



2013 Mid-Year Convention Airway Heights, Washington

RESOLUTION #13 - 53

“TRIBAL COMMENT TO PROPOSED REVISIONS TO THE REGULATIONS GOVERNING TRIBAL TRANSPORTATION PROGRAMS”

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, Executive Orders, 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 to 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, ATNI is a regional organization comprised of American Indians/Alaska Natives and tribes 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 the ATNI; and

WHEREAS, on July 6, 2012, Moving Ahead for Progress in the 21st Century Act (MAP-21) was signed into law, and, on April 12, 2013, the Bureau of Indian Affairs (BIA) published a

notice of Tribal Consultation on draft revisions to the regulations governing the Tribal Transportation Program (TTP), which are set forth in 25 C.F.R. Part 170; and

WHEREAS, the draft revisions include changes to almost every section of the Part 170 regulations and would, in a manner not justified by MAP-21, substantively change many regulations directly related to tribal administration of tribal transportation programs and federal oversight and administration, which were developed through an extensive negotiated rulemaking process and directly implicate tribal self-government and tribal trust resources; and

WHEREAS, it is imperative that Indian tribes be afforded the opportunity to participate in a meaningful and collaborative process in the revision of regulations established through a negotiated rulemaking process; and

WHEREAS, the revision of these regulations must be conducted in compliance with the Department of the Interior's (DOI's) tribal consultation and collaboration responsibilities under Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"), the existing Part 170 regulations and the tribal consultation plans of DOI and the Department of Transportation; and

WHEREAS, the proposed tribal consultation process, which only provides for three regional meetings and the opportunity to submit comments prior to the publication of a Proposed Notice of Rulemaking fails to satisfy the consultation standards and principles set out in the Executive Order and 25 C.F.R. § 170.103, and the Departments should consider providing either a negotiated rulemaking process or some other collaborative consultation process that offers tribes the opportunity to develop a consensus rule or an interim rule; and

WHEREAS, certain draft revisions would restrict tribal flexibility and interfere with the ability of tribes to administer their own transportation programs in accordance with the principles of self-government do not conform to the statutory mandate to make all funds for Tribal Transportation Program activities available, at the request of a tribal government, in accordance with the Indian Self-Determination and Education Assistance Act (ISDEAA); and

WHEREAS, the Departments should refrain from making any change to the Part 170 regulations that alters the terms established pursuant to negotiated rulemaking unless it is required by statutory modification by MAP-21; and


WHEREAS, the Departments should, among other things, consider revisions to: (1) address longstanding obstacles to implementation of agreements under Title I and Title IV of ISDEAA; (2) establish regulations consistent with the above principles to guide implementation of the BIA Program Agreements; (3) establish a process to ensure that tribal transportation funds are distributed in accordance with the statutory deadline; (4) ensure that development of the National Tribal Transportation Facility Inventory is governed by a uniform BIA policy applicable to all regional offices; and (5) ensure that the Departments properly consult, collaborate, and coordinate with tribal governments when developing new or amended regulations or policies and template ISDEAA or Program Agreements; now

THEREFORE BE IT RESOLVED, that ATNI does hereby request that the BIA and Federal Highway Administration (FHWA) reconsider and revise the regulatory process set forth in the April 12, 2013, notice to either provide negotiated rulemaking process or some other collaborative consultation process that offers tribes the opportunity to develop a consensus rule or an interim rule; and

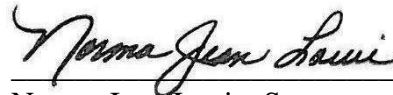
BE IT FURTHER RESOLVED, if the Departments are not willing to use a negotiated rulemaking process, at the bare minimum, the tribal consultation process should not only offer tribes the opportunity to provide comments to draft revisions, it should ensure that the BIA and FHWA will make all tribal comments available to tribes and provide a written response to those comments before publishing a Notice of Proposed Rulemaking.

CERTIFICATION

The foregoing resolution was adopted at the 2013 Mid-Year Convention of the Affiliated Tribes of Northwest Indians, held at Northern Quest Resort Casino, Airway Heights, Washington on May 13–16, 2013 with a quorum present.



Fawn Sharp, President



Norma Jean Louie, Secretary