

TESTIMONY OF

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**SECRETARY OF TRANSPORTATION
STATE OF OKLAHOMA**

REGARDING

**"IMPROVING AND REFORMING OUR NATION'S SURFACE
TRANSPORTATION PROGRAMS: OKLAHOMA CITY, OKLAHOMA FIELD
HEARING"**

BEFORE THE

**COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES**

FEBRUARY 24, 2011

Mr. Chairman and Members of the Committee, my name is Gary Ridley. I am Secretary of Transportation in Oklahoma. I am here today to testify on behalf of the Oklahoma Department of Transportation.

First, we want to thank you, Mr. Chairman, for your leadership and your interest in identifying ways to increase the efficiency of investing transportation funding and to accelerate project and program delivery. We appreciate that you, Congressman Lankford and the Members of your Committee recognize the important contribution of the transportation system in improving the Nation's economic viability and sustaining our quality of life.

Today, I want to emphasize several points –

- The backlog of transportation infrastructure needs in Oklahoma is substantial and requires a continuing, consistent, long-term federal transportation investment strategy.

The conditional deficiencies of a long underfunded national transportation system cannot be resolved by the States alone.

- With consistent and flexible federal funding, State departments of transportation can operate more efficiently thereby ensuring that more transportation dollars support our core infrastructures as intended.

Unfunded federal mandates, federal regulation and federal bureaucracy stifles efficiencies, redirects transportation dollars to other fringe or completely unrelated initiatives and unnecessarily delays critically needed transportation improvements.

- The streamlined delivery of transportation improvements can result in immediate cost savings and a significant, long term reduction in the cost of travel and commerce.

The costs of implementing transportation system improvements can be significantly reduced through minimizing the administrative burden placed on project delivery, thereby allowing for more transportation generated dollars to find their way to the Nation's core infrastructures.

- Performance measures should be created that are of direct benefit to state DOTs and that clearly communicate the benefits and effectiveness of transportation investments.

The return on transportation system investments must be a primary consideration of performance measurement and the results should be honestly and accurately communicated to the Congress, our state officials and our citizens.

TESTIMONY

The conditional deficiencies of a long underfunded national transportation system cannot be resolved by the States alone.

The Oklahoma Perspective

Governor Mary Fallin along with our Legislature and the general public are working hand in hand to make the improvement of the transportation system a priority of the state. However, much work remains to be done to a state and national system in documented disrepair.

For example, in Oklahoma we must sustain a bridge replacement / rehabilitation rate of more than eighty bridges a year far into the future to keep pace with the aging and deterioration of the state's existing bridges. Even now with 650 bridge replacements or major rehabilitations encompassed by our eight-year Construction Work Plan, the Department recognizes 345 narrow or deficient bridges that are currently unfunded. Also, Oklahoma has many large bridge structures on the National Highway System that are at or nearing the end of their life cycle that represent extremely expensive improvements with no current fiscal solution.

The recognized work needed on Oklahoma's highway pavements is no exception. More than 2,500 miles of our 12,268 mile long system are in need of immediate attention and have no planned or viable options due to financial limitations. In addition, hundreds of millions of dollars of needed improvements are now past due on Oklahoma's high volume arterial interstates and freeways in order to keep local, state and national traffic flowing freely.

Long term, consistent funding is critically important to the development and delivery of transportation improvement projects. States must understand and be able to project the availability of resources in order to properly plan, design and construct projects. We constantly inspect our facilities and collect and analyze a wide variety of data in order to assess the operational and conditional status of our highways. Decisions related to the care, preventative maintenance, reconstruction and expansion of the transportation system are predicated on the critical needs of the system and our understanding of our long term resource availability.

When considering the currently projected state and federal resource availability, the magnitude of the recognized needs of Oklahoma's transportation system is significant. As such, it is reasonable to plan our preventative maintenance activities over the coming four years and our major construction activities over an eight year time period. We have found that when our data driven investment priorities are coupled with sound engineering judgment, we do not experience significant changes during these windows of time. If determined necessary, any adjustments to projects can be readily managed through our annual Asset Preservation Plan and Construction Work Plan review and balancing process. This strategy affords us with an encompassing transportation improvement program that is fiscally constrained, tangible, explainable and extremely easy to discuss with transportation professionals, elected officials and the public.

The Federal Perspective

It is important to note that the Highway Trust Fund has been on the verge of insolvency several times in recent history. It can be reasonably anticipated that the current gas and diesel tax deposits to the fund will once again be outstripped by expenditures in the near future. Congress must be prepared to address these deficiencies and identify new, non-traditional transportation revenue streams that can provide consistent and increasing funding levels for transportation infrastructure. In addition, we must eliminate unnecessary federal mandates and untimely regulatory actions that redirect transportation dollars and strangle the efficient investment in the core transportation infrastructure that keeps this Nation on the move.

It is imperative that states be afforded the opportunity to quickly implement improvements and direct federal funding in a manner that is consistent with a national transportation strategy and that is supported by our resident stakeholders in state policy and law. The new national transportation strategy and associated federal policy should provide a framework that empowers states to direct federal transportation funding to the interstate and national highway system as required to address their unique needs.

Oklahoma's own Senator James Inhofe was instrumental in crafting the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Highway Bill in a manner that has provided additional transportation funding, introduced a greater level of equity in funding distributions and that initiated many of today's most successful streamlining efforts. We must rekindle the Senator's spirit of continuous improvement and create new opportunities to advance initiatives that focus on improving our core transportation infrastructure.

A bold, new vision will be necessary to meet the increasing transportation challenges ahead and states should not be left to bear the financial burden of a national transportation system in decline alone. The resolution of our national transportation funding crisis and the crafting of new, more effective project and program delivery protocols must be jointly developed in a renewed State and Federal partnership.

Increasing Private Sector Investments and Enhancing Financing Options

The federal interstate and national highway system has been predominantly constructed and operated on a publicly financed basis with the majority of projects designed, operated and maintained by public sector transportation agencies. However, nothing in proposed federal transportation law should inhibit or restrict the way a state is allowed to fund the transportation improvement projects and transportation facilities of today. Every available option should be on the table when drafting a new transportation bill and every option should be given full, careful and complete consideration. In a time of such funding uncertainty, states should be empowered to look outside the federal government for desperately needed transportation investment dollars.

That being said, the difference between identifying new near and long term sources of transportation revenue and simply creating new ways to incur debt must also be acknowledged. Public / Private partnerships and proclaimed innovative financing options should not be held as the federal government's best or only solution to stemming the further deterioration of our national transportation system.

In 1956, the Federal-Aid Highway Act that initiated the interstate era included a general prohibition on tolling on the interstates and other federally assisted highways. Even today, this prohibition remains largely in effect with the tolling allowed only under very specific circumstances. However, public / private partnerships (P3s) and other debt financing options are encouraged and even touted as effective and widely accepted financing options. With public oversight and proper reviews and protections in place, simple tolling can be very effective and is the purest representation of a public / private partnership. Bond holders finance the initial transportation improvements and the public's use of the facilities provides for a reasonable return on their investment.

Certainly, when properly vetted and administered, a variety of financing methodologies can be utilized to successfully deliver significant transportation improvements that might not be financially viable otherwise. The utilization of such methodologies in order to fund certain, well defined transportation system needs and, in turn, generate a user specific revenue stream in order to finance the construction, operation and maintenance of the facility should not be unnecessarily restricted or inhibited by federal regulation.

Unfunded federal mandates, federal regulation and federal bureaucracy stifles efficiencies, redirects transportation dollars to other fringe or completely unrelated initiatives and unnecessarily delays critically needed transportation improvements.

For practical purposes, there are only two external influences that have significantly impacted the delivery of the federally funded transportation improvements in recent history. One is the consistency and availability of federal funding and the other influencing factor can be attributed to federal regulatory actions. Optimistically we will assume that the Congress will make every effort to at least fund transportation at the historic levels. Therefore, if we are to realize any transportation investment increases in the near term, we must do so by reducing or eliminating transportation funding diversions and increasing the efficiency of project delivery.

Federal Transportation Funding Reallocations

The Oklahoma Department of Transportation does not discount the importance of the programs that are discussed in this section of our testimony. However, when the core transportation infrastructure of this Nation has an enormous backlog of unaddressed deficiencies, we simply question the merit of mandating transportation funding for peripheral projects and programs.

Programs that mandate the commitment of dedicated transportation funding to recreational and fringe activities such as bicycle and pedestrian trails, landscaping and historic preservation should be vigorously reviewed. Much of the popularity of such programs can be attributed to the recreational or cultural nature of the facilities and the fact that little or no other significant funding sources exist for such activities. If the Congress believes that community livability projects and other similar programs are important, other funding mechanisms should be identified and the programs should be funded separately from core transportation infrastructure.

For example, each year the mandated transportation enhancement set aside under the current law diverts an estimated \$12 million of Oklahoma gasoline and diesel tax dollars to such projects. This diversion may seem insignificant in the context of the federal transportation program, but when every deficient bridge replacement and the repair of every mile of inadequate pavement is critical,

\$12 million can be a difference maker. Each state should have the latitude to decide if the eligible activities warrant the commitment of scarce resources above all other transportation needs. The future funding of this program should be left to the discretion of the states alone and the currently mandated set aside should be eliminated.

Much the same as the Enhancement Program, the Safe Routes to Schools program seeks to encourage bicycling and walking as alternate transportation modes for students to get to school. The concept is admirable at face value, but can be somewhat disheartening if you consider that fully loaded school buses are traveling over structurally deficient bridges and are subjected to deterioration and even damage from poor pavement surfaces. Again, if this program is determined to be important at the national level, the decision to implement it should then be left to the full discretion of the states.

Unfunded Mandates

The Americans with Disabilities Act represents a significant unfunded mandate for states and local governments. Everyone should recognize that we must do more to accommodate individuals that are physically challenged. However, when considering accessibility in public rights of way, it is difficult to accept that the Act was intended to be so broadly interpreted as to prohibit the surface maintenance of highways and streets unless the adjacent pedestrian facilities are brought into ADA compliance.

Rarely do small or even medium sized communities possess the resources to bring their community sidewalks into ADA compliance. The unintended consequence is often marked by a noticeable reduction in the local highway pavement surface quality beginning at the corporate city limits. Like the communities, the Department does not possess the resources to bring all of the local sidewalks adjacent to the highway into compliance. Often the costs of the mandated sidewalk improvements can be many times the cost of the badly needed simple asphalt overlay and may also require the complete reconstruction of the highway. Therefore, in most cases we are effectively prohibited from performing routine pavement maintenance activities inside the city limits. However, if the highway is in need of complete reconstruction, ADA compliant adjacent sidewalks are incorporated into the reconstruction project.

In addition, the Act represents another opportunity for other erroneous interpretations. Often, a federal interpretation to construct accessible curb ramps at intersections and other locations is invoked in the name of ADA where no connecting sidewalk exists. Such a wholesale directive can result in curb ramps that terminate in an adjacent vacant lot or worse yet, a ditch bottom, embankment or signal or light pole base. The serious nature of the ADA and everyone's desire to do the right thing and make sure we are in compliance sometimes leaves no room for exercising common sense.

ADA compliance within the public rights of way is important. However, the Act should not force a state department of transportation to assume an enforcement role on behalf of the Federal Highway Administration or the Department of Justice. Nor should it dictate a state's ability to maintain the highway system within a community or delegate all related decision making authority to a particular federal agency. Again, a dedicated, non-transportation related funding source should be identified for community based ADA compliance efforts and initiatives and highway system compliance activities should be limited to projects that clearly constitute reconstruction.

The Environment and System Users

The Nation has made great strides in the last 20 years in improving air and water quality as well as preserving resources. In the case of environmental regulatory issues, we certainly recognize the need to exercise care in protecting the environment. However, we must consider the need to deliver transportation improvements in a manner that enhances the function of the system and the safety of the traveling public as quickly and cost effectively as possible. Regulatory restrictions, bureaucratic actions and mandates that drive up costs, increase delivery times and divert transportation system dedicated resources should be carefully scrutinized and limited or eliminated. In addition, regulatory policy that invokes other unrelated regulatory policies and introduces bureaucratic redundancies should also be minimized to the extent possible.

National Environmental Policy Act (NEPA)

The Federal Highway Administration's policies for implementing the National Environmental Policy Act are important as related to the major transportation improvement projects. NEPA was adopted in 1969 primarily as a result of the construction of the thousands of miles of interstate highway system on virgin alignments. Today, with the focus on state of good repair improvements, a majority of transportation improvements occur within already existing transportation rights of way.

When such projects encompass or require the acquisition of new right of way to support the implementation of the proposed improvements, a reasonable consideration of potential social, environmental and cultural impacts is warranted. Therefore, if it is determined that private property is to be acquired for a permanent, public transportation use, it is always prudent to fully vet and carefully document the investigation, analysis and decision making process.

However, if a transportation improvement project is being developed entirely within an existing or previously reserved transportation corridor, it should be reasonable to expect that the improvements will be of a nature that does not require federal regulation or oversight. Any responsibly executed activity required to construct, reconstruct or maintain that facility as determined necessary by the state Department of Transportation should not be subject to the added expense, delay and potential double jeopardy of further federal oversight, review or regulation. Such state of good repair and operational improvement projects should be allowed to progress from conception to construction unimpeded in order to effect the necessary improvements to the facility.

Therefore, it is recommended that legislative provisions be crafted that provide a full NEPA exemption and minimize or eliminate the impact of other non-transportation related federal regulations when transportation improvements are being implemented within existing transportation rights of way. A few examples of such cross cutting federal mandates include the Clean Water Act, the National Historic Preservation Act, the Endangered Species Act, the Migratory Bird Treaty Act, and so forth. A long list of environmental reviews that are commonly mandated for work within existing right of way is included for reference as Attachment 'A'.

The benefits of such action are broad and far reaching. First, departments of transportation will be inherently encouraged to work within existing transportation facility footprints which will

minimize additional impacts to private property or the environment. Second, the preparation efforts and time saved to deliver projects that meet defined criteria will translate as a cost savings to the agency and a direct "user benefit" to commerce and the traveling public through an expedited improvement delivery. Also, the state and federal regulatory, resource and lead agencies will have the opportunity to focus more of their internal resources on progressing other larger scale proposed transportation improvements in a more timely and effective manner.

Section 4(f) of the DOT Act

The Department of Transportation Act (DOT Act) of 1966 introduced Section 4(f), which stipulated that the Federal Highway Administration (FHWA) and other DOT agencies cannot approve the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless there is no feasible and prudent alternative to the use of land and the action includes all possible planning to minimize harm to the property resulting from the use.

Section 4(f) is a redundant, duplicative and time consuming regulation in the broad context of the preparation of environmental documents under NEPA. The issues related to public lands and historical sites referenced in 4(f) are consistently addressed under NEPA as applicable to federal-aid transportation improvement projects. As such, in August 2005, Section 6009(a) of SAFETEA-LU made the first substantive and positive revision that simplified the process and approval of projects that have only de minimis impacts on lands impacted by Section 4(f).

The need and applicability of Section 4(f) should again be carefully scrutinized and evaluated in order to further understand the effectiveness of the regulation. If it can reasonably be determined that the regulation adds no value other than the reinforcement of redundancies already commonly addressed under NEPA, it should be eliminated.

Air Quality

Undoubtedly, the government, the business community and the general public have all been a force in improving air quality in the United States under the Clean Air Act. As further exemplified for the Oklahoma City area in Attachment 'B' of this document, air quality has progressively improved to the point that the attainment of former air quality targets that once seemed unachievable is now common place. The results for the Tulsa metropolitan area would be similar. Our concern is that the Environmental Protection Agency (EPA) has continually ratcheted down air quality targets and associated measuring requirements to the point that today a common dust storm at an inopportune time can result in non-attainment.

Currently Oklahoma has no areas that are classified as non-attainment. Even so, Oklahoma has invested significant Congestion, Mitigation and Air Quality (CMAQ) funds in proactive program development to stay in attainment and protect the health of our citizens. However, several areas of the state including both the Tulsa and Oklahoma City metropolitan areas teeter on the verge of non-attainment under the lower targets and more restrictive interpretations and measuring requirements. The impacts and costs of non-attainment are significant to both private industry and the transportation system. Non-attainment seriously restricts a state's ability to manage transportation improvements within the designated areas, requires a substantial investment in

planning and conformity studies and analysis before implementing most transportation system improvements or capacity expansions and embattles the private sector against the government.

Air quality targets and guidelines must be established that are determined to be reasonable by state governments and by the private sector and that do not restrict the economic growth, competitiveness and development of our Nation. Oklahoma companies are developing clean energy sources to include wind power, biodiesel fuels and compressed natural gas to assist with air quality improvements. Air quality targets should also fully anticipate the future improvements that will be realized through the enhanced utilization of clean energy sources and the stewardship being exercised by both the government and the private sectors.

Clean Water Act - Proposed Effluent Limitations Guidelines (ELG) and New Source Performance Standards to Control the Discharge of Pollutants from Construction Sites

The Department acknowledges that the EPA desires to reduce the impact of construction activities on the Nation's receiving waters and do not disagree with the concept in principle. However, we have substantial concerns with the general approach taken by EPA. In particular, we are dissatisfied with the far reaching impact their indiscriminate regulation has on linear transportation improvement projects.

Specific to the ELG, the rule itself is ill-conceived when considering linear transportation system improvement and utility construction sites in the subcategory of Heavy Construction. The Proposed ELG includes many provisions that are technologically and/or economically unachievable. It will not be possible to meet the suggested water quality numeric limits in some cases because it is not always feasible to capture, detain and treat all runoff from all transportation improvement projects.

We anticipate that the conventional passive sediment and erosion controls commonly used today will not achieve the turbidity levels mandated in the proposed rule and more intensive, invasive and extremely expensive measures will surely be necessary. Some projects would likely require the Department to acquire additional right of way and displace residences and businesses in the attempt control runoff and comply with the proposed ELG. Many required provisions are likely to increase ground disturbances and construction impacts in the vicinity of discharge points (e.g. water bodies), which would invariably increase impacts to environmental resources that are associated with water bodies.

Much the same as air quality, we should recognize that by federal law, the EPA is obligated to establish effluent limitation guidelines. Nevertheless, it appears that the EPA has drastically underestimated or ignored the number of transportation projects that would be subject to the proposed ELG. Also, the ELG fails to recognize the complexity of the treatment systems that would be required on linear transportation projects that often span many miles, the implementation costs to state departments of transportation, and the impact the actions will have on the Nation's ability to maintain its infrastructure.

The costs of implementing transportation system improvements can be significantly reduced through minimizing the administrative burden placed on project delivery, thereby allowing for more transportation generated dollars to find their way to the Nation's core infrastructures.

As we consider the full magnitude of the current inadequacies of our national transportation system, we must recognize that it will be extremely difficult for the Congress to increase transportation funding and quite challenging to even sustain the current SAFETEA-LU federal transportation funding levels. Therefore, more of the available resources must be directed to our core infrastructures without set asides or diversions. In addition, we must work together to style the project delivery process to be more efficient and free from unnecessary bureaucracy, laws, rules, directives or redundant regulations.

We know efficiencies can be realized because the federal government and DOTs have a long and storied success working together to quickly deliver complex and extensive transportation projects during emergency conditions. Just a few more recent examples include the work done on the I-35 Bridge over the Mississippi River in Minnesota, I-10 in Louisiana and Mississippi, the MacArthur Maze tanker truck fire in California, the I-40 Bridge over the Arkansas River in Oklahoma and the Port Isabella Bridge in Texas. We have often discussed the benefits of mainstreaming the lessons learned to establish such practices as the rule rather than the exception.

Time is money when you are addressing a less than adequate transportation system. The impact of diverted transportation funding and the cost of regulatory compliance are significant and can be quantified in dollars to some extent. The costs of layered federal bureaucracy and delays in transportation improvement project delivery are less tangible but have a far greater impact on the economy, commerce and the safety of the traveling public.

The return on transportation system investments must be a primary consideration of performance measurement and the results should be honestly and accurately communicated to the Congress, our state officials and our citizens.

Performance Measurement and Accountability

All proposed national performance measures should be provisioned to factor and report both the state and federal resources that are available and being invested to sustain and improve the system, element or condition. The measures should also outline the anticipated performance improvements that can be expected with an increased transportation investment. This type of Return on Investment (ROI) format should be developed for each proposed performance measure and should be the standard for reporting.

Each state should understand that the single largest condition influencing factor is the level of state resources available to leverage and enhance the federal-aid program. No state has enough federal or state resources to manage the transportation system in the manner that they desire. However, some states enjoy state funded programs that far exceed their federal-aid allocations and others have very few state budgeted transportation dollars available. Therefore, measures must include provisions to account for and clearly explain such budget disparities when performance is intended to or may be compared on a state-to-state basis.

It is extremely important that states monitor and document the performance of the highway system as related to safety. Safety performance is always a major factor when transportation investments are considered. Accident data and information is meticulously collected and readily available today and thereby should be considered as a primary source for the establishment of related performance measures.

Composite performance measures should be utilized when possible that can accurately reflect and report the overall condition of the transportation system, component or element by considering multiple condition factors. The bridge sufficiency rating and the pavement quality index are examples of such composite measures that can tell a complete and truthful story of condition and of the general improvement or decline of our system.

It is imperative that a performance measure be established to benchmark and measure project delivery as a project progresses from concept to construction contract and on to completion. The time necessary to deliver transportation improvements heavily influences the cost of the improvements. As such, project delivery cannot be separated from the relative measure of the performance of the system we are trying to improve. The project delivery measure can also reflect the effectiveness and focus of the partner and regulatory agencies that a state DOT must coordinate with.

Oklahoma welcomes the establishment and utilization of thoughtful performance measures that can benchmark our transportation system and provide useful information. The high level performance measures adopted for the transportation system should be broad, simple and, above all else, the measures should be meaningful and understandable. However, we must insure that we are attentive to the valuable input that states have to offer and that meaningful and easily understood performance measures are crafted. Performance measurement related to the transportation system must be more than another exercise in bureaucracy.

Conclusion

It is our belief that those of us who work in state government know we can do better. We know we can perform at a very high level in a less bureaucratic and heavily regulated environment. We know we can deliver transportation improvement projects more efficiently, we know we can invest transportation dollars more effectively and we know that commerce and the traveling public will be better off for it. As government transportation officials, we simply request that the Congress make every effort in new legislation to empower us to get out of our own way.

ATTACHMENT 'A'

Environmental Reviews Required for work within existing Right-of-Way:

- **Endangered Species Act (ESA)**- Check listed species, evaluate if activity has the potential to affect, if so, USFWS concurrence is required. ESA requires avoidance, minimization, and mitigation, in that order.
- **Bald and Golden Eagle Protection Act (BGEPA)** – Survey for nests, restricts activity within a radius of an active nest (generally, 660 feet while nests are active).
- **Migratory Bird Treaty Act (MBTA)** – Prohibits destroying active nests with eggs or fledglings. Check for nests, avoid nesting season if they are there, or restrict access to the bridge. (For ODOT this is typically Cliff Swallows, though the list of protected birds is very long. To fully comply, ODOT would be restricted from cutting down any tree with an active nest in it, anywhere.)
- **National Historic Preservation Act (NHPA)** – Check or evaluate if bridge or road segments are eligible for the National Register. (**Interstates are Exempt**). If activity will have an adverse effect, consultation with interest groups, and negotiated mitigation is required, subject to the Advisory Council for Historic Preservation (ACHP in Washington DC) and the State Historic Preservation Office (SHPO).
- **4f**- Adverse effects under NHPA trigger 4f (FHWA responsibility). 4f dictates that there must be no feasible and prudent alternative to the adverse effect. Requires avoidance alternative if it exists. Causes in depth alternative analysis.
- **404 Permit** – Required to place concrete or fill below the ordinary high water mark, or in a jurisdictional wetland. In order to get this permit from the Corps of Engineers, ESA and NHPA must be satisfied. General conditions include not impounding water, (maintaining water flow during construction), implementing erosion control measures. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows and must be removed in their entirety returned to pre-construction elevations and revegetated, as appropriate. If an Individual Permit is required (greater than a half acre of fill below the OHWM), Public Review is undertaken by the Corps, and DEQ can require additional measures through the 401 Certification Process.
- **Construction Stormwater Permit** - Required from DEQ if One Acre or more of ground will be disturbed. It also required ESA and NHPA compliance.
- **FAA Permit** - If near a general aviation airport with new lighting or a bridge, this permit may be required. Ensures new structures won't be a hazard to air traffic.
- **Coast Guard Section 9 Permit** – Required for Bridge work over Navigable Waters for interstate commerce. Also requires 401 Cert, ESA, and Coast Guard NEPA.
- **Corps of Engineers (COE) Section 10 Permit** – Required for work that affect the course, condition, or capacity of navigable waters of the United States. This term includes those waters defined as navigable, and “historically navigable” or that with modification may be available for future use to transport interstate commerce as determined by the COE. (Parts of Arkansas, Canadian, North Canadian, Grand, Illinois, Poteau, Red, Verdigris and Washita Rivers, and Bird and San Bois Creeks.
- **Scenic Rivers** – Work over one of the States Scenic Rivers requires coordination with the Commission.
- **FEMA Map Revisions** – Work affecting hydraulics of stream may require Conditional Letter of Map Revision (CLOMAR)/LOMAR.

ATTACHMENT 'B' – (Provided by the Association of Central Oklahoma Governments)

Air Quality General Information:

- EPA started regulating ozone in 1971
- Central Oklahoman is currently in attainment for all federally regulated pollutants (i.e. ozone, particulate matter, carbon monoxide, nitrogen oxides, sulfur dioxide, lead)
- Ozone is monitored at 6 sites in Central Oklahoma
- Motor vehicle exhaust and industrial emissions, gasoline vapors, and chemical solvents as well as natural sources emit NOx and VOC that help form ozone. Ground-level ozone is the primary constituent of smog. Sunlight and hot weather cause ground-level ozone to form in harmful concentrations in the air. As a result, it is known as a summertime air pollutant. Many urban areas tend to have high levels of "bad" ozone, but even rural areas are also subject to increased ozone levels because wind carries ozone and pollutants that form it hundreds of miles away from their original sources.
- The Ozone standard is measured by taking a 3-year average of the fourth highest 8-hour reading at each monitoring site. Only one monitoring site has to be out of compliance for the entire region to be declared non-attainment.

Background:

1997 - EPA revised the air quality standards for ozone replacing the 1979 standard with an 8-hour standard set at 0.08 ppm (technically 0.085 ppm since rounding was permissible).

2008 – EPA strengthened the 8-hour ozone standard to 0.75 ppm

2010 - EPA proposed to strengthen the national ambient air quality standards (NAAQS) for ground-level ozone to a level within the range of 0.060-0.070 parts per million (ppm). Announcement of the new standard has been delayed three times.....**expected to be announced in July 2011**

Issue:

- Despite the fact that ozone levels have steadily decreased in Central Oklahoma since 1997 (See Figure 1), adherence to the new federal standard (between 0.060 – 0.070) will be very difficult, if not impossible in the short term.
- The end result would be that our region would be saddled with a “dirty air” designation, along with hundreds of other metropolitan areas. The policy paradox is that we have done everything to keep our air clean, but we still may not be able to maintain our clean air status. Being declared a “dirty air region” would result in an arduous, long and costly process in which we would have to develop an emissions reduction strategy to show that we have the capacity to return our air to “clean air status.”

Recommendations:

- **Strengthen National Measures.** It is our belief that any tightening of the standard must be accompanied by simultaneous strengthening of national measures (such as regulatory requirements for power plants, mileage/emissions requirements on motor vehicles, and uniform, cleaner fuels) that affect ozone emissions nationwide. It is simply not in the toolkit

available at the local level to efficiently effect a change significant enough to meet a 0.060-0.070 ppm standard. If Congressional action is necessary to affect the ground rules on a national level, we support revisions of the Clean Air Act to make such changes. The need for proposed, more stringent standards, and the fact that basically the entire country would be found in non-compliance, underscores the fact that this is a national problem, and the solutions must emanate from the federal level rather than on the backs of cities across the country. We simply do not have the strategies or controls to fulfill the ever increasing requirements. The resources saved by looking at a national approach versus the tremendous effort required keeping track of hundreds of communities and their local efforts would be enormous. We believe those financial and human resources could be put to far more efficient and better use by EPA in a holistic, nationwide plan.

- **Lengthen implementation timeline.** In the event that a national approach is not feasible for this rule, ACOG recommends that the timeline for implementation be increased in order to lessen the financial impact of trying to implement a lower standard so close to the most recently announced 0.075 ppm and to give previously established measures time to take effect. As stated by the National Association of Regional Councils (NARC), “states and localities have worked to identify strategies that are both politically and financially feasible to reach attainment through the NAAQS Ozone standard set in 2008. Tightening the standard further will require a duplication of those efforts, with a significant cost to states and regions both financially and politically.” The planned requirements for improvements in vehicle fuel efficiency and cleaner power plants would not have had time to take effect before local areas would be judged as non-compliant.
- **Provide new tools and strategies.** Despite years of sanctions and federally established milestones, many parts of the country have been unable to meet the current ozone standard. Instituting an ozone standard that is more stringent without additional tools such as the 8-Hour Ozone Flex Program, resources and authority would put even more pressure on cities and states. Central Oklahoma has diligently and successfully worked to remain in compliance with the current standard, but even with numerous proactive efforts, teeters on the edge of non-compliance and is dependent on cooperative weather conditions and industrial regulation at the federal level.

FIGURE 1

