



Office of Inspector General
Central Audit Division

Memorandum Report

GRANT MANAGEMENT

**Increased Focus on Grant Management
and Internal Relationships Would Improve
Region 8's Tribal Assistance Program**

Report No. 2000-P-000615-00021

September 29, 2000

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September 29, 2000

MEMORANDUM

SUBJECT: Increased Focus on Grant Management and Internal Relationships
Would Improve Region 8's Tribal Assistance Program
Report No. 2000-P-000615-00021

FROM: Larry Dare 
Acting Audit Manager

TO: William P. Yellowtail,
Regional Administrator
Region 8

Information Resources Center
US EPA (3404)
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Attached is our report entitled *Increased Focus on Grant Management and Internal Relationships Would Improve Region 8's Tribal Assistance Program*. We initiated this review as a result of a December 7, 1999 anonymous letter addressed to the Region 8 Regional Administrator alleging grant mismanagement and other improprieties in the Tribal Assistance Program (TAP). With Region 8's support, we reviewed allegations contained in that letter. In addition, we reviewed three Office of Inspector General (OIG) hotline complaints regarding the Region's tribal program.

Region 8 legally awarded all 137 Tribal grants managed by TAP between fiscal 1996 and 1999. However, TAP's inconsistent management of Tribal grants gave the appearance to some regional staff that certain grants were illegal because TAP did not sufficiently focus on grant management and internal relationships. Region 8 chose to place a higher priority on external relationships and supported the TAP Director's (Director) focus on external priorities. Some grants reviewed included unallowable activities or had inadequate or untimely work plans and progress reports. However, we found no apparent evidence that the Director acted illegally in the grant award process. The Region has taken steps to correct some problems we observed with the internal grant award process. Although some regional staff were aware of financial accounting problems at some Tribes, the Region did not place a high priority on ensuring Tribes resolved those problems.

While TAP focused on developing Tribal policy and building external relationships, TAP's internal relations and program management sometimes suffered. Relationships within TAP and between TAP and some Region 8 programs suffered. TAP appeared to advocate too

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strongly for Tribes which hindered the relationship between other Regional programs and Tribes. In addition, Region 8 management has not reevaluated whether TAP needed its level of travel funding for building and maintaining Tribal relationships or whether other program staff working with tribes needed additional funds. In addition, the Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance and the Director did not comply with Environmental Protection Agency (EPA) flexiplace policies and procedures.

ACTION REQUIRED

In accordance with EPA Order 2750, you, as the action official, are required to provide this office with a written response within 90 days of the final report date. For corrective actions planned, but not completed by the response date, reference to specific milestone dates will assist in deciding whether to close this report.

We have no objection to the release of this report to any member of the public. This report contains findings that the OIG has identified and corrective actions OIG recommends. This audit report represents the opinion of OIG and the findings in this report do not necessarily represent the final EPA position. Final determinations on matters in this audit report will be made by EPA managers in accordance with established EPA audit resolution procedures.

If you have any questions, please call Jeff Hart at (303) 312-6169 or me at (303) 312-6969. Please refer to report number 2000-P-000615-00021 on any correspondence.

Attachment

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PURPOSE

With the Regional Administrator's support, we initiated this review as a result of a December 7, 1999 letter alleging grant mismanagement and other improprieties in the Tribal Assistance Program (TAP). Our overall objective was to determine the validity of allegations regarding Region 8's Tribal grant management and Tribal program operations. We limited our review to Region 8's overall management of Tribal grants, specific allegations made in the December 7, 1999 letter, and allegations made in Office of Inspector General (OIG) hotline complaints dated March 27, 2000; April 10, 2000; and April 19, 2000. We issued a memorandum on March 17, 2000, stating we concluded that Region 8 legally awarded all Tribal grants that we reviewed.

Because there were numerous allegations in the December 7, 1999 letter, we categorized them into three broad objectives to answer the following questions.

1. Has Region 8 legally awarded Tribal grants?
2. Has Region 8 effectively managed its Tribal grants and Tribal program?
3. Have Tribes in Region 8 effectively managed grants?

This report addresses question numbers one and two; we will answer question number three during a subsequent review.

BACKGROUND

The federal government's trust responsibility for Tribes describes the special relationship between the federal government and federally recognized Tribes. The responsibility arises from treaties, statutes, executive orders, and historical relations between the United States Government and Indian Tribes. The federal government's Indian trust responsibility recognizes a federal duty to protect the sovereignty of each Tribe. Sovereignty is what distinguishes Indian Tribes as political entities. President

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Clinton's April 29, 1994 Executive Memorandum directed each federal agency to be responsible for ensuring that it operates based on a government-to-government relationship with federally recognized Tribes. The memorandum also requires that federal agencies consult, to the greatest extent practicable and to the extent permitted by law, with Tribal governments prior to taking action that affects Tribes.

As part of its October 1995 reorganization plan, Region 8 created TAP within its Office of Partnerships and Regulatory Assistance. Region 8 formed TAP in response to expanding Tribal environmental needs and to fulfill overall commitments to Indian Tribes found in the Environmental Protection Agency's (EPA) 1984 *Policy for the Administration of Environmental Programs on Indian Reservations* (Indian Policy). The program served as a first point of contact for Indian Tribes seeking delegation of federal environmental programs and financial and technical assistance relating to development of Tribal environmental programs. TAP also provided a coordination point for Tribal environmental issues among EPA staff, Tribal representatives, and the public.

TAP staff include a program director, seven Tribal Program Managers, one senior environmental employee, and one stay-in-school employee. Tribal Program Managers were project officers for all Tribal grants awarded under the General Assistance Program (GAP); Clean Water Act; Clean Air Act; Federal Insecticide, Fungicide, and Rodenticide Act; and Performance Partnership Grants. While TAP is responsible for processing most Tribal grants, Region 8's Grants, Audit, and Procurement program is responsible for awarding all grants. Tribal Program Managers relied on Region 8 program staff for technical assistance, except for GAP and also coordinated technical assistance between Regional programs and Tribes. Grant specialists rely on Tribal Program Managers to certify that work plans are adequate and budgets accurately support planned activities.

Twenty-seven Tribes on 26 Indian reservations, located in 6 states and covering approximately 15 million acres, are located in Region 8. Between fiscal 1996 and 1999, TAP

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processed Tribal grants totaling about \$25 million to develop and implement environmental programs. Region 8's work with Tribes has been guided by EPA's Indian Policy and the federal government's Indian trust responsibility. EPA's Indian Policy states that EPA will:

- work directly with Tribal governments and recognize Tribal governments as primary parties for setting standards, making environmental policy decisions, and managing programs for reservations; and
- take affirmative steps to encourage and assist tribes in assuming regulatory and program management responsibilities, and as appropriate, to remove legal and procedural impediments to working directly with tribal governments.

**SCOPE AND
METHODOLOGY**

We performed our review in accordance with *Government Auditing Standards* (1994 Revision) issued by the Comptroller General of the United States. We conducted our review from January through September 2000. We reviewed all 137 Tribal grants processed by TAP between fiscal 1996 and 1999. We did not review any grants for Tribes located in Montana because Region 8's Montana Operations Office processed all grants for those Tribes. Region 8 did not award any contracts to Tribes between 1996 and 1999. We interviewed current and former TAP staff and various other Region 8 staff. We met individually with grant specialists to understand the grant process and grant management responsibilities. We also reviewed a judgmental sample of grant work plans to determine whether they adequately addressed work plan requirements.

We assessed the legality of Region 8 Tribal grants and regional management of those grants and its Tribal program. See Exhibit I for a detailed description of our scope and methodology. Exhibit III includes other potential issues we reviewed that are not discussed in the body of the report.

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**PRIOR AUDIT
COVERAGE**

We recommended in our report, *Better Planning and Organizational Changes Could Improve Region 8's Tribal Program* (E1SMF4-08-0036-5100141), dated January 23, 1995, that the Regional Administrator: (1) assess Tribal environmental needs, (2) allocate travel funds consistent with overall regional strategy, (3) establish quantifiable and time-specific performance measures for the Region's Tribal program, (4) assign a single Tribal program manager with sufficient staff to manage Region 8's Tribal program, and (5) identify primary Tribal coordinators within each regional program. The Region has implemented changes and policies to address most of those recommendations. Although TAP established specific measures, they were activity rather than outcome measures. The Region has also worked on other unique Tribal issues, such as the federal government's trust responsibility and jurisdiction on reservations.

**TAP
ACCOMPLISHMENTS**

TAP established good relationships with Tribes and participated effectively in Tribal policy development. EPA's Director, American Indian Environmental Office, Office of Water, stated that TAP's rapport with Tribes in Region 8 resulted in federal-Tribal partnerships that had worked through important and often difficult issues. She stated that Region 8's Tribal program developed a Regional Tribal consultation policy, contributed significantly to national Tribal policies and initiatives, and fostered widespread involvement of Tribes in environmental matters within the Region. In addition, TAP staff participated in development of the proposed Tribal Performance Partnership Grants Rule and prepared budget proposals for EPA Senior Leadership Council's consideration at its annual budget forum. TAP successfully negotiated a Tribal Environmental Agreement between the Yankton Sioux Tribe and Region 8, the first such agreement in the Region. TAP coordinated a federal memorandum of agreement between 18 agencies to work cooperatively and in close consultation with Tribal governments.

TAP also provided information and training to both Tribal and regional program staff. For example, TAP delivered

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grant training and four water quality workshops to Tribes in Region 8. In addition, TAP developed and co-sponsored national *Working Effectively with Tribal Governments* curriculum and routinely provided training for regional staff. TAP and Region 8 enforcement staff also collaborated to create regional Tribal enforcement guidance and training aimed at educating staff about the complexity of enforcement actions on Tribal land.

**IMPROVEMENTS
NEEDED IN GRANT
MANAGEMENT AND
INTERNAL PROGRAM
RELATIONSHIPS**

While TAP established good relationships with Tribes and participated effectively in Tribal policy development, its grant management and internal relationships needed improvement. TAP's management of Tribal grants was inconsistent and gave the appearance to some regional staff that certain grants may have been illegal. TAP's internal program management suffered at times because it did not adequately focus on internal relationships.

**Region 8 Chose to Focus its
Tribal Program on
External Relationships and
Policy Development**

TAP's management of Tribal grants was inconsistent and relationships within TAP and between TAP and some regional programs suffered because TAP did not adequately focus on grant management and internal relationships. At the direction of regional management, TAP emphasized building relationships with Tribes. Senior regional management chose to place a greater emphasis on building relationships with Tribes and supported the Director's focus on external priorities. In 1999, Region 8 identified protecting public health and environment in Indian Country as one of its highest priorities. The Region gave priority to Tribal programs and emphasized EPA's trust responsibility to directly manage environmental programs in Indian Country.

TAP focused on its relationship with Tribes at the expense of effective grant management. Tribal Program Managers stated that in order to maintain good relationships with Tribes, EPA should be more understanding and flexible. In addition, in order to prevent a negative impact on the

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relationship between Region 8 and Tribes, the Director stated that the Region should not discontinue grants to Tribes because it adversely affects EPA's relationship with Tribes. As a result, TAP appeared to some Regional staff to advocate too strongly for Tribes.

**Region 8 Legally Awarded
Tribal Grants, but Grant
Management Needed
Improvement**

Region 8 legally awarded all 137 Tribal grants managed by TAP between fiscal 1996 and 1999. See Exhibit II for the methodology we used to determine grant legality. However, TAP's management of Tribal grants was inconsistent and gave the appearance to some Regional staff that certain grants may have been illegal. Some grants we reviewed were awarded for questionable reasons, which included unallowable activities, or had inadequate or untimely work plans and reports. We found no apparent evidence that the Director acted illegally in the grant award process. Although some regional staff were aware of various Tribal financial accounting problems, the Region did not place a high priority on ensuring Tribes resolved those problems. As a result, some Tribal grant funds were not used efficiently, effectively, or for their intended purposes.

**Region 8 Awarded
Questionable Grants**

Region 8 awarded five questionable Tribal grants totaling \$1,278,371. We questioned these grants because they included unallowable activities or Tribes did not effectively use funds. In two of the examples discussed below, program staff stated they felt pressure to award Tribal grants even though they had concerns regarding those grants. For example, one regional staffmember stated that a Tribal Program Manager and the Director told her not to ask questions about work plans because it was not her job. In addition, some Tribes received funding that was not effectively used and could have been better utilized by other grantees. These examples also gave the appearance to some regional staff that certain grants may have been illegal.

We identified the following examples of questionable grant awards:

- (1) The Region funded a \$135,000 GAP grant

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would have been more appropriately funded by other EPA programs or other federal agencies. The Director stated that this grant was a headquarters initiative even though Region 8 awarded the grant. The grant clearly included implementation activities that are prohibited under *Interim Final Guidance on the Award and Management of General Assistance Agreements for Indian Tribes*, dated June 1994. The grant provided funding for activities such as, "Minimize children's risk of exposure to hantavirus, bubonic plague, insect stings, and snake bites by 25%; groundwater testing and remediation activities; and reduce childhood injury and illness rates by 25%." Also, although we believe that the activities included in the child health care campaign are important, another EPA program or another federal agency may have more appropriately awarded this grant.

- (2) Three Tribes did not effectively use lead program grant funds totaling \$810,863. One regional staff member stated that the three Tribes were neither maintaining significant program progress, nor were seeking program authorization. Fiscal 2000 Toxic Substances Control Act, Title IV grant guidance prohibits recipients from participating further in the lead program without program authorization after they have completed developmental activities. The three Tribes did not use all grant funds for their intended purposes and had unexpended funds of \$67,229, \$69,510, and \$60,957 at the end of fiscal 1999. Because of jurisdictional issues, none of the Tribes sought program authorization and could not use the unexpended funds to assist EPA with their lead programs. Other Tribes could have more appropriately used these funds for

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legitimate program developmental activities and would have been able to participate earlier in the lead program.

- (3) The Region awarded a \$332,508 Tribal grant shortly before the end of fiscal 1999 that we believe should have been awarded as a contract. The grant was for a Tribe to provide a service to other Tribes by developing and conducting four water pollution control training sessions. Typically, a contract is the best instrument to use when purchasing services. Region 8 senior management noted that they believed this is an example of the Region's grant review process working well because regional staff and senior management identified, elevated, discussed, and resolved the issue by making changes to the grant. While we agree that this instance was a good example of the grant process working, we do not believe a grant was the best instrument to achieve the stated objective.

The Region's grant award process included steps intended to ensure that recipients and project officers fulfilled grant requirements. For example, grant specialists used an application and pre-award review sheet to determine if they needed further information or changes from recipients or project officers. Senior management stated, and we agree, that staff involved in the grant process have a responsibility to raise questions about work plans, even in the face of resistance, and management has an equal responsibility to deal effectively with these issues.

**Grant Work Plans Contained
Unallowable Activities**

Even though Tribal Program Managers received advice and approval from other EPA officials, 11 of 24 GAP grant work plans contained one or more unallowable implementation activities because the Region's GAP grant review process was inadequate. GAP guidance requires that Tribes use funds to develop capacity to manage environmental programs, but prohibits funding

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implementation activities. Tribal Program Managers said that they consulted guidance or elevated issues to the Director for clarification. If the Director required clarification, she said that she consulted with her counterparts in other regions, the American Indian Environmental Office, the Assistant Regional Administrator (ARA), or Region 8 Counsel.

We identified the following examples of questionable activities in GAP grant work plans for grants awarded between fiscal 1996 and 1999 that we believe are unallowable:

- using a geographical positioning system to map oil and natural gas leases, to map forest fires and forest replanting projects, and to work with the Tribal police department to map and document high accident areas;
- minimizing children's risk of exposure to hantavirus, bubonic plague, insect stings, and snake bites, and reducing childhood injury and illness rates;
- implementing a recycling program;
- purchasing two computers for onsite water monitoring;
- inspecting underground storage tank facilities to ensure records were current and facilities were in compliance;
- measuring and mitigating radon in cooperation with the Tribe's Housing Authority and the U.S. Department of Housing and Urban Development;
- providing technical assistance on asbestos cleanup at a former Indian Health Service Hospital and monitoring compliance on a site-by-site basis;

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- testing Tribal community homes for radon;
- contracting with a private firm to conduct water sampling;
- testing soil at a solid waste site; and
- purchasing a cardboard bailer for a recycling program.

The Region's GAP grant review process did not ensure GAP grants included only eligible activities. While Tribal Program Managers were responsible for reviewing work plans, Region 8's Grants, Audit, and Procurement program had final authority to award grants. Even though the Director of the Grants, Audit, and Procurement program was given an opportunity to review all grants and was the award official, his staff sometimes did not have adequate time to review work plans and had been told by TAP staff that reviewing work plans was not their responsibility. As a result, some GAP funds were not used for their intended purposes.

**Better and Timely Work
Plans and Progress Reports
Needed**

Region 8 awarded some grants without approved work plans. For example, in fiscal 2000 the Region awarded 11 of 25 GAP and Tribal water grants without approved work plans. Work plans should be approved before grants are awarded. Grant specialists rely on project officers to certify that a work plan is approved or conditionally approved. One grant specialist stated the Region regularly awarded Tribal grants without approved work plans in prior years as well. While it is acceptable to award grants without an approved work plan, it is not appropriate on a regular basis.

Many Tribal progress reports did not include sufficient detail or were untimely. Most Tribal progress reports we reviewed did not include sufficient detail to monitor financial status and programmatic accomplishments. Of 23 reports we reviewed, 20 did not include sufficient detail to determine progress on projects. In addition, some Tribes did not submit progress reports in a timely manner. For

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example, one Tribe submitted reports up to a year late and inadequately reported accomplishments. Further, the Tribal Program Manager had requested additional clarification for unresolved fiscal 1997 reporting issues.

Some work plans and progress reports were inadequate because many tribes lacked sufficient infrastructure. The Director stated that many Tribes lack sufficient infrastructure and regional staff should recognize differences between Tribes and states. However, the Director agreed that these challenges are not an excuse for nonperformance. TAP created an "excellent examples" reference library of adequate reports and instituted a policy to send postcard reminders because it was aware that Tribes needed to improve adequacy and timeliness of grant reporting. While TAP has taken strides to improve adequacy and timeliness of grant reporting, Tribes have continued to submit inadequate and untimely reports.

Also, some work plans and progress reports were inadequate because TAP did not have adequate technical expertise to review work plans or progress reports. Tribal Program Managers did not have the years of technical experience that regional program staff have. When Tribal Program Managers questioned eligibility of work plan activities, they stated that they first discussed issues with other Tribal Program Managers and the Director. One Tribal Program Manager stated that while technical staff were included in the work plan review process, they could not ensure that technical staff had reviewed all work plans. When TAP staff did obtain technical staff comments, they did not always document the resolution of their concerns.

The Region had not held Tribes accountable for grant requirements. As a result of untimely and inadequate work plans, the Region awarded grants before it had a clear understanding of work to be performed. As a result of inadequate reports, Tribal Program Managers had to develop alternative methods to monitor and oversee Tribal work, such as more frequent visits and phone calls. In addition, without adequate reporting on work plan accomplishments, EPA staff outside TAP did not have sufficient knowledge of what Tribes were accomplishing and how Tribes were spending grant funds.

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During the course of our review, the Region took actions, that if fully implemented, we believe will address some of our grant award process concerns. On June 6, 2000, the ARA issued a memorandum to his program directors instituting several changes in the grant award process. He required all project officers to certify that the recipient had a work plan with budget in place, technical program staff reviewed the work plan and budget, and that they had resolved all technical and legal issues before awarding a grant. The ARA or his associate director will process grants without a work plan and budget only in very rare situations. On July 20, 2000, the ARA for Technical and Management Services issued a regionwide memorandum instituting the same changes for all other regional offices. Additionally, she required that project officers certify that they received an acceptable application. She also announced a strategy for developing a tailored post-award monitoring plan for each office.

**Region 8 Needs to Improve
its Financial Oversight**

Region 8 had not resolved many financial management issues found in Management Assistance Program reviews because: (1) it had not given sufficient priority to conducting or following up on reviews, (2) Tribal Program Managers stated that they believed it was unrealistic to expect them to be experts in both program and financial issues, and (3) not all grant specialists were aware of financial accountability review issues. Region 8's Audit Liaison is responsible for conducting financial system oversight reviews at Tribes and resolving issues found during those reviews.

Since 1995, the Region has conducted 17 Tribal Management Assistance Program reviews at Tribes. Beginning in 1997, the Region's review teams conducted more detailed reviews of accounting practices than in prior years. Examples of issues that the review team identified since 1995 include:

- one Tribe borrowed funds from one program to cover expenses from another program;

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- one Tribe charged travel expenses to the wrong grant and did not obtain authorization from an appropriate EPA official for travel expenses;
- Tribes did not document in-kind match;
- Tribes did not regularly reconcile grant funds;
- one Tribe charged staff hours based on budgeted hours rather than actual time worked on the program;
- Tribes had internal control weaknesses; and
- Tribes did not submit timely financial status reports.

Region 8 had not given sufficient priority to Management Assistance Program reviews. It had dedicated only a portion of one person's time to conduct and follow up on reviews. Until the Region identifies and allocates additional resources to the followup process, it will not be able to successfully and sufficiently follow up on issues found in Management Assistance Program reviews.

Tribal Program Managers did not have financial backgrounds and stated that they believed it was unrealistic to expect them to be experts in both program and financial issues. Although Tribal Program Managers are responsible for reviewing financial status reports and approving reimbursement requests, they are not responsible for monitoring Tribes' accounting practices. However, some project officers in other programs reviewed reimbursement requests and the corresponding detail of costs during visits to Tribes to identify and resolve issues promptly. It is not unreasonable to expect Tribal Program Managers to also review reimbursement requests and the corresponding detail of costs as part of their project officer duties.

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Not all grant specialists were aware of financial accountability issues raised in Management Assistance Program reviews. Three grant specialists said that financial oversight or following up on Management Assistance Program review findings were not their responsibility. To increase grant specialists awareness of financial accountability issues, the Region established a followup process in fiscal 2000.

The Region did not provide sufficient resources to conduct and follow up on reviews and Tribal Program Managers and grant specialists were not involved in resolving issues. As a result, the Region could not be certain Tribes used grant funds efficiently, effectively, or for their intended purpose.

Within the last year, Region 8 has taken meaningful steps to hold Tribes more accountable. For example, the Region has terminated one Tribal grant, demanded repayment or disallowed portions of reimbursement requests for undocumented costs, and, in extreme cases, withheld new awards until requirements were met on other grants. In addition, the Region's Audit Liaison has begun to coordinate tribal reviews with Tribal Program Managers' visits. This coordination has helped Tribal Program Managers gain an understanding of some financial accountability issues. As a result, TAP is more aware of financial accountability issues and agreed with the Region's decision to declare two Tribes as high risk grantees.

**Agency Comments and
OIG Evaluation**

Region 8 generally agreed with our conclusion that relationship problems existed within TAP and between TAP and other Region 8 program offices but believes relationship issues are much more of a two-way street than our report portrays. While we agree that most relationship problems are typically attributable to both parties, in this case we believe TAP must take responsibility for the majority of the cause. In our opinion, TAP staff were much

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less willing to work cooperatively with program staff to

resolve issues than program staff were willing to work cooperatively with TAP.

Region 8 also agreed that we accurately described Region 8 Tribal grant management and our conclusions are adequately substantiated. The Region notes that in some cases, they simply disagree with our conclusion that some grants were questionable and some GAP grant activities unallowable. The Region further notes that it does not believe the GAP program draws a clear line between allowable developmental activities and unallowable implementation activities. Finally, the Region discussed recent initiatives intended to improve the Tribal grant process. We agree that the GAP program guidance is not always clear between allowable and unallowable activities. However, we believe the examples provided in this section are clearly implementation activities and should not have been funded through the GAP program and should have been funded by other media grants or other federal agencies. We also agree that recent initiatives to improve the Tribal grant process should help ensure Tribal grants are better managed.

**Tribal Program
Management Focus Was
Not Balanced**

While TAP focused on developing Tribal policy and building external relationships, TAP's internal program management suffered at times because it did not adequately focus on internal relationships. Relationships within TAP suffered because the Director spent, at the direction of senior management, between 50 and 70 percent of her time outside the office. Relationships between TAP and some Region 8 programs suffered because TAP appeared to advocate too strongly for Tribes which hindered relationships between some regional programs and Tribes. TAP and some program staff did not effectively communicate or collaborate. TAP focused on activity measures to assess Tribes' performance rather than outcomes or accomplishments in human health and the

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travel priorities and the ARA and the Director violated flexiplace policy.

**Relationships Within TAP
Needed Continuous
Improvement**

Relationships within TAP suffered at times because the Director worked outside of the TAP office between 50 and 70 percent of her time. Senior management stated they directed and supported the Director's extensive work on external priorities and that she did not do anything that they did not tell her to do. Also, the Director's skills and interests were in working directly with Tribes. In her absence, TAP operated without effective leadership or management and divergent views arose about how TAP should be integrated throughout the Region. For example, one former TAP staff made decisions or reached agreements with other regional programs and subsequently discussed them with the Director. However, the Director would frequently overturn decisions or agreements. Had the Director been in the office more frequently, staff could have more easily clarified expectations before making decisions or agreements that the Director would not support or were not in accordance with Agency or Region 8 Tribal policy.

While the Director's skills and interests were in building Tribal relationships and formulating Tribal policy, relationships within TAP suffered because the Region did not ensure she had good management skills. Senior regional management believed that TAP internal working relationships may have suffered because of the Director's management style combined with the expectations and supervision needs of some of the original TAP staff. The Director stated that relationships with initial TAP staff were difficult and believed that her intentions were misinterpreted. One former TAP staff said that she highly respected the Director's ability to explain Tribal perspectives but disagreed sometimes with how the Director dealt with conflicts. Two other former TAP staff said that they believed the Director favored some TAP staff over others. The Director told us that she did not believe she had acted inappropriately or favored some staff, but did acknowledge that she preferred working with external customers over internal management. The Director stated

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that she now selects self motivated staff who do not need step-by-step assistance. However, without clear and consistent direction and leadership, TAP has not functioned as an effective team. In addition, self-motivated staff who do not need step-by-step assistance do not necessarily have the skills to build strong relationships.

Also, relationships suffered within TAP because the Director did not have good interpersonal skills. Current TAP staff acknowledged that relationships with the Director had been difficult at times, although they fully supported her and the role of TAP. Without good interpersonal skills, the Director may have unintentionally offended staff within and outside TAP.

**TAP Relationships With
Some Programs Suffered**

Relationships between TAP and some Region 8 programs suffered at times because TAP appeared to advocate too strongly for Tribes. Senior management noted and we agreed that there is a fine line between being a strong positive advocate and one whose enthusiasm negates effectiveness. While some Region 8 managers agreed that TAP staff may have been overly enthusiastic in their advocacy for Tribes, they also believed that some program staff do not clearly understand or agree with federal Tribal policy.

TAP and some program staff did not effectively communicate or collaborate which resulted in misunderstanding each other's intentions. For example, a program office wanted to discontinue a grant to a Tribe because the statute did not permit further funding until the grant recipient sought program authorization. The Tribe contacted TAP to review the program's decision. The Director wanted to brainstorm about possible alternatives to discontinuing the grant and requested that the ARA decide whether or not there were alternatives to canceling the grant. While the program staff's perception was that the Director second guessed their decision and authority, the Director felt that discontinuing the grant would have a negative impact on Tribal relationships and that the program was unwilling to seek creative alternatives. Even though the ARA upheld the program office's decision

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because no alternatives were acceptable, TAP's willingness to accommodate Tribal needs hindered the relationship between other regional programs and Tribes. If TAP and program staff had effective communication or collaboration skills, they may have been able to reach agreements or solutions without raising issues to the ARA or hindering program staff and Tribal relationships.

TAP and some program project officers had different perspectives on managing Tribal grants. For example, one program project officer provided additional oversight because of the complexity of the program by closely reviewing Tribes' program accomplishments and reimbursement requests. However, the Director said that this additional oversight was micro-managing Tribal grants. The program staff expected and insisted that Tribes submit timely, complete reports to prevent future problems from arising. Some programs have stricter requirements than others and require an increased level of oversight. Conversely, TAP staff were more willing to supplement untimely and incomplete reports with phone calls and site visits.

Also, TAP and some program project officers did not always share the same understanding of EPA's trust responsibility on Tribal lands and Tribal sovereignty. For example, during environmental spills on Tribal lands, regional programs were most concerned about immediately cleaning up the spill, whereas TAP was more concerned about protecting Tribal jurisdiction and sovereignty. The ARA's associate director noted that at times Tribal sovereignty outweighed environmental concerns. He added that each decision the Region makes involving Tribes may adversely affect Tribal sovereignty and establish a precedent for all Tribes. TAP's *Working Effectively with Tribal Governments* training presentations reduced misunderstandings and clarified appropriate procedures for program staff. However, not all staff who interact with TAP and Tribes have received this training.

While we found that relationships between TAP and some regional programs suffered, TAP has improved its

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relationships with some program offices. According to one enforcement staffmember, working together as a team has improved TAP's relationship with the enforcement program. Enforcement and TAP staff collaborated to create Regional Tribal enforcement guidance and training aimed at educating staff about the complexity of enforcement actions on Tribal land. Also, the Pollution Prevention, Pesticides, and Toxics Program Director said that although she had not had the opportunity to address some issues with TAP, she appreciated when the Director brought Tribal issues to her attention. She added that she used those meetings as an opportunity to improve communication and coordination with TAP.

**TAP Measures of Success
Focus on Activities, Not
Results**

The Region measured TAP's success with activity measures instead of environmental outcome measures. The Director said that TAP's goals were tied to Government Performance and Results Act objectives. The Government Performance and Results Act requires that federal agencies develop outcome measures, report achievements, and explain shortcomings. TAP measured success by: (1) how many programs Region 8 has delegated to Tribes; (2) the number of Tribal Environment Agreements that Region 8 has negotiated with Tribes; and (3) the development of Tribal infrastructure and establishment of a greater environmental presence in Indian Country. The Region had delegated programs to two Tribes and successfully negotiated one Tribal Environmental Agreement. The ARA said that TAP measured development of infrastructure by the number of EPA full-time equivalent positions.

Although we determined that TAP's goals were activity measures and did not measure environmental results, we recognize that establishing performance measures is a slow and difficult task for EPA nationally as well as states and Tribes. The ARA said that his office discussed success in terms of the number of full-time equivalent positions because they were easy to measure and measuring improvements in the environment in Indian Country was very difficult. He said that at the end of fiscal 1999, Region 8 had funded at least 40 EPA positions for direct

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implementation of programs in Indian Country. He also said that EPA was a bureaucracy and that the number of positions was what regional staff understood.

Establishing good performance measures is necessary to measure environmental results. After 4 years TAP should begin to establish measures other than the number of programs delegated, Tribal Environmental Agreements negotiated, and EPA full-time equivalents implementing Tribal programs. We agree that establishing sufficient performance measures is difficult for states, Tribes, other EPA partners, and EPA. However, Congressional overseers recently noted that it is difficult or impossible to evaluate agency goals and allocate resources without adequate performance measures.

**Region 8 Needed to
Reevaluate Travel Priorities**

While TAP's visits to each Tribe have helped build strong relationships, Tribes' needs vary and some Tribes would benefit from increased technical assistance. The Regional Administrator chose to allocate sufficient travel funds to TAP to facilitate TAP's ability to build strong relationships with Tribes and participate in developing Tribal policy. However, Tribal Program Managers do not have sufficient technical expertise to assist Tribes in implementing programs and TAP has not evaluated what assistance would best benefit each Tribe's needs. The ARA said, and we agreed, that since TAP has had 4 years to build relationships, now may be the time to reallocate travel funds to provide additional technical assistance to Tribes with more critical needs and less on Tribes that are doing well.

Between fiscal 1997 and 1999, Region 8 allocated approximately twice the amount of travel funds to TAP than for other regional programs based on the average funds allocated per employee. Regional management has not reevaluated whether TAP needed that level of travel funding for building and maintaining Tribal relationships or whether other program staff working with Tribes needed additional funds. Two program staff stated that insufficient travel funds prevented them from traveling to Tribes to oversee the Tribes' progress and provide technical

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travel funds prevented them from traveling to Tribes to oversee the Tribes' progress and provide technical assistance. Two additional program staff stated that Tribes had requested technical assistance from them rather than general assistance provided by Tribal Program Managers. Because the Region has not evaluated Tribal needs, it cannot determine whether Tribes were receiving the level of technical assistance they needed through Regional program staff site visits.

**The ARA and Director Did
Not Comply With Flexiplace
Policy**

The ARA and the Director did not comply with EPA's *Flexiplace Policy 3180*, dated December 23, 1997. EPA's flexiplace policy states that prior to participation, employees, including managers and supervisors, must have a flexiplace agreement, application, and safety checklist in place. The Director was not eligible to participate in the program in 5 of 8 flexiplace days because they occurred prior to obtaining her approved flexiplace application, work agreement and safety checklist. Although the ARA approved all days, both he and the Director should have ensured that she met all flexiplace requirements. Other staff perceived that the ARA favored the TAP Director. In addition, when managers did not follow rules, it may have caused others to believe it would be acceptable to do the same thing.

**Agency Comments and
OIG Evaluation**

The Region agreed that it should reevaluate travel usage by TAP but believes our report does not provide a balanced view of the situation. It notes that the cost of travel to Tribal localities is and will continue to be high. While we understand that travel costs to remote localities is high, we are primarily concerned that regional program staff that also need to visit Tribes to provide technical assistance are unable to do so because TAP receives the majority of Tribal travel funds. We do not recommend that the Region reduce the level of support it provides Tribes. We do believe that the Region should objectively analyze Tribal needs to ensure limited travel dollars are allocated to those that can provide the type of assistance most needed.

CONCLUSION

Region 8 senior leadership intentionally chose to emphasize building relationships with Tribes, utilizing the Director's skills and interests in working directly with Tribes, developing national policy, and coordinating other federal agencies' work with Tribes. While TAP successfully focused on building external relationships and developing Tribal policy, it did not provide effective grant oversight or effective internal management. TAP's management of Tribal grants was inconsistent and gave the appearance that some grants were illegal.

We agree that TAP's advocacy role is important because of the unique relationship the federal government has with Tribes, but not at the expense of good grant management and strong internal working relationships. TAP's focus on Tribal advocacy interfered with effective grant management and building and maintaining relationships with some program offices. TAP's strong advocacy resulted in the appearance to some regional staff that it approved and continued questionable grants. We believe the new grant procedures established by the ARA and the Region, if fully implemented, will address some of those concerns.

Most Tribes do not have the same level of capacity to manage environmental programs as states. In addition, Tribes within the Region have varying levels of capacity, but the Region has not analyzed Tribal needs and determined what assistance the Region can provide to help Tribes with greater needs. The Region has recently taken actions to hold Tribes more accountable. We agree that it is time to hold Tribes more accountable for not complying with grant requirements. Awarding Tribes grants without adequate work plans and allowing Tribes to expend grant funds without timely and adequately reporting does not help Tribes build capacity.

Although TAP received about twice the average per capita travel budget as other programs, regional management has not reevaluated whether Tribal relationship needs continue to warrant that level of funding. As a result, the Region cannot be sure it made the best use of limited travel resources.

RECOMMENDATIONS

We recommend the Regional Administrator:

1. Improve Tribal grant management by:
 - A. Implementing the new Region 8 policy on grant roles and responsibilities;
 - B. Balancing TAP's external focus so that it does not interfere with effective grant management;
 - C. Developing a systematic grant review process that ensures:
 - (1) Grant specialists are given adequate time to review grants; and
 - (2) Technical staff are given adequate time to review work plans and that project officers document the resolution of technical staff comments;
 - D. Requiring that:
 - (1) Tribes submit timely reports that include sufficient detail to monitor financial and programmatic accomplishments,
 - (2) Tribes have accounting systems that adequately account for grant expenditures,
 - (3) Tribes follow grant requirements, and
 - (4) Appropriate action is taken for noncompliance;
 - E. Requiring that grant work plans meet all legal requirements;
 - F. Requiring that Tribal Program Managers are adequately trained and have the time to effectively complete project officer responsibilities; and
 - G. Clarifying follow up responsibilities for Management Assistance Program issues.

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2. Improve working relationships by:
 - A. Providing appropriate communication or collaboration skills training for TAP and Region 8 program staff who regularly interact to provide the tools they need to reach mutually acceptable agreements and solutions;
 - B. Consider creating a position in TAP to handle internal communication and coordination;
 - C. Developing among TAP and program staff a common understanding and resolving fundamental differences in managing Tribal grants and working with Tribes;
 - D. Continuing to provide *Working Effectively with Tribal Governments* training to all Region 8 staff;
 - E. Reevaluating the Region's travel priorities to:
 - (1) Assess whether grant specialists and technical program staff need additional funds to travel to Tribes to provide technical assistance, and
 - (2) Determine if Tribes with more critical needs require more frequent visits; and
 - F. Requiring that all Region 8 managers comply with EPA flexiplace policy.

SCOPE AND METHODOLOGY

Our ability to conduct our review was hampered by the unwillingness of employees making the allegations to discuss allegations with us or give us specific examples of Tribal grants to review or identify specific regional staff to interview.

EPA grant guidance does not clearly define what determines grant legality. As a result, we compiled a list of criteria with input and consensus from Region 8 senior management, the Office of Administration and Resources Management, and other EPA headquarters staff. We used the criteria in determining grant legality. Exhibit II describes detailed methodology we used to determine grant legality.

We reviewed the following Region 8 documents:

- 137 official Tribal grant files processed by Region 8's TAP between fiscal 1996 and 1999.
- a judgmental sample of 33 Tribal work plans out of 127.
- Federal Managers' Financial Integrity Act Assurance Letters between fiscal 1995 and 1999.
- 10 Tribal Management Assistant Program reviews between fiscal 1996 and 1999.
- December 15, 1999 letter from William Yellowtail to recipients of the December 7, 1999 allegation letter.
- TAP Director's and three Tribal Program Managers' time and attendance files.
- December 20, 1999 TAP employees' letter of support for the TAP Office Director to William Yellowtail.
- *EPA Region 8 Policy for Environmental Protection in Indian Country.*
- Office of Partnerships and Regulatory Assistance distribution of travel funds between fiscal 1997 and 1999.
- Region 8's *Progress and Priorities 1999* dated September 1999.
- Memorandum from the ARA discussing processing grant applications in the Office of Partnerships and Regulatory Authority dated June 6, 2000.

We also reviewed Region 8's grant process and review procedures, various Region 8 delegations of authority, and the Region's travel fund allocation process.

We also reviewed the following documents:

- December 7, 1999 anonymous letter alleging improprieties in TAP.
- *Final American Federation of Government Employees National Collective Bargaining Agreement for Flexiplace* dated November 25, 1998.
- *EPA Flexiplace Policy 3180* dated December 23, 1997.
- *Interim Final Guidance on the Award and Management of General Assistance*

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Agreements for Indian Tribes dated June 1994.

- OIG report dated January 23, 1995, *Better Planning and Organizational Changes Could Improve Region 8's Tribal Program*, report number E1SMF4-08-0036-5100141.
- *Managing Your Financial Assistance Agreement, Project Officer Responsibilities* dated October 1996.
- 8 Single Audit reports conducted by various independent public accountants on Region 8 Tribes between fiscal 1995 and 1998.
- 3 OIG Hotline complaints dated March 27, 2000; April 10, 2000; and April 19, 2000.

We participated in meetings and conference calls with the following Region 8 staff:

- Regional Administrator.
- Deputy Regional Administrator.
- Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance.
- Assistant Regional Administrator, Technical and Management Services.
- Regional Counsel.
- Other Region 8 staff.

The following EPA headquarters staff also participated in conference calls:

- Deputy Chief of Staff, Office of the Administrator.
- Assistant Administrator, Office of Assistant Administrator for Administration and Resources Management.
- Director, Office of Grants and Debarment.
- Acting Deputy Assistant Administrator, Office of Assistant Administrator for Administration and Resources Management.
- Deputy Assistant Administrator, Office of Assistant Administrator for Water.
- Director of the American Indian Environmental Office.
- Staff in the Office of Civil Rights.

We informed OIG Counsel, Office of General Counsel, of various issues.

We conducted interviews with the following Region 8 staff:

- TAP Director.
- 14 current and former TAP staff.
- Water, Air, Enforcement, Pesticides, and Lead program staff.
- Grants, Audit, and Procurement Program Director and staff.
- ARA, Office of Partnerships and Regulatory Assistance.
- Regional Counsel and Office of Regional Counsel staff.

METHODOLOGY FOR DETERMINING GRANT LEGALITY

1. *Was the proper instrument used to accomplish the Agency mission, e.g., use a grant when a contract was the correct instrument?*

We reviewed work plan activities to determine if a grant was the appropriate instrument. For grants on which we had questions about eligibility of activities funded, we consulted Regional Counsel and program staff to determine if activities were eligible. We believe that one grant for water quality workshops should have been a contract, but we determined the grant was not illegal.

2. *Was the award authorized under appropriate statutory authority and was the correct statutory citation used?*

We reviewed the statutory and regulatory authorities cited on grant documents and work plan activities. All grants cited correct statutory and regulatory authorities that authorized Tribes to receive grant awards.

3. *Was there proper delegation of authority to make the award?*

We reviewed the signatures of the Award Official on grant documents and the Funds Certifying Officer and Decision Official on Commitment/Award Certification documents. To determine if signatures were valid we reviewed Region 8's *Delegations of Authority* manual. For any questions we had, we followed up with the Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, and the Grants, Audit, and Procurement Program Director. All grants were signed by staff having the proper delegation of authority.

4. *Was the recipient eligible for the award?*

All 27 of Region 8's Tribes are federally recognized Tribes and are eligible to receive grant awards. All Region 8 grants that we reviewed were awarded to eligible Tribes.

5. *Was the correct funding source used?*

We reviewed Commitment/Award Certification documents and found the Funds Certifying Officer verified that funding sources were correct and funds were available.

6. *Were funds available to make the commitment and/or award?*

We compared funds certifying dates to grant award dates. We also completed steps to answer question number 4 above. Region 8 awarded all grants after the funds certifying date.

7. *Did the work plan include eligible, allowable activities and costs?*

Although we questioned the appropriateness of some activities, we determined these activities did not make the grant illegal. If Region 8 approved unallowable activities in Tribal work plans, Region 8 has recourse, such as repayment or cancellation of a grant award or amendment.

8. *Were all legal administrative grant requirements met, i.e., was there a signature, proper date, project period, etc.?*

We reviewed Application/Pre-Award Review Sheets and performed a review of grant files to verify that Region 8 staff completed all legal administrative requirements. In each case, Region 8 Grant Specialists completed a copy of the Application/Pre-Award Review Sheet to ensure that grant recipients had submitted necessary documentation and Region 8 staff had completed necessary reviews. Region 8 met all legal administrative grant requirements.

9. *Was the match calculated correctly?*

For each grant that required a recipient match, we calculated the amount of match and compared our calculation to the amount on the grant document. We found two instances where the match was not calculated correctly. However, the differences were immaterial.

OTHER POTENTIAL ISSUES

The following is a summary of other allegations in the December 7, 1999 letter that we did not include in the body of the report.

Tribal Program Managers Appeared to Write Tribal Work Plans

Although EPA regulations prohibit federal employees from performing work for grant recipients, one Tribal Program Manager appeared to write a work plan for a Tribe. In addition, four regional staff stated that while they had no direct evidence, they had knowledge that former and current Tribal Program Managers wrote work plans for Tribes. One Tribal Program Manager, who appeared to write a work plan, sent a Tribe a copy of a work plan to use as an example. Subsequently, the Tribe submitted a work plan that mirrored the Tribal Program Manager's example except for a few minor changes. Finally, one former Tribal Program Manager, prior to being transferred from a regional program to TAP, stated that he wrote one work plan for a Tribe.

Refreshments at Tribal Meetings

We found no evidence to support that a Tribal consortium misappropriated federal funds to provide refreshments to Tribal and regional officials during conferences and meetings. In one instance, a Tribal consortium contracted with TAP for a conference held offsite. The contract stated that the consortium was not to use federal funds for refreshments. In response to a Region 8 inquiry, the vendor stated that the consortium did not use federal funds to pay for refreshments. However, to avoid any appearance of impropriety, TAP has instituted a policy of no refreshments at any future regional and Tribal staff meetings.

The EPA Comptroller released an interim policy dated February 25, 2000, regarding light refreshments at conferences. The policy allows for light refreshments for federal employees in travel status, but can include other EPA or federal employees if more than 50 percent of attendees are in travel status. The policy further states that appropriated funds may not be used to purchase light refreshments for non-federal attendees unless they are on invitational travel orders.

AGENCY RESPONSE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

Ref: 8TMS-G

MEMORANDUM

SUBJECT: Draft Report: *Increased Focus on Grant Management and Internal Relationships Would Improve Region 8's Tribal Assistance Program*
Report No. 2000-M-000615-XXXXX

FROM: William P. Yellowtail
Regional Administrator

TO: Jeff Hart
Audit Manager
Denver Branch
Office of the Inspector General

We have reviewed your draft report *Increased Focus on Grant Management and Internal Relationships Would Improve Region 8's Tribal Program* and we offer you these comments in order to improve the report's accuracy and balance. As you know, your involvement in this subject was initiated by me when I received an anonymous letter which made very serious allegations on the part of the Tribal Assistance Program Director as well as being extremely critical of the overall management of Tribal grants and the Tribal Assistance Program (TAP) in general. I specifically requested the Inspector General's assistance in investigating and determining the validity of the allegations. I am pleased that you found no evidence of illegal acts on the part of the Tribal Assistance Program Director. Similarly, I am pleased that none of the grants you reviewed were illegally awarded.

My overall conclusion from reading the draft is that the Region operates an effective Tribal grants management program. In my view, this speaks well of the Region's



commitment to good grants management. Of course, improvement is always possible, and, as you noted, the Region has already corrected the problems you identified with the grants process on our own initiative. With that backdrop, our comments are as follows:

Comment 1. In several places, the report makes reference to internal relationship problems

between TAP and some programmatic offices. You attribute these problems to the external focus of TAP and the TAP Director's absence from the office. I agree with your finding that such problems existed; however, I do not agree with your conclusions that TAP was the major cause of those problems.

I believe relationships have and are continuing to become much more cooperative as the education on our trust responsibilities, the President's consultation requirement, and TAP's role in the Region take hold. I appreciate the amount of time and energy your staff has devoted to this issue, as well as their willingness to discuss our differing views at length. Nonetheless, I see this matter as much more of a two-way street between TAP and other programmatic offices than that described in the report.

Comment 2. Overall, the section concerning Tribal grants in the review we believe to be accurate and that your conclusions are adequately substantiated. The most important conclusion to us reflected in the new report was that all 137 Tribal grants reviewed were awarded legally.

The review also concludes that several grants were questionable and that some activities were not allowable. In some cases regarding these grants and activities, we and your staff just simply disagree. Our interpretation of grant and program policies are different than yours. Most importantly, from our perspective, the GAP program does not have a bright, clear line in terms of allowable developmental activities and unallowable implementation activities. There are also among the grants and activities cited as questionable/unallowable situations in which we did not document adequately the basis for awarding the grant or including the activities. With better and more complete files, some of the questionable grants or unallowable activities would probably be seen differently.

We will continue to train and inform our staff concerning grants management responsibilities. Our Regional Counsel's office is involved frequently in helping us determine and address situations when there are questions about the grant and/or its activities. Further, we provided "refresher" training for project officers this year, and the responsibilities of project officers was emphasized. Specifically, the refresher training highlighted situations in which the project officers were grappling with pressure to award a grant. We made it very clear that project

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officers must raise questions about grants or work plans to their management and that their CONCURRENCE on the grant denotes that issues were resolved to their satisfaction. Further, the training noted that the Grants Management Office will use the mechanisms available to fully support project officers in resolving the appropriateness of a grant or activity and for addressing issues like late reports and so forth.

Comment 3. I agree with your overall conclusion that we should reevaluate travel usage by

TAP; however, I believe that the report does not provide a balanced view of the situation. First, because of the geographic isolation of Tribal localities, the need for continued capacity building assistance to Tribes and the high level of consultation needed on thorny jurisdictional issues, travel costs to Indian country by *whomever*, will continue to be high. Second, Native American cultures place a very high premium on face-to-face dealings as part of their relationships. This makes trips to the Tribes an essential part of building and maintaining those relationships. Third, TAP staff must attend the Regional Operations Committee meetings which are held quarterly; and the TAP Director is expected to a participant at the Agency's Tribal Operations Committee and other similar national groups.

Thank you again for all the hard work that went into the production of the draft report. As I said earlier, I believe the final report will prove to be a very useful management tool. I hope you will take my comments in that context.

cc: Pat Hull, 8TMS
Wayne Anthofer, 8TMS-G

Kerry Clough, 8P
Thorne Chambers, 8P

ABBREVIATIONS

ARA	Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance
EPA	Environmental Protection Agency
GAP	General Assistance Program
OIG	Office of Inspector General
TAP	Tribal Assistance Program

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