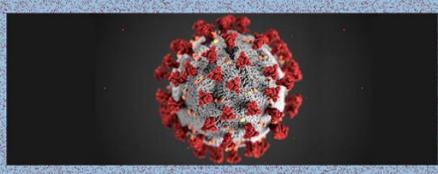




Pandemic Highlights Need for Additional Tribal Drinking Water Assistance and Oversight in EPA Regions 9 and 10

EPA OIG's [Response](#) to the COVID-19 Pandemic



Source: Centers for Disease Control and Prevention image.

This evaluation addresses these EPA mission-related efforts:

- *Ensuring clean and safe water.*
- *Partnering with states and other stakeholders.*

This evaluation addresses these top EPA [management challenges](#):

- *Maintaining operations during pandemic response.*
- *Overseeing tribes implementing EPA programs.*
- *Improving workforce/workload analyses.*
- *Integrating and leading environmental justice.*

Report contributors:

Stacey Banks
 Kathlene Butler
 Allison Dutton
 Alicia Mariscal
 Renee McGhee-Lenart
 Peter Otness
 Jayson Toweh

Address inquiries to our public affairs office at (202) 566-2391 or [OIG WEBCOMMENTS@epa.gov](mailto:OIG_WEBCOMMENTS@epa.gov).

Full list of [EPA OIG reports](#).

Why We Did This Evaluation

The Office of Inspector General [initiated](#) this evaluation to determine how the coronavirus pandemic—that is, the SARS-CoV-2 virus and resultant COVID-19 disease—affected the ability of U.S. Environmental Protection Agency Regions 9 and 10 to provide oversight to help public water systems in Indian Country deliver safe drinking water to customers. Our work focused on oversight of tribal drinking water systems in Regions 9 and 10, as more federally recognized tribes are located in these two regions than in other EPA regions. We sought to understand the conditions facing tribal drinking water systems and how the pandemic affected the regions' direct implementation and use of existing regulations and tools during the pandemic.

Background

EPA Oversight Responsibilities and Authorities

To protect the public from contaminants that may be found in drinking water, the Safe Drinking Water Act, or SDWA, authorizes the EPA to establish national health-based standards via National Primary Drinking Water Regulations. The Regions 9 and 10 Water Divisions are responsible for determining public water system compliance with the drinking water regulations; conducting reviews, called **sanitary surveys**, of public water systems to assess their capability to supply safe drinking water, as well as educating them about proper monitoring and sampling procedures; and providing technical and compliance assistance. The Regions 9 and 10 Enforcement and Compliance Assurance Divisions are responsible for conducting inspections and taking enforcement actions when drinking water regulations are violated.

Under Sections 1413 and 1451 of SDWA, the EPA can delegate primary enforcement authority, known as **primacy**, to a state or tribe. According to 40 C.F.R. § 141.2, in the absence of delegated primacy for a particular state or tribe, the EPA serves as the primacy agency and directly implements the program for that state or tribe. In this report, we use the term **tribal drinking water program** to refer to the EPA's

Key Terms

A **public water system** provides water for human consumption through pipes or other constructed conveyances to at least 15 service connections or serves an average of at least 25 people for at least 60 days a year.

A **tribal drinking water system** is a public water system that is located within tribal boundaries; is owned and operated by several entities, including tribal governments, the federal government, and private entities; and serves both tribal communities and non-tribal populations.

There are three types of public water systems:

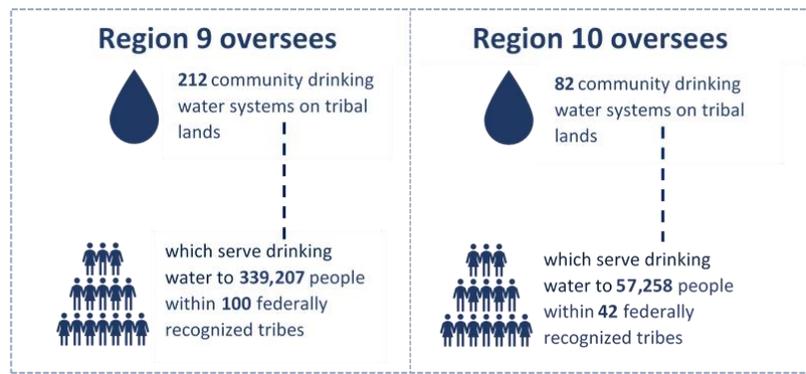
- A **community water system** supplies water to the same population year-round.
- A **nontransient noncommunity water system** regularly supplies water to at least 25 of the same people at least six months per year—for example, in schools, factories, office buildings, and hospitals.
- A **transient noncommunity water system** provides water in a place where people do not remain for long periods of time—for example, a gas station or campground.

direct implementation and enforcement authority for tribal drinking water systems.

Several regulations and policies govern the EPA’s direct implementation and oversight of tribal drinking water programs. These regulations and policies are detailed in Appendix A.

Tribal Drinking Water Systems in Regions 9 and 10

Region 9 oversees 212 community drinking water systems on tribal lands, which serve drinking water to an estimated 339,207 people within 100 of 148 federally recognized tribes. Region 10 oversees 82 community drinking water systems on tribal lands, which serve a population of 57,258 people across 42 federally recognized tribes, excluding those under the State of Alaska’s primacy.



Source: OIG analysis of EPA data. (EPA OIG image)

The EPA classifies public water systems according to the number of people they serve. In Regions 9 and 10, about 88 percent (269) and 94 percent (127) of the tribal drinking water systems, respectively, are classified as small or very small and serve 3,300 or fewer people.¹ Region 9 oversees 23 tribal drinking water systems that provide drinking water to populations of 3,301 to 10,000 people, as well as 15 that supply drinking water to populations of 10,001 to 100,000 people. Region 10 oversees seven tribal drinking water systems that provide drinking water to populations of 3,301 to 10,000 people, as well as one that supply drinking water to populations of 10,001 to 100,000 people.

Tribal Drinking Water System Capacity Limitations

To ensure their sustainability and maintain compliance with all applicable drinking water laws and regulations, drinking water systems must have adequate capacity to perform their required technical, managerial, and financial duties.

¹ Very small systems serve fewer than 500 people, and small systems serve from 501 to 3,300 people. Throughout this report, we refer to both small and very small systems as “small” systems.

Many tribal drinking water systems struggle with these capacity limitations:

- Technical



- Managerial



- Financial



Source: OIG summary of EPA data.
(EPA OIG image)

Obstacles for tribal drinking water systems tend to be associated with the following:

- *Technical capacity limitations*, wherein the systems lack the proper equipment or personnel for operation and maintenance. Tribal drinking water systems with technical capacity limitations may be less likely to properly monitor their water for contaminants or make timely repairs. This can lead to poor water quality, water system unreliability, or failing water system infrastructure, all of which pose significant public health risks to customers.
- *Managerial capacity limitations*, wherein the systems lack accountable owners or adequate staffing and organization. Tribal drinking water systems with managerial capacity limitations may not have the expertise needed to ensure safe and reliable delivery of drinking water.
- *Financial capacity limitations*, which underlie managerial and technical capacity limitations. Tribes typically do not have access to the same array of financing options as state or local governments, and they do not always charge their customers for the drinking water they provide. This may leave tribal drinking water systems with less funding.

As a result of these capacity limitations, tribal drinking water systems may be unable to operate safely or sustainably and comply with drinking water regulations.

To help address water infrastructure issues and the technical, managerial, and financial capacity limitations of drinking water systems, Congress enacted the America's Water Infrastructure Act of 2018, which amended SDWA, in October 2018. The America's Water Infrastructure Act outlines strategies and offers grants to address drinking water system resilience, including malevolent acts and natural hazards (Appendix B).

Pandemic Has Substantially Affected Tribal Communities

The pandemic-related challenges faced by tribal communities affect tribal drinking water operations because staff may not be available to maintain operations. Pandemic-related financial pressures in the overall tribal community may also reduce funding for tribal drinking water system operations.

In response to the coronavirus pandemic, the EPA established guidance and informational webpages for the Agency, tribal governments, and other external stakeholders (Appendix A). In an April 7, 2020 memorandum to tribal leaders, the EPA administrator requested that local governments consider drinking water systems and their operators as essential. The EPA administrator emphasized that fully operational drinking water systems are "critical to containing COVID-19 and protecting Americans from other public health risks."

Regions 9 and 10 directly implement the Safe Drinking Water Act for federally recognized tribes in Indian Country within the states of:



Source: OIG analysis of EPA data.
(EPA OIG image)

The memorandum further added that handwashing and cleaning to protect against the coronavirus depend upon safe and reliable drinking water.

EPA's Responsibilities for Workforce Planning

Workforce planning is critical to ensure that the EPA has the expertise it needs to achieve its strategic goals and objectives. To fulfill its oversight responsibilities for tribal drinking water systems, the EPA needs to have both sufficient staff to conduct site visits and the expertise to understand the particular capacity limitations that tribal drinking water systems face. Workforce planning is also a requirement: effective in 2017, 5 C.F.R. Part 250, Subpart B, requires federal agencies to develop a Human Capital Operating Plan, which includes agencywide workforce planning. The U.S. Office of Personnel Management details five phases of workforce planning:

- Establish strategic direction.
- Analyze current workforce, identify skill gaps, and determine future workforce needs.
- Develop an action plan to address gaps and assess progress.
- Implement the action plan.
- Monitor progress, assess for improvements, and revise the workforce plan to incorporate necessary improvements and changes to address new issues.

Although the EPA has taken steps to comply with 5 C.F.R. Part 250, Subpart B, it has not, as of August 2021, fully executed the required workforce plan to ensure that it is appropriately staffed to achieve its overall mission to protect human health and the environment.

Scope and Methodology

See Appendix C for a description of our scope and methodology in conducting this evaluation.

Responsible Offices

Regions 9 and 10 directly implement SDWA for all federally recognized tribes in Indian Country within the States of Alaska, Arizona, California, Idaho, Nevada, New Mexico, Oregon, and Washington, except for the Navajo Nation and the Alaska Native Villages.

Prior OIG Reports

See Appendix D for a description of prior OIG reports related to this evaluation.

How the pandemic further challenged tribal drinking water systems in Regions 9 and 10:

- Transition from mailing to emailing lab results



- Delayed efforts to address significant deficiencies identified in EPA sanitary surveys



- Quarantine orders closed reservation borders



- System operators could not access homes that the EPA identified as sample sites



- Operator certification training sessions were delayed



- Financial impacts led to difficulty maintaining water systems, making



Source: OIG analysis of EPA data. (EPA OIG image)

What We Found

The coronavirus pandemic negatively impacted the oversight and assistance that Regions 9 and 10 provide to the tribal drinking water systems under their purview, as well as the capacity of these systems to provide safe drinking water. Specifically, the pandemic limited the regions' ability to provide technical and compliance assistance, conduct sanitary surveys and inspections, and address previously identified program deficiencies. The pandemic also underscored the limitations of EPA resources, as well as of tribal drinking water system capacity and resiliency. As a result, tribal drinking water systems may be unable to operate safely and comply with drinking water regulations. Access to safe and clean water is critical at all times, but even more so during pandemic situations.

Pandemic Underscored Tribal Drinking Water System Capacity and Resiliency Limitations

Due to their preexisting technical, managerial, and financial capacity limitations, the impact of the coronavirus pandemic was exacerbated for tribal drinking water systems. EPA regional managers and staff told us that pandemic-related staff reductions at tribal drinking water systems—either permanent or through temporary furloughs or quarantines—impacted operations and the systems' ability to meet regulatory requirements. Some tribal drinking water systems were shut down because they did not have the staff to operate. EPA personnel in Regions 9 and 10 identified additional examples of how the pandemic challenged tribal drinking water systems:

- Most EPA employees were instructed to work from home starting in March 2020. Therefore, many systems transitioned from physically mailing to emailing lab results. EPA personnel told us that some systems, however, may not have had internet access or been able to email lab results.
- Systems delayed efforts to address significant deficiencies identified in EPA sanitary surveys. Some systems requested extensions, but others did not. Region 10 staff told us that these delays could lead to health-based violations.
- Tribal quarantine orders closed many reservations' borders and prevented system staff who lived off-site from entering. These orders also prevented system staff who lived on-site from leaving, even to purchase necessary chemicals for treating drinking water.
- System operators often could not access homes that the EPA identified as sites to collect water samples for testing, such as for lead and copper levels. On a case-by-case basis, Region 10 allowed systems to use alternative sites for coliform and lead and copper sampling.
- Operator certification training sessions were delayed. Without certified operators, the systems may not have the technical

The director of the EPA’s Water Security Division described the coronavirus pandemic as qualifying as a natural hazard under the America’s Water Infrastructure Act, because ...

it is a natural event that threatens the operation of a drinking water system.

Ways oversight of tribal systems declined in Regions 9 and 10:

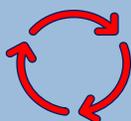
1. Sanitary Surveys



2. Inspections



3. Maintaining programmatic operations



Source: OIG analysis of EPA data. (EPA OIG image)

expertise to perform routine sampling and other tasks needed to provide safe drinking water.

- The systems faced maintenance challenges—including making improvements or purchasing chemicals—due to the financial impacts of the pandemic. In a June 2020 survey conducted by the Rural Community Assistance Program on pandemic impacts to drinking water, tribal respondents were more likely to indicate that they experienced or anticipated experiencing negative impacts and would be unable to pay for expenses if the pandemic-related financial conditions persisted.

Because of their known capacity limitations, tribal drinking water systems in Regions 9 and 10 could benefit from the EPA’s efforts under the America’s Water Infrastructure Act. While designed to improve resilience in the face of natural disasters and malevolent acts, the Act’s risk assessment and emergency response strategies could help tribal drinking water systems improve their resiliency during pandemic-related challenges as well. For example, as noted in a 2020 OIG report,² vulnerable small community water systems in Puerto Rico did not have electricity in the aftermath of Hurricanes Irma and Maria and were unable to provide safe drinking water. Because of a limited supply of generators, not all small rural systems in need of electricity received them. Risk assessments and emergency response plans for these systems could have anticipated the potential for power-related disruption in drinking water service, leading to strategies for acquiring generators. Similarly, tribal drinking water systems could use risk assessments and emergency response plans to ensure safe drinking water during a crisis, such as the coronavirus pandemic. The EPA’s Water Security Division director agreed and described the coronavirus pandemic qualifying as a natural hazard under the America’s Water Infrastructure Act because it is a natural event that threatens the operation of a drinking water system.

Pandemic Limited EPA’s Tribal Drinking Water System Assistance, Sanitary Surveys, and Inspections

Within Regions 9 and 10, the pandemic slowed or delayed EPA oversight activities for several reasons. Regional staff adhered to social distancing requirements, especially as they developed a health-and-safety protocol specific to the pandemic. Some tribes issued their own quarantine orders and closed their reservations to nonresidents, which prevented the EPA from conducting on-site visits. Although regional staff adjusted their routine operating strategies to fulfill their programmatic responsibilities, we identified three ways oversight of tribal drinking water systems declined in Regions 9 and 10: the delay of sanitary surveys and technical assistance, the postponement of inspections, and the interruption of general programmatic operations.

² EPA OIG, *Region 2’s Hurricanes Irma and Maria Response Efforts in Puerto Rico and U.S. Virgin Islands Show the Need for Improved Planning, Communications, and Assistance for Small Drinking Water Systems*, Report No. [21-P-0032](#), December 3, 2020.

Region 9



Region 10



Source: OIG analysis of EPA data.
(EPA OIG image)

Sanitary Surveys and Technical Assistance Delayed

Regions 9 and 10 delayed sanitary surveys of tribal drinking water systems, which the EPA is required to conduct every three to five years for each system under its direct implementation and enforcement authority, per 40 C.F.R. § 142.16 and *EPA's Direct Implementation of Federal Environmental Programs in Indian Country*.

Region 9 normally conducts from 60 to 100 sanitary surveys per year. In the spring of 2020, the region and its third-party providers, including the federal Indian Health Service, delayed 28 sanitary surveys as a result of quarantines, social distancing requirements, and the need to develop a pandemic health-and-safety protocol. Region 9 resumed sanitary surveys in October 2020 and, as of August 2021, had conducted 88 sanitary surveys, including those that were delayed in the spring of 2020. Region 9 told us that, by the end of fiscal year 2022, it expected to have surveyed all the region's tribal drinking water systems within the required three- to five-year time frame, assuming no new quarantines or travel restrictions were enacted.

Approximately 15 sanitary surveys of tribal drinking water systems in Region 10 were delayed in early 2020. As a result, Region 10 may not meet the requirement to conduct sanitary surveys every three to five years at the affected facilities.

Region 10 and its third-party providers also cancelled or delayed site visits to provide technical assistance. For instance, Region 10 told us that the Metlakatla Indian Community requested and needed a third-party technical assistance and site visit for one of its tribal drinking water systems as a result of health-based violations and operational issues. This visit did not occur due to the stalling of contracts and agreements during the pandemic.

Inspections Postponed, but Emergency Actions Continued

Regional enforcement managers in Regions 9 and 10 told us that inspections have been postponed or slowed down as a result of the pandemic, partly because some tribes closed their borders, preventing EPA inspectors from accessing facilities. Region 10 personnel told us that, in lieu of conducting on-site inspections, they conducted some off-site inspections and monitoring, which they refer to as "desk audits."

Both Regions 9 and 10 told us that that, during the pandemic, they continued to issue and monitor enforcement actions under SDWA Sections 1431. For example:

- Region 9 continued to work with the Oasis Mobile Home Park on the Torres Martinez Tribe's lands in southern California on an emergency order issued under SDWA Section 1431 in August 2019. The EPA also issued a second order in September 2020. Both

EPA Authority to Issue Emergency Orders

SDWA Section 1431 provides the EPA with emergency authority to address “imminent and substantial endangerment” to human health from drinking water contamination. The EPA can use this discretionary authority whenever a contaminant “is in or likely to enter a drinking water source” and “the appropriate state and local authorities have not acted to protect human health.”

SDWA Section 1414(g) governs the EPA’s authority to issue an order to require compliance with an applicable SDWA requirement.

orders involve violations of the maximum contaminant level of arsenic and require the Oasis Mobile Home Park to provide an alternative source of water, prepare both short- and long-term compliance plans, and retain certified technical providers to assess the system and its compliance.

- Region 10 continued to work with the Confederated Tribes of Warm Springs in Oregon on two formal enforcement actions. In May 2019, Region 10 issued an emergency order under SDWA Section 1431 due to a pattern of high turbidity. This order details requirements for corrective measures and an alternative water supply. Additionally, in June 2019, Region 10 issued an administrative order on consent under SDWA Section 1414(g), which involves correcting significant deficiencies identified in a sanitary survey conducted in July 2018.

During the pandemic, Regions 9 and 10 did not conduct tribal consultations on drinking water matters but did conduct virtual tribal consultations on other matters.

According to Region 10 staff, tribes may consider in-person interactions preferable. As such, remote compliance monitoring and virtual tribal consultations do not provide the in-person interactions likely preferred by the tribes. In addition, Region 10 staff reported that in-person meetings and trainings are a more effective means of communication for tribes.

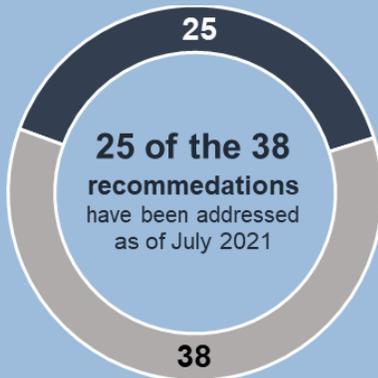
Programmatic Operations Interrupted

Regions 9 and 10 personnel reported that the coronavirus pandemic delayed the credentialing of EPA inspectors because inspectors were unable to obtain the required fieldwork training. A ***credentialed inspector*** is one who has received the training and certifications required to conduct a compliance monitoring activity on-site at a regulated facility. A credentialed inspector may collect information or samples; make a compliance determination; or develop evidence that leads to, or supports, an enforcement action.

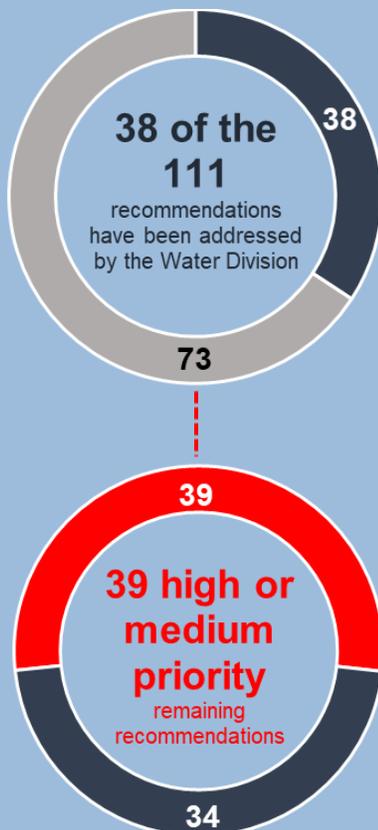
In addition, EPA staff in Regions 9 and 10 told us that, as they transitioned to full-time telework due to the pandemic, they had difficulty accessing the databases needed to oversee drinking water systems, including the Safe Drinking Water Information System. Region 9 told us that the major connectivity issues were resolved by June 2020. The resolution of these issues will be valuable lessons learned for Regions 9 and 10 that could be used to prepare for future pandemics or disasters.

In January 2021, Regions 9 noted that it had delayed ongoing work to address recommendations identified during direct implementation program and file reviews conducted in 2019. The purpose of a ***file review*** is twofold: (1) to detect discrepancies between the public water system data in the primacy agency files or database and the data

Region 9



Region 10



Source: OIG summary of EPA data.
(EPA OIG images)

reported to the Safe Drinking Water Information System and (2) to ensure that the primacy agency is determining compliance in accordance with federal regulations. A **program review** is an on-site discussion of the file review findings to allow the region to provide further background on what may have caused the identified discrepancies.

For example, the 2019 reviews identified the following issues for resolution:

- In Region 9's files, sampling locations were not consistently named. These inconsistencies could lead to errors in where drinking water is sampled. The EPA recommended that Region 9:
 - Work with public water systems to ensure that they understand the importance of identifying sampling locations.
 - Consider developing a written policy for public water systems to consistently use the correct names for sampling locations.
- In Region 10, some tribal drinking water systems failed to adhere to the requirements under the Revised Total Coliform Rule for monitoring and reporting, and the region either entered data erroneously in the Safe Drinking Water Information System or did not issue violations for these failures. The EPA recommended that the region observe the procedures for assigning monitoring and reporting violations under the Revised Total Coliform Rule.

As of March 2021, both regions had begun to address some issues identified as a result of these program and file reviews. Because of the increased pandemic-related demands on its Water Division, Region 9 initially had not prioritized or formally tracked its efforts to address the identified issues. According to Region 9, as of July 2021, it had addressed 25 of the 38 recommendations. Region 10 reported in March 2021 that its Water Division had addressed 38 recommendations noted in the file review and identified 73 remaining recommendations to address, with 39 of these considered high- or medium-priority items.

Pandemic Underscored Limited Agency Resources

The pandemic highlighted preexisting resource limitations in Regions 9 and 10 for overseeing tribal drinking water systems. Because tribal drinking water systems generally have technical, managerial, and financial capacity limitations, additional staffing and expertise would benefit the direct implementation of tribal drinking water programs in Regions 9 and 10, especially for compliance assistance and oversight tasks. In addition, Regions 9 and 10 both reported staff retirements prior to the pandemic. As a result, both regions have experienced a loss of institutional knowledge. Also, as discussed previously, the pandemic delayed some EPA inspectors from obtaining the fieldwork training necessary to obtain their credentials.

Deficiencies & Recommendations



Drinking water risk



Source: OIG analysis of EPA data.
(EPA OIG image)

The OIG has identified workforce planning as a top EPA [management challenge](#) since 2012. We previously reported that the EPA is taking steps toward meeting its agencywide workforce planning requirements. However, the pandemic further magnified the Agency's existing workforce challenges and the importance of workforce planning and succession management to the EPA's mission to protect public health and the environment. For example, Water Division and Enforcement and Compliance Assurance Division workloads for Regions 9 and 10 include the following workforce challenges:

- As of March 2021, Region 9 had a total of 14 staff to cover 100 tribes, which operate a collective 307 drinking water systems. This included eight staff in the Water Division to implement the tribal direct implementation program. These staff split their time among other Water Division programs and, as a result, their work is not solely dedicated to direct implementation responsibilities. This also included six inspectors in the Enforcement and Compliance Assurance Division—three of whom are credentialed—to conduct compliance monitoring, assess compliance, and support enforcement actions. The six inspectors conduct enforcement throughout the region for drinking water systems, including for public water systems on nontribal lands.
- As of April 2021, Region 10 had a total of ten staff to cover 42 tribes, which operate a collective 135 drinking water systems. This included seven staff in the Water Division to implement the tribal direct implementation program, including five who have less than five years of experience with the EPA. Region 10's Water Division said that it relies heavily on contract staff. This also included three inspectors in the Enforcement and Compliance Assurance Division—one credentialed and two working on their credentials—to conduct compliance monitoring, assess compliance, and support enforcement actions.

To help address the capacity needs of public water systems, the EPA regions enlist help from third-party technical assistance providers, including the federal Indian Health Service and nonprofit organizations. In addition, third-party technical assistance providers assist remote tribal drinking water systems, since providing such assistance would require extensive travel by the EPA. However, a resource gap remains as third-party technical assistance providers are also dealing with impacts from the pandemic.

Conclusions

Not only did the coronavirus pandemic reinforce the importance of safe and reliable drinking water as a basic daily necessity, but efforts to combat the transmission of the virus also rely on widespread access to such water. Because of preexisting capacity limitations and pandemic-related challenges, tribal drinking water systems in Regions 9 and 10 have not fully addressed deficiencies. In addition, Regions 9 and 10

have delayed addressing recommendations from previous program and file reviews. By not addressing these deficiencies and recommendations, tribal drinking water systems may be unable to operate safely and comply with drinking water regulations. As the coronavirus pandemic continues to disproportionately affect tribal populations, Regions 9 and 10 need to take steps to improve tribal direct implementation programs so that tribal drinking water system customers have consistent access to safe and reliable drinking water.

Recommendations

We recommend that the regional administrator for EPA Region 9:

1. Implement a strategy to provide outreach, training, guidance, and technical and financial assistance to tribal drinking water systems to improve their resilience using the tools developed and grants distributed by the EPA in accordance with the America's Water Infrastructure Act of 2018.
2. Develop and implement a strategy to help the direct implementation of the tribal drinking water program, including resumption of sanitary surveys and inspections in a manner that considers the coronavirus restrictions of each tribe.
3. Develop and implement a plan to prioritize and address the recommendations identified in the 2019 file review for Region 9.
4. Incorporate lessons learned from the coronavirus pandemic to improve Region 9's existing plans for continuity of operations, with an emphasis on data management and network connectivity.
5. Develop a workforce analysis to address staff workload and the skills needed for the direct implementation of the tribal drinking water program.

We recommend that the regional administrator for EPA Region 10:

6. Implement a strategy to provide outreach, training, guidance, and technical and financial assistance to tribal drinking water systems to improve their resilience using the tools developed and grants distributed by the EPA in accordance with the America's Water Infrastructure Act of 2018.
7. Develop and implement a strategy to help the direct implementation of the tribal drinking water program, including resumption of sanitary surveys and inspections in a manner that considers the coronavirus restrictions of each tribe.
8. Develop and implement a plan to prioritize and address the recommendations identified in the 2019 program and file reviews for Region 10.

9. Incorporate lessons learned from the coronavirus pandemic to improve Region 10's existing plans for continuity of operations, with an emphasis on data management and network connectivity.
10. Develop a workforce analysis to address staff workload and the skills needed for the direct implementation of the tribal drinking water program.

Agency Response and OIG Assessment

Region 9 provided the following responses to Recommendations 1, 3, and 4:

- In response to Recommendation 1, Region 9 stated that it would conduct outreach and training to small drinking water systems following the Office of Water's publication of guidance. Region 9, however, did not commit to implementing a strategy to improve resiliency at tribal drinking water systems. Therefore, Recommendation 1 is unresolved.
- Region 9 agreed with Recommendation 3 and expects to complete the implementation of file review recommendations. Region 9, however, did not explicitly outline that it will implement a plan to ensure that it will address all file review recommendations. Therefore, Recommendation 3 is unresolved.
- Region 9 agreed with Recommendation 4 and reported that it incorporated lessons learned into its continuity of operations plan in December 2020. After further review, we determined that the Region 9 continuity of operations plan was still in draft and would not be finalized until September 30, 2021. We reviewed the draft continuity of operations plan, and Region 9 incorporated the information that we recommended. Based on our review, we consider this recommendation resolved with corrective actions pending.

Region 10 provided the following response to Recommendations 6, 8, and 9:

- In response to Recommendation 6, Region 10 stated that it would develop a plan to be implemented by September 30, 2022. Region 10, however, did not commit to developing a strategy to provide outreach, training, guidance, and technical and financial assistance to tribal drinking water systems to improve their resilience. Therefore, Recommendation 6 is unresolved.
- In response to Recommendation 8, Region 10 committed to developing a plan to prioritize and implement file review recommendations by March 2022. Recommendation 8 is resolved with corrective actions pending.
- In response to Recommendation 9, Region 10 committed to evaluate and conduct lessons-learned exercises by

September 2022, but it did not commit to incorporating the lessons learned into its existing continuity of operations plans. Therefore, Recommendation 9 is unresolved.

Based on comments received from Regions 9 and 10 regarding the draft report, we revised Recommendations 2 and 7 to consider the tribes' individual pandemic restrictions:

- Region 9 disagreed with the draft Recommendation 2, said that it did not experience a lapse in oversight of public water systems in Indian Country during the pandemic, and suggested alternative recommendation language. While Region 9 agreed to develop and implement a strategy to prioritize the completion of sanitary surveys and inspections necessary for the protection of public health by September 2022, we need to provide Region 9 with an opportunity to respond to the revised final report recommendation. Therefore, Recommendation 2 is unresolved.
- Region 10 partially agreed with the draft Recommendation 7 but suggested alternative language to clarify the tribes' individual pandemic restrictions. While Region 10 agreed to develop and implement a strategy to prioritize completion of sanitary surveys and inspections necessary for the protection of public health by September 30, 2022, we need to provide Region 10 with an opportunity to respond to the revised final report recommendation. Therefore, Recommendation 7 is unresolved.

Based on comments received from Regions 9 and 10 regarding the draft report, we revised Recommendations 5 and 10 to clarify their intent. Region 9 stated that it would complete a workforce analysis by September 30, 2023. This critical analysis should be done more quickly to address the immediate needs of the tribal drinking water program. To resolve the recommendation, Region 9 should offer a target date for corrective action that is within a year of this report's issuance date. Recommendation 5 is unresolved. Region 10 stated that it would complete a workforce analysis by September 30, 2023. This critical analysis should be done more quickly to address the immediate needs of the tribal drinking water program. To resolve the recommendation, Region 10 should offer a target date for corrective action that is within a year of this report's issuance date. Recommendation 10 is unresolved.

Region 9's full response is in Appendix E, and Region 10's full response is in Appendix F. Both Regions 9 and 10 provided technical comments that we considered and applied as appropriate.

Status of Recommendations

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status*	Action Official	Planned Completion Date
1	11	Implement a strategy to provide outreach, training, guidance, and technical and financial assistance to tribal drinking water systems to improve their resilience using the tools developed and grants distributed by the EPA in accordance with the America's Water Infrastructure Act of 2018.	U	Regional Administrator, EPA Region 9	
2	11	Develop and implement a strategy to help the direct implementation of the tribal drinking water program, including resumption of sanitary surveys and inspections in a manner that considers the coronavirus restrictions of each tribe.	U	Regional Administrator, EPA Region 9	
3	11	Develop and implement a plan to prioritize and address the recommendations identified in the 2019 file review for Region 9.	U	Regional Administrator, EPA Region 9	
4	11	Incorporate lessons learned from the coronavirus pandemic to improve Region 9's existing plans for continuity of operations, with an emphasis on data management and network connectivity.	R	Regional Administrator, EPA Region 9	9/30/21
5	11	Develop a workforce analysis to address staff workload and the skills needed for the direct implementation of the tribal drinking water program.	U	Regional Administrator, EPA Region 9	
6	11	Implement a strategy to provide outreach, training, guidance, and technical and financial assistance to tribal drinking water systems to improve their resilience using the tools developed and grants distributed by the EPA in accordance with the America's Water Infrastructure Act of 2018.	U	Regional Administrator, EPA Region 10	
7	11	Develop and implement a strategy to help the direct implementation of the tribal drinking water program, including resumption of sanitary surveys and inspections in a manner that considers the coronavirus restrictions of each tribe.	U	Regional Administrator, EPA Region 10	
8	11	Develop and implement a plan to prioritize and address the recommendations identified in the 2019 program and file reviews for Region 10.	R	Regional Administrator, EPA Region 10	3/31/22
9	12	Incorporate lessons learned from the coronavirus pandemic to improve Region 10's existing plans for continuity of operations, with an emphasis on data management and network connectivity.	U	Regional Administrator, EPA Region 10	
10	12	Develop a workforce analysis to address staff workload and the skills needed for the direct implementation of the tribal drinking water program.	U	Regional Administrator, EPA Region 10	

* C = Corrective action completed.
 R = Recommendation resolved with corrective action pending.
 U = Recommendation unresolved with resolution efforts in progress.

EPA's Regulations, Policies, and Guidance Related to Oversight of Tribal Drinking Water Systems

EPA's Direct Implementation and Oversight Regulations and Policies

Several regulations and policies govern the EPA's direct implementation and oversight of tribal drinking water programs:

- *EPA's Direct Implementation of Federal Environmental Programs in Indian Country*, dated February 25, 2016, describes the EPA's direct implementation responsibilities and activities under nine major federal environmental statutes. It also outlines emergency response activities.
- The 1984 *EPA Policy for the Administration of Environmental Programs on Indian Reservations* specifies how the Agency should interact with tribal governments and consider tribal interests in carrying out its programs to protect human health and the environment.
- The *Drinking Water Enforcement Response Policy*, dated December 8, 2009, focuses enforcement attention on the drinking water systems with the most serious or repeated violations. Per this policy, these systems should be prioritized for enforcement action so that they can return to compliance as quickly as possible.
- The *Standard Operating Procedures for EPA's Tribal Drinking Water Program*, dated March 11, 2010, formally identifies the EPA regions' responsibility for the tribal drinking water program. The EPA developed these procedures in response to [OIG Report No. 08-P-0266](#), *EPA Assisting Tribal Water Systems but Needs to Improve Oversight*, issued September 16, 2008.
- The *National Primary Drinking Water Regulations* establish primary drinking water regulations, pursuant to Section 1412 of the Public Health Service Act, as amended by SDWA, and related regulations applicable to drinking water systems.

Environmental Justice Requirements and Policies

Federal government and EPA environmental justice policy and requirements help ensure public health and protection for all:

- Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, dated February 11, 1994, directs all federal agencies to make environmental justice a part of its mission by "identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, of its programs, policies, and activities" on minority and low-income populations. This order applies equally to Native American programs.
- Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, dated January 27, 2021, directs the Office of Management and Budget, the chair of the Council on Environmental Quality, and the national climate advisor, in consultation with the White House Environmental Justice Advisory Council, to jointly publish guidance on how certain federal investments might be made toward a goal that 40 percent of the overall benefits of such investments flow to disadvantaged communities. This is known as the Justice40 Initiative.
- The *EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples*, dated July 24, 2014, describes how environmental justice principles should be incorporated into the EPA's work. The policy consists of 17 principles, including seven focused on integrating environmental justice into the Agency's direct implementation of programs, policies, and activities.
- The *EPA Policy on Elevation of Critical Public Health Issues*, dated January 21, 2016, encourages EPA staff to elevate issues that appear to be a substantial threat to public health.

The EPA has issued the following guidance and policies to specifically address operations during the pandemic:

- In a March 20, 2020 letter to tribal leaders and tribal environmental directors, the assistant administrator for International and Tribal Affairs detailed the Agency’s plan to identify and address regional and programmatic challenges related to the coronavirus pandemic. The memorandum also offered assistance and, where possible, flexibility in terms of deadlines, timelines, and grant work plans during the coronavirus pandemic.
- In a March 26, 2020 memorandum to governmental and private sector partners, the assistant administrator for Enforcement and Compliance Assurance discussed the implications of the coronavirus pandemic on the office’s programs. This memorandum also detailed a temporary enforcement policy that provided the Agency with enforcement discretion when addressing noncompliance during the pandemic. This temporary enforcement policy expired in August 2020.
- In an April 7, 2020 memorandum to tribal leaders, the EPA administrator requested that local governments consider drinking water systems and their operators as essential. The EPA administrator emphasized that fully operational drinking water systems are “critical to containing COVID-19 and protecting Americans from other public health risks.” The memorandum further added that handwashing and cleaning to protect against the coronavirus depend upon safe and reliable drinking water.
- In an April 28, 2020 memorandum to the Agency’s regional and assistant administrators, the assistant administrator for International and Tribal Affairs issued internal guidance regarding tribal consultation and coordination during the pandemic. The memorandum stated that the pandemic “does not affect or limit the applicability of the Consultation Policy to EPA’s actions” and recommended that EPA regions consider using flexible approaches when consulting and communicating with tribes, such as extended consultation periods and virtual and electronic means of communication.
- The Agency established pandemic-specific webpages with resources for managing drinking water and wastewater concerns, including:
 - “Coronavirus and Drinking Water and Wastewater” [webpage](#).
 - “Water Utility Resources for the COVID-19 Pandemic” [webpage](#).
 - “Tribal Water Utility Resources for the COVID-19 Pandemic” [webpage](#).
 - “Frequent Questions Related to Coronavirus (COVID-19)” [webpage](#), which includes drinking water and wastewater concerns.

Federal Oversight and Assistance for Drinking Water Systems

Federal Approach to Improve Drinking Water System Capacity and Resiliency

The America’s Water Infrastructure Act of 2018 requirements include:

- Community water systems serving more than 3,300 people must develop risk assessments or update, if necessary, their existing risk assessments.
- The EPA must publish a resource to help community water systems identify acts that could disrupt their ability to provide safe drinking water or that present significant public health or economic concerns to their consumers. The EPA first published this guidance document, *Baseline Information on Malevolent Acts for Community Water Systems*, in November 2019 and updated it in February 2021.
- Community water systems must certify their assessments and submit the certifications to the EPA. The Act required the largest systems to certify their assessments by March 31, 2020, and the systems serving between 3,300 and 50,000 people to certify their assessments by June 30, 2021.
- Community water systems serving over 3,300 people must develop emergency response plans within six months of their respective certification deadlines.
- Although the Act makes risk assessments and emergency response plans voluntary for small community water systems serving fewer than 3,300 people, the EPA administrator must:

[P]rovide guidance and technical assistance to community water systems serving a population of less than 3,300 persons on how to conduct resilience assessments, prepare emergency response plans, and address threats from malevolent acts and natural hazards that threaten to disrupt the provision of safe drinking water or significantly affect the public health or significantly affect the safety or supply of drinking water provided to communities and individuals.

In May 2020, the Agency issued *Guidance for Small Community Water Systems on Risk and Resilience Assessments under America’s Water Infrastructure Act* to assist community water systems that serve greater than 3,300 but fewer than 50,000 people with complying with the Act’s risk assessment and emergency response plan requirements. The EPA recommends that smaller community water systems also use this guidance document to conduct assessments.

The America’s Water Infrastructure Act also established a grant program to provide technical assistance grants to drinking water systems to “assist in the planning, design, construction, or implementation of a program or project consistent with an emergency response plan.” As of August 2021, Congress had not appropriated funding for these grants. However, Congress appropriated \$4 million for fiscal year 2021—a \$1 million increase from fiscal year 2020—to fund a separate grant program for increasing drinking water resilience at small and disadvantaged community water systems.

Scope and Methodology

We conducted this evaluation from August 2020 to June 2021 in accordance with the *Quality Standards for Inspection and Evaluation*, published in January 2012 by the Council of the Inspectors General on Integrity and Efficiency. These standards require that we perform the evaluation to obtain sufficient, competent, and relevant evidence to provide a reasonable basis for our findings, conclusions, and recommendations based on our objective. We believe that the evidence obtained provides a reasonable basis for our findings, conclusions, and recommendations.

We conducted this evaluation to determine how the coronavirus pandemic—that is, the SARS-CoV-2 virus and resultant COVID-19 disease—affected the ability of Regions 9 and 10 to provide oversight to help public water systems in Indian Country deliver safe drinking water to customers. This evaluation focused on the EPA’s direct implementation of the tribal drinking water program and the EPA’s oversight of the tribal drinking water systems in Regions 9 and 10. Tribal drinking water systems under the purview of state and tribal primacy agencies—including those in the Alaska Native Villages and in the Navajo Nation—were excluded from our review. We focused on drinking water issues and oversight beginning in March 2020, but we took conditions that existed prior to the pandemic into account.

To answer our objective, we reviewed SDWA and its amendments, including the America’s Water Infrastructure Act. We reviewed Agency policies, procedures, guidance, and memorandums, including those related to the coronavirus pandemic. We reviewed fiscal year 2020 grant allotments for state and tribal drinking water programs to gain an understanding of the funding provided and to help select the regions for the evaluation. We also reviewed Executive Order 12898, as well as the briefing memorandum and written testimonies from a congressional hearing on the impact of the pandemic on environmental justice communities.³ We analyzed the 2019 program and file reviews of Regions 9 and 10’s direct implementation of the tribal drinking water program. We did not review compliance data for the tribal drinking water systems.

We interviewed staff from the EPA’s Office of Water, Office of Enforcement and Compliance Assurance, and Office of International and Tribal Affairs. We interviewed Regions 9 and 10 staff from the regional Water Divisions and Enforcement and Compliance Assurance Divisions, as well as the EPA’s tribal coordinators and advisors from Regions 9 and 10. We also interviewed staff from the Indian Health Service and the Rural Community Assistance Partnership.

³ Pollution and Pandemics: COVID-19’s Disproportionate Impact on Environmental Justice Communities, before the House Committee on Energy and Commerce, Subcommittee on Environment and Climate Change, 116th Congress, June 9, 2020.

Prior OIG Reports

On September 16, 2008, we issued Report No. [08-P-0266](#), *EPA Assisting Tribal Water Systems but Needs to Improve Oversight*. We found that regional EPA staff made correct compliance decisions related to sample results provided by tribal community water systems. However, internal control deficiencies existed in the EPA's oversight of tribal community water systems in two of the five regions that we reviewed. The EPA reported in August 2010 that it completed all three recommendations issued in this report.

On March 22, 2016, we issued Report No. [16-P-0108](#), *Drinking Water: EPA Needs to Take Additional Steps to Ensure Small Community Water Systems Designated as Serious Violators Achieve Compliance*. We found that, while the EPA's enforcement and compliance assistance efforts led to some improvements at small community water systems, the EPA and states need to engage in a long-term, system-specific approach to address systems with serious noncompliance. In addition, we found inconsistencies in adherence to the EPA's *Drinking Water Enforcement Response Policy*. The EPA reported in February 2018 that it completed corrective actions for all six recommendations issued in this report.

On September 25, 2019, we issued Report No. [19-P-0318](#), *EPA Must Improve Oversight of Notice to the Public on Drinking Water Risks to Better Protect Human Health*. We reported inconsistencies among primacy agencies fulfilling their enforcement responsibilities regarding drinking water public notice requirements. In addition, we found that the EPA's protocol for assessing primacy agency oversight does not fully cover all public notice requirements. We also determined that the EPA does not have complete and nationally consistent information about public water systems' compliance with public notice requirements and that Agency guidance documents for primacy agencies and public water systems are inconsistent with regulations and out of date. As of August 2021, all recommendations were resolved, with corrective actions pending.

On December 3, 2020, we issued Report No. [21-P-0032](#), *Region 2's Hurricanes Irma and Maria Response Efforts in Puerto Rico and U.S. Virgin Islands Show the Need for Improved Planning, Communications, and Assistance for Small Drinking Water Systems*. We reported that some small, rural drinking water systems in Puerto Rico and the U.S. Virgin Islands had still not returned to normal operations more than nine months after the storms made landfall. The damage caused by the hurricanes and the preexisting conditions of those systems complicated response efforts. We also found that the EPA's internal review processes delayed distribution of public health announcements, such as instructions on how to treat drinking water to reduce risk of illness. In addition, we determined that Region 2 did not fully engage its local staff during hurricane preparations. One of the three recommendations issued in this report was for Region 2 to help improve the capacity and resiliency of small, rural drinking water systems by developing and implementing a strategy to provide training, guidance, and assistance, as well as a grant application process. As of August 2021, all recommendations were resolved, with corrective actions pending.

EPA Region 9 Response to Draft Report

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report No. OA&E-FY20-0044
“Pandemic Highlights Need for Additional Tribal Drinking Water Assistance and Oversight in EPA Regions 9 and 10,” dated June 8, 2021

FROM: Deborah Jordan
Acting Regional Administrator

DEBORAH
JORDAN

Digitally signed by DEBORAH
JORDAN
Date: 2021.07.01 11:21:51
-07'00'

TO: Office of the Inspector General

Thank you for the opportunity to respond to the Subject audit report. The U.S. Environmental Protection Agency, Region 9 (EPA) agrees that “the pandemic underscored the challenges of limited EPA resources and limited tribal drinking water system capacity and resiliency.”

Throughout the pandemic EPA leveraged its partnerships and technical, financial, and legal mechanisms to ensure that public water systems (PWSs) in Indian Country received the assistance necessary to ensure the safe provision of drinking water to consumers. As further detailed in our attached *EPA Response to OIG Recommendations & Requested Changes and Corrections to Draft Report*, EPA would like to clarify that there was no lapse in programmatic oversight of our direct implementation efforts. With the exception of some sanitary survey work, all of EPA’s critical program activities were performed without interruption, including compliance sampling and reporting, onsite technical assistance, operator training, data management including regulatory compliance determinations and enforcement. Despite its shift to remote work, EPA prioritized its efforts to ensure the protection of public health in tribal communities.

EPA agrees with recommendations 1, 3, 4 and 5 and provides existing and proposed strategies and actions that address these recommendations, including projected completion dates. EPA disagrees with recommendation #2 and offers alternative language that better characterizes EPA’s oversight efforts during the pandemic and its obligation to ensure the health and safety of water utility and field personnel. The attached includes EPA’s material corrections and requested changes to the draft report.

SUMMARY OF AGENCY’S RESPONSE TO REPORT RECOMMENDATIONS

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
1.	Implement a strategy to provide outreach, training, guidance, and technical and financial assistance to tribal drinking water systems to improve their resiliency using the	EPA agrees with this recommendation. 1.1 Additional Outreach to Small Water Systems – EPA’s Office of Water (OW) expects to publish additional guidance for systems serving fewer than 3,300 people later this year. Once published, EPA will conduct outreach and training as appropriate to ensure that small PWSs in Indian	Conduct directed outreach and training to small drinking water systems following OW’s publication of guidance. (4Q, FY22, September 30, 2022) ¹

¹ Actions related to recommendation 1.1 are dependent on EPA’s Office of Water (OW) as they are the lead in developing new guidance and financial assistance tools.

	<p>tools developed and grants distributed by the EPA in accordance with the America’s Water Infrastructure Act (AWIA) of 2018.</p>	<p>Country have access to these resources. EPA will further direct its Technical Assistance (TA) providers to assist PWSs in Indian Country implement the tools and recommendations contained in the guidance.</p>	
		<p>1.2. Outreach to Public Water Systems- AWIA authorizes two grant programs to support resiliency of public water systems. Thus far congress has appropriated \$7M in funding for the program authorized under SDWA Section 1459A(l) (AWIA Section 2005). OW expects to announce a request for applications (RFA) for this competitive grant program later this year. Following the RFA announcement, EPA will conduct outreach to eligible PWSs in Indian Country to encourage them to apply for this opportunity.</p>	<p>Conduct outreach to eligible PWSs in Indian Country (2Q, FY22, March 31, 2022)²</p>
<p>2.</p>	<p>Develop and implement a strategy to help the direct implementation of the tribal drinking water program return to normal operations, including the full resumption of sanitary surveys and inspections.</p>	<p>Sanitary Surveys and Inspections – EPA disagrees with this recommendation and clarifies that there was no lapse in oversight of PWSs in Indian Country during the pandemic. The most critical direct implementation program responsibilities, including compliance sampling and reporting, onsite technical assistance, operator training, regulatory compliance determinations and enforcement, were not interrupted. While some sanitary survey field work was delayed allowing for appropriate coordination with PWSs in Indian country and to develop appropriate field health and safety protocols, the surveys themselves are one of many mechanisms EPA utilizes to ensure the provision of safe drinking water. We request that the language in recommendation #2 be modified as follows to focus on the resumption of sanitary surveys and inspections and account for potential tribal access restrictions: “Develop and implement a strategy, taking into account tribal and local restrictions, to prioritize completion of sanitary surveys and inspections</p>	<p>Develop and implement a strategy to prioritize completion of sanitary surveys and inspections necessary for the protection of public health (4Q, FY22, September 30, 2022)³</p>

² Actions related to recommendation 1.2 are dependent on EPA’s Office of Water (OW) as they are the lead in developing new guidance and financial assistance tools.

³ Assumes that no new travel restrictions or quarantines are enacted.

		necessary for the protection of public health.” EPA agrees to implement actions under this modified recommendation.	
3.	Develop and implement a plan to prioritize and address the recommendations identified in the EPA headquarters’ 2019 file review for EPA Region 9.	EPA agrees with this recommendation 3.1 Response – EPA is continuing its review and prioritization of the recommendations in the file review. Thus far it has addressed 25 of the 38 recommendations. By the end of the 4 th quarter FY21, EPA expects to respond to the file review recommendations including timeframes for future actions.	Respond to the File Review Report recommendations, including timeframes for future actions. (4Q, FY21, September 30, 2021)
		3.2 Implementation – By the end of the 4 th quarter of FY23, the region anticipates completing the implementation of any remaining recommendations it plans to adopt.	Implement remaining recommendations (end of 4Q, FY23, September 30, 2023)
4.	Incorporate lessons learned from the coronavirus (COVID-19) pandemic to improve Region 9’s existing plans for continuity of operations, with an emphasis on data management and network connectivity.	EPA agrees with this recommendation (completed in December 2020). In December 2020, EPA updated the network and data connectivity procedures in its continuity of operations plan, incorporating lessons learned during the pandemic. The updates included computer server fail overs that will prevent future data connectivity issues. As further detailed in the attachment, EPA has developed improved data management structures and protocols to incorporate lessons learned during the transition to remote work at the start of the pandemic.	Incorporate lessons learned to improve continuity of operations (Completed – December 2020)
5.	Develop a workforce analysis and a staffing plan to address long-term and near-term staff workload, skills, and credentialing needs for the direct implementation of the tribal drinking water program.	EPA agrees with this recommendation and will develop a workforce analysis and staffing plan to identify short and long-term staff workload and skills necessary to effectively implement the tribal drinking water and inspection programs.	To ensure appropriate resources are allocated to this effort and alignment with EPA’s FY2022-2026 Strategic Plan, EPA proposes to complete the workforce analysis by September 30, 2023 (end of 4QFY23)

CONTACT INFORMATION

If you have any questions regarding this response, please contact Mendy Guan, Region 9's Audit Follow-Up Coordinator at 415 972-3749 or guan.mendy@epa.gov, or Emmanuelle Rapicavoli, Team Leader, Tribal Drinking Water Team at 415 972-3969 or rapicavoli.emmanuelle@epa.gov.

Attachments:

1. EPA Response to OIG Recommendations & Requested Changes and Corrections to Draft Report
2. Region 9 Technical Comments Attachment 6-30-2021
3. EPA R9 COVID Guide to Sampling Lead and Copper
4. Amended COVID-19 Emergency Authorization RCAC
5. Region 9 Sanitary Survey Protocol during COVID-19 updated 3-24-2021

EPA Region 10 Response to Draft Report

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report No. OA&E-FY20-0044 “Pandemic Highlights Need for Additional Tribal Drinking Water Assistance and Oversight in EPA Regions 9 and 10,” dated June 8, 2021

FROM: Michelle L. Pirzadeh MICHELLE PIRZADEH Digitally signed by MICHELLE PIRZADEH Date: 2021.07.06 17:14:07 -0700
Acting Regional Administrator, Region 10

TO: Office of Inspector General

Thank you for the opportunity to respond to the observations and recommendations in the subject audit report. The U.S. Environmental Protection Agency, Region 10 agrees that the pandemic “underscored the challenges of both limited EPA resources and limited tribal drinking water system capacity and resiliency.” EPA R10 agrees with your emphasis on building and supporting the tribes’ resiliency. The resiliency of tribal water systems starts with a capable water workforce and a utility organization with well-developed technical, managerial, and financial capacity. These principles are central to many of Region 10’s comments. Outside of specific review comments, EPA Region 10 has three general concerns and requests:

- 1) EPA Region 10 would like to clarify that there was no lapse in oversight. Despite its shift to remote work, EPA Region 10’s programs considered risks, considered agency guidance, and prioritized its efforts to ensure the protection of public health in tribal communities. Compliance sampling, reporting, compliance determination, and necessary enforcement activities were not interrupted.
- 2) We respectfully request that the statements regarding the possible exposures or effect on tribal communities be removed or revised, as we do not think the statements as written are supported by evidence. While we agree that the EPA programs’ engagements with the tribes are important elements of a comprehensive program, the day-to-day reliability and safety of drinking water are an operational function. For tribal water systems, the tribe is responsible for operations and the regulations place the burden of compliance on the water system. Additionally, as stated elsewhere, the most critical regulatory activities of the EPA Region 10 were uninterrupted despite adaptations necessitated by the pandemic.
- 3) We recommend adding clarification regarding the scope of your report relative to the scope of community water systems directly regulated by EPA Region 10. The Direct Implementation (DI) program’s scope includes non-tribal community water systems located in *Indian Country*. More specifically, EPA Region 10 regulates 82 community water systems, with ownership/operation as follows: 71 Native American (tribal), 5 private, 3 federal agency, 3 local government. The population served by the 71 tribal systems is 52,093. This is based on the Safe Drinking Water Information System (SDWIS) federal data. Additionally, EPA data does not collect demographic data related to the population, and therefore, EPA cannot determine the number of American Indian or Alaska Native people are served by the 82 systems.

EPA accepts recommendations 6, 8, 9 and 10 as written. We are concerned about one aspect of the specific language in recommendation 7. As written, recommendation 7 requires the “full resumption” of field activities on tribal lands. Because the pandemic persists, and because it disproportionately affects tribal communities, EPA R10 recommends that the statement include acknowledgement that resumption of field work equally depends on the tribes’ decisions.

AGENCY’S RESPONSE TO REPORT RECOMMENDATIONS

Recommendation	Concurrence	Response	Proposed Actions and Completion Date
Implement a strategy to provide outreach, training, guidance, and technical and financial assistance to tribal drinking water systems to improve their resilience using the tools developed and grants distributed by the EPA in accordance with the America’s Water Infrastructure Act of 2018.	Yes	EPA R10 does not take exception to incorporating the resilience tools into technical and financial assistance, assuming that we are afforded latitude to work with partner agencies and Tribes to tailor the specific details to each Tribe’s situation. Time is needed to engage with partners, modify appropriate agreements and consult with Tribes, and therefore, planned completion, including “implementation” allows for timelines associated with fiscal year cycles.	Develop a plan in fiscal year 2022 and begin implementing by 9/30/2022.
Develop and implement a strategy to help the direct implementation of the tribal drinking water program return to normal operations, including the full resumption of sanitary surveys and inspections.	Partial	For reasons previously discussed and stated, it is not possible to commit to “full resumption” while a pandemic continues. We recommend this language: “Develop and implement a strategy to help the direct implementation of the tribal drinking water program return to normal operations, including resumption of sanitary surveys and inspections in a manner that considers the individual tribes’ COVID-19 restrictions.”	With partner agencies and contractors, develop and implement a strategy to prioritize completion of sanitary surveys and inspections necessary for the protection of public health no later than 9/30/2022 ¹
Develop and implement a plan to prioritize and address the recommendations identified in the EPA headquarters’ 2019 program and file reviews for Region 10.	Yes	The Region is in the process of major database and IT investments to support improved data management for the DI drinking water program. This is foundational and must be implemented before the file review improvement plan can be effective.	Develop a plan for file review report recommendations, prioritize actions, and begin implementing no later than 3/31/2022.
Incorporate lessons learned from the coronavirus (COVID-19) pandemic to improve Region 10’s existing plans for continuity of operations, with an emphasis on data management and network connectivity.	Yes	This is consistent with EPA R10’s goals and plans. Timeframe is interdependent with major database changes described above. Available contractual instruments necessitate time for EPA R10 to implement.	Evaluate and conduct lessons learned exercises, memorialize lessons, and implement by 9/30/2022.

¹ Assumes that no new or additional travel restrictions, tribal access limitations, or quarantines are enacted.

Recommendation	Concurrence	Response	Proposed Actions and Completion Date
Develop a workforce analysis and a staffing plan to address long-term and near-term staff workload, skills, and credentialing needs for the direct implementation of the tribal drinking water program.	Yes	Region 10 will collaborate with Region 9 to develop a workforce analysis. We understand from OIG that Regions should conduct workforce analysis in accordance with previous guidance provided to OMS, and that R10 can contact OMS-OHR-PPTD to seek guidance on how to proceed with such an effort.	EPA R10 proposes to complete the workforce analysis in coordination with R9 and in consultation with OMS by 9/30/2023.

Factual Concerns

Page #	Requested Change/Correction
2	The Indian Health Service (IHS) data utilized appears to be inapplicable to the scope of the report. IHS Sanitation Facilities Construction (SFC) program’s deficiency data includes estimates for projects that address deficiencies at individual homes (e.g. private wells), small water systems that are not subject to regulation under the Safe Drinking Water Act (SDWA), and unserved homes. Additionally, the IHS data usually includes wastewater and solid waste needs, which are beyond the scope of the SDWA and the EPA DI program to address. We suggest that the OIG consult with IHS headquarters on how their data and reports can be run or sorted to directly align to the scope of this report.
9	The opening paragraph appears to be incomplete with respect to describing role and responsibilities of the water system owner and operator. Consistent with the OIG’s emphasis on resilience of the water utility, we recommend the language be altered or amended to reflect the critical role of the owner and operator of the water system plays in the reliability and safety of the water supply. Additionally, as a part of your summary statement, we request that you acknowledge that EPA was able to continue and prioritize work that ensured protection of public health, despite remote working arrangements. While EPA Region 10 curtailed non-essential onsite technical assistance and operator training, essential activities including compliance sampling, reporting, and compliance determination were not interrupted. Compliance and enforcement for the most troubled systems continued, despite the challenges COVID-19 presented to both EPA and the Tribes. We ask that you rewrite or remove the following: “As a result, tribal drinking water systems may not meet SDWA requirements, potentially exposing tribal residents to unsafe and unreliable drinking water.”
9	In the sidebar, there is a potential error or omission in the statement: “Number of operator certification training sessions were delayed”.
9-10	The bullet needs modification to ensure accuracy: “System operators often could not access homes that the EPA identified as sites to collect water samples for testing, such as for lead and copper levels. On a case-by-case basis, Region 10 allowed systems to use alternative sites, such as outdoor taps.” Outdoor taps were not allowed under any circumstances for lead and copper sampling, and only in rare cases for coliform. The latter part should read: “Region 10 allowed systems to use alternative sites for coliform and lead and copper sampling.”
10	We recommend that the utility staff furloughs be mentioned. As a result of reduced revenue on reservations, operators were laid off, indefinitely furloughed, or partially furloughed.

Page #	Requested Change/Correction
11	Suggested replacing this sentence: “As a result, Region 10 may not meet the requirement to conduct sanitary surveys every three to five years at the affected facilities.” Replace with this sentence: “To accommodate catching up with the delayed surveys at current resource levels, some upcoming surveys may be slightly delayed until travel and tribal community access returns to pre-pandemic conditions.”
12	The description of the Warm Springs enforcement has incorrect dates and omits relevant EPA R10 actions that occurred during the Pandemic. EPA issued two formal enforcement actions to the Confederated Tribe of Warm Springs: An emergency order under Section 1431 of the SDWA in May 2019 and an administrative order on consent (AOC) under Section 1414 of the SDWA, in June 2019. (The OIG report states 2016.) EPA enforcement officials met weekly with Warm Springs, using virtual methods, throughout the duration of the pandemic.
12-13	The name of the data system is incorrect. Amend “...including the Safe Drinking Water Information System Federal Reporting Services, or SDWIS-Fed, system” to “...including the Safe Drinking Water Information System (SDWIS), which is used by primacy agencies to record and report drinking water compliance data.”
13	The statement that EPA headquarters conducted a file review is inaccurate. While EPA headquarters recommends DI primacy program file reviews, R10 paid for the program and file review to improve the R10 DI program. We recommend striking “Regions 9 and 10 also delayed ongoing work to address the recommendations identified in the direct implementation program and file reviews that EPA headquarters conducted in 2019.” Overall workload, including added workload to address pandemic-related issues, has delayed R10’s implementation of file review recommendations.
13	We request you remove the file review recommendation bullet noted for Region 10 on RTCR, as it does not capture the breadth and depth of recommendations made across rules and processes. Suggest replacing with: In Region 10, the file review identified a wide range of issues and provided recommendations. R10 staff have reviewed and prioritized the recommendations and have begun to address recommendations in order of need and urgency. Overall workload, including added workload to address pandemic-related issues, has delayed R10’s implementation of file review recommendations.
14	The representation of staffing levels needs clarification and correction. In total, the Groundwater and Drinking Water Section (GDWS) has the equivalent of 5.7 FTE EPA staff assigned to DI work along with a heavy reliance on contract staff. The Enforcement and Compliance Assurance Division, Water Enforcement and Field Branch has the equivalent of 2.8 FTE EPA staff assigned to enforcement of the DI program.
15	The final sentence in the conclusion section is not accurate. Even with EPA having presence through inspections or sanitary surveys, the EPA does not “ensure” that safe water is delivered. The entity responsible for operation, maintenance and compliance with the SDWA controls the water system and is the entity responsible to ensure the reliability and safety of the water supplied to their community. EPA R10 recommends this be revised to say: “As the coronavirus pandemic continues, Region 9 and 10 need to take steps to resume optimal levels of capacity development support, compliance assistance activities, and regulatory oversight to the tribes, taking into account the tribes’ restrictions associated with the ongoing COVID-19 pandemic.”

Distribution

The Administrator
Deputy Administrator
Chief of Staff, Office of the Administrator
Deputy Chief of Staff, Office of the Administrator
Agency Follow-Up Official (the CFO)
Assistant Administrator for Water
Regional Administrator for Region 9
Regional Administrator for Region 10
Agency Follow-Up Coordinator
General Counsel
Associate Administrator for Congressional and Intergovernmental Relations
Associate Administrator for Public Affairs
Deputy Assistant Administrator for Water
Deputy Regional Administrator for Region 9
Deputy Regional Administrator for Region 10
Director, Office of Continuous Improvement, Office of the Chief Financial Officer
Director, Office of Regional Operations
Audit Follow-Up Coordinator, Office of the Administrator
Audit Follow-Up Coordinator, Office of Water
Audit Follow-Up Coordinator, Region 9
Audit Follow-Up Coordinator, Region 10