

# Byron Bluehorse

Owner and Principal Planner

SOVEREIGN PLANNING



# Brian Allen, P.E.

Field Operations Manager

OFFICE OF TRIBAL TRANSPORTATION





National Transportation in Indian County Conference

# Tribal Transportation Program

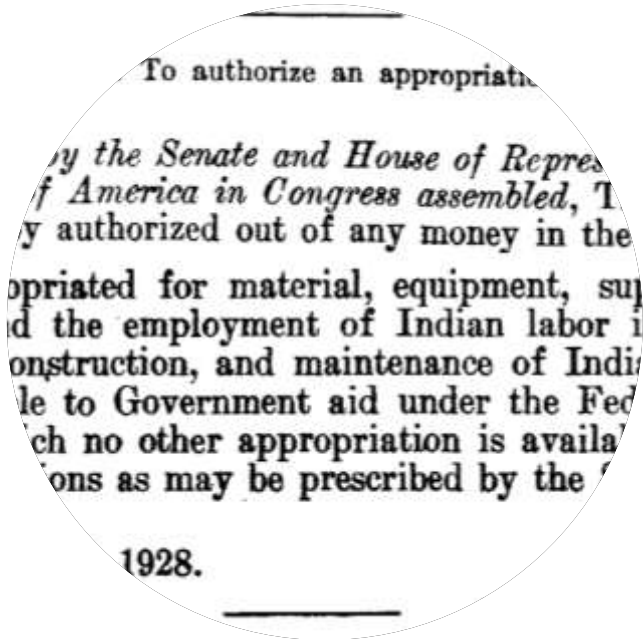
## 101

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Byron Bluehorse

August 22, 2022





**1928**

IRR Established



**1975**

Public Law 93-638



**1982**

FLH Created

# Highway Bills

1992

**ISTEA**

Intermodal Surface Transportation  
Equity Act

2005

**SAFETEA-LU**

Safe Accountable Flexible Efficient  
Transportation Equity Act: A  
Legacy for Users

2015

**FAST ACT**

Fixing America's Surface  
Transportation Act

1998

**TEA-21**

Transportation Equity Act for the  
21st Century

2013

**MAP-21**

Moving Ahead for Progress into the  
21st Century

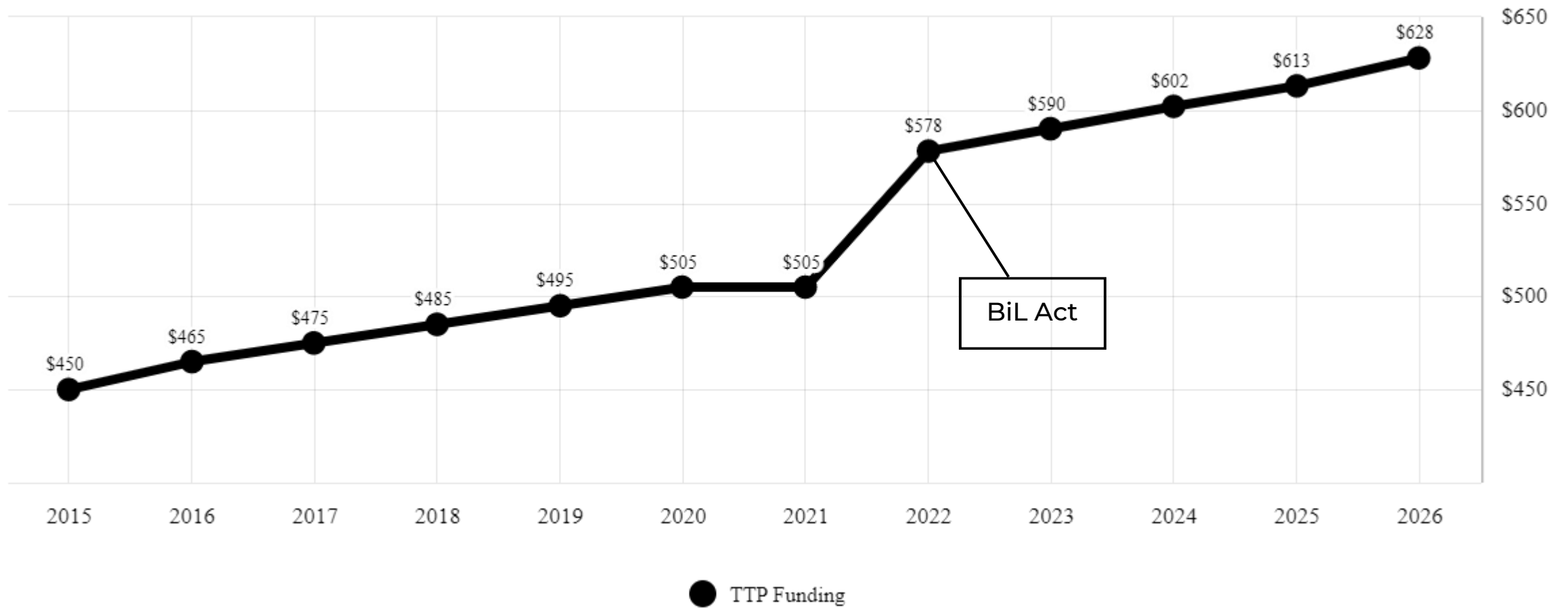
2022

**BiL ACT**

Bipartisan Infrastructure Law



# Funding Timeline



# SAFETEA-LU

- **25 CFR Part 170**  
**Final Rule (Indian Reservation Roads Program)**  
Effective November 2004
- **Funding Increase**  
**Fiscal Year 2005 - 2009**  
300 million to 450 Million
- **Establish Separate Bridge Program**  
**\$70 Million**  
Finance from the Highway Trust Fund rather than from IRR Appropriation
- **Established Tribal Transit Grant Program**  
**Within Federal Transit Administration**  
Provided \$45 Million over four years
- **Tribal Safety**  
**Increased to 2%**  
Established a grant approval process - Single application and annual deadline
- **Created New Position**  
**Deputy Assistant Secretary of Transportation for Tribal Government Affairs**  
Within U.S.DOT
- **FHWA Agreements**  
Agreements directly with Tribes
- **Tribal Powers**  
**23 U.S.C. § 202(d)(5)(H)**  
Indian tribes “shall have all powers that the Secretary of the Interior would have exercised in admin.
- **Tribal Transportation Allocation Methodology**  
**Relative Need Distribution Factor**  
Cost to Construct - Vehicle Miles Traveled - Population  
$$A = \alpha \times \{ \mathbf{CTC} \div \text{Total C} \} + \beta \times \{ \mathbf{VMT} \div \text{Total VMT} \} + \delta \times \{ \mathbf{POP} \div \text{Total POP} \}$$



# MAP-21

- **New Name**  
Tribal Transportation Program
- **High Priority Project**  
In Name Only
- **Funding Formula Frozen**  
Phased over four years 80/60/40/20
- **27% Total Eligible Mileage**
  - Prior to October 1, 2004
  - Roads owned by Tribal Government
  - Roads owned by the BIA
- **34% Divided Equally**  
By 12 BIA Regions
- **39% Population**

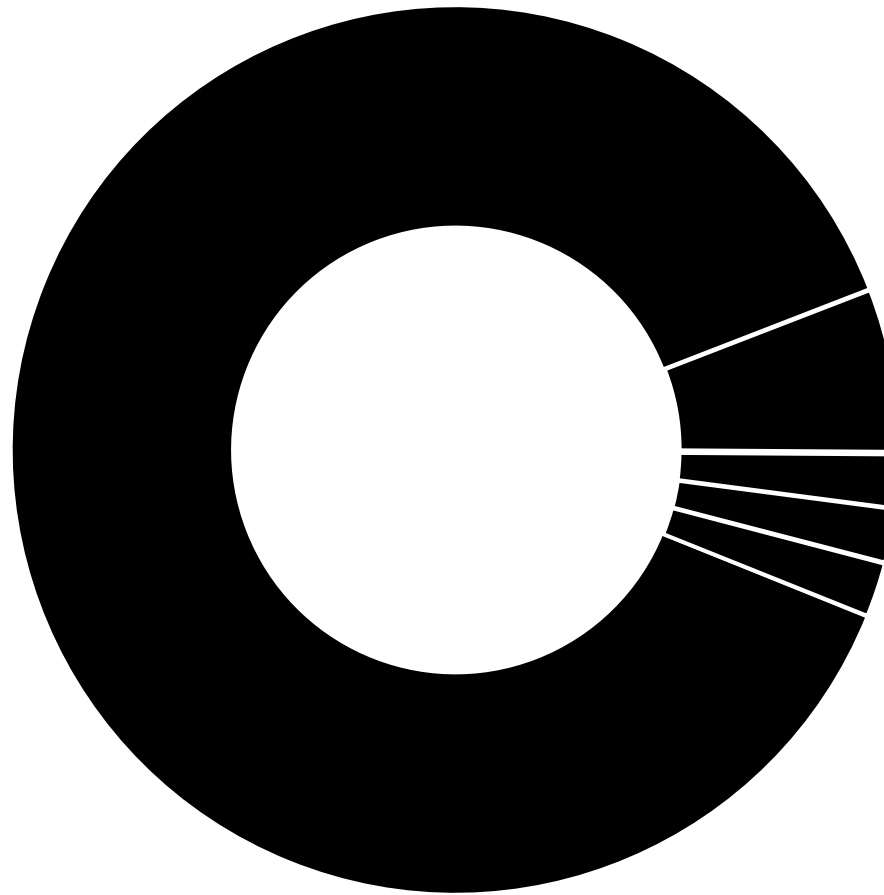




# MAP-21

450 Million

Shares  
**88%**



PM&O  
**6%**

Safety  
**2%**

Bridge  
**2%**

2% Planning  
**2%**



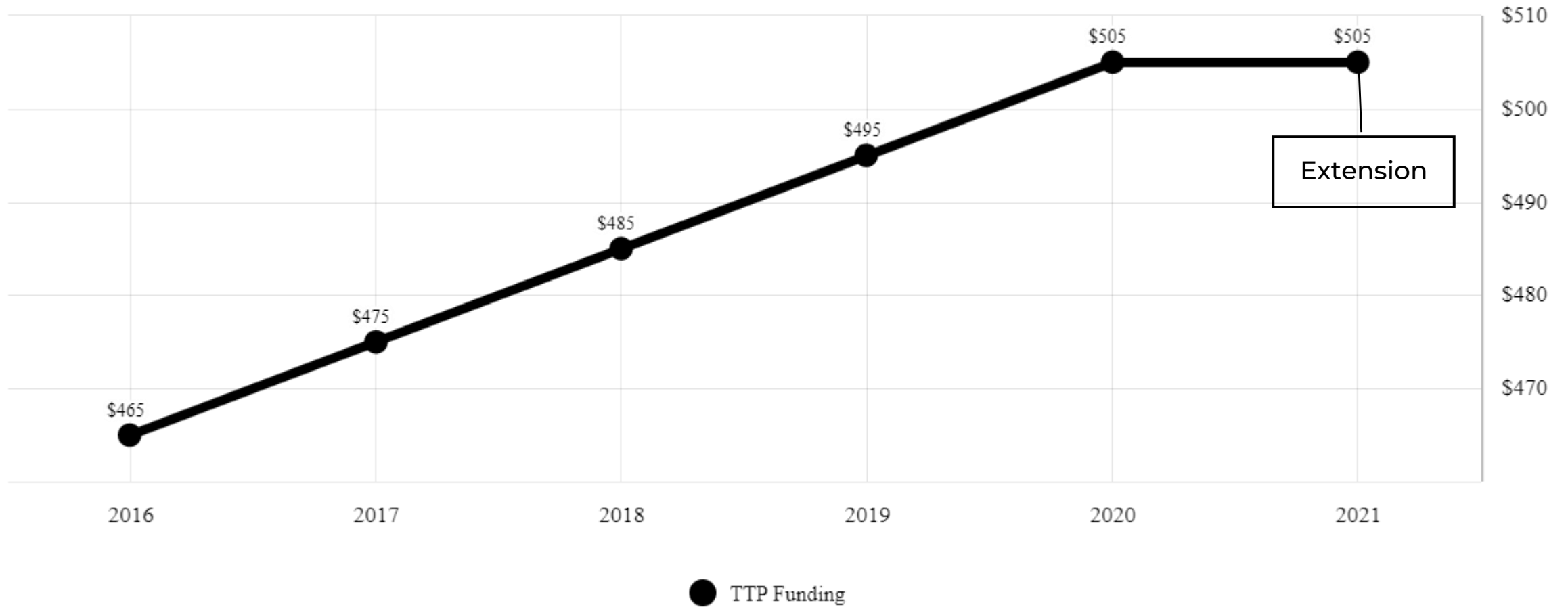


# FAST ACT

- Program Admin 5%
- 2% Planning 2%
- Bridges 3%
- Safety 2%
- No High Priority Projects Funding



# FAST ACT



# Allowable Uses of TTP Funds

Determining Eligibility and Allowable Uses of  
Tribal Transportation Funds



# Topics

- Applicable Statutes & Regulations
- Allowable Costs
- Eligibility
- Non-typical Examples



# TTP Statutes & Regulations

- 23 U.S. Code § 202 Tribal transportation program
- 23 CFR Part 661 IRR Bridge Program
- Any provision of Title 23 U.S.C.
- 25 CFR Part 170 Tribal Transportation Program
- Tribe's TTP Contracts or Agreements
- 25 CFR 900
- 2 CFR 200



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Federal Highway Administration

# Known Allowable Costs

1. Appendix A to Subpart B - Allowable Uses of TTP Funds
2. Appendix to Subpart G - List of Eligible Maintenance Activities under the TTP.
3. Activity listed under Title 23?
4. If any questions, work with your Agency Point of Contact.



# Eligibility: 25 CFR 170.111

25 CFR 170.111 What activities may be carried out using TTP funds?

TTP funds will be used to pay the cost of items identified in **23 USC 202(a)(1)**. A more detailed list of eligible activities is available in appendix A to this subpart. **Each of the items identified in this appendix must be interpreted in a manner that permits, rather than prohibits, a proposed use of funds.**



# Eligibility: 25 CFR 170.112

## 170.112 What activities are not eligible for TTP funding?

TTP funds cannot be used for any of the following:

- a) Structures and erosion protection unrelated to transportation and roadways;
- b) General or Tribal planning not involving transportation;
- c) Landscaping and irrigation systems not involving transportation programs and projects;
- d) Work or activities that are not listed on an FHWA-approved TTPTIP;
- e) Condemnation of land for recreational trails;
- f) Salaries and/or other incidental costs of any Federal employee or contractor not performing Federal TTP stewardship and oversight, work identified in the appendix to subpart E, or project-related activities identified on an approved TTIP; or
- g) Direct and/or incidental costs associated with the Federal Government's acquisition of goods, services, or construction unrelated to the program.



# Eligibility: 23 USC 202(a)(1)(A)

- (i) transportation planning, research, maintenance, engineering, rehabilitation, restoration, construction, and reconstruction of **tribal transportation facilities**;
- (ii) adjacent vehicular parking areas;
- (iii) interpretive signage;
- (iv) acquisition of necessary scenic easements and scenic or historic sites;
- (v) provisions for pedestrians and bicycles;
- (vi) environmental mitigation in or adjacent to tribal land
- (I) to improve public safety and reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and
- (II) to mitigate the damage to wildlife, aquatic organism passage, habitat, and ecosystem connectivity, including the costs of constructing, maintaining, replacing, or removing culverts and bridges, as appropriate;
- (vii) construction and reconstruction of roadside rest areas, including sanitary and water facilities; and
- (viii) other appropriate public road facilities as determined by the Secretary;

# Eligibility: 23 USC 202(a)(1)(B)&(C)

**(B)** operation and maintenance of transit programs and facilities that are located on, or provide access to, tribal land, or are administered by a tribal government; and

**(C)** any transportation project eligible for assistance under this title that is located within, or that provides access to, tribal land, or is associated with a tribal government

Title 23 USC



# Eligibility: 25 CFR 170.5

*Tribal transportation facility* means a **public** highway, road, bridge, trail, transit system, or other approved facility that is located on or provides access to Tribal land and **appears on the NTTFI** described in 23 U.S.C. 202.



# Eligibility: 25 CFR 170.410 & .414

## 170.410 How does a long-range transportation plan relate to the NTTFI?

A LRTP is developed using a uniform process that identifies the transportation needs and priorities of a Tribe. The NTTFI (see § 170.442) is derived from transportation facilities identified through an LRTP. It is also a means for identifying projects and activities for the TTP.

## 170.414 How is the Tribal long-range transportation plan used and updated?

The Tribal government uses its TTP long-range transportation plan to develop transportation projects as documented in a Tribal priority list or TTIP and to identify and justify the Tribe's updates to the NTTFI...

# Eligibility: Key Criteria

1. Transportation-related
2. Public Facility
3. On the NTTFI
4. On an approved TTIP
  - TTIP needs to be updated every four years at a minimum.
  - Project agreement as party of project package prior to construction.
5. On your LRTP
  - LRTP needs to be updated every five years at a minimum.



# New Uses of TTP Funds

25 CFR 170.113 How can a Tribe determine whether a new use of funds is allowable?

(a) A Tribe that proposes new uses of TTP funds must ask BIA or FHWA in writing whether the proposed use is eligible under Federal law.

(1) In cases involving eligibility questions that refer to 25 U.S.C., BIA will determine whether the new proposed use of TTP funds is allowable and provide a written response to the requesting Tribe within 45 days of receiving the written inquiry. Tribes may appeal a denial of a proposed use by BIA under 25 CFR part 2 ...

(2) In cases involving eligibility questions that refer to the TTP or 23 U.S.C., BIA will refer an inquiry to FHWA for decision. FHWA must provide a written response to the requesting Tribe within 45 days of receiving the written inquiry from the Tribe. Tribes may appeal denials of a proposed use by the FHWA...



# New Uses of TTP Funds

25 CFR 170.113 (continued)

(b) To the extent practical, the deciding agency must consult with the TTP Coordinating Committee before denying a request.

(c) BIA and FHWA will:

(1) Send copies of all eligibility determinations to the TTP Coordinating Committee and BIA Regional offices;

(2) Coordinate all responses and if the requested agency fails to issue a decision to the requesting Tribe within the required time, the proposed use will be deemed to be allowable for that specific project; and

(3) Promptly make any final determination available on agency Web sites.

