

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

FACSIMILE TRANSMITTAL SHEET

126

TO: WRP Comments	FROM: Audie Huber
COMPANY: NRCS	DATE: Monday, March 16, 2009
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NOTES/COMMENTS:

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

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DEPARTMENT OF NATURAL RESOURCES



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March 16, 2009

Easements Programs Division,
Natural Resources Conservation Service,
Wetlands Reserve Program Comments,
P O. 2890, Room 6819-S, Washington,
DC 20013.

Re: Wetland Reserve Program 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 Wetlands Reserve Program, for the Natural Resources Conservation Service (NRCS) published in the Federal Register. 74 Fed. Reg. 2317 (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 a mission based on "First Foods" ritualistically served in a tribal meal. Listed in the order in which they are served, First Foods include; Water, Salmon, Deer, Cous, and Huckleberry, and are central to the CTUIR's DNR mission statement:

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.

We seek to utilize the First Foods to bring attention to ecological processes that may be devalued outside of Tribal culture and to prioritize efforts to re-naturalize those processes that sustain First Foods. Further, we suggest First Foods provide a direct and culturally appropriate means to monitor and report restoration progress to the Tribal community. The serving ritual acknowledges spatial and temporal relationships between First Foods and the landscape that we

TREATY JUNE 9, 1855 + CAYUSE, UMATILLA AND WALLA WALLA TRIBES

anticipate will focus future management direction. It is within this framework that the DNR manages natural resources to which CTUIR members retain rights under the Treaty of 1855.

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.

Section 1467(c) clarifies that eligible program participants are subject to the adjusted gross income limitations. The CTUIR is exempt, but how exactly will the USDA calculate individual tribal members incomes without using data from the Individual Indian Monies accounts administered by the Office of Special Trustee within the Department of the Interior?

The rule provides that an easement can not be created on land that was transferred within the previous 7 years. Prior to this, the time frame was 12 months. I want to make clear that this does not involve the change of beneficial ownership, but only actual titled ownership. Trust lands often have shifting beneficial owners, while the title remains in the United States.

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

CTUIR DNR Wetland Reserve Program Comments

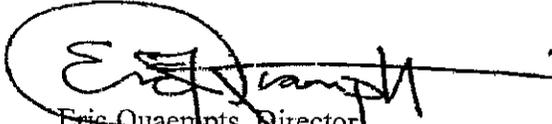
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Page 3 of 3

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 Quenpts, Director
Department of Natural Resources

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