



Modernize Civil Works Federal Register Notice



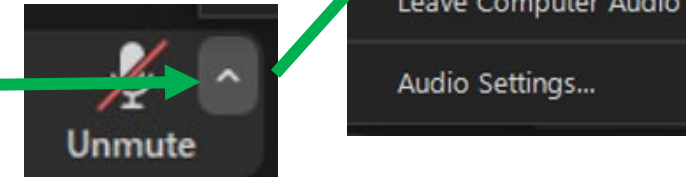
Tribal Initiatives Meeting

Thank you for joining, the meeting will start at 1 pm ET.

You can listen to the presentation through your computer (or mobile device) speakers.

If you do not have speakers, or a microphone, you can call into the meeting:

- Click on the **arrow to the right of the Unmute button**,
- Select “**Switch to Phone Audio**,” and
- Dial in using the information displayed on your screen, including your participant ID.



If you call into the meeting **via phone**, please turn off your computer speakers to avoid an echo. All participants have been muted but can unmute themselves.

If you have any technical difficulties please type your concern via the chat function and we will try to resolve it.

If you did not use your full name when you connected, please consider renaming yourself: find your name in the participant list, click on the right arrow, and “Rename.”

The slides for this meeting will be posted to Army’s webpage (<https://www.army.mil/asacw>) and the meeting content will be recorded for our own purposes.



Modernize Civil Works Federal Register Notice

Tribal Initiatives Virtual Meeting
July 07, 2022



Logistics: Options for Audio

Option 1: Computer Audio

You can listen to the presentation through your computer (or mobile device) speakers.



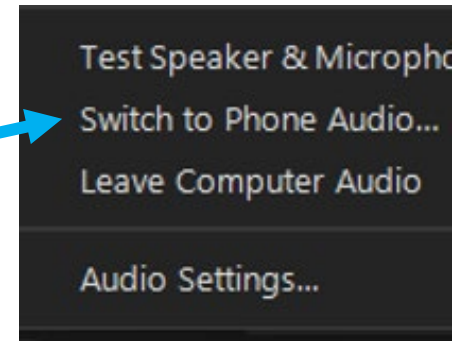
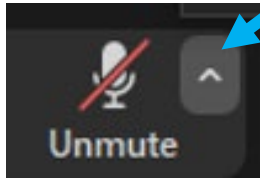
Logistics: Connect Phone



Option 2: Connect to Audio via Phone

If you do not have speakers or a microphone on your device, you may call in via phone.

To do so, in the **Unmute** button, select the arrow on the right.



Then "**Switch to Phone Audio**" and follow screen prompts.

This method will link your phone line to your computer, and allow you to use controls on your screen.

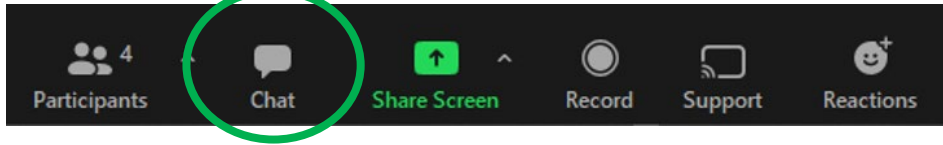
If you call in, turn off your computer speakers to avoid an echo.



Logistics: Chat



If you still have trouble connecting to audio, use the chat function.



- In the Chat window, select To “Everyone”
- Type your question in the Text Box, and
- Hit Enter.
- Staff will reach out to assist you.



Meeting Format and Ground Rules



- This is a meeting open to Tribal members.
- The objective of today's meeting is to:
 - Provide a brief overview of the Tribal initiatives related to the FRN to Modernize Civil Works.
 - Hear feedback from Tribes regarding the effort to Modernize Civil Works, in particular on Tribal Initiatives for today's session.
- If you have any clarifying questions please send them to:
usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil.
- The overview meeting slide deck includes the following slides and has been posted on the Army's website: <https://www.army.mil/asacw>.
- This session is being recorded for our comment summary purposes.



Meeting Format and Ground Rules



- Comments will be received during this session.
- After the opening presentation, we will hear from anyone who would like to provide comments.
- Anyone participating who would like to speak may use the raise their hand feature and will be called upon to provide remarks.
- Please remember to unmute yourself prior to providing your remarks.
- There will be a five-minute waiting period where if no additional attendees request to speak we will conclude the meeting early.



Introductions



- **Michael L. Connor**, Assistant Secretary of the Army (Civil Works) (providing recorded opening remarks)
- **Wes Coleman**, Chief of Program Integration Division at Headquarters, U.S. Army Corps of Engineers
- **Lisa Morales**, Tribal Liaison at Headquarters, U.S. Army Corps of Engineers
- **Stacey Jensen**, Assistant for Regulatory and Tribal Affairs in the Office of the Assistant Secretary of the Army (Civil Works)



ASA(CW) Priorities



- **Modernize Civil Works programs to better serve the needs of disadvantaged communities.**
- **Strengthen communications and relationships to solve water resource challenges.**
- **Build innovative, climate-resilient infrastructure to protect communities and ecosystems.**
- Upgrade the Nation's waterways and ports to strengthen supply chains and economic growth.
- Invest in science, research and development to deliver enduring water-resource solutions.



Modernize Civil Works Effort

- Army Civil Works, to include the Corps, published a Federal Register notice (FRN) on June 3, 2022, to announce an effort to modernize and advance the Corps' Civil Works program through a number of related policy initiatives consistent with Administration priorities and statutory authorities.
- A primary focus of the modernization effort is to identify ways to better serve the needs of Tribal Nations and other disadvantaged and underserved communities.
- Before deciding on specific future actions regarding the priority policy initiatives, the Army wants to gather public and Tribal input to help shape future decision-making.



Modernize Civil Works Effort

- The FRN's intention is to gather oral and written input that will be used to inform future decision-making related to:
 1. **Tribal Consultation Policy update.**
 2. **Comprehensive guidance on the Tribal Partnership Program.**
 3. Rulemaking action on the Corps' Regulatory Program's implementing regulations for the National Historic Preservation Act at 33 CFR 325, Appendix C.
 4. Rulemaking action on Principles, Requirements, and Guidelines.
 5. Environmental Justice policy.
 - Including, Section 160 of the Water Resources Development Act of 2020 draft definition of "economically disadvantaged community."



Tribal Consultation Policy Update



Tribal Consultation Policy - Background

- On January 26, 2021, President Biden issued the Presidential Memorandum, *Tribal Consultation and Strengthening Nation-to-Nation Relationships*.
- The Memorandum called on each federal agency to engage in regular, meaningful, and robust consultation and to implement the policies directed in Executive Order 13175 of November 6, 2000, *Consultation and Coordination with Indian Tribal Governments*.
- In addition, President Biden issued Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, directing agencies to consider environmental and social justice in their mission areas.



Tribal Consultation Policy - Background

- The Corps' Tribal Consultation Policy was issued in November 2012, which replaced the Corps' Tribal Policy Principles (1998 and 2010).
- It provides details regarding Tribal consultation specific to the Corps' authorities and responsibilities.
- The Army and the Corps is committed to ensuring the Corps' Policy is reviewed and updated to promote early, regular, meaningful, and robust consultation consistent with its missions and authorities.





Tribal Consultation Policy – Current Contents

- Definition of “Consultation”:
 - Open, timely, meaningful, collaborative and effective deliberative communication process that emphasizes trust, respect and shared responsibility;
 - To the extent practicable and permitted by law, consultation works toward mutual consensus and begins at the earliest planning stages, before decisions are made and actions are taken;
 - An active and respectful dialogue concerning actions taken by the Corps that may significantly affect tribal resources, tribal rights (including treaty rights) or Indian lands.
- Consultation will be an integral, invaluable process of the Corps’ planning and implementation processes.



Tribal Consultation Policy – Current Contents

- Requests for consultation by a Tribe to the Corps will be honored.
- Potentially affected Tribes will be contacted sufficiently early to allow a timely review of the proposed action and their comments will be taken into consideration.
- Consultation is generally conducted at the district or division level of the Corps.
- Dispute resolution process will be developed during consultation process.
- Consultation procedures may be developed at the local level to meet the needs of a particular Tribe.
- Emphasizes Corps support of Tribal self-determination, self reliance and capacity building.



Tribal Consultation Policy Update – Initial Review

- The Army has preliminarily identified several areas which may be included in an update to the Tribal Consultation Policy:



- Consistent with the Consolidated Appropriations Act of 2004, as amended, the Corps will consult with Alaska Native Corporations on the same basis as Indian Tribes under Executive Order 13175.
- Address provisions on culturally-sensitive information consistent with DoD Instruction 4710.02, dated September 24, 2018. Army has an obligation to take into account confidentiality concerns raised by Tribes. Army recognizes that a Tribe may wish to keep confidential some of the culturally sensitive information it provides during consultation.





Tribal Consultation Policy Update – Initial Review

- In March 2019, the Government Accountability Office (GAO) issued a Report, “Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects”, which included a recommendation to document in the agency’s Tribal Consultation Policy how agencies will communicate with Tribes regarding how Tribal input from consultation was considered in agency decisions on infrastructure projects.



- The Army intends that the policy update will include a requirement to provide a written response to Tribes on how Tribal input was considered in the decision-making process for all consultations.



Tribal Consultation Policy Update – Regulatory Program

- Currently, the Corps' Regulatory Program relies on existing regulations which provide very limited references to Tribal consultation.
- There is no consolidated comprehensive guidance specific to the Regulatory Program for Tribal consultation.
- Tribes have indicated that the lack of regulations or specific policy suggests that the Corps' Regulatory Program is not committed to consulting with Tribes.
- Army wants to make clear that the Tribal Consultation Policy applies to the Regulatory Program and seeks input on whether additional changes may be needed to best incorporate the Regulatory Program.

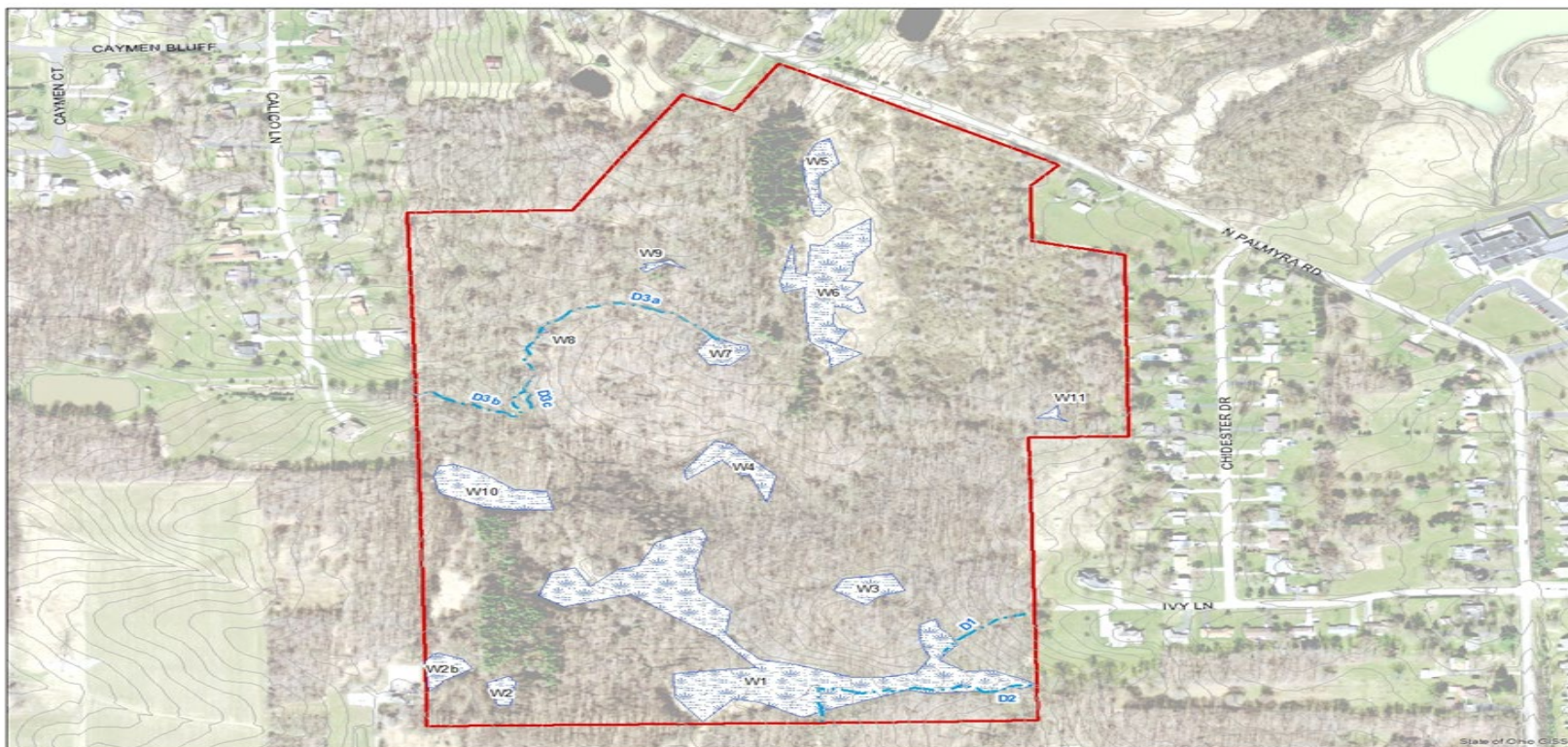


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Tribal Consultation Policy Update – Approved Jurisdictional Determinations (AJDs)



- The Army intends to address Tribal consultation requirements for AJDs issued by the Regulatory Program.
- An AJD is Corps documentation of the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel.





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Tribal Consultation Policy Update – Approved Jurisdictional Determinations (AJDs)



- Some Tribes have questioned previous issuances of AJDs, which are final agency actions under the Administrative Procedure Act, without pre-decisional government-to-government consultation.
- Tribes may have information, including Indigenous Knowledge (IK), that may assist in making such a determination.
- The Army solicits input on conducting Tribal consultations on AJDs as a policy matter and the procedures specific to the Regulatory Program's implementation of the policy.

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Tribal Consultation Policy Update – Additional Input

- The Army also welcomes feedback related to other key issues:
 - Identification of ways in which existing policy has or has not worked.
 - Specific procedures that should/could be identified to ensure that consultation is regular, meaningful, and robust.



Tribal Partnership Program Comprehensive Guidance



Tribal Partnership Program - Background

Section 203 of WRDA 2000, as amended, authorizes the Program which includes:

- Water-related planning activities - study, design, and construction
- Must substantially benefit Indian Tribes
- Includes flood risk management, environmental restoration and protection, navigation, and preservation of natural and cultural resources, watershed assessments and planning activities/technical assistance
- Located:
 - Primarily within Indian Country (18 U.S.C. 1151)
 - Jurisdictional area of an Oklahoma Tribe (as determined by the Secretary of the Interior as eligible for trust land status)
 - Proximity of an Alaska Native Village



Tribal Partnership Program - Background

Allows for the completion of feasibility studies, design, construction, watershed studies, and technical assistance.

Programmatic Design and Construction Authority

- Design and construction of water resources development projects or separable elements not more than \$18,500,000 Federal (set by Congress)
- Studies exceeding the \$18,500,000 Federal cost require separate construction authorization from Congress

Preservation of Natural and Cultural Resources

- Must be related to a water resources development project

Studies not Intended for Construction

- Watershed assessments or stand-alone water-related planning activities
- Feasibility-type report without recommendations for resource planning



Tribal Partnership Program - Background

Cost Share

- Feasibility 50% federal/50% Tribal
- Watershed Assessments 75% federal/25% Tribal

In-kind Services

- 100% of Tribal cost share can be fulfilled through contribution of in-kind services

Adjusted Cost Share Waiver – Section 1156 of WRDA 1986, as amended

- Waives the cost share amounts owed by a Tribe up to a certain amount
- Applies to feasibility studies and construction
- FY22 Adjusted Waiver: \$530,000
- Waiver limit includes an annual inflation adjustment (Section 135 WRDA 2020)

Ability to Pay

- Results in further reduction of cost-share amount owed by the Tribes
- Per capita income must be less than the per capita income of 2/3 of the counties in the U.S.



Tribal Partnership Program - Examples



- **Pueblo of Santo Domingo Watershed Assessment**
- The purpose of the study is to examine flooding, erosion, and environmental restoration challenges, and to develop a comprehensive watershed management plan with a focus on developing a drought resiliency plan.



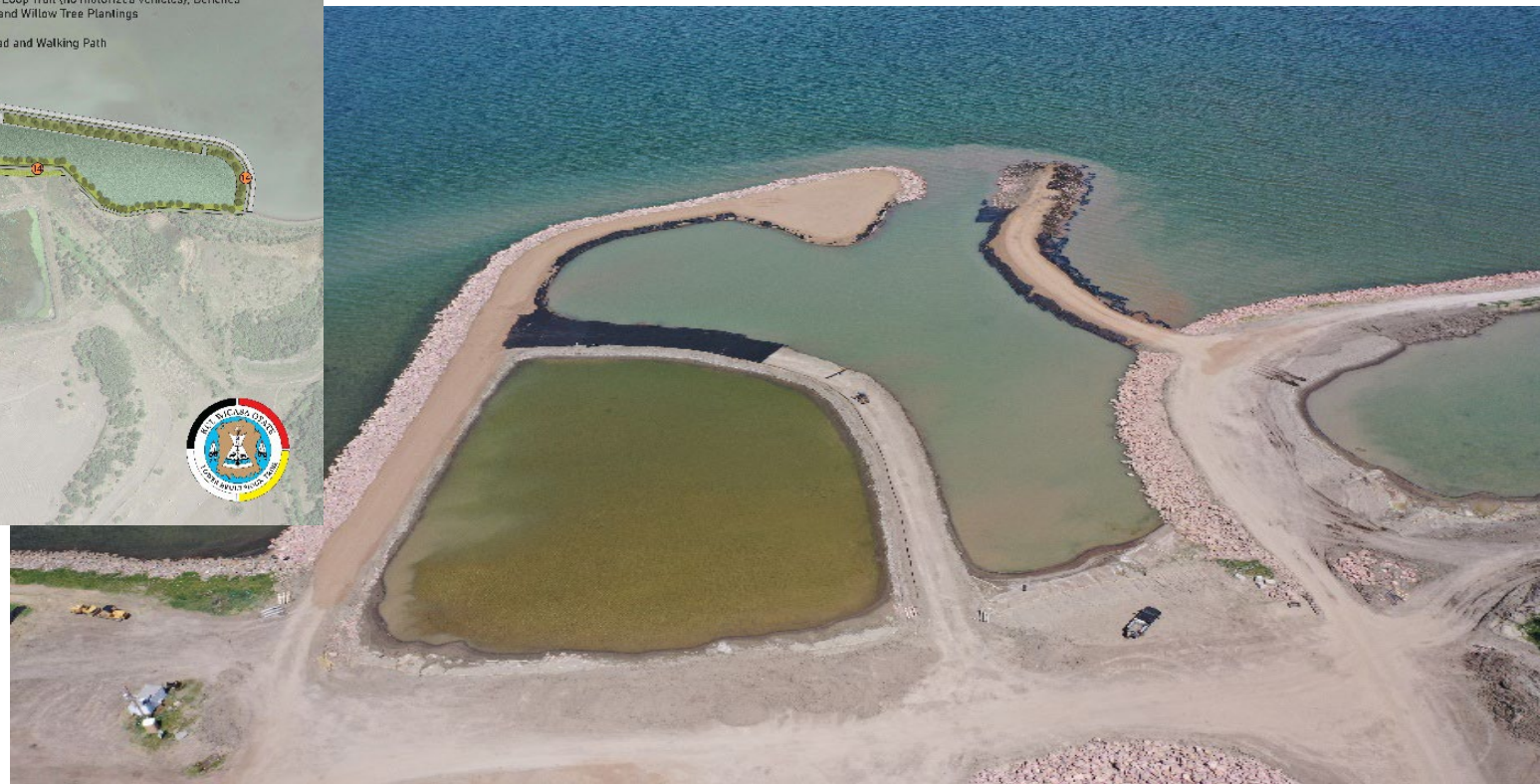
Lower Brule Sioux Tribe Sewage Lagoon Protection Ecosystem Restoration Project

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Wata Onazin (Boat Park) Recreation Area

- | | |
|---|--|
| ① Swimming Area | ⑩ Boat Ramp |
| ② Beach, Picnic Shelters, Grills, and Benches | ⑪ Boat Staging Area |
| ③ Parking Area | ⑫ Boat Access to River |
| ④ Basketball Court | ⑬ Group Gathering Area/Interpretive Signage |
| ⑤ Existing Playground | ⑭ 2-Mile Oyate Loop Trail (no motorized vehicles), Benches |
| ⑥ Horseshoe Courts | ⑮ Cottonwood and Willow Tree Plantings |
| ⑦ Vault Toilets | ⑯ Wetland |
| ⑧ Fish Cleaning Station | ⑰ Entrance Road and Walking Path |
| ⑨ Walking Path, Observation, Shorefishing Access, and Benches | |



The project is designed to abate erosion that poses an imminent threat to the Lower Brule sewage lagoons and the town's infrastructure, and to address habitat degradation that has occurred along the shoreline of Lake Sharpe.

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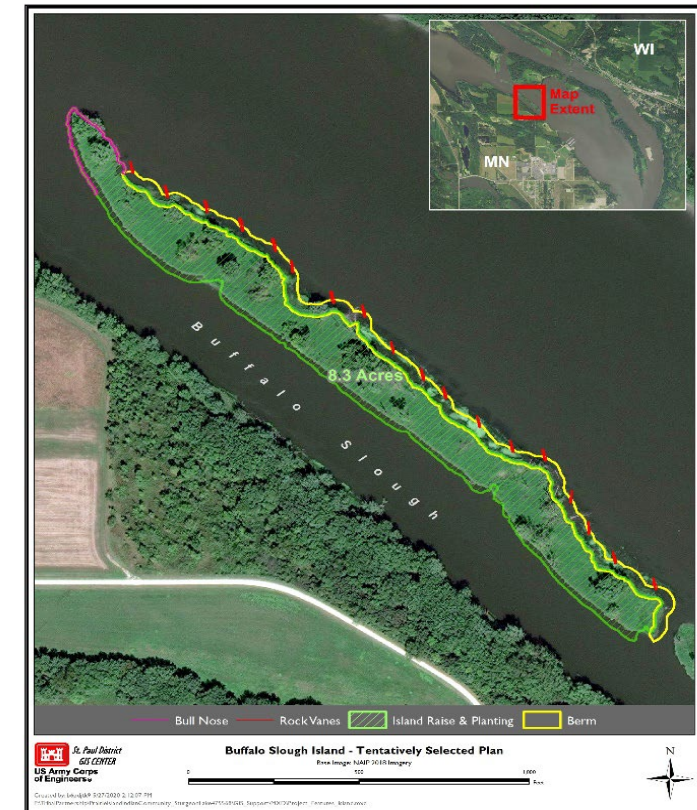


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Prairie Island Sturgeon Lake Habitat Restoration, MN



- Physical construction anticipated to be completed October/November 2022
- The purpose of the project is to address sedimentation, erosion and degradation of culturally significant habitat on Prairie Island Indian Community's tribal land in Sturgeon Lake.



Assistant Secretary of the Army (Civil Works)

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Existing Tribal Partnership Program Guidance

- The Corps currently uses the Tribal Partnership Program Implementation Guidance from WRDA 2016 Section 1121 as the primary source for implementing procedures for the Program along with several other sources of implementation guidance related to previous WRDA provisions.
- It provides cross-references to other sources of guidance on specific topics related to the Program.
- The ASA(CW) identified a need for consolidated comprehensive guidance on the Tribal Partnership Program as well as a need to provide further details on specific topics for transparency and clarity to ensure the Program reaches its maximum potential.



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Tribal Partnership Program Draft Comprehensive Guidance Overview

- Chapter 1: Program Overview
- Chapter 2: Feasibility Phase Leading to Congressional Authorization
- Chapter 3: Programmatic Feasibility Phase
- Chapter 4: Programmatic Design and Implementation Phase
- Chapter 5: Tribal Partnership Program Watershed Studies
- Chapter 6: Water-Related Planning and Feasibility-Like Studies
- Chapter 7: Other Provisions

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Tribal Partnership Program Draft Comprehensive Guidance Overview

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General Topics Covered

- ★ Purpose/Applicability
- ★ Definitions
- ★ Authorities
- ★ How to initiate
- ★ Roles and Responsibilities
- ★ General Principles
- ★ Coordination procedures
- ★ Project Management Plan and Milestones
- ★ Public involvement and review components
- ★ Review Processes
- ★ Draft Agreements
- ★ Approval requirements
- ★ Completion of phases
- ★ Termination of phases
- ★ Cultural Resources
- ★ Real Estate

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Tribal Partnership Program

Draft Comprehensive Guidance Input



- Are there additional topics that should be covered in the guidance?
- Is additional clarity needed regarding the cost share waiver and/or ability to pay provisions, and if so, are there recommendations for clarification?
- In what ways can the Corps improve communication and increase awareness with Tribes regarding the Tribal Partnership Program?
- Are there barriers for Tribes to participate in the Tribal Partnership Program? If so, are there recommendations to overcome those barriers?
- Are there best practices from implementation of the Tribal Partnership Program that we can be sure to incorporate?

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Outreach and Written Docket

Policy Initiative	Public	Tribal
Tribal Issues (Tribal Consultation Policy and Tribal Partnership Program)	July 11, 2022, from 1 - 3 p.m. Eastern	July 7, 2022, from 1 - 3 p.m. Eastern; July 12, 2022, from 2 - 4 p.m. Eastern
Appendix C	July 14, 2022, from 2 - 4 p.m. Eastern	July 19, 2022, from 2 - 4 p.m. Eastern
PR&G	July 18, 2022, from 1 - 3 p.m. Eastern	July 21, 2022, from 1 - 3 p.m. Eastern
Environmental Justice (including WRDA Section 160 definition of "economically disadvantaged community")	July 20, 2022, from 1 - 3 p.m. Eastern; July 26, 2022, from 2 - 4 p.m. Eastern	July 27, 2022, from 1 - 3 p.m. Eastern

Written Docket: <https://www.regulations.gov/> at Docket ID No. COE-2022-0006

60-day comment period concludes on August 2, 2022.

Assistant Secretary of the Army (Civil Works)

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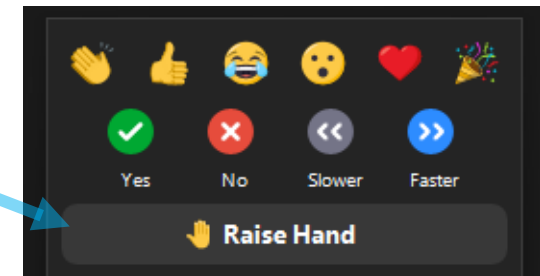
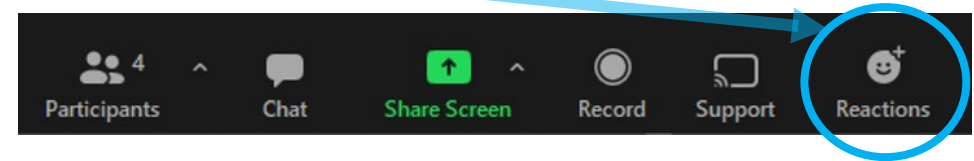
Comments



How to Request to Speak



- If you would like to speak, please raise your hand.
 - On a computer (or mobile device), select the **Reactions** button then click on “**Raise Hand**”
 - If you called in, you may also press *9 on your phone to raise your hand.
- When it is your turn to speak, I will call on you by using your name or phone number.
- At that time, you can unmute yourself by pressing the unmute button on your screen or dialing *6 on your phone.
- Please feel free to turn on your video while you are speaking.
- If you have technical issues, please use the chat function.





This meeting has ended

Thank you for participating!