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Final Draft Rules: Tribal Nation Natural Resource Program Fund

Division 10

Chapter 699

Division 10

TRIBAL NATION NATURAL RESOURCE PROGRAM FUND

699-010-0010

Purpose

- (1) This Division provides requirements for the Tribal Nation Natural Resource Program Fund.
- (2) The Tribal Nation Natural Resource Program Fund provides funds to federally recognized Tribes in Oregon for projects and purposes consistent with the terms of the Monsanto Settlement Agreement.

699-010-0020

Definitions

“Available Funds” means the funds available in the Tribal Nation Natural Resource Program Fund for annual distribution. This amount may vary annually and is determined based on the Oregon Environmental Restoration Council’s (Council) most current adopted distribution policy.

“Biennium” means OWEB’s two-year budget cycle that begins July 1 of odd-numbered years.

“Council” means the Oregon Environmental Restoration Council.

“Director” means the Executive Director of OWEB or the Executive Director’s designee.

“Fund” means the Oregon Environmental Restoration Fund.

“Inter-Governmental Agreement” means the legal agreement between OWEB and individual Tribes. It consists of the terms and conditions specified in these rules, the funding mechanism and amount, special conditions to the agreement, and a certification to comply with applicable state and federal regulations.

“Monsanto Settlement Agreement” means the consent general judgement between the State of Oregon and Monsanto Company, along with other defendants, filed in Multnomah County Circuit Court on December 15, 2022.

“PCBs” means the class of polychlorinated biphenyls as defined in ORS 466.505.

“Projects, Programs, and Purposes” all have the same meaning for application of these rules.

“OWEB” means the Oregon Watershed Enhancement Board state agency.

“Tribal Nation Natural Resource Program Fund” is a sub-fund of the Oregon Environmental Restoration Fund that receives 25% of the annual disbursement from the Fund and annually is distributed in equal amounts to the Tribes in Oregon.

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“Tribe” or “Tribes” means a federally recognized Indian tribe in Oregon as defined in ORS 182.162.

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Inter-Governmental Agreement Conditions

In consultation with affected Tribes, OWEB may place additional conditions into the Inter-Governmental Agreement, consistent with these rules, as necessary to carry out the purpose of the Tribal Nation Natural Resource Program Fund as provided in ORS 541.851-882 including:

- (1) Eligible uses of funds;
- (2) Reporting requirements necessary to facilitate the Council’s report to the Legislative Assembly pursuant to ORS 541.861.

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Eligibility

Eligible recipients for the Tribal Nation Natural Resource Program Fund are Tribes.

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Use of Funds

Eligible uses of Tribal Nation Natural Resource Program Fund include:

- (1) Must be for projects or purposes consistent with the terms of the Monsanto Settlement Agreement which include restoring, maintaining and enhancing the quality of Oregon’s air, land, water and other natural resources and consist of but are not limited to projects that:
 - a. Have a nexus or connection with brownfields remediation or redevelopment
 - b. Conduct environmental or natural resource damage assessment or restoration
 - c. Result in improvements to air and water quality
 - d. Cleanup contaminated sites
 - e. Remediate impaired water bodies, sediments or soil
 - f. Restore or protect wildlife or wildlife habitats including fish, aquatic life, marine mammal or bird habitats
- (2) Activities that are a component of the projects and purposes described in (1) may include but are not limited to:
 - a. Acquisition of land or water including expenses incurred during escrow, Title Reports, Title Insurance, Legal Review, Surveys, Pro Rata Taxes, Tribal Legal, Environmental Site Assessment, and Appraisal;
 - b. Capacity or staffing to carry out project activities
 - c. Education or outreach activities specific to the restitution or remediation project related to restoring, maintaining, and enhancing the quality of Oregon’s air, land, water, and natural resources
 - d. Monitoring activities related to restoring, maintaining, and enhancing the quality of Oregon’s air, land, water, and natural resources
 - e. Restoration or remediation activities related to restoring, maintaining, and enhancing the quality of Oregon’s air, land, water, and natural resources
 - f. Technical assistance activities related to restoring, maintaining, and enhancing the quality of Oregon’s air, land, water, and natural resources

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- g. Indirect costs to carry out project activities
- (3) As matching funds for federal or other funding sources used for programs or projects.
- (4) May be used to supplement existing programs or projects consistent with (1).
- (5) Tribal Nation Natural Resource Program Funds do not need to be expended by Tribes within the biennium they are transferred.

In accordance with OAR 699-010-0060, ineligible uses of Tribal Nation Natural Resource Program Fund include:

- A. As a replacement to funds from other existing sources.
- B. For uses not consistent with the projects and purposes included in (1) or not otherwise determined by the Council to be a project to restore, maintain and enhance the quality of Oregon's air, land, water and other natural resources.

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Deference to Tribal Nations Determinations of Eligible Use of Funds

Tribes are sovereign nations, possessing experience and expertise in stewarding natural resources. As such, their determinations that Tribal Nation Natural Resource Program Funds are committed to eligible uses shall be given a high degree of deference by the Council.

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Sources of Funds

Moneys in the Tribal Nation Natural Resource Program Fund consist of moneys transferred to the fund from the Oregon Environmental Restoration Fund and moneys deposited or transferred into the fund from any other public or private source.

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Distribution of Funds

- (1) Available funds will be distributed at the beginning of the biennium and additionally as the Tribal Nation Natural Resource Program Fund allows.
- (2) At the close of each biennium, any amounts in the Tribal Nation Natural Resource Program Fund that are unexpended, unobligated, and not subject to any conditions shall revert to the Oregon Environmental Restoration Fund.

699-010-0090

Reporting

- (1) A Tribe receiving Tribal Nation Natural Resource Program Funds must submit a report to Council biennially.
- (2) The report format will be developed in consultation with Tribes and provided to Tribes by OWEB.
- (3) The report is due 90 days after the final day of each biennium.

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Waiver and Periodic Review of Rules

The Director may waive the requirements of Division 10 unless required by statute, when doing so will result in more efficient or effective implementation of the Tribal Nation Natural Resource Program. Any waiver must be in consultation with affected Tribes, included in the fund transfer file records to which the waiver applies, and reported to the Council at the next meeting. The administrative rules for the Tribal Nation Natural Resource Program Fund shall be periodically reviewed by the Council and OWEB and revised as necessary and appropriate.