

Staff Summary and Response to Tribal Comments

Rule: OAR 699-010-0030 Inter-Governmental Agreement Conditions

Commenter(s)	Comment	Response	Rule Change
Austin Smith Jr, Confederated Tribes of Warm Springs	Recommends clarifying that additional conditions must be developed in consultation with any affected Tribal Nation and may not impose substantive restrictions that are inconsistent with the rules or the deference standard established in OAR 699-010- 0060.	The Intergovernmental Agreement (IGA) sent out to Tribes in June 2026 was developed in consultation with the Oregon Department of Justice (DOJ), Native American Affairs Coordinator and DOJ legal counsel to ensure compliance with the Monsanto Settlement Agreement, state statute, and Tribal Government authority. Any changes proposed in future iterations of the IGA would have an equal level of legal sufficiency review, as well as advance review with the affected Tribe. OWEB agrees with the recommendation and has changed the proposed rule language in 699-010-0030 by adding "In consultation with affected Tribes, OWEB may place additional conditions..."	Yes
Teresa Spangler, Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians	Recommends clarifying that any additional conditions in an intergovernmental agreement must be limited to administrative details necessary to implement the program, may not narrow eligible uses established in rule, and may not impose reporting requirements beyond what is reasonably necessary to support the Council's legislative reporting obligations and what has been developed in consultation with Tribes.	OWEB has changed the proposed rule language in 699-010-0030 by adding "In consultation with affected Tribes, OWEB may place additional conditions..." Existing rule language specifies that any additional conditions must be consistent with the rules for the Tribal Nation Natural Resource Program Fund and therefore may not narrow eligible uses established in rule. ORS 541.876 directs the Oregon Environmental Restoration Council to establish reporting requirements after consultation with Tribal governments; additional conditions added to an intergovernmental agreement may not override this.	Yes

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Rule: OAR 699-010-0050 Use of Funds

Commenter(s)	Comment	Response	Rule Change
Teresa Spangler, Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians	Requests that the final rule clarify that eligible uses also include Tribal cultural stewardship and other culturally grounded natural resource stewardship activities, where consistent with the purposes of the program. For Tribal Nations, stewardship of natural resources includes not only discrete remediation and restoration projects, but also the long-term care, protection, monitoring, and enhancement of culturally important species, habitats, and ecosystems. Requests clarification that eligible uses may include: • culturally grounded restoration and stewardship activities; • planning, design, baseline assessment, and adaptive management; • invasive species control and habitat enhancement; • restoration, protection, and enhancement of culturally significant plants, fish, shellfish, wildlife, and other first foods; and related stewardship education and community engagement activities that support eligible restoration, remediation, monitoring, or protection work.	The rule language developed by the Oregon Environmental Restoration Council (Council) is intended to be deferential to Tribal authority in determining how use of Tribal Nation Natural Resource Program Funds is consistent with the terms of the Monsanto Settlement Agreement. Council has not made any decision to narrow what would be considered to be an eligible use of these funds through these rules. The eligible uses provided in 699-010-0050(1)(a) are noted specifically in the Monsanto Settlement Agreement. The clause “may include but are not limited to...” is intended to communicate that the list of eligible uses is not exhaustive. In cases where a proposed use is not explicitly listed in 699-010-0050(1)(a), Council will defer to an individual Tribe’s experience and expertise in stewarding natural resources to determine eligibility. The proposed use of Tribal cultural stewardship and other culturally grounded natural resource stewardship activities is consistent with currently proposed rule. Given the intention for this rule to be broad and encompassing and not narrow or exhaustive, the proposed existing language provides Tribes with autonomy to determine use and will apply to other proposed uses not included in the current list. In cases where Tribes would seek clarification on the consistency of a proposed use with the Monsanto Settlement Agreement or on how to interpret 699-010-0050(1)(a), Council would expect Tribes to consult with their individual Tribal counsel.	No

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Rule: OAR 699-010-0050(1)(b)(C) Use of Funds

Commenter(s)	Comments	Response	Rule Change
Teresa Spangler, Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians	Recommends rule should instead allow education and outreach activities <i>reasonably connected to</i> an eligible restoration, remediation, stewardship, monitoring, planning, or protection activity funded through the program.	The rule language developed by the Oregon Environmental Restoration Council (Council) is intended to be deferential to Tribal authority in determining how use of Tribal Nation Natural Resource Program Funds is consistent with the terms of the Monsanto Settlement Agreement. Council has not made any decision to narrow what would be considered to be an eligible use of these funds through these rules. The activities provided in 699-010-0050 (1)(b) are examples. The clause “may include but are not limited to...” is intended to communicate that the list of activities is not exhaustive. In cases where an activity is not explicitly listed in 699-010-0050(1)(b), Council will defer to an individual Tribe’s experience and expertise in stewarding natural resources to determine eligibility. The interpretation of outreach and education activities being “reasonably connected” to stewardship work is consistent with currently proposed rule. Given the intention for this rule to be broad and encompassing and not narrow or exhaustive, the proposed existing language provides Tribes with autonomy to determine use and will apply to other proposed uses not included in the current list. In cases where Tribes would seek clarification on the consistency of an activity with the Monsanto Settlement Agreement or on how to interpret 699-010-0050(1)(b), Council would expect Tribes to consult with their individual Tribal counsel.	No

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Rule: OAR 699-010-0050(1)(b)(D), (E), and (F) Use of Funds

Commenter(s)	Comments	Response	Rule Change
Austin Smith Jr, Confederated Tribes of Warm Springs	Recommends replacing references to “quality” with broader language that encompasses the condition, quantity, availability, and function of natural resources. At a minimum, OWEB should clarify that monitoring of water quantity, streamflow, groundwater, habitat extent, species abundance, and similar metrics are eligible uses of Program funds.	The reference to “quality” comes directly from the terms of the Monsanto Settlement Agreement. The rule language developed by the Oregon Environmental Restoration Council (Council) is intended to be deferential to Tribal authority in determining how use of Tribal Nation Natural Resource Program Funds is consistent with the terms of the Monsanto Settlement Agreement. Council has not made any decision to narrow what would be considered to be an eligible use of these funds through these rules. The activities provided in 699-010-0050 (1)(b) are examples. The clause “may include but are not limited to...” is intended to communicate that the list of activities is not exhaustive. In cases where an activity is not explicitly listed in 699-010-0050(1)(b), Council will defer to an individual Tribe’s experience and expertise in stewarding natural resources to determine eligibility. The interpretation of activities that monitor water quantity, streamflow, groundwater, habitat extent, species abundance, and similar metrics is consistent with currently proposed rule. Given the intention for this rule to be broad and encompassing and not narrow or exhaustive, the proposed existing language provides Tribes with autonomy to determine use and will apply to other proposed activities not included in the current list. In cases where Tribes would seek clarification on the consistency of an activity with the Monsanto Settlement Agreement or on how to interpret 699-010-0050(1)(b), Council would expect Tribes to consult with their individual Tribal counsel.	No

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Rule: OAR 699-010-0050(1)(e) Use of Funds

Commenter(s)	Comments	Response	Rule Change
Teresa Spangler, Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians	Recommends final rules make clear that once funds have been transferred or otherwise obligated to a Tribe through an intergovernmental agreement, those funds are not considered unexpended or unobligated amounts remaining in the Program Fund for purposes of reversion.	The rule language developed by the Oregon Environmental Restoration Council is consistent with this interpretation as noted in 699-010-0050 (5). Tribal Nation Natural Resource Program funds are considered obligated when an intergovernmental agreement with a Tribe is in progress or fully executed, whether or not a transfer has been made. Funds received and unexpended by the Tribe at the end of the biennium are not considered unobligated for the purposes of the Fund balance.	No

Staff Summary and Response to Tribal Comments

Rule: OAR 699-010-0050(2)(b) Use of Funds

Commenter(s)	Comments	Response	Rule Change
Austin Smith Jr, Confederated Tribes of Warm Springs	Notes that the Oregon Environmental Restoration Council (Council) authority to determine whether a project qualifies (outside of the enumerated examples) is identified in OAR 699-010- 0050(2)(b), but without reference to the deference standard. Recommends clarifying that Council review under OAR 699-010-0050(2)(b) must also be conducted consistent with the stated deference requirement, and that Tribal determinations should be presumed valid unless clearly inconsistent with governing State law or the Monsanto Settlement Agreement.	OWEB agrees, and has changed the proposed rule language in OAR 699-010-0050(2) by adding: " In accordance with OAR 699-010-0060 , ineligible uses of Tribal Nation Natural Resource Program Fund include:"	Yes
Teresa Spangler, Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians	Recommends that any Oregon Environmental Restoration Council determination regarding eligibility must be made with a high degree of deference under OAR 699-010-0060 to the Tribe's determination that the use is consistent with the purposes of the program and these rules.	OWEB agrees, and has changed the proposed rule language in OAR 699-010-0050(2) by adding: " In accordance with OAR 699-010-0060 , ineligible uses of Tribal Nation Natural Resource Program Fund include:"	Yes

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Rule: OAR 699-010-0090 Reporting

Commenter(s)	Comments	Response	Rule Change
Teresa Spangler, Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians	Requests that reporting focus on general expenditures, activities, and outcomes sufficient to support the Oregon Environmental Restoration Council's legislative reporting obligations and allow Tribes to provide information at a summary level without disclosing confidential or culturally sensitive information.	The proposed biennially reporting requirements being developed in consultation with eligible Tribes meet this standard.	No

Staff Summary and Response to Tribal Comments

Rule: OAR 699-010-0100 Waiver and Periodic Review of Rules

Commenter(s)	Comments	Response	Rule Change
Austin Smith Jr, Confederated Tribes of Warm Springs	Recommends clarifying that any waiver affecting Tribal funding, reporting obligations, eligibility determinations, or Tribal use of funds should only occur after consultation with an affected Tribe. Such consultation would be consistent with the government-to-government relationship between the State and Tribal Nations and would help ensure that administrative waivers do not inadvertently diminish Tribal deference, stewardship goals, or Program benefits.	OWEB agrees and has changed the proposed rule language in 699-010-0100 by adding: "Any waiver must be made in consultation with affected Tribes , in writing with notification sent to Tribes , included in the fund transfer file records to which the waiver applies, and reported to the Oregon Environmental Restoration Council at the next meeting.	Yes
Teresa Spangler, Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians	Requests clarification that this waiver authority may not be used to reduce Tribal funding, narrow eligible uses, or increase reporting or administrative burdens on a Tribe without that Tribe's agreement.	OWEB agrees and has changed the proposed rule language in 699-010-0100 by adding: "Any waiver must be made in consultation with affected Tribes , in writing with notification sent to Tribes , included in the fund transfer file records to which the waiver applies, and reported to the Oregon Environmental Restoration Council at the next meeting.	Yes