

September 28, 2015

Joe Watkins
Office of Tribal Relations and American Cultures
1201 Eye Street NW.,
Washington, DC 20005

Re: NPS Gathering Rule, RIN 1024-AD84,

Dear Mr. Watkins,

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) Department of Natural Resources (DNR) appreciates the opportunity to review the proposed rules for the Gathering of Certain Plants or Plant Parts by Federally Recognized Indian Tribes for Traditional Purposes, 80 Fed. Reg. 21674-81 (April 20, 2015). CTUIR tribal members retain rights under the Treaty of 1855 including, among others, the rights to gather, graze, and hunt on unclaimed lands and the right to fish at all usual and accustomed fishing stations. The CTUIR DNR supports the National Park Service (NPS) drafting regulations to facilitate tribal member access to traditional foods, medicines and textiles on NPS lands; however the draft regulations are far too intrusive to accomplish the goal of tribal gathering. The CTUIR DNR recommends including much more flexibility in the draft regulations for the park manager to allow gathering without requiring exhaustive documentation and justification of tribal member use.

Members of the CTUIR have gathered their First Foods in their aboriginal territory since time immemorial. This includes fishing for salmon, lamprey and other aquatic species from far down the Columbia River to hunting buffalo up into Montana and ranging far and wide within and amongst the tribes of the region. Some of the areas in which CTUIR tribal members gathered are now managed by the NPS, including Yellowstone National Park. Please find attached an article of the recent return of CTUIR tribal hunters to the lands of the buffalo. This article discusses the history of the tribal hunting of buffalo and our work with Montana to protect, preserve and perpetuate this treaty right.

Unfortunately, section 2.6(f) of the draft regulations require exhaustive documentation requirements for agreements with tribes to exercise otherwise existing treaty rights. What is most troublesome about this requirement is that the information provided becomes public. Tribes have sought to protect this sensitive information from release and traditional gatherers keep this information confidential. Tribes across the United States have had their lands, resources and cultural practices appropriated and over-exploited for many generations. There are many instances of tribal resources being overused on federal lands. For instance, in the mountains of Oregon and Washington there exists competition and conflict over the harvest of huckleberry with commercial harvesters over their methods, rates, and quantities leading to Tribal concerns over the availability of First Foods for our feasts and subsistence needs. Because Tribal First Foods have been exploited, there is an extreme reluctance to trust agencies such as

the NPS with knowledge regarding First Foods including, importantly, roots. This problem is exacerbated by the fact that these resources are limited on the Umatilla Indian Reservation, difficult to gain access to on private lands or the private lands have been developed, and therefore are primarily available on federal lands to which the general public has access to damage or harvest those resources.

Congress recognized this problem for tribes collaborating with federal agencies to protect first foods while simultaneously keeping the information confidential in the 2008 Farm Bill (P.L. 110–234). That law, codified at 25 USC 3056(a), states (emphasis added):

(a) Nondisclosure of information

- (1) In general The Secretary shall not disclose under section 552 of Title 5 (commonly known as the “Freedom of Information Act”), information relating to--
 - (A) subject to subsection (b)(1), human remains or cultural items reburied on National Forest System land under section 3053 of this title; or
 - (B) subject to subsection (b)(2), resources, cultural items, uses, or activities that--
 - (i) have a traditional and cultural purpose; and
 - (ii) are provided to the Secretary by an Indian or Indian tribe under an express expectation of confidentiality in the context of forest and rangeland research activities carried out under the authority of the Forest Service.
- (2) **Limitations on disclosure Subject to subsection (b)(2), the Secretary shall not be required to disclose information under section 552 of Title 5 (commonly known as the “Freedom of Information Act”), concerning the identity, use, or specific location in the National Forest System of--**
 - (A) **a site or resource used for traditional and cultural purposes by an Indian tribe; or**
 - (B) any cultural items not covered under section 3053 of this title.

This statutory protection is of no help in the instance of the NPS regulations because it only applies to the Department of Agriculture. While it may be possible to develop confidentiality agreements under the Freedom of Information Act, such agreements are hard to enter into and extremely difficult to enforce. Because of this, the information requirements regarding the exercise of traditional gathering rights should be limited to only information that is absolutely necessary, disclosing no confidential information.

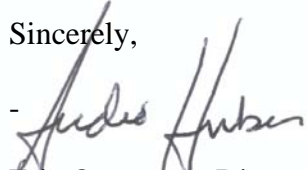
By requiring disclosure of only general information from tribes, the regulations could provide that the NPS make a determination that the use of the lands to gather certain resources is not inconsistent with the management of NPS lands. Such a finding would be based on the availability of resources on park lands and certain non-discriminatory requirements on the gathering of such resources. Tribes will need to confer with the NPS on the timing, nature and quantity of tribal use for resource management purposes, but the burden would not be on the tribes to disclose confidential traditional use information. Further, such agreements could include provisions for the closure of traditional gathering in the event that is determined necessary in consultation with the affected tribe due to resource concerns.

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The CTUIR DNR hopes that these regulations will further our efforts to reinforce the cultural connections and practices of CTUIR tribal members to exercise their treaty rights on the landscape. We look forward to continued work with the NPS to implement these regulations.

If you have any questions regarding this e-mail, please contact Carl Scheeler, Wildlife Program Manager of the DNR at 541-429-7242.

Sincerely,

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Eric Quaempts, Director
Department of Natural Resources