

# Drinking Water Infrastructure Grants Tribal Set-Aside Program

Revised Guidelines

FINAL

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## LIST OF ACRONYMS

ANV	Alaska Native Village
CDP	Community Deficiency Profile
CWISA	Clean Water Indian Set-Aside
DL	Deficiency Level
DWIG-TSA	Drinking Water Infrastructure Grant Tribal Set-Aside
DWINS	Drinking Water Infrastructure Needs Survey
DWSRF	Drinking Water State Revolving Fund
EPA	U.S. Environmental Protection Agency
ERP	Enforcement Response Policy
ETT	Enforcement Targeting Tool
FFY	Federal Fiscal Year
GMO	Grants Management Office
HITS	Home Inventory Tracking System
HUD	U.S. Department of Housing and Urban Development
IA	Interagency Agreement
IASSC	Interagency Agreement Shared Service Center
IGMS	Integrated Grants Management System
IHS	Indian Health Service
MCL	Maximum Contaminant Limit
MOA	Memorandum of Agreement
NPDWR	National Primary Drinking Water Regulations
OECA	Office of Enforcement and Compliance Assurance
OGD	Office of Grants and Debarment
OGWDW	Office of Ground Water and Drinking Water
OMB	Office of Management and Budget
OW	Office of Water
OWM	Office of Waste Management
PWSS	Public Water System Supervision
QAPP	Quality Assurance Project Plan
SDS	Sanitary Deficiency System
SDWA	Safe Drinking Water Act
SDWIS	Safe Drinking Water Information System
SNC	Significant Noncompliance
STARS	Sanitation Tracking and Reporting System
TDI Nex	Tribal Drinking Water Program Direct Implementation Nexus
TT	Treatment Technique

## I. INTRODUCTION

Section 1452 of the Safe Drinking Water Act (SDWA) authorizes the Environmental Protection Agency (EPA) to award capitalization grants to states to establish a Drinking Water State Revolving Loan Fund (DWSRF). These funds are used to make low interest loans and offer other types of assistance to eligible water systems. Section 1452(i) of the SDWA also authorizes EPA to set aside a portion of each year's DWSRF appropriation and use it to make direct grants (not loans) for capital improvements to public water systems that serve tribes.

The Drinking Water Infrastructure Grant Tribal Set-Aside (DWIG-TSA) program allocates funds to be used only "for public water system expenditures referred to in subsection (a)(2)," and to "address the most significant threats to public health." Subsection (a)(2) further directs that financial assistance may be used for public water system expenditures which will facilitate compliance with the National Primary Drinking Water Regulations (NPDWRs) or will otherwise further the health protection objectives of the SDWA (Appendix A).

EPA's Office of Water (OW) has been delegated the authority by the EPA Administrator to allocate funding to the DWIG-TSA Program. The authority to approve grants to tribes for drinking water infrastructure needs has been delegated by the EPA Administrator to EPA Regions (Appendix B). The fiduciary responsibility, which includes accounting for funds utilization and expenditures of DWIG-TSA Program funds, is a shared responsibility between OW and EPA Regions. This accountability is necessary to allow OW to manage the program responsibly and maximize the use of funds to address significant threats to the public health of tribes and Alaska Native Villages. Guidelines were developed in 1998 to assist Regions with program implementation. In 2010, EPA initiated a program evaluation of both the DWIG-TSA and Clean Water Indian Set-Aside (CWISA) programs. Through the evaluation, EPA sought to determine the effectiveness of the programs in meeting stated goals and whether program performance measures are accurate indicators of EPA's progress in meeting these goals. The evaluation resulted in recommendations to revise the 1998 guidelines to articulate program goals, priorities, and performance measures and ensure that selected projects meet these standards.

### A. Purpose of Guidelines

These guidelines provide an overview of the DWIG-TSA Program, describe the allocation process used to distribute funds to the Regions and detail the eligible uses for the funds. They also articulate minimum threshold criteria and ranking requirements for project selection to ensure consistency and transparency across Regional DWIG-TSA Programs. The responsibilities of OW currently implemented through the Office of Ground Water and Drinking Water (OGWDW) and the Regions in administering the DWIG-TSA Program are also discussed along with the administrative policies used to manage the program.

## II. PROGRAM OVERVIEW

Each year, EPA's OGWDW uses an allocation formula to distribute set-aside funds among the nine EPA Regions with federally recognized tribes. Each EPA Region is responsible for working with the Indian Health Service (IHS) and the tribes in their Region, to identify, prioritize, and select projects to receive funding from its share of the program funds. Regions are given flexibility in project selection but must ensure that the selection process meets the requirements of SDWA Section 1452(i)(2), which state that funds "shall be used to address the most significant threats to public health associated with public water

systems that serve Indian Tribes.” Project selection should also prioritize projects that meet, to the maximum extent practicable, the requirements listed in Section 1452(b)(3)(A) of the SDWA, as shown below, and the additional requirements outlined in this guidance.

**SDWA Section 1452(b)(3)(A) states that funded projects should:**

- (i) address the most serious risk to human health;
- (ii) are necessary to ensure compliance with the requirements of this title; and
- (iii) assist systems most in need on a per household basis

To assist in the project selection process, these guidelines establish three threshold requirements that must be met by a water system serving a tribe prior to award of DWIG-TSA project funding:

- Technical, managerial and financial capacity;
- Compliance with the SDWA (as described in Section X-A-2 ); and
- Project readiness.

In addition, two criteria for ranking projects for funding are also included. These criteria are to ensure that projects designed to address significant threats to public health are prioritized. They are:

- Evaluation of an applicant’s ability to self-finance a project (Recommended Criteria); and
- Evaluation of the project’s cost efficiency (Required Criteria).

EPA Regions are responsible for the development of a quantifiable approach for project selection. There are a number of tools available to Regions to help identify and prioritize projects. These include:

- Responses from American Indian tribes and Alaska Native Villages (ANVs) to Regional project solicitations;
- Findings from sanitary surveys of public water systems serving tribes;
- Safe Drinking Water Information System (SDWIS) data on systems with maximum contaminant level (MCL) exceedances/violations, treatment technique violations; and
- Projects included in the IHS Sanitation Deficiency System (SDS) database.

While each Region has flexibility in designing a program that works best for the tribes in that Region, Regional programs must comply with the statutory requirements and be consistent with the threshold requirements and ranking criteria outlined in Section X of these guidelines. Prior to implementing their program under these national guidelines, each Region is required to update their program guidelines. During this process the Region will allow OGWDW and tribes to review and comment on their guidelines prior to finalization. Once the guidelines are developed, each Region must work with the IHS and tribes regarding project selection.

After the Regions have identified the projects to be funded, they must notify OGWDW of their selections. OGWDW then will transfer the program funds to the Regions, and the Regions work to allocate the funding in projects.

The tribes have two methods they can use to implement the project. They may request to administer the project funds themselves through a direct grant, or they may request that IHS administer the project funds for them, through an interagency agreement (IA) between EPA and IHS. To qualify for a grant, the

tribe must meet the grant requirements listed in Appendix C and the Region must determine that the tribe has the necessary capacity to successfully complete the project, following an approved grant work plan. If EPA approves a tribe's request to administer the grant itself, a grant agreement is signed between EPA and the tribe and grant regulations must be followed.

In the case where an IA is used, the funds are administered by IHS. The required standard terms and conditions for these IAs are provided in Appendix D. In either situation, EPA Regions are responsible for managing the award and for administering and tracking project progress after an award.

## **A. Roles and Responsibilities**

There are many active partners that participate in the DWIG-TSA Program. Each has responsibilities throughout the different stages of the program, from guideline development, project selection, dispersing funds and managing project construction progress. Figure 1 provides an overview of the DWIG-TSA Program activities and the overarching roles and responsibilities of agencies and offices that participate in the program. The primary partners are EPA Headquarters, Interagency Agreement Shared Service Center (IASSC) West, EPA Regional Grants Management Offices (GMOs), EPA Regional program staff, IHS and tribes/ANVs.

## **B. Program Goals and Strategic Measures**

Progress made by the DWIG-TSA Program is measured against Strategic Plan Goal 2 (Protecting America's Waters) of the *FY2011-2015 EPA Strategic Plan*.<sup>1</sup> This goal, Protecting America's Waters, has two program measures by which the DWIG-TSA Program is evaluated:<sup>2</sup>

1. Percent of the population in Indian country served by community water systems that receive drinking water that meets all applicable health-based drinking water standards; and
2. Number of American Indian and ANV homes provided access to safe drinking water in coordination with other federal agencies.

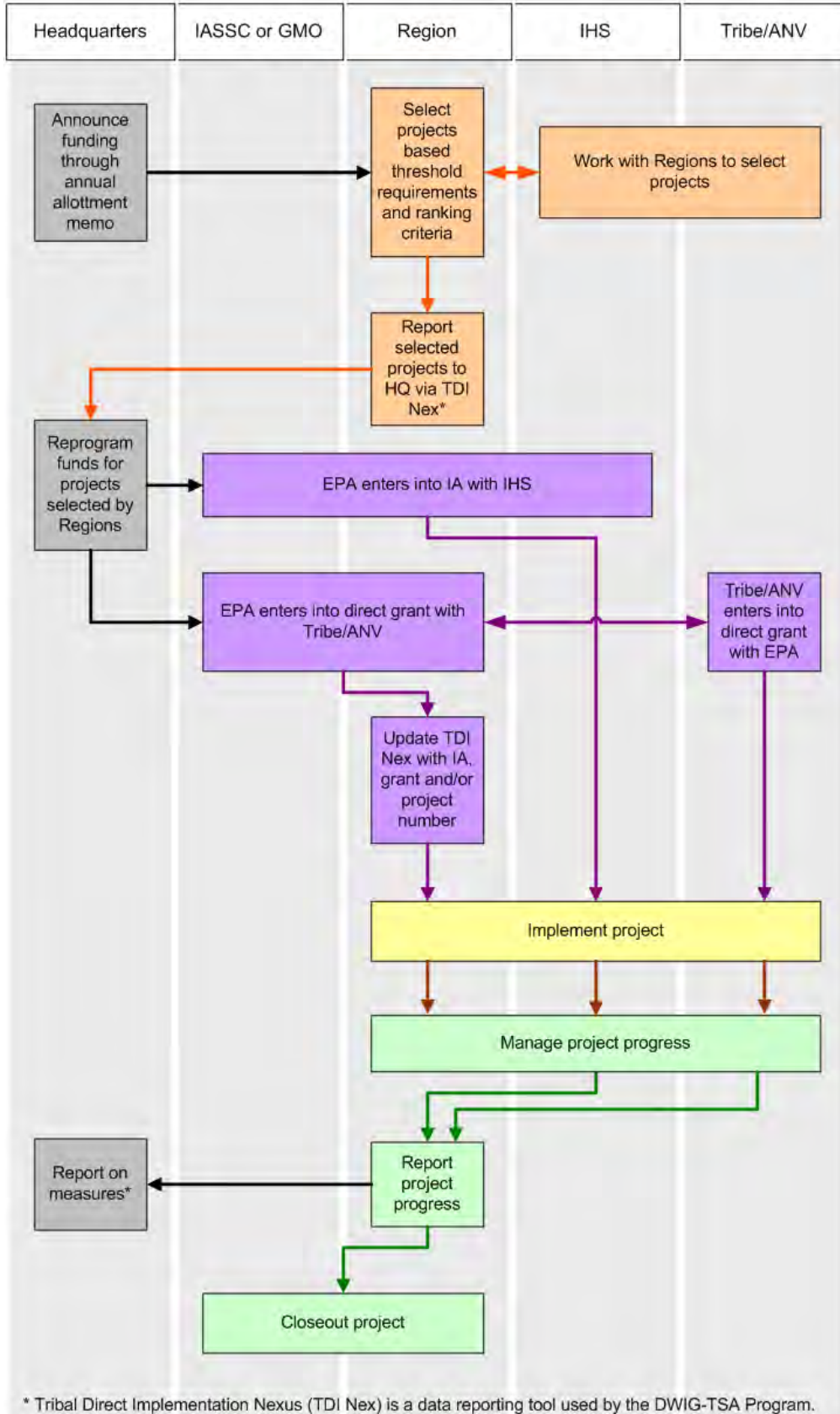
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<sup>1</sup> EPA, September 2010, Fiscal Year 2011 – 2015 EPA Strategic Plan, [http://www2.epa.gov/planandbudget/stagicplan](http://www2.epa.gov/planandbudget/stategicplan)

<sup>2</sup> EPA, April 2012, National Water Program Guidance, Appendix E: 2013 Detailed Measures Appendix, [http://water.epa.gov/resource\\_performance/planning/upload/FY-2013-NWPG-4-20-2012\\_Appendix-E.pdf](http://water.epa.gov/resource_performance/planning/upload/FY-2013-NWPG-4-20-2012_Appendix-E.pdf)



**Figure 1: DWIG-TSA Program Roles and Responsibilities**



In addition to program measures, OGWDW also uses the number of American Indian and ANV homes lacking access to safe drinking water as a program indicator. Information on tribal home access to safe drinking water is obtained from IHS Community Deficiency Profile (CDP) of the Sanitation Tracking and Reporting System (STARS), a database used by IHS to track sanitation facilities deficiencies. In accordance with Public Law (P.L.) 94-437, as amended, at 25 USC 1632(g)(4), IHS associates each American Indian and ANV tribe or community with a deficiency level (DL) between 1 and 5, with DL5 being the greatest deficiency.<sup>3</sup>

Tribal homes that lack access to safe drinking water are defined by the Tribal Infrastructure Task Force,<sup>4</sup> as homes ranked in STARS with a DL 4 or DL 5. IHS is developing the Home Inventory Tracking System (HITS), which will geographically locate all tribal homes with corresponding deficiency attribute data. After HITS is fully populated, it will be used by the DWIG-TSA Program to identify tribal homes for its measure and allocation formula.

### **C. Statutory Authority and Controlling Regulations**

The statutory authority for DWIG-TSA Program grants is the SDWA, as amended, *Section 1401 Definitions* and *Section 1452(i) State Revolving Loan Fund, Indian Tribes*. EPA determined that program-specific regulations are not required for the conduct of the DWIG-TSA Program as the regulations in *40 CFR Part 31 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments* apply to the program.

There are a number of federal laws, executive orders and government-wide policies that apply additional terms to projects and activities receiving federal financial assistance. These “cross-cutting federal authorities” apply to both direct grant and IA funded projects and include environmental laws such as the National Environmental Policy Act, the National Historic Preservation Act, Endangered Species Act and the Wild and Scenic Rivers Act, and authorities such as Executive Orders on Equal Employment Opportunity and government-wide debarment and suspension rules. A basic list of these cross-cutting-laws is contained in Appendix E.

## **III. FUNDING AMOUNT AND ALLOCATION**

### **A. Funding Amount**

The SDWA allows EPA to use up to 1.5% of the annual DWSRF appropriation to carry out Section 1452 of the SDWA as grants to tribes (the DWIG-TSA Program). Since 2010, EPA has been authorized through its appropriation from Congress to use up to a 2% set aside from the DWSRF each federal fiscal year (FFY) for grants to tribes. The total amount of DWIG-TSA Program funds varies annually based on the DWSRF appropriation level.

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<sup>3</sup> Indian Health Service, Office of Environmental Health and Engineering, Division of Sanitation Facilities Constructions, May 2003, Guide for Reporting Sanitation Deficiencies for Indian Homes and Communities: Working Draft, <http://www.ihs.gov/dsfc/documents/sdsworkingdraft2003.pdf>

<sup>4</sup> Infrastructure Task Force Access Subgroup, March 2008, Meeting the Access Goal, <http://www.epa.gov/tp/pdf/infra-tribal-access-plan.pdf>

## B. Allocation of DWIG-TSA Program Funds

The nine Regions participating in the DWIG-TSA Program each receive a “base” amount that is equal to 2% of the annual DWIG-TSA appropriation, accounting for 18% of the available DWIG-TSA funds. The remaining funds are allotted to the Regions using a formula that is based on two types of data: 1) EPA drinking water infrastructure need cost data; and 2) IHS tribal home count data.

### 1. EPA’s Drinking Water Infrastructure Needs Survey

As required by the SDWA the Drinking Water Infrastructure Needs Survey (DWINS) analysis is updated every four years making it a resource for drinking water infrastructure cost data for both states and tribes. The American Indian and ANV drinking water infrastructure needs were last updated in the 2011 DWINS<sup>5</sup> and will be used in the allocation formula for FFYs 2014 to 2017, at which point updated DWINS data from the 2015 DWINS should be available. In FFY 2018 and every four years following, OGWDW, in coordination with the Regions, will examine the source of the cost data to determine if EPA DWINS or IHS Sanitation Deficiency cost data are most representative at that time. Consideration will be given to the timing of when the DWINS survey data was collected.

### 2. IHS’s Community Deficiency Profile and Home Inventory Tracking System

In the allocation formula DWIG-TSA funds, DL 3, DL 4 and DL 5 homes are extracted from the data in STARS because of their direct correlation to the goals of the program. Because all homes classified as DL 4 and DL 5 lack access to safe drinking water and only a smaller portion of homes classified as DL 3 meet this requirement, homes with DL 4 and DL 5 are given twice the emphasis as DL 3 homes when calculating the Regional allotment factor.

The DWIG-TSA Program currently uses CDP data, which is updated annually. When the IHS HITS data are used by IHS in their allocation formula, these data will replace the CDP and become the data source for DL 3, DL 4 and DL 5 homes in the DWIG-TSA allocation formula. At that point, only tribal homes associated with a public water system will be included in the allocation formula. Tribal homes not associated with a public water system will not be used in the allocation formula.

### 3. Regional Allotment Factor and Allocation Formula

Using data obtained from DWINS and IHS CDP (and in the future HITS), the allotment factor for each Region is calculated by the following formula.

$$\text{Region A Allotment Factor} = 0.5 \times \left( \frac{((\text{DL 4 homes} + \text{DL 5 homes}) \times 2) + \text{DL 3 homes}}{\text{in Region A}}}{((\text{DL 4 homes} + \text{DL 5 homes}) \times 2) + \text{DL 3 homes}} \text{ in IHS CDP (or HITS)} \right) + 0.5 \times \left( \frac{\text{DWINS AI}^* + \text{ANV Cost Data for Region A}}{\text{DWINS AI} + \text{ANV Total Cost Nationwide}} \right)$$

\*AI – American Indian

Each Regional allotment of the DWIG-TSA funds is then determined by the following formula.

<sup>5</sup> Drinking Water Infrastructure Needs Survey and Assessment, Fifth Report to Congress (April 2013). Available at: [http://water.epa.gov/grants\\_funding/dwsrf/index.cfm](http://water.epa.gov/grants_funding/dwsrf/index.cfm)

$$\text{Regional A Allocation} = (2\% \times \text{DWIG TSA Appropriation}) + ((82\% \times \text{DWIG TSA Appropriation}) \times \text{Region A Allotment Factor})$$

An example Regional allocation based on the 2011 American Indian and ANV DWINS cost data and the November 2012 IHS CDP home counts are provided in Appendix F.

### C. Allotted Funds Memorandum

After EPA receives its annual appropriation for the fiscal year and OGWDW calculates the Regional funding allotments using the above formula, OGWDW will send an annual allotment memorandum to the Regions. It will list the Regional allocations, provide availability of funds that have been re-allotted, if applicable, and include IHS Allowable Unit cost per home (used to rank projects), if updated information is available. The annual memorandum will also include a list of all health-based drinking water violations data associated with tribally owned American Indian and Alaska Native Village public water systems from the Safe Drinking Water Information System (SDWIS) for the twelve month period of July 1 to June 30. The data will indicate if the cause of each violation could be eliminated with infrastructure improvements. The list will be developed jointly by OGWDW and the Regions. This allocation memorandum will be completed within 30 days of when EPA has received its annual budget appropriation.

Once Regions receive the memorandum, they have two years to submit to OGWDW their selected projects; however it is strongly encouraged that Regions make their selections by the end of the first year. This recommendation is consistent with the August 2006 memo from the OGWDW Director to improve the state DWSRF program pace and the timely and efficient use of federal capitalization grants.<sup>6</sup> Once projects are selected, Regions must report available project data as required in the EPA Tribal Drinking Water Program Direct Implementation Nexus (TDI Nex) Data Entry Guidelines (see Appendix G). The purpose of TDI Nex is to provide a comprehensive picture of the DWIG-TSA Program and describe the public health benefits of DWIG-TSA funded projects. Following notification of data entry into the TDI Nex, OGWDW will transfer the funds required for the selected projects to the Regions.

Regions will be required to update the data entry for each project, following the award, with the assigned IA or grant number and IHS Project Data System project number (if funding is via an IA with IHS).

### D. Potential for Additional Funds

The EPA capitalization grants to states for DWSRF programs are available for a limited time (two years). The SDWA requires that any funds not obligated to the states within this two-year time frame are to be reallotted among the states that have obligated all of their funds. The SDWA also allows EPA to reserve, and allocate, 10% of these “reallotment” funds for additional grants to tribes (i.e., the DWIG-TSA Program). EPA reserves the maximum amount allowable (10%) of any available reallotment funds for additional grants to tribes through the DWIG-TSA Program. If additional funds become available through this process they will be identified in the annual allotted funds memorandum.

<sup>6</sup> Cynthia C. Dougherty, August, 2006, Memorandum: National Priorities for the Drinking Water State Revolving Fund. [http://www.epa.gov/ogwdw/dwsrf/pdfs/memos/memo\\_dwsrf\\_policy\\_2006-08-21.pdf](http://www.epa.gov/ogwdw/dwsrf/pdfs/memos/memo_dwsrf_policy_2006-08-21.pdf)

Formula	originally to allot the DWIG-TSA funds for that year's appropriation.
Timing	The timing of any re-allotment of DWSRF funds will be established through the DWSRF program when this event occurs.

## E. Fund Re-allotments

Any fiscal year DWIG-TSA funds originally allotted to a Region that are not awarded within two years of allocation will be re-allotted among those Regions that have awarded all of their funds for that fiscal year. Funds will not be re-allotted without notification to and consultation with the Regions. OGWDW will maintain all of the allotted funds for the DWIG-TSA Program within the program. Any funds that are available for internal re-allotments are re-allotted among the EPA Regions using the same formula that was used to originally allot DWIG-TSA funds for that year's appropriation.

## IV. POTENTIAL RECIPIENTS AND FUNDING MECHANISMS FOR DWIG-TSA FUNDS

Typically, funds are provided through a grant to a tribe, a grant to the State of Alaska or an IA with the IHS.

### A. Federally Recognized Tribes

The SDWA gives EPA the authority to award grants directly to tribes. All tribes recognized by the Bureau of Indian Affairs are eligible to receive grants from the DWIG-TSA Program unless they have been deemed ineligible to receive federal funds if any federal agency or department or the Region determines that the tribe does not have the necessary capacity to successfully complete the project following an approved grant work plan. After the funds are awarded, the tribe may elect to provide some or all of the funds to a local government, a tribal consortium, IHS or a non-tribally owned water system that serves tribal members in order for them to conduct the project. The plan for the tribe's use of the grant funds must be identified in the grant award document. If a tribe decides to provide all or some of its funds to another entity as described above, the tribe must recognize that it is still the grant recipient and is ultimately responsible to EPA for proper management of the funds.

Direct grants to tribes through the DWIG-TSA Program are subject to assistance agreement regulations, Office of Management and Budget (OMB) cost principles, the Cash Management Improvement Act and EPA policies. The grants must be awarded and managed as any other assistance agreement. The Office of Grants and Debarment (OGD) has developed Orders, Grants Policy Issuances (GPIs), and directives to assist project officers and program offices in fulfilling and understanding their responsibilities (available at <http://intranet.epa.gov/ogd/policy/policy.htm>). Several grant requirements are discussed further in Appendix C.

Some tribes may elect to have IHS administer and manage the project on their behalf. This requires an IA between EPA and IHS. Funds provided by EPA through an IA to IHS may only be used in agreements authorized by the Indian Sanitation Facilities Act, 42 U.S.C. 2004a (Public Law 86-121). Tribes that have assumed the responsibility to implement the Indian Health Service Sanitary Facilities Construction Program under Title I or Title III of Public Law 93-638 (Indian Self-Determination Act) can only receive DWIG-TSA funds through a direct grant with EPA.

## **B. The State of Alaska**

The SDWA also gives EPA the authority to award grants to the State of Alaska on behalf of ANVs. Award of funds to the State of Alaska for the benefit of ANVs may only occur when the village asks the state to administer the project and the state agrees to manage the project on their behalf. In the case of a grant for a project made to the State of Alaska, DWIG-TSA funds can be provided in an amount not to exceed 4% for project management. These indirect project management costs do not include reimbursement for project design or construction oversight responsibilities.

## **C. Indian Health Service**

IHS has been providing drinking water infrastructure to tribes through the Sanitation Facilities Construction Program since 1959. IHS is organized in twelve area offices as shown in Figure 2. Some tribes may request that IHS design, construct and/or administer construction of the projects funded with DWIG-TSA Program funds. Assuming that IHS agrees to provide the requested service, the tribe can request EPA to directly transfer the funds for the project to IHS through an IA. An IA reduces the administrative burden on the tribe, lessens paperwork for all parties and provides IHS with access to all of the funds throughout the project.

Using the Integrated Grants Management System (IGMS), Regions will submit an IA funding package (Decision Memorandum, Commitment Notice and Scope of Work) to Interagency Agreement Shared Service Center (IASSC) West. A signed memorandum of agreement (MOA) between IHS and a tribal recipient is not required as part of the initial funding package, however, they should be provided to IASSC West for inclusion in the official IA file once available.

The IA describes the scope of work for the project, milestones, project period, budget and payment terms. The total project period, including extensions, may not exceed seven years without specific regulatory or statutory authorization, or a signed waiver.<sup>7,8</sup> As such, project funds must be liquidated (spent) within that seven-year period. After the IA is executed, the funds are transferred to the IHS Area Office and they are considered obligated for the FFY.

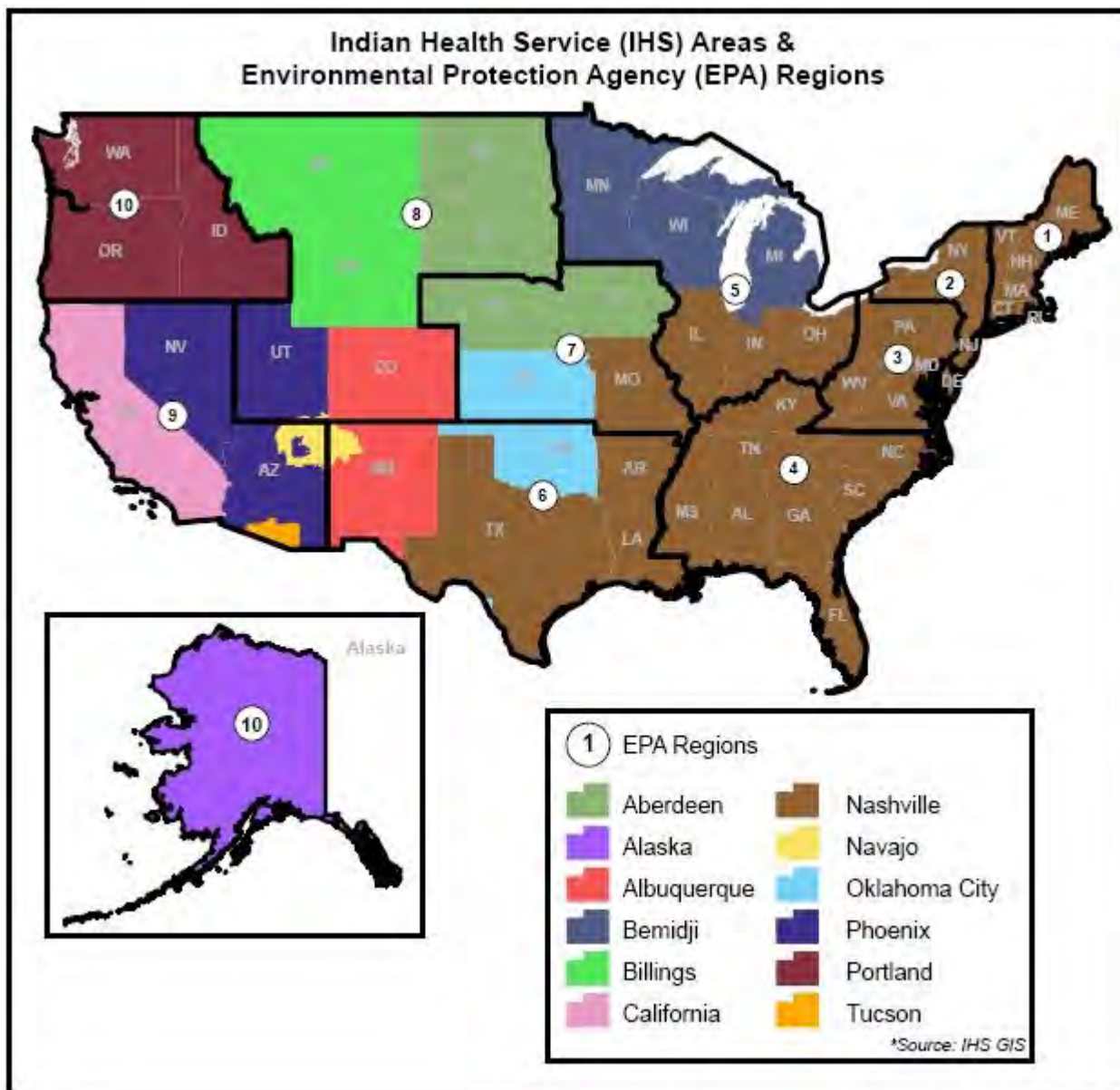
If multiple projects are to be combined into a single IA, it should be done strategically based on project scale and schedule. Similar-term projects are better grouped together to ensure that the award does not extend beyond the seven-year authorization period. Similarly, an IA with multiple projects should be limited to one FFY. Additional projects should not be added to an IA of a previous FFY unless the project is phased over several years and benefits the same tribe; in this case, one IA is preferred.

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<sup>7</sup> As per Interagency Agreement Policy Issuance (IPI-08-02), Guidance on Project Period Duration, and Interagency Agreement Policy Issuance (IPI-11-02), Clarification of Senior Resource Official Review Requirements for Time Extensions under Interagency Agreements.

<sup>8</sup> Class Waiver for the Clean Water Act Indian Set-Aside and the Safe Drinking Water Act Tribal Set-Aside Infrastructure Programs dated July 21, 2008.

Figure 2: IHS Areas and EPA Regions



When DWIG-TSA projects are funded through an IA with IHS, IHS often does the engineering, construction project management and funds administration. When IHS provides any of these services, DWIG-TSA funds can be used for these costs. The scope and cost for IHS engineering, construction project management and administration should be discussed and negotiated between the tribe, EPA Region and IHS Area. If the design, management and administration costs are more than 15% of the construction the Region should request written documentation from IHS to include in their project file explaining the expenditures.

Appendix D contains the IA standard terms and conditions to be used between Regions and IHS Area offices. These terms and conditions may be updated periodically by IASSC West to incorporate changes to interagency agreement policies and procedures, add new statutory requirements, or in response to requests from OGWDW to incorporate additional programmatic requirements that have been mutually

agreed upon between OGWDW and the IHS Headquarters. No changes shall be made to the standard terms and conditions included in this guidance by the Regions or IHS Area offices.

The IA standard terms and conditions specify that an umbrella Quality Assurance Project Plan (QAPP) previously prepared by EPA applies to DWIG-TSA funded projects. The QAPP<sup>9</sup> describes applicable water sample collection and analysis activities conducted at the completion of drinking water facility construction to ensure proper project performance and operation. If the scope of the DWIG-TSA funded project includes a pilot water treatment facility study or hydraulic network modeling, IHS is responsible for preparing an individual project-specific QAPP in accordance with *EPA Guidance for Quality Assurance Project Plans*.<sup>10</sup>

## V. WATER SYSTEM ELIGIBILITY FACTORS

### A. System Ownership

The SDWA specifies that the DWIG-TSA funds must be used to address the most significant risks to public health associated with public water systems serving Indian tribes. This can include systems owned by a tribe, or systems owned by someone other than a tribe, as long as the system serves a tribal population, regardless of whether EPA or state primacy has oversight. EPA's definition of what constitutes a system that serves Indian tribes follows.

*Tribally Owned Water Systems:* All existing community water systems and all non-profit, non-community water systems owned by a tribal government are considered to serve an Indian tribe and are eligible to have projects funded with DWIG-TSA funds provided they serve tribal homes.

During project evaluation, Regions should consider whether it is reasonable for the DWIG-TSA to fund the entire cost of the project. In some cases, a significant portion of the water produced by some tribally-owned water systems serves a non-tribal population. The Region must resolve whether it is appropriate for the DWIG-TSA funds to pay for the entire project, or whether the non-tribal community being served should pay for a portion of the project.

Similarly, a significant portion of the water produced by some tribally-owned community and non-profit non-community water systems will serve connections other than tribal homes (whether it is a tribal or non-tribal entity). In such cases, Regions must decide whether it is appropriate for DWIG-TSA funds to pay for the entire project or whether another entity should pay for a share of the project cost. In both of the above situations, Regions have the responsibility and authority to determine the appropriate DWIG-TSA funding level.

*Non-Tribally Owned Water Systems:* The tribal population served by the water system must be governed by a federally recognized tribal entity. When considering projects with non-tribally-owned water systems, Regions must take into account the tribal proportion of the population to benefit from the project. A system's tribal population may be a small percentage

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<sup>9</sup> "Water Sample Collection and Analysis QAPP for Tribal Water and Wastewater Infrastructure Projects" signed by EPA's QA Manager, OWM, OGWDW, and IHS (March 2012).

<sup>10</sup> See "Water Sample Collection and Analysis QAPP for Tribal Water and Wastewater Infrastructure Projects" signed by EPA's QA Manager, OWM, OGWDW and IHS (March 2012).



of the total service population, but a particular project may be primarily for the benefit of that tribal population. If the project is exclusively, or primarily, for the benefit of a tribal population, then the Region may conclude that the DWIG-TSA should fund the entire cost of the project. On the other hand, if the tribal population benefitting from the project is a relatively small percentage of the total population benefitting from the project, then the Region must conclude that it is not appropriate for the DWIG-TSA to fund the entire cost of the project. In this case the DWIG-TSA Program should fund the project proportionally according to the tribal population served. Regions should evaluate these situations on a project by project basis.

*Federally Owned Systems:* The DWIG-TSA Program cannot directly be used to fund drinking water systems owned and operated by the federal government for the benefit of a tribe. If a project meets the criteria of the SDWA 1452(i)(1) and (2); however, tribes may choose to have EPA enter into an IA with a federal agency to provide construction or improvement of drinking water facilities so long as the terms of the IA meet the criteria to be considered a grant or cooperative agreement, and not a contract. That is, the purpose of the IA must be to carry out the public purpose for the benefit of the tribe. It shall not be for the direct benefit or use of the United States Government.

## **B. Public Water Systems Serving Commercial or Industrial Properties**

Community water systems typically serve residential properties and their funding for improvements serves the goal of providing safe drinking water to tribal homes. Funding of systems serving solely commercial or industrial uses is not allowed under the DWIG-TSA Program. Funding can only be provided for systems if they serve a tribal residential population and the extent of funding must be scaled to the proportion of water served to residential users.

## **C. System Location**

The SDWA does not restrict funding to projects that are within reservations or on tribally-owned land. The Act only requires that the system serve an Indian tribe. As such, system location alone is not a factor in determining eligibility.

## **D. EPA and Tribal Primacy Authority**

EPA is directly responsible for the oversight of public water systems operated in Indian country with the exception of those systems operating on the Navajo Nation and ANVs that are overseen by the Navajo Nation and the State of Alaska, respectively. The entity that regulates or has primacy over the public water system is not a factor in determining eligibility for DWIG-TSA funds. Many federally recognized tribes are eligible to seek and assume authority to operate their own regulatory primacy program under the SDWA. Even if tribes receive this authority, such a determination has no impact on the DWIG-TSA Program. Primacy for overseeing implementation of the SDWA does not alter a tribe's opportunities or limitations under the DWIG-TSA Program.

## **E. Constructed Conveyance Public Water Systems**

Based on the 1996 Amendments to the SDWA, EPA modified its federal drinking water regulations to adopt a revised definition of "public water system," and on August 5, 1998 published a revised definition of a public water system. It is defined as "a system for the provision to the public of water for human

consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves at least 25 individuals.”<sup>11</sup> Systems that serve Indian tribes and meet this definition are eligible for DWIG-TSA funding. This revised definition expanded the means of delivering water to include not only systems that provide water for human consumption through pipes, but also systems that provide water for human consumption through “other constructed conveyances.” A *constructed conveyance* is broadly interpreted to refer to any manmade conduit such as a ditch, culvert, waterway, flume, mine drain or canal.

## VI. ELIGIBLE USES OF DWIG-TSA FUNDS

The DWIG-TSA Program can only fund public water system projects that EPA determines will meet the SDWA priorities for funding as discussed in the Program Overview section of this document. These include projects that address the most serious health risks, facilitate compliance with the NPDWR and address those systems most in need (on a household basis). Eligible project categories should directly or in a phased manner:

- Address a current NPDWR health-based violation (MCL) or treatment technique violation (TT);
- Address a current MCL or action level exceedance(s);
- Address a system deficiency as part of an approved NPDWR exception;
- Address drinking water outages or limited supply needed for human consumption;
- Reduce the risk of failure of major treatment or distribution system components;
- Provide first service to homes that lack access to safe drinking water; and
- Provide operational efficiencies to reduce operation and maintenance costs.

Examples of eligible projects are provided below.

### Example Eligible Project Types

- Rehabilitate or develop sources (excluding reservoirs, dams, dam rehabilitation and water rights) to replace contaminated sources;
- Install or upgrade treatment facilities if, in the Region’s opinion, the project would improve the quality of drinking water to comply with NPDWR;
- Install or upgrade storage facilities, including finished water reservoirs, to prevent microbiological contaminants from entering the water system;
- Install or replace transmission and distribution pipes to prevent contamination caused by leaks or breaks in the pipe, or improve water pressure to safe levels;
- Replace aging infrastructure if the replacement is needed to maintain compliance or further the health protection goals of the SDWA;
- Install new transmission, distribution or service lines to connect existing homes to a public water supply;
- Water efficiency projects (e.g., installation of meters);
- Expansion, consolidation or development of a new public water system (Limited Circumstances See Section A Below); and
- Develop preliminary engineering reports (PERs) for future project funding by DWIG-TSA Program.\*

\* Regions have the discretion to limit the total amount of funds awarded to develop PERs. See Section X.A.3 on Project Readiness.

<sup>11</sup> EPA guidelines on the definition of a public water system can be found here: <http://water.epa.gov/infrastructure/drinkingwater/pws/pwsdef2.cfm>

## A. Expansion, Consolidation or Development of a New Public Water System

Under limited circumstances, expansion, consolidation or construction of new public water systems are eligible projects for DWIG-TSA funds. While Section 1452 of the SWDA states that DWIG-TSA funds may only be used for assisting existing public water systems and are not available for the construction of new public water systems, EPA believes that the SDWA may be interpreted to permit the creation of new public water systems, in limited circumstances, to solve the public health problems intended to be addressed by the statute. The conditions used to determine if development of a new water supply is appropriate are listed below.

### Conditions for Creation of New Water Systems with DWIG-TSA Funds

- Options for connection with adjacent public water systems have been fully explored and deemed unreasonable by the EPA Region;
- Upon completion of the project, the entity created must meet the federal definition of a public water system;
- Funding is limited to projects where an actual public health problem exists with documented health risks;
- The project must be limited in scope to the specific geographic area affected by health risk; and
- The project can only be sized to accommodate a reasonable amount of growth expected over the life of the facility. Growth cannot be a substantial portion of the project.

A project to supply drinking water to existing homes that do not currently receive their drinking water from an existing public water system is eligible for funding, if the current source of the drinking water available to the homes has documented concentration levels of contaminants above the MCL for the NPDWR and/or there is an inadequate supply of safe drinking water at the home to meet basic water needs. An inadequate supply is considered to be less than 30 gallons per person per day for more than 20 days per year.<sup>12</sup> Note that DWIG-TSA grants can only be awarded to tribes, not directly to the water system or to the individual home owners.

System consolidation can also be an eligible project for DWIG-TSA funds if specific circumstances exist. The purpose of system consolidation funded by DWIG-TSA is to address the public health risk posed to the service population by the current system. This is accomplished through provision of an alternative water source and/or the expansion of the user base to support long-term tribally sustained operation and maintenance of the system. A project to eliminate an existing public water system through consolidation with another existing system is eligible for funding if the water served by the system to be eliminated exceeds the MCL for at least one contaminant included on the NPDWR, has a TT violation, and/or lacks an adequate quantity of water to meet basic needs as described above. Additionally, systems which the Region believes are lacking in adequate technical, managerial and financial capacity are also eligible for consolidation with a system that demonstrates it has capacity.

All projects selected for construction of new public water systems, system expansion and system consolidation should meet the project cost efficiency requirements (see the Section X: Threshold Requirements and Ranking Criteria). Regions should avoid funding a costly system consolidation when there are lower capital cost alternative solutions (e.g. treatment), particularly in situations where the tribe has the technical, managerial and financial capacity to operate and maintain its facilities.

<sup>12</sup> Appendix E: Sanitation Deficiency System Guide for Reporting Sanitation Deficiencies for Indian Homes and Communities, May 2003 <http://www.ihs.gov/dsfc/documents/SDSWorkingDraft2003.pdf>

DWIG-TSA funds are limited and the Region should make award decisions to benefit the maximum tribal population.

## **B.     Unscheduled “Emergency” Projects**

It is possible that an emergency project will become necessary after a Region uses its prioritization method to rank projects for a year and informs the tribes of the rankings and selections. Such projects can include those where some type of failure was unanticipated or the result of natural disaster or an emergency and may require immediate attention to protect public health. In these cases, the Regions have the authority to fund the emergency project ahead of the selected projects provided it meets the requirements of the DWIG-TSA Program. Funding can be redirected from a project to support an emergency project only between the time the project is identified and entered into TDI Nex and when an IA is signed with IHS or a direct grant is signed by a tribe. After an IA or a direct grant has been signed for a project, funds cannot be redirected. The Region must inform the tribe(s) whose project(s) were by-passed of the Region’s decision and provide the rationale behind that decision and update the project data in the TDI Nex. The projects that were by-passed should receive consideration for the next available round of funding. Regions should identify in their priority system the types of situations that constitute emergencies.

## **VII.    INELIGIBLE USES OF DWIG-TSA FUNDS**

According to Section 1452 (a)(2), the SDWA specifically disallows projects for:

- Monitoring;
- Operation and maintenance;
- Projects intended primarily for future growth, and
- Land acquisition (unless the land is integral to the project and is from a willing seller) (Section 1452(k)(1)(A)(i)).

Water systems serving a tribe that do not meet the threshold requirements established in Section XI of these guidelines are also not eligible for DWIG-TSA funds. In addition, EPA has determined that a number of other types of projects are ineligible for funding through the DWIG-TSA Program.

### **Examples of Projects Ineligible for Funding**

- Dams, or rehabilitation of dams, including bank stabilization, erosion control or repair to weirs and flow control structures;
- Water rights (except if the water rights are owned by a public water system that is being consolidated and the EPA Regional Office has determined that the consolidation is necessary because the system to be consolidated lacks adequate technical, managerial, or financial capacity);
- Reservoirs (except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the treatment facility is located);
- Projects that serve only commercial uses such as livestock watering
- Projects needed mainly for fire protection;
- Compliance monitoring; and
- Projects for tasks that are considered routine operation and maintenance.

There are a number of “non-infrastructure improvement” activities described in SDWA sections 1452(g)(2) and 1452(k) that allow the use of DWSRF fund appropriations. It is EPA’s interpretation that the SDWA does not provide the same allowance for the DWIG-TSA funds. Both sections specifically use language that a “state” may use funds for these other purposes. SDWA defines a “state” as each of the

50 states, the District of Columbia, and the Commonwealth of Puerto Rico. Indian tribes were not included in the term “state.” As a result, EPA does not have the statutory authority to use DWIG-TSA funds for the purposes described in sections (g)(2) and (k). These prohibited and ineligible activities are identified below.

#### Activities in Section 1452(g)(2) of the SDWA not eligible for DWIG-TSA funds

- Supplement the Public Water System Supervision Program;
- Administer or provide technical assistance through source water protection programs;
- Develop and implement a capacity development strategy; and
- Administer an operator certification program.

#### Activities in Section 1452(k) of the SDWA not eligible for DWIG-TSA funds

- Loans to water systems to acquire land or a conservation easement;
- Loans to any community water system to implement source water protection measures in delineated areas;
- Loans to any community water system to assist them with source water protection;
- Technical or financial assistance to any water system to carry out a capacity development strategy; and
- Implementation of a wellhead protection program.

Although the SDWA does not provide for the above activities under the DWIG-TSA Program, EPA recognizes their importance to tribal water system operation, especially system capacity development (including operator training and certification) and the various source water protection activities. Since FFY 1998, EPA has received funding under the Public Water System Supervision (PWSS) Program to provide tribal water systems, regulated under SDWA by the Regions or the Navajo Nation, technical assistance to improve the technical, financial and managerial capacity of tribes to operate and maintain their public water systems, among other priorities. In addition, in FFY 2011 EPA began the National Tribal Drinking Water Operator Certification Program.<sup>13</sup>

## VIII. COMBINING DWIG-TSA FUNDS WITH OTHER SOURCES OF MONEY

There are many sources of financial assistance available for projects to improve tribal drinking water systems. In some circumstances, there may not be sufficient funds from one source to complete a project, therefore leveraging funds from multiple sources should be recommended to the tribal applicant. Regions that have limited DWIG-TSA allotments that may not be able to fund an entire project in one fiscal year should examine this option to ensure funds are not subject to re-allotment.

For projects with multiple funding sources, Regions need to evaluate the appropriate amount in which DWIG-TSA funds can contribute. Using the Region’s ranking criteria can help assess how a project will address health risks or meet water infrastructure needs of tribal homes. DWIG-TSA funds can be combined with other federal or state funds as long as the Region determines that the portion of funds provided by the DWIG-TSA Program support the requirements of these guidelines.

There is one exception in which funds cannot be combined for a single project. The SDWA language in Section 1452(i)(1) states that DWIG-TSA funds “may be used by the Administrator to make grants to Indian tribes and ANVs *that have not otherwise received either grants from the Administrator under this*

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<sup>13</sup> Authorized through direct implementation authority set forth in Public Law No. 105-65, iii Stat.1334, 1374 (1997) and 42 U.S.C. 300j-2(a)(8)

*section or assistance from state loan funds established under this section”* (emphasis added). Some states allow tribally-owned public water systems to apply for and receive funds from their state’s DWSRF program. While this is another potential source of funds for tribes, the SDWA limits a tribe’s ability to mix DWIG-TSA and state DWSRF funds. A tribe may not receive funds from both the DWIG-TSA and a state DWSRF for the same project. In instances where a tribe would like to use both DWIG-TSA and state DWSRF funds to improve a single water system, the two funding sources must be used on separate and discretely different projects.

The SDWA language should not be interpreted to mean that a tribe is only eligible to receive one grant or only have one project funded from the DWIG-TSA. Some tribes have many systems and it is EPA’s interpretation that Congress did not intend that tribes only be allowed to improve one of their systems. Further, some water systems may require multiple projects. Nothing in the above SDWA language should be interpreted to mean that EPA can only fund one project per water system.

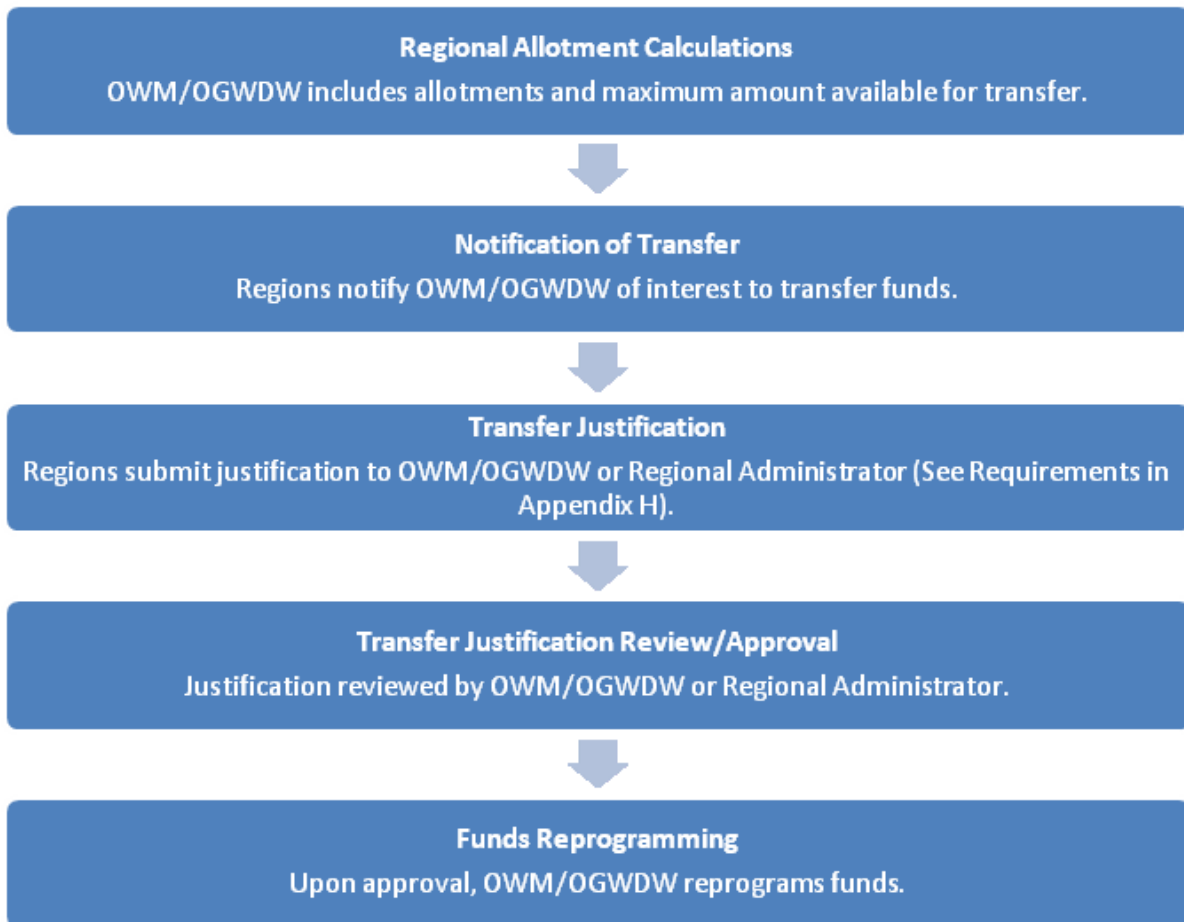
## **IX. DWIG-TSA AND CWISA INTER-PROGRAM TRANSFER AUTHORITY**

In FFY 2012, Congress provided EPA with the authority to transfer funds between the CWISA administered by the Office of Wastewater Management (OWM) and DWIG-TSA Programs. Starting in FFY 2013, EPA began implementing this authority by allowing Regions to transfer funds between the two programs up to an amount that is equivalent to 33% of a Region’s DWIG-TSA allotment. Any transferred clean water infrastructure funds must be used to fund projects that are related to drinking water and will provide the greatest public health benefit to tribes. To determine the amount of funds that could be transferred in each Region, OWM and OGWDW establish the allotment and maximum amount available for transfer for each EPA Region. Figure 3 provides an overview of the transfer process for both the CWISA and DWIG-TSA Programs. Appendix H contains the guidelines that outline the required documentation and approvals for an inter-program funds transfer.

## **X. THRESHOLD REQUIREMENTS AND RANKING CRITERIA**

Included in this section are DWIG-TSA Program threshold requirements EPA has established that water systems serving tribes must meet prior to funding. These requirements are intended to provide a consistent programmatic approach to evaluating projects submitted for funding and are based on the statutory requirements of EPA under the SDWA. This section also includes ranking criteria EPA Regions can use to prioritize projects for funding. These ranking factors shall be incorporated into the quantifiable selection factors in each Region’s program.

**Figure 3: Overview of CWISA and DWIG-TSA Programs Transfer Authority**



## **A. Threshold Requirements**

There are three threshold requirements that a water system serving a tribe must meet prior to project funding:

- Technical, managerial and financial capacity;
- Systems compliant with the SDWA; and
- Project readiness.

Regions have the flexibility to include additional threshold requirements in their guidelines that are consistent with the program’s authorities, goals and objectives.

### **1. Technical, Managerial and Financial Capacity**

The DWIG-TSA Program only funds drinking water infrastructure projects at public water systems that have the technical, managerial and financial capacity to ensure compliance with the requirements of the SDWA per requirements of Section 1452 (a)(3)(A)(i). EPA has established the following criteria to ensure this requirement is met by the DWIG-TSA Program.

Prior to the award of DWIG-TSA funds, the public water system receiving the improvement(s) must demonstrate that it has:

- a. *Certified Operator*: An operator in charge is certified at the appropriate level to operate the public water system, including the infrastructure proposed in the project. Operator certification helps protect human health and the environment by establishing minimum professional standards for the operation and maintenance of public water systems. A tribe or the water system serving the tribe must provide copies of the operator's certification prior to award of DWIG-TSA funds. The certification required to meet this requirement can be issued from EPA, EPA Approved Providers or a state (see Appendix I).
  
- b. *Annual Operating Budget*: An annual operating budget that shows income, operation and maintenance costs, and short-lived asset reserves. A key element in demonstrating public water system managerial and financial capacity is a documented understanding of the revenue and expenditures that allow a system to be operated and maintained over the long term. EPA requires that an annual operating budget with information on income from user rates or other sources, operation and maintenance costs and short-lived asset reserves for the public water system serving the tribe be provided prior to award. The recommended details to include in an annual operating budget are included in Section 6.f. "Annual Operation Budget" of the PER requirements document in Appendix J. If a tribe does not have an annual operating budget, EPA Regions are encouraged to work with the tribe to assist them in developing one.

An annual operating budget is also required when a tribe requests funding for PER development to demonstrate the public water system serving the tribe and considering improvements through DWIG-TSA funds has an operating budget. This operating budget only needs to consider the existing infrastructure under operation by the public water system. Changes to the operating budget that may result from future infrastructure improvements should be reflected in the PER.

- c. *Accounting System*: A utility should demonstrate that they have an accounting system that records, tracks and reports the public water system's revenues and expenses separate from other program activities. The Infrastructure Task Force cites this as an attribute of a sustainable utility, where utility funds are managed separately from general tribal funds.<sup>14</sup> The ability to track operating funds is an important element in demonstrating a utility's managerial and financial capacity. Expenses or revenues associated with the utility should be managed in a separate accounting system or tracked through separate line items within the tribe's accounting ledger.

To meet DWIG-TSA Program threshold requirements, tribes must document that the accounting system for the public water system receiving DWIG-TSA funds has the capability to record, track and report on the program specific financial information independently from other programs. As part of the project award Regions shall require a written certification from the governing body of the public water system that their accounting system meets these requirements. An example certification letter is included in Appendix K.

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<sup>14</sup> Infrastructure Task Force, January 2012, Summary of Commonalities and Best Practices from Tribal Utility Interview, <http://www.epa.gov/tp/pdf/itf-commonalities-12.pdf>



## 2. Systems Compliant with the SDWA

The primary purpose of the DWIG-TSA Program is to support the construction of drinking water infrastructure that will facilitate compliance with the SDWA. According to the SDWA Section 1452 (a)(3)(A)(ii), DWSRF funds, including those allotted to the DWIG-TSA Program, cannot be awarded to existing public water systems that are in significant noncompliance (SNC) with any requirements of the National Primary Drinking Water Regulations.

In December 2009, the Office of Enforcement and Compliance Assurance (OECA) released an Enforcement Response Policy (ERP) that provides a new enforcement targeting approach that identifies all unaddressed violations at a public water system. The new approach replaces the prior strategy which focused on water systems in SNC on a rule-by-rule basis. The ERP is supported by the Enforcement Targeting Tool (ETT), which assigns a point value to individual violations at each system to prioritize public water systems with the most serious, numerous or long lasting unaddressed violations for possible enforcement actions.<sup>15</sup>

The Director of the OGWDW issued a memo on March 30, 2012, instructing that the term “significant noncompliance” be interpreted for the purpose of the DWSRF Program implementation as systems with ETT scores of 11 or greater.<sup>16</sup> This means assistance from the DWIG-TSA Program may not be provided for projects at systems that have an ETT score of 11 or greater prior to award, unless the project will directly address existing violations that impact the ETT score. It should be noted that OECA requires public water systems with an ETT score of 11 or higher to return to compliance within six months of reaching that score, or OECA will issue an enforcement order to correct all violations at the system.

## 3. Project Readiness

Projects that have not been fully evaluated prior to funding may not provide the most feasible and cost efficient solution to address public health risks and may also result in construction delays. To improve project readiness to ensure that health risks are adequately addressed, a project submitted for funding must have a completed PER that follows the standardized template for PERs developed by the Infrastructure Task Force (Appendix J). The standardized PER makes it easier for tribes to receive funding from more than one federal source and simplifies coordination between federal agencies.

The PER should clearly describe the public water system’s current situation, include an analysis of alternatives and propose a specific course of action from an engineering perspective. The analysis of alternatives must compare construction costs and operation and maintenance costs. A project that has been vetted through an analysis of alternatives and is ready for implementation ensures that funds are awarded to projects that are ready to proceed to construction.

DWIG-TSA funds will not be awarded without the submission of a PER, however there are some instances in which IHS Area Sanitation Facilities Construction Program Director may determine that a PER is not required because the project’s scope is limited. It should be noted, however, that even when

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<sup>15</sup> Memo dated December 8, 2009 from Cynthia Giles, EPA Assistant Administrator to Regional Administrators. [http://www.epa.gov/enforcement/water/documents/policies/drinking\\_water\\_erp\\_2009.pdf](http://www.epa.gov/enforcement/water/documents/policies/drinking_water_erp_2009.pdf)

<sup>16</sup> Cynthia C. Dougherty, March 2012, Memorandum: Update to the Implementation of Capacity Development & Drinking Water State Revolving Fund Programs to Reflect the New Enforcement Policy & Enforcement Targeting Tool, <http://water.epa.gov/type/groundwater/upload/erpettememo.pdf>

a PER is not required, an annual operating budget for current operating conditions as part of the funding award must still be submitted per Section X.A.

As indicated in Section VI, Regions may award projects to develop a PER. Regions should take steps to ensure that projects receiving funds for development of a PER are eligible infrastructure projects under the DWIG-TSA Program. They should also ensure that the project will be ready for construction (pending the availability of project funds) as soon as possible following completion of the PER. Following completion of a DWIG-TSA funded PER, Regions have the discretion in their program guidelines to identify how they will handle award of a DWIG-TSA project to construct the recommended course of action identified in the PER.

## B. Ranking Criteria

Regions must develop a quantifiable method of prioritizing projects and the method must be applied to all the potential projects each fiscal year. Regions have flexibility in developing the prioritization method within their Region, but must meet the requirements of Section 1452(b)(3)(A) of the SDWA.

### **SDWA Section 1452(b)(3)(A) states that funded projects should:**

- (i) address the most serious risk to human health;
- (ii) are necessary to ensure compliance with the requirements of this title; and
- (iii) assist systems most in need on a per household basis.

Each Region's prioritization method should differentiate the projects according to the severity of the health risk to be resolved by the project. Acute health risks should be resolved before non-acute risks and known threats should be addressed before potential threats. Assuming projects address similar health risks, ranking criteria can help Regions select the best project for funding in a given fiscal year.

There are two factors that the Regions shall consider in developing their Regional guidelines:

- Evaluation of an applicant's ability to self finance a project (recommended) and
- Evaluation of the project's cost efficiency (required).

Specific ranking criteria for these issues are discussed below. The Regional Administrator in each Region has the ability to waive these specific criteria on a case-by-case basis. This is allowed if the Region can demonstrate that a project provides a significant public health benefit or resolves serious compliance issues as described in Section 1452(b)(3)(A) of the SDWA and that these considerations outweigh these ranking criteria.

### 1. Applicant Ability to Self Finance

The ability of tribes to pay for needed infrastructure varies widely across the country. The applicant's ability to self finance refers to the ability of the community served by the public water system to provide funds to cover all or a portion of the cost associated with the construction of the proposed infrastructure. The limited grant funds from the DWIG-TSA Program should be used to assist public water systems that serve communities with the greatest financial need. Therefore, the Regions may develop within their project ranking criteria a method to reduce the priority of projects requested from public water systems that serve a community with a median household income equal to or greater than 80% of the statewide nonmetropolitan household income. In the Region's project prioritization this factor is recommended to be weighted to account for a maximum of 7% of the overall calculation, a

percentage that is equivalent to the current IHS ranking system for the consideration of other funds that can be added to a project's financing.

The median household income of the service area and the nonmetropolitan median household income of the state will be determined from available U.S. Census data. If there is reason to believe that the Census data do not provide an accurate representation of the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or the Region may obtain, additional information regarding such median household income. Information will consist of reliable data from local, Regional, state or federal sources, or from a survey conducted by a reliable impartial source.

Appendix L provides an example of how household income of the water system's service area can be calculated. Also included in Appendix L are current non-metropolitan household income amounts by state prepared by the U.S. Department of Housing and Urban Development (HUD), which are used by the U.S. Department of Agriculture in determining the loan/grant mix for water project awards. These numbers are calculated from the American Community Survey data of the U.S. Census and are updated as new data are released.

## 2. Project Cost Efficiency

SDWA Section 1452(b)(3)(A)(iii) requires the DWIG-TSA Program to assist systems most in need on a per household basis. Including project cost efficiency in the Region's prioritization process addresses this requirement. In the Region's project prioritization this factor is recommended to be weighted to account for a minimum of 15% of the overall ranking process. This weighting factor is consistent with existing IHS ranking criteria.

IHS determines the economic feasibility of a project by comparing the per unit project cost to serve a home to the total allowable unit cost based on the HUD Dwelling Construction and Equipment Cost (DCE) and the IHS Health Facilities Cost Index.<sup>17</sup> The threshold costs included in Appendix M are 50% of the IHS calculated 2012 allowable cost. These figures represent the highest threshold costs allowable for drinking water facilities under the IHS approach. These figures will be updated by OGWDW as they are available from IHS Headquarters and will be provided to the Regions in the annual allotted funds memorandum. Projects with a unit cost per home equal to or greater than the amounts shown in Appendix M will receive a lower priority in the Region's allocation process.

Regions have the flexibility to develop their own project cost efficiency methodology other than the process described in this guidance. This criterion will be deemed met for Regions that utilize the IHS SDS as the project prioritization process. A Region can increase the weighting factor used to consider cost efficiency or make project cost efficiency a threshold criteria to determine if a project is eligible for funding. In any case, if the project selected for funding has a unit cost equal to or greater than \$132,000 per tribal home served, the Regional Administrator must be notified to ensure awareness of such projects.

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<sup>17</sup> IHS, May 2003, Guide for Reporting Sanitation Deficiencies for Indian Homes and Communities  
<http://www.ihs.gov/dsfc/documents/SDSWorkingDraft2003.pdf>

## **XI. OGWDW AND REGIONAL PROGRAM RESPONSIBILITIES**

The responsibilities of OGWDW staff and their Regional counterparts were described in a recent memorandum from OGWDW to Regional drinking water program managers. These responsibilities are described below, including the requirements for regular meetings between OGWDW and Regions, and project management responsibilities for all involved with the program.

### **A. OGWDW Responsibilities**

Twice a year, OGWDW DWIG-TSA staff will initiate a teleconference with the Regional programs to discuss funding allocation and project selection issues. The first meeting is scheduled approximately 90 days following the annual announcement of the funding allocations to the Regions. The second meeting takes place in the fall following the close of the fiscal year to discuss funded project milestones and implementation challenges encountered with the tribes and/or IHS.

In addition, OGWDW program staff shall:

1. Designate a DWIG-TSA National Program Coordinator with the responsibility for Regional coordination;
2. Develop an annual allotted funds memorandum providing the funding amount for that fiscal year to each Region, and update project cost efficiency data (the memo is to be sent to the Regions within 30 days of when EPA's annual appropriation is finalized);
3. Monitor and report on the overall progress made by the DWIG-TSA Program in meeting Regional and national goals;
4. Schedule, lead and summarize progress meetings with Regions to track projects and identify and resolve problems encountered by Regions during implementation;
5. Access, review and summarize the most recent data from SDWIS, IHS PDS and EPA's Integrated Grants Management System prior to the meeting through TDI Nex;
6. Work with the Regions to categorize the causes of health based drinking water regulation violations at tribally owned and operated systems as either infrastructure or operations and maintenance related; and
7. Identify and coordinate responses to DWIG-TSA Program implementation issues with the IHS Headquarters.

### **B. Regional Responsibilities**

After OGWDW allots the DWIG-TSA funds to Regions, Regions are responsible for management and oversight of the direct grants and interagency agreements associated with their projects. Each Region shall develop a set of quantifiable methods and standards to identify and prioritize water system projects. Prior to DWIG-TSA Program funding being obligated for FFY 2015, Regions must submit their guidelines to OGWDW for comment to ensure consistency with these guidelines. Within 30 days of receipt of the Regional guidelines, OGWDW will either inform each Region that their guidelines are consistent with the national program or will provide written comments to the Region for consideration in revising their guidelines to ensure national consistency. Future updates of the Region's DWIG-TSA Program guidelines must also be submitted to OGWDW for review following the same schedule.

## 1. Regional Outreach

Regions should provide their program guidelines to the tribes in their Region and allow for an adequate opportunity for review and comment. Guidelines should also be redistributed when revisions are made.

Annually, Regions must inform tribes about projects identified for DWIG-TSA Program funding. They must also inform tribes and other parties about the estimated amount of DWIG-TSA funds to be awarded for each project. In some instances, such as for the ANVs, it may also be appropriate to inform the states of the Region's plans.

It is important that the Regions consult and coordinate with the local IHS Area Office in project selection to avoid confusion and possible duplication of effort.

## 2. Plan & Specification Review

If a Region has directly provided or funded a review of the plans and specifications for the same or similar project, the Region must ensure that the tribe has sufficiently addressed the review comments provided before project award.

For projects funded with IAs to IHS, EPA Regions shall provide comments according to their standard practice to IHS Area Offices on the design and planning documents associated with projects funded through an IA following project award.

For projects funded through direct grants to tribes following project award, it is recommended that EPA Regions include the following grant conditions:

*Prior to the start of project construction the tribe must:*

- a. Provide the plans and specifications to the EPA Region for review and comment*
- b. Sufficiently address the review comments provided by the EPA Region*

## 3. Other Regional Responsibilities

EPA Regional Program staff will participate in the semi-annual meetings with OGWDW program staff as discussed in the OGWDW Responsibilities section above. In addition, Regional staffs have the responsibility to:

1. Designate a Regional Program Coordinator to participate in semi-annual meetings/conference calls. The Regional Program Coordinator is responsible for presenting a summary of annual Regional project selection decisions and awarded project status oversight activities;
2. Ensure that the Regionally-entered data fields in the TDI Nex are updated according to the Tribal Direct Implementation Nexus Data Guidelines (Appendix G) prior to meetings;
3. Work with OGWDW staff to categorize the causes of health based drinking water regulation violations at tribally owned and operated systems as either infrastructure or operations and maintenance related;
4. Attend semi-annual meetings prepared to review detailed information on the following topics:

- a. Individual DWIG-TSA funded project details, schedule, milestones, outputs and planned project oversight for both direct grant and IA awards,
  - b. The factors influencing annual project prioritization and selection for DWIG-TSA award,
  - c. The expected impact of the individual DWIG-TSA projects on Regional goals and national Tribal Drinking Water Program measures,
  - d. Progress on DWIG-TSA project funds expenditure, milestones and outputs, as well as the demonstrated impact on expected Regional outcomes and Tribal Drinking Water Program measures, and
  - e. Identification and qualification of any discrepancies between the amount of funds expended and project milestone progress reported; and
5. Identify and report issues associated with EPA Region and IHS Area office coordination or EPA Region and grant recipient coordination that may impact the award of DWIG-TSA funds or completion of DWIG-TSA funded projects.

# **APPENDICES**

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*Appendix A. SDWA Section 1452*

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(A) the Indian Tribes is recognized by the Secretary of the Interior and has a governing body carrying out substantial governmental duties and powers;

(B) the functions to be exercised by the Indian Tribe are within the area of the Tribal Government's jurisdiction; and

(C) the Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this title and of all applicable regulations.

(2) PROVISIONS WHERE TREATMENT AS STATE INAPPROPRIATE.—For any provision of this title where treatment of Indian Tribes as identical to States is inappropriate, administratively infeasible or otherwise inconsistent with the purposes of this title, the Administrator may include in the regulations promulgated under this section, other means for administering such provision in a manner that will achieve the purpose of the provision. Nothing in this section shall be construed to allow Indian Tribes to assume or maintain primary enforcement responsibility for public water systems or for underground injection control in a manner less protective of the health of persons than such responsibility may be assumed or maintained by a State. An Indian tribe shall not be required to exercise criminal enforcement jurisdiction for purposes of complying with the preceding sentence.

[42 U.S.C. 300j-11]

#### STATE REVOLVING LOAN FUNDS

##### SEC. 1452. (a) GENERAL AUTHORITY.—

(1) GRANTS TO STATES TO ESTABLISH STATE LOAN FUNDS.—

(A) IN GENERAL.—The Administrator shall offer to enter into agreements with eligible States to make capitalization grants, including letters of credit, to the States under this subsection to further the health protection objectives of this title, promote the efficient use of fund resources, and for other purposes as are specified in this title.

(B) ESTABLISHMENT OF FUND.—To be eligible to receive a capitalization grant under this section, a State shall establish a drinking water treatment revolving loan fund (referred to in this section as a "State loan fund") and comply with the other requirements of this section. Each grant to a State under this section shall be deposited in the State loan fund established by the State, except as otherwise provided in this section and in other provisions of this title. No funds authorized by other provisions of this title to be used for other purposes specified in this title shall be deposited in any State loan fund.

(C) EXTENDED PERIOD.—The grant to a State shall be available to the State for obligation during the fiscal year for which the funds are authorized and during the following fiscal year, except that grants made available from

funds provided prior to fiscal year 1997 shall be available for obligation during each of the fiscal years 1997 and 1998.

(D) ALLOTMENT FORMULA.—Except as otherwise provided in this section, funds made available to carry out this section shall be allotted to States that have entered into an agreement pursuant to this section (other than the District of Columbia) in accordance with—

(i) for each of fiscal years 1995 through 1997, a formula that is the same as the formula used to distribute public water system supervision grant funds under section 1443 in fiscal year 1995, except that the minimum proportionate share established in the formula shall be 1 percent of available funds and the formula shall be adjusted to include a minimum proportionate share for the State of Wyoming and the District of Columbia; and

(ii) for fiscal year 1998 and each subsequent fiscal year, a formula that allocates to each State the proportional share of the State needs identified in the most recent survey conducted pursuant to subsection (h), except that the minimum proportionate share provided to each State shall be the same as the minimum proportionate share provided under clause (i).

(E) REALLOTMENT.—The grants not obligated by the last day of the period for which the grants are available shall be reallocated according to the appropriate criteria set forth in subparagraph (D), except that the Administrator may reserve and allocate 10 percent of the remaining amount for financial assistance to Indian Tribes in addition to the amount allotted under subsection (i) and none of the funds reallocated by the Administrator shall be reallocated to any State that has not obligated all sums allotted to the State pursuant to this section during the period in which the sums were available for obligation.

(F) NONPRIMACY STATES.—The State allotment for a State not exercising primary enforcement responsibility for public water systems shall not be deposited in any such fund but shall be allotted by the Administrator under this subparagraph. Pursuant to section 1443(a)(9)(A) such sums allotted under this subparagraph shall be reserved as needed by the Administrator to exercise primary enforcement responsibility under this title in such State and the remainder shall be reallocated to States exercising primary enforcement responsibility for public water systems for deposit in such funds. Whenever the Administrator makes a final determination pursuant to section 1413(b) that the requirements of section 1413(a) are no longer being met by a State, additional grants for such State under this title shall be immediately terminated by the Administrator. This subparagraph shall not apply to any State not exercising primary enforcement responsibility for public water systems as of the date of enactment of the Safe Drinking Water Act Amendments of 1996.

## (G) OTHER PROGRAMS.—

(i) NEW SYSTEM CAPACITY.—Beginning in fiscal year 1999, the Administrator shall withhold 20 percent of each capitalization grant made pursuant to this section to a State unless the State has met the requirements of section 1420(a) (relating to capacity development) and shall withhold 10 percent for fiscal year 2001, 15 percent for fiscal year 2002, and 20 percent for fiscal year 2003 if the State has not complied with the provisions of section 1420(c) (relating to capacity development strategies). Not more than a total of 20 percent of the capitalization grants made to a State in any fiscal year may be withheld under the preceding provisions of this clause. All funds withheld by the Administrator pursuant to this clause shall be reallocated by the Administrator on the basis of the same ratio as is applicable to funds allotted under subparagraph (D). None of the funds reallocated by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 1420 (relating to capacity development).

(ii) OPERATOR CERTIFICATION.—The Administrator shall withhold 20 percent of each capitalization grant made pursuant to this section unless the State has met the requirements of 1419<sup>1</sup> (relating to operator certification). All funds withheld by the Administrator pursuant to this clause shall be reallocated by the Administrator on the basis of the same ratio as applicable to funds allotted under subparagraph (D). None of the funds reallocated by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 1419 (relating to operator certification).

(2) USE OF FUNDS.—Except as otherwise authorized by this title, amounts deposited in a State loan fund, including loan repayments and interest earned on such amounts, shall be used only for providing loans or loan guarantees, or as a source of reserve and security for leveraged loans, the proceeds of which are deposited in a State loan fund established under paragraph (1), or other financial assistance authorized under this section to community water systems and nonprofit non-community water systems, other than systems owned by Federal agencies. Financial assistance under this section may be used by a public water system only for expenditures (not including monitoring, operation, and maintenance expenditures) of a type or category which the Administrator has determined, through guidance, will facilitate compliance with national primary drinking water regulations applicable to the system under section 1412 or otherwise significantly further the health protection objectives of this title. The funds may also be

<sup>1</sup>So in law. The reference to “1419” probably should be to “section 1419”. See the amendment made by section 130 of Public Law 104–182.

used to provide loans to a system referred to in section 1401(4)(B) for the purpose of providing the treatment described in section 1401(4)(B)(i)(III). The funds shall not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized by this paragraph and the purchase is from a willing seller. Of the amount credited to any State loan fund established under this section in any fiscal year, 15 percent shall be available solely for providing loan assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects of public water systems.

(3) LIMITATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no assistance under this section shall be provided to a public water system that—

(i) does not have the technical, managerial, and financial capability to ensure compliance with the requirements of this title; or

(ii) is in significant noncompliance with any requirement of a national primary drinking water regulation or variance.

(B) RESTRUCTURING.—A public water system described in subparagraph (A) may receive assistance under this section if—

(i) the use of the assistance will ensure compliance; and

(ii) if subparagraph (A)(i) applies to the system, the owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures) if the State determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with the requirements of this title over the long term.

(C) REVIEW.—Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of a national primary drinking water regulation or variance, the State shall conduct a review to determine whether subparagraph (A)(i) applies to the system.

(b) INTENDED USE PLANS.—

(1) IN GENERAL.—After providing for public review and comment, each State that has entered into a capitalization agreement pursuant to this section shall annually prepare a plan that identifies the intended uses of the amounts available to the State loan fund of the State.

(2) CONTENTS.—An intended use plan shall include—

(A) a list of the projects to be assisted in the first fiscal year that begins after the date of the plan, including a description of the project, the expected terms of financial assistance, and the size of the community served;

- (B) the criteria and methods established for the distribution of funds; and
- (C) a description of the financial status of the State loan fund and the short-term and long-term goals of the State loan fund.
- (3) USE OF FUNDS.—
- (A) IN GENERAL.—An intended use plan shall provide, to the maximum extent practicable, that priority for the use of funds be given to projects that—
- (i) address the most serious risk to human health;
  - (ii) are necessary to ensure compliance with the requirements of this title (including requirements for filtration); and
  - (iii) assist systems most in need on a per household basis according to State affordability criteria.
- (B) LIST OF PROJECTS.—Each State shall, after notice and opportunity for public comment, publish and periodically update a list of projects in the State that are eligible for assistance under this section, including the priority assigned to each project and, to the extent known, the expected funding schedule for each project.
- (c) FUND MANAGEMENT.—Each State loan fund under this section shall be established, maintained, and credited with repayments and interest. The fund corpus shall be available in perpetuity for providing financial assistance under this section. To the extent amounts in the fund are not required for current obligation or expenditure, such amounts shall be invested in interest bearing obligations.
- (d) ASSISTANCE FOR DISADVANTAGED COMMUNITIES.—
- (1) LOAN SUBSIDY.—Notwithstanding any other provision of this section, in any case in which the State makes a loan pursuant to subsection (a)(2) to a disadvantaged community or to a community that the State expects to become a disadvantaged community as the result of a proposed project, the State may provide additional subsidization (including forgiveness of principal).
- (2) TOTAL AMOUNT OF SUBSIDIES.—For each fiscal year, the total amount of loan subsidies made by a State pursuant to paragraph (1) may not exceed 30 percent of the amount of the capitalization grant received by the State for the year.
- (3) DEFINITION OF DISADVANTAGED COMMUNITY.—In this subsection, the term “disadvantaged community” means the service area of a public water system that meets affordability criteria established after public review and comment by the State in which the public water system is located. The Administrator may publish information to assist States in establishing affordability criteria.
- (e) STATE CONTRIBUTION.—Each agreement under subsection (a) shall require that the State deposit in the State loan fund from State moneys an amount equal to at least 20 percent of the total amount of the grant to be made to the State on or before the date on which the grant payment is made to the State, except that a State shall not be required to deposit such amount into the fund prior to the date on which each grant payment is made for fiscal

years 1994, 1995, 1996, and 1997 if the State deposits the State contribution amount into the State loan fund prior to September 30, 1999.

(f) TYPES OF ASSISTANCE.—Except as otherwise limited by State law, the amounts deposited into a State loan fund under this section may be used only—

(1) to make loans, on the condition that—

(A) the interest rate for each loan is less than or equal to the market interest rate, including an interest free loan;

(B) principal and interest payments on each loan will commence not later than 1 year after completion of the project for which the loan was made, and each loan will be fully amortized not later than 20 years after the completion of the project, except that in the case of a disadvantaged community (as defined in subsection (d)(3)), a State may provide an extended term for a loan, if the extended term—

(i) terminates not later than the date that is 30 years after the date of project completion; and

(ii) does not exceed the expected design life of the project;

(C) the recipient of each loan will establish a dedicated source of revenue (or, in the case of a privately owned system, demonstrate that there is adequate security) for the repayment of the loan; and

(D) the State loan fund will be credited with all payments of principal and interest on each loan;

(2) to buy or refinance the debt obligation of a municipality or an intermunicipal or interstate agency within the State at an interest rate that is less than or equal to the market interest rate in any case in which a debt obligation is incurred after July 1, 1993;

(3) to guarantee, or purchase insurance for, a local obligation (all of the proceeds of which finance a project eligible for assistance under this section) if the guarantee or purchase would improve credit market access or reduce the interest rate applicable to the obligation;

(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the State if the proceeds of the sale of the bonds will be deposited into the State loan fund; and

(5) to earn interest on the amounts deposited into the State loan fund.

(g) ADMINISTRATION OF STATE LOAN FUNDS.—

(1) COMBINED FINANCIAL ADMINISTRATION.—Notwithstanding subsection (c), a State may (as a convenience and to avoid unnecessary administrative costs) combine, in accordance with State law, the financial administration of a State loan fund established under this section with the financial administration of any other revolving fund established by the State if otherwise not prohibited by the law under which the State loan fund was established and if the Administrator determines that—

(A) the grants under this section, together with loan repayments and interest, will be separately accounted for and used solely for the purposes specified in subsection (a); and

(B) the authority to establish assistance priorities and carry out oversight and related activities (other than financial administration) with respect to assistance remains with the State agency having primary responsibility for administration of the State program under section 1413, after consultation with other appropriate State agencies (as determined by the State): *Provided*, That in nonprimacy States eligible to receive assistance under this section, the Governor shall determine which State agency will have authority to establish priorities for financial assistance from the State loan fund.

(2) COST OF ADMINISTERING FUND.—Each State may annually use up to 4 percent of the funds allotted to the State under this section to cover the reasonable costs of administration of the programs under this section, including the recovery of reasonable costs expended to establish a State loan fund which are incurred after the date of enactment of this section, and to provide technical assistance to public water systems within the State. For fiscal year 1995 and each fiscal year thereafter, each State may use up to an additional 10 percent of the funds allotted to the State under this section—

(A) for public water system supervision programs under section 1443(a);

(B) to administer or provide technical assistance through source water protection programs;

(C) to develop and implement a capacity development strategy under section 1420(c); and

(D) for an operator certification program for purposes of meeting the requirements of section 1419,

if the State matches the expenditures with at least an equal amount of State funds. At least half of the match must be additional to the amount expended by the State for public water supervision in fiscal year 1993. An additional 2 percent of the funds annually allotted to each State under this section may be used by the State to provide technical assistance to public water systems serving 10,000 or fewer persons in the State. Funds utilized under subparagraph (B) shall not be used for enforcement actions.

(3) GUIDANCE AND REGULATIONS.—The Administrator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—

(A) provisions to ensure that each State commits and expends funds allotted to the State under this section as efficiently as possible in accordance with this title and applicable State laws;

(B) guidance to prevent waste, fraud, and abuse; and

(C) guidance to avoid the use of funds made available under this section to finance the expansion of any public water system in anticipation of future population growth.

The guidance and regulations shall also ensure that the States, and public water systems receiving assistance under this section, use accounting, audit, and fiscal procedures that conform to generally accepted accounting standards.

(4) STATE REPORT.—Each State administering a loan fund and assistance program under this subsection shall publish and submit to the Administrator a report every 2 years on its activities under this section, including the findings of the most recent audit of the fund and the entire State allotment. The Administrator shall periodically audit all State loan funds established by, and all other amounts allotted to, the States pursuant to this section in accordance with procedures established by the Comptroller General.

(h) NEEDS SURVEY.—The Administrator shall conduct an assessment of water system capital improvement needs of all eligible public water systems in the United States and submit a report to the Congress containing the results of the assessment within 180 days after the date of enactment of the Safe Drinking Water Act Amendments of 1996 and every 4 years thereafter.

(i) INDIAN TRIBES.—

(1) IN GENERAL.—1½ percent of the amounts appropriated annually to carry out this section may be used by the Administrator to make grants to Indian Tribes and Alaska Native villages that have not otherwise received either grants from the Administrator under this section or assistance from State loan funds established under this section. The grants may only be used for expenditures by tribes and villages for public water system expenditures referred to in subsection (a)(2).

(2) USE OF FUNDS.—Funds reserved pursuant to paragraph (1) shall be used to address the most significant threats to public health associated with public water systems that serve Indian Tribes, as determined by the Administrator in consultation with the Director of the Indian Health Service and Indian Tribes.

(3) ALASKA NATIVE VILLAGES.—In the case of a grant for a project under this subsection in an Alaska Native village, the Administrator is also authorized to make grants to the State of Alaska for the benefit of Native villages. An amount not to exceed 4 percent of the grant amount may be used by the State of Alaska for project management.

(4) NEEDS ASSESSMENT.—The Administrator, in consultation with the Director of the Indian Health Service and Indian Tribes, shall, in accordance with a schedule that is consistent with the needs surveys conducted pursuant to subsection (h), prepare surveys and assess the needs of drinking water treatment facilities to serve Indian Tribes, including an evaluation of the public water systems that pose the most significant threats to public health.

(j) OTHER AREAS.—Of the funds annually available under this section for grants to States, the Administrator shall make allotments in accordance with section 1443(a)(4) for the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam. The grants allotted as provided in this subsection may be provided by the Administrator to the governments



of such areas, to public water systems in such areas, or to both, to be used for the public water system expenditures referred to in subsection (a)(2). The grants, and grants for the District of Columbia, shall not be deposited in State loan funds. The total allotment of grants under this section for all areas described in this subsection in any fiscal year shall not exceed 0.33 percent of the aggregate amount made available to carry out this section in that fiscal year.

(k) OTHER AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—Notwithstanding subsection (a)(2), a State may take each of the following actions:

(A) Provide assistance, only in the form of a loan, to one or more of the following:

(i) Any public water system described in subsection (a)(2) to acquire land or a conservation easement from a willing seller or grantor, if the purpose of the acquisition is to protect the source water of the system from contamination and to ensure compliance with national primary drinking water regulations.

(ii) Any community water system to implement local, voluntary source water protection measures to protect source water in areas delineated pursuant to section 1453, in order to facilitate compliance with national primary drinking water regulations applicable to the system under section 1412 or otherwise significantly further the health protection objectives of this title. Funds authorized under this clause may be used to fund only voluntary, incentive-based mechanisms.

(iii) Any community water system to provide funding in accordance with section 1454(a)(1)(B)(i).

(B) Provide assistance, including technical and financial assistance, to any public water system as part of a capacity development strategy developed and implemented in accordance with section 1420(c).

(C) Make expenditures from the capitalization grant of the State for fiscal years 1996 and 1997 to delineate and assess source water protection areas in accordance with section 1453, except that funds set aside for such expenditure shall be obligated within 4 fiscal years.

(D) Make expenditures from the fund for the establishment and implementation of wellhead protection programs under section 1428.

(2) LIMITATION.—For each fiscal year, the total amount of assistance provided and expenditures made by a State under this subsection may not exceed 15 percent of the amount of the capitalization grant received by the State for that year and may not exceed 10 percent of that amount for any one of the following activities:

(A) To acquire land or conservation easements pursuant to paragraph (1)(A)(i).

(B) To provide funding to implement voluntary, incentive-based source water quality protection measures pursuant to clauses (ii) and (iii) of paragraph (1)(A).

(C) To provide assistance through a capacity development strategy pursuant to paragraph (1)(B).

(D) To make expenditures to delineate or assess source water protection areas pursuant to paragraph (1)(C).

(E) To make expenditures to establish and implement wellhead protection programs pursuant to paragraph (1)(D).

(3) STATUTORY CONSTRUCTION.—Nothing in this section creates or conveys any new authority to a State, political subdivision of a State, or community water system for any new regulatory measure, or limits any authority of a State, political subdivision of a State or community water system.

(l) SAVINGS.—The failure or inability of any public water system to receive funds under this section or any other loan or grant program, or any delay in obtaining the funds, shall not alter the obligation of the system to comply in a timely manner with all applicable drinking water standards and requirements of this title.

(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the purposes of this section \$599,000,000 for the fiscal year 1994 and \$1,000,000,000 for each of the fiscal years 1995 through 2003. To the extent amounts authorized to be appropriated under this subsection in any fiscal year are not appropriated in that fiscal year, such amounts are authorized to be appropriated in a subsequent fiscal year (prior to the fiscal year 2004). Such sums shall remain available until expended.

(n) HEALTH EFFECTS STUDIES.—From funds appropriated pursuant to this section for each fiscal year, the Administrator shall reserve \$10,000,000 for health effects studies on drinking water contaminants authorized by the Safe Drinking Water Act Amendments of 1996. In allocating funds made available under this subsection, the Administrator shall give priority to studies concerning the health effects of cryptosporidium (as authorized by section 1458(c)), disinfection byproducts (as authorized by section 1458(c)), and arsenic (as authorized by section 1412(b)(12)(A)), and the implementation of a plan for studies of subpopulations at greater risk of adverse effects (as authorized by section 1458(a)).

(o) MONITORING FOR UNREGULATED CONTAMINANTS.—From funds appropriated pursuant to this section for each fiscal year beginning with fiscal year 1998, the Administrator shall reserve \$2,000,000 to pay the costs of monitoring for unregulated contaminants under section 1445(a)(2)(C).

(p) DEMONSTRATION PROJECT FOR STATE OF VIRGINIA.—Notwithstanding the other provisions of this section limiting the use of funds deposited in a State loan fund from any State allotment, the State of Virginia may, as a single demonstration and with the approval of the Virginia General Assembly and the Administrator, conduct a program to demonstrate alternative approaches to intergovernmental coordination to assist in the financing of new drinking water facilities in the following rural communities in southwestern Virginia where none exists on the date of enactment of the Safe Drinking Water Act Amendments of 1996 and where such communities are experiencing economic hardship: Lee County, Wise County, Scott County, Dickenson County, Russell County, Buchanan County, Tazewell County, and the city of Norton, Virginia.

The funds allotted to that State and deposited in the State loan fund may be loaned to a regional endowment fund for the purpose set forth in this subsection under a plan to be approved by the Administrator. The plan may include an advisory group that includes representatives of such counties.

(q) **SMALL SYSTEM TECHNICAL ASSISTANCE.**—The Administrator may reserve up to 2 percent of the total funds appropriated pursuant to subsection (m) for each of the fiscal years 1997 through 2003 to carry out the provisions of section 1442(e) (relating to technical assistance for small systems), except that the total amount of funds made available for such purpose in any fiscal year through appropriations (as authorized by section 1442(e)) and reservations made pursuant to this subsection shall not exceed the amount authorized by section 1442(e).

(r) **EVALUATION.**—The Administrator shall conduct an evaluation of the effectiveness of the State loan funds through fiscal year 2001. The evaluation shall be submitted to the Congress at the same time as the President submits to the Congress, pursuant to section 1108 of title 31, United States Code, an appropriations request for fiscal year 2003 relating to the budget of the Environmental Protection Agency.

[42 U.S.C. 300j-12]

#### SOURCE WATER QUALITY ASSESSMENT

SEC. 1453. (a) **SOURCE WATER ASSESSMENT.**—

(1) **GUIDANCE.**—Within 12 months after the date of enactment of the Safe Drinking Water Act Amendments of 1996, after notice and comment, the Administrator shall publish guidance for States exercising primary enforcement responsibility for public water systems to carry out directly or through delegation (for the protection and benefit of public water systems and for the support of monitoring flexibility) a source water assessment program within the State's boundaries. Each State adopting modifications to monitoring requirements pursuant to section 1418(b) shall, prior to adopting such modifications, have an approved source water assessment program under this section and shall carry out the program either directly or through delegation.

(2) **PROGRAM REQUIREMENTS.**—A source water assessment program under this subsection shall—

(A) delineate the boundaries of the assessment areas in such State from which one or more public water systems in the State receive supplies of drinking water, using all reasonably available hydrogeologic information on the sources of the supply of drinking water in the State and the water flow, recharge, and discharge and any other reliable information as the State deems necessary to adequately determine such areas; and

(B) identify for contaminants regulated under this title for which monitoring is required under this title (or any unregulated contaminants selected by the State, in its discretion, which the State, for the purposes of this subsection, has determined may present a threat to public

*Appendix B. EPA Administrator's Delegated  
Authority to DWIG-TSA Program*

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## **Appendix B**

### **EPA Administrator's Delegated Authority to DWIG-TSA Program**

#### **9-67. Drinking Water State Revolving Fund (DWSRF) Program**

1200 TN 499  
2/14/2000

1. **AUTHORITY.** Pursuant to Sections 1419, 1420, and 1452 of the Safe Drinking Water Act (SDWA), as amended, the authority to:
  - a. Allot funds among the States, Indian Tribes, Alaskan Native Villages, governments of the Virgin Islands, the Northern Mariana Islands, American Samoa and Guam, the Trust Territory of the Pacific Islands, and to the District of Columbia for drinking water infrastructure needs, as authorized by Section 1452.
  - b. Approve capitalization grant agreements to States and grants to Indian Tribes, Alaskan Native Villages, and the State of Alaska for the benefit of Native Villages, governments or public water systems of the Virgin Islands, the Northern Mariana Islands, American Samoa and Guam, the Trust Territory of the Pacific Islands, and to the District of Columbia for drinking water infrastructure needs, as authorized by Section 1452.
  - c. Make determinations annually on a fiscal year basis to withhold a certain percentage of each capitalization grant, in accordance with Sections 1420(a), 1420(c), and 1452(a)(1)(G)(i), made to a State if it has not:
    1. developed and is implementing a program to ensure demonstration of technical, managerial, and financial capacity by new community and nontransient, noncommunity water systems; and
    2. developed and is implementing a strategy to assist public water systems in acquiring and maintaining the technical, managerial, and financial capacity to comply with the Act.
  - d. Concur with determinations made under 1(c) and 1(e).
  - e. Make determinations to withhold 20% of a State's capitalization grant, in accordance with Section 1419(b) and Section 1452(a)(1)(G)(ii), made to a State if it has not adopted and is implementing a program for the certification of operators of community and nontransient, noncommunity public water systems that meets the requirements of guidelines published pursuant to section 1419(a) or meets the requirements of Section 1419(c).
  - f. Reallot unobligated and withheld funds in accordance with the requirements of Section 1452.
2. **TO WHOM DELEGATED.**
  - a. Authorities 1(a), 1(d), and 1(f) are delegated to the Assistant Administrator for Water (OW).
  - b. Authorities 1(b), 1(c), and 1(e) are delegated to Regional Administrators.
3. **LIMITATIONS.**
  - a. To achieve national consistency in withholding decisions under 1(c), each Regional Administrator is to make withholding decisions, in accordance with the guidance published under Sections 1420(d)(4) and 1452(g)(3) and must seek concurrence from the Assistant Administrator for OW on:
    1. the decision on the first State new systems program submitted under Section 1420(a) in each Region, and all decisions to withhold funds; and

2. the decision on the first capacity development strategy submitted under Section 1420(c) in each region, and all decisions to withhold funds.
- b. To achieve national consistency in withholding decisions under 1(e), each Regional Administrator is to make withholding decisions, in accordance with the guidance published under Sections 1419(a) and 1452(g)(3) and must seek concurrence from the Assistant Administrator for OW on:
  1. the decision on one State operator certification program submitted under Section 1419(b) in each Region, and all decisions to withhold funds;
  2. the decision on any State operator certification program submitted under Section 1419(c) (programs submitted as "equivalent") in each Region, and all decisions to withhold funds;
- c. Withholdings under 1(c) and 1(e) do not apply to Native American Tribes, the Virgin Islands, the Northern Mariana Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.
- d. For concurrences under 1(b), the Regional Administrator shall obtain the concurrence of the Director of the Office of Ground Water and Drinking Water for the following:
  1. in those cases where a state capitalization grant applicant requests an exception to cash draw procedures related to aggressive leveraging proposals or other cases which would involve the draw of cash at a more accelerated rate than specified in the DWSRF Guidelines or regulations;
  2. for approval of any capitalization grants where the DWSRF will be used to generate payments for state match bonds. However, this concurrence is not required if concurrence was given for such use on a previous capitalization grant and there are no changes to the structure of the program.

#### **4. REDELEGATION AUTHORITY.**

- a. The authorities delegated to the Assistant Administrator for OW under 1(a) and 1(f) may not be redelegated.
- b. The authority delegated to Regional Administrators to approve the initial grant agreement in each State, or the initial grant to the District of Columbia and the above listed territories under 1(b) may not be redelegated.
- c. The authority delegated to Regional Administrators to approve all grants to Native American Tribes and the State of Alaska for the benefit of Native Villages in 1(b) may be redelegated to the Regional Division Director level, or equivalent, and may not be redelegated further.
- d. The authority delegated to Regional Administrators to approve amendments to initial grant agreements and approve subsequent grant agreements to States, the District of Columbia, and above listed territories under 1(b) and 1(e) may be redelegated to the Regional Division Director level, or equivalent, and may not be redelegated further.
- e. Regional Administrators may redelegate the authority under 1(c) and 1(e) to the Water Division Directors, or equivalent, and this authority may not be redelegated further.
- f. The Assistant Administrator for OW may redelegate the authorities under 1(d) and 3(a) and 3(b) to the Office Director level or equivalent, and this authority may not be redelegated further.

#### **5. ADDITIONAL REFERENCES.**

- a. 40 CFR Parts 30, 31, 32, 141, and 142
- b. EPA Delegation 1-14, Assistance Agreements
- c. EPA Assistance Administration Manual
- d. EPA Guidance on Implementing the Capacity Development Provisions of the Safe Drinking Water Act Amendments of 1996

- e. EPA Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems
- f. EPA DWSRF Program Guidelines and additional regulations and guidance for the Program

*Appendix C. Grant Management and  
Oversight Requirements*

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## Appendix C

### Grant Management and Oversight Requirements

Grants through the DWIG-TSA program are subject to assistance agreement regulations, Office of Management and Budget (OMB) cost principles, the Cash Management Improvement Act, and Agency policies. Grants must be awarded and managed as any other assistance agreement. The Office of Grants and Debarment (OGD) has developed Orders, Grants Policy Issuances (GPIs) and directives to assist project officers and program offices in fulfilling and understanding their responsibilities (available at <http://intranet.epa.gov/ogd/policy/policy.htm>). Several grant requirements are discussed in further detail below.

Orders, Policies, and Directives	Overview
EPA Order 5700.7, <i>Environmental Results Under Assistance Agreements</i>	<p>The Order applies to funding packages to the Grants Management Office after January 1, 2005, and requires EPA Program Offices to:</p> <ol style="list-style-type: none"> <li>1) Link proposed assistance agreements to the Agency's Strategic Plan/Government Performance and Results Act (GPRA) architecture;</li> <li>2) Ensure that outputs and outcomes are appropriately addressed in assistance agreement work plans and funding recommendations; and</li> <li>3) Ensure that progress in achieving agreed-upon outputs and outcomes is adequately addressed in grantee progress reports and advanced monitoring activities.</li> </ol>
OGD policy memorandum GPI 00-02, <i>Pre-Award Costs</i> , and 2 CFR 225	<p>Applies to all grants awarded on or after April 1, 2000 and addresses EPA's revised interpretation of a provision in the general grant regulations at 40 CFR 31.23(a) concerning the approval of pre-award costs.</p> <p>Addresses EPA's interpretation of a provision in the general grant regulations at 40 CFR 31.23(a) allowing up to 90 days of preaward costs.</p> <ul style="list-style-type: none"> <li>• Recipients may incur pre-award costs [up to] 90 calendar days prior to the award date provided they include such costs in their application, the costs meet the definition of pre-award costs and are approved by the EPA Project Officer and EPA Award Official.</li> <li>• The award official can approve pre-award costs incurred more than 90 calendar days prior to the grant award date, in appropriate circumstances, if the pre-award costs are in conformance with the requirements set forth in 2 CFR 225 (supersedes OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments) and with applicable Agency regulations, policies and guidelines.</li> </ul> <p>If otherwise consistent with the coverage of 2 CFR 225, the following two situations may meet the requirements at Appendix B 31.</p> <p>Pre-award costs:</p> <ul style="list-style-type: none"> <li>• Any allowable costs incurred after the start of the fiscal year for which the funds were appropriated but before grant award (i.e. for a FY 2010 project, this date is October 1, 2009).</li> <li>• Allowable facilities planning and design costs associated with the construction portions of the project included in the grant that were incurred before the start of the fiscal year for which the funds were appropriated (i.e. for a FY 2010 project, this date is October 1, 2009).</li> </ul>

Orders, Policies, and Directives	Overview
OMB Circular A-16, which incorporates Executive Order 12906 and the One-Stop Geospatial E-gov Initiative	Project officer must indicate in the funding recommendations for a proposed assistance agreement that the grant involves or relates to the creation, collection, or analysis of geospatial information.
OGD Cost Review Guidance	GPI's 00-05 & 08-04 require EPA staff to review all elements of cost for all funding packages. Cost review checklists are available at <a href="http://intranet.epa.gov/ogd/cost_review/main/index.htm">http://intranet.epa.gov/ogd/cost_review/main/index.htm</a> .
EPA Order 5700.6A2, <i>Policy on Compliance, Review, and Monitoring</i>	Streamlines post-award management of assistance agreements and helps ensure effective oversight of recipient performance and management. Requires EPA project office to develop and carry out post-award monitoring plan, and conduct annual baseline monitoring or the equivalent for every award.
OGD directives to project officers	Grants will be managed according to the EPA Project Officer Manual ( <a href="http://intranet.epa.gov/OGD/project_officer_manual6/">http://intranet.epa.gov/OGD/project_officer_manual6/</a> ) and directives listed at <a href="http://intranet.epa.gov/OGD/policy/policy.htm">http://intranet.epa.gov/OGD/policy/policy.htm</a>
OGD policy memorandum GPI 08-05, <i>Guidance regarding Grants Management and the Management of Interagency Agreements under the Performance Appraisal and Recognition System (PARS)</i> Office of Human Resources (OHR) PARS policy documents	For consideration in assessing grants project officer and supervisor/manager compliance with key grants management policies under the PARS process, developing PARS performance agreements, and conducting mid-year and end-of-year performance reviews. <a href="http://intranet.epa.gov/policy/pars/index.htm">http://intranet.epa.gov/policy/pars/index.htm</a>
"Place of performance" requirement	For most projects, the geographic information needed includes the NPDES or SDWIS number(s). For those without these identification numbers, the latitude and longitude of the project should be provided.

*Appendix D. Interagency Agreement (IA)  
Standard Terms and Conditions*

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**Interagency Agreement between the  
U.S. Environmental Protection Agency and the Indian Health Service  
for [Tribal Drinking Water Facilities] Construction**

**I. ADMINISTRATIVE TERMS AND CONDITIONS**

This Interagency Agreement (IA) provides for the coordination between the Environmental Protection Agency (EPA) Region [\_\_\_\_] Drinking Water Infrastructure Grants – Tribal Set Aside (DWIG-TSA) Program and the Indian Health Service (IHS) Sanitation Facilities Construction Program. This IA applies to funds appropriated to the EPA under section 1452(i) of the Safe Drinking Water Act, which the EPA intends to transfer to the IHS under this IA.

If the actual cost of providing the facilities is less than the amount in the Project Documents, the IHS Area Office and the EPA Region, in consultation with the Tribe, will coordinate the disposition of the remaining funds. The parties may decide to increase the scope or identify another project for funding, or the IHS may return the unused funds to the EPA. Any project changes agreed to by the parties must be reflected in the IA through an amendment prior to expiration of the IA and before allocating funds to a new project, unless the IHS decides to return the funds to the EPA. If the parties cannot come to agreement, the IHS will return the funds to the EPA.

Funds transferred by EPA to the IHS under this IA may only be used in agreements authorized by Indian Sanitation Facilities Act, 42 U.S.C. 2004a.

The IHS is approved to purchase equipment in accordance with its equipment management policies. The IHS will determine that the equipment is in the best interest of the government and is necessary for the performance of the projects under this IA. Disposition of the equipment will be subject to IHS equipment management policies or as specified in the Project Documents with no further accountability to EPA.

**A. Resolution of Disagreements**

Should disagreements arise on the interpretation of the provisions of this agreement or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement or interpretation is not reached within 30 days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

If a dispute related to funding remains unresolved for more than 30 calendar days after the parties have engaged in an escalation of the dispute, disputes will be resolved in accordance with instructions provided in the Treasury Financial Manual (TFM) Volume I, Part 2, Chapter 4700, Appendix 10, available at <http://www.fms.treas.gov/tfm/index.html>.

**B. Duration of Agreement and Termination Procedures**

This agreement shall continue in effect until IHS or EPA provides written notice of termination, or when a project (or projects) funded under this agreement are completed or are no longer needed for the purpose identified in the Project Documents. Any funds that are obligated up to and on the date of

termination will remain obligated to the project(s) identified in this agreement. Notice shall be given to the other party at least 60 days in advance of a termination date.

As per section 4.3.2 of EPA's "Interagency Agreement Policies, Procedures, and Guidance Manual 2008" the total duration of the project period for an IA may not exceed 7 years unless (1) there is statutory or regulatory authorization for a longer period, (2) a signed waiver from an EPA Director, Office of Grants & Debarment (OGD), or designee, granting an exception is obtained, or (3) in the case of an allocation (appropriation) transfer, a shorter period is mandated, i.e., 5 years. This durational limitation includes both the original period of performance and any extensions. The initial determination of the appropriate length of the project period should take this limitation into account. (For example, an IA between IHS and EPA normally has a 5-year term. The IA can be extended upon approval of the parties for up to two more years for a total IA term of 7-years. An IA cannot be extended beyond the 7-year limit unless a waiver is granted by the EPA Director, Office of Grants & Debarment.) To exceed the 7-year policy limitation, a waiver request must be submitted in writing by the appropriate EPA Senior Resource Official to OGD. The OGD Director, or designee, may approve waivers on a class or individual basis because of national security concerns, circumstances of unusual or compelling urgency, unique programmatic considerations, or because the waiver would be in the public interest.

#### **C. Sufficient Progress**

EPA expressly reserves the right to terminate the IA for failure to make sufficient progress so as to reasonably ensure completion of the project within the project period (as defined in Section I.B.), including any extensions. EPA will measure sufficient progress by examining the performance required under the Statement of Work, the time remaining for performance, and/or the availability of funds necessary to complete performance. Prior to exercising this right to terminate, EPA will follow the resolution procedures cited Section I.A.

#### **D. Cost Collection upon Cancellation**

If the EPA cancels the order, the IHS is authorized to collect costs incurred prior to cancellation of the order plus termination costs, up to the total payment amount provided for under the agreement.

#### **E. IAs with Contracts or Procurement**

The IHS will use its administrative policies and procedures including those under the Buy Indian Act provisions for direct federal acquisition, to implement and execute projects funded under this IA.

#### **F. Fiscal and Project Reporting Requirements**

The IHS will update its Sanitation Tracking and Reporting System (STARS) quarterly and provide a report in STARS that may be accessed by the EPA. The report will include at minimum, project-specific estimated expenditures and actual milestones achieved to date and will be available to the respective EPA Regional DWIG Program Coordinator and to the EPA Financial Management Center. The STARS will be updated by the 30th day following the end of a quarter, beginning with the first full reporting period after funds are received by the IHS.

## **G. Audit Findings**

If an audit determines that any direct or indirect costs in a project funded under this IA are unallowable, the parties to this IA will be notified immediately following resolution of the audit and the IHS project account will be credited for ineligible costs.

## **II. PROGRAMMATIC TERMS AND CONDITIONS**

### **A. Authority and Purpose**

The activities under this IA are being executed by the EPA pursuant to the Safe Drinking Water Act section 1450 (b), 42 USC 300j-9(b) and 1452(i), 42 USC 300j-12(i). The services and facilities will be provided to the Tribe by the IHS under the Transfer Act, 42 U.S.C. 2001; Indian Sanitation Facilities Act, 42 U.S.C. 2004a; and Title III of Indian Health Care Improvement Act, as amended, 25 U.S.C. 1632.

### **B. EPA Responsibilities**

1. The EPA Regional Office shall designate a representative to coordinate its participation in projects (Regional Program Coordinator). This representative shall formally advise the respective IHS Area Office of this designation.
2. As resources permit the EPA shall provide to the IHS and Tribes technical assistance as needed to successfully meet applicable program requirements.
3. The EPA Regional Office will ensure that the proposed projects are in accordance with the Safe Drinking Water Act, annual national guidance and the Drinking Water Infrastructure Grants Tribal Set-Aside Program Final Guidelines October 1998 and the Addendums.
4. EPA Regional Office will ensure that water collection and analysis methodologies (as applicable) are in accordance with the IHS/EPA jointly developed Quality Assurance Project Plan (QAPP).
5. EPA is responsible for any distribution within the EPA of the final technical and financial report provided to the respective EPA Regional Program Coordinator after the construction phase completion.
6. The EPA will not be a signatory on any Project Summaries or Memorandums of Agreement.
7. Where appropriate, EPA Regions shall provide comments to IHS Area Offices on the design and planning documents associated with projects funded by the IA within 30 days of receiving said documents.
8. EPA Regions shall monitor construction progress with: data from the IHS database, discussions with the IHS Area Offices and field site visits as necessary to ensure the level of expended funds is reasonable given the reported milestone dates. The EPA will consult with the IHS Area Office quarterly to discuss project status.
9. The EPA Regions will participate in the final project inspection, as deemed necessary and resources permitting. At project completion, the EPA Region will review the final technical and financial reports provided by the IHS Area Office and will initiate the necessary EPA close-out process.

10. The EPA Regions will acknowledge and respond to IHS Area invitations to participate in project activities within 10 days of receipt.

### **C. IHS Responsibilities**

1. The IHS shall implement and execute projects funded under this IA using its administrative policies and procedures as described in the Indian Health Manual, Part 5, Chapter 2, Memorandum of Agreement.

2. Project Documents (Project Summary/ Memorandum of Agreement or Arrangements as described in 42 U.S.C. 2004a) will be developed by the IHS Area Office, in consultation with the respective Tribes and respective EPA Regional Office.

3. Unless otherwise stipulated in the project documents, the IHS shall be the lead agency in assuring compliance with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and other applicable Federal requirements only if the EPA funds are deposited in the IHS financial system (UFMS).

4. Quarterly progress reports will be available to EPA through the IHS STARS system as stated in I.F., Fiscal and Project Reporting Requirements. Should the need arise and if the agencies mutually agree, the report may be supplemented.

5. The EPA Regional Office shall be formally notified of and invited to participate in the conceptual design meeting, the final plans and specification review, and the final inspections for projects in which EPA funds are utilized. IHS shall notify the EPA at least 30 business days prior to these events to allow optimal participation. Notification will be by e-mail.

6. As applicable, upon completion of each project under this IA, all rights title and interest to the provided sanitation facilities shall be transferred to the Tribe or to a responsible entity identified by the Tribe in accordance with the Project Documents. Each respective IHS Area Office shall make such arrangements as they determine necessary for the ownership and operation and maintenance of the completed facilities.

7. For each project funded under this IA, a final technical and financial report shall be provided no later than 365 days after construction phase completion to the respective EPA Regional Program Coordinator. Electronic copies of the report shall be provided to the EPA representatives identified above in Fiscal Reporting Requirements.

8. The water sampling umbrella Water Sample Collection and Analysis Quality Assurance Project Plan (QAPP) for Tribal Drinking Water and Wastewater Infrastructure Projects, developed jointly between EPA and IHS, will be implemented by IHS as applicable.

9. For an EPA funded project for a pilot water treatment study or for a specific hydraulic network model calibration, the IHS will prepare an individual project specific Quality Assurance Project Plan (QAPP) in accordance with EPA Guidance for Quality Assurance Project Plans (QA/G-5) (EPA 2001) which can be found at <http://www.epa.gov/QUALITY/qs-docs/r5-final.pdf>. The QAPP must be submitted for review and approval by the EPA OW QA Officer through the EPA IA Project Officer, who must approve

the Quality Assurance procedures or standards in writing. EPA will have 60 calendar days to approve the QAPP submitted by IHS, after that time the QAPP will be considered final.

#### **10. Restrictions on FY13 Funding for Corporations with Unpaid Federal Tax Liabilities and Felony Convictions**

This interagency agreement (IA) obligates and transfers or advances EPA funds appropriated under Public Law 113-6 (Department of Defense, Military Construction and Veterans Affairs, and Full-Year Continuing Appropriations Act, 2013) and Public Law 112-175 (Continuing Appropriations Resolution, 2013). As a result, this IA is subject to the provisions contained in the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2012, Public Law 112-74, Division E, Title IV, Sections 433 and 434, regarding unpaid federal tax liabilities and federal felony convictions.

The IHS is also subject to the provisions of Division E, Sections 433 and 434 of the FY12 Appropriations Act, regarding federal felony convictions and unpaid federal tax liabilities, in accordance with Department of Health & Human Services Acquisition Policy Number 2012-03. IHS will forward to the EPA Award Official, within 45 days, any documentation supporting an award where a written determination was made by the agency debarring and suspending official that suspension or debarment was considered but is not necessary to protect the interests of the Government.



*Appendix E. Federal Cross-Cutting  
Authorities*

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## **Appendix E**

### **Federal Cross-Cutting Authorities**

A number of federal laws and Executive Orders apply in Federal financial assistance programs - including projects and activities funded through the DWIG-TSA Program. Below is a list of statutes, regulations, and other information that may be helpful in complying with the requirements of other federal authorities.

#### **Environmental Authorities**

- Archeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended
- Clean Air Act, Pub. L. 84-159, as amended
- Coastal Barrier Resources Act, Pub. L. 97-348
- Coastal Zone Management Act, Pub. L. 92-583, as amended
- Endangered Species Act, Pub. L. 93-205, as amended
- Environmental Justice, Executive Order 12898
- Floodplain Management, Executive Order 11988 as amended by Executive Order 12148
- Protection of Wetlands, Executive Order 11990
- Farmland Protection Policy Act, Pub. L. 97-98
- Fish and Wildlife Coordination Act, Pub. L. 85-624, as amended
- National Environmental Policy Act, Pub. L. 91-190, as amended
- National Historic Preservation Act of 1966, PL 89-665, as amended
- Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

#### **Economic and Miscellaneous Authorities**

- Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended
- Executive Order 12372, Intergovernmental Review of Federal Programs
- Procurement Prohibitions under Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal
- Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans
- Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended
- Debarment and Suspension, Executive Order 12549
- Davis-Bacon Act, Pub. L. 107-217, as amended

#### **Social Policy Authorities**

- Age Discrimination Act of 1975, Pub. L. 94-135
- Title VI of the Civil Rights Act of 1964, Pub. L. 88-3524
- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)
- Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)
- The Drug-Free Workplace Act of 1988, Pub. L. 100-690 (applies only to the capitalization grant recipient)
- Equal Employment Opportunity, Executive Order 11246
- Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432
- Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590
- Anti-Lobbying Provisions (40 CFR part 30) [applies only to capitalization grant recipients].

*Appendix F. Example Regional Funding  
Allocation*

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**APPENDIX F**  
**Example Regional Funding Allocation**

<b>Example Regional Allocation of DWIG-TSA Funding (Assumed \$18,000,000 DWIG-TSA Funding Level<sup>1</sup>)</b>		
<b>Region</b>	<b>Funding Amount<sup>2</sup></b>	<b>% of Total DWIG-TSA Funds</b>
1	\$ 397,000	2.2%
2	\$ 475,000	2.6%
4	\$ 767,000	4.3%
5	\$ 924,000	5.1%
6	\$ 3,126,000	17.4%
7	\$ 548,000	3.0%
8	\$ 2,488,000	13.8%
9	\$ 5,863,000	32.6%
10	\$ 3,412,000	19.0%
<b>Totals</b>	<b>\$ 18,000,000</b>	

Note:

- <sup>1</sup> The funding level used in this example is not based on actual Drinking Water State Revolving Fund appropriation amount.
- <sup>2</sup> Allocation distribution based on the 2011 EPA Drinking Water Infrastructure Needs Survey and the November 2012 IHS home counts using the formula described in Section III B of the guidelines.

*Appendix G. EPA Tribal Drinking Water  
Program Direct Implementation Nexus  
(TDI Nex) Data Entry Guidelines*

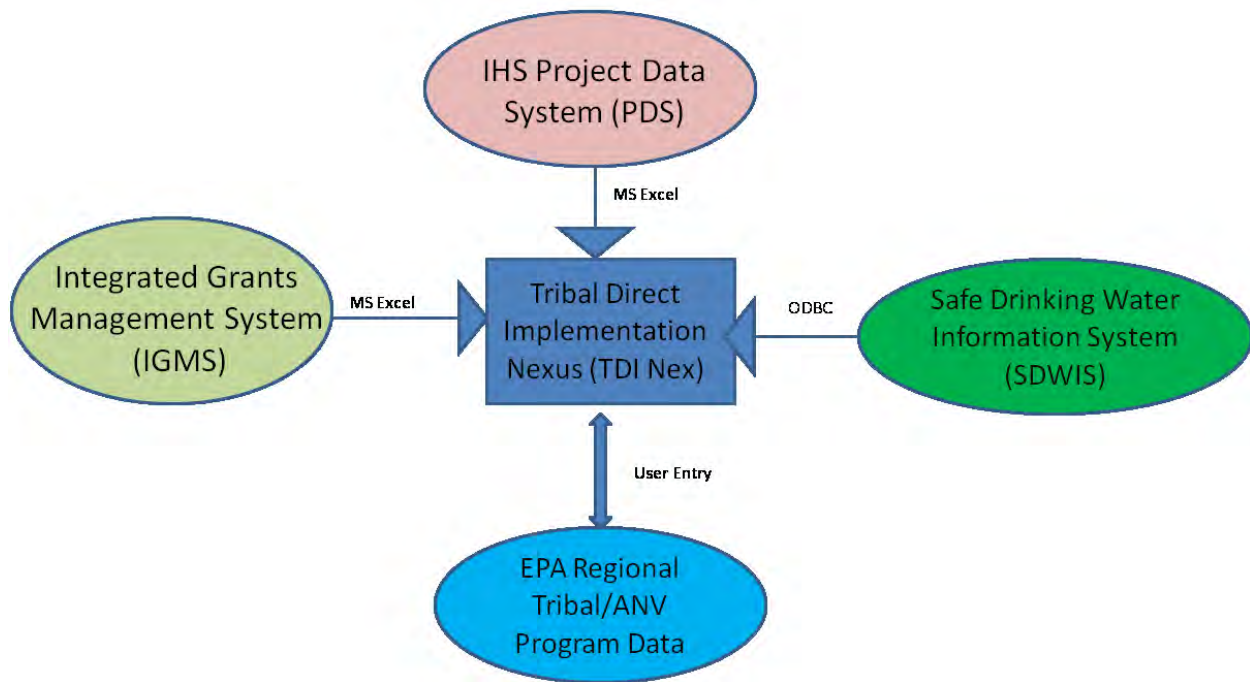
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**EPA Tribal Drinking Water Program  
Tribal Direct Implementation Nexus (TDI Nex)  
Data Guidelines  
March 2012**

**I. Introduction**

The Tribal Direct Implementation Nexus (TDI Nex) unites existing data systems from the Environmental Protection Agency (EPA) and Indian Health Service (IHS) with EPA Regional Tribal and Alaska Native Village (ANV) program data to assist in the oversight of the Drinking Water Infrastructure Grants Tribal Set-Aside (DWIG-TSA) Program. Information from existing agency wide data systems: the IHS Project Data System (PDS), the EPA Integrated Grants Management System (IGMS), and the EPA Safe Drinking Water Information System (SDWIS) form the backbone of the TDI Nex. The EPA Regional Tribal/ANV data supplements the existing data sources to improve EPA’s ability to describe the success of the DWIG-TSA program.

This document summarizes data fields available through the TDI Nex Tool and the responsibility and frequency of data updates. The use of this tool will start with the FY 2012 funding year and will continue for future funding cycles or until future notice.



**Figure 1: Data Sources Integrated via the TDI Nex**

## II. Purpose of Data Integration

The data integration effort is part of an overall strategy by EPA to better establish the specific public health benefits realized in both State and tribal communities by the State Revolving Fund and DWIG-TSA programs. Data Integration will also improve EPA’s ability to demonstrate the use of DWIG-TSA funds and identify aspects of DWIG-TSA program implementation that lead to lasting success in Indian country. The TDI Nex tool will be used to improve accountability of the DWIG-TSA program by; helping track and summarize the annual fund usage over time. The outputs of the tool will be used to help the DWIG-TSA program demonstrate successful implementation over time including: compliance with the National Primary Drinking Water Regulations and a summary of EPA infrastructure investments. The specific Region entered data fields are intended to support EPA’s goal of improved program accountability.

## III. Summary of Data Responsibility

Table 1 summarizes the minimum update frequency and responsible entity associated with the four data sources integrated by the TDI Nex. EPA Headquarters will be responsible for updating the IGMS, IHS PDS and SDWIS data sources quarterly. The Regional Tribal and ANV Program Data shall be updated by the EPA Regions at a minimum prior to each of the bi-annual Regional—Headquarters check in discussions. Additionally, any project changes that impact the required regional data fields (see Table 3 below) and occur outside of scheduled meetings should be updated within 30 calendar days of the change.

**Table 1: Data Source Minimum Update Frequency and Responsibility**

<b>Data Source</b>	<b>Minimum Update Frequency</b>	<b>Responsibility Entity</b>
Integrated Grants Management System (IGMS)	Quarterly	EPA HQ
Safe Drinking Water Information System (SDWIS)	Quarterly	EPA HQ
IHS Project Data System (PDS)	Quarterly	EPA HQ
Regional Tribal and ANV Program Data	Bi-Annually prior to check-in meetings	EPA Regions

## IV. Description of Data Sources

The following section describes the data fields associated with each database included in the TDI Nex tool.

### A. Integrated Grants Management System (IGMS) Data

The IGMS is a database used by EPA to manage grant and interagency agreement funding agency wide. Twenty – three IGMS data fields that are of importance to EPA’s tribal drinking water program have been incorporated into the TDI Nex via a data pull from IGMS that will be

completed quarterly by EPA Headquarters and uploaded to the TDI Nex tool via an excel spreadsheet. The IGMS data will include the follow fields:

**Table 2: Integrated Grants Management System Data Fields Included in the TDI Nex**

Awarding Region Code	Project Start Date
Applicant Type	Project End Date
Project Officer	Applicant Name
Award Date	EPA Amount This Action
Award Fiscal Year	Total EPA Amount Awarded to Date
Grant No	Recipient Contribution: Amended Total
Grant Family	Other Federal Funds: Amended Total
Grant Status	EPA Amount : Amended Total
Program Code	Expenditure Amount
Project Description	Unliquidated Obligation Amt
Project Title	Final Report
	Final Report Date

Detailed description of the data fields in IGMS can be found at this web link:

<http://www.epa.gov/enviro/facts/igms/userguide.html>

### **B. Indian Health Service Project Data System (PDS) Data**

The IHS maintains six data systems within the Sanitation Tracking and Reporting System (STARS) the data system that is of most importance to the fiduciary responsibilities of the EPA’s tribal drinking water set aside program is the PDS. PDS data is used by IHS to track construction project progress. Forty-one PDS data fields of importance to EPA’s tribal drinking set aside water program will be incorporated in the TDI Nex via a quarterly data pull to be coordinated between EPA and IHS Headquarters. EPA Headquarters will upload the data to the TDI Nex tool quarterly. The data from PDS will be arranged in six tabs (Project Details, Project Milestones, Homes, Project Costs, Project Funding and IA Project identification number) and will include the following fields:

**Table 3: IHS Project Data System Data Fields Included in the TDI Nex**

IHS Area	Housing Group
PDS Project Number	Home Type
EPA Region	Number Homes
Project Name	Homes Served
Tribe	Initial Deficiency Level (IDL)
Community State Code	Final Deficiency Level (FDL)
Community Name	First Service Homes
Project Homes	Funding Source Code
Total Cost	Funding Source Name
Total Funding	Fiscal Year
Percent Construction Complete	Funding Year



Percent Project Complete	Estimated Cost
Percent Funds Expended	Actual Cost
MOA Signed Date	Document Num. (IA)
Construction Start Date	Estimated Amount
Construction Complete Date	Estimated Expenditure
Final Report Date	Document (IA) Signed Date
Last Update	Start Date
Scope	End Date
Percent Construction Complete*	Document (IA) Amount
Construction Document Start Date*	
Construction Document Complete Date*	
Construction Phase Start Date*	
Construction Phase End Date*	
*Includes: Proposed, Estimated and Actual Dates.	

Additional information regarding these data fields can be found in the *Sanitation Tracking and Reporting System User Manual (September 2008)*.

### C. Safe Drinking Water Information System (SDWIS) Data

The SDWIS contains information about public water systems and their violation of EPA’s drinking water regulations, as reported by the EPA Regional Direct Implementation Program and the States. All the publically available in SDWIS available through the EPA Data Warehouse associated with public water systems serving tribes and ANVs will be imported into the tool via an Open Database Connectivity (ODBC) by EPA Headquarters on a quarterly basis.

Projects will be associated to one or more public water systems by the Regions through direct data input. This will link the project to the public water system and their violations, Enforcement Tracking Tool scores and inventory.

### D. EPA Regional/ANV Tribal Program Data

Table 4 contains four key numeric data fields Regions need to fill in order to reference data tables within the tool.

**Table 4: Region Entered Project Identifiers**

<b>Data Field</b>	<b>Description</b>	<b>Source</b>	<b>Location in TDI Nex</b>
Funding Source	Identifies where the program funds will be taken from	EPA Region	Drinking Water Project Detail
Region Project ID#	Number which will identify projects before there are IGMS or PDS numbers available	EPA Region	Drinking Water Project Detail
PDS Number	IHS PDS number associated with the funded project	IHS (Must be entered by EPA Region)	Drinking Water Project Detail
IA Number	Number which identifies the IA under which the project is funded.	EPA Region	Drinking Water Project Detail
EPA Grant Number	Number associated with direct grant project	EPA Region	Drinking Water Project Detail
Public Water System Identification Number (PWS#)	Number associated with the system(s) receiving DWIG-TSA funds	EPA Region	PWS Details

The fields described in Table 5 represent data that is currently not tracked by any of the aforementioned existing databases, but are required under the 1998 DWIG-TSA Program Guidelines, as a condition of the EPA National Tribal Drinking Water Operator Certification program and as part of an overall effort by EPA to better establish the specific public health benefits realized in both State and tribal communities by the State Revolving Fund and DWIG-TSA programs. Regional project managers will be responsible for data entry for the fields listed in Table 5.

**Table 5: Region Entered Data Fields (required)**

<b>Reference Number</b>	<b>Region Entered Data Field</b>	<b>Description</b>	<b>Notes</b>	<b>Location in TDI Nex</b>
a	Certified Operator(s) appropriate to operate/maintain current infrastructure	Y/N	At the time of project application	Drinking Water Project Detail
b	Certified Operator(s) appropriate to operate/maintain future infrastructure	Y/N/Agrees to Obtain	At the time of project application	Drinking Water Project Detail
c	Project Purpose	Narrative of the specific public health benefit (s) achieved by this project	See Section IV-D-2 for additional	Drinking Water Project Detail

			guidance.	
d	Primary Project Purpose	Pick List menu of purpose categories to provide sortable data	See Section IV-D-3 for additional guidance.	Drinking Water Project Detail
e	Primary Infrastructure category	Enable project to be categorized by infrastructure type(s) (attached)	See Section IV-D-4 for additional guidance.	Drinking Water Project Detail
f	Rule violation (s) Addressed/Prevented	The specific rule violation that is being addressed or prevented by this infrastructure (conditional). One record for each rule type. Multiple records for violation type (e.g. MCL violations will require one record for each contaminant exceeding the MCL.)	Conditional	Drinking Water Project Detail
g	Technical Assistance (TA) Provided	Drop down EPA Funded TA, Other Funded TA, EPA and Other Funded TA or None.	Currently or in the last 12 months prior to project application.	PWS Details
h	Technical Managerial and Financial (TMF) Capacity	Y/N Water system has the technical, managerial, and financial capacity to operate the planned infrastructure	At the time of project application	PWS Details
i	Capacity Agreement	Y/N tribal entity responsible for funding water system operations has entered into an agreement to develop the capacity to operate the planned infrastructure)	Conditional	PWS Details
j	Fiscal Year Funding Tag	Identifies the fiscal year of the funds used for the project		Drinking Water Project Details
k	Project Phased	Yes/No		Drinking Water Project Details

Table 6 lists optional data fields that can be used as needed by Regions to assist in their program management.

**Table 6: Region Entered Data Fields (optional)**

<b>Reference Number</b>	<b>Region Entered Data Field</b>	<b>Description</b>	<b>Notes</b>	<b>Location in TDI Nex</b>
l	Secondary Project Purpose	Allows categorization of an additional project purpose.	Pick List	Drinking Water Project Detail
m	Secondary Infrastructure Category	Allows categorization of an additional infrastructure category	Pick List	Drinking Water Project Detail
n	Responsible Entity	Responsible entity for oversight of the water system pick list tribal utility board, tribal council, federal government, local (non-tribal) government or none	Pick list	PWS Details
o	Public Water System O&M Funding Sources	Identifies the funding sources and percent that each attribute to each of the operation and maintenance of the water system. List all sources of funds (user fees, tribal enterprise, tribal general funds, federal government or other.)	See Section IV-D-4 for additional guidance.	PWS Details
p	System Receiving Infrastructure has Asset Management Program	Y/N/Will receive tool as part of project		PWS Details
q	Project Prioritization Score	Ranking scheme based on Regional solicitation and prioritization process		Drinking Water Project Detail
r	Regional Funding Tracking	Field used to track returned and de-obligated project funds to ensure full project accounting.		Still in Progress

## 1. Region Entered Data Field Descriptions

- a. **Certified Drinking Water Operator(s) appropriate to operate/maintain current infrastructure (required):** The intent of this field (Yes/No) is to establish if the system receiving project funds has met the grant condition of being operated by an adequately trained and certified operator (DWIG-TSA Guidelines, 17) appropriate for the current system at the time of application for funding. This condition helps ensure the system has adequate technical, managerial and financial capacity as required by SDWA 1452(a)(3)(A) and The DWIG-TSA Final Guidelines (16).
- b. **Certified Drinking Water Operator(s) appropriate to operate/maintain future infrastructure or agreement to obtain (required):** The intent of this field (Yes/No/Agrees to Obtain) is to indicate if the system receiving funds will be operated by an adequately trained and certified operator following project completion. An appropriately certified operator helps ensure the system has adequate technical, managerial, and financial capacity as required by SDWA 1452(a)(3)(A) and The DWIG-TSA Final Guidelines (16).
- c. **Project Purpose Narrative (required):** the intent of this narrative field is to specifically establish how the infrastructure funded by the DWIG-TSA will improve public health in Indian country by; a.) facilitating compliance with the National Primary Drinking Water Regulations and/or b.) significantly furthering the health objectives of the SDWA (SDWA 1452 (a)(2), DWIG-TSA Guidelines, 13). The population of this field explains the contribution a project has to public health protection as indicated by the traditional program measures of GPRA compliance (SP-3) and the provision of access to safe drinking water (SDW-18) and/or other public health impacts. Additional details provided in Section IV-D-2 below.
- d. **Primary Project Purpose Category (required):** the intent of this data pick list field is to provide easy sorting of projects for data summary and analysis purposes according to categories of public health purpose. Additional details provided in Section IV-D-3
- e. **Primary Infrastructure category (required):** The intent of this pick list field is to systematically categorize the infrastructure funded by the DWIG-TSA program. Data in this field will allow for a more complete summarization and analysis of the infrastructure built by EPA in Indian country (e.g. infrastructure category most frequently associated with projects to facilitate compliance with the Arsenic Rule). Data in this field will promote the adoption of best practices and allow EPA to quickly identify the general use of funds for a particular system or tribe. Additional detail on this field is provided in Section IV-D-4.
- f. **Rule Violations Addressed/Prevented (conditional required):** The intent of this field is to establish which drinking water rule violation(s) will be addressed and/or prevented by infrastructure to facilitate compliance with NPDWRs. This field will enable EPA to

establish the actual and preventative contributions of the DWIG-TSA program to rule compliance with SDWA in Indian country. This information will be used with the above field for purposes calculating the DWIG-TSA program's annual impact on non-compliance.

- g. **Technical Assistance Provided (required):** The intent of this field pick list (PWSS Funded TA, Other Funded TA, Both or None) is to establish if a system receiving DWIG-TSA funded project is receiving or has received support from services funded by EPA's Tribal Public Water System Supervision (PWSS) program, other technical assistance support, or none in the last 12 months prior to funding application. Information in this field will enable EPA to better understand the capacity support provided for each project and promote comparative analysis of post project outcomes.
- h. **Technical, managerial and financial (TMF) capacity (required):** The intent of this field (Yes/No ) is to establish that the system receiving DWIG-TSA funds currently has adequate technical, managerial, and financial capacity as required by SDWA 1452(a)(3)(A) and The DWIG-TSA Final Guidelines (16).
- i. **Capacity Agreement (conditional required):** The intent of this field (Yes/No) is to establish that a system receiving DWIG-TSA funds that does not possess adequate technical, managerial and financial capacity has entered into an agreement to undertake feasible changes in operations necessary to ensure that the system has the technical, managerial and financial capability to comply with the requirements of SDWA over the long term (SDWA 1452 a(3)(b)).
- j. **Fiscal Year Funding Tag (required):** The intent of this field is to establish the primary fiscal year of the funds awarded to an infrastructure project. If a project utilizes multiple funding years, the EPA Region should select the fiscal year from which the majority of the project funds originated.
- k. **Project Phased (required):** The intent of this Y/N field is to determine if additional project phases must be completed before the project purpose is fulfilled. If in order to fulfill the project purpose an additional project(s) must be complete then the project is phased (Yes). If when completed this project will meet the project purpose without a need for additional funding then the project is not phased (No).
- l. **Secondary Project Purpose (not required):** The intent of this field is to allow regions to categorize a secondary project purpose.
- m. **Secondary Infrastructure Category (not required):** The intent of this field is to allow regions to categorize additional infrastructure categories as applicable.
- n. **Responsible Entity (not required):** The intent of this pick list field is to establish how operation of the public water system receiving DWIG-TSA funding is overseen (e.g. a

utility board, tribal council, local non-tribal government, federal government or none). Information in this field will provide insight on the organizational set-up of public water systems receiving EPA funds.

- o. **Public Water System Operation and Maintenance Funding Source (not required):** The intent of this field is to determine the source(s) of funds utilized by the system to regularly maintain and operate its facilities. Information in this field will provide insight on the organizational set-up of public water systems receiving EPA funds and help identify systems/projects that may benefit from managerial and financial capacity training to help ensure optimal operation of infrastructure over its lifetime. Additional detail on this field is provided in Section IV-D-5.
- p. **System Receiving Infrastructure has Asset Management Program (not required):** The intent of this field is to establish if the system receiving DWIG-TSA funded infrastructure has or will have by project completion, a program to effectively manage their existing and future assets. EPA has an interest in providing asset management tools for systems in Indian country to help ensure proper operation of water infrastructure to achieve continual compliance with the SDWA and to avoid unnecessary use of program funds.
- q. **Project Prioritization Score (not required):** This intent of this field is for use by EPA Regions, to indicate the regional ranking associated with a project.
- r. **Regional Fund Tracking (not required):** The intent of this field is to track funding of projects that utilize funds from multiple fiscal years. As of the date of this guidance this field is still being developed.

## 2. Project Purpose Narrative Data Field Entry Requirements

The below guidelines establish the minimal reporting requirements for data entry in the Project Purpose field by EPA Regional staff. The requirements of this field may be fulfilled through entry into either:

- i. The “Project Description” data field in IGMS data system for direct grant and IA funded projects
- ii. The “Project Description: data in IHS PDS data system for IA funded projects
- iii. The “Project Purpose Narrative” data field in the TDI Nex for direct grant and IA funded projects

If possible, it is recommended that EPA Regional staff utilize option (i) to ensure the quality of the data contained within the “Project Description” field in IGMS is consistent across EPA data systems and to reduce duplicative data entry requirements.

Option ii could be used for DWIG-TSA projects funded through IAs with IHS. Under this option the EPA Regions could request the IHS Area to input the level of detail required by EPA

into the PDS data system. However, reliance on IHS data does not relieve the EPA Region the burden of following the requirements of the guidelines included in this document.

Option iii relies upon duplicative direct data entry into the TDI Nex. Data entered into the Project Purpose.

Project purpose narrative field data that meets the requirements of these guidelines will only need to be re-visited by the EPA Region if changes in scope occur that alter a project's purpose.

- a. **Background:** The intent of this field is to establish how the infrastructure funded by the DWIG-TSA will improve public health in Indian country by; a.) facilitating compliance with the National Primary Drinking Water Regulations and/or b.) significantly furthering the health objectives of the SDWA (SDWA 1452 (a)(2), DWIG-TSA Guidelines, 13). Data entered into this field must explain the contribution an awarded project will make to the protection of public health as demonstrated by the EPA Tribal Drinking Water program measures SDW-SP3.N11 and SDW-18.N11 and/or other health indicators.
  - SDW-SP3.N11: Percent of the population in Indian country served by community water systems that receive drinking water that meets all applicable health-based drinking water standards.
  - SDW-18.N11: Number of American Indian and Alaska Native homes provided access to safe drinking water in coordination with other federal agencies.
  
- b. **Field Requirements:** This field is to be populated by 1 or more sentences that include the following:
  - Identification of the specific system infrastructure deficiencies addressed by the awarded project
    - Identification of the total system infrastructure deficiencies (for phased and shared cost projects)
  - Description of the negative public health effects and/or threats caused by the identified system infrastructure deficiencies (include an estimate of population affected for phased, first service, new public water system, shared cost and feasibility study projects)
    - Public health effect: a demonstrated and documented health impact on the service population or the environment (e.g. health-based violations, boil water notices, source water quality monitoring data, etc.)
    - Public health threat: an identified situation that may lead to a public health effect based upon existing water system deficiencies (e.g. low distribution system pressure, point source pollution, new treatment requirements, etc.)
  - Description of what infrastructure will be built and how that infrastructure will address the identified deficiencies



- Identification of the specific public health benefit(s) gained or negative public health impact(s) avoided by addressing infrastructure deficiencies. The TDI Nex includes the National Primary Drinking Water Standard health effects language for all regulated drinking water contaminants to assist EPA Regions in fulfilling this requirement.

**c. Data Entry Examples:**

i. *Existing System Upgrade*

This project will prevent TCR violations as well as address DBPR MCL exceedences for TTHMs caused by bacteriological growth and low pressure due to undersized pipe, and dead-ends by replacing existing mains with 5000' of 10 inch pipe to loop the system which will improve the hydraulics, prevent growth and support compliant chlorine residuals.

ii. *First Service Extension*

The project directly addresses an ongoing Radionuclides Rule MCL violation at the current system (PWS ID 090400267) by taking the current system offline and extending the neighboring, NPDWR compliant Bald Hill water system to serve the 30 residents of Bald Hill on Hoopa Valley Tribal Lands. This grant will provide funds for the construction of 2 drinking water tanks, 2 pump stations and 10,000 ft of 6" PVC pipeline. Pre-award costs have been approved back to August 1, 2004.

iii. *New System*

This project will address a significant risk to public health from bacteriological contamination and disruptions in service due to treatment malfunction and water main breaks. One main break resulted in a loss of pressure and required the issuance of a boil water notice. This grant will provide funds for the construction of a new community water system to serve the 60 residents of the Kwigillingok Village in Alaska. The system is scheduled to reach the end of its design life by 2014. The new system will include; a new treatment building and equipment, 1 new tank, and a new water main and distribution system. The new system will rely on a geothermal power plant installed by the Department of Energy to reduce operating costs and provide circulated heat to prevent pipe breaks.

iv. *Phased Project*

This project is Phase I of IV of an overall plan to construct a 50 mile transmission line and regional water system between Shiprock, NM and Sweetwater, AZ. The fully completed project will address Arsenic MCL violations at 5 water systems (NN0400571, NN0400572, NN0400574, NN0400575, and NN0400578) that serve 7832 residents/1958 homes in 7 communities with a current deficiency of 4. In addition, this project will increase revenues by expanding the rate payer base and provide operational efficiencies to help address TCR MR repeat major violations at NN0400572 and NN040574.

Phase I will address the Arsenic MCL violation for 600 homes (1200 residents) in the Sweetwater System (NN0400571). Construction will include; two 500,000 gallon water storage tanks in Sweetwater and Teec Nos Pos, a 300 gallon-per-minute (gpm) booster station in Sweetwater with a 3-phase power line upgrade, 17,000' of 6" waterline between the Sweetwater Master Well and the Sweetwater Franco-Western Well, 250' of 14" water transmission line, booster station upgrades at two sites in Beclabito, and a new booster station on the existing inter-tie between Cudei and Beclabito.

v. *Shared Cost Project*

This project will address a risk to public health from bacteriological contamination caused by chlorination equipment malfunction and subsequent interruptions in service as well as a lack of staffing by installing a new water treatment plant. This project includes construction of a new building, two new high service pumps at the water treatment plant for pumping to the community elevated water storage reservoir, two new high service pumps at the lake intake, a chlorine contact tank with equalization storage at the water treatment plant, three chemical treatment rooms for chlorine/fluoride, ammonia, and filter cleaning chemicals, and modest office and laboratory space for water treatment plant operation. This project is being funded by EPA and IHS. EPA's contribution will be used to fund outside engineering services to provide specialized design work needed for the geotechnical evaluation, the building and its systems, and possibly the treatment process itself.

vi. *Feasibility Study*

This project is for a feasibility study to target the best option to directly address the Arsenic Rule exemption at the Meneger's Dam water system set to expire in 2015. This project will provide for a feasibility study to compare the total life time system costs of, but not limited to, the following alternatives:

- Creating an expanded regional water system that will connect the Meneger's Dam water system to the proposed Gu Vo/Pia Oik Regional Water System. The Gu Vo water system will be intertied with the Pia Oik water system under IHS projects TU 99-262 and TU 99-252, creating the Gu Vo/Pia Oik Regional Water System. The Gu VO/Pia Oik Regional Water System will utilize a water source with an arsenic level of only 5 ppb.
- Provide a water treatment plant for the Meneger's Dam water system.

Findings from this study will be used to plan and design the most cost effective and expedient solution to ensure public health protection under the Arsenic Rule for the population served by the Meneger's Dam system.

vii. *Other Infrastructure*

This project will directly address TCR MCL violations due to bacteriological contamination caused by water system power loss and subsequent pressure loss. Loss of pressure in drinking water systems is closely associated with bacteriological contamination of water supplies and the risk of exposure to disease causing organisms. Both systems have experienced TCR MCL violations and have issued boil water notices over the last year during power failures. One diesel powered generator will be installed at the two small Tribal community water systems to provide power during predictable interruptions in power supplied by San Diego General Electric during wind storms and fire events and maintain pressure within the system.

**3. Project Purpose Category Data Field Entry Requirements**

To enable the categorization and sorting of projects to summarize use of funds and identify trends, the Project Purpose Category “pick list” is to be used in conjunction with the Project Purpose Narrative field. The following list of purpose categories is intended to identify the public health impact of each project. Users will select the primary and if needed secondary categorical purpose for each DWIG-TSA funded project.

The infrastructure project will [check one] ( directly OR  as part of a phased approach):

- a. Address a current NPDWR Health Based Violation (MCL or TT)
- b. Address a current NPDWR MCL or Action Level exceedance(s)
- c. Address a secondary contaminant exceedance
- d. Address a system deficiency as part of an approved NPDWR exemption
- e. Address drinking water outages or limited supply needed for human consumption
- f. Reduce the risk of failure of major treatment or distribution system components
- g. Provide first service to homes that lack access to safe drinking water
- h. Provide operational efficiencies and reduce O&M
- i. Other

**4. Infrastructure Category Data Field Entry Requirements**

The Infrastructure Category pick list shall be used to enable the categorization and sorting of projects to summarize the use of funds and identify trends. The following list of infrastructure categories is intended to clearly identify the main purpose of the public water system capital expenditure funded directly by EPA. Users will select the primary and if needed secondary infrastructure category for each DWIG-TSA funded project.

Drinking Water Infrastructure Grants Tribal Set-Aside Program	
Project Infrastructure Categories <sup>1</sup>	
DWIG-TSA Project Infrastructure Category <sup>i</sup>	Description
Planning	Engineering Project Report that includes: executive summary, background narrative, preliminary design description, alternative considered and recommended solution, permits required, O&M requirements, environmental considerations, and project cost estimate.
Design	Construction project plans and budget
Source	Well, well pump, well house, eliminated well pit, abandon well, aquifer storage and recovery well, surface water intake, raw water pump, off-stream raw water storage, spring collector, and de-stratification
Transmission	Raw water transmission and finished water transmission
Treatment	<p><u>Disinfection</u>: chlorination, chloramination, chlorine dioxide, ozonation, mixed oxidant type equipment, ultraviolet disinfection, contact basin for CT, dechlorination of treated water, and chlorine gas scrubber</p> <p><u>Complete Plants</u>: conventional filter plant, direct or in-line filter plant, slow sand filter plant, diatomaceous earth filter plant, membrane technology for particulate removal, cartridge or bag filtration plant, lime softening, reverse osmosis, electrodialysis, activated alumina, manganese green sand (or other oxidation/filtration technology, ion exchange, groundwater chemical-feed and iron adsorption</p> <p><u>Other components/equipment/processes</u>: zebra mussel control, corrosion control (chemical addition), powdered activated carbon, aeration, sequestering for iron and/or manganese, chemical feed, chemical storage tank, fluoride addition, pre-sedimentation basin, sedimentation/flocculation, granular activated carbon, membrane filtration, media filters, mechanical waste handling/treatment and non-mechanical waste handling</p>

Storage (finished/treated water)	Elevated water storage, ground level water storage, hydropneumatic storage, cisterns and cover for existing water storage
Distribution	Distribution mains (transport water through a piping grid serving customers), lead service line replacement, service lines, hydrants used for flushing (not for firefighting), valves (gate, butterfly, and etc.), control valves (PRVs, altitude, and etc.), backflow prevention devices/assemblies and water meters
Other	Laboratory capital costs for labs owned by the system, asset management software/program, computer and automation cost (SCADA), pump controls/telemetry, emergency power, security fencing, security other physical (lights, wall, manhole locks, other locks), security electronic/cyber (computer firewall, closed circuit TV), and security monitoring tools (identify anomalies in process streams or finished water)

Above categories adapted from the 2011 Drinking Water Infrastructure Needs Survey and Assessment. Items listed for each description are intended to indicate where different water system infrastructure components should be categorized. It is not an exhaustive list of eligible examples.

**5. Water System Funding Source Data Field Entry Requirements (Optional Regional Field)**

Public water system (PWS) support for the maintenance and operation is crucial for the service population to receive the maximal public health benefit from EPA’s water infrastructure investments. The categories listed below enables the user to categorize the source of PWS operational funding. Categorization of funding source provides a method to easily identify trends in project award, as well as retrospective analysis of post award performance. Information contained within this field will also help EPA target the appropriate party for managerial and financial capacity training to support system viability.

**Water System Funding Source**

- User Fees
- Tribal Government General Fund
- Tribal Economic Enterprises
- Federal Government
- Other

*Appendix H. Guidelines for Fund Transfer  
Authority between the DWIG-TSA and  
CWISA Programs (May 2013)*

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

APR - 4 2013

OFFICE OF THE  
ADMINISTRATOR

**MEMORANDUM**

**SUBJECT:** Request to Establish Delegation of Authority 2-105 to Transfer Funds Between State Revolving Fund Tribal Set-Aside Programs

**FROM:** Bob Perciasepe, Acting Administrator *Bob Perciasepe*

**TO:** Regional Administrators

I hereby delegate to the U.S. Environmental Protection Agency's regional administrators the authority to establish Delegation of Authority 2-105 to transfer funds between State Revolving Fund Tribal Set-Aside programs.

**2-105 Transfer Funds Between State Revolving Fund Tribal Set-Aside Programs  
(1200 TN 618)**

1. **AUTHORITY.** Pursuant to Public Law 112-74, to approve the transfer of funds between the accounts provided for tribal set-asides appropriated through the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund.
2. **TO WHOM DELEGATED.** Regional administrators.
3. **LIMITATIONS.** In a fiscal year, a regional administrator may:
  - a. Transfer a dollar value of up to 33 percent of the funds provided for the region's Drinking Water Indian Set-Aside account to the region's Clean Water Indian Set-Aside account.
  - b. Transfer a dollar amount up to the dollar amount identified in paragraph *a* of funds provided for the region's Clean Water Indian Set-Aside account to the region's Drinking Water Indian Set-Aside account.
  - c. Starting in FY13, for the first transfer within each region the regional administrator must obtain concurrence of the Office of Water's assistant administrator or designee and thereafter must consult with the Office of Water's assistant administrator or designee exercising this authority.

**4. REDELEGATION AUTHORITY.**

- a. This authority may be redelegated to the division-director level or equivalent in the regions and no further.
- b. This authority may be exercised by any person in the chain of command to the person to whom it has been redelegated. Any redelegation of this authority does not divest the official making the redelegation from the power to exercise this authority.

**5. ADDITIONAL REFERENCES.**

- a. Section 518(c) of the Clean Water Act.
- b. Section 1452(i) of the Safe Drinking Water Act.
- c. Additional guidance may be issued by the Office of Wastewater Management or the Office of Groundwater and Drinking Water.



**Attachment 1**  
**Guidelines for Implementation of Fund Transfer Authority**  
**Between the Drinking Water Infrastructure Grant – Tribal Set Aside and the**  
**Clean Water Indian Set – Aside Programs**  
**May 2013**

**I. Purpose**

This document provides guidance to EPA Regions when implementing the option to transfer funds between the Drinking Water Infrastructure Grant – Tribal Set Aside (DWIG-TSA) and Clean Water Indian Set Aside (CWISA) programs.

**II. Authorization**

State Revolving Fund (SRF) programs currently have permanent authority to transfer funds between the Clean Water SRF and the Drinking Water SRF. Authority to transfer funds between the DWIG-TSA and CWISA programs was provided through EPA's FY12 appropriations, stating:

*Provided further, That for fiscal year 2012 and hereafter, the Administrator may transfer funds provided for tribal set-asides through funds appropriated for the Clean Water State Revolving Funds and for the Drinking Water State Revolving Funds between those accounts in such manner as the Administrator deems appropriate, but not to exceed the transfer limits given to States under section 302(a) of Public Law 104-182.*

The transfer limit identified in section 302(a) is 33 percent of the Drinking Water SRF. For example, had we implemented the transfer provision in FY12, 33 percent of the DWIG-TSA allotment (of \$18,358,000) would have been \$6,058,140. The process for tribal transfers will begin in FY13; no transfers may be made with FY12 funds. The project eligibility portion of the grant guidelines specific to the program that receives funds from a transfer will apply to the transferred funds. For example, if funds are transferred from the CWISA to the DWIG-TSA, the funds will follow the project eligibility portion of the grant guidelines that apply to the DWIG-TSA.

**III. Permanent Delegation of Authority**

A permanent delegation of authority is in place that delegates the authority to transfer funds between the CWISA and the DWIG-TSA (#2-105). The April 4, 2013 authority memo is attached.

**IV. Transfer Process**

The following describes the steps to implement a transfer of funds between the two programs.

1. Regional Allotment Calculation: The Office of Ground Water and Drinking Water (OGWDW) and Office of Wastewater Management (OWM) calculate the allotments and indicate the maximum amount of funding available for transfer within each EPA Region.
2. Notification of Transfer: Regions will utilize their existing processes to identify water and wastewater infrastructure projects and notify Headquarters of their interest in exercising the transfer option.
3. Transfer Justification: Regions electing to transfer funds will submit a short narrative transfer justification to HQ that covers key points as described in this guideline supported by a Regional Project List (RPL). For the purposes of these guidelines, the RPL for wastewater projects would consist of information from the IHS Sanitation Deficiency System (SDS) and the RPL for drinking water projects

would consist of SDS information in addition to information identified through regional project solicitations. The proposed projects to be funded through a transfer must be on the IHS SDS list. Section V of this guideline includes a further description of the transfer justification and the data elements required in the RPL.

4. Transfer Approval Review Criteria: The approval of the fund transfer will be based on a consideration of several factors linked to Agency measures and priorities along with consistency with Agency guidelines for implementing the programs. The following information should be provided for consideration during the review process:
  - a. *Number of Homes Provided Access to Safe Drinking Water or Basic Sanitation:* The number of homes the project provides access to safe drinking water or basic sanitation is based on the Indian Health Service deficiency level data.
  - b. *Improving Compliance with Safe Drinking Water Act Regulations* (if applicable).
  - c. *Project Readiness:* Indication that the following types of documents are complete: project engineering report, planning, design, environmental reviews and archeology.
  - d. *IHS Sanitation Deficiency Survey Project Priority Number.*
5. Transfer Justification Review/Approval: Starting in FY2013, for the first transfer within each region the regional administrator must obtain concurrence of the Office of Water's assistant administrator or designee. Should an impasse occur the first time that a transfer is requested, the decision to approve or disapprove will be resolved by the Assistant Administrator of Water.

For transfers subsequent to the first transfer, the Regions are to consult with the Office of Water's assistant administrator through notification of OGWDW and OWM of the intent to transfer and provide the Transfer Justification (Item 3) and the information described in 4a to 4d.

6. Funds Reprogramming: Upon approval of the transfer request, the approved amount of funds will be reprogrammed. The reprogramming will occur at Headquarters before funds are made available to the regions.

## **V. Transfer Justification**

In order for OGWDW and OWM to evaluate the reasons for fund transfer, Regions shall provide a narrative justification for the proposed transfer. The justification statement should highlight the public health threat posed by the current deficiencies and net positive public health benefits of funding the project proposed for the transfer. The narrative statement should answer the question: Why are the projects proposed to receive transfer funds a priority for EPA? The narrative should also describe how the proposed infrastructure project will address the current deficiencies along with measures or metrics that clarify why this project is a priority over others. The transfer statement should be supported by the project data provided in the SDS listing for the project along with the RPL. If the project is not in the top 10 percent of the IHS area SDS, the narrative should also explain why the project does not rank highly on the IHS Area SDS.

The RPL should include the projects planned for funding that utilize all regional funds (both Drinking Water and Clean Water.) If possible, the RPL should also include the highest ranked project(s) not funded as a result of the funds transfer. The data to be included in the RPL for each project are listed in Table 1.

**Table 1: Data Fields for the Regional Project List (RPL)**

<ul style="list-style-type: none"> <li>• Project Name*</li> <li>• Project Purpose*</li> <li>• Tribe Name*</li> <li>• Indian Health Service (IHS) Area*</li> <li>• IHS Sanitation Deficiency System Data (Project Number, Project Priority, Project Initial Deficiency Level and Project Final Deficiency Level)</li> <li>• Funding from Drinking Water Infrastructure Grant-Tribal Set- Aside Program</li> <li>• Funding from Clean Water Act Indian Set-Aside Program</li> </ul>	<ul style="list-style-type: none"> <li>• Total Project Cost*</li> <li>• Public Water System Inventory Number* (Drinking Water project)</li> <li>• National Pollution Discharge Elimination System Permit (Clean Water Project)</li> <li>• Number of Tribal Homes Served*</li> <li>• Current Violation Type(s) to be address by project (as applicable)*</li> <li>• Anticipated Construction Start Date*</li> <li>• EPA Program Measures Addressed*</li> </ul>
---	---

\* Data required for all funded drinking water projects per memo EPA National Tribal Drinking Water Program Oversight and Accountability (March 23, 2012). Data recommended for all funded wastewater projects.

**VI. Annual Timeline**

The following table describes the approximate timing to implement a transfer of funds between the two programs. Approval by OGWDW and OWM of the first transfer within each Region is required. For subsequent transfers, Regions will still need to provide justification information to notify OGWDW and OWM of the intent to transfer. OGWDW and OWM reserve the right to object to a transfer proposal if it is contrary to the program guidelines or the goals of the program.

**Table 2: Tribal Water Infrastructure Funding Transfer Process Timeline**

Milestone	Schedule	Responsible Entities
Regional Allotment Calculation	Budget Operating Plan + 30 days	OGWDW and OWM
Notification of Transfer	Budget Operating Plan + 60 days	EPA Regions
Transfer Justification	Budget Operating Plan + 90 days	EPA Regions
Transfer Approval	Transfer Justification /Consultation + 30 days	Regional Administrator or OGWDW/OWM
Funds Reprogramming	Transfer Approval + 30 days	OWM or OGWDW

*Appendix I. EPA-Approved Providers  
Meeting the Requirements of National  
Tribal Drinking Water Operator  
Certification*

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## **Appendix I**

### **EPA-Approved Providers Meeting the Requirements of the National Tribal Drinking Water Operator Certification Program**

As of March 2013, there are two providers approved by EPA to issue operator certifications under EPA's Tribal Operator Certification Program.

- United Southern and Eastern Tribes (USET): [www.usetinc.org/Home.aspx](http://www.usetinc.org/Home.aspx)
- Inter Tribal Council of Arizona: [www.itcaonline.com](http://www.itcaonline.com)

*Appendix J. Preliminary Engineering Report  
Template*

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January 16, 2013

## INTERAGENCY MEMORANDUM

Attached is a document explaining recommended best practice for the development of Preliminary Engineering Reports in support of funding applications for development of drinking water, wastewater, stormwater, and solid waste systems.

The best practice document was developed cooperatively by:

- [US Department of Agriculture, Rural Development, Rural Utilities Service, Water and Environmental Programs;](#)
- [US Environmental Protection Agency \(EPA\), Office of Water, Office of Ground Water and Drinking Water and Office of Wastewater Management;](#)
- [US Department of Housing and Urban Development \(HUD\), Office of Community Planning and Development;](#)
- [US Department of Health and Human Services, Indian Health Service \(IHS\);](#)
- [Small Communities Water Infrastructure Exchange;](#)

Extensive input from participating state administering agencies was also very important to the development of this document.

Federal agencies that cooperatively developed this document strongly encourage its use by funding agencies as part of the application process or project development. State administered programs are encouraged to adopt this document but are not required to do so, as it is up to a state administering agency's discretion to adopt it, based on the needs of the state administering agency.

A Preliminary Engineering Report (Report) is a planning document required by many state and federal funding agencies as part of the process of obtaining financial assistance for development of drinking water, wastewater, solid waste, and stormwater facilities. The attached Report outline details the requirements that funding agencies have adopted when a Report is required.

In general the Report should include a description of existing facilities and a description of the issues being addressed by the proposed project. It should identify alternatives, present a life cycle cost analysis of technically feasible alternatives and propose a specific course of action. The Report should also include a detailed current cost estimate of the recommended alternative. The attached outline describes these and other sections to be included in the Report.

Projects utilizing direct federal funding also require an environmental review in accordance with the National Environmental Policy Act (NEPA). The Report should indicate that environmental issues were considered as part of the engineering planning and include environmental information pertinent to engineering planning.

For state administered funding programs, a determination of whether the outline applies to a given program or project is made by the state administering agency. When a program or agency adopts this outline, it may adopt a portion or the entire outline as applicable to the program or project in question at the discretion of the agency. Some state and federal funding agencies will not require the Report for every project or may waive portions of the Report that do not apply to their application process, however a Report thoroughly addressing all of the contents of this outline will meet the requirements of most agencies that have adopted this outline.

The detailed outline provides information on what to include in a Report. The level of detail required may also vary according to the complexity of the specific project. Reports should conform substantially to this detailed outline and otherwise be prepared and presented in a professional manner. Many funding agencies require that the document be developed by a Professional Engineer registered in the state or other jurisdiction where the project is to be constructed unless exempt from this requirement. Please check with applicable funding agencies to determine if the agencies require supplementary information beyond the scope of this outline.

Any preliminary design information must be written in accordance with the regulatory requirements of the state or territory where the project will be built.

Information provided in the Report may be used to process requests for funding. Completeness and accuracy are therefore essential for timely processing of an application. Please contact the appropriate state or federal funding agencies with any questions about development of the Report and applications for funding as early in the process as practicable.

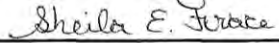
Questions about this document should be referred to the applicable state administering agency, regional office of the applicable federal agency, or to the following federal contacts:

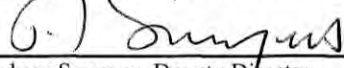
Agency	Contact	Email Address	Phone
USDA/RUS	Benjamin Shuman, PE	<a href="mailto:ben.shuman@wdc.usda.gov">ben.shuman@wdc.usda.gov</a>	202-720-1784
EPA/DWSRF	Kirsten Anderer, PE	<a href="mailto:anderer.kirsten@epa.gov">anderer.kirsten@epa.gov</a>	202-564-3134
EPA/CWSRF	Matt King	<a href="mailto:king.matt@epa.gov">king.matt@epa.gov</a>	202-564-2871
HUD	Stephen Rhodside	<a href="mailto:stephen.m.rhodside@hud.gov">stephen.m.rhodside@hud.gov</a>	202-708-1322
IHS	Dana Baer, PE	<a href="mailto:dana.baer@ihs.gov">dana.baer@ihs.gov</a>	301-443-1345

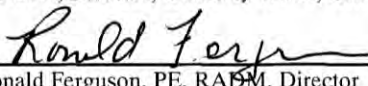


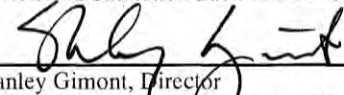
Sincerely,

 1/16/13  
Jacqueline M. Ponti-Lazaruk, Assistant Administrator  
USDA, Rural Development, Rural Utilities Service, Water and Environmental Programs

 01/16/13  
Sheila Frace, Acting Deputy Director  
US EPA, Office of Water, Office of Wastewater Management

 1/16/13  
Andrew Sawyers, Deputy Director  
US EPA, Director, Office of Water, Office of Ground Water and Drinking Water

 1/16/13  
Ronald Ferguson, PE, RADM, Director  
Division of Sanitation Facilities Construction, Indian Health Service

 1-16-13  
Stanley Gimont, Director  
Office of Block Grant Assistance, US Department of Housing and Urban Development

Attachment

## WORKING GROUP CONTRIBUTORS

Federal Agency Partners	
USDA, Rural Development, Rural Utilities Service (Chair)	Benjamin Shuman, PE
EPA, Office of Water, Office of Ground Water and Drinking Water	Kirsten Anderer, PE
EPA, Office of Water, Office of Ground Water and Drinking Water	CAPT David Harvey, PE
EPA, Office of Water, Office of Wastewater Management	Matt King
EPA, Office of Water, Office of Wastewater Management	Joyce Hudson
EPA, Region 1	Carolyn Hayek
EPA, Region 9	Abimbola Odusoga
HUD, Office of Community Planning and Development	Stephen M. Rhodeside
HUD, Office of Community Planning and Development	Eva Fontheim
Indian Health Service	CAPT Dana Baer, PE
Indian Health Service	LCDR Charissa Williar, PE
USDA, Rural Development, Florida State Office	Michael Langston
USDA, Rural Development, Florida State Office	Steve Morris, PE

State Agency and Interagency Partners	
Arizona Water Infrastructure Finance Authority	Dean Moulis, PE
Border Environment Cooperation Commission	Joel Mora, PE
Colorado Department of Local Affairs	Barry Cress
Colorado Department of Public Health & Environment	Michael Beck
Colorado Department of Public Health & Environment	Bret Icenogle, PE
Georgia Office of Community Development	Steed Robinson
Idaho, Department of Environmental Quality	Tim Wendland
Indiana Finance Authority	Emma Kottlowski
Indiana Finance Authority	Shelley Love
Indiana Finance Authority	Amanda Rickard, PE
Kentucky Division of Water	Shafiq Amawi
Kentucky Department of Local Government	Jennifer Peters
Louisiana Department of Environmental Quality	Jonathan McFarland, PE
Maine Department of Health and Human Services	Norm Lamie, PE
Minnesota Pollution Control Agency	Amy Douville
Minnesota Pollution Control Agency	Corey Mathisen, PE
Missouri Department of Natural Resources	Cynthia Smith
Montana Department of Commerce	Kate Miller, PE
North Carolina Department of Commerce	Olivia Collier
North Carolina Rural Center	Keith Krzywicki, PE
North Carolina Department of Commerce	Vickie Miller, CPM
Rhode Island Department of Health	Gary Chobanian, PE
Rhode Island Department of Health	Geoffrey Marchant

## **ABBREVIATIONS**

NEPA – National Environmental Policy Act

NPV – Net Present Value

O&M – Operations and Maintenance

OMB – Office of Management and Budget

Report – Preliminary Engineering Report

SPPW – Single Payment Present Worth

USPW – Uniform Series Present Worth

## GENERAL OUTLINE OF A PRELIMINARY ENGINEERING REPORT

- 1) PROJECT PLANNING
  - a) Location
  - b) Environmental Resources Present
  - c) Population Trends
  - d) Community Engagement
  
- 2) EXISTING FACILITIES
  - a) Location Map
  - b) History
  - c) Condition of Existing Facilities
  - d) Financial Status of any Existing Facilities
  - e) Water/Energy/Waste Audits
  
- 3) NEED FOR PROJECT
  - a) Health, Sanitation, and Security
  - b) Aging Infrastructure
  - c) Reasonable Growth
  
- 4) ALTERNATIVES CONSIDERED
  - a) Description
  - b) Design Criteria
  - c) Map
  - d) Environmental Impacts
  - e) Land Requirements
  - f) Potential Construction Problems
  - g) Sustainability Considerations
    - i) Water and Energy Efficiency
    - ii) Green Infrastructure
    - iii) Other
  - h) Cost Estimates
  
- 5) SELECTION OF AN ALTERNATIVE
  - a) Life Cycle Cost Analysis
  - b) Non-Monetary Factors
  
- 6) PROPOSED PROJECT (RECOMMENDED ALTERNATIVE)
  - a) Preliminary Project Design
  - b) Project Schedule
  - c) Permit Requirements
  - d) Sustainability Considerations
    - i) Water and Energy Efficiency
    - ii) Green Infrastructure

- iii) Other
- e) Total Project Cost Estimate (Engineer's Opinion of Probable Cost)
- f) Annual Operating Budget
  - i) Income
  - ii) Annual O&M Costs
  - iii) Debt Repayments
  - iv) Reserves

## 7) CONCLUSIONS AND RECOMMENDATIONS

## DETAILED OUTLINE OF A PRELIMINARY ENGINEERING REPORT

### 1) PROJECT PLANNING

Describe the area under consideration. Service may be provided by a combination of central, cluster, and/or centrally managed individual facilities. The description should include information on the following:

- a) Location. Provide scale maps and photographs of the project planning area and any existing service areas. Include legal and natural boundaries and a topographical map of the service area.
- b) Environmental Resources Present. Provide maps, photographs, and/or a narrative description of environmental resources present in the project planning area that affect design of the project. Environmental review information that has already been developed to meet requirements of NEPA or a state equivalent review process can be used here.
- c) Population Trends. Provide U.S. Census or other population data (including references) for the service area for at least the past two decades if available. Population projections for the project planning area and concentrated growth areas should be provided for the project design period. Base projections on historical records with justification from recognized sources.
- d) Community Engagement: Describe the utility's approach used (or proposed for use) to engage the community in the project planning process. The project planning process should help the community develop an understanding of the need for the project, the utility operational service levels required, funding and revenue strategies to meet these requirements, along with other considerations.

### 2) EXISTING FACILITIES

Describe each part (e.g. processing unit) of the existing facility and include the following information:

- a) Location Map. Provide a map and a schematic process layout of all existing facilities. Identify facilities that are no longer in use or abandoned. Include photographs of existing facilities.
- b) History. Indicate when major system components were constructed, renovated, expanded, or removed from service. Discuss any component failures and the cause for the failure. Provide a history of any applicable violations of regulatory requirements.
- c) Condition of Existing Facilities. Describe present condition; suitability for continued use; adequacy of current facilities; and their conveyance, treatment, storage, and disposal capabilities. Describe the existing capacity of each component. Describe and reference compliance with applicable federal, state, and local laws. Include a brief analysis of overall current energy consumption. Reference an asset management plan if applicable.

- d) Financial Status of any Existing Facilities. (Note: Some agencies require the owner to submit the most recent audit or financial statement as part of the application package.) Provide information regarding current rate schedules, annual O&M cost (with a breakout of current energy costs), other capital improvement programs, and tabulation of users by monthly usage categories for the most recent typical fiscal year. Give status of existing debts and required reserve accounts.
- e) Water/Energy/Waste Audits. If applicable to the project, discuss any water, energy, and/or waste audits which have been conducted and the main outcomes.

### 3) NEED FOR PROJECT

Describe the needs in the following order of priority:

- a) Health, Sanitation, and Security. Describe concerns and include relevant regulations and correspondence from/to federal and state regulatory agencies. Include copies of such correspondence as an attachment to the Report.
- b) Aging Infrastructure. Describe the concerns and indicate those with the greatest impact. Describe water loss, inflow and infiltration, treatment or storage needs, management adequacy, inefficient designs, and other problems. Describe any safety concerns.
- c) Reasonable Growth. Describe the reasonable growth capacity that is necessary to meet needs during the planning period. Facilities proposed to be constructed to meet future growth needs should generally be supported by additional revenues. Consideration should be given to designing for phased capacity increases. Provide number of new customers committed to this project.

### 4) ALTERNATIVES CONSIDERED

This section should contain a description of the alternatives that were considered in planning a solution to meet the identified needs. Documentation of alternatives considered is often a Report weakness. Alternative approaches to ownership and management, system design (including resource efficient or green alternatives), and sharing of services, including various forms of partnerships, should be considered. In addition, the following alternatives should be considered, if practicable: building new centralized facilities, optimizing the current facilities (no construction), developing centrally managed decentralized systems, including small cluster or individual systems, and developing an optimum combination of centralized and decentralized systems. Alternatives should be consistent with those considered in the NEPA, or state equivalent, environmental review. Technically infeasible alternatives that were considered should be mentioned briefly along with an explanation of why they are infeasible, but do not require full analysis. For each technically feasible alternative, the description should include the following information:

- a) Description. Describe the facilities associated with every technically feasible alternative. Describe source, conveyance, treatment, storage and distribution



facilities for each alternative. A feasible system may include a combination of centralized and decentralized (on-site or cluster) facilities.

- b) Design Criteria. State the design parameters used for evaluation purposes. These parameters should comply with federal, state, and agency design policies and regulatory requirements.
- c) Map. Provide a schematic layout map to scale and a process diagram if applicable. If applicable, include future expansion of the facility.
- d) Environmental Impacts. Provide information about how the specific alternative may impact the environment. Describe only those unique direct and indirect impacts on floodplains, wetlands, other important land resources, endangered species, historical and archaeological properties, etc., as they relate to each specific alternative evaluated. Include generation and management of residuals and wastes.
- e) Land Requirements. Identify sites and easements required. Further specify whether these properties are currently owned, to be acquired, leased, or have access agreements.
- f) Potential Construction Problems. Discuss concerns such as subsurface rock, high water table, limited access, existing resource or site impairment, or other conditions which may affect cost of construction or operation of facility.
- g) Sustainability Considerations. Sustainable utility management practices include environmental, social, and economic benefits that aid in creating a resilient utility.
  - i) Water and Energy Efficiency. Discuss water reuse, water efficiency, water conservation, energy efficient design (i.e. reduction in electrical demand), and/or renewable generation of energy, and/or minimization of carbon footprint, if applicable to the alternative. Alternatively, discuss the water and energy usage for this option as compared to other alternatives.
  - ii) Green Infrastructure. Discuss aspects of project that preserve or mimic natural processes to manage stormwater, if applicable to the alternative. Address management of runoff volume and peak flows through infiltration, evapotranspiration, and/or harvest and use, if applicable.
  - iii) Other. Discuss any other aspects of sustainability (such as resiliency or operational simplicity) that are incorporated into the alternative, if applicable.
- h) Cost Estimates. Provide cost estimates for each alternative, including a breakdown of the following costs associated with the project: construction, non-construction, and annual O&M costs. A construction contingency should be included as a non-construction cost. Cost estimates should be included with the descriptions of each technically feasible alternative. O&M costs should include a rough breakdown by O&M category (see example below) and not just a value for each alternative. Information from other sources, such as the recipient's accountant or other known technical service providers, can be incorporated to assist in the development of this section. The cost derived will be used in the life cycle cost analysis described in Section 5 a.

Example O&M Cost Estimate	
Personnel (i.e. Salary, Benefits, Payroll Tax, Insurance, Training)	
Administrative Costs (e.g. office supplies, printing, etc.)	
Water Purchase or Waste Treatment Costs	
Insurance	
Energy Cost (Fuel and/or Electrical)	
Process Chemical	
Monitoring & Testing	
Short Lived Asset Maintenance/Replacement*	
Professional Services	
Residuals Disposal	
Miscellaneous	
Total	

\* See Appendix A for example list

## 5) SELECTION OF AN ALTERNATIVE

Selection of an alternative is the process by which data from the previous section, “Alternatives Considered” is analyzed in a systematic manner to identify a recommended alternative. The analysis should include consideration of both life cycle costs and non-monetary factors (i.e. triple bottom line analysis: financial, social, and environmental). If water reuse or conservation, energy efficient design, and/or renewable generation of energy components are included in the proposal provide an explanation of their cost effectiveness in this section.

- a) Life Cycle Cost Analysis. A life cycle present worth cost analysis (an engineering economics technique to evaluate present and future costs for comparison of alternatives) should be completed to compare the technically feasible alternatives. Do not leave out alternatives because of anticipated costs; let the life cycle cost analysis show whether an alternative may have an acceptable cost. This analysis should meet the following requirements and should be repeated for each technically feasible alternative. Several analyses may be required if the project has different aspects, such as one analysis for different types of collection systems and another for different types of treatment.
1. The analysis should convert all costs to present day dollars;
  2. The planning period to be used is recommended to be 20 years, but may be any period determined reasonable by the engineer and concurred on by the state or federal agency;
  3. The discount rate to be used should be the “real” discount rate taken from Appendix C of OMB circular A-94 and found at ([www.whitehouse.gov/omb/circulars/a094/a94\\_appx-c.html](http://www.whitehouse.gov/omb/circulars/a094/a94_appx-c.html));
  4. The total capital cost (construction plus non-construction costs) should be included;

5. Annual O&M costs should be converted to present day dollars using a uniform series present worth (USPW) calculation;
6. The salvage value of the constructed project should be estimated using the anticipated life expectancy of the constructed items using straight line depreciation calculated at the end of the planning period and converted to present day dollars;
7. The present worth of the salvage value should be subtracted from the present worth costs;
8. The net present value (NPV) is then calculated for each technically feasible alternative as the sum of the capital cost (C) plus the present worth of the uniform series of annual O&M (USPW (O&M)) costs minus the single payment present worth of the salvage value (SPPW(S)):

$$\text{NPV} = C + \text{USPW (O\&M)} - \text{SPPW (S)}$$

9. A table showing the capital cost, annual O&M cost, salvage value, present worth of each of these values, and the NPV should be developed for state or federal agency review. All factors (major and minor components), discount rates, and planning periods used should be shown within the table.
10. Short lived asset costs (See Appendix A for examples) should also be included in the life cycle cost analysis if determined appropriate by the consulting engineer or agency. Life cycles of short lived assets should be tailored to the facilities being constructed and be based on generally accepted design life. Different features in the system may have varied life cycles.

- b) Non-Monetary Factors. Non-monetary factors, including social and environmental aspects (e.g. sustainability considerations, operator training requirements, permit issues, community objections, reduction of greenhouse gas emissions, wetland relocation) should also be considered in determining which alternative is recommended and may be factored into the calculations.

## 6) PROPOSED PROJECT (RECOMMENDED ALTERNATIVE)

The engineer should include a recommendation for which alternative(s) should be implemented. This section should contain a fully developed description of the proposed project based on the preliminary description under the evaluation of alternatives. Include a schematic for any treatment processes, a layout of the system, and a location map of the proposed facilities. At least the following information should be included as applicable to the specific project:

- a) Preliminary Project Design.

- i) Drinking Water:

Water Supply. Include requirements for quality and quantity. Describe recommended source, including site and allocation allowed.

Treatment. Describe process in detail (including whether adding, replacing, or rehabilitating a process) and identify location of plant and site of any process discharges. Identify capacity of treatment plant (i.e. Maximum Daily Demand).

Storage. Identify size, type and location.

Pumping Stations. Identify size, type, location and any special power requirements. For rehabilitation projects, include description of components upgraded.

Distribution Layout. Identify general location of new pipe, replacement, or rehabilitation: lengths, sizes and key components.

ii) Wastewater/Reuse:

Collection System/Reclaimed Water System Layout. Identify general location of new pipe, replacement or rehabilitation: lengths, sizes, and key components.

Pumping Stations. Identify size, type, site location, and any special power requirements. For rehabilitation projects, include description of components upgraded.

Storage. Identify size, type, location and frequency of operation.

Treatment. Describe process in detail (including whether adding, replacing, or rehabilitating a process) and identify location of any treatment units and site of any discharges (end use for reclaimed water). Identify capacity of treatment plant (i.e. Average Daily Flow).

iii) Solid Waste:

Collection. Describe process in detail and identify quantities of material (in both volume and weight), length of transport, location and type of transfer facilities, and any special handling requirements.

Storage. If any, describe capacity, type, and site location.

Processing. If any, describe capacity, type, and site location.

Disposal. Describe process in detail and identify permit requirements, quantities of material, recycling processes, location of plant, and site of any process discharges.

iv) Stormwater:

Collection System Layout. Identify general location of new pipe, replacement or rehabilitation: lengths, sizes, and key components.

Pumping Stations. Identify size, type, location, and any special power requirements.

Treatment. Describe treatment process in detail. Identify location of treatment facilities and process discharges. Capacity of treatment process should also be addressed.

Storage. Identify size, type, location and frequency of operation.

Disposal. Describe type of disposal facilities and location.

Green Infrastructure. Provide the following information for green infrastructure alternatives:

- Control Measures Selected. Identify types of control measures selected (e.g., vegetated areas, planter boxes, permeable pavement, rainwater cisterns).
- Layout: Identify placement of green infrastructure control measures, flow paths, and drainage area for each control measure.
- Sizing: Identify surface area and water storage volume for each green infrastructure control measure. Where applicable, soil infiltration rate, evapotranspiration rate, and use rate (for rainwater harvesting) should also be addressed.
- Overflow: Describe overflow structures and locations for conveyance of larger precipitation events.

- b) Project Schedule. Identify proposed dates for submittal and anticipated approval of all required documents, land and easement acquisition, permit applications, advertisement for bids, loan closing, contract award, initiation of construction, substantial completion, final completion, and initiation of operation.
- c) Permit Requirements. Identify any construction, discharge and capacity permits that will/may be required as a result of the project.
- d) Sustainability Considerations (if applicable).
- i) Water and Energy Efficiency. Describe aspects of the proposed project addressing water reuse, water efficiency, and water conservation, energy efficient design, and/or renewable generation of energy, if incorporated into the selected alternative.
- ii) Green Infrastructure. Describe aspects of project that preserve or mimic natural processes to manage stormwater, if applicable to the selected alternative. Address management of runoff volume and peak flows through infiltration, evapotranspiration, and/or harvest and use, if applicable.
- iii) Other. Describe other aspects of sustainability (such as resiliency or operational simplicity) that are incorporated into the selected alternative, if incorporated into the selected alternative.
- e) Total Project Cost Estimate (Engineer's Opinion of Probable Cost). Provide an itemized estimate of the project cost based on the stated period of construction. Include construction, land and right-of-ways, legal, engineering, construction program management, funds administration, interest, equipment, construction contingency, refinancing, and other costs associated with the proposed project. The construction subtotal should be separated out from the non-construction costs. The non-construction subtotal should be included and added to the construction

subtotal to establish the total project cost. An appropriate construction contingency should be added as part of the non-construction subtotal. For projects containing both water and waste disposal systems, provide a separate cost estimate for each system as well as a grand total. If applicable, the cost estimate should be itemized to reflect cost sharing including apportionment between funding sources. The engineer may rely on the owner for estimates of cost for items other than construction, equipment, and engineering.

f) Annual Operating Budget. Provide itemized annual operating budget information. The owner has primary responsibility for the annual operating budget, however, there are other parties that may provide technical assistance. This information will be used to evaluate the financial capacity of the system. The engineer will incorporate information from the owner's accountant and other known technical service providers.

i) Income. Provide information about all sources of income for the system including a proposed rate schedule. Project income realistically for existing and proposed new users separately, based on existing user billings, water treatment contracts, and other sources of income. In the absence of historic data or other reliable information, for budget purposes, base water use on 100 gallons per capita per day. Water use per residential connection may then be calculated based on the most recent U.S. Census, American Community Survey, or other data for the state or county of the average household size. When large agricultural or commercial users are projected, the Report should identify those users and include facts to substantiate such projections and evaluate the impact of such users on the economic viability of the project.

ii) Annual O&M Costs. Provide an itemized list by expense category and project costs realistically. Provide projected costs for operating the system as improved. In the absence of other reliable data, base on actual costs of other existing facilities of similar size and complexity. Include facts in the Report to substantiate O&M cost estimates. Include personnel costs, administrative costs, water purchase or treatment costs, accounting and auditing fees, legal fees, interest, utilities, energy costs, insurance, annual repairs and maintenance, monitoring and testing, supplies, chemicals, residuals disposal, office supplies, printing, professional services, and miscellaneous as applicable. Any income from renewable energy generation which is sold back to the electric utility should also be included, if applicable. If applicable, note the operator grade needed.

iii) Debt Repayments. Describe existing and proposed financing with the estimated amount of annual debt repayments from all sources. All estimates of funding should be based on loans, not grants.

iv) Reserves. Describe the existing and proposed loan obligation reserve requirements for the following:

Debt Service Reserve – For specific debt service reserve requirements consult with individual funding sources. If General Obligation bonds are proposed to be used as loan security, this section may be omitted, but this should be clearly stated if it is the case.

Short-Lived Asset Reserve – A table of short lived assets should be included for the system (See Appendix A for examples). The table should include the asset, the expected year of replacement, and the anticipated cost of each. Prepare a recommended annual reserve deposit to fund replacement of short-lived assets, such as pumps, paint, and small equipment. Short-lived assets include those items not covered under O&M, however, this does not include facilities such as a water tank or treatment facility replacement that are usually funded with long-term capital financing.

## 7. CONCLUSIONS AND RECOMMENDATIONS

Provide any additional findings and recommendations that should be considered in development of the project. This may include recommendations for special studies, highlighting of the need for special coordination, a recommended plan of action to expedite project development, and any other necessary considerations.

Appendix A: Example List of Short-Lived Asset Infrastructure

<b>Estimated Repair, Rehab, Replacement Expenses by Item within up to 20 Years from Installation)</b>	
<b>Drinking Water Utilities</b>	<b>Wastewater Utilities</b>
<p><b>Source Related</b></p> <ul style="list-style-type: none"> <li>Pumps</li> <li>Pump Controls</li> <li>Pump Motors</li> <li>Telemetry</li> <li>Intake/ Well screens</li> <li>Water Level Sensors</li> <li>Pressure Transducers</li> </ul>	<p><b>Treatment Related</b></p> <ul style="list-style-type: none"> <li>Pump</li> <li>Pump Controls</li> <li>Pump Motors</li> <li>Chemical feed pumps</li> <li>Membrane Filters Fibers</li> <li>Field &amp; Process Instrumentation Equipment</li> <li>UV lamps</li> <li>Centrifuges</li> <li>Aeration blowers</li> <li>Aeration diffusers and nozzles</li> <li>Trickling filters, RBCs, etc.</li> <li>Belt presses &amp; driers</li> <li>Sludge Collecting and Dewatering Equipment</li> <li>Level Sensors</li> <li>Pressure Transducers</li> <li>Pump Controls</li> <li>Back-up power generator</li> <li>Chemical Leak Detection Equipment</li> <li>Flow meters</li> <li>SCADA Systems</li> </ul>
<p><b>Treatment Related</b></p> <ul style="list-style-type: none"> <li>Chemical feed pumps</li> <li>Altitude Valves</li> <li>Valve Actuators</li> <li>Field &amp; Process Instrumentation Equipment</li> <li>Granular filter media</li> <li>Air compressors &amp; control units</li> <li>Pumps</li> <li>Pump Motors</li> <li>Pump Controls</li> <li>Water Level Sensors</li> <li>Pressure Transducers</li> <li>Sludge Collection &amp; Dewatering</li> <li>UV Lamps</li> <li>Membranes</li> <li>Back-up power generators</li> <li>Chemical Leak Detection Equipment</li> <li>Flow meters</li> <li>SCADA Systems</li> </ul>	<p><b>Collection System Related</b></p> <ul style="list-style-type: none"> <li>Pump</li> <li>Pump Controls</li> <li>Pump Motors</li> <li>Trash racks/bar screens</li> <li>Sewer line rodding equipment</li> <li>Air compressors</li> <li>Vaults, lids, and access hatches</li> <li>Security devices and fencing</li> <li>Alarms &amp; Telemetry</li> <li>Chemical Leak Detection Equipment</li> </ul>
<p><b>Distribution System Related</b></p> <ul style="list-style-type: none"> <li>Residential and Small Commercial Meters</li> <li>Meter boxes</li> <li>Hydrants &amp; Blow offs</li> <li>Pressure reducing valves</li> <li>Cross connection control devices</li> <li>Altitude valves</li> <li>Alarms &amp; Telemetry</li> <li>Vaults, lids, and access hatches</li> <li>Security devices and fencing</li> <li>Storage reservoir painting/patching</li> </ul>	



*Appendix K. Example Certification Utility  
Financial Account*

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## Appendix K Example Certification Utility Financial Account

The following is an example of a form that a Region might develop to certify how a water system benefiting from DWIG-TSA Program funding manages the utility.

Public Water System  
Name: \_\_\_\_\_  
Public Water Supply  
Identification Number: \_\_\_\_\_  
System managed by a:  Tribal government  
 Non-tribal utility serving a tribal community

I certify that the accounting system used to manage the financial operating plan for the public water system benefiting from the Drinking Water Infrastructure Tribal Set-Aside funds has the capability to record, track, and report on the program specific financial information independently from other programs.

\_\_\_\_\_  
PRINT NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

*Appendix L. 2012 Median Metropolitan &  
Non-metropolitan Household Incomes by  
State (HUD)*

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Special Attention of:

## NOTICE PDR-2012-01

Regional Directors, Field Office Directors,  
Economists, Public & Indian Housing  
Division Directors, Multifamily Hub Directors,  
Multifamily Program Center Directors

Issued: December 1, 2011  
Expires: Effective until superseded

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Cross References:

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Subject: Estimated Median Family Incomes for Fiscal Year 2012

This memorandum transmits median family income (MFI) and income distribution estimates for Fiscal Year (FY) 2012. They are calculated for each metropolitan and nonmetropolitan area using the Fair Market Rent (FMR) area definitions applied in the Section 8 Housing Choice Voucher Program. The estimated MFI for the United States for FY 2012 is \$65,000.

There were no changes to the area definitions for the FY 2012 MFIs. HUD continues to use the 2005-2009, 5-year American Community Survey (ACS) income data as the basis of FY 2012 Income Limits for all areas of geography, except for the US Virgin Island and the Pacific Islands. This is the same data that HUD used in calculating the FY 2011 MFIs; more current ACS data has not been released. An additional year of the Consumer Price Index update factor and the use of FY 2012 FMRs for high housing cost adjustments will result in the changes between the FY 2011 and the FY 2012 income limits. The factor HUD uses to trend the 2009 estimates to the midpoint of FY 2012 is unchanged at 3 percent per year<sup>1</sup>.

In areas where there is also a valid 2009 1 year ACS estimate of median family income, a statistical comparison is made between the 5-year median family income and the 1-year median family income available from the ACS. If the 1 year data are statistically different then the 5-year data, HUD calculates an update factor between the 5-year data and the 1-year data and applies this to the 5 year data.

An explanation of the methodology used to develop FY 2012 MFIs and related documents are attached. Attachment 1 provides an explanation of the estimation methodology used. Attachment 2 provides state-level MFI estimates. Since these state-level MFI estimates are no longer an update of the 2000 Decennial Census (which provided 1999 income estimates) there are no longer columns


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<sup>1</sup> This average annual trend factor is unchanged from last year and relies on a comparison of the nation ACS income in 2000 compared with the income for 2008. HUD is currently evaluating alternative trend factors and may update or change this trend factor for next year, most likely using a methodology similar to the method for calculating the trend factor in the FY 2013 Fair Market Rent calculations.

showing comparisons between current and 1999 state medians. The Income Limits Briefing Material and Area Definitions reports are provided with this notice. Data disk files are also provided on Section 8 Income Limits and income limits for the Section 221(d)(3) Below Market Interest Rate (BMIR) rental program, the Section 235 program, and the Section 236 program, that are not part of this transmittal notice, for you information.

Please note that the use of the HUD MFI estimates is subject to individual program guidelines covering definitions of income and family, family size, effective dates, and other factors. If you have any questions concerning these matters, please refer them to our website at <http://www.huduser.org/portal/datasets/il.html>.

HUD MFI estimates are also available at the Department's Internet site, which provides a menu from which you may select the year and type of data of interest (<http://www.huduser.org/portal/datasets/il.html>).



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Raphael W. Bostic, Ph.D.  
Assistant Secretary for Policy  
Development and Research

Attachments

## ATTACHMENT 1

### HUD METHODOLOGY FOR ESTIMATING FY 2012 MEDIAN FAMILY INCOMES

HUD updated its methodology to produce Median Family Income (MFI) estimates to take advantage of new nationally comprehensive data available from the Census Bureau's American Community Survey (ACS), beginning with the FY 2011 MFIs. In December 2010, the first set of 5-year ACS data was published. These 5-year aggregations, covering surveys administered in 2005 through 2009, provided income data for most areas of geography<sup>2</sup>. Because of the increase in the geographic coverage of the 5-year data, HUD's methodology for calculating FY 2011 MFI no longer was based on 2000 Decennial Census data, but rather, the 2005 – 2009 ACS data. The next 5-year series of income data, from 2006 to 2010 was not released in time to incorporate it into the FY 2012 MFIs, which HUD is publishing at this time in response to public comment supporting a fixed, early publication date. HUD is using the same ACS data for FY 2012 MFIs as it used for FY 2011 MFIs. HUD uses additional Consumer Price Index (CPI) data to update the ACS data from mid-2009 to the end of 2010. The factor used to trend the 2010 estimates to the midpoint of FY 2012 MFIs is unchanged at 3 percent per year<sup>3</sup>. Separate HUD MFI estimates are calculated for all Metropolitan Statistical Areas (MSAs), HUD Metro FMR Areas, and nonmetropolitan counties.

The ACS, conducted annually, was designed to produce estimates similar to the long-form sample survey previously conducted with the Decennial Census upon compilation of 5 years of data. Each year since full implementation of the survey in 2005, the Census Bureau collected an ACS sample sufficient to provide estimates of most survey items for areas with populations of 65,000 or more. After the 2007 ACS, the Census Bureau released data aggregated from the ACS samples collected over the three years, 2005, 2006, and 2007. This allowed the Census Bureau to release estimates for most items for areas with populations of 20,000 or more. FY 2010 MFIs reflected ACS survey data aggregated over 2006, 2007 and 2008. After the 2009 ACS sample, the Census Bureau had sufficient data to release aggregated five-year estimates. Five-year estimates are designed to provide estimates for geographic areas of all sizes relevant to MFI and income limit production.

As mentioned above, HUD used the 2005-2009 5-year ACS data in the calculation process for both the FY 2011 MFIs and the FY 2012 MFIs. Specifically, for each metropolitan area, subarea of a metropolitan area, and non-metropolitan county, 5-year ACS data is used as the new basis for calculating MFI estimates. HUD is incorporating the 5-year data in this way to eliminate the reliance on the data collected during the 2000 Decennial Census as it is more than a decade old. In areas

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<sup>2</sup> The ACS covers the 50 United States, and a separate survey called the Puerto Rico Community Survey (PRCS) covers Puerto Rico. The US Virgin Islands and the Pacific Islands (American Samoa, Commonwealth of the Northern Mariana Islands, and Guam) are not covered by the ACS or PRCS. Detailed demographic and socio-economic information covering these island areas have been collected by a special Long Form survey conducted in conjunction with the 2010 Decennial Census. These data are scheduled to be available in the Fall of 2012. For FY 2012 median family income calculations, HUD continues to use the change in the national median income between the 2000 Decennial Census and the latest ACS data as the update factor for the US Virgin Islands and the Pacific Islands. Since there was no new ACS data used for the calculation of FY 2012 median incomes, the national median from FY 2011 was updated with CPI through the end of 2010.

<sup>3</sup> This average annual trend factor is unchanged from last year and relies on a comparison of the nation ACS income in 2000 compared with the income for 2008. HUD is currently evaluating alternative trend factors and may update or change this trend factor for next year, most likely using a methodology similar to the method for calculating the trend factor in the FY 2013 Fair Market Rent calculations.

where there is a valid 1-year ACS survey median family income result, HUD endeavors to use this data as well to take advantage of more recent survey information. By using both the 5-year data and the 1-year data, where available, HUD is establishing a new basis for MFI estimates while also capturing the most recent information available.

HUD changed the way it uses ACS margins of error for the FY 2011 MFI estimates. HUD set the base MFI equal to the 2005-2009 5-year ACS survey value. For areas with a valid 2009 1-year survey result, HUD used the margin of error for the 1-year data in conjunction with the margin of error for the 5-year survey result to determine if the two survey results are statistically different. If they are statistically different, HUD uses the 1-year survey result. In the few cases where the margin of error exceeds the survey estimate, so that the confidence interval around the estimate includes zero, HUD assigns the state nonmetropolitan median<sup>4</sup>. This evaluation is unchanged in the use of the 2005-2009 ACS data for the FY 2012 MFI estimates.

MFI estimates are based on the most currently available data, but the delay in collecting and reporting the survey data mean that 2009 ACS income data is used for FY 2012 estimates that have an as-of date of April 1, 2012. The CPI is used to bring the income data from 2009 to the end of 2010. A trend factor based on historic patterns of nominal income growth is used to inflate the estimate from the end of 2010 to April, 2012. As in previous years, HUD is maintaining the use of a 3 percent trend factor.

Median family<sup>5</sup> incomes start with the development of estimates of MFI for the metropolitan areas and non-metropolitan FMR/income limit areas (including U.S. territories). Attachment 2 provides a detailed explanation of how median family income estimates are calculated. The major steps are as follows:

HUD uses 2005-2009 5-year ACS estimates of median family income calculated for the areas used for FMRs and income limits as the new basis for FY 2012. In areas where there is also a valid 2009 1-year ACS estimate of median family income, a statistical comparison is made between the 5-year median family income and the 1-year median family income available from the ACS. If the 1-year data are statistically different from the 5-year data, HUD calculates an update factor between the 5-year data and the 1-year data and applies this to the 5-year data. Once the appropriate 2009 ACS data has been selected, the data are set as of December 2010 using the December 2010 national CPI value divided by the annual 2009 National CPI value.

All places:

All estimates (using either 5-year data or 5-year data augmented with 1-year data) are updated with CPI through the end of 2010 then trended from December, 2010 to April, 2012 (1¼ year) with a trending factor of 3 percent per year.

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<sup>4</sup> For the FY 2012 MFI estimates, HUD uses the state nonmetropolitan median for Kalawao County, HI and Kenedy County, TX.

<sup>5</sup> Family refers to the Census definition of a family, which is a householder with one or more other persons living in the same household who are related to the householder by birth, marriage, or adoption. The definition of family excludes one-person households and multi-person households of unrelated individuals.

For the non-Puerto Rico Insular Areas of the United States,<sup>6</sup> which currently lack ACS coverage, national ACS income changes are used as surrogates to update 2000 Decennial Census data. HUD anticipates eventually receiving new income data for these areas from the 2010 Decennial Census, which included a "long form" collection of detailed socio-economic information in these areas only.

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<sup>6</sup> The areas without ACS coverage are the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands. Puerto Rico is covered by the ACS-equivalent Puerto Rico Community Survey.



## ATTACHMENT 2

**FY 2012 Median Family Incomes for States,  
Metropolitan and Nonmetropolitan Portions of States**

STATE	----- FY 2012 -----		
	TOTAL	METRO	NONMETRO
Alabama	55400	58800	47600
Alaska	80400	84500	71100
Arizona	61600	62800	46900
Arkansas	50900	56600	43900
California	71400	71800	57900
Colorado	74100	76700	61000
Connecticut	89200	90000	83200
Delaware	73300	77400	62600
District of Columbia	71400	71400	52400*
Florida	57000	57800	45900
Georgia	59800	63700	45200
Hawaii	79400	82700	73400
Idaho	55200	58400	50500
Illinois	72100	75300	57400
Indiana	60100	62400	53600
Iowa	64800	70300	59300
Kansas	65200	72100	54400
Kentucky	53000	61800	43600
Louisiana	55700	59600	47000
Maine	61000	66300	54900
Maryland	89300	90600	72600
Massachusetts	86100	86100	89500
Michigan	60400	62900	52100
Minnesota	73900	80200	60000
Mississippi	48700	57700	42200
Missouri	60700	66600	47800
Montana	58000	60900	56600
Nebraska	64400	71500	57000
Nevada	64800	64700	66000
New Hampshire	80500	87500	70300
New Jersey	89400	89400	52400*
New Mexico	54500	58900	47700
New York	71400	73300	56900
North Carolina	57800	61600	50200
North Dakota	67600	72900	63800
Ohio	61100	63200	53600
Oklahoma	55800	59900	49500
Oregon	63900	67700	53400
Pennsylvania	66600	69300	55600
Rhode Island	75700	75700	52400*
South Carolina	55800	58400	48300
South Dakota	60400	65700	56400
Tennessee	54700	59000	46000
Texas	60300	62400	49300
Utah	67500	69000	57500
Vermont	67600	76700	63800
Virginia	76900	82800	52600
Washington	72900	75600	57400
West Virginia	50700	55400	45400
Wisconsin	66700	70200	59900
Wyoming	67700	66600	68300
US	65000	67600	52400

\* US non-metropolitan median

*Appendix M. IHS 2012 Allowable Cost per  
Unit*

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**Appendix M**  
**IHS 2012 Allowable Cost per Unit**

State	50% of SDS 2012 Total Allowable Unit Cost
Alabama	\$36,750
Alaska	\$84,000
Alaska (1)	\$64,750
Alaska (2)	\$75,250
Arizona	\$42,250
California	\$50,500
Colorado	\$40,750
Connecticut	\$49,500
Florida	\$39,500
Idaho	\$41,750
Iowa	\$42,250
Kansas	\$40,000
Louisiana	\$35,750
Maine	\$42,750
Massachusetts	\$59,500
Michigan	\$42,750
Minnesota	\$48,250
Mississippi	\$36,500
Montana	\$40,750
Nebraska	\$40,750
Nevada	\$46,750
New Mexico	\$40,000
New York	\$47,500
North Carolina	\$37,500
North Dakota	\$41,250
Oklahoma	\$36,500
Oregon	\$45,750
Rhode Island	\$49,000
South Carolina	\$36,500
South Dakota	\$39,500
Texas	\$36,000
Utah	\$40,500
Washington	\$48,250
Wisconsin	\$45,250
Wyoming	\$39,250

The IHS developed total allowable unit costs for each state to determine project feasibility, except for Alaska which has three total allowable unit costs.