



**EPA Region 10 Tribal Operations Committee (RTOC)
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Lisa Berrios, Senior Advisor
U.S. Environmental Protection Agency
American Indian Environmental Office
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

SENT VIA EMAIL (berrios.lisa@epa.gov)

RE Comments on Revised GAP Allocation and Guidance

Dear Ms. Berrios:

Please find attached comments sent on behalf of the Tribal Caucus of the Region 10 Tribal Operations Committee (“RTOC”) on the Proposed Changes to the National Allocation of Indian Environmental General Assistance Program Funding (“GAP Allocation”) and the 2022 Revised GAP Guidance document. These comments are not sent on behalf of EPA Region 10 or any employees of EPA, but solely on behalf of the tribal government representatives of the RTOC.

The RTOC is a partnership between EPA Region 10 and elected tribal representatives to further Tribal environmental objectives at the regional level, serve as a liaison between the EPA and Tribes regarding information exchange, and provide assistance to the National Tribal Operations Committee. In addition, the RTOC conducts an annual Tribal Environmental Leaders Summit and provides education and assistance to the 271 federally recognized Tribes in Alaska, Idaho, Oregon, and Washington (47% of the Tribes in the Nation).

In 1992, Congress passed the Indian Environmental General Assistance Program Act, 42 U.S.C. § 4368b. This Act authorized EPA to provide General Assistance Program (“GAP”) grants to both federally recognized Tribes and Tribal consortia for planning, developing and establishing environmental protection programs and for developing and implementing solid and hazardous waste programs.

The goal of GAP is to assist both Tribes and intertribal consortia in developing the capacity to manage their own environmental protection programs and to develop and implement solid and hazardous waste programs in accordance with individual tribal needs and applicable federal laws and regulations.

Since its inception, GAP has proven to be a critical source of base funding used by the Tribes in Region 10 to protect their tribal citizens, their treaty rights, and the lands and waters to which they depend. This occurs directly by funding to Tribes and through funding through consortia, such as the RTOC.

The RTOC has substantive concerns regarding the changes as proposed by the American Indian Environmental Office (“AIEO”), including the revised GAP Guidance and GAP Allocation that will immediately affect RTOC operations, other consortia, and Tribes in the Region. These comments are set forth below:

GAP Allocation:

The RTOC is extremely concerned that the draft GAP Allocation will impact the amount of funding that the Tribe receives, as well as funding allocated to intertribal consortia. The proposed GAP Allocation formula will have significant negative impacts to the established capacity of infrastructure across the Region. The GAP Allocation would significantly impact Region 10 and its Tribes by reducing the GAP distribution by 5% (amounting to over \$1.5 million). Tribes in Region 10 need more funds, not less. These changes are achieved by removing Tribes who currently do not receive GAP funding from the allocation formula.

Many of the Tribes not receiving GAP funds are small Alaska Native Villages in Region 10 that do not have the staff or resources to apply for and manage a GAP grant. Many of these Villages depend upon intertribal consortia to address their environmental needs. In addition, the Tribes who do run a GAP program are often heavily reliant on consortia to help them. In Fiscal Year 2020, EPA funded 24 intertribal consortia in Alaska, Idaho, Washington, and Oregon that provide significant benefits to Tribes across the Region. GAP was passed by Congress with a specific intent to fund consortia¹ – removing funding is inconsistent with this clear congressional purpose.

Our understanding is that EPA will leave decisions of how to allocate the reduced funds to the Region to determine how to allocate the funds. We support this approach, but this will leave the Region to: (1) reduce GAP funding for Tribes or (2) reduce or eliminate the funding of intertribal consortia in the Region. We understand that consortia will still be eligible for funding, but the issue here is whether and how much funding will continue to be available for the consortia and how the environmental services provided by those consortia will be replaced if the Region is forced to either cut or eliminate consortia funding. Moreover, it has been suggested by AIEO that a Tribe could elect to forgo its own GAP funding and designate a consortium to receive their

¹ “The purposes of this section are to- (1) provide general assistance grants to Indian tribal governments and intertribal consortia...” 42 U.S.C. §468b(b); *see also* 40 C.F.C. § 35.545 (“Tribes and Intertribal Consortia may use General Assistance Program funds for planning, developing, and establishing environmental protection programs and to develop and implement solid and hazardous waste programs for Tribes.”)

allocated funding – a significant change from the current practice. While this approach may work in other regions, we have been told by numerous Tribes that it will not work in Region 10 for Tribes who rely on their own GAP funding AND rely heavily on the GAP funded consortia who provide trainings, guidance, and technical assistance from a unique cultural standpoint that their Project Coordinators simply cannot.

While AIEO has proposed to utilize the 1% set aside to assist with the impacts of the change in allocation, that amount is not nearly enough to cover the reductions that will occur in some of the Regions as a result and it is unclear how long EPA would propose to allow those funds to address part of the shortfall.

Unlike the proposed GAP Guidance, which was developed in close coordination with Tribal representatives, the draft GAP Allocation was developed solely by the EPA with a minimum amount of input from Tribes and the RTOCs/NTOC at the onset of the process. Tribes in Region 10² has expressed significant concern that this will have adverse impacts. For example, the Affiliated Tribes of Northwest Indians (“ATNI”), which is composed of Tribes in the States of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska passed a resolution (attached) calling on EPA “to preserve existing GAP funding levels for Tribes and intertribal consortium in EPA Region 10 and to allow funding of existing intertribal consortium.”

The rapid and unilateral development of the GAP allocation is not consistent with President Biden’s leadership and direction in working with Tribes and Alaskan Native Villages. In an administration that prides itself on support of Native people and Tribes, it is critical that all policies be developed in a way that demonstrates integrity and transparency. There is no demonstrated reason that the GAP Allocation must occur within such a short time frame without vigorous tribal involvement.

GAP needs to be a growing funding source that keeps up with the cost of inflation. AIEO needs to focus on developing implementation funding and designing a process of transitioning from capacity building to implementation, consulting with experienced Tribes who have been building capacity for up to 25 years. Currently, a new distribution plan is not necessary.

GAP Guidance:

The 2022 Revised GAP Guidance in comparison to the 2013 GAP Guidance lacks the kind of information that assists and guides new GAP employees in managing their grants. The 2013 version read more like a handbook, which is what the new guidance should replicate. The new Guidance should be written in plain English that contains the level of detail, examples, and other information that will make it easier to use and implement with little room for any ambiguities, particularly for Tribal administrators and newer environmental staff.

In addition, the requirement for consortia to begin submitting ETEPs is complicated. Regarding the proposed ETEP requirement for consortia, the EPA-Tribal Environmental Plan Fact Sheet states that ETEPs are unique documents that reflect the Tribe’s and EPA’s government-to-

² It must be noted that there are 271 federally recognized Tribes in Alaska, Idaho, Oregon, and Washington (47% of the Tribes in the Nation).

government relationship. Consortia do not reflect this unique characteristic. We believe that a consortia's work plans are adequate in accomplishing the goals of an ETEP. Consortium work plans change to reflect the immediate needs of Tribes and how best to serve its members. An ETEP is simply not applicable to the work of a consortium.

Conclusion:

The RTOC requests that EPA delay the finalization of the new GAP Allocation to take effect in FY24 until further input from the Tribe and RTOC/NTOC is considered. AIEO should take every effort to include Tribes and RTOCs in this process, co-creating any changes to the allocation formula, as true partners.

If a delay is denied, the RTOC requests that AIEO clarify how it will consider the results of Tribal Consultation and comment. The RTOC also seeks information on the following questions that have been posed to the RTOC by its members Tribes: (1) how a change in number of applying Tribes and consortia would affect the allocation distribution year to year; (2) will the allocations to Tribes and consortia be reliable and consistent year to year; (3) what kind of measures do Tribes and consortia need to plan for if their funding level changes year to year. Please include this information in any decision document.

The RTOC further recommends that EPA revise the current GAP Allocation proposal to ensure that Tribes and existing consortia do not see a reduction in funding. This would entail including existing consortia in the national allocations to each region and including a set aside or other method of funding to each region to fully fund existing consortia, if the approved applications are above the allocated amount.

The RTOC also requests that EPA provide a handbook guide to accompany the 2022 Revised GAP Guidance document and that EPA work closely with Tribes and EPA GAP Program Coordinators at the onset of creating this handbook. Involving Tribes and Coordinators before a first draft is created should avoid issues such as is being experienced now, with the Allocation issue, where Tribes are put on the defense. We also believe that EPA should not require consortia to submit ETEPs.

The RTOC appreciates your consideration of these comments.

Sincerely,



Raymond Paddock

Region 10 RTOC, Tribal Caucus Co-chair