



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

OFFICE OF WATER

June 13, 2022

Re: Notification of Continued Consultation and Coordination on the Draft Clean Water Act Section 106 Tribal Grant Guidance

Dear Honorable Leader,

The U.S. Environmental Protection Agency (EPA) is continuing consultation and coordination with federally recognized Indian Tribes on revisions to the Clean Water Act Section 106 Tribal Grants Guidance (Section 106 Tribal Guidance), formerly the *Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act - 2007 and Beyond*.

On January 13, 2021, EPA initiated consultation and coordination with Tribes to seek input on recommended changes to the 2007 Section 106 Tribal Guidance. EPA then established a Section 106 Tribal Guidance Revision workgroup, made up of EPA staff and 24 tribal volunteers, to assist in the revisions to the 2007 Guidance. The Section 106 Tribal Guidance Revision workgroup developed draft text based on the initial EPA recommendations and tribal feedback provided through the consultation and coordination process. The list of work group members is attached.

The EPA is pleased to present for your review and comment the draft revised Section 106 Tribal Guidance. The guidance, once finalized, will replace the 2007 Guidance. It is anticipated that Tribes will have until August 15, 2022 to comment on draft revised Guidance.

The continuation of the consultation and coordination process for the revision of the Section 106 Tribal Guidance will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (<https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes>). The consultation period for the revision of the Section 106 Tribal Guidance has remained open for the duration of this effort.

Enclosed is a consultation and coordination plan that further describes the process EPA has followed, including a timeline for the remainder of the consultation and coordination period, and information on how you can provide input on this action. *This information is also available on EPA's Tribal Consultation Opportunities Tracking System (TCOTS) at <https://tcots.epa.gov>.*

Please contact our official EPA representative for this consultation and coordination process, Robyn Delehanty (delehanty.robyn@epa.gov) at (202) 564-3880, if you have any questions or

would like to request alternate arrangements to the process outlined in the consultation and coordination plan. We look forward to hearing from you.

Sincerely,

for

Andrew D. Sawyers, Director
Office of Wastewater Management

cc: Tribal Environmental and Natural Resource Directors
CWA Section 106 Tribal Coordinators

Enclosures

Updated Consultation and Coordination Plan: Review of the Draft Clean Water Act Section 106 Tribal Grants Guidance

Background Information on the Initiative

Section 106 of the Clean Water Act (CWA) authorizes EPA to provide financial assistance to states, interstate agencies, and eligible Tribes to establish and administer programs for the prevention, reduction, and elimination of water pollution. In 1987, Congress amended Section 518(e) of the CWA to include provisions that allow EPA to treat an Indian Tribe in a manner similar to a state (i.e., treatment in a manner similar to a state, or TAS) for the purpose of providing Section 106 funding.

Since 1987, EPA has provided technical assistance and funding under the CWA Section 106 program to assist Tribes and intertribal consortia to understand, assess, and preserve water resources on their lands. For Tribes, CWA Section 106 grants are a crucial, dedicated source of funds for developing, maintaining, and expanding water quality programs. These programs are designed to control, prevent, and eliminate water pollution as well as to educate tribal members and the public.

Of the 574 federally recognized Tribes, approximately 335 could potentially meet the CWA eligibility requirements for CWA Section 106 funding. To date EPA has determined that 284 Tribes are eligible to receive Section 106 grants.¹

Potential Benefits to Tribes

EPA has used the current CWA Section 106 Tribal Guidance since Fiscal Year 2007 as the primary guidance for Section 106 tribal grant recipients and internal and external grant project officers. The goals of revising the CWA Section 106 Tribal Guidance include:

- Develop clear, comprehensive, updated, and succinct language that is relevant and applicable to Tribes.
- Describe the CWA Section 106 program and provide context around the CWA generally.
- Describe the benefits of water quality program development and implementation.
- Provide practical guidance in program implementation.
- Provide consistent messaging on national program requirements to help Tribes negotiate workplans.

The revisions to the Guidance did not develop new policy for the Tribal Water Programs. The national allocation formula was not impacted by the Guidance revision process.

Initial 60-Day Comment Period

The consultation and coordination period provides Tribes an opportunity to inform the revisions being considered for the CWA Section 106 Tribal Guidance and remains open for the duration of this effort. EPA held the first of two 60-day comment periods from January 13, 2021 – March 14, 2021. During the

¹ Section 518 of the Clean Water Act grants authority to federally recognized Tribes with Indian reservations to receive Section 106 grants if EPA finds that they meet certain specified requirements. Approximately 335 Tribes currently appear to have lands that qualify as reservations as defined in the Act, although an applicant Tribe must provide documentation to EPA concerning its reservation, government, and capabilities to be found eligible.

first comment period, EPA requested tribal feedback on its recommendations for revising the 2007 Guidance.

Second 60-Day Comment Period - Opportunities for Tribes to Participate

For this second comment period, which is anticipated from June 13, 2022 - August 15, 2022, EPA is seeking input on the draft revised Section 106 Tribal Guidance, and is specifically interested in tribal feedback on the following:

1. The Guidance seeks to provide a flexible framework for Tribes to establish and expand their water quality programs. Are there additional flexibilities EPA should consider?
2. Indigenous Traditional Ecological Knowledge (ITEK) is a new addition to the Guidance. Do you have feedback on the language provided?
3. The Guidance retains the three existing programmatic requirements: Monitoring Strategy, Data submission, and Assessment. The Guidance proposes a new requirement for Tribes to provide data directly to WQX in recognition of the progress tribal water quality programs have made over the last 15 years. However, for Tribes that are not currently able to provide data directly to WQX the requirement is to provide the data in a WQX compatible format along with a request for a waiver that provides Tribe-specific information on existing barriers to flowing data. What tools and technical assistance should EPA make available to support tribal data flow?
4. The Guidance should be specific without being overly detailed. Should any of the content be removed and replaced with a link to find more information? If so, please specify what content you suggest removing.
5. The Guidance should be brief but detailed enough to cover all necessary topics. Should any of the content be expanded upon with more information? If so, please specify what content you suggest expanding.

EPA is also interested in highlighting more examples of tribal programs experience developing and managing their CWA Section 106 funded water quality programs

Once EPA evaluates and considers tribal comments from this second comment period, EPA plans to finalize the CWA Section 106 Tribal Guidance. Once finalized, the revised Guidance will replace the 2007 Guidance.

Tribes have three options for submitting written comments:

1. Provide comments electronically by using this [form](#).
2. Email comments to: Draft_Section_106_Tribal_Guidance@epa.gov.
3. Send comments by mail to the following address:

CWA Section 106 Tribal Program
U.S. EPA
1200 Pennsylvania Ave, NW (MC 4201M)
Washington, DC 20460

EPA also will hold identical informational webinars on two separate dates for tribal leaders and staff on June 23, 2022 from 12:00-1:30 pm (EDT) and on June 29, 2022 from 1:00-2:30 pm (EDT). The webinars will provide Tribes and tribal leaders an opportunity to provide input, ask questions and learn more about this consultation opportunity and the draft revised CWA Section 106 Tribal Guidance. You can register for the first webinar [here](#) or the second webinar [here](#).

Additionally, tribal governments may request government-to-government consultation meetings with EPA. EPA will work to accommodate these requests as time and resources permit. If you are interested in requesting consultation with the agency during the consultation and coordination period, please contact Robyn Delehanty (delehanty.robyn@epa.gov).

Tribes may access this letter and related consultation information in EPA’s Tribal Consultation Opportunities Tracking System (TCOTS) located at <https://tcots.epa.gov>.

The combined goal for all these efforts is to ensure there is sufficient information for tribal leaders and their designated consultation representative(s) to make an informed decision about the desire to engage in government-to-government consultation and to understand how to provide informed input. EPA looks forward to working with federally recognized Tribes to better understand their needs and answer questions related to the recommended revisions to the CWA Section 106 Tribal Guidance.

Tribal Consultation and Coordination Process and Timeline

Date/Time	Event	Contact Information	Status of Event
January 13, 2021	Initiation of the tribal consultation period. Consultation notification letters are emailed to tribal leaders. Also initiates first 60-day comment period; share key topic areas being considered for revising the CWA Section 106 Tribal Guidance (see attached supplement)	EPA Contact: Jennifer Wintersteen (406) 457-5006 (Wintersteen.jennifer@epa.gov)	Complete
February 2, 2021 2:00-3:00 PM (EDT)	Tribal Leader Informational Webinar #1: Recommendations for Revising the Section 106 Tribal Guidance.	EPA Contact: Jennifer Wintersteen (Wintersteen.jennifer@epa.gov)	Complete
February 11, 2021 2:00-3:00 PM (EDT)	Tribal Leader Informational Webinar #2: Repeat: Recommendations for Revising the Section 106 Tribal Guidance.	EPA Contact: Jennifer Wintersteen (406) 457-5006 (Wintersteen.jennifer@epa.gov)	Complete

Date/Time	Event	Contact Information	Status of Event
March 14, 2021	End of the first 60-day comment period. EPA then evaluates and considers comments received.	Comments can be emailed to: Jennifer Wintersteen (Wintersteen.jennifer@epa.gov)	Complete
June 13, 2022	Continuation of consultation notification letters are emailed to tribal leaders. Start of second 60-day comment period on Draft Revised CWA Section 106 Tribal Guidance.	Comments can be emailed to: Draft_Section_106_Tribal_Guidance@epa.gov Comments can be submitted electronically using this form . Or mail comments to: CWA Section 106 Tribal Program U.S. EPA 1200 Pennsylvania Ave., NW (MC 4201M) Washington, DC 20460	Active
June 23, 2022 12:00 – 1:30 (EDT)	Tribal Leader Informational Webinar #3: Draft Revised CWA Section 106 Tribal Guidance.	EPA Contact: Robyn Delehanty (delehanty.robyn@epa.gov) Registration link: https://attendee.gotowebinar.com/register/8054392588554722571	Active
June 29, 2022 1:00 – 2:30 (EDT)	Tribal Leader Informational Webinar #4: Repeat: Draft Revised CWA Section 106 Tribal Guidance.	EPA Contact: Robyn Delehanty (delehanty.robyn@epa.gov) Registration link: https://attendee.gotowebinar.com/register/6184062836568226572	Active
August 15, 2022	Consultation closes and Guidance will be finalized.	Final Guidance will be posted at the following CWA Section 106 weblink: https://www.epa.gov/water-pollution-control-section-106-grants	Active

CWA Section 106 Tribal Guidance Revision Work Group

EPA Members:

Robyn Delehanty	HQ-OWM Core Team Lead
Laura Shumway	HQ-OWOW Core Team Lead
Jennifer Wintersteen	Region 8-Regional Core Team
Danielle Grunzke	OWOW Core Team
Kendra Forde	OWOW Core Team
Jeff Butensky	Region 1
Andrea Coats	Region 2
Ed Hopkins	Region 3
Eve Zimmerman	Region 4
Jennifer Shadle	Region 4
David Horak	Region 5
Mari Nord	Region 5
Daniel Cozza	Region 5
Kara Alexander	Region 6
Kimberly Hill	Region 7
Tom Johnson	Region 8
Liz Rogers	Region 8
Danielle Angeles	Region 9
Kate Pinkerton	Region 9
Krista Mendelman	Region 10
Connie Cahanap	OWOW
Dylan Laird	OWOW
Steve Epting	OWOW
James Ray	OST
Danielle Anderson	OST
Fred Leutner	OST
Nizanna Bathersfield	OWM
Karen Gude	OW IO
Will Post	OITA-AIEO
Julie Milazzo	OGD
Stephanie Rich	OGC
Wendel Askew	OGC
Nate Delano	OW
Lauren Kasperek	OWOW
Emma Maschal	OWOW

Tribal Members:

Ryan Siggelkow	Forest County Potawatomi Community (Region 5)
Sean Leask	Grand Traverse Band of Ottawa and Chippewa Indians (Region 5)
Jason De Vries	Lac du Flambeau Band of Lake Superior Chippewa Indians (Region 5)
Jeff Harper	The Leech Lake Band of Ojibwe (Region 5)
Eric Krumm	The Leech Lake Band of Ojibwe (Region 5)
Anthony Mastracci	Choctaw Nation of Oklahoma (Region 6)

Lisa Hopinkah	Pueblo of San Felipe (Region 6)
Dino Chavarria	Pueblo of Santa Clara (Region 6)
Kelly Schott	Sacs & Fox Tribe of the Mississippi in Iowa (Region 7)
Justin Avery	Santee Sioux Nation (Region 7)
Denise Jensen	Winnebago Tribe of Nebraska (Region 7)
Chauncey Means	Confederated Salish and Kootenai Tribes (Region 8)
Tim Spade	Flandreau Santee Sioux Tribe (Region 8)
Mitchell Healy	Ft Belknap Indian Community Assiniboine and Gros Ventre Tribes (Region 8)
Michael D. DeSpain	Buena Vista Rancheria of Me-Wuk Indians (Region 9)
Lisa Gover	Campo Band of Diegueno Mission Indians (Region 9)
Ken Norton	Hoop Valley Tribe (Region 9)
Alvin Crook	Hualapai Indian Tribe (Region 9)
George Rodriguez	Santa Ysabel Band of Diegueno Mission Indians (Region 9)
Mervin Wright	Pyramid Lake Paiute Tribe (Region 9)
Michelle Gutierrez	Ramona Band (Region 9)
Emily Luscombe	Washoe Tribe (Region 9)
Ray Colby	Makah Indian Tribe (Region 10)
Kelsey Taylor	Snoqualmie Tribe (Region 10)