

TESTIMONY OF

THE HONORABLE GARY RIDLEY

**SECRETARY OF TRANSPORTATION
STATE OF OKLAHOMA**

REGARDING

"ISSUES FOR SURFACE TRANSPORTATION AUTHORIZATION"

BEFORE THE

**UNITED STATES SENATE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS**

APRIL 14, 2011

Madam Chair, Senator Inhofe 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, Madam Chair, 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, Senator Inhofe 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 three points –

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

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 costs of implementing transportation system improvements can be significantly reduced through the thoughtful consideration of measures that focus the project delivery process, thereby allowing for more transportation generated dollars to find their way to the Nation's core infrastructures.

TESTIMONY

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 disrepair.

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 the long term resource availability.

Doing More with Less – Empowering States to Efficiently Deliver the National Transportation Program

For practical purposes, there are only two external influences that have significantly impacted the delivery of 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 bureaucracy and regulatory actions. Optimistically, we will assume that the Congress will make every effort to at least fund transportation at the historic levels. Therefore, if any transportation

investment increases are to be realized in the near term, the increase must be achieved through reducing or eliminating transportation funding diversions and increasing the efficiency of project delivery.

It is imperative that the reauthorization minimizes unnecessary federal mandates and untimely regulatory actions that serve to redirect transportation dollars and strangle the efficient investment in the nation's core infrastructures. States must 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 the associated federal agencies, laws, regulations and policies should provide a simple framework that empowers states to efficiently select and deliver transportation solutions to address their unique needs.**

In addition, the opportunities for federal agencies to interject narrowly focused interpretations of the federal law should be restricted to the extent possible. Agencies may supersede the congressional intent of the law by promulgating regulations or rules or by issuing guidelines or directives that serve only their purposes or perceived needs. Many times these agency based actions and interpretations represent pure bureaucracy, blur the critical line between regulatory oversight and agency idealism and are the most time consuming and difficult for the states to manage.

A focal point of the reauthorization discussion has been the consolidation of the maze of SAFETEA-LU Highway Trust Fund (HTF) authorizations. The consolidation of the authorizations is a good and noble concept and represents an opportunity to significantly reduce the administrative burden of the federal program. However, the consolidation of the HTF authorizations only represents half of the action needed. The effort to craft a proposed bill should also consider the actions that will be necessary to minimize or eliminate the SAFETEA-LU bureaucracy associated with each consolidated authorization. **The current section of law that facilitates any HTF authorization which is targeted for consolidation must include a further review to insure that the action does more than just re-categorize the mandate.**

Using the Congestion Mitigation and Air Quality (CMAQ) authorization as an example, the current authorization cannot be simply rolled under a core program as a set-aside and deemed consolidated. The CMAQ authorization should be eliminated completely with the funding directed to the redefined core programs. The states then will retain the maximum flexibility to plan for and expend funds from each core program for CMAQ styled activities, projects or conforming improvements in non-attainment areas or other such activities in attainment areas.

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

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. All

available options should be on the table when drafting a new transportation bill and every option should be given full, careful and complete consideration.

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 GARVEE, TIFIA, P3s, Build American Bonds, infrastructure banks and other such methodologies have proven effective in financing certain, well defined transportation system needs. In addition, simple tolling can also 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.

The federal law should facilitate the commitment of future federal funds to service debt or allow for the generation a user specific revenue stream in order to innovatively finance the construction and secure the future operation and maintenance of the facility.

However, caution should be exercised to insure that Public / Private partnerships and proclaimed innovative financing options are not held as the federal government's best or only solution to stemming the further deterioration of our national transportation system. The nation requires new and effective transportation revenue streams, but does not need new ideas about how to go into debt.

Also, the proposition that an additional federal bureaucracy is necessary to support and provide states with insight into innovative financing options is ill conceived. The states only require clear federal guidance in the law. The expertise necessary to facilitate innovative transportation financing methodologies currently lies with the financial institutions, the investors and the states. If Oklahoma determines that innovative financing advice and counsel is necessary, we will consult with other states that have demonstrated success along with the private financial sector. It has been our experience that they will gladly share their information and knowledge with us.

Federal Transportation Funding Reallocations

The core transportation infrastructure of this nation has an enormous backlog of unaddressed deficiencies that are commonly and consistently recognized. With each new infrastructure study, exposé or report, the state DOTs are saddled with trying to defend what we already know. This country's CORE infrastructure is in a deplorable condition and we have no fiscal solution for making wholesale improvements at the current funding levels. **Therefore, all sections of law that mandate or authorize transportation funding for peripheral projects and programs should be carefully scrutinized.**

Programs that mandate the commitment of dedicated transportation funding to recreational and fringe activities such as bicycle and pedestrian trails, complete streets, landscaping and historic preservation should be vigorously reviewed. If community livability projects and other similar programs are determined to be critically important, other funding mechanisms should be identified and the programs should be funded separately from core transportation infrastructure. If such activities are to remain eligible to receive transportation funding, 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 such programs should be left to the discretion of the states alone and any currently mandated set asides should be eliminated.**

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 difference between transportation maintenance activities and reconstruction should be clearly defined in the law and compliance activities within the public right of way should be limited to projects that clearly meet the definition of reconstruction.

Manual of Uniform Traffic Control Devices (MUTCD)

A recent issue with the Federal Highway Administration's latest release of the MUTCD certainly exemplifies a case where maintaining consistent federal standards are critically necessary, but the responsible federal agency is running amok. Of particular concern to the states, the released 2009

MUTCD deletes the following text from the Section IA.09: "The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus, while this Manual provides Standards, Guidance, and Options for design and application of traffic control devices, this Manual should not be considered a substitute for engineering judgment. Engineering judgment should be exercised in the selection and application of traffic control devices ... "

The following statement, "Standard statements shall not be modified or compromised based on engineering judgment or engineering study" was added in the Section I A.I3 to the definition of Standards. The purpose of this statement is seemingly to eliminate the opportunity to exercise sound engineering judgment when addressing the variable conditions previously recognized in the deleted text of Section IA.09.

The general belief that the FHWA's standard statements in the MUTCD have the ability to address all real world decisions as related to traffic control devices without modification is not realistic. The FHWA has ignored the concerns and desires of the states and appears to be out of touch with the requirements of the location, construction and maintenance of the system for which the states are responsible. The idea that their standards can satisfy the traffic control conditions that are encountered on the entire transportation system without exercising engineering judgment to make beneficial adjustments is unacceptable. Not only is the idea unacceptable, a state's adoption of the 2009 MUTCD will potentially invite litigation.

A copy of a letter to the Federal Highway Administration further articulating Oklahoma's concern is included as Attachment 'A' for reference purposes.

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, many 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.

As a regularly encountered example, the time to complete the federal Access Justification Request (AJR) review of proposed operational improvements to improve the function of an existing interstate interchange is extreme. The federal review and approval often takes longer than the design and construction of the improvements and typically adds no value. 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 'B'.

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).

It can be reasonably determined that the regulation adds no value other than the reinforcement of redundancies already commonly addressed under NEPA. Therefore, the Section 4(f) requirements 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 'C' 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. **Of 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. These adverse operating conditions imposed on non-attainment areas must be addressed in the reauthorization.

In addition, 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 (CWA) - Proposed Effluent Limitations Guidelines (ELG) and New Source Performance Standards to Control the Discharge of Pollutants from Construction Sites

It is widely acknowledged that the EPA desires to reduce the impact of construction activities on the Nation's receiving waters and little disagreement exists with the concept in principle. However, there are substantial concerns with the general approach taken by EPA. In particular, there is a general dissatisfaction 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.

It can be anticipated 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 DOTs 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.

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.

These and other rules and regulations are already in place or being advanced that require states to manage, monitor and potentially treat rain water that falls in or runs into transportation right of way in the name of improving the quality of the receiving waters. However, the quality of the receiving waters is impacted to a far greater extent by the run-off from other non-transportation related lands that sometimes even discharge into highway right of way.

An additional CWA issue is the Municipal Separate Storm Sewer Systems (MS4) permits. This CWA required permit makes the state Departments of Transportation (DOTs) responsible for everything that drains onto and then from the right-of-way and does not recognize that DOTs have no regulatory or enforcement authority over the owners of adjacent property or vehicles that might leave pollutants behind. Also, the CWA and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) consider the DOTs as "conveyors of pollution" and therefore responsible for any pollutants carried by stormwater runoff from transportation facilities.

The CWA would have DOTs bear the cost of treating contaminated stormwater before it leaves the right-of-way and CERCLA would have the DOTs finance any clean-up of any hazardous waste that might run off from storm drains or other drainage conduits. Regardless of the point of origination of the contaminated run off. The CWA and CERCLA court opinions basically hold that because the technology to monitor the run off supposedly exists, it should be implemented without consideration for fiscal or physical feasibility. With multiple drainage outlets per mile, it is completely infeasible to treat all runoff from a highway. The CWA makes no allowance for such factors or for the public purpose the highway is serving.

In summary and as a desirable end result, if these regulations are to continue state DOTs should garner specific consideration for the transportation system and transportation right of way. In the context of the on-going ELG rulemaking, these considerations should limit DOT exposure under the ELG to the "Best Management Practices" erosion and run off control as currently required. It is also recommended that a DOT specific review and a modification of MS4 permitting process and requirements recognizing the challenges presented by linear transportation facilities be performed along with a DOT specific interpretation of the applicability of the CERCLA requirements for run-off originating from off the highway right of way.

The footprint of the linear transportation system represents a microscopic portion of the total land area that can affect water quality. Yet the cost of Clean Water Act regulatory compliance is disproportionate and the true benefit to water quality is questionable.

Performance Measurement and Accountability

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. However, national performance measures presented in the context of a reduced or static federal transportation funding stream may prove to represent a bit of a challenge for the states. Measuring the performance of a system in recognized decline during a time of stagnant investment is a bit of a dichotomy. Will the federal government be measuring which state is the best at slowing the deterioration of the transportation system? If it is determined that the time to implement performance measures has come, there are several considerations that should be carefully vetted.

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

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.

The quest to reduce the administrative burden of delivering the federal transportation program should not be restricted by the perpetuation of long standing administrative models nor should it be exclusively based on the status quo. **Some federal agencies have had success with the wholesale delegation of complete federal programs and functions to the states in order to eliminate the duplication of effort. Others have successfully privatized selected functions and greatly enhanced the effectiveness of the programs and the responsiveness of their agents. It is appropriate to thoughtfully consider such options in the context of reauthorization either as limited pilot programs or as full legislative mandates.** Delegation or privatization could reasonably be facilitated at the national USDOT level, at the state assigned federal divisional office level such as the FHWA or even at the functional level.

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.

ATTACHMENT 'A'

**Oklahoma DOT Letter to FHWA Regarding the
Manual of Uniform Traffic Control Devices**

GARY M. RIDLEY
Secretary of Transportation



STATE OF OKLAHOMA

BRAD HENRY
Governor

TRAFFIC
FILE

July 21, 2010

Victor M. Mendez, Administrator
U.S. Department of Transportation
Federal Highway Administration
1200 New Jersey Avenue, S.E.
Washington, DC 20590

Dear Administrator Mendez:

Subject: 2009 Manual on Uniform Traffic Control Devices

This letter is to express the serious concerns of the Oklahoma Department of Transportation regarding a significant change within the 2009 Manual of Uniform Traffic Control Devices (MUTCD). This change mandates the implementation of all standards within the MUTCD by removing the consideration and application of any engineering studies or engineering judgment. This change is very inappropriate and will require alterations to existing conditions that will waste public funds and could adversely affect traffic operations and safety.

The need for uniformity of traffic control devices has been recognized since the mid-1920's. Advances in the design of roads and vehicles, along with the tremendous increase in the size of the system and vehicle miles traveled, have driven the evolution of the MUTCD along with the disciplines of transportation and traffic engineering. For well over 50 years, the MUTCD has allowed and encouraged, if not required, the use of engineering studies and engineering judgment in the application of traffic control devices. Generations of traffic engineers have long known that conditions on the ground look and drive differently than on a page in a manual. Operational problems have been addressed, safety improved and situations stabilized through the use of engineering studies and the application of engineering judgment.

Now (2009) for the U.S. Department of Transportation and the Federal Highway Administration to decide (clarify) that engineering studies and engineering judgment are not to be considered is absolutely illogical. It is respectfully requested this change be alleviated.

Sincerely,


Gary M. Ridley
Secretary of Transportation

ATTACHMENT 'B'

Environmental Reviews Required for Work Within Existing Right of Way

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 'C'

**Cumulative Regional Average Ozone Readings for the
Oklahoma City Area**

FIGURE 1

