



May 6, 2016

The Honorable John Barrasso
Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Jon Tester
Vice Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510

The Honorable John McCain
Senator
241 Russell Senate Office
Building
Washington, D.C. 20510

Re: Funding for Tribal Water and Waste Water Operator Training & Certification in the Water Resources Development Act of 2016

Dear Chairman Barrasso, Vice Chairman Tester, and Senator McCain,

As you know, the Senate Committee on Environment and Public Works (EPW) recently approved S. 2848, the Water Resources Development Act of 2016 (WRDA). In light of the Flint, Michigan water crisis, and inadequate water infrastructure nationally, this legislation seeks to make necessary investments in our nation's public health. As sovereign governments, Tribal Nations are responsible for public health infrastructure on their lands, including the operation of safe and effective water and waste water systems. These systems depend upon committed public health professionals who are properly trained and certified in their operation, as well as capable of navigating the increasingly complex legal and jurisdictional framework facing Indian Country.

With this in mind, we write to request the introduction of an amendment to WRDA that would ensure that funding for Tribal water and waste water operator training and certification programs is included. United South and Eastern Tribes (USET) and the Inter-Tribal Council of Arizona (ITCA) currently offer no-cost Tribal water and waste water operator training and certification programs, which are available to Tribal Nations throughout the United States. These certification programs have been formally approved by the Environmental Protection Agency (EPA). Collectively, USET and ITCA have issued over 2,500 certifications to personnel employed by approximately 115 Tribal Nations.

Access to Tribally-focused and administered training and certification programs is vital to the health of Tribal Nations and the exercise of Tribal sovereignty. Prior to the establishment of EPA-approved Tribal operator certification programs, Tribal Nations were often left with little choice but to employ or contract with state-certified water operators, many of whom had no ties to the Tribal communities where they were employed, resulting in high turnover rates and a lack of operational continuity for Tribally-operated systems in Indian country. Further, state certification programs are not geared to meet the unique jurisdictional, legal, and cultural frameworks that apply to Tribal water/wastewater systems. Our certification programs

ensure that Tribal Nations have the opportunity to enforce their own public health codes, employ their own people, and above all, secure the health of their communities.

Funding for these programs is currently delivered through the Department of Health and Human Services, Administration on Children and Families, Rural Community Facilities line item within the Community Services Block Grant. Unfortunately, the Obama Administration has zeroed out this funding in annual Presidential Budget Requests and our organizations, along with rural development non-profits, must advocate for its restoration each year. While the Administration argues that this funding is duplicative, there is no other source of sustained federal funding for Tribally-led services. For this reason, we are seeking long-term, sustained federal funding through other authorizations and agencies.

We believe that WRDA presents an opportunity to achieve more stable funding. In evaluating the EPW-approved legislation, our Senate champions have two options for filing amendments that would assist our programs. Option 1: an amendment could be offered that increases the Tribal set-aside within state revolving funds and allows this money to be used for training and certification, rather than only infrastructure development. Option 2: WRDA contains a new provision¹ amending the Safe Drinking Water Act to include "Assistance for Small and Disadvantaged Communities." As historically disadvantaged communities, Tribal Nations should and do qualify for funding via this provision. However, some targeted changes in the language of this provision would allow for Tribal Nations to have more direct access to this funding and for grants to be made to Tribal organizations for training and certification programs. While we believe infrastructure development is critically important, it is equally important that this infrastructure is properly maintained and operated, in Indian Country and beyond. For your consideration, we enclose some draft language for both amendment options.

On behalf of the USET Sovereignty Protection Fund, ITCA, and National Congress of American Indians (NCAI), we thank you for your careful consideration of this request. Among the myriad Trust obligations this Congress and the entire U.S. government has to Tribal Nations is safe and effective drinking and waste water management. As the leadership of the Senate Committee on Indian Affairs, we hope that you will join us in the fight to ensure that this is achieved in a way that respects Tribal sovereignty. Should you have any questions or require further information, please do not hesitate to contact Ms. Liz Malerba, Director of Policy and Legislative Affairs, USET Sovereignty Protection Fund, at lmalerba@usetinc.org or 202-624-3550.

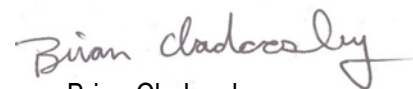
Sincerely,



Brian Patterson
President, USET



Shan Lewis
President, ITAA



Brian Cladoosby
President, NCAI

Enclosures

¹ Section 7106 of WRDA.

Sec. 300j-12. State revolving loan funds

(I) INDIAN TRIBES

Section 1452(i) of the Safe Drinking Water Act (42 U.S.C. 300J-12(i) is amended—

(1) In the first sentence, by striking “1-1/2 percent” and inserting “3 percent” and

(2) And following the fourth bullet, inserting the following fifth bullet:

“(5) TRAINING AND OPERATOR CERTIFICATION--Notwithstanding subsection (i)(2), up to 7 percent of the amounts appropriated annually under subsection (i)(1) may be used by the Administrator to make grants to Tribal organizations as defined in section 4(I) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(I)) for the purpose of providing operator training and certification services to Indian Tribes.”

-CITE-

42 USC Sec. 300j-12 State Revolving Loan Funds (1452)

-EXPCITE-

TITLE 42 - THE PUBLIC HEALTH AND WELFARE
CHAPTER 6A - PUBLIC HEALTH SERVICE
SUBCHAPTER XII - SAFETY OF PUBLIC WATER SYSTEMS
Part E - General Provisions

-HEAD-

Sec. 300j-12. State revolving loan funds

-STATUTE-

(i) INDIAN TRIBES

(1) IN GENERAL

~~1-1/2~~ 3 percent of the amounts appropriated annually to carry out this section may be used by the Administrator to make grants to Indian Tribes and Alaska Native villages that have not otherwise received either grants from the Administrator under this section or assistance from State loan funds established under this section. The grants may only be used for expenditures by tribes and villages for public water system expenditures referred to in subsection (a)(2) of this section.

(2) USE OF FUNDS

Funds reserved pursuant to paragraph (1) shall be used to address the most significant threats to public health associated with public water systems that serve Indian Tribes, as determined by the Administrator in consultation with the Director of the Indian Health Service and Indian Tribes.

(3) ALASKA NATIVE VILLAGES

In the case of a grant for a project under this subsection in an Alaska Native village, the Administrator is also authorized to make grants to the State of Alaska for the benefit of Native villages. An amount not to exceed 4 percent of the grant amount may be used by the State of Alaska for project management.

(4) NEEDS ASSESSMENT

The Administrator, in consultation with the Director of the Indian Health Service and Indian Tribes, shall, in accordance with a schedule that is consistent with the needs surveys conducted pursuant to subsection (h) of this section, prepare surveys and assess the needs of drinking water treatment facilities to serve Indian Tribes, including an evaluation of the public water systems that pose the most significant threats to public health.

(5) TRAINING AND OPERATOR CERTIFICATION

Notwithstanding subsection (i)(2), up to 7 percent of the amounts appropriated annually under subsection (i)(1) may be used by the Administrator to make grants to Tribal organizations as defined in section 4(I) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(I)) for the purpose of providing operations and maintenance training and operator certification to Indian Tribes.

**Tribal Water Operator Amendment to Section 7106 of the Water Resources
Development Act of 2016**

1459A(a)1

Insert the following on page 128, after line 8:

Strike . , and add:

“or an Indian Tribe as defined in section 1401.”

1459A(b)2

Insert the following on page 129, after line 11:

(D) Programs that provide training and certification to water and waste water systems operators.

1459A(c)1

Insert the following on page 129, line 14:

Strike provisions A , B, and 2, and add:

“(1) is a system that is located in an area governed by an Indian Tribe (as defined in Section 1401) or served by a Tribal Organization (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l))); or

(2) is a community water system as defined in section 1401 that serves a community that, under affordability criteria established by the State under section 1452(d)(3), is determined by the State—“

1459A(g)

Insert the following on page 131, line 10:

“Or if the entity is an Indian Tribe (as defined in section 1401) or Tribal organization as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l))”

1459A(h)1

Insert the following on page 131, line 14:

“Of which not less than 3% shall be set aside for water and waste water training and certification”

1459A(h)2

Insert the following on page 131, line 16:

“Of which not less than 3% shall be set aside for water and waste water training and certification”