



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Alleged Misuse of Tribal Clean Water Act Section 106 Funds in EPA Region 8

Report No. 12-P-0453

May 4, 2012



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Report Contributors:

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Abbreviations

CWA	Clean Water Act
EPA	U.S. Environmental Protection Agency
FY	Fiscal year
OIG	Office of Inspector General
ROC	Regional Operations Committee
STAG	State and Tribal Assistance Grants
TAP	Tribal Assistance Program
USGS	U.S. Geological Survey
WQX	Water Quality Exchange

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At a Glance

Why We Did This Review

This review responds to a hotline complaint on alleged misuse of Clean Water Act (CWA) Section 106 funds in U.S. Environmental Protection Agency (EPA) Region 8. The complaint alleged that Region 8: (1) withheld funds meant for tribal programs; (2) provided funds to the U.S. Geological Survey and used funds for a water quality database that neither benefitted tribes nor had their approval; and (3) provided ineffective tribal support by separating decision making between two offices.

Background

CWA Section 106 authorizes EPA to provide federal assistance (in the form of water pollution control program grants) to Indian tribes to establish and implement ongoing water pollution control programs. There are 23 tribal governments in Region 8 eligible to receive CWA Section 106 water pollution control program grants.

For further information, contact our Office of Congressional and Public Affairs at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2012/20120504-12-P-0453.pdf

Alleged Misuse of Tribal Clean Water Act Section 106 Funds in EPA Region 8

What We Found

On the first allegation, we found that Region 8 funded tribal Section 106 programs based on the region's review of tribal work plans and did not inappropriately withhold funds. Region 8 frequently determined that tribal work plans did not warrant the level of funds requested and, therefore, did not award all program funds to the tribes.

On the second allegation, Region 8 provided evidence that both the interagency agreement and water quality database benefit the tribes. However, Region 8 does not have an effective method for gaining tribal approval to use Section 106 funds for special projects/associated program support costs.

On the third allegation, we found that Region 8 properly followed Agency guidance by housing regional program managers separately from the regional grants management office, but there were opportunities for improvement. The region had taken steps to improve cross-office coordination and communication before we started our review.

What We Recommend

We recommend that the Office of Water develop guidance on the use of Section 106 tribal grants funds for associated program support costs, similar to that developed by EPA's Office of Air and Radiation for Clean Air Act Section 105. We also recommend that Region 8 develop guidance to formalize the process by which the region gains approval from tribes for associated program support costs funded with Section 106 program funds. Further, we recommend that Region 8 evaluate the effectiveness of the region's team approach to tribal technical assistance—as part of regional guidance—by querying tribal Regional Operations Committee members and making adjustments as needed based on tribal feedback.

Planned Agency Corrective Actions

The Office of Water and Region 8 concurred with our recommendations and described planned actions to address our recommendations. Our recommendations remain unresolved pending planned completion dates on actions to address our recommendations.



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

THE INSPECTOR GENERAL

May 4, 2012

MEMORANDUM

SUBJECT: Alleged Misuse of Tribal Clean Water Act Section 106 Funds in EPA Region 8
Report No. 12-P-0453

FROM: Arthur A. Elkins, Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins, Jr.", is written over the printed name.

TO: Nancy K. Stoner
Acting Assistant Administrator for Water

James B. Martin
Regional Administrator, Region 8

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. You should include a corrective actions plan for agreed-upon actions, including milestone dates. We will post your response on the OIG's public website, along with our memorandum commenting on your response. Please provide your response as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want released to the public; if your response contains such data, you should identify the data for redaction or removal. We have no objections to the further release of this report to the public. We will post this report to our website at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Melissa Heist at (202) 566-0899 or heist.melissa@epa.gov, or Patrick Gilbride at (303) 312-6969 or gilbride.patrick@epa.gov.

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Purpose

On June 6, 2011, the U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) received a hotline complaint alleging misuse of tribal Clean Water Act (CWA) Section 106 funds in Region 8. The complaint alleged that:

1. Region 8 inappropriately withheld tribal grant funds.
2. Region 8 used funds for activities that neither benefitted tribes nor had their approval; these activities involved an interagency agreement with the U.S. Geological Survey (USGS) and a contract with a service provider to support the Water Quality Exchange (WQX) database.
3. Region 8 separated tribal decision making between two different offices.

Our review addressed the three allegations by determining whether Region 8 followed appropriate guidance for funding activities other than tribal grants with Section 106 tribal funds.

Background

Clean Water Act Section 106

Congress passed the CWA of 1972 to address growing environmental and public health concerns related to water pollution. The Act created mechanisms to regulate the discharge of pollutants and to ensure continuing water quality. CWA Section 106 authorizes EPA to provide federal assistance (in the form of water pollution control program grants) to states and Indian tribes to establish and implement ongoing water pollution control programs.

On October 20, 2006, EPA published *Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act: For Fiscal Year 2007 and Future Years*. The goal of the guidance is to help tribal water quality program managers, staff, and others design and implement effective and successful water quality programs. The guidance also provides EPA regions procedures and guidelines for awarding and administering grants to federally recognized tribes. Reporting requirements and data management expectations for all tribal programs are a key component of the guidance. As a grant requirement, tribes must submit annual Tribal Assessment Reports that contain information about water quality on tribal land, which is compiled by EPA to demonstrate national results for the Section 106 tribal program. A Tribal Assessment Report must have (1) a description of the monitoring strategy, (2) a water quality assessment, and (3) electronic copies of water quality data. EPA's WQX database houses water quality monitoring data collected by water resource management groups across the country.¹

¹ The guidance initially required that water quality monitoring data be submitted in an electronic format compatible with the Agency's STORET system. WQX replaced STORET in 2009 as EPA's repository of water quality monitoring data.

EPA Region 8 Organization

EPA Region 8 serves the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming, as well as 27 federally recognized tribal governments on 26 Indian reservations. There are 23 tribal governments in Region 8 eligible to receive CWA Section 106 grants. Region 8’s organization includes four offices relevant to the hotline complaint (table 1).

Table 1: Relevant offices in Region 8

<i>Office of Partnerships and Regulatory Assistance</i>	<i>Office of Ecosystems Protection and Remediation</i>	<i>Office of Technical and Management Services</i>	<i>Montana Operations Office</i>
This office’s Tribal Assistance Program (TAP) acts as a liaison for EPA offices, the 27 tribes within the region, and other federal agencies.	This office houses the Wetlands and Tribal Unit and provides support functions for tribal grants.	This office houses the Grants, Audits, Procurement Program and the Fiscal Management and Planning Program.	Some of Region 8’s federally recognized tribes are in Montana, and some Montana staff help review tribal grant work plans.

Source: OIG summary of relevant Region 8 offices based on Region 8 organizational charts and interviews with Region 8 staff.

While the Office of Ecosystems Protection and Remediation, TAP, and the Montana Operations Office provide support functions for tribal grants, TAP manages the General Assistance Program and air, waste, and water grants (including CWA Section 106). TAP also serves as the main point of contact on tribal issues, including acting as a liaison to the tribal Regional Operations Committee (ROC).

Tribal and Regional Operations Committees

On February 17, 1994, then EPA Administrator Carol M. Browner created the Tribal Operations Committee to help EPA establish a national co-regulatory partnership by providing a forum for enhancing tribal environmental protection. Region 8 then formed a ROC to help maintain a government-to-government relationship between the region and tribes. The ROC issued a charter in March 2011 that describes the ROC as a liaison between the national Tribal Operations Committee, tribes, and Region 8 on national policy issues. The ROC includes one representative from each tribe in Region 8, each of which has one vote. The charter provides that the ROC maintains open and consistent communications with the Regional Administrator and staff on matters of regional significance to tribal governments, and that the ROC is to enhance and improve EPA tribal operations. The ROC charter describes EPA’s role and responsibility to listen to ROC members and fully consider the perspectives and views of the tribes they represent. The ROC holds quarterly meetings. The ROC charter provides that voting—taken through roll call at meetings—requires a quorum consisting of nine members, one of which must be an officer.

Associated Program Support Costs

In EPA's FY 1999 appropriation² and in each year thereafter, Congress added authority for "associated program support costs" that permits EPA to use a portion of funds available for tribes for activities that benefit all or a portion of tribal grant recipients. Region 8 entered into an interagency agreement with USGS to conduct tribal water quality monitoring in August 2006. Region 8 also entered into a contract to facilitate tribes entering water quality data into WQX. Region 8's Office of Regional Counsel considers services provided through the interagency agreement with USGS and through the WQX contract to be associated program support.

In the absence of specific guidance from EPA's Office of Water on using CWA Section 106 funds for associated program support, Region 8's TAP has relied on guidance from the Office of Air and Radiation on funding associated program support activities under Clean Air Act Section 105. EPA's *Guidance on the Office of Air and Radiation (OAR) Assistance Authorities and Allowable FY 2009 State and Tribal Assistance Grant [STAG] Funded Activities* states that, for EPA to use STAG resources as associated program support, an activity must (a) be the inherent responsibility of a state, tribal, or local air pollution control agency; and (b) be of primary benefit to these agencies and not EPA. The Office of Air and Radiation guidance also requires that EPA must also get the prior approval of these agencies before such funding can be used for associated program support activities. According to the Office of Air and Radiation guidance, associated program support costs should promote administrative efficiency and cost savings to the recipients, and EPA can provide funding for such costs through a grant, contract, or interagency agreement.

Scope and Methodology

We performed our field work from July 2011 to March 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our review to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions.

We reviewed relevant laws, regulations, policies, procedures, and guidance governing CWA Section 106. We conducted interviews with Region 8 personnel responsible for administering and managing Section 106 funds, including personnel from the Office of Partnerships and Regulatory Assistance/TAP, Office of Ecosystems Protection and Remediation, Office of Technical and Management Services, Montana Operations Office, and Office of Regional Counsel. We also interviewed EPA headquarters Office of Water personnel on national guidance/policies. Further, we interviewed USGS personnel and reviewed ROC

² Public Law 105-276 (October 21, 1998).

meeting minutes to determine if there was tribal approval of the region’s use of Section 106 funds for program support activities. We also reconciled grant funds used for the interagency agreement with USGS. We did not review or evaluate the performance of the person conducting work under the EPA–USGS interagency agreement mentioned by name in the hotline complaint. We do note in our report, however, the positive observations by some tribes with regard to work performed under the interagency agreement. To address the allegations raised in the complaint, our review focused on the process by which Region 8 used funds to put the interagency agreement in place.

Results of Review

Allegation #1: Region 8 Withheld Funds Intended for Tribal Programs

Region 8 funded Section 106 programs based on the region’s review of tribal work plans and did not inappropriately withhold funds for special projects or associated program support costs. Tribes submitted detailed work plans when applying for grants under CWA Section 106. The Office of Water affords regions flexibility on awarding the allocation. The national CWA Section 106 coordinator in the Office of Water said that most regions allocate 100 percent of program funds. However, the *Final Guidance on Awards of Grants to Indian Tribes under Section 106 of the Clean Water Act: For Fiscal Years 2007 and Beyond* does not require that regions allocate all funds as part of the regional process to administer grants.³

Region 8 has a four-step process for reviewing tribal grant applications and making funding decisions:

1. The project officer reviews the proposal and provides recommendations.
2. A peer reviewer reviews the proposal and provides comments.
3. Technical reviewers review the proposal and provide comments and funding recommendations.
4. The management team reviews the comments generated by the above steps and makes final funding decisions.

Region 8’s TAP awards grants to tribes based on a review of their work plans, past performance, and the ability of the tribes to meet the goals specified in their work plans. TAP may determine that tribal work plans do not warrant the level of funds requested and, therefore, the region may not award all program funds to the tribes. Table 2 lists Region 8’s annual allocations and remaining funds for FYs 2008–2011.

³ The regulations for “EPA Action of Applications” for tribal grants, 40 Code of Federal Regulations 35.516, 35.517, and 35.518, appear to contemplate that there can be circumstances when all allocated grant funds might not be awarded to tribes.

Table 2: Annual allocations and remaining funds

FY	Total allocation *	Funds remaining after awards (percent of total allocation)
2008	\$5,569,062	\$396,527 (7.12)
2009	5,032,557	329,895 (6.56)
2010	4,743,646	464,404 (9.79)
2011	5,376,900	309,040 (5.75)

Source: OIG analysis of Region 8 tribal funding allocations.

* includes annual allocation and recertified funds

According to Region 8 project managers, rigorous review and fine-tuning of work plans helps assure success for tribes and provides appropriate funding based on achievable goals. This process may result in the region not awarding all of its Section 106 tribal allocation; the region can use any unawarded or unobligated Section 106 funds for special projects/associated program support costs.

Allegation #2: Region 8 Used Funds for Projects That Neither Benefitted Tribes nor Had Their Approval

Region 8 provided evidence that both the interagency agreement with USGS and the contract on WQX support benefit the tribes rather than EPA. However, Region 8 does not have an effective method for gaining tribal approval to use Section 106 funds for associated program support.

Region 8's Associated Program Support Activities

In 2006, Region 8 entered into an interagency agreement with USGS for technical review and technology transfer activities associated with water quality monitoring and assessment. In 2010, Region 8 entered into a contract to provide tribes with support related to WQX. A Region 8 project manager said that the contractor created a template that all Region 8 tribes can use to load data into a virtual warehouse (EPA's Ambient Water Quality Monitoring System). The contractor can then upload that data to WQX.

According to the Region 8 water quality team lead, tribal environmental program staff frequently change, which historically has made it difficult to aggregate water quality data. The Region 8 water quality team lead said that the contractor reviews tribal data to ensure security of cultural and other confidential information for sacred tribal and similar sites, provides technical support, and organizes a peer-training network. Services provided by the USGS (through the interagency agreement) and by the contractor supporting WQX are considered non-grant program support. In the absence of specific Office of Water guidance, Region 8's TAP has relied on the Office of Air and Radiation's Clean Air Act guidance as support for using grant funds for non-grant program support activities.

Guidance on Requirements for Associated Program Support Costs

The Office of Air and Radiation guidance for using STAG resources for associated program support costs includes three requirements:

1. The activity must be the inherent responsibility of a state, tribal, or local air pollution control agency;
2. The activity must be of primary benefit to these agencies and not EPA; and
3. EPA must get the prior approval of these agencies before using funding for associated program support.

The interagency agreement with USGS met the first and second requirements of the Office of Air and Radiation guidance given that Tribal Assessment Reports are a grant requirement, and they must include a water quality assessment. USGS provided training and water quality data interpretation to tribes and retrospective analyses of tribal water quality. Similarly, the WQX contract met the first and second requirements. The activity under the WQX contract is the inherent responsibility of the tribe because grant-required Tribal Assessment Reports contain electronic copies of water quality data, and the contract addressed this by helping to generate and upload this data into WQX. Activities under the WQX contract are the primary benefit of the tribe because the contractor streamlined data entry and provided tribes with technical support and training.

However, neither the interagency agreement nor the WQX contract met the requirement to obtain prior approval from tribal recipients, which Region 8 could have accomplished during ROC meetings. Region 8's ROC charter states that membership consists of one representative from each Region 8 tribe, each of which has one vote. The ROC charter further provides that voting—taken through roll call at quarterly meetings—requires a quorum of nine members, one of which must be an officer. While the ROC minutes from 2008 through 2011 contained some discussion of both the interagency agreement and WQX, the minutes did not demonstrate that quarterly meetings were held each year nor that any meeting had a quorum until June 2011. Moreover, the ROC minutes did not contain any evidence that the IAG or contract was ever presented “for approval.” Table 3 summarizes the results of the ROC meeting discussions on the interagency agreement and WQX.

Table 3: 2008–2011 Region 8 ROC meetings

Date and type of ROC	Discussion topics:		Quorum/attendance
	<i>Interagency agreement</i>	<i>WQX contractor</i>	
March 2008 tribal caucus	Yes	Yes	No evidence
March–April 2010 tribal caucus	Yes	Yes	No evidence
March 2011 conference	Yes	No	No evidence
June 2011 meeting	Yes	No	Yes – per hotel records (no roll call taken) 18 attendees/9 tribes*
October 2011 meeting	Yes	No	Yes – roll call 15 Attendees/11 tribes
November 2011 monthly call	No	No	Yes – roll call 17 attendees/12 tribes

Source: OIG analysis of ROC meeting minutes.

* Absent a roll call we could not discern an accurate number of tribes that participated. We assumed a quorum of 9 tribes based on the 18 attendees.

Members at the March 2011 ROC conference supported work completed under the interagency agreement, and the ROC chairperson drafted a letter to EPA on March 24, 2011, stating tribal support. However, at a subsequent June 2011 ROC meeting, members indicated that they did not benefit from the interagency agreement and did not want to sign the letter. Despite the draft March letter in support of the interagency agreement, Region 8 decided not to extend it beyond early 2012, in part because of the hotline complaint and in part because of difficulties in funding the interagency agreement in 2011.⁴

According to the Office of Water’s national Section 106 coordinator, the Office of Water has not issued national guidance on the use of unobligated Section 106 funds due to the high utilization rate of Section 106 funds by states and tribes. Absent CWA Section 106 guidance, Region 8 has used the Office of Air and Radiation guidance that requires prior approval before using funds for associated program support. The Region 8 TAP Director stated that the region uses a quorum at ROC meetings to determine approval, but ROC minutes did not consistently document either a roll call or the existence of a quorum that would show formal approval of a matter before the ROC, such as on the interagency agreement and WQX contract. A Region 8 TAP tribal program manager said that over the past 2 years, the region took roll during monthly ROC calls but not at ROC meetings (although our review found that they took roll at the October 2011 meeting). The

⁴ In October 2011, EPA adopted a new automated financial system. While the Agency transferred data from the Integrated Financial Management System to the new Compass Financials system, neither the old nor the new system was available. As a result, TAP was precluded from using leftover, unobligated funds for the interagency agreement as previously planned.

region informed us it did not take roll call at all meetings, but believed it had a quorum in FY 2011 based on other information, such as attendee lists from hotels housing tribal members. Results from ROC meetings do not clearly demonstrate whether Region 8 makes decisions on the use of remaining funds via ROC majority/quorum. Thus, the region cannot demonstrate prior, formal tribal approval before using funds remaining, as required by the Office of Air and Radiation guidance.

Allegation #3: Region 8 Separated Decision Making Between Two Offices

Region 8 administered the tribal Section 106 program via two separate offices—Office of Ecosystem Protection and Remediation and Office of Partnerships Regulatory Assistance/TAP,⁵ per Agency guidance. EPA’s *Indian Environmental General Assistance Program – Guidelines on the Award and Management of General Assistance Agreements for Indian Tribes* (March 9, 2000) designates the Regional Administrator as the General Assistance Program manager. Per the guidelines, the Regional Administrator can delegate responsibilities and establish program managers separate from grants managers. Managers and staff responsible for providing technical support can be housed in one office while managers and staff supporting grant functions can be in another.

While Region 8’s approach to housing regional program managers separate from the regional grants management office followed the 2000 guidelines, the hotline complaint asserted that this structure was ineffective in making program decisions and providing program administration. Our interviews with Region 8 staff confirmed the region had difficulties in meeting the technical needs of tribes with the dual-office structure. Region 8 had also recognized this deficiency prior to the hotline complaint, noting that the demand for technical assistance exceeded the level of dedicated staff in any one office assigned to perform those tasks. Region 8 believes the Office of Ecosystems Protection and Remediation, TAP, and the Montana Operations Office have a shared role and responsibility to provide technical and programmatic expertise to tribal grantees. As such, in spring 2011, the region adopted a team approach to facilitate better service. Region 8 now assigns each tribe a specific team with personnel from four program areas: technical water quality, watershed, quality assurance, and TAP.

During the most recent grant solicitation cycle, each team reviewed the technical and programmatic merits of their assigned tribes’ work plan and budget, and provided written comments. The steering committee (a result of the new team approach), comprising five senior Region 8 staff members, reviewed tribal work plans and comments from the technical support team and made final funding recommendations. The steering committee submitted its recommendations (which

⁵ Some Montana staff help review tribal grant work plans; however, the hotline allegation focused on two offices – Office of Ecosystem Protection and Remediation and Office of Partnerships Regulatory Assistance/TAP. Therefore, our findings focused on the two offices mentioned in the hotline allegation.

include comments from the technical support team as well as its own) to the Region 8 management team. The management team (made up of managers from TAP, Office of Ecosystems Protection and Remediation, and the Montana Operations Office) made final funding decisions and shared those decisions with the tribes. According to regional staff, the new process provides tribes additional opportunities to negotiate their funding levels. Also, tribes can work with the region throughout the process to provide additional information or clarify outstanding issues.

Also, Region 8 compiled a list of programmatic and technical contacts and provided contact lists to each tribe. The region expects tribes to direct programmatic requests to the TAP lead whereas most technical issues should be directed to the water quality lead. The contact list includes three other areas of expertise, including a watershed lead (non-point source), a quality assurance lead, and additional water quality resources (water quality standards, and support from the interagency agreements with USGS). The list provides each tribe with a quick reference in each of the program areas.

Cross-office personnel from Region 8 meet monthly to discuss tribal matters. Since September 2008, the Office of Communications and Public Involvement and TAP have hosted meetings with staff across the region to improve internal communications on work with tribes.

Region 8 believes its new team approach will provide a broader set of skills and more effectively address tribal needs. Through its team approach, the region hopes it will be able to provide the support similar to that previously provided by the interagency agreement with USGS. To this end, the region will not be funding the interagency agreement beyond spring 2012. The region also implemented a new process for awarding Section 106 grants that includes multiple review steps to ensure better-informed decisions. According to the region, while long-term effects remain to be seen, the immediate results of the team approach are improved communication and transparency within the region.

Recommendations

We recommend that the Assistant Administrator for Water:

1. Develop guidance for CWA Section 106 associated program support costs. Guidance should incorporate specific requirements to use state and tribal assistance grants for associated program support, and a process to obtain approval from recipients for associated program support costs funded with Section 106 program funds. Alternatively, formally adopt Office of Air and Radiation's guidance on associated program support costs.

We recommend that the Regional Administrator, Region 8:

2. Develop regional guidance to formalize the process by which the region gains approval from tribes for associated program support costs funded with Section 106 program funds. Guidance should include requiring that a roll call be taken indicating the presence of a quorum, and voting records be kept, as a standard part of ROC meetings and minutes.
3. Evaluate the effectiveness of the region's team approach to tribal technical assistance—as part of the guidance developed in recommendation 2—by periodically querying ROC members and making adjustments as needed based on tribal feedback.

Agency Comments and OIG Evaluation

The Office of Water and Region 8 concurred with our recommendations. Appendix A contains the Agency's full response to our draft report and planned actions by both the Office of Water and Region 8 to address our recommendations. We believe planned actions by the Office of Water and Region 8 address the intent of our recommendations. Our recommendations remain unresolved pending planned completion dates on actions to address our recommendations.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS							POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed- To Amount	
1	9	Develop guidance for CWA Section 106 associated program support costs. Guidance should incorporate specific requirements to use state and tribal assistance grants for associated program support, and a process to obtain approval from recipients for associated program support costs funded with Section 106 program funds. Alternatively, formally adopt Office of Air and Radiation's guidance on associated program support costs.	U	Assistant Administrator for Water				
2	10	Develop regional guidance to formalize the process by which the region gains approval from tribes for associated program support costs funded with Section 106 program funds. Guidance should include requiring that a roll call be taken indicating the presence of a quorum, and voting records be kept, as a standard part of ROC meetings and minutes.	U	Regional Administrator, Region 8				
3	10	Evaluate the effectiveness of the region's team approach to tribal technical assistance—as part of the guidance developed in recommendation 2—by periodically querying ROC members and making adjustments as needed based on tribal feedback.	U	Regional Administrator, Region 8				

¹ O = recommendation is open with agreed-to corrective actions pending
 C = recommendation is closed with all agreed-to actions completed
 U = recommendation is unresolved with resolution efforts in progress

Agency's Response to Draft Report



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

APR 16 2012

OFFICE OF WATER

MEMORANDUM

SUBJECT: Review and Comment on the Office of Inspector General Draft Report on the
OIG Hotline Complaint *Alleged Misuse of Tribal Clean Water Act Section 106
Funds in EPA Region 8*, Assignment No. OA-FY11-0444

FROM: Nancy K. Stoner 
Acting Assistant Administrator

TO: Melissa M. Heist
Assistant Inspector General for Audit
Office of the Inspector General

I appreciate the opportunity to review and comment on the Office of Inspector General Draft Report on the OIG Hotline Complaint *Alleged Misuse of Tribal Clean Water Act Section 106 Funds in EPA Region 8*, which you provided on March 8, 2012. As stated in the draft report, the objective of the review was to determine whether Region 8 follows guidance for funding "special projects" with Section 106 tribal funds.

The Office of Water and Region 8 have reviewed the draft report including the draft recommendations. We agree in large part with the findings and recommendations in the OIG's draft report. Our comments are as follows:

RESPONSE TO SPECIFIC RECOMMENDATIONS

OIG Recommendation 1: Develop guidance for CWA Section 106 associated program support costs. Guidance should incorporate specific requirements to use state and tribal assistance grants for associated program support, and a process to obtain approval from recipients for associated program support costs funded with Section 106 program funds. Alternatively, formally adopt Office of Air and Radiation's guidance on associated program support costs.

EP A Response: The Office of Water will conduct a review of Regional use of the associated program support costs authority for assisting tribal programs. In response to this

recommendation, the Office of Water will assess approaches and may, as appropriate, develop new guidance or formally adopt existing guidance (e.g., the applicable sections of the *Guidance on the Office of Air and Radiation (OAR) Assistance Authorities and Allowable FY 2009 State and Tribal Assistance Grant [STAG] Funded Activities*) currently applicable to other programs.

OIG Recommendation 2: Develop regional guidance to formalize the process by which the Region gains approval from tribes for associated program support costs funded with Section 106 program funds. Guidance could include requiring that a roll call be taken indicating the presence of a quorum, and voting records be kept, as a standard part of ROC meetings and minutes.

EPA Response: Region 8 plans to address this recommendation by following the Regional Operations Committee (ROC) guidelines dated March 17, 2011, regarding roll call, a voting quorum, and minutes that document the voting decision process. When a decision is required, Region 8 tribes or the EPA will request the ROC Chair to call for a vote on the specific issue. The vote results will be recorded in the ROC minutes.

OIG Recommendation 3: Evaluate the effectiveness of the region's team approach to tribal technical assistance -as part of the guidance developed in recommendation #2 -by querying ROC members and making adjustments as needed based on tribal feedback.

EPA Response: Region 8 plans to comply with this recommendation by following the review and evaluation criteria outlined in the Region 8 Tribal Support Work Plan. This process calls for ongoing review and feedback on the programmatic and technical assistance provided by the EPA staff. At the annual Spring ROC meeting, the Regional Administrator or designee will query ROC members about the Region's team approach. Feedback will be documented and used to make necessary adjustments to our approach.

TECHNICAL CLARIFICATION TO THE DRAFT REPORT

On page seven of the draft report there is a sentence that states, "According to the Office of Water's national Section 106 coordinator, the Office of Water has not issued national guidance on the use of unobligated Section 106 funds because the office has not identified this issue as an area of concern." The Office of Water believes it is important to clarify the context in which this statement was offered and is proposing alternative report language. In discussions with your staff, EPA's Coordinator for the 106 Program was making the point that Section 106 funds are provided to states and tribes to manage their base programs, and as such, are largely utilized in the year in which they are awarded. Historically, the 106 Program has not experienced significant issues with unobligated funds. Therefore, the Office of Water requests the IG modify the sentence above to reflect that intent. Specifically, we request the following alternative language be used: "According to the Office of Water's national Section 106 coordinator, due to the high utilization rate of Section 106 funds by states and tribes, the Office of Water has not issued national guidance on the use of unobligated Section 106 funds because the office has not identified this issue as an area of concern." We would further note that the Office of Water is currently working with the Office of the Chief Financial Officer to analyze the status of unliquidated obligations by grant program, including the Section 106 program. The goal of the analysis is to identify areas of improvement for awarding grants in a timely manner and may result in updating guidelines for awarding grants.

On behalf of the EPA's Office of Water and Region 8, I want to thank the Office of Inspector General for its recommendations that are aimed at improving the decision process associated with using CWA Section 106 grant funds for associated program support costs to tribes. Region 8 concurs on this response (please see the attached letter from James B. Martin, dated March 29, 2012). If you have any questions or concerns, please contact me, or your staff may contact Felicia Wright, Office of Water Tribal Coordinator at (202) 566-1886, or wright.felicia@epa.gov.

Attachment

cc: James B. Martin
Howard M. Cantor
Callie A. Videtich
Alfreda Mitre
Randy Brown
Michael Boydston
Felicia Wright
Robyn Delehanty
Marilyn Ramos



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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8P-TA

March 29, 2012

MEMORANDUM

SUBJECT: Region 8 Concurrence on Draft OIG Report OA-FY11-044, dated March 8, 2012

FROM: James B. Martin /s/
Regional Administrator

TO: Nancy K. Stoner
Acting Assistant Administrator
Office of Water

I hereby concur on the OIG Draft Report on the *Alleged Waste and Misuse of Tribal Clean Water Act Section 106 Funds in Region 8*. The report contained three recommendations. The action official for the first recommendation is the Acting Assistant Administrator for Water and the second and third are assigned the Region 8 Regional Administrator or designee.

Region 8 plans to address the second recommendation by following the Regional Operations Committee, (ROC) guidelines dated March 17, 2011, regarding roll call, a voting quorum, and minutes that document the voting decision process. When a decision is required, Region 8 tribes or EPA will request the ROC Chair to call for a vote on the specific issue. The voting results will be captured in the ROC minutes.

Region 8 plans to comply with the third recommendation by following the review and evaluation process outlined in the Region 8 Tribal Support Work Plan. This process calls for ongoing review and feedback on the programmatic and technical assistance provided by EPA staff. At the annual Spring ROC meeting, the Regional Administrator or designee will query ROC members about the Region's team approach. Feedback will be documented and used to make necessary adjustments to our approach.

Thank you for the opportunity to respond. If you have any questions or concerns, please contact me or your staff may contact Alfreda Mitre, Tribal Assistance Program Director at (303) 312-6343, or mitre.alfreda@epa.gov.

cc: Howard M. Cantor
Callie A. Videtich
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Distribution

Office of the Administrator
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Regional Administrator, Region 8
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