



# NATIONAL CONGRESS OF AMERICAN INDIANS

*NATIONAL SURFACE TRANSPORTATION POLICY AND REVENUE STUDY  
COMMISSION  
NATIONAL FIELD HEARING  
“IMPROVING THE PERFORMANCE OF OUR TRANSPORTATION SYSTEM”  
2167 RAYBURN HOUSE OFFICE BUILDING*

*March 19, 2007*

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Thank you for inviting the National Congress of American Indians to provide testimony on an issue that is critical to the future of our tribal communities. NCAI is the oldest and largest national organization representing American Indian and Alaska Native tribal governments in the United States. We are steadfastly dedicated to protecting the rights of tribal governments to achieve self-determination and self-sufficiency. We look forward to working with this Commission to ensure that the recommendations coming out of the Commission's hearings process take into account the unique needs of Indian Country. Thank you very much for giving us this opportunity to share our thoughts with you today

### *Background*

The nearly 56,000 mile system of Indian Reservation Roads (IRR) is the most underdeveloped road network in the nation<sup>1</sup>—yet it is the primary transportation system for all residents of and visitors to American Indian and Alaska Native communities. Over two-thirds of the roads on the system are unimproved dirt or gravel roads, and less than 12 percent of IRR roads are rated as good.<sup>2</sup> The condition of IRR bridges is equally troubling. Over 25 percent of bridges on the system are structurally deficient.<sup>3</sup>

Tribal economies, education systems, health care and social service programs are threatened by unsafe and often inaccessible roads, bridges and ferries. A recent Federal traffic safety study showed that Indian tribes suffer the highest per capita traffic fatality rate in the Nation, more than four times the national average.<sup>4</sup> Each year, drivers on the IRR system travel over 2 billion vehicle miles on a system that is a clear health and safety hazard for our communities and an impediment to meaningful economic development.<sup>5</sup>

### *Funding for Tribal Transportation Systems:*

The current scheme for funding surface transportation in the United States is based on a federal-state motor fuel taxation regime that precludes tribes from participating in the system on an equitable basis. While the system of using federal fuel tax revenue

<sup>1</sup> Bureau of Indian Affairs, *Transportation Serving Native American Lands: TEA-21 Reauthorization Resource Paper* (2003) (attached).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> National Center for Statistics and Analysis, *Fatal Motor Vehicle Crashes on Indian Reservations: 1975-2002*, (2004) (attached).

<sup>5</sup> BIA Paper, *supra* note 1.

for road construction and state fuel tax revenue for maintenance has worked to dramatically improve roads in many parts of the nation, it has failed miserably in Indian Country.

Like states, Indian tribes receive some funding for road construction from the federal Highway Trust Fund, but the amount given to tribes is much less than what states receive. Currently, Indian Reservation Roads make up nearly 3 percent of federal roadways, but they receive less than 0.5 percent of total federal highway funding.<sup>6</sup> At the current funding levels, the IRR program receives only about half the amount per road mile that states receive.

The federal government also makes some funds available to tribes for IRR maintenance under the BIA Maintenance Program. This Program is also woefully inadequate. The BIA spends less than \$1000 per mile for road maintenance, compared to estimates of \$4000-\$5000 per mile used by states to fund non-IRR maintenance.<sup>7</sup> Moreover, the states, who receive federal funding for their own roads that fall within reservations, frequently shirk their obligation to improve or maintain these roads and instead siphon off the funds for use elsewhere.<sup>8</sup>

Faced with a severe inadequacy of funding from federal and state sources, tribal governments have looked for other sources of revenue, including levying their own motor fuel taxes. While tribes have the same authority as other governments to collect taxes, the ability of tribes to tax fuel on tribal lands has been severely diminished by the Supreme Court. The Court has upheld the authority of the states to reach onto tribal land to collect a state motor fuel tax. The dual taxation that would result if both states and tribes impose a motor fuel tax makes it impractical for tribes to generate revenue through motor fuel taxes. Although some tribes and states have been able to negotiate motor fuel tax revenue-sharing agreements, those cases are the exception rather than the rule. In most areas, the state governments' collection of motor fuel taxes in Indian country displaces the ability of tribal governments to collect motor fuel taxes.

*Recommendations:*

We are encouraged that this Commission has been charged with looking for ways to improve the surface transportation system in the U.S., and in particular with exploring alternate sources of revenue for the Highway Trust Fund. Given the dire conditions of reservation roads, it is unconscionable that the IRR program does not enjoy parity with the amount given to other governments through the Highway Trust Fund. NCAI feels strongly that this inequity of distribution must be addressed in whatever new system is devised to fund transportation systems across the nation. In addition, if motor fuel taxes are to remain the primary source of funding for road construction and maintenance, we urge the Commission to recommend that Congress clarify authority of Indian tribes to collect this tax on tribal lands. Finally, if the Commission recommends a dramatic change to the way revenue is raised for transportation costs, NCAI recommends that any such system be devised in a manner that treats Indian tribal governments equitably and gives them the same authority as state and local governments to raise revenue to fund the costs associated with building and maintaining transportation infrastructure.

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<sup>6</sup> U.S. Dept. of Transportation, Federal Highway Administration, TEA-21, A Summary (1998).

<sup>7</sup> Brief of *Amicus Curiae* the Inter-tribal Transportation Association in *Wagnon v. Prairie Band of Potawatomi*, available at <http://www.narf.org/sct/richardsvpbp/ITA%20amicus%20final.pdf>.

<sup>8</sup> *Id.*