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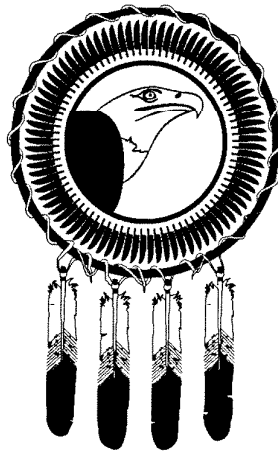
*Paving the Way:  
Strategies for Tribes to Increase Transportation Funding*

by

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**Harvard Project on  
American Indian Economic Development**

**John F. Kennedy School of Government  
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## EXECUTIVE SUMMARY

This report addresses the following questions for ITCA, Inc:

- *Are negotiated tax agreements with the state of Arizona a feasible way for tribes to obtain additional funding for their transportation needs?*
- *If they are not, what are some reasonable alternatives?*

This analysis examines the opportunities and limitations of negotiated tax agreements, explores an additional strategy of increasing tribes' involvement in state and federal transportation planning, and develops actions for tribes acting individually as well as those acting collectively through ITCA, Inc.

## Strategies to Increase Transportation Funding

Two strategies for tribes to obtain additional resources for transportation are:

1. Negotiating Intergovernmental Agreements (IGAs) for fuel tax refunds with State of Arizona.
2. Becoming a player in the state and federal transportation planning processes.

Each strategy offers different benefits and approaches to serve different tribal government interests:

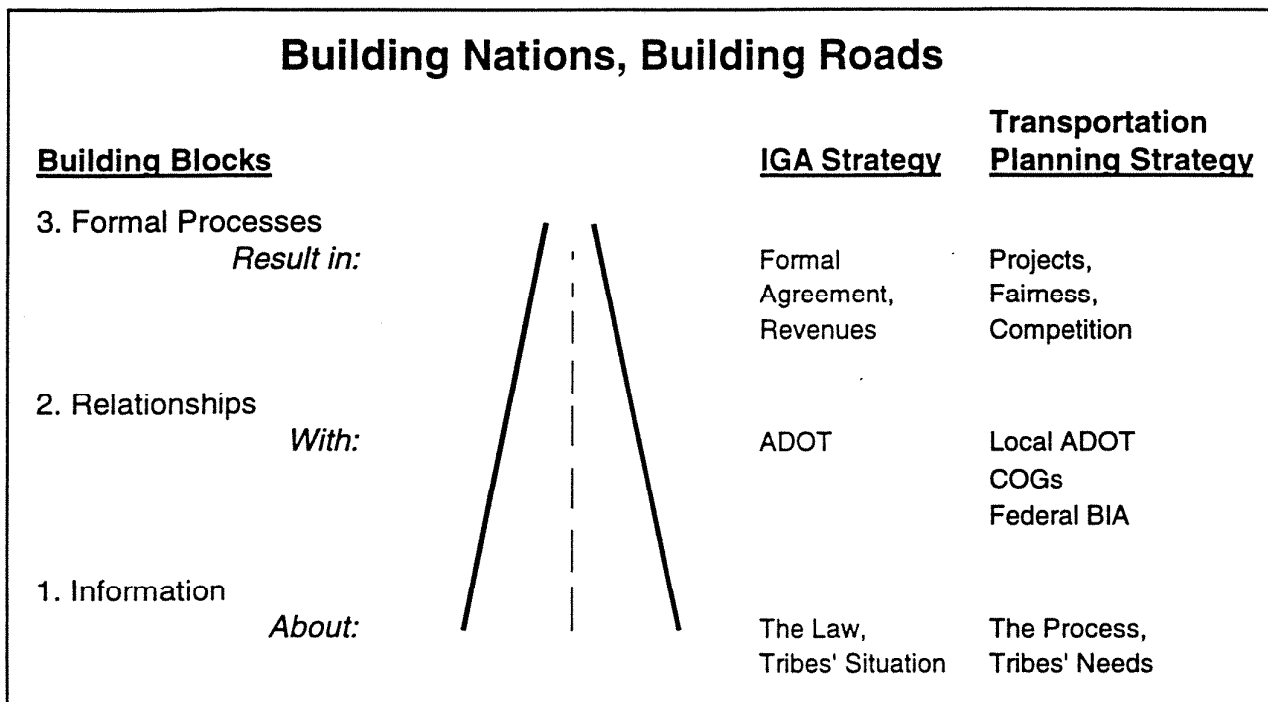
<b>Tribes' Interests</b>	<b>What an IGA Can Provide</b>	<b>What Transportation Planning Can Provide</b>
<b>Size of expected revenues</b>	Small revenues	Large revenues
<b>Ease of implementation</b>	Predictable results	Unpredictable results, large resource commitment
<b>Sovereignty issues</b>	Formal recognition of limits to state authority	Improves fairness, but tribal governments compete with other state and federal entities
<b>Time frame</b>	Short term solution	Longer term solution

The two strategies are not mutually exclusive, though they do have different components.

One way to look at these strategies is that both are processes for achieving the goals of a tribal government.

Meeting those goals requires an interaction between:

- Information,
- Relationships, and
- Formal processes.



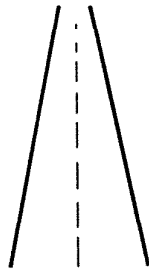
## **Building Block: Information**

### **Building Blocks**

3. Formal Processes

2. Relationships

1. Information



Information is the foundation for creating understanding, performing good analysis, establishing trustful relationships, and accessing the systems that can aid tribes.

### **Information About Tribes' Road Construction and Maintenance Needs:**

Tribes do not have adequate resources to maintain the roads needed to support economic development and community infrastructure.

- Nationwide, tribes need \$6.2 billion; BIA funding is \$1.6 billion
- Reservations receive less than Arizona statewide averages for roads funding, per person and per acre
- Major program needs in:
  - Paving
  - Maintenance
  - Community roads
  - Accessories (street signs, traffic lights, etc.)
  - Staff

### **Information About State Fuel Tax Collection and Refunds:**

Refunds of Arizona state fuel taxes are available to tribal governments and tribal members.

State Fuel taxes are:

- 18 cents per gallon
- Collected at point of distribution, not retail
- Used to fund transportation improvement projects throughout the state

Refunds of fuel taxes collected on reservations are:

- Available to tribal members
- Available to tribal governments
- Supported by the US Supreme Court and by Arizona law (SB 1398)

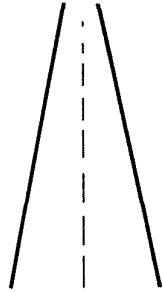
## **Building Block: Relationships**

### **Building Blocks**

3. Formal Processes

2. Relationships

1. Information



ITCA, Inc. and tribes can take steps now to build relationships with individuals and agencies that are important resources. Because state and federal transportation funding programs are highly discretionary, building relationships is a necessary part of accessing resources. Strong relationships will create the basis for completing more formal agreements.

### **Relationships with the Arizona Department of Transportation**

ITCA, Inc. and tribes can be a persistent presence by:

- Inviting presentations by ADOT and Councils of Government staff at Transportation Working Group meetings
- Continuing to work with the ADOT civil rights office
- Being involved with the Governor's rural issues committee
- Contacting the ADOT Citizens Oversight Committee

### **Relationships with the Bureau of Indian Affairs**

ITCA, Inc. and tribes can participate in BIA's Negotiated Rulemaking by:

- Attending Town Hall meetings
- Maintaining contact with the Intertribal Transportation Association
- Continuing to monitor Federal Register
  
- A long term commitment – decide if this is a priority

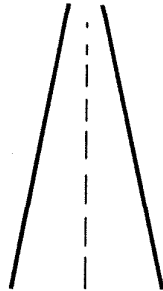
## **Building Block: Formal Processes**

### **Building Blocks**

#### **3. Formal Processes**

#### **2. Relationships**

#### **1. Information**



Negotiated intergovernmental agreements offer tribes a way to formalize the relationships between tribal and state governments. IGAs can also provide a predictable revenue stream for tribes to use in meeting their transportation needs.

Becoming involved in the state and federal transportation planning processes can also offer tribes a more formal relationship between tribal and state governments. And with more formality, the discretionary nature of transportation funding may become more transparent and fair.

### **Process: A Negotiated Intergovernmental Agreement**

What is an IGA?

- It is a legally-binding, negotiated agreement between tribal and state governments
- It provides refunds of state fuel taxes collected on reservations, from fuel sold to tribal members or tribal governments

Lessons for negotiating, from other tribes' experiences

- The facts do matter
- Strong leadership is especially important at the beginning
- The state has an interest in coming to an agreement: an IGA is a positive alternative to a lawsuit
- Administration can be a burden

### **Process: Transportation Planning**

Opportunities with ADOT

- Develop formal process for including tribes in project priority planning, based on needs and relationships.

Opportunities with BIA

- Improve fairness of funding distribution process via Negotiated Rulemaking

## **Positive Goals**

### **Goals for Intergovernmental Agreements**

- ✓ Strengthen legal boundaries of state's ability to tax
- ✓ Receive refunds ranging from \$0 to ~\$325,000 per year
- ✓ Increase tribes' transportation resources by 9% vs. present

### **Goals for Involvement in State and Federal Transportation Planning**

- ✓ Put tribes on an equal level with other municipalities
- ✓ Improve fairness of BIA process via Negotiated Rulemaking
- ✓ Access large revenue sources for meeting transportation needs

### **Solutions to Three Potential Pitfalls**

- **Pitfall:** IGA Administration can be a burden  
→ **Solution:** Craft the agreement carefully to minimize record keeping
- **Pitfall:** Actions require commitment of staff resources  
→ **Solution:** Prioritize, and make use of ITCA, Inc. resources and connections
- **Pitfall:** Transportation planning processes have uncertain results for any one tribe  
→ **Solution:** Focus on developing a transparent process so that funding decisions are understood to be fair.



## TABLE OF CONTENTS

### ACKNOWLEDGEMENTS

### EXECUTIVE SUMMARY

<b>I. INTRODUCTION AND CONTEXT .....</b>	<b>3</b>
Transportation Funding and Issues on Reservations in Arizona.....	3
Purpose and Scope of This Study .....	5
ITCA, Inc.'s Involvement with Transportation Issues.....	6
Overview of Strategies to Increase Transportation Funding.....	7
State Fuel Tax Collection and Refunds .....	7
Other Sources of State and Federal Transportation Funding.....	8
Organization of This Report.....	9
<b>II. OPPORTUNITIES FOR INTERGOVERNMENTAL AGREEMENTS TO REFUND STATE FUEL TAXES .....</b>	<b>11</b>
Arizona's Fuel Tax System.....	11
Understanding Intergovernmental Agreements.....	15
Tribes' Experiences with Intergovernmental Agreements.....	19
Lessons Learned.....	23
<b>III. OPPORTUNITIES IN STATE AND FEDERAL TRANSPORTATION PLANNING.....</b>	<b>25</b>
Understanding Arizona Transportation Funding and Project Planning .....	25
Understanding the BIA Roads Program .....	29
Opportunities for Increasing Tribes' Involvement.....	33
<b>IV. WHAT ITCA, INC. CAN DO .....</b>	<b>37</b>
Assisting Tribes with IGAs.....	37
Increasing Tribes' Access to ADOT and BIA .....	39
ITCA, Inc.'s Organizational Capacity.....	41
Working With Tribes: Who Does What .....	42
<b>V. WHAT TRIBES CAN DO.....</b>	<b>44</b>
Pursuing an IGA for Fuel Tax Refunds .....	44
Increasing Involvement with State and Federal Transportation Planning.....	48

### APPENDICES

- A. Transportation Contacts
- B. Research Methods and Survey Results
- C. Glossary
- D. Bibliography

**TABLES**

TABLE 1. STATE TRANSPORTATION SPENDING ON RESERVATIONS .....	4
TABLE 2. ARIZONA STATEWIDE TRANSPORTATION SPENDING .....	4
TABLE 3. ITCA, INC. MEMBERS .....	6
TABLE 4. ARIZONA FUEL TAX COLLECTIONS .....	12
TABLE 5. 1998 FUEL TAX PAYMENTS FROM RESERVATIONS .....	18
TABLE 6. STATEWIDE TRANSPORTATION NEEDS VS. REVENUES, 1996-2005 .....	27
TABLE 7. TEA-21 FUNDING TOTALS FOR FEDERAL LANDS HIGHWAYS AND INDIAN RESERVATION ROADS .....	29
TABLE 8. RECENT IRR FUNDING FOR THE PHOENIX AREA OFFICE .....	30
TABLE 9. ITCA, INC. PROJECT PLAN FOR IGAS .....	38
TABLE 10. ITCA, INC. PROJECT PLAN FOR WORKING WITH ADOT .....	39
TABLE 11. TRIBES ELIGIBLE FOR AN IGA .....	45
TABLE 12. IGA PROJECT PLAN .....	47

**FIGURES**

FIGURE 1. ARIZONA HIGHWAY SPENDING, PER PERSON AVERAGE .....	4
FIGURE 2. ADOT HIGHWAY FUNDING SOURCES .....	26
FIGURE 3. ADOT PROJECT PLANNING PROCESS .....	28
FIGURE 4. ROLES FOR ITCA, INC. AND TRIBES .....	43
FIGURE 5. IGA PROJECT TIMELINE .....	47

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## I. INTRODUCTION AND CONTEXT

*In this section:*

- ◆ **Transportation issues on reservations:** inadequate and disparate funding, and common road problems for tribes.
  - ◆ **Purpose of this study:** to assess the feasibility of using state fuel tax refunds to meet tribes' transportation needs.
  - ◆ **ITCA, Inc.'s involvement with transportation:** to assist tribes in meeting their economic development and self-governance needs.
  - ◆ **Overview of strategies for tribes:** forging intergovernmental agreements for fuel tax refunds, and becoming more involved in transportation planning.
  - ◆ **State fuel tax collection:** Arizona collects fuel taxes from distributors, and can refund the taxes to tribes.
  - ◆ **Other sources of transportation funding:** the Bureau of Indian Affairs and the state of Arizona also provide roads funding, though obstacles exist to tribes' full participation.
- 

### **Transportation Funding and Issues on Reservations in Arizona**

Tribes in Arizona have serious and persistent road construction and maintenance needs. Though tribes receive some benefits from state and federal transportation funds, these funds are insufficient to meet the pressing needs that exist on many reservations.

-A problem of fairness in distribution can be seen in the discrepancies that exist between state spending on reservations and spending statewide. About 10% of Arizona's discretionary highway funds, and about 4% of the Arizona Highway User Revenue Fund, are spent on reservations roads projects, although tribal lands comprise approximately 27% of land in Arizona and Native Americans make up 6% of the State's population. On an average per capita basis, statewide spending is between ¼-2 times higher than spending on reservations. And according to Arizona

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Department of Transportation (ADOT) information, excluding spending for the cities of Phoenix and Tucson, in 1998 ADOT highway spending was \$10.22 per acre statewide, compared to \$1.91 per acre on reservations.

**Table 1. State Transportation Spending on Reservations**

Year	Population	Spending (\$)	Source For Spending Data
1998	260,031	\$38,549,237	ADOT, 1998
1997	260,031	\$32,999,226	ADOT, 1999

Population data from 1997-98 Arizona Yearbook.

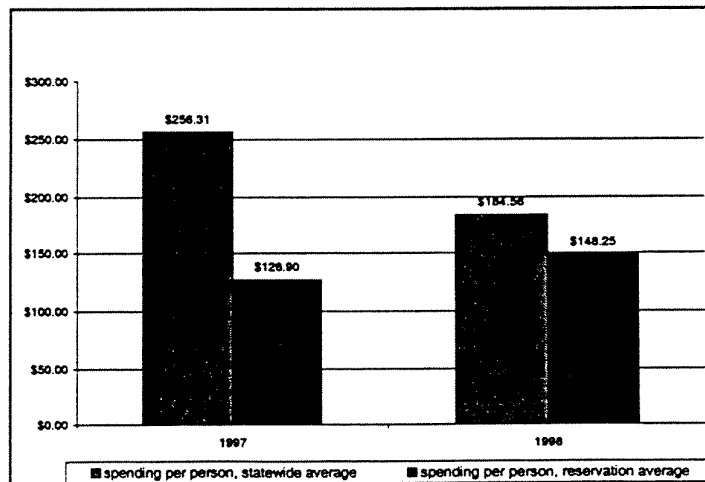
**Table 2. Arizona Statewide Transportation Spending**

Year	Population	Spending (\$)	Source For Spending Data
1998	4,722,075	\$871,500,000	ADOT, 1999
1997	4,555,000	\$1,167,477,000	US Census Bureau, 1998

Population data for 1998 is from 1997-1998 Arizona Yearbook projections; data for 1997 is from the US Census Bureau, 1998.

Furthermore, tribes and the ADOT Civil Rights Office suggest that state spending on reservations is actually lower, as some ADOT projects categorized as “reservation-based” might actually be on portions of the roads that are not on the reservations. Exacerbating the distribution problem is the tribes’ unfamiliarity with state funding and distribution processes, and the state’s unfamiliarity with transportation issues and government institutions in tribal communities.

**Figure 1. Arizona Highway Spending, Per Person Average**



While funding is low, transportation needs for tribes are severe. Common problems include:

- The continued existence of unpaved roads. Unpaved roads create problems with access and safety, particularly in inclement weather.
- Poor maintenance. At one reservation, roads are so badly maintained that the tribal government is closing them in order to avoid the liability created by driving on hazardous conditions.
- Community roads often don't exist. Roads within towns may not exist, leaving houses in what one planner characterized as "mud flats."
- Few accessories are available. Many reservations lack traffic signals, street signs, pedestrian or bike paths, bus shelters, and traffic law enforcement.
- Staffing resources to address these problems are limited. Many tribes have only one individual assigned to transportation issues.

***Tribes' major road needs are:***

- ◆ *Paving*
- ◆ *Maintenance*
- ◆ *Community roads*
- ◆ *Traffic lights, street signs*
- ◆ *Staff*

### **Purpose and Scope of This Study**

The Inter Tribal Council of Arizona, Inc. (ITCA) was interested in examining the problem of fuel tax collection on reservations in Arizona, and what the potential is for using these tax revenues to address road maintenance and construction needs on reservations.

**This report addresses the following questions for ITCA, Inc:**

*Are negotiated tax agreements with the state of Arizona a feasible way for tribes to obtain additional funding for their transportation needs?*

*If they are not, what are some reasonable alternatives?*

This analysis examines the opportunities and limitations of negotiated tax agreements, explores an additional strategy of increasing tribes' involvement in state and federal transportation planning, and develops actions for tribes acting individually as well as those acting collectively through ITCA, Inc.

**ITCA, Inc.'s Involvement with Transportation Issues**

ITCA, Inc. and tribes are becoming more concerned with transportation issues because tribal governments are aware that, in order to attract business enterprises, tribes must provide comparable services to what businesses can find in other communities. Safe, adequate roads are among these essential services. However, transportation is a particularly troublesome element of infrastructure development. Transportation projects are very costly, usually requiring that capital be expended at the front end of a project rather than spread out over several years. And unlike other infrastructure services such as telecommunications or electricity generation, private companies rarely build and operate roads. Thus, the provision of transportation services is typically a government function. ITCA, Inc. is looking for ways to help tribal governments provide these necessary services.

*ITCA, Inc.'s mission is:  
To ensure the self-determination of Arizona Indian tribes through their participation in the development of the policies and programs which affect their lives.*

The Intertribal Council of Arizona, Inc. is a private, non-profit organization that represents 19 tribal governments in the state of Arizona. ITCA, Inc. conducts research and analysis on public policies that affect Indian governments. ITCA, Inc. advocates on behalf of Indian governmental interests, provides technical assistance and training, and disseminates information to members. Transportation is a relatively new area of involvement for ITCA, Inc. A transportation working group was formed in 1998, and has been meeting regularly. ITCA, Inc.'s members are:

**Table 3. ITCA, Inc. Members**

Ak-Chin Indian Community	Kaibab-Paiute Tribe
Camp Verde Yavapai-Apache Indian Community	Pasqua Yaqui
Cocopah Tribal Council	Quechan Tribal Council
Colorado River Indian Community	Salt River Pima-Maricopa Indian Community
Fort McDowell Indian Community	San Carlos Apache Tribe
Fort Mohave Tribal Council	Tohono O'odham Nation
Gila River Indian Community	Tonto Apache Tribe of Payson
Havasupai Tribal Council	White Mountain Apache Tribe
Hopi Tribal Council	Yavapai-Prescott Indian Community
Hualapai Tribal Council	

## **Overview of Strategies to Increase Transportation Funding**

There are two strategies that tribes can take for meeting their transportation funding needs:

- *Intergovernmental agreements for fuel tax refunds.* Individual tribal members and tribal governments are eligible for refunds of fuel taxes from the Arizona Department of Transportation. These refunds can be administered through a government-to-government agreement between tribal and state governments.
  
- *Involvement in the state and federal transportation planning processes.* Tribes have the opportunity to become more knowledgeable and more involved in state and federal transportation funding and project planning processes. Opportunities may be opening up now which were previously unavailable.

*Two major funding strategies for tribes are:*

- ◆ *Refunds of state fuel taxes*
- ◆ *Funding from the state and federal planning processes*

These two strategies are complementary: over time, ITCA, Inc. and tribes can consider both as components to a successful transportation program. The first can probably be completed within 6-12 months but is likely to provide smaller revenues, whereas the second strategy is a long-term approach with greater potential for significant revenues, but a less certain outcome.

## **State Fuel Tax Collection and Refunds**

In Arizona, taxes on motor vehicle fuels are collected at the point of distribution, but consumers at the pump bear the legal "incidence" of the tax. Thus, the 18-cent per gallon cost of the gasoline tax is passed down through the distribution channels and paid in the form of higher prices at the pump. In 1998, the State collected \$508,600,000 in motor vehicle fuel taxes. Tax revenues are used for transportation projects throughout the state. Because the taxes are collected only from the major distributors,

*State fuel tax refunds are:*

- ◆ *Available to tribal members and governments*
- ◆ *Authorized by Arizona law*
- ◆ *Supported by the US Supreme Court.*

the Arizona Department of Transportation does not record how much fuel is sold or how much is collected in taxes from any one gas station, including gas stations on reservations.

An Arizona law, SB 1398, allows individual tribal members and tribal governments to apply for refunds of fuel taxes from fuel sold on reservations. This law is based on a Supreme Court ruling from 1995, *Oklahoma Tax Commission vs. Chickasaw Nation*. Tribal governments in several states have responded to this case by negotiating agreements with state governments for refunding state fuel taxes to tribes. States are willing to negotiate these agreements because of the *Chickasaw* ruling; an agreement is perceived as a healthy alternative to a lawsuit. Under a refund agreement, the tribal government receives periodic revenues from the state equal to the amount of fuel taxes paid by tribal members for fuel purchased on the reservations. Tribes then use these revenues to address transportation needs for the tribal communities. Intergovernmental agreements have been reached between tribes and the states of Arizona, Oklahoma, and Washington.

### **Other Sources of State and Federal Transportation Funding**

The second strategy that tribes can follow is to increase their access to state and federal sources of transportation funding other than direct refunds of fuel taxes. States and the federal government have transportation planning processes that are used to allocate funds and determine priority projects for cities and counties. The Arizona Department of Transportation administers the planning process in Arizona, and the Bureau of Indian Affairs administers the federal transportation planning process for selected federal roads on Indian Reservations. Recent activities within ADOT and the BIA offer promising glimpses of ways that tribes may increase their participation in the planning processes, with the goals of increasing the fairness of funding distribution and ultimately of gaining additional resources.

***Obstacles to tribes' involvement in state and federal funding:***

- ◆ *Unincorporated towns are not eligible for Arizona transportation funds*
- ◆ *Planning processes are both discretionary and competitive.*

Tribal governments are, in principal, supposed to be included in the state transportation planning process. However, two major factors seem to be impeding their access. The first obstacle is that in Arizona, only incorporated cities and towns, or counties, are eligible for state funding for transportation planning. Because tribes do not incorporate towns, they are eligible only for county-level funding from the state. The second obstacle, then, is that tribes are unfamiliar with the county-level Councils of Government (COGs) and with the ADOT planning process generally, while at the same time, the COGs and ADOT are unfamiliar with tribal needs and decision-making processes. The project planning process amounts to a competition for scarce resources, and tribes have tended to lose the competition.

The issues with BIA funding are somewhat different. Tribes are familiar with the funding formulas, but seem to be extremely frustrated with the Indian Reservation Roads program, and particularly with the BIA Area Office's discretionary funding distribution. BIA uses several formulas to determine which projects are funded each year, but ultimately the Area Office has the authority to decide which projects to complete. Because funding is inadequate to complete all proposed projects, the Area Office must select certain ones to complete, while others essentially go on a waiting list for future years. A lack of information about the basis of the funding decisions, and skepticism that the decisions are truly fair, pervade tribes' perceptions of BIA roads programs.

### **Organization of This Report**

- Section II discusses the administration of Arizona's fuel tax, and the opportunities provided by intergovernmental agreements for fuel tax refunds.
  - Section III describes Arizona and BIA transportation planning and assesses the opportunities for increasing tribal representation in these processes.
-

- Section IV offers an action plan for ITCA, Inc. in assisting tribes.
  
  - Section V discusses steps for tribal governments to reach an agreement on fuel tax refunds, as well as initial steps for becoming more involved in transportation planning at the state and federal levels.
-

## II. OPPORTUNITIES FOR INTERGOVERNMENTAL AGREEMENTS TO REFUND STATE FUEL TAXES

*In this section:*

- ◆ **Arizona's fuel tax system:** describes tax rates and collection methods, and why tribal members and governments can apply for refunds of fuel taxes paid on reservations.
  - ◆ **Understanding intergovernmental agreements:** describes the elements of an IGA, its benefits and potential shortcomings, expected revenues, and why ADOT will agree to them.
  - ◆ **Tribes' experiences with intergovernmental agreements:** provides information about agreements that have already been reached in Arizona and elsewhere.
  - ◆ **Lessons learned:** key lessons from previous agreements, and how to evaluate whether an IGA is a good policy option.
- 

### **Arizona's Fuel Tax System**

To understand the opportunities available from tax refunds, it is important to first recognize current issues with fuel taxes in Arizona.

***Rationale for Taxing Fuel:*** Governments justify fuel taxes with three arguments. First, automobile use creates negative effects such as air pollution and traffic congestion. Each individual in the state feels these effects, whether they drive or not. However, in the absence of a tax, not everyone would pay for these negative effects. Thus, a tax becomes a way to ensure that drivers bear some of the financial burden for the effects of auto use. The second rationale for a tax is related: a fuel tax raises the cost of driving, thus discouraging some people from using their cars. This will contribute to decreasing the negative results of driving. Finally, fuel taxes are an important source of revenue for governments.

#### ***Arizona fuel taxes are:***

- ◆ *18 cents/gallon*
  - ◆ *Collected by ADOT*
  - ◆ *Collected from distributors*
  - ◆ *Spent on road construction and maintenance*
-

***Current Tax Collection Methods:*** The State of Arizona levies an 18 cent per gallon tax on gasoline motor vehicle fuel sales. Unlike other kinds of taxes (property taxes, sales taxes), Arizona fuel taxes are not collected by the Department of Revenue, and do not contribute to the state's general fund. Instead, fuel tax revenues are collected by the Arizona Department of Transportation and are put into the Highway User Revenue Fund (HURF). HURF monies are designated for transportation spending only.

Fuel taxes in Arizona are collected from fuel suppliers, not from retailers (gas stations), although consumers ultimately pay the costs of the tax. Arizona law considers the consumers to bear the legal burden of the tax. Because fuel taxes are collected from fuel terminals, ADOT does not know how much is paid (or how much gasoline is sold) from any one retailer in the state. Thus, ADOT does not know how much gasoline is sold, or how much is essentially paid in taxes, from retailers at a given Indian Reservation or from any nearby gas stations. Fuel tax collections for recent years are:

**Table 4. Arizona Fuel Tax Collections**

<b>Year</b>	<b>Fuel Tax Collected</b>	<b>Arizona Population</b>	<b>Average Tax/Person</b>
1998	\$ 508,600,000	4,722,075	\$ 107.71
1997	\$ 504,906,000	4,555,000	\$ 110.85
1996	\$ 497,856,000	4,428,000	\$ 112.43

Source: Tax and population data from US Census Bureau, 1998.

***Availability of Individual and Government Tax Refunds:*** Arizona law allows individual tribal members and tribal governments to apply for refunds of fuel taxes from fuel sold on reservations. This law is based on a Supreme Court ruling from 1995, *Oklahoma Tax Commission vs. Chickasaw Nation*. The Chickasaw Nation had sought to stop the State of Oklahoma from enforcing the state fuel tax on Indian Reservations. On June 14, 1995, the Supreme Court handed down its decision:

**What the US Supreme Court Says About State Fuel Taxes:**

*"A state may not tax motor-vehicle fuels sold by an Indian tribe's retail stores on reservation or tribal trust land, absent clear congressional authorization to the contrary, if the legal incidence of the tax falls on the tribe or its members."*

Arizona responded to this ruling by allowing individual tribal members in Arizona to apply for a refund of the state fuel taxes they have paid, and by authorizing the state to make government-to-government agreements for refunding fuel taxes paid on reservations. The exemption and refund provisions are contained in Arizona Senate Bill 1398, signed by the governor on March 7, 1997. The Bill provides exemptions in Section 28-5610(A)(3) and (4):

**What Arizona Law Says About Fuel Tax Refunds:**

*"(A) The following are exempt from motor vehicle fuel taxes imposed by Section 28-5606 and aviation fuel taxes imposed by Section 28-8344:*

*3. Motor vehicle fuel that is sold within an Indian reservation to an enrolled member of the Indian tribe that is living on the Indian reservation established for the benefit of that Indian tribe and that is used by the enrolled member for the enrolled member's own benefit. This exemption does not apply to sales within an Indian reservation by an Indian or Indian tribe to non-Indian consumers or to Indian consumers who are not members of the Indian tribe for which the Indian reservation was established. For the purposes of this paragraph, "Indian" means an individual who is registered on the tribal rolls of the Indian tribe for whose benefit the Indian reservation was created.*

*4. Motor vehicle fuel used solely and exclusively as fuel to operate a motor vehicle on highways in this state if the motor vehicle is leased or owned by and being operated for the sole benefit of an Indian tribe."*

Individuals who are eligible for the exemptions must file an application form to receive a refund, listing their name and address, dates of the claim, location of the vehicle, number of gallons used for which a refund is claimed, and the amount of refund claimed. Purchase receipts must be included with the application. According to ADOT, no one has ever applied for an individual gasoline tax refund.

---

SB1398 also includes a section outlining the elements that *may* be contained in an agreement between a tribe and ADOT for refunding fuel taxes collected on reservations. Section 28-5703 states the following:

**What Arizona Law Says About Intergovernmental Agreements for  
Fuel Tax Refunds:**

*A. Subject to sections 28-5935 through 28-5938, in lieu of the requirements of this article with respect to licensing, bonding, reporting and auditing, the director may enter into a cooperative agreement with another state or states or an Indian tribe or tribes for the administration of the tax imposed by this article. An agreement, arrangement, declaration or amendment is not effective until stated in writing and filed with the department.*

*B. The agreement may provide for:*

- 1. Determining the base state for users.*
- 2. Users records requirements.*
- 3. Audit procedures.*
- 4. Exchange of information.*
- 5. Persons eligible for tax licensing.*
- 6. Defining qualified motor vehicles.*
- 7. Determining if bonding is required.*
- 8. Specifying reporting requirements and periods, including defining uniform penalty and interest rates for late reporting.*
- 9. Determining methods for collecting and forwarding motor fuel taxes and penalties to another jurisdiction.*
- 10. Other provisions to facilitate the administration of the agreement.*
- 11. Each state to audit the records of persons based in the state to determine if the motor fuel taxes due each state are properly reported and paid.*
- 12. A method or formula to refund taxes paid on exempt motor fuel purchases or use.*

This portion of the law is the foundation for the Intergovernmental Agreements that are possible between tribes and the Arizona Department of Transportation. The agreements are negotiated jointly with ADOT and the state Attorney General's Office, but only ADOT is a signatory to the agreement. At this time, ADOT seems to be enthusiastic about negotiating IGAs with tribes.

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## Understanding Intergovernmental Agreements

This section discusses basic elements of an IGA, identifies revenues that tribes may expect from a governmental tax refund, and explores the opportunities and limitations of an IGA.

**What Is an IGA?** An Intergovernmental Agreement (IGA) is a formal contract between two sovereign governments. In the case of an IGA for sharing fuel tax revenues, the State of Arizona agrees to reimburse tribal governments for fuel taxes paid on the reservation by tribal members. It is a revenue-sharing agreement. An IGA could provide revenue to tribal governments in two ways:

- Periodic reimbursements from the state for fuel taxes from gasoline sold on the reservation, and
- Collection of tribally-imposed taxes for fuel sold on reservations (i.e. the tribe would levy its own tax on fuel sold on the reservation).

An IGA commonly contains the following elements:

- *Methodology for calculating the amount of a refund.* In Arizona, this will need to be based on the number of gallons of gasoline that have been sold on the reservation and used by tribal members, although averages seem to be acceptable.
- *Record keeping demonstrating the relationship between the refund and fuel sales.* The records will need to be available for ADOT to review if requested. Records may be required for tribal enterprises as well as private operations.
- *Imposition of a tribal tax.* ADOT is extremely concerned that an IGA not result in substantially lower prices for vehicle fuel on-reservation than off, as a competitive issue. They have therefore required previous agreements to contain a provision that the tribal government levy a fuel tax equal to the current tax levied by the State
- *Persistence of individual refunds.* So as not to contradict existing state law, the IGA must allow for individuals to apply for fuel tax refunds. The tribal government would reimburse the state for any refunds provided to tribal members, so that ADOT is not paying a refund twice on the same gallon of fuel.

### *IGAs should describe:*

- ◆ *Methodology*
- ◆ *Administrative requirements*
- ◆ *Tribal taxes*
- ◆ *Individual refunds*
- ◆ *Revenue uses*
- ◆ *Legal clauses*

- *No limits on use of revenues.* Since individual refunds are not limited in how they may be used, neither should the tribal government refunds be limited. Practically speaking, funds should be used to advance the reservation's transportation system since that is the problem being answered with the IGA. But decisions on how the funds are to be used should be left to the discretion of the tribal government and not included in the IGA.
- *Standard legal clauses* such as definitions, a "hold harmless" clause, addresses for both parties, signatures, contract duration and termination, and dispute resolution.

**What an IGA Can Do:** Tribal governments should consider many factors in deciding whether an IGA is feasible and whether it is advantageous. Some of the key advantages of an IGA are summarized table below:

<b>Benefits of an IGA</b>
Provides predictable, unrestricted revenues
Removes tribes from competition for State funding
Removes burden of individual refund applications
Formalizes relationships with state

- *Provides Revenues:* An IGA provides a stable source of revenue available for transportation projects, with few if any requirements on how the funding can be used. Tribes would receive a monthly check from the State, for a previously agreed upon amount of money, to be used for the general welfare of the tribe focusing on transportation projects.
- *Removes Tribes from Competition for State Funding:* An agreement would mean that tribes could be less reliant on pursuing other funding channels, though an agreement would not preclude them from doing so.
- *Removes Burden of Individual Refunds:* A government-to-government agreement would allow tribal governments to ensure that their citizens receive the benefits of an individual refund, without needing to file cumbersome individual refund applications.
- *Builds Relationship with the State.* One way to view an IGA is that this form of government-to-government contract puts tribal governments on an equal level with state governments. Rather than having the same status as a municipality or county, tribal governments would be formally and legally recognized through an IGA as sovereign entities that are exempt from the powers of state taxation on motor fuels. In addition, developing an agreement on a subject about which laws are relatively

clear might provide tribes with contacts and added legitimacy that could be useful as more contentious issues arise.

**Concerns about IGAs:** There are also some downsides to developing an Intergovernmental Agreement with the state. The primary concerns are:

<b>Concerns about IGAs</b>
Requires record keeping and administration (Fact set might not support strong revenues)
Might require limits on private operators
Raises political risks

- **Requires Keeping Records:** Keeping records can be an administrative burden that means one or several people have to develop forms and take time to record daily tasks. For some tribes, the burden of record keeping and administration may overwhelm the revenues.
- **Imposes Regulations on Private Operators:** A related concern is that an IGA might require that tribal governments place restrictions on privately owned gas stations that are located on the reservation. The restrictions could be both administrative (record keeping) and financial (imposition of tribal taxes). On reservations where all gas stations are tribally owned, this issue will not exist. Tribal governments will need to consider whether regulation is politically feasible internally, and if it is, will need to develop mechanisms for implementing and enforcing regulations (i.e. a business code, and staff to ensure that records are kept and taxes are submitted).
- **Raising Political Risks:** IGAs, especially if widely publicized, could subject tribes to a political backlash that tribes are somehow “getting away with” something that is not available to other communities in the state.

**Expected Revenues.** The expected amount of the fuel tax refund can vary significantly between tribes, depending on their individual circumstances. Information on fuel taxes paid (which approximate refund revenues) by tribes in Arizona is noted in the table below. In some cases, refund amounts may only make a very small contribution to transportation resources, and may in fact be too small

for appreciable road construction or maintenance. For a few tribes, refund amounts may be quite significant.

**Table 5. 1998 Fuel Tax Payments from Reservations.**

Total fuel taxes paid on reservations:	\$741,552
Range (low-high):	\$0-\$328,749
Average fuel taxes paid:	\$74,155
Median fuel taxes paid:	\$32,580

*Data is from the ten tribes responding to an ITCA survey, based on the current tax rate and the number of gallons of fuel sold on the reservations.*

The amount and feasibility of a refund depends on:

- *The number of gas stations present on a reservation.* Tribes with no gas stations are not eligible.
- *The amount of gasoline sold to tribal members or to the tribal government.* The more gasoline that is sold, the greater the taxes paid and refunded.
- Or, if an alternate method is used to calculate the refund, revenues can depend on *factors like the number of vehicles registered to tribal members and their average annual miles driven.*

***The amount of a refund depends on:***

- ◆ *The number of gas stations*
- ◆ *The amount of fuel sold*
- ◆ *Or, methodology for calculating sales*

Overall, the totals from those tribes responding to the survey indicated that fuel tax refunds would only cover about 3% of the tribes' anticipated transportation costs. However, receiving a fuel tax refund would increase tribes' transportation resources by about 9% compared to what they identified as available resources for 1998. This will not be enough to construct a major new roadway, but it is enough to take care of smaller needs such as resurfacing or installing traffic signals.

Regardless of the size of the refund amount, predictable revenues allow tribal planners to better plan for projects throughout the year and for subsequent years. The revenues may help the tribe complete small-scale projects such as installing traffic lights, paving a troublesome intersection, or improving pedestrian conditions. Predictable revenues also allow tribal governments to more clearly see the choices they have in funding projects.

*ADOT's Incentives to Negotiate:* At this time, ADOT seems to be enthusiastic about negotiating IGAs with tribes in Arizona. ADOT has already negotiated one agreement (described below) and says they are in the process of negotiating a second. ADOT's incentives to reach agreement are:

- An IGA is significantly easier to administer than individual refunds might be, if numerous individual tribal members started applying for fuel tax refunds.
- ADOT and other state-level agencies are concerned with lawsuits involving tax jurisdiction in Indian Country.
- A previous state administration established a precedent of using these agreements to resolve disputes; ADOT is therefore not out on a limb when developing IGAs and in fact is using them to meet state policy.

***Why ADOT will negotiate an IGA:***

- ◆ *Eases administration*
- ◆ *Avoids lawsuits*
- ◆ *Maintains current policy*

Tribes entering negotiations with the state may use these as negotiating points, or at least to gain an understanding of ADOT's reasons for pursuing intergovernmental agreements.

### **Tribes' Experiences with Intergovernmental Agreements**

A number of fuel tax refund agreements between tribal governments and state governments have been signed in Arizona and other states. These can serve as useful examples for tribes considering entering an agreement with the State of Arizona. The following pages describe the framework of three agreements, and look at successes and potential pitfalls in each instance.

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**Example:*****"Intergovernmental Agreement Between Arizona Department of Transportation and White Mountain Apache Tribe Establishing Fuel Tax Refund Procedures."***

One tribe in Arizona has negotiated an agreement with ADOT providing for periodic refunds of fuel taxes from gasoline purchased on the reservation.

**How the Agreement Works:** The major provisions of this agreement are:

*Refund Provisions:* ADOT provides a monthly refund check to the tribe.

*Methodology:* The refund amount is based on the following information, determined by the tribe and ADOT each year:

- Number of motor vehicles registered to resident tribal members
- Average vehicle miles traveled per year, based on US DOT average for western states (12,000 miles/year)
- Average miles per gallon, based on US DOT averages (17.2 mpg)
- Tax rate for gasoline and use fuels (diesel, liquid natural gas, etc.), currently 18 cents per gallon

*Record keeping:* To verify that the refund is based on actual fuel sales, the tribe maintains records of the amount of fuel used in tribal vehicles (bulk purchases, credit card purchases, open account purchases, cash payment, other), and fuel deliveries to the tribally-operated gas stations. The tribe requires that all privately operated gas stations keep the same records as are required for any off-reservation vendor (monthly fuel deliveries and sales).

*Tribal Tax:* The tribe imposes a fuel tax on all motor vehicle fuel and use fuel sold on the reservation. The tax rate is equal to the rate levied by the State of Arizona. The tribe is responsible for the administration of the fuel tax and keeps the revenues.

*Individual Refunds:* If any individual tribal member applies to ADOT and receives a fuel tax refund, the tribe will reimburse the amount of the refund to ADOT.

*Disposition of Revenues:* The agreement does not address how the tribe may use the revenues. Presently, the tribe deposits all refund revenues into a separate account and uses them for a variety of transportation improvements on the reservation.

The agreement also contains standard legal elements such as definitions, a "hold harmless" clause, addresses for both parties, signatures, and provisions for: improving the quality of data, expenses, contract duration and termination, and dispute resolution.

**Why the Agreement Works:** A tribal attorney involved in this agreement believes that the agreement was possible because of the unique circumstances of that tribe:

- the road system on the reservation overwhelmingly comprises tribal roads rather than state roads
- the tribe has historically received no transportation funding from the counties
- all gas stations on the reservation are tribal enterprises
- the reservation is geographically isolated and so most tribal members (and some non-member residents) live and work on the reservation and do not often drive off-reservation
- the tribe has had a good working relationship with ADOT and with the governor's office

Additionally, the tribe had aggressive legal representatives who were familiar with the legal issues of tribal taxation (i.e. the Chickasaw Nation tax case) and were willing to assertively pursue an agreement. Finally, the tribe probably gained some advantage by being the first to negotiate such an agreement. To some extent, ADOT perceived the agreement as an experiment, and the legislature was perhaps more accommodating since this agreement was the first one of its kind in the state.

**Example:**  
**Oklahoma State Contracts.**

Numerous tribes in Oklahoma have contracted with the State Department of Revenue to receive refunds of fuel taxes. The contracts are based on 1996 enabling legislation that moved the fuel tax collection back to the distribution point, and allowed for the contracts. The legislation was enacted in response to the Chickasaw v. Oklahoma Department of Revenue Supreme Court case.

**How the Contracts Work:** The major components of the agreements are:

*Refund Provisions:* Tribes choosing to enter into the contract receive quarterly payments from the Oklahoma Department of Revenue.

*Methodology:* The 1996 legislation designated 4.5% of all fuel taxes collected in the state to be distributed to tribes choosing to enter into the contracts. All tribes that contract get a percentage of the 4.5%, based on their enrolled population; tribes with gas stations receive an additional amount. No tribe may receive less than \$25,000 per year. Any tribal government may contract, whether or not they have a gas station on the reservation. The contracts are in effect for 20 years.

*Record keeping:* No records are required for fuel sold or used on the reservation. Tribes must have their population counts verified by an external source.

*Tribal Tax:* Tribes are not required or prohibited from imposing their own fuel tax. Since the taxes are added on at the distribution point and passed along to the retail level, consumers do not see a change in the price paid at the pump.

*Individual Refunds:* If a tribe contracts with the state, individual members of that tribe cannot apply for refunds. Otherwise, individual tribal members are able to apply to the Department of Revenue for refunds of fuel taxes paid. According to the State Commission of Indian Affairs, many individuals apply for refunds every year.

*Disposition of Revenues:* Only very general restrictions apply. Tribes must use the rebate revenues for public services such as health, education, roads, or welfare. There is no enforcement of this provision, however, and in fact tribal governments were granted sovereign immunity for this portion of the agreement.

**Why the Contracts Work:** The Commission of Indian Affairs stated that strong tribal leadership and intense lobbying were the reasons that tribes got what they wanted out of the legislation and the associated agreements. Prior to the 1996 legislation, Oklahoma had been in constant litigation with tribes over taxation issues. According to the Commission on Indian Affairs, the State lost almost every case. The rebate legislation was enacted as a legal response to the Chickasaw case, but the Commission believes that it has also saved the state the money and hard feelings that were the cost of litigation. Tribes initially were not supportive of the state-initiated legislation, and only three tribes choose to contract. Those tribes split \$14 million between them for the first two years. It was such a windfall that soon other tribal governments began signing on as well. The amounts per tribe are decreasing in subsequent years as more tribes join the contracts. Tribes that are choosing not to enter into contracts are still mistrustful of the state's motives and perceive sovereignty issues with the contract arrangements.

**Example:**  
**Confederated Tribes of the Colville Reservation and the State of  
Washington Department of Licensing.**

The Confederated Tribes of the Colville Reservation sued the Washington State Department of Licensing over the state's taxation of fuel sold on the reservation. The result of the lawsuit was a 1995 consent decree that set out terms for the state to refund motor vehicle fuel taxes to the Confederated Tribes.

**How the Agreement Works:** The major components of the agreements are:

*Refund Provisions:* Each quarter, the state refunds the state taxes paid for fuel sold on the reservation. Only fuel sold to tribal members and the tribal government is considered in the refund provision.

*Methodology:* The refund amount is based on the current state tax rate and the number of gallons sold by gas stations on the reservation both to tribal government vehicles and to enrolled tribal members.

*Record keeping:* The tribe maintains records of fuel delivered, fuel sold, the identification of tribal vehicles using fuel, and the tribal programs or businesses for which fuel is purchased. Filling stations are to record the type and amount of fuel delivered, the price, the tax status of the purchaser (member or non-member), and the tax rate. The tribal government must also keep records of the roadwork for which the refund is being budgeted.

*Tribal Tax:* The tribe is required to mandate that filling stations on the reservation collect fuel taxes that are equal to the state tax rate. The tribe is also required to license filling stations for operation on the reservation.

*Individual Refunds:* Individuals who purchase fuel that the tribe claims on the refund application are not eligible for a refund of the tax on that same gallon of fuel. In practice, the tribe tends to pass along about half of the refund amount to consumers.

*Disposition of Revenues:* Tribes must budget each year for road safety, construction, or maintenance work, in an amount equal to what they anticipate receiving as a refund.

**Successes and Problems of the Agreement:** The agreement was created to settle a lawsuit, and one tribal attorney believes that the agreement was successfully negotiated based on legal precedent. This attorney admits that the refund amount is always less than the amount of road money received from the BIA, but the tribe nevertheless is able to use the funds for road projects. Also, the record keeping of this agreement seems to be burdensome and the tribe would like to broaden the agreement and reduce the record keeping, but has so far been unable to do that. The State has considered this kind of agreement to be their model of choice.

## **Lessons Learned**

Although experience is somewhat limited, the experiences of tribes already engaged in IGAs offer some valuable lessons for tribes considering these agreements.

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### **Lessons Learned from Previous Experiences**

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The fact set does matter

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Strong leadership is important at the start

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An IGA is a solid alternative to a lawsuit

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Administration can be a burden

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- *The facts do matter.* Because the form of an IGA is constrained by Arizona law, tribes will need to have a certain set of facts in order for an IGA to be legally authorized and practically useful. For instance, tribes with no gas stations will not be eligible. For tribes with only one gas station, an agreement may present more of a burden than it offers in revenue. Tribes near metropolitan areas may have to use an inventive formula or keep more records to support the refund agreement since they sell more gasoline to non-members.
  - *Strong leadership is especially important in the beginning.* In all three examples discussed above, tribes or their representatives had to be particularly aggressive in seeking out these agreements. The state tolerates the Supreme Court's position because it has no choice, but it will not seek out revenue-sharing agreements. Tribal governments need to be prepared to take the lead.
  - *An IGA is a valid alternative to a lawsuit.* In all cases presented above, the IGA was developed as an alternative to an existing or threatened lawsuit. While it may not be necessary to take such an adversarial position in Arizona, where law authorizes the refunds, the State is still in a precarious legal position based on the *Chickasaw* case. Tribes should recognize that the State also has an incentive to reach agreement.
  - *Administration can be a burden.* The record keeping that an IGA requires can turn out to be troublesome and hard to change, but need not kill the deal. The Colville case indicates that the record keeping burden has been more problematic than anticipated, and the tribe has so far been unsuccessful in changing the original agreement. An alternative is provided by the example of the WMAT, which arranged to use average rather than actual values. Averages allow a tribe to keep fewer records of fuel sales, and would mean that identifying tribal and non-tribal members as they purchase gas is not required. The tradeoff is that average values are likely to be low since they do not account for the extensive travel that occurs in remote western lands.
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*Evaluating this Strategy:* Finally, tribes' past experiences offer some guidance on how to evaluate IGAs as a policy strategy.

<b>Tribes' Interests</b>	<b>What an IGA Provides</b>
Size of expected revenues	Small revenues
Ease of implementation	Predictable results
Implications to sovereignty	Formal recognition of limits of state authority
Time frame	Short-term solution

Clearly, IGAs are likely to yield more revenue for some tribes than for others, and tribes will need to consider their own circumstances when making their decision. ITCA, Inc. may be quite useful in providing assistance to tribes that otherwise would not find the negotiations financially worthwhile.

But, revenues are not the only criteria for weighing strategies. It seems that, because law authorizes the agreements and ADOT is currently receptive to them, not much political capital needs to be expended to pursue these intergovernmental agreements. Furthermore, the agreements may provide a good footing for tribes to assert their sovereignty on tax issues and build government-to-government relationships with the state.

Finally, the agreements seem to be negotiable within a relatively short amount of time; tribes would quickly have access to additional funds. IGAs seem to offer a feasible and achievable short-term solution to tribes' transportation needs, recognizing that the revenues may be insufficient to meet major transportation needs over the longer term.

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### III. OPPORTUNITIES IN STATE AND FEDERAL TRANSPORTATION PLANNING

*In this section:*

- ◆ **Understanding Arizona transportation funding and planning:** describes sources and uses of revenue in state road construction and maintenance programs.
- ◆ **Understanding the BIA roads program:** describes funding and administration of the Indian Reservation Roads program.
- ◆ **Opportunities for increasing tribes' involvement:** changes in federal and state programs are providing more opportunities for tribes; includes measures for evaluating this strategy as a policy option.

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#### **Understanding Arizona Transportation Funding and Project Planning**

Transportation funding comes from a variety of sources. Distribution is determined through a process of project planning with other interested parties, including towns and counties.

**Sources of Revenue.** ADOT receives revenue from a variety of sources:

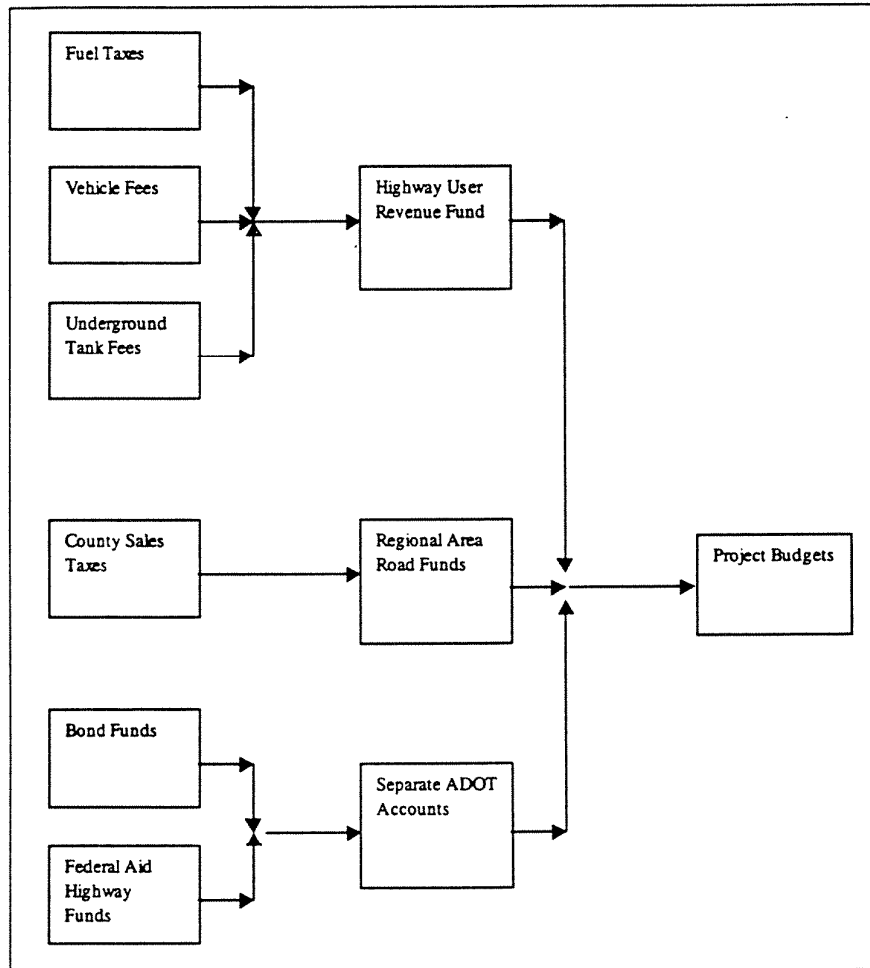
- **Fuel Tax.** The tax on motor fuel sales in Arizona is the largest source of highway funding.
  - **Vehicle Fees.** Four types of vehicle fees are assessed in Arizona: the Vehicle Registration Fee, the Vehicle Property Tax, the Driver's License and Certificate of Title fee, and A User Tax on commercial motor carriers.
  - **Underground Storage Tank Fees.** Any underground storage tank that stores a regulated substance, including gasoline and diesel fuel, is assessed a fee of 1 cent per gallon of product placed in the tank during the calendar year.
  - **County Sales Tax.** Counties in Arizona are authorized to levy an additional sales tax to gain revenues for transportation improvements. The tax is collected by the Department of Revenue and deposited into a separate Regional Area Road Fund for that county.
  - **Federal Aid Highway Funds.** Arizona is eligible for funds from the US Department of Transportation for road construction. Interstate projects are
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reimbursed at 90%, leaving the states to pay the remaining 10%. All other projects are split at 75% federal and 25% state. In states such as Arizona where public lands are greater than 5% of the state area, the federal share is increased.

- **Bond Funding.** From time to time, the state will issue bonds to finance specific projects or general program needs.

Revenues from the fuel taxes, vehicle fees, and underground tank tax are deposited into Arizona’s Highway User Revenue Fund (HURF). County taxes are deposited into Regional Area Road Funds (RARFs) for Maricopa, Pinal, and Gila counties. Federal-aid highway dollars and bond funding are maintained separately.

**Figure 2. ADOT Highway Funding Sources**



**Distribution of Funding:** ADOT planners state that needs are always greater than available funding. In 1999, ADOT expects a \$9 billion shortfall between what is needed and the available budget.

**Table 6. Statewide Transportation Needs vs. Revenues, 1996-2005**  
(In 1993 constant \$)

Road type	Cost	Revenue	Unfunded Need
State highways	\$9,229,904,000	\$4,678,500,000	\$4,551,404,000
County roads	\$2,508,423,000	\$1,417,600,000	\$1,090,823,000
City streets	\$5,699,244,000	\$2,512,400,000	\$3,186,844,000
<b>Total</b>	<b>\$17,437,571,000</b>	<b>\$8,608,500,000</b>	<b>\$8,829,071,000</b>

Source: ADOT 1995

This chronic underfunding means that ADOT must set spending priorities, which it does through a process called Transportation Planning. Transportation planning identifies facilities, programs, and major investments that are needed to maintain and update a transportation system. Planning also includes the development of financial documents that describe costs and revenues for the projects selected.

ADOT uses two processes to determine planning priorities:

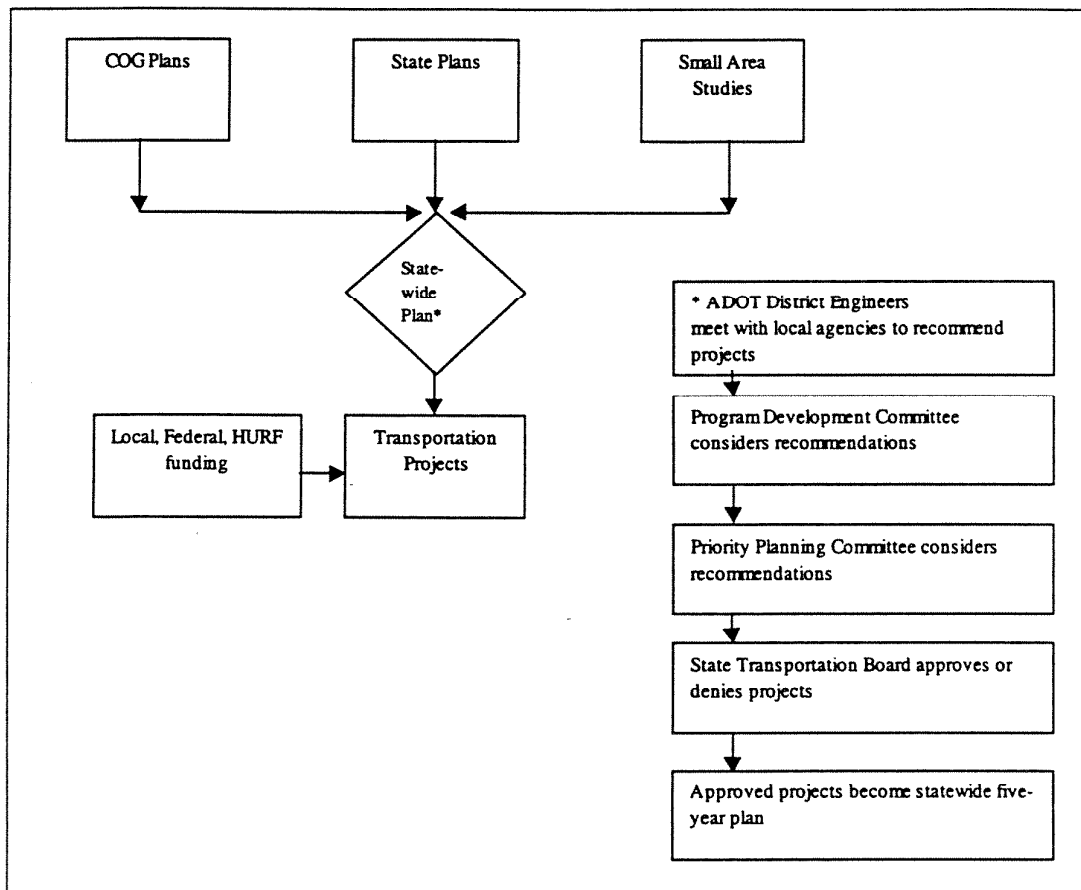
1. *Work on "Corridors or Statewide Significance."* These are roads and road systems that are deemed especially important for state (economic) development. In the past, the 25 Corridors have received special funding priority, although ADOT indicated that they are now done with the initial work on these Corridors and are moving on to other state facilities.
2. *A rolling five-year plan for road construction and maintenance needs.* The plan is initiated by District Engineers working with local agencies (typically mayors, county transportation departments, or representatives of either) to identify local priorities. The District Engineers develop a list that they bring to the Program Development Committee, which

#### Public Participation

- The five-year plan is not reviewed by the US DOT.
- All Committees and Boards are composed of ADOT employees.
- All review meetings are open to the public; anyone can call ADOT's Community Relations office to find out when and where the meetings occur.

reviews the list and makes recommendations to the Priority Planning Committee. The Priority Planning Committee can change or endorse the recommendations, and will then pass them along to the final approval body – the State Transportation Board. The Board can approve or deny the prior recommendations. All approved projects comprise the state’s five-year plan. All projects that are recommended are then scoped and funded. Projects that are not recommended typically compete for funding again during the following year.

**Figure 3. ADOT Project Planning Process**



ADOT characterizes the planning process as very budget-oriented, and very political.

### **Understanding the BIA Roads Program**

**Federal Funds Authorization and Appropriation:** The US Federal Government authorizes money for construction and maintenance of roads on Indian Reservations as part of the Federal Lands Highway (FLH) program. FLH funding was authorized originally in the Intermodal Surface Transportation Efficiency Act of 1990 (known as ISTEA), and renewed in 1998 through the Transportation Equity Act for the 21<sup>st</sup> Century (known as TEA-21). Although these laws designate funding that the Congress *may* approve, actual funding levels are determined each year as part of the annual federal budget process. Fiscal year funding begins in October and ends in September. The federal budget is assembled between September and February each year. The table below shows funding authorized and appropriated for Indian Reservation Roads under TEA-21.

**Table 7. TEA-21 Funding Totals for Federal Lands Highways and Indian Reservation Roads**  
(In 1998 \$millions)

<b>Program</b>	<b>Year:</b>	<b>FY 1998</b>	<b>FY 1999</b>	<b>FY 2000</b>	<b>FY 2001</b>	<b>FY 2002</b>	<b>FY 2003</b>	<b>Total</b>
FLH authorized		536	706	706	706	706	706	4,066
FLH appropriated (est.)		512	512	--	--	--	--	--
IRR (authorized)		225	275	275	275	275	275	1,600
IRR appropriated (est.)		282	203	--	--	--	--	--
IRR as % of FLH (appropriated)		55.1%	39.6%	--	--	--	--	--

Source: US Department of Transportation, 1998.

Money for federal transportation appropriations comes from several sources. The largest sources are the federal motor vehicle fuels taxes, other user fees, the general fund, and investment income.

**IRR Program Administration:** The Bureau of Indian Affairs administers IRR funds for all BIA roads on Indian Reservations. Funds are distributed from BIA in Washington DC to BIA Area Offices using the Relative Needs Formula. This formula is based on the following factors:

- Cost to construct, based on a road inventory, road conditions, and estimated costs to bring roads up to adequate condition.
- Vehicle miles traveled, based on average daily traffic multiplied by miles of road.
- Population in the Area. The Phoenix Area office includes all tribes in Arizona except the Navaho; all tribes in Utah and Nevada; and tribes in parts of California, Idaho, and Oregon.

The Relative Needs formula was introduced in 1990, but Fiscal Year 1999 was the first year that the Phoenix Area used this formula for the full year's funding. Prior to that, the formula was distorted by the federal government's budget shutdowns and by the delays in ISTEA reauthorization. The following table shows IRR funding received by the Phoenix Area Office.

**Table 8. Recent IRR Funding for the Phoenix Area Office**

<b>Fiscal Year</b>	<b>Phoenix Area Office Share</b>
1998	\$ 16 million, of which \$3m was used and \$13m held over during reauthorization
1999	\$ 21 million, plus \$13 m left over from 1998

Source: Vernon Palmer, BIA 1998

Estimates for fiscal year 2000 funding were not yet available at the time the Area Office was interviewed.

Despite the fact that the Relative Needs formula has only recently been fully used in the Phoenix Area, it is likely to undergo significant changes. Tribes are largely dissatisfied with the formula funding, and TEA-21 has authorized the BIA and the Federal Highway Administration to undertake a negotiated rulemaking process with tribes throughout the US to change the formula. Several Town Hall meetings have already been held with introductory discussions on the topic. Participants interviewed said that they were hopeful the negotiations would result in an improved funding mechanism, but were uncertain what that would look like. It is expected that the negotiations may take several years.

IRR funds can only be used for roads in the IRR system, not for state, county, or city roads, though these may benefit from proximity (i.e. projects for roadway connectors). IRR funds must be used for public roads; they cannot, for example, be used for a road that leads only to a single, private residence. Up to 15% of IRR

***IRR Money can be used for:***

- *Road enhancements*
- *Planning capacity*
- *Scenic Byways program*
- *Bridges*
- *Transit*
- *Not maintenance (except seal coating)*

money can be used for seal coating, which is maintenance. The remaining 85% must be used for new road construction. According to the BIA, state departments of transportation occasionally try to get tribes to use their IRR money as matching funds, although the state is not supposed to do this.

***IRR Funding Distribution within Arizona:*** BIA Area Offices distribute funding within their area at the Office's discretion. The Phoenix Area Office uses a "Fair Share" formula based on population, miles of BIA roads, vehicle miles traveled (VMT) and land area of reservations. This provides a "planning amount" which is described as an average over a period of years. Population data is taken from the Labor Force Report provided by tribes to the BIA. Road miles and VMT are based on actual traffic counts where these have been done, and on values from standard highway engineering manuals where they have not been done. The BIA admits that they do not have a satisfactory inventory of actual VMT for all areas.

***IRR funding in Arizona is:***

- ◆ *Insufficient to meet needs*
- ◆ *Allocated using the Fair Share formula*
- ◆ *Distributed unevenly across time*

The Fair Share formula has resulted in some differences in money allocated between tribes. Smaller tribes generally receive less funding, since they don't have the population or the road miles to generate funds for a transportation project. There are also differences between tribes near urban areas, where vehicle miles traveled on reservation roads may be higher due to local urban traffic, and tribes in more remote areas, where reservation roads are used primarily by tribal members.

In practice, the Fair Share formula seems to only be used as a check on distributions over a period of years. On an annual basis, the BIA Area Office said they determine maintenance and construction needs using information provided by tribes. According to BIA, the process works like this: each year, tribes present the Area Office with a list of prioritized projects for the next five years. The Office then compares the requests to the available funding, and prepares a Transportation Improvement Plan of projects to be performed that year. When funds are insufficient to perform all projects requested by tribes, the BIA Area Roads Engineer uses professional judgement to decide which projects to complete. According to the Roads Engineer, funding is insufficient every year. Once it has been decided that a project will be funded, BIA will perform detailed engineering and design studies and complete the environmental impact requirements. BIA typically contracts out the construction work.

***BIA Area Office Project Selection:***

- *Funding received from federal government*
- *Tribes submit 5-year plan*
- *Area Office compares plans to funding*
- *Area Office uses professional judgement to prioritize projects*

Because of funding shortfalls, the Area Office characterizes their funding distribution as “borrow and lend” among tribes in the Area. In other words, funding may be granted to one tribe one year to meet an urgent need, then that tribe may receive nothing the following year so that BIA can assist another tribe.

***BIA Relationship with ADOT:*** Although IRR funds are to be used only on BIA roads, the Phoenix Area BIA Office does work with the Arizona Department of Transportation. The Phoenix Area Roads Engineer said that occasionally the two agencies work jointly on a reservation road project when it impacts state roads as well. Funding, administration, and contracting are arranged on an ad hoc basis: they “just work it out” for each project. The Phoenix Area Office stated that they do not work jointly with counties in Arizona, although they do in other states in their Area.

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In 1995, ADOT and BIA began working cooperatively on a transportation needs assessment for reservations. This assessment was never completed, and was perhaps complicated by differing relationships. According to ADOT, some tribes wanted ADOT to work directly with BIA and not with the tribes, whereas other tribes wanted to work directly with ADOT and not involve BIA. The assessment is supposed to be updated every five years.

### **Opportunities for Increasing Tribes' Involvement**

*Involvement with ADOT:* Tribes can become better represented in the process by which ADOT determines which transportation projects to fund. The persistent inequality of tribal exclusion is beginning to receive some attention at the state level, and a window of opportunity for improving tribal participation may be opening. By becoming more vocal in the statewide planning process, Indian governments could better incorporate their own needs into state project plans.

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**Benefits of Involvement with State  
Processes**

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Potential for significant funding  
Recognition of state responsibility toward  
tribes

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*Benefits.* The primary advantages of participating more fully in the state planning process are that tribes may gain funding and project support from ADOT, as well as recognition that ADOT has some responsibility for transportation planning in tribal communities. There is no desire among tribes for the state to completely subsume the tribal government's provision of service. Rather, involvement in the state processes would provide a reasonable forum for working out ways that the state government and tribes can address social needs within the state.

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**Concerns with Involvement in State  
Processes**

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Requires long term commitment of resources

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Uncertain outcome

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Puts tribes on an equal level with other  
municipalities

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*Concerns.* The main disadvantages are that this is a long-term endeavor that may require tribal or ITCA, Inc. staff to aggressively attend community and ADOT meetings over several years, and that it may not substantially increase funding for several years if at all. It is also possible that this strategy will not increase funding for any one tribe. Furthermore, it may contribute to the perception that Indian governments are no more sovereign than any other municipal government in the state.

*Involvement with BIA:* TEA-21 has authorized the BIA and the Federal Highway Administration to undertake a negotiated rulemaking process with tribes throughout the US to change the way that Indian Reservation Roads funding is distributed. This process is opening up the BIA funding mechanisms to increased scrutiny and is providing tribes with an opportunity to comment on and improve the distribution formulas. The Intertribal Transportation Association, located in Tulsa, Oklahoma, has been organizing Town Hall meetings to develop the new rules. Tribal government representatives are invited to attend these meetings and voice their concerns over the current formulas, as well as present ideas for revising the systems or identifying new funding opportunities.

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**Benefits of Involvement with BIA  
Rulemaking**

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Improve fairness of distribution formulas

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Potential for increasing funding

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*Benefits of Participating in the Rulemaking:* The primary advantage of participating in these negotiations is that the rulemaking provides an opportunity to see that the IRR program's substantial funds are distributed more fairly across and within BIA

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Areas. If tribal governments are to have any role in determining the funding formulas and are to be taken seriously when they dispute existing funding processes, it is to their political benefit to participate. Another benefit is that reworking the formulas might, in the long run, provide an improved revenue stream to tribes in Arizona.

**Concerns with Involvement in BIA  
Rulemaking**

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**Requires long term commitment of resources**

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**Increased dependence on federal programs**

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*Concerns about Participating in the Rulemaking:* The two primary concerns about participating in the negotiated rulemaking are the commitment of resources, and the risk of increasing dependence on federal programs. First, parties already involved in the meetings expect that the negotiations may take several years. That is a long-term commitment of staff resources, the results of which are not certain to benefit every tribe that participates. BIA officials involved in the process are hopeful, but not certain, that an agreement is possible. The other concern is that the IRR program is another federal program, dependence on which can be seen to weaken tribal self-governance. Unfortunately, transportation programs are so capital-intensive that tribes cannot easily afford road-building on their own. But they may want to think seriously about becoming further reliant on federal assistance.

*Evaluating this Strategy:* A few key points should be considered when examining this strategy, particularly in the context of allocating scarce staff resources:

<b>Tribes' Interests</b>	<b>What State and Federal Involvement Provide</b>
Size of expected revenues	Large revenues
Ease of implementation	Uncertain results, large resource commitment
Implications to sovereignty	Improves fairness, but places tribal governments in competition with other state and federal entities
Time frame	Long-range solution

- Funds potentially available from ADOT and BIA are far greater than those likely to be provided by fuel tax refund agreements.
- The likelihood of obtaining significant additional funds from ADOT or BIA is uncertain, and could take years to achieve.
- A goal in developing these processes should be to make the funding distribution decisions less a matter of discretion than they are now, particularly at the BIA Area Office level.
- Becoming more involved in the processes can provide tribal governments with added legitimacy, improving tribes' representation in the transportation planning systems.

ITCA, Inc. could play a very useful role in providing the resources (staff, access) that individual tribes tend to lack but which could greatly increase the presence of tribal governments in the transportation planning processes. ITCA, Inc. could also be instrumental in working with the agencies and the tribes to ensure that any process developed does not introduce additional threats to tribal sovereignty.

Tribes' inexperience with these processes makes it difficult to evaluate the prospects for success. Nevertheless, on balance it seems that as a long-term goal, increasing involvement is a strategy that should be taken seriously while recognizing its short-term limitations.

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## IV. WHAT ITCA, INC. CAN DO

*In this section:*

- ◆ **Assisting tribes with IGAs:** ITCA, Inc. can continue to provide information to tribes about strategies, issues, and precedents.
- ◆ **Increasing tribes' access to BIA and ADOT:** ITCA, Inc. can act as a liaison between tribes and ADOT, strengthening relationships and improving understanding.
- ◆ **ITCA, Inc.'s organizational capacity:** ITCA, Inc. is a small organization best suited to continuing their current role of providing information and advocacy.
- ◆ **Working with tribes:** ITCA, Inc.'s role will be greatest in providing general information to tribes, rather than helping them with the specifics of (for example) negotiating an IGA.

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ITCA, Inc. is beginning to play an important role in helping tribes identify and meet their transportation needs, ITCA, Inc. can continue to provide information and advocacy to tribes in Arizona. This section suggests some priority activities for ITCA, Inc. to focus on, given the pressing needs of their members as well as the limits on their capacity.

### **Assisting Tribes with IGAs**

Because of ITCA Inc.'s non-profit status and the absence of lawyers on the staff, ITCA, Inc.'s support should focus on providing information about what other tribes have done, what some issues might be, and what the alternatives are. ITCA, Inc. can break down these activities into three major tasks to comprise the following project plan:

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**Table 9. ITCA, Inc. Project Plan for IGAs**

<b>Task</b>	<b>Actions</b>	<b>Persons Involved</b>
1. Collect information and build relationships	<ul style="list-style-type: none"> <li>- Continue discussions with tribes about their interest and concerns with IGAs, as well as what priority tax refund issues should take for the Working Group.</li> <li>- Follow-up with tribes that did not return the transportation survey, to gain a more complete understanding of road and funding conditions throughout the state, barriers to working with ADOT, and the potential revenues to be obtained through IGAs.</li> <li>- Meet with Suzanne Sales and Kathleen Morely at ADOT's Administrative Office to develop a working relationship that can be used if and when questions or conflicts arise between tribes and ADOT.</li> </ul>	ITCA, Inc. transportation staff; Transportation Working Group members; ADOT
2. Distribute information	<ul style="list-style-type: none"> <li>- Generate priority activity list based on Working Group Meetings</li> <li>- Compile remaining survey results and provide to members</li> <li>- Distribute copies of this report at the next Transportation Working Group meeting</li> </ul>	ITCA, Inc. transportation staff; Transportation Working Group members
3. Provide direct assistance to tribes	<ul style="list-style-type: none"> <li>- Assist tribes with administrative tasks that are repeated at many locations, such as creating standard record keeping forms. This task may be particularly useful in for smaller tribes who may otherwise find the administration of developing an IGA to be a deterrent</li> </ul>	ITCA, Inc. transportation staff; Transportation Working Group members

For the activities involving the Transportation Working Group and contacts with ADOT, it is recommended that ITCA, Inc. use professional staff. For some of the above activities, particularly the administrative tasks, ITCA, Inc. could use non-professional staff, including unpaid student interns from local universities.

Another role that ITCA, Inc. may play is in working with contacts in the legislature to assess whether it is feasible to revisit SB1398 to change the tax procedure from one of refunding to a process in which state taxes are not even initially collected from reservations. This is not a short-term endeavor, and might require substantial political activity.

Finally, ITCA, Inc. must be aware that the fuel tax issue is only a part of the complex relationship between tribes and state and local governments. These issues

are expected to continue playing out in courts and legislatures around the country. It may be useful for ITCA, Inc. to develop, with tribes, an overall tax strategy that addresses the broader fiscal and political aspects of taxation on tribal lands.

**Increasing Tribes’ Access to ADOT and BIA**

ITCA, Inc. can play a critical role as a representative of tribes’ interests in forging a process for improved involvement with state and federal transportation planning processes.

*Building a Relationship with ADOT.* ITCA, Inc. can work with ADOT to develop a process for including tribal governments in the statewide transportation planning process. ITCA, Inc. has been making contacts with the Civil Rights Office within ADOT, and could continue to develop this relationship as a conduit to relay concerns and solutions between the member tribes and ADOT. ITCA, Inc. can take the following actions to strengthen the relationships between tribes and ADOT:

**Table 10. ITCA, Inc. Project Plan for Working With ADOT**

<b>Task</b>	<b>Actions</b>	<b>Stakeholders</b>
Access information	<ul style="list-style-type: none"> <li>- Schedule a series of presentations by ADOT staff at ITCA’s Transportation Working Group meetings.</li> <li>Call :                             <ul style="list-style-type: none"> <li>- ADOT’s Transportation Planning Office and invite a planner to provide an overview of the state’s planning process</li> <li>- ADOT’s Office of Tax Administration</li> <li>- ADOT’s Civil Rights Office</li> <li>- the Citizen’s Oversight Committee</li> <li>- the State Transportation Board</li> </ul> </li> <li>- Invite several COG representatives to attend or make presentations at ITCA, Inc.’s Transportation Working Group meetings.</li> </ul>	ITCA, Inc. transportation staff; Transportation Working Group members; ADOT; COGs

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Raise awareness	<ul style="list-style-type: none"> <li>- Schedule periodic meetings with Erialinda Gene of the ADOT Civil Rights Office to keep this issue visible within ADOT.</li> <li>- Maintain involvement with the Governor's recently formed task force on resolving rural-urban transportation funding issues. Try to ensure that ITCA, Inc. or tribes are represented on advisory committees.</li> <li>- Contact the ADOT Citizens Oversight Committee to see what role Native Americans can play on this committee</li> <li>- Contact a few of the county-level Councils of Government for informal meetings (i.e. not part of the formal planning process) to see what their awareness is of tribal issues, and to begin building relationships with these organizations.</li> </ul>	ITCA, Inc. transportation staff; various state agencies
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Establishing new relationships might take one or two initial meetings, with follow-up contact about every six months. These connections would allow ITCA, Inc. to track upcoming state activities (and disseminate this information to tribes), and to “check in” from time to time on the state’s attitude toward tribal issues. The steps listed above should be considered preliminary approaches to developing a longer-term process for tribes to become better represented in state planning.

***Participating in BIA Regulatory Negotiations.*** ITCA, Inc.’s involvement with the regulatory negotiation process may stretch out over time. Limited staff time will make involvement in this national process somewhat limited, but if the rulemaking becomes a high priority for tribes, then ITCA, Inc. may need to become more involved. Regulatory negotiation processes can quickly become very time consuming; ITCA, Inc. will probably not be able to take on this task without either using additional staff or reducing work on current projects.

Initial activities could include the following:

- Call the Intertribal Transportation Association in Oklahoma City, or a BIA Transportation Analyst in Washington DC to get on a mailing list, and forward information to member tribes.
  - Attend the Town Hall meetings that are being used to develop new funding formulas.
-

- Invite a representative of ITA or of the federal BIA transportation staff to attend a Working Group meeting to discuss the negotiating process and progress so far.
- Continue looking for and commenting on Federal Register notices about the rulemaking. The BIA's Internet website is a good resource that regularly posts updates about the negotiated rulemaking process.

### **ITCA, Inc.'s Organizational Capacity**

Because of the organization's limited capacity and special mission, ITCA, Inc. will need to prioritize what they want to accomplish in assisting tribes with meeting their transportation needs. ITCA, Inc. has a total staff of about 50 persons. One staff person currently works full-time on transportation issues. The Director and Assistant Director become involved in transportation issues from time to time, typically when legislative issues become pressing or special projects arise. ITCA, Inc. occasionally uses contractors or consultants to assist with project work. ITCA, Inc. does not have its own legal staff.

Because the capacity to take on additional, large projects is limited by staff and resource constraints, ITCA, Inc. may want to continue in their current role of providing information and advocacy. ITCA, Inc. can also supplement their capacity by using interns or other non-professional staff to perform research projects and handle administrative tasks, from distributing mailing materials to developing record keeping forms for tribes to use. Contacts at the University of Arizona and at Arizona State may be particularly useful because of their proximity and prior experience with tribal issues.

***ITCA, Inc.'s small staff capacity may mean they should:***

- ◆ *Focus on providing information*
- ◆ *Keep their involvement broad-based*
- ◆ *Supplement their staff with interns or non-professionals*

## **Working With Tribes: Who Does What**

ITCA, Inc. is most valued by tribes for providing information quickly and making tribes aware of options they have for addressing various problems. They should continue to concentrate on making information available and helping to focus tribes' activities. The Working Group provides a useful forum for ITCA, Inc. to strengthen its role as a conduit between tribes and the state and federal transportation agencies.

ITCA, Inc. can act as a resource for tribes, providing general information and developing processes and contacts for tribes to use. Another way to think about ITCA, Inc.'s role is that they are a finite point of contact for the state and the BIA. ITCA, Inc. can make it easier for the government to contact tribal interests by using a single point of contact. ADOT officials may find it easier to make one phone call rather than 20, and this may make the difference in whether a phone call is made at all. This is a role frequently taken on by trade association representing industry in their relationships with government agencies, and one that seems suitable for ITCA, Inc.

***Tribes can focus on:***

- ◆ *General and specific information*
- ◆ *Specific relationships*
- ◆ *Specific actions*

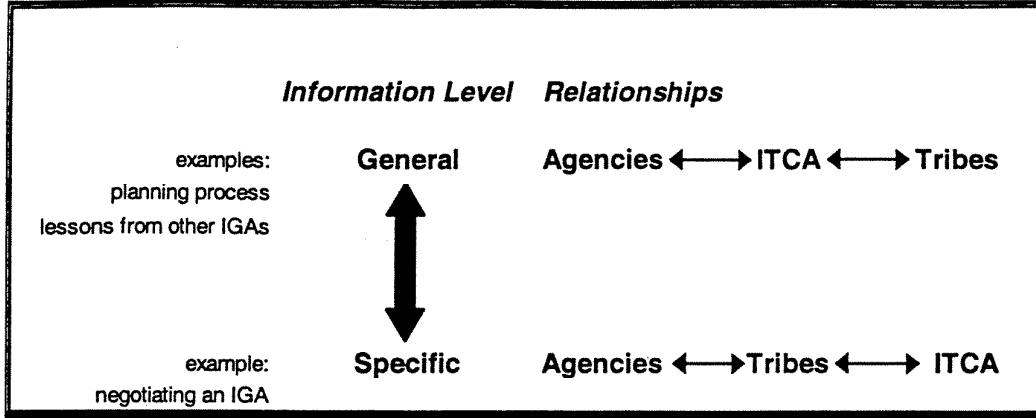
***ITCA, Inc. can focus on:***

- ◆ *General information*
- ◆ *Large number of relationships*
- ◆ *General advocacy*

Tribes ultimately will be responsible for representing their own interests in specific negotiations over terms of an IGA, and over project funding priorities. Tribal governments will need to collect and analyze their own data, negotiate their own agreements, and develop their own project plans. They may still turn to ITCA, Inc. for information about precedent or policy, but their relationships with agencies will become more direct as the information they process becomes more specific.

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Figure 4. Roles for ITCA, Inc. and Tribes



## V. WHAT TRIBES CAN DO

*In this section:*

- ◆ **Pursuing an IGA for Fuel Tax Refunds:** A project plan for tribes to assess their fact sets and work toward a negotiated agreement.
- ◆ **Increasing Involvement in State and Federal Transportation Planning:** Steps for tribes to take to become more familiar and involved with transportation planning agencies and processes.

### Pursuing an IGA for Fuel Tax Refunds

A tribe wishing to enter into an IGA will need to prepare by collecting certain information, and then be ready for negotiations with ADOT.

#### *First Steps: Assessing Your Fact Set – For Whom Would an Agreement Work?*

Because a fuel tax agreement is seen as payment in-lieu-of individual refunds, ADOT generally believes that the tribe must demonstrate that residents meet conditions similar to those under which individual refunds are available.

These conditions imply that the following facts should apply:

- Gas stations are present on the reservation, either privately owned or owned by the tribal government.
- Motor vehicle fuel sold on the reservation is purchased by enrolled tribal members living on the reservation, using the fuel for their own benefit, or
- Motor vehicle fuel sold on the reservation is purchased by representatives of the tribal government for government purposes in a government-owned vehicle.

*Agreements are feasible for tribes with:*

- ◆ *Gas stations on the reservation*
- ◆ *Most fuel purchased by members or the government*

The table below lists the number of gas stations located on ITCA-Member reservations in Arizona, according to available data:

**Table 11. Tribes Eligible for an IGA**

Community	Number of Gas Stations	Eligible for an IGA?
Ak-Chin Indian Community	2	Yes
Camp Verde Yavapai-Apache Indian Community	1	Yes
Cocopah Tribal Council	1	Yes
Colorado River Indian Community	15	Yes
Fort McDowell Indian Community	1	Yes
Fort Mohave Tribal Council	1	Yes
Gila River Indian Community	1	Yes
Havasupai Tribal Council	0	No
Hopi Tribal Council	>1	Yes
Hualapai Tribal Council	1	Yes
Kaibab-Paiute Tribe	1	Yes
Pasqua Yaqui	0	No
Quechan Tribal Council	Unknown	Unknown
Salt River Pima-Maricopa Indian Community	>0	Yes
San Carlos Apache Tribe	5	Yes
Tohono O'Odham Nation	8	Yes
Tonto Apache Tribe of Payson	1	Yes
White Mountain Apache Tribe	>1	Yes
Yavapai-Prescott Indian Community	1	Yes

Sources: Survey data; Tiller, 1996.

*Step 1: Find the Facts.* Tribal planners (or other government representatives) will need to determine whether the above conditions describe the population and physical aspects of their reservation. Important facts to look for and consider are:

- Tribes with no gas stations located on the reservation are not currently eligible for refund agreements.
- Reservations located near major urban areas may have difficulty figuring out how to demonstrate the extent to which refund conditions are met, if numerous non-member persons purchase gasoline at filling stations that are located on the reservation.

- Any tribe with gas stations that derive substantial business from nearby non-Indian communities will probably have extensive record keeping requirements to demonstrate that the refunds are being provided only for fuel that is sold to tribal members or to the tribal government.

*Step 2: Determine the Agreement's Scope.* Early on in the process, it is also important for tribes to consider what kind of agreement they want to pursue. This determines what data needs to be collected, and who internally will need to be involved in the process. For instance, it may be administratively easier to use average numbers as surrogates for actual gallons of fuel sold. Tribes will also need to determine if they can regulate private operators, or if only tribal enterprises will participate.

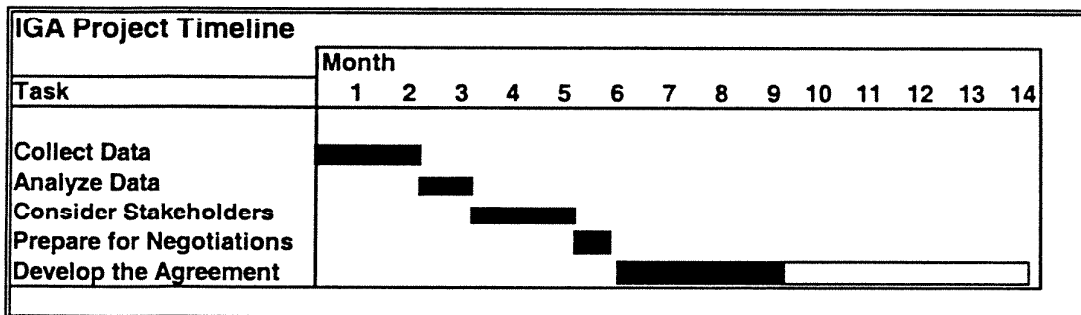
*Next Steps.* The table on the following page describes steps that tribal governments can expect to comprise a "project plan" for completing the negotiations with ADOT.

**Table 12. IGA Project Plan**

<b>Step</b>	<b>Information or Actions Needed</b>	<b>Stakeholders</b>
1. Collect Data	<ul style="list-style-type: none"> <li>- How many gas stations are on the reservation, who owns them</li> <li>- How much gas is sold per month and per year</li> <li>- Among residents and non-residents, who purchases gas and where is it used?</li> <li>- Look at agreements that have been used in Arizona and other states – what features are most promising, considering your circumstances?</li> </ul>	Tribal planners (or other transportation representative), gas station owners, attorneys.
2. Analyze Data	<ul style="list-style-type: none"> <li>- Calculate taxes: 18 cents per gallon x gallons sold; or 18 cents per gallon x avg. miles per year / avg. miles per gallon.</li> <li>- Estimate legal and administrative fees</li> <li>- Do tax revenues exceed fees?</li> </ul>	Planners, attorneys.
3. Consider Stakeholders	<ul style="list-style-type: none"> <li>- Will private operators (if there are any) agree to record keeping and regulation?</li> <li>- Who needs to support the agreement within the tribal community? Will they support it?</li> <li>- Are lawyers available?</li> <li>- Is record keeping feasible?</li> <li>- How will the refunded monies be collected and distributed: are accounts available? Who decides how the funds are spent? Do oversight mechanisms exist for tracking the funds?</li> </ul>	Planners, other economic development staff, attorneys, tribal government councils or executives.
4. Prepare for Negotiations	<ul style="list-style-type: none"> <li>- Develop a one-page list of talking points based on your fact set</li> <li>- Contact ADOT 's Office of Tax Administration to express initial interest and to schedule a meeting.</li> </ul>	Attorneys, planners, ADOT
5. Develop the Agreement	<ul style="list-style-type: none"> <li>- Meet with ADOT.</li> <li>- Gain tribal government approval</li> </ul>	Attorneys, planners, ADOT, tribal council or executive.

The project can be expected to proceed according to the following schedule:

**Figure 5. IGA Project Timeline**



## **Increasing Involvement with State and Federal Transportation Planning**

*The Arizona Statewide Transportation Planning Process:* For tribes wanting to increase their involvement in the Arizona statewide transportation process, the steps below will get them started. A long-term plan is not presented here because it is expected that the nature of tribal government involvement will change over time and is not necessarily predictable. However, ITCA, Inc. may play an important role in developing a process for tribal involvement, so that tribes will better know what is available and expected.

For the short-term, tribes may start with:

- Understand how ADOT's revenue and project planning processes work now. Some primer information on these subjects is provided in this report. ITCA, Inc. may be a good resource to help clarify the process at Transportation Working Group meetings.
- Contact the ADOT Civil Rights Office to see what recourses they recommend and to let them know of tribes' concerns with exclusion from the planning process.
- Contact the local county-level Council of Government to find out when the next transportation planning meetings are, and to get on their mailing list for transportation planning issues.
- Once tribal transportation representatives have become familiar with the processes, they may want to start attending planning meetings, bringing a copy of the tribe's five-year BIA TIP as a reference for what projects are needed.

***Working with the state:  
gathering information and  
building relationships – start  
by:***

- ◆ *Understanding the state's processes*
- ◆ *Contacting ADOT*
- ◆ *Contacting the COGs*
- ◆ *Attending state transportation planning meetings*

### **Questions to ask ADOT and the COGs:**

- When is the next transportation planning meeting?
- When is the next update of the local Transportation Improvement Plan due? When does planning start for that update? When is the first meeting of that planning process?
- Can I get on ADOT's mailing list for the statewide planning process?
- Whom do I speak with if I have grievances about the statewide planning process?
- How are other tribes participating in the planning process?
- What level of staff should attend the meeting? What should they do to prepare?

***The BIA Indian Reservations Roads Program Regulatory Negotiation Process.***

Given that the negotiations are likely to be drawn-out, some initial steps for tribal involvement are suggested below. Tribal representatives to the process have been proposed; ITCA, Inc. can provide a list of who represents the Arizona Area. The list is also available on the BIA Internet web site. For tribes who are not now involved in the negotiations, it may a more effective use of staff resources to let ITCA, Inc. track the process, and for tribal staff to submit comments as BIA requests them. For tribes that are already somewhat involved, or who would like to become involved, the following actions are a way to start:

- Understand how BIA funding works now. While the Town Hall meetings offer some basic information, participation will be more effective if attendees are informed on how current procedures work.
- Contact any of the following offices for more information. Since these are all public agencies, they are obligated to provide information on how their programs work:
  - BIA Area Roads Office
  - BIA Agency Offices
  - BIA National Transportation Programs
- Contact the Intertribal Transportation Association in Oklahoma for more information on the meeting schedule.

***Working with BIA:  
gathering information and  
building relationships – start  
by:***

- ◆ *Working with ITCA, Inc.  
to track the federal  
process.*
- ◆ *Understanding the IRR  
program and formulas*
- ◆ *Contacting agencies for  
more information*
- ◆ *Contacting the ITA*

This policy strategy is unlikely to yield immediate results and may take years to negotiate. But in the long term, because BIA funds are significant, it is important for tribes to maintain access to these programs.



## APPENDIX A

### TRANSPORTATION CONTACTS

Organization	Phone Number
<b>Arizona Councils of Government</b>	
Maricopa Assoc. of Governments	(602) 255-8107
Pima Assoc. of Governments	(520) 628-5313
Northern Arizona Council of Governments	(520) 774-1895
Western Arizona Council of Governments	(520) 753-6247
Central Arizona Assoc. of Governments	(520) 689-5004
Southeastern Arizona Govts. Organization	(520) 432-5301
Yuma Metropolitan Planning Org.	(520) 783-8911
Flagstaff Metropolitan Planning Org.	(520) 779-7685
<b>Arizona Department of Transportation</b>	
General Information	(602) 255-6941
Community Relations	(602) 255-7356
Civil Rights Office	(602) 255-7761
Citizens Transportation Oversight Committee	(602) 255-7519
State Transportation Board, Engineer	(602) 255-7391
District Engineers:	
Flagstaff	(520) 779-7547
Globe	(520) 425-7638
Holbrook	(520) 524-6801
Kingman	(520) 757-5828
Phoenix	(602) 255-8366
Prescott	(520) 445-5391
Safford	(520) 428-5470
Tucson	(520) 620-5412
Yuma	(520) 317-2107
Policy, Rules, & Tax Administration	(602) 255-8827
Planning Office	(602) 255-6872
<b>Bureau of Indian Affairs</b>	
Phoenix Area Office	(602) 379-6782
Regional Engineering Division (Albuquerque)	(505) 346-6834
Transportation (Washington, DC)	(202) 208-4180
<b>Intertribal Transportation Association</b>	
	(405) 372-0202

## APPENDIX B

### RESEARCH METHODOLOGY AND SURVEY RESULTS

The following research methods were used in preparing this report:

**Interviews:** I interviewed individuals within tribal government, the Arizona Department of Transportation, the Bureau of Indian Affairs, and other familiar with state-tribal issues or transportation planning. Interviewees were selected based on the relevance of their roles within the organization or their involvement in past activities, and on their availability. I conducted interviews both in person and over the telephone. The bibliography includes a list of interviewees.

**Review of Public Information.** Information on federal and state transportation planning and spending was gathered from government publications, online sources, and journal articles. The Intergovernmental Agreements discussed in the report are all public documents, though information of how the agreements were reached was gained by interviews. As noted in the report, a crucial piece of information – fuel taxes collected from reservations – is not available due to the method ADOT uses to collect fuel taxes. Sources are noted within the text of this report and provided in full in the bibliography.

**Survey.** ITCA, Inc. mailed a survey to their members requesting information about their road conditions, needs, and finances. Two copies were mailed: one to the transportation contact (as identified by who attends ITCA, Inc.'s Transportation Working Group), and one to the tribal chair. ITCA, Inc. sent the survey to 19 tribal governments; 10 responded. This is a 53% response rate. The sample size of 10 respondents is too small to be considered statistically significant, although the response rate is considered fairly high for surveys among this population. Respondents were located throughout the state, in rural and more urban areas. I chose not to extrapolate data statewide because variations between tribes would have made this calculation no more than a guess. This report does not identify individual respondents in order to protect the confidentiality of their responses. The survey questions and aggregated data are presented below.

## Survey Questions and Results

Number of surveys sent: 19

Number of Respondents: 10

1. Does the Tribe have an inventory of the roads within the reservation? (10 responses)  
Yes: 9  
No: 1
2. How many road miles on the reservation are maintained by the tribe? (8 responses)  
Total: 717.24  
Range: 0-400  
Average: 79.69  
Median: 1.5
3. How many road miles on the reservation are maintained by the BIA? (9 responses)  
Total: 995.2  
Range: 0-336  
Average: 110.58  
Median: 6
4. How many road miles on the reservation are maintained by the state? (9 responses)  
Total: 203.3  
Range: 0-69  
Average: 22.59  
Median: 4
5. How many road miles on the reservation are maintained by the county? (9 responses)  
Total: 128.5  
Range: 0-61.6  
Average: 14.28  
Median: 0
6. Have you ever done a reservation transportation needs assessment? (10 responses)  
Yes: 5  
No: 5

## 7. Please identify the tribe's three most pressing transportation needs: (10 responses)

- Annual maintenance
- Bridge replacement
- Bridge replacement
- Chip sealing
- Construction/improvements
- Crack sealing
- Erosion control
- Flood control, berm development, engineering study
- Frontage roads along main highway for safety purposes
- Inadequate staff at tribal and BIA level
- Install light at intersection
- Maintenance
- Minimal maintenance funds to maintain existing roads
- Need a comprehensive updated inventory of existing conditions
- New Road Construction
- New roads construction within community
- Patching
- Pave housing subdivision
- Pave subdivision
- Paving
- Preservative seals
- Rebuilding above grade level
- Road Extension
- Specific road projects [road names not provided here for confidentiality]
- Widening and paving roads within the community

## 8. Has the tribe estimated the cost to meet all of its transportation construction and maintenance needs? (10 responses)

Yes: 3

No: 7

## 9. If yes, what is that estimate? (3 responses)

Total: \$31.1m

Range: \$4m-20.9m

Average: \$10.4m

In 1998, how much money from the following funding sources was spent on roads construction and maintenance on the tribe's reservation:

## 10. Tribal funds (8 responses)

Total: \$950,000

Range: \$0-850,000

Average: \$118,750

Median: \$0

## 11. Arizona state funds (9 responses)

Total: \$285,000

Range: \$0-285,000

Average: \$31,667

Median: \$0

12. BIA funds (10 responses)
  - Total: \$2,521,300
  - Range: \$0-2,100,000
  - Average: \$252,130
  - Median: \$0
13. Other fund sources (3 responses)
  - Federal Highway Administrations, Arizona Department of Commerce, County.
14. What percent of the tribe's roads construction and maintenance finance needs is **not** being met? (8 responses)
  - Range: 60-150%
15. In the last five years, have you received funding from the Arizona Department of Transportation for road construction or maintenance? (10 responses)
  - Yes: 1
  - No: 9
16. If not, what do think the barriers are to receiving state funding? (8 responses)
  - Competition with other public entities
  - Don't know the process
  - Don't know how to pursue State
  - Don't know what's available from State
  - Getting greater priority with state funding
  - Governmental obstructions
  - Limited maintenance funds
  - No county roads on reservation
  - Only one person working on transpo
  - Only one state road on reservation, its maintained by state
  - Overall insufficient funding in rural areas
  - Procedures - funding stream
  - Projects must be on State's 5 year plan for road construction
  - Reservation roads not a priority
  - State average daily traffic counts as a minimum for construction
  - State funds are not shared with tribe
  - State identified routes
  - TEA-21 mandates road inventories & TIPs to quantify and justify need for competitive state funding, that is insufficient to the needs of other cities, towns, and provinces.
  - Tribal needs not a priority within the state, competing with cities and counties
  - Tribal reluctance to work with State
  - Tribes rather deal with federal agencies than with state
17. How many privately-owned gas stations are located on the tribe's reservation? (10 responses)
  - Total: 17
  - Range: 0-12
  - Average: 1.9
  - Median: 0
18. During 1998, what was the total volume of gasoline sold by all privately-owned gas stations on the reservation? (10 responses)
  - Total: 1,630,887 gallons/year
  - Range: 0-1,400,000 gallons/year
  - Average: 181,208 gallons/year
  - Median: 0, NA, or unknown

19. How many tribally-owned gas stations are located on the tribe's reservation? (10 responses)  
Total: 12  
Range: 0-3  
Average: 1.2  
Median: 1
20. During 1998, what was the total volume of gasoline sold by all tribally-owned gas stations on the reservation? (9 responses)  
Total: 2,488,857 gallons/year  
Range: 0-1,826,383 gallons/year  
Average: 276,540 gallons/year  
Median: 49,500
21. Does the tribe levy its own tax on gasoline sold on the reservation? (8 responses)  
Yes: 0  
No: 8
22. If yes, what is the tribe's motor fuel tax levy on gasoline sold on the reservation? (0 responses)
23. If the tribe does levy a motor fuel tax, is a portion of the collected tax revenue used to meet:  
a. roads construction  
b. roads maintenance  
c. other transportation needs, please specify:  
(0 responses)

In addition, four questions were asked about the location of fuel suppliers for gas stations located on the tribe's reservations. The answers are not provided here for confidentiality reasons.

## APPENDIX C

### GLOSSARY OF TERMS

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<b>Acronym</b>	<b>Term</b>
ADOT	Arizona Department of Transportation
BIA	Bureau of Indian Affairs
COG	Council of Government (Arizona county-level association)
FHWA	Federal Highway Administration, part of US Department of Transportation
FLH	Federal Lands Highway program, part of US Department of Transportation
HURF	Highway User Revenue Fund (ADOT fund for financing roads in Arizona)
IGA	Intergovernmental Agreement
IRR	Indian Reservation Roads (US federal government program)
ISTEA	Intermodal Surface Transportation Efficiency Act
ITCA	Inter Tribal Council of Arizona
RARF	Regional Area Road Fund (ADOT fund for financing roads in urban counties)
TEA-21	Transportation Equity Act for the 21 <sup>st</sup> Century
US DOT	United States Department of Transportation
VMT	Vehicle Miles Traveled
WMAT	White Mountain Apache Tribe

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## APPENDIX D

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