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COMMITTEE ON
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Congress of the United States
House of Representatives
Washington, DC 20515

December 2, 2009

Honorable Kenneth Salazar
Secretary
United States Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

Re: Indian Reservation Roads Funding Formula

Secretary Salazar:

This is a follow up of the March 25, 2008 letter to former Secretary Kempthorne by Senator James Inhofe and Congressman Don Young. The purpose of the letter was to express concern over the Bureau of Indian Affairs' (BIA) position on the Indian Reservation Roads (IRR) funding formula.

The letter explained that the IRR formula is a product of a negotiated rulemaking process as defined by the Transportation Equity Act for the 21st Century (TEA-21). Additionally, one of the objectives of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act – A Legacy of Users (SAFETEA-LU) was to rectify all IRR eligibility problems for tribes in Oklahoma, Alaska, and in other states, especially in light of past limitations. Prior to 2004, the BIA/IRR program excluded more than half of Indian country.

In May of 2008, former Assistant Secretary, Carl Artman responded with a much different viewpoint. He concluded that there exists a trend that is creating a negative impact on BIA and tribally owned roads as a result of other types of Indian roads becoming eligible for the IRR inventory in reference to roads in Oklahoma and Alaska. Additionally, 23 U.S.C. §204(c) requires IRR funds to be supplemental to and not in lieu of funds apportioned to a state under §104. He further believed that a negotiated rulemaking process is not required to correct such issues and that BIA should proceed forth with a regulatory update.

We have become increasingly concerned by BIA's recent presentation to the National Congress of American Indians. The slide presentation indicated that there is movement to make significant changes to the formula outside of the legal framework set up in TEA-21.

We have had a chance to review this slide presentation and would like to make a few observations of our own:

1. It appears that the BIA is advocating for a specific sector of tribes on a national distribution issue where all tribes are equally eligible.
2. The distribution of IRR funding is now more equal across Indian country than prior to 2004; the purpose and intent of the TEA-21 negotiated rulemaking process.
3. The IRR program is for all Native Americans living in the United States, not exclusively for those living on well-defined reservations, as was the case prior to 2004. Road systems serving all Indian communities are essential to providing access, not just those owned by BIA.

The Federal-Aid Highway Act of 1973 required the functional classification of highway/roadway systems for the purposes of identifying federal funding eligibility in all 50 states. The states have primary responsibility for the designation of these systems in coordination with the applicable federal agencies. There are roadways which traverse through Indian reservations and Indian communities that are not only classified as BIA roads but also eligible for other federal-aid highway funding sources. This means that all Indian tribes are treated equally in terms of roadway funding eligibility.

It appears the BIA is acting outside the intent of the law and is applying pressure on non-reservation tribes to change the formula. The negotiated rulemaking process was established, to initiate a collaborative and just distribution formula for all tribes. As federal stewards of the IRR program, we must maintain and protect the trust responsibility we have to all Native Americans. We appreciate your consideration of our concerns and welcome further discussion of possible legislative modifications to the IRR program in the future.

Sincerely,



James M. Inhofe, Ranking Member
Environment and Public Works
Committee
United States Senate



Don Young, Member
Natural Resources Committee
United States House of Representatives