

**Consultation and Coordination on Potential EPA Actions to Increase Tribal Capacity to Maintain and Expand Nonpoint Source Management Programs  
Summary of Comment Period 2**

**Background:**

*On March 29, 2022, the U.S. Environmental Protection Agency (EPA) initiated consultation and coordination with federally recognized Indian tribes to inform potential EPA actions the Clean Water Act section (§) 319 national Nonpoint Source (NPS) program could take to better support §319-eligible tribes in their efforts to manage NPS pollution.*

*During the first 60-day comment period, held from March 29, 2022 to May 27, 2022, EPA sought input from tribes on their experiences, including successes and challenges, building and sustaining tribal NPS program capacity. [Click here for the Comment Period 1 summary.](#)*

**Comment Period 2:**

Comment Period #2 was open from October 24 to December 23, 2022. EPA invited Tribal input on the following Comment Period #2 questions via email (to [tribal319grants@epa.gov](mailto:tribal319grants@epa.gov)) or by completing a webform on EPA's NPS website:

1. **Allocation Options:** What is your ranked preference order (#1 = most preferred option, #6 = least preferred option) for the proposed base grant allocation options outlined in the attached supplement? We also invite your input on alternative base grant allocation options not listed below.
2. **Data Source(s):** For FY23, EPA is proposing to derive land area, and other data layers included in the allocation formula, where applicable, from the 2010 US Census. For Tribal data not available in the US Census, EPA proposes to use data from current Tribal CWA §319 TAS packages. What are your thoughts, including any concerns, regarding this proposed approach? Moving forward, what process (e.g., frequency of updates) should EPA adopt regarding the data used in the base grant allocation formula?
3. **Allocation Formula Factors:** The base grant allocation options below incorporate Tribal land area, Tribal surface water area, and/or population. Which factor(s) should be used to determine a Tribe's base grant funding amount?
4. **Tribal CWA §319 Competitive Grants:** EPA is proposing to continue reserving approximately \$3million/year from the Tribal set-aside for competitive grants to support on-the-ground NPS projects. In FY23, EPA increased the competitive grant project cap from \$100,000 to \$125,000 and plans to set aside a portion of available funds for CWA §319-eligible Tribes that have not received a competitive grant in the last five years. Beyond FY23, should EPA continue this approach in future years?
5. Please share any other thoughts on how EPA can better support Tribal NPS programs.

**EPA HQ outreach during Comment Period #2:**

<b>Geo Focus</b>	<b>Event</b>
National	<ul style="list-style-type: none"> <li>• Monthly National Tribal Water Council Meeting presentation – 11/9/22</li> <li>• Comment Period 2 Info Session Webinar #1 – 11/1/22 (~15 participants)</li> <li>• Comment Period 2 Info Session Webinar #2 – 11/10/22 (~20 participants)</li> </ul>
Region 1	<ul style="list-style-type: none"> <li>• Region 1 RTOC meeting presentation – 12/14/22</li> </ul>
Region 2	
Region 3	
Region 4	<ul style="list-style-type: none"> <li>• Region 4 RTOC meeting presentation – 11/8/22</li> </ul>
Region 5	<ul style="list-style-type: none"> <li>• Region 5 Tribal Water Workshop equity presentation – 10/18/22</li> <li>• Region 5 RTOC meeting presentation – 11/30/22</li> </ul>
Region 6	<ul style="list-style-type: none"> <li>• Region 6 RTOC meeting presentation – 12/1/22</li> </ul>
Region 7	<ul style="list-style-type: none"> <li>• Region 7/8 RTOC Meeting equity presentation – 10/19/22</li> </ul>
Region 8	<ul style="list-style-type: none"> <li>• Region 7/8 RTOC Meeting equity presentation – 10/19/22</li> </ul>
Region 9	<ul style="list-style-type: none"> <li>• Region 9 Tribal EPA Conference equity presentation – 10/26/22</li> </ul>
Region 10	<ul style="list-style-type: none"> <li>• Region 10 RTOC meeting presentation – 11/17/22</li> </ul>

**Response/ Participation Rates:**

<b>Method</b>	<b># Of Tribes</b>
Written Comments	6
Webform Responses	5
Webinar Participants	26 Tribal reps
EPA-Tribal consultation meetings held	2

**Consultation Information Session Webinars:**

EPA hosted two 1-hour information session webinars to provide an overview of the consultation opportunity, answer any questions, and provide an opportunity for Tribes to provide comments.

**Webinar 1: November 1, 2022:** 21 attendees, 14 self-identified Tribal members

**Webinar 2: November 10, 2022:** 15 attendees, 12 self-identified Tribal attendees

General questions submitted by participants during the informational webinars:

- Who will be making the final decision on these comments?
  - EPA leadership will be finalizing any allocation formula changes based on EPA NPS Program recommendations and distillation of the consultation period comments
- How will Fee lands be considered in these options?
  - Fee lands are not taken into consideration for these land area calculations because those lands are not included on Boundary Annexation Survey for the Census.
- Are there going to be revisions on allowable costs? Question on ongoing maintenance

- This is related to the base grant funding and with O&M. We have had some ongoing conversations with the lawyer on this, we don't have a clear direction yet bc we may be statutory /regulated on spend proportions. But EPA HQ is looking into it.
- Will this become the funding allocation formula for all future funding?
  - Yes, any changes to the allocation formula will be implemented from FY23 forward.
- Additional comments during the informational webinars were related to seriousness of NPS pollution in a given area and emerging contaminants, but were not directly related to the questions posed in this consultation so details have been omitted for relevancy.

**EPA HQ Engagements with Individual Tribes:**

- Leech Lake Band of Ojibwe (LLBO), Region 5 (12/13/22): This was a staff-to-staff requested meeting between the Leech Lake Band of Ojibwe Environmental Lands Department and EPA HQ NPS staff. Topics covered in this 1-hour meeting included: review of presented allocation options, discussion on data sources, and consideration of equitable distribution of funds. EPA HQ NPS staff followed up the meeting with Tribal specific data that would inform the Tribe's written comments (LLBO was not included in the initial data tables because 319 status was obtained after the consultation was opened).
- Pueblo of Tesuque, Region 6 (1/12/23): This was a staff-to-staff requested meeting between Pueblo of Tesuque Department of Environment and Natural Resources and EPA HQ NPS staff. Topics covered in this 1-hour meeting included a detailed review of presented allocation options.

**Comments Received:** *For ease of reference, comments received are organized by question.*

- 1. Allocation Options:** *What is your ranked preference order (#1 = most preferred option, #6 = least preferred option) for the proposed base grant allocation options outlined in the attached supplement? We also invite your input on alternative base grant allocation options not listed below.*

This tabulation of rank preferences was submitted via webform or was explicitly listed in the consultation response letters. Follow up comments follow.

Tribe/ Nation	Option Preference Rank					
	# 1 (Top choice)	# 2	# 3	# 4	# 5	# 6 (Bottom)
Pueblo of Laguna (R6)	1	3	2	4	5	6
Nez Perce (R10)	1	3	2	4	5	6
Snoqualmie (R10)	4	6	5	1	2	3
Ottawa Tribe of OK (R6)	6	5	4	1	2	3
Confederated Salish and Kootenai (R8)	1	2	3	4	5	6
Prairie Island Indian Community (R5)	4	3	5	6	2	1
Santa Clara Pueblo (R6)	4	6	<i>Other rankings not provided.</i>			
Oneida Nation (R5)	<i>No ranking provided.</i>					
Leech Lake Band of Ojibwe (R5)	<i>No ranking provided.</i>					
Pueblo of Tesuque (R6)	<i>No ranking provided.</i>					
<b>RANK SUMS</b>	<b>20</b>	<b>26</b>	<b>24</b>	<b>18</b>	<b>26</b>	<b>27</b>

Tribe/Nation	Comment
Santa Clara Pueblo	The most equitable options seem to be option 4 and 6. Option 4 is the least complicated to determine and provides a better base in which to either establish a program or maintain continuity. Option 6 has more metrics to consider in determining the variable amounts but increases in funding that result from the calculations are minimal and the simplest calculation in Option 4 seems to be the most equitable in providing funds for all 319 NPS eligible tribes. Though this item asked for a ranking of each option the Pueblo prefers to list the two best viable options.
Oneida Nation	Increasing the EPA funding of the Nonpoint Program will assist the Nation in handling future growth and projects.
Prairie Island Indian Community	I like the idea behind the set amount plus additional funding based on different variables. What made you decide on the standard allocation starting at \$60,000 instead of say, \$50,000? I would suggest a \$50,000 standard allocation with more depending on other factors. I would also like to mention that even small tribes can have major water quality issues. [For example,] just because a tribe may be small compared to others, does not mean that tribe has less work on pollution issues to address – it just means they have to coordinate with outside organizations more to address issues outside of tribal

	lands, but nonetheless, has impacts on water quality flowing within tribal lands.
Snoqualmie Tribe	We request that EPA consider Option 4: \$60K + Tribal-Specific Variable Amount based on Land Area for the allocation of 319 funds. This option allows for the equitable sharing of federal resources among tribes so that we may all protect the waters that sustain us.

**2. Data Source(s):** For FY23, EPA is proposing to derive land area, and other data layers included in the allocation formula, where applicable, from the 2010 US Census. For Tribal data not available in the US Census, EPA proposes to use data from current Tribal CWA §319 TAS packages. What are your thoughts, including any concerns, regarding this proposed approach? Moving forward, what process(e.g., frequency of updates) should EPA adopt regarding the data used in the base grant allocation formula?

Tribe/Nation	Comment
Santa Clara Pueblo	The Pueblo recommends requesting data from Department of Interior Bureau of Indian Affairs where there are gaps in information. A frequency of 10-years to update in line with the US Census schedules would be appropriate.
Pueblo of Tesuque	The Pueblo of Tesuque is enthused about the potential changes to increase funds for the CWA section 319 tribal grant allocations to support Tribal NPS program work. At this time, the Pueblo is requesting tribal consultation to further discuss the options in regard to the Grant Allocation Formula, specifically with the following allocation options: Option 4 Option 5 Option #6
Leech Lake Band of Ojibwe	The Leech Lake Band of Ojibwe Water Resources Program (LLBO WRP) is encouraged by EPA’s actions to increase Tribal allocation for the EPA 319 funding program. However, it is disappointing that Tribes continue to be pitted against one another for a share of funding that is allocated for Tribes. The current allocation options being offered by EPA are concessions for which Tribes are forced to choose from and not what LLBO would consider fair and equitable.
Prairie Island Indian Community	I understand the difficulty of where to extract data from to determine land area. However, I do think that using data that is 10+ years old is not as accurate as I would hope. I do also think that by using this data and getting tribal staff to review the accuracy of the information you extracted is a decent compromise. I would also recommend contacting all tribes to ensure they have had the opportunity to review the data you extracted and that it is accurate.
Pueblo of Laguna	The vote of the POL SWQP is for the EPA to continue to derive information from the Tribal CWA 319 TAS packages. The Program's opinion is that it would be beneficial.

Nez Perce	This method seems reasonable because as was stated in the informational meeting, the 2020 census data are not available yet, thus the 2010 data are the most current for use in the allocation formula. Moving forward, EPA should adopt the most current data available for the base allocation formula.
Ottawa Tribe of Oklahoma	EPA will be calculating the allocation each year; therefore, data sources should be reviewed annually. Tribes should certify relevant information in their TAS packages is current or provide updated information to EPA annually.

**3. Allocation Formula Factors:** *The base grant allocation options below incorporate Tribal land area, Tribal surface water area, and/or population. Which factor(s) should be used to determine a Tribe's base grant funding amount?*

Tribe/Nation	Comment
Santa Clara Pueblo	Factors used to determine a <i>base</i> amount should be the tribe's interest in running a 319 NPS program and the ability to manage a cooperative agreement. Interest is measured by the submittal of a proposal. The base amount should allow for resources to have a position to run 319 NPS administrative functions. The listed factors of surface water, land and population area are data that could be used to determine <i>variable</i> funding.
Leech Lake Band of Ojibwe	In order for Tribal funding to truly be fair and equitable, Tribes should receive funding based on the amount of surface waters within Reservation Boundaries, the same way that States are given funding for the same programs.  LLBO WRP has reviewed EPA's 319 consultation base allocation formula options. The proposed allocation formula uses Tribal land area from census data alone. This is not the best metric for a water-based program. NPS issues occurring on Tribal lands are directly affecting Tribal surface water resources and therefore, this formula at the minimum should include the amount of surface water as well as total land area within the exterior boundaries of any Reservation as well as any off-Reservation trust lands.
Prairie Island Indian Community	Has there been any discussion with other variables such as cost of living and degree of development/industry? I am unsure on how the cost of living differences would be addressed as they vary drastically even within states/counties. A higher cost of living would mean more of the base funding would go towards salary and not as much towards funding projects. In addition, a higher cost of living would likely correlate with higher project costs. A \$50,000 base fund would essentially give tribes located in areas with a lower cost of living more resources to fund certain projects.  The degree of industry and development may also be worthy of elaborating on. I would argue the primary contributors of water quality issues stems from highly developed areas

	<p>including high intensity agriculture lands. Again, not sure how this factor would play into the funding allocations, perhaps looking at land use covers to determine a risk factor of water pollution as it relates to highly developed areas.</p> <p>I do not necessarily agree with the parameters used to determine funding amounts, particularly the population rank. I mentioned a couple parameters in the previous question that may be worth your time to explore. I would strongly urge you to check in to the cost of living parameter as the base grant largely funds a full-time employee dedicated to work on NPS projects. If the employee is not being offered a livable wage, turnover will likely lead to a halt in BMP implementation. I strongly believe this is an important parameter that needs to be considered because work will not get done if tribes are having issues with finding staff to work towards minimizing NPS issues. It would be great if EPA has the ability to get this idea circulated around other tribes in the nation to gauge support of using this as a parameter to determine base funding.</p> <p>I also believe that by using cost of living as a parameter that the individual or group focused on NPS issues will be more qualified and thus, achieve greater results than an individual without a background in natural resources. In addition to having more qualified individuals in these positions, it may spark a greater competition among the competitive funds which will lead to projects with greater impact on our water resources.</p>
Confederated Salish and Kootenai Tribes	Tribal Land Area
Ottawa Tribe of Oklahoma	Each Tribe should receive a standard allocation. Land area rank, surface water area rank and population rank should then be used to determine a Tribal-specific variable amount.
Nez Perce	<p>Land area, which should include land use type, is the most important factor in determining base grant funding. Cultivated crops dominate land types on the Nez Perce Reservation and are the primary source of nonpoint pollutants. Along with livestock pasture, these two land cover types compose approximately 47% of the land cover on the Nez Perce Reservation. This is likely true on other reservation lands dominated by agriculture and grazing, especially in the western US. In addition, the logistical costs associated with implementing and managing 319 projects on large, rural reservations are often much higher due to increased travel times to remote locations, the proximity of implementation supplies to project sites, and relative inaccessibility during certain seasons. Because surface water is the end point of many pollutants, using its area as an allocating factor is a pertinent qualifier in determining base grant funding. However, the overall length or density of lotic systems should also be considered when determining the likelihood of elevated nonpoint source loads entering waterbodies and subsequently moving to adjacent waters outside reservation boundaries. Population seems a less important factor because the population density on many tribal lands is relatively small. Although nonpoint sources such as failing septic tanks/fields,</p>

	residential applied fertilizers and pesticides, and petrochemicals from vehicles and equipment may be common on reservation lands, relatively low population and the sparse occurrence of towns reduces overall pollutant loads from these nonpoint sources when compared to more densely populated locales with heavy industry and urban development.
Pueblo of Laguna	The POL SWQP believes grant allocation options should be based on land area and population.  Tribal base grant funding should be determined by land area and population.

**4. Tribal CWA §319 Competitive Grants:** EPA is proposing to continue reserving approximately \$3million/year from the Tribal set-aside for competitive grants to support on-the-ground NPS projects. In FY23, EPA increased the competitive grant project cap from \$100,000 to \$125,000 and plans to set aside a portion of available funds for CWA §319-eligible Tribes that have not received a competitive grant in the last five years. Beyond FY23, should EPA continue this approach in future years?

Tribe/Nation	Comment
Santa Clara Pueblo	Would this set aside be for a pool of tribes who have not received competitive funding to then <i>compete</i> for, not automatic allocation? A competitive pool is what was discussed in the tribal equity calls so the question is to clarify if this is the case for this item. The Pueblo is in support of a set aside from the competitive funds for a subset of tribes to compete (tribes which have not received competitive funds in the last five years). In the future 319 NPS tribal programs could be approached again in through workgroups to see if this is still the consensus.
Oneida Nation	Oneida Nation encourages EPA to move towards non-competitive, base funding for tribes and expanding Self-Governance authority into the EPA. Competitive grant funding puts smaller tribes at a disadvantage because they may not have skilled grant writers needed to obtain the grant. Non-competitive base funds provide tribes with more flexibility than competitive grants, allows for long-term planning, and frees up time to focus on providing actual services.  The most effective approach to non-competitive federal funding is utilizing and expanding Self-Governance. The Oneida Nation supports expanding Self-Governance to all federal agencies, including the EPA.
Prairie Island Indian Community	The one last point I want to emphasize is regarding the competitive funding as it relates to how much is leftover after base grants have been awarded. Currently all the 6 different funding options leaves approximately the same leftover for competitive funding. I would advocate for slightly lower standard allocations (\$50,000) to allow for more funding in the

	<p>competitive grant. I know that there really has not been a whole lot of “competition” for this grant, but I believe this fund is very important to reward the tribes actively planning on implementing BMPs to address these issues.</p> <p>In the long run, I would hope for this amount to be increased. I am not sure why the tribes who apply for base funds do not also apply for the competitive funds, maybe it stems from not having the staff capacity or if there are other sources of funding tribes are focusing on instead. Either way, with more tribes becoming eligible for 319 funding year after year, I would expect there to more competition for these funds. With the increase in competition, it may warrant an increase in the amount reserved or moving the base funds to the competitive fund.</p>
Confederated Salish and Kootenai Tribes	No. It is burdensome to not have enough money to hire a person to run the programs.
Ottawa Tribe of Oklahoma	Yes, EPA should continue to set aside a portion of available funds for eligible Tribes that have not received a competitive grant in the last five years.
Snoqualmie Indian Tribe	Yes.
Nez Perce	<p>Given that this is a competitive grant, determining whether a set-aside portion of the available funding for Tribes that have not received a competitive grant in the last five years is a challenging and contentious subject. Grants take weeks or even months to finalize. Applicants must locate suitable project sites, secure necessary permissions and assurances, and spend significant time writing and editing their proposals. Tribes that have had consistent success in obtaining competitive funding in the past through their hard work should not be penalized for their success. What metrics would be used to evaluate proposals from Tribes that have not received competitive grants in the past five years? Would more effective pollutant reduction projects go unfunded in favor of less deserving projects that were simply “due” to receive funding? While this approach is novel in concept, there are too many questions about its efficacy in meeting the goals of the CWA §319 Program and continuing this approach beyond FY23 should not occur.</p>
Pueblo of Laguna	Yes, beyond FY23, the EPA should continue to reserve funds for competitive grants to support on-the-ground NPS projects with an increase of the award.

5. Please share any other thoughts on how EPA can better support Tribal NPS programs.

Tribe/Nation	Comment
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<p>Santa Clara Pueblo</p>	<p>The EPA 319 NPS consultation and equity efforts have been very well managed and have provided tribal 319 NPS programs multiple opportunities to meet and provide input. This is a credit to the HQ staff who have been involved in the process and their work with the NPS Regional staff to get the word out to tribal programs. Tribal comments were not just heard but incorporated into the final proposals. The many sessions encouraged feedback and there was never any impression of “one and done” or a “check the box” process. This particular effort can serve as a model of how tribal consultation can be performed with the goal of an overall mutual beneficial result. The data and materials shared during this particular consultation and comment period provided information in advance to help make comments more specific and detailed.</p>
<p>Oneida Nation</p>	<p>Tribal Self-Determination and Self-Governance has been the most successful Federal Indian policy in history and nearly all Tribal Nations utilize Self-Determination contracts and/or Self-Governance compacts and have extensive experience with P.L. 93-638, the Indian Self-Determination and Education Assistance Act (ISDEAA).  Self-Governance allows Tribes, as sovereign nations, to exercise their inherent right to self-govern and to accept Federal program funds through a negotiated agreement and provide programs and services that meet the needs of their citizens and Tribal communities. For more than 3 decades, Self-Governance has shown to be an effective and efficient approach for implementing the government-to-government relationship that exists between the Federal government and Tribal governments.  If EPA funds were provided through Self-Determination contracts and Self-Governance agreements, Tribal Nations would be able to develop long-term plans to meet the needs of their communities. Tribal Nations would also recognize greater flexibility to redesign programs that provide critical enhancements to our natural and built environments  Further, Self-Governance reduces levels of Federal bureaucracy and expands local decision making and Tribal control. Oneida Nation encourages EPA to support Self-Governance expansion and to look to the BIA, IHS, and DOT for successful models.</p>
<p>Pueblo of Tesuque</p>	<p>We do struggle with lack of funding for our program and projects, as it does not fully support a fulltime employee to manage the projects for our community. We are challenged with the lack of time and funds allocated for salaries for staff to work on projects that end up requiring more time and resources to complete due to the complexity of watershed, the river, and climate change over time.</p>
<p>Leech Lake Band of Ojibwe</p>	<p>With so many important resources requiring proper management and protection, the Tribe is largely underfunded. The LLBO WRP relies exclusively on grant funding for implementation of our Clean Water Act programs. US EPA has identified the Leech Lake Band to receive a \$60,000 base funding allocation for our 319 TAS. As it currently stands this funding is only enough to support 1 staff member at 0.75 FTE making \$18.50/hr. This is not a sustainable nor competitive wage, nor does it allow the Tribe to retain staff to run a program and seek</p>

	additional funding opportunities. Tribes are disproportionately affected by non-point source pollution, and without an increase in Tribal allocation for 319 programs, this injustice will continue.
Prairie Island Indian Community	Funding is likely the main reason for limited progress, combined with not enough staff which is likely from not enough funding to support staff. What EPA could do to better support Tribal NPS programs would be to communicate more in regards to potential funding opportunities. My one other suggestion is for EPA to gradually increase funding in the Nationwide 319 program to account for inflation, so we are all able to continue working towards cleaner air, land, and water to protect human health.
Confederated Salish and Kootenai Tribes	If competitive grant projects are continued, please consider having a EPA employee that could help design and implement the projects without using funds for contractors.
Ottawa Tribe of Oklahoma	As new Tribes become eligible for CWA Section 319 grants, EPA should reduce the Tribal competitive grant funding and NOT reduce any base funding amounts to Tribes.
Nez Perce	The primary limiting factor to successful implementation of Tribal §319 Programs has always been funding. It is encouraging to see EPA working to increase base funding, so Tribes can at least fund one staff member full-time to run the program. EPA should continue to increase direct funding to Tribes whenever possible. Increased technical assistance by EPA, in the form of pilot projects, independent research, and the facilitation of partnerships would be extremely useful. Ongoing training for Tribal staff, through webinars, conferences, and workshops should also be prioritized.
Snoqualmie Tribe	Section 319 is an important tool in protecting all of the waters that impact the lifeways of the Tribe. We use the funds allocated to the Tribe for the waters of the Snoqualmie Reservation, but some of our most meaningful work is in partnering with other organizations throughout the watershed to improve water quality on a larger scale. Our work to outreach and educate the public about the importance of water quality to human health, to our enjoyment of the water, and for the s?ilas (Kokanee salmon) is vital to the goal of water quality for all people. To achieve this goal, base 319 funding for water quality needs to be able to cover the cost of a staff member to run a non-point source pollution program full time. Without this funding, the Snoqualmie Tribe will struggle to staff a program solely to protect the watershed from pollutants.



Oneida Nation  
Oneida Business Committee  
PO Box 365 • Oneida, WI 54155-0365  
[oneida-nsn.gov](http://oneida-nsn.gov)



November 4, 2022

U.S. Environmental Protection Agency  
Attn: Steve Epting  
Washington, D.C. 20460

Submitted electronically to: [tribal319grants@epa.gov](mailto:tribal319grants@epa.gov)

Re: U.S.E.P.A. Consultation

It is with great privilege that I submit the Oneida Nation's official comments regarding the potential actions relating to the Clean Water Act §319 national nonpoint source program.

The Oneida Nation's 65,400-acre reservation is located near the City of Green Bay in the State of Wisconsin. We serve more than 17,000 Oneida tribal members worldwide, with approximately 8,000 tribal members living on or near the reservation boundaries. The Nation, like all other Tribal Nations, places the environment at the utmost value and has dedicated many resources to preserve, restore and enhance our natural and built environments to enhance the quality of life for the Oneida Community. We do that through responsible, professional actions that reflect Oneida's culture, tradition and core values, and we perform work that contributes to a healthy and safe environment, create a place where we want to raise our families, practice our cultural traditions, hunt, fish, harvest and enjoy leisure activities on our lands.

To continue meeting our goals, consistent and direct funding continues to be a struggle. The Oneida Nation's Eco Services Nonpoint Program operates exclusively on grant funding. These grants are essential to implement corrections to agricultural practices, such as runoff to Oneida Nation's creeks and streams that affect fish population, harvest, and the water quality in the Bay of Green Bay.

The Nonpoint Program role has expanded over the last decade because of the importance to address agricultural issues and implement conservation practices in the Great Lakes. Partnerships with Oneida have also steadily grown as local governments and agencies seek to implement systems wide projects that don't stop at local government boundaries and affect all our waterways. Some of these partnerships include NEW Water (Green Bay Metropolitan Sewage District brand), Brown & Outagamie County Land Conservation Departments and Natural Resource Conservation Services (NRCS).

The Eco Services Nonpoint Program supports Oneida's role in water quality projects and continues to expand. Projects include agricultural best management practices, wildlife habitat, wetland restorations and reforestations that will provide hunting, fishing and gathering opportunities for Oneida. Increasing the EPA funding of the Nonpoint Program will assist the Nation in handling future growth and projects.

In addition to increased funding, Oneida Nation encourages EPA to move towards non-competitive, base funding for tribes and expanding Self-Governance authority into the EPA. Competitive grant funding puts smaller tribes at a disadvantage because they may not have skilled grant writers needed to obtain the grant. Non-competitive base funds provide tribes with more flexibility than competitive grants, allows for long-term planning, and frees up time to focus on providing actual services.

The most effective approach to non-competitive federal funding is utilizing and expanding Self-Governance. The Oneida Nation supports expanding Self-Governance to all federal agencies, including the EPA. As you may be aware, Tribal Self-Determination and Self-Governance has been the most successful Federal Indian policy in history and nearly all Tribal Nations utilize Self-Determination contracts and/or Self-Governance compacts and have extensive experience with P.L. 93-638, the Indian Self-Determination and Education Assistance Act (ISDEAA).

Self-Governance allows Tribes, as sovereign nations, to exercise their inherent right to self-govern and to accept Federal program funds through a negotiated agreement and provide programs and services that meet the needs of their citizens and Tribal communities. For more than 3 decades, Self-Governance has shown to be an effective and efficient approach for implementing the government-to-government relationship that exists between the Federal government and Tribal governments.

If EPA funds were provided through Self-Determination contracts and Self-Governance agreements, Tribal Nations would be able to develop long-term plans to meet the needs of their communities. Tribal Nations would also recognize greater flexibility to redesign programs that provide critical enhancements to our natural and built environments. Further, Self-Governance reduces levels of Federal bureaucracy and expands local decision making and Tribal control. Oneida Nation encourages EPA to support Self-Governance expansion and to look to the BIA, IHS, and DOT for successful models.

With a Good Mind, a Good Heart & a Strong Fire,

*Tehassi tasi Hill*

Tehassi tasi Hill, Chairman  
Oneida Nation

A good mind. A good heart. A strong fire.



## Response letter from Prairie Island Indian Community

1. Allocation Options: What is your ranked preference order for the proposed base grant allocation options outlined in the attached supplement? We also invite your input on alternative base grant allocation options not listed below.

**My ranked preference order for the proposed base grant allocations are listed below in order of priority:**

1. Option #4: \$60K/Tribe + add'l \$ based on land area
2. Option #3: 4 land area-based funding tiers (0-5; 5-100; 100-400; 400+ sq mi)
3. Option #5: \$60K/Tribe + add'l \$ based on land area rank
4. Option #6: \$60K/Tribe + add'l \$ based on land + surface water + population rank
5. Option #2: 2 land area-based funding tiers (0-100; 100+ sq mi)
6. Option #1 (current): 2 land area-based funding tiers (0-1,000; 1,000+ sq mi)

I like the idea behind the set amount plus additional funding based on different variables. What made you decide on the standard allocation starting at \$60,000 instead of say, \$50,000? I would suggest a \$50,000 standard allocation with more depending on other factors. I would also like to mention that even small tribes can have major water quality issues. I am from Prairie Island, a small tribe on the Eastern side of Minnesota – in between two rivers: the Mississippi River and the Vermillion River – both with major non-point source pollution issues from the amount of impervious area to the north and the amount of farmland to the west. What I am getting at is just because a tribe may be small compared to others, does not mean that tribe has less work on pollution issues to address – it just means they have to coordinate with outside organizations more to address issues outside of tribal lands, but nonetheless, has impacts on water quality flowing within tribal lands.

Has there been any discussion with other variables such as cost of living and degree of development/industry? I am unsure on how the cost of living differences would be addressed as they vary drastically even within states/counties. A higher cost of living would mean more of the base funding would go towards salary and not as much towards funding projects. In addition, a higher cost of living would likely correlate with higher project costs. A \$50,000 base fund would essentially give tribes located in areas with a lower cost of living more resources to fund certain projects.

The degree of industry and development may also be worthy of elaborating on. I would argue the primary contributors of water quality issues stems from highly developed areas including high intensity agriculture lands. Again, not sure how this factor would play into the funding allocations, perhaps looking at land use covers to determine a risk factor of water pollution as it relates to highly developed areas.

The one last point I want to emphasize is regarding the competitive funding as it relates to how much is leftover after base grants have been awarded. Currently all the 6 different funding options leaves approximately the same leftover for competitive funding. I would advocate for slightly lower standard allocations (\$50,000) to allow for more funding in the competitive grant. I know that there really has not been a whole lot of “competition” for this grant, but I believe this fund is very important to reward the tribes actively planning on implementing BMPs to address these issues.

2. Data Source(s): For FY23, EPA is proposing to derive land area, and other data layers included in the allocation formula, where applicable, from the 2010 US Census. For Tribal data not available in the US Census, EPA proposes to use data from current Tribal CWA §319 TAS packages. What are your thoughts on this approach? Moving forward, what process (e.g., frequency of updates) should EPA adopt regarding the data used in the base grant allocation formula?

**I understand the difficulty of where to extract data from to determine land area. However, I do think that using data that is 10+ years old is not as accurate as I would hope. I do also think that by using this data and getting tribal staff to review the accuracy of the information you extracted is a decent compromise. I would also recommend contacting all tribes to ensure they have had the opportunity to review the data you extracted and that it is accurate.**

3. Allocation Formula Factors: The base grant allocation options below incorporate Tribal land area, Tribal surface water area, and/or population. Which factor(s) should be used to determine a Tribe's base grant funding amount?

**I do not necessarily agree with the parameters used to determine funding amounts, particularly the population rank. I mentioned a couple parameters in the previous question that may be worth your time to explore. I would strongly urge you to check in to the cost of living parameter as the base grant largely funds a full-time employee dedicated to work on NPS projects. If the employee is not being offered a livable wage, turnover will likely lead to a halt in BMP implementation. I strongly believe this is an important parameter that needs to be considered because work will not get done if tribes are having issues with finding staff to work towards minimizing NPS issues. It would be great if EPA has the ability to get this idea circulated around other tribes in the nation to gauge support of using this as a parameter to determine base funding.**

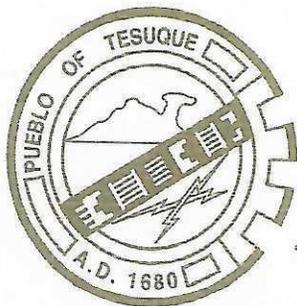
**I also believe that by using cost of living as a parameter that the individual or group focused on NPS issues will be more qualified and thus, achieve greater results than an individual without a background in natural resources. In addition to having more qualified individuals in these positions, it may spark a greater competition among the competitive funds which will lead to projects with greater impact on our water resources.**

4. Tribal CWA §319 Competitive Grants: EPA is proposing to continue reserving approximately \$3 million/year from the Tribal set-aside for competitive grants to support on-the-ground NPS projects. What are your thoughts on this approach?

**In the long run, I would hope for this amount to be increased. I am not sure why the tribes who apply for base funds do not also apply for the competitive funds, maybe it stems from not having the staff capacity or if there are other sources of funding tribes are focusing on instead. Either way, with more tribes becoming eligible for 319 funding year after year, I would expect there to be more competition for these funds. With the increase in competition, it may warrant an increase in the amount reserved or moving the base funds to the competitive fund.**

5. Please share any other thoughts on how EPA can better support Tribal NPS programs.

**Funding is likely the main reason for limited progress, combined with not enough staff which is likely from not enough funding to support staff. What EPA could do to better support Tribal NPS programs would be to communicate more in regards to potential funding opportunities. My one other suggestion is for EPA to gradually increase funding in the Nationwide 319 program to account for inflation so we are all able to continue working towards cleaner air, land, and water to protect human health.**



Office of the Governor  
*Pueblo of Tesuque*  
20 TP828  
Santa Fe, New Mexico 87506

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December 14, 2022

Steve Epting  
Office of Water  
US Environmental Protection Agency  
Washington, DC 20460

Re: Notification of Continued Consultation and Coordination on Potential EPA Actions to Increase Tribal Capacity to Maintain and Expand Nonpoint Source Management Program

Dear Mr. Epting,

The Pueblo of Tesuque and our Department of Environment and Natural Resources has reviewed and discussed the Notification of Continued Consultation and Coordination on Potential EPA Actions to Increase Tribal Capacity to Maintain and Expand Nonpoint Source Management Program. The Pueblo of Tesuque is a federal recognized Indian Tribe with EPA Clean Water Act (CWA) (§) 319 national Nonpoint Source (NPS) grants. So, any decision being made by EPA that could better support CWA §319-eligible Tribes in our project efforts to manage NPS pollution will be of concern.

The Pueblo of Tesuque has attended in the engagement efforts for tribes to discuss the challenges facing Tribal communities and how EPA can help address these challenges through action in the CWA §319 program. The Pueblo of Tesuque receives the base funding and along with the competitive CWA §319 funds. We do struggle with the lack of fund for our program and projects, as it does not fully support a fulltime employee to manage the projects for our community. We are challenged with the lack time and funds allocated for salaries for staff to work on projects that end up requiring more time and resources to complete due the complexity of watershed, the river and climate change over time.

The Pueblo of Tesuque is enthused about the potential changes to increase funds for the CWA §319 tribal grant allocations to support Tribal NPS program work. At this time, the Pueblo is requesting tribal consultation to further discuss the options in regard to the Grant Allocation Formula, specifically with the following allocation options:

- Option 4: \$60K + Tribal-Specific Variable Amount based on Land Area
- Option 5: \$60K + Tribal-Specific Variable Amount based on Land Area Rank,
- Option #6. \$60K + Tribal -Specific Variable Amount based on the Land Area and Rank, Surface Water Area Rank and Population Rank.

Thank you for your attention regarding this matter, if you have any questions or concerns, please feel free to contact Sage Mountainflower, Department of Environment and Natural Resources Director at (505) 303-1566 or email at [sagem@pueblooftesuque.org](mailto:sagem@pueblooftesuque.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Earl Samuel". The signature is written in a cursive style with a large, stylized initial "E".

Earl Samuel  
Governor

## SANTA CLARA

POST OFFICE BOX 580  
(505) 753-7330  
(505) 753-5375 Fax



## INDIAN PUEBLO

ESPANOLA, NEW MEXICO  
87532  
OFFICE OF GOVERNOR

December 9, 2022

[tribal319grants@epa.gov](mailto:tribal319grants@epa.gov)

US EPA Office of Water  
Washington, DC 20460

Re: *Santa Clara Pueblo Comments to EPA Second 60-Day Comment Period to the Tribal CWA §319 Grant Allocation Formula*

To Whom It May Concern:

Santa Clara Pueblo formally provides the following comments in response to the EPA second 60-day comment period requesting input on potential changes to the Tribal CWA §319 grant allocation formula.

EPA asked for specific Tribal feedback on the following items. The Pueblo's response to each are in bold:

1. Allocation Options: What is your ranked preference order (#1 = most preferred option, #6 = least preferred option) for the proposed base grant allocation options outlined in the attached supplement? We also invite your input on alternative base grant allocation options not listed below. **The most equitable options seem to be option 4 and 6. Option 4 is the least complicated to determine and provides a better base in which to either establish a program or maintain continuity. Option 6 has more metrics to consider in determining the variable amounts but increases in funding that result from the calculations are minimal and the simplest calculation in Option 4 seems to be the most equitable in providing funds for all 319 NPS eligible tribes. Though this item asked for a ranking of each option the Pueblo prefers to list the two best viable options.**

2. Data Source(s): For FY23, EPA is proposing to derive land area, and other data layers included in the allocation formula, where applicable, from the 2010 US Census. For Tribal data not available in the US Census, EPA proposes to use data from current Tribal CWA §319 TAS packages. What are your thoughts, including any concerns, regarding this proposed approach? Moving forward, what process (e.g., frequency of updates) should EPA adopt regarding the data used in the base

grant allocation formula? **The Pueblo recommends requesting data from Department of Interior Bureau of Indian Affairs where there are gaps in information. A frequency of 10-years to update in line with the US Census schedules would be appropriate.**

3. Allocation Formula Factors: The base grant allocation options below incorporate Tribal land area, Tribal surface water area, and/or population. Which factor(s) should be used to determine a Tribe's base grant funding amount? **Factors used to determine a *base* amount should be the tribe's interest in running a 319 NPS program and the ability to manage a cooperative agreement. Interest is measured by the submittal of a proposal. The base amount should allow for resources to have a position to run 319 NPS administrative functions. The listed factors of surface water, land and population area are data that could be used to determine *variable* funding.**

4. Tribal CWA §319 Competitive Grants: EPA is proposing to continue reserving approximately \$3 million/year from the Tribal set-aside for competitive grants to support on-the-ground NPS projects. In FY23, EPA increased the competitive grant project cap from \$100,000 to \$125,000 and plans to set aside a portion of available funds for CWA §319-eligible Tribes that have not received a competitive grant in the last five years. Beyond FY23, should EPA continue this approach in future years? **Would this set aside be for a pool of tribes who have not received competitive funding to then *compete* for, not automatic allocation? A competitive pool is what was discussed in the tribal equity calls so the question is to clarify if this is the case for this item. The Pueblo is in support of a set aside from the competitive funds for a subset of tribes to compete (tribes which have not received competitive funds in the last five years). In the future 319 NPS tribal programs could be approached again in through workgroups to see if this is still the consensus.**

5. Please share any other thoughts on how EPA can better support Tribal NPS programs. **The EPA 319 NPS consultation and equity efforts have been very well managed and have provided tribal 319 NPS programs multiple opportunities to meet and provide input. This is a credit to the HQ staff who have been involved in the process and their work with the NPS Regional staff to get the word out to tribal programs. Tribal comments were not just heard but incorporated into the final proposals. The many sessions encouraged feedback and there was never any impression of "one and done" or a "check the box" process. This particular effort can serve as a model of how tribal consultation can be performed with the goal of an overall mutual beneficial result. The data and materials shared during this particular consultation and comment period provided information in advance to help make comments more specific and detailed.**

Should you have any questions on the Santa Clara Pueblo comments please contact Mr. Bernardino Chavarria, Environment Director at 505 753 -7326 x1239, email [dinoc@santaclarapueblo.org](mailto:dinoc@santaclarapueblo.org).

Sincerely,

*J. Michael Chavarria*  
J. Michael Chavarria, Governor

CC: Steve Epting EPA HQ 319 NPS  
Nikole Witt EPA R6 319 NPS



December 21st, 2022

Steve Epting  
U.S. EPA  
1200 Pennsylvania Ave NW  
Washington DC 20460  
tribal319grants@epa.gov

*Re: Tribal 319 Consultation Comment Period 2 (10/24-12/23): Soliciting Tribal Input on 319 Allocation Formula*

Dear Steve Epting:

The Snoqualmie Indian Tribe—*sduk<sup>w</sup>albix<sup>w</sup>* in our Native language—consists of a group of Coast Salish Native American peoples from the Puget Sound region of Washington State. We have been in the Puget Sound region and the Snoqualmie Valley since time immemorial. *sq<sup>w</sup>ed* (Snoqualmie Falls) is the birthplace of the *sduk<sup>w</sup>albix<sup>w</sup>*. We had more than 90 long houses along the Snoqualmie River and its tributaries. These rivers and streams were the highways used to travel from village to village and connected all the *?aciłtalbix<sup>w</sup>* (Natives). The fish, game, trees and roots provided us with everything we need to live. All of this was given to us by *duk<sup>w</sup>ibeł* (Transformer) in the ancient times when all of the animals could talk and before things were what they are now.

We are the *sduk<sup>w</sup>albix<sup>w</sup>*, People of Moon. We are the descendants of *sluk<sup>w</sup>alb tə duk<sup>w</sup>ibeł*. We have lived, hunted and fished this area for as long as the earth and rivers remember. Our Tribe was a signatory of the Point Elliott Treaty with the Washington territory in 1855. At that time, our people were one of the largest tribes in the Puget Sound region totaling around 4,000. We are still here today; caring for the land, water, fish and game that *duk<sup>w</sup>ibeł* gave us. Our culture is sustained by this land. Without clean, cold water to drink and to fish in; without land to sustain game and plants for food, fiber, and medicine; without clean air to breathe—our culture cannot exist.

The Snoqualmie Indian Tribe is a federally-recognized sovereign Indian Tribe with its governmental offices at 9571 Ethan Wade Way SE, Snoqualmie, WA 98065. The Tribe is a signatory to the Treaty of Point Elliott of 1855 in which it reserved to itself certain rights and privileges, and ceded certain lands to the United States. As a signatory to the Treaty of Point Elliot, the Tribe specifically reserved to itself in perpetuity. Treaty of Point Elliot, art. V, 12 Stat. 928. Tribal treaty reserved rights are a property right which is protected by Article V of the United States Constitution, as applied through the Fourteenth Amendment, which cannot be deprived without due process of law and just compensation. Only Congress can abrogate the Tribe's treaty rights, which it has never done. See, e.g., *Menominee Tribe v. United States*, 391 U.S. 404, 412-13, (1968) (treaty rights may only be abrogated by Congress).



Tribal waters are not limited to the waters on the Reservation. Tribal waters include all the waters in our historical homelands, those covered by treaties, and those that affect our cultural lifeways. These lands were ceded in exchange for treaty rights, and a given water's status as a tribal water protected by treaty rights is still in place, even if said waters are not on a reservation. Exercise of the Tribe's treaty-reserved rights depends upon healthy ecosystems and clean water that supports them. Over the years, the Tribe's treaty resources have been incrementally diminished by development, which irreversibly impacts the ecology of the Tribe's ceded lands. The protections enshrined in the Clean Water Act enable the State of Washington and federally recognized tribes to provide minimum protections for water quality within the Tribe's ceded territory.

Section 319 is an important tool in protecting all of the waters that impact the lifeways of the Tribe. We use the funds allocated to the Tribe for the waters of the Snoqualmie Reservation, but some of our most meaningful work is in partnering with other organizations throughout the watershed to improve water quality on a larger scale. Our work to outreach and educate the public about the importance of water quality to human health, to our enjoyment of the water, and for the s?ilas (Kokanee salmon) is vital to the goal of water quality for all people. To achieve this goal, base 319 funding for water quality needs to be able to cover the cost of a staff member to run a non-point source pollution program full time. Without this funding, the Snoqualmie Tribe will struggle to staff a program solely to protect the watershed from pollutants. In light of these needs, we request that EPA consider Option 4: \$60K + Tribal-Specific Variable Amount based on Land Area for the allocation of 319 funds. This option allows for the equitable sharing of federal resources among tribes so that we may all protect the waters that sustain us.

Sincerely,

A handwritten signature in cursive script that reads "Kelsey Payne".

Kelsey Payne  
Water Quality Manger  
Snoqualmie Indian Tribe  
Environmental and Natural Resources Department



# LEECH LAKE BAND OF OJIBWE DIVISION OF RESOURCE MANAGEMENT

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The Leech Lake Band of Ojibwe (LLBO) would like to thank the United States Environmental Protection Agency (US EPA) for the opportunity to comment on this matter. The Leech Lake Band of Ojibwe Water Resources Program (LLBO WRP) is encouraged by EPA's actions to increase Tribal allocation for the EPA 319 funding program. However, it is disappointing that Tribes continue to be pitted against one another for a share of funding that is allocated for Tribes. The current allocation options being offered by EPA are concessions for which Tribes are forced to choose from and not what LLBO would consider fair and equitable. In order for Tribal funding to truly be fair and equitable, Tribes should receive funding based on the amount of surface waters within Reservation Boundaries, the same way that States are given funding for the same programs.

Non-point source pollution is a widespread problem across LLBO lands as well as upstream from the Reservation. With a land area larger than the State of Rhode Island, and approximately 495,000 acres of total waterbodies, Leech Lake Band members are disproportionately affected by NPS pollution occurring on our lands. Not only do these issues directly affect the cultural and spiritual lifeways of Leech Lake Band members, but activities occurring within the Reservation have nationwide water quality effects. Located less than 100 miles from the headwaters source of the Mississippi River, the majority of the Leech Lake Reservation falls within the Upper Mississippi River drainage basin. Activities occurring both upstream, and throughout the Reservation can have impacts for thousands of miles downstream and even out into the Gulf of Mexico. The Northeastern portion of the Reservation is located in the headwaters of the Big Fork River Watershed which is part of the Rainy River Drainage Basin which flows north and eventually drains into Hudson Bay. With so many important resources requiring proper management and protection, the Tribe is largely underfunded. The LLBO WRP relies exclusively on grant funding for implementation of our Clean Water Act programs. US EPA has identified the Leech Lake Band to receive a \$60,000 base funding allocation for our 319 TAS. As it currently stands this funding is only enough to support 1 staff member at 0.75 FTE making \$18.50/hr. This is not a sustainable nor competitive wage, nor does it allow the Tribe to retain staff to run a program and seek additional funding opportunities. Tribes are disproportionately affected by non-point source pollution, and without an increase in Tribal allocation for 319 programs, this injustice will continue.

LLBO WRP has reviewed EPA's 319 consultation base allocation formula options. The proposed allocation formula uses Tribal land area from census data alone. This is not the best metric for a water-based program. NPS issues occurring on Tribal lands are directly affecting Tribal surface water resources and therefore, this formula at the minimum should include the amount of surface water as well as total land area within the exterior boundaries of any Reservation as well as any off-Reservation trust lands.

Thank you for your time and consideration of our comments. If you have any questions or requests for clarifications, please contact the Leech Lake's Water Resources Program staff at:

Jeff Harper || Water Program Manager || 218-252-2805 || [jeff.harper@llojibwe.net](mailto:jeff.harper@llojibwe.net) ||

Jakob Sorensen || Water Resource Technician || 763-516-0266 || [jakob.sorensen@llojibwe.net](mailto:jakob.sorensen@llojibwe.net) ||

Eric Krumm || Water Resources-Environmental Program || 507-450-0879 || [eric.krumm@llojibwe.net](mailto:eric.krumm@llojibwe.net) ||

Regards,

*Jeffrey Harper*

Jeffrey Harper (Dec 22, 2022 09:18 CST)

Jeff Harper

Water Resource Program Manager

Leech Lake Band of Ojibwe

CC:

Brandy Toft, Interim Environmental Director