



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Examination of Costs Claimed Under Cooperative Agreement X7-83325501 Awarded to Kathleen S. Hill, Chiloquin, Oregon

12-4-0224

January 23, 2012

REDACTED VERSION FOR PUBLIC RELEASE

The full version of this report contained sensitive information. This is a redacted version of that report, which means the sensitive information has been removed. The redactions are clearly identified in the report.



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Report Contributors:

Janet Lister
David Kim
Lela Wong

Abbreviations

CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
GIAMD	Grants and Interagency Agreements Management Division
OIG	Office of Inspector General
Recipient	Kathleen S. Hill

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At a Glance

Why We Did This Examination

The U.S. Environmental Protection Agency (EPA) requested assistance from the Office of Inspector General (OIG) due to concerns relating to project and funding management exercised by a cooperative agreement recipient, as well as the recipient's cash draw practices.

Background

EPA competitively awarded Cooperative Agreement X7-83325501 on October 26, 2006, to Kathleen S. Hill (recipient), an individual, to support the creation and administration of a national tribal water program council. The council is intended to raise awareness of water-related issues pertaining to the health of tribal communities and the quality of tribal aquatic resources and watersheds. EPA's contribution to the project was 100 percent of approved costs up to \$800,000.

For further information, contact our Office of Congressional and Public Affairs at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2012/20120123-12-4-0224.pdf

Examination of Costs Claimed Under Cooperative Agreement X7-83325501 Awarded to Kathleen S. Hill, Chiloquin, Oregon

What We Found

Kathleen S. Hill did not have a financial management system that met federal standards. We identified the following material weaknesses concerning the recipient's internal controls and compliance with federal requirements:

- The recipient did not have adequate controls to ensure that costs claimed were in accordance with Code of Federal Regulations (CFR) requirements under 2 CFR Part 230.
- The recipient's cash draws did not comply with 40 CFR Part 30 requirements or the terms and conditions of the cooperative agreement.

As a result, we questioned \$80,721 of the \$726,587 claimed under the cooperative agreement. Questioned costs included ineligible fringe benefit, travel and per diem, supplies, and contractual costs.

What We Recommend

We recommend that the Director, Office of Grants and Debarment, disallow and recover \$80,721 in questioned costs. We also recommend that the director verify that the recipient has an adequate financial management system in place prior to any future award. Further, we recommend that the director verify that the recipient's final financial status report is properly supported by accounting system records.

EPA did not comment on the recommendations, but generally agreed with the findings, with the exception of fringe benefits. The recipient generally disagreed with the findings and recommendations, and said they were based on inaccurate and incomplete data. However, the recipient's comments and supporting documentation did not change our findings and recommendations.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

January 23, 2012

MEMORANDUM

SUBJECT: Examination of Costs Claimed Under Cooperative Agreement X7-83325501
Awarded to Kathleen S. Hill, Chiloquin, Oregon
Report No. 12-4-0224

FROM: Arthur A. Elkins, Jr.
Inspector General

A handwritten signature in black ink, appearing to read "Arthur A. Elkins, Jr.", is written over the printed name.

TO: Howard Corcoran
Director, Office of Grants and Debarment

This is our report on the subject examination conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. EPA managers in accordance with established audit resolution procedures will make final determination on matters in this report.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 120 calendar days, or May 22, 2012. You should include a corrective action plan for agreed-upon actions, including milestone dates. Your response will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public. If your response contains such data, you should identify the data for redaction or removal.

We have redacted information on pages 24–76 of this report. Exemption (b)(6) of the Freedom of Information Act permits the government to withhold names of individuals when disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy” [5 U.S.C. § 552 (b)(6)]. The individuals whose names are redacted were not high-level officials.

If you or your staff have any questions regarding this report, please contact Robert Adachi, Director of Forensic Audits, at (415) 947-4537 or adachi.robert@epa.gov; or Lela Wong, Project Manager, at (415) 947-4531 or wong.lela@epa.gov.

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Introduction

Purpose

The U.S. Environmental Protection Agency's (EPA's) Grants and Interagency Agreements Management Division (GIAMD), within the Office of Grants and Debarment of the Office of Administration and Resources Management, requested assistance from the Office of Inspector General (OIG) due to concerns related to Kathleen S. Hill's (recipient's) management of activities and funding under Cooperative Agreement X7-83325501, as well as cash draw practices. The OIG met with a GIAMD team leader and agreed to perform an examination to determine whether the recipient complied with applicable federal laws and regulations and the terms and conditions of the cooperative agreement.

Background

Through a competitive process, EPA awarded the cooperative agreement to an individual, Kathleen S. Hill, of Chiloquin, Oregon, on October 26, 2006. The cooperative agreement provided assistance of \$800,000, incrementally funded over a 4-year budget period. The budget and project period was from October 15, 2006, to October 15, 2010, and was subsequently extended to March 31, 2011. The purpose of the cooperative agreement was to support the creation and administration of a national tribal water program council. The council is intended to:

- Raise awareness of water-related issues pertaining to the health of tribal communities and the quality of tribal aquatic resources and watersheds.
- Promote information exchange, facilitate the exposure of tribal water program employees to best management practices for addressing water quality concerns, and encourage the enhancement of tribal water protection program development and implementation.

To help the reader understand the report, we define the following key terms:

Amount Claimed. Amounts drawn to support federal outlays as certified by the recipient on *U.S. EPA Payment Requests (EPA Form 190-F-04-001)*.

Costs Questioned—Ineligible. Costs that in the auditor's opinion have been incurred contrary to a provision of a law, regulation, contract, grant, or cooperative agreement term, or other agreement or document governing the expenditure of funds, and which should be disallowed from consideration for federal reimbursement.

Costs Questioned—Unsupported. Costs for which the auditee was not able to provide adequate supporting documentation to the auditor. In the auditor's opinion, such costs should be disallowed for federal reimbursement unless EPA program officials satisfactorily resolve the deficiencies reported by the auditor.

Independent Auditor's Report

At the request of the EPA Grants and Interagency Agreements Management Division, Office of Grants and Debarment, Office of Administration and Resources Management, we have examined the costs claimed by Kathleen S. Hill (recipient) under Cooperative Agreement X7-83325501 for the period October 15, 2006, to September 30, 2010. This is an interim audit. The cooperative agreement ended on March 31, 2011.

By signing the award documents and thus agreeing to the terms set out therein, the recipient has accepted responsibility for preparing its cost claim to comply with the requirements of the Code of Federal Regulations (CFR) under 2 CFR Part 230, 40 CFR Part 30, and the terms and conditions of the cooperative agreement. Our responsibility is to express an opinion as to whether the costs claimed complied with the applicable requirements.

Our examination was conducted in accordance with the *Government Auditing Standards* issued by the Comptroller General of the United States, and the attestation standards established by the American Institute of Certified Public Accountants. We examined, on a test basis, evidence supporting the amount claimed under the cooperative agreement and performed other procedures we considered necessary under the circumstances. We believe our examination provides a reasonable basis for our opinion.

We conducted our field work from January 11, 2011, to July 27, 2011, and performed the following steps:

- Reviewed EPA project and cooperative agreement files.
- Interviewed EPA personnel to obtain an understanding of the project.
- Interviewed the recipient, her project administrator, and her bookkeeper to obtain an understanding of the project and the internal controls.
- Performed a judgmental sample of the EPA payments/draws to obtain a reasonable assurance that the recipient deposited the payments into the proper bank accounts and that draws complied with federal laws, regulations, and terms and conditions of the cooperative agreement.
- Performed judgmental samples of costs claimed under the cooperative agreement to obtain a reasonable assurance that the costs are allowable in accordance with federal laws, regulations, and terms and conditions of the cooperative agreement.
- Performed fraud detection procedures, including review for transaction patterns and duplicate payments.

As part of obtaining reasonable assurance that the recipient's costs claimed under the cooperative agreement are free of material misstatement, we performed tests of its compliance with the requirements of 2 CFR Part 230, 40 CFR Part 30, and

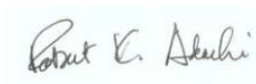
the terms and conditions of the cooperative agreement. We also considered the recipient's internal controls over cost reporting to determine our audit procedures and to express our opinion on the costs claimed. Our consideration of internal control would not necessarily disclose all internal control matters that might be material weaknesses. A material weakness is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements would not be prevented, or detected and corrected on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our examination disclosed the following material weaknesses concerning the recipient's internal controls and compliance with the requirements of 40 CFR Part 30 and 2 CFR Part 230.

- The recipient did not have adequate controls to ensure that costs claimed were in accordance with 2 CFR Part 230 requirements.
- The recipient's cash draws did not comply with 40 CFR Part 30 requirements or the terms and conditions of the cooperative agreement.

As a result, we questioned \$80,721 of the \$726,587 claimed under the cooperative agreement.

In our opinion, because of the effect of the issues described above, the costs claimed do not meet, in all material respects, the requirements of 40 CFR Part 30, 2 CFR Part 230, and the terms and conditions of the cooperative agreement for the period ended September 30, 2010.



Robert K. Adachi
Director for Forensic Audits
January 23, 2012

Results of Examination

The recipient's financial management system did not meet federal standards. We identified the following material weaknesses concerning the recipient's internal controls and compliance with federal requirements:

- The recipient did not have adequate controls to ensure that costs claimed were in accordance with 2 CFR Part 230 requirements.
- The recipient's cash draws did not comply with 40 CFR Part 30 requirements or the terms and conditions of the cooperative agreement.

As a result, we questioned \$80,721 of the \$726,587 claimed under the cooperative agreement. We summarize the costs claimed and questioned in table 1 below:

Table 1: Summary of questioned costs			
Cost category	Amount claimed	Amount questioned— ineligible	Note
Personnel	\$282,969		
Fringe Benefits	60,339	60,339	1
Travel & Per Diem	276,122	1,916	2
Supplies	16,034	170	3
Contractual	37,892	3,375	4
Other	51,395	13,085	5
Costs Claimed in Excess of Accounting System Amount	1,836	1,836	6
Totals	\$726,587	\$80,721	

Sources: Amounts claimed were from the recipient's accounting system and U.S. EPA Payment Requests. Costs questioned were based on the OIG's analysis of the data.

Internal Controls Over Costs Claimed Need Improvement

The recipient did not have adequate controls to ensure that costs claimed under the cooperative agreement were in accordance with federal requirements. According to 2 CFR 230, Appendix A, Section A.2, to be allowable under an award, a cost must, among other things, be reasonable for the performance of the award and be allocable, conform to any limitations or exclusions set forth in the cost principles, and be adequately supported. The recipient claimed costs under the cooperative agreement that were not in accordance with these requirements.

Note 1: Fringe Benefits

We questioned fringe benefit costs of \$60,339 claimed because the recipient:

- Charged \$32,943 in 401K costs to the cooperative agreement that was not supported by established written organization policy, as required by 2 CFR Part 230 federal cost principles.
- Did not allocate life insurance and medical costs of \$27,396 according to 2 CFR Part 230 requirements.

Fringe Benefit Charges Contrary to Federal Cost Principles

We questioned \$32,943 in 401K costs charged to the cooperative agreement that were not supported by established written organization policy, as required by 2 CFR Part 230. The budget for the cooperative agreement included a total fringe benefit amount equal to 23 percent of personnel costs. On an annual basis, the recipient calculated a 401K amount for herself and the project administrator and charged it to the cooperative agreement. The annual 401K amount charged to the cooperative agreement was the budgeted amount (i.e., 23 percent of their salaries) less all other fringe benefits paid during the year.

According to 2 CFR 230, Appendix B, Section 8.g.2, fringe benefits in the form of employer contributions or expenses for social security, employee insurance, pension plan, and the like are allowable, provided such benefits are granted in accordance with established written organization policies. Title 40 CFR 30.21(b)(6) requires the recipient to have an adequate financial management system, which includes written procedures for determining the reasonableness, allocability, and allowability of costs. Title 2 CFR 230, Appendix A, Section 2.g. further states that in order for a cost to be allowable it must be adequately documented. In our opinion, these regulations require the recipient to demonstrate that the fringe benefit amount charged to the cooperative agreement was granted in accordance with established written policy.

During our field work, the recipient provided policies stating that fringe benefit packages for key personnel included the 401K and that the recipient was committed to providing these benefits. The policy did not provide benefit amounts or computation methods; therefore, the recipient has not met the above federal requirements.

The recipient believes that the 23 percent budgeted amount for fringe benefits constituted an approved amount. We disagree with the recipient's position. The cooperative agreement budget is an estimate. It does not represent approved actual fringe benefit costs.

Life Insurance and Medical Costs Not Properly Allocated

We questioned life insurance expenses of \$4,901 and medical expenses of \$22,495 that were not allocated based on the requirements of 2 CFR 230, Appendix A, Section A.4, which states that a cost should be allocated to a particular cost objective in accordance with the relative benefits received. The recipient and the project administrator were both part-time employees under the cooperative agreement. However, the recipient charged the cooperative agreement for 100 percent of the premiums for a life insurance policy obtained for the project administrator and for all medical expenses for the recipient, the project administrator (her husband) and for two of their children. The medical expenses included the employee's share of the health insurance premium for a family policy provided by the California Public Employees' Retirement System from the recipient and the project administrator's prior employment with the State of California. The medical expenses also included all out-of-pocket medical and dental expenses for the family (the recipient, the project administrator, and two of their children). This charging practice is not in accordance with the relative benefit received under the cooperative agreement. The costs should be allocated to the cooperative agreement according to the recipient and the project administrator's part-time employment status.

The recipient believes that she considered the part-time status in the fringe benefit allowance. Her policy stated that total fringe benefit expenses were restricted and limited to 23 percent of the personnel costs for the cooperative agreement. The employee's personnel cost was for part-time employment; therefore, total fringe benefit reflected the part-time status. However, in our opinion, although the recipient's 23 percent fringe benefit ceiling considered the part-time status, the actual charges to the cooperative agreement did not. As explained above, the recipient charged 100 percent of the life insurance and medical costs to the cooperative agreement. Therefore, we continue to question the costs.

Note 2: Travel and Per Diem Costs

We questioned travel costs of \$1,916, consisting of a travel refund of \$1,728 not credited to the cooperative agreement and cell phone charges of \$188 not properly allocated.

Travel Refund Not Credited to the Cooperative Agreement

The recipient received a travel refund of \$1,728, but did not demonstrate that the refund was credited to the cooperative agreement in accordance with 2 CFR Part 230. According to 2 CFR 230, Appendix A, Section A.5.a, applicable credits refers to those receipts or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards. To the extent that such credits accruing or received by

the organization relate to allowable costs, they shall be credited to the federal government either as a cost reduction or cash refund.

The recipient received a \$1,728 refund for lodging costs paid under the cooperative agreement. The recipient claimed that the credit was applied to subsequent payments. She provided a summary of the transactions where she claimed the credit was applied. However, we were unable to verify the recipient's statement, as neither the credit amount nor the transactions in the summary were in the recipient's accounting system download. As a result, we questioned the costs.

Cell Phone Costs Not Properly Allocated

We questioned cell phone charges of \$188 that were not properly allocated. The charge was miscoded as Travel and Per Diem. See Note 5 for details on cell phone costs questioned.

Note 3: Supplies

We questioned supplies of \$170 for a cell phone charge not properly allocated. The charge was miscoded as supplies. See Note 5 below for details on cell phone costs questioned.

Note 4: Contractual Costs

We questioned contractual costs of \$3,375 claimed contrary to 2 CFR Part 230 requirements. The recipient claimed organization costs to set up a 401K plan, a medical plan, and employee agreements. There was no evidence of prior EPA approval for the costs. According to 2 CFR 230, Appendix B, Section 31, organization costs are unallowable except with prior approval from the awarding agency.

The recipient believes that the evidence provided in her draft report response demonstrated prior approval of the costs. In particular, the recipient believes the following events and documentation collectively establish prior approval:

- EPA project officer's understanding of the necessity to incur the contractual costs to comply with applicable law
- E-mail to the project officer requesting budget line-item changes relating to the contractual costs
- Project officer's oral approval of the costs
- Quarterly report discussing these ongoing costs

We disagree with the recipient that this information constitutes the prior approval per 2 CFR 230, Appendix B, Section 31. The recipient's response did not include evidence of the project officer's approval of the costs. The e-mails cited by the

recipient stated that there was a need to make some budget line-item changes to address the start-up costs of the project. However, there was no mention of the intent to obtain professional assistance or evidence of EPA's approval of the budget line item changes. The recipient's quarterly report for the time period stated that work is ongoing regarding the issue of appropriate fringe benefit charges to the cooperative agreement and that further work will be in progress. The quarterly report also did not mention professional assistance. In addition, it is our opinion that the quarterly report is the recipient's after-the-fact assertion of the project activities, not EPA's approval of the activities.

Note 5: Other Costs

We questioned other costs of \$13,085, consisting of \$8,800 for less-than-arms length rental and \$4,285 for cell phone charges.

Less-Than-Arms Length Rental Costs

The recipient charged office trailer rental costs of \$8,800 to the cooperative agreement at an arbitrary monthly rate, contrary to the requirements of 2 CFR Part 230. The office trailer was initially owned by the recipient's daughter, and subsequently purchased by the recipient. Rentals from the recipient and her daughter were less-than-arms-length transactions. According to 2 CFR 230, Appendix B, Section 43.c, less-than-arms-length leases include, but are not limited to, those between divisions of a non-profit organization and the key employee of the non-profit organization or his or her immediate family. Rental costs of buildings under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the non-profit organization. The allowable costs, according to 2 CFR 230, Appendix B, Section 43.b, include actual costs of ownership, expenses such as depreciation or use allowance, maintenance, taxes, and insurance. The recipient charged an arbitrary amount rather than actual cost of ownership. As a result, we questioned the \$8,800 claimed under the cooperative agreement.

To address this issue in the draft report response, the recipient proposed a depreciation methodology to support the office trailer costs. However, we could not accept the recipient's depreciation methodology for the following reasons:

- The recipient did not provide a basis for allocating the property acquisition cost of \$20,000 between the trailer (depreciable portion) and the land (non-depreciable portion).
- The recipient did not provide a cost of ownership calculation for the period when rent was paid to her daughter. As a result, we continue to question the office rental costs.

Cell Phone Costs

The recipient charged cell phone costs of \$4,285 to the cooperative agreement. The costs were not allocated according to 2 CFR Part 230 requirements. The costs were for a family plan for four members, including the recipient, her husband (project administrator), and two children. The cell phones were used for personal and business purposes. The recipient either charged 100 percent of the costs to the cooperative agreement or an arbitrary amount.

According to 2 CFR 230, Appendix A, Section A.4, a cost is allocable to a particular cost objective, such as a grant, contract, project, service, or other activity, in accordance with the relative benefits received. The recipient and her husband worked part-time on the cooperative agreement. However, the cell phone charges did not reflect the benefits received from their part-time employment, or account for their personal usage or their children's usage.

According to the recipient, she had a family cell phone plan prior to the cooperative agreement. When she received the cooperative agreement, her cell phone costs under her family regional plan increased significantly because of the long distance calls she had to make to communicate with EPA and council members. In addition, under the cooperative agreement, she was required to be available through e-mail. After setting-up the initial plan, the grantee changed the plan 3 more times. She changed the cell phone plan four times trying to find one that was reasonable. She eventually selected a national family plan that included cell phone use for herself, her husband, and two of their children, as well as data use for herself.

In our opinion, a family plan should be prorated to charge the cooperative agreement according to benefit received, as required under 2 CFR 230, Appendix A, Section A.4, regardless of the arrangement she had prior to the cooperative agreement.

In the draft report response, the recipient proposed an entirely new cost allocation methodology to address the issue. Under the new methodology, the recipient charged monthly cell phone plan costs to the cooperative agreement as follows: (a) for the initial plan, she charged 50 percent of the monthly plan cost; and (b) for the subsequent three plans, she charged the monthly plan costs over and above half the cost of the initial plan. This methodology resulted in charges to the cooperative agreement for approximately 75 percent of the plan costs. As explained above, the plans were for four family users, including the recipient and her husband, who were part-time on the cooperative agreement, and two of their children. In our opinion, the new cost allocation methodology of charging approximately 75 percent of the plan costs to the cooperative agreement is

not in accordance with the benefit received under the cooperative agreement. Therefore, we continue to question the cell phone costs claimed.

Note 6: Costs Claimed in Excess of Accounting System Amount

We questioned \$1,836 claimed in excess of the expenditures recorded in the recipient's accounting system. The excess amount occurred because the recipient did not comply with the cash management requirements of 40 CFR 30.22. See **Advance Cash Draws Do Not Meet Federal Requirements** section below for details.

Advance Cash Draws Do Not Meet Federal Requirements

The recipient's advance cash draws did not comply with federal requirements. The recipient made quarterly advance draws of \$50,000 or \$60,000, instead of making draws to cover immediate cash needs, as required under 40 CFR 30.22 and the terms and conditions of the cooperative agreement. This advance draw method occurred from the inception of the cooperative agreement in October 26, 2006, to May 7, 2010, when EPA changed the recipient's payment method to reimbursement. Based on our review of the accounting system records, as of May 7, 2010, the recipient drew \$62,229 under the cooperative agreement in excess of actual expenditures.

According to 40 CFR 30.22(a), payment methods shall minimize the time elapsing between the transfer of funds from the U.S. Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Title 40 CFR 30.22(b) states that cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs. Administrative condition 4 of the cooperative agreement also states that, by accepting this agreement for the electronic method of payment through the Automated Clearing House network, the recipient agrees to request funds based on the recipient's immediate disbursement requirements.

The recipient stated that she communicated her intent to make quarterly advance draws to the EPA project officer, grant specialist, and Las Vegas Finance Center. It was the recipient's understanding that once the funding was obligated for an upcoming event, the money would no longer be available. The recipient believed that she always had zero cash on hand, as the draws were always committed for future events. However, according to 40 CFR 30.22, draws were to be timed with actual disbursement, not commitment or obligation.

After the recipient was placed on reimbursement, she applied the \$62,229 remaining from prior draws to expenditures incurred over the subsequent months. The recipient stated that she did not submit a reimbursement request until August 19, 2010, after she had spent all cash on hand. The recipient's accounting system records showed that as of September 30, 2010, the cut-off date of our examination, the recipient had a cash balance of \$1,836. The cash balance represents cash drawn in excess of expenditures. As a result, we questioned the \$1,836 excess draw amount.

It should be noted that this is an interim audit with a cut-off date of September 30, 2010. The cooperative agreement ended on March 31, 2011. As cash draw is an on-going process, the excess draw amount may be different at the end of the cooperative agreement.

Work Performance Issues

In the audit request, GIAMD raised concerns about the recipient's work performance under the cooperative agreement. Specifically, GIAMD stated that the recipient did not provide the required quarterly reports according to terms and conditions of the agreement until year 4. GIAMD also stated that the recipient claimed to have developed databases that EPA was not aware of; therefore, EPA raised concerns about the validity of the databases.

To address this concern, we reviewed the original workplan, discussed the tasks and deliverables with the recipient, and obtained samples of the deliverables.

The purpose of the cooperative agreement was to support the creation and administration of a national tribal water program council. The council was expected to raise awareness of water-related issues pertaining to the health of tribal communities and the quality of tribal aquatic resources and watersheds. The council was also expected to promote information exchange, facilitate the exposure of tribal water program employees to best management practices for addressing water quality concerns, and encourage the enhancement of tribal water protection program development and implementation.

We believe the recipient has fulfilled the overall purpose of the cooperative agreement. The recipient created a national tribal water council and held various meetings for the council to raise awareness of water-related issues pertaining to the health of tribal communities and quality of tribal aquatic resources and watersheds. The meetings included presentations and discussions on best management practices for water quality concerns and enhancing tribal water protection program development and implementation.

We found that many of the tasks in the workplan were general in nature and did not have verifiable deliverables. Examples of these tasks include coordinating meeting schedules, updating council members on meetings and emerging issues,

arranging for other communication events, promoting information exchange within the council, and assisting in finding opportunities for council members to raise awareness regarding tribal health and quality of tribal aquatic resources. The verifiable deliverables under the cooperative agreement were council operating procedures, quarterly reports, various databases, and meeting minutes. Based on the work performed under our examination:

- The council operating procedures were established and adopted.
- Quarterly reports were submitted through September 30, 2010, as of the end of our field work on July 27, 2011. We did not review the quarterly report for timeliness. The audit cut-off date of our examination was 6 months before the end of the cooperative agreement. Therefore, we did not believe the timeliness issue to be significant at that time.
- The databases were created and posted on the council's website. The recipient explained that traditional databases were not conducive to information sharing, so she used weblinks to allow all council members access to the data.
- Documentation requirements for annual and monthly meetings were generally met.

We noted that the financial portion of the quarterly report submitted to EPA for the period ended September 30, 2010, did not reconcile to the recipient's accounting system. The financial report showed total expenditures of \$727,693, while the recipient's accounting system showed total expenditures of \$724,751, a variance of \$2,942. The cooperative agreement ended on March 31, 2011. EPA should verify that the final financial status report is properly supported by accounting system records.

Recommendations

We recommend that the Director, Office of Grants and Debarment:

1. Disallow and recover unallowable costs of \$80,721 claimed under the cooperative agreement.
2. Verify that the recipient has a financial management system that meets federal standards established under 2 CFR 215.21 prior to any future awards.
3. Verify that the recipient's final financial status report is properly supported by accounting system records.

Agency and Recipient Comments

The OIG received comments on the draft report from EPA's Office of Grants and Debarment on August 29, 2011, and from the recipient on August 26, 2011. The

recipient also provided supplemental documentation as support for her comments. We held exit conferences with EPA on October 6, 2011, and with the recipient on October 11, 2011, to discuss the respective draft report comments.

EPA did not comment on the recommendations, but generally agreed with the findings, with the exception of the fringe benefit issues. EPA stated that 2 CFR Part 30 does not specify technical requirements for fringe benefit policies and that we are holding the recipient to a higher standard than necessary. EPA also pointed out that the report did not raise concerns regarding the reasonableness of the fringe benefit amount nor did it question whether EPA authorized the costs in the budget for the cooperative agreement. In addition, EPA requested that we include the following in our report: (1) clarification regarding the applicability of 40 CFR Part 30 regulations to an individual; (2) recognition that the quarterly reports only partially met the terms and conditions of the cooperative agreement because they were not submitted timely and the earlier ones did not include financial tracking reports; and (3) providing of the specific dollar amount of the discrepancy where the report cited that the recipient's quarterly financial report did not reconcile to the accounting system. EPA's complete written response is in appendix A.

The recipient disagreed with the findings and recommendations. The recipient's complete written response is in appendix B. The supplemental documentation provided by the recipient is not included in the report due to its volume, but is available upon request.

During the exit conference, the recipient requested clarification language on cash draw, organization costs, and travel refund. The recipient also requested that we remove the draft report section titled Request for Additional Funding.

OIG Response

We disagreed with EPA's position on the fringe benefit costs. We believe that 40 CFR 30.21(b)(6) and 2 CFR 230, Appendix A, Section 2.g. require the recipient to demonstrate that the amount of fringe benefit charged to the cooperative agreement was granted in accordance with established written policy; therefore, we will continue to question the fringe benefit costs. However, we have included allocation as the basis for questioning the life insurance costs.

Based on EPA's comments, we have added the clarification regarding the applicability of 40 CFR Part 30 and the compliance with quarterly reporting requirements. We have also included details on the expenditure variance between the recipient's financial tracking report and the accounting system records.

The recipient's comments and supporting documentation did not resolve the issues addressed in the draft report. Therefore, our position on the findings and recommendations generally remains unchanged. We did make the following changes in response to the recipient's comments:

1. Based on the recipient's request, we eliminated the "Request for Additional Funding" section of the report, as there is no longer an audit issue on the matter.
2. We eliminated the section in the draft report regarding the recipient's fringe benefit policy not including effective dates and approval signatures. However, the fringe benefit issues remain in the report because the recipient has not demonstrated that the amount of 401K charged to the cooperative agreement was granted in accordance with established written policy and that life insurance and medical costs were properly allocated. As stated above, we moved the life insurance expenses of \$4,901 from the "Fringe Benefit Charges Contrary to Federal Cost Principle" section to "Life Insurance and Medical Costs Not Allocated Properly" section.
3. We added discussions regarding the recipient's new cost allocation methods for office trailer rental costs and cell phone charges.
4. We modified the report language for cash draw, organization costs and travel refund, to recognize the recipient's perspective on the issues.

Details of our responses are included as text boxes in appendices A and B of this report.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
1	13	Disallow and recover unallowable costs of \$80,721 claimed under the cooperative agreement.	U	Director, Office of Grants and Debarment		\$81	
2	13	Verify that the recipient has a financial management system that meets federal standards established under 2 CFR 215.21 prior to any future awards.	U	Director, Office of Grants and Debarment			
3	13	Verify that the recipient's final financial status report is properly supported by accounting system records.	U	Director, Office of Grants and Debarment			

¹ O = recommendation is open with agreed-to corrective actions pending
 C = recommendation is closed with all agreed-to actions completed
 U = recommendation is unresolved with resolution efforts in progress

Agency's Comments on Draft Report and OIG Evaluation

The response from the Agency is provided verbatim. OIG responses to those comments have been inserted in text boxes



United States Environmental Protection Agency
Washington, DC 20460

**Office of
Administration
and Resources
Management**

August 29, 2011

MEMORANDUM

SUBJECT: Comments on Draft Attestation Report, "Examination of Costs Claimed Under EPA Cooperative Agreement X7-83325501 Awarded to Kathleen S. Hill, Chiloquin, Oregon" Project No. 2011-1564

FROM: Howard Corcoran /s/ *Howard Corcoran*
Director, Office of Grants and Debarment

TO: Robert Adachi, Director
Forensic Audits

Thank you for the opportunity to review and comment on the factual accuracy of the subject Office of Inspector General Draft Attestation Report dated July 27, 2011.¹ We sincerely appreciate your prompt and comprehensive examination of this matter at our request.

¹ We note that although OIG requested comments on the Report within 30 days of the date of the draft Report, EPA Manual 2750, allows the Action Official a 45-day period to comment on draft assistance agreements audit reports. Specifically, Chapter 3, Section 3.a. of the Manual, provides that "the Action Official should provide comments on the draft report, if needed, in writing to the auditors within 45 days of issuance of the draft." The Action Official should request an extension on the comment period, if appropriate."

Based on our review of the Report and information available at this time, we generally agree with the accuracy of most of the findings in the Report but have concerns over the finding relating to fringe benefit costs. Our overall concern is that the Report does not fully take into account the fact that EPA awarded the cooperative agreement to Kathleen Hill as an individual rather than to an incorporated nonprofit organization. The Report assumes that 2 CFR Part 230 and 40 CFR Part 30 apply to the cooperative agreement as a matter of regulation. That is not the case. As an individual, Ms. Hill was technically not covered by 2 CFR Part 230, which applies to nonprofit organizations, or 40 CFR Part 30, which applies to institutions of higher education, hospitals and other nonprofit organizations. The definition of nonprofit organizations, as defined by 2 CFR § 230.25(a), does not include individuals.

We believe that the OIG should point out that Ms. Hill agreed to comply with 40 CFR Part 30 when she accepted the cooperative agreement, rather than to assert that the regulation applied automatically. She was then subject to 2 CFR Part 230 by operation of 40 CFR § 30.27.

OIG Response 1: We applied the criteria for non-profit organizations in accordance with the regulatory authority cited in the award documents.

To explain the recipient's responsibility for complying with the non-profit criteria, we stated in the Independent Auditor's Report that "by receiving the award, the recipient has accepted responsibility for preparing its cost claim to comply with the requirements of the Code of Federal Regulations (CFR) under 2 CFR Part 230, 40 CFR Part 30, and the terms and conditions of the cooperative agreement." In light of Agency's comment, we have revised the phrase "by receiving the award" to "by signing the award document and thus agreeing to the terms set out therein."

More importantly, the sole basis on which the OIG questions the fringe benefit costs is that the benefits were not "granted in accordance with established written organization policies" as required by 2 CFR Part 230, Appendix B, section 8.g.2. The OIG acknowledges that Ms. Hill established a policy granting fringe benefits to herself and the project manager for the cooperative agreement, Ms. Hill's husband, and that the fringe benefits provided under the policy included payments for a 401K plan and life insurance. The Report does not raise any concerns regarding the reasonableness of the amount of the fringe benefit payments nor does it question whether the payments were authorized when EPA approved the budget for the cooperative agreement. Instead, according to the Report:

the policies did not include an effective date, approval date, or approval signature; therefore, there was no evidence that the recipient had these policies in place at the time the recipient incurred the 401K and life insurance costs. The policies also did not include plan details, such as qualifying and vesting conditions, criteria for determining eligible amount, or payment plan. Without such details, the plan can be unenforceable, and we do not consider them "established organization polices" in accordance with 2 CFR 230, Appendix B, Section 8.g.2.

The absence of an effective date, approval date, or approval signature on the written policies does not necessarily render the policies invalid. The regulation does not specify such technical

requirements in order for the fringe benefit policies to be effective. Similarly, there is no requirement in 2 CFR Part 230, Appendix B, Section 8.g.2 that fringe benefit policies “include plan details, such as qualifying and vesting conditions, criteria for determining eligible amount, or payment plan.” The OIG appears to be holding Ms. Hill to a higher standard than is necessary given that the fringe benefit payments were not excessive.²

OIG Response 2: In our opinion, it is the recipient’s responsibility to demonstrate that the amount of fringe benefits charged to the cooperative agreement was granted in accordance with established written policy. Title 40 CFR 30.21(b)(6) requires the recipient to have an adequate financial management system, which includes written procedures for determining the reasonableness, allocability, and allowability of costs. Title 2 CFR 230, Appendix A, Section 2.g., further states that in order for a cost to be allowable, it must be adequately documented. The recipient’s written policy merely stated that “the fringe benefits package for the key personnel includes, but is not limited to medical expenses, medical insurance, term life insurance and 401K retirement program.” The policy did not provide benefit amounts or computation methods; therefore, the recipient has not demonstrated that the benefit amounts were granted in accordance with established written policies.

The Agency raised concerns regarding EPA approval as well as the reasonableness and allocability of the benefit costs. EPA did approve fringe benefits in the cooperative agreement budget. We did not raise the reasonableness issue in our report because it is subjective.

We agree that allocability should be included as an additional reason for questioning the life insurance costs. The recipient charged 100 percent of the costs of the project administrator’s life insurance policy to the cooperative agreement. Since the project administrator was part-time, the recipient should have allocated the costs to the cooperative agreement according to his employment status. We have modified the report accordingly.

Allocability does not apply to the 401K costs because the costs were not calculated based on employment status. Rather, the amount was based on the maximum fringe benefit allowed in the cooperative agreement budget. The budget included a total amount for fringe benefits equal to 23 percent of the budgeted personnel costs. At the end of each year, the recipient would calculate 23 percent of total personnel costs, subtract all other fringe benefits incurred, and contribute the remaining balance to 401K, which was then charged to the cooperative agreement.

² We note that at a prior meeting with my staff, OIG representatives stated that the fringe benefits would be questioned based on the allocability of such costs in accordance with 2 CFR Part 230, Appendix A, Section 4. Apparently, the OIG audit indicated that Ms. Hill charged the cooperative agreement for 100% of her and her husband’s fringe benefits when a lower percentage was warranted. If the audit did establish that all of the fringe benefit payments were not allocable to the cooperative agreement, the Agency would be more amenable to disallowing the costs on that basis.

It is also noteworthy that under the OGD pre-award review for carrying out EPA Order 5700.8, “EPA Policy on Assessing Capabilities of Non-Profit Applicants for Managing Assistance Awards”, the Office of Grants and Debarment personnel would have required that Ms. Hill establish written personnel policies, which typically address fringe benefits provided by an organization. The Agency did not conduct a pre-award review of Ms. Hill because she was not a nonprofit organization. Consequently, the Agency bears some responsibility for not providing Ms. Hill the pre-award assistance she may have needed to understand the requirements of 2 CFR Part 230, Appendix B, section 8.g.2.

OIG Response 3: We agree that because the award document cited 40 CFR Part 30 as the regulatory authority, the Agency should have conducted a pre-award review. However, the fact that the Agency did not address the policy issue during pre-award does not relieve the recipient from having the policies necessary to comply with the applicable requirements.

Finally, we have two additional comments with respect to the findings on page 13 of the Report. First, the second bullet on the top of page 13 indicates that “quarterly reports were submitted through September 30, 2010, in compliance with the terms and conditions of the agreement.” However, in addition to requiring quarterly reports, the cooperative agreement also called for the quarterly reports to:

- Be submitted to the EPA Project Officer within 30 days after the end of each quarter;
- Include a financial tracking report that provides expenditures for the quarter and a comparison to the budget for each of the items listed;
- Describe work progress made toward reaching objectives and benchmarks, difficulties encountered, corrective action plans for the next quarter, and any key personnel changes; and
- Provide periodic updates listing work and travel plans, and progress and funding status of efforts under the cooperative agreement.

The contents of the recipient’s quarterly reports did not fully comply with those requirements. Among other things, the recipient failed to include the requisite “financial tracking report” within 30 days after the end of each quarter. Although the contents of the recipient’s quarterly reports improved in the third quarter of the final year of the cooperative agreement, we suggest that the OIG revise the second bullet of the audit report to indicate that the quarterly reports were submitted through September 30, 2010, in “partial” compliance with the terms and conditions of the agreement.

OIG Response 4: Based on our review, we believe the financial tracking reports were in the quarterly reports as of September 30, 2010, although we cannot opine on the timeliness of these reports. We have revised the report to explain that we did not review for timeliness of quarterly report submittals. The examination was conducted close to the end of the cooperative agreement period. We did not believe the timeliness issue was significant at that point. Our focus was whether the recipient submitted the required reports at the time of our examination.

Second, we request that the OIG clarify the finding in the first full paragraph on page 13 of the Report. In particular, the OIG points out in that paragraph that the financial portion of the

quarterly report for the period ending on September 30, 2010, did not reconcile with the recipient's accounting system. We request that the OIG provide the specific dollar amount of the discrepancy between the recipient's accounting system and the quarterly report.

OIG Response 5: We have added the requested information to the final report.

Thank you once again for the opportunity to comment on the draft Report and for your thorough review of the recipient's claimed costs. If you have any questions concerning this matter, please feel free to contact Joe Lucia, the Office of Grants and Debarment's assistance agreement Audit Follow-up Coordinator. You may reach Joe by email at lucia.joseph@epa.gov, or by phone at 202-564-5378.

cc: Lela Wong
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Jessica Durand
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Recipient's Comments on Draft Report and OIG Evaluation

The response from the recipient is provided verbatim. OIG responses to those comments have been inserted in text boxes. We did not include the recipient's attachments due to volume. These attachments may be obtained upon request.

Kathleen S. Hill Response

To

The U.S. Environmental Protection Agency
OFFICE OF INSPECTOR GENERAL

Draft Attestation Report

re Examination of Costs Claimed Under

Tribal Water Program Council Cooperative Agreement X7-83325501

Awarded to

Kathleen S. Hill, Chiloquin, Oregon
Project No. 2011-1567 July 27, 2011

August 26, 2011

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List of Attachments

1. Attachment 1 EPA Competition Order, Section 20 Waiver
2. Attachment 2 EPA Competition Order, 12 a. (1) (A), Exceptions from Competition
3. Attachment 3 Letter from Grantee to Michael Shapiro re Meeting, April 18, 2010
4. Attachment 4 [REDACTED] Letter to Grantee, 5/27/06
5. Attachment 5 E-Mail from [REDACTED] re DUNs Number, 6/14/06
6. Attachment 6 E-Mail from [REDACTED] re OGC Questions and Sole Proprietorship
7. Attachment 7 Budget Documents for Cooperative Agreement, 3/9/06
8. Attachment 8 E-Mail from Kathleen Hill to [REDACTED] re Sole Proprietorship, 6/14/06
9. Attachment 9 NTWC Quarterly Report, pp. 1-2, re LLC Status and Fringe Benefits, 9/30/07
10. Attachment 10 NTWC Quarterly Report, pp.1-2, re Accounting Services, 7/1/07
11. Attachment 11 NTWC Budget Details for TWPC, revised 7/31/07
12. Attachment 12 E-Mail from [REDACTED] re Budget Modification Request, 8/8/07
13. Attachment 13 Letter from Michael Shapiro to Kathleen S. Hill, re Grant Award, 6/22/06
14. Attachment 14 E-Mail from [REDACTED] re Revised NTWC Budget, 9/13/06
15. Attachment 15 Revised TWPC Budget, 9/13/06
16. Attachment 16 Revised NTWC Schedule of Milestones, 9/18/06
17. Attachment 17 Employee Acknowledgement of Personnel Policies, 10/15/06
18. Attachment 18 Northwest Retirement Plans, Inc. Letter re 401k plan, 10/5/07
19. Attachment 19 Kathleen S. Hill, LLC Action to Adopt Qualified Retirement Plan, 10/25/07
20. Attachment 20 IRS EIN [partly redacted] Issued for Kathleen S. Hill, LLC, 10 October 2007
21. Attachment 21 Employee Acknowledgement of LLC Personnel Policies, 10/1/07
22. Attachment 22 Medical Care and Insurance Plan Adoption, 10/1/07
23. Attachment 23 Medical Care and Insurance Plan of Kathleen S. Hill, LLC, October 1, 2007
24. Attachment 24 Spreadsheet for Reimbursement of Funds to NTWC Account
25. Attachment 25 April 2010 Credit Card Statement re Reimbursement of Funds
26. Attachment 26 May 2010 Credit Card Statement re Reimbursement of Funds
27. Attachment 27 June 2010 Credit Card Statement re Reimbursement of Funds
28. Attachment 28 July 2010 Credit Card Statement re Reimbursement of Funds

29. Attachment 29 5.19.11 Auditor to Grantee re GL & \$1,728.71 Credit
30. Attachment 30 7.31.07 Project Administrator to EPA PO & GIAMD GS
31. Attachment 31 E-Mail from Project Administrator to Project Officer, 7/31/07
32. Attachment 32 E-Mail from Project Officer to Project Manager, 8/1/07
33. Attachment 33 E-Mail from Project Manager to Project Officer, 8/5/07
34. Attachment 34 Spreadsheet for Cell Phone Reimbursements from Grant Funds
35. Attachment 35 Attachment 35 3.7.11 Grantee to Auditors re \$1,721.98
36. Attachment 36 5.1.11 Grantee Responses to Auditors_\$1,836 Balance
37. Attachment 37 Application Estimate of \$50,000.00 Spending Rate for Grant Activities
38. Attachment 38 11/04/06 E-Mail from Grantee to Project Officer re Drawdowns
39. Attachment 39 11/04/06 E-Mail from Grantee to Project Officer re Spending Authorization
40. Attachment 40 11/7/06 E-Mail forwarded by Project Officer to Grantee re Grant Specialist
41. Attachment 41 11/9/06 E-Mail forwarded from Project Officer to Grantee re Grant Paperwork
42. Attachment 42 11/09/06 E-Mail from Grantee to Project Officer re Status of Funds
43. Attachment 43 11/09/06 E-Mail from Grantee to Project Officer re Fund Advances
44. Attachment 44 11/09/06 E-Mail from Grantee to Project Officer re Grant Specialist
45. Attachment 45 6.22.11 Grantee re Delayed Closeout
46. Attachment 46 10.26.09 PO re IGMS
47. Attachment 47 ██████████ re 40K Shortfall
48. Attachment 48 1.5.10 EPA PO re GIAMD Grant Specialist Change
49. Attachment 49 1.21.10 EPA PO re Supplemental Actions
50. Attachment 50 1/21/10 Fax from Grantee to GIAMD Personnel re \$840,000 Award
51. Attachment 51 1.21.10 Grantee re Anticipated Resolution
52. Attachment 52 1.27.10 Actions Authorizing Out of Scope of Workplan
53. Attachment 53 Grantee letter to Michael Shapiro re Request for Assistance
54. Attachment 54 2.21.10 EPA PO re PO Authority
55. Attachment 55 7.30.07 PO re STORET Assistance
56. Attachment 56 7.31.07 ██████████ to Grantee re Assistance
57. Attachment 57 10.19.07 EPA PO re \$10K in Funding Pkg.
58. Attachment 58 11.01.07 ██████████ re OWM \$10K in Grant
59. Attachment 59 11.12.07 Grantee re STORET/WQX Budget Concerns
60. Attachment 60 11.15.07 ██████████ re \$10K Addition
61. Attachment 61 11.15.07 ██████████ re Budget Concerns_ Funding
62. Attachment 62 11.15.07 EPA PO re \$810,000
63. Attachment 63 11.15.07 EPA PO re Grant Specialist Competition Policy

- 64. Attachment 64 GIAMD Awards Grantee \$10,000 Supplemental Funds for WQX/Storet
- 65. Attachment 65 10.2.09 OWOW Query to [REDACTED] re Adding \$\$
- 66. Attachment 66 10.5.09 [REDACTED] _Add up to \$30,000
- 67. Attachment 67 10.08.09 OWOW Request to Grantee
- 68. Attachment 68 10.12.09 Grantee re OWOW Assistance Request
- 69. Attachment 69 10.12.09 Grantee re OWOW Assistance Request
- 70. Attachment 70 10.13.09 OWOW Informed PO & GS re \$30K
- 71. Attachment 71 Grantee to [REDACTED], [REDACTED], [REDACTED] re \$30,000
- 72. Attachment 72 11.2.09 OWOW_PO_GS re \$30,000
- 73. Attachment 73 12.16.09 Grantee re URGENT Funding Issue

Response to *At a Glance*

There are factual errors/inconsistencies under the heading of *Why We Did This Examination*.

First, grantee Kathleen S. Hill was awarded three (3) assistance awards by EPA: the Tribal Water Program Council Cooperative Agreement, a competitive award of \$800,000, and two (2) supplemental, non-competitive awards for \$10,000 and \$30,000. The total awards add to \$840,000, not “up to \$800,000” as reported by the OIG.

OIG Response 1: Only one cooperative agreement for \$800,000 was awarded to the recipient. Refer to **OIG Response 33** for discussion on the additional \$40,000.

Second, the Office of Inspector General (OIG) states that EPA requested assistance

“due to concerns relating to a cooperative agreement recipient’s project and funding management, as well as cash draw practices.”

This statement is inconsistent with the Office of Inspector General’s statement on page 13 of the report, in which the OIG states

“The GIAMD’s audit request stemmed from the recipient’s request for additional funding as a result of the following two training courses initiated by the EPA program offices:

- *Training in 2007 for tribal members to learn about Storage and Retrieval Data Warehouse and Water Quality Exchange (referred to as STORET/WQX).*
- *Office of Wetlands, Oceans, and Watersheds training in 2009 on Sustainable finance for tribal wetlands [programs].”*

OIG Response 2: Consistent with OIG practice, we did not include the audit request in the draft report. However, we correctly summarized the concerns in the audit request. According to the audit request, EPA started to review the cooperative agreement supporting documentation in detail when the recipient requested additional funding as a result of the training events cited above. EPA’s review identified the concerns in the audit request.

It is the grantee’s opinion that the statement on the *At A Glance* page was made to avoid drawing attention to errors made by EPA’s GIAMD Grant Specialist who arbitrarily cut \$40,000 from the original Tribal Water Program Council Cooperative Agreement funding intended to support the work of the National Tribal Water Council. It is also the grantee’s opinion that EPA’s decision to add \$30,000 of funding for the additional work was a violation of EPA’s own *Competition Order* and that those funds, and the \$10,000 for additional work awarded to the grantee previously, were used to supplant \$40,000 of original grant funding that EPA had committed for the support of the National Tribal Water Council.

GIAMD's action violated the EPA Competition Order that prohibits non-competitive, supplemental grant awards of more than \$15,000 to existing EPA grantees unless the Order requirement is waived by the Grants Competition Advocate.

(See Attachment #1)

The decision to reject \$40,000 included in the original funding for the support of the National Tribal Water Council (NTWC) and supplant it with separate awards of \$10,000 and \$30,000, respectively, appears to have effectively shielded GIAMD's violation of the Order from exposure. (See Attachment #2)

The grantee's request to EPA in December 2009 was not to add funds for the training, but to honor the Tribal Water Program Council Cooperative Agreement by releasing the \$40,000 to support the work of the National Tribal Water Council. The EPA not only refused to release the \$40,000 but also failed to provide grant funds to any other grantee for the support of the NTWC between the end of the grantee's extension to March 31, 2011 and issuance of a new award that is anticipated to take place in the Fall of 2011.

OIG Response 3: Refer to **OIG Response 33** for discussion of the additional \$40,000.

Response to *Introduction*

Purpose

Factual Error: The OIG claims that the GIAMD requested assistance

“due to concerns related to Kathleen S. Hill's (recipient's) management of activities and funding.... As well as cash draw practices.”

Issues pertaining to any concerns related to the grantee's management of “activities and funding” will be addressed later in this document, on an issue by issue basis.

The issue of cash draw practices was resolved May 13, 2011 during a face-to-face meeting requested by the grantee and NTWC Project Administrator with Office of Water and GIAMD personnel, including the Office of Water Deputy Assistant Administrator, an Office of General Council attorney and the Chief of a Grants Management Branch, almost eight months prior to the January 11, 2011 date that OIG says the audit began. [REDACTED], [REDACTED], [REDACTED], memorialized the resolution of this issue in a May 27, 2010 letter to the grantee:

“...Further, I recognize that you have been consistently drawing funds in even amounts because you misunderstood the process for making financial drawdowns. Since you contacted EPA's Las Vegas Finance Center prior to making a drawdown, you assumed you were allowed to draw award funds in advance of immediate cash needs.”

(See Attachments #3 & #4)

In fact, the grantee's cash drawdowns prior to May 27, 2010 were based on negotiations with the original EPA Project Officer, authorization by the original GIAMD Grant Specialist (to the best of the grantee's knowledge) and discussion with EPA's Las Vegas Finance Center. The grantee negotiated cash advances with the EPA Project Officer under the "administratively feasible" standard of 40 CFR Part 30. As the cash advances were obligated to a zero amount of available funds, a new request was made to the Las Vegas Financial Center.

The GIAMD Grant Specialists who are responsible for monitoring grant financial matters did not notify the grantee that her negotiated cash advance procedures were inconsistent with EPA standard procedures. In fact, it is shocking that none of the three GIAMD Grant Specialists assigned to this grant addressed the matter until 3 ½ years into the grant – and only *after* the grantee questioned a GIAMD Grant Specialist's arbitrary withdrawal of \$40,000 of grant funding.

OIG Response 4: As addressed in **OIG Response 2**, the OIG correctly summarized EPA's concerns in the audit request.

We evaluated historical activities of the cooperative agreement from inception to the examination cut-off date of September 30, 2010. The audit request referenced the May 13, 2010, meeting between the recipient and EPA staff. However, the audit request also indicated that EPA still had concerns. Therefore, we do not agree that the cash draw issue was resolved. In the May 27, 2010, memo cited by the recipient, EPA recognized that the recipient misunderstood the advance draw requirement, but EPA did not consider the issue resolved or waive the advance draw for immediate cash needs requirement.

Administrative Condition 4a in the cooperative agreement clearly states that cash draws are for meeting immediate cash disbursement needs. No amendment was made to the cooperative agreement to change the requirement.

Background

Many of the auditor statements in this section are in error and/or incomplete. As mentioned above, the grantee received three (3) assistance awards from EPA. The NTWC \$800,000 Tribal Water Program Council Cooperative Agreement, a \$10,000 supplemental, non-competitive award for EPA training of tribal participants at a STORET/WQX training in 2007, and a \$30,000 supplemental non-competitive award for EPA Tribal Wetlands training in 2009. The total for the three (3) grant awards is \$840,000 and not \$800,000 as stated by the OIG auditors. This issue is addressed with more detail in the *Request for Additional Funding* section of this response.

OIG Response 5: See **OIG Response 1**.

Grantee's Background Statement

Since at least October 18, 1972, EPA has been authorized to issue water-related grants to individuals via Public Law 92-500, the *Federal Water Pollution Control Act Amendments of 1972*, which amended the original *Federal Water Pollution Control Act*. To the best of the grantee's knowledge, EPA has never developed and published rules and regulations for working with "individual" grantees.

In or about February 2006, Kathleen Hill and Dr. Joseph Dupris, wife and husband, learned of an EPA Office of Water grant opportunity to create and facilitate the work of a national tribal water council. The RFA allowed for proposals by "individuals", so Hill and Dupris applied.

Hill and Dr. Dupris, who are both enrolled in federally recognized Indian tribes and who have more than half a century of experience in service to Indian Country, were notified that their grant application had been chosen in or about late May, 2006, but that the grant could only go to an individual (i.e., Hill *or* Dupris), not individualsg (Hill *and* Dupris).

Other issues pertaining to a grant to an individual arose immediately:

At 7:06 a.m. on June 14, 2006, the EPA Project Officer forwarded a message informing Hill and Dupris that "*The DUNs hotline made it very clear that individuals that are receiving federal funds for a public purpose must have a DUNs number.*" (See Attachment #5)

At 11:47 a.m. on June 14, 2006, the EPA Project Officer forwarded a list of questions to Hill and Dr. Dupris from the EPA Office of General Counsel (OGC). Following is a summary of Hill's and Dupris' responses to the questions posed by OGC, which the EPA Project Officer shared with OGC and GIAMD representatives. (See Attachment #6)

- * Hill would be the official individual applicant for the grant.
- * Hill would be the overall NTWC Project Manager, Dr. Dupris would be the NTWC Project Administrator, and he would be the employee of Hill.
- * The salaries of both Hill and Dr. Dupris were provided for in the applicant's proposed budget, which would fund salaries, taxes and fringe benefits as provided for in the budget detail submitted by the applicant. (See Attachment #7)

At 12:58 p.m. on June 14, 2006, the EPA Project Officer informed headquarters Grants and OGC representatives that "*Kathleen Hill is working on getting a DUNS number, but she is having a heck of a time. She is going to try to apply as a sole proprietorship, because there is apparently no "individual" category on the required form.*" (See Attachment #6).

On June 20, 2006, Hill informed the EPA Project Officer that she and Dr. Dupris had

- 1) acquired a DUNs number;

- 2) filed papers for the “Kathleen S. Hill” business with the state of Oregon, and received a business registry number (which was required in order to open a business bank account in the state of Oregon);
- 3) opened a new business bank account (which was needed in order to provide routing information, bank account number, etc. for the required Central Contractor Registration); and
- 4) completed the required CCR registration process. (See Attachment #8)

As documented above, EPA knew in 2006 that Hill had to create a new business and register as a sole proprietor in order to receive EPA funding. EPA also knew that the grantee revised that status to a single-member LLC in October 2007 in order to access fringe benefits authorized by EPA in the grantee’s budget. (See Attachment #9)

The original EPA Project Officer was aware of the challenges faced by the grantee as a small business owner required to comply with state, federal, and IRS rules and regulations, while also trying to comply with nonprofit rules. Based on that understanding the original EPA Project Officer authorized the grantee to seek professional assistance to help resolve these difficulties. (See Attachments #10, #11 and #12)

On June 22, 2006, Mike Shapiro (Deputy Assistant Administrator, Office of Water) sent the official letter notifying Hill that she had *“been selected as the party with whom EPA will pursue negotiations to award a cooperative agreement.”* Shapiro’s letter stated further that *“[REDACTED], of my staff, will be working closely with you to negotiate a cooperative agreement prior to the award of the grant.”* (See Attachment #13)

Hill, with the assistance of Dr. Dupris as NTWC Project Administrator, moved forward to negotiate the Tribal Water Program Council Cooperative Agreement with [REDACTED], who was also the EPA Project Officer. On September 13, 2006, Dupris submitted a revised budget (which specifies ½ time salaried positions for Hill and Dupris, and fringe benefits at the 23% level), that was approved by EPA on September 13, 2006. (See Attachment #14)

On September 18, 2006, the EPA Project Officer called Hill and Dr. Dupris to inform them that GIAMD had requested that they revise their Milestone Schedule and the budget formats from those provided in the original grant application. The EPA Project Officer forwarded a sample for the grantee’s review, and Hill provided the revised budget, mentioned above, and a new Four (4) Year Milestone Chart to the EPA Project Officer on September 22, 2006. (See Attachments #15 and #16)

It was the grantee’s understanding that the negotiated modifications and amendments to the application for the cooperative agreement were incorporated by reference in the Notice of Award signed by [REDACTED] on October 26, 2006. The modifications and amendments negotiated with the EPA Project Officer included, but were not limited to:

1. The 4-year budget of \$800,000 for the NTWC Tribal Water Program Council Cooperative Agreement;
2. Revision of applicant status to being a single applicant and a sole proprietor;
3. Key personnel employment status;
4. Application of OMB Circular A-122 provisions for non-profit entities;
5. Salaries and fringe benefit calculations;
6. A cash advance process;
7. Revision of grant milestone schedule and budget formats; and
8. Advance understandings and approvals by EPA.

Since there was no notification or discussion to the contrary, it was the grantee's understanding that these negotiated and approved terms and conditions were included, by reference in the 2007, 2008, 2009 and 2010 *Notices of Award* since the general language remained consistent. It is the grantee's understanding that the combination of records missing from the EPA Project Officer files coupled with what appears to be incomplete recordkeeping by a series of GIAMD Grant Specialists, have led to misunderstandings among the various parties, including the auditors.

For example, one issue that the grantee has become aware of is that the original GIAMD Grant Specialist apparently did not attach the revised *Schedule of Milestones* (that the EPA Project Officer had request on behalf of the GIAMD) to the October 26, 2006 *Notice of Award*. This oversight seems to have contributed to confusion on the part of the GIAMD Grant Specialist and EPA Project Officer appointed after the retirement of the original EPA Project Officer. The *Notice of Award* and the original grant application timeline for deliverables and activities differ because the original grant application timeline anticipated a grant start date of June 2006, but the grant was not actually awarded until October 2006.

OIG Response 6: We acknowledge that the recipient is an individual, not a non-profit, and that there were challenges in meeting the various requirements. However, when the recipient signed the award documents for the cooperative agreement, she agreed to comply with the non-profit requirements under 40 CFR Part 30; therefore, regardless of other federal and state requirements, the recipient is required to comply with 40 CFR Part 30.

Most of the information presented here is repeated later in the Results of Examination section. We will address those comments in the Results of Examination section.

Response to *Independent Auditor's Report*

Audit Timeframe

In the grantee's opinion, the statement that the auditors conducted their field work beginning January 11, 2011 is factually inaccurate.

The auditors say that during the time period between January 11, 2011 and July 27, 2011, they:

- Reviewed EPA project and cooperative agreement files.
- Interviewed EPA personnel to obtain an understanding of the project.

It was obvious during the grantee and NTWC Project Administrator's first meeting with the auditors on January 12, 2011 that extensive communication, discussion and information exchange had already taken place between the auditors and GIAMD staff and managers. In fact, when the grantee addressed GIAMD's allegation of misspending \$40,000, the auditor told the grantee that she needed to "*make your best case*" as to that matter. The auditor also questioned the grantee as to her pre-grant relationship with [REDACTED] (there was none), asked why her communication with the current EPA Project Officer differed markedly from her communication with the current EPA Project Officer (based on e-mail messages the auditor said she had seen), and asked whether the grantee's "prior relationship" with EPA Region 10 staff played a role in "getting extra work" (a \$30,000 supplemental, non-competitive award, which the grantee did not seek) with regard to the grantee's 2009 support of OWOW Tribal Wetlands training on behalf of the EPA headquarters office. The auditors also took pictures of the grantee's office in response to GIAMD allegations that the grantee was working out of her home and charging her home utility bills to the grant.

The grantee does not infer specific motives as to the factually erroneous statements regarding the beginning dates of audit interviews with EPA personnel.

OIG Response 7: The field work dates in the draft report are correct. Preliminary research work, such as interviewing EPA personnel and reviewing EPA files, was performed prior to field work to obtain an understanding of the concerns in the audit request in order to determine whether an examination was warranted. Field work started on January 11, 2011, after OIG management's approval to proceed with the examination.

Alleged Material Weakness – Cost Controls

A factual error is made by the OIG auditors in alleging that the grantee did not have adequate controls to ensure that costs claimed were in accordance with 2 CFR Part 230 requirements. These requirements are in OMB Circular A-122 for non-profit entities. The error in the audit report is that the accounting records examined were supported and documented according to the EPA approved cash-based accounting system. The auditors were able to identify the costs associated with the grant expenses by budget category in the paper records of the grantee. The accounting records of the grantee were also memorialized in a Quickbooks accounting system that was in the exclusive controlled of an independent contractor, and the accounting records were reconciled to a dedicated bank account.

What is at issue in the auditor's report is not that the accounting documents do not record and support the grant expenses, instead the OIG auditors take issue with the approved EPA grant

budget and associated grant costs. If the grantee did not have the records to support the grant costs in question, the auditors would not have been able to determine the exact dollar amount and budget category for each grant expense “in question”. Additionally, the auditors seem to ignore the fact that the grantee must comply with state and federal business and labor laws, and IRS rules and regulations that apply to businesses. Instead, the auditors allege that compliance with those laws and the negotiated terms and conditions of the grant “do not meet federal standards” that apply to nonprofit entities.

OIG Response 8: Internal control is more than having the supporting documentation for the costs. It also includes controls to ensure that costs are claimed in accordance with federal requirements and cooperative agreement terms and conditions. According to 40 CFR 30.21, federal standards for financial management systems includes, among other things, written procedures for:

- a) Determining the reasonableness, allocability, and allowability of costs in accordance with the provisions of the applicable federal cost principles and the terms and conditions of the award; and
- b) Minimizing the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants, or payments by other means for program purposes by the recipient.

The report identified issues with five out of six cost categories and questioned \$80,721 of the \$726,587 claimed due to noncompliance with federal requirements. This represents approximately 83 percent of the cost categories and 11 percent of the costs claimed. In our opinion, the results of our examination demonstrated that the recipient had material internal control weaknesses.

The recipient cited state and federal laws, as well as Internal Revenue Service rules and regulations. As explained under **OIG Response 6** above, the cooperative agreement was awarded under 40 CFR Part 30. The recipient agreed to comply with these requirements when she signed the award documents; therefore, regardless of other federal and state requirements, the recipient is required to comply with 40 CFR Part 30.

In the grantee’s opinion, the OIG auditors also err in their failure to reveal that the audit was conducted during the course of grant performance, that the accounting records reviewed during the audit were working documents that had not yet been through the due diligence process that is part of the grant closeout process, and that the documents were not certified by the grantee.

The auditors also do not reveal that (1) the timing of the audit was during an accounting change over from a cash advance system to a reimbursement system, and (2) the grantee and NTWC Project Administrator were required to fund some of the grant activities with their 401k retirement and other personal funds because EPA did not provide timely reimbursement payments.

OIG Response 9: We stated in the Background section that the cooperative agreement period ended on March 31, 2011, and in the Independent Auditor’s Report section that the cut-off date of our examination was September 30, 2010. We have included additional information in the report to clarify that this is an interim audit, not a final audit.

The recipient’s financial management requirement is the same regardless of the timing of the examination. The recipient is required to maintain records to demonstrate that costs are allowable, allocable, and in accordance with federal requirements at all times, not just at grant close-out.

The examination began in January 2011, 3 months after the cut-off period of our examination, and 8 months after the recipient was placed on reimbursement payment method. The recipient also revised her accounting records in March 2011, 6 months after the examination cut-off period. The fact that the recipient did not have the accounting records ready after 6 month further demonstrated internal control weaknesses.

Finally, the auditors fail to mention that their examination of accounting records was based on Profit and Loss Statements and not full accounting records that would include the balance sheet and transactions lists that are part of the general ledger. These examination procedures give rise to auditing errors as to the ending account balance on September 30, 2010, a false allegation that a credit was not returned to the grant, and other issues that relate to the questioned costs, such as two (2) coding errors.

OIG Response 10: In our audit notification letter to the recipient, we requested the financial records for the agreement, including “all ledgers, journals, and other books of original entry.” In response to our request, the recipient’s bookkeeper provided an initial download of the records from its accounting system QuickBooks at the start of our field work in January 2011 and a revised download in March 2011, almost 3 months into the examination. The records examined were determined by the recipient to be the proper records to support the costs incurred under the cooperative agreement.

It is important to note that in sampling documents from almost four (4) years of the grant activity the auditors revealed only two (2) miscoding errors by the bookkeeper (one for \$170 and another for \$188). In the grantee’s opinion these two temporary coding errors do not rise to the level of a “*material weakness...or combination of significant deficiencies that results in more than a remote likelihood that a material misstatement will not be prevented or detected.*” (See auditor’s statement on page 4 of the Draft Report).

OIG Response 11: Our conclusions were not based on the two nominal issues as indicated by the recipient. **OIG Response 8** above discussed the materiality of the internal control weaknesses in detail.

Alleged Material Weakness – Cash Draws

The grantee also questions the auditor’s reiteration of an alleged material weakness as to the recipient’s cash draws since those cash draw downs and procedures were negotiated with the EPA Project Officer in 2006. As noted previously in this response, the issue of cash draw practices was resolved during a face-to-face meeting of the grantee and NTWC Project Administrator with Office of Water and GIAMD personnel, including the Office of Water Deputy Assistant Administrator, an Office of General Council attorney and the Chief of a Grants Management Branch on May 13, 2011, almost eight months prior to the January 11, 2011 date that OIG says the audit began.

OIG Response 12: See **OIG Response 4.**

Response to Results of the Examination

The OIG auditors have made factual errors and mischaracterizations related to the questioned costs of \$80,721. The auditors also err in their assessment that the grantee’s financial management system did not meet federal standards because of inadequate controls and cash draws that do not comply with 40 CFR Part 30 or the grant terms and conditions.

OIG Response 13: See **OIG Response 8**

Response to Internal Controls over Costs Claimed Need Improvement

The auditors factually err in their assessment that 2 CFR, Appendix A, Section A.2 does not allow fringe benefit costs of \$60,339 for life insurance, 401k costs, and medical costs. It is essential to a factual analysis to correctly interpret applicable laws, rules, and regulations. An audit report should reveal that the auditors did not access or examine certain documents during the course of an audit. Such a review is necessary to form a valid opinion.

In this section, the auditors do not reveal that the questioned costs for fringe benefits of the grantee relate only to non-profit entities and not to for-profit entities. In fact, as a business owner, the grantee could not avail herself of most of the fringe benefits that she would generally have access to if the grantee organization had been a nonprofit. The auditors err in their failure to reveal the requirement of state, federal, and IRS rules and regulations that apply to the grantee. The auditors also fail to reveal that they did not ask for or review grantee documents that demonstrate that the written policies for fringe benefits were signed, approved, and effective when costs were incurred.

OIG Response 14: We requested documentation throughout the examination and we held extensive interviews with the recipient and the project administrator to gain an understanding of how costs were charged to the cooperative agreement. We considered all documentation provided by the recipient during field work in our draft report.

The recipient commented that “the auditors factually err in their assessment that 2 CFR, Appendix A, Section A.2 does not allow fringe benefit costs of \$60,339 for life insurance, 401k costs, and medical costs.” We would like to clarify that the report did not assert that life insurance, 401K, and medical costs are not *allowable* per 2 CFR Part 230. Rather, it is our opinion that the amount of life insurance and 401K benefits were not established in the company policy and that the medical costs were not properly allocated, as required under 2 CFR Part 230.

As explained in **OIG Response 6** above, we acknowledge that the recipient is an individual business owner, not a non-profit entity. However, when the recipient signed the award documents for the cooperative agreement, she agreed to comply with the non-profit requirements under 40 CFR Part 30; therefore, regardless of other federal and state requirements, the recipient is required to comply with 40 CFR Part 30.

Response to Note 1: Fringe Benefits

As noted previously, since at least October 18, 1972, EPA has been authorized to issue water-related grants to individuals via Public Law 92-500, the *Federal Water Pollution Control Act Amendments of 1972*, which amended the original *Federal Water Pollution Control Act*. To the best of the grantee’s knowledge, EPA has never developed and published rules and regulations for working with “individual” grantees. In this instance, EPA instructed the individual grantee to comply with OMB Circular A-122, while also complying with state, federal and IRS laws applicable to small businesses.

OIG Response 15: See **OIG Response 6**.

The statement that the recipient “*charged life insurance and 401K costs of \$37,844 for herself and her husband to the cooperative agreement without established written organization policy*” is a factual error for the following reasons:

- * The grantee did not charge *any* of her life insurance costs to the Tribal Water Program Council Cooperative Agreement.

OIG Response 16: We agree with the recipient’s comment and have revised our report accordingly.

- * The life insurance costs charged for the NTWC Project Administrator were consistent with the grantee’s written organization policies and the NTWC Project Administrator’s signed and dated acknowledgement of those policies.

- * The grantee charged 401K costs for herself and the NTWC Project Administrator to the cooperative agreement consistent with written organization policies and a professionally written 401K plan that included signatures and dates.

OIG Response 17: See **OIG response 19** below.

- * The statement that the recipient “*did not allocate medical costs of \$22,495 according to 2 CFR Part 230 requirements*” is misleading because the recipient did not receive any of the medical benefits allowed under 2 CFR Part 230 until professionally written policies and procedures were developed in October 2007.

OIG Response 18: We questioned the medical costs due to the allocation method, and not lack of policy. As explained in the draft report, the project administrator (recipient’s husband) was a part-time employee under the cooperative agreement. However, he charged all medical expenses for himself and his immediate family to the cooperative agreement. Title 2 CFR 230 requires costs to be allocated to cost objectives in accordance with the relative benefits received. The cooperative agreement only received part-time benefit from the employee; therefore, only part of the medical costs should be allocated to the cooperative agreement.

Fringe Benefit Charges Contrary to Federal Cost Principles ***Life Insurance and 401K Benefits***

It is a factual error to claim that the grantee claimed life insurance and 401K costs without established written policies. Furthermore, it is the opinion of the grantee that the auditors’ failure to ask for or review the relevant fringe benefit documents is sufficient to deny their recommendation that the grantee repay \$37,844 of life insurance and 401k costs that were included in the EPA-approved grant budget.

As noted previously, the grantee did not utilize Tribal Water Project Council Cooperative Agreement funds to pay for life insurance for herself. Furthermore, the auditors did not request or examine the relevant fringe benefit documents that prove that the grantee had written and approved fringe benefit policies.

The grantee did use Cooperative Agreement funds to begin paying for life insurance for the NTWC Project Administrator in January 2007, consistent with the *Personnel Policies for Kathleen S. Hill*, which stated that:

*“The employer is committed to providing a flexible and cost-effective medical care, disability income, **life insurance**, and retirement program for eligible employees. The employer reserves the right, in its discretion, to change the nature of the benefits offered to employees....”* [Emphasis added]

On October 15, 2006, the NTWC Project Administrator signed and dated an *Employee Acknowledgement* document stating that he had read and understood the policies outlined in the *Personnel Policies for Kathleen S. Hill*. (See Attachment #17)

As noted in the *Grantee's Background Statement* section of this response, the original EPA Project Officer was aware of the challenges faced by the grantee as a small business owner required to comply with state, federal, and IRS rules and regulations, while also trying to comply with nonprofit rules. Based on that understanding the original EPA Project Officer authorized the grantee to seek professional assistance to help resolve these difficulties.

One of the professional parties from whom the grantee sought assistance was *Northwest Retirement Plans, Inc.* *Northwest Retirement Plans, Inc.* developed a comprehensive IRS compliant 401K plan for the grantee. The grantee is attaching the following documents in order to address the factual error that “no evidence exists that the recipient had these policies in place at the time the recipient incurred the 401k... costs.”

* October 5, 2007 *Northwest Retirement Plans, Inc.* letter about the Plan; (See Attachment #18)

* Action by *Unanimous Consent of members of LLC – Adoption of Qualified Retirement Plan*, signed by the grantee and dated October 25, 2007; and (See Attachment #19)

* Documentation of the Internal Revenue Service's issuance of an EIN number for the Kathleen S. Hill 401K Plan. (See Attachment #20)

The first 401K costs were incurred on October 29, 2007, after the 401K Plan was adopted, and after the NTWC Project Administrator had signed an *Employee Acknowledgement* document on October 1, 2007, stating that he had read and understood the policies outlined in the *Personnel Policies for Kathleen S. Hill, LLC*. (See Attachment #21).

While the auditors acknowledge that OMB Circular A-122 permits life insurance, 401k plans, and other fringe benefits, they do not reveal that their opinion that the grantee's written Personnel Policies are not “established written policies” is based on a detail that is not part of the published regulation in OMB Circular A-122. The auditor's statement infers that OMB Circular A-122 defines a written fringe benefit policy as effective and applicable **if, and only if**, there is proof of its existence not only by a physical written statement but also by a “signature of approval” with an “approval date” and an “effective date.” The auditors do not, however, cite to a specific section of OMB Circular A-122 in support of that assertion.

The very existence of professionally written and adopted fringe benefit documents that are consistent with OMB Circular A-122 and other relevant laws is sufficient to deny the recommendation that the grantee should repay \$37,844 of life insurance and 401k costs that were included in the EPA-approved grant budget.

OIG Response 19: We requested documentation throughout the examination and reviewed all documentation provided. As of the draft report date, the recipient did not provide documentation showing approval date or signature. This information was later provided as part of the draft report response. Based on the additional information provided, we have removed the language in the report about the policies not having an effective date, approval date, or approval signature. However, we will continue to question the costs because the recipient's policy did not include plan details to substantiate that the amounts charged to the cooperative agreement were according to the written policy.

Title 40 CFR 30.21(b)(6) requires the recipient to have an adequate financial management system, which includes written procedures for determining the reasonableness, allocability, and allowability of costs. Title 2 CFR 230, Appendix A, Section 2.g., further states that in order for a cost to be allowable, it must be adequately documented. In our opinion, these regulations require the recipient to demonstrate that the amount of benefit was granted in accordance with established written policy. The recipient's written policy merely stated that the fringe benefits package for key personnel includes term life insurance and a 401K program, and that the recipient is committed to providing these benefits. The policy did not provide benefit amounts or computation methods; therefore, the recipient has not met the federal requirements.

We agree with the recipient's comment that she did not use cooperative agreement funding for her life insurance. The life insurance was for the project administrator. We have revised the report accordingly.

The total questioned fringe benefit costs of \$60,339 in the final report are the same as in the draft report, however, we modified the details within this category. In the draft report we had bundled 401K costs of \$37,844 and life insurance costs of \$4,901 together and questioned them as not supported by organization policy. In the final report, we split them up and had only the 401K costs of \$37,844 questioned on lack of organization policy. We moved the life insurance costs of \$4,901 to the same category as the medical costs of \$22,495 because they both have the same issue of lack of proper allocation. We continue to question these costs.

Medical Costs Not Properly Allocated

It is a factual error to state that the grantee did not allocate medical costs pursuant to 2 CFR Part 230 requirements.

The auditors rest their entire argument on their interpretation of 2 CFR 230, Appendix A, Section A.4, which states that *"a cost is allocable ... in accordance with the benefits received."*

The auditors claim that medical costs reimbursed to the NTWC Project Administrator are prohibited and disallowed because the auditors consider the NTWC Project Administrator to be a "part-time" employee.

Oregon state law and federal law do not define salaried employees as part or full time employees. At issue for state and federal labor law is whether the employee is paid a fixed

salary per year. Salaried employees are paid a fixed salary amount per pay period and are determined to be exempt employees, not hourly employees. Both the grantee (NTWC Project Manager) and NTWC Project Administrator (key personnel of the grant) were paid a fixed salary of \$35,000 per year. The grant benefitted from the fact that exempt salaried employees were **not paid** for all hours worked, and from the fact that the grant did not have to fund a separate health insurance policy. This is a “relative benefit” for the grant and EPA. The auditors do not seem to acknowledge these cost-saving benefits.

Several other factors seem to be ignored, including the following:

2 CFR 230 § 230.25 Definitions (b) Prior approval

Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitutes approval of that cost.

The auditors state that the “actual charges” for medical reimbursement costs for the family of the employee are not permitted by 2 CFR Part 230. This statement rests solely on the auditor’s opinion that the salaried key grant personnel are only part-time employees that do not merit full funding of their contracted fringe benefits. This is inconsistent with the fact that EPA approved the grantee’s budget which includes the allocation of an amount equal to 23% of key personnel salary for fringe benefits.

2 CFR 230, Appendix A, Section A.6 Advance understandings.

Under any given award, the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with organizations that receive a preponderance of their support from Federal agencies. ... The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element.

The grantee, as a small business owner who received the preponderance of her support from the EPA grant, was not eligible to receive all of the benefits – including medical insurance and other medical benefits – which nonprofit employees are generally eligible for. Based on her understanding of the grantee’s unique circumstances, the original EPA Project Officer authorized the grantee to seek professional assistance to address the difficult situation of having a negotiated and approved fringe benefit budget to which she had limited access as the owner of a small business.

In this instance, a Certified Public Accountant referred the grantee to an attorney with expertise in business structure and IRS approved fringe benefit plans. That professional was knowledgeable about *Section 105 Medical Care and Insurance Reimbursement Plans*, which Congress adopted specifically for small business owners whose spouses are in their employ. The *Section 105 Plan*, governed by IRS rules, enabled the grantee and their dependent children to be

insured through the NTWC Project Administrator's medical insurance and health care plan within the 23% fringe benefit budget approved by EPA.

*** 2 CFR 230, Appendix B, Section 8.g (2)**

"Fringe benefits in the form of employer contributions or expenses for... employee insurance... and the like, are allowable, provided such benefits are granted in accordance with established written organization policies."

The *Medical Care and Insurance Reimbursement Plan*, which was signed and adopted on October 1, 2007, was granted in accordance with established written organization policies. (See Attachment #22)

The NTWC Project Administrator's Employment Agreement, also signed and adopted on October 1, 2007, contains the following statement:

3. The medical care and insurance reimbursement plan attached hereto is incorporated herein. (See Attachment #23)

Although one of the auditors expressed considerable personal consternation with the *Section 105 Plan*, the cost of the *Section 105 Medical Care and Insurance Reimbursement Plan* is reasonable for the benefit received. In the grantee's opinion, it would be unreasonable to require the grantee to repay EPA \$22,495 for a medical benefits plan that did not utilize an excessive amount of the negotiated and EPA-approved fringe benefit budget.

OIG Response 20: The report did not assert that medical cost reimbursements were prohibited. As explained under **OIG Response 18** above, we questioned the medical costs because they were not allocated to the cooperative agreement according to relative benefits received.

We disagree with the recipient's position that we should not distinguish salaried employees between part-time and full-time. The recipient and the project administrator were budgeted to work half-time under the cooperative agreement. The intent was for the cooperative agreement to benefit half-time; therefore, medical costs should be allocated accordingly.

The recipient believes that she received prior approval for the medical costs through the cooperative agreement budget. In our opinion, the prior approval under 2 CFR 230.25 refers to the type of cost, not the amount incurred. By definition, budget represents an estimate, not actual costs. The 23 percent fringe benefit in the cooperative agreement budget was an estimate, not approved actual costs.

The recipient cited advance understanding under 2 CFR Part 230, Appendix A.6. According to the 2 CFR, advance understanding means securing the awarding agency's permission prior to incurring costs, and should generally be in writing. The recipient did not provide documentation to demonstrate the existence of an advance understanding regarding the amount of 401K costs or medical costs.

The recipient asserted that the medical cost reimbursement method was allowed under Internal Revenue Service rules for small business owners. As previously stated, the cooperative agreement was awarded under 40 CFR Part 30, and the recipient agreed to comply with the 40 CFR Part 30 requirements when she signed the award documents. Regardless of other federal and state requirements, the recipient is required to comply with 40 CFR Part 30. In this case, the recipient did not comply with the allocation requirement under 2 CFR 230, Appendix A, Section A.4; therefore, we continue to question the costs.

Response to Note 2: Travel and Per Diem Costs

The statement that \$1,728 was not properly allocated to the Tribal Water Program Council Cooperative Agreement is a factual error.

The statement that \$188 in cell phone charges was not properly allocated in Quickbooks at the time of the audit is accurate. The charge was, however, properly recorded in the grantee’s files.

Travel Refund Not Credited to the Tribal Water Program Council Cooperative Agreement

It is a factual error that a \$1,728 Travel credit was not properly allocated to the Tribal Water Program Council Cooperative Agreement. It should also be noted that the credit resulted from the fact the grantee’s contract for lodging required that the lodging be paid in advance of the National Tribal Water Council – EPA meeting that took place there in May, 2010.

The grantee did in fact allocate the credit to the grant by deducting it from other expenses incurred by the grant. In fact, the grantee provided the following information to the auditors on April 30, 2011 (all of which are attached hereto):

- (1) 7.21.10 spreadsheet which deducts the credit from \$ 8,768.10 of NTWC expenditures charged to the grantee’s credit card, resulting in a remaining NTWC credit card debt of \$7,039.39. Following is an excerpt from the spreadsheet, which is also attached in full (See Attachment #24)

NTWC Flights	\$7,989.42
NTWC Agent Fees	\$440.00
NTWC Postage	\$0.00
NTWC Supplies	<u>\$338.68</u>
	\$8,768.10
Mtg/Ldgng	
CREDIT	<u>(\$1,728.71)</u>
NTWC Total	\$7,039.39

- (2) April 2010 credit card statement listing some of the expenditures reflected in the spreadsheet. (See Attachment #25)
- (3) May 2010 credit card statement listing some of the expenditures reflected in the spreadsheet. (See Attachment #26)
- (4) June 2010 credit card statement documenting the credit of \$ 1,728.71. (See Attachment #27)

(5) July 2010 NTWC Bank Statement reflecting the \$7,039.39 credit card payment. (See Attachment #28)

In response to that documentation, the grantee received the following message:

“Also, I reviewed the explanation you previously provided for the \$1,728.71 travel refund, but unable to trace any of the amounts to the general ledger (GL). Please see page 2 attached. The GL is the basis for our audit. I have to see those amounts (either in total or individually) hit the GL to confirm that the credit has been applied to other charges. Please clarify. Thanks!” (See Attachment #29)

Ironically, the credit itself was not in the General Ledger – the auditors only knew of the credit because it was recorded in the supportive accounting documents of the grantee, including a credit card statement provided to the auditors.

As noted previously, this audit took place during the course of the grant, before the grantee had an opportunity to engage in the kind of due diligence that is expected to take place in the closeout phase of the grant.

Additionally, the grantee’s independent bookkeeper has informed the grantee that the auditors only requested the grantee’s *Profit and Loss Statements* – she said that they had never requested her General Ledger.

OIG Response 21: Title 2 CFR 230, Appendix A.5.a., requires all allocable returns, refunds, credits, and like items to be credited to the award. To obtain a reasonable assurance that this requirement was met, we examined bank statements, credit card statements, and other source data to identify credits and refunds and ensure that they were credited to the award.

From our review of the source documentation, we identified a credit of \$1,728.71 received by the recipient, but could not trace to the recipient’s accounting system records to verify that the credit was applied to other expenses under the cooperative agreement. None of the transactions listed in the recipient’s response was traceable to the accounting system, either in total or in individual entries. In our opinion, the recipient did not demonstrate that the refund was credited to the cooperative agreement. As a result, we questioned the costs.

The recipient stated that the examination took place during the course of the cooperative agreement, before she had an opportunity to perform the kind of due diligence expected to take place at grant close-out. We acknowledge that this is an interim audit, but the recipient’s financial management requirement is the same regardless of the timing of the audit. Title 40 CFR 30.21 requires the recipient to maintain records to demonstrate that costs are allowable, allocable, and in accordance with federal requirements at all time, not just at grant close out.

The transaction in question occurred in May 2010, over 7 months prior to the beginning of our field work, and almost 10 months prior to the date of the recipient’s submission of its revised accounting system data to the auditors. Due diligence should have been performed.

The fact that recipient did not accomplish due diligence after 7 to 10 months further demonstrated internal control weaknesses.

See **OIG Response 10** for discussions regarding the recipient's statement that the auditors only asked for profit and loss statement, not the general ledger.

Cell Phone Costs Not Properly Allocated

The auditors state that a cell phone charge of \$188 was miscoded as a Travel and Per Diem cost by the bookkeeper. This item is also a questioned cost (see the discussion below).

The auditors do not reveal that the accounting records supporting that cell phone cost were properly and accurately reported in the grantee's original documentation, which is in the grantee's files.

As noted previously, this audit took place during the course of the grant, before the grantee had an opportunity to engage in the kind of due diligence process that is expected to take place in the closeout phase of the grant.

In the grantee's opinion, the characterization of a simple recording error during the course of a grant as a "material error" is unreasonable.

Response to Note 3: Supplies

As noted above, the auditors state that a cell phone charge of \$170 was miscoded by the bookkeeper as a Supply cost, and is a questioned cost.

The auditors do not reveal that the accounting records supporting that cell phone cost were properly and accurately reported in the grantee's original documentation, which is in the grantee's files.

As noted previously, this audit took place during the course of the grant, before the grantee had an opportunity to engage in the kind of due diligence process that is expected to take place in the closeout phase of the grant.

OIG Response 22: We did not question the cell phone charges for miscoding. All cell phone costs questioned were due to improper allocation, as explained in the draft report.

Response to Note 4: Contractual Costs

As noted previously, since at least October 18, 1972, EPA has been authorized to issue water-related grants to individuals via Public Law 92-500, the *Federal Water Pollution Control Act Amendments of 1972*, which amended the original *Federal Water Pollution Control Act*. To the best of the grantee's knowledge, EPA has never developed and published rules and regulations

for working with “individual” grantees. In this instance, EPA instructed the individual grantee to comply with OMB Circular A-122, while also complying with state, federal and IRS laws applicable to small businesses.

OIG Response 23: See OIG Response 6.

The statement that EPA did not approve the accounting service expenses included in the grantee budget is contrary to the facts. EPA knew that the grantee, a sole proprietor prior to the issuance of the Tribal Water Program Council Cooperative Agreement, was also required to comply with 2 CFR Part 230 that applies to non-profit entities because EPA had not developed rules and regulations for individual grantees.

On July 31, 2007 the NTWC Project Administrator sent a message to the EPA Project Officer and GIAMD Grant Specialist, noting that some budget line-item changes needed to be made, partly because

“EPA’s requirement that I work as Kathy’s employee (not business partner) had both federal and state tax consequences not anticipated in our original proposal....

Our local accountant has limited experience with federal grants, so I sought guidance from [REDACTED].... He also said that I need to talk with [REDACTED] regarding these financial matters, as well as [REDACTED]....

I look forward to speaking with both of you, and will call you. If I don’t reach you, I would appreciate it if you could call me at your earliest convenience....” (See Attachment #30)

At 10:51 pm Pacific time that same day, while forwarding the *Year One, Quarter Four SCHEDULE OF MILESTONES Quarterly Report* to the EPA Project Officer, the NTWC Project Administrator informed the EPA Project Officer that he had not been able to reach the GIAMD Grant Specialist. (See Attachment #31)

Evidence of due diligence relative to fringe benefits is reflected in the *Quarterly Report* referenced above, in which the grantee reported the following

“Work is ongoing regarding the issue of appropriate fringe benefit charges to the grant and IRS rules for sole proprietors. Further work will be in progress for several quarters to resolve these issues.” (See Attachment #9)

On August 1, 2007, the EPA Project Officer notified the NTWC Project Administrator that she had forwarded his e-mail and quarterly report to the GIAMD Grant Specialist. (See Attachment # 32)

The EPA Project Officer, grantee and NTWC Project Administrator had several discussions about the difficulties associated with the conflicting state, federal, and IRS rules that apply to

businesses while the grantee was also trying to comply with non-profit terms and conditions, but the NTWC Project Administrator was unable to talk with the GIAMD Grant Specialist.

On August 5, 2007, the NTWC Project Administrator notified the EPA Project Officer that

“I am writing because I have had no luck in connecting with [REDACTED] regarding the line item modification in the NTWC budget. I have called her once a day for the past week, with no response. I will keep trying to reach her.” (See Attachment #33)

On August 8, 2007 the EPA Project Officer responded, with a cc to the GIAMD Grant Specialist, saying that *“It is not like [REDACTED] not to respond.”* Sadly, that was not the case where the grantee and NTWC Project Administrator were concerned. Despite numerous telephone calls, the GIAMD Grant Specialist did not speak to the grantee or NTWC Project Administrator from the beginning of the grant until a new GIAMD Grant Specialist was assigned in November, 2007.

As a result of the above, and as a result of discussions with the grantee and NTWC Project Administrator, the EPA Project Officer verbally approved the use of funds in the grantee’s Contractual category for fringe benefit related professional services.

That authorization allowed the grantee to address the fringe benefits issue. As the grantee reported in the *Year One, Quarter Four SCHEDULE OF MILESTONES Quarterly Report*:

“Worked to finalize the documents and organization structure [of the] grantee. Resolved the procedure for distribution of fringe benefit charges to the grant by conforming to the rules of the IRS for sole proprietors. The restructuring of the sole proprietorship into a limited liability company, with one member, resolved pension and health benefits issues. Further work with the accountants, attorney and fringe benefit specialist should be on a limited basis in the future.”

The costs at issue are directly linked to the 401K and *Medical Care and Insurance Reimbursement Plan* discussions above, for which the grantee was required to have written policies.

The statement that the questioned “organization costs” were used to set up the grantee as a “sole proprietor” is a factual error. As noted above, in the *Grantee’s Background Statement*, the grantee was required to become a sole proprietor in 2006, prior to accepting the Tribal Water Program Council Cooperative Agreement award. The attorney who assisted the grantee by developing the medical care plan did assist in restructuring the business entity so that the proper employee agreements were in place and the grantee could receive health care and health insurance that would otherwise not be available to her with the support of grant funds as a small business owner.

Since the grantee’s consultation with fringe benefit professionals was authorized by the EPA Project Officer and benefitted the grant by ensuring that fringe benefit policies were properly written, the grantee disagrees with the auditor’s assertion that the \$3,375 in costs are not allowable.

OIG Response 24: We accept the recipient’s explanation that the costs were for setting up 401K, medical plan, and employee agreements, and not for setting up the sole proprietorship. We have modified the report accordingly.

The recipient stated that she received verbal approval from the EPA project officer to use funds in the contractual category for fringe benefit related professional services. However, we could not verify her statement. The recipient’s response did not include evidence of the project officer’s approval of the costs. The e-mails cited by the recipient referred to the need to make some budget line-item changes to address the start-up costs of the project. There was no mention of the intent to obtain professional assistance or evidence of EPA’s approval of the budget line item changes. The recipient’s quarterly report for the time period stated that work is ongoing regarding the issue of appropriate fringe benefit charges to the cooperative agreement and that further work will be in progress. The quarterly report also did not mention professional assistance. In addition, it is our opinion that the quarterly report is the recipient’s after-the-fact assertion of the project activities, not EPA’s approval of the activities. As a result, we continue to question the costs.

Response to Note 5: Other Costs

Less than Arms Length Rental Costs

The auditors question the rental costs for the grantee’s “trailer” office as being an “arbitrary flat monthly rate”, and states that the costs for the monthly office rental are a less-than-arms length transaction that requires the grantee to treat the costs as if “the grantee had title to the property.” The grantee agrees that the less-than-arms length transaction requires a “use allowance calculation” which is provided below. However, the grantee does not agree that EPA did not approve the office rental costs, and that the rental costs are “arbitrary”. The use allowance calculation for the office rental is a conservative statement that verifies that the monthly office rental of \$200 is supported as being reasonable because the calculations reveals that the office rental could have been up to \$211.91 per month:

Units of Production Method for Calculating Use Allocation

Formula: (Cost-Residual Value)/Estimated Life in Units = Depreciation per Unit
 Depreciation, Multiplied Rate per Unit times the Number of Units.

Calculations:

Cost of Trailer/Office	\$18,000	Cost-Residual Value	\$18,000.00
Salvage Unit	0	Estimated Life in Units (7)	\$ 2,571.43
Value of Asset	\$18,000	Monthly Depreciation	\$ 211.91
Useful Per Day Units	8		
Annual Work Days	260		
Hours of Yearly Use	2080		
Monthly Use	173.33		
Grant Years	4.5		
Total Hours of Use	9360		

The auditor's statement that the office rental cost was arbitrary is a factual error. EPA assessed the rental cost of \$200 as being both reasonable and allocable in 2006, before the grant was awarded, and EPA approved that cost in the Tribal Water Program Council Cooperative Agreement budget for each year of the grant. Thus, as the use allowance calculations confirm, the rental cost of \$200 is both reasonable and allowable, even with a less-than-arm's length transaction. The \$200.00 per month rent also meets the 2 *CFR* 230 § 230.25 prior approval test.

The auditor's opinion that the rental costs should be disallowed and that the grantee should have to repay those funds to EPA is not supported by the facts of the matter.

As the grantee informed the auditors, the original EPA Project Officer is the only EPA representative who has ever discussed the office space and rent cost with the grantee.

On a side note, the auditors did not reveal in their *Draft Report* that current GIAMD Grant Specialist personnel alleged that the grantee did not have an office, and that the grantee was using grant funds to pay for the grantee's residential utility expenses. When the auditors met with the grantee in the grantee's office in Chiloquin, Oregon for the first time, they took pictures that documented the existence of the grantee's office for the audit records. (Ironically, one of the utility charges questioned by GIAMD was for water and sewer charges. The grantee has lived in two different rural residences since the inception of the grant – and both residences rely on a well and septic system!) The false allegations by GIAMD are but one of many indications that the GIAMD attempted to characterize the grantee as a dishonest and a fraudulent grantee before the auditors began their audit examination visit in January 2011.

OIG Response 25: The recipient stated that she believes office rental costs were approved by EPA. We want to clarify that the report did not question the rental costs for lack of EPA approval. We questioned the costs because the method used by the recipient to charge the costs to the cooperative agreement was not in accordance with 2 *CFR* Part 230 requirements. The office trailer was owned initially by the recipient's daughter, then by the recipient herself. These are less-than-arms length rental relationships. Under 2 *CFR* Part 230, Appendix B, Section B.43.c, amounts chargeable to a cooperative agreement for a less-than-arms length transaction is limited to cost of ownership, including costs such as depreciation or use allowance, maintenance, taxes, and insurance. Instead, the recipient charged a flat monthly rental fee without supporting the basis for the rental rate.

In the draft report response, the recipient proposed a depreciation method, using \$18,000 as the base. However, we could not accept the recipient's depreciation method because:

- The recipient did not provide a basis for allocating the property acquisition cost of \$20,000 between the trailer (depreciable portion) and the land (non-depreciable portion).
- The recipient did not provide a cost of ownership calculation for the period when rent was paid to her daughter.

For the reasons detailed above, we will continue to question the office rental costs.

Cell Phone Costs

The statement that cell phone costs of \$4,285 were not properly allocated according to 2CFR Part 230 requirements is a factual error.

It should also be noted that the grantee reimbursed late payment charges to the grant during the closeout process, and any remaining late payment charges or fees have been identified for further reimbursement pending the outcome of the audit. (Since the auditors are recommending that *all* cell phone charges be reimbursed to the grant, it would not have made sense for the grantee to continue reimbursing such charges until this matter is resolved.)

Although a cell phone reimbursement process is allowable under IRS rules, it is understandable that the auditors are confused as to the grantee's cell phone expenses for the following reasons:

- ▶ The grantee (NTWC Project Manager) informed the auditors that the cell phone service costs were reimbursed in a financially conservative manner, consistent with IRS rules and procedures.
- ▶ The auditors examined some of the cell phone bills that were paid on behalf of the grant that had all of the charges for the family plan expenses listed in the invoice, but the total of the amount paid with grant funds did not cover even the grant-related costs of the grantee (NTWC Project Manager's) and NTWC Project Administrator's cell phone use. The total cell phone reimbursements certainly did not rise to a level that would pay for the children's cell phone expenses.

In keeping with the due diligence that is appropriate to the closeout process, the grantee developed a spreadsheet that provides information regarding the cell phone costs that are discussed below:

1. October 15, 2006 through May 18, 2007.

The grantee and NTWC Project Administrator used their existing cell phone plan for grant-related calls during this time period. The grantee's mother passed on in November, 2006, so although the cell phone was used for some NTWC purposes between October 15 and December 18, 2006, the grantee did not allocate any of the cell phone use costs to the grant. For the period from December 19 through May 18, 2007, the grantee has allocated the following to the grant:

- ½ of the monthly plan cost; associated with the grantee (NTWC Project Manager's) phone
- ½ of the NTWC Project Administrator's cell phone use
- ½ of credits received by the NTWC Project Administrator for his cell phone use

As recorded on the spread sheet related to cell costs (see attachment for this section), cell phone use (and costs) sky-rocketed to more than twice their prior level in April and May 2007,

when the Interim National Tribal Water Council (NTWC) members were selected and subsequently appointed. In spite of the substantial increase in costs, the grantee did not allocate any of the additional cell phone expenses to the grant.

2. Late May 2007 through October 18, 2007

In response to the dramatic increase in cell phone use costs, the grantee changed the cell plan to ensure that the grant would not be threatened by significant unexpected rises in costs such as those experienced in April and May. The new plan included a major increase in minutes available for use without extreme charges, as well as unlimited incoming calls that would increase the grantee's (NTWC Project Manager's) and NTWC Project Administrator's availability to the EPA Project Officer, NTWC members and others interested in the new Council. For this period of time, the grantee has allocated the following to the grant:

- the cost of the monthly plan over and above ½ the cost of the original plan
- ½ the cost of unlimited incoming calls
- ½ of the grantee's (NTWC Project Manager's) cell phone service
- ½ of the NTWC Project Administrator's cell phone service
- ½ of the grantee's (NTWC Project Manager's) cell phone use charges and fees
- ½ of the NTWC Administrator's cell phone use charges and fees

3. Late October 2007 through May 18, 2009

After the first meeting of the full Council of the National Tribal Water Council, the grantee (NTWC Project Manager) determined that she needed to be more accessible to the EPA Project Officer and Council members when she traveled or did not have immediate access to a computer. As a result, she selected a "smart phone" that would enable her to access the internet and e-mail on the road. When she changed phones, she learned that the cell phone contract could be changed to get a lower price on the national plan while still maintaining an adequate level of minutes available for use. She learned that she could also communicate with Council members via text for a reasonable price (as contrasted with "per text message" charges) For the period of time between late October 2007 and May 18, 2009, the grantee allocated the following charges to the grant:

- the cost of the monthly cell plan over and above ½ the cost of the original cell plan
- ½ the cost of the unlimited incoming calls
- ¼ the cost of the text messaging plan
- the full cost of the smart phone services that were acquired specifically for the grant
- ½ of the grantee's (NTWC Project Manager's) cell phone use charges and fees
- ½ of the NTWC Project Administrator's cell phone use charges and fees

4. Late May 2009 through March 31, 2011

In late May, 2009, the grantee changed to a cell plan that included unlimited incoming calls without an extra fee. For the time period between late May 2009 and March 31, 2011, the grantee has allocated the following charges to the grant:

- the cost of the monthly cell plan over and above ½ the cost of the original cell plan
- ¼ of the cost of the text messaging plan
- the full cost of the smart phone services that were acquired specifically for the grant
- ½ of the grantee’s (NTWC Project Manager’s) cell phone use charges and fees

These pro-rated cell phone charges are detailed in a spreadsheet attachment to this report. In the grantee’s opinion, the prorated cell phone expenses are reasonable and financially conservative. The prorated costs for the cell phone service are based upon the review requirements of the IRS rules and the terms and conditions of the Tribal Water Program Council Cooperative Agreement. In the grantee’s opinion, requiring the grantee to repay \$4,285 for approved and allocable costs associated with assisting the National Tribal Water Council as authorized by EPA in the Tribal Water Program Council Cooperative Agreement award would be arbitrary and capricious.

Following are the final calculations from the attached spreadsheet:

Total Cell Phone Charges	\$11,582.13
Total NTWC Project Manager & NTWC Project Administrator’s Charges	\$8,405.70
Total Grant Charges	\$6,277.21
Total Paid by Grant	<u>(\$4,285.00)</u>
Total Owed to Grantee	\$1,992.21

(See Attachment #34)

OIG Response 26: The draft report addressed actual cell phone costs claimed under the cooperative agreement and questioned the costs due to inconsistent charging methodologies.

In the draft report response, the recipient proposed an entirely new allocation methodology for these costs. We evaluated the new methodology and determined it to be unacceptable because it does not charge costs according to relative benefits received, as required under 2 CFR 230, Appendix A, Section A.4.

Under the new methodology, the recipient charged monthly cell phone plan costs to the cooperative agreement as follows:

- For the initial plan, the recipient charged half of the cost of the monthly plan.
- For the subsequent three plans, the recipient charged the cost of the monthly plan over and above half of the cost of the original plan.

This methodology resulted in approximately 75 percent of the plan costs being charged to the cooperative agreement and is not in accordance with the benefit received under the cooperative agreement. The plan included four family users. Two of the users are the recipient's children. The remaining two users (the recipient and her husband) are part-time employees. It is our opinion that the cell phone costs did not reflect the benefits received from the recipient's and her husband's part-time employment, account for their personal usage or their children's usage.

For the reasons identified above, we continue to question the cell phone costs.

Response to Note 6: Costs Claimed in Excess of Accounting System Account

The claim that the recipient's accounting system had \$1,836 "claimed in excess of the expenditures recorded" is a factual error since the audit took place mid-grant. In the grantee's opinion, the recommendation that the grantee should "pay back" those funds is arbitrary and capricious given the fact that the auditors were informed on April 30, 2011 that \$1,721.98 of those funds were the grantees' personal funds which were being used to meet grant expenditures. As of September 30, 2011 \$1,721.98 of the grantee's personal 401K funds transferred to the NTWC account to meet outstanding debts remained in the account, and \$3,224.79 in costs had been incurred but not yet reimbursed.

Furthermore, as the auditors were informed via e-mail on March 7, 2011:

On August 18, 2010, I submitted a \$4,099.57 request for reimbursement to [REDACTED]. I did not know that I needed to include a Payment Request Form, so had to resubmit it on August 19. On August 24 I received an e-mail from [REDACTED] in which she stated that [REDACTED] had faxed the request to Las Vegas on Friday, August 20. During a call on August 25, however, [REDACTED] informed Joseph and me that [REDACTED] had forgotten to fax the request, but that it had subsequently been sent.

On August 19, 2010, I also submitted a payment request for my 8.25.10 pay draw and Joseph Dupris' 8.25.10 payroll, with accompanying timesheets. I submitted it early because we had put in our hours for that time period, and were leaving for Juneau on August 26. On August 24, [REDACTED] sent an e-mail with questions regarding our timesheets. I answered her questions the same day (August 24, 2010).

Joseph and I had a conference call with [REDACTED] on August 25. Since neither reimbursement was forthcoming immediately, and I did not know when the funds would be available, I told her during that call that we would have to transfer funds from our retirement account to pay for the remaining NTWC Juneau per diem. I deposited \$4,500.00 from our retirement account into the NTWC account that same day.

I submitted another request for reimbursement on September 12, 2010, and [REDACTED] also had a number of questions regarding that request.

So this was the pattern:

<u>Submission Date</u>	<u>Payment Date</u>
August 19	August 27
August 19	August 30
September 12	September 20

As result of the delays in reimbursements, I was afraid to withdraw full amounts due to outstanding account debts, such as per diem checks. (See Attachment #35)

The grantee provided the following information to the auditors on May 1, 2011 specifically in response to the issue of “excess funds” in the account:

The NTWC bank account showed a balance of \$1,836 (rather than 0) as of 9/30/10 for the following reasons:

- (1) On 8/25/10, as reflected in the August 2010 bank statement, the grantee had transferred personal funds from her 401k retirement account to the NTWC account in the amount of \$4,500.00. \$1,721.98 of those 401K funds were remaining as of 9/30/10.
- (2) A reimbursement in the amount of \$9,570.73 had been deposited by EPA on 9/20/10 and all of the reimbursement charges had not been processed.
- (3) Additionally, the following charges had been incurred, but not paid/reimbursed from grant funds prior to 9/30/10:

Kathleen S. Hill	9/25/10 Paydraw	\$ 1,458.33 ¹
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Joseph C. Dupris	9/25/10 Payroll	\$ 1,458.33 ²
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Bank of America Credit Card Purchases:

Office Depot	8/25/10 Supplies Purchase	\$ 45.50 ³
Office Depot	8/25/10 Supplies Purchase	\$ 22.63 ⁴

Books 2 Taxes, Inc.	9/15/2010 Contractual payment (Paid by personal check #10922)	\$ 234.00 ⁵
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Klamath Co. Solid Waste	9/25/10 cash payment	\$ 6.00 ⁶
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The above expenses incurred but not paid/reimbursed prior to 9/30/10 total \$3,224.79.

¹ Payment requested on 9/30/10; payment deposited by EPA on 10/5/2010.

² Payment requested on 9/30/10; payment deposited by EPA on 10/5/2010.

³ Reimbursement requested on 11/3/10; reimbursement deposited by EPA on 11/24/10.

⁴ Reimbursement requested on 11/3/10; reimbursement deposited by EPA on 11/24/10.

⁵ Reimbursement requested on 11/3/10; reimbursement deposited by EPA on 11/24/10.

⁶ Reimbursement requested on 11/3/10; reimbursement deposited by EPA on 11/30/10.

(See Attachment #36)

A secondary issue not revealed by the auditors is the delays in the cost reimbursement requests of the grantee by GIAMD. As a result of the delays in reimbursements by GIAMD, the grantee concluded that it was not financially responsible to draw the full amounts due for outstanding NTWC account debts. The grantee could not zero out the bank account because the grant terms and conditions required the grantee to keep the NTWC bank account active in order to accept EPA reimbursements and to pay the bills for NTWC activities. Thus, the \$1,836 remaining in the bank account on September 30, 2010 were the grantee's personal funds, not grant funds as alleged by the auditors.

OIG Response 27: Our examination covered the period from inception of the cooperative agreement on October 15, 2006, through the examination cutoff date of September 30, 2010. As explained in the report, the amount questioned represents the difference between the revenue amount (cash draw/reimbursement) and the total expenditure amount for the cooperative agreement, as shown in the recipient's accounting system.

We evaluated the additional documentation provided by the recipient regarding the use of her personal funds, subsequent EPA reimbursement, and outstanding payments. Our review confirmed that the net amount of cash draw/reimbursement exceeded the cumulative expenditure amount by \$1,836; therefore, we maintain our position on this issue. As cash draw is an ongoing process, the excess draw amount may be different at the end of the cooperative agreement.

Response to *Advance Cash Draws Do Not Meet Federal Requirements*

The statement that "advance cash draws do not meet federal requirements" is a factual error, and misleading since the issue of cash draw practices was resolved during a face-to-face meeting of the grantee and grant NTWC Project Administrator with Office of Water and GIAMD personnel, including the Office of Water Deputy Assistant Administrator, an Office of General Council attorney and the Chief of a Grants Management Branch on May 13, 2011, almost eight months prior to the January 11, 2011 date that OIG says the audit began.

The resolution of this issue was memorialized in a letter written by the [REDACTED] on May 27, 2010:

"...Further, I recognize that you have been consistently drawing funds in even amounts because you misunderstood the process for making financial drawdowns. Since you contacted EPA's Las Vegas Finance Center prior to making a drawdown, you assumed you were allowed to draw award funds in advance of immediate cash needs."
(See Attachment #4)

As noted previously, the grantee's cash drawdowns prior to May 27, 2010 were based on negotiations with the original EPA Project Officer, authorization by the original GIAMD Grant Specialist (to the best of the grantee's knowledge) and discussion with EPA's Las Vegas Finance Center. During those negotiations, the NTWC Project Administrator reviewed the budget that he had developed regarding anticipated grant expenditures.

The auditors fail to note that although the grantee and NTWC Project Administrator have significant grants management experience on the programmatic side, and overseeing federal grants as a whole (with staff), the EPA drawdown process was an entirely new experience. Prior to the award of the grant, the grantee, NTWC Project Administrator and EPA Project Officer reviewed the grant budget with the goal of projecting a reasonable spend-down rate of grant funds. During that discussion, the NTWC Project Administrator shared a budget that he had developed regarding quarterly expenditures, and the parties agreed that it would make sense to draw funds down on an approximately quarterly basis to meet upcoming expenses. The EPA Project Officer, grantee and NTWC Project Administrator believed that such a process was consistent with the “administratively feasible” standard in 40 CFR 30.22. Such a process was familiar to the grantee and NTWC Project Administrator based on their Tribal and nonprofit experiences where drawing down a significant proportion of the budget at a time, spending it for allowable purposes and providing reports of those expenditures was common practice. (See Attachment #37)

As the following e-mail excerpts indicate, the grantee was very confused when the issue of EPA drawdowns was first raised to her attention, and sought the advice of her EPA Project Officer, who sought the advice of the GIAMD Grant Specialist:

11/04/06 After attending the Region 9 Tribal Environmental Conference, the grantee wrote the following message to the EPA Project Officer:

“While in San Francisco, a project officer asked us if we have to do "drawdowns" through the Las Vegas office. We really didn't know what she was talking about, and we thought the whole purpose of the paperwork we did in July was to initiate the financial process once things were approved. Now we are wondering if there is something we need to learn about (or initiate) pertaining to the drawdown process... could you let us know?

We also learned that although Tribes (like our project) don't engage in the kind of big-dollar procurement processes that get complicated, they are expected to track their procurement informally re minority and women-owned businesses. Do you know anything about this? Is this something we should ask someone else about?”
(See Attachment #38)

11/04/06 The grantee followed the above message up with a second message:

Hi, [REDACTED] –

A quick note to let you know that we haven't yet received the authorization letter, or a copy of it. We did, however, receive a "Managing EPA Grants" dvd from the grants office and inspector general's office that provides an overview of financial management and references a web site for the ASAP system. According to the dvd, agencies enter spending authorizations into ASAP accounts and grantees initiate payment requests. Do you know anything about this? According to the website, EPA provides a number of some sort so the grantee can register. Do you know if EPA has entered a spending authorization re our cooperative agreement, and who will provide us with the information necessary to register as a grantee?

We didn't realize this step was necessary, as we thought we had provided all necessary financial account information to the agency last July. According to the dvd, it is provided to new awardees, so I am assuming we are somewhere in the pipeline we are just not sure "where."

Thank you in advance for any information you can provide. - Kathy Hill (See Attachment #39)

11/7/06 The EPA Project Officer forwarded the grantee's first 11/04/06 message to the GIAMD Grant Specialist, as follows"

"Do you know the answer to this question? Or can you give me the name of someone who would know? If there is a formal process, I need to find out what it is, ASAP.

Thanks." (See Attachment #40)

11/9/06 (9:09 a.m. Eastern) The EPA Project Officer forwarded information indicating that the grant paperwork had been processed:

Hopefully it went through at the Las Vegas office as well (?)

█ (See Attachment #41)

11/09/06 (10:53 a.m. Eastern) The NTWC Project Administrator responded

"Thanks for the update. I will contact the Las [Vegas] financial center this morning to determine the status of the funds [disbursement]. We don't know as yet if there are other papers to file with the financial center, but we will hopefully resolve that matter this morning." (See Attachment #42)

11/09/06 (12:21 p.m. Eastern) The NTWC Project Administrator send a second follow-up message:

"I talked to the Las [Vegas] financial center and found out that the authorization had not yet been sent to them. █ was sent the form on Tuesday morning. █ said that he would follow up, find the authorization information, and start the funding process. He has the banking information from us for the processing, but we still need to fill out some forms that request the funds.

█ *was unaware that we are not working under a cost-reimbursed cooperative agreement.* I told him that we are expecting the funds as we wrote in the proposal - funds advances of approximately \$50,000 per fiscal quarter. He is looking into this for us.

█ *said that once we [receive] the new forms for requesting funds and once he enters that information into the financial center system that it will take three (working) days to have the funds appear in our bank account. Since tomorrow is a federal holiday that may delay the funds until next week - about [W]ednesday.*

We hope this update is helpful if you are contacted about the funding procedures."
(See Attachment # 43)

11/09/06 (1:39 p.m. Eastern) the NTWC Project Administrator followed up once more :

I have sent the request for payment to [REDACTED] at the Las [Vegas] Financial Center and a copy of the signed Affirmation of Award for his records. As of 10.30 am PST, [REDACTED] has not [received] the information from [REDACTED]. He cannot proceed to process the funds for cooperative agreement until that information is sent to him.

Tomorrow is a federal holiday, and there [are] only a few hours left for your office in Washington D.C. to process the information to [REDACTED]. His phone number is [REDACTED] and his fax is [REDACTED]

Would you contact [REDACTED] [GIAMD Grant Specialist] and see if she sent the information Las Vegas Financial Center? I will try to call her as well. (See Attachment #44)

As mentioned previously (in the *Contractual Costs* section above), in spite of numerous telephone calls requesting assistance, the GIAMD Grant Specialist never spoke to the grantee or NTWC Project Administrator from the beginning of the grant until a new GIAMD Grant Specialist was assigned in November, 2007.

While the grantee understands that there were concerns about the manner in which drawdowns were processed during the first 3 ½ years of the grant, it would have been helpful if just one GIAMD Grant Specialist had provided specific drawdown guidance to the grantee or NTWC Project Administrator during that time. Since nothing was ever questioned, the EPA Project Officer, grantee (NTWC Project Manager) and NTWC Project Administrator had no idea that the negotiated \$50,000 drawdowns were outside the EPA norm until the May 13, 2010 meeting at which this issue was resolved as a misunderstanding.

In the grantee's opinion this issue is moot and has no place in the Draft Report since it was resolved eight months before the beginning of the audit.

OIG Response 28: See OIG Response 4.

Response to Recommendation

For the reasons detailed above, the grantee believes it is a factual error to state that \$80,721 disallowed costs should be recovered by the EPA.

In the grantee's opinion, it is inappropriate to recommend that the grantee's financial management system should be verified prior to any future award based, especially given the fact that the auditors make this recommendation elsewhere in the Draft Report. (See **Response to Status of Recommendations and Potential Monetary Benefits** on the last page of this response.)

OIG Response 29: Based on our analysis of the recipient’s draft report comments, no significant changes have been made to the Results of Examination or the questioned costs of \$80,721, and no changes will be made to the recommendation regarding verification of the recipient’s financial management system prior to any future award.

Response to *Other Concerns Raised By Audit Request*

Work Performance

The auditors state that the recipient has fulfilled the overall purpose of the Tribal Water Program Council Cooperative Agreement. In fact, the grantee, in collaboration with the NTWC Project Administrator, first EPA Project Officer and volunteer members of the National Tribal Water Council *exceeded* the expectations related to the overall purpose of the Cooperative Agreement during the relevant time frame.

As memorialized in the NTWC minutes for November 12, 2009, the original EPA Project Officer said that

“...she considers her role in the establishment of the Council to be the most important thing she has accomplished during her years with EPA. She said that the NTWC is ‘beyond stellar’ and that every single Council member has contributed to making a difference to the agency, and beyond, at both the national and Tribal levels.”

The statement that *“the recipient did not provide the required quarterly reports according to terms and conditions of the agreement until year 4”* is a factual error. Contrary to the allegations made by GIAMD, the grantee filed quarterly reports with the EPA Project Officer from the beginning of the Tribal Water Program Council Cooperative Agreement in 2006, as documented by attachments to this Response. There is a possibility that when the original EPA Project Officer retired, she did not print out hard copies of quarterly reports prior to “cleaning out” her e-mail messages. This is only a theory, and the grantee does not claim to know why EPA does what EPA does.

OIG Response 30: The statement that *“the recipient did not provide the required quarterly reports according to terms and conditions of the agreement until year 4”* was from the audit request. We did not opine on the timeliness of the report submittals. We only confirmed that the quarterly reports were submitted by the recipient as of September 30, 2010, the examination cut-off date.

The GIAMD claim of not being aware of the database or webpage links to other organizations and entities related to the protection of water resource is also without substance. GIAMD and the EPA Project Officer have direct access to the NTWC webpage on which the databases were posted and could have asked the grantee about them at any time.

The auditors assert that “*many of the tasks in the workplan were general in nature and did not have verifiability.*” However, the grantee, NTWC Project Administrator and National Tribal Water Council have produced numerous verifiable documents that are consistent with their purpose.

It should also be noted that EPA liked the grant application submitted by Kathleen Hill and Dr. Dupris so much that they asked them to give a grant proposal writing workshop at the *National Tribal Forum on Environmental Science*. The presentation, made on September 27, 2006 was well attended, and the grantee has been told that it received very positive feedback.

Furthermore, although the auditors acknowledge that the “*recipient has fulfilled the overall purpose of the cooperative agreement,*” the discussion regarding work performance is written in such a manner that it appears to be an attempt to diminish the accomplishments of the grantee and the activities of the National Tribal Water Council.

Following are real examples of the kind of work accomplished by the grantee and NTWC Project Administrator in collaboration with the National Tribal Water Council. In the grantee’s opinion, they reflect the benefit of the National Tribal Water Council to EPA and to Indian Country.

The following is excerpted from the grantee’s *Programmatic Closeout Report*:

Long-Term Milestone 3

Improve water-related public health protection in Tribal communities.

Each of the NTWC members is aware of the threat poor water quality poses to the Tribal members they serve, and the Tribal resources they are responsible for protecting. Based on that knowledge and their commitment to Indian Country, the NTWC incorporated what Council members identified as the NTWC’s health-related purposes in its By-laws:

“The NTWC was established to advocate for the best interests of federally-recognized Indian and Alaska Native Tribes, and Tribally-authorized organizations, in matters pertaining to water. It is the intent of the NTWC to advocate for the health and sustainability of clean and safe water, and for the productive use of water for the health and well-being of Indian Country, Indian communities, Alaska Native Tribes and Alaska Native Villages.”

During its first NTWC-EPA face-to-face meeting in October 2007, NTWC members shared some of their concerns about water-related health in Tribal communities. Among these were concerns about:

- * The effect of climate change on all aspects of life for Alaska Natives;
- * States ignoring Tribes as they attempt to downgrade water quality standards by using receiving waters as the standard for water quality;
- * Agricultural impacts on water quality;

- * Mercury levels in fish tissue;
- * Unregulated drinking water sources in remote areas;
- * Impacts of uranium and power plant related issues;
- * Impacts of low water tables coupled with upstream, underground contamination;
- * The need to mitigate the effects of global warming;
- * Threats posed by private corporations draining aquifers;
- * Air deposition of mercury;
- * Arsenic contamination in groundwater supplies;
- * Groundwater mercury contamination;
- * Mercury and nitrogen deposition impacts on tidal marshes;
- * Failure to recognize the links between pollution and physical and spiritual health;
- * Capture of pollutants from distant industrial emissions;
- * Lack of funding for EPA-approved Tribal labs; and
- * Social and health problems arising from the inability to practice traditional subsistence lifeways.

As noted in Long-Term Milestone 2, above, the NTWC website includes a *Links and Resources* page with over three dozen sites pertaining to entities engaged in the protection of aquatic resources in Indian Country and a list of *Funding Sources for Tribal Water & Aquatic Resource Protection*. Clearly, entities that engage in the protection of aquatic resources in Indian Country help to address water-related Tribal health issues. Water and Tribal health meetings and conferences that teach best-practices, as well as meetings at which knowledge about water quality and Tribal public health can be enhanced, have consistently been included in the website *Meeting and Events* page.

As discussed in Workplan Milestone 9, the NTWC has engaged with many EPA experts who help to address water-related health threats. The NTWC has also designed presentations regarding best practices for protecting Tribal public health. Council members have done this directly, through presentations such as the “*Tribal Water Quality Data Management: Making Your Data Work for You*,” which emphasized the need for Tribes to manage data for their own Tribal purposes, as well as EPA’s purposes, and by serving such entities as the *Mississippi Basin/Gulf of Mexico Hypoxia Task Force*, *National Water Quality Monitoring Council*, *EPA State-Tribal Climate Change Council*, *National Tribal Operations Committee Tribal Caucus*, *National EPA-Tribal Science Council*, and the various entities they serve or are engaged with through their individual Tribes and EPA regions.

The Grantee (NTWC Project Manager) has also shared information about water-related public health threats in Indian Country, such as a major CDC publication regarding public health and drought, the National Oceanic and Atmospheric Administration's work with the Quileute Tribes re shellfish toxin, uranium plume health threats to Hopi villages, health threats posed to Tribes and the fish they eat by mining slag that is in the Columbia River, and high levels of mercury in fish that were found to be unsafe for consumption by the Clear Lake Pomo Tribe in California.

The Grantee (NTWC Project Manager) and NTWC Project Administrator have supported the NTWC's development of policy papers that incorporate concerns about impacts on water quality that potentially impact Tribal health, including:

- (1) A set of NTWC Issue Papers (previously mentioned) presented to EPA during the October 2009 NTWC-EPA meeting, including

A Cultural Perspective on Water,

An Overview of Some Alaska Native Water Quality Issues & Concerns,

Tribal Issues & Concerns Related to Mining & Superfund Sites in the Lower 48 States and Alaska,

Proposed Alternatives for Water Quality Protection When EPA Authorization is Not an Option,

Inadequate/Inconsistent Funding Levels for Indian Tribes with Regard to the Clean Water §106 Program, and

Initial NTWC Recommendations on Climate Change.

- (2) Two policy-relevant letters pertaining to issues in Alaska:

A January 6, 2011 letter to EPA Administrator Lisa Jackson re *National Tribal Water Council Follow-Up: Key Messages Articulated during the EPA Region 10 Tribal Leaders Summit*. The letter highlighted the following issues:

- (1) Environmental Justice (EJ) issues,
- (2) Government- to-Government consultation,
- (3) Global Climate Change Impacts,
- (4) Access to Basic Sanitation,
- (5) National Pollution Elimination System (NPDES) issues, and
- (6) Mining Issues.

A January 6, 2011 letter to EPA Administrator Lisa Jackson and Region 10 Administrator Dennis McLerran, regarding the NTWC's *Request for EPA to exercise its authority under Section 404(c) of the Clean Water Act to protect water quality in Bristol Bay from the proposed Pebble Mine*.

(3) Comments that address policy matters, such as

- | | |
|------------------|--|
| January 21, 2008 | Comments on the <i>Rapanos</i> decision; |
| August 18, 2008 | Recommendation Against Alaska NPDES Program Delegation;
and |
| November 7, 2008 | Comments on the <i>NRC Uranium Recovery GEIS Proposal</i> |

The NTWC has also provided input to EPA with regard to both policy matters and EPA's efforts for attaining measurable water quality improvement by submitting formal comments on EPA plans, proposals and strategies, including

- | | |
|--------------------|---|
| March 31, 2008 | Comments on the <i>National Water Program Draft Guidance for FY 2009</i> , |
| August 18, 2008 | Comments on the <i>National Water Program in the EPA Strategic Plan 2006-2011 Update</i> , |
| September 22, 2008 | Comments on the <i>Data Management Appendix to the CWA Section 106 Tribal Guidance</i> , |
| November 13, 2008 | Comments on the <i>§319 Handbook</i> annotated outline, |
| November 30, 2008 | Comments for the <i>2009-2014 EPA Strategic Plan Change Document</i> , |
| March 20, 2009 | Comments on the <i>National Water Program Draft Guidance for FY 2010</i> , |
| October 14, 2009 | Comments on <i>FY 2010 EPA National Tribal Program Tribal Measures</i> , |
| October 15, 2009 | <i>§106 Draft Status Report Comments</i> , |
| January 19, 2010 | Comments regarding the <i>FY 2011-2013 National Priorities for Enforcement & Compliance Assurance</i> , |
| April 2, 2010 | Comments on the <i>Draft FY 2011 OECA National Program Manager Guidance</i> , |
| April 2, 2010 | Comments on the <i>Draft FY 2011 National Water Program Manager Guidance</i> , and |
| July 30, 2010 | Comments re the <i>Draft FY 2011–2015 EPA Strategic Plan</i> . |

In addition to promoting water protection and awareness via the website, networking and writing, the NTWC's work has contributed information as to developing, establishing and sustaining a comprehensive Tribal water protection program. It should be noted, however, that the members of the National Tribal Water Council recognize that there is no "one size fits all" Tribal water protection program. Every Tribe has its own unique sovereign government and a unique relationship with the federal government and neighboring state

and local governments. Each Tribe's homeland is different, and each Tribe's water-related challenges are unique.

As the above excerpt reveals, the grantee, NTWC Project Administrator and National Tribal Water Council have been advocates with regard to water quality issues that are important to Indian Country. The NTWC, with the support of the grantee and NTWC Project Administrator, have been valuable partners with EPA in its goal to carry out the mission of the Clean Water Act.

OIG Response 31: The statement that “many of the tasks in the workplan were general in nature and did not have verifiable deliverables” addressed the fact that there were no measurable outputs or deliverables for some of the tasks. Examples of these tasks include promoting information exchange within the council and assisting in finding opportunities for council members to raise awareness regarding tribal health and quality of tribal aquatic resources. We verified that the recipient has completed the broad scope of the cooperative agreement, even though we were unable to verify some of the more general tasks to quantifiable output. For this reason, we stated that the recipient has fulfilled the overall purpose of the cooperative agreement. There was no attempt to diminish the recipient's accomplishments.

Finally, the auditors use the “work performance” section to imbed a recommendation that the Director of Grants and Debarment verify the grantee's accounting system records for the final financial report based on their claim that the grantee did not submit quarterly reports until Year 4 of the grant and that the September 30, 2010 quarterly report did not reconcile to the recipient's accounting system.

The auditors have presented no evidence that the grantee's accounting system records are inadequate. In fact, the auditors have relied on the grantee's accounting system files to question the independent bookkeeper's mid-grant Quickbooks documents.

The statement that the grantee did not submit quarterly reports until Year 4 of the grant is also false. In fact, pages from two first-year quarterly reports are attached to this document in response to auditor errors pertaining to the grantee's fringe benefit processes.

The grantee does agree with the auditor that the mid-grant September 30, 2010 quarterly report did not reconcile to the recipient's accounting system. There are several reasons for this:

- (1) GIAMD required the grantee to change to a reimbursement process that began in late August, 2010, and the independent bookkeeper was still in the process of making major changes to her accounting system;
- (2) Expenditures made out-of-pocket (such as those referenced in **Response to Note 6: Costs Claimed in Excess of Accounting System Account**, above) were not yet integrated into the independent bookkeeper's accounting system;
- (3) The bookkeeper was still trying to figure out how to properly record the grantee's personal deposits to the grant account (such as the August 25, 2010 \$4,500 deposit from the

grantee's 401K account) to cover grant costs for which EPA reimbursements had been delayed; and

- (4) The bookkeeper was trying to update and reconcile the Quickbooks documents to the grantee's records while dealing with the demands of tax season.

The auditors also state that

"The recipient is required to submit its final financial status report by June 29, 2011, 90 days after the end of the cooperative agreement budget period."

At the time the auditors wrote the Draft Report that deadline has passed, and the auditors already knew that the grantee had not submitted the final financial status report. As the grantee informed the EPA Project Officer and GIAMD Grant Specialist on June 22, 2011

"I am writing to let you know that it will not be possible to complete the financial closeout of EPA grant #X7-83325501 by June 29, 2011."

The audit that was started in January of this year has taken a significant amount of time and energy, and expenditures and unpaid expenses that were obligated before the end of the grant period have not been fully processed. The financial closeout is also impeded by the fact that we do not know where the budget modification stands.

We will also inform the Las Vegas Financial Office of this necessary delay." (See Attachment #45)

The grantee has been informed by non-GIAMD EPA financial personnel that EPA allows extensions for the final financial report due date. The GIAMD did not offer the grantee such an extension, or even inform her that the due date could be extended. Instead, several different GIAMD personnel tried to pressure her into submitting the final financial report before she had an opportunity to complete her due diligence review of all financial records. In fact, the grantee was informed that the GIAMD will not process previously submitted grant reimbursement requests until the final financial report is turned in.

The grantee's financial closeout has been delayed even further by the legal requirement of responding to the auditor's Draft Report within 30 days.

OIG Response 32: The recipient's accounting system is required to support the data submitted in the financial reports for all quarters, not just at close-out. We found that the financial portion of the quarterly report for the period ended September 30, 2010, did not reconcile to the recipient's accounting system. To address this issue, we recommended the EPA to verify that the final financial status report is properly supported by accounting system records. The recommendation was not intended to point out the due dates of the final financial status reports. Our finding and recommendation remain unchanged.

Request for Additional Funding

The draft **Report** is factually in error with the statement that “[t]he GIAMD’s audit request stemmed from the recipient’s request for additional funding as a result of Two training courses.....”

In fact, the grantee (recipient) did not request additional funding for the two training courses since the funding for those courses was provided for in the 2008 Assistance Amendment (see the \$10,000 item in the Fiscal section) and the 2010 Assistance Amendment (see the \$30,000 item in the Fiscal section), which were both authorized by the awarding official.

The grantee did, however, request \$40,000 that was included in the budget for the support of the Tribal Water Council and approved by EPA in 2006, but rejected by a Grants and Interagency Agreements Management Division (GIAMD) Grant Specialist in November, 2009.

There are numerous other factual errors in this section of the draft audit report. As noted on page 3 of this *Response*, the above statement regarding the origination of the audit is inconsistent with the *Why We Did This Examination* textbox on the **At A Glance** page wherein the Office of Inspector General (OIG) states that EPA requested assistance

“due to concerns relating to a cooperative agreement recipient’s project and funding management, as well as cash draw practices.”

It remains the grantee’s opinion that the statement on the **At A Glance** page was made to avoid drawing attention to errors made by EPA’s GIAMD Grant Specialist who arbitrarily cut \$40,000 from the original grant funding intended to support the work of the National Tribal Water Council. It is also the grantee’s opinion that EPA’s decision to add \$30,000 of funding for the additional work was a violation of EPA’s own *Competition Order* and that those funds, and the \$10,000 for additional work awarded to the grantee previously, were used to supplant \$40,000 of original grant funding that EPA had committed for the support of the National Tribal Water Council.

A factual error is also made by the statement that

“The recipient believes that the cooperative agreement is entitled to an additional \$40,000 based upon the project officer’s assurances.” [Emphasis added]

Numerous EPA officials, including GIAMD personnel, were involved in discussions pertaining to the \$40,000 referenced by the OIG.

Although the November 30, 2009 Notice of Award for 2010 that included the \$30,000 in funding listed the original EPA Project Officer, there is no evidence that the GIAMD’s decision to reject \$40,000 in funding for the Tribal Water Council involved any discussion or consultation with the outgoing EPA Project Officer. Following is an October 26, 2009 message sent by the EPA

Project Officer to an Integrated Grants Management System colleague that reflects her commitment to ensure that Tribal Water Council grant funds were appropriately processed:

“Once again I need help entering appropriate information into IGMS. I now believe I have six change requests pending finalization by IGMS. All are for the same grant...Tribal Water Council # 83325501...Grantee is Kathleen Shaye Hill.

Five of them (\$40,000 each) are incremental funding for general Council operations for the next 12 months. These were generated by OW program offices: OST, OWM, OGWDW, OWOW, and by the Immediate Office of the Assistant Administrator. I thought I had completed finalizing them months ago, but apparently not.

The final one just came in. It is a one time amount of \$30,000 to fund tribal training.

All are waiting for me to complete change award requests. As happens each year, IGMS bollixes my mind. I could sure use your help.” (See Attachment #46)

GIAMD was solely responsible for the decision to supplant \$40,000 of original grant funding for the National Tribal Water Council with \$10,000 and \$30,000 of funding for extra work that was supplemental to the original workplan and had already been performed by the grantee at EPA’s request. When the grantee contacted the retired EPA Project Officer regarding the Notice of Award that still listed her as the Project Officer, she was saddened and surprised to learn that the GIAMD had unilaterally cut NTWC funding. More information related to the background of the \$30,000 in funding is documented in the *OWOW Tribal Wetland Training - \$30,000* section.

Based on research done after the \$40,000 in supplemental funding became an issue, it is the grantee’s opinion that GIAMD’s decision to award the \$30,000 of supplemental funding violated EPA’s own ***Policy for Competition of Assistance Agreements*** (Revised 4/09/2007). The ***Policy for Competition*** states at Section 12 (1):

“Program Offices may award assistance agreements that are subject to this Order non-competitively ... (1) When the assistance agreement is for \$15,000 or less....” (See Attachment #2)

In both instances (the \$10,000 funding for the Office of Wastewater Management STORET/WQX training and the \$30,000 funding for the Office of Wetlands, Oceans and Watersheds Tribal Wetlands training), the EPA Project Officer inquired with the appropriate GIAMD Grant Specialist as to how to appropriately add funding for the additional work. (See e-mail excerpts in the *STORET/WQX Training - \$10,000* and *OWOW Tribal Wetland Training - \$30,000* sections, below.) Neither the GIAMD Grant Specialist nor anyone else in GIAMD informed the EPA Project Officer or the grantee that there might be some concern about adding \$30,000 in supplemental funding to the award without putting that additional work out for competition.

In fact, a great deal of confusion ensued on December 16, 2009 when the grantee received the 2010 Notice of Award, and the funding was \$40,000 less than anticipated. Dr. Dupris, the NTWC Project Administrator called the GIAMD Grant Specialist immediately. The GIAMD Grant Specialist, who had been in communication with the EPA Project Officer and Office of Wetlands, Oceans and Watersheds (OWOW) staff member who had arranged the Tribal Wetlands training, told Dr. Dupris that the funding for the Tribal Water Program Council Cooperative Agreement could not be added because the grant had already reached its “ceiling”. He also told Dr. Dupris that he had turned away \$40,000 that an Office of Water Director had tried to contribute as his office’s share of funds in support of the National Tribal Water Council. In subsequent communication that same day, the supervisor of the new EPA Project Officer sent a message to the grantee stating that

“The 40K shortfall is not because OWOW’s funding didn’t or couldn’t come through. I think the issue is that 40K of OW’s 200K total funding for the NTWC that was supposed to go into the grant never did. I don’t think NTWC funds were used to cover the training. I think the grant is short 40K of NTWC funds. At least that is how it seems to me. And I have heard nothing about funding being rescinded.” (See Attachment #48)

After the holidays, on January 5, 2010, the new EPA Project Officer notified the grantee that she had met with the GIAMD Grant Specialist who had turned away the \$40,000 in funding for the National Tribal Water Council, and another person who “*will be the grants specialist for this grant going forward*”. In other words, less than a month after his action became known, the GIAMD Grant Specialist who had partially supplanted \$40,000 of the original funding for the NTWC with \$30,000 of supplemental funds was reassigned. (See Attachment #48)

On January 21, 2010, the new EPA Project officer wrote the following to the grantee:

“The four year grant that supports the NTWC was for \$800,000. There were two instances where money was added to the grant, as you have indicated, for \$10,000 and \$30,000 for training/travel support from OW program offices. Those additions totaling \$40,000 brought the funding level of the grant to the ceiling of \$800,000. In retrospect, those two instances of additional funding should have been processed as supplemental actions, per EPA. As that did not take place on our end, and the ceiling was hit, we now need to move forward to address that \$40,000.” (See Attachment #49)

That same day (January 21, 2010), the grantee and NTWC Project Administrator faxed the signed *Acceptance of Notice Award* with the following statement:

“In December, we requested a waiver for acceptance of the award time period, which [GIAMD Grant Specialist] ██████████ agreed to. This was because of the questions regarding the additional \$40,000 that was not processed by EPA for the cooperative agreement. The total of the grant was amended to reflect an addition last year that raised the total amount of the award to \$810,000, and for this year the

grant activities were to include an additional \$30,000 for travel for Wetlands Training events. This raised the total grant award to \$840,000.

“We have discussed the confusion about this matter of funding with our new EPA Project Officer, [REDACTED], and have agreed to submit the signed notice of award to insure the continuation of the grant activities until the issue of the missing \$40,000 is sorted out. In addition, we have asked to adjust budget line items to reflect changes. As we understand it, the revision to the budget line items will be addressed and completed after the decision is made regarding the \$40,000. (See Attachment #50)

Finally, on that same day, in response to what the grantee believed to be an earnest effort on EPA’s part to address its funding errors, and due to concern about continued funding for the National Tribal Water Council, the grantee wrote the following to the EPA Project Officer regarding the 2010 Assistance Agreement

“Thank you for providing the information needed to address FY2010 funding for the NTWC, and for discussing the matter with Joseph in his capacity as NTWC Administrator.

Following is an update since Joseph’s conversation with [REDACTED]:

(1) Per Joseph’s earlier discussion with you, our contact in the Las Vegas EPA financial center, and [REDACTED], I have signed and Joseph has submitted (faxed) the Notice of Award signature page for \$190,000 pending resolution of issues pertaining to the additional \$40,000 of OWOW funds. Once those issues are resolved, an amendment can be processed, if appropriate.

(2) Although the current Notice of Award includes an approved FY2010 budget, [REDACTED] [the new GIAMD Grant Specialist] agreed that a budget line item modification is in order. Joseph will work on that and submit a request to you and [REDACTED] simultaneously. This is something we requested several times while [REDACTED] [the former GIAMD Grant Specialist] was still there. Although she was always amenable, she would invariably be out of the office when we worked on it. In the long run, we don’t perceive this to be a problem. Instead, this presents an opportunity to incorporate changes relative to the 2007 OWOW STORET/WQX Training travel and 2009 OWOW Wetlands Training travel.....” (See Attachment #51)

Six days later, on January 27, 2010, the grantee was shocked to receive a message from the new EPA Project Officer that included the following statement

“Actions authorizing additional funds were out of scope of the workplan. The Agency needs to resolve this matter.” (See Attachment #52)

In fact, it is the grantee’s opinion that EPA knew that the work done with regard to the additional funds was not outside the scope of the workplan of the Tribal Water Program Council

Cooperative Agreement. Instead, the grantee believes that EPA was beginning to engage in a cover-up of the error it had made by adding \$30,000 in funding to the Assistance Agreement for additional work that was not put out for competition per EPA's own *Policy for Competition of Assistance Agreements* (Revised 4/09/2007).

After two months with no progress toward resolving the \$40,000 loss in funding, and having been accused of misspending federal funds, on February 12, 2010, the grantee and NTWC Project Administrator turned to the Office of Water Deputy Assistant Administrator, sending a memo in which they stated

"FYI, all of the OWOW funding was designated for OWOW-related travel, and neither Hill, Dupris nor the NTWC received any economic benefit from this work. Rather, the NTWC seems to have received economic detriment.

We are willing to live with a smaller budget if necessary, as long as we can properly support the work of the National Tribal Water Council. We are not willing, however, to continue to be treated as fraudulent grantees.

We need your support and assistance to resolve this matter so that we can move forward and focus on the continuing good work of the NTWC." (See Attachment # 53)

On February 26, 2010, the OW Assistant Administrator responded to the grantee, admonishing her to work with his staff – the same staff that was treating her like a fraudulent grantee. The grantee and NTWC Project Administrator did so.

The OIG's statement that 40 CFR 30.25(c)(1) requires that *"the recipient shall request prior written approval from the EPA awarding official for additional federal funding"* is inconsistent with the facts in this situation. Following is the relevant text:

30.25 - Revision of budget and program plans

(c) For nonconstruction awards, unless EPA regulations provide otherwise, recipients shall request prior written approvals from:

(1) The EPA Award Official for the following:

(i) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(ii) The need for additional Federal funding.

There was no change in the scope or objective of the project, the grantee was not seeking additional funding, and the funding for the additional work asked of the grantee by EPA was already in the budget of the relevant offices. The grantee relied on the expertise of her EPA Project Officer, the EPA Project Officer's supervisor, the GIAMD Grant Specialist and the OWOW staff person to properly follow EPA's internal processes.

Following is the course of funding for 2007, 2008, 2009 and 2010 as captured in the various Fiscal sections of the Assistance Amendments. Please note that when there was no other funding, the grant was funded for a total of \$200,000, consistent with the original grant budget of \$800,000 or \$200,000 per year. Although the supplemental work was consistent with the grantee’s statement of work, it was not included in the original grant workplan.

2007	Purpose	2008	Purpose	2009	Purpose	2010	Purpose
\$200,000	TWPC	\$40,000	TWPC	\$40,000	TWPC	\$40,000	TWPC
		\$40,000	TWPC	\$40,000	TWPC	\$40,000	TWPC
		\$40,000	TWPC	\$40,000	TWPC	\$40,000	TWPC
		\$40,000	TWPC	\$40,000	TWPC	\$40,000	TWPC
		\$40,000	TWPC	\$40,000	TWPC	\$40,000	TWPC (Rejected by GIAMD)
_____		\$10,000	STORET/WQ X Training	_____		\$30,000	Wetlands Training
—				—			
\$200,000		\$210,000		\$200,000		\$190,000	

The auditor’s citation regarding 40 CFR 30.25(c)(1) is also inconsistent with following statement made by the EPA Project Officer to the grantee on February 21, 2010, with a cc to both her supervisor and the GIAMD Grant Specialist (neither of whom disagreed):

“The project officer ... has the role of determining that costs on a grant are consistent with the workplan, scope, and approved budget of the grant.”
(Attachment #54)

In fact, both the \$10,000 and \$30,000 additional funding commitments were authorized as being within the scope of the workplan by the former EPA Project Officer, neither GIAMD Grant Specialist questioned the \$10,000 awarded in the 2008 Assistance Amendment or the \$30,000 awarded in the 2010 Assistance Amendment, and both Amendments were authorized by [REDACTED]. [REDACTED] None of the relevant EPA parties ever suggested that the grantee needed to request prior written approval for the additional, supplemental funding awarded by EPA for training events sponsored by EPA.

It is also a factual error that

“EPA has advised the recipient on several occasions that she needed to provide a revised budget, along with the outstanding tasks under the cooperative agreement, to justify the additional funding.”

In fact, as noted above, EPA officials informed both the grantee and Dr. Dupris that EPA had awarded the additional funding of \$40,000 for the extra, supplemental work, but unilaterally denied the grantee \$40,000 of funding for the original grant that supported the National Tribal Water Council. The \$40,000 of Tribal Water Council funding, which the former GIAMD Grant Specialist rejected in December 2009, was included in the original budget that was approved in 2006.

The only request for a revised budget by GIAMD was for the \$800,000 that was the alleged “ceiling” for the Tribal Water Program Council Cooperative Agreement and at no time did the GIAMD request a revised budget for \$840,000 which represented the total grant awards to the grantee.

Details pertaining specifically to the \$10,000 award and \$30,000 award are provided below.

STORET/WQX Training - \$10,000

Following is a summary of communication pertaining to the \$10,000.00 funding for the 2007 STORET/WQX training for which EPA requested the grantee’s assistance. Word format copies of all of the e-mail messages quoted below are attached.

7/30/07 [REDACTED], EPA Project Officer, notified Kathleen Hill that *“One of our managers in the 106 program stopped me in the hall the other day to ask whether it might be possible to put additional funds into your grant for training for tribes in STORET data entry and the new Tribal 106 guidance.”* She added *“Please let me know what you think – I believe this activity is within the scope of your work.”* (See Attachment #55)

7/31/07 [REDACTED] contacted Kathleen Hill regarding his request to [REDACTED] *“whether the scope of the [NTWC] grant could accommodate training of this sort as well as some travel scholarships to Tribes....”* (See Attachment #56)

10/19/07 [REDACTED] informed Kathleen Hill that *“I have just submitted your second year’s funding package for \$210,000 to [REDACTED] [GIAMD Grant Specialist].... That amount includes the \$10K for Storet/WQS [WQX] training....”* (See Attachment #57)

11/01/07 [REDACTED] (Tribal Section 106 Program, Office of Wastewater Management) sent an e-mail message to Kathleen Hill, saying, *“Kathleen – not sure if [REDACTED] was able to talk to you about this or not – she’s out sick. My office has put an additional 10K into your grant with OW to provide travel money for the Water Tribal Council members (or a designee for each member) to attend the Storet/WQX Training.... I*

need your help to organize having tribes attend, up to the 10K we budgeted for in your grant.” (See Attachment #58)

11/12/07 Kathleen Hill contacted [REDACTED] with concerns regarding STORET/WQX funding, saying *“We want to be sure that these matters are appropriately addressed and that proper conduct is reflected in our records.”*

Hill also informed [REDACTED] that [REDACTED] had told her on Thursday [November 8, 2007] *“that we will likely not see those funds for at least 45 days, and more likely 60, because of the late date on which our funding documents were submitted.”* (See Attachment #59)

11/15/07 [REDACTED] notified Kathleen Hill that *“The \$10K was included in the amendment language that I had to put through for your FY 2008 funding.”* (See Attachment #60)

11/15/07 [REDACTED] [new GIAMD Grant Specialist] notified [REDACTED] and Kathleen Hill that *“it looks like the funding for the training is built into the current funding action I am working on. I have to work with [REDACTED] on some things, but I do not foresee the amendment taking 45-60 days to get awarded.”* (See Attachment #61)

11/15/07 [REDACTED] informed [REDACTED] that *“The travel funding is built into the amendment you are now processing, because it only recently was made available. The entire amount of the grant through 10/15/10 will now be \$810,000. ... The grant SOW [statement of work] covers tribal water training in a variety of venues. This particular training opportunity will have major positive implications for our new CWA Section 106 tribal guidance initiative.... The travel costs for this training were pre-approved by the EPA Project Officer and included in the amendment that is now being processed (amendment one).”* (See Attachment #62)

11/15/07 [REDACTED] forwarded [REDACTED] comments to Hill, with a cc to [REDACTED]. [REDACTED] had said *“Note that the extra \$10k will not show up in your account until after all \$800k is put in.”*

[REDACTED] message included the following comments from [REDACTED], *“On the change request, you noted that an additional \$10,000 is being added to the project, thus making the total budget/project period cost \$810,000. Per the competition policy, supplemental funding amendments less than \$15,000 can be issued non-competitively if the additional work is within the scope of the original agreement. Program offices must document compliance with the requirements of the competition policy in the amendment package (see section 13). This means that we won't change the budget/project period cost to \$810,000 until the supplemental funding is approved (ie, when EPA's total funding exceeds \$800,000). At that time, you will have to submit the documentation in accordance with the competition policy. This is mostly an FYI, but I*

wanted to explain why the total budget/project period cost won't change on this amendment. It will still say \$800,000.” (See Attachment #63)

Contrary to the GIAMD Grant Specialist’s 11/15/07 statement, the 2008 Assistance Award, authorized by awarding official [REDACTED], included the additional \$10,000. The Notice of Award within the Assistance Agreement contains the following language

“Based on your application dated 3/09/2006, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$210,000.” (See Attachment #64)

OWOW Tribal Wetlands Training - \$30,000

In early October 2009, the grantee received a call from the EPA Project Officer informing her that another Office of Water program was asking for the grantee’s assistance. The EPA Project Officer informed the grantee that the request was being made because, without the grantee’s assistance, Tribal staff would be denied an important training opportunity. Following are excerpts from a series of e-mail messages documenting the assistance requested and financial commitments made:

10/2/09 [REDACTED] OWOW staff person, wrote the following to [REDACTED], GIAMD Grant Specialist for the Tribal Water Council grant, with a cc to EPA Project Officer [REDACTED].

“[REDACTED]: As we discussed this afternoon, I would like to add some money to the Office of Water grant to Kathleen Hill for supporting the National Tribal Water Program Council. The money we add would be to support tribal travel to some ‘sustainable finance workshops for tribal wetland programs’....

The finance workshops... can be linked to a larger capacity-building function that I believe is part of the mission of the National Tribal Water Program Council. So I am hoping this grant’s SOW [statement of work] can support travel support for tribes.

[REDACTED] has already told me that she has no objection **if you say it is OK.**
[Emphasis added]

Please let me know if what I am asking for is consistent with this grant’s SOW (I have no other vehicle to use to support tribal travel to the workshops, and would hate to see some tribes not attend the workshops because of financial reasons....” (See Attachment #65)

10/5/09 [REDACTED] (GIAMD Grant Specialist) responded to [REDACTED], with a cc to [REDACTED] as follows:

“... You can add the EPM money if you choose, but the grant is near it’s ceiling, so the maximum amount you may add is \$30,000. (See Attachment #66)

10/08/09 [REDACTED] subsequently wrote a message to the grantee which included the following

“I am writing you because I am interested in adding money to your grant with the Office of Water, and I want to know if you are willing to take on the work that I would be funding.

[REDACTED] has said she is fine with what I proposed, and she and the relevant person in EPA’s Grants Office ([REDACTED]) have said the grant statement of work covers what I am proposing.

I am interested in adding \$15-20K to the grant so that you can fund tribal travel to some tribal wetland program finance workshops.

Both Region 9 and Region 10 have asked if EPA HQ could provide some financial support for tribes to travel to the respective trainings. We have some funds to provide, but no vehicle to deliver the financial aid....

I was going to contact you through [REDACTED], but as you must know, [REDACTED] has been battling an illness for a long time, and she has been difficult for me to contact, so [REDACTED] suggested I contact you directly....” [Emphasis added] (See Attachment #67)

10/12/09 Having been assured that both the EPA Project Officer and GIAMD Grant Specialist approved the additional work and funding, the grantee responded to [REDACTED], stating

“We would be happy to work with you to ensure that Tribal representatives have an opportunity to participate in this important training....” (See Attachment #68)

10/13/09 [REDACTED] notified the grantee that

“I let [REDACTED] and [REDACTED] know that I would be adding \$30K to your grant soon.” (See Attachment #69)

10/14/09 [REDACTED] (OWOW) included the following in a message to the grantee

“I actually have already put through the electronic paperwork to add \$30,000 to your grant, and my manager has already signed off on it. So after our accounting person signs it, it will be in [REDACTED] and [REDACTED] hands.” (See Attachment #70)

10/14/09 The grantee forwarded a message to the EPA Project Officer, her supervisor, and her back-up person (the future EPA Project Officer) that she had sent to EPA Region 9 personnel regarding the upcoming OWOW Tribal Wetlands training. That message contained the following text:

“FYI – Just to keep you in the loop –

██████████ said his office has processed the additional \$30,000 - \$14,000 for Region 9 Tribal travel and \$14,000 for Region 10 Tribal travel, with \$2,000 for our travel to coordinate. Whatever we don't use for our travel will be used for Tribal travel." (See Attachment #71)

11/2/09 ██████████ (OWOW) sent the following message to the grantee and NTWC Project Administrator:

"... in case ██████████ did not already inform you, see the 10/30 emails from ██████████ and ██████████ below for status of the \$30K we added to your grant with the Office of Water. I think for any future funding status questions, you should contact ██████████ (or ██████████) directly."

██████████ message included two attached messages. The earlier one, dated 10/30/09 at 12:24 p.m., was from the EPA Project Officer to ██████████ with a CC to the GIAMD Grant Specialist:

"I think the process of adding your funding should be complete – ██████████, do you have everything you need? There should be \$200,000 (\$40K from each of our 4 program offices plus \$40K from the immediate Office) and the additional \$30K that OWOW put in for wetlands training/travel for tribes.

Total should be \$230,000 for this period of performance."

The GIAMD Grant Specialist responded to the EPA Project Officer on the same day (10/30/09, at 12:26 p.m.), stating

"Everything is good. It will be obligated in the coming weeks."

(See Attachment #72)

12/16/09 The grantee sent a message titled **URGENT Funding Issue** to the new EPA Project Officer and her supervisor. That message included the following:

"... I am very concerned about an error made in our funding. Joseph spoke with grant specialist ██████████ earlier today about this concern.

In summary, the four-year grant that supports the NTWC was for \$800,000. At EPA's request, we have taken on additional work NOT specifically for the NTWC and – apparently WITHOUT COMPENSATION to the tune of \$40,000....

It is also our understanding that ██████████ submitted a Programmatic Review Report about our grant citing a total Award Amount of \$830,000 on or about October 30 because of this additional work and the funds verbally committed to it.

██████████ is now telling us that our grant had an \$800,000 ceiling and we cannot be reimbursed for the extra \$40,000 worth of expenditures that we did as a favor to the EPA Office of Water for tribal travel to the trainings. If this was the case, we should have been told that the additional \$30,000 would not be added to our grant, but would

come out of funds earmarked specifically for the National Tribal Water Council.”
(See Attachment #73)

As noted earlier, both the EPA Project Officer’s supervisor and the new EPA Project Officer acknowledged that EPA had erroneously failed to process 40,000 of Tribal Water Council funding:

12/16/09 The EPA Project Officer’s supervisor stated

“The 40K shortfall is not because OWOW’s funding didn’t or couldn’t come through. I think the issue is that 40K of OW’s 200K total funding for the NTWC that was supposed to go into the grant never did. I don’t think NTWC funds were used to cover the training. I think the grant is short 40K of NTWC funds. At least that is how it seems to me. And I have heard nothing about funding being rescinded.”
[Emphasis added.] (See Attachment #48)

1/21/10 And, as noted previously, the EPA Project Officer wrote to the grantee, stating

“The four year grant that supports the NTWC was for \$800,000. There were two instances where money was added to the grant, as you have indicated, for \$10,000 and \$30,000 for training/travel support from OW program offices. Those additions totaling \$40,000 brought the funding level of the grant to the ceiling of \$800,000. In retrospect, those two instances of additional funding should have been processed as supplemental actions, per EPA.” [Emphasis added.] (See Attachment #49)

In spite of these acknowledgements of EPA’s error by both the new EPA Project Officer and her supervisor, EPA took no action to correct its error.

Instead, the EPA Project Officer told that grantee on January 27, 2010 that

“Actions authorizing additional funds were out of scope of the workplan...” (See Attachment #52)

... eventually leading to an audit initiated before the end of the grant – an audit which the auditors themselves referred to as *“unusual.”*

OIG Response 33: During the exit conference, the recipient requested the OIG to eliminate the entire section in the report regarding the additional \$40,000. We agreed to eliminate the section because there was no longer an audit issue. EPA had determined the work relating to the \$40,000 to be within the original scope of the cooperative agreement; therefore, the costs are allowable. We included the section in the draft report because the recipient felt strongly about explaining the issue at the time.

As this section is eliminated, no further discussion on this issue is necessary.

Response to *Recommendation*

The auditors' recommendation that the final financial status report be properly supported by grantee accounting records appears to be a recommendation to the Director of the Office of Grants and Debarment to conduct an unknown process to verify supportive documents for the grant expenditures. Without further information, the grantee cannot provide a reasoned response. Though the grantee does agree that the final financial status report must be properly supported by the accounting records, the grantee believes that she has demonstrated that she maintains proper accounting records to support grant expenditures. If such a verification process is imposed on her, the grantee strongly appeals to whomever is in charge to ensure that she will not be treated with same condescension and suspicion that she has endured for the last 19 months.

Response to *Status of Recommendations and Potential Monetary Benefits*

1. Based on the documentation provided herein, the grantee disagrees with the auditor's assertion that there are \$80,271 of unallowable costs, and with the recommendation that the Director of the Office of Grants and Debarment should recover \$80,271.

In fact, it is the grantee's opinion that EPA continues to owe the grant \$40,000, in addition to reimbursements for grant expenses incurred before March 31, 2011.

2. In the event that the grantee receives an award in the future, the grantee is confident that any action taken by the Director of the Office of Grants and Debarment to verify that she has a financial management system that meets federal standards would be met with success.

3. The grantee is not threatened by the need to verify that the recipient's financial status report is properly supported by accounting system records, but she requests that if the Director of the Office of Grants and Debarment decides to do so, that he assign a GIAMD Grant Specialist whose primary goal is not an intent to do the grantee harm.

The grantee also requests that if the Director of the Office of Grants and Debarment decides to do so, that he will identify a third, (truly) neutral party who can resolve any disputes between the grantee and GIAMD staff.

OIG Response 34: Based on our analysis of the recipient's draft report comments, no significant changes have been made to the findings and recommendations.

Distribution

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Audit Follow-Up Coordinator, Office of Grants and Debarment
Kathleen S. Hill