



October 8, 2021

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American Indian Environmental Office
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

SENT VIA EMAIL (chase.joann@epa.gov)

RE: Principles for EPA Consideration in Reviewing Indian General Assistance Program Grant Allocation

The Region 6, Region 9, and Region 10 Tribal Operations Committees (“RTOCs”),¹ which collectively work to serve 485 federally recognized Tribes, provide these principles for EPA to consider and implement if the development of a new national Indian General Assistance Program (“GAP”) grant allocation is necessary.

These principles were developed considering EPA’s trust obligations to Tribes to ensure that its actions are consistent with and the protection of tribal rights, lands, resources, and health. The GAP statute was established to provide funds to tribal governments and eligible consortia “to build capacity to administer environmental regulatory programs” and for “the development and implementation of solid and hazardous waste programs.” 42 U.S.C. § 4368b(f).

The RTOCs have reviewed the information provided by EPA and do not agree that EPA should move forward at this time without an analysis of what the impacts of a new Allocation Plan might be. However, if EPA does move forward with a change in the GAP Allocation Plan, the RTOCs believe that EPA should adhere to the following principles:

- The timeframe for adoption must provide for adequate time for review, comment, and consultation and take into consideration undue burdens to tribes. In addition to the multitude of current federal tribal consultations, at the present time, many Tribes are struggling with other emergencies, including increases in COVID rates and wildfires.

¹ This statement of principles is solely submitted on behalf of these organizations and not submitted on behalf of any individual Tribe and is not intended to replace government-to-government consultation between EPA and Tribal governments on this matter.

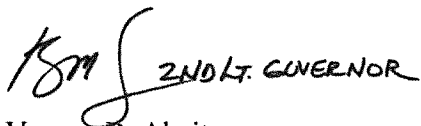
- The existing timeline for consultation, adoption, and implementation should be pushed back accordingly at least 12 months to allow for robust and meaningful consultation.
- Consultation on the allocation must occur on a government-to-government basis, as requested by Tribes. Sending letters, notices, copies of documents, and webinars do not substitute for meaningful consultation. Webinars should be simply noted as information sharing.
 - Consultation means the process of seeking, discussing, and considering the views of others, and where feasible, seeking agreement with them. Consultation must be two-way communication initiated at the earliest stages and held throughout the entire process until completion. Consultation is built upon the exchange of ideas, not simply providing information.
 - Only one-on-one government-to-government meetings can be considered consultation. The process must allow for consultation with any Tribe that requests it.
 - The President’s January 26, 2021 Memo on Tribal Consultation supports a robust and meaningful consultation process, stating, “It is a priority of my Administration to make respect for Tribal sovereignty and self-governance, commitment to fulfilling Federal trust and treaty responsibilities to Tribal Nations, and regular, meaningful, and robust consultation with Tribal Nations cornerstones of Federal Indian policy.”
- The existing GAP allocation presents a fair and reasonable approach for GAP allocation to Tribes. There is no compelling need that has been presented by EPA to support any change.
 - Increased funding provided by Congress shall increase awards to existing GAP recipients. As EPA has noted, GAP awards have not had any significant increase in years.
- Any new GAP allocation formula must do no harm to Tribes receiving current GAP awards. In other words, EPA’s effort must not reduce any existing GAP awards.
- GAP allocation must not decrease existing levels of flexibility in the use of GAP funding and should increase the level of flexibility. This is consistent with EPA’s 1984 Indian Policy, which states, “In keeping with the principle of Indian self-government, the Agency will view Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace.”
- The GAP allocation formula should provide secured funding on an annual basis without the need for a competitive grant process that makes environmental planning uncertain and

staffing decisions difficult. These processes are often based on subjective criteria and that are not made in a clean/transparent process. The amount cannot change each year.

- Any allocation must not pit Tribes against each other or use arbitrary allocation factors – larger Tribes against smaller Tribes, Alaska Tribes against lower 48 Tribes. EPA must recognize that each Tribe faces unique challenges – be it cleanup of toxic sites, water quality, climate change, solid waste removal, or air quality challenges. Size, population, geographic location, or legal-jurisdictional challenges do not make these challenges and tasks any less important for a Tribe to address.
- After receiving initial feedback, EPA should commit to a process to review and develop any changes to the GAP allocation in meaningful consultation with Tribes. The way GAP funding is distributed deserves a more rigorous process that includes a high level of tribal involvement in its development, not just an opportunity to comment at the beginning and end.
 - EPA discussions should occur on a national level involving representatives of all RTOCs and the National Tribal Caucus and not segmented into individual EPA Regions.
- EPA must provide, at a minimum, an analysis of impacts to Tribes, including economic, environmental, and personnel impacts.

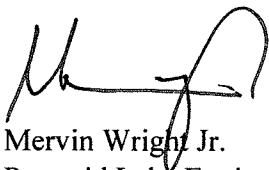
We look forward to working with EPA to develop GAP Allocation Plan that incorporates these principles.

Sincerely,



Vernon B. Abeita
Governor, Pueblo of Isleta
Region 6 RTOC Tribal Co-Chair

FOR



Mervin Wright Jr.
Pyramid Lake Environmental Manager
Region 9 Tribal RTOC Co-Chair

Raymond Paddock III

Raymond E. Paddock III
Central Council of the Tlingit and Haida Indian Tribes of Alaska
Region 10 Tribal RTOC Co-Chair

cc: Region 6, 9, 10 Administrators
Jane Nishida, Assistant Administrator, EPA American Indian Environmental Office of International and Tribal Affairs
Lisa Berrios, Senior Advisor, Tribal Capacity Development, EPA American Indian Environmental Office of International and Tribal Affairs