
**TRIBAL PARTNERSHIP
PROGRAM: *Issues Relevant to Working
with Native Americans and Alaska Natives
on Section 203 Studies***

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Executive Summary

Section 203 of the Water Resources Development Act of 2000 provides authority for a Tribal Partnership Program (TPP). The provision allows the Corps to work collaboratively with Federally recognized American Indian and Alaska Native tribal governments (tribes) to study the feasibility of water resource projects that will substantially benefit their constituents. The purpose of this report is to identify and examine a range of opportunities and policy issues associated with implementation of the Tribal Partnership Program¹.

Section 203 studies may address a number of purposes: flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources. In addition, the authority allows the Assistant Secretary of the Army for Civil Works (ASA(CW)), in consultation with tribes and other Federal agencies to pursue other projects determined to be appropriate.

The Tribal Partnership Program (TPP) provides a unique opportunity for the Corps to support the Federal government's trust responsibility while addressing tribal water and related resource challenges. The notion of a "tribal partnership program" within Section 203 is broader than just working with tribes on feasibility studies. If the Corps were to pursue an implementation policy that embraces a broad range of tribal partnership opportunities, it could use Section 203 as a basis for organizing "assistance to tribes" under all Civil Works authorities and programs. The current implementation guidance for Section 203 primarily addresses management and funding for feasibility studies pursued under Section 203, rather than the broader use of the authority as a program for assisting tribes through the suite of Civil Works programs and authorities.

In addition, Section 203 could potentially provide opportunities to study a range of water related economic development and natural resources issues, including needs not typically pursued as Civil Works budgetary priorities. For example, the Corps might consider the need for improved water, sanitation, and solid waste facilities on tribal lands. Also, the Corps might be able to study inadequate environmental infrastructure systems and facilities that threaten tribal community health and safety.

Section 203 is a study authority. The program funding authority is specified as \$5,000,000 per year for studies in FY 2002 to FY 2006, with not more than \$1,000,000 per Indian tribe. However, no provision for funding Section 203 studies is included in the FY 2002 budget. Implementation of feasible TPP projects will require individual project authorization or pursuit through an existing programmatic authority (e.g. a continuing authority program).

Much of the information regarding opportunities and issues discussed in this report is based on field responses to an HQUSACE memorandum soliciting field input to better define and understand the range of potential opportunities that may be pursued under Section 203. A number of additional issues related to implementation of this program were identified while examining the field responses, and during conversations with headquarters and district staff.

¹ Initial implementation guidance for Section 203 was issued in January 2002, and can be found at Appendix A and: http://www.usace.army.mil/inet/functions/cw/cecwp/branches/mp_and_dev/WRDA2001guidanceindex.htm.

Examining potential opportunities within the TPP raises a number of questions about its scope and the nature of products or services anticipated or allowed under Section 203. Although the program's authorizing language suggests that the purpose of the TPP is to study the feasibility of implementing projects, field responses indicate that the tribes may be interested in broad planning and technical assistance as well.

For example, the products and services include not only projects recommended for Corps implementation, but also planning assistance necessary for management of water and other natural and cultural resources on tribal lands or resources otherwise important to the tribes. Some of the products include master-planning type or technical support documents and services useful to the tribes in managing and developing these resources. Some of the management plans may include projects that the Corps could construct under existing authorities or under specific authorizations, while other plans may be more appropriately implemented by the tribes via other agencies' programs and funds.

Many of the study opportunities identified in the field responses could be pursued through existing Civil Works authorities, however, the districts indicated that the tribes often are unable to fund their share of the study costs. Section 203 includes provisions for tribal cost sharing through in-kind contributions, which should increase the opportunities for tribes to participate with the Corps in these studies. In some instances, the tribes may be able to use funds from other sources, including other Federal agencies, to participate in Section 203 studies, if agency approves the use of the funds for this purpose.

Outside of Section 203, there is no authority that specifically allows for feasibility studies for cultural resources preservation. The issues associated with formulating and evaluating plans for this purpose have not been fully assessed in this report. District responses indicated that management plans and opportunities to protect sacred sites and trust resources have been difficult to accomplish under existing authorities because cultural resources protection has not been a budgetary priority.

Section 203 implementation issues identified in the field responses and discussed in this report include:

- Cooperation with other Federal agencies, and consultation and coordination with the Secretary of the Interior.
- Cost sharing, ability to pay, and work-in-kind for Section 203 studies.
- The potential to support tribal self-reliance and economic capacity building through Section 203 studies.
- Preliminary discussion of issues relevant to cultural resources preservation studies (e.g. consideration of cultural and ethnic significance) and conducting studies with tribal sponsors (e.g. communication styles and dealing with potentially sensitive information).

Additional issues discussed in the report include:

- Other projects approved by the Secretary.
- Federal interest with regard to Section 203.
- Land base and ownership questions and issues.
- Cultural resource protection studies formulation and evaluation issues.
- Other planning considerations associated with these studies.

A number of terms and definitions relevant to implementing Section 203 are discussed (e.g. Indian tribes, Federally recognized tribes, Indian country, protected tribal resources, sacred site, traditional cultural properties). A discussion of tribal sovereignty and Federal trust responsibilities is provided,

along with suggestions that the Corps of Engineers Tribal Policy Principles can be used to guide development and implementation of the Section 203 program.

Some initial suggestions regarding criteria that may be useful in prioritizing Section 203 allocations/expenditures are provided. These include the provisions of treaties, laws, Executive Orders, tribally identified needs, tribal community safety and health, significance of protecting, enhancing or restoring trust resources (including subsistence resources, protection of sacred sites). Lessons from other Federal programs such as the Army's Native American Lands Environmental Mitigation Program (NALEMP), and the Environmental Protection Agency's Indian Environmental General Assistance Program (GAP) may also be useful. Additional discussion and investigation of program performance evaluation and prioritization is needed.

A number of other agencies have program funds and grants for which the tribes may be eligible. The Tribal Environmental Assistance and Natural Resources Assistance Handbook identifies over a dozen agencies and numerous programs available to the tribes, and the Bureau of Indian Affairs identified over 200 programs from the Catalog of Federal Domestic Assistance Programs that indicate that Federally recognized tribal governments may apply. Information about these programs will be useful to Corps study managers and tribal coordinators and to the tribes. Some of these programs are summarized in this report. Awareness of these programs may facilitate assistance to the tribes in a manner that leverages Federal resources. The information could effectively improve synergy among tribal assistance programs. This information may also be used to facilitate interagency coordination that could be initiated at the HQUSACE level. Further examination of other agency programs, along with discussions with agency staff is recommended, both to help better define the TPP relative to other Federal tribal programs, and to clarify official statements on funds that can be used by the tribes in Section 203 studies.

Recommendations and future work. Preliminary suggestions are made regarding potential legislation and policy that could enhance the Corps' ability to support the tribes through the TPP. Additional recommendations are made regarding increasing and improving tribal input to the program. This would include work to identify cultural resource analysis methods for application in cultural resources preservation planning under Section 203. These recommendations are presented in terms of near-term and longer-range efforts.

Near Term

Legislation

- Special cost sharing for tribes where the first \$200,000 of any study or project is 100% Federal, similar to Section 1156 of WRDA 1986, Cost Sharing Provisions for the Territories. Rationale for this would build off Federal trust responsibilities and the unique economic situations of many tribes.
- Authorize the Corps to accept and use PL 93-638 funds provided by the tribes for their non-Federal cost share for studies and/or project implementation.

Funds Eligible for Cost Sharing

- Identify other Federal agency funds that the Corps may accept from the tribes as their non-Federal cost-share and include them in an amendment to Section 203, or at least in an internal Corps guidance document, or possibly and MOU with relevant agencies.

Seek Additional Tribal Input

- Identify and pursue opportunities to meet with tribal representatives to further identify Section 203 opportunities and implementation issues. Explore opportunities for mutual exchange of information and ideas relevant to improving the ability of the Corps and tribes to work together, including enhanced participation in formulation and evaluation.

Federal Agency Cooperation Agreements.

- Because the Civil Works Tribal Partnership program was authorized only recently, most agencies are either unaware of the authority or uncertain as to how the Corps intends to implement it. A meeting with the Department of the Interior and other Federal agencies concerning trust responsibilities and to discuss the alternative role(s) of the Corps Tribal Partnership Program would be helpful to successful implementation of Section 203. Such meetings would be useful fostering coordinated Federal efforts to enhance tribal self-governance and intergovernmental relationships with tribes. Coordination will identify opportunities to leverage resources, avoid duplication of effort, avoid conflicts and unanticipated effects on tribes, and more effectively assist tribes with their water and related land resources needs. This early consultation and coordination with other Federal agencies is consistent with Section 203 (c) of WRDA 2000.

Evaluation and Justification of Studies Conducted under Section 203.

- The nature of outputs significant to and appropriate for Section 203 studies that focus on cultural resources protection or preservation presents challenges to the Corps' formulation and evaluation framework. Examination of other experiences that involved examination and quantification of cultural resources significance and outputs would be helpful. Several examples have been identified that may be useful. No doubt others can be identified with additional effort.
- Two concepts which may be useful in formulation and evaluation for Section 203 projects are "ethnic significance", and the concept of "place".
 - Ethnic Significance. The passage of Federal legislation relating to Native Americans (i.e., the *American Indian Religious Freedom Act* of 1978 and the *Native American Graves Protection and Repatriation Act* of 1990) and the publication of *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King 1990) have emphasized the importance of ethnic significance in both legal and ethical terms.
 - Place. The "sense of place" involves understanding of how tribes view the land and their attachments to certain places. A recent Forest Service document describes three forms of place. The cultural/symbolic sense of place which involves a sense of historical, spiritual and cultural traditions in the face of competing land views from outsiders. A second form of sense of place is instrumental/goal directed with a relationship with the land characterized as one of guardianship and caretaking, rather than ownership. Individualistic senses of place are imbedded in family meanings and histories.

- *Cultural and Tribal Planning Manual* – The development of material that provides information and ideas on working with tribes through various aspects of the planning process may be useful in implementing Section 203, as well as working with tribes on other studies. Such a manual could potentially be developed as part of the environmental planning manual series currently under development through IWR’s planning manual development program.

Refinement of Implementation Issues.

- It would be useful to send copies of the summary of field responses to the HQUSACE Section 203 memorandum (February 2001), along with summaries of the issues identified for comment, including issue refinement and identification of additional issues. This review by the field could help refine the approach to Section 203 implementation.

Long Range

Improve Understanding and Integration of Tribal Perspectives into Section 203 Planning.

- Building upon the near term effort mentioned above, Evaluation and Justification of Studies Conducted under Section 203), develop and hold workshops with tribes, and participate in meetings as appropriate to develop and refine regarding assessment of outputs from projects recommended under Section 203.
- District development of tribal assistance profiles. Potentially the FOA, working with tribes, could develop a profile on each tribe in their respective area. The profile would be used, along with personal contacts within the tribe, to design a specific outreach and assistance effort for each tribe fitting to the tribes respective needs.

Research on Analytical Methods for Cultural Resources Preservation Outputs.

- Methods that can be used in formulating and evaluating cultural resources studies will be useful for implementing Section 203 studies. Material developed, and lessons learned from the “near-term efforts” discussed above should be used to develop more detailed research rationale and approaches.

Section 1 - Introduction - The Section 203 Authority

Section 203 of WRDA 2000 provides authority for a Tribal Partnership Program (TPP) through which the Corps can work collaboratively with Federally recognized American Indian and Alaska Native tribal governments (hereinafter referred to as “tribes”)² to address water resources challenges. Under this authority, the Corps can study and examine the feasibility of water resources development projects, which benefit Indian tribes and are located primarily within Indian country (see Box 1) or in proximity to Alaska Native villages. Section 203 studies may address projects for flood damage reduction, environmental restoration and protection, preservation of cultural and natural resources and other such projects determined, by the ASA(CW) to be appropriate³. The text of Section 203 is provided in Box 2.

Section 203 provides an authority through which the Corps can conduct studies substantially for the benefit of tribes. It provides a unique opportunity to put to service Civil Works expertise and capabilities to assist and meet Federal trust responsibilities and obligations. It does not connote a new Corps mission, but rather a program that enables, with targeted funding, current Civil Works missions to assist Federally Recognized Tribes. It also offers an opportunity for the Corps to work with and reach out to tribes to conduct studies that reflect tribal values and to help develop, restore, protect and enhance resources for their benefit.

Matters to be Studied

Section 203 carries a broad legislative mandate to assist Federally recognized tribes in new and important ways. Development of program implementation guidance should consider the unique relationship the Federal government has with tribes (see Section 2 of this report). It should also consider the capabilities the Corps possesses that will contribute to tribal goals for water

Box 1. Defining “Indian Tribes”, “Federally Recognized Tribes”, and “Indian Country”

◆ Federally Recognized Tribes are those tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. Section 104 of the Federally Recognized Indian Tribe List Act requires the Department of Interior Bureau of Indian Affairs to publish the current list of Federally Recognized Tribes in the Federal Register. The most recently published list can be found at FR 13298, Vol. 65, No. 49, March 13, 2000

◆ ““Indian Tribe” means any Indian tribe, band nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (per 25 U.S.C. 450(b)).

◆ “...“Indian country”, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same”. (per Title 18 U.S.C. Section 1151).

² As defined by most current DOI/BIA list of tribal entities published in the Federal Register pursuant to Section 104 of the Federally Recognized Indian Tribe List Act

³ Determination will be by the Secretary, in cooperation with Indian tribes and other Federal agencies.

resources, cultural and natural resource protection and development, and the potential policy issues and opportunities that may be specific to the Tribal Partnership Program (which are discussed in Sections 3, 4 and 5 of this report). The scope of the TPP program has the potential to include a wide range of opportunities.

Box 2. Text of Section 203 of WRDA 2000

SEC. 203. TRIBAL PARTNERSHIP PROGRAM.

(a) **DEFINITION OF INDIAN TRIBE.**—In this section, the term “Indian tribe” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(b) **PROGRAM.**—

(1) **IN GENERAL.**—In cooperation with Indian tribes and the heads of other Federal agencies, the Secretary may study and determine the feasibility of carrying out water resources development projects that—

(A) will substantially benefit Indian tribes; and

(B) are located primarily within Indian country (as defined in section 1151 of title 18, United States Code) or in proximity to Alaska Native villages.

(2) **MATTERS TO BE STUDIED.**—A study conducted under paragraph (1) may address—

(A) projects for flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources; and

(B) such other projects as the Secretary, in cooperation with Indian tribes and the heads of other Federal agencies, determines to be appropriate.

(c) **CONSULTATION AND COORDINATION WITH SECRETARY OF THE INTERIOR.**—

(1) **IN GENERAL.**—In recognition of the unique role of the Secretary of the Interior concerning trust responsibilities with Indian tribes and in recognition of mutual trust responsibilities, the Secretary shall consult with the Secretary of the Interior concerning studies conducted under subsection (b).

(2) **INTEGRATION OF ACTIVITIES.**—The Secretary shall—

(A) integrate civil works activities of the Department of the Army with activities of the Department of the Interior to avoid conflicts, duplications of effort, or unanticipated adverse effects on Indian tribes; and

(B) consider the authorities and programs of the Department of the Interior and other Federal agencies in any recommendations concerning carrying out projects studied under subsection (b).

(d) **COST SHARING.**—

(1) **ABILITY TO PAY.**—

(A) **IN GENERAL.**—Any cost-sharing agreement for a study under subsection (b) shall be subject to the ability of the non-Federal interest to pay.

(B) **USE OF PROCEDURES.**—The ability of a non-Federal interest to pay shall be determined by the Secretary in accordance with procedures established by the Secretary.

(2) **CREDIT.**—The Secretary may credit toward the non-Federal share of the costs of a study under subsection (b) the cost of services, studies, supplies, or other in-kind contributions provided by the non-Federal interest if the Secretary determines that the services, studies, supplies, and other in-kind contributions will facilitate completion of the study.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out subsection (b) \$5,000,000 for each of fiscal years 2002 through 2006, of which not more than \$1,000,000 may be used with respect to any 1 Indian tribe.

To explore the potential scope of the program and to better define the issues and policy concerns related to program implementation, an inquiry was sent to the 38 Corps districts⁴. The districts were encouraged to consult directly with tribal governments in developing their responses⁵. The field responses included ideas for not only feasibility studies, but also other types of studies, planning assistance, technical assistance, and other types of support and services. Included were a number of opportunities pertaining to cultural resource objectives - some specifically to protect, enhance or restore Indian culture, artifacts, or resources. Some of the proposed activities are similar to those pursued with non-tribal sponsors, e.g. control of bank erosion, but the purposes may be less “traditional”, e.g. cultural resources protection or preservation. This begins to point to some of the potential formulation challenges in implementing Section 203. Discussion of some of these challenges is provided in Section 3. Table 1 presents a summary of the categories of Section 203 opportunities provided in the response to the memorandum. A more detailed summary of the opportunities and issues provided in the field responses is provided in Appendix C.

- Flood Damage Reduction	- Emergency Management and Preparedness
- Erosion or Sedimentation Control/Mgmt	- HTRW assessment, clean up, management
- Watershed, River Basin & Comprehensive Planning	- Water Quality
- Ecosystem Restoration & Management	- Water Supply
- Floodplain Mapping, Delineation, GIS, Surveys	- Real Estate
- Wetland/Natural Resources Mapping	- Dam Safety
- Water Control Management Changes	- Community Infrastructure (Water, Roads, Schools)
- Cultural Resources Protection, Management	- Recreation - Safety
- Self-Reliance & Economic Capacity Building	- Recreation - Lewis & Clark Bicentennial (cultural resources, recreation, capacity building)
- Technical Capacity Building	

Many of the study opportunities identified in the responses could be pursued through existing Corps program authorities. However, competition for program funding, inability to “cost-share” and other issues have prevented tribes from fully participating in the Civil Works program. Some district offices indicated that they are unable to reach out to tribes due to funds being tied to specific projects, others indicated that tribes do not have the funding needed for cost sharing in studies and projects. In addition, existing programs may not sufficiently address many of the natural and cultural resource preservation opportunities or the economic capacity building opportunities that tribal government’s are looking for, and that the Section 203 program study authority may allow.

A number of the field responses suggested activities that may be more appropriately addressed by, or pursued in collaboration with other Federal agency programs. (See Table 2). There may be opportunities to leverage Corps Civil Works and other agency program resources to support the tribes. In its Tribal Priority Allocation Report (BIA, 1999), the Bureau of Indian Affairs has

⁴ Subject: Section 203 of the Water Resources Development Act of 2000 (WRDA 2000) Tribal Partnership Program. (See Appendix B).

⁵ Districts were able to accomplish this to varying degrees, given the time allowed for their response. Input from the tribes for the responses was not intended to be exhaustive, rather it was intended to get an initial sense of the range of needs and opportunities for Section 203 application.

identified a list of programs that specifically identify tribal governments as eligible applicants. This list includes programs that provide project grants, loans or technical assistance some of which may be used by the tribes for its cost share requirement (provided the agency authorizes its funds to be used by a local sponsor for its cost share). See Appendix C for a list of other Federal agency programs for which the tribes may be eligible.

Section 203 Studies	Other Corps Authorities/ Programs	Implementation through Other Agency Programs (Reimbursable either through Agency or Tribe)
<ul style="list-style-type: none"> - Flood Damage Reduction - Erosion or Sedimentation Control or Management - Ecosystem Restoration & Management - Cultural Resources Protection, Management - Water Control Management Changes 	<ul style="list-style-type: none"> - Watershed, River Basin & Comprehensive Planning - Floodplain Mapping, Delineation, GIS, Surveys - Wetland/Natural Resources Mapping - Real Estate - Technical Capacity Building - Emergency Management and Preparedness - Dam Safety - Recreation - Safety 	<ul style="list-style-type: none"> - Water Quality - Water Supply - Community Infrastructure (Water, Roads, Schools) - Recreation - Lewis & Clark Bicentennial (cultural resources, recreation, capacity building)

Further examination of other agency programs, along with discussions with agency staff will help define the Corps’ roles in partnering with tribes through Section 203. However, the most appropriate Corps role may be to formulate water resources development projects for flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources. Implementation of recommendations from Section 203 studies will vary depending upon the nature of the recommended projects and action(s).

Cooperation with Other Federal Agencies

Administration directives, budget guidance, Congressional language, and Corps policy have increasingly emphasized coordination among agencies in order to leverage resources and foster synergy in problem solving. Subsections 203 (b) and (c) include several references to cooperating, consulting and coordinating studies conducted under Section 203 with the Secretary of the Interior and the heads of other Federal agencies.

Consultation and Coordination with the Secretary of the Interior

Section 203(c) is titled “Consultation and Coordination with the Secretary of the Interior”. This subsection recognizes the unique role of the Secretary of the Interior concerning trust responsibilities with the tribes and mutual trust responsibilities. It directs consultation with the Secretary of the Interior concerning Section 203 studies. Section 203(c)(2) directs integration of civil works activities with activities of the Department of the Interior “to avoid conflicts, duplications of effort, or unanticipated adverse effects on Indian tribes”, along with consideration of DOI (and other agency) authorities and programs in any Section 203 recommendations.

Because of the emphasis included in the legislative language, meetings with DOI staff and leadership are recommended to more closely examine the potential relationships between Section 203 and their programs and policies. Specifically, discussions should examine not only procedural requirements necessary to respond to the intent of this legislated consultation and coordination, but also ways to streamline procedures so that tribal and agency field staff involved in these efforts do not require more time and resources than necessary. The need to develop the requirements and procedures for working with DOI in connection with the Section 203 is identified as an implementation issue in Section 3 of this report.

It may be reasonable to explore development of an MOU with DOI (and other appropriate agencies) to help assure effective, efficient, and mutually satisfactory consultation and coordination. Tribal involvement should be included in discussion of these procedures. For example, some of the funding tribes receive from BIA can be used by the tribes as their non-Federal cost share in working with the Corps. Rather than the tribe or BIA regional offices having to provide a statement regarding which funds are available for cost sharing for each individual Section 203 study, it would be useful to develop an umbrella MOA, or some other official document, regarding funding that is available to the tribes for use as their non-Federal cost share in Section 203 studies, and perhaps all Civil Works studies.

Agency Programs that May be Relevant in Section 203 Studies

Several other agencies have programs specific to tribes or in which tribes are eligible to participate. An examination of these programs will provide information helpful in developing approaches for assisting and working with tribal governments through the Civil Works program. Discussion of these programs with the respective agency contacts will help facilitate the coordination required by the legislation, and will provide information useful in determining the best use of the Corps' authority and expertise relative to other agency programs.

The Bureau of Indian Affairs identified grant and other programs within the Catalog of Federal Domestic Assistance Programs that indicate that Federally recognized tribal governments may apply⁶. This list includes over 100 programs and is provided in Appendix C of this report. It would be useful to the tribes and field if, when coordinating not only with DOI, but also other agencies regarding Section 203, the funding sources available for tribal non-Federal cost-share could be identified and included in official documentation.

Tribal Environmental and Natural Resource Assistance Handbook

A Tribal Environmental and Natural Resource Assistance Handbook was developed by the Domestic Policy Council Working Group on American Indians and Alaska Natives (Working Group) and the Native American Fish and Wildlife Society. The handbook was published in 1999 and it contains summary profiles of the Federal sources of financial and/or technical assistance programs available for tribal environmental management. Information about grant

⁶ BIA, 1999 .

programs available to the tribes is included. The handbook can be found at <http://www.epa.gov/indian/tribook.pdf>.

A preliminary discussion of some of the other Federal agency programs is provided in the next few pages. More extensive discussion and coordination with DOI and other agencies, however, is necessary to fully understand the potential relationships of the Section 203 program with their programs and policies.

Department of Interior

Several offices within the Department of the Interior have responsibilities for Federal tribal policy and programs that are available to the tribes, and may be relevant to the Section 203 program. Some of these offices and programs are described below.

Bureau of Indian Affairs (BIA).

The BIA is the principal Federal agency charged with the responsibility of administering Federal Indian policies and programs, fulfilling the Federal trust responsibility for American Indian and Alaska Native Tribes, and for promoting Indian self-determination. The BIA distributes funds to the tribes for their use in managing tribal community services, infrastructure development and maintenance (See Box 3).

The agency also provides business loans, education scholarships for American Indians, employment assistance, and social services. BIA administers more than 43 million acres of tribally-owned land, more than 11 million acres of individually-owned land held in trust, and 443,000 acres of Federally-owned land. Field operations are carried out through 12 regional offices and their area offices.

The BIA programs are decentralized in funding and operation, with nearly 55% of BIA funds expended by tribes through contracts or Self-Governance compacts⁷. The Tribal Priority Allocation (TPA) funds provide the principle source of funds for local units of tribal government and agency offices at the reservation level⁸. In addition to the TPA funds managed by

Box 3. The scope of BIA programs includes nearly the entire range of government services, including:

- education
- social services
- law enforcement and tribal justice systems
- business loans
- land and heirship records
- tribal government support
- forestry, agriculture, range land development
- water resources
- fish, wildlife and parks
- roads
- housing
- adult and juvenile detention facilities
- irrigation and power systems.

Total FY 98 BIA appropriations were \$1.7 billion, distributed across the following accounts:

- Operation of Indian Programs
- Construction
- Indian Land and Water Claim Settlements
- Indian Guaranteed Loan Program.

The TPA is a budget activity within the first account, and in FY 98 was funded at \$757 million.

⁷ Tribal Self Governance, as authorized by Title IV of the Tribal Self-Determination and Education Assistance Act, as amended; 25 CFR 1000; final rule January 16, 2001, FR December 15, 2000, pages 78687-78735.

BIA several other DOI programs include funds potentially available to tribes.

Proposed FY 2002 DOI appropriations include the first funding for tribal participation in the Land and Water Conservation Fund (LWCF), making \$10.0 million available for competitive grants to tribes.

While the program has not received full authorized funding in the past, the tribes may be able to use these funds for cost sharing Section 203 studies which address natural resources preservation or economic capacity building through recreation development. Other DOI programs may be available to tribes as a funding source or water and related resources management issues.

The LWCF was created in 1965 to assure that revenues from offshore resources that belong to all of the people of the United States are used to develop and preserve recreation and conservation heritage benefits. From 1965 to 1995, funding for state grants averaged only \$108 million a year and no state grant funds were appropriated for years 1996 through 1999.

Fish and Wildlife Service (FWS).

While the FWS does not have official programs specific to tribes, it does have several programs that may provide financial or technical assistance. For example, the FY 2002 FWS budget proposes \$50.0 million to establish a Landowner Incentive program for grants that are competitively awarded and cost shared. Tribes, along with states and territories, are eligible for grants and technical assistance to help landowners protect and manage habitat, while continuing to engage in traditional land use practices. The tribes may be able to use these funds for cost sharing Section 203 studies which address habitat protection and management in conjunction with other land uses.

Additional DOI programs which provide financial or technical assistance to tribes and that may be relevant to Section 203 studies include: Fish, Wildlife and Recreation Program (financial assistance); Environmental Management Services (financial and technical); Forest Management, Protection, and Development (technical); Soil and Moisture Conservation (technical). It would be helpful to engage DOI in discussions as to whether some or all of these or other DOI funds are available to the tribes for use as their non-Federal cost share for Section 203 studies.

Environmental Protection Agency

The U.S. Environmental Protection Agency (EPA) administers a number of Federal statutes that provide for protection of public health, welfare and the environment in the United States. Under its *Indian Policy*, EPA works with tribal governments on a government-to-government basis, and recognizes tribes as the primary parties for making environmental policy decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. The EPA can assist tribes in developing tribal

⁸ BIA policy is to distribute TPA funds to tribes on a “needs” basis and emphasize respect for tribal government priorities. TPA base budgets are a result of history, geography, policies, politics and timing. As of 1999 estimates were that current funding meets only one-third of identified need. Fewer than 10% of the tribes have realistically achieved a revenue stream which would allow them to provide a full range of services to their citizens. 18 tribes nearly match BIA support for local government services.

environmental protection programs through the General Assistance Program (GAP), authorized by the Indian Environmental General Assistance Program Act of 1992⁹. The Indian General Assistance Program was funded at \$38.6 million in FY98.

Five statutes authorize tribal programs or a substantial role for tribes in implementing EPA guidance: Federal Insecticide, Fungicide, and Rodenticide Act; Safe Drinking Water Act; Comprehensive Environmental Response, Compensation, and Liability Act (Superfund); Clean Water Act; Clean Air Act. Two additional statutes for which tribes may apply for environmental programs are: Toxic Substances Control Act; and Emergency Planning and Community Right-to-Know Act.

The GAP program assists tribes in building the basic infrastructure of a tribal environmental program, which may include planning, developing, and establishing the administrative, technical, legal, enforcement, communications, and environmental education and outreach infrastructure. Guidelines on the award and management of General Assistance Agreements for Indian tribes (March 2000) can be found at: <http://www.epa.gov/indian/gap2000.pdf>. Box 4 provides examples of activities which may be conducted using GAP funds. Additionally GAP funds can be used to develop GIS if it is necessary to build the tribe's capability to run environmental programs. Using GIS for surveying a commercial purchase of land or in support of current litigation are not activities that can be funded by GAP.

Generally, GAP funds cannot be used for construction, however, a determination is made on a case-by-case basis whether construction activities are necessary to plan, develop, or establish a tribal environmental protection program. For example, for a tribe to develop a core tribal environmental protection program it is necessary for the tribe to have a place for staff to work. If rental space is not available, it may be necessary to construct office space or buy a modular building and move it to an appropriate location. Examples of construction activities not allowed include, but are not limited to, landfill construction, recycling facility construction, wastewater treatment facility construction, construction, operation and maintenance of sanitary facilities, construction related to implementation of best management practices for nonpoint source pollution control in a watershed, or purchase of construction equipment such as trucks and compactors or graders.

In addition to GAP, the EPA, Office of Compliance Assurance, manages a number of grant programs for which the tribes are eligible. They are also developing a guidebook titled Environmental Management Resources for Indian tribes to support the development of tribal environmental programs.

⁹ Indian Environmental General Assistance Program Act of 1992, as amended (42 U.S.C. §4368b). The regulations at 40 CFR Part 35, Subpart Q (§§35.10000 and 35.10035, see <http://www.epa.gov/indian/laws3.htm>) govern the award and administration of GAP grants, and apply to all GAP grantees and subgrantees.

Box 4. Examples of activities that may be accomplished with EPA GAP funds.

- Systems for grant proposal development, accounting, auditing, evaluating, reporting, procurement procedures, computer systems for grant management.
- Technical management of environmental programs (incl. QA, sampling, data management, training, emergency response)
- Integrated approaches to environmental protection and natural resource management, such as Integrated Resource Management Plans (IRMP), reflecting both tribal environmental and natural resource management goals and objectives
 - For example, developing IRMP components (e.g. water quality assessments and species inventories) are allowable if they are for the purpose of planning, developing or establishing an environmental protection program. Natural resource assessment and development activities for commercial purposes, such as forestry, fisheries, and minerals, water, or energy resources are not allowed under GAP. (see <http://snake1.cr.usgs.gov/bofrp/irmp.html> .)
- Communication plans (technical, regulatory, legal, outreach)
- Identifying multi-jurisdictional opportunities, including feasibility for intergovernmental cooperative efforts

Federal Emergency Management Agency (FEMA).

The FEMA administers the National Flood Insurance Program (NFIP), which has three components potentially of interest to tribes: the Flood Insurance Study (FIS) effort, the Limited Map Maintenance Program (LMMP), and the Community Assistance Program. Often FEMA funds the Corps to conduct flood insurance studies for states and tribes under this program.

The FIS and LMMP efforts require detailed hydrologic and hydraulic analyses to determine areas of flood hazards and the degree of flood risk. While FIS efforts are community-wide or basin-wide studies, LMMP efforts generally are limited to analysis of a single stream or reach of stream. The Community Assistance Program assists local officials in the administration of the NFIP for their community, including such activities as surveying elevation reference marks, performing community assessment visits, and conducting flood proofing workshops. See Section 4 of this report for discussion of Corps assistance to tribes in FIS and LMMPs.

Department of Agriculture (USDA)

The USDA's Native American Programs Office within the Office of Intergovernmental Affairs has the primary responsibility for coordinating USDA programs serving American Indian and Alaska Natives. Several USDA agencies can work with tribes, including the Natural Resources Conservation Service and the Forest Service, along with the Animal Plant Health Inspection Service, Foreign Agriculture Service, Farm Service Agency, and Risk Management Agency.

National Resources Conservation Service (NRCS).

The NRCS provides services to tribes working through the Intertribal Agriculture Council (IAC). The IAC is a nonprofit corporation of 61 member tribes devoted to improving agriculture as a source of economic development for American Indian people. Assistance to tribes may include: conservation planning on cropland, pastureland and rangeland and assistance to apply rangeland management and improvement practices; irrigation development structures and management, brush and erosion control structures, agriculture, forestry, salinity control, land treatment for watershed programs, no-till conservation tillage, soil evaluation for various land uses, farmland production, wildlife habitat improvement, and wetlands restoration.

Forest Service.

The Forest Service works with tribes to coordinate the management of national forest lands and resources with adjacent tribes; to honor tribal water rights and reserved rights to hunt, fish, gather and graze on present day national forests. The Forest Service also provides research, technology transfer, and technical assistance to tribes, and engages in consultation to accommodate traditional, cultural sites on public lands.

Section 203 Appropriations

The legislation authorizes funding for the Section 203 program for each of the fiscal years 2002 through 2006. One interpretation may be that this authority may be intended to have a “sunset clause” unless specifically reauthorized. However, other CAP program authorities, like Section 1135, initially included similar limits on the number of years for program funding authorization. These provisions were extended and eventually removed in subsequent WRDA’s. Another interpretation is that there may be an intent to modify the provision after some experience with program implementation in order to better define the program and appropriate funding. Perhaps consideration should be given to evaluation of the program in the fourth year and development of recommendations regarding extending this authority beyond 2006. Such a review may be facilitated by the establishment of coordination approaches and/or reporting information which should be considered early in the program. Also see discussion on Program Performance Indicators in Section 5.

Other Policy Aspects of Section 203

The authorizing legislation includes provisions for ability to pay and credit for in-kind contributions, and implies but does not include specific requirements for cost-sharing. Each of these issues will need to be addressed in implementation guidance for Section 203. These and other policy and implementation issues are discussed in Section 3 of this report.

Section 2 - Civil Works Tribal Policy Principles as a Foundation for Implementing Section 203

Acknowledging Sovereignty and Trust Responsibilities

The Federal government recognizes special relationships with tribes and long standing commitments made to tribes and acknowledges tribal sovereignty along with Federal trust responsibilities. These commitments stem from treaties, and Executive and Congressional declarations.

The special relationship between Indians and the Federal government is the result ...of solemn obligations which have been entered into ... down through the years, through written treaties and through formal and informal agreements, our government has made specific commitments to the Indian people. For their part, Indians have often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide community services such as health, education and public safety, services which would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans.¹⁰

Congress declares its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual Indian Tribes and to the Indian people as a whole through the establishment of meaningful Indian self-determination policy which will permit an orderly transition from Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services¹¹.

Tribes enjoy a direct government-to-government relationship with the U.S. government wherein no decisions about their lands and people are made without their consent. The Corps acknowledges that Indian Nations are sovereign, with right to self-governance and decision-making.

Our Nation has long recognized the sovereign status of Indian tribes. The United States Constitution specifically addresses Indian sovereignty by classing Indian treaties among the "supreme Law of the land", and establishes Indian affairs as a unique focus of Federal concern. Principles outlined in the Constitution and treaties, as well as those established by Federal laws, regulations and Executive Orders, continue to guide our national policy towards Indian Nations. (USACE, CECW-A, Policy Guidance Letter 57, 1998).

¹⁰ In 1970, President Richard Nixon affirmed the special relationship between the Federal government and Indian Tribes and acknowledged Federal commitment to supporting tribal communities. R.J.,Nixon, 1970 - Special Message to Congress on Indian Affairs, Pub papers 564 (Richard M. Nixon), 6 Pres. Doc. 894 (1970) [in DOI, BIA, 1999. Report on Tribal Priority Allocations, pages 44-46].

¹¹ Ibid.

These characteristics and requirements are the cornerstone of the Corps Tribal Policy Principles presented and discussed below.

Corps Tribal Policy Principles

The Office of the Chief of Engineers, in coordination with the Office of the Assistant Secretary of the Army (Civil Works), developed and published Corps Tribal Policy Principles consistent with Executive goals and objectives. These Tribal Policy Principles were developed and published in Policy Guidance Letter No. 57, Indian Sovereignty and Government-to-Government Relations With Indian tribes as a response to Executive directive.

On 29 April 1994, President Clinton reaffirmed the United States' "unique legal relationship with Native American tribal governments." In recognition of the special considerations due to tribal interests, the President directed Federal agencies to operate within a government-to-government relationship with Federally recognized Indian tribes; consult, to the greatest extent practicable and permitted by law, with Indian tribal governments; assess the impact of agency activities on tribal trust resources and assure that tribal interests are considered before the activities are undertaken; and remove procedural impediments to working directly with tribal governments on activities that affect trust property or governmental rights of the tribes. (USACE, CECW-A, Policy Guidance Letter 57, 1998).

The principles were incorporated into the revised ER 1105-2-100 (PGN) (Appendix C, pages C-32-33), (see Box 5) and are now part of the Civil Works planning guidance. The Corps' Tribal Policy Principles are intended to guide Civil Works programs and activities in working with tribes and considering their needs, and are applicable to Section 203. When initially published, existing authorities and guidance primarily emphasized recognition of tribal sovereignty and appropriate interaction with the tribes as outlined in the first three principles:

- Recognize tribal sovereignty
- Adhere to government to government relations policy treating tribes with appropriate respect and dignity and in accordance with principles of self-determination
- Involve tribes in pre-decisional and honest consultation.

However, the principles have broader implications, beyond compliance, regarding responsibilities and opportunities to provide assistance to Native American and Alaska Native tribes. Section 203 provides the Corps with an opportunity to enhance support for all of the Tribal Policy Principles. Through the TPP authority, the Corps has greater opportunity to more comprehensively support the full intent of the Principles including the last three:

- Opportunities to support Federal Trust responsibilities (i.e. through application of Civil Works programs and authorities),
- Work to fulfill obligations to preserve and protect trust resources, and
- Support self-reliance and economic capacity building.

**Box 5. U.S. Army Corps of Engineers
Tribal Policy Principles***

- 1. TRIBAL SOVEREIGNTY** - The U.S. Army Corps of Engineers recognizes that Tribal governments are sovereign entities, with rights to set their own priorities, develop and manage Tribal and trust resources, and be involved in Federal decisions or activities which have the potential to affect these rights. Tribes retain inherent powers of self-government.
- 2. GOVERNMENT-TO-GOVERNMENT RELATIONS** - The U.S. Army Corps of Engineers will ensure that Tribal Chairs/Leaders meet with Corps Commanders/Leaders and recognize that, as governments, Tribes have the right to be treated with appropriate respect and dignity, in accordance with principles of self-determination.
- 3. PRE-DECISIONAL AND HONEST CONSULTATION** - The U.S. Army Corps of Engineers will reach out, through designated points of contact, to involve Tribes in collaborative processes designed to ensure information exchange, consideration of disparate viewpoints before and during decision making, and utilize fair and impartial dispute resolution mechanisms.
- 4. TRUST RESPONSIBILITY** - The U.S. Army Corps of Engineers will work to meet trust obligations, protect trust resources, and obtain Tribal views of trust and treaty responsibilities or actions related to the Corps, in accordance with provisions of treaties, laws and Executive Orders as well as principles lodged in the Constitution of the United States.
- 5. NATURAL AND CULTURAL RESOURCES** - The U.S. Army Corps of Engineers will act to fulfill obligations to preserve and protect trust resources, comply with the Native American Graves Protection and Repatriation Act, and ensure reasonable access to sacred sites in accordance with published and easily accessible guidance.
- 6. SELF RELIANCE, CAPACITY BUILDING, AND GROWTH** - The U.S. Army Corps of Engineers will search for ways to involve Tribes in programs, projects and other activities that build economic capacity and foster abilities to manage Tribal resources while preserving cultural identities.

* From PGL 57.

A number of the study opportunities identified in response to the memo relate to principles 4 and 5 as they involve preservation and protection of trust resources and support trust responsibilities. Additionally the field identified opportunities that support principle 6, which could foster studies with goals or purposes that have not been “priority” for the civil works program. Section 203 affords an opportunity to address these needs and support the goals and this principle as discussed below.

Support for Self Reliance, Capacity Building, and Growth

National policy regarding the relationship between the Federal government and Indian tribes, and commitment to supporting and assisting tribes in developing economies of their respective communities is declared in the Indian Self-Determination and Education Assistance Act of 1975:

In accordance with this policy, the United States is committed to supporting and assisting Indian Tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities. (25 U.S.C. 450a(b).)¹²

The Corps' Tribal Policy Principles include a commitment to search for ways to involve tribes in programs, projects and other activities *that build economic capacity and foster abilities to manage Tribal resources while preserving cultural identities.* Box 6 lists categories of activities that support tribal economic capacity building and self-reliance which are most logically linked to potential Corps assistance, along with examples provided in the field responses regarding potential support to tribes under Section 203.

Striking the balance between the immediate poverty-related needs of the Tribes and the necessity for investment in longer term infrastructure and development programs which would, it is presumed, keep future generations from poverty vexes both the Administration and the Congress.
(BIA, 1999, page 5)

Other categories of economic capacity building include activities more appropriately supported by other agencies, however the Corps can and has assisted in these areas (e.g. clinics and other centers), through engineering and facility construction via reimbursable arrangements. Also see "technical capacity building" in Section 4 of this report.

Box 6. Examples of Activities that Support Self Reliance and Economic Capacity Building

- *Technical Assistance*
- *Economic Development*--example... Much of what is labeled "recreation" in the field responses involves purposes or goals intended to enhance local economic viability and capacity building.
- *Natural And Cultural Resources Protection and Restoration*
- *Curriculum Development*
- *Archaeology*

¹² 25 USC 450(a)(1), (a)(2), (b)(2).

Section 3 - Policy & Implementation Issues

A number of policy and implementation questions and issues were raised in examination of the legislative language and the field responses or during internal meetings for the development of this report. These issues are discussed below.

Cost Sharing

The Section 203 language does not include specific cost sharing requirements but it does include terms such as “cost sharing”, “ability to pay”, and “credit for non-Federal share of the costs”, which imply cost sharing is intended. In considering the appropriate non-Federal share, it is useful to review existing cost sharing formulas and Administrative policies. The discussion below summarizes many of the Civil Works cost sharing requirements, and is followed by several cost-share formula options and policies that may be considered for the Section 203 program.

<i>Issues Examined in This Section</i>
- <i>Cost sharing</i>
- <i>Ability to Pay</i>
- <i>Credit for Work-in-Kind</i>
- <i>Other Projects As Approved by the ASA(CW)</i>
- <i>Federal Interest with Regard to Section 203 Studies</i>
- <i>Cultural and Cultural Resources Protection Studies</i>
- <i>Natural Resources in Section 203 Studies</i>
- <i>Planning Considerations in Section 203 Studies</i>
- <i>Public Involvement/Participation and Tribal Sponsors</i>
- <i>Land Issues</i>
- <i>Roles of the Secretary of the Interior in Section 203 Studies</i>
- <i>Military Programs, DoD Native American Lands Environmental Mitigation Studies.</i>

The concept of cost sharing has long been a part of the Corps Civil Works Program. Cost-sharing requirements have been included in water resource development and flood control laws, in legislative language for specific projects, and in Administration policy. The Water Resources Development Act of 1986 (WRDA 1986) produced the first comprehensive treatment of cost sharing for all water resource purposes. The cost-sharing concept is important because it ensures that non-Federal sponsors participate in and are responsible for development of water resource projects from which they directly benefit.

Cost sharing requirements are provided in WRDA 1986 and subsequent legislation for all project purposes. For some project purposes that produce vendible outputs (i.e., hydropower and municipal and industrial water supply), WRDA 1986 stipulates that these activities be 100% non-Federally funded (unless an exception is made). For most of the other Civil Works programs, non-Federal cost-sharing requirements range from to 25% to 100% depending on the program and project purpose. In addition, most programs allow a portion of the study costs to be 100% Federally funded to a certain specified limit. For example, GI reconnaissance studies are 100% Federally financed, and the feasibility phase in Section 103, 107, 111, and 205 Continuing Authority Program (CAP) studies is initially Federally funded up to \$100,000. For Section 14 and 208 projects, the cost of planning and design is initially Federally financed for up to \$40,000. For Section 1135, 204 and 206 studies, the initial planning phase or preliminary restoration plan is 100% Federally funded and is limited to \$10,000 and the planning and design work, whether done in one or two phases, will be initially Federally financed. The non-Federal sponsor is responsible for their share of the costs when the Project Cooperation Agreement is

executed. For these environmental CAP projects (1135, 204, 206), planning and design work will be cost shared at the rate specified for the project purposes (e.g. 75:25 or 65:35).

The per project Federal funding limit for the CAP programs range from \$500,000 for Section 208 projects to \$7,000,000 for Section 205 projects. The Section 203 study authority does not have a specified limit on Federal funding for individual studies, but instead specifies a \$1,000,000 cap on the Federal funds for any one tribe. The legislation does not specify this as an annual limit so it may be interpreted as a cap against which funds could be spent over several years. Up to \$5,000,000 may be appropriated for each of fiscal years 2002 through 2006. This annual program limit is well below the smallest program limit in the CAP (i.e., the annual program limit for Federal funds for Section 208 is \$7,500,000).

As discussed above, cost sharing requirements vary depending on the program, project phase and purpose of the proposed activity. Table 3 provides a summary of the non-Federal requirements.

Table 3. Non-Federal Cost-Sharing Requirements.	
General Investigation Project Development Phase	Local Cost Share
Reconnaissance Phase	None (100% Federal)
Feasibility Phase	50% 100% Federal (inland waterways)
Pre-construction Engineering and Design	25%
Construction	Navigation Harbor 20% if depth <= 20 feet 35% if depth > 20 feet <=45 feet 60% if depth is > 45 feet
	Navigation Inland -None (50% Federal/50% Inland Waterway Trust Fund)
	Flood Damage Reduction -Structural 35% to 50%
	Non structural 35%
	Hurricane and Storm Damage 35%
	Hydroelectric Power – 100%
	Municipal and Industrial Water Supply – 100%
	Agricultural Water Supply – 35%
	Recreation - 50%
	Ecosystem Restoration – 35%
Operations and Maintenance Phase	100% for Flood Damage Reduction , (with some exceptions) None for Harbors and Inland Waterways (100% Federal)
Continuing Authority Programs	
Section 14 & Section 208 Feasibility study Plans & Specifications	Initial \$40,000 100% Federal remainder 50:50 cost shared Initially Federally financed and later recovered
Section 103, 107, 111, 205 Feasibility Study Plans & Specifications	Initial \$100,000, 100% Federal remainder 50:50 cost shared Same as Congressionally authorized projects for project purpose
Section 204 and 1135 Preliminary Restoration Plan Feasibility, Plans & Specifications	Limited to \$10,000 and 100% Federally funded 25% (initially Federally funded but if approved for implementation included in total cost, and cost shared 75:25)
Section 206 Preliminary Restoration Plan Feasibility, Plans & Specifications	Limited to \$10,000 and 100% Federally funded 35% (initially Federally funded but if approved for implementation included in total cost, and cost shared 65:35)

Several Section 203 cost-sharing options and rationale are presented below and summarized in Box 7.

Box 7. Summary of Cost Sharing Options for Section 203 Studies

- **Option A - Existing Feasibility Study Cost Share Requirement for All Section 203 Studies**
 - 50:50
 - ATP and Work-in-Kind Applies
- **Option B - Reduced Uniform Cost Share Requirement for All Section 203 Studies**
 - Consider 75:25 or 65:35 for all Section 203 studies regardless of purpose
 - ATP and Work-in-Kind Applies
- **Option C - CAP Program Cost Share Requirements for Section 203 Studies**
 - 25% to 50% depending on study purpose
 - ATP and Work-in-Kind May Apply

Option A – Feasibility Study 50:50 Cost Sharing Formula

The WRDA 1986 established the 50:50 cost sharing formula for feasibility studies. This cost sharing formula is also used in the Corps Section 22, Planning Assistance to States and Tribes program. The Corps may want to implement Section 203 studies as “feasibility” studies and apply the current 50:50 cost share formula to these studies. As such, up to \$100,000 of the initial study costs would be 100% Federally funded, and the remaining study costs would be shared equally with the study sponsor.

This approach would ensure consistent application of the established feasibility study cost sharing formula and would not offer any special treatment for tribes. However, the ability to pay provision would apply and a reduction in the 50% non-Federal cost share requirement may be possible if the tribe qualifies under this rule. It may take some time for the Corps to implement the ability to pay rule. In the interim, many tribes will be required to provide 50% of the total study costs either in cash or through in-kind services and work. (Both Section 203 and Section 225 of WRDA 2000 will allow tribes to provide their entire cost share through in-kind services and work).

Option B - Development of a reduced uniform cost sharing formula for Section 203 studies

Many field responses indicated that tribes are unable to come up with the 50% cost share required by existing rules for feasibility studies. In addition, some tribes have indicated that varying cost share requirements are confusing. To address these concerns the Corps may consider imposing a uniform cost share formula that is less than 50% (e.g. 25% or 35%) for all Section 203 studies regardless of the study type or purpose. This approach would satisfy the need to make civil work studies under Section 203 affordable for tribal governments and also help eliminate confusion. Further reductions in a tribe’s share resulting from application of the ability to pay rule may further reduce the cost share responsibility for some of the nation’s poorest communities. In addition, for those feasibility studies pursued under Section 203, per

Section 225 WRDA 2000, the tribes may provide their share of the study costs through in-kind services and work.

Option C – Using Continuing Authority Program Cost Sharing Policies as a Model for Section 203

Because Section 203 can address a range of purposes (flood damages reduction, environmental restoration and protection, preservation of cultural and natural resources), it may be appropriate to consider developing a specific cost sharing formula for each of the study purposes that could potentially be addressed in a Section 203 study. For example, in some of the Continuing Authority Programs (CAP) the non-Federal cost share for feasibility or feasibility like studies ranges from 25% to 50% depending on the project purpose (e.g. 35%-50% for Flood Control and 35% for Section 206 Ecosystem Restoration Projects). In addition, existing policy allows that a portion of the feasibility study conducted under the CAP program be 100% Federally financed. The project limits for these studies is \$1,000,000, the same limit per tribe under the Section 203 program.

Further reductions resulting from application of the ability to pay rule would also apply and may further enable the Corps to work with some of the nation's poorest communities. Tribes may be allowed to receive credit for 100% of their share of study costs under this option.

Although this approach addresses the economic hardship many tribes face, it may not eliminate confusion caused by different requirements.

Use of Other Agency Funds for Non-Federal Cost Share

As discussed earlier in this report, other agencies have a number of programs with grants, funds and other assistance for which tribes are eligible. In Section 203 studies, as in under other study authorities, the use of other Federal agency funds for the non-Federal share of study costs is not allowed unless the Federal agency verifies, in writing, that the use of these funds is expressly authorized by statute¹³. This is required for each study. A list of funds known to be usable by the tribes for their non-Federal cost share would be useful to both Corps study managers and tribes. A list of programs which are not eligible for this purpose, but frequently asked about would also be useful. Table 4 provides examples of Federal Agency program funds that have

¹³ Guidance Letter No. 13, Use of Federal Funds to Meet Local Cost Sharing Requirements. The guidance underscores the principle that local sponsors must rely on non-Federal funding sources to comply with the cost sharing requirements of P.L. 99-662. The restriction applies to any intended use of Federal funds by the local sponsor to either acquire lands, easements, or rights-of-way; or perform construction in advance of a Federal project; or perform or assure performance of relocations; or to satisfy cash contributions to construct a project. The language precludes use of any Federal funds for the non-Federal share of projects, unless such use is authorized by law and confirmed in writing by the responsible granting Federal agency. A letter permitting such use must be secured from the granting Federal agency and furnished with the draft LCA package referred to HQUSACE.

been approved for use by the non-Federal sponsor on specific projects cost-shared with the Corps.

Table 4. Federal Agency Determination for Using Program Funds for Local Cost-Share¹⁴

Agency	Funding Type	Funds Can be Used for Non-Federal Sponsors Cost Share?	Constraints placed on use of funds?
U.S. Department of Agriculture Rural Development	Loans & Grants	Y	None
Housing & Urban Development	Community Development Block Grants (CDBG)	Y	None
National Park Service National Trust for Historic Preservation	Grant	Y	None

Ability to Pay

One of the primary Section 203 implementation issues identified by most districts is a tribe's ability to cost share studies. Because an ability to pay provision enables non-Federal sponsors, including tribes, to contribute less than the standard cost-share that would otherwise be required under the provisions of WRDA 1986, as amended, ability to pay will be an important component of the Tribal Partnership Program. The Tribal Partnership Program legislation includes a provision that studies conducted under Section 203 will be subject to the ability to pay rule (See Section 203(d)(1)(A) in Box 2). This language implies that studies for the preservation of cultural and natural resources conducted under this program authority will also be eligible for ability to pay reductions. The following paragraphs discuss the legislative background and policies of the ability to pay concept.

Indian Tribes are, as a group, the poorest people in the Nation with generally higher indices of poverty and related socio-economic maladies (BIA, 1999).

WRDA 1986 introduced an ability to pay provision for flood control and agricultural water supply. Corps guidance on the ability to pay was published in 1989 and revised in 1995, based on provisions in WRDA 1992. It pertained only to flood control projects, including CAP projects constructed under Sections 14 and 205.

Provisions in WRDA 1996 resulted in redefinition of the criteria used to determine a non-Federal sponsor's ability to pay. Criteria such as per capita income (PCI) for the county or counties in which the project is located, and non-Federal sponsor per capita project costs (PCPC), along with other information concerning the sponsor's financial ability, were among the criteria to be used to determine a non-Federal sponsor's ability to pay. Before these provisions could be enacted, however, WRDA 2000 was passed.

¹⁴ Per correspondence received from Howard Goldman, CECE-OC.

Section 204 of WRDA 2000 provides additional changes to the ability to pay provision. For example, the applicability of ability to pay provision was expanded to allow consideration for reductions in the non-Federal cost share for both studies and projects. In addition, the applicable project purposes were expanded from flood control and agricultural water supply, to include environmental protection and restoration, navigation, hurricane storm damage reduction, and recreation. However, at this time neither the 1996 nor the 2000 changes have been promulgated in a rule for field application. Some of the Corps proposed general policies on the WRDA 2000 ability to pay provision are presented in Box 8 below.

Box 8. Proposed General Ability to Pay (ATP) Policies

- The ATP is independent of any analysis of a non-Federal sponsor’s ability to finance its share of the costs.
- As a result of the application of an ability to pay test, some feasibility studies will be cost shared at a lower level than the standard non-Federal share required by WRDA 1986, as amended.
- ATP applies to all feasibility studies and projects and to continuing authorities for the applicable project purposes.
- Per capita income is used as the indicator of economic well-being.
- ATP permits a reduction for non-Federal sponsors located in areas with a per capita income in the lowest 33 1/3 % of the counties in the nation.
- The ability to pay test should not be used to affect plan formulation, project scope or to change budgetary priorities among projects competing for Federal funds.
- The non-Federal interest may waive the application of the ability to pay test.
- Per Capita Project Costs are among the criteria for determining the sponsor’s qualifying reduction in construction costs.

A new rule that will address the requirements of Section 204 WRDA 2000 is under development and will include the requirements to be applicable for studies conducted under the Tribal Partnership Program.

Credit for Work in Kind

Section 203 allows tribes to receive credit for in-kind contributions that will facilitate completion of the study. The legislation is silent on the percentage of work that a tribe may contribute to fulfill their cost share requirement.

Current laws and Corps policy allow non-Federal sponsors to receive credit towards their cost share requirement through in-kind contributions, or “work in kind”. Box 9 provides examples of types of contributions, which may be provided by non-Federal sponsors, in lieu of cash, to meet their non-Federal cost share requirement. The tribes as non-Federal sponsors, would not receive credit

Box 9. Examples of Work Provided by Non-Federal Sponsors:

- Environmental Studies
- Economic Studies
- Project Management
- Engineering
- Other studies that the district determines will facilitate completion of the study.

for activities that are inherently government functions (such as quality assurance, contract negotiation etc., per OMB Circular A-76). The dollar value of the in-kind services is established prior to the initiation of the in-kind effort and no reimbursement can be given for in-kind services that exceed the non-Federal cost-share.

Given the language in both Section 203 and Section 225 of WRDA 2000¹⁵, there is the potential for tribes to provide 100% of their study share as work-in-kind for Section 203 studies. Section 225 of WRDA 2000, along with Corps implementation guidance (Appendix G), authorizes non-Federal sponsors to provide their entire share of feasibility study costs through in-kind services. This policy could be applied to Section 203 studies in order to offer the greatest opportunity for tribes to participate in this program and fulfills the intent of the Section 203 legislation. Allowing credit for in-kind contributions may allow tribes that do not have cash resources to participate in Section 203 studies when they would not otherwise be able to through cash contributions alone.

Other Projects as Approved by the ASA(CW)

Section 203(b)(2)(B) includes a provision that the ASA(CW) may approve studies deemed appropriate. Some factors that may be considered could be projects or project components which support Federal trust responsibilities to protect and preserve trust resources, or support tribal self reliance, and economic capacity building (including technical capacity building). To clarify this aspect of the provision, the implementing guidance should discuss the criteria depicted in the table below. It may be reasonable to re-examine this division of delegation after some experience with the program is gained within the agency.

Programmatic authority (no need to elevate for approval)	ASA(CW) approval required
<ul style="list-style-type: none"> - Flood damage reduction - Ecosystem restoration - Cultural and natural and natural resources preservation - Erosion and sedimentation control - Water control management changes - Watershed, river basin studies? 	<ul style="list-style-type: none"> - Studies addressing environmental infrastructure (e.g. water supply distribution and treatment systems) - Water-related Health and safety¹⁶

Federal Interest with Regard to Section 203 Studies

Several districts raised questions regarding determination of “Federal interest” in working on Section 203, and other studies with the tribes. The notion of “Federal interest” has several

¹⁵ Section 225 of WRDA 2000 amends section 105(a)(1)(E) of WRDA 1986, to allow the sponsor to provide their entire share of feasibility study costs through provision of in-kind services. A copy of the implementation guidance for this provision is included in Appendix E.

¹⁶ Inadequate environmental infrastructure systems and facilities threaten tribal community health. Improvement of water, sanitation, and solid waste facilities of Indian Reservations was identified as an opportunity in several of the responses. A broader application of the Section 203 program authority could allow evaluation of reservation or tribal community environmental infrastructure needs through Section 203 studies, with subsequent implementation funded buy BIA, HUD or EPA programs.

contexts in Civil Works studies. First is the determination as to whether and action is appropriate for Federal agency involvement, in contrast with either state or local government responsibilities. Next is the consideration of whether a project is likely to be recommended for Corps implementation. The first is primarily founded in the Constitution, both are guided by Administration policies and budgetary priorities.

The root of the question regarding Federal interest in Section 203 studies seems to lie in questioning the nature of work and extent of benefits that will gain support/justification for expenditures of Civil Works funds for project implementation. However, Section 203 states that the studies conducted under this authority “will substantially benefit Indian tribes”. This provision may be interpreted to extend the objectives of water resources development studies conducted with tribes under Section 203 to include emphasis on protection and restoration of trust resources, along with support for tribal self-reliance and economic capacity building. Some tribes may be interested in pursuing project purposes related to basic community infrastructure such as water distribution systems and transportation. The Federal interest in Section 203 initiatives should be guided by not only Administration policy and budgetary priorities, but also recognition of Federal trust responsibilities (see discussion in Section 2). For Section 203 studies, the Federal interest may be described as:

Assisting the tribes through an appropriate mix of Federal - Corps and other agency - services or assistance in combination with involvement by the tribes and potentially others. This assistance will address water resources development needs and opportunities related to flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources, and other approved projects.

Culture and Cultural Resources Protection Studies

Several districts raised questions regarding what appropriately might be addressed with regard to the protection of cultural resources as part of Section 203 studies. Relevant definitions and discussion is provided here to aide in the consideration of the nature of cultural resources protection studies under this authority.

Culture. There are many definitions of the word "culture". The National Park Service (NPS) National Register programs, defines “culture” as traditions, beliefs, practices, lifeways, arts, crafts, and social institutions of any community, be it an Indian tribe, a local ethnic group, or the people of the nation as a whole [http://www.cr.nps.gov/nr/publications/bulletins/nr38_int.htm#tcp]. A longer and somewhat more complex definition from the Appendix in NRB #38 may be helpful for further examination of the term as applicable in the Tribal Partnership Program:

Culture (is) a system of behaviors, values, ideologies, and social arrangements. These features, in addition to tools and expressive elements such as graphic arts, help humans interpret their universe as well as deal with features of their environments, natural and social. Culture is learned, transmitted in a social context, and modifiable. Synonyms for culture include lifeways, customs, traditions; social practices; and folkways. The terms folk culture

and folklife might be used to describe aspects of the system that are unwritten, learned without formal instruction, and deal with expressive elements such as dance, song, music and graphic arts as well as storytelling."

[<http://www.cr.nps.gov/nr/publications/bulletins/nr38apx1.htm>].

Traditional cultural resource. A traditional cultural resource can be defined generally one that is associated with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community.

Culturally significant natural landscape. A culturally significant natural landscape may be classified as a site, or it may be the specific location where significant traditional events, activities, or cultural observances have taken place. A natural object such as a tree or a rock outcrop may be a culturally significant landscape feature if it is associated with an event, a significant tradition or use.

Protected tribal resources. Protected tribal resources include: those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources (source: DoD American Indian and Alaska Native Policy).

Cultural resources protection studies. These studies may potentially include initiatives undertaken for the purposes of cultural resources protection or restoration, site management, education, and interpretation, of resources, sites and artifacts significant to tribal culture, or the development of plans which incorporate these and other cultural resources management needs and objectives. A cultural resource project may involve anything that supports the continued survival of Indian tribes. Some of the resources identified for protection may include fish and wildlife habitat, culturally significant subsistence roots, bulbs, herbs, medicinal plants, sacred religious sites, ritually significant plants, stones or minerals. The field responses indicated that some tribes have identified the need for interpretation plans for priority cultural and historic sites, and the development of cultural resources management plans as Section 203 opportunities.

The formulation and evaluation process used in ecosystem restoration planning may be useful in conducting cultural resources preservation studies. Ecosystem restoration projects focus on "national ecosystem restoration" (NER) outputs, and Corps policy does not require the monetary valuation of NER service outcomes, or the use of dollar based cost-benefit analysis to identify economically efficient plans. Studies that focus on cultural resources protection can use similar procedures. Cultural resources preservation may also result in significant outputs which may be characterized as a subset of environmental quality (EQ) or other social effects (OSE).

Drawing on the policy and procedures developed for ecosystem restoration may be useful in developing guidance for cultural resources protection studies conducted under Section 203. Single-purpose cultural resources preservation project plans may be recommended based on a subjective determination that non-monetary benefits are worth monetary costs, provided that the

selected plan is shown to be cost-effective. This determination is made by first examining whether the cultural resource preservation outputs yielded are “significant” based on institutional, public and/or technical recognition of importance¹⁷. The significance test can be viewed as a way to document importance of project outputs in the absence of monetary values providing an indication of demand for these outputs. (See additional discussion of “significance” in the following paragraphs). Other applicable project evaluation criteria relate to effectiveness, acceptability, efficiency, and completeness. As for ecosystem restoration studies, these standard civil works project evaluation criteria may assume added importance in the case of cultural resources program (CRP) projects where outputs cannot be evaluated in monetary terms.

Natural Resources in Section 203 Studies

Natural resources include ecological and geological components of the environment, and the interactions among the living (including humans) and non-living components which are all part of dynamic and diverse ecosystems. Activities for the restoration, protection or preservation of these resources in Section 203 studies may be the same as in eco-restoration projects and in environmental stewardship. However, because *tribally significant* values may characterize the relative importance of protecting certain natural resources, the natural and cultural world are often inextricably linked and can not be separated in tribal culture. Replanting of sacred sites, restoration or protection of important medicinal, or ceremonial plants or animals are examples. The basis for some natural resource protection or restoration may be in the form of an ecosystem restoration measure, but the significance of the outcomes may be related to spiritual or cultural significance. Thus, Section 203 studies may emphasize natural resources in different ways than is often used in ecosystem restoration planning under other authorities.

Planning Considerations in Section 203 Studies

The Corps’ planning process follows a six-step process defined in the P&G. This process is a structured approach to problem solving which provides a rational framework for sound decision making. The process is also applicable for many other types of studies and its wide use is encouraged for use in a variety of Civil Works programs¹⁸. This planning process is applicable to Section 203 studies, and the steps can be scoped and scaled as appropriate for the particular study. It is important to note however, that a number of procedures, issues and considerations may warrant special consideration in studies with and

Six Planning Steps:

- Step 1 - Identifying problems and opportunities
- Step 2 - Inventorying and forecasting conditions
- Step 3 - Formulating alternative plans
- Step 4 - Evaluating alternative plans
- Step 5 - Comparing alternative plans
- Step 6 - Selecting a plan

¹⁷ See later discussion of tribal sovereignty and institutional significance.

¹⁸ See ER 1105-2-100.

for tribes. A number of these are identified and discussed below. This material is not intended to be exhaustive, rather to raise awareness and initiate identification and discussion of the issues. The material is organized by the following categories:

- Problems, Opportunities and Objectives
- Significance of Resources and Outputs
- Output Measurements/Units
- Process and Partnerships
- Public Involvement/Participation & Tribal Sponsors

Problems, Opportunities and Objectives

Section 203 provides an opportunity to examine and potentially formulate for a broader range of water resources related needs in support of tribal needs and priorities. The chart below illustrates the accounts, which represent the categories of effects considered in water resources planning and development according to the P&G¹⁹. From the early 1980’s to the early 1990’s the Corps’ recommendations were based primarily on maximizing net national economic development benefits. Since the late early 1990’s the Corps has also been able to recommend projects which produced ecosystem restoration benefits. (Note that the concept of the NER objective was developed by the Corps to be parallel to the NED objective and to distinguish the subset of environmental quality (EQ) attributes on which Civil Works ecosystem restoration studies and projects would focus (i.e. ecological resources, not cultural or aesthetic)). Section 203 authorizes studies to address cultural resources preservation objectives, along with ecosystem restoration and national economic development objectives.

NED	EQ			RED	OSE
Typically flood damage reduction & navigation; may also include water supply, recreation, hydropower	<i>Environmental Quality Attributes</i>			May be relevant in Section 203 studies	May be relevant with regard to self-reliance and capacity building; typically; also considered in impact analysis and formulation
	Ecological NER focuses on ecosystem structure and function	Cultural Section 203 provides new emphasis on this attribute via tribal cultural resources preservation	Aesthetic Typically considered in impact analysis		

Many of the opportunities identified by the districts involve “typical” Civil Works water resources development and management purposes, with NED benefits and within the priority budget categories (i.e. flood damage reduction, navigation). In these instances support to the tribes can utilize evaluation frameworks typically used in Civil Works planning, however RED analysis may play a larger role in consideration of the benefits to be achieved by these projects. The potential and appropriateness for using RED benefits used in Section 203 studies is not examined in this report.

¹⁹ The P&G framework includes four accounts for evaluating and displaying the effects of alternative plans: (1) the NED account, (2) the environmental quality (EQ) account, (3) the regional economic development (RED) account, and (4) the other social effects (OSE) account. Only the NED account and EQ account are required for project evaluation, however.

A number of the study opportunities identified in the field responses included study objectives with outputs that can be monetized, but that are not typically considered Civil Works budgetary priorities (e.g. water supply distribution systems). Section 203 may enable the Corps to study these types of needs and opportunities in support of the tribes as sovereign and dependent Nations. Studies involving these objectives may support tribal economic capacity building and an evaluation of RED effects and benefits may be appropriate.

Studies which focus on the preservation of cultural and natural resources may be able to use some existing Corps planning formulation and evaluation approaches, but may also require new approaches. Section 203 studies involving cultural and natural resource protection and restoration may employ the evaluation framework used in ecosystem restoration planning, provided that *outputs can be quantified* (not necessarily *monetized*). This evaluation framework includes not only cost effectiveness and incremental analysis, but also consideration of significance (institutional, public and scientific), and the four P&G evaluation criteria: effectiveness, efficiency, completeness and acceptability.

Projects examined as part of the Tribal Partnership Program may have monetary benefits, non-monetary benefits, and some combinations of both. The field responses regarding potential needs and opportunities that could be pursued under Section 203 included a combination of “measures”, “purposes”, and “objectives” which need to be examined together in each study to determine the most appropriate evaluation approach and information. For example, reduction of erosion or sedimentation via rip rap may be a purpose and a measure, while the objectives can vary, e.g. reduce residential property damage (an economic goal), restore aquatic ecosystem (an ecological goal), or protect culturally significant sites or artifacts (a cultural goal). This illustrates the importance in applying sound planning principles in these studies as the same measure (rip rap) could be specified for a given objective (reduce erosion), for three different purposes. Depending upon the objectives, the appropriate output unit and evaluation approach may vary. Understanding the objectives can help in identifying the appropriate evaluation framework(s) to apply to the Section 203 study.

Summary of Cost Effectiveness and Incremental Analysis Used in Ecosystem Restoration Planning

For ecosystem restoration studies, project outputs are quantified in non-monetary units, and NER project plans are evaluated using cost-effectiveness (CE) analysis to ensure that the least cost alternative plan is identified for various levels of NER outputs. CE analysis weighs the net costs of each project plan against its non-monetary measure of output. The CE analysis screens out plans that are not cost effective from further consideration to ensure that the least cost alternative plan is identified for various levels of NER outputs.

Once all cost-effective plans have been identified, then “incremental cost” (IC) analysis is used to help answer the question “What level of restoration output is worth it? The IC analysis identifies the incremental cost per unit output gained from moving from one plan to the next higher-output plan. This incremental value information helps to identify plans that capture production efficiencies with respect to NER output along different segments of the CE frontier.

Other studies while not specifically identified as cultural resources preservation (e.g. they may be identified as flood damage reduction or erosion control) may have protection of traditional or culturally significant resources as their target.

Significance of Resources and Outputs

In Section 203 studies, the basis for *resource* and *outcome* significance may be the same as or different from projects the Corps has worked with in the past²⁰ (see Box 10). Significant resources are important considerations in understanding problems and opportunities and conditions. Significant effects are identified for consideration in alternative comparison and selection. The significance of resources and effects is derived from institutional, public or technical recognition. These categories of significance will still be relevant, however, a different aspect of institutional significance may be particularly relevant to Section 203 studies. Projects in support of tribal needs and opportunities are likely to involve “*cultural*” or “*ethnic*”²¹ significance (also see Box 10 for notes on ethnic significance). Given the sovereignty of tribes, these types of significance may most appropriately be considered as “institutional significance”.

Box 10. Sources of Significance

Institutional recognition of a resource or effect means its importance is recognized and acknowledged in the laws, plans and policies of government and private groups.

Technical recognition of a resource or an effect is based upon scientific or other technical criteria that establishes its significance.

Public recognition means some segment of the general public considers the resource or effect to be important. Public recognition may be manifest in controversy, support or opposition expressed in any number of formal or informal ways.

“Traditional cultural significance” may also be important in Section 203 studies. “Traditional” refers to those beliefs, customs, and practices of a living community of people that have been passed down through the generations, usually orally or through practice. The traditional cultural significance of a resource is derived from the role it plays in a community's historically rooted beliefs, customs, and practices. Examples of traditional cultural significance include resources:

- Associated with the traditional beliefs of a Native American group about its origins, its cultural history, or the nature of the world;

²⁰ Since the enactment of NEPA and the adoption of the P&G, the idea of significance has been considered in identifying and describing resources and the impacts of proposed actions on them. Significance is defined in the P&G as “likely to have a material bearing on the decision-making process” in evaluation the effects of alternative water resources plans on environmental quality. The importance and value of the “concept of significance” or the use of the “significance criteria”, has increased over the last decade as the Corps worked to develop an evaluation process that would work for ecosystem restoration planning for which outputs typically measured in non-monetary units. This cost effectiveness and incremental analysis developed for ecosystem restoration may also be useful for planning projects with culturally significant outputs. A potential drawback may be in the quantification of outputs relative to cultural or ethnic significance.

²¹ Ethnic significance: when a resource is of “*religious, mythological, spiritual, or other symbolic importance for a discrete group of people*”. Ethnic significance does not necessarily mean “sacredness” or religious importance; some sites may be significant because of their *economic* value to an ethnic group. (From Cleeland, Teri and David E. Doyel. 1982, and Doyel, David E. 1982, both in Briuer, F.L. & C. M. Mathers, 1996. Trends and Patters in Cultural Resource Significance: An Historic Perspective and Annotated Bibliography. IWR Report 96-EL-1, January 1996).

- A location where Native American religious practitioners have historically gone, and are known or thought to go today, to perform ceremonial activities in accordance with traditional cultural rules of practice; and
- A location where a community has traditionally carried out economic, artistic, or other cultural practices important in maintaining its historic identity.

As noted earlier, tribal culture often inextricably links natural resources with cultural significance and because of this the *tribally significant* values ascribed to the resources being restored or preserved may provide the basis for recommended action. Protected tribal resources, ethnic significance such as sacred sites, traditional cultural resources, and other considerations are likely to play a prominent role in Section 203 studies. The significance of resources and outputs, along with information about the relative scarcity and uniqueness of the resources will help in understanding current conditions, examination of alternatives, and justifying recommended projects involving cultural and natural resources preservation. Discussion of “risk” to the cultural resources can help in making a case for the significance of the outputs anticipated from the recommended project.

Cultural priorities for Indian tribes often include, (1) the return and reburial of tribal ancestors, (2) the institution of strong measures to rescue, maintain, and support the retention of American Indian languages, oral history, and oral literature, and (3) reinforcing, nurturing, and strengthening the spiritual traditions of life. These priorities may take precedence over identifying and evaluating traditional cultural properties unless such places are in imminent danger of damage or destruction²². Other priorities may be identified by the tribes.

Comparing alternatives. Different alternatives may produce the desired output to different degrees, or in some circumstances, it may be “all or nothing”. Different levels of protection or restoration can be described, along with risk and uncertainty associated either with the resource or the proposed measures and alternatives. The “significance” of expected restoration or preservation outputs can be used in conjunction with information from cost effectiveness and incremental cost analyses to help determine whether an alternative should be recommended. Information on effectiveness, acceptability, efficiency and completeness of ecosystem restoration or cultural resource preservation plans also contributes to this determination.

Recommending alternatives. The culmination of the planning process is the selection of a recommended plan or the decision to take no action. In the case of Section 203, the recommended plan may be carried out by the Corps in collaboration with the tribal sponsor²³, or it may be a plan with recommendations that the tribe may chose to carry out on its own, or with other partners.

²² From: Parker. P.L., Traditional Cultural Properties - *What You Do and How We Think*, from NPS Cultural Resources Management, Vol 16, 1993. Found at <http://tps.cr.nps.gov/crm/archive/16-si/16-si-1.pdf>

²³ Recommended plans may be carried out by the Corps in collaboration with the tribal sponsor and potentially other partners as appropriate.

Box 11. Ethnic Significance.

- Ethnic significance, as it applies to "*an archaeological location which holds religious, mythological, or other spiritual significance for a discrete community of people*"
- Ethnic significance, like scientific significance, is in the eye of the beholder; when asking different medicine men about the importance of the same locations, different answers were often possible. Furthermore, different kinds of sites have various levels of ethnic importance, and often there are markedly different viewpoints *within* an ethnic group concerning the value of such locations
- Ethnic significance does not necessarily mean "sacredness" or religious importance; some sites may be significant because of their economic value to an ethnic group
- Ethnic significance and scientific significance may not always be congruent.

[From: Doyel, David E. 1982. "Medicine Men, Ethnic Significance, and Cultural Resource Management." *American Antiquity*. 47(3):634-642. (In Briuer & Mathers 1996).]

Output Measurements/Units

A challenge to planning for cultural resources preservation will be in the quantification of outputs relative to cultural or ethnic significance.

Some preliminary exploration of approaches to quantify cultural resources preservation outputs was considered in this study however

extensive examination and method development was beyond the scope of this policy study and is recommended for a future, more concentrated effort. That said, in working with the tribes, it may be possible to characterize the value of a "place", series of sites or set of resources. In conjunction with tribal members, it may be possible to develop criteria and characteristics which can

be rated by them and used in the study to produce information useful in formulation and evaluation of alternatives (see box at right). Potentially, "scores" developed through this process can be useful in ranking various needs and opportunities, and may be useful in establishing priorities for addressing culturally significant needs and opportunities for a particular objective, or a set of objectives which are important to the tribe. It is NOT however, proposed that this approach be suggested as a programmatic ranking system at this time.

A general approach that has been applied to evaluating cultural resource sites involves:

- Identification of evaluation characteristics
- Development of rating criteria
- Rating the site or resource for each criteria (could use an appropriate scale, e.g. 0 (lowest) to 3 (highest))
- Rating each site or resource based on how it scored.

Process and Partnerships

Working with the tribes may be different in a number of ways, only a few of which are identified here. Corps tribal coordinators and DOD program guidance, along with that of other agencies,

more fully describe some of the nuances of process important to effectively working with tribes. The Northwest Division has developed a Native American Program Desk Guide for all elements within their districts to use when working with tribal sponsors or consulting with tribes on Corps studies. The Alaska District has developed “protocol” suggestions as a reference for study managers in working with tribes. This brief document introduces useful approaches for interacting with tribes and offers insight into tribal culture.

As the Corps works with tribes through the Tribal Partnership Program and other programs, it will be important to understand that the tribal concept of development may be fundamentally different than that of the Corps or other partners. See the material underlined in Box 12 regarding economic development and land management. While the concept of development may be different between its application by the Corps and interpretation by tribes, the notion of sustainability may have some similarities. The notion of considering “seventh generation implications” of actions is in keeping with the consideration of long-term implications of proposed actions currently being discussed by Corps leadership regarding sustainability and environmentally sustainable development.

Box 12. Aspects of Tribal Culture

Native culture is founded on respect, which may be manifested through:

Community: All beings on earth (human, plant, animal) are part of a natural community. All have a role in it. All have a spirit. This concept of community provides a basis of individual obligation to society as a whole and a basis for human behavior within that society. Relationships between members of the community are essentially equal (human-human; human-plant; human-animal). None have dominance over the other. Because of this equality, a reciprocity of exchange exists through the natural life cycle.

Connectedness: Related to community, all things are linked through a holistic ecosystem. Whereas the concept of community lays out a basis for behavior and interaction, connectedness is a statement of the way things are.

Seventh generation: All actions taken today must be made with an eye to how they will effect descendents at least seven generations hence. Just as those living today inherited their well being from those who went before, so do they have an obligation to use resources in a way that ensures their availability to those of the future.

Humility: The natural world has great power. It must be treated with respect. This philosophic basis affects the way tribal members may view economic development, especially with regard to land management issues. At the heart of economics in the democratic capitalist tradition is the concept of private property and corporations. Yet the components above do not fully support either (again, this will be interpreted differently from tribe to tribe). For example, the concept of private property may violate the concept of community in the sense that it establishes dominance of one element of the natural order over another. It violates connectedness by placing boundaries within an interconnected ecosystem, and reduces relationships to market transactions. It violates provision for the seventh generation by allowing the sale of assets and resources to those outside of the tribal community, thereby denying them to future generations.

* From: Trosper, Ronald L. (1995). Traditional American Indian Economic Policy. American Indian Culture and Research Journal, 19(1), pp. 65-95.

Sensitivity of Data

It is important to recognize that some kinds of information that may surface or be critical to Section 203 studies, are sensitive, especially information regarding traditional religious practices or sacred sites. Tribes may be reluctant to divulge certain information unless confidentiality can be assured. In some instances, tribal customary law or religious rules regarding confidentiality are simply non-negotiable. Confidentiality may present a challenge in terms of plan formulation and evaluation (e.g. the Corps cannot study or formulate alternatives if adequate information i.e. location is not known). Additionally, the Corps study process is a public process and much of the information may be made available for public comment.

Tribes may request that the Corps hold confidential proprietary information regarding tribal natural resources and economic development. In the NPS guidance, information on historic properties, including traditional cultural properties may be kept confidential under the authority of Section 304 of the National Historic Preservation Act. This may not always be enough to satisfy the concerns of those who value, but fear the results of releasing information on, traditional cultural resources. It is important to be careful not to overstate the agency's ability to limit public access to sensitive information in light of statutory requirements of the Freedom of Information Act (FOIA).²⁴

Freedom of Information Act.

The public can get documents from Federal agencies based on the Freedom of information Act (FOIA). The FOIA, 5 U.S.C. 552, as amended, is based on the principle of openness in government and generally provides that any person has a right, enforceable in court, of access to Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one of nine exemptions or by one of three special law enforcement record exclusions.

Under the spirit and provisions of the FOIA, Federal agencies are to make their records available to the public to the greatest extent possible. The FOIA applies only to Federal agencies and does not create a right of access to records held by Congress, the courts, or by state or local government agencies. States have their own public access laws that should be consulted for access to state and local records. The FOIA was established to make the Federal government accountable to the public for its actions and to prevent agencies from having secret policies.

Land base and Ownership Issues.

Several questions with respect to land issues were identified in the field responses (see Appendix C). These issues and relevant background information potentially useful in addressing them are discussed below.

Indian Lands are defined as any lands title to which is either; 1) held in trust by the US for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation. (*DoD American Indian and Alaska Native Policy*)

²⁴ *Revised Draft Guide on Consultation and Collaboration with Indian Tribal Governments and the Public Participation of Indigenous Groups and Tribal Citizens*. A project of a Work Group of the Indigenous Peoples Subcommittee of the National Environmental Justice Advisory Council. May 1, 2000, p.18

Section 203 authorizes activities both on and off reservation lands. A number of issues related to “land” were raised in the field responses. These are summarized below and preliminary responses are provided.

As U.S. citizens, Indians can buy and hold title to land purchased with their own funds. Nearly all lands of Indian Tribes, however, are held in trust for them by the United States.

- Addressing Tribal concerns in areas where there is no Land Base (e.g. Alaska). The statutory language specifically includes Alaska Natives by definition of Indian tribe. Land base is not a pre-requisite for a study under the TPP. Instead, any activity may be studied that may benefit an Indian tribe within Indian Country or that is in proximity to an Alaskan Native villages.
- Regarding resource preservation, does Section 203 only apply to preservation on Indian lands? Uncertain. However, see above, and the discussion of “significance” earlier in this report.
- Access to culturally significant subsistence resources or sacred religious sites and places on non-Indian lands may present implementation challenges. It seems this will have to be treated on a case-by-case basis, however, an effort could be made to determine which districts have experience with this so that they can share their approaches with other districts.
- If there are no tribal lands in a district area, should the district interpret this to mean there are no Section 203 opportunities? If Federally recognized tribes desire assistance with a study and the relevant area is within the district, it seems there is still an opportunity to assist them.
- Should TPP opportunities on lands managed by the Corps be viewed differently than those on lands not managed by the Corps? Might Corps land ownership connote greater responsibility? What if the activity or project requested by the tribe is in conflict with Corps ecosystem management or recreation plans at the project? There may be opportunities to address tribal needs which would occur on or involve Corps project lands through a range of Civil Works programs and activities (e.g. Natural resources management, water control, and other operations functions, Section 1135). Each opportunity should be examined individually to determine the best approach.

Questions Regarding Roles of the Secretary of the Interior in Section 203 Studies.

Discussions with some field contacts included questions as to whether DOI would have consultation/advisory, collaborative or approval roles in the Section 203 program. The emphasis on consultation and coordination with the Secretary of the Interior in the Section 203 legislation was discussed earlier in this report (see Section 1). Requirements, procedures and working relationships are still to be determined through discussions with agency staff and the tribes.

A number of DOI programs may be relevant to Section 203 studies - not only those managed by the BIA, but also FWS, NPS, and potentially others. Coordination and collaboration in studies pursued under Section 203 is intended to avoid conflicts, duplications of effort, or unanticipated adverse effects on Indian tribes. It would be useful for staff at both HQUSACE, and the field to be aware of, or have access to, information about the authorities and programs of the Department of Interior (not only BIA) and any other Federal agencies when pursuing studies and/or recommending implementation of projects with tribes. Coordination with DOI and other agencies could also explore opportunities to streamline procedures, leverage resources, and foster synergy among Federal programs to benefit the tribes, and potentially result in fiscal efficiencies.

Military Programs DoD Native American Lands Environmental Mitigation Program

Among the field responses to the Section 203 opportunities memorandum were the identification and clean-up of areas associated with past military activities. For example, the Alaska and Omaha districts indicated that tribes are interested in opportunities to address impacts associated with past military activities. While assessments and remedies may be appropriate to study under the Section 203 program, these concerns may be more appropriately addressed under the DoD Native American Lands Environmental Mitigation Program (NALEMP). The matter of whether Section 203 studies can include study of contaminant situations resulting from past military activities should be considered in Section 203 policy and guidance development.

Section 4 - Opportunities to Assist the Tribes

The Corps can assist tribes through a number of Civil Works authorities and programs. This section discusses the advantages provided specifically by Section 203. It also discusses the application of Section 22 in assisting tribes, examples of Floodplain Management Services provided to tribes, and potential opportunities to address tribal needs through project operations and management, and the Regulatory program. A brief discussion of additional technical assistance and services, including reservation master planning and “technical capacity building” is also provided for further consideration.

Advantages Provided by Section 203

Many of the study opportunities the districts identified may be pursued through existing Corps program authorities. All Civil Works programs and activities are available to the tribes and a number of examples of partnerships with the tribes have been identified. However, competition for program funding, the tribes’ inability to cost-share, and other factors have prevented tribes from fully participating in the Civil Works program. Some district offices indicated that they are unable to reach out to tribes (no funding mechanism for coordination and outreach), in contrast, other districts have active tribal coordination and assistance programs. Outside of Section 203, no authority specifically allows for studies to examine the feasibility of projects for cultural resources preservation²⁵. Additionally, all other authorities and programs involve competition with other non-Federal sponsors for the program resources.

Some of the advantages or capabilities that Section 203 adds to the Civil Works portfolio of programs include:

- programmatic or standing study authority to assist the tribes - without a requirement for individual study authority or competition with other types non-Federal sponsors for program funds
- potential reduction of a tribe’s cost share requirements based on ability-to-pay analysis
- provision for allowing the tribes to contribute their non-Federal share via in-kind services
- potentially provides coordination and study funds
- opportunity to specifically address cultural preservation needs identified by the tribes
- opportunity to emphasize the application of Civil Works authorities and programs to support tribes, trust resources and tribal needs
- potentially allows support for tribal self-reliance and economic capacity building
- potential opportunity to study a range of water related economic development and natural resources issues, including needs not typically pursued as Civil Works budgetary priority²⁶.

²⁵ However, cultural resource preservation may contribute to the significance of the outputs for some studies, e.g. ecosystem restoration or erosion control.

²⁶ Improvement of water, sanitation, and solid waste facilities of Indian reservations was identified as Section 203 opportunities in several of the responses. Inadequate environmental infrastructure systems and facilities threaten tribal community health and safety. It may be possible to study reservation or tribal community environmental infrastructure needs under Section 203, with implementation funded by BIA, HUD or EPA programs.

None the less, other authorities are still available to use in working with the tribes and depending on specific circumstances may be appropriate. Categories of *study authorities* through which the Corps can examine water and related land resource development and management needs and opportunities have been used to assist tribes, these include:

- Congressionally authorized studies, pursued under General Investigations (i.e., new start reconnaissance and feasibility studies for single-purpose ecosystem restoration or multiple purpose projects which include ecosystem restoration as a purpose);
- General Reevaluation Reports, and reformulation opportunities in conjunction with significant Post-Authorization Change Reports;
- Section 216, Review of Completed Projects (River and Harbor and Flood Control Act of 1970);

There are also a number of *programmatic authorities* through which the Corps can participate in the study, design and implementation of projects to assist tribes. These authorities are collectively called the “continuing authorities program” (CAP) and are identified in Box 13. The CAP authorities provide avenues for assisting tribes and implementing projects without receiving Congressional authorization. Studies that result in a recommended project under Section 203 must go back to Congress in order to be implemented. On the other hand, CAP studies are limited in terms of the amount of credit allowed for work in kind, whereas, a non-Federal sponsor may provide 100% of their feasibility study costs through work in kind.

Box 13. Programmatic Authorities

Erosion Protection

- Section 14, 1946 Flood Control Act (P.L. 79-526) – emergency streambank and shoreline protection for public works and non-profit public services
- Section 103, 1962 Rivers and Harbors Act (P.L. 87-874) – small beach erosion control projects
- Section 111, 1968 Rivers and Harbors Act (P.L. 90-483) – mitigation of shoreline damages attributable to Federal navigation projects

Flood Damage Reduction

- Section 205, 1948 Flood Control Act (P.L. 80-858) – small flood damage reduction projects
- Section 208, 1954 Flood Control Act (P.L. 83-780) – stream clearing and snagging for flood damage reduction

Navigation

- Section 3, 1945 Rivers and Harbors Act (P.L. 79-14) – clearing and snagging for navigation
- Section 107, 1960 Rivers and Harbors Act (P.L. 86-645) – navigation projects
- Section 204, Water Resources Development Act of 1992 (P.L. 102-580) – beneficial uses of dredged material

Environmental Restoration

- Section 206, Water Resources Development Act of 1996 (P.L. 104-303) – aquatic ecosystem restoration and protection projects
- Section 1135, Water Resources Development Act of 1986 (P.L. 99-662) – Corps project modifications to improve the quality of the environment and restore ecosystem functions.

Some of the study opportunities identified in the district responses may also be pursued through other Corps programs (e.g., Planning Assistance to States/Tribes, or Floodplain Management Services), or through operation and management at Corps projects. A discussion of these opportunities and potential concerns are provided in following paragraphs.

Planning Assistance to States Program (Section 22)

The Planning Assistance to States Program was authorized by Section 22 of the Water Resources Development Act (WRDA) of 1974, as amended. It authorizes the Chief of Engineers to cooperate with states and Indian tribes in preparing plans for the development, utilization, and conservation of water and related land resources of drainage basins located within the boundaries of the state or Indian country. Section 208 of WRDA 1992, amended the provision to specifically include assistance to Indian tribes. The amendment in Section 221 of WRDA 1996 added the opportunity for this authority to be used for *watershed studies* and *ecosystem studies*. Districts are encouraged to continue to look for opportunities to assist in these types of studies where appropriate and when identified as a state or tribal priority. The non-Federal cost sharing requirement is 50%. Fiscal year appropriations for the program are limited to no more than \$10 million, and expenditures are limited to \$500,000 per year, per state or Indian tribe but are typically much less.

“Planning assistance” under this program can include any effort or service pertaining to the planning for water and related resources of a drainage basin or larger region of a state or tribal lands, for which the Corps has expertise. The planning process can extend through the functional design process and the preparation of generic structural designs. However, planning assistance under this program cannot extend to the preparation of site-specific structural designs or construction specifications.

Since 1993, the Corps has partnered with approximately 28 tribes on 73 projects under the Section 22 program. During this period, the amount of Federal dollars spent through the Section 22 program in support of tribal requests totals \$ 3,270,400 (See Appendix F for a list of tribes involved in this program as well as a summary of Federal funding provided under Section 22). Up to this point, tribal participation in this program has been small (i.e. less than 5% of the Federally recognized tribes have participated). Two factors may contribute to this level of participation: 1) substantial competition with states for a limited amount of program funding; and 2) the requirement for the non-Federal sponsor to pay for 50% of the study costs in cash. However, in October 2000, the Assistant Secretary of the Army approved the use of in-kind services for up to ½ of the local sponsor’s cost-share²⁷. This may enable more tribes to participate in this program.

²⁷ Where as in-kind services under Section 203 may be 100%, i.e. Section 225 of WRDA 2000 does not apply to studies conducted under Section 22.

Examples of work conducted under this program include:

- Reservation flood maps and topographic mapping, flood mitigation studies, review of tribal flood control plans
- Reservation H&H delineation, H&H analysis and modeling, sediment study, river analysis
- Wetland delineation and assessment, dock evaluation
- Planning services, reservation civil planning, river corridor master planning, reservation watershed study, floodplain evaluation,
- Reservation GIS development
- Emergency response planning
- Lake flowage water quality testing, lake water and nutrient budget, water quality plans
- Marine habitat proposal, environmental restoration, estuary rehabilitation study,
- Fish impoundment study, wildlife area assessment
- Relocation study
- Cultural resources study/investigation
- Water supply and demand study

Flood Plain Management Services

Flood plain management services program (FPMS) provides the full range of information, technical services, and planning guidance within the broad umbrella of flood plain management. Services provided through this his program are funded entirely by the government, that is they are free of charge to tribal, state, local and other non-Federal public agencies without charge. However annual appropriations for this program are about \$8,000,000 annually. As a result, the requests for assistance under this program often far exceed the availability of funds and it may take more than one year to respond to any request. Nevertheless, at least three districts indicate that they have used the FPMS program to assist tribes. Some district's commented that assistance with floodplain management be specifically included in the Tribal Partnership Program. Numerous requests have been received to delineate the 100-year flood frequency on reservations because currently not all are mapped on FEMA's Flood Insurance Rate maps. Without this information, the tribal members are unable to participate in the Flood Insurance Program.

In addition to the FPMS program, the Corp may assist tribes by conducting Flood Insurance Studies using funds provided by the Federal Emergency Management Agency (see also Section 3 regarding FEMA programs). For example, acting as a "contractor" the Omaha district recently developed a scope of work with the tribes and completed a flood insurance study for the Fort Belknap, Fort Peck, Yankton Sioux, Standing Rock Sioux, and Cheyenne River Sioux Tribes. However, the district did indicate that sometimes the tribe may not have the technical expertise to review the Corps studies.

Examples of FPMS Assistance to Tribes

Jacksonville District - survey data and hydrologic/hydraulic modeling and delineation of the 100-year frequency for the Seminole Tribe.

Omaha District - floodplain delineation studies for the Omaha Tribe in Macy, Nebraska.

South Pacific Division - Addressed smaller scope/site specific information needs including flood hazard assessments for Indian Nations. However, often larger scale studies, involving hundreds of thousands of acres of land (e.g., Navajo Nation), exceed the scope of the FPMS program.

Operations and Maintenance

A number of aspects of the Civil Works Operations and Maintenance Program may be relevant to the tribal partnership program. These include the Natural Resources Management, Water Control Management, Emergency Management, and Regulatory programs.

The lands and waters managed as part of the Corps's Civil Works program Operation and Maintenance may also provide resources or opportunities important to tribes. Some districts identified opportunities that involve existing Corps projects or project lands. For example, putting up bi-lingual interpretive signs about tribal culture or native medicinal plants located on Corps project lands. Another example was to develop cultural resource inventories and management plans at Corps projects.

Some of these activities are already being pursued through the Corps recreation and natural resource management programs. Although the Corps may already be involved in some of these types of activities or have the authority to do them, funding competition among competing project needs suggest that Section 203 may provide another avenue to accomplish these efforts. However, Section 203 studies that address opportunities on Corps lands should be conducted in cooperation with the Operations project managers.

Another opportunity identified by the field involved providing recreational, fishery enhancement and economic development opportunities for tribes at Corps projects and on Corps lands (e.g. growing wild rice on project lands). Again current policies allow the Corps to lease certain land to states and tribes. Section 203 studies that involve Corps project lands should be coordinated with the Operations project manager and water control management staff.

Clean dredged material from routine navigation channel maintenance may be useful to the tribes for habitat restoration on Indian lands; similarly, woody material/tree root wads cleared under Section 208 may be useful to the tribes in restoring habitat in treaty fishing areas.

Regulatory

Although not a study or planning program, the Corps Regulatory program may contribute to tribal independence and self-sufficiency. Districts engage with tribal governments in a variety of ways to implement the Regulatory program in a manner that is consistent with tribal values and Federal requirements. Programmatic General Permits, Letters of Permission, 401 Water Quality Certification and Regional Conditions for Nationwide Permits (NWP), are examples of the ways in which the Corps works with tribes to implement the Regulatory program.

Some Corps districts have worked with tribal governments to develop procedures and conditions for proposed activities within the exterior boundaries of reservations. Tribal governments are also provided the opportunity to review and comment on public notices for proposed activities outside of reservation boundaries. In some instances tribes have also worked out procedures whereby they are notified for certain activities that may affect trust resources. These

partnerships tend to result in a mutual understanding that facilitates the conduct of the established permitting process for both parties and are endorsed wherever such government-to-government relationships are forged.

It may be possible for tribes to work with Corps regulatory and planning divisions to develop special area management plans for reservation lands. These plans provide an inventory of aquatic resources and as a subsequent effort may involve the development of abbreviated permit processing procedures in certain areas.

Reservation Master Planning and Other Comprehensive Planning Assistance

Evidently some tribes expressed interest in assistance in developing information needed for the effective management of reservation resources, and the examination of needs and opportunities associated with natural and cultural resources as well as infrastructure. Assistance with planning for flooding problems and for future development may also be part of this master planning. Such planning efforts could also serve to coordinate and better integrate the broad range of CW programs and activities that may contribute to implementation of the master plans. If Section 203 is interpreted to be appropriate for this master planning, Section 203 reports could serve to document needs and priorities for which the tribes may be assisted by not only the Corps, but by other agencies. For example, in some instances it may be appropriate to conduct the studies under Section 203, with project implementation being done by the tribes themselves with grant money from other agency programs (also see Regulatory (SAMP)).

Technical Capacity Building

Technical capacity building could contribute to tribal self-reliance and economic capacity building by fostering the development of capabilities within a tribe to address long-range water and environmental resources needs. Several of the field responses included recommendations for Corps involvement in tribal community efforts, providing examples such as support for job corps in which the tribes can develop technical skills, and development or sharing information for local college curriculum. One specifically mentioned was Sinte Gleska University, on the Rosebud Sioux Reservation.

Water Resources Capacity Building Examples

Tribal governments nominate individuals to the [Water Resource Management Technician Training Program](#) who have shown a desire to enter a new career field whose training would be in the interest of both, thereby creating a partnership between the applicant and their tribal government. Successful graduates receive college credits from the [New Mexico State University](#).

The BIA provides funding in the amount of \$15,000 to tribal governments to employ the graduate in the Water Resources or Surveying field for one year. This funding provides on-the-job training for the graduate and complements the training program by giving the graduate an opportunity to immediately put skills to work. The tribe also benefits from the graduate's expertise.

The Corps has extensive technical opportunities and training information, which may be useful to tribes and helpful in developing their technical capabilities. The most natural links may be where these needs relate to water resources management and development. There may be opportunities for individuals within tribes to gain some of this knowledge and capability through

working with the Corps on Section 203 studies. Including tribal members on Section 203 planning teams in the districts and other avenues for technical capacity building could be explored.

Corps participation in education programs provided by other agencies by providing training materials and instruction may provide another alternative to assist with technical capacity building. For example, the BIA offers two training programs aimed at developing Indian tribal technical capabilities. The BIA programs include - a Water Resources Technician Training Program (WRTTP), and an Engineering Surveying Technician Program. The programs are offered in conjunction with New Mexico State University, Department of Civil Engineering and a number of Federal agency partners including: Bureau of Reclamation, EPA, FBI, OSM, and USFWS. For more about the program see: <http://www.doi.gov/bia/water/water-re.html> . Staff from the Seattle District have participated as instructors in this training. The BIA partnered with the district and funded the Corps' participation. More formalized or routine arrangements for Corps participation in this and other technical education programs could be explored. Other technical contributions to tribal self-reliance and technical capacity building may be cost-shared, fully funded by the tribe, or perhaps may have to be examined by the ASA(CW).

Section 5 - Section 203 Program Management Issues

A number of program management issues need to be examined and addressed in planning for the implementation of the Tribal Partnership Program under Section 203. These include the scope and nature of appropriate studies and their products, the relationships of districts, divisions and HQUSACE in managing the program, the nature of agreements between the Corps and tribes, budgetary prioritization, and program performance indicators. In addition, special concerns regarding involvement of tribes as well as making sensitive information available to the public should be considered. The development of special protocols for working and coordinating with the tribes may be necessary along with promoting awareness and skills for working with tribes to insure their concerns are not only addressed in Section 203 studies but in other studies and projects as well.

Alternative Scopes of Section 203 Implementation

The development of Section 203 implementation guidance will need to address the potential scope of opportunities included in studies carried out under this authority. A number of options are presented below.

- *Assist with water resources projects that address NED and NER kinds of outputs.* This seems the most obvious scope to adopt. It is consistent with the thrust of most other civil works authorities and programs. It, however, may not accommodate cultural resources preservation which is included in Section 203.
- *Assist with water resources projects that address NED and NER and cultural resources kinds of outputs.* This scope more closely encompass the intent of the legislative language in Section 203. However, adopting this scope for Section 203 implementation emphasizes the need to develop better evaluation frameworks better accommodate cultural resources formulation objectives as either single or one of multiple project purposes.
- *Assist with water resources projects that address NED, NER, and cultural resources, including consideration of benefits related to tribal self-reliance and economic capacity building, and possibly measured in terms of RED and OSE.* These studies may include protection and enhancement of subsistence resources. They could also potentially address planning for improvement of water, sanitation, and solid waste facilities of Indian Reservations, and possibly other infrastructure needs on tribal lands. It may be possible to study reservation or tribal community environmental infrastructure needs under Section 203, with implementation funded by BIA, HUD, EPA programs, or in coordination with state programs.
- *Focus Section 203 specifically on cultural resources preservation, since we have used other avenues for assisting the tribes.* This option may be attractive because Section 203 provides the only programmatic study authority that specifically includes tribal cultural resources preservation. Needs and opportunities to address this area of concern were

identified in a number of field responses. However, examination of the legislative provision makes it clear that the intention is broader than would be allowed by a focus limited to cultural resources preservation.

- *Apply Section 203 to any type of study the tribe needs assistance with.* The notion of a “tribal partnership program”, as per the title of Section 203, would seem broader than working with tribes on feasibility studies. However, the legislative language does appear to provide “sideboards” for this assistance, relating it specifically to water resources. Paragraph (b)(2)(B) of Section 203 under “Matters to be Studied” allows that Section 203 studies may address *such other projects as the Secretary, in cooperation with Indian tribes and the heads of other Federal agencies, determines to be appropriate.* Like the legislation title, this aspect of the legislation appears to convey a broad intent in working with the tribes on studies. Carrying this broad application further, Section 203 could potentially be used as basis for organizing potential assistance to tribes under all Civil Works authorities and programs, as this approach would help foster a broad range of tribal partnership and assistance opportunities.

Alternative Types of Studies and Products.

The legislation authorizes studies to determine the feasibility of carrying out water resources development projects which address flood damage reduction, environmental restoration and protection, and preservation of cultural and natural resources. This has been interpreted to mean that Section 203 is a feasibility study authorization; no implementation authority was provided so implementation would be carried out either after specific authorization or via an existing program such as Section 206, or depending upon the work, through the existing programs of other agencies.

Additional discussion with HQ should examine whether the Section 203 studies can produce other products related to tribal management and development of water and related natural and cultural resources on their lands. Such studies may include watershed studies that result in a range of recommendations, including projects for construction, but other actions and information as well (e.g. floodplain delineation, land and resource use strategies and actions to be coordinated with other agencies). The implementation guidance for Section 202 of WRDA 2000, Watershed and River Basin Assessments, states that the product of watershed assessments can be a watershed planning document that is intended to guide future watershed resources development and management. This philosophy may be useful in assisting tribes in these types of studies²⁸. Additional products could include natural resources inventories and management plans, cultural and historic resource inventories and management plans (including recommendations regarding renovation and relocation), HTW assessments, and emergency management plans.

²⁸ The implementation guidance for Section 202 of WRDA 2000 can be found at: http://www.usace.army.mil/inet/functions/cw/cecwp/branches/mp_and_dev/Wrda00/wrda00202.PDF.

Several field responses noted that Section 203 could provide the Corps with an opportunity for increased resources available for providing Indian Nations and their Reservations an increased level of service. In this regard, they urged that Corps policy for implementing this section should be as general/flexible as possible in order to accommodate cultural diversity and to provide room for “non-traditional” approaches to problem solving. Recommendations were that any required agreements with tribes (e.g. MOUs) should be greatly simplified, e.g. similar to that used for the Planning Assistance to States Program.

Overall Management of the Program at HQ and at Districts and Divisions

Management of the program may be handled at the Division and District levels with minimal involvement by headquarters (with the exception of funding and policy direction). Native American Coordinator (NAC) positions at all districts may enable effective management of the program at the district level and enable effective working relationships with tribal governments within their region. The NAC positions vary in location among the district offices with some located in the Executive Office, in PPMD or in Planning Divisions. Currently only about a half dozen districts have full-time Native American Coordinators. These individuals often have other duties in addition to serving as NAC. Wherever located, the NAC needs to be enabled to provide direction and receive input throughout the district organization. A person at the division level should also be designated to coordinate tribal initiatives and provide consistent guidance across districts within a region.

Program funding may be managed at the headquarters level and criteria should be developed to guide the distribution of funds to the divisions and subsequently to the districts. In addition to requests for study funds provided by districts and divisions, other criteria may be useful for making decisions regarding the distribution of study funds. For example, a formula that considers tribal land base, number of tribes, and tribal population may be appropriate. In addition, it may be appropriate to consider retaining a portion of the funds appropriated to support studies that may address national program needs identified by headquarters and tribes.

Coordination with Tribes. Some districts commented that there are no funds available for use in visiting tribes, to inform them about available Civil Works programs and services, to learn about tribal needs and priorities, or to coordinate or negotiate potential studies and projects. Perhaps some Section 203 funds could be used for these purposes. Special Investigations funds may also be made available for this purpose.

Project Management & Native American Coordinators. Several Corps offices have developed organizations, protocols or documents which may be useful to examine planning for management of the Section 203 program. Two examples are provided below.

CESPD has assembled a *Federally Recognized Tribes Working Group* including the MSC and districts. Through this group they developed and offered a number of suggestions regarding Section 203 TPP management, including:

1. Assignment of Indian Nations coordinators at the Division and District levels,
2. Training and education to develop a better understanding of Native American issues and expertise in working with tribal governments
3. Account Teams to implement Corps strategy and coordinate activities between the Corps, tribes and other agencies
4. Account Plans developed by Account Teams for outreach, identification, and action for potential work efforts to assist tribal governments
5. Support of Customer Accounts created and developed under Account Plans for project efforts
6. Development of MOA(s) between agencies and Government to Government Agreements for execution of partnership activities and efforts for Indian Nations
7. Development of projects under Corps study authorities, and
8. Project execution in cooperation and partnership with tribal governments and other agencies.

The Northwest Division has completed a Native American Desk Reference for program and project managers supervisors and staff. This document is intended to provide guidance for those in the division who interact directly with the tribes. It may be used as a model for developing similar resources for other divisions and districts.

Consultation.

Outside of the Native American Coordinators in the districts, many Corps staff may be unaware of consultation policy, requirements and protocol. The Corps does not have consultation policy specific to the Civil Works program. Instead, the Department of Defense (DoD) policy and guidance is referenced as applicable. This information is found in DoD American Indian and Alaska Native Policy (1998), and AR 200-4, Cultural Resources Management. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments was signed 6 November 2000. The E.O. is intended to *“establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes.* Some districts have tailored the DoD information and this recent Executive guidance into plans and procedures for use in their programs and activities. This information may be of interest to other FOA. It also may be useful in development of Section 203 implementation guidance.

Program Performance Indicators.

The language in Section 203(e) authorizes appropriations for carrying out Section 203 for each of the fiscal years 2002 through 2006. Consideration should be given to evaluation of the

program in the third or fourth year, along with whether any coordination or reporting requirements that may be needed for this evaluation, and the development of recommendations regarding extending this authority beyond 2006.

How will the performance of this program be judged? The number of projects implemented, the number of tribes assisted, and the amount of money spent could be reported, however, this information says nothing about “outcomes”. Consideration could be given to establishing goals such as ultimately providing flood damage reduction or restoration of significant ecological resources for every tribe. Other goals could include developing a tribal lands management plan for each interested tribe to help enable them to manage, develop and protect the resources on their lands as they see fit. But these goals may not be suitable for all the tribes, nor may they be interpreted as appropriate Section 203 study efforts. Plus these goals may not lead to the type of performance information that will be useful in evaluating progress and success of the program.

It would be helpful to gain insights both from within the Corps, and from the tribes as to what should be examined in evaluating program success. Perhaps the initial performance goals could be to have the staff, reference materials, consultation guidelines, and budget in place to begin working with tribes in a consistent and effective manner. While this is being established coordination with Corps field offices and tribes would be useful, if not essential, in discussing how to conduct program performance analysis.

Cost Sharing Agreements.

Several field responses included recommendations that any required agreements with tribes (e.g. MOUs) should be simplified, e.g. similar to that used for the Planning Assistance to States Program. Guidance developed for Section 22 may be useful in considering appropriate documents and procedures for Section 203. Types of agreements for Section 22 studies costing \$100,000 or less are to be kept as simple as possible, using less formal “Letters of Agreement.” More complicated studies and studies costing in excess of \$100,000 may have to use a more formal “Cost Sharing Agreement.” The guidance in ER 1105-2-100 states that *[i]n either case, every effort should be made to keep the negotiation and execution of agreements as simple as possible to conserve the limited program funds.*

The non-Federal share of a Corps study or project usually consists of some combination of the following components: in kind services, a cash contribution. Both of these would be considered in the cost sharing agreements with tribes.

Prioritization

For Section 203, as with other Civil Works programs, the Corps will need to make “portfolio” decisions regarding how to spend limited resources among a potentially large number of competing demands on the program. It is important to emphasize that the FOA should collaborate with tribes to understand their priorities relative to assistance through Section 203.

Some or all of the following may be considered in initial thoughts about prioritizing Sec 203 studies:

- *Treaties & Laws & Executive Order Responsibilities*
- *Tribal Identified Needs*
- *National Policy and Budget priority*
- *Health & Safety* - Should studies that focus on human health and safety matters as they affect the tribes receive priority? Inadequate environmental infrastructure development threatens public health. Improvement of water, sanitation, and solid waste facilities of Indian reservations has been identified by some to be a significant tribal concern²⁹.
- Protection, Enhancement, Restoration Trust Resources including Subsistence Resources
- *Protection of Sacred Sites* - this may help in the consideration of significance in outputs for projects.
- *Support to Economic Capacity Building* - both basic needs like environmental infrastructure and economic development may support tribal capacity building. Perhaps this would be most relevant with the poorer tribes?

Prioritization may also be influenced by attempting to focus early program efforts on studying those needs that involve Reservation, tribal allotments, or Corps lands because these issues may not involve complex real estate concerns or require the cooperation of private, state, or locally owned land. Pursuit of studies that involve these lands may allow early successes under the program. Section 203 enables the Corps to work with tribes to address their needs. It should not be used as a funding source to implement compliance activities that are required by other laws when a Corps project or activity involves protected resources.

Lessons may be learned from the prioritization approaches used by the Department of Defense (DoD) Native American Lands Environmental Mitigation Program (NALEMP). NALEMP is a 10 million-dollar program implemented by the DoD Office of the Deputy Under Secretary of Defense for Environmental Security. These funds are used to mitigate the negative impact associated with prior DoD activities. The use of cooperative agreements enable tribal governments to work in partnership with DoD to address environmental impacts on tribal lands resulting from past DoD activities and allow greater access to training and technical assistance.

Public Involvement

- There are two aspects of this topic to be considered. Working with the tribes so they can better participate in the CW public involvement process, and addressing tribally sensitive information in public involvement and information procedures (e.g. NEPA). These issues were not examined during the study in detail.

²⁹ It is understood that other agencies have authorities for funding implementation of these needs, only the study of an planning for these needs is suggested here.

Staff Awareness and Skills

In addition to tribal coordinators, other Corps staff will no doubt be working with tribes in conducting Section 203 studies. These staff may have had limited prior experience with protocols and practices important to working with tribes. An examination of required awareness and skills is needed to help assure successful Section 203 implementation and working with the tribes. Some preliminary ideas on some of the topics and issues that require attention are provided below.

- Facilitation and development of appropriate protocols and business practices. The TPP authority could be used to emphasize the need for organizing and developing awareness and capabilities regarding the protocols and practices important for effectively communicating with and working with tribes (e.g., communications skills, awareness and sensitivities, responsibilities regarding Indian Self-Determination, tribal self-governance). A wide range of staff positions within the Corps should be targeted, including study managers, tribal coordinators, district commanders, other.

The Department of Defense has developed staff and executive training sessions on American Indian Cultural Communications. It is open to DoD staff from Operations, Logistics, Project Managers, Legal, Environment, Public Affairs, Procurement and Administration. The implications of the DoD policy reach far beyond cultural affairs to include range operations, BRAC and FUDS projects, and NEPA requirements, and other activities.

AMERICAN INDIAN CULTURAL COMMUNICATIONS- three and a half days - The course covers the "how to's" for understanding Indian law history, diverse American Indian / Alaska Native cultures and the resulting communication style differences. Understanding these cultural factors can help DoD successfully consult with tribes.

EXECUTIVE OVERVIEW - half day - The training is designed for senior leadership, providing an overview of the DoD policy, the legal precedence for the policy, and the consultation requirements under current laws and executive orders. Training includes time for Q&A with DoD legal staff.

[Two documents mentioned earlier in this report, the Native American Program Desk Guide developed by the Northwest Division, and the "protocol" suggestions developed by Alaska District, may serve as useful sources of information to facilitate awareness, develop protocols and gain insights into tribal culture. Also see previous discussion under "Overall Program Management," and "Consultation"]

- Help ensure that American Indian, Alaska Native and Native Hawaiian concerns are considered in policies, regulations, and programs that affect them. Assist and promote tribal participation in carrying out CW policies, programs, and activities. The development of special protocols for working and coordinating with the tribes may be necessary along with promoting awareness and skills for working with tribes to insure their concerns are not only addressed in Section 203 studies but in other studies and projects as well.
- Work with Indian offices in other agencies, tribes, intertribal organizations and other partners in pursuing support under the TPP.
- Educate field and program managers concerning Indian Self-Determination, Tribal Self-Governance, and effective means of working with tribes.

- Consider rotational assignments of D/A interns or personnel to work with tribes to both facilitate improved awareness and communication, and to foster development of skills.

Relation of Section 203 to Other Corps Tribal Initiatives

Other Corps tribal initiatives may provide information and insights regarding implementation of Section 203. Two of these are summarized below.

USACE Indian Strategy

In 1994, and subsequently, Presidential Executive memorandums have recognized the unique relationship with Native American Tribes and provided direction for "Government to Government" relationships. In the President's FY01 Budget Proposal included support of Federally recognized tribes by proposing an increase of 1.2 billion dollars to 9.4 billion dollars on Federal Indian programs. The Corps, in response to this executive branch interest, prepared a draft *USACE Indian Nations Strategy*, November 2000, which set the tone for future Corps involvement. An update of the draft Strategy is underway, based on input from a meeting of Native American Coordinators in June 2001. Section 203 address could address some of the strategic actions, depending upon how it is implemented.

Assessment of Corps/Tribal Intergovernmental Relations

In 1995 the Corps of Engineers met with representatives from 186 or 57% of the Federally Recognized Tribes from the lower 48 states, and conducted a number of data collection activities to assess the scope, extent and quality of Corps-Tribal interactions. Several of the issues identified at these workshops and meetings, and in the report that was prepared are relevant to the way in which the Corps implements the Tribal Partnership Program. The information provided in the 1996 Report (USACE, 1996) indicates that the Corps has had interactions with Tribal Governments in most of its program areas including: Planning, Engineering and Construction, Regulatory, Operations and Maintenance, Emergency Operations, and Real Estate.

Several recommendations were made at the conclusion of the workshops. Some of these recommendations involve improvements that can be made internally and others were identified as "**Executive Decision or Beyond Corps Authority**". These recommendations and their status if known, are summarized in the following table.

Recommendations from the 1995 Native American Intergovernmental Relations Task Force (USACE, 1996)	
Recommendation	Status
Presentation on Government to Government relations in training for new Commanders and at Corps-wide meetings.	Implemented in 199. Training video initiated but not completed.
Insert tribal communication module into Prospect courses.	
Develop 1-1/2 – 2 day exportable training course on trust and consultation with Tribes.	
Establish and maintain permanent project file that documents the interrelationships between project operations and tribal interests.	
Establish headquarters coordinating council within CW to provide policy for coordination of tribal matters.	In March 2001 the Tribal Issues Group was established at Corp Headquarters
Establish a CW policy on consultation with Indian Tribes; develop programmatic guidance.	CW PGL –57 and subsequently incorporated into Planning Guidance Notebook ER 1105-2-100 Appendix C; USACE Indian Nations Strategy
Issue interim guidance on consultation requirements until a consultation policy is fully formulated.	DoD American Indian and Alaska Native Policy (?)
Develop a post-workshop “customer satisfaction survey” to evaluate the progress in improved interactions.	Not accomplished
Develop an opportunity for tribal staff to attend Prospect courses and cross training through Intergovernmental Personnel Act (IPA) program.	Not accomplished
Develop a strategy for including tribal members and governments in the Corps hiring, purchasing, and property surplus process.	Check St. Paul & Omaha
Recommend to BIA that, in cooperation with other appropriate Federal agencies, a “one-stop shopping” guide to Federal water programs be developed for use by tribes	
Select Examples of Issues that are “Executive Decision or Beyond Corps Authority”	Status
Lack of Congressional funding for more programs specifically benefiting tribes.	Section 203 & Section 208 WRDA 2000
Need for smaller cost share requirements for tribes	Section 204 WRDA 2000
Congressionally mandated Corps program to aid tribes.	Section 203 WRDA 2000
Assumption of Section 404 permitting	To date no tribes have attempted to Assume 404 (EPA has review and approval for assumption) Some are developing programmatic general permits with the Corps.
Coordination of similar programs	
Variability in funding cycles and its effect on tribal budgets and planning	
Federal protection of tribal water rights	
Federal acquisition regulations need to recognize sovereign tribal status	

Section 6 - Recommendations and Future Needs

Preliminary ideas regarding future actions and efforts necessary to help assure successful implementation of Section 203 are presented below. These include both near-term and longer range efforts.

Near Term

Legislation

- Special cost sharing for tribes where the first \$200,000 of any study or project is 100% Federal, similar to Section 1156 of WRDA 1986, Cost Sharing Provisions for the Territories. Rationale for this would build off Federal trust responsibilities and the unique economic situations of many tribes.
- Authorize the Corps to accept and use PL 93-638 funds provided by the tribes for their non-Federal cost share for studies and/or project implementation.

Funds Eligible for Cost Sharing

- Identify other Federal agency funds that the Corps may accept from the tribes as their non-Federal cost- share and include them in an amendment to Section 203, or at least in an internal Corps guidance document, or possibly and MOU with relevant agencies.

Seek Tribal Input

Identify and pursue opportunities to meet with tribal representatives to further identify Section 203 opportunities and implementation issues. Explore opportunities for mutual exchange of information and ideas relevant to improving the ability of the Corps and tribes to work together, including enhanced participation in formulation and evaluation.

Federal Agency Cooperation Agreements

Because the Civil Works Tribal Partnership program was authorized only recently, most agencies are either unaware of the authority or uncertain as to how the Corps intends to implement it. Meeting with the Department of the Interior and other Federal agencies concerning trust responsibilities and to discuss the alternative role(s) of the Corps Tribal Partnership Program would be helpful to successful implementation of Section 203. Such meetings would be useful fostering better coordinated Federal efforts to enhance tribal self-governance and intergovernmental relationships with tribes. Coordination will identify opportunities to leverage resources, avoid duplication of effort, avoid conflicts and unanticipated effects on tribes, and more effectively assist tribes with their water and related land resources needs. This early consultation and coordination with other Federal agencies is consistent with Section 203 (c) of WRDA 2000. It may be helpful for HQUSACE and ASA(CW) staff to

coordinate with DOI and other agencies about potential collaboration and coordination in assisting the tribes through Section 203 and their respective programs.

Evaluation and Justification of Studies Conducted under Section 203

- The nature of outputs significant to and appropriate for Section 203 studies which focus on cultural resources protection or preservation presents challenges to the Corps' formulation and evaluation framework. Examination of other experiences which involved examination and quantification of cultural resources significance and outputs would be helpful.

One potentially useful example is the ranking system mentioned on page 35 of IWR-Report 96 EL-3 applied at the Yatesville Reservoir Project where >100 sites were recorded (based on work by Creasman (1979), and Davis 1982)). In this example, study efforts ranked archeological sites involving five problem domains (settlement structure, bioarcheology, culture definition, subsistence, and technology) on a scale of 0-3. This approach was used to rate sites and site scores were evaluated relative to the mean - those above the mean were thought to be potentially significant, and were further evaluated on the same scale in three areas: integrity, uniqueness and site complexity. Two other potentially useful examples identified but not yet examined include a Los Angeles District study related to Navajo resource development and management needs, and work done on "areas of influence" in Memphis District.

- Ethnic Significance. A few case studies in the bibliography developed by Briuer and Mather (1996)³⁰ illustrate how ethnic significance can be measured and evaluated (see Doyel 1982; Cleeland and Doyel 1982). The passage of Federal legislation relating to Native Americans (i.e., the *American Indian Religious Freedom Act* of 1978 and the *Native American Graves Protection and Repatriation Act* of 1990) and the publication of *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King 1990) has further emphasized the importance of ethnic significance in both legal and ethical terms.
- Concept of "place". The "sense of place" involves understanding of how tribes view the land and their attachments to certain places. A recent Forest Service document describes three forms of place. The cultural/symbolic sense of place which involves a sense of historical, spiritual and cultural traditions in the face of competing land views from outsiders. A second form of sense of place is instrumental/goal directed with a relationship with the land characterized as one of guardianship and caretaking, rather than ownership. Individualistic senses of place are imbedded in family meanings and histories. (See McAvoy, L., McDonald, D., 2001. *American Indians: Sense of Place and Contested Terrain*. Technical Report PSW-98-001CA. Pacific Southwest Research Station, Forest Service.)

³⁰ Briuer, F.L. & C. M. Mathers, 1996. Trends and Patters in Cultural Resource Significance: An Historic Perspective and Annotated Bibliography. IWR Report 96-EL-1, January 1996

- *Cultural and Tribal Planning Manual* – The development of material that provides information and ideas on working with tribes through various aspects of the planning process may be useful in implementing Section 203, as well as working with tribes on other studies. Such a manual could potentially be developed as part of the environmental planning manual series currently under development through IWR-MD’s manual development program.

Refinement of implementation issues

It would be useful to send copies of the summary of field responses to the HQUSACE Section 203 memorandum (February 2001), along with summaries of the issues identified for comment, including issue refinement and identification of additional issues.

Long Range

Improve Understanding and Integration of Tribal Perspectives into Section 203 Planning

Building upon the near term effort mentioned above, develop and hold workshops with tribes, and participate in meetings as appropriate to gain and develop new ideas regarding assessment of outputs from projects recommended under Section 203.

Potentially the FOA, working with tribes, could develop a profile on each tribe in their respective area. The profile was used along with personal contacts within the tribe to design a specific outreach and assistance effort for each tribe fitting to the tribes respective needs.

Research on Analytical Methods for Cultural Resources Preservation Outputs

Methods that can be used in formulating and evaluating cultural resources studies will be useful for implementing Section 203 studies. Material developed, and lessons learned from the “near-term efforts” discussed above would be used to develop more detailed research rationale and approaches.

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Appendix A - Implementation Guidance for Section 203 of WRDA 2000

CECW-PG

8 January 2002

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS AND DISTRICT COMMANDS

SUBJECT: Implementation Guidance for Section 203 of the Water Resources Development Act of 2000 (WRDA 2000), Tribal Partnership Program

1. Section 203 of WRDA 2000. Section 203 of WRDA 2000, Public Law 106-541, authorizes the Secretary of the Army, in cooperation with Indian tribes and the heads of other Federal agencies, to study and determine the feasibility of carrying out projects that will substantially benefit Indian tribes. The projects would be undertaken at sites primarily within Indian country, as defined in 18 U.S.C. 1151. Section 203, titled the Tribal Partnership Program (TPP), also establishes cost sharing provisions, defines cooperation and consultation requirements, and authorizes appropriations. The statutory language for this section is contained in enclosure 1.
2. Matters to be Studied. Section 203 provides an authority through which the U.S. Army Corps of Engineers can conduct studies that will substantially benefit Indian tribes. The statutory language for the TPP defines the matters to be studied to include flood damage reduction, environmental restoration and protection, preservation of natural and cultural resources, and, “such other projects as the Secretary, in cooperation with Indian tribes and the heads of other Federal agencies, determines to be appropriate.” The TPP provides an opportunity to assist with water resources projects that address economic, environmental and cultural resources needs.
3. Program Management and Budgeting.
 - a. When funded, Section 203 studies shall be part of a discrete program. Section 203 studies will subsequently be proposed for funding under this program, subject to the approval of the Administration. HQUSACE will recommend study proposals that most clearly address the matters to be studied above and, in the interest of developing program priorities, specific annual themes may be identified for the program. These annual themes, to be developed in HQUSACE and approved by the Office of the Assistant Secretary of the Army for Civil Works (OASA/CW), will be consistent with the statutory language establishing the program and will provide focus to prioritize proposals in a limited budget environment.
 - b. When funded, up to \$ 100,000 of Federal funds may be used to prepare a reconnaissance study in accordance with guidance in ER 1165-2-100, Appendix G, paragraph G-7. The purpose of a reconnaissance study is to identify the problem, the project purposes, types of outputs, and whether or not the intended project purpose and/or likely outputs are consistent with Army/Corps implementation and budgetary policy. If it is determined that

the outputs are not consistent with Army/Corps implementation and budgetary policy, no further studies should be undertaken and a recommendation as to an appropriate course of action should be made to the tribal interests. If it is determined that the outputs are consistent with Army/Corps implementation and budgetary policy, you must identify a cost sharing partner, define the scope of the feasibility study and negotiate a Feasibility Cost Sharing Agreement (FCSA). Recognize that these studies have a cost limit, so discipline must be exercised throughout the process in scoping the level of detail and duration of such studies, especially the reconnaissance phase, in order to maximize the return on our efforts and preserve as much funding as possible for as many studies as possible.

c. Proceeding into the next phase of study will be subject to HQUSACE approval of the reconnaissance study and execution of the FCSA. Section 203 feasibility studies will be cost shared 50/50 and all the sponsor's share may be provided as in-kind services. The use of other Federal agency funds for the non-Federal share of the feasibility study costs shall be guided by Article II.F. of the model FCSA, which requires approval of the use of those funds by the contributing agency. Section 203 states that any cost sharing agreement for a study under this provision shall be subject to the ability of the non-Federal entity to pay. A draft Ability to Pay rule is currently being developed for coordination with the Office of the Assistant Secretary of the Army (Civil Works) and the Office of Management and Budget. When finalized, this rule will apply to section 203 studies. Until such time as the rule is final, reductions under the section 203 Ability to Pay provision cannot be applied.

d. In accordance with Section 203 (c), all activities undertaken under this authority must be coordinated with the Department of the Interior to avoid conflicts and to consider the authorities and programs of DOI as well as other Federal agencies.

e. Pre-authorization feasibility reports shall be sent, upon completion, to HQUSACE for review and approval. Approved Section 203 feasibility reports shall be submitted to the ASA(CW) for transmittal to OMB and ultimately to Congress. Since section 203 does not provide construction authority, additional congressional construction authority will be required.

Encl

/s/
JAMES F. JOHNSON
Chief, Planning and Policy Division
Directorate of Civil Works

DISTRIBUTION:
(see pages 3 & 4)

Appendix B - Section 203 Memo to Field

CECW-PG

S: 15 February 2001

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS AND DISTRICT COMMANDS

SUBJECT: Water Resources Development Act of 2000, Section 203. Tribal Partnership Program

1. Section 203 of the Water Resources Development Act (WRDA) of 2000, Public Law 106-541, authorizes the Secretary of the Army, in cooperation with Indian tribes and the heads of other Federal agencies, to study and determine the feasibility of carrying out projects that will substantially benefit Indian tribes. The projects would be undertaken at sites primarily within Indian country, as defined in 18 U.S.C. 1151. The statutory language for this section is contained in enclosure 1.
2. Projects that may be studied under this newly created Tribal Partnership Program (TPP) include those for flood damage reduction, environmental restoration and protection, preservation of natural and cultural resources, and "such other projects as the Secretary, in cooperation with Indian tribes and the heads of other Federal agencies, determines to be appropriate." The TPP is the most recent expression in recognition of the 29 April 1994 Executive Memorandum, in which President Clinton reaffirmed the United States' "unique legal relationship with Native American tribal governments." Implementation of the TPP will be an effective means of fostering government-to-government relations with Indian tribes and offers opportunities to protect, preserve, restore and develop vital tribal trust resources.
3. My staff is embarking on the important task of developing implementation guidance for WRDA 2000. Section 203 carries a broad legislative mandate to assist tribal governments and communities in new and important ways. This new authority emphasizes our ability to partner with tribal communities as sponsors in not only traditional Civil Works projects such as flood damage reduction and environmental restoration and protection, but also in projects for preservation of cultural and natural resources.
4. To ensure that our implementation guidance captures the broad meaning of this WRDA 2000 provision, I am seeking your views on the range and character of study opportunities that may characterize the section 203 program within your command. I invite you to develop ideas and narratives that reflect input from the wide array of specialists within your command. You may also chose to consult directly with tribal representatives as you develop your response to this memorandum.
5. Responses to this request are due in hard-copy and electronic format by 15 February 2001. They should include the substantive input and a point of contact who can be available to answer questions or participate in further discussions. My staff manager for the implementation of the TPP is Paul Rubenstein, Guidance Development Branch, Planning and Policy Division. Mr. Rubenstein can be contacted by telephone at 202-761-4251, and electronically through the Corps electronic mail system.

FOR THE COMMANDER:

Encl

HANS A. VAN WINKLE
Major General, USA
Director of Civil Works

Appendix C - Summary from District Responses

Categories of Section 203 Opportunities

In response to CECW-PG Memorandum dated 18 January 2001, districts and divisions provided information about potential Section 203 study opportunities, issues and questions associated with implementation of this new program. In preparing the responses, many of the districts sought input from the tribes, attempting to present a cross-section of policy issues, challenges and potential study opportunities that will be useful in drafting implementation guidance for the program. Several districts noted that further discussions with tribes would be necessary to ensure that tribal views are addressed and/or reflected as the program is developed. The issues raised are summarized and discussed in Section 3 in the main body of this report.

A number of suggested Section 203 opportunities pertain to cultural resource objectives - some specifically to protect, enhance or restore Indian culture, artifacts, resources. Some of the proposed activities involve activities similar to “traditional” CW projects, e.g. flood damage reduction, but not only for economic benefits but directed at culturally significant resources (e.g. reducing flooding which destroys culturally significant resources).

The information provided in the responses includes a combination of study “objectives” and “measures” that could be applied in projects. For example, reduction of erosion or sedimentation was identified in a number of instances but for different purposes: reduce property damage, restore aquatic ecosystem, or protect culturally significant sites or artifacts, via some specified measure (e.g. rip rap). No attempt was made to reconcile study goals, objectives, project purposes or measures for opportunities that were identified. The study team determined that this mix of information is useful in helping to illustrate the range of TPP initiatives and potentially, the nature of the guidance needed for the program.

Table C-1 below, presents categories of the Section 203 study opportunities, and is followed by examples of the opportunities provided in the responses. **Table C-2** in this appendix is a compilation of the data provided by the Corps field offices, including Corps contacts, general opportunities identified, policy and other issues or questions they identified.

Table C-1. Categories of Section 203 Opportunities	
<ul style="list-style-type: none"> - Flood Damage Reduction - Erosion or Sedimentation Control/Mgmt - Watershed, River Basin & Comprehensive Planning - Ecosystem Restoration & Management - Floodplain Mapping, Delineation, GIS, Surveys - Wetland/Natural Resources Mapping - Water Control Management Changes - Cultural Resources Protection, Management - Real Estate - Self-Reliance & Economic Capacity Building - Technical Capacity Building 	<ul style="list-style-type: none"> - Emergency Management and Preparedness - HTRW assessment, clean up, management - Water Quality - Water Supply - Dam Safety - Community Infrastructure (Water, Roads, Schools) - Recreation - Safety - Recreation - Lewis & Clark Bicentennial (cultural resources, recreation, capacity building)

Examples of the needs and opportunities identified in the field responses are provided below. Some of the examples could be placed in multiple categories, depending on the specific study objectives.

Flood Damage Reduction

Among the responses included needs or opportunities for:

- flooding threatening homes, schools
- ice-related flooding; bridge substandard and does not pass ice flows - only access
- non-structural FDR measures in conjunction with ecosystem restoration

Erosion/ Sedimentation Control/Management

- Stream bank erosion control
 - Runoff and erosion problems attributed to livestock grazing
 - Erosion attributed to Corps lake water control fluctuations; rip rap and cribbing to slow process
- (Also see Cultural Resources, Water Quality, and Economic Capacity Building)

Watershed, River Basin and Comprehensive Planning

- Watershed studies to examine a range of needs and opportunities, including runoff retention, channel clearing, wetland creation, habitat development and restoration of community floodplain, other social, environmental and cultural issues, instream flow needs, emergency preparedness and early-warning.
- Master plan for infrastructure development, including preserved environmental/habitat areas, along with recreation complex and trout hatchery and fishery, cultural amenities emphasizing Native American culture.

Ecosystem Restoration and Resource Management - These examples, while related to ecological resources, may pertain objectives either related to ecological goals (e.g. ecosystem health and integrity, biodiversity), or cultural and spiritual goals, or some combination of both. Some of the resource management (e.g. fisheries) opportunities may be targeted toward economic capacity building.

- Low head dams for flow regulation
- Problems caused by decreased sediment flows
- Wildlife management plans
- Propagation or reintroduction of threatened and endangered species
- Study to ensure habitat suitability for important species
- Fluctuating releases from dam adversely affect piping plover and pallid sturgeon habitat.
- Removal of fish passage obstructions
- Wetland restoration
- Modify tidal inlet for fisheries improvement
- Fish passage/sea lamprey control
- Aquatic plant control
- Removal of causeway restricting tidal flows in bay
- Reduce impacts from commercial feed-lot and gravel mining operations (aquatic eco-restoration)

Floodplain Mapping, Delineation/GIS/Survey

- Floodplain delineation and mapping to aid in future planning and development
- Floodplain hazard study

Wetland/Natural Resource Mapping

- Tribal input to wetland delineation and 404 permits

Water Control Management Changes

- Lake Oahe level fluctuations causing sedimentation & erosion - loss of thousands of acres along river system

- Kinzua Dam - changes in water control may benefit tribe and other recreation partners (relates to economic capacity building)

Cultural Resources Protection, Management

(See Also: **Recreation - related to Lewis & Clark Bicentennial below**)

- Cultural resources inventory and management plan- - place interpretive information on native medicinal plants along trails
- Inventory of traditional medicinal plants located on reservation
- Management plan and interpretation plans for priority cultural and historic sites; many sites are long river courses; examples include council houses, burial grounds, & early settlement sites.
- Preservation/restoration of historic structures to preserve history and culture and for contemporary uses (e.g. office space- Basic office furnishings for Cultural interpretive center)
- Youth camp/retreat adjacent to bison pasture
- Language preservation initiative
- Protect cultural and traditional resources via flood proofing, and access restriction
- Cultural interpretive center
- Relocation and renovation of powwow grounds due to bridge replacement
- Archeological survey of tribal fee and ancestral lands; preparation of a cultural resources management plan for tribe; video of tribal heritage to preserve tribal history in ways written reports cannot
- Protection of cemetery where graves were relocated during construction of Corps projects - bank protection (Kinzua)
- Cultural resources protection plan for flowage easement areas on reservation.
- Construction of curation facilities that meet the requirement of 36 CFR 800, to be built on Indian Lands.
- Bulletproof interpretive signs
- Corps Process: Honor and nurture a "creative participatory process" of Native science and culture by involving key individuals in identifying & preserving that which is considered "sacred" by all Native peoples
- Gather stories from elders that essentially define the "ethics of sacred spaces" that will educate younger tribal members and outside entities through outreach activities
- Develop protection plans and strategies for the future that will incorporate Native "science, ceremony and culture" which will be established as being as important as western engineering/ economic plans
- Develop efforts to collaborate with other tribes facing the same problems.
- Traffic and crowd control to protect sensitive sites and resources

***Notes: - While the procurement of sponsor furniture and computer needs is not typically a Corps function, these needs identified by the tribes in support of cultural centers may be raised in discussions with other agencies (e.g. GAO?) or perhaps suggestions could be made regarding corporate donations.
 - A suggestion for establishing an "Indigenous Science and Ceremonial approach" for respectful treatment and monitoring of ancestral remains - might this be covered under Sec 208 efforts(?)
 - One example noted Tribal planning work underway for cultural resources center with DOT grant and BIA trust funds - they hope to partner with the Corps on implementation.
 - There may be other agencies who can assist w/language preservation - this is an item that can be explored when coordinating with other agencies.*

Emergency Management, Preparedness

(See also: **Floodplain Mapping**)

- Emergency preparedness and early warning- Bowman-Haley and Shadehill Reservoirs
- Emergency management plan
- Tribal health dept coordinates EMP and needs funds to implement education, management strategies and community preparedness
- Natural disasters and emergencies, and security threats [e.g. bomb threat] could be relevant to Lewis & Clark commemoration (\$100k)
- Early warning system for flooding & potential contamination of drinking water
- Need inspector to evaluate river systems and notify residents about evacuation procedures and water supply contamination; also provision of community water alternatives (bottled)
- Pre and post fire management and rehabilitation

***Notes: -Bomb threat planning - potentially seek input from other appropriate agency.*

- *Coordination/collaboration with FEMA? EPA? Others?*
- *The responses included some related to dam safety, which is handled by Engineering, rather than Operations*

Environmental Remediation - Hazardous, Toxic and Radioactive Wastes

- Assessment and clean up of: unexploded ordnance, HTW in lagoons and elsewhere
- Landfill cleanup and WQ monitoring- some landfill leachate into Corps lake.
- Equipment and crew training (\$100k)
- Move and transfer landfill waste material & monitoring (compliance requirement)
- Develop & manage a solid waste management program, with enforcement and signage, and address illegal dumping, some of which occurs on Corps project lands.
- Need consultation and implementation of EPA requirements at local dumpsites;
- Abandoned mine lands cleanup
- Perform preliminary assessment screening, develop remediation plans and:
 - Superfund site cleanup
 - Brownfields development
 - Contaminated sediment removal or remediation
 -

***Note: Can Section 203 studies address contaminant situations created by military activities? Specify in guidance.*

Water Quality

- Water quality study to preserve surface spring from contamination
- Permanent monitoring locations & stream gaging - sedimentation and erosion impacts
- Groundwater, well field WQ problems, some affect drinking water, others affect aquatic ecosystem health
- WQ monitoring - potential surface water contamination - water supply concern

Water Supply

- Rural water supply for reservation - reliable long-term water supply delivery system. Some water systems don't have enough pressure to be safe and sanitary.
- Regional water supply analysis addressing quantity and quality and considering sources from the river and Corps lake
- Needs assessment and planning for a new treatment plant and infrastructure system for a combined community of native and non-native population

***Notes: A question was raised regarding implications and special considerations for mix communities, i.e. Tribal and non-tribal. Cost sharing implications? Potential to leverage/assist through EPA program/grants?*

Dam Safety

- Dam Safety -monitor and administer dam safety controls through tribal government

Community Infrastructure (Water, Roads, Schools)

- Transportation planning, include mapping, signs, walkways – vehicle traffic and pedestrian safety
- Highway upgrade to accommodate traffic
- Relocation studies (environmental infrastructure)
- Seawall repair
- Education facility replacement – relocation and renovation of waterlines.
- Schools, hospitals, medical and dental clinics
- (Also See Real Estate issues)

***Note - Perhaps some if these needs could be addressed through DOT, HUD or other agency programs. These are other topics to raise in discussions with the other agencies.*

Recreation -- Economic Development

- Road paving and parking areas for pedestrian beach access in resort area - would also keep vehicles off the beach (Four Bears Park, ND).
- Development of water-oriented recreation and resort areas on Corps lakes and off project lands

Note: The first item seems more like a “safety” matter/issue rather than a recreation development issue.

Recreation - related to Lewis & Clark Bicentennial A number of suggestions included needs/opportunities to address cultural resource protection, emergency planning (i.e. crowd control, looting) and recreational economic benefit opportunities for tribes that may be associated with or a direct result of Lewis and Clark Bicentennial activities. A primary concern for tribes with respect to the Bicentennial activities appears to be protection of the environment and cultural sites, but a number of economic development opportunities were identified.

- Repair boat dock at historic site
- Financial and planning assistance for bicentennial observances with period events, powow and concession center at a current interpretive center w/camping, arts & crafts center, and dock.
- Funding for event planning and coordination - being coordinated w/ Smithsonian and L&C Commemoration Committee signature event;
- Designated lake shore facilities are underdeveloped (boat ramps, restrooms, picnic areas, signage, interpretation panels, campsites (primitive & modern))
- Tribal History - research; staffing of cultural resources center
- Interpretive & Info centers along trail (historical, cultural and spiritual sites, native medicinal plants.
- Fishing docks for handicapped, public access improvements.
- Interpretive & Info centers along trail (historical, cultural and spiritual sites, native medicinal plants.
- Fishing docks for handicapped, public access improvements.

Real Estate

- Incomplete relocation of schools from original project
- Land dispute title issue (tribe vs local church)
- Treaty issues - compensation for inundated lands not acquired

Self-Reliance and Economic Capacity Building

- Energy resources Development
- Low-head hydropower development at locations associated with Corps and BuRec dams and lakes.
- development of natural gas fired turbine electric generating facilities near Corps lakes and rivers
- Economic Development utilizing invasive species control (eastern red cedar) - develop pellet fuel, fence posts, cedar shingles
- Contracting opportunities for cultural resource monitoring
- Training
- Develop economic development strategies for the tribes in relation to natural resources on tribal lands
- Tribal Youth Job Corps Program
- Enhance or protect blueberry production
- Examine potential changes in watershed conditions may reduce instream flow needs allowing potential higher summer pool & positive impacts to tribe's economy (capacity building) Kinzua Dam
- Fishery habitat projects where Corps reservoir is on reservation lands (Allegheny Res., NY) benefit economy and partner w/others)
- Funding to support Tribal EPA Dept, along w/ consultation and technical assistance
- Job Corps - assist in reforestation and noxious weed eradication; intern programs, curriculum for local college
- Lake shoreline stabilization and campground facility rehab
- Repair and upgrade access roads and bridge for seasonal recreation sites along the reservoir on the reservation.
- Dredging to reduce flood damages and provide recreation development (Cattaraugus Creek)
- Education Cooperation – improve curriculum in water resources, wetland protection and cultural resources.; USACE community involvement; Sinte Gleska University.
(Also see Watershed Planning)
- Master planning for and development of destination resort on tribal lands.

Notes: - Are there any special considerations when these proposed initiatives involve Corps project lands?

- Some of the roads are on flowage easement lands -- real estate issues?

- The Corps could explore collaboration with other agencies to assist the tribes on some of these items that may more appropriately fit their programs in part or in total

Table C-2. District Responses to January 18, 2001 Memorandum

District	POC	Opportunities	Concerns & Questions
POA	Johnny Duplantis	Flood control; Bank Erosion; Environmental Restoration; Environmental Infrastructure type studies such as at the Northwest Arctic borough, relocation studies such as Kivalina, and shore line erosion studies such as Shishmaref	228 of 229 Federally recognized tribes do not have traditional reservation lands; Implementation guidance should not be limited to those with a land base. Guidance should not be limited to Indian Country. Inclusion of Alaska Native Tribe; Civil Works Projects only or Military Projects or all environmental projects. Ability to cost-share the studies.
LRB	William Butler	Erosion Protection; Flood Damage Reduction; Navigation; Environmental Restoration; Hazmat; Technical Assistance	Cayuga Nation does not have a reservation or Land Base
SAC	Bob Chappell	Flood Control; Repair Infrastructure; Environmental	No budgeted funds to visit tribes; non-Federally recognized tribes; ATP
ERDC	Fred Bruier	Activities along the trail that cross Corp lands.	
SWF	Paddie Patterson	Cultural Resource Preservation and or mitigation efforts on other district projects; Erosion control; Environmental Restoration; Water Quality Issues	Tribal Administrator will provide formal response to district.
CELRB	Joe Wanielista	Floodplain delineation mapping; Ecosystem restoration; Environmental Baselines (using GIS); Cultural Resources Inventories; Flood Control (non-structural specifically)	Cost-sharing
POD/POH	Linda Hihara-Endo	N/A	Tribes in Hawaii do not have Federal Sovereignty
SAJ	Kimberly Brooks-Hall	Floodplain mgmt because FEMA maps do not include reservations; Tribes cannot receive insurance because they don't have floodplain delineations;	Role of BIA in project implementation; BIA funds 93-628
NWK	Kimberley Oldham	SEE NWO/NWK Joint Response	
SPL	Stephen Dibble	Enhance cultural resource sites/features (traditional cultural properties or sacred sites); Management Plans, restoration of natural environmental conditions for cultural resources/properties/sacred sites; Curation facilities on Indian Lands.	

Table C-2. District Responses to January 18, 2001 Memorandum

District	POC	Opportunities	Concerns & Questions
MVM	Jimmy McNeil	None	
SAM	James Buckalew	Development of Interpretive Centers; environmental infrastructure, HTRW, D/A Interns to tribes,	
MVD	William Arnold	None provided	<p>The "ability to pay" provision and how it is interpreted by ASA could be key to being able to do much with this authority. Without some break on ability to pay, all this does is provide another cost shared study authority, which we generally already have for these areas. Guidance should clarify if other Federal funds (such as from BIA) can be used to cost share studies or projects. -We have had several requests under CAP (Section 14) to protect cultural resources (including some Native American artifacts), and there is some question about our authority in this area. Our CAP manager (LexineCool) is preparing a request for policy guidance on this issue. It seems that this authority is covered by Section 203, at least for projects "located primarily within Indian country". The guidance should clarify if protection of artifacts outside the boundaries of Indian country is covered.</p>
NAE	Marcos Paiva	Environmental Restoration; Archeological Surveys; Cultural Resource Management Plans; Tribal Heritage Video; Watershed Plans; Sediment Analysis; Dam Removal, Water Quality;	
NAN	John Killeen	None Provided	
NAO	Tim Thompson	None Provided	

Table C-2. District Responses to January 18, 2001 Memorandum

District	POC	Opportunities	Concerns & Questions
NWO	David Vader; Debra Kobler	A significant number of opportunities were identified through consultation and coordination with the 28 Tribes in the Missouri River Basin. Examples of opportunities include flood damage reduction, cultural resources, environmental restoration, water quality/supply, erosion and sedimentation, emergency management, HTRW, floodplain mapping/wetland delineation/GIS/Survey, Public facility/Schools/etc., Infrastructure, Recreation, and Others.	Ability to cost-share; Reconnaissance and Feasibility Phases. The recon phase of potential project studies should be 100% Federally funded. Also, the definition of "feasibility" in the Tribal Partnership Project should be constructed to reflect the unique nature and intent of the program and not limited to conventional definitions which may be too rigid or restrictive to successfully implement Section 203
NAP		No viable opportunities	
LRP	Jim Purdy	Kinzua Dam & Allegany Reservoir - Downstream low flow augmentation; Fishery habitat projects; Bank Protection & facility improvements at Highbanks Campground; Road improvements; Sacred site protection; Cultural resource protection plan; Dredging for flood control.	District coordinated with Seneca Nation of Indians
MVR	Ron Deiss & Jerry Skalak	Inventory, manage, and protect historic properties and natural resources. Protection and stabilization of original settlement (archeological deposit), associated cemetery (human remains), and Pow Wow grounds (archeological deposit, traditional and sacred site). Recreational lake and appurtenant facilities.	Value of sacred site, human remains, archeological deposit to justify project costs (Benefits)
SAD	Dennis Barnett	Traditional; Preservation of natural & cultural resources; development of interpretive centers; HTRW assessment and remediation planning; brownfields redevelopment, environmental infrastructure, DA INTERNS to Tribes	State council tribes (NC & VA); Roles of Sec Interior in project implementation; BIA funds for cost-sharing; ATP;

Table C-2. District Responses to January 18, 2001 Memorandum

District	POC	Opportunities	Concerns & Questions
NWS	David Rice	Address Indian treaty fishing issues through environmental restoration; physical protection for culturally significant natural resources not protect by ESA; protection of significant cultural properties where there is no Federal undertaking under 106/110 (e.g. planning and physical protection of these resources); physical protection of F&W habitat, culturally significant subsistence roots, bulbs, herbs, and medicinal plants, sacred or religious sites, or ritually significant plants, stones, or minerals (access to these things or places on non-indian lands may compromise another issue; Emergency measures to protect CR, TCP on indian lands through stabilization, construction, restoration or relocation; clean dredge material from routine O&M (WRDA 1994); Woody material pursuant to Section 208 1964 FCA for habitat restoration; Sole source contracting or Federal contracting opportunities	Guidance on the application of preservation of cultural and natural resources; If a cultural site has been evaluated for or listed on the NRHP or how a Traditional Cultural Property may be significant in the cultural life of a contemporary NA community. Would 203 apply only to isolated preservation situations on Indian Lands? How does 203 relate to Section 106 or 110? ATP;
SPD	Clark Frentzen	Suggested list of projects under 203 not specified in response but areas of work in the past include Ecosystem restoration, watershed management, floodplain management and mapping, abandoned mine land clean up, water quality, schools and healthcare facilities, infrastructure, housing, fire management, energy resources development.	Policy should be as general/flexible as possible to accommodate cultural diversity, and for non-traditional approaches to problem solving. Federally Recognized Tribes Working Group?
MVP	Tom Crump	Water Supply at Grand Portage, Leech Lake, Bois Forte, Cultural resource preservation at Leech Lake, Wetland delineation at Mille Lacs, Wastewater Treatment at Mille Lake and Leech Lake. Environmental Restoration at Red Lake. Flood Control/Emergency Access at Prairie Island.	Cost-sharing, Use of Section 14 for cultural resource protection; appropriations and implementation authority

Table C-2. District Responses to January 18, 2001 Memorandum

District	POC	Opportunities	Concerns & Questions
SWT	John Sparlin, John Wagner	Masterplan and Infrastructure development for Integrated recreation complex with trout fishery; hydropower on the McClellan-Kerr waterway and other locations associated with Corps and BOR lakes. Natural gas fired turbine electricity generation facilities; water based recreation enterprises on Corps Lakes; Regional water treatment and distribution systems; Preservation and restoration of historical and cultural significance sites;	
MVK	Renee Turner, James Wojtala	Identify, preserve, and protect traditional cultural properties, sacred sites, or historic properties on non-Federal lands. Transfer of traditional and sacred properties or historic properties for protection, tribal control. Navigation studies	Consider 100% Federal funding
NWW	Lynda Nutt & Allen Pomraning	Bank Erosion (threatening cultural sites); Cultural Resources Demonstration & Education Center; Fisheries Training Hatchery; Native American Interpretive signs on Corp Property; Stream restoration/cleanup; Rural water supply & sewer system master planning.	Ability to cost-share
SAW	Richard Kimmel	Repair Infrastructure	No tribal lands, not Federally recognized; CECW-PG may want to consider if or how such Native American groups, some of whom may have achieved state recognition, might seek assistance from the Corps of Engineers when acting through and with the support of a state council. These groups would not have tribal lands, but may want assistance with infrastructure.

Appendix D - Federal Domestic Assistance Programs Available to Federally Recognized Tribes

Source: Department of the Interior Bureau of Indian Affairs. July, 1999. Report on Tribal Priority Allocations. Appendix 2.

APPENDIX 2

**1998 Catalog of Federal Domestic Assistance (CFDA) Programs
Which Indicate that Federally Recognized Indian Tribal Governments May Apply**

CFDA #	Name of Program	Type of Assistance
Department of Agriculture		
10.001	Agricultural Research-Basic Applied Research	Project Grants
10.028	Wildlife Services	Project Grants; Provision of Specialized Services; Advisory Services; Dissemination of Technical Information; Training
10.064	Forestry Incentives Program	Direct Payments for Specified Use
10.153	Market News	Dissemination of Technical Information
10.163	Market Protection and Promotion	Provision of Specialized Services; Advisory Services; Training
10.167	Transportation Services	Advisory Services; Training
10.220	Higher Education Multicultural Scholars program	Project Grants
10.250	Agricultural and Rural Economic Research	Dissemination of Technical Information
10.421	Indian Tribes and Tribal Corporation Loans	Direct Loans
10.438	Section 538 Rural Rental Housing Guaranteed Loans	Guaranteed/Insured Loans
10.441	Technical and Supervisory Assistance Grants	Project Grants
10.444	Direct Housing-Natural Disaster Loans and Grants	Project Grants; Direct Loans
10.445	Direct Housing-Natural Disaster	Direct Loans
10.453	Fund for Rural America-Farm Ownership Loans	Direct Loans
10.550	Food Distribution	Sale, Exchange, or Donation of Property and Goods
10.565	Commodity Supplemental Food Program	Formula Grants; Sale, Exchange, or Donation of Property and Goods
10.567	Food Distribution Program on Indian Reservations	Project Grants; Sale, Exchange, or Donation of Property and Goods
10.760	Water and Waste Disposal Systems for Rural Communities	Project Grants; Direct Loans; Guaranteed/Insured Loans
10.767	Intermediary Relending Program	Direct Loans
10.768	Business and Industry Loans	Direct Loans; Guaranteed/Insured Loans
10.769	Rural Development Grants	Project Grants

CFDA #	Name of Program	Type of Assistance
10.770	Water and Waste Disposal Loans and Grants (Section 306C)	Project Grants; Direct Loans
10.800	Livestock, Meat and Poultry Market Supervision	Project Grants
10.852	Rural Telephone Bank Loans	Direct Loans
10.854	Rural Economic Development Loans and Grants	Project Grants; Direct Loans
10.903	Soil Survey	Dissemination of Technical Information
10.907	Snow Survey and Water Supply Forecasting	Dissemination of Technical Information
10.912	Environmental Quality Incentives Program	Direct Payments for Specified Use
10.914	Wildlife Habitat Incentive Program	Direct Payments for Specified Use
10.950	Agricultural Statistics Reports	Dissemination of Technical Information
Department of Commerce		
11.001	Census Bureau Data Products	Dissemination of Technical Information
11.002	Census Customer Services	Advisory Services; Dissemination of Technical Information; Training
11.003	Census Geography	Provision of Specialized Services; Dissemination of Technical Information
11.005	Census Special Tabulations and Services	Provision of Specialized Services; Dissemination of Technical Information
11.025	Measures and Analyses of the U.S. Economy	Dissemination of Technical Information
11.026	National Trade Data Bank	Dissemination of Technical Information
11.027	Economic Bulletin Board	Dissemination of Technical Information
11.106	Remedies for Unfair Foreign Trade Practices- Antidumping and Countervailing Duty Investigations	Provision of Specialized Services; Investigation of Complaints
11.108	Commercial Service	Advisory Services
11.110	Trade Development	Advisory Services
11.150	Export Licensing Service and Information	Advisory Services
11.302	Economic Development-Support for Planning Organizations	Project Grants
11.303	Economic Development-Technical Assistance	Project Grants
11.307	Special Economic Development and Adjustment Assistance Program- sudden and Severe Economic Dislocation and Long-Term Economic Deterioration	Project Grants
11.405	Anadromous Fish Conservation Act Program	Project Grants

CFDA #	Name of Program	Type of Assistance
11.417	Sea Grant Support	Project Grants
11.427	Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program	Project Grants
11.428	Intergovernmental Climate-Program	Project Grants
11.430	Undersea Research	Project Grants
11.431	Climate and Atmospheric Research	Project Grants
11.433	Marine Fisheries Initiative	Project Grants
11.452	Unallied Industry Projects	Project Grants
11.454	Unallied Management Projects	Project Grants
11.459	Climate and Air Quality Research	Project Grants
11.463	Habitat Conservation	Project Grants
11.468	Cooperative Institute for Applied Meteorological Studies (CIAMS) and Cooperative Institute for Tropical Meteorology (CITM)	Project Grants
11.469	Congressionally Identified Construction Projects	Project Grants
11.472	Unallied Science Program	Project Grants
11.550	Public Telecommunications Facilities-Planning and Construction	Project Grants
11.601	Calibration Program	Dissemination of Technical Information
11.603	National Standard Reference Data System	Project Grants; Dissemination of Technical Information
11.604	Standard Reference Materials	Dissemination of Technical Information
11.606	Weights and Measures Service	Provision of Specialized Services; Advisory Services; Dissemination of Technical Information
11.610	National Center for Standards and Certification Information	Dissemination of Technical Information
11.650	National Technical Information Service	Dissemination of Technical Information
11.800	Minority Business Development Centers	Project Grants
11.900	Patent and Trademark Technical Information Dissemination	Dissemination of Technical Information
Department of Defense		
12.104	Flood Plain Management Services	Advisory Services; Dissemination of Technical Information

CFDA #	Name of Program	Type of Assistance
12.111	Emergency Advance Measures for Flood Prevention	Provision of Specialized Services
12.551	National Security Education-Scholarships	Project Grants
12.552	National Security Education-Fellowship	Project Grants
12.607	Community Economic Adjustment Planning Assistance	Project Grants
12.611	Community Economic Adjustment Planning Assistance for Reductions in Defense Industry Employment	Project Grants
12.612	Community Base Reuse Plans	Project Grants
12.613	Growth Management Planning Assistance	Project Grants
12.900	Language Grant Program	Project Grants
12.901	Mathematical Sciences Grants Program	Project Grants
12.902	Information Security Grants Program	Project Grants
Department of Housing and Urban Development		
14.155	Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Project	Guaranteed/Insured Loans
14.159	Section 245 Graduated Payment Mortgage Program	Guaranteed/Insured Loans
14.162	Mortgage Insurance-Combination and Manufactured Home Lot Loans	Guaranteed/Insured Loans
14.171	Manufactured Home Construction and Safety Standards	Dissemination of Technical Information; Investigation of Complaints
14.172	Mortgage Insurance-Growing Equity Mortgages	Guaranteed/Insured Loans
14.191	Multifamily Housing Service Coordinators	Project Grants
14.227	Community Development Block Grants/Special Purpose Grants/ Technical Assistance Program	Project Grants; Direct Payments for Specified Use
14.238	Shelter Plus Care	Project Grants
14.239	HOME Investment Partnership Program	Formula Grants
14.243	Opportunities for Youth-Youthbuild Program	Project Grants
14.402	Non-Discrimination in Federally-Assisted Programs (On the Basis of Age)	Investigation of Complaints
14.404	Non-Discrimination in Federally Assisted and Conducted Programs (On the Basis of Disability)	Investigation of Complaints
14.405	Non-Discrimination in Federally Assisted Programs (On the Basis of Race, Color, or National Origin)	Investigation of Complaints

CFDA #	Name of Program	Type of Assistance
14.406	Non-Discrimination in the Community Development Block Grant Program (On the Basis of Race, Color, National Origin, Religion, or Sex)	Investigation of Complaints
14.407	Architectural Barriers Act Enforcement	Investigation of Complaints
14.412	Employment Opportunities for Lower Income Persons and Businesses	Investigation of Complaints
14.850	Public and Indian Housing	Direct Payments for Specified Use
14.853	Public Housing-Tenant Opportunities Program	Project Grants
14.857	Section 8 Rental Certificate Program	Direct Payments for Specified use
14.862	Indian Community Development Block Grant Program	Project Grants
Department of the Interior (other than the Bureau of Indian Affairs)		
15.222	Cooperative Inspection Agreements with States and Tribes	Project Grants
15.224	Cultural Resource Management	Project Grants; Sale, Exchange, or Donation of Property and Goods; Use of Property, Facilities, and Equipment; Provision of Specialized Services; Advisory Services; Dissemination of Technical Information; Training; Investigation of Complaints
15.225	Recreation Resource Management	Project Grants; Use of Property, Facilities, and Equipment; Provision of Specialized Services; Advisory Services; Dissemination of Technical Information; Training
15.252	Abandoned Mine Land Reclamation (AMLR) Program	Formula Grants; Project Grants
15.608	Fish and Wildlife Management Assistance	Provision of Specialized Services
15.620	African Elephant Conservation	Project Grants
15.809	National Spatial Data Infrastructure Competitive Cooperative Agreements Program	Project Grants
15.850	Indian Arts and Crafts Development	Use of Property, Facilities, and Equipment; Advisory Services; Investigation of Complaints
15.910	National Natural Landmarks Program	Provision of Specialized Services; Dissemination of Technical Information
15.912	National Historic Landmark	Advisory Services
15.916	Outdoor Recreation-Acquisition, Development and Planning	Project Grants
15.922	Native American Graves Protection and Repatriation Act	Project Grants

CFDA #	Name of Program	Type of Assistance
15.923	National Center for Preservation Technology and Training	Project Grants
15.926	American Battlefield Protection	Project Grants
15.976	Migratory Bird Banding and Data Analysis	Dissemination of Technical Information
Department of Justice		
16.005	Public Education on Drug Abuse-Information	Provision of Specialized Services; Dissemination of Technical Information; Training
16.101	Equal Employment Opportunity	Provision of Specialized Services
16.103	Fair Housing and Equal Credit Opportunity	Provision of Specialized Services
16.104	Protection of Voting Rights	Provision of Specialized Services
16.105	Civil Rights of Institutionalized Persons	Provision of Specialized Services
16.109	Civil Rights Prosecution	Investigation of Complaints
16.200	Community Relations Service	Provision of Specialized Services
16.541	Juvenile Justice and Delinquency Prevention-Special Emphasis	Project Grants; Provision of Specialized Services
16.542	National Institute for Juvenile Justice and Delinquency Prevention	Project Grants
16.543	Missing Children's Assistance	Project Grants
16.580	Edward Byrne Memorial State and Local Law Enforcement Assistance Discretionary Grants Program	Project Grants
16.583	Children's Justice Act Partnerships for Indian Communities	Project Grants; Direct Payments for Specified Use
16.587	Violence Against Women Discretionary Grants for Indian Tribal Governments	Project Grants
16.589	Rural Domestic Violence and Child Victimization Enforcement Grant Program	Project Grants
16.590	Grants to Encourage Arrest Policies	Project Grants
16.592	Local Law Enforcement Block Grants Program	Formula Grants
16.596	Correctional Grant Program for Indian Tribes	Project Grants
16.598	State Identification Systems Grant Program	Formula Grants
16.710	Public Safety Partnership and Community Policing Grants	Project Grants
16.711	Troops to COPS	Project Grants

CFDA #	Name of Program	Type of Assistance
Department of Labor		
17.003	Prices and Cost of Living Data	Dissemination of Technical Information
17.004	Productivity and Technology Data	Dissemination of Technical Information
17.005	Compensation and Working Conditions Data	Project Grants; Dissemination of Technical Information
17.006	Employment Projections Data	Dissemination of Technical Information
17.249	Employment Services and Job Training-Pilot and Demonstration Programs	Project Grants
17.601	Mine Health and Safety Counseling and Technical Assistance	Advisory Services; Dissemination of Technical Information
17.602	Mine Health and Safety Education and Training	Training
Department of Transportation		
20.106	Airport Improvement Program	Project Grants; Advisory Services
20.217	Motor Carrier Safety	Training; Investigation of Complaints
20.301	Railroad Safety	Investigation of Complaints
20.500	Federal Transit Capital Improvement Grants	Formula Grants; Project Grants
20.509	Public Transportation for Nonurbanized Areas	Formula Grants
20.512	Federal Transit Technical Assistance	Project Grants; Dissemination of Technical Information; Training
20.600	State and Community Highway Safety	Formula Grants
20.703	Interagency Hazardous Materials Public Sector Training and Planning Grants	Project Grants
20.812	Construction Reserve Fund	Direct Payments for Specified Use
20.900	Transportation-Consumer Affairs	Investigation of Complaints
20.903	Support Mechanisms for Disadvantaged Businesses	Project Grants
Department of the Treasury		
21.003	Taxpayer Service	Advisory Services; Training
Office of Personnel Management		
27.011	Intergovernmental Personnel Act (IPA) Mobility Program	Provision of Specialized Services; Advisory Services
Commission on Civil Rights		
29.001	Clearinghouse Services, Civil Rights Discrimination Complaints	Dissemination of Technical Information

CFDA #	Name of Program	Type of Assistance
Equal Employment Opportunity Commission		
30.009	Employment Discrimination Project Contracts- Indian Tribes	Direct Payments for Specified Use
Federal Communications Commission		
32.001	Communications Information and Assistance and Investigation of Complaints	Dissemination of Technical Information; Investigation of Complaints
Federal Maritime Commission		
33.001	Shipping Investigation of Complaints	Investigation of Complaints
Federal Trade Commission		
36.001	Fair Competition Counseling and Investigation of Complaints	Advisory Services; Investigation of Complaints
General Services Administration		
39.003	Donation of Federal Surplus Personal Property	Sale, Exchange, or Donation of Property and Goods
39.007	Sale of Federal Surplus Personal Property	Sale, Exchange, or Donation of Property and Goods
39.008	Federal Information Center	Dissemination of Technical Information
39.009	Consumer Information Center	Dissemination of Technical Information
Government Printing Office		
40.002	Government Publications Sales and Distribution	Sale, Exchange, or Donation of Property and Goods; Dissemination of Technical Information
Library of Congress		
42.002	Copyright Service	Dissemination of Technical Information
42.003	Distribution of Library of Congress Cataloging	Dissemination of Technical Information
42.005	Library of Congress Publications	Dissemination of Technical Information
42.006	Library of Congress - Library Services	Dissemination of Technical Information
42.007	Reference Services in Science and Technology	Dissemination of Technical Information
42.008	Semiconductor Chip Protection Service	Dissemination of Technical Information
National Foundation on the Arts and Humanities		
45.149	Promotion of the Humanities - Division of Preservation and Access	Project Grants
45.162	Promotion of the Humanities - Education Development and Demonstration	Project Grants
45.164	Promotion of the Humanities - Public Programs	Project Grants
45.311	Native American Library Services	Project Grants

CFDA #	Name of Program	Type of Assistance
President's Committee on Employment of People with Disabilities		
53.001	Employment Promotion of People with Disabilities	Advisory Services; Dissemination of Technical Information
Securities and Exchange Commission		
58.001	Securities - Investigation of Complaints and SEC Information	Dissemination of Technical Information; Investigation of Complaints
Small Business Administration		
59.007	Management and Technical Assistance for Socially and Economically Disadvantaged Businesses	Project Grants
Environmental Protection Agency		
66.009	Air Information Center	Dissemination of Technical Information
66.032	State Indoor Radon Grants	Project Grants
66.432	State Public Water System Supervision	Formula Grants
66.433	State Underground Water Source Protection	Formula Grants
66.460	Nonpoint Source Implementation Grants	Formula Grants
66.461	Wetlands Protection - Development Grants	Project Grants
66.467	Wastewater Operator Training Grant Program (Technical Assistance)	Project Grants
66.604	Environmental Justice Grants to Small Community Groups	Project Grants
66.605	Performance Partnership Grants	Formula Grants; Project Grants
66.606	Surveys, Studies, Investigations and Special Purpose Grants	Project Grants
66.607	Training and Fellowships for the Environmental Protection Agency	Project Grants; Training
66.651	Sustainable Development Challenge Grants	Project Grants
66.700	Consolidated Pesticide Enforcement Cooperative Agreements	Project Grants
66.707	TSCA Title IV State Lead Grants - Certification of Lead-Based Paint Professionals	Project Grants
66.708	Pollution Prevention Grants Program	Project Grants
66.713	State and Tribal Environmental Justice	Project Grants

CFDA #	Name of Program	Type of Assistance
66.802	Superfund State Site - Specific Cooperative Agreements	Project Grants
66.805	Leaking Underground Storage Tank Trust Fund Program	Project Grants
66.806	Superfund Technical Assistance Grants for Citizen Groups at Priority Sites	Project Grants
66.807	Superfund Innovative Technology Evaluation Program	Project Grants
66.808	Solid Waste Management Assistance	Project Grants
66.809	Superfund State Core Program Cooperative Agreements	Project Grants
66.810	CEPP Technical Assistance Grants Program	Project Grants
66.811	Brownfield Pilots Cooperative Agreements	Project Grants
66.926	Indian Environmental General Assistance Program	Project Grants
Commodity Futures Trading Commission		
78.004	Commodity Futures Reparations Claims	Investigation of Complaints
Department of Energy		
81.003	Granting of Patent Licenses	Dissemination of Technical Information
81.036	Energy-Related Inventions	Project Grants; Use of Property, Facilities and Equipment; Advisory Services; Dissemination of Technical Information
81.039	National Energy Information Center	Dissemination of Technical Information
81.042	Weatherization Assistance for Low-Income Persons	Formula Grants
81.064	Office of Scientific and Technical Information	Dissemination of Technical Information
81.065	Nuclear Waste Disposal Siting	Project Grants; Direct Payments for Specified Use
81.089	Fossil Energy Research and Development	Project Grants
81.104	Technology Development for Environmental Management	Project Grants
81.106	Transport of Transuranic Wastes to the Waste Isolation Pilot Plant: States and Tribal Concerns, Proposed Solutions	Project Grants
Federal Emergency Management Agency		
83.011	Hazardous Materials Training Program for Implementation of the Superfund Amendment and Reauthorization Act (SARA) of 1986	Project Grants

CFDA #	Name of Program	Type of Assistance
83.548	Hazard Mitigation Grant	Project Grants
Department of Education		
84.010	Title I Grants to Local Educational Agencies	Formula Grants
84.032	Federal Family Education Loans	Guaranteed/Insured Loans
84.060	Indian Education - Grants to Local Educational Agencies	Formula Grants; Project Grants
84.101	Vocational Education - Indians Set-Aside	Project Grants
84.170	Javits Fellowships	Project Grants
84.206	Javits Gifted and Talented Students Education Grant Program	Project Grants
84.245	Tribally Controlled Postsecondary Vocational Institutions	Project Grants
84.250	Rehabilitation Services - American Indians with Disabilities	Project Grants
84.258	Even Start - Indian Tribes and Tribal Organizations	Project Grants
84.269	Institute for International Public Policy	Project Grants
84.281	Eisenhower Professional Development State Grants	Formula Grants
84.318	Technology Literacy Challenge Fund Grants	Formula Grants
Architectural and Transportation Barriers Compliance Board		
88.001	Architectural and Transportation Barriers Compliance Board	Dissemination of Technical Information
National Archives and Records Administration		
89.001	National Archives Reference Services - Historical Research	Use of Property, Facilities and Equipment; Advisory Services; Dissemination of Technical Information
89.003	National Historical Publications and Records Grants	Project Grants
Department of Health and Human Services		
93.001	Civil Rights Compliance Activities	Dissemination of Technical Information; Investigation of Complaints
93.004	Cooperative Agreements to Improve the Health Status of Minority Populations	Project Grants
93.005	Project Grants for Facilities to Improve the Health Status of Minority Populations	Project Grants
93.047	Special Programs for the Aging - Title VI, Part A, Indian Programs - Grants to Indian Tribes and Part B, Grants to Native Hawaiians	Project Grants

CFDA #	Name of Program	Type of Assistance
93.105	Bilingual/Bicultural Service Demonstration Projects in Minority Health	Project Grants
93.111	Adolescent Family Life Research Grants	Project Grants
93.151	Health Center Grants for Homeless Populations	Project Grants
93.158	Adolescent Health Centers for American Indians/Alaska Natives	Project Grants
93.180	Research on Health Care Outcomes and Quality	Project Grants
93.184	Disabilities Prevention	Project Grants
93.187	Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds	Project Grants
93.197	Childhood Lead Poisoning Prevention Projects - State and Community-Based Childhood Lead Poisoning Prevention and Surveillance of Blood Lead Levels in Children	Project Grants
93.204	Surveillance of Hazardous Substance Emergency Events	Project Grants
93.206	Human Health Studies - Applied Research and Development	Project Grants
93.208	Great Lakes Human Health Effects Research	Project Grants
93.219	Matching Grants for Health Professions Scholarships to Indian Tribes	Project Grants
93.228	Indian Health Service - Health Management Development Program	Project Grants
93.231	Epidemiology Cooperative Agreements	Project Grants
93.236	Grants for Dental Public Health	Project Grants
93.237	Special Diabetes Program for Indians - Prevention and Treatment Projects	Project Grants
93.238	Cooperative Agreements for State Treatment Outcomes and Performance Pilot Studies Enhancement	Project Grants
93.242	Mental Health Research Grants	Project Grants
93.289	President's Council on Physical Fitness and Sports	Provision of Specialized Services; Advisory Services; Dissemination of Technical Information
93.358	Professional Nurse Traineeships	Project Grants
93.375	Minority Biomedical Research Support	Project Grants
93.550	Transitional Living for Homeless Youth	Project Grants

CFDA #	Name of Program	Type of Assistance
93.551	Abandoned Infants	Project Grants
93.559	Federal Loans for State Welfare Programs	Direct Loans
93.568	Low-Income Home Energy Assistance	Formula Grants; Project Grants
93.569	Community Services Block Grant	Formula Grants
93.575	Child Care and Development Block Grant	Formula Grants
93.581	Improving the Capability of Indian Tribal Governments to Regulate Environmental Quality	Project Grants
93.582	Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities	Project Grants
93.587	Promote the Survival and Continuing Vitality of Native American Languages	Project Grants
93.592	Family Violence Prevention and Services/Grants for Battered Women's Shelters - Discretionary Grants	Project Grants
93.594	Tribal Work Grants	Formula Grants
93.596	Child Care Mandatory and Matching Funds of the Child Care and Development Fund	Formula Grants
93.612	Native American Programs	Project Grants; Direct Loans
93.613	Mental Retardation - President's Committee on Mental Retardation	Dissemination of Technical Information
93.647	Social Services Research and Demonstration	Project Grants
93.671	Family Violence Prevention and Services/Grants for Battered Women's Shelters - Grants to States and Indian Tribes	Formula Grants
93.905	Indian Health Service Research	Project Grants
93.910	Family and Community Violence Prevention Program	Project Grants
93.933	Research and Demonstration Projects for Indian Health	Project Grants
93.954	Tribal Recruitment and Retention of Health Professionals into Indian Health Programs	Project Grants
93.959	Block Grants for Prevention and Treatment of Substance Abuse	Formula Grants
93.970	Health Professions Recruitment Program for Indians	Project Grants
93.991	Preventive Health and Health Services Block Grant	Project Grants

Appendix E - Implementation Guidance for Section 225 of WRDA 2000



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CECW-PM

26 MAR 2001

MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS AND DISTRICT
COMMANDS

SUBJECT: Implementation of Section 225 of the Water Resources Development Act of 2000

1. Section 225 of the Water Resources Development Act (WRDA) of 2000, (Public Law 106-541) amends Section 105(a)(1)(E) of WRDA 1986, to allow the sponsor to provide their entire share of feasibility study costs through the provision of in-kind services. Effective immediately, you are authorized to execute the model Feasibility Cost Sharing Agreements (FCSA) with non-Federal sponsors by deleting "25" and substituting "50" in Article II.B. of the model FCSA.
2. For ongoing feasibility studies with executed FCSAs, effective immediately, you are authorized to execute the enclosed Amendment without deviation, thereby allowing sponsors to provide their remaining study share through the provision of in-kind services. Since the Amendment applies only to remaining study efforts, non-Federal funds provided prior to the effective date of the Amendment shall not be subject to refund or reimbursement.
3. We will shortly issue an updated model FCSA that will include changes authorized by WRDA 2000, as well as optional language for your use in including, as needed, frequently requested changes to the model FCSA. All other deviations to the model FCSA must be submitted to CECW-P for approval.

FOR THE COMMANDER:

Encl

A handwritten signature in black ink, appearing to read "James F. Johnson".

JAMES F. JOHNSON
Chief, Planning and Policy Division
Directorate of Civil Works

Appendix F - Planning Assistance to Tribes via Section 22

This appendix summarizes guidance on assisting tribes under the Section 22 program, and identifies the tribes who have participated in this program since FY 93.

General guidance for the planning assistance to tribes is provided in Box F-1.

Box F-1. General Guidance for Assisting Tribes Under the Section 22 Program*

- Work should be at least regional and comprehensive in scope or be a part of a regional, comprehensive study or effort being performed by the state or tribe.
- The PAS Program will not be used to supplement efforts under other ongoing or pending Corps programs, such as feasibility studies.
- **If a study under this Program identifies a potential construction project with Federal interest, the study should be immediately transferred to the appropriate GI study program, unless the tribe intends to pursue the project solely as a tribal project.**
- Planning assistance may be funded under this program and provided to assist tribes in support of the Coastal Zone Management Act or in flood plain management activities when the primary purpose of the assistance is to supplement basin-wide or regional planning for the coastal zone or flood plains.
- Planning assistance may include, among other activities, review and update of information previously developed by authorized studies that are not currently funded, provided that the assistance is required for preparation of the tribal water plan.
- Planning assistance may include the collection of new data, but only as an integral part of conducting a legitimate planning study. This should not be interpreted as authorizing the use of the PAS Program to conduct large data collection programs.
- Tribes may not use any Federal grant funds as their share of a cost sharing agreement, except where the legislation authorizing the Federal grant program allows such use.

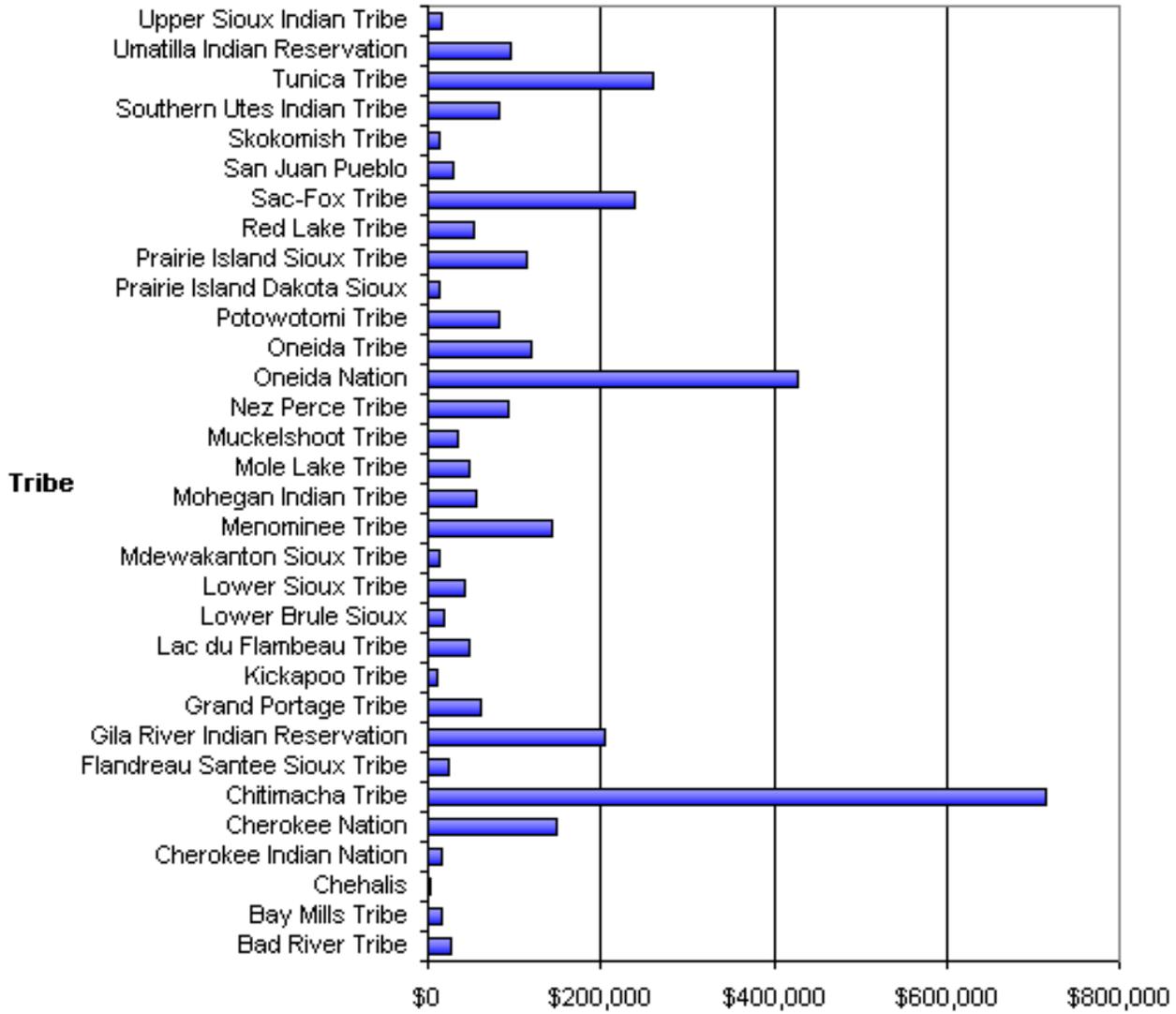
* Adapted from guidance in ER 1105-2-100.

Table F-1 identifies the tribes with which the Corps worked under the Section 22 Program between FY 93-FY 01. Figure D-1 illustrates the level of Federal funds used in efforts with Tribes.

Table F-1. Tribes involved in Section 22 Program through FY01

TRIBE	DISTRICT
Bad River Tribe	Detroit
Bay Mills Tribe	Detroit
Chehalis	Seattle
Cherokee Indian Nation	Tulsa
Cherokee Nation	Nashville
Chitimacha Tribe	New Orleans
Flandreau Santee Sioux Tribe	Omaha
Gila River Indian Reservation	Los Angeles
Grand Portage Tribe	Detroit
Kickapoo Tribe	Kansas City
Lac du Flambeau Tribe	St. Paul
Lower Brule Sioux	Omaha
Lower Sioux Tribe	St. Paul
Mdewakanton Sioux Tribe	St. Paul
Menominee Tribe	Detroit
Mohegan Indian Tribe	New England
Mole Lake Tribe	Detroit
Muckelshoot Tribe	Seattle
Nez Perce Tribe	Walla Walla
Oneida Nation	Detroit
Oneida Tribe	Detroit
Potowotomi Tribe	Detroit
Prairie Island Dakota Sioux	St. Paul
Prairie Island Sioux Tribe	St. Paul
Red Lake Tribe	St. Paul
Sac-Fox Tribe	Rock Island
San Juan Pueblo	Albuquerque
Skokomish Tribe	Seattle
Southern Utes Indian Tribe	Albuquerque
Tunica Tribe	New Orleans
Umatilla Indian Reservation	Portland
Upper Sioux Indian Tribe	St. Paul

Section 22 Federal Funding for Tribes FY 93 - FY 01



Appendix G - Glossary

Culture.

There are many definitions of the word "culture". The National Park Service (NPS) National Register programs, defines "culture" as traditions, beliefs, practices, lifeways, arts, crafts, and social institutions of any community, be it an Indian tribe, a local ethnic group, or the people of the nation as a whole [http://www.cr.nps.gov/nr/publications/bulletins/nr38_int.htm#tcp].

A longer and somewhat more complex definition from the Appendix in NRB #38 may be helpful for further examination of the term as applicable in the Tribal Partnership Program:

Culture (is) a system of behaviors, values, ideologies, and social arrangements. These features, in addition to tools and expressive elements such as graphic arts, help humans interpret their universe as well as deal with features of their environments, natural and social. Culture is learned, transmitted in a social context, and modifiable. Synonyms for culture include lifeways, customs, traditions; social practices; and folkways. The terms folk culture and folklife might be used to describe aspects of the system that are unwritten, learned without formal instruction, and deal with expressive elements such as dance, song, music and graphic arts as well as storytelling." [<http://www.cr.nps.gov/nr/publications/bulletins/nr38apx1.htm>].

Culturally Significant Natural Landscape.

A culturally significant natural landscape may be classified as a site, or it may be the specific location where significant traditional events, activities, or cultural observances have taken place. A natural object such as a tree or a rock outcrop may be a culturally significant landscape feature if it is associated with an event, a significant tradition or use.

Federally Recognized Tribe

Federally recognized tribes are those acknowledged through the Federal acknowledgment process established by the Department of Interior/Bureau of Indian Affairs (BIA). The BIA maintains and regularly publishes the list of Federally recognized Indian tribes in the Federal Register pursuant to Section 104 of the Federally Recognized Indian Tribe List Act. These are tribes with whom the Federal government maintains an official relationship, usually established by treaty, congressional legislation, or executive order. (*Revised Draft Guide on Consultation and Collaboration with Indian Tribal Governments and the Public Participation of Indigenous Groups and Tribal Citizens. A project of a Work Group of the Indigenous Peoples Subcommittee of the National Environmental Justice Advisory Council. May 1, 2000*)

Tribes that have a legal relationship to the United States Government through treaties, acts of Congress, executive orders, or other administrative actions, and are "recognized"

by the Federal Government as Governmental entities (Source: Assessment of Corps/Tribal Intergovernmental Relations 1996 p.37)

Federally Recognized Tribes are those tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. Section 104 of the Federally Recognized Indian Tribe List Act requires the Department of Interior Bureau of Indian Affairs to publish the current list of Federally Recognized Tribes in the Federal Register.

Indian Country

Per Title 18 U.S.C. Section 1151, Indian country defined: Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this Section, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian Lands

Any lands title to which is either; 1) held in trust by the US for the benefit of any Indian Tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation. (*DoD American Indian and Alaska Native Policy*)

Indian Tribe

For the purposes of Section 203, the term "Indian tribe" has the meaning given the term in the Indian Self-Determination and education Assistance Act (25 U.S.C. 450b).

"Indian Tribe" means any Indian tribe, band nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Protected Tribal Resources

Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through Treaties, statutes, judicial decisions, or executive orders, including tribal trust resources. (*DoD American Indian and Alaska Native Policy*)

Sacred Site

Any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site. (*Indian Sacred Sites Executive Order, 13007, May 24, 1996*)

Traditional Cultural Properties

Properties that have been defined as those that are eligible for inclusion in the National Register because of their association with cultural practices or beliefs of a living community that (a) are rooted in that community's history and (b) are important in maintaining the continuing cultural identity of the community. (*National Register Bulletin # 38*)

Traditional Cultural Resource.

A traditional cultural resource can be defined generally one that is associated with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community.

**U.S. Army Institute for Water Resources
Planning and Policy Studies Programs**

The Institute for Water Resources (IWR) is a Corps of Engineers Field Operating Activity, located in Alexandria Virginia. It was created in 1969 to analyze and anticipate changing water resources management conditions, and to develop planning methods and analytical tools to address economic, social, institutional, and environmental needs in water resources planning and policy. Since its inception, IWR has been a leader in the development of tools and strategies to plan and execute Corps water resources planning.

IWR's program emphasizes planning concepts for use by Corps field offices. Initially, this work relied heavily on the experience of highly respected planners and theorists, gained in the many river basin and multiple purpose studies undertaken in the 1960s. As these concepts matured and became a routine part of Corps planning, the emphasis shifted to developing improved methods for conducting economic, social, environmental, and institutional analyses. These methods were essential to implementation of the Water Resources Council's (WRC) Principles and Standards (P&S) and later, Principles and Guidelines (P&G) for water resources planning, which required a multi-objective analysis of tradeoffs among national and regional economic development, environmental quality, and social effects.

Increasingly over the years, IWR has also responded to Corps program development needs by studying policy issues resulting from changes in national objectives and priorities. In addition to directly supporting Corps needs, IWR has established an analytic and strategic competence through the direction of such efforts as the National Drought Management Study, National Waterways Studies, the National Wetlands Mitigation Banking Study, the Federal Infrastructure Strategy, and as a lead participant in the development of policy and procedures for environmental planning and management.

Many of these forward-looking policy and strategic studies were accomplished by the Planning and Policy Studies Division. The mission of the Division is to support the Director of Civil Works by assessing and evaluating changing national water resources and related public works infrastructure management needs as they affect Corps Civil Works missions, policies, practices, legislative mandates, and executive directives.

The Division supports the Office of the Assistant Secretary of Civil Works [OASA (CW)] and the Headquarters, U.S. Army Corps of Engineers (HQUSACE) in analyzing current policy issues, and conducting special studies of national and international significance. The Division's work encompasses the following thematic areas:

*Planning Studies
Policy Studies*

*Special and Strategic Studies
National Studies*

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