

Environmental Protection



Tribal peoples have close spiritual, cultural, practical, and interdependent relationships with their homelands and natural resources. As such, they also face the direct and often disproportionate impacts of environmental degradation, contamination, and climate change. To preserve and enhance the environmental quality of Indian Country for present and future generations and to sustain tribal cultures, tribes require equitable funding for their environmental programs. As sovereign entities, tribes can set environmental quality standards, make environmental policy decisions, and manage programs consistent with the Environmental Protection Agency's (EPA) Indian Policy.



Key Recommendations

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Multimedia Tribal Implementation Grants Program

- Authorize and appropriate \$30 million for this program.

The president's FY2011 budget request proposed \$30 million for funding a new Tribal Multimedia Implementation Grants program, which the tribes fully support. This new grant program was established to provide necessary resources and programmatic flexibility for the many tribal environmental programs poised to yet unable to engage in activities that will result in on-the-ground environmental protection of their peoples and natural resources.

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Tribal Water Pollution Control

- Provide \$32 million for this program.

Section 106 of the Clean Water Act provides grants that enable tribes to engage in activities necessary to undertake water pollution control efforts, including water quality planning and assessments; developing and implementing water quality standards and total maximum daily loads; ground water and wetland protection; and nonpoint source control activities. Currently, 252 tribes receive Section 106 funding. For FY2012, tribes request \$32 million so that an additional 15 tribes can engage in these activities. This modest funding increase will help meet the following goals by the end of 2012: 57 percent of tribes will have comprehensive monitoring program strategies; 70 percent of tribes will have water quality data accessible in the STORET database; 10 percent of tribes will be involved in cooperative approaches with states and/or EPA to develop watershed-based plans; and 23 percent of tribes will have EPA-certified water quality standards.



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Nonpoint Source Pollutant Control

- Provide \$12 million for the Nonpoint Source Pollutant Control program.

Section 319 of the Clean Water Act provides tribes with grants to develop and implement polluted runoff control programs that address critical water quality concerns identified in the 106 program and other monitoring programs. Less than 10 percent of tribes have EPA-approved water quality standards (WQS), compared to 96 percent of states. WQS are the necessary foundation to engage in water pollution control activities, making this program critical, particularly as climate change will significantly affect water quality, and collaboration across jurisdictions will be required. As tribal demand for this competitive funding exceeds availability, CWA Section 319 funding to tribes should be increased by \$1 million to \$12 million. Furthermore, the statutory cap on the tribal set-aside of a mere one-third of 1 percent of all Section 319 funding should be removed. By the year 2012, 200 tribes receiving CWA Section 319 funding should have comprehensive assessment and management plans, putting them one step closer to WQS implementation.

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Wetlands Program

- Provide \$5 million for the Wetlands Program.

Tribal peoples rely on wetlands for sustenance and cultural vitality. The biodiversity that wetlands foster supports species that are intimately connected with tribal lifeways and traditions that cannot be replaced. Across the nation, wetlands are threatened by rising sea levels, drought conditions, and other factors associated with climate change. In these circumstances, tribal needs and interests in wetlands protection are heightened.

As of 2008, 53 tribes had received Clean Water Act Section 104 grant funding to engage in wetland protection activities, including assessments and monitoring, and wetlands restoration, protection, and enhancement. It is anticipated that \$5 million to tribes (compared to \$1.75 million in FY2006) will result in 75 tribal wetland projects by the end of 2012. Ecosystems transcend political jurisdictions and, as such, efforts to support tribal wetlands also bolster cooperation in regional wetlands protection strategies encouraged by EPA's Strategic Plan.



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Clean Water and Drinking Water State Revolving Funds (SRFs)

- Provide a minimum of \$67.2 million or a 3 percent tribal set-aside for these programs.

Tribes have a tremendous need for funding under the Clean Water and Drinking Water State Revolving Funds (CWSRF and DWSRF). According to the Indian Health Service (IHS), more than 13 percent of tribal homes lack access to safe drinking water and sanitation infrastructure (compared to less than 1 percent of homes nationwide), including more than 36,000 tribal homes without potable water. Recognizing the severity of these circumstances, MOUs signed by EPA, IHS, Department of the Interior, and Department of Agriculture (USDA) resulted in the creation of an interagency ACCESS workgroup. This group's mission is to meet America's commitment to the United Nations Millennium Development Goal to reduce tribal lack of access to clean and safe drinking water by 50 percent by the year 2015.

Tribes appreciate that the FY2010 budget provided up to a 2 percent tribal set-aside, which surpasses the current 1.5 percent set-asides for the SRFs. However, due to the evident need and comparative inequities, tribes request a 3 percent set-aside under these Acts for FY2012 appropriations. The 3 percent set-aside would consist of \$67.2 million of CWSRF and DWSRF funds dedicated to tribes for FY2012 and beyond. This calculation is based on an IHS report to the Office of Management and Budget citing that \$67.2 million per year is needed until the year 2018 to reduce the number of tribal homes lacking access by 67 percent. Even if this goal is achieved, tribal homes would still lack access at a rate at least four times higher than homes nationwide.

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Operation and Maintenance (O&M) Funding for Tribal Public Water Systems

- Provide \$1 million for this program.

A common challenge many tribes encounter, particularly those experiencing persistent poverty, is the ability to hire, fund, and retain qualified water system operators. The interagency ACCESS workgroup notes that some tribal water systems fail before their intended design life for lack of O&M funding. This in turn requires premature recapitalization and the diversion of funds, which could be used to provide some tribal communities with safe drinking water and basic sanitation for the first time. The IHS has the statutory authority to fund tribal O&M under 25 USC §1632(b), but has not yet done so. Tribes request that \$1 million be provided to fund and retain operators of tribal water systems with high rates of non-compliance in order to protect the federal investment in physical infrastructure on Indian lands and ensure the provision of safe drinking water and basic sanitation. Such funding should not be extracted from funds already dedicated to the construction of tribal water infrastructure.



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Border Environmental Infrastructure Fund (BEIF)

- Provide \$1 million for BEIF.

Since 1996, tribes have used BEIF funding to improve water and sanitation for more than 8,000 homes. Yet, no funding has been provided for tribes under this program since FY2006. Tribes request that \$1 million of the total FY2012 program funding be allocated to support tribal water infrastructure.

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Underground Injection Control (UIC)

- Provide \$1 million for the UIC tribal set-aside.

Increased UIC funding from \$1 million will help tribes address groundwater problems associated with wastewater disposal and oil spill prevention practices. Tribes have encountered problems with upland dumping of wastewater and oil spills associated with drilling over groundwater aquifers that are drinking water sources, both of which have the potential to impact water quality. Funding to address these significant health risks is critical.

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Alaska Native Villages

- Provide an increase of \$26 million for Alaska Native villages to conduct science/research activities and to address climate change impacts.

Climate change affects the more than 200 Alaska Native villages on a daily basis. It is imperative that funding be allocated to tribes and Alaska Native villages to conduct science/research activities critical to their unique locations with consideration for normal daily activities. At a minimum, increase funding to \$26 million, an increase of \$1.4 million over the FY2008 allocation of \$24.6 million. With these resources, approximately 10 percent of Alaska Native villages will begin to address climate change impacts and provide safe drinking water and basic sanitation to at least 20 percent of village homes by 2015.



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Information Exchange Network (IEN)

- Set aside 10 percent of IEN funding for tribes.

The EPA IEN is an innovative partnership among states, tribes, and the EPA that is designed to facilitate environmental data management and submission in a cost-effective manner. Beginning in 1998, states assisted in developing the IEN and received several million dollars to develop requisite information technology infrastructure and staffing. Tribal governments were brought in years later, with limited capacity and unequal access to the resources states had, particularly as IEN experienced budget reductions.

At present, all 50 states operate nodes, while only eight tribes do, with several in the development and planning phase. Tribes urge sustained funding for the Information Exchange Network and a minimum 10 percent tribal set-aside of such funding to provide development and implementation support for tribes that are just coming on board and operations/maintenance funding to tribes with operating programs.

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Indian Environmental General Assistance Program (GAP)

- Provide \$75 million for institutional capacity building and environmental management.

The top environmental priority identified by tribal governments is continued program capacity building. GAP is particularly critical to Alaska Native villages, as it provides 99 percent of the overall funding to address their basic environmental needs. Tribes welcomed the restoration of GAP funding levels, which had been reduced in the prior Administration, through an increase from \$58 million to \$71 million in FY2011. However, GAP funding has not kept pace with the growth of tribal environmental programs over the years, forcing tribes to perform the increased duties of maturing programs with fewer funds. Furthermore, the average cost for tribes to sustain a basic environmental program was set at \$110,000 per tribe in 1999 and has not been adjusted for inflation. Tribal demand for program implementation across various media includes a very pressing need to establish climate change adaptation plans. A \$175,000 per tribe distribution (totaling approximately \$98 million) reflects an equitable adjustment, which we seek to achieve incrementally through a \$75 million request for FY2012.



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Solid Waste Priorities

- Provide \$4 million to enable tribes to develop and implement solid and hazardous waste programs.

The Indian Lands Open Dump Cleanup Act of 1994 (P.L. 103-399) requires that IHS submit annual reports to Congress indicating a priority for addressing solid waste deficiencies and progress made in addressing the needs in Indian Country. These reports include assessments of the funding necessary to bring those open dump sites into compliance. IHS's last report, in 1998, indicated that 1,104 open dumps existed on Indian land, and that approximately \$126 million was needed for activities to clean up open dump sites.

Despite a committed interagency effort among EPA, BIA, IHS, the Department of Defense (DOD), and USDA to tackle this enormous problem, tribal requests have always vastly exceeded available funding to directly address solid waste issues in Indian Country. A total of \$19.5 million was awarded to support 163 proposals between FY1999 and FY2007; this represents less than one-sixth of the total need identified by IHS. In one attempt to mitigate these fundamental legal, programmatic, and policy obstacles, EPA's General Assistance Program (GAP) statute allows funding for the development and implementation of solid and hazardous waste programs for Indian lands. While this is not ideal, we recommend an additional \$4 million be included in the GAP as an interim measure to enable tribes to develop and implement solid and hazardous waste programs. In the longer term, we also recommend that the relevant agencies work with the tribes to overcome the existing legal, funding, and policy obstacles toward a coordinated effort to address this persistent problem.

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Direct Implementation Tribal Cooperative Agreements (DITCAs)

- Provide \$5 million for effective and efficient on-the-ground environmental protection.

DITCAs provide a cost-effective and efficient mechanism for tribes to accomplish the statutory responsibilities assigned to the EPA. DITCAs enable tribes to conduct environmental activities on behalf of the agency on their lands. As such, activities occur under federal authority, and DITCAs do not result in disputes over jurisdictional authority that previously hampered the implementation of environmental protection programs. DITCAs are flexible enough to address high-priority tribal environmental problems and also allow tribes the opportunity to exercise their programmatic capability prior to seeking and receiving tribal regulatory authority for applicable programs.

Thus far, the EPA has awarded more than 20 DITCAs to Indian tribes to undertake such activities as Clean Air Act Title V permitting, development of smoke management plans, National Pollution



Discharge Elimination System storm water permitting compliance, water quality monitoring, public water system supervision, and the hiring of a tribal pesticide circuit rider. DITCAs fund the actual activity (e.g., inspections, compliance assistance, etc.) and therefore provide environmental results and meet strategic targets prized by both tribes and the EPA. Despite clear value and effectiveness, DITCAs do not come with dedicated funding so funding must be pieced together through discretionary program funding. While there is a strong interest among tribes to enter into more DITCAs, they are constrained by limited resources.

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Clean Air Act Section 103/105 Grants for Indian Tribes

- Provide \$14 million in Clean Air Act Section 103/105 grants to tribes.

By finalizing the Tribal Authority Rule (TAR) in 1998, EPA determined that tribes may be treated in a manner similar to states for virtually all provisions of the Clean Air Act. Tribes are not only eligible for Section 103 grant funding to conduct air quality monitoring, emissions inventories, and other studies and assessments, but they may also obtain Section 105 grant funding to implement Clean Air Act regulatory programs.

In anticipation of the TAR, the EPA increased its funding for tribal air grants during a time when few Indian tribes were conducting air-related activities. This funding, however, has remained relatively flat during the past 10 years, ranging between \$10.7 million and \$13.3 million. At the same time, the number of tribes seeking Sections 103 and 105 grant funding has substantially increased to the point that any carryover of tribal air funding from previous years has now been exhausted. The EPA and its regional offices are forced to turn away a number of tribes for 103 and 105 grant funding requests. Tribes, however, are facing many of the same air-related issues that neighboring state and local jurisdictions are facing, but are significantly underfunded to address such issues. Tribal air grant funding must be increased by \$0.7 million over the FY2010 enacted level of \$13.3 million to a total of \$14 million to more accurately reflect the air quality-related needs of tribes across the nation.

