Presented by Pete Red Tomahawk and JoAnn Polston

Title I Self-Determination Model Contract/Flexible Financing Follow-up:

At the Committee’s July 23, 2008 semi-annual meeting in Washington D.C., Policy Chairman Pete Red Tomahawk presented the Committee’s approved letter to Messrs. Skibine and Mike Smith regarding the status of the Title I self-determination contract template for IRR Program and BIA Road Maintenance Programs. The letter also requested that the BIA work the Committee and the Solicitor’s office to develop a model flexible financing agreement and procedure to address Tribal flexible financing to ensure that there is consistency nationwide.

Flexible Financing: Mr. Gishi reported to the full Committee on September 9, 2008 that BIA Headquarters will now address all Tribal requests for flexible financing agreements to improve BIA’s consistency in handling these agreements. Mr. Gishi further explained to the Policy Workgroup that the BIA Regional Offices will now direct any Tribe that is interested in flexible financing to BIADOT to conclude the agreements as soon as possible. To speed approval of these agreements, BIA Headquarters will also use the same model flexible financing agreement (see attached) that had previously been approved by the Interior Solicitors office, unless the Tribe requests a different format. The model agreement includes assurances from BIA that the financed project will remain on the TIP until the financing has been repaid and that Tribes can leverage up to 50% of their annual IRR Program funding share. Mr. Gishi also assured the Workgroup that the Tribe would continue to receive its IRR Program funding share through its Title I self-determination contract or Title IV self-governance compact, which will ensure that FTCA coverage and other protections apply to these projects.

Sampson Begay moved to approve the new BIA flexible financing procedure as an acceptable initial response to the Committee’s request, but further requested that the Committee continue to monitor the implementation of this new policy and request that BIA training and education efforts be made to educate Tribal leaders about this new procedure. JoAnn Polston seconded the motion. The Policy Workgroup passed the motion and forwarded its recommendation to the Committee for approval by consensus.

Title I Model IRR Program and Road Maintenance Contract -

The full Committee approved and sent to Mssr. Skibine and Gidner a June 26, 2008 letter requesting that the Title I Model Contract - which was formally endorsed with minor edits by the Committee on August 8, 2007 following nearly two years of negotiations with Tribal and Federal officials – be formally adopted for use by all BIA Regions, unless a Tribe requests the use of a different contract format. The Committee’s June 26 letter requested a response from the Acting Assistant Secretary Skibine and BIA Director Gidner within 30 days. This was also the first issue raised by the Committee during its July 23 meeting with Mr. Skibine and Mr. Smith. The Committee requested that Acting Assistant Secretary Skibine approve the model agreement no later than August 1, 2008. Mr. Skibine then requested that BIA Deputy Director Mike Smith send a letter to the Committee by August 1 explaining the BIA’s progress on this effort. To date, the Committee has not received either a notice that the Model Contract has been approved or a report of the BIA’s progress on this matter from Mr. Smith.

The Policy Workgroup remains deeply concerned about the lack of progress in finalizing the Model Title I Contract. In the Policy Workgroup’s view, the lack of a Model Title I Self-Determination Contract directly contributes to the chronic delays in IRR Program payments to Tribal...
Governments and places the BIA in violation of the SAFETEA-LU 30-day payment mandate. This lack of progress also contributes to the large amount of IRR Program funds that are returned to FHWA during the August redistribution. The failure of the BIA to complete its review and approve the Model Title I Contract in a timely fashion may make it more difficult for Tribes to advocate for increased IRR Program funding in the next Highway Reauthorization legislation because it creates the erroneous impression in Washington D.C. that the current level of IRR Program funds are not being used each year. FHWA and BIA management of the IRR Program is also called into question when large amounts of available IRR Program funds are carried over from one fiscal year to the next.

The Committee was informed at its December 2007 meeting that the Interior Solicitor’s office had approved the form of the Model Title I Contract, but that it was still under review by the BIA Division of Self-Determination. The Policy Workgroup believes that any further delay in this BIA review and approval process is unacceptable, is damaging to the IRR Program and is harmful to the interests of Tribal governments. The Interior Department’s approval of the Title IV Self-Governance IRR Addendum Template has greatly improved the timeliness of IRR Program payments to self-governance tribes and has reduced the amount of IRR funds that are returned to FHWA in the August redistribution. The same benefits must be provided to Tribes that have elected to enter into self-determination contracts with the BIA.

John Healy moved that the Committee recommend that Acting Assistant Secretary Skibine immediately approve the Model Title I Contract for use by BIA Regional offices and Tribes as a template, unless the Tribe requests that a different format be used. Mr. Healy further moved that the Committee recommend that Tribes that are unable to secure a Model Title I Contract from their BIA Regional Office be authorized by Mr. Skibine to negotiate the Model Title I Contract with Awarding Officials appointed by BIA Headquarters in Washington D.C. or Albuquerque, New Mexico. Mr. Healy further moved that the Committee recommend that this new procedure be established no later than November 28, 2008 and that, if this procedure is not established, Acting Assistant Secretary Skibine and BIA Director Gidner attend the next IRR Program Coordinating Committee meeting in person to explain why this recommendation was not acted upon. JoAnn Polston seconded the motion. The Policy Workgroup passed the motion and forwarded its recommendation to the Committee for approval by consensus.

**Inventory Issues follow-up**

**Regional Consistency in the Inventory Update Process**

At the Committee’s Rapid City meeting held on June 24, 2008, JoAnn Polston, speaking on behalf of the Policy Workgroup, reiterated the importance of all parties (BIA, FHWA, and the Tribes) meeting the inventory update deadlines set out in 25 CFR 170.444. The Policy Workgroup expressed concern that all BIA Regions are not consistently complying with the obligation to provide Tribes with copies of their current approved IRR Inventory by November 1st each year or issuing “errors and omissions” review letters by May 15th. There was additional discussion on Tribal access to RIFDS and confusion about the security level needed to access the RIFDS system.

To follow up on this concern, Sheldon Kipp reported to the Policy Workgroup that BIADOT will shortly send a formal policy memorandum to all BIA Regional offices advising BIA Regional Directors that BIA must send out the inventory information prior to November 1st and the “errors and omissions” review letters prior to the May 15th deadline in order for the Tribes to receive them by these dates, in accordance with 25 C.F.R. Part 170.444. Chairman Red Tomahawk also explained that this information must be sent to the Tribal Chairman with a copy to the Tribal Transportation Department, to ensure that it will be acted upon in a timely fashion.
Mr. Kipp further reported that some BIA Regional Offices are approving Tribal submissions with limited or no quality assurance reviews, which tends to delay the review process until after July 15 and results in more Tribal data appeals. This appeal delay also prevents BIADOT from running the IRR TTAM formula by August 15th.

In contrast, Navajo Nation DOT IRR Project Manager Nick Hutton reported that the Navajo Nation Regional Office carefully reviews the Navajo Nation submission and, in some cases, requires that the Navajo Nation DOT exceed the Minimum Requirements set out in the Ragsdale “Minimum Attachment Policy” before accepting the Navajo Nation’s inventory submission. Mr. Hutton gave two examples of inconsistent interpretations of the minimum attachment requirements – the purpose of the strip maps and a definition of “public roads” eligible for inclusion in the IRR Inventory. Ms. Polston also reported that some BIA Regional Offices are not providing Tribes with any information at all after the Tribes submit their inventory data.

The Policy Workgroup believes that this information demonstrates that the inventory update process remains inconsistent from BIA Region to BIA Region. Mr. Sampson Begay recommended that the Policy Workgroup continue to work for more BIA Regional consistency.

Mr. Begay moved that the Committee endorse Mr. Gishi’s recommendation to ask the BIA Director to send a formal policy memorandum to all BIA Regional Directors clarifying that each BIA Regional Office must provide all Tribes with:

- Their current approved IRR Inventory by November 1st (in paper or electronic form, as requested by the Tribe). This means that the information must be sent several days earlier so that Tribes will receive it by the deadline.

- An acknowledgement letter upon the Regional Office’s receipt of each Tribe’s March 15th inventory submission (in paper or electronic form, as requested by the Tribe)

- An “errors and omissions” review letter by May 15th explaining in sufficient detail what corrections should be made in order for the Tribe’s submission to be approved by the Regional Office and transferred to BIADOT. This means that the review letter must be sent several days earlier so Tribes will receive it by the deadline. This letter should be sent to the Tribal leadership and copied to the Tribal Transportation Department or Planner.

Mr. Begay further moved that the Committee recommend that this policy memorandum also state that adherence to the 25 C.F.R. Part 170 IRR Inventory update deadlines will be a key BIA performance measure in FY 2009 and that Regional Offices will be held accountable for compliance with the regulations. Mr. Healy seconded the motion. The Policy Workgroup passed the motion and forwarded its recommendation to the Committee for approval by consensus.

**Inventory Update Review Technical Issues:**

The Policy Workgroup also heard reports about technical issues that delay the BIA Regional and BIADOT review of Tribal inventory submissions. The Policy Workgroup believe that faster inventory reviews will help reduce inventory appeals and speed up the determination of the final TTAM formula, which will allow Tribes and BIA Regional Offices to know the amount of each Tribe’s TTAM funding share earlier in the fiscal year.

For example, Mr. Sheldon Kipp and Mr. Clarence Kie reported that BIADOT’s review of Tribal inventory submissions are sometimes hampered because the strip maps do not include latitude and longitude coordinates to allow them to easily locate the route. Now that the BIA has access to the
internet, BIADOT has begun to use Google Maps and other mapping resources to help it review and perform quality assurance for the inventory updates.

Mr. Kipp also reported that Q/A inventory review teams would greatly aid in the Inventory review process and also contribute to clarifying some of the questions in the preparation of inventory submissions. Mr. Gishi also reported that BIADOT and FHWA are considering establishing an IRR Inventory “quality assurance” review teams made up of Tribal and Federal officials to randomly sample Tribal inventory submissions to ensure the accuracy of the data and promote the integrity of the IRR Inventory. Tribal members of the Q/A review teams would not review inventory data from their own BIA Regions, but would review data from other BIA Regions. The proposal is viewed as in support of BIA/FHWA corrective action plans to address the deficiencies identified in the FHWA Report to Congress on the IRR Inventory.

JoAnn Polston stated that she has been involved in Q/A reviews in the past and believes Q/A reviews teams are appropriate and should be helpful in identifying the technical, coding and interpretation issues that currently delay inventory reviews and result in poor inventory data. Mr. Red Tomahawk also stated that these Q/A reviews need to be coordinated with BIADOT, FHWA, the IRRPCC and the BIA Regional Offices to serve as a “check and balance” to improve the integrity of the IRR Inventory system.

Navajo Nation DOT consultant, Nick Hutton, also noted a number of concerns that the Navajo Nation DOT has experienced in the inventory update process (see attached report). He recommended that - upon the request of the Tribes – the BIA Regional Offices should provide the RIFDIS information in an electronic format (i.e. ASCII, Excel Spreadsheet, or other database format) in order to better analyze the data and to assess its accuracy. Mr. Hutton also expressed concern that there is still too much ambiguity and room for interpretation for the different RIFDIS codes and that this also makes inventory updates for difficult than it needs to be.

Sheldon Kipp also reported that roughly 140 Tribal contractors and Tribal employees are now cleared to access the RIFDIS system, of which 70-75 are Tribal employees. Many of the Tribal contractors have access to multiple Tribal RIFDIS databases, so Mr. Kipp estimates that roughly 220 Tribes are now able to directly input inventory data into RIFDIS, either using their own employees or their contractors.

The Policy Workgroup believes that this information demonstrates that further technical improvement can be made to improve the accuracy and efficiency of the IRR Inventory submission process. However, the Policy Workgroup also wants to ensure that any technical improvements do not add undue burdens to Tribal governments or add new requirements that are not authorized by 25 C.F.R. Part 170.

Sampson Begay moved that the Committee endorse Mr. Gishi’s recommendation to establish Q/A review teams made up of Tribal and Federal officials, with the understanding the Tribal members would not review Inventory data in their own region. Mr. Begay further moved that the Committee request a formal briefing from Mr. Kipp and Mr. Kie at the next scheduled IRRPCC meeting to provide advice and recommendations to the Policy Workgroup on technical improvements to the Inventory review process in light of the fact that the BIA now has access to Internet resources. This briefing should not make any recommendations that would add additional burdens or requirements for Tribes that are beyond the requirements in 25 C.F.R Part 170 or the Ragsdale “Minimum Attachment” memorandum. Mr. Healy seconded the motion. The Policy Workgroup passed the motion and forwarded its recommendation to the Committee for approval by consensus.