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Accounting and Information
Management Division

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August 14, 2000

The Honorable Ben Nighthorse Campbell
Chairman
Committee on Indian Affairs
United States Senate

Subject: Bureau of Indian Affairs: Use of Highway Trust Fund Resources

Dear Mr. Chairman:

This letter summarizes the information we provided during a July 18, 2000, briefing to your Committee's staff. In your April 4, 2000, letter to the Comptroller General you had asked us to analyze the Bureau of Indian Affairs' (BIA) responses to Committee inquiries regarding BIA's use of federal Highway Trust Fund (HTF) money for Indian reservation roads.

In your letter, you asked us to determine

- what percentage of fiscal years 1999 and 1998 HTF contract authority available to BIA was obligated for (1) management costs directly related to specific projects within a program for construction, repair, and improvement of roads and (2) program management and oversight costs not directly related to specific projects;
- whether BIA spent more than 6 percent of the contract authority allocated to its Midwest and Western Regional Offices¹ on non-project-related program management costs for those offices;
- whether the annual 6 percent statutory limitation on the use of HTF contract authority for road program management costs applies only to non-project-related management costs; and
- whether the project-related costs that BIA bears for individual tribes should be paid from HTF contract authority or from BIA's annual appropriations for managing Indian programs or construction.

The enclosed briefing slides highlight the results of our work and the information we provided during the briefing.

¹In September 1999, BIA changed its field office structure. The Minneapolis Area Office became the Midwest Regional Office and the Phoenix Area Office became the Western Regional Office.

The purpose of the Indian Reservation Roads program is to provide safe and adequate transportation and public road access to and within Indian reservations, Indian lands, and communities for Native Americans and others while contributing to economic development, self-determination, and employment of Native Americans. BIA develops and submits to the Federal Highway Administration (FHWA) a priority listing of projects for approval, and FHWA transfers yearly HTF contract authority to BIA for road projects. BIA's use of HTF resources falls into four categories: project construction, project-related management, non-project-related program management, and tribal transportation planning. The project construction category is used for "on the ground" activities and covers such costs as construction materials, construction labor, and equipment usage. The project-related management category covers nonconstruction costs for activities directly related to a specific project, such as preliminary and construction engineering and contract administration. The non-project-related program management category is used for costs not directly related to any one project but necessary to the program, such as developing and approving design standards and maintaining the bridge database. The tribal transportation planning category is used for planning by Indian tribal governments, including activities such as the Tribal Transportation Improvement Program and the measurement of traffic.

Summary: BIA's Use of HTF Resources

We found that BIA's use of HTF contract authority was within statutory limitations. Of the HTF contract authority available to BIA in fiscal years 1999 and 1998—approximately \$261 million and \$218 million, respectively—about 5.7 percent in each year was used for program management and oversight costs not directly related to any one project but necessary to the program. About \$43 million in fiscal year 1999 and \$46 million in fiscal year 1998 was used for project management costs, which are nonconstruction costs directly related to specific projects. These costs represented about 17 percent and 21 percent, respectively, of the contract authority available to BIA in those years.

While BIA as a whole used about 5.7 percent of available HTF contract authority for nonproject program management and oversight costs in both fiscal years 1999 and 1998, cost percentages varied at its Midwest and Western Regional Offices, the two BIA offices for which you requested information. The Midwest Regional Office's non-project-related program management costs did not exceed 6 percent of its allocated contract authority in either fiscal year 1999 (4.0 percent) or 1998 (5.1 percent). While this was also the case for the Western Regional Office for fiscal year 1999 (5.2 percent), that office used about 11.5 percent of available contract authority for non-project-related program management costs for fiscal year 1998.

Based on applicable legislative language and the history of the 6-percent provision limiting the use of available federal HTF contract authority for road program management costs, we agree with BIA's interpretation that this limitation applies only to the total amount of the HTF contract authority BIA receives, not separately to each regional office and its allocated contract authority. Further, we agree with BIA's view that the 6-percent limitation applies only to non-project-related costs of road program

administration as opposed to any other cost category for which BIA uses HTF resources.

Finally, we agree with BIA's position that it is proper to use HTF budget authority to cover project-related management costs it incurs, rather than using its construction appropriations or Indian program appropriations. We have found no indication in the law or legislative history that the Congress intended otherwise or that the Congress included these costs in calculating BIA's annual appropriations.

Scope and Methodology

In order to analyze BIA's use of HTF resources, we interviewed BIA and FHWA officials and obtained and analyzed program, budget, accounting, and cost information for fiscal years 1999 and 1998. As agreed with your Committee's staff, we relied on the information provided by BIA and FHWA and did not determine the propriety of transactions, verify the validity or reasonableness of cost data, or determine the appropriateness of cost categorizations.

Regarding questions on BIA's interpretation of legal provisions governing its use of HTF contract authority, we requested written responses from the Department of the Interior's Solicitor; researched and analyzed applicable laws; and compared our legal analysis to Interior's responses.

We conducted our work from April 2000 through July 2000 in accordance with generally accepted government auditing standards. We requested comments on our draft briefing slides from BIA officials. They agreed with our findings and offered some clarifying comments that we incorporated into our slides as appropriate.

As agreed with your office, unless you announce the contents of this letter earlier, we plan no further distribution until 10 days from the date of this letter. At that time, we will send copies Senator Daniel K. Inouye, the Ranking Minority Member of your Committee; the Honorable Bruce Babbitt, the Secretary of the Interior; and other interested parties. Copies will be made available to others upon request.

If you have any questions about this letter or the earlier briefing, please contact me at (202) 512-9508, or Mike Koury, Assistant Director, at (202) 512-3405. Key contributors to this assignment were Charles Norfleet, Bert Berlin, and Wendy Albert.

Sincerely yours,



Linda M. Calbom
Director, Resources, Community,
and Economic Development, Accounting
and Financial Management Issues

Enclosure

July 18, 2000, Briefing to the Senate Committee on Indian Affairs



**Accounting and Information Management
Division and the Office of the General Counsel**

Briefing for the Senate Committee on Indian Affairs

**Review of the Bureau of Indian Affairs'
Use of Federal Highway Trust Fund Resources**

July 18, 2000



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Objectives

- ☐ Determine the percentage of FY1999 and FY1998 Federal Highway Trust Fund (HTF) contract authority available to the Bureau of Indian Affairs (BIA) that was obligated for (a) management costs directly related to specific projects within a program for construction, improvement, and repair of roads, and (b) program management and oversight costs not directly related to specific projects
- ☐ Determine if BIA spent more than 6 percent of the contract authority allocated to its Midwest (Minneapolis) and Western (Phoenix) regional (area) offices on non-project related program management costs for those offices



Objectives

- ☐ Determine whether the annual 6 percent statutory limitation on the use of HTF contract authority for road program management costs applies only to non-project related management costs
- ☐ Determine if the project-related costs that BIA bears for individual tribes should be paid from HTF contract authority or from BIA's annual appropriations for managing Indian programs or construction



Scope and Methodology

- ☐ Conducted our review in accordance with generally accepted government auditing standards
 - ☐ Researched and analyzed applicable laws
 - ☐ Requested written responses from the Department of the Interior's Solicitor, which we received July 12, 2000
 - ☐ Interviewed BIA and Federal Highway Administration (FHWA) officials
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Scope and Methodology

- ☐ Obtained and analyzed FY99 and FY98 program, budget and accounting information
- ☐ Obtained and analyzed BIA and FHWA FY99 and FY98 cost information
 - ☐ Did not determine the propriety of transactions
 - ☐ Did not verify the validity or reasonableness of cost data
 - ☐ Did not determine the appropriateness of cost categorizations



Background -- BIA's Indian Reservation Roads (IRR) Program

- The purpose of the IRR program is to provide safe and adequate transportation and public road access to and within Indian reservations, Indian lands and communities for Native Americans and others while contributing to economic development, self-determination, and employment of Native Americans
 - IRR system consists of over 25,000 miles of BIA and tribal-owned roads and over 25,000 miles of state, county and local government public roads



Background -- BIA and FHWA Roles

- ☐ BIA and FHWA jointly develop highway design, construction, maintenance, and safety standards for Indian reservation roads
- ☐ BIA develops and submits to FHWA a priority listing of projects for approval
- ☐ FHWA transfers yearly HTF obligational (contract) authority to BIA for projects for which BIA has program responsibility



Background -- BIA and FHWA Roles

- On projects that BIA undertakes, it furnishes FHWA reports such as
 - Number of projects and miles worked on
 - Funds obligated and expended



Background -- BIA's Process for Using HTF Contract Authority

- To distribute contract authority for construction activities to its 12 regional offices, BIA applies a Relative Need formula that considers
 - population of the reservation being served
 - vehicle miles traveled on an existing road to be repaired or expected to be traveled on a proposed road
 - cost to build a new road or improve an existing road to adequate design standards established by FHWA and BIA
- At the start of each fiscal year, BIA allocates to its 12 regional offices portions of the offices' available contract authority for annual management costs and transportation planning

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Background -- BIA's Cost Categories for Using HTF Contract Authority

- ☐ **Project construction:** actual "on the ground" costs for
 - ☐ Construction materials
 - ☐ Construction labor and equipment usage
- ☐ **Project related management:** non-construction costs for activities directly related to a specific project such as
 - ☐ Preliminary engineering and contract administration
 - ☐ Construction engineering and contract administration
- ☐ **Non-project related program management:** costs not directly related to any one project but necessary to the program, such as
 - ☐ Developing and approving design standards
 - ☐ Maintaining the bridge database
 - ☐ Funding BIA's Division of Transportation Central Office operations

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Background -- BIA's Cost Categories for Using HTF Contract Authority

- Tribal transportation planning: planning by Indian tribal governments including activities such as
 - Tribal Transportation Improvement Program
 - Measurement of traffic
 - Transit planning
 - Public involvement



Financial Issues -- FY99 and FY98 HTF Contract Authority Available To and Used by BIA

<u>Category</u>	(\$ in 000s)	
	<u>FY99</u>	<u>FY98</u>
Contract authority available	\$261,261	\$217,871
□ Includes current year Advice of Allotments and prior year amounts carried forward		
Total BIA obligations	\$254,771	\$215,747
□ Obligated during fiscal year		
Percentage contract authority used	97.5%	99.0%
□ Unused portions can be carried forward for up to three years		

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Financial Issues -- Breakdown of FY99 BIA Obligations

	<u>\$ in 000s</u>	<u>% Contract Authority</u>
Project construction	\$192,641	73.7 %
Project related management	42,926	16.5
Non-project related management	15,001	5.7
Tribal transportation planning	<u>4,203</u>	<u>1.6</u>
FY99 TOTAL	\$254,771	97.5 %

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Financial Issues -- Breakdown of FY98 BIA Obligations

	<u>\$ in 000s</u>	<u>% Contract Authority</u>
Project construction	\$153,325	70.4 %
Project related management	45,911	21.0
Non-project related management	12,342	5.7
Tribal transportation planning	<u>4,169</u>	<u>1.9</u>
FY98 TOTAL	\$215,747	99.0 %

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Financial Issues -- Midwest Regional (Minneapolis) Office Contract Authority and Non-Project Related Management Costs

<u>Category</u>	(\$ in 000s)	
	<u>FY99</u>	<u>FY98</u>
Contract authority	\$13,776	\$9,859
Non-project related management (excludes project related costs of \$205,000 and \$279,000, respectively, that had been recorded in the accounting system as non-project related management costs)	\$548	\$499
Percentage contract authority used for non-project related management costs	4.0%	5.1%

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Financial Issues -- Western Regional (Phoenix) Office Contract Authority and Non-Project Related Management Costs

<u>Category</u>	(\$ in 000s)	
	<u>FY99</u>	<u>FY98</u>
Contract authority	\$30,508	\$8,991
Non-project related management	\$1,572	\$1,037
Percentage contract authority used for non-project related management costs	5.2%	11.5%

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Legal Issues -- 6 Percent Limitation

- BIA interprets the 6 percent limitation as applying only to non-project related program management costs
- FY99 and FY98 appropriations acts' provisions say
 - *"Provided further, That not to exceed six percent of contract authority available to the Bureau of Indian Affairs from the Federal Highway Trust Fund may be used to cover the road program management costs of the Bureau."*



Legal Issues -- 6 Percent Limitation

- History of the 6 percent limitation
 - Surface Transportation Assistance Act of 1982 funds IRR program out of HTF
 - FY84 road construction appropriation reduced to \$4,000,000 representing only administrative costs
 - FY85 BIA road construction appropriation: 5 percent limitation of contract authority for roads management costs and construction supervision
 - FY90 BIA construction appropriation: 6 percent limitation of contract authority for roads management costs, thus removing construction supervision costs from the limitation



Legal Issues -- 6 Percent Limitation

- ☐ GAO agrees with BIA's interpretation based on applicable legislative language and the history of the 6 percent provision



Legal Issues -- Using Contract Authority for Project-Related Costs

- ☐ BIA has taken the position that it is proper to use HTF contract authority to cover project-related management costs it incurs rather than using its construction appropriations or Indian program appropriations
- ☐ GAO agrees with BIA's position
 - ☐ GAO found no indication in the law or in the legislative history that the Congress intended otherwise
 - ☐ GAO found no indication that the Congress included these costs in calculating BIA's annual appropriations



Legal Issues -- Applying the 6 Percent Limitation to BIA Regional Offices

- ☐ BIA interprets the legislative language to mean that the 6 percent limitation applies only on a BIA-wide basis to the total amount of the HTF contract authority it receives, and that the limitation does not apply separately to each regional office and that regional office's contract authority
- ☐ GAO agrees that the 6 percent limitation applies BIA-wide only, not on a region-by-region basis