

Bristol Bay Native Association

Federal Issues Packet

January 2012

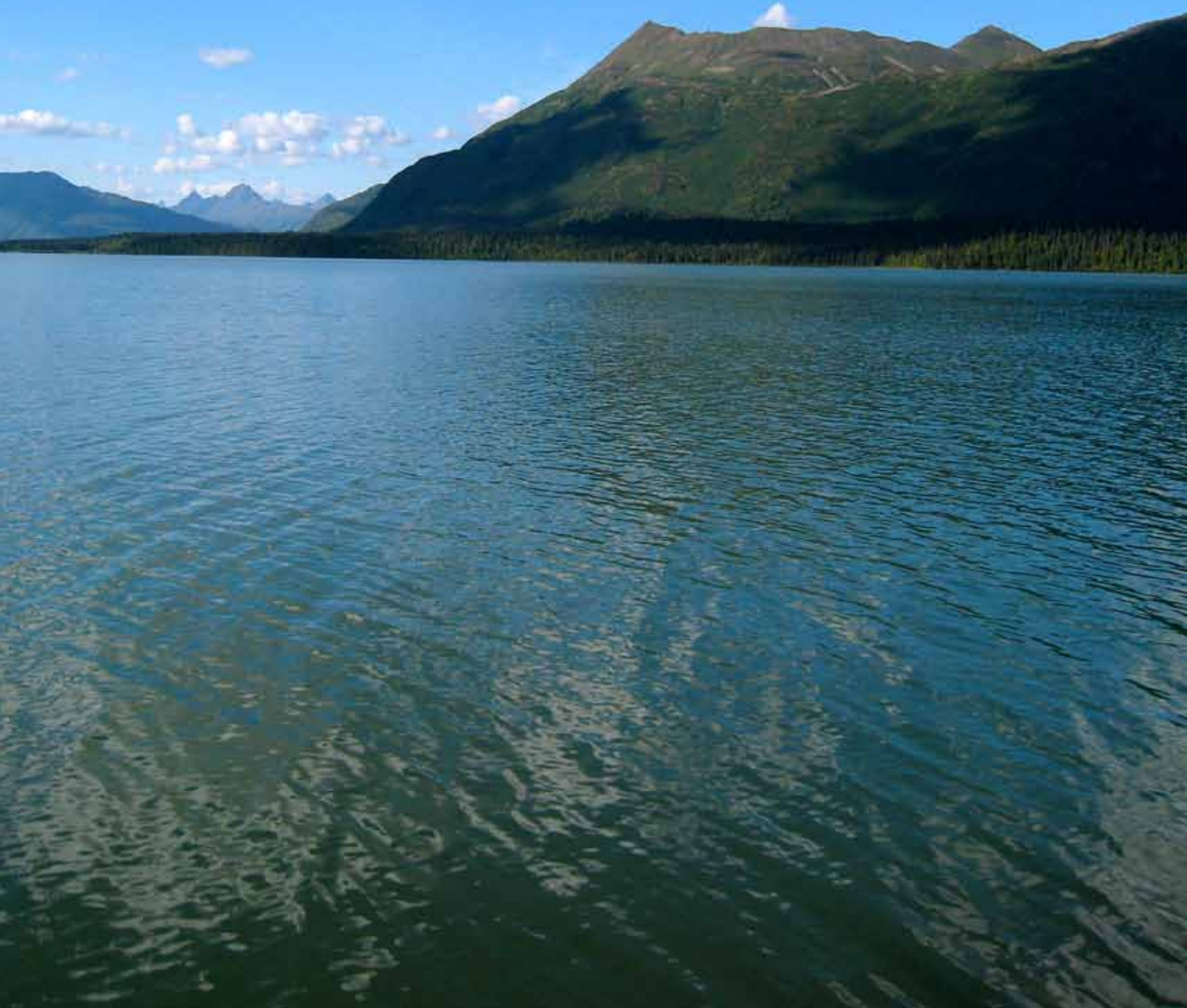


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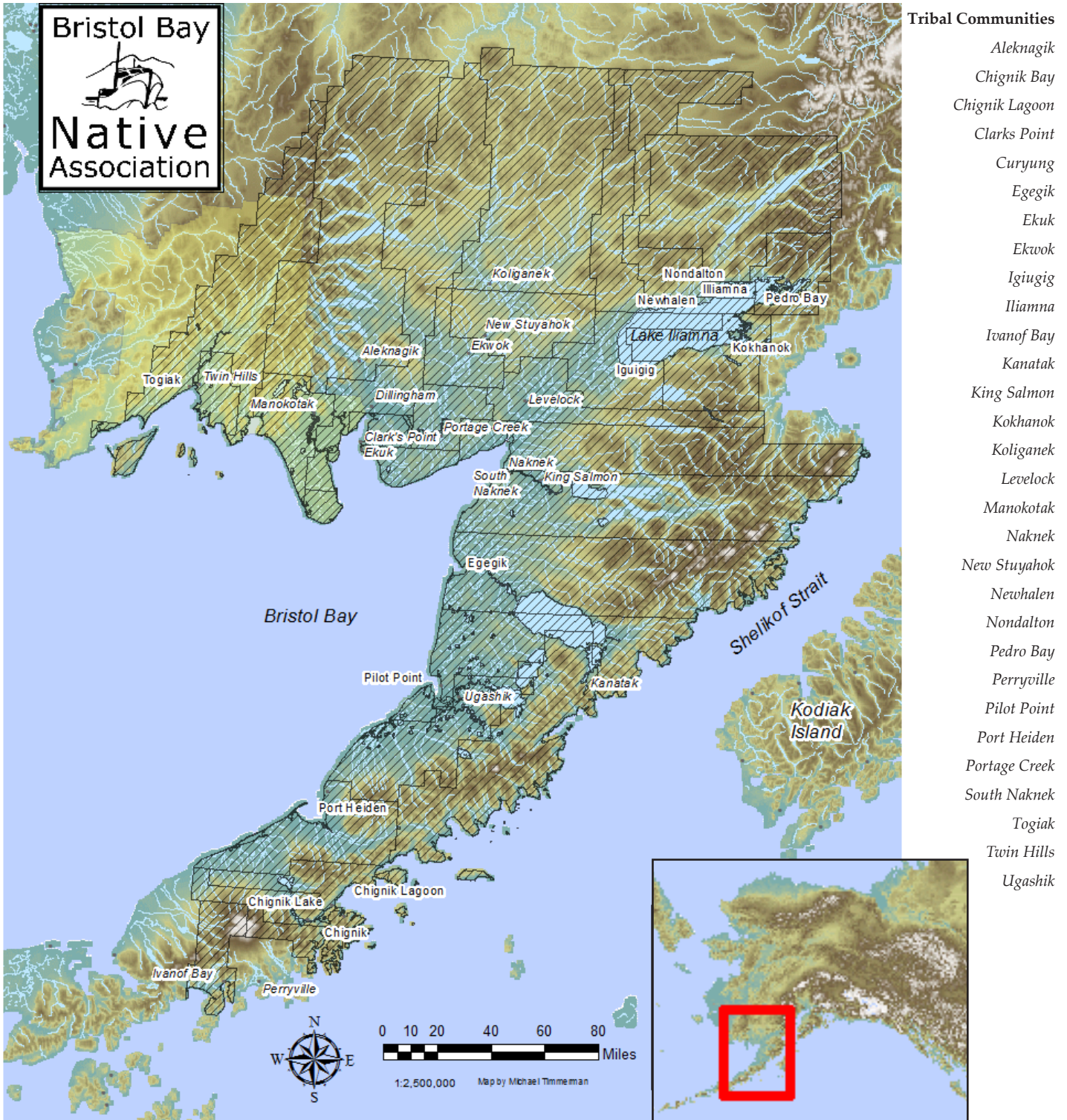
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Bristol Bay Native Association

The Bristol Bay Native Association (BBNA) is a Tribal Consortium, made up of 31 Tribes and is organized as a non-profit corporation to provide a variety of educational, social, economic and related services to the Native people of the Bristol Bay Region of Alaska.

BBNA Mission

The Mission of BBNA is to maintain and promote a strong regional organization supported by the Tribes of Bristol Bay to serve as a unified voice to provide social, economic, cultural, educational opportunities and initiatives for the benefit of the Tribes and the Native people of Bristol Bay.



History of BBNA



The Natives of Bristol Bay, like others throughout Alaska, were involved in the land claims struggle for years prior to passage of Alaska Native Claims Settlement Act (ANCSA). 40 years ago the ANCSA formally recognized the struggles of Native people for economic and social justice. Our elders worked aggressively for the passing of ANCSA's, which settled the Native Land Claims Act, created Native corporations and set the stage for participation by our people in the modern economy.

The land claims movement brought together leaders from 15 villages scattered throughout Bristol Bay who organized the region's first Native Association in 1966 to negotiate the land claims settlement. The association's membership would double before the Bristol Bay Native Association was formally incorporated in 1973. After ANCSA, BBNA turned it's attention to addressing the social and economic problems facing Native people in the region. The change was partly in response to increasing requests for social and economic services directed to BBNC, the for-profit corporation formed pursuant to ANCSA, but largely in response to the need for increased social services traditionally delivered by distant state and federal agencies with no knowledge of the people, culture, or living conditions in the most politically and culturally diverse region in Alaska.

Although BBNA's roots predated ANCSA, the association we know today as BBNA was formally incorporated as a non-profit in 1973, the same year as the Bristol Bay Area Health Corporation. BBNA's early work focused on Head Start, jobs and training funded through the Comprehensive Employment Training Act (CETA). Later reforms allowing tribes to compact directly with the Department of Interior-rather than waiting for services to "trickle down" through the Bureau of Indian Affairs' bureaucracy-accelerated tribal self-determination. In 1975, the Indian Self-Determination and Education Assistance Act opened the door for tribal organizations to assume responsibility for delivering federally funded services to Native people.

BBNA and our member tribes have focused on expanding and improving their services. Job placement and training remains an important part of our work, and the Head Start program is expanded to four communities. Today we also offer Land Management Services, Indian Child Welfare, Natural Resources, Economic and Workforce Development, Vocational Rehabilitation, Higher Education, Temporary Assistance for Needy Families (TANF), Low Income Home Energy Assistance Program (LIHEAP) and Tribal Energy program. Our budget has grown 10-fold in the last 18 years, and collectively employment at BBNA and other tribal entities is the region's largest employer and fastest growing segment of the Bristol Bay economy, according to the Alaska Department of Labor statistics.

Summary of Requests:

Part One - Legislative Requests

I. Highway Bill Reauthorization – BBNA strongly opposes the IRR provisions of the Senate Highway Bill, MAP-21. The new funding allocation is irrational, discriminatory, and would substantially dismantle the IRR program in Alaska. (Effects BIA and FHWA)

II. Support the Alaska Safe Families and Villages Act, S. 1192, which would create a demonstration project for the exercise of tribal authority in the villages in the areas of alcohol and drug abuse, and domestic violence.

III. Support the Native American Challenge Demonstration Project Act, S. 1293, which would create a new “compact” program with dedicated funding for grass-roots level economic development in remote Native American communities.

IV. Self-Governance amendments: Support the “Title IV” and “Title VI” amendments to PL 93-638. The Title IV amendment package would update the laws authorizing Bureau of Indian Affairs compacting to make them consistent with Indian Health Service compacting. The Title VI amendments would expand Department of Health and Human Services compacting to programs beyond the Indian Health Service, including Head Start. (BIA and DHHS)

V. Support amendments to PL 102-477 to streamline program and clarify that all agency programs covered by PL 102-477 are fully subject to PL 93-638. (BIA, DHHS, DOL)

VI. Support Head Start Act amendments. Certain requirements of the 2007 Head Start Act are counter-productive or impossible to meet in rural Alaska. These include the education requirements for Head Start teachers, and the “re-competition” requirement for grants. (Head Start)

Part Two - Funding Requests

VII. Exempt Native Programs from Federal Discretionary Spending Cuts

VIII. Increase Funding for Head Start

IX. Provide Direct Funding of Regional Marine Mammal Programs. (Dept. of Commerce – NOAA, and DOI - US-FWS)

X. Continue “Energy Efficiency Block Grants,” which were authorized by the 2007 Energy Act, funded in ARRA, but otherwise not funded through regular appropriations. (Dept. of Energy)

XI. Increase resources for providing Native allotment services within the Department of the Interior and the Department of Justice. (BIA and DOJ).

Summary of Requests: (continued)

Part Three - Administrative Policy Requests

XII. Broadband Access – Agency Oversight of Terra-SW project to ensure that terrestrial broadband is actually made available to the public. (FCC and USDA – Rural Utilities)

XIII. Establish Harvey Samuelson National Fisheries Zone in Bristol Bay. (White House).

XIV. Federal Oversight of large scale mining projects.

XV. Head Start Indirect/Administrative Cost Cap

XVI. Head Start Poverty Guidelines – Head Start should update its poverty guidelines to take into account the higher cost of living in rural Alaska. (Head Start)

XVII. DOJ Study of Alaska Criminal Justice System (DOJ)

XVIII. Include Alaska Regional Consortia in tribal consultations. (White House)

XIX. IRR Program Issues – BBNA position on issues under policy review by BIA - “Q. 10” issue, proposed roads, and access roads. (BIA and FHWA)



Part One – Legislative Issues

I. Surface Transportation Act Reauthorization – BBNA Opposes the IRR Sections of MAP-21

The Bristol Bay Native Association is strongly opposed to the tribal transportation sections of the Senate “MAP-21” surface transportation bill. The bill imposes a new funding formula for the Indian Reservation Roads (IRR) program that is irrational on its face, negates the outcome of negotiated rule-making, and would effectively demolish the IRR Program for most tribes in Alaska. Our assessment is that the funding formula will harm a large majority of tribes nationally and also in most BIA regions. We are very concerned that given the importance of the bill to state governments MAP-21 may be forced through despite a terribly negative impact within Indian Country.

MAP-21 also appears to remove transportation funding for the Denali Commission, and it specifically ends the BIA High Priority Project Program. Both of these have been extremely beneficial to Alaska. They have been of significant benefit to tribes and rural communities and have provided badly needed infrastructure aid beyond the limited amounts available from the Alaska DOT and the regular IRR program.



Dillingham's Wood River Road Project, 2010

Summary of Current IRR Funding and Inventory Problems

The IRR Program has become the single largest BIA program, with a \$450 million authorization amount at current levels. The highway transportation act which authorizes the program, SAFETEA-LU, was supposed to expire in 2009 but has been extended until March of 2012.

Despite stepped funding increases from \$275 Million in 2004 to \$450 Million in 2008-2012, a significant number of tribes – including most Bristol Bay tribes - have seen flat or decreased funding over the past several years. Widespread dissatisfaction continues with how the BIA has applied, or misapplied, changes made by the new program regulations in 2004, and by SAFETEA-LU itself in 2005. The regulations were developed by a negotiated rule-making process that took five years to complete and resulted in a delicate set of compromises and trade-offs among the tribes.

The main BIA implementation error was the virtually unrestricted expansion of the IRR inventory, which provides the data for 80% of the funding formula. A key compromise in the 2004 regulations had been that non-BIA, non-tribal roads could be added, but would only count at the local match rate – typically 25% or less – in the funding formula.

With rare exceptions, only BIA and tribal roads were to count at 100%. However, the BIA did not initially have the data to apply the local match rate, so when tribes added tens of thousands of miles of state, county and municipal roads, the BIA simply funded them all at 100% in the formula. The effect was to dramatically reallocate funds, primarily from remote rural tribes to tribes in more densely populated areas with infrastructure owned by other jurisdictions.

By a similar mistake, BIA staff allowed thousands of miles of tribal "proposed" roads – i.e. roads not currently existing – into the inventory without regard to constraints in the statutory framework of the program. Although legitimate proposed roads are very important to Alaska tribes, many and probably most of those submitted simply cannot be built because of feasibility problems and legal obstacles to tribes obtaining right-of-way outside of reservations. The effect of adding all these infeasible routes was to swamp and devalue legitimate proposed projects.



Waskey Road in Dillingham

The BIA and FHWA have been addressing these inventory issues over the last several years, but it is a very slow process. The so-called "Question 10" implementation addresses the local match issue. The agencies are now considering additional submittal requirements for proposed roads and access roads. The long delay in addressing these known problems is in part because the agencies defer to the IRR Program Coordinating Committee in the first instance, even though that body reaches impasse on most funding issues. The agencies themselves have moved very slowly, and changes to the inventory in one year are not reflected in the funding until the next. The effect of current changes will not be known until 2013.

Many tribes have thus gone to Congress with complaints about IRR funding. Tribes that have seen no increases or have lost money are unhappy with the expansion of the inventory, the BIA's failure to implement the negotiated rule as intended, and the extraordinarily long time it has taken to correct known problems. Tribes that benefitted from the BIA's mistake are unhappy the agencies



Aerial Photo of roads in Kokhanok, Alaska

want to fix the inventory. In fact these tribes received wind-fall funding they should not have received. The result is many unhappy tribes on all sides of the issues, and dissension based upon winners and losers no matter what the agencies do.

Problems with MAP-21 IRR Provisions.

The IRR formula proposed by the Senate EPW committee in MAP-21 is irrational and extremely harmful. It would be far better to let the BIA and FHWA make their inventory changes and leave the law alone. MAP-21 takes 80% of the funding and allocates it by population. Strict population-based formulas always hurt small tribes because small tribes have higher costs per capita. Worse, the MAP-21 formula takes half of the population funding - 40% - and allocates it equally by BIA region, with tribes within each region receiving funds on a complicated stepped population basis. This has the effect, in most regions, of simply taking additional money away from small tribes and the very largest tribes and giving it to tribes of between 1,000 and 60,000 people.

One major effect of this is just to benefit tribes in BIA regions with few tribes. An 8-tribe region receives the same amount under this part of the formula as Alaska's 200-plus tribes or California's 100-plus tribes. Lower 48 reservation tribes that are identically situated by any measure considered - population, road miles or land area - will get widely different amounts based solely on which BIA region they are in.

Within Alaska, the stepped population allocation has completely irrational results. Because there are few tribes of less than 25 population, these tiniest tribes actually get slightly more than tribes of 26-100 people. (\$7,250 compared to \$6,820) The eleven Alaskan tribes of 1,000 people or more will receive \$843,290, while a tribe of 999 people would receive just \$11,190. Ironically these "large" tribes are typically located in 1st class cities or boroughs and are less dependent on IRR funding than remote villages.

MAP-21 eliminates both the "population adjustment factor" part of the current formula, and the High Priority Projects pool, both of which were designed to provide some equity to small tribes.



Local Road in Port Heiden, Alaska

MAP-21 creates a terrible precedent. Not only does it negate a tribal negotiated rule-making, it is a bad precedent for Congress itself to massively reallocate funds based solely on transient political clout. Somebody else will be in power when the next reauthorization rolls around. Congress should be looking at ways to stabilize the IRR program rather than destabilizing it every time there is a reauthorization.

SAFETEA-LU Reauthorization Requests

- We support prompt reauthorization of SAFETEA-LU with a modest increase, to \$600 million in IRR program funding. However, we absolutely oppose reauthorization with the MAP-21 IRR funding formula. It would be better to continue extensions of SAFETEA-LU until the next Congress rather than pass the MAP-21 IRR language.
- We support the package of "Indian Country" amendments developed in a joint white paper from NCAI and the Intertribal Transportation Association, which in general supports increased funding for the IRR construction and road maintenance programs, and the creation or expansion of Native American set-asides for other federal transportation programs.

- We support just two features of MAP-21:
 - o Increased ceiling and percentage for the use of IRR funding for road maintenance.
 - o Including all public bridges in the National Bridge Inventory.
- We urge Congress to remove the “grandfather-in” language in the IRR inventory section at 23 USC Section 202 (d)(2)G(ii)(I), and replace it with language that clearly allows the BIA and FHWA to correct mistakes in the inventory. The grandfather-in language was intended to protect historic IRR routes that were in the “old inventory” from the 1990s and earlier, but it has created uncertainty over whether the BIA can correct factual mistakes in the inventory data or remove routes that do not comply with applicable legal standards.
- We urge Congress to clarify that the routes in the IRR Inventory identified for funding must be priority transportation needs that impact the majority of resident tribal members, and must fall within the tribes’ 20 year long-range transportation plans for construction or maintenance.
- We urge Congress to allow the FHWA and BIA to continue their process of implementing policy changes which will bring the inventory more closely into alignment with what was intended by the negotiated rule.
- We urge that the MAP-21 formula and IRR changes be dropped and that existing law remain in effect. Specifically, we oppose the following changes within MAP-21:
 - o Any change in the IRR funding formula, including the removal of the negotiated rulemaking TTAM formula and IRR High Priority Projects. As written, the funding formula is blatantly discriminatory among BIA Regions.
 - o Changing the language in SAFETEA-LU’s Transportation Facility Inventory at 23 USC 202(d)(2) (G) (ii)(IV) from “community streets” to “public roads.”
 - o Changing BIA Program Management and Oversight funding from a capped amount in SAFETEA-LU to up to 6% of the overall funding.
 - o Limiting control of developing regulations to the BIA. We believe FHWA needs a leadership role in this process.
 - o The proposed tribal supplemental funding, which would have the effect of rewarding tribes that have abused the system.
 - o Including tribal Bridge and Safety Programs within the Tribal Transportation Program, thus effectively reducing overall funding to tribal transportation programs by \$18 million per year.



Aleknagik Road near Dillingham

II. Support the Alaska Safe Families and Villages Act.

BBNA strongly supports enactment of the Alaska Safe Families and Villages Act, S.1192. This bill would create a demonstration project by which participating tribes would have clearly confirmed authority to enforce tribal laws regarding alcohol and substance abuse, and domestic violence within their villages. The bill would also establish a grant program within the Department of Justice to support the tribal demonstration project, and a separate grant program within the Department of the Interior to provide tribal police officers. Although this is just a demonstration project, the concept is to enable tribal governments – an immediately available local resource – to help fill the gaps in dealing with social problems in remote rural villages. This has been a top priority of BBNA and the Alaska Federation of Natives for more than a decade.

Request: Enact the Alaska Safe Families and Villages Act.



Officers in BBNA's Village Public Safety Officer (VPSO) Program

III. Support the Native American Challenge Demonstration Project Act

One of BBNA's top priorities the last several years has been legislation to apply a similar approach to the "Millennium Challenge compacts" used to provide foreign development to rural Alaska and in other remote, disadvantages areas of Native America. Bills have been introduced in the last several Congresses, most recently as S. 1293, and have had full hearings in the Senate.

America's Native peoples --- American Indians, Alaska Natives and Native Hawaiians --- continue to suffer disproportionately high rates of unemployment and poverty, poor health, substandard housing, and associated social ills when compared to any other group in our nation. Although there has been steady improvement in absolute terms, particularly in the area of health, the fact remains there has been little progress in the last 30 years towards closing the gap between Native peoples and the American public at large in most indicators of well-being. The demonstration project will seek to reinvigorate Native economies by building on the concepts and principles of the Millennium Challenge Corporation, and using a compacting model to channel a significant amount of development funds to implement locally designed economic development strategies. The objectives are to enhance the long-term job creation and revenue generation potential of Native economies by creating investment-favorable climates and increasing Native productivity and to improve the effectiveness of existing Federal economic development assistance by encouraging the integration and coordination of such assistance for the benefit of Native economies.

Request: Enact the Native American Challenge Demonstration Project Act

IV. Support Updating the Self-Governance Compact Provisions of the Indian Self-determination and Education Assistance Act, PL 93-638.

Since at least 2000 there has been wide support among self-governance tribes nationally for two sets of amendments to PL 93-638. Consensus amendment language has been developed by national workgroups.

A. Title IV of PL 93-638. This is the part of PL 93-638 that authorizes tribes to compact BIA programs, and is thus the authorizing legislation for much of what BBNA does. It has not been updated since 1994. In contrast, Title V of PL 93-638, which governs Indian Health Service compacts, was updated in 2000 and contains many procedural improvements on the way compacts are administered. Amendments to update Title IV to make it consistent with Title V have been introduced in every Congress since 2000, but have not yet passed. This and other self-governance legislation appears to have broad bi-partisan support, but was "bottlenecked" in key committees by the Indian Health Care Reauthorization Act and the Tribal Justice Act, which were deemed of higher importance. This is in the nature of a house keeping bill to a significant program for Alaska tribes, and would not involve funding increases.

Request: That the Title IV amendments as proposed in the last Congress be enacted.

B. Support "Title VI" amendments, expanding PL 93-638 compacting to include Head Start and other DHHS programs. The existing Title VI of PL 93-638 was enacted in 2000 and required the Department of Health and Human Services to study the feasibility of adding its programs, beyond the Indian Health Service, to self-governance compacts. DHHS conducted the study and concluded that it was feasible to compact some of its programs, including Head Start, but implementation action in Congress has stalled along with the Title IV amendments.

Request: That Congress enact follow-up legislation to Title VI of PL 93-638 to expand compacting to the Head Start program and other appropriate programs within DHHS.



Head Start Class Learning about good dental health.

V. Support updates to PL 102-477.

This is the law which allows tribes/tribal organizations to have "477 Plans" which consolidate Department of Labor, Department of Health and Human Services, and Bureau of Indian Affairs programs dealing with workforce development, adult education, BIA welfare assistance, TANF, and related services into one consolidated program. All the funding from the various agencies is transferred to the BIA and provided to the tribe/tribal organization by the BIA via PL 93-638 agreements. Although tribes still have to comply with the regulations of the various agencies, the consolidation has allowed tribal organizations such as BBNA to operate one-stop shops and achieve considerable administrative savings by having a single funding award to manage. Further, the award has all the conveniences of compact funding, i.e. it comes in automatically in a lump sum with relatively light reporting requirements. Unfortunately, the DHHS unilaterally took the position several years ago that its funding must be administered by ordinary grants rather than through PL 93-638 contracts. Although DHHS has backed off on this, it apparently still wants additional reporting and perhaps audit requirements that would keep tribes from fully integrating DHHS funds with other funds in the 477 plans. Discussions are still taking place between the 477 agencies and the tribes.

Request: BBNA urges Congress to closely monitor the negotiation between the federal agencies and the tribes, and if necessary enact amendments to PL 102-477 to absolutely clarify that all programs covered by PL 102-477 can be consolidated under a 477 plan with reporting and audits requirements based on the approved plan.

VI. Head Start Reauthorization Act Amendments.

The Head Start Reauthorization Act of 2007 was very urban-centric; it made reforms that may have made sense in urban areas but which are simply impossible to comply with in remote rural areas.

A. Staff education mandate. The Head Start Reauthorization Act increased the education requirements for Head Start teachers. It now requires that all Head Start teachers have an AA degree by the Fall of 2011 and a BA degree by the Fall of 2013. This is just not possible for Alaska Native programs given the small local workforce and the length of time it takes for someone to get a degree while holding down a job in rural Alaska. Although our staff continually takes classes, in reality this just prepares them to take higher paying jobs elsewhere. Our Head Start grant does not provide enough funding to cover competitive salaries for degreed teachers. This education requirement is an unfunded, counter-productive mandate. It also means that our program and similar ones will be perpetually out of compliance with one of the formal Head Start grant requirements.



Head Start Class in Dillingham

Request: Amend the law to make an exception for rural areas.

B. "Re-competition" requirement. Under the 2007 law, Head Start programs will be reviewed every five years. The Head Start agency will be required to technically de-fund at least 25% of the reviewed grantees in a given year, and have them "re-compete" for the program; the 25% will be selected based on performance standards. Since the Head Start Act also imposes requirements that remote rural programs cannot meet, this process is structurally biased against rural programs. Alaska programs will probably always be in the bottom 25% since they cannot meet all of the performance standards, such as teacher education. Our programs will have to use the more complex competitive grant process – even though, realistically, there is typically no other entity to run the program in remote rural areas and the Head Start agency has no actual interest in discontinuing our programs.

Request: Amend the law to remove re-competition requirement in remote areas, at least where the agency knows there are no competitors for the program.

C. Overly Restrictive Administrative, Indirect, and Non-Federal Share Policies. The Head Start agency applies a 15% administrative cap and a 15% indirect cap. Additionally it requires a 20% Non-Federal Share match of the full federal grant. This is unlike most federal grants, which honor the indirect cost rate that grantees negotiate with their primary federal funding agency. Negotiated indirect cost rates are typically considerably higher than 15%.

To complicate matters, Head Start uses a default administrative cost rate on some funding lines (such as 100% for office supplies) which in some instances would not normally be considered "indirect" or administrative costs by the grantee because they relate to a single program. Since all indirect costs are considered administrative, the default administrative cost rate on other budget lines has the effect of pushing the grantee's actual indirect cost recovery below the 15%, sometimes considerably below.

Further, the Head Start agency also applies the 15% administrative cost cap to the 20% Non-Federal Share requirement. This means that many commonly used "matches" cannot be used in Head Start because they would push the grantee over the 15% limit. For example, donated office supplies or a donated administrative position would be considered administrative, would bump into the cap, and would reduce the grant award. As a consequence many Head Start grantees are forced to make significant contributions to the program without even getting credit for the match.

Request: Amend law and increase funding so that Head Start pays negotiated indirect cost rates. At a minimum the Non-Federal Share match funding should be exempt from the administrative cap.



Dillingham Head Start Class

Part Two – Funding Requests

VII. Exempt Native Programs from Federal Discretionary Spending Cuts.

BBNA urges our Congressional delegation to hold the line against budget cuts falling on Native American programs. Native American programs are based on a federal trust responsibility and thus are not ordinary “discretionary” funding. Our organization and our sister Alaska Native tribal organizations are already under severe budget pressures due to rising energy costs and employee health insurance costs. (The latter have increased on average by 20% per year for the past decade, and by 40% in 2010 alone, before the health care bill passed.) We are particularly concerned, given the current political climate in Washington, that the core service programs in rural Alaska including BIA, IHS and HUD (NAHASDA) funding not be cut.



Bristol Bay Resident's Home

Request: Exempt Native American programs from cuts in discretionary funding.

VIII. Increase Funding for Head Start.

Head Start is a critically important program in rural Alaska, but it is continually squeezed by increased costs. Many of the buildings BBNA uses in the villages are substandard, the continuing education requirements for Head Start staff drives up costs, and like all of our other programs Head Start is im-



Manokotak Head Start Class

acted by higher energy costs and increased health insurance premiums for employees. There is an unrealistic 15% cap in indirect cost recovery. BBNA substantially subsidizes this program from other sources.

Request: Head Start deserves a higher appropriation level from Congress.

IX. Provide for Direct Funding of Regional Alaska Native Marine Mammal Programs.

BBNA urges Congress to directly fund regional Alaska Native marine mammal councils, through the creation of a specific Native marine mammal program to implement Section 119 of the Marine Mammals Act.

This could be housed in either the Department of Commerce or the Department of the Interior, or even both, and would roll up and include exist-



2011 Qayassiq Walrus Commission Meeting

ing funding for Native marine mammal organizations but have its own appropriations line.

BBNA has an active marine mammal program, but is extremely frustrated with the way funding is allocated. The attempt to regularize funding by consolidating funds into a statewide organization, the Indigenous Peoples Council for Marine Mammals (IPCoMM), which then funds a few projects, seems to have served mainly to leave funding at the mercies of the federal agencies and their budget priorities. The existing system has Alaska Native marine mammal programs dying on the vine.

While we understand the proliferation of marine mammal councils in Alaska has been problematic, Bristol Bay's approach has been to deal with all marine mammal species in our region. Thus we have had projects related to various seal populations, belugas, walrus and other species. BBNA supports two councils: the Qayassiq Walrus Commission (QWC) manages the Round Island walrus hunt and is the only true Native marine mammal co-management body in Alaska, and the Bristol Bay Marine Mammal Council (BBMMC), which oversees our other projects. At present we are funded only by a small pass-through amount from the Eskimo Walrus Commission for the QWC, and another small pass-through grant from IPCoMM, for the BBMMC. BBNA subsidizes our marine mammals program from other sources. Even so the QWC only has funding to meet once a year despite having significant management responsibilities.

We strongly believe that a better way to fund Alaska Native marine mammal activity and cooperative agreements would be to establish a program to do so, specifically fund it, and allocate the funds on a regional basis. Although there are some effective single species councils, the best of these such as the Eskimo Walrus Commission or the Whaling Commission are effectively regional entities anyway. We don't believe single species commissions that purport to operate statewide from Anchorage actually work very well

Request: Congress should establish and fund an Alaska Native marine mammal program, with funding to be allocated on a regional basis.

X. Continue Energy Efficiency and Conservation Block Grants

BBNA urges Congress to fund Energy Efficiency and Conservation Block Grants established by Section 548 of Title V of the Energy Independence and Security Act of 2007. The EECBG program assists local governments - including tribes - through formula and competitive grants to develop energy efficiency and conservation projects. The goal of the program is to reduce fossil fuel emissions and total energy use at local and regional levels. It empowers tribes to make investments in technologies that deploy the cheapest, cleanest and most reliable energy available. Although the 2007 Act authorized a \$2-billion annual appropriation for five years, the grants were first funded in 2009 by the American Recovery and Reinvestment Act.

The tribal allocations for Alaska totaled \$12.2 million. In rural areas where the majority of Alaska tribes are located and energy costs are high, the grants have been very effective. The Bristol Bay Native Association has been assisting 14 tribes implement their allocations through energy audits and retrofits on tribal buildings where local labor is hired and trained to make the suggested improvements. The estimated energy saved will be about 544,200 kWh or 357 metric tons of greenhouse gas emissions reduced.

Request: Congress should appropriate funds to continue the Energy Efficiency and Conservation Block Grant Program.



Windmills in Perryville help lower diesel fuel consumption

XI. Increase Resources for Native Allotment Services

A. BIA Services. The system for protecting and servicing Native allotments in Alaska has become overwhelmed. Alaska Native allotments are “restricted” and enjoy various advantages including exemption from local taxes. However, restricted status means the Bureau of Indian Affairs has to approve almost anything having to do with title or land use by anyone other than the allotment owner. The procedural layers necessary to get anything done under this system – subdivisions, conveyances, probates – have become a huge obstacle to economic development and the enjoyment of the land by the owner. Horror stories of probates taking decades to complete and of routine business such a subdivision approvals taking years are common in the Bristol Bay region. The system is simply overloaded.

There are several reasons for the overload. One is simply increased demand on the system. For many years the main focus of the BIA and tribal programs was to get allotments approved. That process is largely completed, but now more and more ordinary business related transactions are occurring as allottees – particularly in relatively rich resource areas such as Bristol Bay – attempt to derive economic benefit from their land. Increased probate activity is also a naturally occurring phenomenon as allotments are passed down to multiple heirs. It would greatly help the probate backlog if an Administrative Law Judge for probate was actually stationed in Alaska and assigned specifically to Alaska probates. Alaska had such a position for a time and the backlog was greatly reduced, but the position became empty and was not filled.

Another factor is that “trust reform” prompted by the Cobell litigation and other changes such as the Alaska Native Subdivision Act have imposed a higher burden on the BIA, without a comparable increase in resources. It appears also that some current BIA staff may not be familiar with the role of PL 93-638 contractors and do not limit themselves to the “inherently federal” functions of final review and approval on transactions.

Recommendations:

- ◆ Congress and the BIA Central Office should review staff levels at the Alaska BIA and ensure it has adequate resources to handle the increases allotment-related workload.
- ◆ An Administrative Law Judge for allotment probates should be stationed in Alaska, preferably in Anchorage.
- ◆ The BIA administration should ensure that BIA staff understand that all services and program activity that are not “inherently federal” have been assumed by the compactors, and that they should not duplicate work.

B. Department of Justice Services to Native Allotment Owners. The Department of Justice is a key player in the enforcement of Alaska Native land rights, particular in the context of restricted lands, yet it rarely takes cases. Many Alaska Native allotment holders or pending applicants are elderly, low income, or both, and relatively few can afford private attorneys. One example would be a long-term encroachment or trespass. The system is that once the trespass is reported, the tribal BIA contractor (BBNA) will conduct a field investigation, write a report and make recommendations to the BIA. The BIA Realty Office will review the report and forward it to the Interior Solicitor’s Office. While the Solicitor’s Office might take some action such as writing letters, if litigation is warranted all it can do is make a recommendation and forward it to the DOJ for legal action. There, most likely, nothing will happen because a minor civil matter such a trespass on a Native allotment is unlikely to be a priority.

A particular problem affecting about a dozen pending allotment applications in Bristol Bay has to do with allotment claims on land that was previously and erroneously conveyed to the state. The state had the right to challenge these allotments and did so, but in general it has allowed allotments to proceed. It will give the land back if the allotment applicant agrees to restrictions such as setback requirements. However, some applicants with fully adjudicated allotments and the absolute right to the land do not wish to accept state conditions, and these allotments have simply languished for years. The state won’t convey the land back to BLM so the allotment patent can be issued. The allotment applicants could compel the re-conveyance in court, but do not have funds to litigate. The federal government has a moral and trust obligation to protect their rights, but to date the Justice Department has declined to take such cases.

Request: BBNA urges Congress to investigate the availability of legal services to allottees and ensure that sufficient resources are available to protect Native allotment owners and applicants.

BBNA also urges the Department of Justice to consult with tribal organizations regarding its role with Native Allotments, and to re-prioritize so that it takes some Native allotment rights cases. Currently, the federally protected rights that allotment owners and some allotment applicants have are a paper tiger because there is no one to enforce them.



Part Three – Administrative Policy Issues

XII. Broadband Access – Federal Oversight of TERRA-SW Terrestrial Broadband Project in Southwest Alaska.

BBNA is very concerned that the much touted Terra-Southwest Terrestrial Broadband Project, which received \$44 million in federal ARRA funding from the USDA Rural Utilities Service, is not actually providing internet access to the public in its service area. It is not clear the grantee ever intends to.

The Terra-SW Project is hybrid fiber/microwave network connecting 65 communities in southwest Alaska, including Dillingham and other Bristol Bay communities. It is owned by United Utilities Inc. (UUI), which is a wholly owned subsidiary of GCI, Inc. UUI has constructed the system,

and there was a much publicized ribbon cutting ceremony in Dillingham in August, 2011, attended by many dignitaries including FCC Chairman Julius Genachowski. At that time BBNA understood that the system would be online and that agreements would be in place such that BBNA, and the public in general, would be able to obtain broadband access by the end of 2011. The Terra SW project is for middle mile transport, so our assumption has been that the local rural carriers already serving the communities in the project area would be able to buy broadband access and provide upgraded service to their customers.

BBNA has seen nothing to indicate UUI or GCI have taken steps to make broadband publicly available. We were stunned, in fact, to read in a December 29, 2011 FCC filing by the Alaska Rural Coalition (made up of small rural phone companies) that of the four local carriers to request a quote from UUI/GCI, only two received them. The others were told that Terra-SW is “unregulated” and “has been presold for internal use by GCI.” (Quotes are from In the Matter of Connect America Fund, etc, WC Docket No. 10-90, etc., Alaska Rural Coalition Petition for Reconsideration, December 29, 2011, at page 12.) Although this FCC filing does not reveal the actual price quote by UUI/GCI to the other two carriers, it says “the price provided by UUI/GCI far exceeded the cost of purchasing satellite backhaul, an already cost-prohibitive solution to providing broadband to remote Alaska.” The filing goes on to state that the cost for subscribers would exceed \$1,000 per month per DSL line, just for the UUI/GCI middle mile. In other words, hypothetical consumers would pay more than \$12,000 per year for broadband internet access.

So despite the grant of \$44 million federal dollars, it does not appear that UUI/GCI actually intends to provide terrestrial broadband service to the public in southwest Alaska at a price anyone can afford. The company will provide access to its main existing customers, the health corporations and schools. Given that GCI receives huge Universal Service Fund subsidies for providing that service, which is based on the difference in price between urban locations and the rural area it is serving, it seems that GCI has large incentive to keep the “market” price of rural internet access as high as can for as long as it can.

Although presumably there will be a negotiation process between UUI/GCI and the local carriers, we do not believe that the intent of ARRA or the particular grant program was for GCI to take large sums of federal funds and then not provide the service to the public.

Request: BBNA urges the Alaska Congressional delegation and the responsible federal agencies, the FCC and the USDA Rural Utilities Service, to investigate what is happening with the Terra-SW and take all appropriate steps to ensure the terrestrial broadband service paid for by the federal government actually serves the public.



Typical Telecommunication Earth Station in Southwest Alaska

XIII. Establish Harold "Harvey" Samuelson Bristol Bay National Fisheries Zone.

The Bristol Bay Native Association and its member villages have long sought greater and permanent protection of the rich marine waters of Bristol Bay. Although the Obama Administration has removed Bristol Bay from the current Outer Continental Shelf Oil and Gas leasing program, this only provides protection until 2017 when the government establishes a new 5-year plan.

Bristol Bay and the North Aleutian Basin form one of the most biologically productive high latitude seas, supporting a world class commercial seafood industry. It has



Salmon caught in Bristol Bay Subsistence Net



Traditionally processed Salmon drying in Bristol Bay

sustained our traditional communities for hundreds if not thousands of years. The Bristol Bay marine ecosystem supports more than 450 species of fish, crustaceans and mollusks including red king crab, Tanner crab, Pacific halibut, herring, pollock, Pacific cod, flatfish, sablefish, and all five species of Pacific salmon. The ecosystem supports thriving marine mammal populations including walrus, belugas, at least four seal species, and others.

Villages in the region have a deep cultural

reliance on the harvesting and sharing of marine and coastal resources for subsistence. And they rely on the seafood industry as the region's economic base.



Bristol Bay Smoked Salmon Strips

relying on the seafood industry as the region's economic base. The President has the authority to permanently withdraw the Outer Continental Shelf area from development and create a marine fisheries zone, reserving the area for promoting and sustaining the commercial and subsistence fisheries.

Request: President Obama should withdraw the Bristol Bay Outer Continental Shelf area and create a National Fisheries Zone.

XIV. Federal oversight of large scale mining projects.

The Bristol Bay region is the site of the Pebble Project, which if developed will be one of the largest mines in the world and will require extensive disruption of streams and groundwater. Water from the Pebble area, and any discharges from a mine, will flow into the Nushagak and Kvichak River systems, which are among the most productive salmon rivers in the world. Mineral exploration in other parts of the Bristol Bay region is also underway. BBNA is very concerned that the existing economic mainstays of our region's economy and way of life - commercial fishing and subsistence - not be damaged if the Pebble mine or other large scale development proceeds.



Mouth of Kvichak River in Bristol Bay

BBNA is also very concerned that the State of Alaska's regulatory processes are overly weighted in

favor of extractive industries, and that the state does have adequate resources to evaluate permits for projects on the scale of the proposed Pebble Mine. While BBNA recognizes that the Pebble area is on state land and will be primarily under state regulatory authority, the federal government will have some role in regard to protecting wetlands, migratory birds, and in approving or vetoing discharge permits under Section 404(c) of the Clean Water Act.



Nushagak River near Ekwok, Alaska

Request: BBNA urges the responsible federal agencies including the Department of the Interior and the Environmental Protection Agency, in regard to Section 404(c) of the Clean Water Act, to bring their full resources to bear and fully evaluate any federal permit application related to large scale mining in the Bristol Bay region. There should be no deference to the State of Alaska's processes. Congress should not interfere with the existing authority of federal agencies in this regard.

XV. Head Start Indirect/Administrative Cost Cap

The Head Start agency applies a 15% administrative cap and a 15% indirect cap. Additionally it requires a 20% Non-Federal Share match of the full federal grant. This is unlike most federal grants, which honor the indirect cost rate that grantees negotiate with their primary federal funding agency. Negotiated indirect cost rates are typically considerably higher than 15%.

To complicate matters, Head Start uses a default administrative cost rate on some funding lines (such as 100% for office supplies) which in some instances would not normally be "indirect" or administrative costs by the grantee because they relate to a single program. Since all indirect costs are also administrative, the default administrative cost rate on other budget lines has the effect of pushing the grantee's actual indirect cost recovery below the 15%, sometimes considerably below.

Further, the Head Start agency also applies the 15% administrative cost cap to the 20% Non-Federal Share requirement. This means that many commonly used "matches" cannot be used in Head Start because they would push the grantee over the 15% limit. For example, donated office supplies or a donated administrative position would be considered administrative, would bump into the cap, and would reduce the grant award. As a consequence many Head Start grantees are forced to make significant contributions to the program without even getting credit for the match.



New Stuyahok Head Start Class

Request: Head Start should reconsider both its administrative cost limit and the application of the limit to matching contributions. At a minimum it makes sense to exempt the Non-Federal Share match funding from the administrative cap. This would allow some relief to grantees that are funding their Head Start programs but are unable to claim the match. Currently, at least 1/4 of Alaska grantees are applying for waivers for NFS match.

Request: Head Start should reconsider both its administrative cost limit and the application of the limit to matching contributions. At a minimum it makes sense to exempt the Non-Federal Share match funding from the administrative cap. This would allow some relief to grantees that are funding their Head Start programs but are unable to claim the match. Currently, at least 1/4 of Alaska grantees are applying for waivers for NFS match.

XVI. Head Start Poverty Guidelines.

Head Start uses "100% of the federal poverty guideline" to determine eligibility for services; however, the federal guidelines uses Anchorage rates for the whole state despite a much higher cost of living in rural Alaska. The cost of living in Dillingham is about 150% of Anchorage. Yet in general our wages are no higher. A family of 4 in Dillingham would need to earn about \$40,000 per year to have the same buying power as an identical family earning \$25,000 per year in Anchorage. The Anchorage family would be eligible for Head Start, and the Dillingham family would not be.

Request: Head Start should adopt more accurate poverty guidelines, perhaps using state data, taking into account the higher cost of living in rural areas.

XVII. Justice Department Study of Alaska Criminal Justice System.

BBNA urges that the Department of Justice (DOJ) conduct a study of the interaction between the Alaska criminal justice system and Alaska Natives, particularly Alaska Natives residing in the villages. This is not intended as adversarial to the state, but rather as a cooperative endeavor among DOJ, the Alaska Native Community, and appropriate state agencies. BBNA is very concerned that Alaska Natives make up a disproportionate share of the prison population in Alaska, that Alaska Native are at a cultural disadvantage in dealing with the justice system, and that there is an excessive rate of convictions and recidivism among Alaska Native men. Since criminal convictions substantially reduce employability, the economic viability of many Alaska Native families is being undermined.

The purposes of the study would be to evaluate whether Alaska Natives are convicted disproportionately, the causes of Native crime and recidivism, the effect of cultural differences, and whether there are alternative approaches to prosecutions and sentencing, including involvement of the tribal governments, that might reduce crime rates, make safer communities, and keep Alaska Natives out of the criminal justice system.

Request: BBNA urges Congress to direct, and fund, such a study.

XVIII. Regional Consortia Participation at Tribal Consultations and Summits

In Alaska, the primary vehicle for delivering BIA and IHS services are regional non-profit organizations / tribal consortia, such as BBNA, organized along the ANCSA region boundaries. Although many Alaska tribes operate some or all of their own BIA programs, by far the majority of BIA and IHS services are still delivered through the regional organizations. Nonetheless, the regional organizations as such are never invited to national tribal consultations or events such as President Obama's Tribal Summits. This has the effect of skewing Alaska's participation at such events to those individual tribes which have both the interest and the funding to attend. As a practical matter the regional organizations most often have the most expertise on service delivery issues, and the resources to devote to consultations.

Request: BBNA urges the federal government at all levels but particularly the White House and those federal agencies that administer programs for Native Americans to recognize the way tribal organizations are structured in Alaska, and to include the Alaska Native regional consortia in tribal summits, consultations, and similar meetings.



Tribal Representatives at BBNA's Full Board Meeting, September 2011

XIX. Indian Reservation Roads Program Administrative Recommendations.

The Indian Reservation Roads (IRR) program has been a lifesaver for many tribal communities, providing badly needed transportation infrastructure and jobs. It has done great things for tribes all across the country. While over the past 6-8 years, the Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA) have made great efforts to implement the 2004 IRR program regulations, many ongoing problems stem from BIA mistakes in regard to the inventory in the first years after adoption of the new rule. Two critical mistakes – failing initially to apply the local match share limit to non-BIA, non-tribal roads, and failing to apply existing (and widely understood) constraints on proposed roads – have probably caused 90% of the problems and dissension over the program. The BIA allowed some tribes to add routes far beyond anything intended in the negotiated rule. The BIA serves as the gatekeeper for integrity of the inventory system. There also appears to have been a lack of oversight by the FHWA in regard to the BIA administration of the inventory. We believe that both agencies serve as trustees to all tribes and must make every effort to assure that the IRR Program is fairly administered and serves the real transportation need of the all tribes.

In any event, ongoing inventory and formula problems have made tribes on all sides of the issues angry. Some, including most large reservation tribes, believe the BIA didn't honor or follow the intent of the negotiated rule and allowed a massive reallocation of funds that was never intended. BBNA largely agrees with this point of view. But other tribes that benefitted from the BIA mistake are now angry at the FHWA and BIA efforts to fix the problem.

The Senate's response to this dissension is to throw out the tribally negotiated funding formula and replace it with MAP-21's Tribal Transportation Program methodology, which if implemented takes immediate and punitive action against a large number of tribes that had done nothing wrong. BBNA strongly opposes the MAP-21 IRR language. We believe the Administration should take a much stronger position with the Senate against changing the tribally negotiated funding formula, as part of the government's trust responsibility.

We do applaud the efforts taken by the BIA and FHWA to correct implementation problems, and encourage the BIA and FHWA to take further action to ensure the funding distribution is based upon actual transportation needs of the tribes and that all tribes are playing by the same rules. Our particular recommendations follow.



General Program Recommendations:

- **Tribal Consultation.** We support the BIA and FHWA holding a one-time, intensive national tribal leaders consultation meeting as recommended by the IRR PCC at its January 2011 meeting, in order to resolve disagreements about the IRR Program and to give the BIA and FHWA the best policy direction on divisive inventory issues.
- **Implement SAFETEA-LU National Inventory Language.** We believe the BIA made a serious mistake in not simply using this language as the definition of the inventory, as a limit. Not all routes within or near a reservation or Alaska Native Village are necessarily needs of the tribal government, or the responsibility of the tribe. This is particularly true in places where a majority of residents are not Native American.
- **Federal Agency Roads.** The majority of other (non-BIA) federal agency roads, including Forest Service roads, currently in the inventory should be changed to construction need zero (0). The negotiated rule did not intend for these to count at 100%. There is absolutely no policy justification for the IRR program funding the construction costs of routes belonging to other agencies, each of which has its own appropriations and project selection process. This is particularly true when the route is outside of a reservation or Alaska Native Village – some routes in the inventory now do not appear to even meet the basic Indian Reservation Road definition. We do believe that some of these roads likely meet the SAFETEA-LU inventory language, and should be included. But the majority of the routes would never be classified as “primary” access routes, the majority of Forest Service roads for example are local roads that were built strictly for purposes of the Forest Service. The tribes located nearby receive an intrinsic benefit from these roads; they do not contribute to their “need.”
- **Correction or deletion of obsolete data in the Inventory database.** We recommend that any route that was accepted as official into the Inventory prior to 2006 needs to have all minimum attachments documents added into the RIFDS. If a tribe or BIA cannot provide a viable strip map, the route should be deleted.



Dillingham Road during winter

- Clear and consistent inventory standards; quality control. It is critical that the IRR inventory be developed and maintained uniformly in all BIA regions, with consistent and clear standards, reasonable constraints, verifiable information, and actual oversight and quality control by the BIA and, if necessary, the FHWA. Routes that should never have been included should be removed for funding formula purposes. A funding formula system that allows the beneficiaries or any subset of beneficiaries to unilaterally increase their own numbers without constraint is mathematically “broken” and does not measure anything.



Mountainside portion of Dillingham’s “Snake Lake Road”

- Role of IRRPCC. We support, in general, the current BIA and FHWA process of deferring policy questions to the IRRPCC, but with clear deadlines and with the understanding that the BIA or FHWA will make key policy decisions whether or not the IRRPCC reaches consensus. The IRRPCC is an advisory body. We feel that the self-imposed protocol of IRRPCC that they reach consensus on all positions is too often unworkable. We urge the BIA and FHWA to take the following approach on working with the Committee:
 - 1) Establish priorities and deadlines for the Committee, recognizing that some issues are particularly time sensitive;
 - 2) Bring in tribal technical experts to support discussion;
 - 3) Require that the IRRPCC provide written majority and minority positions when consensus cannot be reached;
 - 4) When new issues are brought to the IRRPCC, there should be an initial assessment whether the issue is a potentially controversial policy issue. If it is controversial, the IRRPCC should be given a limited time to deal with it. Although the IRRPCC should be kept informed and given an opportunity to act, the agencies should not expect it to decide issues that create winners and losers and not allow the issue to drag out for months and years.

- Management Improvements. The management of the staff responsible for the inventory data at the Albuquerque Central Office must be improved. For the last six years, staff has been making ad hoc decisions regarding inventory submittals, with far reaching policy implications, without much guidance and with little help from DOI lawyers. In some instances it appears that the software system has driven policy decisions, even when the result conflicts with the regulations. The BIA must assert control on the inventory management system at Central Office West such that routine additions or changes are quickly processed, but that submittals that raise policy questions are flagged and decided at the appropriate level of the BIA with the input of the FHWA and of legal staff familiar with the program. The BIA should not hesitate to deny inventory submittals when they do not meet the statutory and regulatory requirements of the program.

BIA-FHWA Proposed and Access Road Implementation.

BBNA concurs generally with the direction of the federal recommendations, although some need more work. Should the funding formula be changed through legislation, the entire issue becomes moot. It is unclear how the timelines are supposed to work with MAP-21 clouding the issue. We suggest the BIA consider enforcing the new requirements in the first year only for tribes with obvious problems, perhaps tribes with more than 30 miles of proposed roads in the inventory and give other tribes a pass for the first year.

Proposed Roads:

- Land ownership other than the Tribe of BIA - If the landowner is not a public authority, they will not have an LRTP or submit projects to the STIP. We recommend that where the landowner is private, all that be required is written verification the landowner is willing to provide a public easement.



The frozen Lake Aleknagik serves as a winter ice road for local residents.

- **Public Hearing** - We believe public meetings are more appropriate for adding proposed roads than public hearings, but in any event it is unclear what constitutes a "hearing." In the regulations, the hearing process is required for construction projects whereas public meetings are used for planning. Whatever it is called, we recommend that the requirement be: documentation that the tribe held a public meeting including copies of notices for the meeting and the record of all pertinent oral and written comments.
- **Environmental Feasibility** - Instead of the language similar to NEPA, we recommend that the inventory submittal merely describe the types of impacts likely to be found, i.e. wetlands, river/stream crossing, endangered species, etc, and indicate the likely environmental evaluation (EA or EIS). As written this is far too burdensome for this stage of the process. The agencies should keep in mind that the major constraints on proposed roads in Alaska will be the right-of-way requirement and the limits on access roads. It is not necessary to be punitive.
- **Maintenance Responsibility** - Instead of requiring a resolution from the public authority for maintenance, the citation, 23 U.S.C. § 116 requires a formal agreement. We recommend consistency with the statute.
- **Quality Assurance Team** - We support a QA review team for oversight of the IRR Inventory, we also recommend the use of a tribal peer review team to assist the QA team. We recommend that an appeal process be provided. We would like to know who will have oversight of the QA team? We believe it is very important that either the QA team have internal knowledge of the issues that may impact any specific BIA region, or that they consult with the peer review team on issues that are outside of their level of knowledge.
- **Some accommodation** has to be made for projects already in the IRR TIP. It doesn't make sense to yank the rug from under projects already in the pipeline. For a transition, we recommend that if the proposed road is already in the IRR TIP the tribe should submit a status of the work being performed. (E.g, if the project is under design, the % complete, or if in construction, plans signed by a licensed engineer should have already been provided.)



Aerial photo of roads in Twin Hills, Alaska

Access Roads:

- Access Roads Requirements – By definition, we do not agree with the statement that primary access roads are outside of the recognized boundary. “Primary” access has to do with what the road is accessing, i.e., whether the road meets the definition provided in SAFETEA-LU’s inventory language at (G) (V) “are primary access routes proposed by tribal governments, including roads between villages, roads to landfills, roads to drinking water sources, roads to natural resources identified for economic development, and roads that provide access to intermodal termini, such as airports, harbors, or boat landings.” We recommend deleting “physically located outside of a recognized boundary”. We also note that the reference to the regulations for the submittal requirements is incorrect. The document that discusses the submittal process and minimum attachments was the Minimum Attachment Policy document issued by the BIA on June 15, 2006. Regarding the checklist, we recommend that the checklist for access roads be limited to the list within SAFETEA-LU; all other items should be removed.
- In regard to an inhabited or developed Alaska Native Village with a population more than 50% Alaska Native - if this language is to be used, it must be applied to reservation tribes as well. Why does this document single out Alaska?
- In addition, you must address tribes that are less than 50% Native. As written this appears to effectively take Alaska tribes in communities less than 50% native out of the program. That is flat out illegal, for a variety of reasons. These tribes are likely to have particular neighborhoods, housing projects, etc. that should be included. Whatever is done with this, the requirement has to apply nationally and not just to Alaska.
- ANCSA lands, ADL, etc. Although we do not object to using a 2-mile radius to indicate the developed area of the village, it is absolutely essential to use village ANCSA land as the land base of the tribe for this program. The term “Alaska Native Village” comes from ANCSA. The ANCSA land is where economic development, new housing, etc. is likely to occur.
- Statement that only Class 3 and Class 5 roads within the 2-mile radius will be eligible to generate IRR funding – this is inconsistent with SAFETEA-LU and we recommend deleting it in all locations within the document. Limitation on functional classification should not apply. Any route proven as vital to the tribe should be included within the boundary for funding and application of Q. 10. This has to apply to reservations as well as Alaska Native Villages.
- If more than 25% of the Alaska Native Village population resides outside of the ADL, the tribe may request that the ADL be extended - We recommend that the tribes be able to use non-circular ADLs for communities with unique situations, and where the homes are located in multiple locations. Most of our villages are on the coast, and half of the circle would be in the water.
- Tribally owned trust or fee parcel (regardless of location) – we recommend the following change in title: “A tribally owned trust or fee parcel and ANCSA Village lands.” Again, it is critical that ANCSA lands be included.

In addition, we believe the ADL for this should be the property line. Having an ADL of 2 miles from a particular parcel makes no sense.
- Applicability to existing access roads – for those roads already in the IRR Inventory, we recommend an exception for those routes already identified in an IRRTIP and in which work is already underway. If the route is only identified on a STIP, it should have a construction need of zero (0) as there is no apparent need for the tribe to participate in the project if not included within the tribe’s IRRTIP.