FHWA possesses the technical and administrative expertise to directly administer the IRR Program, and some tribes desire to enter into agreements with FHWA under the authorities of the Indian Self-Determination and Education Assistance Act to avoid duplicative functions and processes existing in the current joint BIA-FHWA management of the IRR Program; and

WHEREAS, unlike the Highway Bridge Replacement and Rehabilitation Program, TEA-21 does not specify that Indian Bridge Program funds may be used to develop plans, specifications and estimates for bridge projects, and it is interpreted by FHWA to mean that such funds shall not be used for such purposes, resulting in the substantial accumulation of funds totaling $30 million by FHWA that are unavailable to make needed repairs to Indian bridges; now

THEREFORE BE IT RESOLVED, that the Affiliated Tribes of Northwest Indians urges the United States Congress to enact a technical amendment to TEA-21 to restore and set aside full obligation authority at 100% of amounts authorized for the Indian Reservation Roads Program at Section 1102(c)(1) of TEA-21; and

THEREFORE BE IT FURTHER RESOLVED, that the Affiliated Tribes of Northwest Indians urges that the United States Congress enact additional amendments as follows:

- Amend Section 1115 of TEA-21 to clarify that all Indian Reservation Roads Program funds, including the "up to 6%" administrative funds, must be made available to Indian tribes in accordance with the Indian Self-Determination and Education Assistance Act.
- Clarify that the BIA may only use the "up to 6%" administrative funds for both IRR Program administration and IRR project-related administrative activities.
- Amend Section 1115 of TEA-21 to clarify that Indian tribes can meet the statutory requirement to assure public health and safety simply by agreeing to meet or exceed health and safety provisions.
- Amend Section 1115 of TEA-21 to establish an IRR Pilot Program which allows Indian tribes to enter into agreements directly with FHWA under the authorities of the Indian Self-Determination and Education Assistance Act.
- Amend Section 1115 of TEA-21 to authorize the use of IRR Bridge Program funds to develop plans, specifications, and estimates for proposed bridge projects; and

THEREFORE BE IT FINALLY RESOLVED, that the Affiliated Tribes of Northwest Indians urges the National Congress of American Indians resolve to affirm, support, and actively advocate for the enactment of the foregoing amendments.

CERTIFICATION

The foregoing resolution was adopted at the 2000 Winter Conference of the Affiliated Tribes of Northwest Indians, held at the Holiday Inn Portland Airport in Portland, Oregon on February 17, 2000 with a quorum present.

Ernest L. Stensgar, President

Patricia L. Martin, Secretary

JOINT TESTIMONY FROM THE TRIBAL CAUCUS OF THE
IRR NEGOTIATED RULE-MAKING COMMITTEE

Before the U.S. Committee on Indian Affairs
Hearing on Indian Reservation Roads and Bridges

June 28, 2000

Mr. Chairman, and Members of the Committee, the following comments are the view of the tribal delegates to the TEA-21 Negotiated Rulemaking Committee in regard to the progress and status of the rulemaking. We understand that verbal testimony during the hearing suggested that the negotiated rulemaking was at impasse and that the process could be best completed by the BIA.

The IRR Negotiated Rule-Making is not at impasse, is not stalled, and in fact is making rapid progress toward a projected publication date later this year. We believe that the rulemaking for the IRR program is actually proceeding faster than comparable rule-making processes, which typically take about three years to complete.

To place the task of the Rule-Making Committee in context, the Indian Reservation Roads program is far more technically complex than most BIA service programs. It involves aspects of construction, construction design and engineering, community and transportation planning, and transportation management systems in addition to contracting issues under PL 93-638. The BIA has operated this program historically with great differences and disparities from region to region. The BIA funding allocation system requires a massively complex database and data collection system, which is not easily replicable and requires annual updating. The data collection system also varies widely from region to region.

Since March of 1999, the IRR Negotiated Rulemaking Committee has identified well over 200 "issues" or topics to address by regulation. These issues were assigned to four workgroups, Funding Formula, Delivery of Services, Technical and Standards and Policy. The Workgroups have completed "first draft" regulation language for all but about half a dozen of the programmatic regulations, and the federal and tribal caucuses are now exchanging views on these drafts.

On June 28, the day your Senate Committee heard live testimony, the Funding Workgroup agreed on a model for a future formula, based on need, and with a uniform, constrained system for determining costs.

The tribal caucus delegates to the IRR rulemaking believe that the negotiations are on track, and that it would be a great disservice to Indian Country to discontinue the process before it has completed its work. Even if an impasse were reached on funding – which we do not believe will occur - the programmatic regulations being developed are critical to the program.

In closing, we would like to express our appreciation to Congress for affording us this opportunity to develop regulations for this crucial program. We thank you for recognizing that Indian Country knows best how to address our needs.

Certification:

The Tribal Co-Chairs certify that the foregoing statement of recommendation represents the consensus of the Tribal Caucus to the TEA-21 Negotiated Rulemaking Committee.

Tribal Co-Chair
Dated: 6/30/2000

Tribal Co-Chair
Dated: 6-30-00

June 30, 2000

The Honorable Kevin Gover
Assistant Secretary for Indian Affairs
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Sir:

RE: Failure to Comply with Tribal Caucus and Committee Consensus Decisions of the TEA-21 Negotiated Rulemaking Committee

The Tribal Caucus of the TEA-21 Negotiated Rulemaking Committee is deeply concerned with the manner in which you have failed to honor consensus decisions of the Tribal Caucus and the TEA-21 Negotiated Rulemaking Committee. We also feel compelled to respond to your oral testimony before the Senate Committee on Indian Affairs concerning our ability to complete the negotiated rulemaking process for regulations governing the Indian Reservation Roads program and relative need formula.

Our concern with regard to the first matter arises as the result of several instances in which the Tribal Caucus or the Negotiated Rulemaking Committee reached a consensus that you chose not to honor, including:

- The Protocols governing the negotiation process of the Committee which were altered unilaterally despite the Committee's consensus;
- Distribution of the $18.3 million "special appropriation" for FY2000 in a manner contrary to the priorities and time lines recommended by the Tribal Caucus to which the Federal Caucus concurred;
- Failing to correct the federal cost indices as recommended by the Tribal Caucus and to which the Federal Caucus concurred; and,
- Distributing the FY2000 funds in two separate allocations, rather than immediately, as recommended by the Tribal Caucus.

Continued disregard for our consensus decisions renders Congress' directive and our efforts meaningless. To avoid this, we respectfully request that you adhere to all future consensus agreements of the Tribal Caucus and the Committee. Further, should you determine that a consensus agreement of the Tribal Caucus or the Committee is a decision with which you have concern or disagreement, we respectfully request that you share such concerns with the respective group and obtain the necessary input from the group to resolve your concerns.

With regard to the second matter, we would like to make a few points concerning the status of the Committee's progress to date. First, recall that the Committee was convened only one month prior to the deadline set by Congress for completing the negotiation process. We believe that, had the Committee been established and the protocols approved in a more timely fashion, we would have already completed the negotiated rulemaking process.

The Committee has been meeting for 15 months; yet, we are close to completing a proposed rule. Negotiated rulemaking typically takes 24 to 36 months. The states met for five years before determining a distribution methodology for their federal transportation funding. Accordingly, we believe it is premature to conclude and convey to Congress that the Committee does not appear able to accomplish its task. In fact, of the more than 200 issues originally identified by the Committee for resolution through negotiations, we have completed initial review and drafting on most of those issues. In addition, the Funding Formula Workgroup has identified a model for allocation of IRR funds and is moving rapidly towards completion of a new relative need formula. In light of the foregoing, we respectfully disagree with your assessment of our progress to Congress, and strongly urge you to allow us to complete the process without interference.

Finally, though we have been meeting for 15 months, including a meeting in Washington, D.C. over a year ago, your only presence at any of our meetings occurred a mere two months ago. And, in recent comments to the Senate Committee on Indian Affairs you indicated your lack of familiarity with TEA-21. We respectfully recommend that you familiarize yourself with the legislation and commit to involving yourself more deeply in our process before you consider unilaterally taking over the task of developing the regulations to govern the IRR program.

Certification:

The Tribal Co-Chairs certify that the foregoing statement of recommendation represents the consensus of the Tribal Caucus to the TEA-21 Negotiated Rulemaking Committee.

Tribal Co-Chair
Dated: 6/30/2000

Tribal Co-Chair
Dated: 6-30-00

TESTIMONY OF PAT RAGSDALE
DIRECTOR OF GOVERNMENT SERVICES FOR THE CHEROKEE NATION
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
HEARING ON S. 2283
A BILL TO AMEND
THE TRANSPORTATION EQUITY ACT FOR THE 21st CENTURY
June 28, 2000

Good morning Mr. Chairman and Members of the Committee, my name is Pat Ragsdale, and I am the Director of Government Services for the Cherokee Nation. I appear here at the request of Principal Chief Chad Smith to deliver the Cherokee Nation's strong support for S. 2283, the Indian Tribal Surface Transportation Act of 2000. With me are Cherokee Councilman Jackie Bob Martin, who also is Chairman of the Tribal Resources Committee and Melanie Knight, our Self-Governance Administrator for the Nation.

The Cherokee Nation represents over 213,000 tribal citizens, nearly half of whom live within our 7,000 square mile jurisdictional area. The Cherokee Nation has long been recognized as a leader in the tribal effort to reform the Indian Reservation Roads (IRR) program – to make it more efficient and more responsive to the needs of all tribal people across this country. The Cherokee Nation is proud to be one of only two tribes in the country to have successfully completed negotiations with the BIA and the Office of Self-Governance for a demonstration to apply self-governance principles to the IRR program.

Along with the Red Lake Band of Chippewa Indians, the Cherokee Nation 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 doing so, 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 partners with the tribes or as overseers of the larger IRR program.

In fact, Cherokee Nation has been successfully operating the IRR program since 1994 as part of its self-governance agreement, despite the BIA's unwillingness to extend the attributes of self-governance to the IRR program that all of our other programs flourish under. Although we believed the existing legislation in 1994 authorized the IRR program to be a full partner in the self-governance initiative and that a demonstration was not necessary, we worked to address BIA's resistance and to provide some level of comfort by pursuing a demonstration concept.

Despite all our best efforts, and despite six years of constant pushing by the tribes and by Congress, I regret to report that some key people in the BIA and the Federal Lands Highway program still refuse to accept the basic principles of tribal self-determination and self-governance when it comes to the IRR program. For this reason, the Cherokee Nation supports prompt enactment of S. 2283.

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. The President, Secretary Babbitt, Secretary Slater, and Congress, including this Committee, have all recognized that the federal policy of tribal self-determination and self-governance has been the most successful federal Indian policy in our Nation's history. Congress has an important role to play in protecting and preserving these policies in the face of often strong resistance within the federal bureaucracy.

Twenty-five years ago the Cherokee Nation began the process of self-determination contracting to operate BIA programs to streamline, redesign and enhance federal services for our people. Today we have a self-governance compact under which we operate virtually all of the federal government's Indian programs serving our people, including – as of two months ago – the IRR program. As a result of our vision and our determination, the Cherokee Nation has succeeded in substantially reducing the federal bureaucracy, enhancing local control and making vast improvements in the efficiency of these programs for the benefit of our people.

We strongly support the provisions of S. 2283 to continue this important effort. These amendments benefit not only the tribes, but the BIA and the Federal Lands Highway program as well. These federal agencies will become stronger, not weaker, once they stop resisting Indian tribes' natural desire to govern themselves and start figuring out ways to become true partners, strong advocates and helpful resources for all tribes.

Let me now speak briefly to the importance of each of the bill's provisions:

Obligation Limitation

First, the obligation limitation issue. It has been said that "great nations, like great men, keep their promises." As I see it, S. 2283 simply allows Congress to fulfill the promises it made to tribal leaders in passing TEA-21, working hard to increase the IRR budget to $225 million in the first year and then to $275 million per year thereafter through FY 2003. Unfortunately, a little noticed provision placing an obligation limitation on the IRR program has resulted in the transfer of funds intended for IRR to the 50 states – a total of $24.2 million in FY 1998, $31.7 million in FY 1999 and $34.9 million in FY 2000. This represents a change in policy. In all previous enacting legislation since 1982, federal funds intended for IRR programs were used only for IRR purposes. Only in TEA-21 was this changed due to the application of the obligation limitation to Federal Lands Highways and the IRR program.

The members of this Committee are well aware that the IRR program is woefully underfunded, both for construction and for maintenance. It has been estimated that at least $7.2 billion dollars is needed to eliminate the *current* road construction and maintenance backlogs in Indian country. While the restoration of the full $275 million IRR appropriation for these last few years until FY 2003 is only a small step, it is an appropriate and honorable step in the right direction.

Indian tribes throughout the country, the National Congress of American Indians, the Intertribal Transportation Association, and regional tribal organizations all strongly support this provision (as well as the other provisions in S. 2283). Joining us in this effort are the States of California, New Mexico, Washington, Utah, North Dakota and South Dakota. Each of these states has sent letters to their Congressional delegations strongly supporting the elimination of the obligation limitation deduction to the IRR program. We ask that those letters, which I understand Committee staff have received, be made a part of this record. I am not aware of *any* State that is on record opposing this legislation. The Cherokee Nation therefore urges the Committee to enable Congress to fulfill the promises it made to the Indian people in TEA-21.

Six Percent Administrative Funding

Next, the six percent administrative funding issue. The need for this provision is nowhere better illustrated than in the experience of the Red Lake Band and the Cherokee

Nation in our recent self-governance negotiations.

TEA-21 was meant to clarify that the IRR program is just like other federal programs serving Indian tribes, and is equally subject to the contracting, compacting and funding mandates set forth in the Indian Self-Determination Act. Except for a few "inherently federal functions" retained by the Secretary, tribal governments may therefore choose to compact for all, or any portion, of the IRR program in their area.

Compacting tribes are also legally entitled to receive their fair share of IRR direct program and administrative funding. This is clear in existing law, which provides that "*all funds* received under [Title 23] for Indian reservation roads and highway bridges . . . shall be made available" to tribal governments upon their request for contracts and compacts. 23 U.S.C. § 202(d)(3)(A). Subsection (B) of the same provision further clarifies that this payment obligation includes funds for "supportive administrative functions that are otherwise contractible." *Id.*

Based on these Congressional mandates, the Cherokee Nation and the Red Lake Band attempted to engage in good faith, government-to-government negotiations with the BIA and the Office of Self-Governance to determine the actual costs associated with the administrative functions the tribes were assuming, as well as the costs of those functions that the BIA would retain.

Those efforts met stiff resistance, and our tribal negotiators soon learned that the BIA intended to retain *all* the 6% funds – even those funds associated with Red Lake and Cherokee's own IRR administrative functions. We also learned that the BIA intended to retain additional IRR construction funds to pay for so-called "project-related" administrative costs. The BIA negotiators flatly told us this issue " was off the table" and would not even be discussed.

During negotiations, we learned that the BIA has historically funded its administrative costs using *both* IRR construction funds *and* the 6% administrative funds. The BIA explained that neither source of administrative funding was available to contracting tribes. The BIA made clear that it did not intend to disturb this historic system, notwithstanding the clear funding mandates of TEA-21 and the Indian Self-Determination Act.

Our tribal negotiators explained at length that self-determination and self-governance tribes are legally entitled to a fair share of the 6% funds. The Cherokee Nation even demonstrated its willingness to leave a generous amount of administrative funding with the

BIA to allow it to carry out its own retained administrative functions. In fact, we offered to let the BIA retain more than $125,000 of the Cherokee Nation's share of the IRR allocation – the equivalent of two full-time BIA employees. This amount was certainly more than the BIA actually needed to avoid any negative impacts on its overall IRR operations or on it services to other Indian tribes. But, the BIA flatly refused to budge.

The legislative history of TEA-21 makes clear that these provisions were specifically passed to assure that the IRR program is subject to the same self-determination funding mandates as all other tribal programs, including access to agency administrative funds.

Tribal negotiators also pointed out that Congress only earmarked *up to* six percent of the annual IRR program budget for IRR program administration. Specifically, the FY 2000 Interior Appropriations Act provides that "not to exceed 6 percent" of the total IRR appropriation "may be used to cover the road program management costs of the Bureau." This appropriation earmark establishes a funding ceiling, not a floor. Nor does it *guarantee* the BIA a flat 6 percent to administer the IRR program, without regard to its actual and justifiable costs. Nor does it excuse the BIA's refusal to negotiate with the tribes for a fair share of 6% funding.

We also pointed out that BIA's historical practice of using both the 6% funds for IRR program administration plus an additional, *unknown* amount of construction funds for project-related administrative costs, is a violation of the "purpose" restriction contained in the 6% appropriation earmark. As pointed out by our legal counsel, this practice violates basic appropriations law because federal agencies may only use appropriated funds for the particular purposes identified by Congress.[1]

Despite months of negotiation to overcome this impasse, the BIA never retreated from

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[1] See 31 U.S.C. § 1301 ("Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."). As explained in the GAO-"published treatise Principles of Federal Appropriations Law, an "appropriation for a specific object is available for that object to the exclusion of a more general appropriation which might otherwise be considered available for the same object." Moreover, "the fact that an appropriation is included as an earmark in a general appropriation does not deprive it of its character as an appropriation for the particular purpose designated, and where such specific appropriation is available for the expenses necessarily incident to its principal purpose, such incidental expenses may not be charged to the more general appropriation." See 20 Comp. Gen. 739 (1941).

its position. Indeed, it continues to hold fast to this position in the ongoing TEA-21 Negotiated Rulemaking process.

Indian tribes should not have to engage in lengthy and expensive litigation to vindicate their legal rights. The " 6%" provisions in S. 2283 are needed to once again *make absolutely clear* that Congress intends for these 6 percent administrative funds to be appropriately shared with Indian tribes.

Health and Safety Provisions

The Cherokee Nation also strongly supports the health and safety provisions in S. 2283. We understand that minor wording changes have been made to the original bill to clarify that this amendment is intended *to authorize* tribes to obtain their own independent review of road construction " plans, specifications, and estimates" (PS&Es), using appropriate licensed professionals. Again, the Cherokee Nation's own experiences during the IRR self-governance negotiations demonstrate the need for this amendment.

During our negotiations, the Cherokee Nation agreed to abide by strict engineering and construction standards in operating the IRR program, including a second-level review of PS&Es by an "independent and appropriately licensed" engineer. We further agreed to provide copies of the PS&Es to the BIA Regional office and other local transportation officials for their review. We also agreed to several "public health and safety" provisions that would allow the federal government a continuing role in monitoring our tribal IRR program and would even permit it to halt construction activities upon a finding that continued work would seriously jeopardize public health and safety. The TEA-21 Negotiated Rulemaking Committee is also developing regulations which preserve the BIA's legitimate role in protecting public health and safety.

Despite all these agreements on our part, BIA officials *still* did not want to allow tribes to perform their own PS&E approvals. BIA Regional Roads officials took this position even though the BIA's own approvals of PS&Es are often contracted out to private engineering firms or done by BIA officials who are not themselves licensed engineers. Only after months of difficult negotiations did the BIA reluctantly agree to the Cherokee Nation's proposal. However, BIA and Federal Lands Highway officials made clear that this agreement was an exceptional case, limited to the IRR Self-Governance Demonstration Project – although applications to the Federal Highway Administration to delegate this approval function to entities other than tribes are approved on a regular basis. In the TEA-21

Negotiated-Rulemaking process, the BIA and Federal Lands Highway negotiators are once again opposing this idea.

In our view, the real reason for the BIA's intransigence on this issue is not public health and safety, but rather its desire to maintain a bureaucratic check on the IRR planning, design and construction process. After all, both the Red Lake Band and the Cherokee Nation readily agreed to make these PS&Es available to the BIA regional roads engineers for them to study and review.

Under our negotiated system and under S. 2283, the BIA continues to have every opportunity to identify any design problem that might impact public health and safety. We made it clear in negotiations that the tribes would obviously welcome and act on any BIA information about potential design defects. After all, Cherokee families, our children and our Elders are the ones who will drive on these IRR roads. The Cherokee Nation takes great pride in constructing and maintaining the IRR road system in our area just as well as, if not much better, than any federal agency or private contractor ever could.

Our desire for PS&E approval authority is driven by our desire to gain greater control over the IRR construction process so that we can make the program more efficient and more responsive to the needs of our tribal members. Without the ability to approve our own PS&Es, Indian tribes must often wait months – and sometimes even entire construction seasons – for BIA approval. There is nothing tribes can do but complain and wait. Under the system we negotiated and under S. 2283, tribes will have the ability to take control of the process and ensure that the review and approvals are done promptly. At the same time, no licensed professional is going to risk a professional career by doing slipshod work or by approving PS&Es that are deficient, merely to please a tribal client.

Department of Transportation Pilot Project

Finally, the Cherokee Nation wishes to express its strong support for the DOT "pilot program" provisions in S. 2283. While the Cherokee Nation still has to consider whether it wants to participate in this pilot program given our new IRR self-governance agreement, this demonstration project will provide opportunities for other Indian tribes to gain greater control over the IRR program in their area. This, in turn, will eliminate the middleman, reduce duplicative administrative costs and make the entire IRR program more efficient.

We must be clear that while we support this pilot program, we *do not* support the transfer of the entire IRR program back to the Department of Transportation. The Cherokee

Nation believes that Indian people are best served by a strong and vital BIA, the federal agency most responsible for and most experienced in maintaining the federal government's trust obligations toward Indian tribes.

The Cherokee Nation looks forward to the day when it can come to this Committee with nothing but glowing reports about a true partnership between the BIA and Indian tribes operating self-determination and self-governance programs. In some areas, the BIA is indeed moving closer to this goal. But our experience in the IRR self-governance negotiations makes it clear that the BIA still has a long way to go before that can be said here. We therefore believe it is essential that tribes be given the option of contracting and compacting directly with the Federal Lands Highway program to perform these IRR activities.

Conclusion

Like other self-determination and self-governance tribes, the Cherokee Nation has for many years run IHS health clinics, administered child protection services and justice programs, and operated federal housing programs, among many other programs. We have constructed health clinics and other facilities. When TEA-21 was passed, Congress made it absolutely clear that there is nothing special or different about the IRR program that would suggest that tribes cannot be trusted to act prudently when building or maintaining our roads, tasks the Nation has been successfully conducting since 1994. In introducing this bill, Chairman Campbell 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." S. 2283 furthers and strengthens Congress' historic self-determination, self-governance and tribal transportation policies. It should become law.

Thank you Mr. Chairman and Members of the Committee for the opportunity to testify in strong support of this important legislation.

Statement of
The Honorable Mark A. Macarro
Chairman
Pechanga Band of Luiseno Indians
For the
Senate Committee on Indian Affairs
Hearing on
S.2283 the Indian Tribal Surface Transportation Act of 2000
On
June 28, 2000

The Pechanga Band of Luiseno Mission Indians in Temecula, California presents this testimony in strong support of S. 2283, the Indian Tribal Surface Transportation Act of 2000, which would amend the Transportation Equity Act (commonly known as "TEA-21"), to correct serious inequities that have reduced by millions of dollars the funds appropriated by Congress for Indian Reservation Roads ("IRR") Program each year.

A very essential provision of S. 2283 would exclude the IRR program from the annual "obligation limit" in the future. We also support S. 2093, introduced by Senators Domenici, Bingaman, Baucus, and Daschle, to exempt the IRR program from the obligation limit and, thus, protect it from the "off the top" cut.

TEA-21 placed this "obligation limit" on the Indian Reservation Roads (IRR) program for the first time ever. Of the federal highway funds collected from the federal gas tax, the IRR Program is authorized to receive $275 million in FY 2001. The Federal Highway Administration (FHWA) transfers this amount to the Bureau of Indian Affairs ("BIA"). As we understand the process, any IRR funding above the "obligation limit" is returned to FHWA and redistributed at the end of the fiscal year to fund projects that are ready to go. In FY 1998 alone, $25 million was taken from tribes because of this "obligation limit" provision, and the deduction climbed to $32 million in FY 1999.

Nowhere in the United States is this obligation limit more devastating to tribes than in California. Of the $275 million authorized in TEA-21 for the IRR Program, only about $203 million remains after the bites taken by the "obligation limit" and by the BIA for administering the IRR Program. Of that $203 million, California's 2.8% share results in only $5.7 million to address the pre-planning, environmental planning, design and construction needs of all 104 Indian Reservations/Rancherios in the State.

Even if 100% of the $275 million authorization for FY 2001 actually were distributed to tribes, that amount still would be grossly inadequate to meet the basic and present needs of the tribes in California and the rest of the country. **In May, 1999, the California Transportation Commission identified $275 million in road improvements needed on tribal lands just in California alone!** Since that needs assessment covered only transportation rehabilitation, maintenance and operations, **this figure does not include any new road or bridge projects!**

Under the present IRR distribution formula, providing California tribes only slightly more than $5.7 million per year, without a funding increase or funding formula reallocation, it will take 55 years to meet our present needs just for rehabilitation, maintenance and operations.

Most noteworthy, the California Transportation Commission agrees with the tribes that it is fundamentally unfair to take IRR funds from tribes because of the "obligation limit' and give these funds to states. In a November 1999 letter mailed to all members of the State's Congressional Delegation, the Commission requested assistance in addressing the level of funding for the IRR program, stating that its "current structure and funding level . . . do not reflect the needs of Tribal Governments nationwide, and is grossly inadequate in funding needed transportation improvements for the Tribes in California." The letter later described the obligation limit situation as "inherently inequitable" to tribes. A copy of that letter is attached for your information.

We agree with the California Transportation Commission's analysis, and urge exemption or waiver of the obligation limit for the IRR Program so that full funding of $275 million annually for the IRR program can be restored.

The Pechanga Band also urges the Senate Indian Affairs Committee to prod the negotiated rulemaking group to complete its work, particularly on the IRR funding formula, and adopt a more equitable distribution of the IRR funds. As the overall Highway Trust Fund distribution to states is based on returning funds to the source, California tribes deserve far more than the meager 2.8% which they currently receive each year under the present IRR distribution formula. Yet, the State of presently collects in gasoline taxes what accounts for about 12% of the total federal gas tax receipts, and gets back from the Highway Trust Fund about 10% for its state highway program. If the California tribes were to receive an equivalent 10% of the IRR funds, we would be far better able to meet our road improvement needs. **What we are seeking in the IRR formula funding reallocation is 9.2% of the IRR program total.**

One huge step in the right direction would be for the Congress to approve President Clinton's FY 2001 budget request to increase the IRR Program authorization from $275 million to $350 million. With that higher level of federal funding and a more equitable distribution formula, it might actually become possible to fulfill more tribal needs and work down the $4 billion repair and replacement backlog for Indian Reservation Roads nationwide.

We also strongly endorse the provisions of S. 2283 that would create a demonstration program for tribes to enter into 638 contracts with the Federal Highway Administration (instead of the Bureau of Indian Affairs) to administer IRR funds. We urge, however, that the bill's language be flexible enough to permit a consortium of tribes to qualify for such a demonstration program. One such consortium is the unique new organization called the Reservation Transportation Authority ("RTA"), of which the Pechanga Band is a founding member. The RTA is a tribally chartered consortium which now consists of 25 Southern California Tribal Governments. Each of its member tribes has passed a tribal council resolution authorizing the pooling of tribal IRR funds and the administration of the IRR funds by the RTA (instead of the BIA) in the best, most efficient and expeditious manner possible. We believe that the RTA would be just the kind of demonstration project contemplated by S.2283. The RTA is already well established, and would be ready to proceed under this demonstration authority when it becomes law.

The RTA would be in an excellent position to demonstrate the viability of another important provision of S. 2283, giving tribes the ability to obtain their own, independent review of road construction "plans, specifications, and estimates" ("PS&E"), using appropriate licensed professionals. The RTA already performs independent PS&Es quite successfully, and always under budget. We are pleased to see this development because, from the Pechanga Band's recent experience in working with the BIA on a bridge replacement and road widening project, we know that BIA approvals can slow projects to a halt, if not kill them. There needs to be some tribal "self-help" flexibility and authority to ensure that necessary federal approvals will occur on a timely basis so that tribal projects can proceed expeditiously.

For the foregoing reasons, the Pechanga Band urges immediate enactment of S.2283. Thank you for this opportunity to express our support for this important legislation.

Attachment

STATE OF CALIFORNIA

GRAY DAVIS
GOVERNOR

EXHIBIT A

Do Mazzetti

CALIFORNIA TRANSPORTATION COMMISSION

1120 N STREET, MS-52
P.O. BOX 942873
SACRAMENTO 94273-0001
FAX (916) 653-2134
FAX (916) 654-4364
(916) 654-4245

November 12, 1999

This letter individually addressed & sent to each Congressional member.

The Honorable Barbara Boxer
United States Senator
Washington, DC 20510

Dear Senator Boxer:

The California Transportation Commission requests your assistance in addressing both the level of funding for the federal Indian Reservation Road Program (IRR), and inequities in the formula controlling the distribution of these funds among the Native American Tribes. The Commission believes the current structure and funding level of the IRR program do not reflect the needs of Tribal Governments nationwide, and is grossly inadequate in funding needed transportation improvements for the Tribes in California.

The State of California is committed to working with the leaders of the tribes in California at a Government-to-Government level to identify Native American transportation issues, and to develop policies to resolve these issues at the State level. Specifically, the Commission is working to better integrate the land use policies and transportation needs of the tribal governments into the state and regional transportation planning and programming processes. However, the effective coordination of transportation improvements funded through the IRR program and funding of transportation projects accessing tribal lands through state and local transportation programs is hampered by the inadequate IRR program funding for tribes in California.

There is a notable Native American population in every county in California, and all counties except Los Angeles and Orange contain tribal lands. California's population includes 309,000 Native Americans (15.9% of the national total), including 60,200 living on reservations (4.5% of the national total). Also, 104 federally recognized Tribes, 19.6% of the 530 federally recognized Tribes nationwide, are located in California. The total amount of tribal lands in California is rather small, about half a million acres (1% of the national total) because there are many small rancherias and reservations located mostly in rural areas of the State. Due to the fragmentation of tribal lands among many remote locations, the cost of maintaining and constructing roads on tribal lands is much higher per mile in California than on large reservations in other states. Also, the cost of necessary transportation improvements for providing access to lifeline services in distant urban areas is beyond the resources of the small remote rancherias and reservations. The current formula for distributing IRR program funds does not address these higher cost factors for Tribes in California.

In May 1999, the Commission, as part of 10-year needs assessment of transportation rehabilitation, maintenance, and operations needs, identified $275 million of needed road improvements on tribal lands in the state. The current level of funding from the IRR program for road improvements for Tribes in California is about $5 million a year. The expected IRR program funding over the next 10 years will be just $50 million, only 18% of the identified needs. At current funding levels, it would take 55 years to fund currently identified projects.

The federal IRR program is funded with federal fuel tax revenues and is included in the Transportation Equity Act for the 21st Century (TEA-21). The amount of the IRR program apportionment is set by TEA-21, initially $225 million and rising to $275 million nationally. FHWA annually transfers the funds to the Bureau of Indian Affairs (BIA) to administer. After Congress sets the amount of Obligational Authority (OA) each year, FHWA gives BIA their share of OA. Any IRR program apportionment above the OA limitation is returned to FHWA to be added to apportionments for federal Surface Transportation Program funds in the states where the Tribes are located. This is called the "lop off provision" which is unique to the IRR program and is inherently inequitable to the Tribes because it assures that the IRR program cannot effectively compete for redistributed OA at the end of each federal fiscal year.

BIA allocates funds to the tribes in accordance with a "relative need" formula. Negotiated rule making is still underway among the Tribal governments and BIA for updating the IRR program procedures and relative need funding formula. In federal fiscal year 1999, $275 million was authorized for the IRR program and OA was limited to $238,557,000. **California received $6,043,533**, $5,361,000 in construction funds, and $682,533 in maintenance funds, **only 2.5% of the national total**.

The basic philosophy behind the federal aid highway program is "return to source". Given that California accounts for approximately 12% of the national gas tax receipts and receives back about 10%, it is fundamentally unfair to distribute IIR funds according to a different formula, one that yields only 2.5% of the national total. California and the Tribal Governments within California lose an estimated $20 million each year through this inequity.

The Commission strongly supports immediate revision of the formula for the distribution of IRR program funding to increase the share of IRR program funds allocated to California Tribes to 9.2% of the program total (California's minimum guarantee percentage of federal highway funds), guaranteeing 100% obligational authority for the IRR Program nationwide, and making all IRR program apportionments above the OA limitation in previous years of TEA-12 available for expenditure in FY 1999-00. Alternatively, given California's status as a donor state, any "underrun" in IRR funds back to the states should at least be counted in calculating minimum guarantee funds coming back to those states.

California could then establish a procedure allowing Tribal Governments to compete for redistributed OA, and Minimum Guarantee funds, at least to the extent that any "lopped off" IRR apportionments are redistributed back to the state.

If you have any questions or comments regarding this issue, please contact me or the Commission's Executive Director, Robert I. Remen.

Sincerely,

EDWARD B. SYLVESTER
Chairman

cc: Ronald M. Jaejer, Sacramento Area Director, Bureau of Indian Affairs
cc: Jose Medina, Director, Caltrans
cc: Members, California Transportation Commission

IRRCongltrAwinword/ks

SUSAN MASTEN, PRESIDENT
NATIONAL CONGRESS OF AMERICAN INDIANS
WRITTEN TESTIMONY TO THE SENATE COMMITTEE ON INDIAN AFFAIRS ON

S. 2283, THE INDIAN TRIBAL SURFACE TRANSPORTATION ACT OF 2000

JUNE 28, 2000

I. INTRODUCTION

On behalf of the National Congress of American Indians (NCAI), the oldest, largest, and most representative Indian organization in the United States, I would like to provide this statement for the record on the June 28, 2000, hearing in support of S. 2283, the Indian Tribal Surface Transportation Act of 2000.

When the Committee held an October 1999 hearing on the Indian Reservation Roads (IRR) Program and the implementation of the Transportation Equity Act of the 21st Century (TEA-21), NCAI presented a written statement that urged careful consideration of the recommendations of the tribal leaders who testified during the hearing. NCAI is grateful that the Chairman introduced S. 2283 to address the major concerns raised by those tribal leaders, and we urge Congress to pass the bill this year.

II. BACKGROUND

Tribal governments rely on IRR funding to supply the dollars needed to construct and maintain the public roads that provide access to and on Indian reservations, Indian trust lands, restricted Indian lands, and Alaska Native villages. Unfortunately, this funding is woefully inadequate.

The fact that fully 66 percent of the roads serving Native American communities are not even paved has a direct impact on basic services to tribal members. These roads are primarily dirt and clay, ungraded, and deeply rutted. During spring and fall rains, they turn to mud or wash out, forcing people to walk for miles to get to their homes. Even more troubling are these seasonal disruptions to emergency health care and law enforcement services and to the availability of heating fuel, water, and food delivery.

On average, only $500 per mile – and, in some cases, as little as $80 per mile – is available for Indian roads maintenance. In comparison, an average of $2,200 per mile is spent on maintaining other federal roads, and average of $2,500 to $4,000 per mile is spent by states. As a direct result of this low funding, many roads in Indian communities cannot be maintained sufficiently and must be shut down during the winter or in bad weather. Clearly, having this type of unreliable transportation infrastructure has a direct negative impact on the ability of tribal governments to attract economic development.

III. IRR FUNDING AND THE "OBLIGATION LIMITATION"

IRR roads make up 2.63 percent of all existing roads in the federal-aid highway system, but historically they have received less than 1 percent of federal highway dollars. During the TEA-21debate, NCAI and tribal governments fought hard to convince Congress to increase funding for Indian roads and bridges. In the end, tribes received an increase from approximately $191 million a year to $275 million, which is still far less than what is needed to address the deplorable road conditions in Indian Country.

Unfortunately, this increase was in large part offset by a new cut imposed on IRR funding. TEA-21 for the first time extended the "obligation limitation" to the Indian roads allocation, resulting in a loss of about $25 million of the $225 million authorized for FY1998, and about $32 million of the $275 million for FY1999. Tribes stood to lose even more in FY2000 if it were not for the successful efforts of our friends in the Senate to reallocate some additional funding to the IRR program in the FY2000 Transportation Appropriations Act.

Under the obligation limitation, the Federal Highway Administration (FHWA) is required to withhold a certain percentage of the total IRR obligation authority at the beginning of each fiscal year, so that it can be redistributed at the end of the fiscal year. When the obligation limitation was expanded to the IRR program in TEA-21, Congress failed to authorize IRR to participate in this end-of-the-year redistribution. As a result, funding that was expressly authorized for tribes is now being diverted to states for their transportation projects. Obviously, our member tribes consider this to be grossly unfair.

S. 2283 would correct this situation by exempting the IRR program from the obligation limitation, as it was prior to the enactment of TEA-21. This would ensure that all of the funding authorized for Indian roads could be used for its intended purpose without being subject to the whims of the annual appropriations process.

IV. SIX PERCENT LIMITATION FOR PROGRAM AND PROJECT ADMINISTRATION

Under current law, the BIA is authorized to use "up to 6 percent" of IRR roads funding for oversight and administration. Tribal leaders rightfully are concerned that the BIA historically has funded its administrative costs through both IRR construction funds and the 6 percent administrative funds, and that it plans to continue to do so.

NCAI supports the provision of S. 2283 that would clarify that Congress intended this 6 percent to be a maximum funding level by limiting the amount of funding for the BIA to perform program management and project administration functions to "not to exceed 6 percent of the contract authority available from the Highway Trust Fund."

NCAI also supports the language in S. 2283 that would clarify that all IRR program funds should be available to tribal governments that want to exercise their rights under the Indian Self-Determination and Education Assistance Act, P.L. 93-638. It simply does not make sense, and is contrary to the tribal self-determination policy, to allow the BIA to retain 6 percent for IRR program administration when a tribal government or tribal organization takes over these administrative functions under a P.L. 93-638 contract or compact.

V. PILOT PROJECT FOR FHWA P.L. 93-638 CONTRACTS

Another provision in S. 2283 that would bring the IRR program more in sync with the tribal self-determination policy is the proposed pilot project that would allow tribal governments to enter into P.L. 93-638 agreements directly with the Federal Highway Administration. In addition to furthering the goals of true self-determination and establishing government-to-government relationships between tribes and all federal agencies, this pilot project also would go a long way toward reducing administrative costs and making the IRR program more efficient – simply by eliminating the "middleman," which, in this case, is the BIA.

VI. HEALTH AND SAFETY STANDARDS

NCAI strongly supports the provisions of S. 2283 that would authorize tribes to obtain their own independent review of road construction "plans, specifications, and estimates" using licensed professionals. This language would allow tribes that to ensure that proposed construction projects performed under P.L. 93-638 authority are in accordance with health and safety standards, without requiring them to undergo a second, duplicative BIA process.

VII. CONCLUSION

As set forth in the attached Resolution #JUN-00-048, NCAI is in full support of S. 2283. This legislation would help to ensure that TEA-21 and the IRR program is implemented in accordance with the Indian self-determination policy, and it would help to ensure that much-needed IRR funding is used to provide a safe and efficient transportation infrastructure in Indian Country. We look forward to working with the Committee to enact this important legislation as soon as possible.

THE NATIONAL CONGRESS OF AMERICAN INDIANS

RESOLUTION #JUN-00-048

Title: In Full Support of Recommended Amendments to the Transportation Equity Act for the 21st Century (P.L. 105-178) For the Indian Reservation Roads Program.

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) is the oldest and largest national organization established in 1944 and comprised of representatives of and advocates for national, regional, and local Tribal concerns; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of NCAI; and,

WHEREAS, the Congress of the United States enacts legislation which appropriates and distributes funding for the planning, design, actual construction and maintenance of the Indian Reservation Roads (IRR) & Bridge program and other tribal transportation needs; and,

WHEREAS, the Intermodal Surface Transportation Equity Act of 1991 (ISTEA) was replaced in 1998 by the Transportation Equity for the 21st Century (TEA21) which continues to limit the full recognition to Tribal governments as Sovereigns, requires the development of a new funding distribution formula developed in a negotiated rulemaking process and sets forth complex legal criteria that continues to benefit States and the Federal bureaucracy; and

WHEREAS, the TEA21 further implements detrimental policy and statutory restrictions such as the annual withholding of the Obligation Ceiling limitation, Section 1102(f), which *since 1998 has reduced the Indian Reservation Roads (IRR) national budget by over $90.6 million;* and

WHEREAS, an estimated $8.2 billion construction backlog for the IRR continues to serve as a detriment to tribal social and economic diversity, tribal jurisdiction, and ultimately tribal sovereignty; and

WHEREAS, the President's FY2001 budget requested that full funding be restored to the IRR program and further requested an additional $117 million be provided; and

WHEREAS, on May 27, 1999, Senator Voinovich introduced in the Senate of the United States the Surface Transportation Act of 1999, Senate Bill 1144, to provide increased flexibility in use of highway funding and for other purposes, has been referred to the Senate Committee on Environment & Public Works and placed on Senate Legislative Calendar under General Orders, Calendar No. 425; and

WHEREAS, on February 24, 2000, Senators Domenici, Bingaman, Baucus and Daschle introduced Senate bill 2093 to restore full obligation authority for the IRR program through an amendment to the TEA21; and

WHEREAS, on March 23, 2000, Senators Campbell, Inouye, and Johnson, introduced Senate bill 2283, entitled the Indian Tribal Surface Transportation Act of 2000, which proposes to: 1.) restore full obligation authority for the IRR program, 2.) to establish a Pilot Program for direct full funding that includes exclusion of agency participation, 3.) clarifies that not to exceed 6% of the contract authority amounts shall be used to pay administrative expenses for related projects and that such funds shall be made available for tribal governments pursuant to 638 contracting, and, 4.) clarifies that tribal governments can meet statutory requirements to assure public health and safety by agreeing to meet or exceed proper health and safety standards, obtained certification of plans & specifications by a licensed professional, and by provided certification to the BIA, through amendments to the TEA21.

NOW THEREFORE BE IT RESOLVED, that NCAI does hereby fully support Senate bill 2093 and Senate bill 2283, which proposes to restore full funding to the IRR program by amendment of TEA21, Section 1102; and

BE IT FURTHER RESOLVED, that NCAI does hereby respectfully request the U.S. Congress to consider enactment of those additional amendments regarding a Federal Lands Highway Program demonstration project, clarification of the BIA administrative 6%, and, health and safety assurances; and

BE IT FINALLY RESOLVED, that NCAI does hereby respectfully urge the U.S. Congress to consider an appropriate increase allocation of an annual $117 million to the IRR program for FY2001-2003.

CERTIFICATION

The foregoing resolution was adopted at the 2000 Mid-Year Session of the National Congress of American Indians, held at the Centennial Hall in Juneau, Alaska on June 25-28, 2000 with a quorum present.

Susan Masten, President

ATTEST:

Juana Majel, Recording Secretary

Adopted by the General Assembly during the 2000 Mid-Year Session of the National Congress of American Indians, held at the Centennial Hall in Juneau, Alaska on June 25-28, 2000.

Fort Belknap Indian Community

R.R. 1, Box 66
Fort Belknap Agency
Harlem, Montana 59526
PH: (406) 353-2205
FAX: Council - (406) 353-4541
FAX: Departments - (406) 353-2797

Fort Belknap Indian Community
(Tribal Govt.)
Fort Belknap Indian Community
(Elected to administer the affairs of the community and to represent the Assiniboine and the Gros Ventre Tribes of the Fort Belknap Indian Reservation)

July 14, 2000

Senate Committee on Indian Affairs
Attn: Eleanor McComber
838 Hart Senate Office Building
Washington, D.C.20510-6450

Honorable Chairman:

Honorable Chairman Campbell and respected members of the Senate Committee on Indian Affairs. My name is Joseph McConnell, I am the President of the Fort Belknap Indian Community Council which is the governing body for the Gros Ventre and Assiniboine Nation on the Fort Belknap Indian Reservation in Montana. We are pleased to submit these written comments regarding S. 2283, and amendments to TEA-21.

Our reservation is located in north central Montana and encompasses 652,593 acres. In addition, there are 28,731 acres of Tribal lands outside the reservation's boundaries obtained through the land acquisition program. The reservation is rectangular in shape with an average width of 28 miles. The average length north to south is 40 miles. The northern boundary is the Milk River; the southern boundary includes a large portion of the Little Rocky Mountains. The east and west boundaries are marked by survey lines. The Fort Belknap Reservation is the fourth largest of the seven reservations in Montana and is included in portions of Blaine and Phillips counties. Our on reservation population is approximately 4000 and we have a enrolled membership of 5256 people.

The Assiniboine were part of the Yantonai Sioux. The Gros Ventres are of Algonquian origin and are closely related to the Arapaho. The Assiniboine originally resided in the woodland area near northern Minnesota. The Gros Ventre resided near the Saskatchewan River area of the province of Alberta, Canada. In search of hunting areas, competition from other stronger Tribes, and the development of new trade routes, the Tribes migrated toward Montana in the 1700's - 1800's.

The Fort Belknap Indian Reservation was created by an Act of Congress on May 1, 1888 (Stat., L., XXV, 113). The site for the Fort Belknap Agency as the government headquarters was informally established in 1889. The Fort Belknap Agency is located four miles southeast of Harlem, Montana. Fort Belknap was named after William W. Belknap, Secretary of War under President Grant.

The male Indian voters accepted the Indian Reorganization Act (IRA) on October 27, 1934. This allowed Tribal members of Fort Belknap to establish a constitution and corporate charter. The constitution was adopted on October 19, 1935 and a corporate charter on August 25, 1937 in accordance with Section 16, of the IRA.

It is well known that the IRR Program is underfunded and has been for many years. Transportation experts estimate that the IRR Program needs at least $7 billion dollars in increased funding to even come close to meeting the actual transportation needs of Indian Tribes. The IRR road system consists of at least 50,000 road miles, but this figure is itself understated because of the lack of an updated and adequate IRR roads inventory. Even using this low figure, tribal roads constitute 2.63% of all public roads eligible to receive federal funding under TEA-21. Yet the IRR Program receives less than 1% of TEA-21 funds for its entire operation, whether for transportation planning, road design, road construction, or program administration.

TRANSPORTATION PLANNING

Transportation planning is the procedure for determining, as accurately as possible, future transportation needs and the most practical ways to satisfy them. Transportation system planning is one of the most complex endeavors in which any community can become involved. The planning effort involved in preparing a transportation plan for an "Indian Reservation Roads" (IRR) system is unique because it includes roads under the jurisdiction of several different governmental agencies, not just the Bureau of Indian Affairs (BIA). This road network consists of all public roads that are located within, or provide access to an Indian reservation or trust lands. Also it is necessary to understand the political, cultural, and historical environment.

The Transportation Planning Process involves an in-depth and comprehensive evaluation of all factors influencing the performance and orderly growth of transportation systems. The primary objectives of transportation planning are to determine the needs for both new and existing transportation facilities and to lay the groundwork for transportation improvements.

The Bureau of Indian Affairs Roads Department primarily maintains the Fort Belknap Indian Reservation roads system. Indian Reservation Roads (IRR) are public roads, including roads on the Federal-Aid- Highway system, that are located within or provide access to Indian reservations of Indian Trust Land. The BIA has responsibility for administering IRR programs that serve Indian tribes. The Fort Belknap Reservations fair share from the Billings Area Office, Bureau of Indian Affairs for Roads Maintenance in FY-99 is $314,000.00 to maintain 215 miles of BIA System roads, this includes 100 miles of paved roads, 58 miles of gravel roads, and 57 miles of earth roads. The actual need however is $500,000.00 to maintain an additional 250 miles of tribal roads that serve our elderly, handicap, and school children.

The Fort Belknap Indian Community Council recognizes the importance of the Transportation Equity Act of the 21st Century (TEA-21) signed by President Clinton, and the Memorandum dated April 29, 1994 the Transportation Planning activities among Indian tribal governments, the Bureau of Indian Affairs, Federal Highway Administration, Federal Transit Administration, States and local governments will be performed on a government-to-government basis as outlined by the President of the United States of America, and

Presidential Executive Order dated August 12, 1998, Consultation and Coordination with Indian Tribal Governments, that honor and strengthen the government-to-government relationship between the United States of America and all Tribal Nations, and

23 CFR 450 Subpart A define ***coordination*** as *"the comparison of the transportation plans, programs, and schedules of one agency with related plans, programs, schedules of other agencies or entities with legal standings, and adjustments of plans, programs and schedules to achieve general consistency."* In addition, the regulations define ***cooperation*** as *"...the parties involved in carry out the planning, programming and management systems processes work together to achieve a common goal or objective."* And

The Fort Belknap Indian Community Council supports the proposed TEA 21, Indian Reservation Roads amendments to address the following tribal concerns:

- Strongly support the President requesting $117 million IRR increase in FY-2001 funding
- Restore funds lost due to the inadvertent application of the obligation limitation the IRR program
- Clarify that all IRR funds, including the "up to 6% BIA administration funds, must be made available to Tribes in accordance with the Indian Self-Determination and Education Assistance Act ("ISDEAA")
- Clarify that Tribes may assume responsibility for approving construction and design plans, specifications and estimates ("PS&Es") and may satisfy health and safety requirements making proper representations and assurances in self-determination contracts
- Establish an IRR Pilot Program allowing Tribes to enter into agreements directly with the Federal Highway Administration under the authority of the ISDEAA
- Clarify that the BIA may only use "up to 6% of IRR funds for both IRR program administration and IRR project-related administration activities
- Strongly opposes the States receiving monies designated for Indian Nations under TEA-21
- Lowering the ceiling amount from $500,000.00 to $200,000.00 to address Tribal disaster roads infrastructure

There was specific Congressional intent in the ISTEA Bill to provide new opportunities for tribes in transportation improvements, jobs, and ultimately recreational and tourism enhancements that will lead to economic growth.

Congress authorizes and appropriates Highway Trust Funds for the Federal Lands Highway Program (FLHP), through the passing of multi-year transportation acts. The last four transportation acts were:

1. The Surface Transportation and Uniform Relocation Assistance Act of 1987.
2. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).
3. The National Highway System Designation Act.
4. The Transportation Equity Act for the 21st Century (TEA-21).

In most of these acts, Congress authorized funds for the FLHP for 5 or 6 fiscal years. This type of multi-year funding is called "contract authority" (a special type of budget authority), sums authorized in transportation acts are made available for obligation without an appropriations action.

The use of contract authority gives the Federal Land Management Agency (FLMA), Indian Tribal Governments, and States advance notice of the size (funding levels), of the various categories of the FLHP. These categories are, Forest Highways, Indian Reservation Roads, Park Roads, and Parkways, Public Lands Highway Discretionary, and Refuge Roads. As soon as an authorization is enacted it eliminates some of the uncertainty contained in the fiscal year authorization-appropriation sequence.

Historically the FLHP was not effected by the authorization-appropriation sequence since it always was provided the full amount of annual obligation limitation.

Section 1102 of TEA-21 states how the annual obligation limitation would be distributed for FY's 1998-2003. This overrides the special treatment for FLHP funds under the FY-98 DOT Appropriations Act.

The Fort Belknap Indian Community Council again would like to thank you for the opportunity to submit our written testimony to the Senate Committee on Indian Affairs regarding S.2283, the Indian Tribal Surface Transportation Act of 2000.

Respectfully,

J F McConnell

Joseph F. McConnell, President
Fort Belknap Indian Community Council

TESTIMONY OF DUANE JAMES RAY, PRESIDENT OF THE SENECA NATION OF INDIANS

BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS
HEARING ON S. 2283
A BILL TO AMEND
THE TRANSPORTATION EQUITY ACT FOR THE 21st CENTURY
June 28, 2000

I am Duane James Ray, President of the Seneca Nation of Indians. The Seneca Nation appreciates this opportunity to submit testimony for the record in the hearing held on June 28, 2000 before the Senate Committee on Indian Affairs. I am pleased to announce the Seneca Nation's strong support for S. 2283, the Indian Tribal Surface Transportation Act of 2000.

The Seneca Nation has made great strides in recent years to become a recognized leader in the on-going tribal effort to reform the Indian Reservation Roads (IRR) program. Our Tribal Transportation Manager serves with distinction as a tribal representative for the Eastern Region on the TEA-21 Negotiated Rulemaking Committee. The Nation's experience in working on the Committee over the last year and in working with BIA-Eastern Regional Roads officials over several years has convinced us that fundamental changes are needed to make the IRR program more efficient and more responsive to the needs of all Indian nations.

The Seneca Nation is pleased that this Committee continues to seek innovative ways to improve and strengthen the IRR program. The safety of Seneca families, our children and our Elders, continues to be at risk by the lack of adequate IRR construction and maintenance funding. This Committee has long recognized that the best efforts of Indian tribes and the federal government will never fully succeed in fostering and strengthening business development in impoverished Indian communities if businesses must contend with unpaved roads and unsafe bridges to bring their products to market.

Let me briefly discuss the importance of each the bill's provisions.

Obligation Limitation and Funding Equity for the IRR Program. In its IRR oversight hearing last October and its hearing on S. 2283 two weeks ago, this Committee received testimony from many tribal leaders, transportation experts, the BIA and the Federal Highway Administration ("FHWA") regarding the IRR program. Despite areas of disagreement, one constant fact emerges from this testimony -- the IRR program is badly underfunded and has been for several decades. The lack of funds for tribal transportation and

infrastructure development greatly hinders the advancement of tribal economies and services for Native people.

The Seneca Nation is comprised of nearly 7,000 enrolled members, many of whom live on or near our three Reservations. The unmet transportation needs on our Allegany, Cattaraugus and Oil Spring Reservations are enormous. The Nation's Transportation Department estimates that our current road maintenance and construction backlog is well over $20 million. Several roads on our Reservations now require complete reconstruction due to the lack of adequate road maintenance.

Fifty-six miles of IRR roads and bridges provide critical access to our Reservations, yet the Seneca Nation receives a paltry $25,000 in annual IRR maintenance funding to care for them, only $445 per road mile. In contrast, recent figures from the Cornell University Roads Program place annual road maintenance funding at much higher levels for state and local governments -- $4,900 per mile for municipal transportation departments and $11,000 per mile for state transportation departments. Many of the Nation's highest priority road construction projects have been put on hold for years due to a lack of IRR funding.

Insufficient Congressional funding for IRR construction and maintenance is the principal reason for the Nation's unmet transportation needs. However, the dire situation is compounded by the failure of BIA to fairly allocate the IRR funds it does receive from Congress. We enclose with this testimony, and ask that it be made a part of the record, a BIA spreadsheet showing BIA-Eastern Regional IRR distributions over the last ten years. The spreadsheet only confirms, as the Nation has long suspected, that the Nation's IRR allocation has been *underfunded* by almost a million dollars over the last decade.

The BIA-Eastern Regional Office is the least funded of the twelve BIA Regional Offices. The BIA-Eastern Regional Office receives only $3.7 million per year to meet the transportation needs of dozens of Indian tribes from Maine to Alabama -- less than 2% of the annual IRR funding authorization. The Seneca Nation has faith in the TEA-21 Negotiated Rulemaking Committee to correct this funding imbalance, but it cannot succeed without the full support of the Administration and the Congress.

S. 2283 does not attempt to solve all these funding problems, but it does correct one terribly unfair aspect of TEA-21, the so-called "obligation limitation" problem. As this Committee is well aware, TEA-21 made the obligation limitation deduction applicable to IRR funds for the first time in the program's history. This significant and costly change to the IRR program was silently imposed on Indian tribes without the benefit of hearings, consultation or debate. Compounding this unfairness, TEA-21 did not include Indian tribes

among the list of governments eligible to receive redistributed highway funds withheld during the obligation limitation process.

Because of the obscure "obligation limitation" accounting mechanism, millions of dollars of badly needed IRR funding is now transferred from Indian tribes to states or other eligible recipients *every year*. In FY 1998, Indian tribes lost roughly $25 million from the $225 million dollar IRR funding allocation. In FY 1999 tribes lost approximately $32 million. This year, the IRR program will lose another $34 million. If this oversight is not corrected millions more will be lost to tribes in future years.

Senator Wellstone said it best in his comments at the October 1999 IRR oversight hearing that "the problem was created by Congress and must be fixed by Congress." S. 2283 partially fulfills the promise Congress made to the Indian nations when it told them that IRR funding would be increased to $275 million annually. Currently, after BIA and FHWA deductions, only about $200 million actually reaches Indian country for road construction each year. The restoration of the full $275 million IRR authorization through FY 2003 is an important first step toward funding fairness in the IRR program. The Seneca Nation applauds this Committee's fine effort to stop the diversion of IRR funds away from Indian country, where it was first intended and is so critically needed.

Before leaving the topic of IRR funding, I must urge the Congress to do even more to correct the severe funding shortfalls in the IRR program. In this era of budget surpluses, the time has come for full funding equity for the IRR road construction and maintenance program. It simply makes no sense to spend millions of dollars in federal funds to construct IRR roads and bridges only to see them fall into disrepair and lose years of useful life due to a lack of adequate maintenance. The current $25.5 million dollar appropriation for IRR maintenance is woefully inadequate. Without an increase in funds for regular road maintenance, taxpayers will -- in the long run -- end up spending much more to rehabilitate and replace these roads and bridges.

The lack of adequate funds for Indian Reservation roads and bridges creates serious health and safety problems for both Seneca Nation members and the many non-Indians who use our roads. We have had far too many traffic accidents, including many serious injuries and fatalities, on our IRR roads and bridges over the last several years. The Seneca Nation urges the Congress to increase IRR construction funding to 2.63% of the total TEA-21 authorization. IRR maintenance funding should be increased to $100 million per year, bringing annual IRR road maintenance funding up to $2,000 per road mile (still far less than the maintenance expenditures of State and municipal governments). These funding increases

are modest, appropriate and befitting of the federal government's historic trust responsibility toward the Indian nations.

Six Percent Administrative Funding

The Seneca Nation wholeheartedly approves of the Committee's effort to rein in the BIA's unaccountable use of the 6% administrative funds and clarify that Indian tribes are entitled to a fair share of these administrative funds when they assume IRR administrative functions. As Chairman Campbell repeatedly explained to BIA and FHWA witnesses appearing before this Committee, "all funds" means "all funds." Congress explicitly mandated in TEA-21 that these funds be made available to tribes. Despite this, BIA and FHWA negotiators on the TEA-21 Negotiating Rulemaking Committee continue to insist that the 6% funds are not available to tribes, citing the "otherwise contractible" language in TEA-21. S. 2283 is needed to remove *any doubt* that Congress intends these funds to be made available to Indian tribes.

Equally important, S. 2283 explicitly prohibits another unlawful BIA practice. For years, the BIA has been siphoning off *an undisclosed amount* of IRR construction funds to pay for so-called "project related" administrative costs *in addition to* the "up to 6%" of IRR funds that Congress actually approved for this purpose. As Chairman Campbell indicated in his comments to the BIA and in his October 29, 1999 letter initiating a GAO audit of this practice, no statutory support exists for the BIA's position. Yet, the practice continues to this day.

The Seneca Nation was deeply disappointed in Assistant Secretary Gover's testimony before this Committee on the 6% issue. We assume that he must be aware of the controversy over the BIA's use of these additional "project related" funds because it has been a topic of heated debate during the TEA-21 Negotiated Rulemaking Committee meetings. Yet, his testimony left the impression that the BIA spends less than 6% of IRR funds for *all* its IRR administrative activities. To speak frankly, this testimony was erroneous and misleading. ***The BIA actually spends far more than the 6% of IRR funds for administrative functions when "project related" administrative functions are included in the total amount.*** Indian tribes do not know *how much* more the BIA spends for these "project related" administrative costs because the BIA has never provided this information to the tribes or to this Committee, despite repeated requests that it do so.

Indian nations, the members of this Committee and the Congress as a whole expect and deserve accountability and openness from the BIA concerning its administration of Indian programs. Unfortunately, on the 6% funding issue, the BIA has stonewalled tribal and

Congressional inquiries and has flatly refused to negotiate with tribes over these funds. To this day, the BIA has never clearly accounted for its use of *all* administrative IRR funds, whether related to particular construction projects or to the entire IRR program.

The presumption must be that *all* IRR funds are available, in the first instance, to the Indian tribes themselves according to their own "relative need" funding allocation. The BIA and FHWA must provide a clear and compelling reason for withholding IRR funds, including administrative funds, from tribes wishing to operate IRR projects or programs under self-determinations contracts. S. 2283 simply and emphatically reiterates Congress' original intention in passing TEA-21.

Health and Safety Provisions

The Seneca Nation also strongly supports the health and safety provisions in S. 2283, which are designed to clarify that Indian tribes may obtain their own independent review and approval of road construction "plans, specifications, and estimates" (PS&Es), using appropriate licensed professionals.

Once again, the record must be corrected with regard to the testimony of the Administration witnesses on this issue. These health and safety provisions *do not* limit the ability of the BIA or the FHWA to ensure that IRR roads and bridges are built safely and efficiently. The BIA retains an on-going monitoring and oversight role in the construction of *every* IRR road and bridge. *See* 25 U.S.C. § 458cc (e)(1); 25 C.F.R. § 900.131. All IRR roads and bridges are also subject to final inspections by federal officials using nationally accepted health, safety and design standards. The TEA-21 Negotiated Rulemaking Committee is also developing regulations which preserve the BIA's legitimate role in protecting public health and safety in the construction of IRR roads and bridges.

None of this will change after passage of S. 2283. BIA roads engineers will continue to have every opportunity to identify any design problem that might impact public health or safety because they will receive copies of the PS&Es well before construction begins. Indian tribes will obviously welcome and act on BIA information about potential design defects because their own members' lives are at stake. Indian tribes must also use cost-effective construction practices. Tribes are not likely to ignore valid BIA design objections only to see completed projects rejected at the final inspection stage of the construction process.

The only thing S. 2283 does is allow Indian tribes to regain control over the processing of PS&Es so that important construction projects are not needlessly delayed waiting for BIA officials to approve these design documents. Indian tribes can be trusted to

build safe, affordable IRR roads and bridges, just like they operate other federal Indian programs, without unnecessary review by federal officials at every step of the design process. The health and safety provisions in S. 2283 will make the IRR program more efficient and more responsive to the tribal communities the program is intended to serve. It has the strong support of the Seneca Nation.

Department of Transportation Pilot Project

The Seneca Nation also wishes to express its strong support for the DOT "pilot program" provisions in S. 2283. The Nation, in fact, urged Congress to pass such an amendment in our previous testimony on the IRR program. The Seneca Nation is gratified that the Committee listened to our concerns and has developed this appropriate and innovative pilot program to further the goals of tribal self-determination in the administration of the IRR program.

This demonstration project will provide opportunities for Indian tribes to gain greater control over the IRR program in their area. This, in turn, will reduce duplicative administrative costs and make the entire IRR program more efficient and accountable to Indian nations. When S. 2283 becomes law, the Seneca Nation will seriously consider becoming one of the first participants in this pilot program.

As explained in our previous testimony, the Seneca Nation has experienced great difficulty working with the BIA-Eastern Regional Roads staff over the last several years, as we have sought to administer more IRR projects under the Indian Self-Determination Act. The Nation has now successfully performed several IRR construction projects under self-determination contracts with the BIA. Unfortunately, it often seems that we have been successful in spite of the BIA. Rather than receiving support, encouragement and competent technical advice and assistance in performing these self-determination contracts, the Nation's staff has often been told incorrect information or received advice that later proved to be false or contrary to the law.

Some twenty-five years after passage of the Indian Self-Determination Act and some four years after promulgation of the Indian Self-Determination regulations, the BIA-Eastern Regional Roads Division still provides us with self-determination construction contracts that contain unlawful and inappropriate FAR clauses and other unacceptable provisions.

For example, our self-determination contracts have never contained advance funding provisions despite the express mandate in the Indian Self-Determination Act and its implementing regulations that tribes performing self-determination construction contracts

must receive advance funding on *at least* a quarterly basis. *See* 25 C.F.R. § 900.132. Quarterly advance payments are the ***minimum amounts*** authorized by law for self-determination construction contracts. However, the law authorizes the BIA and contracting tribes to negotiate advance payment schedules on terms that will stretch these limited IRR funds even further. All other self-determination contracts must be paid in advance on a quarterly, semiannual or annual basis, at the option of the tribe. *See* 25 U.S.C. §§ 450j(b), 450j-1(g) and 450*l*(c) [Model Agreement section (b)(5)].

Many tribes around the country already receive a 100% annual lump sum payment for their road construction contracts. The Seneca Nation has now sent several written requests to the BIA-Eastern Regional Director asking to revise its current construction contracts so that they contain appropriate advance funding provisions, as mandated by law. To date, we have yet to receive a positive response to these requests.

The Indian Self-Determination Act also requires that tribes be allowed to keep "savings" on cost reimbursement construction contracts to "be used to provide additional services or benefits under the contract." 25 U.S.C. 450j-1(a)(4). However, the cost reimbursement construction contracts offered to the Seneca Nation by the BIA-Eastern Regional Roads Division all contained express provisions requiring us to pay these savings back to the BIA. In fact, in one case, the BIA "accidentally" sent us an advance payment but then immediately demanded that we pay the money back. It later required us to pay back $132,000 in savings as a condition of closing out the contract. These savings resulted from the Nation's efficient performance of the construction contract. By law, we should have been permitted to keep these saving to provide additional services under the contract. We are hopeful that this incident will be remedied in the near future, but it should never have occurred at all.

These are just a few examples out of many where the BIA-Eastern Area Roads Division has failed to fulfill its statutory responsibilities under the Indian Self-Determination Act and TEA-21. We believe the DOT pilot program created by S. 2283 will greatly improve this situation because tribes that participate will have greater flexibility in choosing whom to negotiate with in concluding self-determination construction contracts.

Healthy competition can only serve to improve the BIA's efforts to serve all Indian tribes in the Eastern region. Some BIA Area Roads divisions have been quite helpful and supportive of tribes performing self-determination construction contracts. They have actually been a help not a hindrance to contracting tribes. By giving Indian tribes the option of contracting directly with the FHWA, we believe all BIA Regional Roads departments will

become more efficient and more responsive to the interests of tribal governments.
TEA-21 Negotiated Rulemaking Committee

Finally, in the face of comments made by Assistant Secretary Gover about the need to "wrap up" the work of the TEA-21 Negotiated Rulemaking Committee, the Seneca Nation of Indians wishes to express its full support for the Committee's efforts to date. Our own Transportation Manager ably serves as a tribal representative for the Eastern Area on the Rulemaking Committee and also serves on the TEA-21 Policy Workgroup. As other tribal witnesses have testified, tribal representatives on the Committee were greatly frustrated, early on in the process, both by the time it took for the BIA and FHWA to get the Committee up and running and by the BIA's initial reluctance to sign the rulemaking protocols. However, we are pleased that over the last sixteen months that negotiations have actually been underway, the Committee is moving forward with the important tasks assigned to it by Congress. The Seneca Nation is committed to seeing the rulemaking process completed as fairly and as expeditiously as possible.

Conclusion

The Seneca Nation greatly appreciates the dedicated work of this Committee and its staff in developing S. 2283. Thank you, Mr. Chairman and members of the Committee, for the opportunity to testify in strong support of this important legislation.

Updated: 3/29/00

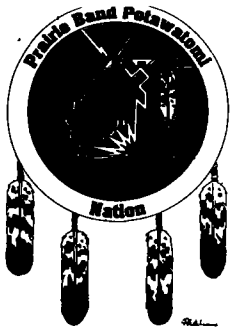
EASTERN AREA - FUNDING DISTRIBUTION ACTUAL VS. FORMULA

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95	FY96	FY97	FY98	FY99	Total
CATAWBA												
Actual	$ -	$ -	$ -	$ -	$ -	$ 127,153	$ 316,017	$ 559,500	$ 144,880	$ 216,787	$ -	$ 1,364,417
Formula	N/A	N/A	N/A	N/A	N/A	Not Avail.	Not Avail.	$ 20,000	$ 14,515	$ 29,436	$ 26,177	$ 90,128
Difference								$ 539,500	$ 130,445	$ 187,351	-$ 26,177	$ 831,119
CAYUGA												
Actual	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Formula	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	$ 4,147	$ 8,411	$ 7,479	$ 20,037
Difference									-$ 4,147	-$ 8,411	-$ 7,479	-$ 20,037
CHEROKEE											see note d)	
Actual	$ 370,000	$ 345,000	$ 858,700	$ 545,000	$ 493,000	$ 1,521,350	$ 842,995	$ 666,000	$ 858,240	$ 1,666,360	$ 2,148,245	$ 10,230,880
Formula	$ 260,550	$ 245,970	$ 196,329	$ 446,540	$ 789,087	$ 927,647	$ 1,299,334	$ 1,054,659	$ 858,240	$ 1,730,287	$ 1,804,245	$ 9,414,887
Difference	$ 109,450	$ 119,030	$ 358,372	$ 98,461	-$ 296,087	$ 593,703	-$ 456,349	-$ 388,659	$ -	-$ 63,927	$ 542,000	$ 815,993
CHITIMACHA												
Actual	$ -	$ -	$ 9,000	$ 148,000	$ 7,000	$ -	$ 10,525	$ -	$ -	$ -	$ 175,052	$ 349,577
Formula	$ 10,381	$ 9,801	$ 7,902	$ 17,792	$ 19,868	$ 17,780	$ 19,400	$ 12,324	$ 6,912	$ 14,850	$ 12,485	$ 148,475
Difference	-$ 10,381	-$ 9,801	$ 1,098	$ 130,208	-$ 12,868	-$ 17,780	-$ 8,875	-$ 12,324	-$ 6,912	-$ 14,850	$ 162,567	$ 201,102
CHOCTAW												
Actual	$ 775,000	$ 621,000	$ 408,000	$ 1,008,769	$ 439,000	$ 977,093	$ 1,218,114	$ 435,000	$ 328,300	$ 538,633	$ 532,612	$ 7,395,452
Formula	$ 238,162	$ 224,835	$ 181,287	$ 408,178	$ 490,334	$ 564,747	$ 712,867	$ 530,008	$ 328,550	$ 662,387	$ 842,368	$ 4,983,708
Difference	$ 536,838	$ 396,165	$ 226,713	$ 598,590	-$ 51,334	$ 412,346	$ 505,247	-$ 95,008	-$ 250	-$ 125,754	-$ 9,751	$ 2,411,744
COUSHATTA												
Actual	$ -	$ -	$ -	$ -	$ -	$ -	$ 107,100	$ -	$ -	$ -	$ -	$ 107,100
Formula	$ 21,172	$ 19,987	$ 16,116	$ 36,286	$ 37,101	$ 34,050	$ 37,839	$ 24,584	$ 16,898	$ 32,383	$ 30,747	$ 306,143
Difference	-$ 21,172	-$ 19,987	-$ 16,116	-$ 36,286	-$ 37,101	-$ 34,050	$ 69,261	-$ 24,584	-$ 16,898	-$ 32,383	-$ 30,747	$ 199,043
GAY HEAD												
Actual	$ -	$ -	$ -	$ -	$ 852,000	$ 117,116	$ -	$ -	$ -	$ -	$ 49,800	$ 1,018,916
Formula	N/A	N/A	$ 7,022	$ 15,811	$ 15,700	$ 13,907	$ 14,793	$ 9,092	$ 8,084	$ 18,353	$ 14,543	$ 115,286
Difference			-$ 7,022	-$ 15,811	$ 836,300	$ 103,209	-$ 14,793	-$ 9,092	-$ 8,084	-$ 18,353	$ 34,957	$ 903,330
HOULTON BAND												
Actual	$ 2,000	$ 1,000	$ 11,000	$ 2,000	$ -	$ -	$ 129,475	$ -	$ -	$ -	$ 21,783	$ 167,258
Formula	$ 5,609	$ 5,295	$ 4,269	$ 9,612	$ 12,033	$ 15,362	$ 22,770	$ 19,261	$ 8,451	$ 13,119	$ 11,219	$ 124,999
Difference	-$ 3,609	-$ 4,295	$ 6,731	-$ 7,612	-$ 12,033	-$ 15,362	$ 106,705	-$ 19,261	-$ 8,451	-$ 13,119	$ 10,564	$ 42,259
INDIAN TOWNSHIP												
Actual	$ 6,000	$ 1,000	$ -	$ 237,000	$ 707,000	$ 112,624	$ -	$ 444,973	$ 54,283	$ 205,592	$ -	$ 1,767,452
Formula	$ 129,596	$ 121,400	$ 97,686	$ 220,382	$ 154,572	$ 130,202	$ 129,305	$ 71,945	$ 48,614	$ 99,110	$ 87,254	$ 1,289,276
Difference	-$ 123,596	-$ 120,400	-$ 97,686	$ 16,606	$ 552,428	-$ 17,578	-$ 129,305	$ 373,028	$ 5,649	$ 106,482	-$ 87,254	$ 478,177
Formula	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	$ 922	$ 1,871	$ 1,662	$ 4,455
Difference									-$ 922	-$ 1,871	-$ 1,662	-$ 4,455

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95	FY96	FY97	FY98	FY99	Total
GROOSBURBE												
Actual	$ 6 000	$ 20,000	$ -	$ 92,000	$ 337,000	$ 26,260	$ -	$ -	$ -	$ -	$ 57,200	$ 537,560
Formula	$ 128,019	$ 118,967	$ 95,825	$ 215,975	$ 220,071	$ 288,076	$ 360,299	$ 313,379	$ 194,458	$ 396,297	$ 265,505	$ 2,592,842
Difference	-$ 121,019	-$ 98,967	-$ 95,825	-$ 123,975	$ 116,929	-$ 239,716	-$ 360,299	$ 313,379	-$ 194,458	-$ 396,297	-$ 208,305	-$ 1,425,835
MICMACS												
Actual	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Formula	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	$ 10,598	$ 21,492	$ 19,113	$ 51,203
Difference									-$ 10,598	-$ 21,492	-$ 19,113	-$ 51,203
MOHEGAN												
Actual	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Formula	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	$ 5,760	$ 11,681	$ 10,388	$ 27,829
Difference									-$ 5,760	-$ 11,681	-$ 10 388	-$ 27,829
NARRAGANSETT												
Actual	$ -	$ -	$ -	$ 10,500	$ -	$ -	$ 170,000	$ -	$ -	$ -	$ 116,600	$ 297,100
Formula	$ 43,992	$ 41,531	$ 33,487	$ 73,396	$ 93,205	$ 109,132	$ 152,408	$ 123,235	$ 77,184	$ 156,954	$ 196,947	$ 1,103,468
Difference	-$ 43,992	-$ 41,531	-$ 33,487	-$ 64,896	-$ 93,205	-$ 109,132	$ 17,594	-$ 123 235	-$ 77,184	-$ 156,954	-$ 80,347	-$ 806,368
ONEIDA												
Actual	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Formula	$ 10,129	$ 9,562	$ 7,710	$ 17,359	$ 29,311	$ 25 942	$ 27,565	$ 16,917	$ 10,138	$ 20,556	$ 18,282	$ 193,472
Difference	-$ 10,129	-$ 9,562	-$ 7,710	-$ 17,359	-$ 29,311	-$ 25 942	-$ 27,565	-$ 16,917	-$ 10,138	-$ 20,556	-$ 18,282	-$ 193,472
ONONDAGA												
Actual	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Formula	$ 28,377	$ 26,789	$ 21,600	$ 48,633	$ 38,643	$ 31,705	$ 30,271	$ 15,777	$ 9,446	$ 19,156	$ 17,038	$ 287,433
Difference	-$ 28,377	-$ 26,789	-$ 21,600	-$ 48,633	-$ 38,643	-$ 31,705	-$ 30,271	-$ 15,777	-$ 9,446	-$ 19,156	-$ 17,038	-$ 287,433
PENOBSCOT												
Actual	$ 10,000	$ 220,530	$ 30,000	$ 108,000	$ 12,000	$ -	$ 410,697	$ 69 287	$ 363,110	$ 114,179	$ 67,995	$ 1,465,264
Formula	$ 212,030	$ 200,165	$ 161,395	$ 363,384	$ 288,220	$ 218,372	$ 180,567	$ 66 619	$ 61,856	$ 124,719	$ 109 690	$ 1,999,217
Difference	-$ 202,030	$ 19,635	-$ 131,395	-$ 255,384	-$ 277,220	-$ 218,372	$ 230,129	$ 668	$ 302,054	-$ 10,540	-$ 41,695	-$ 533,953
PEQUOT												
Actual	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Formula	$ 9,264	$ 8,746	$ 7,052	$ 15,877	$ 16 931	$ 17,525	$ 22,096	$ 18,410	$ 10,893	$ 38,437	$ 37,395	$ 206,626
Difference	-$ 9,264	-$ 8,746	-$ 7,052	-$ 15,877	-$ 16,931	-$ 17,525	-$ 22,096	-$ 18,410	-$ 10,893	-$ 38,437	-$ 37,395	-$ 206,626
PLEASANT POINT												
Actual	$ 89,059	$ 175,000	$ 14,400	$ 57,000	$ 200,000	$ -	$ -	$ 3,701	$ -	$ -	$ -	$ 530,161
Formula	$ 45,786	$ 43,205	$ 34,837	$ 78,435	$ 63,672	$ 83,808	$ 102,149	$ 73,434	$ 45,850	$ 93,286	$ 84,761	$ 789,404
Difference	$ 34,224	$ 131,795	-$ 20,437	-$ 21,435	$ 116 128	-$ 83,808	-$ 102,149	-$ 69,733	-$ 45,850	-$ 93,286	-$ 84,761	-$ 259,303
POARCH CREEK												
Actual	$ 8,000	$ 5,000	$ 7,000	$ -	$ -	$ -	$ -	$ 10,000	$ 44,382	$ -	$ 20,000	$ 94,382
Formula	$ 36,861	$ 33,855	$ 27 297	$ 61,480	$ 49,544	$ 43 322	$ 45,307	$ 27,213	$ 17,749	$ 36,004	$ 31,994	$ 409,566
Difference	-$ 27,861	-$ 28,855	-$ 20,297	-$ 61,480	-$ 49,544	-$ 43,322	-$ 45,307	-$ 17,213	$ 26,642	-$ 36,004	-$ 11,994	-$ 315,216

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95	FY96	FY97	FY98	FY99	Total
ST. REGIS												
Actual	$ -	$ 1,000	$ 40,000	$ 223,000	$ 38,000	$ 226,250	$ 10,391	$ 472,000	$ -	$ -	$ -	$ 1,012,641
Formula	$ 140,691	$ 132,818	$ 197,083	$ 241,121	$ 164,597	$ 140,728	$ 142,780	$ 82,051	$ 82,070	$ 105,632	$ 92,657	$ 1,402,409
Difference	-$ 140,691	-$ 131,818	-$ 87,083	$ 18,121	-$ 126,597	$ 87,522	-$ 132,389	$ 389,949	-$ 82,070	-$ 105,632	-$ 92,657	$ 389,768
SEMINOLE												
Actual	$ 463,000	$ 394,000	$ 368,000	$ 606,500	$ 358,000	$ 358,959	$ 519,869	$ 380,000	$ 270,000	$ 469,131	$ 447,531	$ 4,834,990
Formula	$ 249,566	$ 225,801	$ 199,968	$ 427,715	$ 497,806	$ 489,011	$ 502,874	$ 438,293	$ 302,054	$ 508,989	$ 438,352	$ 4,480,209
Difference	$ 213,434	$ 168,199	$ 168,032	$ 178,785	-$ 139,806	-$ 130,052	-$ 83,005	-$ 78,293	-$ 32,054	-$ 139,858	$ 9,179	$ 154,781
SENECA											see note 7)	
Actual	$ 52,000	$ 9,000	$ 3,000	$ 272,000	$ 186,000	$ 167,000	$ 780,033	$ 28,539	$ 169,000	$ 1,044,533	$ 70,070	$ 2,781,175
Formula	$ 315,740	$ 298,072	$ 240,339	$ 641,126	$ 439,783	$ 378,261	$ 389,102	$ 228,860	$ 176,716	$ 389,817	$ 341,957	$ 3,705,775
Difference	-$ 263,740	-$ 289,072	-$ 237,339	-$ 369,126	-$ 252,783	-$ 211,261	$ 391,931	-$ 198,321	-$ 7,716	$ 654,716	-$ 271,887	-$ 924,600
TONAWANDA												
Actual	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Formula	$ 21,981	$ 20,733	$ 16,717	$ 37,838	$ 29,931	$ 23,906	$ 21,864	$ 10,518	$ 6,220	$ 12,617	$ 11,219	$ 213,324
Difference	-$ 21,981	-$ 20,733	-$ 16,717	-$ 37,838	-$ 29,931	-$ 23,906	-$ 21,864	-$ 10,518	-$ 6,220	-$ 12,617	-$ 11,219	-$ 213,324
TUSCA-BELOW												
Actual	$ 160,000	$ 10,000	$ 12,000	$ -	$ -	$ -	$ -	$ 20,000	$ 65,300	$ -	$ 150,414	$ 417,714
Formula	$ 7,815	$ 7,377	$ 5,946	$ 13,393	$ 56,021	$ 46,085	$ 44,181	$ 23,190	$ 17,510	$ 35,845	$ 30,747	$ 287,912
Difference	$ 152,185	$ 2,623	$ 6,052	-$ 13,393	-$ 56,021	-$ 46,085	-$ 44,181	$ 3,190	$ 47,790	-$ 35,845	$ 119,667	$ 129,802
TUSCARORA												
Actual	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
Formula	$ 19,373	$ 19,289	$ 14,747	$ 33,203	$ 26,401	$ 21,415	$ 20,085	$ 10,138	$ 5,989	$ 12,149	$ 10,803	$ 192,593
Difference	-$ 19,373	-$ 19,289	-$ 14,747	-$ 33,203	-$ 26,401	-$ 21,415	-$ 20,085	-$ 10,138	-$ 5,989	-$ 12,149	-$ 10,803	-$ 192,593

Notes: 1) Formula funding for FY's '89, '90, and '91 based on FY '90 Fair Share formula.
2) Formula funding for FY '93 calculated based on 3/4 of the Fair Share formula and 1/4 Relative Need formula.
3) Formula funding for FY '94 calculated base on 1/2 of the Fair Share formula and 1/2 Relative Need formula.
4) Formula funding for FY '95 calculated base on 1/4 of the Fair Share formula and 3/4 Relative Need formula.
5) Formula funding for FY '96 - Current FY, calculated using the Relative Need Formula
6) Actual funding for FY 99 included $342,000 of advance funding for FY 2000. FY 2000 funds will be reduced by this amount
7) Actual funding for FY 99 $202,684 - $132,614 (returned savings from Strasburg Loop Rd Project) = $70,070



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WRITTEN TESTIMONY OF MAMIE RUPNICKI
CHAIRWOMAN OF THE PRAIRIE BAND
POTAWATOMI INDIAN NATION

Senate Committee on Indian Affairs Hearing on
S. 2283, a bill to amend the Transportation Equity Act of the 21st Century
June 28, 2000

Introduction

I am submitting written testimony on behalf the Prairie Band Potawatomi Indian Nation to support S. 2283, a bill to amend the Transportation Equity Act of the 21st Century (TEA-21) with respect to Indian tribes. We are grateful to Senators Campbell (R-CO), Inouye (D-HI) and Johnson (D-SD) for their leadership on this issue and their efforts to amend TEA-21 to ensure it benefits tribes.

When Congress enacted TEA-21 in 1998 to authorize federal surface transportation programs, it included several provisions relating to Indian tribes and the Indian Reservation Roads (IRR) program. These provisions included requiring a negotiated rule-making to determine the allocation formula for the IRR programs as well as a provision to make sure that all TEA-21 funds set aside for Indians would be made available to tribes that choose to enter contracts under the Indian Self-Determination Act of 1975 , P.L. 95-638. It has become clear, however, that certain provisions must be included in TEA-21 if the IRR program and tribes are to truly benefit from the Act. S. 2283 proposes these necessary provisions, and for that reason, the Prairie Band supports the bill.

S. 2283 proposes to (1) exempt tribes from application of the obligation limitation; (2) limit the BIA's use of funds for the program administrative and project-related administrative expenses from exceeding 6% of the construction funds transferred from the Highway Trust Fund to the Bureau of Indian Affairs (BIA); (3) make sure that all funds are made available for tribes to be used for administrative functions assumed by the tribe under contracts entered into pursuant to the Indian Self-Determination and Education Assistance Act; (4) clarify that tribal governments can meet statutory requirements to assure public health and safety by agreeing to meet health and safety standards; and (5) establish a pilot program to allow tribes to enter into agreements directly with the Federal Highway Authority (FHWA). Because these provisions are necessary for TEA - 21 to benefit tribal governments, we support S. 2283.

The Prairie Band Potawatomi Indian Nation is located in Jackson County, Kansas, twenty miles north of Topeka and eighty miles north of Kansas City. We have approximately 4700 tribal members, more than 500 of whom live on tribal lands. Our governing body is a seven member Tribal Council which is charged with protecting the health, peace, morals, education, welfare and safety of the Prairie Band and its members. It does this, in part, by ensuring that our members, non-member residents and visitors have safe, stable roads to travel on when within the reservation boundaries. In an effort to provide for our members, the Tribe has engaged in several economic development activities, some of which draw visitors from miles around. Further, since our lands are near metropolitan areas, we receive substantial traffic on our roads from members and non-members alike.

We have approximately 288.6 miles of road within the IRR system. We just recently, by resolution dated July 5, 2000, requested the addition of 174.30 miles to our existing 114.30 miles. Our priority is to ensure that residents and visitors have safe passage while traveling on these miles of road across our lands. We, therefore, must make sure our roads are properly maintained. This takes effort, adequate appropriations and cooperation from the federal government. S. 2283 will help towards these ends.

Obligation Limitation

Tribes should be exempt from the application of the obligation limitation. While TEA-21 seemingly significantly increased annual funding for the IRR program, the resulting increases are not that substantial after the effects of the obligation limitation are taken into consideration. Prior to the enactment of TEA-21, IRR program funds were not reduced by the obligation limitation. Yet, under TEA-21, they are. The obligation limitation is a mechanism for withholding a percentage of monies at the beginning of the fiscal year for reallocation to projects at the end of the year. TEA-21 requires a percentage of the IRR program funds to be withheld, but lacks the authority to reallocate funds to IRR projects at the end of the year. Applying the obligation limitation has resulted in tribes receiving approximately $34 million less in 1999 than they were authorized to receive. While initially the funding levels in TEA-21 looked substantial, tribes are not actually receiving these amounts for their roads. Under the obligation limitation, authorized IRR funds are being reallocated to fund projects of the state and local governments instead of to the tribes. This is wholly unfair and must be rectified.

S. 2283 would remove the application of the obligation limitation to the IRR program, and, thereby, would allow the already authorized funds for IRR to reach the tribal beneficiaries. While this is a simple technical amendment, it would have great benefits for tribes. At present, tribes receive and spend far less federal money for road maintenance than other governments (states and local units) do. It is estimated that tribal roads constitute 2.63% of all public roads eligible for TEA-21 funding. Yet, the IRR program receives less than 1% of the funds available under TEA-21 for its entire operation - - whether for transportation planning, road design, road construction, or simple administration of the IRR program. State and local government funding levels for maintenance per mile are approximately ten times the funding amount of tribes for the same purpose. Further, there is a $7.2 billion construction backlog for the IRR. The drastic inequity between states' and tribal governments' funding levels for road maintenance and

construction is especially apparent at the Prairie Band. It was only a little more than a year ago that we celebrated our first paved road! The rest of our roads are dirt, which causes terrible problems for traveling during inclement weather. In such times, emergency vehicles cannot reach their destinations, school buses have trouble transporting children to and from school, and elders have more difficulty than usual traveling to doctors' appointments. While an overall increase in the IRR funding levels is needed, some of this inequity can be corrected by exempting tribes from the obligation limitation.

6% Administrative Funds

The Prairie Band also supports S. 2283 because it would clarify that the Bureau of Indian Affairs can use 6% of the contract authority amounts made available from the Highway Trust Fund to the BIA as a maximum for administrative activities for both IRR program administration and IRR project-related administrative activities. This provision would ensure that the monies allocated for the IRR program are actually being spent on tribal roads and benefitting Indian country, rather than being used up by the BIA on administrative tasks or to subsidize other BIA road operations.

Further, S. 2283 clarifies that all IRR funds including up to 6% of the administrative funds must be made available to Indian tribes in accordance with the Indian Self-Determination And Education Assistance Act (ISDEAA). We understand that TEA-21 was intended to clarify that the IRR program is similar to other federal programs serving tribes, and is, therefore, subject to the requirements of ISDEAA on contracting, compacting and funding. Except for a few "inherently federal functions" that the Secretary retains, tribes can compact for all or a portion of the IRR program in their area. If a tribe chooses to assume the BIA's responsibilities for the IRR program and contracts with the BIA to do so, the tribe should not only receive the program money, but also up to 6% of the administrative fees to cover the costs of the administration of the program that the BIA would receive if it continued the administration. The Prairie Band believes that these provisions are necessary for Congress to make it clear that these administrative funds are to be made available to the tribes when they compact for IRR program responsibilities, and that the BIA cannot retain these monies.

Pilot Program and Health and Safety Standards

S. 2283 would establish a pilot program whereby up to twelve (12) tribes could enter into self-determination contracts or self-governance compacts directly with the FHWA. It would also provide that a tribe could advance a project to construction as long as it provides assurances that the construction would meet or exceed the health and safety standards. The Prairie Band supports these provisions because they will eliminate duplicative costs and efforts on the part of the tribes and the federal government and make the IRR program more efficient.

Allowing a certain number of tribes to contract directly with the FHWA will help the interested parties - - the tribes, the agencies and Congress - - to examine whether it is a viable method for decreasing duplicative efforts conducted by the federal agencies. We understand that the FHWA possesses the technical expertise to administer the IRR program, but that the BIA

duplicates a lot of the efforts of the FHWA. It would be our preference, of course, to reduce the redundancy as much as possible to make the IRR program as efficient as it can be.

Likewise, we support the provision of S. 2283 on the health and safety standards. As it stands now, the BIA does not allow a tribe to proceed on a construction project until it has an opportunity to review the plans, specifications and estimates of the project and verify that they meet the appropriate health and safety standards. Our position, however, is that tribes should be able to proceed on construction without waiting for BIA approval as long as they employ licensed professionals who can ensure that the projects will meet or exceed the health and safety requirements. Retaining a bureaucratic check by the BIA on every detail of IRR planning and construction can impede progress. Further, we do not we need the BIA to be spending administrative monies on duplicating the tribes' efforts. The bottom line is to build and maintain safe roads upon which our members and our visitors travel. If the tribes' professionals can attest that the IRR projects will ensure this goal, this should be sufficient to commence construction.

Conclusion

We would like to thank Senators Campbell, Inouye and Johnson for recognizing the significant need for good roads in Indian country. The prospect for economic development becomes greatly hindered when there is no stable infrastructure. Indian people continue to suffer from the highest rates of poverty in the United States despite the recent national economic boon. Tribes need well-maintained road systems to attract visitors and potential businesses to Indian lands. We also need well-maintained roads for our member and non-member residents to ensure that their travel across our lands is as trouble-free as possible. We believe that the amendments to TEA-21 as set forth in S. 2283 will help ensure that the IRR program runs as efficiently as possible and that the monies allocated for Indian reservation roads are used for their maintenance and construction

0240/07351/tea21test

RED LAKE BAND
of CHIPPEWA INDIANS

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DIVISION:

TESTIMONY

OF

THE HONORABLE BOBBY WHITEFEATHER, CHAIRMAN

RED LAKE BAND OF CHIPPEWA INDIANS TRIBAL COUNCIL

Before the U.S. Senate Committee on Indian Affairs

Hearing on S. 2283, a bill to amend
The Transportation Equity Act for the 21st Century (TEA-21)
June 28, 2000

Good afternoon, Mr. Chairman, Mr. Vice Chairman, and Members of this Committee. My name is Bobby Whitefeather and I am the Chairman of the Red Lake Band of Chippewa Indians. I appreciate the opportunity to provide the Committee with this written testimony in strong support of S. 2283, "The Indian Tribal Surface Transportation Act of 2000."

This bill would substantially improve the overall administration of the Indian Reservation Roads program, a program important to the health, growth and future of all Indian Tribes and communities, including the Red Lake Band.

My testimony is designed to show how important it is to the Red Lake people that the federal administration of the Indian Reservation Roads program be transformed into a cost-effective and productive system. I will highlight specific provisions of your bill, and demonstrate how the proposed bill will specifically impact the Red Lake Band. Finally, I must respond to several remarks made by the two federal witnesses at today's hearing, and share some of my concerns about the direction of Self-Governance at the Department of the Interior.

Background on the Red Lake Indian Reservation

The Red Lake Band of Chippewa Indians is a small-to-medium-sized Tribe with more than 9,500 members, most of whom live on our relatively-large Reservation. The

Red Lake Indian Reservation, with over 840,000 acres of Tribal trust land and water, is located in a rural area within the boundaries of the State of Minnesota. The State has no jurisdiction over our Reservation. While over time our Reservation has been diminished from its original 15 million acres, it has never been broken apart or allotted to individuals and lost to non-Indians.

The Red Lake Tribal government is responsible, in conjunction with the United States, to provide a full range of governmental services to Reservation residents. We administer transportation, police, judicial, penal and fire protection services, natural resource protection and management, social services, health and other emergency services, economic development and planning, and many other governmental activities. The Red Lake Band is completing its fourth year of operating BIA-funded programs under Tribal self-governance authorities.

A 1995 study carried out by the Department of Economics, Bemidji State University, found that approximately 6,130 of our Tribal members live on the Reservation in 1,560 households. A majority of Reservation households (59%) have incomes below the federal poverty line for a family of four. Forty percent of all Reservation households receive income from employment with our Tribal government, making Tribal government jobs the single most important source of income on our Reservation. Our Tribe employs approximately 2,400 workers in its governmental programs and enterprises, for a total annual payroll of about $17.5 million. Many Tribal members survive on a traditional subsistence economy of fishing and small-scale timber cutting.

Due in part to our location far from centers of population and commerce, we have few jobs available in the private sector economy. If our members work off-Reservation, they necessarily must travel often more than an hour to get to or from their jobs. While unemployment rates throughout Minnesota have dropped to historically low levels, the Red Lake Reservation unemployment rate remains at an outrageously high level of 65.0%. The chronic lack of good roads, communications, and other necessary infrastructure continually derails our efforts to expand economic development and job opportunities. If our people are to secure and maintain steady work as responsible citizens, we must as a responsible government provide reliably safe and useable roads so that they can get to their jobs throughout all weather conditions.

Specific Information on Red Lake Roads and Bridges

Due to welfare reform and other factors, the population of the Red Lake Indian Reservation continues to grow at a rate much faster than can be accommodated by the present infrastructure. Our infrastructure, especially our road system, is being "taxed" to its limits. The Red Lake road system consists of approximately 350 miles, which includes about 70 miles of paved roads, 60 miles of gravel surfaced roads and 120 miles of earth surfaced roads. We also have approximately 50 miles of state-owned roads on the Reservation. There are no county or township roads on the Reservation, however, there are county and township roads that provide access to the Reservation. Of the 70

miles of paved roads, 40% have surfaces that have outlived their design-life of 20 years. With our expanding population, our gravel and earth-surfaced roads will require complete reconstruction to serve our residents.

With the level of Indian Reservation Roads program funding we currently administer, we have to "phase" some of our larger projects into multiple years. We are currently in the last phase of a project that is vital to the economic development of the Reservation and that has required five years of funding to complete. We have been somewhat successful in leveraging state dollars for projects on the Reservation. We completed construction of one new bridge last year and have started construction of a bike path project on both sides of a state highway that connects our two largest communities on the Reservation. We also are currently working with the State on two more bridge projects.

These infrastructure improvements will serve many beneficial purposes, including providing safer access to and across our Reservation, enabling the Red Lake Tribal government to improve the delivery of emergency and law enforcement services, and placing our Reservation in a position which is more attractive to private sector investment and activities. However, we are denied the full benefits of the Transportation Equity Act for the 21st Century (TEA-21) by the unintended consequences of the "obligation limitations" provisions of that Act and by the federal agencies' mis-administration of the Indian Reservation Roads program. S. 2283 would go a long way towards resolving these problems.

S. 2283 -- The Indian Tribal Surface Transportation Act of 2000

S. 2283 will help the Red Lake Band and other Indian Tribes receive the full benefits of TEA-21 as Congress had originally anticipated. Enactment of S. 2283 will enable Indian Tribes to move beyond some of the current obstacles in the administration of the Indian Reservation Roads program and focus on the work at hand: efficiently building as many safe roads and bridges as is possible.

A. <u>The "Obligation Limitation" and the Diversion of Indian Roads Funds.</u>

S. 2283 would make modifications to the language of TEA-21 to restore the full funding for the Indian Reservation Roads program that Indian Tribes and friends in Congress fought so hard to secure during the last reauthorization. The Red Lake Band of Chippewa Indians fully supports the proposed removal of the obligation limitation that TEA-21 applied to Indian Reservation Roads funding.

On its face, TEA-21 provided a substantial increase in funding (from $191 million under ISTEA to $225-275 million per year under TEA-21) for the Indian Reservation Roads program. However, TEA-21 also applied the "obligation limitation" provisions to the Indian roads allocation for the first time. Because of the obligation limitation, approximately $25 million of the $225 million Indian roads allocation for fiscal year

1998 and about $32-34 million of the $275 million allocation for each of fiscal years 1999 and 2000 were diverted to state transportation programming accounts.

Unless the Congress restores the old exemption from the obligation limitation that the Indian Reservation Roads program previously had, the $275 million promised for Indian roads is a fiction. The actual Indian road funding level is far less than promised, because the obligation limitation provision elsewhere in TEA-21 cuts it back by more than 10% and ultimately distributes these monies to the various state governments for other purposes. S. 2283 proposes to remove the obligation limitation.

If you determine that the particular language used in S. 2283 poses some problems with regard to the identification of offsets, then we would fully support you replacing it with language similar to that proposed by the Administration in its FY 2001 budget request. Either way, full funding should be restored to the Indian roads allocation and we are very appreciative of your efforts to accomplish this.

B. The Pilot Program for Contracting Directly with the Transportation Department.

The bill would establish a pilot program that would enable Indian Tribal participants, upon Tribal request, to enter into contracts and compacts directly with the Secretary of the Department of Transportation for planning, research, engineering, and construction activities. The Red Lake Band of Chippewa Indians fully supports this portion of the bill and wishes to participate in this pilot program upon its establishment.

Why would so many Tribes welcome a direct relationship with the U.S. Department of Transportation? Because time and time again Tribes have seen the BIA administrators divert or reallocate Indian Reservation Roads funding, particularly at the Regional Office level. A recurring Tribal complaint is that Regional BIA roads engineers appear to feel they have the discretion to reallocate IRR program dollars once the BIA's central office has delivered those funds to the Area/Region. BIA Central Office allocated them based on a formula that was generated by data specific to each Tribe in a particular Region. But after the Regional Office receives the funds allocated to its Tribes by Central Office, the Regional Office arbitrarily and, sometimes capriciously, reallocates those funds among the Tribes in a given Region. As a result, a Tribe's own "relative need" may have generated data that was used by Central Office to identify the relative share of the funds due that Tribe and of every Tribe in that Region, but when those Tribal-specific funds arrive at the Regional Office, the Regional Office Directors disregard that prior allocation and instead make up their own allocation as they see fit. You might well imagine how tenuous a process this is. Any self-interested Tribe is going to try its hardest to maintain good relations with the Regional Office engineers, who can under the present system, with completely unfettered discretion punish a progressive Tribe, or a Tribe that is too assertive, or a Tribe that asserts that the Regional Office of mismanagement, or for any whimsical reason at all. The decision process that controls who gets how much roads construction funding is one of the last and biggest dinosaurs of the old BIA system. It is clear the BIA is not going to give it up without a fight. Your bill would take it away from them, rendering extinct the last of the BIA dinosaurs.

Last year I testified before your Committee and mentioned that the Director of the Red Lake Tribal Roads Program (and a former Bureau employee who retired after 32 years of service in the Bureau's roads program), had discovered that a BIA engineer had diverted $50,000 of Red Lake's road maintenance funding to purchase computer equipment for the Area Office. Our testimony did not endear us to the BIA. Since then, our ongoing negotiations with the BIA over the past months have been chilly. While we have lots of experience in our region knowing how to work under cold conditions, the chill does slow things down.

IRR funding serves a crucial need in Indian country. While Congress has increased IRR allocations in recent years, the funding continues to lag far behind an even faster-growing need. When BIA officials abuse their powers and arbitrarily reallocate IRR funds for other purposes, we fall farther behind. The pilot program will remove the Bureau "middleman" and should result in a smaller, more streamlined Bureau staff because they have less work to do. Also, by limiting the initial number of participants to 12 and by limiting the number of new program participants in each subsequent year to 12, the Federal Highway Administration will have a manageable number of participants and will be able to administer the pilot with a consolidated staff. I am confident that the pilot program will prove to be a more efficient and expeditious way to administer these dollars.

As you know, Indian Tribes receiving construction funds under Public Law 93-638 Self-Determination contracts or Self-Governance annual funding agreements do not receive contract support cost funding for their related indirect costs. Rather, the BIA has refused to provide any money for administering Tribal construction activities from the BIA's "Contract Support Cost" fund. We note this to provide an added rationale for the next topic, that of the "up to 6 percent" funds now withdrawn by BIA from our construction dollars in order to support BIA roads bureaucracy costs. Certainly as Indian Tribes assume more and more of the roads functions previously carried out by the BIA roads bureaucracy, there should be a corresponding reduction in the size of the BIA roads bureaucracy as they have less and less work to do. Fundamentally, there should be a corresponding reduction in the amount of funds allocated to support of the BIA roads bureaucracy, and the savings produced should be transferred to the Indian Tribes assuming the previously federal functions. This is one of the most basic of principles set out by the Congress in Public Law 93-638. Your bill would reiterate and clarify this long-standing requirement. The BIA opposes it.

C. The Bureau of Indian Affairs' "6%" Administrative Takedown.

S. 2283 would clarify that the Bureau may use no more than 6% of the Indian Reservation Roads program funding for administrative activities. The Red Lake Band of Chippewa Indians fully supports this clarification.

I understand that the BIA opposes this provision because it is concerned that this would leave the BIA financially incapable of meeting its obligations with regards to this program. Let me be clear: the Red Lake Band likewise does not want to see the Bureau left with insufficient resources to meet its obligation to Indian Tribes. However, we think the BIA's fear is unfounded. If you ask the Bureau to provide the Committee with an honest and clear statement of how much funding, in absolute terms or by percentage, the Bureau needs to meet its basic obligations when an Indian Tribe takes on all programs, functions, services and activities, we believe the BIA response will necessarily be far less than 1%.

However, the BIA continues to insist in negotiations with us in our demonstration project, the precursor to the pilot project to be authorized by S. 2283, that it must retain the full 6%. In other words, we take on the work the BIA used to do, but the BIA insists on keeping the money with which they did that work. This BIA fund withholding must stop. By claiming that the bill's provision won't work for the Bureau and failing to provide a discernable alternative, the Bureau helps nobody and only perpetuates the problem.

D. Tribal Assurances of Health and Safety.

S. 2283 would clarify that an Indian Tribe that has assumed the construction of an Indian reservation road or bridge is not required to obtain an additional level of approval from the BIA before commencing construction under the terms of a self-determination contract or self-governance compact. The Red Lake Band of Chippewa Indians fully supports this clarification, with one minor modification.

The BIA has consistently taken the position that its obligation under Public Law 93-638 to "ensure that proper health and safety standards are provided for in the funding agreements" requires Indian Tribes to submit their design and construction plans to BIA staff for review and approval before the Tribes may commence construction. Many Indian Tribes, including the Red Lake Band, employ licensed professionals to design and review construction and design plans and specifications. It is unnecessarily duplicative, inefficient and time-consuming to submit these plans to BIA staff for review and approval of work performed by a licensed professional. Furthermore, the BIA retains funding for this double-checking activity that should otherwise be transferred to the contracting or compacting Tribe for its assumption of the design and construction activity. Moreover, the language I have quoted above from Public Law 93-638 does not require a duplicative level of review; it merely requires the Secretary to ensure that the funding agreement itself identifies or indicates that the Indian Tribe agrees to adhere to proper health and safety standards.

The language in S. 2283 will help to streamline the design and construction process by enabling Indian Tribes to begin construction without an unnecessary duplicative review by the BIA, if (i) the Indian Tribe agrees in the contract or agreement to construct the road or bridge to certain standards, (ii) the Indian Tribe obtains a certification that the road or bridge plans and specifications meet or exceed these

standards, and (iii) the Tribe provides the BIA with a copy of the certification. The Red Lake Band believes that this provision will greatly clarify Congressional intent in how the BIA should administer IRR construction programming.

The language used in S. 2283 needs one minor modification, however. The word "only" is overly restrictive and would require all Indian Tribes assuming Indian Reservation road and bridge construction activities to hire a licensed professional to review the plans. Some contracting and compacting Tribes may wish to have the BIA perform this activity. That should remain a Tribal choice. Deleting the word "only" would honor Tribal choice but also empower those Tribes that choose to be free of duplicative and wasteful BIA oversight.

Assistant Secretary's Testimony on S. 2283

Mr. Chairman, we are very dismayed with the written and oral testimony provided by the Assistant Secretary-Indian Affairs at this hearing. It appears that the BIA will stop at nothing, not even Congressional mandates, to thwart the efforts of Tribes to achieve self-sufficiency. While Congress has been trying to curb the BIA bureaucracy and support Tribal autonomy ever since enactment of Public Law 93-638 in 1975, it seems that the BIA has been constantly trying to tear down what the Congress and Tribes have accomplished.

A. Require Full Funding.

In expressing his concerns about S. 2283, the Assistant Secretary mentions that while the BIA is in favor of a provision that will provide 100 percent obligation limitation for the IRR program, they are opposed to making this program mandatory. He does not explain his opposition to this provision. If the obligation limitation is not amended to actually restore these funds to the Indian programs, it won't happen. The Assistant Secretary's approach of "I'm for it but against it" is more than confusing. We urge the Committee to insist that the Assistant Secretary clarify his testimony.

B. Tribes Are the "Owners" of Indian Lands.

In his reference to S. 2283 to establish a pilot program within the Federal Highway Administration's Federal Lands Highways (FHWA-FLH) program, the Assistant Secretary expressed concern that S. 2283 does not address the involvement of the "facility owner" who he said is the BIA. His testimony goes on to say that as the facility owner, the responsibility for these systems remains with the BIA, not FHWA or the Tribes. Mr. Chairman, the Assistant Secretary and the BIA should be reminded that Tribes are the owners, the beneficial owners of the land, roads and bridges. BIA is not the "owner", it is the trustee.

As trustee, the BIA's role in other natural resources has been changing in recent decades. When a Tribe, the beneficial owner, says it wants to manage or organize or assume trust-related functions, the BIA has, albeit reluctantly sometimes, agreed to

transfer the trust-related functions over to Tribal administration. On roads it should be no different. But it is. The BIA's continuing insistence on having a day-in-day-out role as "owner" means that an Indian Tribe like the Red Lake Band of Chippewa Indians, who has taken over management of its timber trust resources after the BIA severely bungled that responsibility, is being treated by the BIA as if it cannot take over management of its road resources. In both cases, the Band is the beneficial owner.

This continuing effort by the BIA to call itself the "owner" of the Indian reservation roads and bridges is desperate effort to maintain the bureaucratic control the rest of the BIA began to lose in 1975 with the enactment of the Indian Self-Determination Act. What the BIA is saying is that Indian Tribes are not capable of designing and building safe facilities without a heavy-handed BIA oversight.

C. Tribes Are Responsible for Health and Safety.

The Indian Self-Determination Act and its accompanying regulations provide for adequate safeguards to address health and safety issues. For example, Indian tribes are required to design and construct facilities under the direction of licensed and qualified engineers. Indian Tribes are required to ensure that the construction will meet all health and safety standards that are contained in the approved design. As a matter of fact, they are identical standards used by the BIA to construct buildings. If an Indian Tribe fails to apply these standards, the licensed engineers it has hired will lose their individual licenses and the audits of the Tribe will require remedial action.

These Tribal assurances are already in place and required for purposes of health and safety. The bill, S. 2283, recognizes that there are already Tribal health and safety mechanisms in place that assure adherence to national standards. The bill merely says the standard mechanisms are sufficient – and forbids the perpetuation of the duplicative, extra, and double layer of oversight now carried out by a BIA roads bureaucracy in search of a reason to preserve federal jobs and spheres of power until retirement.

Mr. Chairman, does anyone honestly believe that a Tribal government would design or build an unsafe facility that would injure or kill its members? This would be the height of political folly. Anyone who understands Indian Tribes knows how fictional is this fear. Every day, in the private sector, transportation facilities are constructed with plans and specifications developed by licensed engineers who do not require the approval and oversight of some governmental bureaucrat. Counties and States as local public authorities develop their own plans and specifications without federal bureaucratic oversight. The Federal Highway Administration recognizes Tribal governments as "local public authorities" on par with State and County governments. However, the BIA apparently does not. The Red Lake Band of Chippewa employs professional, licensed staff who we believe are better qualified than BIA staff to ensure health and safety on the projects we design and construct.

When the Red Lake Band assumed the IRR program under the Self-Governance pilot program, we assumed all programs, functions, services, and activities including

administration functions. We sought to do all the work with all the money. But during the negotiations, the BIA informed us that the 6% administration funds were "off the table". It is our understanding that when Congress inserted the word "ALL" in the legislative language, it included the 6% Administrative funds. We are performing most of the administrative functions that the BIA used to perform, however, the BIA refuses to provide funds for this function; and we have to fund this portion of the program with scarce program dollars. We will be negotiating our 2001 AFA with the OSG and BIA the last week of July. I am sure that the BIA will tell us again that because the Secretary has to ensure Health and Safety on our projects, the 6% issue is off the table.

D. Treat the Negotiated Rulemaking Committee With the Respect It Deserves.

The Assistant Secretary's oral testimony regarding the progress of the TEA-21 Negotiated Rulemaking Committee is another unfortunate example of ongoing BIA efforts to discredit the work of the Committee and stymie the Federal-Tribal negotiation process. From his oral testimony, it appears that the Assistant Secretary is grossly misinformed about the work of the Committee, perhaps because he has attended only one Committee meeting for approximately 30 minutes. It is a matter of record that the Committee has been meeting for approximately 15 months. The Committee could have concluded its work long ago if the Assistant Secretary had established the Committee in a timely manner. Instead, he waited ten months after enactment before convening the first meeting of the Committee. In other words, the BIA waited to organize the first Committee meeting (March, 1999) until just one month before the deadline Congress placed in the statute for the Committee to develop a new formula (April, 1999). It took the first five months of the Committee's meetings to get the Assistant Secretary to agree to the basic rules of negotiation executed as the Committee Protocols.

It now appears to the Tribal members on the Committee that there is a definite attempt on the Federal side to ensure that the negotiation process will fail. First of all, the manner in which the Federal side formed the Committee caused substantial delays since the start. The large size of the Committee (42 members plus technical support), determined unilaterally by the Federal side, has delayed the process. Many of the Tribal and Federal representatives who were hand-picked by the Assistant Secretary to serve on the Committee lacked prior personal experience in transportation issues or the negotiated rulemaking process.

We are also concerned by the Assistant Secretary's oral testimony (1) that the only important or main issue is that involving the funding formula, (2) that it was perhaps unrealistic to expect all Indian Tribes to agree on how to divide up a limited amount of funding, and (3) that this will drag on and on and therefore perhaps the BIA should just make the decision. While the funding formula workgroup has encountered some difficult challenges, I want the Senate Committee to know that the Negotiation Rulemaking Committee is making good progress in developing a proposed formula. Clearly, the BIA wants to perpetuate the present, unfettered discretion it has at the regional level to reallocate funds without regard to any relative needs formula. Since it likes the present system that allows the BIA to move funds around as it pleases at the Regional Office

level, the BIA does not want any change in the funding formula system. The BIA also has an interest in delaying the negotiated rulemaking process or seeing it flounder and fail. Tribal representatives have seen evidence of Federal efforts, through selective transmission of information, to encourage Tribal disagreement on formula negotiations.

Another reason why the BIA has sought to focus congressional attention on the funding formula is to distract the Senate Committee from the fact that an equally important negotiation is underway to rewrite the roads program regulations. The BIA hopes the negotiated rulemaking process is terminated abruptly, leaving unresolved the Tribal interest in simplifying program regulations and streamlining administrative procedures. If the process is made more simple and more intelligible, there will be less discretionary power and function left with the BIA bureaucracy, eroding the justification for the huge BIA roads staff. Despite all of the obstructions and delays, the Committee has made substantial progress. The Negotiation Committee has prepared simplified rules and procedures that, if permitted to be brought to completion without BIA obstruction, promise great efficiencies of operation. As you know, the average time it has taken to complete a negotiated rulemaking process is 24 months. The Roads Committee, although working on it for only 15 months, is confident that a proposed rule will be published by the end of 2000, well short of the 24 month average.

E. Don't Penalize Red Lake for its Leadership.

Finally, I want to report to the Senate Committee that our Tribe has yet to receive its FY 2000 funding for its road program. The BIA has, in its testimony, spoken highly of Red Lake's participation in the self-governance roads demonstration project, but the same BIA has yet to provide any FY 2000 roads funding to Red Lake.

More than three-quarters of the fiscal year has passed. The construction season in northern Minnesota is more than half over. Our annual funding agreement requires the BIA to provide us with a lump sum advance payment. Yet we have no roads money.

The BIA has informed us that the reason the BIA has not transferred our funds is that a General Accounting Office ("GAO") investigation has raised some questions about how the BIA releases roads funds. It was the Red Lake Band who called upon this Committee, at your October 20, 1999 hearing, to request a GAO investigation of the BIA roads department and its administration of roads funding.

Now the BIA has put a hold on Red Lake's FY 2000 roads funds. Yet tribal roads programs throughout the rest of Indian Country long ago received their FY 2000 funds. Is it now merely coincidence that Red Lake's funding has been held back? Surely this is not the price we must pay for being critical of the BIA? On behalf of my Tribe, I would very much appreciate the Committee inquiring into this matter.

Conclusion

Mr. Chairman, and members of the Committee, I want to reiterate what I stated before this Committee at the October 20, 1999 TEA-21 hearing. The BIA roads program is one of the last bastions of an old paternalistic bureaucracy. Indian Tribes are building huge buildings and administering complex operations without BIA oversight, but BIA roads staff seem to think Tribes cannot build a safe road without a BIA shadow looking over our shoulder. The BIA's approach wastes scarce dollars. We want all of our roads funds to be spent on our Reservation building roads. We don't need or want an expensive BIA bureaucracy second-guessing our every move and wasting 6% or more of our precious roads funds.

From the beginning, the BIA overlooked the deadlines in TEA-21 and failed to form the Negotiated Rulemaking Committee until several weeks before its statutory deadline to produce proposed regulations. The BIA placed on the Committee federal roads staff who appear to have taken positions that mostly serve to protect the status quo and resist change. Changing the status quo was the main reason the Congress enacted the Tribal provisions of TEA-21 in 1998. Your bill, S. 2283, would make crystal clear, the original intention of those 1998 provisions.

I still wonder whether effective change can ever come through negotiations with an entrenched BIA bureaucracy. And so I would encourage the Congress to give consideration to a statutory transfer of Indian roads program management authority from the BIA to the Federal Highway Administration under strict requirements that Tribal governments, consistent with Public Law 93-638, be treated like state and local units of government for purposes of the administration and expenditure of Federal Highway Trust funds. This idea has been around for quite some time. Given the frustrating lessons learned thus far in the negotiated rulemaking experience, it may be time to put the transfer in motion in order to preserve the government-to-government relationship between Indian Tribes and the United States. Your pilot program proposal in S. 2283 would accomplish this in a measured and careful way.

Again I thank you for this opportunity to provide this written testimony, and I applaud you and other members of Congress for your efforts in promoting Tribal self-sufficiency, self-determination, and self-governance.

The Eastern Band of Cherokee Indians

The Honorable Leon D. Jones, Principal Chief
The Honorable Carroll J. Crowe, Vice-Chief

June 9, 2000

Senate Committee On Indian Affairs
Attn: Theresa Rosier, Majority Counsel
SH-838 Hart Senate Office Building
Washington, D.C. 20210-6450

Dear Sir:

The Eastern Band of Cherokee Indians have a vital interest in the positive outcome of proposed amendments to the Transportation Equity Act for the 21st Century (TEA-21), but like many Tribes we do not have the resources to make our voices heard.

Instead the Tribe wishes to submit written testimony for the record being compiled at the scheduled hearing regarding S-2283 on June 28, 2000.

Please accept our thoughts as concerns regarding this proposed legislation and keep us informed as to the outcome of this effort to improve the transportation resource of Indian people as we address our roads problems.

Sincerely,

EASTERN BAND OF CHEROKEE INDIANS

Carroll Crowe
Vice Chief

cc: Principal Chief
Chairman of Tribal Council
Tribal Legal Services
Wilson Pipestem
Chron

Qualla Boundary • P.O. Box 455 • Cherokee, N.C. 28719
Telephone: (828) 497-2771 or 497-4771
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WRITTEN TESTIMONY regarding Senate Bill-2283
presented to the Senate Committee on Indian Affairs on
June 28, 2000

Comments of the Eastern Band of Cherokee Indians relating to a proposed amendment to the Transportation Equity Act for the 21st Century (TEA-21) are based on previous understanding of the Act and its intent. As an example, appropriations in the Intermodal Surface Transportation Equity Act of 1991 (ISTEA) did not impose an obligation limitation on Indian Reservation Roads (IRR) because Congress recognized the hardships which could accrue to Indian people if this was done.

Obligation Limitation

The Transportation Equity Act for the 21st Century provided an average increase of only 1.05% over the previous 10 year average of $191 million allocated for the IRR program to build and maintain this investment. The original TEA-21 proclaimed it would provide $275 million beginning with year three. This seems a lot of money for Indian Road programs until one realizes the amount is intended to repair and maintain 550,000 miles of substandard roads on isolated Indian reservations across the Nation. On average, off-reservation roads cost $5,000 dollars per mile to maintain at the existing level of serviceability. This hardship is compiled on top of other human service problems on Indian Reservations as Indian Tribes struggle to serve the needs of Indian people

This resource for reservation roads is further drained by a set-aside of $13 million dollars for repair or replacement of bridges taken from the top of funds remaining after reduction by the 9% to 11% obligation limitation and by 6% reduction for BIA administrative costs.

Supported by this rationale, the Eastern Band of Cherokee Indians supports removal of the obligation limitation and return of full obligation authority for the Indian Reservation Roads program as articulated in S-2283.

Costs for BIA Administration

The Eastern Band does not believe an already depleted resource should be further reduced by the Bureau of Indian Affairs practice of taking 6% of IRR funds for its own administrative overhead with no accounting to Tribes.

S-2283 provides a reminder that the BIA does not have carte blanche to take and to use this money as it chooses, but is a maximum amount intended for administrative costs related to management of the IRR program.

Demonstration Project

Time and experience has shown that Tribes are capable of managing their own affairs in delivering services to their enrolled members. In many instances Tribes have shown the ability to inspect, plan and design the most effective and best use of limited road funds.

Successful mature contracts under authority of the Indian Self -Determination and Education Assistance Act (PL93-638) show that Tribes are able to manage and to carry over funds to the next funding cycle without any significent audit findings. These same experiences show the Eastern Band of Cherokee Indians acting as contractor under its own Cherokee Department of Transportation (CDOT) is able to perform as planner, and exercise budget control and perform legal research as a function of government and organizational efficiency. CDOT has shown that it can plan, design, construct and maintain all the roads in its trust.

Proficiency and skill of the Cherokee Department of Transportation has been further demonstrated as a mature contract designated by the Bureau of Indian Affairs.

The Eastern Band of Cherokee Indians strongly encourages passage of S-2283 which includes provision to create a pilot program where tribes can contract through PL93-638 directly with FHWA for administration of their roads programs cutting BIA out of the loop.and allowing them to access the 6% administration costs otherwise lost to Indian Reservation Roads for construction and maintenance.

KICKA[illegible]BE
[illegible]SAS
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00 JUL 17 PM 6:06

July 11, 2000

Members of the Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510
Fax: (202) 224-5429

Re: Senate Bill 2283

Honorable Senators:

The Kickapoo Tribe in Kansas would like to offer our support for Senate Bill 2283. As we continue to develop our reservation, we are constantly faced with inadequate transportation systems. Even on our rather small reservation, we have limited "all weather" roads. Safety of travelers is a constant concern on all of our roads that provide limited site distance and have little or no shoulders.

We strongly support fully funding of the Indian Reservation Roads program. We also feel the ability for tribes to enter into self-determination contracts with the Federal Highway Administration is a key in the long term development of a quality transportation system in Indian country.

We encourage the Senate Indian Affairs Committee to approve Senate Bill 2283.

Sincerely,

Bobbi Darnell
Acting Chairperson
Kickapoo Tribe in Kansas

COLORADO RIVER INDIAN TRIBES

Colorado River Indian Reservation

ROUTE 1 BOX 23-B
PARKER, ARIZONA 85344
TELEPHONE (520) 669-9211

June 27, 2000

Senate Committee on Indian Affairs
%Eleanor McComber
838 Hart Senate Building
Washington, DC 20510

Re: Hearing on S.2283, Amending Transportation Equity Act(TEA21)

Dear Sirs:

The Colorado River Indian Tribes, a 3,340 member federally recognized Indian Tribe, would like to submit testimony for the referenced bill. The Colorado River Indian Reservation(CRIR) is located in western Arizona and in California along the Colorado River.

The Colorado River Indian Reservation includes over 370 road miles, which are maintained by the Bureau of Indian Affairs and other agencies. Each respective state or county government maintains state roads and U.S. highways, which pass through the Reservation. The Tribes continue to preserve working relationships with these governmental units.

State governments will only fund state-owned or Federal Aid System(FAS) roads on Indian Reservations. Any funds which may come back to the Tribes in the form of STP funds could only be used on one-third of existing road miles. Under the current bill, the obligation limits are diverted from the Indian Reservation Road(IRR) program to states and TEA21 did not extend the redistribution authority to Indian tribes. This means that $34 million will be diverted from the under funded $275 million IRR program in FY2000.

The budgeted amount for BIA road maintenance on the CRIR in FY2000 was $270,000. The recommended average cost to maintain paved roads in 1996 dollars was $5,800/mile, over $800,000 for CRIR. Without adequate maintenance funds, the Tribes are forced to rebuild roads in lieu of proper maintenance, which precludes development of new roads or paving of gravel roads.

The Colorado River Indian Tribes support S.2283 and as appropriate S.2093, which supports renewing full obligation authority for the Indian Reservation Roads(IRR) Program.

Sincerely,

Daniel Eddy, Jr., Chairman
Colorado River Indian Tribes

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