



CONFEDERATED TRIBES  
of the  
*Umatilla Indian Reservation*  
Department of Natural Resources  
**ADMINISTRATION**  
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March 17, 2009

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Financial Assistance Programs  
Division, Natural Resources  
Conservation Service, Wildlife Habitat  
Incentive Program Comments, P.O. Box  
2890, Room 5237-S, Washington, DC  
20013

Re: Wildlife Habitat Incentive Program Regulations

Submitted Electronically to [www.Regulations.gov](http://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 Wildlife Habitat Incentives Program (WHIP) for the Natural Resources Conservation Service (NRCS) published in the Federal Register. 74 Fed. Reg. 2786 (January 16, 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 11 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.

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 CTUIR DNR suggests that the regulations require consultation with tribes to discuss impacts and evaluate the effectiveness of the program over time so that the NRCS can meet its trust responsibility to the tribes.

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.

CTUIR DNR WHIP Comments

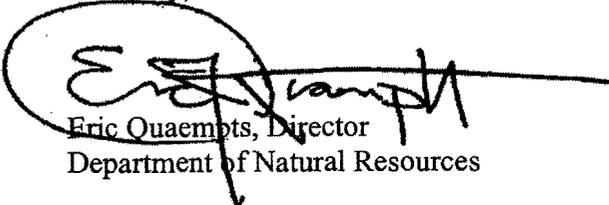
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Further, another issue has created some conflict with Washington State NRCS staff who believe that funds identified in legislation for a specific purpose and specific recipient do not require compliance with Section 106 of the NHPA because the funds are "pass-through funds." The Advisory Council on Historic Preservation, the federal agency responsible for monitoring the implementation of the NHPA, has taken the position that unless the legislation expressly exempts the funding from environmental laws in general or the NHPA specifically, the federal agency must comply with Section 106. Please clarify this directive to your state staff.

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