

## Fort Belknap Indian Community

WHEREAS, the Fort Belknap Indian Community Council is the governing body of the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community, Fort Belknap Indian Reservation, Montana, by the authority of the Constitution and By-Laws of the Fort Belknap Tribes approved on the 13 day of December 1935, and

WHEREAS, under the Constitution and By-Laws of the Fort Belknap Indian Community, the Community Council is charged with the duty of protecting the health, security and general welfare of the Fort Belknap Indian Community, and

### A RESOLUTION REGARDING THE RE-WRITE OF 25 CFR PART 170

**WHEREAS**, the Fort Belknap Indian Community Council is committed to making the Fort Belknap Indian Reservation an abiding place to live for the Tribal members and resident population, and

**WHEREAS**, the Fort Belknap Indian Community is cognizant of H.R. 43-48, PL 112-141 known as "MAP-21" which has a program to assist the Tribal Government in making improvements to roads on the Fort Belknap Indian Reservation, and

**WHEREAS**, the Fort Belknap Indian Community Council recognizes the importance of planning, design, construction and maintenance of transportation facilities throughout the Rocky Mountain Region to improve public safety and promote jobs and economic development on our Reservations; and

**WHEREAS**, regulations for the Indian Reservation Roads (IRR) Program (25 CFR Part 170) were published by the Bureau of Indian Affairs (BIA) and became effective in Fiscal Year 2005, which converted the IRR Program from a Regional roads Program into a formula-based, inventory-driven, tribal shares program highly dependent upon an accurate transportation inventory; and

**WHEREAS**, SAFETEA-LU was enacted in August 2005, increased funding for the IRR Program from \$275 million annually to \$450 million annually, streamlined the IRR Program, and directed the Secretary of Transportation and the Secretary of the Interior to complete a comprehensive national inventory of transportation facilities eligible for assistance under the IRR Program; and

**WHEREAS**, with implementation of the Part 170 regulations and increased funding, Indian tribes soon realized that the BIA and the Federal Highway Administration (FHWA), which jointly administer the IRR Program, were not ensuring that BIA Regions uniformly and

consistently updated Tribal IRR Program Inventories for inclusion in the National Tribal Transportation Facility Inventory (NTTFI), resulting in the addition to the NTTFI of tens of thousands of miles of IRR Program routes which greatly altered the distribution of “tribal shares” of IRR Program funds among BIA Regions and tribes; and

**WHEREAS**, despite increased funding under SAFETEA-LU, Indian tribes in the Rocky Mountain Region witnessed a significant decrease in our IRR Program tribal shares; and

**WHEREAS**, despite a six year effort by Indian tribes and the IRR Program Coordinating Committee to convince the BIA and FHWA to establish uniform Federal policies and procedures for the inclusion in the NTTFI of eligible transportation facilities, including clear criteria for adding proposed roads, primary access routes, or other eligible routes, the agencies did not amend the Part 170 regulations or establish interim guidelines or policies for use by all BIA Regional Offices and Indian tribes; and

**WHEREAS**, at the request of Indian tribes, Congress amended the IRR Program with the enactment of MAP-21 in July 2012, which replaced the regulatory funding formula with a statutory-based formula to distribute TTP funds to Indian tribes, renamed the IRR Program the Tribal Transportation Program (TTP), and made other changes to the IRR Program; and

**WHEREAS**, the BIA and FHWA developed draft changes to the Part 170 regulations to implement the statutory changes required by MAP-21, and making other changes to the Part 170 regulations sought by the agencies; and

**WHEREAS**, the BIA has scheduled three consultation meetings with Indian tribes over a one week period in May, including meetings in Phoenix, Arizona (May 16, 2013) and Minneapolis, Minnesota (May 21, 2013), to discuss the draft changes with Indian tribes; and

**WHEREAS**, the MT-WY Tribal Leaders Council is concerned that the draft changes proposed by BIA and FHWA have not had the benefit of meaningful consultation with Indian tribes concerning how best to improve the delivery of transportation programs, projects and services to Indian tribes, to promote the rights of tribal governments to govern their own affairs, to ensure the continuation of the trust responsibility of the United States to tribes and individual Indians, to encourage flexibility and innovation and to reduce, streamline and eliminate unnecessary and restrictive Federal policies or procedures; and

**WHEREAS**, a review of the draft changes to the Part 170 regulations suggests that the BIA and FHWA would limit tribal flexibility and innovation, curtail tribal appeal rights, unreasonably restrict tribal access to TTP, Federal-Aid and State-Administered Highway Safety funds at a time of funding shortages in Indian country and not fully implement MAP-21’s streamlining provisions; and

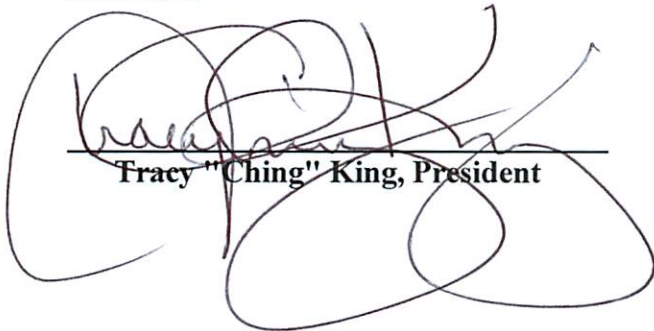
**WHEREAS**, the Fort Belknap Indian Community Council demands that BIA and FHWA have meaningfully consultation with Indian tribes before new regulations are issued for the TTP;

**NOW, THEREFORE BE IT RESOLVED** that the Fort Belknap Indian Community Council calls upon the BIA and FHWA to convene meaningful consultation with Indian tribes – beyond the three limited consultation sessions announced in the April 12, 2013, Federal Register – concerning the overhaul of the Part 170 regulations and before the agencies issue a Notice of Proposed Rulemaking (NPRM) for public comment, as required in Executive Order 13175 and the Departments' respective Tribal Consultation Policies; and

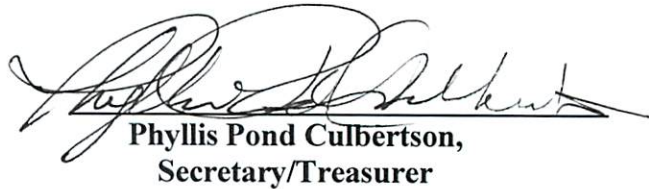
**BE IT FURTHER REVISED THAT**, the Fort Belknap Indian Community Council authorizes elected Tribal officials and Tribal personnel to travel to the upcoming tribal consultation meetings to share directly with BIA and FHWA officials their concerns with the draft changes to the Part 170 regulations, which do not appear to reduce, streamline and eliminate unnecessarily restrictive Federal transportation policies or procedures, honor the government-to-government relationship, or promote the rights of tribal governments to receive direct transportation services from the Federal Government.

**BE IT FINALLY RESOLVED**, that the Council Officers are hereby delegated the authority and responsibility to sign all documents necessary to effect this action.

**ATTEST:**



Tracy "Ching" King, President



Phyllis Pond Culbertson,  
Secretary/Treasurer

**CERTIFICATION**

I, the undersigned, as Secretary of the Fort Belknap Community Council of the Fort Belknap Indian Reservation, Montana, do hereby certify that the Fort Belknap Community Council is composed of 10 members, of whom 6 members, constituting a quorum were present at a meeting thereof, duly and regularly called, noticed, convened and held this 3 day of June, 20 13; and that the foregoing resolution was adopted by the affirmative vote of 4 for; 0 opposed; 2 not voting; 0 absent; 4 excused absence; 0 temporarily absent; and that the said resolution has not been rescinded in any way.

DATE: June 14 13

Fort Belknap Indian Community  
Tribal Government



Phyllis Pond Culbertson, Secretary/Treasurer

656 Agency Main Street, Harlem, MT 59526  
Address



## Montana & Wyoming Tribal Leaders Council

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### RESOLUTION #13MAY2013-01

**A RESOLUTION CALLING FOR THE BIA AND FHWA TO CONVENE MEANINGFUL CONSULTATION WITH INDIAN TRIBES REGARDING PART 170 REGULATIONS AND TO HONOR THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP AND TO PROMOTE THE RIGHTS OF TRIBAL GOVERNMENTS TO RECEIVE DIRECT TRANSPORTATION SERVICES FROM THE FEDERAL GOVERNMENT.**

**WHEREAS**, the Montana-Wyoming Tribal Leaders Council (MT-WY TLC) has been created for the express purpose of providing the Indian Tribes of Montana and Wyoming with a unified voice and a collective organization to address issues of concern to the Tribes and Indian people; and

**WHEREAS**, the Tribal governments in Montana and Wyoming and Idaho recognize the importance of actively engaging in policy formation on any matters that may affect the Tribes and reservations; and

**WHEREAS**, the Board of Directors of the MT-WY Tribal Leaders Council consists of duly elected Tribal Chairs, Presidents and Council Members who are fully authorized to represent their respective Tribes; and

**WHEREAS**, the MT-WY Tribal Leaders Council recognizes the importance of planning, design, construction and maintenance of transportation facilities throughout the Rocky Mountain Region to improve public safety and promote jobs and economic development on our Reservations; and

**WHEREAS**, regulations for the Indian Reservation Roads (IRR) Program (25 CFR Part 170) were published by the Bureau of Indian Affairs (BIA) and became effective in Fiscal Year 2005, which converted the IRR Program from a Regional roads Program into a formula-based, inventory-driven, tribal shares program highly dependent upon an accurate transportation inventory; and

**WHEREAS**, SAFETEA-LU was enacted in August 2005, increased funding for the Indian Reservation Roads (IRR) Program from \$275 million annually to \$450 million annually, streamlined the IRR Program, and directed the Secretary of Transportation and the Secretary of the Interior to complete a comprehensive national inventory of transportation facilities eligible for assistance under the IRR Program; and

**WHEREAS**, with implementation of the Part 170 regulations and increased funding, Indian Tribes soon realized that the BIA and the Federal Highway Administration (FHWA), which jointly administer the IRR Program, were not ensuring that BIA Regions uniformly and consistently updated Tribal IRR Program Inventories for inclusion in the National Tribal Transportation Facility Inventory (NTTFI), resulting in the addition to the inventory (NTTFI) of tens of thousands of miles of IRR Program routes which greatly altered the distribution of "tribal shares" of IRR Program funds among BIA Regions and Tribes; and

**WHEREAS**, despite increased funding under SAFETEA-LU, Indian Tribes in the Rocky Mountain Region witnessed a significant decrease in our IRR Program tribal shares; and

**WHEREAS**, despite a six year effort by Indian Tribes and the IRR Program Coordinating Committee to convince the BIA and FHWA to establish uniform Federal policies and procedures for the inclusion in the inventory (NTTFI) of eligible transportation facilities, including clear criteria for adding proposed roads,

primary access routes, or other eligible routes, the agencies did not amend the Part 170 regulations or establish interim guidelines or policies for use by all BIA Regional Offices and Indian Tribes; and

**WHEREAS**, at the request of Indian Tribes, Congress amended the IRR Program with the enactment of MAP-21 in July 2012, which replaced the regulatory funding formula with a statutory-based formula to distribute TTP funds to Indian Tribes, renamed the IRR Program the Tribal Transportation Program (TTP), and made other changes to the IRR Program; and

**WHEREAS**, the BIA and FHWA developed draft changes to the Part 170 regulations to implement the statutory changes required by MAP-21, and making other changes to the Part 170 regulations sought by the agencies; and

**WHEREAS**, the BIA has scheduled three consultation meetings with Indian Tribes over a one week period in May, including meetings in Phoenix, Arizona (May 16, 2013) and Minneapolis, Minnesota (May 21, 2013), and Alaska (May 14, 2013), to discuss the draft changes with Indian Tribes; and

**WHEREAS**, the MT-WY Tribal Leaders Council is concerned that the draft changes proposed by BIA and FHWA have not had the benefit of meaningful consultation with Indian Tribes concerning how best to improve the delivery of transportation programs, projects and services to Indian Tribes, to promote the rights of tribal governments to govern their own affairs, to ensure the continuation of the trust responsibility of the United States to Tribes and individual Indians, to encourage flexibility and innovation and to reduce, streamline and eliminate unnecessary and restrictive Federal policies or procedures; and

**WHEREAS**, a review of the draft changes to the Part 170 regulations suggests that the BIA and FHWA would limit tribal flexibility and innovation, curtail tribal appeal rights, unreasonably restrict tribal access to TTP, Federal-Aid and State-Administered Highway Safety funds at a time of funding shortages in Indian country and not fully implement MAP-21's streamlining provisions; and


**WHEREAS**, the MT-WY Tribal Leaders Council calls upon its member Tribes to demand that BIA and FHWA meaningfully consult with Indian Tribes before new regulations are issued for the TTP;

**NOW, THEREFORE BE IT RESOLVED** that the Montana Wyoming Tribal Leaders Council calls upon the BIA and FHWA to convene meaningful consultation with Indian Tribes – beyond the three limited consultation sessions announced in the April 12, 2013, Federal Register – concerning the overhaul of the Part 170 regulations and before the agencies issue a Notice of Proposed Rulemaking (NPRM) for public comment, as required in Executive Order 13175 and the Departments' respective Tribal Consultation Policies; and

**BE IT FURTHER RESOLVED THAT**, the Montana Wyoming Tribal Leaders Council asks its Member Tribes to authorize their elected Tribal officials and Tribal personnel to travel to the upcoming tribal consultation meetings to share directly with BIA and FHWA officials their concerns with the draft changes to the Part 170 regulations, which do not appear to reduce, streamline and eliminate unnecessarily restrictive Federal transportation policies or procedures, honor the government-to-government relationship, or promote the rights of tribal governments to receive direct transportation services from the Federal Government.

#### CERTIFICATION

We, the undersigned, as the Chair and the Secretary of the Tribal Leaders Council, do hereby certify that the foregoing Resolution was duly presented and approved unanimously at an official Board Meeting of the Montana Wyoming Tribal Leaders Council, which was held on the 13<sup>TH</sup> day of May 2013 with a full quorum of member Tribes present.

  
Ivan Posey  
Chairman – Tribal Leaders Council

  
Robert Welch  
Secretary - Tribal Leaders Council

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May 8, 2013

Via Electronic Mail

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ROGER W. DUBROCK (AK)\*  
KAY E. MAASSEN GOUWENS (AK)\*  
JOAN M. WILSON (AK)\*

\*NOT ADMITTED IN D.C.

**Tribal Discussion Points  
Concerning the BIA/FHWA Draft Changes to the  
Part 170 Tribal Transportation Program (TTP) Regulations  
for use in the BIA/FHWA Tribal Consultation Meetings  
(May 14 – 21, 2013)**

We offer the following discussion points to our Tribal Transportation Coalition clients who plan to attend any of the three tribal consultation meetings that the Bureau of Indian Affairs (BIA) has announced will be held in May in Anchorage (May 14), Phoenix (May 16) and Minneapolis (May 21) to discuss the draft changes that the BIA and the Federal Highway Administration (FHWA) propose be made to the Part 170 regulations which govern the Tribal Transportation Program (TTP), the former Indian Reservation Roads (IRR) Program. Tribes may submit comments concerning the draft changes to the Interior Department at [draft.25cfr170consult@bia.gov](mailto:draft.25cfr170consult@bia.gov) by June 14, 2013. The discussion points highlight some of the more serious concerns we have with the changes the agencies have proposed.

**Overview:** In most instances, the draft changes to the Part 170 regulations made by BIA and FHWA simply carry out the administrative task of updating the regulations to reflect the statutory changes mandated by SAFETEA-LU and MAP-21, including changing references to the Indian Reservation Roads Program to the Tribal Transportation Program. Yet in a number of important instances, the draft revisions restrict tribal flexibility, preclude tribal access to the BIA's PM&O and PRAE funds, do not permit the direct transfer to tribes of Federal-Aid and State-administered highway safety funds, do not consistently reflect the expanded role played by FHWA in the Tribal Transportation Program, and deny

tribes the right to challenge important agency determinations concerning funding allocations or the addition of facilities to the inventory. We found little innovation or creativity to improve the regulations and streamline the TTP.

It is our opinion that the draft changes and recent actions taken by the agencies:

- Do not honor meaningful tribal consultation (the draft changes made by BIA and FHWA were presented to TTP Coordinating Committee for comment; tribes were not first consulted by the agencies concerning whether additional provisions warranted changes to improve the program, no redline edition was posted online or distributed to tribes to easily track the draft changes proposed, and efforts by the TTP Coordinating Committee to meet directly with the BIA Assistant Secretary and FHWA Associate Administrator were declined);
- Do not reflect a careful and thoughtful examination by BIA and FHWA concerning how best to efficiently streamline the TTP to improve transportation infrastructure and transportation systems in Indian country to take advantage of a once-in-a-decade opportunity to revise the regulations to benefit Indian tribes carrying out Federal obligations and responsibilities with limited funds; and
- Do not interpret Federal laws and regulations to "facilitate" the transfer of programs to tribes under appropriate award instruments as required under current regulation (25 CFR 170.2(e)) or "liberally construe" laws and regulations for the benefit of Indian tribes to "implement the Federal policy of self-determination and self-governance." 25 CFR 170.2(h).

We highlight below what we believe to be agency overreach in the draft. We encourage tribal elected and transportation officials to make known your objections and request meaningful consultation.

1. Denial of Formula Data Appeals (Subpart C, § 170.231) – Tribes should object to the rewrite of 170.231 that entirely precludes tribal appeals to BIA or FHWA of the data relied upon by the agencies to calculate "tribal shares" under the Tribal Transportation Program, with the exception of American Indian and Alaska Native (AIAN) population data, which may only be appealed to HUD. BIA and FHWA may make mathematical or transcription errors when using the NAHASDA AIAN population data, the "historic" RNDF and PAF data, or the revised MAP-21 funding factor data for the TTP (i.e., "eligible road mileage," NAHASDA AIAN population figures, or the seven-year average of RNDF/PAF funding). Amend the Part 170 regulations to permit Indian tribes to bring administrative challenges and appeals against the BIA concerning disputes over "tribal shares" calculations as currently provided in 25 C.F.R. §170.231. Tribes should also be permitted in the Part 170 regulation to appeal agency denials concerning a tribe's addition of a proposed road or primary access route that is not currently listed on the National Tribal Transportation Facility Inventory (NTTFI), or disputes which arise from tribal updates to their TIP, all preconditions to the allowable use of TTP funds on eligible TTP facilities.
2. BIA 6% Program, Management and Oversight (PM&O) and Project-Related Administrative Expenses (PRAE) – As defined in draft 170.2 (Definitions), the term "TTP program management and oversight funds," and §§170.612-613 (determination of "non-contractible, non-project related

functions”), would shield the BIA from sharing with Indian tribes any portion of its 6% PM&O and PRAE allocation, by representing that all such funds are used for “non-contractible” functions. That is factually and legally incorrect and contrary to existing agency practice. Amend 170.2 and 170.612 and 170.613 to reflect the ability of FHWA to negotiate with BIA, and to share with tribes, a portion of the BIA’s PM&O and PRAE funds when tribes assume the Secretary of the Interior’s duties for the TTP under an FHWA TTP Agreement.

3. Use of Pub. L. 93-638 contracts and agreement, FHWA and other BIA/FHWA instruments for transfer of Federal-Aid and State-administered Highway Safety funds to Indian tribes – While tribes are pleased to see that draft section 170.926 is revised to allow tribes to administer approved Emergency Relief for Federally Owned (ERFO) Roads repairs under a self-determination contract, agreement, FHWA Program agreement and “other appropriate agreements” (e.g., Interior Government-to-Government Agreements), the draft changes do not authorize tribes to receive Chapter 1 Federal-Aid funds, or State-administered highway safety funds under Chapter 4 (170.144(a)), using available TTP award instruments, thereby complicating the prompt transfer and use by tribes of Federal-Aid and Highway Safety funds. Allowing Indian tribes to use a single award instrument to receive all their title 23 United States Code funds for eligible Tribal Transportation Program facilities is one of the most effective measures that FHWA and BIA can take to improve Tribal transportation infrastructure and safety on tribal transportation facilities. MAP-21 requires FHWA to promote the cooperation of States and counties in the construction and improvement of eligible tribal transportation projects and requires “any funds” received from a State or county or local subdivision to be “credited to appropriations available for the tribal transportation program.” 23 U.S.C. §202(a)(9). Amend the Part 170 regulations to authorize direct transfers of Federal-Aid and State-administered Highway Safety funds to tribes using the TTP award instruments.

a) As concerns TTP’s 2% safety funding, FHWA issued a Federal Register Notice of Funding Availability (NOFA) and request for comment (April 30, 2013), concerning the safety program that would require tribes to submit competitive safety grant applications to Grants.gov (using the System for Award Management (SAM)), when many tribes and Alaska Native villages are on record with FHWA complaining that SAM – a web-enabled government wide application – has numerous system flaws and many tribes have been unable to register. SAM registration is required to use Grants.gov. The NOFA exemplifies the lack of prior tribal consultation.

4. Omission of a draft rule for primary access routes – The draft regulation does not include a provision concerning the criteria for including or adding primary access routes to the NTTFI. While the tribal consultation meetings will discuss the criteria for retaining or adding primary access routes to the Inventory, the agencies should have included in the draft changes the criteria for adding or retaining a primary access route in the NTTFI Inventory for tribal consideration and comment. Primary access routes were defined in SAFETEA-LU (2005) and were the subject of TTPCC consideration and consensus deliberations for several years.

5. Complicates the Planning for New Road and Bridge Construction – Sections 170.460(b)(2) and 170.473(d) of the draft regulation would raise uncertainty in TTP project planning by requiring that a PS&E package must include “certification of the required right-of-way, easement, or public taking



documentation clearances,” and raises an issue of whether the Part 169 (Right-of-Way) regulations apply, including the requirement to secure an affidavit of completion of a ROW to file and record with the BIA under 25 CFR 169.16, in order to properly register a ROW over Indian lands. Tribes successfully fought to exclude a reference to the Part 169 regulations during the 1990’s Negotiated Rulemaking that drafted the Part 170 regulations because the “tribal and Federal sides agreed . . . that relying on 25 CFR Part 169 as the only reference for rights-of-way over Indian lands was not appropriate since tribes are not required to obtain rights-of-way when constructing IRRs across their own reservation” (see 69 Fed. Reg. 43090, 43092, July 19, 2004 (Final Part 170 Rule)). During the Negotiated Rulemaking it was the Federal view that “any issues beyond the scope of the existing 25 CFR 169 are properly dealt with in a future revision of part 169 and are inappropriate for inclusion in this rule or for public comment.” See 67 Fed. Reg. 51341, August 7, 2002 (Part 170 NPRM). The Part 170 regulations should retain the consensus “right-of-way clearances” phrase in 170.460(b)(2) and further streamline and simplify the planning and construction process phases of an eligible TTP project.

6. Omission of other SAFETEA-LU and MAP-21 provisions – The draft revisions to the Part 170 regulations do not address:

- SAFETEA-LU’s and MAP-21’s 30-day rule - SAFETEA-LU’s requirement for the BIA to distribute TTP shares to tribes “not later than 30 days after the date on which funds are made available to the Secretary of the Interior” (23 U.S.C. §202(b)(4)(A) is not referenced in the revised rule (see, e.g., draft section 25 C.F.R. §170.203). Amend 170.203 to reference this seven year old law to expedite the transfer of TTP funds to tribes.
- The use of Categorical exclusions to expedite project approvals – The revised rule should reference the directive to the Secretary of Transportation under MAP-21 to designate any project that is within an “existing operational right-of-way,” or that receives less than \$5 million in Federal funds, or that concerns qualifying projects for the repair or reconstruction of a road, highway, or bridge in operation or under construction and damaged by an emergency declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as actions categorically excluded from the requirements relating to environmental assessments or environmental impact statements . See sections 1316 and 1317 of MAP-21. Most TTP-funded projects will likely qualify for a categorical exclusion under this MAP-21 provision, yet this streamlining MAP-21 provision is not reflected in the draft regulation.
- The ability to expand the type and character of transportation facilities eligible for listing on the National Tribal Transportation Inventory – Tribes have fought for years to ensure that public transit facilities, ice and board roads, and marine facilities could be included in the Inventory, if only to ensure that IRR/TTP funds could allowably be used on such facilities. Consensus motions were passed by the TTP Coordinating Committee concerning these issues. Draft section 170.226 omits MAP-21 statutory text that permits the inclusion in the NTTFI of “additional transportation facilities” if such facilities are included in the inventory in a “uniform and consistent manner nationally.” See 23 U.S.C. § 202(b)(1)(D). Expressly include public

transit and marine facilities, ice and board roads in the NTTFI, and reference MAP-21's "additional transportation facilities" language in the Part 170 rule.

- **Eligibility for Additional Funds** – In draft section 170.602(b), tribes object to the notion that only Indian tribes carrying out contractible transportation programs and functions under a Pub. L. 93-683 contract or agreement may request additional funding from the Secretary due to unforeseen circumstances, when all other agreements (FHWA and BIA G2G Agreements) include "limitation of cost" clauses and have provisions that clearly allow tribes to seek additional transportation funding from the Secretary "on the same basis as other Indian tribes." Revise 170.602(b) to clarify the right of every Indian tribe to request additional funding.

#### 7. Additional Draft Regulation Changes Tribes Object to –

- the draft 170.803 narrows existing regulatory authority of Indian tribes to use BIA Road Maintenance Program funds on BIA and non-BIA System routes at the tribe's election and when required to "ensure public health, safety and economy" that have been in place since the Part 170 regulations were published in the Federal Register in 2004.
  - the deletion of section 170.807 (Subpart G – Maintenance) by the BIA and FHWA which addresses the importance of the TTP Transportation Facilities Maintenance Management System or the deletion in section 170.810 of the role the TTPCC should play with BIA to develop such Management Systems. Deleted 170.807 set out a guide that Indian tribes could use to budget maintenance program funds and identify future transportation facility maintenance needs through such means as predicting facility deterioration, tracking and reporting actual maintenance costs and activities, forecasting short- and long-term budget needs, etc.
  - Definition of "Construction contract" (170.4) – The BIA attempts to fold road maintenance projects within the definition of "Construction contract" in the draft regulation section 170.4. Road maintenance is not a construction activity under Pub. L. 93-638. MAP-21 defines the term "Construction" and the BIA's efforts to expand the term do not streamline the Program.
  - Inconsistent reference to FHWA in numerous provisions of the Part 170 regulations to reflect FHWA's role as an awarding and oversight agency with direct agreements with tribes (e.g., FHWA, as well as BIA, should be referenced in the Part 170 provisions concerning the use of flexible financing arrangements under 170.300 et seq.)
8. Cost-to-Construct Tables – The draft rule appears to retain the Part 170 regulation Cost-to-Construct (CTC) tables. With a statutorily mandated formula which does not require current CTC calculations, what is the purpose of including the CTC tables in the revised rule?



## Montana & Wyoming Tribal Leaders Council

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Website <http://www.mtwytlc.org> Email: [belcourt@mtwytlc.com](mailto:belcourt@mtwytlc.com)

### RESOLUTION #13MAY2013-01

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**WHEREAS**, the Montana-Wyoming Tribal Leaders Council (MT-WY TLC) has been created for the express purpose of providing the Indian Tribes of Montana and Wyoming with a unified voice and a collective organization to address issues of concern to the Tribes and Indian people; and

**WHEREAS**, the Tribal governments in Montana and Wyoming and Idaho recognize the importance of actively engaging in policy formation on any matters that may affect the Tribes and reservations; and

**WHEREAS**, the Board of Directors of the MT-WY Tribal Leaders Council consists of duly elected Tribal Chairs, Presidents and Council Members who are fully authorized to represent their respective Tribes; and

**WHEREAS**, the MT-WY Tribal Leaders Council recognizes the importance of planning, design, construction and maintenance of transportation facilities throughout the Rocky Mountain Region to improve public safety and promote jobs and economic development on our Reservations; and

**WHEREAS**, regulations for the Indian Reservation Roads (IRR) Program (25 CFR Part 170) were published by the Bureau of Indian Affairs (BIA) and became effective in Fiscal Year 2005, which converted the IRR Program from a Regional roads Program into a formula-based, inventory-driven, tribal shares program highly dependent upon an accurate transportation inventory; and

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**WHEREAS**, with implementation of the Part 170 regulations and increased funding, Indian Tribes soon realized that the BIA and the Federal Highway Administration (FHWA), which jointly administer the IRR Program, were not ensuring that BIA Regions uniformly and consistently updated Tribal IRR Program Inventories for inclusion in the National Tribal Transportation Facility Inventory (NTTFI), resulting in the addition to the inventory (NTTFI) of tens of thousands of miles of IRR Program routes which greatly altered the distribution of "tribal shares" of IRR Program funds among BIA Regions and Tribes; and

**WHEREAS**, despite increased funding under SAFETEA-LU, Indian Tribes in the Rocky Mountain Region witnessed a significant decrease in our IRR Program tribal shares; and

**WHEREAS**, despite a six year effort by Indian Tribes and the IRR Program Coordinating Committee to convince the BIA and FHWA to establish uniform Federal policies and procedures for the inclusion in the inventory (NTTFI) of eligible transportation facilities, including clear criteria for adding proposed roads,

primary access routes, or other eligible routes, the agencies did not amend the Part 170 regulations or establish interim guidelines or policies for use by all BIA Regional Offices and Indian Tribes; and

**WHEREAS**, at the request of Indian Tribes, Congress amended the IRR Program with the enactment of MAP-21 in July 2012, which replaced the regulatory funding formula with a statutory-based formula to distribute TTP funds to Indian Tribes, renamed the IRR Program the Tribal Transportation Program (TTP), and made other changes to the IRR Program; and

**WHEREAS**, the BIA and FHWA developed draft changes to the Part 170 regulations to implement the statutory changes required by MAP-21, and making other changes to the Part 170 regulations sought by the agencies; and

**WHEREAS**, the BIA has scheduled three consultation meetings with Indian Tribes over a one week period in May, including meetings in Phoenix, Arizona (May 16, 2013) and Minneapolis, Minnesota (May 21, 2013), and Alaska (May 14, 2013), to discuss the draft changes with Indian Tribes; and

**WHEREAS**, the MT-WY Tribal Leaders Council is concerned that the draft changes proposed by BIA and FHWA have not had the benefit of meaningful consultation with Indian Tribes concerning how best to improve the delivery of transportation programs, projects and services to Indian Tribes, to promote the rights of tribal governments to govern their own affairs, to ensure the continuation of the trust responsibility of the United States to Tribes and individual Indians, to encourage flexibility and innovation and to reduce, streamline and eliminate unnecessary and restrictive Federal policies or procedures; and

**WHEREAS**, a review of the draft changes to the Part 170 regulations suggests that the BIA and FHWA would limit tribal flexibility and innovation, curtail tribal appeal rights, unreasonably restrict tribal access to TTP, Federal-Aid and State-Administered Highway Safety funds at a time of funding shortages in Indian country and not fully implement MAP-21's streamlining provisions; and

**WHEREAS**, the MT-WY Tribal Leaders Council calls upon its member Tribes to demand that BIA and FHWA meaningfully consult with Indian Tribes before new regulations are issued for the TTP;

**NOW, THEREFORE BE IT RESOLVED** that the Montana Wyoming Tribal Leaders Council calls upon the BIA and FHWA to convene meaningful consultation with Indian Tribes – beyond the three limited consultation sessions announced in the April 12, 2013, Federal Register – concerning the overhaul of the Part 170 regulations and before the agencies issue a Notice of Proposed Rulemaking (NPRM) for public comment, as required in Executive Order 13175 and the Departments' respective Tribal Consultation Policies; and

**BE IT FURTHER RESOLVED THAT**, the Montana Wyoming Tribal Leaders Council asks its Member Tribes to authorize their elected Tribal officials and Tribal personnel to travel to the upcoming tribal consultation meetings to share directly with BIA and FHWA officials their concerns with the draft changes to the Part 170 regulations, which do not appear to reduce, streamline and eliminate unnecessarily restrictive Federal transportation policies or procedures, honor the government-to-government relationship, or promote the rights of tribal governments to receive direct transportation services from the Federal Government.

#### **CERTIFICATION**

We, the undersigned, as the Chair and the Secretary of the Tribal Leaders Council, do hereby certify that the foregoing Resolution was duly presented and approved unanimously at an official Board Meeting of the Montana Wyoming Tribal Leaders Council, which was held on the 13<sup>TH</sup> day of May 2013 with a full quorum of member Tribes present.

  
**Ivan Posey**  
Chairman – Tribal Leaders Council

  
**Robert Welch**  
Secretary - Tribal Leaders Council