

**STATEMENT OF THE  
NAVAJO NATION  
BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS**

**On  
Transportation Equity Act for the 21st Century (TEA-21)**

**OCTOBER 20,1999**

The Navajo Nation welcomes this opportunity to provide its views to the Committee about the implementation of the Transportation Equity Act for the 21st Century ("TEA-21"). TEA-21 is an important piece of legislation, which promises many improvements for the transportation infrastructure within Indian Country. TEA-21 is particularly important to the Navajo Nation since the Navajo Nation has such a large land base in desperate need of roads.

In particular today, the Navajo Nation would like to bring to the Committee's attention its experience with the Negotiated Rulemaking process and concerns the Nation has with the distribution of funds during pendency of the Rulemaking, especially the obligation limitation imposed by Section 1102 of TEA-21 and the bridge replacement program.

**RULEMAKING**

Overall, the Negotiated Rulemaking is progressing, although not at the speed which was originally desired. The original delays in naming and organizing the Rulemaking Committee were compounded by the Secretary of the Interior's reluctance to sign off on the Protocol's which formed the basis for the procedures to be used for the rulemaking. These delays have impacted the ability of the Rulemaking Committee to develop a final product in accordance with the proposed time lines. Nevertheless, it is anticipated that with the possible exception of funding formula, which will be discussed shortly, the other aspects of the proposed regulations will be ready for release soon.

Of the four workgroups which make up the Negotiated Rulemaking Committee, the workgroup most in controversy is the Funding Formula Workgroup. This workgroup has been tasked with the review and development of possible alternative methods for distributing funds under the Indian Reservation Roads ("IRR") program. The Funding Formula Workgroup has encountered problems surrounding the appropriate method to address needs of smaller tribes, who have asked the Workgroup and Committee to consider the possible "set aside" of a portion of the IRR funding to be used as a base to address transportation projects which might not otherwise be addressed as quickly. The Navajo Nation has opposed such a set aside, as being contrary to the underlying principle of a relative needs formula. However, this issue has brought about an impasse in the Funding Formula Workgroup.

Given some of the difficulties faced by the Funding Formula Workgroup, it may be wise to support the development of a "partial rule." That is, rather than have a complete set of regulations, the Negotiated Rulemaking Committee would issue a set of proposed regulations on everything except the funding formula. This would have an advantage of allowing the Committee to issue the regulations in the near future.

## Large vs. Small Tribe Issues

While the Navajo Nation understands that small Tribes desire a "set aside" for their use, and moreover, it seems logical that they may have real need for funds for various projects, any set aside is clearly unacceptable. Regardless of how need is determined, or the formula to be used, funding of the IRR program must focus on need and must be related to need.

It has been the position of the Navajo Nation for several years that the BIA funding to tribes must be needs based. Most recently that Navajo Nation reaffirmed this position to Assistant Secretary Gover with respect to the Tribal Priority Allocation study and workgroup. Similarly, this is the position which was taken surrounding the BIA budget development for the FY 2001 budget.

However, this is not to say that needs do not exist for small tribes. In fact, it may be worthwhile considering a general recommendation that part of the IRR funding (preferable from the 6% funding) be used by the BIA to develop a "small Tribe assistance program." The goal of this program would be to help small Tribes in the development of Transportation Improvement Plans or TIPs which clearly state their needs in a defensible manner. This type of recommendation would have several advantages, particularly in that it would help develop information which could then be used to justify larger appropriations in Congress.

## POST-NEGOTIATED RULEMAKING WORK

Over the course of rulemaking meetings, it has become apparent that even after the rulemaking is concluded much work needs to be done. In particular, this seems to be on two levels: training (both general and specific to contracting and compacting) and the development of some standards regarding use of the Federal Acquisition Regulations, which would not otherwise apply to contracts under the Indian Self-Determination and Education Assistance Act.

In the process of some of the presentations, it is apparent that some employees of the BIA do not understand and/or agree with the goals of Self-Determination, let alone have an understanding of the Indian Self-Determination Act's requirements and provisions. This imposes a handicap on tribes and tribal organizations attempting to contract or compact.

Probably the only effective method to address these misunderstandings is through comprehensive training for both BIA and tribal personnel. Not only could this training help improve the implementation of the law, but it would assist in making the interpretations throughout Indian Country uniform.

## OBLIGATION LIMITATION

Section 1102 of TEA-21 creates an obligation to redistribute approximately 10% of the Federal Lands Highways Program to the states as Surface Transportation Program funds. Unfortunately, the IRR program funding is located within the Federal Lands Highway Program. While this may have started off as an attempt to address states needs for funds in road development around federal lands, it also deprives the IRR program of needed funds; for example in Fiscal Year

2000, the IRR program was allocated \$275 million, yet the obligation limitation reduced that amount by \$32 million.

### BRIDGES

While the reductions imposed by the obligation limitation hurt the IRR program, their effect is worsened by the additional reduction caused by the delays and inability of the Federal Highway Administration ("FHWA") to distribute Bridge Replacement funding. Fiscal Year 1999 is gone, yet some \$13 million designated for bridges is still being withheld by FHWA. In the current year, an additional \$13 million is being withheld, for a total of \$26 million to be eventually distributed. The obligation limitation will apply to withheld amounts, actually increasing percentages to be turned over to the states.

The Navajo Nation has requested that the bridge funding be released based on the emergency condition of most of the Navajo Nation's structurally deficient bridges. See, Exhibit "A", Resolution of the Transportation and Community Development Committee of the Navajo Nation Council, TCDCMA-21-99. However, FHWA has advised that these funds will not be distributed until the method of distribution by formula is acceptable to Indian Country. It is presumed that the Negotiated Rulemaking will determine the distribution formula for bridges, however, this formula could be delayed, particularly if the Negotiated Rulemaking Committee decides not to issue a new distribution formula immediately.

The Navajo Nation believes that it is critical that FHWA release these needed bridge replacement funds immediately, before additional funds "pile up." As the funds withheld by FHWA continue to grow, so does the need for bridge replacement.

The Navajo Nation thanks the Senate Committee on Indian Affairs for the opportunity to express its concerns and observations regarding the implementation of TEA-21. If the Committee has questions about the Act and its impact on the Navajo Nation, we will be happy to address those questions.