CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION
P.O. BOX 638 PENDLETON, OREGON 97801
DEPARTMENT OF NATURAL RESOURCES

# FACSIMILE TRANSMITTAL SHEET

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| TO: EQIP Comments | FROM: Audie Huber |
| COMPANY: NRCS | DATE: Monday, March 16, 2009 |
| FAX NUMBER: 202-720-4265 | TOTAL NO OF PAGES INCLUDING COVER: 4 |
| PHONE NUMBER: | PHONE NUMBER 541-966-2334 |
| E-MAIL | FAX NUMBER |
| | E-MAIL ADDRESS: AudieHuber@CTUIR.com |

NOTES/COMMENTS:

Please find attached the comments of the Confederated Tribes of the Umatilla Indian Reservation to the EQIP Regulations

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March 16, 2009

Financial Assistance Programs
Division, U.S. Department of
Agriculture, Natural Resources
Conservation Service, 1400
Independence Avenue, SW., Room
5237S, Washington, DC 20250–2890.

Re: EQIP Regulations Comments

Submitted Electronically to www.Regulations.gov

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) provides the following comments regarding the draft regulations for the Environmental Quality Incentives Program (EQIP) for the Natural Resources Conservation Service (NRCS) published in the Federal Register. 74 Fed. Reg. 2293 (January 15, 2009). Unfortunately, the CTUIR DNR was not aware that these regulations were available for comment until we received an e-mail from the local NRCS representative 10 days prior to the expiration of the 60 day comment period. Due to this short timeframe, we were not able to give the draft regulations the full and careful review that would otherwise have occurred. However, we do have the following comments on the proposed regulations.

The CTUIR DNR has adopted the following "First Foods" mission:

> *"To protect, restore, and enhance the first foods - water, salmon, deer, cous, and huckleberry - for the perpetual cultural, economic, and sovereign benefit of the CTUIR. We will accomplish this utilizing traditional ecological and cultural knowledge and science to inform: 1) population and habitat management goals and actions, and 2) natural resource policies and regulatory mechanisms."*

This mission emphasizes the indivisible nature of natural resources and tribal culture. It also provides a framework to identify management goals and leverage practical areas of overlap with co-managers such as the NRCS. It is our intent to fulfill this mission for both the benefit of the CTUIR, and agencies with Trust responsibility and who need to be responsive to Tribal values, rights, and goals.



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The CTUIR DNR appreciates the addition of tribes in the category of "socially disadvantaged farmer or rancher" under the broader term "historically underserved producer." We feel this change will assist tribes in participating EQIP projects. However, we understand that the payment rates set for "historically underserved producers" are set by the State Conservationist. What will the payment rates be? As I understand it, the NRCS considered three ways to allocate funds to meet the 2008 Act 's requirements: (1) Issuing the allocations at the National level to defined geographic areas, where such groups are prevalent; (2) issuing the allocations to each State; or (3) establishing a national target that conforms to the statutory language, but providing States flexibility to designate money to each specified group based on potential demand in a given State. At this time it is unclear whether NRCS's selection of option 3 to establish a national target while giving states flexibility to designate the funding for each group based on potential demand will be effective. This might go smoothly, however there is the potential that it will not. The CTUIR DNR suggests that the regulations require consultation with tribes to discuss these rates and evaluate their effectiveness over time so that they are not set at arbitrary levels, failing to meet NRCS's trust responsibility to the tribes. Oregon previously set aside a separate pool of funding for tribes, will this continue?

We have found that there needs to be a more realistic look at practice rates. The practice rates outlined in the previous farm bill were considerably lower than the actual costs to implement most structural practices. How are the rates developed and do they differ by regional or local standards? The CTUIR DNR would like to see tribal consultation added to the development of these rates so that we are not out of line with our actual costs.

On the issue of tribal consultation, it is not clear that the regulations require consultation with tribes when actions NRCS funds off reservation directly impact a treaty reserved resource of the tribes. The regulations overall are silent on this issue. Tribal consultation is the cornerstone of the trust responsibility owed the tribes by federal agencies. Failing to mandate tribal consultation for projects which may impact treaty reserved resources is a significant oversight. This is not to presuppose that NRCS projects may damage treaty rights or resources, only that there may be impacts, good or bad.

The merging of the terms "cost share and incentive payments" into "payments," it does not appear that there are "management practice incentive" payments anymore. Are those incentive payments intended to be removed? Some of the new rates outlined on the NRCS website still show incentive payments, but they are drastically lower than the previous farm bill. For example "Use Exclusion" can be an expensive management practice. Why are the incentive rates so low?

The CTUIR has begun grazing under our Treaty of 1855 on National Forest Service lands. These lands are deemed important to our Indian livestock operation. The CTUIR DNR believes that EQIP funds should be available to be applied to Forest Service lands when a tribe is exercising a treaty reserved right. Is this the understanding of NRCS?

The EQIP rules make reference to a required Forest Management Plan before EQIP can be applied on Forested Lands. The CTUIR and Bureau of Indian Affairs are in the final stages of developing a Forest Management Plan for tribal trust, allotted trust and tribal fee lands on the



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reservation. Will this be sufficient to comply with the rule? The CTUIR intends to provide our FMP to the Department of Agriculture

The CTUIR expects the NRCS to comply with Section 106 of the National Historic Preservation Act, 16 USC § 470 and 36 CFR § 800, for all it's undertakings including Environmental Quality Incentives Program, Farm and Ranch Lands Protection Program, Grassland Reserve Program, Healthy Forest Reserve Program, Technical Service Provider Assistance program, Wetlands Reserve Program, Wildlife Habitat Incentives Program or any other project of NRCS. In order to assess whether sites listed in or eligible for inclusion in the National Register are within the Area of Potential Effect (APE), a cultural resource investigation must be conducted. The SHPO/THPO and affected Tribes need to be consulted with throughout the process. This includes reviewing cultural resource reports in order to assess the effects the undertaking may have on cultural resources and make any needed recommendations. The agency evaluates the historic significance of the resources in consultation with the SHPO and affected tribes.

Currently for off-reservation projects, the NRCS provides the CTUIR with a spreadsheet that includes location only to section and the type of activity that is to occur. There is no description as to the extent of the activity, just "stream rechannel" or "prescribed burn". The CTUIR does not receive the results of the cultural resource investigations and therefore has no idea what resources were identified and therefore potentially affected by the proposed undertaking. The CTUIR believes that consultation is critical throughout the process. As 36 CFR 800.1(a) says, "The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, asses its effects, and seek ways to avoid, minimize, or mitigate any adverse effects on historic properties." The CTUIR feels that it is vital to be consulted with on the determination of the APE of the proposed undertaking and the results of the investigation to determine whether or not historic properties will be effected. Without this information, the CTUIR finds it difficult to assess whether historic properties of religious and cultural significance will be impacted.

Again, due to the short time frame, we were not able to provide detailed review of the regulatory proposal. In the future, I would appreciate notices such as these be mailed to myself as the Director of DNR and Gordy Schumacher, program manager of the Forest, Agriculture, and Range Programs. The CTUIR DNR expects a written response to the questions posed in this letter. If you have any questions, please contact Mr. Schumacher at 541-278-3792.

Sincerely,

Eric Quaempts, Director
Department of Natural Resources



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