

# **Consultation Summary Report**

**November 18, 2022**

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## **1.0 Introduction**

President Biden signed the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58) (also known as the Bipartisan Infrastructure Law or BIL) on November 15, 2021. Section 40601(d) of the BIL creates an orphaned well site plugging, remediation, and reclamation grant program within the Department of the Interior (DOI) to address orphaned wells and well sites on Tribal lands. Draft Tribal grant guidance for Fiscal Year (FY) 2023 was shared through Dear Tribal Leader Letter on August 26, 2022. The draft Tribal grant guidance sets forth the application process for Tribes and provides requirements for carrying out activities under Sec. 40601(d) of the BIL. It also describes what the DOI considers to be best practices for establishing, conducting, and reporting on a program's activities to plug, remediate, and reclaim orphaned wells on Tribal lands.

The Assistant Secretary for Indian Affairs, the Bureau of Indian Affairs (BIA), and the Office of Environmental Policy and Compliance (OEPC) held two Tribal consultations in September of 2022. The purpose of these consultations was to receive Tribal input on the draft FY 2023 Tribal grant guidance for the Orphaned Well Program. This Report summarizes comments received from Tribes during the consultation sessions and comments submitted during the open comment period ending October 28, 2022.

## 2.0 Background

The BIL creates a once-in-a-generation investment in the Nation's infrastructure and economic competitiveness. This landmark investment will rebuild America's critical infrastructure, tackle the climate crisis, address legacy polluted sites, advance environmental justice, and drive the creation of good-paying jobs. By addressing long overdue infrastructure and environmental improvements and strengthening our resilience to the changing climate, this investment in our communities across the country will grow the economy sustainably and equitably for decades to come. The overall objectives of the Tribal Orphaned Well Program are to assist Tribes in creating jobs, protecting the environment, and using Federal funds in a transparent and responsible manner.

OEPC worked closely with the Assistant Secretary for Indian Affairs and the BIA's Indian Energy Service Center (IESC) to develop the draft Tribal grant guidance. Under BIL Section 40601, Tribal Orphaned Well funds may be used for any of the following:

- (i) to plug, remediate, or reclaim an orphaned well on Tribal land.
- (ii) to remediate soil and restore native species habitat that has been degraded due to the presence of an orphaned well or associated pipelines, facilities, or infrastructure on Tribal land.
- (iii) to remediate Tribal land adjacent to orphaned wells and decommission or remove associated pipelines, facilities, and infrastructure.
- (iv) to provide an online public accounting of the cost of plugging, remediation, and reclamation for each orphaned well site on Tribal land.
- (v) to identify and characterize undocumented orphaned wells on Tribal land.
- (vi) to develop or administer a Tribal program to carry out any activities described in clauses (i) through (v).

The DOI will provide technical assistance to the Tribes through training on methane measurement, identifying or addressing soil and groundwater contamination, well plug

witnessing by a qualified inspector, assessing and inventorying wells, and training in grant management, contract management, and grant reporting.

### **3.0 2022 Listening Sessions and Consultations**

On December 21, 2021, DOI announced through a Dear Tribal Leader Letter and, later, through BIL Tribal Consultations held on January 26, 27, and 28, 2022, that Tribal grant guidance would be developed for the Tribal Orphaned Well Program. On February 8, 9, and 10, 2022, the DOI conducted three Tribal listening sessions to receive input in the development of Tribal Orphaned Well Program guidance.

On August 26, 2022, draft Tribal grant guidance was shared with Tribes through Dear Tribal Leader letters from DOI Assistant Secretary of Indian Affairs Bryan Newland and DOI Deputy Assistant Secretary Eric Werwa. This letter also included an invitation to two formal Tribal consultation sessions conducted by the Assistant Secretary of Indian Affairs, the BIA, and the Office of Environmental Policy and Compliance (OEPC) on September 27 and 29, 2022.

For the September sessions, the Dear Tribal Leader letters and Tribal consultation sessions requested input on the following questions:

1. What recommendations do you have for partnering with Tribes to conduct activities described in the BIL and this grant program?
2. How might DOI improve communication with Tribes regarding orphaned well plugging, remediation, and reclamation?
3. What additional support, including specific types of technical assistance, might be useful to your Tribe in order to submit a grant application, manage a plugging program, and meet the administrative and reporting requirements of this program?
4. The BIL Section 40601 appropriation for Tribal grants totals \$150 million. Allocation of not more than \$50 million, total, in Year One, and not more than \$1

million per Tribe for capacity-building in Year One are recommended to make sure that Tribes are able to conduct orphaned well inventories and plan a plugging program over a period of time. Do these recommended caps support your Tribe's needs?

The consultations were held virtually on September 27, 2022, from 1:00 PM to 3:00 PM EDT, and September 28, 2022, from 1:00 PM to 3:00 PM EDT. The consultations were primarily led by OEPC's Energy Communities Revitalization Program (ECRP) Manager Greg Nottingham and Deputy Assistant Secretary of Indian Affairs for Policy and Economic Development Kathryn Isom-Clause. Federal staff members from DOI and BIA also participated in the consultations.

Altogether, approximately 41 individual members and representatives from Tribes participated in the consultations.

On September 27, there were 18 total Tribal representative attendees.

On September 29, there were 23 total Tribal representative attendees.

DOI and BIA also received a total of 5 sets of written comments and 24 total comments in response to the August 26, 2022, letter and September consultations.

#### **4.0 Summary of Comments Received by Questions Posed**

##### **1. What recommendations do you have for partnering with Tribes to conduct activities described in the BIL and this grant program?**

- One commenter requested clarification on the Tribal Implementation Grant and Program Development Grant funding for FY 2023.
- One commenter expressed concerns with their Tribe inheriting liability by conducting remedial activities on orphaned wells.

- One commenter encouraged the prompt disbursement of funds from the DOI to Tribes to quickly identify environmental impacts and minimize the effect on Tribal natural resources.
- One commenter recommended the OEPC and BIA establish a central office to oversee and provide technical assistance for grants and programs, and to facilitate communication between Tribal, State, and Federal entities.

**2. How might DOI improve communication with Tribes regarding orphaned well plugging, remediation, and reclamation?**

- One commenter requested that the DOI provide a single point of contact for each Tribe.
- One commenter noted that the DOI has done an excellent job in communicating with Tribes regarding orphaned well plugging, remediation, and reclamation.

**3. What additional support, including specific types of technical assistance, might be useful to your Tribe in order to submit a grant application, manage a plugging program, and meet the administrative and reporting requirements of this program?**

- One commenter noted that the Tribe will engage a third-party contractor to assist with developing the inventory of undocumented wells.
- One commenter noted that implementation and data gathering will require a third-party contractor.
- One commenter expressed concern with the capacity to gather data and implement the Program Development Grant without the Implementation Grant.

**4. The BIL Section 40601 appropriation for Tribal grants totals \$150 million. Allocation of not more than \$50 million, total, in Year One, and not more than \$1 million per Tribe for capacity-building in Year One are recommended to make sure that Tribes are able to conduct orphaned well inventories and plan**

**a plugging program over a period of time. Do these recommended caps support your Tribe's needs?**

- One commenter noted that the funding cap appears adequate to complete the inventory of undocumented wells.
- One commenter expressed concern that \$50 million per year is not adequate funding to address a substantial number of wells and complete pre- and post-testing requirements.
- One commenter requested clarification on if the \$1 million Program Development Grant for capacity-building was for each awarded applicant.
- One commenter requested clarification on the maximum funding amount for the Implementation Grants.
- One commenter expressed concerns with the prioritization of funding used toward Tribal land well plugging and requested the DOI facilitate agreements between States, Tribes, and Federal agencies to utilize State and Federal funding on Tribal lands.
- One commenter requested the guidance be revised to ensure the majority of the \$150 million is set aside for Tribal lands and the \$250 million for Federal lands is used to address orphaned wells on lands managed by the BIA.
- One commenter urged the DOI to remove caps on funding and examine how to use all \$150 million and part of the \$250 million dedicated to the Federal lands on Tribal lands.
- One commenter noted that the \$1 million cap for capacity building seems appropriate.

**5. Additional Comments**

- One commenter expressed concern with Tribes developing full grant applications for funds they are not guaranteed to receive, and therefore



requested that DOI not impose significant grant application requirements, allowing for equal administrative burden between grant applicants and those requesting “In Lieu Of” support.

- One commenter requested that the DOI distribute funds via formula grants to reduce competition within the application process.
- One commenter noted that a mapping platform Land Scout will be utilized to identify orphaned wells and then prioritize the wells based on environmental risks and proximity to communities. The commenter noted that a licensed plugging company will be utilized to complete field work.
- One commenter expressed concern that the methodology is not an accurate way to evaluate need because the unemployment rate of the Tribe is unable to be accurately provided.
- One commenter requested that the program prioritize well plugging over remediation on Tribal lands due to the limited funding.
- One commenter requested that the DOI revise the guidance to reflect additional funding that may be needed by Tribes operating and developing their own standards for well plugging.
- One commenter requested that the DOI revise the guidance to recognize that some of the \$250 million available for Federal land management agencies be made available to address underfunding of energy programs and records systems by BIA.

## **5.0 Conclusion**

The DOI greatly appreciate the time and effort Tribes and Tribal entities have spent to engage in this consultation process. The goal of these consultations was to hear from Tribal Nations on how this grant program and funding opportunity can be best designed to address orphaned wells on Tribal lands. With this critical input, the draft Tribal grant guidance is being finalized and will be posted on the program website:

<https://www.doi.gov/oepe/tribal-orphaned-well-grant>