

The Effect Government Recognition of Indigenous Communities Has on Climate Adaptation Funding in the United States

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Abstract

The global community already spends billions of dollars per year on projects and strategies intended to adapt to current and future challenges brought about by climate change. Indigenous communities, which are often place-based and culturally dependent on local resources, are especially vulnerable to the effects of climate change. Without adequate funding to build climate resilience, these communities face potential displacement and cultural extinction. The United States government maintains a complex and subjective system by which it acknowledges the Indigenous communities within its borders and enforces this recognition system to make determinations on which Indigenous Peoples to engage through numerous climate adaptation programs and grants. This study utilizes a comparative statutory review of dozens of federal climate funding opportunities and concludes that a lack acknowledgement of a Tribal nation's sovereignty severely impacts access to climate adaptation financial resources. Efforts by some federal agencies to redefine what constitutes an "Indian tribe" in certain programs calls into question the bureaucratic structures that typically determine which Indigenous Peoples can and should be acknowledged by the U.S. government. Adjustments to federal recognition procedures for Indigenous Peoples may be necessary to ensure justice and equity in adapting to climate change.

Keywords: Adaptation, Funding, Indigenous, Recognition, Policy

1. Introduction

Access to financial capital is regularly identified as a chief driver of adaptive capacity to climate change (Fankhauser & McDermott, 2014) and can also support other important adaptation elements such as technology, education, information management, and risk spreading (Yohe & Tol, 2002). Studies of local adaptation plans have concluded that funding shortfalls are a major barrier to adaptation implementation and can be exacerbated by staffing

constraints and mismatches between the availability of aid and the needs of the community (Bierbaum et al., 2013). The exact price tag for global adaptation is difficult to estimate because of uncertainty as to the full effects of climate change, differing rates of change across regions, and the variation in vulnerability of different communities. The Global Commission on Adaptation, a coalition of 23 countries launched by the 8th Secretary-General of the United Nations, Ban Ki-moon, with the goal of bringing more visibility and support for climate adaptation, estimates that global spending on adaptation in 2015 and 2016 was around \$22 billion each year (GCA, 2019). The United Nations Environment Programme places future adaptation costs as high as \$500 billion per year by 2050 (UNEP, 2021). In the United States, the Government Accountability Office (GAO) reports that only a small fraction of the \$154 billion expended on climate change by the federal government since 1993 has gone to adaptation (GAO, 2018).

Although climate change was not a concern originally contemplated as tribes and the federal government negotiated 19th-century treaties, tribes argue today that adaptation funding is nonetheless a central component of the U.S. government's trust responsibility to Indigenous Peoples (Whyte, 2013). However, tribes must contend with a cost-benefit allocation system for federal funding that disadvantages rural, sparsely populated Indigenous communities (Whyte, 2017). Often tribes have access to resources that can aid in adaptation, but they lack the funding to adequately develop those resources for use. For instance, Cozzetto et al. (2013) described the long battles that tribes in the arid Southwest fought to secure senior water rights through years of litigation only to discover that the federal government would not help pay for the infrastructure needed to get that water to drought-stricken tribal lands. The current system for federal funding can leave Indigenous communities without the capital to pursue large-scale infrastructure projects to adapt to the worst effects of climate change.

The authors of the Fourth National Climate Assessment (NCA4) identified more than 800 adaptation actions, such as planning, monitoring, and capacity building, in various stages of implementation by Indigenous communities throughout the United States (Jantarasami et al., 2018). But implementation for many of these actions remains stunted due to lack of funding. Gautam et al. (2013) found that tribes requested \$8.75 million from the federal government for adaptation in 2012 but only received \$200,000. Whyte (2013) points out that tribes are excluded from many of the major climate funding schemes that are restricted to state and federal agencies. This was confirmed by a 2018 GAO report that listed only two federal initiatives dedicated to tribes over a 25-year span totaling less than \$1 million out of more than \$154 billion allocated for climate spending (GAO, 2018).

The extensive climate funding priorities for tribes have at times overwhelmed the federal bureaucracy and inhibited government response. Whyte (2013: 520) wrote that the adaptation needs of tribes “can lead federal agencies to throw their hands in the air due to the lack of funds and personnel and lessen their efforts at honoring the government-to-government relationship.” The cost to relocate the Alaska Native village of Kivalina due to sea level rise is estimated at \$200 million and has been in the process for nearly 30 years (Maldonado et al., 2013). To place the Biloxi-Chitimacha-Choctaw Tribe of Isle de Jean Charles in Louisiana behind protective levees, the Army Corps of Engineers would need to spend \$100 million; the

agency has instead opted to relocate the community for \$8 million. Tribes are struggling to cope with the lack of financial support and bureaucratic assistance regarding climate adaptation.

Nearly two hundred years ago, the U.S. Supreme Court ruled that tribes possess an inherent right to self-govern that preceded the formation of the United States and even Columbus's arrival in 1492 (Fletcher, 2006). This sovereignty is exercised through actions such as participation in diplomacy (Ricci, 2019), cultural expression (Yakama Nation, 2016), and land stewardship (Middleton, 2013). Historically, tribes acted on their sovereignty by entering into government-to-government relationships with other sovereigns, often manifested through treaties (Fletcher, 2016). The idea behind government-to-government relationships would later be memorialized in what is now referred to as the federal "recognition" or "acknowledgment" of a tribe's sovereign status.

At the present, more than four hundred Native American tribes exist without acknowledgement of their sovereignty by the U.S. government (GAO, 2012). While a handful of these "non-federal" tribes have been recognized by various state governments, the vast majority exist in a grey area where they experience many of the same social, geographic, economic, and political problems but are denied access to federal policies intended to uplift Indigenous Peoples and ensure their cultural survival. NCA4 explained that lack of recognition may also leave non-federal tribes more vulnerable to the effects of climate change because they operate "without reservation lands, treaty rights, and federal provision of essential services, among other rights, authorities, and capacities to which federally recognized tribes can appeal" (Jantarasami et al., 2018; CH. 15). This paper addresses whether the contributions that federal programs can make to non-federal tribes for climate adaptation and planning are comparable to the contributions being made to federally recognized tribes. Embedded in this inquiry are considerations regarding federal Indian policy, identity politics, and climate justice.

To test the juxtaposition between federally recognized and non-federal tribes in climate adaptation funding, I use a comparative statutory analysis method to differentiate how federal agencies define "Indian tribe" for the purposes of determining program eligibility. I find that federal agencies do sometimes include non-federal tribes in program eligibility, and there are 4 different ways in which those agencies classify non-federal tribes based on traits commonly associated with federally recognized tribes, such as relationships with other sovereigns (i.e., state recognition) or possession of tribal reservation lands. Additional hurdles, such as requirements for matching funds or technical expertise, embedded in some programs could further discourage pursuit of federal funding by non-federal tribes. The difficulty in navigating funding opportunities and qualifying for programs has the potential to leave non-federal tribes more vulnerable to climate change.

2. Methods

There is no comprehensive database available to locate and apply for federal grants and programs. Grants.gov houses many of these funding opportunities, but agencies are not obligated to list funding availability on the site. Instead, some agencies choose to build

websites to manage the dissemination of information and application to specific opportunities. Thus, data for the comparative statutory analysis of access to federal climate adaptation funding for non-federal tribes is compiled from a climate-specific funding database for tribes maintained by the University of Oregon as a part of its Tribal Climate Change Project (Oregon, 2021a). The University of Oregon’s Tribal Climate Change Guide is a component of the “Pacific Northwest Tribal Climate Change Project” a collaboration between the University, BIA, U.S. Forest Service, and the Affiliated Tribes of Northwest Indians (Oregon, 2021b). Along with maintaining the funding and other databases relevant to tribal climate activities, the Project also aids tribes with adaptation and mitigation planning, connects tribal officials to management opportunities for off-reservation resources, and provides climate consultations. The funding database has cataloged federal grants and financing programs related to climate change dating back more than a decade (Oregon, 2021a).

A query was performed in Oregon’s Tribal Climate Change Guide in February 2022 for all funding opportunities available in 2021 and January and February of 2022. The search netted 55 funding opportunities. *Figure 1* shows how many funding opportunities are present in each federal agency. The majority originate with the Department of Agriculture (18), Department of Interior (11), and the Department of Commerce (11). The Environmental Protection Agency (9), Department of Energy (2), Department of Homeland Security (2), and National Science Foundation (2) were also represented.

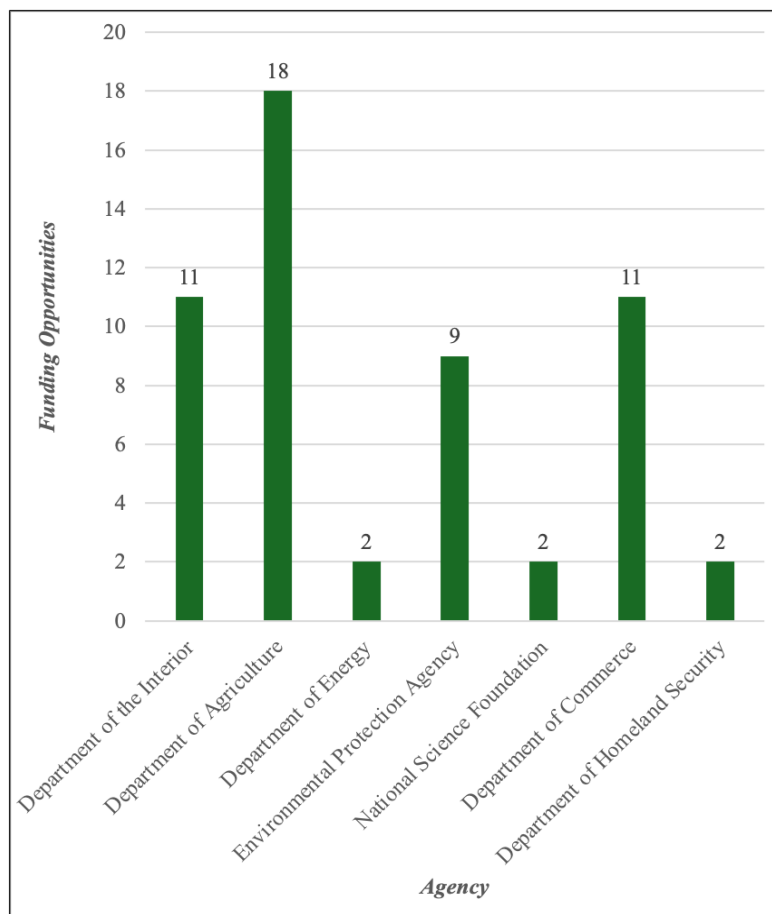


Figure 1. Number of Funding Opportunities for Tribes by Agency

The funding opportunities produced in the search query are a mix of climate-specific programs, such as research funding through the Northwest Climate Action Science Center and grants that indirectly support resilient and adaptive infrastructure, ecosystems, and tribal communities, such as NOAA’s environmental literacy program. Adaptive capacity is not restricted to direct actions that shield communities from the more overt harms of climate effects like sea level rise, flooding, or species migration. It also includes dimensions of public health (Hess et al., 2012), economic development (Williamson et al., 2012), education (Wamsler et al., 2012), and environmental management (Plummer & Armitage, 2010). So, while programs, grants, or other government aid may not directly reference climate change, those activities may still help contribute to a tribe’s overall climate resilience.

Non-federal tribes are eligible for federal funding based on their status as state recognized tribes or non-profit organizations (GAO, 2012). Although the NCA4 authors asserted that “non-federally recognized tribes lack legal status to qualify for funding and economic development support, though some are eligible for state support” (Jantarasami et al., 2018, CH. 15), a 2012 report by the Government Accountability Office (GAO), a nonpartisan agency charged with providing information on U.S. government operations, found that many non-federal tribes qualify for common federal programs such as food assistance, vocational rehabilitation services, Native language preservation, and community services block grants (GAO, 2012). At that time, GAO did not extend its analysis to programs concerned with climate change.

To evaluate program availability for non-federal tribes in the Oregon climate funding database, a comparative statutory analysis method was applied to differentiate statutory definitions of “Indian tribe” related to federal funding opportunities to pinpoint grant availability for non-federal tribes. Comparative statutory analysis has a long history in environmental applications (DeCicco & Bonanno, 1989; Hofmann, 2021) and is useful in understanding the practical effect that slight variations in terminology can have when applying laws (Castrilli, 1998). It is a policy and legal tool for assessing multiple laws through a singular context and involves the dissection of those laws to understand how changes in wording can impact statutory application. Indigenous legal scholars have long discussed the significance of the term “Indian tribe” as it applies to identity (Quinn, 1990), but no one has assessed the effects of the definition in the policy context of program eligibility and inclusion of non-federal tribes.

The federal government generally defines “Indian tribe” as:

“Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians” (25 U.S.C. 5304(e)).

Through this definition, the U.S. government seeks to control its relationship with Indigenous Peoples by acting as the sole decision maker on Indigenous identity and access to funding earmarked for Indigenous Peoples. But as the original 2012 GAO report described, federal

laws and agencies have interpreted and expanded upon the term “Indian tribe” to create new categories of non-federal tribes based on qualifiers such as state recognition, the method a state used to recognize the tribe, state reservation lands, treaty status, and non-profit designation. The comparative statutory analysis takes these GAO categories one step further to determine the exclusionary effects these definitions can have for the various forms of non-federal tribes.

Definitions for non-federal tribes fall under four categories — state recognition, state reservations, treaty with a state, and incorporated non-federal tribe. As noted in the original GAO report (2012), laws such as the Indian Education Formula Grant (20 U.S.C. §7491(3)(A)) simply lists “state recognition” in its definition of Indian tribe. Others, like the Department of Health and Human Services’ Low Income and Energy Assistance program, place conditions on the method a state used to recognize the tribe, such as through an act by the state legislature or gubernatorial proclamation (45 C.F.R. §96.48(b)). State reservation lands are a prerequisite for many elder care programs, such as grants for Community Innovations for Aging in Place (42 U.S.C. §3002(27)). Treaties with states reference agreements made between tribes and former colonial governments (GAO, 2012) and are a requirement for non-federal tribal governments wishing to participate in the Department of Agriculture’s Supplemental Nutrition Assistance Program (SNAP) (7 U.S.C. §2012(v)). The final category is incorporated non-federal tribes and comprises Indigenous communities organized as non-profit entities.

To qualify for inclusion with the University of Oregon funding database, programs must be active in 2021 or 2022 and related to the planning, implementing, or monitoring of climate change activities or support social, cultural, or economic activities potentially impacted by climate change. A February 2022 inquiry returned 55 closed and active funding opportunities from the Oregon database for 2021 and 2022. The programs analyzed are found in *Table 1*.

Table 1. Funding Opportunities January 2021- February 2022

Agency and Program	Funding Opportunity Number	Definition of Tribe
<i>Department of the Interior</i>		
<i>Tribal Organization Support for Tribal Climate Resilience Liaisons</i>	TCRP-16241	25 U.S.C. 5304(l), 5304(e)
<i>Energizing Insular Communities Grant Program</i>	OIAOIA-EIC210043	#
<i>Federal Subsistence Management Program</i>	F21AS00249	#
<i>Endangered Species Program</i>	*	25 C.F.R. 900.6
<i>Invasive Species Program</i>	*	*
<i>Historic Preservation Fund- History of Equal Rights- Preservation Grants</i>	P22AS00644	54 U.S.C. 300309
<i>Tribal Climate Resilience Program Funding</i>	*	P.L. 93-638; 25 U.S.C. 5304(l)
<i>Tribal Wildlife Grants Program</i>	F21AS00354	81 F.R. 5019
<i>WaterSMART Water and Energy Efficiency Grants</i>	R23AS00005	#
<i>Fish Hatchery Maintenance Program</i>	*	*
<i>Tribal Youth Initiative Program</i>	*	P.L. 93-638

Department of Agriculture		
<i>Business and Industry Loan Guarantees</i>	*	25 U.S.C. 5304(e); 7 C.F.R. 5001.3
<i>Community Facilities Direct Loan & Grant Program</i>	*	7 C.F.R. 1942.1(b), 1942.17(b)(1)(iii)
<i>Wood Innovations Funding Opportunity FY 2022</i>	USDA-FS-WOOD-INNOVATIONS-2022	7 USC 8113
<i>Community Wood Energy Grant FY 2022</i>	USDA-FS-COMMUNITYWOOD-2022	7 U.S.C. 8113
<i>Rural Business Development Grants</i>	*	7 C.F.R. 4280.403
<i>AgriAbility- Assistive Technology Program for Farmers with Disabilities</i>	USDA-NIFA-SLBCD-00862	7 U.S.C. 5933
<i>Agriculture and Food Research Initiative-Foundational and Applied Science Program</i>	USDA-NIFA-AFRI-009003	7 U.S.C. 3157(b)(7)
<i>Agriculture and Food Research Initiative-Sustainable Agricultural Systems</i>	USDA-NIFA-AFRI-009002	7 U.S.C. 3157(b)(7)
<i>Food Distribution Program on Indian Reservations Nutrition Education Grant Program</i>	USDA-FNS-FDD-FDPNE-FY21	7 U.S.C. 2012(v)
<i>Integrated Research, Education, Extension Competitive Grants Program-Organic Transitions</i>	USDA-NIFA-ICGP-009001	7 U.S.C. 3157(b)(7)
<i>Organic Agriculture Research and Extension Initiative</i>	USDA-NIFA-ICGP-008621	7 U.S.C. 3157(b)(7)
<i>Regional Conservation Partnership Program</i>	*	16 U.S.C. 3871a(4); 7 C.F.R. 1468.3
<i>Rural Energy for America Program Renewable Energy Systems & EnergyEfficiency Improvement Guaranteed Loans & Grants</i>	*	7 U.S.C. 8107(c)(1)(A)
<i>Rural Health and Safety Education Competitive Grants Program (RHSE)</i>	USDA-NIFA-RHSE-008841	7 U.S.C. 2662(i)(4)
<i>Community Forest and Open Space Conservation Program</i>	*	16 U.S.C. 2103d(a)(1); 25 U.S.C. 5304(e)
<i>Agroforestry Outreach Proposals</i>	USDA-FS-AGROFORESTRY-01-2021	25 U.S.C. 5304(e)
<i>Multi-Family Housing Loan Guarantees</i>	*	7 C.F.R. 3565.3
<i>Conservation Innovation Grants</i>	USDA-NRCS-NHQ-CIGCLASSIC -22-NOFO0001179	#
Department of Energy		
<i>On-Request Technical Assistance</i>	*	25 U.S.C. 3501(11)
<i>Energy Infrastructure Deployment on Tribal Lands</i>	*	25 U.S.C. 3501(11)
Environmental Protection Agency		
<i>Local Government Reimbursement Program</i>	*	40 C.F.R. 310.1, 310.3(d)
<i>Pacific Southwest (Region 9) Tribal Clean Air Act Funding</i>	*	42 U.S.C. 7602(b), 7602(r)
<i>Environmental Justice Collaborative Problem-Solving Cooperative Agreement</i>	*	*
<i>Region 10 Indian Environmental General Assistance Program</i>	*	42 U.S.C. 4368(b)(1), 4368(c)(1) & (2)
<i>Region 6 Indian General Assistance Program</i>	*	42 U.S.C. 4368(b)(1), 4368(c)(1) & (2)
<i>Region 9 Indian Environmental General</i>	EPA-CEP-02	42 U.S.C. 4368(b)(1),

<i>Assistance Program</i>		4368(c)(1) & (2)
<i>Region 9 Water Pollution Control Program</i>	EPA-CEP-01	40 C.F.R. 130.6(d), 130.2(b)
<i>Tribal and Insular Area Grants: Diesel Emissions Reduction Act</i>	EPA-OAR-OTAQ-22-03	42 U.S.C. 16131(3)
<i>Environmental Justice Small Grants Program</i>	EPA-OP-OEJ-22-01	#
National Science Foundation		
<i>Long Term Research in Environmental Biology</i>	NSF 21-544	#
<i>Build and Broaden 2.0: Enhancing Social, Behavioral, and Economic Science Research and Capacity at Minority-Serving Institutions</i>	NSF 21-542	20 U.S.C. 1067q, 1067q(c)(6)
Department of Commerce		
<i>Supporting Economic Development in Indigenous Communities</i>	EDA-2021-ARPAINDIGENOUS	13 C.F.R. 300.3; 42 U.S.C. 3122(7)
<i>A Cooperative Agreement for Climate Adaptation and Mitigation Competition</i>	NOAA-OAR-CPO-2021-2006841	#
<i>MET Mini Grant Program</i>	NOAA-NMFS-PIRO-2021-2006718	16 U.S.C. 1855(j)
<i>Environmental Literacy Program</i>	*	
<i>Hydrographic Surveys and Request for Partnership Proposals</i>	*	86 F.R. 2387
<i>National Coastal Resilience Fund</i>	*	*
<i>Climate Program Office</i>	NOAA-OAR-CPO-2022-2006799	#
<i>Science Collaboration Program</i>	NOAA-OAR-CPO-2021-2006797	#
<i>Adaptation Science Program</i>	NOAA-OAR-CPO-2021-2006389	#
<i>Coping with Drought: Tribal Resilience</i>	NOAA-OAR-CPO-2022-2006799	#
<i>Planet Stewards Funding Opportunity</i>	*	*
Department of Homeland Security		
<i>Flood Mitigation Assistance Program</i>	DHS-21-MT-029-000-99	42 U.S.C. 5122(6)
<i>Building Resilient Infrastructure and Communities (BRIC)</i>	DHS-21-MT-047-00-99	42 U.S.C. 5122(6)

* connotes that grant information is maintained on a special program website and not the Grants.gov database.

connotes that eligibility criteria can be found in the grant announcement.

Programs associated with the Grants.gov database are also listed with their unique federal funding opportunity number (FON). All others were found on websites developed by the federal agencies specifically for the grant or program. When available, the statute from which “Indian tribe” is defined for each program is also provided. If not available, the definition is derived from the request for proposal or specific program website. The analysis of eligibility standards for these programs paints a more complete picture of federal climate adaptation opportunities for non-federal tribes.

3. Results

In total, 55 programs were identified and analyzed from the Oregon climate funding database. *Table 2* shows how non-federal tribes qualify for different funding opportunities. In three instances, only state recognition was required. Three programs necessitated the presence of a

state reservation. One grant asked for the non-federal tribe to possess a treaty with a state, and twenty-one programs simply demanded incorporation as a non-profit organization. The Departments of Commerce and Agriculture provided the most climate funding opportunities in the query period and opened up the most grant programs to non-federal tribes as well.

Table 2. Program Eligibility for Non-Federal Tribes

Agency and Program	State Recognition	State Reservation	Treaty with State	Incorporated Non-Federal Tribe
Department of the Interior				
<i>Federal Subsistence Management Program</i>				Y
<i>History of Equal Rights-Preservation Grants</i>				Y
Department of Agriculture				
<i>Business and Industry Loan Guarantees</i>		Y		Y
<i>Community Facilities Direct Loan & Grant Program</i>		Y		Y
<i>Wood Innovations Funding Opportunity FY 2022</i>				Y
<i>Community Wood Energy Grant FY 2022</i>				Y
<i>Rural Business Development Grants</i>		Y		Y
<i>AFRI - Foundational and Applied Science Program</i>				Y
<i>AFRI - Sustainable Agricultural Systems</i>				Y
<i>FDPIR Nutrition Education Grant Program</i>			Y	
<i>Community Forest and Open Space Conservation Program</i>				Y
<i>Agroforestry Outreach Proposals</i>				Y
<i>Multi-Family Housing Loan Guarantees</i>				Y
<i>Conservation Innovation Grants</i>				Y
Environmental Protection Agency				
<i>Environmental Justice Collaborative Problem-Solving Cooperative Agreement</i>	Y			Y
<i>Environmental Justice Small Grants Program</i>	Y			Y
Department of Commerce				
<i>MET Mini Grant Program</i>				Y
<i>Environmental Literacy Program</i>				Y
<i>National Coastal Resilience Fund</i>	Y			Y
<i>Climate Program Office</i>				Y
<i>Adaptation Science Program</i>				Y
<i>Coping with Drought: Tribal Resilience</i>				Y

There can be overlap in these classifications, and non-federal tribes can qualify for programs based on multiple classifications. For instance, the MOWA Band of Choctaw Indians are a state-recognized tribe in Alabama (AIAC, n.d.). The tribe has a state reservation as well. There are seven programs that present multiple pathways to qualification, with many Department of Agriculture programs permitting application for non-federal tribes possessing a state reservation or tribes organized as a non-profit.

Less than half (22) of the 55 original funding opportunities are open to non-federal tribes. None of the tribal specific programs offered by the Bureau of Indian Affairs to help manage invasive and key species are open to unrecognized tribes. Indigenous populations are often

more dependent on place-based resources for cultural, economic, and social support (Wildcat, 2013), so lack of access to these BIA programs affords non-federal tribes fewer opportunities to participate in active management of key species.

Three funding sources for non-federal tribes were for science research. Whyte (2013) warns that non-federal tribes rarely have the staff availability or expertise to conduct technical assessments like long-term scientific monitoring. Matching funds could also be an issue for non-federal tribes that enjoy few economic development opportunities (Miller, 2003). For instance, Agroforest Outreach, a program through the National Agroforestry Center that disseminates strategies to integrate agricultural production into tree conservation, requires cost sharing through matching funds, a potential barrier to application for non-federal tribes (National Agroforestry Center, 2021). The Hydrographic Surveys program through the National Oceanic and Atmospheric Administration (NOAA) calls for 50 percent matching funds up front before the project will commence. Even when eligible, non-federal tribes could struggle to meet the staffing, expertise, and cost-matching provisions of federal environmental programs.

4. Discussion

Acknowledging an Indigenous community's sovereign status is ultimately a commentary on that community's identity. "Indian tribe" is a unique term of art utilized by the U.S. government and is not intended to be inclusive of all Indigenous Peoples across the nation. For instance, 25 U.S.C. §5131 requires the Secretary of the Interior to regularly publish a list of all Indian tribes recognized as eligible for special federal programs. The preceding section defines Indian tribe as "any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe" (25 U.S.C. §5130(2)). In connection with this definition, the federal government has been accused of equating Indigenous Peoples exclusively with federally recognized tribes (Tsosie, 2013). On its FAQ webpage, the Bureau of Indian Affairs (BIA), the federal agency charged with carrying out the government's trust responsibility to Indigenous Peoples, answers the question, "Who is an American Indian or Alaska Native?" with "someone who has blood degree from and is recognized as such by a federally recognized tribe or village" (BIA, n.d.). By associating indigeneity with federal recognition, the U.S. government attempts to act as the "arbiter of Indian identity" (Klopotek, 2011: 1).

Recognition was originally envisioned to be the purview of Congress via the Commerce Clause of the U.S. Constitution, but over the years Congress did little to stop other branches from making determinations on tribal status (Quinn, 1992). Since the creation of an office at the BIA in 1979 to handle recognition petitions, the agency has acknowledged approximately a dozen tribes through its bureaucratic process (Koenig & Stein, 2008). There is even some debate over whether the Department of the Interior can exercise this authority at all, but the Secretary of the Interior made clear their intent to do so for decades without any retaliation from the courts or Congress (Quinn, 1992). The BIA's recognition process is maligned with problems and inefficiencies, and the office overseeing tribal recognition is often touted as an embodiment of everything that is wrong with federal Indian policy and the treatment of

Indigenous Peoples in America. In fact, the person who developed the recognition criteria for the BIA called it a “monster” and lamented that the “standards got to be impossible” (Koenig & Stein, 2008: 97).

The BIA’s recognition process has historically been described as slow, expensive, and time-consuming (Miller, 2004). Klopotek (2011) noted that tribes can spend on average upwards of \$10 million on their petitions. Much of this expense is due to the hiring of professional historians, anthropologists, genealogists, and other social scientists needed to research the tribe’s history and culture to frame that information into a narrative palatable to BIA staff. A GAO report in 2001 found that more than half of all recognition petitions were ready and waiting more than 5 years for the BIA to begin review (GAO, 2001). The BIA completes about 1-2 petitions per year (Koenig & Stein, 2008). One study calculated that as of 2011, if no new petitions were received, the BIA would resolve all cases at its current pace by the year 2141 (Klopotek, 2011). The glacial speed at which the U.S. government addresses petitions is a common impediment to tribal recognition. The GAO (2001) also found that it typically takes around 15 years to render a final decision, despite the fact that it should only take about two. This could be explained in part by the chronic understaffing of at the BIA’s Office of Federal Acknowledgment (OFA), which had only a handful of employees at the time of the GAO report. This inefficiency in the BIA might help explain why other federal agencies have opened certain opportunities to non-federal tribes.

When the U.S. government fails to adequately address a policy problem, states often move to fill the void left by federal inaction. This is especially true for environmental issues, like more stringent vehicle emissions standards in California (Abate, 2007) or the cap-and-trade emissions market on the East Coast (Chan & Morrow, 2019). State authorities are now also forming recognition policies to engage with Indigenous communities more formally. The Reagan Administration kickstarted efforts in the 1980s to scale back the trust relationship to tribes and end federal support of tribal housing, healthcare, economic development, and other services. They succeeded in pressuring Congress to curtail appropriations to the BIA and left both recognized and unrecognized tribes with little federal support (Morris, 1988). The tightening of federal support during this era was referred to as “Termination by Accountants” and paved the way for states to take flexible approaches to Indian affairs that responded to local demands (Koenig & Stein, 2008). The result has been a hodgepodge of state recognition schemes and an incomplete response to federal abdication of its trust responsibility to Indigenous Peoples. Seven federal programs analyzed in this study permitted non-federal tribes to access funding based on relationships originating not with the U.S. government but rather with the state government. This peculiar situation raises questions about whether the U.S. government is engaging in *de facto* recognition by opening programs to non-federal tribes, whether those agencies have the authority to alter federal Indian policy by redefining what constitutes an “Indian tribe” in special circumstances, and whether a slow, expensive, and complicated process to determine recognition status is even necessary when many federal agencies are bypassing OFA’s determinations and offering federal funding to non-federal tribes anyway.

Federal transfer of power to states in the realm of Indian affairs is not a new phenomenon.

Public Law 280, a 1953 Congressional act that transferred federal court jurisdiction over certain criminal and civil matters to state courts set a precedent of federal surrender to state interests over Indigenous populations (Campisi, 1991). The U.S. government also tacitly approves of state intervention in Indian affairs by authorizing state-recognized tribes to access many federal programs and grants traditionally restricted to federally recognized tribes (Koenig & Stein, 2008). However, state-tribal relations should not be viewed as sharing a similar government-to-government relationship like the one between federal tribes and the U.S. government. The literature has been slow to explore state-tribal relationships, instead choosing to focus more on the journey state tribes endure to affirm federal recognition (Hiraldo, 2020). Thus, there is a great need for research that exposes not only how opportunities for state recognized tribes differ from their federal peers, but also examples of how state recognized tribes engage in a mixed-recognition political system with federal tribes and other governments.

Some scholars argue that indigenous communities should seek validation, not through political recognition, but rather via cultural expression with activities like hunting and fishing (Hiraldo, 2020). There is a natural push and pull between tradition and evolution, each conforming to American societal norms in a manner palatable to non-Indian neighbors while still maintaining some semblance of indigeneity. The results of the comparative statutory analysis bear this out. Non-federal tribes are far more likely to qualify for federal funding if they exhibit traits of federally recognized tribes, such as reservations, treaties, and formal recognition from other sovereigns. This compels non-federal tribes to adapt to political identities associated with federally recognized tribes, rather than pursue culturally distinct pathways.

Discrepancies in statutory definitions may also be a byproduct of political choices by non-federal tribes. Differences in statutory definitions across jurisdictions and agencies can sometimes be attributed to dynamic interactions between Congress and other actors (Buzbee, 2000). The plethora of definitions for “Indian tribe” found in this analysis, and cataloged in *Table 1*, could be the result of actions by a select group of non-federal tribes expending political capital to gain access to certain programs deemed important to the community. This has led to quasi-recognition of certain non-federal tribes that hold certain attributes but only the limited capacity of specific programs. By finding creative ways to carve out small exceptions for select groups, such as by restricting non-federal tribal access to food distribution based on colonial treaties, members of Congress minimize budgetary impacts to these programs while also gaining political allies.

At the same time, political carve outs create added confusion to a complex process and could further inequality in an already imbalanced process. Possessing a treaty with a former colonial government has no bearing on a community’s capacity to engage in federal food distribution programs. The intricate maze of definitions can discourage participation and limit the positive social, environmental, and climatological effects of these programs. Although politically expedient for a select few non-federal tribes, the practical effect of the half-dozen ways in which federal programs categorize non-federal tribes appear decoupled from the purposes of the programs in general.

Funding opportunities for non-federal tribes are extremely limited, especially for wholly unrecognized communities. Of the more than 400 non-federal tribes identified for the 2012 GAO report, only 66 are currently state recognized (NCSL, 2021), and less than a half dozen non-federal tribes have state reservations (Koenig & Stein, 2008). Therefore, the vast majority of non-federal tribes can only seek classification as incorporated non-federal tribes by achieving non-profit status. As shown in *Table 2*, this category of non-federal tribes qualifies for less than half of the opportunities present in the Oregon database during the study period. My comparative statutory analysis uncovered irregular applications of certain eligibility criteria to programs that would not require that status for execution, such as mandating non-federal tribes possess a treaty with a colonial government to administer food relief to needy families. Access to climate-related programs is similarly restrictive, but the cost-matching and resource-intensive nature of these programs are likely to further limit participation by understaffed non-federal tribes with few avenues to pursue economic development.

5. Conclusion

For much of the first half of the 20th century, the BIA made *ad hoc* decisions about the recognition status of dozens of tribes often ignoring precedent, historical documentation, and equity. Emboldened by efforts for equality by African Americans during the Civil Rights movement, Indigenous Peoples began to organize and push for greater representation and sovereignty. This momentum coalesced into the American Indian Movement, and the American Indian Policy Reform Commission (AIPRC) was formed in the 1970s to expose issues within federal Indian policy and propose new trust standards. Eleven task forces were assembled to examine the federal-Indian relationship, including a group for unrecognized and terminated tribes (Klopotek, 2011).

The committee ultimately recommended that Congress declare all Indians “included in the federal trust responsibility,” and that the federal government needed a process to recognize Indigenous communities that never had the opportunity to engage with the U.S. as sovereigns (AIPRC, 1977). The task force would continue by detailing the harms imposed on unrecognized tribes:

“The results of ‘nonrecognition’ upon Indian communities and individuals have been devastating, and highly similar to the results of termination. The continued erosion of tribal lands, or the complete loss thereof; the deterioration of cohesive, effective tribal governments and social organizations; and the elimination of special Federal services, through the continued denial of such services which Indian communities appear to need desperately” (AIPRC, 1977: 1695).

The Commission concluded that “every Indian tribal group which seeks recognition must be recognized” and encouraged the U.S. government to delineate a set of factors that could be used for all petitions for recognition. In response, the BIA set up a predecessor to the OFA, the Branch of Acknowledgment and Research (BAR). BAR then set out to create criteria that would make acknowledgment determinations more objective (Miller, 2004). The criteria have been amended slightly over the years and are still in use today, but the problems inherent in

the recognition process have led to the procedure being referred to as “administrative genocide” (Beinhart, 1999). With the growing threat from climate change, such administrative inefficiency could lead to extensive cultural, economic, and environmental harm of unrecognized Indigenous populations.

Given its recent policy announcements regarding environmental justice (Exec. Order No. 14,008, 2021), the U.S. government has signaled its commitment to supporting the needs of the most vulnerable and disadvantaged communities in this country. However, persistent decades of marginalization of Indigenous Peoples means little is known about the needs and threats faced by non-federal tribes. More research is needed on these communities to pinpoint major climate concerns, resource constraints, and cultural necessities. With no full extant list of non-federal tribes (Koenig & Stein, 2008), research efforts will require extensive cataloging of existing non-federal tribes and targeting surveying of their challenges. The framework developed in this paper should be extended to other areas of need, beyond climate-specific programs, to ensure all adaptation strategies are explored.

Non-federal tribes are not without options. This study found that non-federal tribes with characteristics more akin to federally recognized tribes, such as state recognition, reservations, and treaties, qualified for some funding opportunities. Currently, there are only a little more than a dozen states that have recognition schemes (Koenig & Stein, 2008). Non-federal tribes could press states to develop recognition processes. In general, state recognition tends to be far less onerous than the federal recognition procedure, albeit state recognition provides far fewer benefits. However, state recognition in some form for the more than 400 non-federal tribes would at least open access to more federal funding channels.

Because of the difficult funding landscape created by limited federal opportunities, non-federal tribes are also choosing to move forward on their own terms. The Lumbee Tribe of North Carolina, the largest non-federal tribe, are specifically engaging in climate strategies that do not rely on federal funding because it can be so difficult to obtain (Emanuel, 2018). My study found that opportunities do exist for non-federal tribes to seek funding from the U.S. government for climate adaptation, but eligibility varied based on the presence of traits that are often associated with federal recognition, such as political acknowledgment, reservation lands, and historical treaties. The need for adaptation funding is expected to grow considerably in the coming decades, and the U.S. government will require a more cohesive strategy to ensure all Indigenous Peoples in America are prepared for the worst effects of climate change.

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Dr. Clifton Cottrell was responsible for all aspects of study design, data collection, drafting,

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