



CONFEDERATED TRIBES
of the
Umatilla Indian Reservation
Department of Natural Resources
ADMINISTRATION

P.O. Box 638
73239 Confederated Way
Pendleton, Oregon 97801
Area code 541 Phone 276-3447 FAX 276-3317



January 31, 2006

U.S. Army Corps of Engineers
Attn: CECW-OR/MVD (David B. Olson)
441 G Street NW.
Washington, DC 20314-1000

Re: CTUIR DNR Comments on Nationwide Permits

DELIVERED ELECTRONICALLY

Dear Mr. Olson:

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) appreciates the opportunity to review the Corps of Engineers' (Corps) solicitation of comments on the proposal to reissue and modify Nationwide Permits (NWP), general conditions and definitions. On November 27th, the CTUIR requested a 60-day extension to address individual details regarding the NWP. After review of DNR's original concerns from our November 27th letter, it is apparent that our concerns were justified and we reiterate our comments on General Conditions 16 and 18.

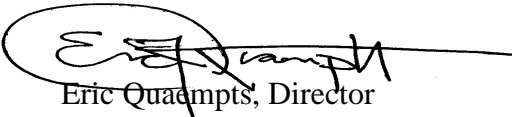
General Condition 16, Tribal Rights, states that "No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights." Further research of Corps records and conversations with Corps staff indicate that there exists no guidance within the Nationwide Permit process which tells potential permittees what is meant by "tribal rights," nor what standard is used to determine their impairment. Unless and until the Corps develops some form of guidance to potential permittees regarding General Condition 16, there is essentially no Corps oversight of impacts to tribal rights. The Corps of Engineers has a Trust Responsibility to manage resources entrusted to their care so that resources secured by treaty for Indian tribes are protected from destruction or degradation. Under the Nationwide Permitting scheme, the Corps is exercising no oversight of tribal treaty-reserved rights or resources and is therefore breaching that Trust Responsibility. Worse still, Condition 16 suggests that the Corps is ensuring protection of tribal rights, when in fact the Corps appears to have no intention of doing so. To remedy this failure, the Corps has an obligation to consult with tribes to determine what tribal rights are and what actions the Corps must take to protect them. This could be done on a division or district level.

General Condition 18, regarding Historic Properties, should reference the 36 CFR § 800 regulations for compliance with the National Historic Preservation Act (NHPA). The draft conditions cite the Corps' compliance with "the current procedures for addressing the requirements of Section 106 and the" NHPA. As of this date, the only lawful "current procedures" for the Corps to comply with the NHPA are in 36 CFR § 800. We would direct the Corps' attention to a letter sent to the CTUIR on November 14th from Don T. Riley, Major General, U.S. Army, Director of Civil Works. The letter, in the attached Appendix C Fact Sheet, states that "The ACHP has never concurred in our counterpart regulations due to disagreements primarily on jurisdictional issues." Further, the Fact Sheet states that "Appendix C lacks updated effect definitions, updated public involvement guidelines and does not address any tribal involvement." Until the ACHP concurs in the Appendix C regulations, they are a nullity, enacted without legal force or effect. To quote our November 27th letter:

The Corps of Engineers should immediately abandon Appendix C and comply with 36 CFR § 800. This should be done rather than embarking on an open-ended "consultation" on an unambiguously flawed Appendix C. During the time allocated to revise Appendix C, the Corps should comply with the law as it is written. . .

If you have any questions, please feel free to contact Audie Huber, Intergovernmental Affairs Manager, at (541) 966-2334.

Sincerely,



Eric Quémpts, Director
Department of Natural Resources

Cc: NATHPO, D. Bambi Kraus
ACHP, Valerie Hauser, Tribal Liaison
Georgeie Reynolds, Tribal Liaison COE
Deborah Knaub, Seattle COE
Diane Lake, Seattle COE
Corrie Veenstra, Portland COE
Barbara Creel, Portland COE