



DRINKING WATER INFRASTRUCTURE GRANTS

TRIBAL SET-ASIDE PROGRAM



Final Guidelines

October 1998

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A. INTRODUCTION:

The purpose of this document is to establish general guidelines for the conduct of the new funding program established through the Safe Drinking Water Act (SDWA) Amendments of 1996. The program will allow the Environmental Protection Agency (EPA) to award Federal grants for infrastructure improvements for public drinking water systems that serve Tribes¹.

B. BACKGROUND:

The Safe Drinking Water Act (SDWA) amendments of August 6, 1996 made a number of changes to the United States' drinking water program. One of the most significant changes to the SDWA was the establishment of a program that authorizes EPA to distribute Federal funds among States and Tribes for needed public drinking water system infrastructure improvements.

The SDWA prescribed different programs for States and Tribes, and while this document is about the Tribal program, a brief discussion about the State programs may be helpful as several sections of the guidelines make reference to the State Revolving Loan Fund program. The SDWA authorizes EPA to award "capitalization" grants to States. States will use these capitalization grants to establish State Revolving Loan Funds (SRFs) from which they will make low interest loans, and other types of assistance, to eligible systems. These loans will then be repaid to the States and will be available for additional loans to other systems. While the SDWA provides for the possibility that some Tribes may be able to seek and get loans from the State in which the tribal water system is located, the SDWA also authorizes EPA to set aside a portion of each year's appropriation and use it to make direct **grants** (not loans) for capital improvements to public water systems that serve Indian Tribes.

The provision for the Drinking Water SRF Tribal Set-Aside (DWIG TSA) program is contained in Section 1452(i) of the SDWA. In summary, this section says that the DWIG TSA program grants may only be used "for public water system expenditures referred to in subsection (a)(2)," and will "address the most significant threats to public health." Subsection (a)(2) then 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. The text of the SDWA sections that apply to the DWIG TSA

¹ Although the SDWA makes reference to both Indian Tribes and Alaska Native Villages, for clarity, these guidelines will refer to American Indians and Alaska Natives as "Tribes", unless we are quoting the SDWA language.

program is contained as *Appendix A* to these guidelines.

C. GENERAL OVERVIEW OF THE DRINKING WATER INFRASTRUCTURE GRANTS TRIBAL SET-ASIDE (DWIG TSA) PROGRAM :

EPA's Office of Ground Water and Drinking Water (OGWDW) has developed an allotment formula that will distribute each year's available set-aside funds among the nine EPA Regions with Tribal programs. OGWDW will allot the funds to the EPA Regional offices. **In consultation with the Indian Health Service (IHS) and the Tribes in their Region**, each EPA Region will be responsible for identifying potential projects, for prioritizing those projects, for selecting the ones to receive funding from its share of the Set-Aside Program allowance. The Region's priority system must ensure that funding priority be given to projects that address the most serious public health risks, are necessary to ensure compliance with SDWA requirements, and assist systems most in need. The EPA Regions will also award and administer the grants.

There are a number of tools already available to the Regions to help them identify and prioritize projects. These include: the information that Regions have collected through their sanitary surveys; data on systems with MCL compliance problems; and system projects that have already been identified by the IHS through its Sanitation Facilities Deficiency System. Regions may use any combination of the existing tools, or they may choose to develop a totally new method of identifying and prioritizing projects. **Each Region must, however, give the Tribes in their Region an opportunity to review and comment on the Regional program as they develop it; and once developed, must consult with the IHS and Tribes in their Region regarding project selections.** While the Regional programs must be consistent with these national guidelines, each Region will have a good deal of flexibility in designing a program that works best for the Tribes in their Region.

After the EPA Regional offices have developed their Regional program and have selected the projects to be funded, they will negotiate and make the grants to accomplish the project construction. The SDWA authorizes EPA to make the grants to Tribes and, in the case of the Tribes in Alaska, to the State of Alaska for the benefit of Alaska Tribes. Tribes may choose to administer the project funds themselves or they may request the Indian Health Service to serve as their agent and administer the project funds for them. *(The Indian Health Service (IHS) administration is, of course, dependent on IHS staff availability.)* The EPA Regional Offices will be responsible for managing any grant award and for administering and tracking project progress after an award; or for transfer of any funds to IHS via an Interagency Agreement.

D. STATUTORY AUTHORITY, CONTROLLING REGULATIONS & OMB GUIDELINES:

1. **Statutory Authority:** The statutory authority for the Drinking Water Tribal Set Aside grants is the Safe Drinking Water Act, as amended through August 1996. Section 1401 -- Definitions; and Section 1452 -- State Revolving Loan Fund
2. **Regulatory Authority:** EPA has determined that new regulations are not required for the conduct of the DWIG TSA program. The following, existing grant regulations, apply to the DWIG TSA program. *40CFR Part 31 -- Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.*
3. **Office of Management and Budget (OMB) Guidelines :** The Office of Management and Budget has established a series of “Cost Principles” that federal agencies must use in determining allowable costs under federal assistance agreements. The cost principles contained in *OMB Circular A-87 -- Cost Principles for State, Local and Indian Tribal Governments* are incorporated by reference in the Part 31 regulations and apply to the grants made under the DWIG TSA program.
4. **Other Federal Statutes -- Cross-Cutting Federal Authorities:** There are a number of Federal laws, executive orders and government-wide policies that apply by their own terms to projects and activities receiving Federal financial assistance, regardless of whether the SDWA makes them applicable. These “cross-cutting Federal authorities” will include environmental laws such as the National Historic Preservation Act and the Wild and Scenic Rivers Act, and social and economic policy authorities such as Executive Orders on Equal Employment Opportunity and government-wide debarment and suspension rules. A complete list of these cross-cutters is contained in *Appendix B.*

E. SPECIFIC DWIG TSA PROGRAM ISSUES:

1. **Available funds and method of distribution**
 - a. **Amount of DWIG TSA funds available** -- The SDWA allows EPA to use up to 1½% of the amounts annually appropriated to carry out Section 1452 of the SDWA for grants to Tribes (the DWIG TSA program). EPA’s current policy is that the maximum 1½% will be set-aside each fiscal year for grants to Tribes.
 - b. **Method of allotting funds among EPA Regional offices** -- Each of the nine EPA Regional offices participating in the DWIG TSA program (*EPA’s Region III office does not encompass any federally recognized Tribes with drinking water systems*) will receive a share of the 1½% that is set aside for the DWIG TSA program. EPA HQ will use a formula to determine the share that each

Regional office will receive.

The formula that will be used for the foreseeable future provides, to each of the nine Regions, a “base” amount that is equal to 2% of the annual DWIG TSA appropriation. This base will account for 18% of the available DWIG TSA funds. The remaining funds (82% of each appropriation) will be allotted to the EPA Regions using a formula that assigns a weight of 50% to the Indian Health Service’s Sanitation Deficiency System (IHS SDS) and a weight of 50% to EPA’s Drinking Water Infrastructure Needs Survey (DWINS).

EPA selected this formula for a number of reasons. First, we believe that of all the “tools” that could be used to allot DWIG TSA funds, the DWINS and the IHS SDS are the most appropriate because they are both based on drinking water systems (as opposed to the general factors such as population, land area, or other environmental factors that are contained in other existing formulae). Further, the information in both the DWINS and the IHS SDS is based on the infrastructure needs of drinking water systems and that is what the DWIG TSA funds are intended to address. Neither tool is “perfect”, however -- both have strengths and weaknesses. As a result, we believe that the distribution formula should be based on the information that is contained in both the DWINS and SDS rather than focusing exclusively on one set of data. (*Appendix C* provides a brief comparison of what EPA believes are the major differences between the DWINS and the SDS). Finally, we believe that providing each Region with a 2% baseline of funding will allow for at least one viable project in each Region, each year, and thus allow every Tribe to at least have the opportunity to receive a grant from the DWIG TSA funds. Without this base, Tribes in several EPA Regional offices would never enjoy this opportunity.

The Final formula allotments for federal fiscal years (FFY) 1997 and 1998, and the Tentative formula allotments for FFY 1999 are provided in *Appendices D, E and F* respectively.

- c. **Schedule for allotment of funds** -- EPA HQ will use the formula twice during each federal fiscal year. The first calculation will be a tentative allotment and will be based on the President’s budget request. The budget submission historically occurs in late January or early February of each year, and so EPA HQ should be able to calculate the tentative allotments in mid to late February of each year. We cannot guarantee that Regional offices will actually receive the level of funding identified in the tentative allotments, however, since they are based on the amount of funds that are “requested” from Congress. The purpose of the tentative allotments is to provide EPA’s Regional offices with a planning target on which to base their potential funding decisions for the

coming fiscal year.

When EPA receives its appropriation for the year, typically in late summer or early fall, EPA HQ will use the formula to calculate the final (actual) allotments for the year. We will use the same IHS SDS and DWINS information to calculate the final allotments as was used to calculate the tentative allotments for the year, even if more current information has become available. This practice will avoid major changes between a Region's tentative and final allotments, and will provide them with as much stability as possible between the planning and execution phases. If the funds appropriated to EPA are the same as were requested in the President's budget, the final allotments will be the same as the tentative allotments. The only thing that will cause the final allotments to be different than the tentative allotments is an appropriation that is different than the requested budget.

IHS SDS: The IHS currently updates its SDS information every year. This update currently occurs in December and so new SDS information should be available shortly before we calculate the tentative allotments each year. As an example, IHS SDS information that became available in December 1998 will be used to calculate the Tentative allotments of the FFY2000 DWIG TSA funds as the President's budget for FFY 2000 will be released in January or February of 1999. The same December 1998 IHS SDS data will be used in the calculation of the Final FFY 2000 allotments. IHS could, of course, alter the timing of the compilation of the SDS information. Should that happen, we will use the most current SDS data that is available when we calculate the tentative allotments (i.e., no later than the end of each February).

EPA DWINS: The DWINS is required to be conducted and updated every four years. The most recent (and first) DWINS was published in January 1997. We will use the information contained in that report for allotment of the FFY1997, FFY1998, FFY1999, FFY2000, and FFY2001 DWIG TSA appropriations. The next DWINS is scheduled to be published in February 2001. Based on that scheduled date, EPA would first be able to use the 2001 DWINS report for allotment of the FFY2002 DWIG TSA budget request and appropriation. The February 2001 DWINS report would also be used for allotment of the FFY2003, FFY2004, and FFY2005 DWIG TSA funds. As long as Congress continues to appropriate funds for the DWIG TSA program we will continue to use the most currently available DWINS information in the

allotment formula.²

- d. Potential for additional funds being added to the DWIG TSA program --**
The EPA capitalization grants to States are available to the States for a limited time (two years). The SDWA requires that any funds not obligated to States within this two-year time frame are to be reallocated 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’s current policy is that we will take advantage of this allowance and that we will reserve the maximum amount allowable (10%) of any available reallocation funds for additional grants to Tribes through the DWIG TSA program.

Formula: The formula that EPA will use to conduct a reallocation of SRF funds will be same formula that was used to originally allot the DWIG TSA funds for that year’s appropriation. As an example: if there are any FFY1997 State Revolving Loan Funds that are made available for a reallocation, EPA will reallocate the DWIG TSA share of the funds among the EPA Regional Offices, using the formula that was originally used to allot the FFY1997 DWIG TSA funds among the Regions.

Timing: The timing of any reallocation of SRF funds will be established through the SRF program. As of the release date of these DWIG TSA guidelines, the SRF program had not established guidance on the timing of potential reallocations. It will, however, be the goal of the DWIG TSA program to calculate the distribution of any reallocation within 90 days after the time those monies become available to the DWIG TSA program. As more detailed SRF guidance becomes available, the DWIG TSA guidelines will be amended as necessary.

2. Duration of availability of DWIG TSA funds and the potential for an “internal” reallocation of funds within the DWIG TSA program.

While the funds that the US Congress appropriates for the Drinking Water SRF program do not expire after any period of time, the SDWA does require that the funds intended for the States (SRF funds) be obligated to the States within a 2-year time frame. As mentioned in Section E1d above, any SRF funds not

² EPA has received DWIG TSA funds in the FFY97 and FFY98 appropriations. Any discussion of the policy on the DWIG TSA program for FFY99 and beyond is dependent on the President continuing to request funds for this program in the annual budget and Congress continuing to appropriate funds for this purpose.

obligated within that period are to be reallocated by EPA. There is no similar statutory requirement that the DWIG TSA funds be obligated within a specified period.

While it will be EPA policy to keep all of the set-aside funds within the DWIG TSA program, we also believe that it is appropriate to set some time limit on the award of the funds after they are allotted to EPA's Regional Offices. Therefore, it is EPA's current policy that the DWIG TSA funds will be available to the EPA Regional Offices, to which they were originally allotted, during the federal fiscal year (FFY) in which they were appropriated and during the following two fiscal years. For example: funds appropriated in FFY 1999 will be available to the EPA Regional Offices during FFY1999, FFY2000, and FFY2001. The exception to this policy is that the funds appropriated for FFY1997 and FFY1998 will be available to the EPA Regional offices, to which they were originally allotted, through FFY2001. We believe this extension for FFY1997 and FFY1998 funds is appropriate because national guidelines were not available during FFY1997 and much of FFY1998, and because Regions will initially need additional time to develop their Regional programs.

Any fiscal year funds originally allotted to a Region, that are not awarded by that Region during the above specified period, will be reallocated among those Regions that have awarded all of funds originally allotted to them for that fiscal year. For example: any FFY1999 funds allotted to a Region, that have not been awarded by that Region by the end of FFY2001 (September 30, 2001), shall be reallocated among all the Regions that have awarded all of the FFY1999 funds previously allotted to them. As noted earlier, it is EPA's intention to keep all reallocated funds within the DWIG TSA program. The only exception to this would be the unlikely situation where none of the EPA Regions would have any eligible DWIG TSA projects remaining to be funded.

Regional Offices do not need to wait for the full time period described above to expire before returning unneeded funds to EPA HQ. If a Regional Office realizes that all of the DWIG TSA needs of the Tribes within its area have been satisfied, and no further eligible projects exist, the Region shall inform EPA HQ as soon as possible and return any unneeded funds for reallocation.

Formula: Any funds that are available for an internal reallocation, will be reallocated among the EPA Regional Offices using the same formula that was used to originally allot the DWIG TSA funds for that year's appropriation. As an example: if there are any FFY1997 DWIG TSA funds available for a reallocation, EPA will reallocate those funds among the EPA Regional Offices using the formula that was originally used to allot the FFY1997 DWIG TSA funds among the Regions.

Timing: EPA's current plan is to conduct any necessary internal DWIG TSA reallocation within 90 days after the close of each federal fiscal year. As an example, any FFY1997 or FFY1998 DWIG TSA funds that are not awarded by an EPA Regional Office by September 30, 2001, will be reallocated between October 1, 2001 and January 1, 2002.

3. Potential recipients of DWIG TSA funds

- a. **Tribes** -- The SDWA gives EPA the authority to award grants to Tribes. All Tribes that are recognized by the Bureau of Indian Affairs as eligible to receive services are eligible to receive grants from the DWIG TSA program. DWIG TSA funds cannot be awarded to individual water systems (whether they are Tribally or non-Tribally owned), or any individual home owners. [After the funds are awarded to the Tribe, however, the Tribe may elect to provide some, or all, of the funds to a local government, a Tribal consortium, the Indian Health Service, a water system, etc., for the conduct of the project. The plan for the Tribe's use of the grant funds should be identified in the grant award document. It should also be clear that in such a case, the Tribe is still the grant recipient, and is ultimately responsible to EPA for proper management of the funds].
- b. **The State of Alaska** -- The SDWA also gives EPA the authority to award grants to the State of Alaska for projects for Alaska Tribes. Award of funds to the State of Alaska for the benefit of Alaska Tribes should only occur when the Tribe requests the State to administer the project and the State agrees to manage the project on behalf of the Tribe.
- c. **The Indian Health Service** -- EPA realizes that the Indian Health Service (IHS) has been providing financial and engineering support to Tribes for drinking water facilities for many years. EPA also understands that some Tribes may request that the IHS design, construct, or administer construction of the projects that they will be funding with DWIG TSA program monies. Assuming that IHS is able to provide the requested service to the Tribe, there are two methods of accessing IHS assistance. The Tribe may either contract with IHS for administration after the Tribe receives grant funds from EPA; or the Tribe can request that EPA directly transfer the funds for the entire project to IHS through an Interagency Agreement (IAG) and the EPA Regional Office can award a grant of IHS services to the Tribe. While both methods are acceptable, we believe that the latter approach is far more efficient and strongly recommend it as the method of choice. This approach will reduce the administrative burden on the Tribe, lessen paperwork for all parties, and

provide IHS with access to all of the project funds throughout the conduct of the project.

4. Water system eligibility factors

- a. **Tribally owned vs non-Tribally owned systems** -- the SDWA specifies that the DWIG TSA funds; *“shall be used to address the most significant risks to public health associated with public water systems that serve 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 Tribe.
- b. **Profit vs non-profit systems** -- EPA categorizes public water systems into three types -- 1) community water systems (CWS), 2) nontransient noncommunity water systems (NTNCWS), and 3) transient noncommunity water systems (TNCWS). *Appendix G* defines each of these three categories. Both for-profit and non-profit CWSs are eligible to receive DWIG TSA grants. Only non-profit systems in the NTNCWS and TNCWS categories are eligible to receive DWIG TSA funds. For-profit NTNCWSs and for-profit TNCWSs are not eligible to receive DWIG TSA funds.
- c. **Service population** -- As mentioned above, both Tribally owned and non-Tribally owned systems are eligible to have projects funded through the DWIG TSA program as long as the system serves the Tribe. Many systems do not exclusively serve a Tribal population, however. EPA’s definition of what constitutes a system that “serves an Indian Tribe” follows:

Tribally owned water systems -- EPA’s current policy is that all existing community water systems, and all nonprofit noncommunity water systems, owned by a Tribal government will be considered to serve an Indian Tribe and will eligible to have projects funded with DWIG TSA funds.

EPA Regional offices must, however, take into account, during the grant negotiations, whether it is reasonable for the DWIG TSA to fund the entire cost of the project. A significant portion of the water produced by some Tribally-owned water systems serves a non-Tribal population. In such cases, the EPA Regional office 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 noncommunity water systems is used by a for-profit entity (whether it’s a Tribal or non-Tribal entity). In such cases, the EPA Region must decide whether it’s appropriate for DWIG TSA funds to pay for the entire project or

whether the for-profit entity should pay for a share of the project cost. In both of the above situations, EPA Regional offices have the responsibility and authority to determine the appropriate DWIG TSA funding level.

Non-Tribally owned water systems -- There is no “hard and fast” rule as to how much (or what percent) of a system’s water must be “served to a Tribal population” for a project to qualify for funding from the DWIG TSA. As with the Tribally owned systems that serve a non-Tribal population, 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 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 should conclude that it is not appropriate for the DWIG TSA to fund the entire cost of the project, and may conclude that the DWIG TSA should not fund any portion of the project. The EPA Regional offices have the responsibility and authority to determine the appropriate DWIG TSA funding level.

Clearly, there are systems that should not qualify for DWIG TSA funds even though some small portion of the water that they produce serves an Indian population. Almost every large city in the United States includes some Native Americans among its users. We don’t believe that Congress intended that the DWIG TSA funds be used to support projects for such systems.

DWIG TSA funds are limited, there will be many more needs and projects than EPA will have funds for. EPA must be judicious in its funding decisions and ensure that the available DWIG TSA funds are stretched as far as possible in achieving the goal of the SDWA in protecting the health of Native Americans. We believe that the EPA Regional offices are in a better position to make those difficult decisions than is EPA HQ. As a result, the above policies give the EPA Regions a significant amount of authority, and responsibility, in determining how much of a project cost should be funded with DWIG TSA monies. We believe this is preferable to establishing rigid national criteria for calculating the portion of a project that would be eligible to be funded with DWIG TSA funds.

- d. **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.

- e. PWSS regulatory authority** -- The regulatory authority is not a factor in determining eligibility for DWIG TSA funds. The concept of authority to establish and enforce drinking water regulations stems from the Public Water System Supervision (PWSS) portions of the SDWA. The SDWA treats the DWIG TSA and PWSS programs differently. For example, all Federally recognized Tribes are considered eligible Tribes with respect to the DWIG TSA program. This is not true under the PWSS program. As one example, the Tribes in Alaska are subject to the drinking water regulations established by the State of Alaska. There are also a few Tribes in other States that follow the drinking water regulations established by a State. This situation has no effect on the eligibility of those Tribes to have projects funded with DWIG TSA monies.
- f. Tribal Primacy for the PWSS program** -- Many federally recognized Tribes are eligible to seek and assume authority to operate their own Public Water System Supervision (PWSS) programs and, therefore, be the regulatory authority for purposes of the PWSS program requirements. Even though no Tribe currently has received this authority, such a determination will have **no** impact on the DWIG TSA program. PWSS Primacy does not alter a Tribes authorities or limitations under the DWIG TSA program.
- g. Creation of “New” water systems** -- Currently, EPA’s interpretation of the SDWA is that funds available under Section 1452 may only be used for providing assistance to existing public water systems and are not available for the construction of a new public water system. However, 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, and on June 12, 1998 proposed, in the Federal Register, a policy outlining the Agency’s interpretation. *[Although the FR notice does not specifically reference Tribal water systems or Tribal project grants, if adopted, the proposed policy will apply to the DWIG TSA as well as State SRF programs.]*

Under the proposed policy, award of a DWIG TSA grant for creation of a new system could only be made if the following conditions are met:

- upon completion of the project, the entity created must meet the Federal definition of a community water system;
- funding is limited to projects where an actual public health problem with serious risks exists;

- the project must be limited in scope to the specific geographic area affected by health risk;
- 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; and
- the system, upon completion, must have adequate technical, financial, and managerial capacity (see *Section E7*).

The comment period on the proposed policy closed on July 19. EPA is currently reviewing comments and expects to make a decision by the end of FFY1998. If the proposed policy is adopted, this section of the Guidelines will be modified at a later date to reflect the new policy. Until further notice, however, the Agency is operating under the policy that “new” systems are not eligible to be created through the use of DWIG TSA funds.

- h. Newly identified public water systems** -- EPA realizes that all “public water systems” do not consist of the traditional vision of a system (e.g: well/surface water source, collection facilities, treatment plant, storage, distribution lines, etc.), and EPA has previously interpreted the term “public water system” in very broad terms. Opinions are currently on record that interpret public water systems to potentially include entities such as “hand-pumped wells”, “water vending machines”, and “water haulers”.

More recently, the 1996 amendments to the SDWA expanded the definition of a “public water system” from entities that provide “piped water for human consumption” to those that provide “water for human consumption through pipes or other constructed conveyances”. On April 28, 1998 EPA modified its Federal drinking water regulations to adopt the new definition, and on May 8, 1998 published draft guidelines on the subject. These changes further broaden the definition of a public water system.

The result of the statutory and regulatory changes is that there will likely be entities that are newly identified as public water systems. EPA also realizes that there may have been bonafide public water systems under the prior definition that were never properly identified as such. As noted in the May 8 draft guidelines mentioned above, PWSS Primacy agents have the authority and responsibility to conduct reviews to identify public water systems. Any newly identified systems that “serve Indian Tribes” and meet the criteria specified in this section will be eligible to have projects funded with DWIG TSA funds to the same extent as any previously identified public water system.

5. Eligible uses of DWIG TSA funds

A DWIG TSA grant may be made **only** for public water system projects that, EPA determines, will: a) facilitate compliance with the National Primary Drinking Water Regulations (NPDWR) or, b) significantly further the health protection objectives of the SDWA. Projects to address existing health standards that have been exceeded or to prevent future violations of the rules are both eligible for funding.

a. Examples of fundable projects

Projects to:

- rehabilitate or develop sources (**excluding** reservoirs, dams, dam rehabilitation and water rights) to replace contaminated sources;
- install or upgrade treatment facilities if, in the EPA Regional Offices' opinion, the project would improve the quality of drinking water to comply with primary or secondary standards;
- 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; and
- replace aging infrastructure if the replacement is needed to maintain compliance or further the health protection goals of the SDWA.

b. System consolidation -- a project to eliminate an existing public water system through consolidation with another existing water system is eligible for funding, **if** the water system to be consolidated is currently contaminated or is otherwise posing a risk to the public health of the Tribe. This includes consolidation of systems which are considered to lack adequate technical, financial, or managerial capacity (see Section E7) if it is determined that consolidation is the best solution to correct the lack of capacity.

c. Existing homes that are not currently connected to an existing public water system -- a project to connect existing homes -- that do not currently receive their drinking water from a public water system -- to an existing public water system is eligible for funding, **if** the current source of the drinking water available to the homes is contaminated or is otherwise posing a risk to the public health of the Tribe. *(Note that DWIG TSA grants can only be awarded to Tribes, not directly to the water system or to the individual home owners).*

d. Feasibility studies, engineering work, and project management -- While the purpose of the DWIG TSA funds is to improve water system infrastructure,

some preliminary work is typically necessary to reach the stage of an infrastructure project. Often feasibility studies are necessary to identify the best and most cost effective solution to an infrastructure need, and engineering design work is necessary for almost every construction project. Such work is an eligible expense for DWIG TSA funds and may be funded as discrete projects. However, Regions must be cautious about the amount of such work that is done each year. Regions must not get into a situation where they are funding a lot of feasibility and design work that is not going to lead to project awards in the near future. We recommend that each Region establish a reasonable limit on the amount or percent of DWIG TSA funds that it will allow to be spent on such work each year.

As described in *Section E3*, some Tribes may request that the Indian Health Service administer a DWIG TSA funded construction project for the Tribe. In many of those cases, the IHS conducts a feasibility study for the project, and does the design and engineering work for the project. When IHS provides any of these services, it is an allowable use of DWIG TSA funds for the grant recipient to include these costs into the grant application and to provide them to IHS for any feasibility studies, engineering work, or administration services that they provide to the Tribe in support of the DWIG TSA project.

The SDWA provides that: *“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.”*

6. Ineligible uses of DWIG TSA funds

The SDWA specifically disallows projects for:

- monitoring,
- operation & maintenance, and
- land acquisition (*unless the land is integral to the project and is from a willing seller*).

In addition to the SDWA limitations, EPA has determined that a number of other types of projects are ineligible for funding through the DWIG TSA program:

- Dams, or rehabilitation of dams;
- 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 needed mainly for fire protection;
 - Projects intended primarily for future growth;
 - Projects for systems that do not have the technical, managerial, and financial capability to ensure compliance with the SDWA and the NPDWRs, **unless** the Tribe/owner of the system agrees to make appropriate changes in operation (management, rate structure, maintenance, consolidation, alternative supplies, etc) that will ensure the long term capability of the system. (*See Section E7*); and
 - Projects for systems that are in significant noncompliance with any requirement of the NPDWRs, **unless** the project which is being funded will ensure full compliance with the NPDWRs.

Project administration by EPA Regional offices: Funds **cannot** be used by EPA Regions for the administration of their Regional DWIG TSA program. Resources and staffing to conduct this administration are provided through EPA's operating budget.

Other ineligible uses of DWIG TSA funds: There are a number of "non-infrastructure improvement" activities described in SDWA sections 1452(g)(2) and 1452(k) that the Act allows to be funded with State Revolving Loan fund appropriations. It is EPA's interpretation that the SDWA does not provide the same allowance for the DWIG TSA funds. In brief, both sections (g)(2) and (k) specifically use language that a "State" may use funds for these other purposes. The definition section of the SDWA states that; "for the purposes of section 1452, the term 'State' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico." Indian Tribes were not included in the term "State" for purposes of section 1452, and section 1452 is where the Tribal Set-Aside program is authorized. As a result, we believe that we do not have the statutory authority to use DWIG TSA funds for the purposes described in sections (g)(2) and (k). These unallowable activities are identified below:

Section 1452(g)(2) of the SDWA allows a "State" to use up to 10% of its capitalization grant to:

- supplement its 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.

Section 1452(k) allows a “State” to use a total of 15% of its capitalization grant to:

- provide loans to water systems to acquire land or a conservation easement;
- provide loans to any community water system to implement source water protection measures in delineated areas;
- provide loans to any community water system to assist them with source water petitions;
- provide technical or financial assistance to any water system to carry out a capacity development strategy;
- delineate and assess source water protection areas (FFY1996 and FFY1997 funds only); and
- establish and implement wellhead protection programs.

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. As a result, in FFY 1998, EPA requested, and received, supplemental funding under the Public Water System Supervision (PWSS) program to assist Tribes with activities that would improve their capacity to manage PWSS programs and assist them in doing things that will allow them to secure DWIG TSA funds. EPA also requested supplemental funding in its FFY1999 budget. It is EPA’s intent to use these funds, in part, to assist Tribes with operator training and certification, system capacity development, and source water protection activities.

7. Technical, financial & managerial capacity of a system

Before a DWIG TSA award is made for a water system project, the EPA Regional office making the award will be responsible for determining whether the system has adequate technical, financial, and managerial capacity. (A brief summary of what EPA means by technical, financial, and managerial capacity is contained in *Appendix H.*) With the one exception explained in the second paragraph of this section, EPA Regional offices will have the authority and responsibility to define what constitutes adequate capacity. EPA’s policy is that projects for systems (either Tribally or non-Tribally owned) that do not have adequate technical, financial and managerial capability are not eligible to be funded with DWIG TSA monies unless the Tribe or owner of the system agrees to make appropriate changes in operation (management, rate structure, maintenance, consolidation, alternative supplies, etc) that will ensure the long term capability of the system and

the EPA Regional Office is reasonably confident that these changes will occur.

While each EPA Regional office has the authority to define adequate capacity, EPA Headquarters is requiring one mandatory element – that after EPA has finalized development of an operator certification program for Tribes, any system to be assisted with DWIG TSA funds must be operated by adequately trained and certified operators. EPA Regional offices will not make awards for any systems that do not meet this condition. While this requirement will not take effect until EPA's national operator certification program is completed, there are a number of existing training and operator certification sources currently available to most Tribes, and we strongly recommend that all Tribal water system operators take advantage of these opportunities and become certified as soon as possible.

As noted in the first paragraph, awards may be made for a system that does not have adequate capacity as long as the Tribe or owner of the system agrees to ensure that the appropriate improvements or changes are made. (A few examples of potential improvements or changes are provided in *Appendix H*.) Any agreements, commitments, interim milestones, etc, must be clearly identified in the assistance award package, and it should be clear that the DWIG TSA award will be terminated if the agreements are not satisfied. For projects for systems that are not Tribally owned, the Tribe will need to agree that it will not transfer any funds to the system, local government, the project contractor, or otherwise use DWIG TSA funds on the project unless it gets a commitment that the system will make all necessary changes to improve its capacity. For projects for which a Tribe has asked that IHS administer the funds, the EPA Regional office will not transfer any funds to IHS unless the Tribe agrees to make all necessary changes. Further, no subsequent DWIG TSA award will be made to, or for the benefit of, a Tribe that has not satisfied all prior DWIG TSA project agreements and commitments.

8. Reimbursement of expenditures incurred prior to receipt of a DWIG TSA grant.

There may be instances where a Tribe incurs project costs prior to receipt of a DWIG TSA grant. Regions may be able to use DWIG TSA funds to reimburse a Tribe for certain “pre-award costs” as long as a number of conditions are met.

- the system is a municipal system (i.e., is owned by a Tribal government, or a non-Tribal municipality) -- the system cannot be owned by a private entity;
- the pre-award costs meet the project eligibility criteria outlined in *Section E5*;
- the pre-award costs were incurred after August 6, 1996. This is the date that the SDWA was amended (and the DWIG TSA was authorized). EPA

cannot pay for any costs that were incurred before the DWIG TSA was created.

- negotiations, regarding the project for which the costs were incurred had occurred between the Tribe and EPA Region, and both had anticipated that the incurred costs were going to be funded with DWIG TSA monies. *(Regions must be cautious, however, not to commit the Agency to an award of funds that it does not have. No commitment can occur before the grant is actually awarded.)*, and
- Regions must seek and obtain a deviation to EPA's General Grant Regulations (40 CFR Part 31) whenever they elect to allow any pre-award costs.

Not all pre-award costs may be allowed. As an example, the OMB Cost Principles (A-87) note that costs incurred for interest on borrowed capital are unallowable except in certain limited situations described in A-87.

Finally, while pre-award costs may be eligible under the above circumstances, Regions are not obligated to reimburse Tribes for any costs that are incurred prior to a grant award. Any expenses that a Tribe incurs prior to award are incurred at the Tribe's risk.

9. Combining DWIG TSA funds with other sources of money

EPA knows that there are other sources of financial assistance available to assist Tribes with projects to improve their drinking water systems. We also know that many times the most expedient way of completing a project will be to combine funds from multiple sources -- that sufficient funds to complete a project may not be available from any single source -- and Tribes should explore all potential sources of funding. With the one exception explained below, combining DWIG TSA funds with monies from other federal, State, or local loan or grant programs is a perfectly acceptable method of funding a Tribal drinking water project.

The exception referred to above stems from the SDWA language in §1452(i)(1) -- that DWIG TSA funds; "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" (emphasis added). It is EPA's understanding that some States will be allowing Tribally-owned water systems to apply for and receive funds from their State's SRF program. While this is another potential source of funds for Tribes, the SDWA does limit a Tribe's ability to mix DWIG TSA and State SRF funds. The limitation is that a Tribe may not receive funds from both the

DWIG TSA and a State SRF **for the same project**³. In instances where a Tribe would like to use both DWIG TSA and State SRF funds to improve a single water system, the two funding sources must be used on separate and discretely different projects. *(Tribes should be aware that whenever they receive funds from a State SRF program, they must comply with all of the State requirements and conditions associated with the SRF grant or loan.)*

10. Tribal “matching” requirements

The SDWA does not require Tribes to provide any match to an EPA DWIG TSA grant. While we encourage Tribes to share in funding of water system projects, EPA policy will be that Tribes receiving DWIG TSA grants will not be required to provide matching Tribal funds.

F. EPA REGIONAL DWIG TSA PROGRAMS

In summary, once EPA Headquarters allots the annual DWIG TSA funds to the EPA Regional offices, the Regions will be responsible for management and oversight of the grants and the projects funded by the grants. Each EPA Regional office will develop a method of identifying water system projects and prioritizing those projects. Regions must provide these intended methodologies to the Tribes, and other potentially interested parties in their Region, and allow for an adequate opportunity for comment. Each year the Regional Offices will use the identification and prioritization methods to rank the projects and select those that they will be able to fund for the year. Each Region will then provide the entire list of identified projects (including estimated costs), and those that were selected for funding, to the Tribes and the other interested parties within the Region. Regional methodologies can change from year to year, but when that occurs, they will need to inform, and seek comment from, the Tribes, and the other interested parties.

1. **Project identification** -- Regions have flexibility in deciding how to gather information on potential DWIG TSA projects. Regions are aware of many Tribal system needs as a result of the sanitary surveys that they routinely conduct and through the compliance information that exists in the Safe Drinking Water Information System (SDWIS). In addition, the Indian Health Service’s (IHS) Sanitation Deficiency System (SDS) is an extremely valuable source of potential project information. However, even though the IHS SDS and the Region’s own

³ 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.

information may identify the majority of the potential projects, Tribes may have additional projects that they believe may qualify for DWIG TSA funding. Regions may want to consider providing a mechanism that will allow other potential projects to be included on the list of candidates.

- 2. Project prioritization** -- Regions must develop a quantifiable method of ranking all of the identified projects, and the ranking method must be applied to all the potential projects each fiscal year.

Like project identification, Regions will have flexibility in developing a prioritization method for the projects within their Region. Regions must give priority, however, to projects that;

- address the most serious risk to human health;
- are necessary to ensure compliance with the requirements of the SDWA;
- and assist systems most in need on a per household basis.

Each method must differentiate the projects according to the severity of the health risk to be solved by the project. As examples: acute health risks should be resolved before non-acute risks and known threats should be addressed before potential threats.

Project readiness cannot be a factor in determining a project's ranking. Regions may, of course "skip-over" a project that is not ready to proceed, but such a project should stay on the Region's priority list and be re-ranked and reconsidered in the following year's ranking.

- 3. Regional outreach and Tribal involvement** -- As mentioned above, Regions must inform Tribes, and other potentially interested parties, about their project identification and prioritization methods, of the ranking of all of the identified projects each year, and of the estimated amount of DWIG TSA funds to be awarded for each project. Because non-Tribally owned systems are eligible to have projects funded through the DWIG TSA program, Regions will need to explore and identify ways to reach such systems. In some instances, such as for the Tribes in Alaska, it may also be appropriate to inform the States of the Region's plans.

Regions also need to work closely with the local Area Office of the Indian Health Service. As mention earlier, the IHS has been assisting Tribes improve their drinking water facilities for many years and have a project identification and funding program of their own. Even if a Region chooses not to use the IHS's SDS in its project identification or ranking methods, **it is imperative that the Region consult and coordinate with the local IHS Area Office** . Otherwise, confusion

and possible duplication of effort will occur.

4. **Unscheduled “emergency” projects** -- It is possible that after a Region uses its prioritization method to rank projects for a year, and informs the Tribes of the rankings and selections, that an emergency project will occur. Such projects may include those where some type of failure was unanticipated and requires immediate attention to protect public health. In such cases, the Regions have authority to fund the emergency project ahead of the selected projects. The Region must, of course, inform the Tribe(s) whose project(s) were by-passed of the Region’s decision and the rationale behind that decision. The projects that were by-passed should receive the highest priority for the next available funding. Regions should identify, in their priority system, the types of situations that constitute emergencies.
5. **Grant management and oversight** -- Regions will serve as the Project Officer on each of the DWIG TSA grants and, as such, will be responsible for all of the activities traditionally assigned to a Project Officer. The general requirements are outlined in *“Managing Your Financial Assistance Agreement -- Project Officer Responsibilities”*. Regions will be responsible for developing the oversight criteria that will be contained the grant award document, and for all oversight associated with the assistance agreement.
6. **Reports to EPA Headquarters** -- EPA Regions will be expected to provide EPA Headquarters (currently the Office of Groundwater and Drinking Water) with summary information about the grants that are awarded. The reports shall be made once per year, within 90 days after the end of the fiscal year. The reports shall contain information about both new awards during the past fiscal year, and information about projects funded in prior fiscal years.

At a minimum, the information on the new awards shall include: the name of the Tribe receiving the grant, the name and identification number of the system that benefitted from the grant, the purpose of the grant (feasibility study, engineering/design, construction, etc), a brief description of the project, the amount of the award, the appropriation year of the funds (e.g., FFY97 funds), the date of the award, the portion of the project being funded by the DWIG TSA grant, other known funds that are being used to fund the project, and finally whether the Tribe requested IHS administration or is administering the project itself.

At a minimum, the information on the projects awarded in prior years shall include: major milestones, such as start and completion of feasibility studies, design, and construction and the dates of each. The report shall also include any changes that were made to the award amounts of the assistance agreements.

SAFE DRINKING WATER ACT AMENDMENTS
§1452 – REVOLVING LOAN FUNDS
SUBSECTIONS ADDRESSING INDIAN TRIBES & ALASKA NATIVE VILLAGES:

§1452(i) Indian Tribes.--

- (1) In general.--1 ½ 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).** *(emphasis added -- see section (a)(2) below)*
- (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.

The highlighted sections of section (a)(2) apply to Tribal projects :

§1452(a)(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 noncommunity 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 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.

Federal Cross-Cutting 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 Historic Preservation Act of 1966, PL 89-665, as amended
- Safe Drinking Water Act, Pub. L. 93-523, 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
- 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

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].

4

The Civil Rights Act and related anti-discrimination statutes apply to all the operations of the SRF Program.

Comparison of Major Differences Between
Indian Health Service Sanitation Deficiency System (Drinking Water Project List)
and
EPA Drinking Water Infrastructure Needs Survey

*Analysis by EPA, for EPA Concept Paper associated with
Drinking Water Tribal Set-Aside Infrastructure Grants Program*

EPA Drinking Water Needs Survey

IHS Sanitation Deficiency System

Needs of existing community water systems.

Needs of American Indian and Alaska Native homes (excluding HUD funded homes) that lack safe water supply. (individual homes included).

Does not account for developing new water systems.

Considers possibility of new water systems.

Current & future (20-year) needs.

Current needs.

SDWA compliance needs as well as immediate public health needs.

Primarily for immediate public health needs. All SDWA compliance needs not considered immediate health risk.

Needs are modeled projections. Model was designed to estimate national needs rather than Tribe, or EPA Region, specific needs.

Each project need is based on actual site visit and tribal consultation.

Needs are not associated with specific projects.

Needs comprised of actual project estimates.

Project feasibility not a factor in Survey.

Project costs and feasibility are factor. (only feasible projects are used to determine the distribution funds appropriated for IHS SDS).

Conducted every 4 years.

Updated annually.

Appendix C

**FORMULA FOR DISTRIBUTION OF
DRINKING WATER INFRASTRUCTURE GRANTS
TRIBAL SET-ASIDE PROGRAM (DWIG TSA) FUNDS
FINAL DISTRIBUTION OF FFY 1997 APPROPRIATION**

Actual Funds Available for FFY1997 DWIG TSA Program: **\$19,125,000**
Each Region to Receive 2.0% of Total (\$382,500) as a Base Allotment
DWIG TSA Needed to Accommodate "Base" (18.0% of Available) **\$ 3,442,500**
Available to Allot After Base: **\$15,682,500**

EPA Region	Formula Factors & Calculations					TOTAL REGIONAL ALLOTMENT (Base + Formula)
	Needs Survey Needs ① (Weight -- 50%)	IHS SDS Projs (Dec 96 List) ② (Weight -- 50%)	Formula Percentage	Formula Allotment	Base Allotment	
Region 1	\$3,000,000	\$436,400	0.17%	\$27,100	\$382,500	\$409,600
Region 2	\$2,100,000	\$371,750	0.13%	\$20,400	\$382,500	\$402,900
Region 4	\$15,600,000	\$3,194,800	1.03%	\$161,300	\$382,500	\$543,800
Region 5	\$41,200,000	\$7,788,760	2.63%	\$411,700	\$382,500	\$794,200
Region 6	\$38,200,000	\$36,111,012	6.47%	\$1,014,300	\$382,500	\$1,396,800
Region 7	\$5,700,000	\$2,060,000	0.50%	\$78,500	\$382,500	\$461,000
Region 8	\$95,500,000	\$30,502,725	7.82%	\$1,227,000	\$382,500	\$1,609,500
Region 9	\$320,500,000	\$176,023,094	36.54%	\$5,730,400	\$382,500	\$6,112,900
Region 10 (incl ANV)	\$817,500,000	\$101,647,220	44.71%	\$7,011,800	\$382,500	\$7,394,300
TOTALS:	\$1,339,300,000	\$358,135,761	100.00%	\$15,682,500	\$3,442,500	\$19,125,000

- ① Needs Survey figures were adjusted to account for Tribally-owned systems that were not credited to the Tribes in the 1995 Survey
- ② December 96 (rather than December 1995) IHS SDS data was used to distribute the FFY1997 funds as the more current data was available when EPA first developed the allotment formula. Advisory Group recommended using the December 1996 data.

Example of calculation -- using Region 1:

Region receives a "Base Allotment" of \$382,500 (as do all 9 Regions). There is a total of \$19,125,000 available for the DWIG TSA for FFY97. After each of the 9 Regions receives its base of \$382,500 there is \$15,682,500 remaining to distribute. The share of the \$15,682,500 that Region 1 receives is determined by the following formula:

$$[0.5 \times (3,000,000 \div 1,339,300,000) + 0.5 \times (436,400 \div 358,135,761)] \times \$15,682,500 = \$27,100$$

The Region's total allotment is the sum of the "Base Allotment" plus its "Formula Allotment". For Region 1, this is \$382,500 + \$27,100 = \$409,600. Each Region's Allotment is calculated in the same manner.

Appendix D

**FORMULA FOR DISTRIBUTION OF
DRINKING WATER INFRASTRUCTURE GRANTS
TRIBAL SET-ASIDE PROGRAM (DWIG TSA) FUNDS
FINAL DISTRIBUTION OF FFY 1998 APPROPRIATION**

Actual Funds Available for FFY1998 DWIG TSA Program: **\$10,875,000**
Each Region to Receive 2.0% of Total (\$217,500) as a Base Allotment
DWIG TSA Needed to Accommodate "Base" (18.0% of Available) **\$ 1,957,500**
Available to Allot After Base: **\$ 8,927,500**

EPA Region	Formula Factors & Calculations				Base Allotment	TOTAL REGIONAL ALLOTMENT (Base + Formula)
	Needs Survey Needs ① (Weight -- 50%)	IHS SDS Projs (Dec 96 List) (Weight -- 50%)	Formula Percentage	Formula Allotment		
Region 1	\$3,000,000	\$436,400	0.17%	\$15,400	\$217,500	\$232,900
Region 2	\$2,100,000	\$371,750	0.13%	\$11,600	\$217,500	\$229,100
Region 4	\$15,600,000	\$3,194,800	1.03%	\$91,700	\$217,500	\$309,200
Region 5	\$41,200,000	\$7,788,760	2.63%	\$234,100	\$217,500	\$451,600
Region 6	\$38,200,000	\$36,111,012	6.47%	\$576,800	\$217,500	\$794,300
Region 7	\$5,700,000	\$2,060,000	0.50%	\$44,600	\$217,500	\$262,100
Region 8	\$95,500,000	\$30,502,725	7.82%	\$697,700	\$217,500	\$915,200
Region 9	\$320,500,000	\$176,023,094	36.54%	\$3,258,500	\$217,500	\$3,476,000
Region 10 (incl ANV)	\$817,500,000	\$101,647,220	44.71%	\$3,987,100	\$217,500	\$4,204,600
TOTALS:	\$1,339,300,000	\$358,135,761	100.00%	\$8,917,500	\$1,957,500	\$10,875,000

① Needs Survey figures were adjusted to account for Tribally-owned systems that were not credited to the Tribes in the 1995 Survey

Example of calculation -- using Region 1:

Region receives a "Base Allotment" of \$217,500 (as do all 9 Regions). There is a total of \$10,875,000 available for the DWIG TSA for FFY98. After each of the 9 Regions receives its base of \$217,500 there is \$8,917,500 remaining to distribute. The share of the \$8,917,500 that Region 1 receives is determined by the following formula:

$$[0.5 \times (3,000,000 \div 1,339,300,000) + 0.5 \times (436,400 \div 358,135,761)] \times \$8,917,500 = \$15,400$$

The Region's total allotment is the sum of the "Base Allotment" plus its "Formula Allotment". For Region 1, this is \$217,500 + \$15,400 = \$232,900. Each Region's Allotment is calculated in the same manner.

**FORMULA FOR DISTRIBUTION OF
DRINKING WATER INFRASTRUCTURE GRANTS
TRIBAL SET-ASIDE PROGRAM (DWIG TSA) FUNDS
TENTATIVE DISTRIBUTION OF FFY 1999 APPROPRIATION**

Budget Request for FFY1999 DWIG TSA Program: **\$11,625,000**
Each Region to Receive 2.0% of Total (\$232,500) as a Base Allotment
DWIG TSA Needed to Accommodate "Base" (18.0% of Available) **\$ 2,092,500**
Available to Allot After Base: **\$ 9,532,500**

EPA Region	Formula Factors & Calculations					TOTAL REGIONAL ALLOTMENT (Base + Formula)
	Needs Survey Needs ① (Weight -- 50%)	IHS SDS Projs (Dec 97 List) (Weight -- 50%)	Formula Percentage	Formula Allotment	Base Allotment	
Region 1	\$3,000,000	\$220,000	0.14%	\$13,800	\$232,500	\$246,300
Region 2	\$2,100,000	\$348,750	0.13%	\$12,300	\$232,500	\$244,800
Region 4	\$15,600,000	\$2,890,000	1.01%	\$95,900	\$232,500	\$328,400
Region 5	\$41,200,000	\$9,916,560	2.99%	\$285,100	\$232,500	\$517,600
Region 6	\$38,200,000	\$27,383,152	5.44%	\$518,400	\$232,500	\$750,900
Region 7	\$5,700,000	\$962,000	0.35%	\$33,700	\$232,500	\$266,200
Region 8	\$95,500,000	\$30,983,275	8.10%	\$722,600	\$232,500	\$1,005,100
Region 9	\$320,500,000	\$167,085,687	36.45%	\$3,474,200	\$232,500	\$3,706,700
Region 10 (incl ANV)	\$817,500,000	\$101,471,620	45.39%	\$4,326,500	\$232,500	\$4,559,000
TOTALS:	\$1,339,300,000	\$341,261,744	100.00%	\$9,532,500	\$2,092,500	\$11,625,000

① Needs Survey figures were adjusted to account for Tribally-owned systems that were not credited to the Tribes in the 1995 Survey

Example of calculation – using Region 1:

Region receives a “Base Allotment” of \$232,500 (as do all 9 Regions). There is a total of \$11,625,000 available for the DWIG TSA for FFY99. After each of the 9 Regions receives its base of \$232,500 there is \$9,532,500 remaining to distribute. The share of the \$9,532,500 that Region 1 receives is determined by the following formula:

$$[0.5 \times (3,000,000 \div 1,339,300,000) + 0.5 \times (220,000 \div 341,261,744)] \times \$9,532,500 = \$13,800$$

The Region’s total allotment is the sum of the “Base Allotment” plus its “Formula Allotment”. For Region 1, this is \$232,500 + \$13,800 = \$246,300. Each Region’s Allotment is calculated in the same manner.

Types of Public Water Systems

Public Water System -- A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year. Such term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district”. A public water system is either a “community water system” or a “noncommunity water system”.

A “special irrigation district” means an irrigation district in existence prior to May 18, 1994 that provides primarily agricultural service through a piped water system with only incidental residential or similar use where the system or the residential or similar users of the system comply with the exclusion provisions found in section 1401(4)(B)(i)(II) or (III) of the Safe Drinking Water Act.

Community Water System -- a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

Noncommunity Water System -- a public water system that is not a community water system. There are two types of noncommunity water systems -- nontransient and transient.

Nontransient Noncommunity Water System -- a noncommunity water system that regularly serves at least 25 of the same persons, at least 6 months per year.

Transient Noncommunity Water System -- a noncommunity water system that does not regularly serve at least 25 of the same persons, over 6 months per year.

Brief Description of Technical, Financial and Managerial Capacity for Public Water Systems

Technical Capacity refers to: (1) the physical infrastructure of the water system (the capability of the system components to provide water that meets the requirements of the SDWA); and (2) the technical knowledge of the system personnel and their ability to use that knowledge to adequately operate the system.

Financial Capacity refers to the ability of the system to maintain sufficient revenues to cover operation costs and the effective management of those resources in operating the system. In effect, is the system financially healthy.

Managerial Capacity refers to such things as ownership accountability; the ability of management to adequately staff the system with qualified personnel; an understanding of the regulatory requirements involved in operating a water system; and the ability to interact well with customers and regulators

The following are potential actions that might be appropriate for a system to take to improve its capacity. These are offered as suggestions only:

- develop a source water protection plan,
- develop an infrastructure replacement plan,
- institute a long-term program to provide any needed operation and maintenance,
- conduct an analysis of the systems financial health,
- adopt a rate structure, and collect fees, that will provide the system with sufficient resources to adequately maintain and operate the system, or
- establish a Tribal utility authority to manage and operate the system.

