

WATER DIVISION UPDATES

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WATER DIVISION UPDATES

1. Commitment to Consultation
2. Water Program Funding
3. New Water Rules
4. Water Infrastructure
5. Status of TAS approvals
6. Training
7. Your Questions!

Commitment to Consultation

EPA Region 9 Water Division Tribal Consultation Standard Operating Procedures September 24, 2019

I. Purpose

To provide expectations and procedures for consulting with tribal governments on water program actions that affect tribal interests.¹

II. Background

The Water Division upholds its trust responsibility to federally recognized tribal governments through implementation of all water programs consistent with the [2011 EPA Policy on Consultation and Coordination with Indian Tribes](#) (Policy) and [2018 Region 9 Implementation Best Practices](#).

Fundamental to the Policy is meaningful communication and coordination with appropriate tribal leadership prior to EPA taking actions or making decisions that may affect tribal interests, including but not limited to tribal lands, cultural resources, or treaty rights. This means the Water Division will offer tribal leaders a timely, substantive, and good-faith exchange of ideas on our actions; it is not required that the tribe(s) agree to engage or agree with EPA's proposed decision or timetable.

Water Division Programs should consider their consultation objectives and plan as early in their processes as practicable and engage the tribe(s) in the development of the consultation plan. Although the criteria for the types of actions that may warrant tribal consultation are intentionally broad, examples of Water Division actions include:

- Reinterpretations of how programs will be implemented in Indian country²
- Permit issuance or re-issuance
- Water quality certifications for federally-permitted or licensed projects
- Decision on a state or tribe's application for delegation / assumption / primacy of a federal environmental program
- Approval of state water quality standards or TMDLs where up- or down-stream tribal resources may be affected
- Changes to Division procedures that impact the allocation of federal funds to tribes
- Any action that the Water Division has reason to believe may be controversial or precedent-setting to tribal communities
- Any action, including state actions under a federally-delegated program, where a tribal government requests a consultative role for EPA in writing

III. Procedures

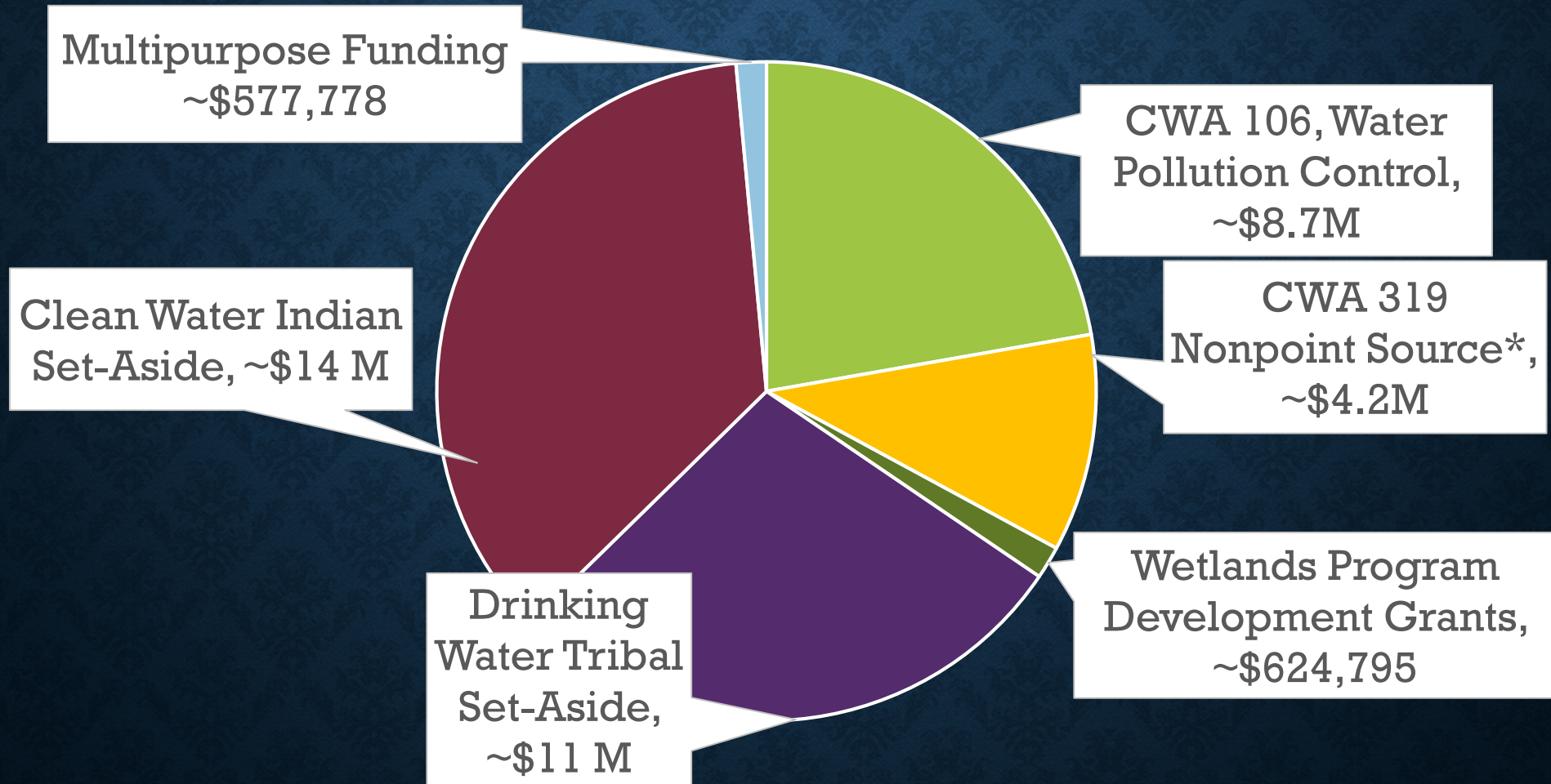
Consultation has four phases: Identification, Notification, Input, and Follow-up. The Office of the Regional Administrator's Tribal, Intergovernmental, and Policy (TIP) Division is responsible Headquarters for tracking consultations across Region 9's media programs and for providing policy

¹ "Consultation" is always with tribal leadership and is the focus of this SOP. Any number of routine programmatic and/or pre-consultation "coordination" events may also take place and are encouraged as a best practice consistent with the Policy. Headquarters-led national tribal consultations are also beyond the scope of this SOP. Water Division's investment in such activities will vary by issue and will be addressed by managers case-by-case.

² In some cases, "Indian country" can go beyond the borders of a formal reservation.

Program	Offers	Accepted
EPA 401 WQ Certifications	34	0
State WQ Standards	141	6
Tribal TAS for WQ Standards	1	1
Tribal WQ Standards	15	1
UIC Permits	23	11
Ocean Dumping Site Expansion	10	3
State Nonpoint Source Plans	152	1
Total 2020 to date:	376	23

Funding Our Programs ~\$39 MILLION



* CWA 319 funding includes 15 competitive awards

NEW WATER RULES

- **Navigable Waters Protection Rule**
 - Effective June 22, 2020
 - Excludes certain waters
 - Flow duration tools in development
- **Clean Water Act Section 401 Rule**
 - Effective September 11, 2020
 - Sets time limits and defines scope of state/tribal certifications



Water Infrastructure Updates

- DW Infrastructure Needs Survey
- Infrastructure: '20 Award and '21 Solicitation



Sanitary Surveys

- Sanitary Survey Field work in 2020/2021
 - September Time-Frame



Big Valley Director of Public Works

Tribal "TAS"

The Authority to Oversee CWA Programs

Total # of Eligible Tribes: 148

Program	R9 Tribes with	NEW in 2020
CWA 106: Water Pollution Control Program	114	<ul style="list-style-type: none">• Upper Lake• North Fork
CWA 319: Nonpoint Source Pollution Prevention Plan	105	<ul style="list-style-type: none">• Upper Lake• North Fork
CWA 303: Water Quality Standards Program	24	<ul style="list-style-type: none">• Cabazon Band• Quartz Valley• Duck Valley• Karuk• Yerington• San Carlos Apache



Navajo Nation

WATER TRAININGS

Upcoming

- September 1 & 3, 2020: Tribal Water Resiliency Workshops
- February 2021 (TENTATIVE): Tribal Water Quality Standards Academy
- CA Tribal Water Systems Public Safety Power Shutoff (PSPS) Virtual Workshops

Past

- Water Reuse Action Plan Training (June 2020)

QUESTIONS??