

OREGON ENVIRONMENTAL RESTORATION COUNCIL

TRIBAL NATION FUND PROGRAM ADMINISTRATIVE RULES

STAFF REPORT | JULY 15, 2026



REPORT PURPOSE: This report provides information to support a vote by the Oregon Environmental Restoration Council (OERC) to adopt program administrative rules for the Tribal Nation Natural Resource Program Fund at the July 15, 2026 OERC meeting.

COUNCIL DISCUSSION AND DECISION ON JULY 15, 2026

- Discussion: Questions or requests for clarification on the Tribal Nation Natural Resource Program Fund Rules (rules) and/or process undertaken to develop the rules.
- Decision: Vote to adopt the Tribal Nation Natural Resource Program Fund Rules (Action Item)

BACKGROUND

[ORS 541.879](#) directs the OERC to establish rule procedures for the transfer of moneys from the Tribal Nation Natural Resource Program Fund in equal amounts to each of the federally recognized Tribes in Oregon. Staff from the Oregon Environmental Restoration Program (OERP) have been working with Tribal representatives since March 2026 to develop program administrative rules for the Tribal Nation Natural Resource Program Fund (Tribal Nation Fund) that meet the requirements in statute. The process and timeline from that work are described below.

PROCESS AND TIMELINE

The following describes the process and timeline for developing rules for the Tribal Nation Fund. Supporting information can be found in appendices included with this report.

DATE	DESCRIPTION
March 6, 2026	Letter from Nicole Maness, Program Manager sent to chair of each Tribe describing the proposed process and timeline for developing rules for the Tribal Nation Fund.
March 11, 2026	Draft rules for the Tribal Nation Fund shared with Tribal staff and with OERC members for a 45-day review period. Input/feedback was received from all Tribes and two OERC members.
April 2-30, 2026	Individual meetings conducted with Tribal staff to discuss draft rules and biennial reporting requirements. There was consensus among all Tribes to include reporting requirements as an appendix to the intergovernmental agreement (IGA) that will be signed between each Tribe and the Oregon Watershed Enhancement Board (OWEB) to facilitate transfer of annual payments from the Tribal Nation Fund to each Tribe.
May 12, 2026	Staff completed edits to the content and language of the draft rules to reflect recommendations from Tribes. Oregon Department of Justice completed a review of the final draft rules. Clean and tracked-changes versions of the final draft rules were shared with Tribes for a one-week final review. No further input was received.

DATE	DESCRIPTION
May 20, 2026	Legislative notice for proposed rulemaking for the Tribal Nation Fund sent out and notice filed with the Secretary of State.
June 1, 2026	Notice of rulemaking sent to OWEB's mailing list via Granicus (formerly GovDelivery). Tribes were sent individuals emails with notice that a 30-day tribal and public comment period would run from June 1-July 1, 2026 and a virtual public hearing was scheduled for June 17, 2026. Email correspondence encouraged Tribes to reach out directly to OERP staff with any questions/requests for clarification during that period. No requests for meetings or discussions were received.
June 17, 2026	Virtual public hearing held. One Tribal staff member was in attendance to listen to the hearing. There were no additional attendees.
July 1, 2026	Tribal and public comment period closed. Comments were submitted by two Tribes.
July 7, 2026	Tribal and public comment materials posted.
July 2-14, 2026	Revision to draft rules based on tribal comment.
July 15, 2026	OERC meeting with an agenda item to vote to adopt rules for the Tribal Nation Natural Resource Program Fund.

FINAL DRAFT TRIBAL NATION NATURAL RESOURCE PROGRAM FUND RULES

The final draft program rules are provided in Appendix D of this staff report. During the July 15 OERC meeting, OERP staff will walk through the ruleset with the OERC. As the tribal and public comment period closed on July 1, the OERC will not receive additional comments on the draft rules at the July 15 meeting.

NEXT STEPS

Oregon Department of Justice (DOJ) and OWEB have completed review of a draft template for the IGA that will next be reviewed by each Tribe (at their request) in advance of signing. OERP staff will be meeting with each Tribe in June and July 2026 to hear if any changes are requested to the IGA template as well as to receive any final recommendations on reporting requirements. Any requested changes to the draft IGA will require DOJ review and approval. Staff will work with each Tribe and with OWEB to get IGAs signed.

As soon as program rules have been adopted and IGAs are signed, OWEB will process the 2025 payment of \$833,333.33 to each Tribe. Once OERC has made their 2026 distribution from the Oregon Environmental Restoration Fund and funds are available in the Tribal Nation Fund, OWEB will amend the IGA to include the proportionate share of the distribution and process the appropriate payment to each Tribe. The IGAs will be in effect from July 15, 2026 - June 30, 2027 and will be renewed biennially.

STAFF RECOMMENDATION TO OERC

Staff recommend that the Oregon Environmental Restoration Council adopt program administrative rules for the Tribal Nation Natural Resource Program Fund found in Appendix D.

RESOURCES ATTACHED

Appendix A

This appendix lists the federally recognized Tribes engaged in rulemaking for the Tribal Nation Natural Resource Program Fund.

Appendix B

This appendix includes the staff summary and response to Tribal comments received during the Tribal and public comment period. The Tribal and public comment period closed on July 1, 2026.

Appendix C

This appendix includes the written comments received during the Tribal and public comment period.

Appendix D-1

This appendix includes the proposed Tribal Nation Natural Resource Program Fund Administrative Rules with edits addressing Tribal comments received during the Tribal and public comment period.

Appendix D-2

This appendix includes the proposed Tribal Nation Natural Resource Program Fund Administrative Rules (Division 10).

Appendix A

This appendix lists the federally recognized Tribes engaged in rulemaking for the Tribal Nation Natural Resource Program Fund.

Burns Paiute Tribe

Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians

Confederated Tribes of Grand Ronde

Confederated Tribes of Siletz Indians

Confederated Tribes of the Umatilla Indian Reservation

Confederated Tribes of Warm Springs

Coquille Indian Tribe

Cow Creek Band of Umpqua Tribe of Indians

The Klamath Tribes

Appendix B

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

Appendix B

Staff Summary and Response to Tribal Comments

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

Appendix B

Staff Summary and Response to Tribal Comments

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

Appendix B

Staff Summary and Response to Tribal Comments

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

Appendix B

Staff Summary and Response to Tribal Comments

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

Appendix B

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

Appendix B

Staff Summary and Response to Tribal Comments

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

Appendix B

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

Appendix C

This appendix includes the written comments received during the Tribal and public comment period.



Confederated Tribes of Warm Springs, Oregon
PO Box C
Warm Springs, OR 97761
Phone: 541-553-1161
Fax: 541-553-1924

June 25, 2026

VIA E-MAIL ONLY: RACHEL.THOMPSON@OWEB.OREGON.GOV

Rachel Thompson
Oregon Watershed Enhancement Board
775 Summer St. NE., Suite #360
Salem, OR 97301

**Re: Confederated Tribes of the Warm Springs Reservation of Oregon –
Comments on Tribal Nation Natural Resource Program Notice of
Proposed Rulemaking**

Dear Ms. Thompson:

I write on behalf of the Confederated Tribes of the Warm Springs Reservation of Oregon (“CTWS”) to provide comments on the Oregon Watershed Enhancement Board’s (“OWEB”) proposed rules to implement the Tribal Nation Natural Resource Program (“Program”). CTWS appreciates this opportunity to provide feedback. CTWS further appreciates OWEB’s efforts to establish a Program that recognizes the unique role Tribal Nations play in stewarding natural resources, and that provides direct funding to federally-recognized Tribes to support that stewardship. CTWS respectfully offers the following comments on the Program’s proposed rules:

1. High Degree of Deference Standard is Appropriate and Should Broadly Apply.

CTWS appreciates and supports the inclusion of OAR 699-010-0060, which expressly recognizes that “Tribes are sovereign nations, possessing experience and expertise in stewarding natural resources,” and provides that Tribal determinations regarding eligible uses of funds “shall be given a high degree of deference by the Council.” This principle is critical to the success of the Program. OAR 699-010-0060 appropriately acknowledges that Tribal Nations are best positioned to determine how these funds can be used to address Tribal natural resource priorities and fulfill Tribal stewardship responsibilities. CTWS encourages OWEB to ensure that this deference standard is applied broadly and consistently throughout Program administration, including, without limitation, as to reporting requirements, eligibility determinations, and any future Council review of Tribal expenditures.

For example, some other provisions of the proposed rules appear to be in some tension to this appropriate standard of deference. For example, 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. Because OAR 699-010-0060 requires a high degree of deference to Tribal determinations of eligible use, CTWS 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.

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Rachel Thompson

June 25, 2026

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2. Monitoring Activities Should Not Be Limited to Resource Quality.

OAR 699-010-0050(1)(b)(D), (E), and (F) identify monitoring, restoration, remediation, and technical assistance activities related to restoring, maintaining, and enhancing the “quality” of Oregon’s air, land, water, and natural resources. CTWS recommends revising these provisions to avoid any implication that monitoring activities must be limited to resource quality metrics. For many Tribal natural resource programs, monitoring of resource quantity is equally important. For example, water quantity is a key hydrologic condition that directly affects fish habitat, treaty-reserved resources, ecosystem function, and Tribal water rights. Technical assistance and remediation activities should be able to apply broadly to quantity considerations, in addition to quality considerations. Accordingly, CTWS 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.

3. Additional Conditions in Inter-Governmental Agreements Should Be Limited.

OAR 699-010-0030 authorizes OWEB to place “additional conditions” into Inter-Governmental Agreements, including conditions related to eligible uses and reporting requirements. CTWS is concerned that this provision could unintentionally allow future conditions that narrow the flexibility (and Tribal deference standard) otherwise provided by the proposed rules. To preserve Tribal sovereignty, deference to Tribal Nations, and the intent of the Program, CTWS 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.

4. The Director’s Waiver Authority Should Not Reduce Tribal Rights or Program Flexibility.

OAR 699-010-0100 authorizes the Director to waive the requirements of Division 10 when doing so will result in more efficient or effective implementation of the Program. CTWS 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.



VIA E-MAIL: RACHEL.THOMPSON@OWEB.OREGON.GOV

Rachel Thompson
June 25, 2026
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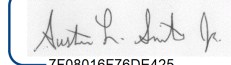
5. Reporting Requirements Should Remain Streamlined.

CTWS appreciates that OAR 699-010-0090 requires only biennial reporting and provides that the reporting format will be developed in consultation with Tribes. We encourage OWEB to maintain a streamlined reporting framework focused on accountability while minimizing administrative burden. Consistent with OAR 699-010-0060, reporting requirements should recognize Tribal expertise and avoid unnecessarily prescriptive documentation standards.

CTWS appreciates OWEB's work to establish this important Program and looks forward to continued collaboration with the State during the Program's implementation. We respectfully request that OWEB incorporate the recommendations above to ensure that the Program fully respects Tribal sovereignty, Tribal expertise in natural resource stewardship, and the government-to-government relationship between the State and CTWS.

Thank you for your consideration.

Sincerely,

DocuSigned by:


Austin Smith, Jr.

Natural Resources General Manager
for Confederated Tribes of the Warm Springs
Reservation of Oregon

AS:rk

cc: Josh Newton – Best Best & Krieger LLP
Alison Toivola – Best Best & Krieger LLP





**CONFEDERATED TRIBES OF
COOS, LOWER UMPQUA & SIUSLAW INDIANS
TRIBAL GOVERNMENT OFFICES**

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July 1, 2026

Oregon Watershed Enhancement Board
Attn: Nicole Maness, Oregon Environmental Restoration Program Manager
775 Summer St. NE, Suite 360
Salem, OR 97301

RE: Comments on Proposed Rules for the Tribal Nation Natural Resource Program Fund (OAR Chapter 699, Division 10)

niishanax (Hello) Members of the Oregon Environmental Restoration Council (OERC) and Oregon Watershed Enhancement Board (OWEB) Staff,

The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (CTCLUSI) appreciate the opportunity to comment on the proposed rules for the Tribal Nation Natural Resource Program Fund.

CTCLUSI supports adoption of the proposed rules, provided the final rules are revised or clarified as described below. Specifically, CTCLUSI requests several revisions and clarifications to ensure the final rules fully support Tribal self-determination, maintain the program as a funding transfer program rather than a grant program, protect sensitive Tribal information, and preserve the flexibility necessary for long-term natural resource stewardship and restoration.

1. The proposed rules should be finalized to recognize Tribal sovereignty, needs, and expertise

CTCLUSI appreciates the OWEB's and the OERC's engagement with Tribal governments during the development of these rules and recognizes the importance of this program as an investment in Tribal-led environmental restoration and stewardship of natural resources. We also appreciate that the proposed rules recognize Tribal sovereignty and Tribal expertise in stewarding lands, waters, fish, wildlife, plants, and ecosystems.

CTCLUSI is generally supportive of the proposed rules. We especially appreciate the broad range of eligible uses included in the draft, the allowance for staffing, monitoring, indirect costs, and matching funds, the provision stating that funds do not need to be expended within the biennium in which they are transferred, and the requirement that reporting be developed in consultation with Tribes. CTCLUSI also strongly supports proposed OAR 699-010-0060, which recognizes Tribal sovereignty and provides that Tribal determinations regarding eligible use of funds shall be given a high degree of deference by the Council.

2. Intergovernmental agreements should not be used to impose new substantive restrictions

CTCLUSI requests revision of proposed OAR 699-010-0030 regarding Inter-Governmental Agreement conditions. As drafted, the proposed rule allows OWEB to place additional conditions into the Inter-Governmental Agreement, including conditions related to eligible uses of funds and reporting requirements.

CTCLUSI is concerned that this language could allow substantive restrictions or additional reporting obligations to be imposed through intergovernmental agreements rather than through rulemaking and Tribal consultation. Because this program is intended to transfer funds to Tribal governments for Tribal stewardship of natural resources, the final rules should make clear that intergovernmental agreements are implementation tools and not mechanisms to narrow Tribal discretion or impose new substantive requirements beyond those established in rule and statute.

CTCLUSI requests that the final rule clarify 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.

3. Eligible uses should expressly include Tribal cultural stewardship and related restoration activities

CTCLUSI appreciates that proposed OAR 699-010-0050 includes a broad list of eligible uses, including restoration, natural resource damage assessment, water and air quality improvements, cleanup and remediation, habitat restoration and protection, land and water acquisition, staffing, outreach, monitoring, technical assistance, indirect costs, and use of funds as match.

CTCLUSI 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.

CTCLUSI 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.

CTCLUSI also requests revision of OAR 699-010-0050(1)(b)(C), which currently allows education or outreach activities "*specific to the restitution or remediation project*" (emphasis added). This phrasing may be read too narrowly. Education, youth engagement, outreach, and stewardship learning activities are integral components of Tribal restoration and stewardship work, even where they are not tied to a single restitution or remediation project. The rule should instead allow education and outreach activities *reasonably connected to* an eligible restoration, remediation, stewardship, monitoring, planning, or protection activity funded through the program.

4. Council eligibility determinations must remain subject to Tribal deference

CTCLUSI requests clarification to OAR 699-010-0050(2)(b), which states that ineligible uses include uses not consistent with subsection (1)(a) 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.

As drafted, this language may be read to reserve broad discretion to the Council to determine whether a Tribal use is eligible, without expressly tying that determination to the standard in OAR 699-010-0060 to

defer to Tribal Nations' Determinations of Eligible Use of Funds. CTCLUSI requests that the final rules clarify that any 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.

5. The rules should clearly protect multi-year Tribal projects and use of transferred funds

CTCLUSI strongly supports OAR 699-010-0050(1)(e), which states that Tribal Nation Natural Resource Program Funds do not need to be expended by Tribes within the biennium in which they are transferred. This flexibility is essential because Tribal restoration and stewardship work often spans multiple years, field seasons, permitting windows, and funding cycles.

CTCLUSI requests clarification of the relationship between this provision and OAR 699-010-0080(2), which states that unexpended, unobligated, and unconditional amounts in the Tribal Nation Natural Resource Program Fund revert to the Oregon Environmental Restoration Fund at the close of the biennium. The final rules should 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.

6. Reporting requirements must protect confidential and culturally sensitive Tribal information

CTCLUSI appreciates that OAR 699-010-0090 provides for biennial reporting and states that the report format will be developed in consultation with Tribes. CTCLUSI supports this approach. At the same time, the final rules or associated reporting framework should expressly recognize that reporting must not require disclosure of confidential or culturally sensitive Tribal information.

Many Tribal natural resource and stewardship efforts involve sensitive information, including sacred or culturally significant places, archaeological and cultural resources locations, traditional gathering areas, culturally significant species locations, and Indigenous Knowledge. Reporting should support accountability without requiring Tribes to disclose information that could compromise Tribal resources or cultural practices.

CTCLUSI requests that reporting focus on general expenditures, activities, and outcomes sufficient to support the Council's legislative reporting obligations and allow Tribes to provide information at a summary level without disclosing confidential or culturally sensitive information.

7. Waiver authority should not reduce Tribal protections or increase Tribal burdens without Tribal agreement

CTCLUSI understands the purpose of OAR 699-010-0100, which allows the Director to waive rule requirements when doing so will result in more efficient or effective program implementation. However, CTCLUSI 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.

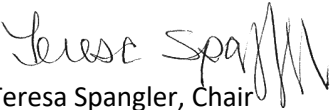
Conclusion

CTCLUSI appreciates OWEB and the OERC's work to establish the Tribal Nation Natural Resource Program Fund and recognizes the significant value of this program for Tribal-led restoration and stewardship of natural resources. CTCLUSI is supportive of the proposed rules and appreciates several strong features in the draft, including the broad range of eligible uses, the recognition of Tribal sovereignty and expertise, the deference provision, and the flexibility for funds to support work across multiple years.

CTCLUSI supports adoption of the rules if they are revised or implemented consistent with the requests outlined above. CTCLUSI respectfully requests that the final rules be revised or clarified as described above to preserve Tribal discretion, support culturally grounded Tribal stewardship, protect confidential Tribal information, and ensure the program remains workable for long-term restoration and natural resource stewardship.

Thank you for the opportunity to comment and for your continued engagement with Tribal governments.

hiisəch hai (With a good heart),

A handwritten signature in cursive script, appearing to read "Teresa Spangler".

Teresa Spangler, Chair

Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians

Appendix D-1

This appendix includes the proposed Tribal Nation Natural Resource Program Fund Administrative Rules with edits addressing Tribal comments received during the Tribal and public comment period.

DRAFT

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.

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

699-010-0030

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.

699-010-0040

Eligibility

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

699-010-0050

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
 - 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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699-010-0060

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.

699-010-0070

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.

699-010-0080

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.

699-010-0100

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 in writing with notification sent to 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.

DRAFT

Appendix D-2

Proposed Tribal Nation Natural Resource Program Fund Administrative Rules

DRAFT

Final Draft Rules: Tribal Nation Natural Resource Program Fund

Division 10

Chapter 699

Division 10

TRIBAL NATION NATURAL RESOURCE PROGRAM FUND

699-010-0010

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