Words are insufficient to describe the depth of the divide generated over hundreds of years of conflict between Native Americans and all levels of U.S. government. But in the transportation field, some people are successfully making connections between Indian tribes and government agencies. That was evident in a technical session at the NACE conference titled “Tribal Technical Assistance Program: Tribes, Transportation, and You.” Four speakers discussed ways that tribal governments are cooperating with local, state, and federal transportation officials to build and maintain good roads in Indian Country.

U.S. government and tribal roads

Ron Hall led off the session by summarizing major milestones in the U.S. government’s transportation-related dealings with the 565 federally recognized Indian tribes. One component of this was the creation of seven Tribal Technical Assistance Programs (TTAPs) in 1991 as part of ISTEA. The TTAPs are administered through the FHWA and are part of the nationwide Local Technical Assistance Program (LTAP). Hall is the director of the TTAP for the Four Corners states: Colorado, Utah, Arizona, and New Mexico. “When I get questions from a tribal government,” Hall said, “if I don’t have an answer, I can turn to the LTAP network and get answers quickly. A technical issue on a tribal road is the same as for any other road.” For more about TTAPs, see www.ltap.org/about/ttap.php.

Indian Self-Determination Act of 1960

Before 1960, Hall explained, Indian tribes received government services from federal agencies, such as the Bureau of Indian Affairs (BIA) and the Department of Housing and Urban Development (HUD), that operated outside the tribes. But in 1960, the Indian Self-Determination Act (Public Law 93-638) mandated the beginning of a shift to tribal self-management. Hall said the law “allows tribes to receive federal funds and deliver services through tribal programs for almost all services, including transportation, law enforcement, education, health care, clean water, and sewer. The tribes can negotiate contracts to perform all or any part of a program that benefits the tribe. People refer to these as ‘638 contracts.’”

Indian Reservation Roads (IRR) Program

The next big change in the relationship between tribes and the federal government was the Indian Reservation Roads (IRR) Program, which was part of the 1982 Surface Transportation Assistance Act. Hall said this was a major transition and said the official definition of “Indian Reservation Road” is important within the program: “It has nothing to do with who owns the road,” he said. “It refers to any public road that the tribe has the ability to operate, maintain, and repair.”
that’s located within or provides access to an Indian reservation or other tribal community. It can be a federal or state highway, a county road, BIA road, or Bureau of Land Management road.”

“The IRR Program,” he added, “was for reservation roads that previously were ineligible to receive federal aid money. It meant that reservations could receive money from the federal Highway Trust Fund. The BIA was directed to work with FHWA to create a reservation roads management program. But unfortunately, the program ran by the squeaky wheel method. The BIA managed the program and the tribes were not in the driver’s seat.”

Hall said the situation began to change in 1991. At that point, 2 percent of the IRR funding was set aside for tribal transportation planning. “That set the stage for a real transfer of the IRR program to the tribes.” He added that, in 1997, Congress restated that it was serious about wanting the tribes to manage their own transportation.

SAFETEA-LU changes
The next major advancement in giving tribes control of their roads came as part of the 2005 SAFETEA-LU Act. He outlined several major components of this legislation:

• Tribes can now avoid BIA and contract directly with the FHWA.
• A separate IRR Bridges Program authorized $70 million over the entire span of SAFETEA-LU with $14 million each year.
• Tribes can use up to 25 percent of their construction money for road maintenance. However, BIA has primary responsibility to obtain maintenance money—not from the Highway Trust Fund but from Department of Interior appropriations. “Road maintenance allocations haven’t changed in about 20 years and maintenance has always been underfunded,” Hall commented.
• Tribal-State Road Maintenance Agreements: “Congress said they wanted to encourage more cooperation between tribes and states, counties, and townships,” he said.
• Tribes can approve plans, specifications, and estimates (PS&E) as long as they have the stamp of a state-licensed engineer.
• Transportation funding from the federal Highway Trust Fund can be used with matching funds from local agencies for federal aid projects. “So a county or state agency can end up with a 100% federally funded project if it’s partnering with a tribe that has available IRR money. That can be used for any IRR road as long as it’s within the tribal planning process mandated by federal law.”

Hall added that both FHWA and the LTAPs are emphasizing safety in Indian Country. “The rate of people killed in crashes in Indian Country is higher than in the general population,” he said, “so we’re working to come up with real solutions and funding to change that.”

Finally, Hall listed resources for tribal road issues:
• TTAP websites that can be found at www.LTAP.org
• Three offices within FHWA: Office of Planning, Office of Legislative and Governmental Affairs, and Federal Lands Highways
• AASHTO’s web page dealing with tribal consultation
• Transportation Research Board’s Committee on Native American Transportation Issues—soon to publish its Guidebook For Successful Communication, Cooperation, and Coordination Strategies Between Transportation Agencies and Tribal Communities
• NCHRP 366—Synthesis on Tribal Transportation Programs
• National Tribal Transportation Conference—Nashville, Tennessee, Nov 14-17, 2011.

Cass County and Leech Lake Reservation
The next two presenters were Dave Enblom, the county engineer in Cass County, Minnesota, and Art Chase, operations manager for Leech Lake Reservation Tribal Roads. Both provided examples of cooperation between their agencies.

Enblom discussed a successful collaboration among his agency, Chase’s agency, and Rogers township: “Fifteen years ago, our county identified a wide range of tribal-county issues: law enforcement, child welfare, human services—and also transportation. One of the transportation issues involved the level of service on Indian Service Road (ISR) 6, which provides access to Boy Lake in northeast Cass County, Minnesota. Because it’s a route that primarily serves non-Indians, it wasn’t a high priority for the tribe—but it was a high priority for the county and Rogers Township. At the county, we wanted to identify a project that could exemplify how the reservation and the county could work together.”

Enblom explained that the area traversed by the road is a patchwork of lands owned by Chippewa National Forest, the Leech Lake Reservation, and private parties: “It’s in a very rural part of Cass County, about 30 miles from the closest incorporated town. For a long time, the road had been in rough shape. It goes through wetlands and was
often impassable in the springtime.” He outlined the road’s history:

- In the mid-70s, there was informal cooperation on routine maintenance. The county took over maintenance of the road. In return, the tribe worked on some county roads closer to its headquarters at the town of Cass Lake; that cooperation ended in the mid-1990s.
- In 2001, Leech Lake Tribal Roads facilitated a reconstruction upgrade—a lift and drainage project. To do this, they took advantage of the U.S. Navy SEABEEs Walking Shield program. Coordinated through the BIA, that program made SEABEEs available to Indian reservations for road improvement in rural areas. Cass County participated by placing the final gravel surface.
- In 2002, Cass County wanted to be sure ISR 6 didn’t deteriorate, so the county entered into a formal operation and maintenance agreement with Rogers Township, and the Leech Lake Tribe. With the tribe contributing by bringing in the SEABEEs to reconstruct, the county agreed to handle ongoing maintenance.
- In 2008, ISR 6 was wearing out. In response, the Cass County Board of Commissioners passed a resolution to secure funds for additional upgrades and improvements in support of Leech Lake Tribal Roads.
- In 2009, a new agreement was reached. It stated that the county would do maintenance; the tribe would pay for any betterment such as additional gravel or blacktop; and the county, tribe, and township would all contribute funds. A major component of this agreement was that ISR 6, which had been an IRR road, was also formally designated as Cass County Road 172. This allowed the county to use its tax revenue to upgrade the road. In addition, it allowed the county to fund improvements beyond the agreement—to treat it as any other county road.
- In 2010, the Leech Lake Tribe obtained ARRA funds and devoted a significant amount of those funds to improvement of the road.

Enblom said there’s no guarantee that the existing agreement will go forward when new leaders are elected and that any party can pull out with notice. But, he said, “Probably, no one will pull out unless there’s a problem. So that puts the responsibility on the county highway department to make sure everything runs smoothly. By making it a county road, it becomes harder for the county to back out. There would need to be hearings—and the neighbors near the lake would not like to see the road deteriorate.”

In conclusion, Enblom noted that the success of this project has led to cooperation between the county and the tribe on non-transportation-related issues, such as law enforcement and out-of-home placement for children. “It really worked out well. Art’s department and our department all feel that we led the way on cooperation between tribal and county officials.”

**Leech Lake Tribal Roads**

Art Chase followed with another success story. He said that, in 1998, when Leech Lake Tribal Roads began, it had a director (himself) and two technicians. “We were crowded into a 14 x 14 room, and our budget was $492,000 for construction and maintenance on 98 miles of BIA roads. With that level of funding, all you can do is save until you can afford to do a project.”

“But by 2009, we had 1,817 miles of roads on our inventory because we were able to count the BIA, state, county, township, and federal roads. With that increase, our annual budget was $7M. Now we have seven people in our maintenance department and six in our construction department. When we started, we had one grader, one dump truck, and one sweeper. Now we have five dump trucks, two graders, three sweepers, and a sign truck, so we can do a lot more. We’ve done three roads working with Dave Enblom of Cass County and another one with Beltrami and Itasca Counties. We’ve also worked on 12 roads with ARRA funds. But now the federal government wants to change the rules again; they don’t want us to be able to count some of the state and county roads in our inventory. If that happens, we will lose some of our funding.”

Chase described a current project: “It’s an old, winding 13-mile road that has no shoulders. There have been a lot of fatal accidents there. After two years of work with Beltrami County and the U.S. Forestry Service, we have a plan to rebuild that road. We’re going to add a 7-foot shoulder and straighten the curves.”

He also said that a lot of time to plan work on reservation roads is taken up in dealing with allotment issues. Allotment is a term used in the 1887 Dawes Act and several more recent laws. In an effort to get Indians to become farmers, the Dawes Act allotted 40-acre plots of reservation land to individual families. Over the years, ownership of these land parcels has been divided and re-divided as those families grew. Chase explained that, today, any work on roads touching allotment properties must be approved by 51% of the allottees. “In some cases,” he said, “there may be 100 allottees on one allotment, and we have to try to contact every one of them!”
Minnesota Advocacy Council for Tribal Transportation

The next speaker was Mike Robinson, MnDOT’s district engineer for District 1 based in Duluth. He described the Minnesota Advocacy Council for Tribal Transportation (ACTT), which has representation from all of the following:

- The 11 Indian tribes in Minnesota
- Executive Director of the Minnesota Indian Affairs Council (MIAC), a group composed of the chairs of the 11 tribes
- FHWA's Minnesota office
- MnDOT—including Robinson, another MnDOT district engineer, and Linda Aitken, whose title is tribal liaison. Robinson said, “I can’t say enough about the value that Linda Aitken has brought to this group!”
- BIA
- A representative of county engineers, currently Dave Enblom
- A city engineering representative
- U.S. Forest Service
- Michigan TTAP, which represents the eastern half of the United States

Established in 2006, ACTT’s mission is “to establish a coherent strategy for Indian reservation transportation through effective collaboration and partnerships.” Robinson emphasized that the group is effective because it has representation from all of the tribes “at a level in their organization where they can not necessarily speak for their tribes, but certainly serve as a liaison to their tribal councils when action is required.” He further explained that decisions are made by tribal consensus. “I and the other district engineer are not part of the decision making. We’re there to assist in any way we can.”

ACTT meets quarterly to resolve issues and provide training. Robinson explained that “Issues can be brought up by anyone; the criterion for deciding whether to address an issue is whether the committee determines that resolution would be beneficial to all or most of the tribes.” One issue that comes up annually is tribal communications in which state, local, and tribal governments talk about their highway improvement plans for the next four years. “That’s been very helpful,” said Robinson. “It creates understanding so we don’t catch anyone by surprise. In the past, tribes have sometimes been surprised by our projects in their areas where they have resource or cultural issues. Through this process, it has opened up the communication with the right people at the table.”

In the training component, experts are brought in to make presentations to the committee. “This sometimes leads to the formulation of issues that may require the committee’s action,” Robinson said. He added that another major function is ACTT’s annual Minnesota Tribal Transportation Planning Conference; he encouraged everyone to attend it. Robinson described two successful issues that have led to policy changes for MnDOT and the tribes. The first dealt with roadside vegetation. “MnDOT is concerned that invasive species or volunteer growth may become a safety issue,” he said. “Our typical response is to use a herbicide and eventually to mechanically remove it. But that’s a sensitive issue on reservations. They don’t want us to use herbicides because it can harm the plant life they want to protect—and there are potential groundwater issues. So the committee developed a memorandum of understanding. It’s not a contract. All it says is that MnDOT will always contact the tribe and work collaboratively.” He showed the first of these memoranda of understanding and said, “This was the first in the country, and it received an award from the FHWA in 2009 for environmental stewardship. We’re very proud of it.”

Robinson’s second example dealt with reservation road signs: “MnDOT had worked with individual tribal governments to develop a policy on signs that direct people to casinos. Then one of the tribal members brought a related issue to the ACTT committee. Their concern was that there’s a lot more going on at reservations than casino activity, and they want people to understand that. So the ACTT group worked with MnDOT signing experts and we developed standards that in general agree with the MUTCD but are specific to tribal needs. This has been a very successful program for the state and the tribes—and the counties are free to use these signs as well.”

In closing, Robinson emphasized this: “It’s through the respect that happens in this group that a lot of success happens.”

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