

EPA Region 9 Water Division

Tribal Consultation Standard Operating Procedures

September 2021

Note: This document is intended for use by EPA Region 9 Water Division staff and is being shared externally for awareness only.

I. Purpose

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

II. Background

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

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

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

- Reinterpretations of how programs will be implemented in Indian country¹
- Permit decisions
- Water quality certification actions for federally-permitted or licensed projects
- Decisions on a state or tribe's application for delegation / assumption / primacy of a federal environmental program
- Decisions on state water quality standards or TMDLs where up- or down-stream tribal resources may be affected
- Changes to Division procedures that impact the allocation of federal funds to tribes
- Any action that the Water Division has reason to believe may be controversial or precedent-setting to tribal communities
- Any action, including state actions under an EPA-delegated program, where a tribal government requests a consultative role for EPA in writing

III. Roles

As a "government-to-government" undertaking, Water Division engages in tribal consultation between EPA decision-makers and tribal leadership unless expressly delegated. Routine staff programmatic and technical coordination with tribal environmental offices is also strongly encouraged consistent with the Policy (see also "Identification Phase" below), and can be in support of, or in preparation for, consultation meetings among decision-makers. The following roles

¹ Note that "[Indian country](#)" may go beyond the borders of a formal reservation.

and responsibilities can help Water Division staff understand the consultation and coordination process at different levels of EPA's water programs:

- **Office of Water or National Program Managers (NPMs):** Headquarters leads most tribal consultations on rulemakings or other decisions of national effect. When a Region 9 tribe requests consultation on a national issue, Water Division will typically play a support role.
- **Regional Consultation Advisor:** The Office of the Regional Administrator's Tribal, Intergovernmental, and Policy (TIP) Division is responsible for tracking all Regional consultations and providing policy support to the Divisions through the Advisor.
- **Water Division Director:** The consulting decision-maker for Region 9 Water issues, unless delegated to the Deputy Director (senior management lead for tribes), an Associate Director (senior management lead for specific programs), or an applicable Program Office Manager.
- **Program Office Managers:** Responsible for considering tribal implications in their Section's work planning, ensuring their staff's familiarity with and adherence to EPA's tribal policies and this SOP, and collaborating on continuous improvement of Division tribal engagement practices. As the subject matter experts on their programs, each office is responsible for supporting the Director in conducting consultation events.
- **Tribal Clean Water Section Manager:** The consultation policy advisor to the Water Management team, responsible for reporting Division consultation metrics and outcomes.
- **Water Division Tribal Consultation Coordinator (TCC):** A senior tribal water Project Officer with the lead for advising Division staff on applying this SOP, facilitating meetings with tribal representatives as necessary, tracking consultation-related work in the Division, and developing and updating support materials such as example letters, FAQs, and informal training. TCC facilitate but typically do not lead program consultations unless the program resides in the Tribal Clean Water Section (e.g., Treatment as a State).
- **Water Division Program Office Staff:** Engage with their Managers and the TCC on their projects as early as possible to identify issues of potential tribal effect and develop strategies to engage with their technical counterparts at the tribes. When consultation is necessary, program staff produce the correspondence, advise management, and coordinate as detailed in Procedures below.

IV. Procedures

Consultation has four phases: Identification, Notification, Input, and Follow-up.

IDENTIFICATION PHASE

1. Identification of EPA water actions or decisions that trigger this SOP ideally occur as part of early planning, such as annual work planning at the section level, the Division Strategic Plan and Operating Plan cycles, or early coordination with other action agencies through the NEPA or CEQA process.² If an effect on tribes is ambiguous, program staff should contact the [TCC](#) as

² The NEPA (and in California, CEQA) processes can be useful for early identification of issues while alternatives are still being developed and can provide an opportunity to coordinate with other agencies who may have consultation policies. When multiple agencies have actions on one project, it may be appropriate to explore combining coordination or consultation events.

early as practical to discuss the potential for effects to tribal interests. If the TCC is unavailable, the program may also contact the [applicable liaison](#) (CWA Project Officer) to scope the issue.

2. Early identification of an action or decision that may affect tribal interests can help improve environmental outcomes, build trust, and may minimize the need for higher level interactions on EPA work. After staff scopes an action or decision and determines that potential effects to one or more tribes is likely, Program Office Manager(s) should be briefed and decide on appropriate engagement opportunities (e.g. webinars or listening sessions at tribal conferences). Written outreach to tribal environmental departments at the Section or Branch level may also be appropriate at this stage.
3. If early coordination did not occur or was not possible, or if early coordination resulted in a decision that tribal leadership needs to be engaged, the program should proceed to the Notification phase below to offer consultation.³

NOTIFICATION PHASE

3. Once an action is determined to require consultation with tribal leadership, the program will draft a letter for Division Director signature offering the opportunity to consult. Example letters and other resources are available on the Water Division Tribal Consultation TEAMS channel, but the common elements include:
 - a. Addressing the applicable tribal government leader (addresses are available on the Indian Nations Database and can be confirmed current with the [CWA Project Officer](#)). This is generally the tribal Chairperson or equivalent unless a known delegation is in place.
 - b. A brief, plain-language description of the action, legal authority, and reason we believe tribal interests may be implicated.
 - c. An offer to consult, citing the 2011 EPA Policy, and one or more appropriate EPA points of contact.
 - d. A draft or anticipated decision timeline and steps in the proposed action.
 - e. A request to confirm by a reasonable deadline (typically 30 days) whether the tribe will consult, and a request to designate a tribal official for consultation.
 - f. A courtesy copy list including the appropriate environmental staff at the tribe(s), typically the Environmental Director. Courtesy copies should be sent concurrently with the letter to the tribal leader(s), but in no case later than 24 hours after.
4. Once a signed letter is transmitted, the program will provide a PDF copy of the signed and dated letter to the TCC within 24 hours. The TCC will upload letters into EPA's national and local tracking systems. This applies to any letters generated in subsequent phases as well.

INPUT PHASE

5. If no response from the tribe is received by the deadline, the program staff and manager will determine if follow up actions are appropriate. Actions can include a courtesy call or email and the outcome should be documented in the program office's decision record.

³ One or more tribes may initiate the process by requesting to be consulted on an issue they believe affects their interests. It is the program office's responsibility to determine whether the action(s) at issue are within EPA's purview and to respond. If consultation is appropriate, this SOP should be followed. If not, the response should provide information clarifying why the action is not subject to EPA's consultation policy (for example, if it is another agency's action).

6. If EPA's offer to consult is accepted, the program will schedule a consultation scoping meeting or conference call with the tribe(s), the [CWA Project Officer](#) and TCC if necessary, and appropriate management representative(s) to confirm the consulting parties, stages, and timeframes (a Consultation Plan). The program will draft a consultation initiation letter for the Director's signature that includes the Consultation Plan.
 - a. From this point forward, it is not required that the TCC or other Tribal Clean Water Section representatives participate in consultation events, but the TCC should be informed of progress to support a monthly management update on the Division's consultation activities.
7. The program will execute the steps in the consultation plan developed in step 6.

FOLLOW-UP PHASE

8. The program will conclude the consultation with a close out letter summarizing the input received and whether and how it was applied to decision making.