POTENTIAL REVISIONS TO THE DRINKING WATER INFRASTRUCTURE GRANT TRIBAL SET-ASIDE (DWIG-TSA) ALLOCATION FORMULA
CONSULTATION SUMMARY
Consultation Period: January 31, 2022, through May 2, 2022

I. Background

Section 1452 of the Safe Drinking Water Act (SDWA) authorizes the United States Environmental Protection Agency (EPA) to award capitalization grants to states to establish a Drinking Water State Revolving Loan Fund (DWSRF). Section 1452(i) of the SDWA also directs EPA to set aside a portion of each year's DWSRF appropriation to make grants for capital improvements to public water systems that serve Native American Tribes and Alaska Native Villages through the Drinking Water Infrastructure Grant Tribal Set-Aside program (DWIG-TSA).

As per SDWA, eligible activities under the DWIG-TSA program are only "for public water system expenditures referred to in subsection (a)(2)," and to "address the most significant threats to public health." Subsection (a)(2) directs that financial assistance may be used for tribal 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. EPA's Office of Water has been delegated the authority by the EPA Administrator to allocate funding to the DWIG-TSA Program. The authority to approve grants to tribes for drinking water infrastructure needs has been delegated by the EPA Administrator to EPA Regions.

The Bipartisan Infrastructure Law (BIL) delivers an additional $30.7 billion in funding to the DWSRF, including $15 billion for lead service line identification and replacement as well as $4 billion to address perfluoroalkyl and polyfluoroalkyl substances (PFAS) and other emerging contaminants. As with the annual appropriations to the DWSRF, a portion of these funds are reserved to address infrastructure needs for water systems serving tribes and EPA has the authority to allocate these funds among the ten EPA Regions.

Each year, EPA's Office of Ground Water and Drinking Water uses an allocation formula to distribute DWIG-TSA funds among the ten EPA Regions to support federally recognized tribes. Each EPA Region is responsible for working with tribes in their Region and the Indian Health Service (IHS), to identify, prioritize, and select projects to receive funding from their share of the program funds. At the time of this consultation, the ten EPA Regions each receive a "base" amount that is equal to 2% of the annual DWIG-TSA appropriation, accounting for 20% of the available DWIG-TSA funds. The remaining 80% of funds are allocated to the Regions proportionally based on their needs, giving equal weight to needs data from IHS' Sanitation

Deficiency System (SDS) and from the most recent EPA Drinking Water Infrastructure Needs Survey and Assessment (DWINSA).

II. Consultation

The EPA sought tribal comments and consultation from January 31, 2022, through May 2, 2022, to better understand tribal priorities with respect to the distribution of DWIG-TSA funds to EPA Regions. Letters were emailed to tribal leaders upon initiation of consultation, providing background information about the DWIG-TSA program and consultation plan. The EPA also hosted two identical informational webinars. The EPA sought comments to better understand tribal priorities by requesting answers to the following multi-part question:

1. How can EPA more equitably distribute the DWIG-TSA funds among the ten EPA Regions?
    a. What factors should be considered and prioritized in determining the drinking water infrastructure funding needs for tribes in an EPA Region?
    b. What factors should be considered and prioritized in determining the drinking water funding needs related to lead service line identification and replacement for tribes in an EPA Region?
    c. What factors should be considered and prioritized in determining the drinking water infrastructure funding needs related to emerging contaminants (such as PFAS) for tribes in an EPA Region?

III. Opportunities for Comment

The EPA requested tribal comments in written or verbal form be submitted to the EPA's Office of Groundwater and Drinking Water by phone or email to EPA staff, or via a form on the EPA website. In addition, the EPA hosted two identical tribal informational webinars and listening sessions. The webinars provided tribal representatives an opportunity to ask questions, learn more about this consultation opportunity, and discuss the potential revisions to the DWIG-TSA allocation formula. The informational webinars and listening sessions were hosted on March 1, 2022, and March 10, 2022.

IV. Comments Received

The EPA received two letters, two online responses, and one email providing input from tribes. The comments received are organized below by topic area. Some comments have been edited for clarity.

A. Comments in response to request for tribal input question 1: "How can EPA more equitably distribute the DWIG-TSA funds among the ten EPA Regions?"

Comments received	EPA Response
1. The EPA should distribute 3% of the total DWIG-TSA funds to the ten EPA Regions, and separately distribute 3% to Alaska, creating effectively 11 "Regions" totaling 33% of DWIG-TSA funds. The remaining 67% of funds should be proportionally divided among those 11 "Regions" based on their respective needs.	*EPA appreciates the commenter's suggestion. EPA recognizes the unique water infrastructure challenges faced by Alaska Native Villages and will continue to consider these unique needs in the allocation of water infrastructure funding.*
2. The 2% base allocation should be maintained for the EPA regional allocation formula. However, the additional FY2022 BIL funds should not include the 2% base allocation for each EPA Region and instead should be replaced with an allocation that would be distributed among EPA Regions based on addressing tribal community drinking water system priorities and health-based violations collectively.	*EPA appreciates the commenter's suggestion. EPA will revisit the 2% base allocation and assess whether an adjustment to this base allocation would result in a more equitable distribution of funds that is responsive to the drinking water infrastructure needs of tribal communities. Regions will retain the flexibility to develop project selection criteria, in consultation with tribes, to address the most significant threats to public health.*
3. Given that the 2021 DWINSA and Unregulated Contaminant Monitoring Rule (UCMR) results will not be available for analysis in time for the distribution of FY2022 BIL funds, the EPA should reallocate any unobligated FY2022 BIL funds among EPA Regions to address the most significant risks to public health and public water systems that serve tribes. 4. The Drinking Water Infrastructure Needs Survey (DWINS) analysis should be updated every year or every two years, instead of every four years. Depending on the emerging contaminants and the level of risk they	*EPA appreciates the commenters' suggestions. EPA uses multiple data sources to determine water infrastructure funding need and will continue to use the best available data at the time of allocation to distribute funds. The Drinking Water Infrastructure Needs Survey and Assessment (DWINSA) gauges 20-year Public Water System infrastructure needs across tribal nations and the 7th report will include recently collected data from Public Water Systems serving tribes. Existing tribal drinking water needs are also captured in the Indian Health Service's Sanitation Deficiency System (SDS), which is updated annually. The DWINSA does not currently consider the*

Comments received	EPA Response
pose, four years is too long between analyses.	*water infrastructure needs related to addressing emerging contaminants, so EPA will consider alternative data sources to inform the distribution of DWIG-TSA Emerging Contaminants funding appropriated under the BIL.*

A. Comments in response to request for tribal input question 1a: "What factors should be considered and prioritized in determining the drinking water infrastructure funding needs for tribes in an EPA Region?"

Comments received	EPA Response
1. Funding should be distributed per "rural or municipality" based on tribes' individual source of potable waters. Tribes that are rain dependent for source waters should be in a higher tiered status. 2. Climate change will impact rural communities the hardest, so they should be prioritized.	*EPA recognizes that water infrastructure needs in rural areas differ from those in urban areas and will work to ensure that the allocation formulas used to distribute funds accurately reflect the diverse needs of tribal communities nationwide. EPA also appreciates the commenter's suggestion that the impacts of climate change be considered when assessing tribal drinking water infrastructure needs.*
3. The greatest weighting should be given to the greatest [Indian Health Service] Deficiency Level (DL) of DL5, and least weighting to DL1, but all five DL factors should be considered. 4. BIL supplemental funds should target EPA Regions with high need where tribal communities lack access to safe drinking water and where drinking water systems have health-based violations that are well above the national average. 5. The EPA should consider the proximity of the water and the difficulty to access the water.	*EPA agrees with the commenters that the goals of improving drinking water safety and access should influence the distribution of DWIG-TSA funds. EPA endeavors to place funds where they are needed most and is committed to improving access to safe drinking water for Tribal Nations through the DWIG-TSA program and other tribal water infrastructure programs.*

B. Comments in response to request for tribal input question 1b: "What factors should be considered and prioritized in determining the drinking water funding needs related to lead service line identification and replacement for tribes in an EPA Region?"

Comments received	EPA Response
1. The factors for lead service line identification and replacement should be considered in two separate steps. First, the EPA should identify the number of total feet of lead service lines there are and then the number of total feet of non-lead service lines that potentially need to be decontaminated for lead. Second, the EPA should prioritize replacement of the lead service lines, and then consider the non-lead service line decontamination for lead. The EPA should prioritize these steps, but both should be considered to protect human health.	*EPA appreciates the commenter's suggestion. DWIG-TSA LSLR funding may be used to conduct service line inventories which can help determine the number of lead service line replacements that are needed. EPA will aim to allocate DWIG-TSA LSLR funds based on tribal funding needs associated with conducting service line inventories as well as replacing identified lead service lines.*
2. As part of assessing the amount of lead service line, the EPA should consider the total amount of lead-base brass components needing replacement to non-lead brass components. 3. The deterioration of the pipes and the acidity of the water should be considered. The more extensive the deterioration and lower pH, the more likely lead is present in the water.	*The DWIG-TSA LSLR funding is focused on replacing all lead service lines regardless water chemistry or corrosion control practices. Lead service lines are defined in the SRF Implementation Memo from March 2022. While DWIG-TSA LSLR funding cannot be used for corrosion control treatment, DWIG-TSA Base funding and infrastructure funding programs may be used to fund treatment upgrades leading to increased corrosion control.*

C. Comments in response to request for tribal input question 1c: "What factors should be considered and prioritized in determining the drinking water infrastructure funding needs related to emerging contaminants (such as PFAS) for tribes in an EPA Region?"

Comments received	EPA Response
1. The EPA should consider and provide support for tribes to examine and screen out source contaminants from their potable water. The EPA should also assist tribes with improving wastewater effluent to effectively remove contaminants from discharges. 2. The EPA should fund research that develops solutions for removing contaminants from the water and build a pilot project or new infrastructure in the areas that are most susceptible to these threats.	*Certain source water activities that focus on identifying and addressing emerging contaminants in drinking water sources are eligible for BIL funding under both the DWIG-TSA emerging contaminants funding program and the Emerging Contaminants in Small or Disadvantaged Communities (EC-SDC) Tribal Grant Program. The EC-SDC program can also fund research activities focused on emerging contaminants, including research and pilot testing for drinking water treatment alternatives. Additionally, EPA's Office of Research and Development is currently conducting research on treatment technologies for emerging contaminants in drinking water to help water systems determine how to address contamination from emerging contaminants of concern. While addressing emerging contaminants in wastewater is not the focus of the DWIG-TSA program, there is dedicated funding available for these types of activities through EPA's Clean Water Indian Set-Aside (CWISA) program.*

D. Comments received that were not directly in response to consultation questions.

Comments received	EPA Response
1. Adjustments to the allocation formula are being done before testing has been completed for PFAs in tribal regions.	*EPA appreciates your comment. There is not currently a comprehensive occurrence dataset for all emerging contaminants eligible for infrastructure funding, therefore using emerging contaminant occurrence as a consideration in the formula to allocate DWIG-TSA emerging contaminants funding is not possible. However, DWIG-TSA emerging contaminants and EC-SDC funds can be used to conduct sampling for PFAS and other emerging contaminants to help determine the need for EC-related projects. DWIG-*

Comments received	EPA Response
	TSA and EC-SDC funds can be used to test for and/or address any contaminant listed on EPA's Contaminant Candidate Lists (1-5)
2. Many tribes cannot qualify for loan and grant funds.	*EPA endeavors to ensure that tribal water infrastructure funding benefits the communities that need it the most. EPA will work closely with tribes and the IHS to provide necessary technical assistance to identify needs and develop projects to be funded through the DWIG-TSA and EPA's other tribal water infrastructure funding programs. Tribes may also request technical assistance from EPA through our water technical assistance (WaterTA) program by filling out a short online WaterTA Request Form on our EPA website.*
3. Tribal community water needs are not the same across the nation.	*EPA agrees that tribal water infrastructure needs vary from region to region. Therefore, we aim to ensure that our formula for allocating tribal funds accommodates the variation in needs.*
4. Historical DWIG-TSA funding allotments to each Region from FY1997-FY2020 show that Regions 8, 9, and 10 have consistently received higher allocations based on the greater number of tribal drinking water systems that are located within those Regions.	*EPA can confirm that the allocation formula historically distributed 80% of the funding based on documented project needs. As most of the tribal public water systems are in Regions 8, 9 and 10 and have documented needs, this directed a higher level of funding to these Regions. However, the remaining 20% was distributed equally by Region, including to Regions with less documented infrastructure needs.*
5. The EPA needs to adequately fund the tribes' drinking water needs	*EPA agrees and strives to ensure that appropriated funds are directed towards communities with the greatest needs.*
6. The EPA should provide training in PEX-polyethylene pipe plumbing to prepare tribes for continued work with newer technologies.	*As part of the BIL implementation, EPA will provide technical assistance and training to water systems on a wide variety of topics related to drinking water infrastructure, including trainings related to service line replacement piping materials. These trainings will be focused on water system service lines rather than on premise plumbing materials.*