

**Wisconsin Tribal Conservation Advisory Council Meeting Minutes**  
**Wednesday, September 7 and Thursday, September 8, 2011**  
**Mole Lake**

**WEDNESDAY, SEPTEMBER 7**

Meeting called to order 9:09 am by Nate Guldan. Jonathan Pyatskowit will be late, so Nate Guldan is chairing the meeting.

**1. Attendees**

Jacob Maas (Red Cliff), Lacey Hill (Bad River), Tina Van Zile (Mole Lake), Jeff Mears (Oneida), Brett McConnell (LCO), David Spafford (St. Croix), Jim Ruppel (US EPA), Nate Guldan (FCPC), Melinda Danforth (Oneida)

**2. Meeting Minutes**

The minutes from the May 10, 2011 Tribal Caucus Meeting were distributed. It was decided that the minutes from the Tribal Caucus portion of WTCAC would just be approved at the WTCAC meeting tomorrow. In the future, the Tribal Caucus portion of the minutes will be approved at the next regular WTCAC meeting.

**3. Agenda for Tribal Caucus Portion of WTCAC Meetings**

There was a discussion on putting together meeting agendas for the Tribal Caucus portion of the WTCAC meetings. Who should help pull the meeting agendas together? It was decided that there should be 3 parts to the agenda: 1) Issues to bring to the RTOC, 2) Issues that EPA wants to bring to the Tribes, 3) Any other items that Tribes would like to discuss, 4) Consultation Opportunities. Jim Ruppel will take a lead role in developing the agenda and send out an email to everyone to asking for agenda items. If the host tribe has a major agenda issue that is of interest to them then we will make sure it gets on the list. Jim would like to use a rolling agenda and he will also send out consultation items to review before the meeting.

**4. NTOC Representative**

Tehassi Hill was not reelected so he will need to be replaced on NTOC. Melinda is looking for nominations, so if you would like to nominate someone please send an email to her or send her a letter from the Tribe. It would be preferable if the NTOC representative was an elected leader and it would be fine if Wisconsin filled the position. Monica Headstrom from White Earth will be filling in as she is the last representative left. The RTOC representatives will have the final say on who is selected. The current representatives are Stan Ellision, Sally Kniffen, Eric Chapman, and Melinda Danforth. Michigan and Minnesota are trying to fill their vacant spots.

## **5. GAP Guidebook**

The guidebook would be used to help define what building tribal capacity is. There was concern at the NTOC of what this meant. There would be a different funding formula. They seemed to stress with the funding issue to try and focus on who has been successful with the money in the past and the needs. There will need to be an agreement between EPA and each Tribe on how they will move the program forward.

## **6. Solid Waste**

There was a long discussion on Solid Waste funding. Programs that were a success story are now falling apart. This issue needs to be reflected in the TEAs. This issue should be brought to RTOC.

## **7. Extra GAP Funds**

EPA received \$350,000 in supplemental GAP funds. Each tribe would get \$10,000 or they could prioritize funds for certain projects. No information was provided on how things would be ranked and what the selection criteria would be. A consensus was reached that EPA should just give \$10,000 to each tribe.

## **8. Tribes/RTOC/NTOC Communication**

Melinda is trying to pull together a flow chart for how things flow from the Tribes to RTOC and then up to NTOC. How can we improve RTOC, it was created from EPA's side and we felt that there were things that should be improved. EPA has committed to having dialogue between meetings so Melinda will be contacting Susan Hedman when needed. EPA also said they would come up with some items that they thought we improve communication as well.

## **9. July RTOC**

The hiring policy of EPA was discussed. They are struggling with filling the IEO Director position. We also went through a session that developed the top 5 tribal priorities for Region 5. They will send the list out once it is finalized. At RTOC in November they will be putting some meat to the strategies.

Water Quality Standards – What about the ceded territory areas? Why can't the Tribes have some input on Water Quality Standards in ceded areas being they have hunting and fishing rights? We asked EPA about this. It is on the tracking matrix so EPA will be getting us an answer. They committed to getting us a legal opinion on it.

Susan noted she is serving on an international joint commission looking at mining around the great lakes. She would like mining issues brought up to the region.

## **10. Next RTOC**

Wisconsin will be the host for the next RTOC meeting. Willie said the NTOC is December 5. Red Cliff volunteered to host the next RTOC. Jacob Maas will be the contact.

## **11. Consultation**

EPA plans to over consult at first to make sure they are getting the right things out. Now it seems the Tribes are overwhelmed with consultation requests. Oneida has a form letter if there are items in Wisconsin which says they have no comment but thanks for the invitation. We get requests for comment from all over the country from different agencies. RTOC could be used to present what is changing and how it impacts the Tribes when things are technical. Tribes need to indicate if they do not have the expertise to properly comment on things.

## **12. Information Exchange Network**

Information Exchange Network is a partnership between states, tribes, territories and EPA to share data. In October they are having a Region 5 conference and it is important to get Tribes there to see what the EPA informational exchange grant program is.

## **13. BIA Fee to Trust**

Herb Nelson put together comments on this (attached). There are 400 pending applications for fee to trust just sitting there. Look at Herb's comments as some will apply to your tribe. Oneida is going to contract with a company to do asbestos and lead. The rules require a federally licensed inspector.

## **14. EPA Emails**

Everyone seems to be getting excessive emails from EPA. Can everything be run through Jim for EPA? Jim has been putting FWD only on his emails to indicate he hasn't added anything new and can be deleted if you have already seen it. Jim has proposed using a list serve to distribute emails. Jim is going to put together a proposal to do this.

## **15. RTOC ISSUES**

- 1) How does EPA, at least in the Region, plan on working with the Tribes on the Solid Waste Issue?

## **THURSDAY, SEPTEMBER 8**

Jonathan Pyatskowit called the meeting to order at 8:16 am.

### **1. Roll Call**

Present: Bad River (Lacey Hill), FCPC (Nate Guldán), Ho-Chunk (Randy Poelma), LCO (Brett McConnell), Menominee (Jonathan Pyatskowit), Mole Lake (Tina Van Zile), Oneida (Pat Pelky, Jeff Mears), Red Cliff (Jacob Maas), St. Croix (Tony Havranek), Stockbridge-Munsee (Luke Hennigan)

Others present: Tom Krapf (NRCS), Chris Borden (NRCS), Tom Melnarik (NRCS), JoAnn Cruse (APHIS), Keith Sengbusch (WTCAC), Tony Bush (NRCS), Sherrie Zenk-Reed (NRCS), Brian Kowalkowski (College of Menominee Nation), Pat Leavenworth (NRCS), Dr. Tim Davoe (APHIS), Jerry Thompson (WTCAC)

### **2. Approval of Agenda**

Add Technical Service Provide discussion, Program Manager update, and discussion of WHIP and EQIP Ranking Tool to agenda, remove EPA.

**MOTION:** Motion to approve the agenda with additions. Motion by Oneida, seconded by Stockbridge-Munsee. All ayes, zero opposed, motion carried.

### **3. Approval of Minutes**

**MOTION:** Motion to approve the May 10, 2011 minutes. Motion by Stockbridge-Munsee, seconded by St. Croix. All ayes, zero opposed, motion carried.

Item #16 needs to be clarified in the July 27, 2011 minutes to indicate that we are having issues with the Indian Agricultural Act.

**MOTION:** Motion to approve the July 27, 2011 minutes with clarification and email minutes from August 18, 2011. Motion by Stockbridge-Munsee, seconded by Mole Lake.

### **4. NRCS Update**

Pat Leavenworth gave the NRCS update. Three weeks ago she went to DC and went on the Hill to meet with the new congressional delegation staff (Reid Ribble, Sean Duffy and Ron Johnson). Her purpose was to educate them on NRCS programs and to share with them the work WTCAC is doing with NRCS. She gave them our brochure. Reid Ribble is on the House Ag Committee and his staffer is very well versed in Farm Bill conservation programs. He is looking forward to getting engaged when developing the 2012 Farm Bill. She also met with Kohl's staff; his main Ag staffer has assumed a position in the Office of Congressional Affairs with USDA. They are

hearing that there is likely a push to get the Farm Bill done in a very short time frame. The agency has sent 2 people to work with Senate Ag committee leaders.

The 2011 budget is closing out very nicely and they are filling vacancies. They have the state biologist position posted now. For the 2012 budget, the House passed their version with a 15% cut to USDA. It is not as bad with NRCS but the final numbers are not known. The Senate still has to vote on its version and they may be meeting next week to begin that effort. In terms of positions, Chris Borden is now the Tribal Resource Conservationist. We had requested a replacement for Randy; so Chris will be working with all of us on technical assistance and conservation planning advice. He will also be working with GLIFWC and BIA, etc. Tom Krapf – we hope this will give us better coordination and will be responsible to cover anyone's issues here in the state. Chris indicated that he is very excited about the opportunity and looking forward to visiting with all of us. He will appreciate our help getting him up to speed. Pat Leavenworth is speaking for her supervisor Tom Christiansen at the NAFWS and Chris Borden will also be speaking at the conference.

A Regional Cookbook is currently being developed. WTCAC knows it came from Washington, no consultation occurred with Tribes on this issue. WTCAC has issues with how this may affect us. Tom Krapf – they are having a meeting next week. Wisconsin is linked up with Michigan and Minnesota, each state is sending 2 specialists to work on the cookbook to have some uniformity with the pay rates. The first year they will be starting with 15 practices. Eight scenarios will be allowed to be developed with each practice. The Regional Cookbook is meant to bring fairness across state lines; an example is a farmer with land in Wisconsin and Minnesota. They may not have great differences but they have not had communication on them. How do these practices flow across states? Not looking at it as a limiting factor on our scenarios as they can have 8. Tom feels like it won't be too bad. They could take some opportunity to work with other states to see what tribal scenarios that they have developed. He will know a lot more after they meet the first time. Matt Otto and Scott Miller are on the committee from Wisconsin. Pat Pelky – a good opportunity to share our experiences with tribes in other states. How do we get engaged at a regional level instead of just the state level? Let him know what scenarios are the most important to us.

There is an issue with contracting procedures. We need to let our liaisons know how we want contracts done, it is up to us. Please realize the affects this will have on your ranking. Aquaculture practices were added and will use up big chunks of money. Tribes need to be aware that if ranked you will get all or nothing on a contract.

Is the \$440,000 set aside set in stone? The total pie hasn't changed. If we have extra practices then they would come back and have another sign up. They can do this. It would increase our allocation. After the initial application is done, they then do redistribution. If we take in our

applications and we find out we have more than \$440,000 then let them know. They would then do another signup. They are not sure how much money they would have after the redistribution. Sometimes they get a bigger EQIP allocation and then could adjust the \$440,000 based on that. They could also try to go through an initiative such as this year. The application date of the 2<sup>nd</sup> sign up needs to be after the first sign up has ended.

We could apply for other area funds directed at other socially disadvantaged farmers. We could potentially have some push back from other groups if we start applying for other socially disadvantaged funds being we already get a set aside. They are also going to be looking at the funding pools states are using nationwide. She said our set asides will still be protected Wisconsin and South Dakota already have set asides and it looks like Minnesota is going to start.

WTCAC's recommendations on the ranking questions for the state issues for EQIP were handed out. Pat and Tom did not have any issues or concerns with them.

There was a suggestion that the liaison and Chris Borden sit down and rank them so that every liaison interprets them the same way. Or have a meeting where all liaisons get together with Chris and rank them at the same time.

## **5. APHIS Update**

JoAnn Cruse – APHIS looks like it may not be getting as huge a cut as other USDA agencies are. They are thinking maybe an 8% cut for them. There will probably be a 60% cut in EAB funding. They are already downsizing the programs and as they find more EAB the funding is going down. She sent out their road map to 2015 and it was the strategic plan for plant protection and quarantine and they are now rolling it out and trying to get some feedback. Outreach, partnership, and using science to back up programs are their goals. Only 1 staff out of 3 will be left for EAB by October 2012. They are developing a modernization plan within APHIS to take a look at how they can work more efficiency between the different APHIS services. There is a committee looking at this and there will likely be some major changes (potential to eliminate office managers). Some states directors are being combined. They offered buyouts to certain parts of their agency. EAB was found in La Crosse County and Winona County. She will meet with the tribes to see if there are any issues with counties being considered for quarantine. Gypsy moth reports are coming in and numbers are high in some places including Bayfield County. The EAB discoveries in Racine County and Kenosha County came from traps. The site in La Crosse County had 6 beetles in one trap. They were found southeast of La Crosse or 22 miles north of the last find. EAB traps can come down and if you have suspects please let her know. It is essential to get GPS readings on the traps. Finds may increase for EAB and gypsy moth as all the traps are not down yet. They were going to have a full scale exercise with Menominee; they would like to carry it out in FY2012 as it won't happen this year because of funding. She will be talking to Menominee and getting them updates. She is making some

contacts with Ho-Chunk, Menominee and Stockbridge-Munsee to see what they would do in emergency response situations. Are they going to have someone pick up the traps for St. Croix? JoAnn will look into it and send something out. There was a question on the wasp release to control EAB – Their effectiveness will take a while to determine. UW headed it up with DNR. Part of it was a research component to see how well it takes. The push for whatever funding is out there is biocontrol, outreach and regulatory work because these can help slow the spread. It will probably take 1 – 2 years to see whether or not the wasp is surviving. Releases are occurring in WI, MN, IL, OH, IN, MI, maybe PA and NY as well. New sites: DC, more in WV, KY, PA, and NY.

Dr. Deveau – APHIS Veterinary Services- They are looking at consolidating their Area Veterinary in Charge (AVIC). New England is already under 1 AVIC. They may make the whole US one region instead of two. Their Emergency Management Coordinator left and the position will probably be left vacant. This position covered Minnesota and Wisconsin. Right now the Illinois person is also covering Wisconsin and Minnesota. There were only 2 tribes that wanted assistance with rabies vaccination (Lac du Flambeau and Ho-Chunk). Just fewer than 200 animals were vaccinated with Ho-Chunk. 174 animals were vaccinated at Lac du Flambeau. In his area, more rabies activity this summer than the last couple of years, skunk rabies in particular. A couple cases where skunks showed aggressive behavior, one actually entered a house. One came out of a field and came after the people at a gathering. They have been seeing a lot of cattle from Texas in particular coming to Wisconsin for slaughter because of the drought in Texas; they are also potentially feeding them on pasture land in Wisconsin. In Green Bay a packing house inspector found an insect he didn't recognize, they determined it was a tick. The tick was a tick that lives deep in ear canals. This tick could probably possibly establish in cattle barns in Wisconsin but probably not in the wild. Because of the rapid movement of cattle in the U.S., a disease could show up in different parts of the country very rapidly.

The VHS agreement was signed on the 28<sup>th</sup> of August, only St. Croix will be conducting VHS testing this fall and next spring. Jerry is waiting on the University of Minnesota to get their cost together for testing the samples. Water needs to be less than 60°F so we have a way to go before they can get out and sample.

Stockbridge-Munsee is looking into biocontrol of spotted knapweed. Shawano County is doing a full roadside survey on invasive species. Stockbridge-Munsee would be willing to provide bugs, but you need a mile or more of roadway or a 30 acre infestation to do it. Bugs would be free. St. Croix did an experimental release about 5 years ago – they are still at the site. Any other Tribes interested in biocontrol? Let JoAnn know. Bugs are \$1/piece if you buy them individually.

## **6. FSA Update**

Susan forwarded her update to Jerry (attached).

## **7. Technical Service Provider Training**

Brian Kowalkowski, the Interim Dean of Continuing Education at the College of Menominee Nation is now heading up the TSP Project. Chad took a different position with the College at the Green Bay campus. He and Chad drove to Madison to meet with NRCS last week. They discussed the process for getting the certifications for the Conservation Activity Plans (CAPs). It boils down to for each one you need to go through a complete set of online modules and then develop the plan. There are a number of qualifications you need. They will work with NRCS to set up the trainings that are needed. They could provide access to the modules either at the college or they could bring laptops to different facilities. Maybe have a meeting for potential interested parties to describe to them what this is and the training that would be needed. The subcommittee needs to meet to talk about policy issues. The Fish and Wildlife CAP would need to be added to the Wisconsin docket. Tribes could possibly use 2501 grant money to develop a new practice or scenario. It that 4 things need to be done: 1) Meeting with possible TSP students 2) Subcommittee meeting to address policy issues 3) Agreement between WTCAC and College on recouping funds from the college 4) Small grant projects for Forestry Plans and Fish and Wildlife Plans. It would be good for Chris to pull together all the information NRCS already has on this stuff. They are going to shot for the week of October 17<sup>th</sup> to have the initial meetings.

## **8. EQIP and WHIP Ranking Questions**

WTCAC decided to use the EQIP State Questions for the WHIP State Questions as well.

For EQIP, the local questions will be done the same as prior years however each one will have the same point value. For WHIP, the local questions will be handled the same way as WHIP, however Tony will drop out the resource concerns that don't apply to WHIP.

**MOTION:** Motion to send WTCAC's recommendations for the EQIP and WHIP ranking questions on to Tony Bush and copy Tom Krapf and Matt Otto. Motion by Oneida, seconded by Ho-Chunk. All ayes, zero opposed, motion carried.

## **9. Small Project Reports**

Jerry requested all of the rest of our fiscal year 2011 2501 grant money. We have all of it in our bank account. Jerry needs in report: What did you special project accomplish that will make access to USDA programs available to you? We will approve projects for payment at the next meeting. Jerry will email out what should be in the report.

St. Croix – They conducted 1,500 acres of assessments for blueberry and sugar maple. They collected GPS readings at the stands and collected soil samples. Field work is mostly wrapped up, now he needs to put together the final report. He should have it done the 2<sup>nd</sup> or 3<sup>rd</sup> week in

October. They will be giving back some money. It was money for a 2<sup>nd</sup> LTE position that they were not able to fill. He needs a letter back from Jerry to approve the extension for their records.

Oneida – The project will be completed and the final report is currently being drafted.

Ho-Chunk – Citizen Science based monitoring. Surveys were done in the beginning of August and they were hoping to get tribal member involvement. The 1<sup>st</sup> property had no tribal involvement but horrible weather; they had 10 volunteers at the second property. Raw data has been collected and they need to summarize the results and do the report. They learned what good times to schedule the surveys were. People were most interested in frog and bat surveys and wolf howling.

Mole Lake – Project still on schedule and it is currently at the modeling stage.

Red Cliff – The project is coming along. They had community members come out and drive by. It is interesting and has been a lot of fun. Issues with using plastic on a traditional log house and making it work without having too many mechanical parts on it. They are also working on the outdoor sink, it has been a challenge. A local tribal member will be building it. They moved the greenhouse and it will finally be in a central location with the garden. NRCS did attend community events, the Bayfield County Ag Agent has been pretty much unavailable and they really need his assistance. Jerry asked them to please identify the barriers in the report. She finds herself acting in a liaison in some ways and is having to defend the tribal community. There have been 40 home gardens that have been tilled (increase of 10 from last year). They used the greenhouse to provide over 4000 plants to the community. They had an increase of 40 plant boxes this year. They will have leftover money because they are using the used utility sink. She would like to use the money somewhere else; Jerry asked that she send in a modification request.

## **10. INCA Meeting**

Jonathan is on the INCA board and was at their meeting 2 weeks ago in Montana to go over their strategic plans and other things they are working on. They are having employee issues and Jonathan was able to relay our experiences. They took some stuff from our strategic plan and reworked it. They modified our vision and mission and used it for theirs. They are looking at ideas for long term funding. They are looking at doing a capital campaign and endowment at a minimum to fund meetings. Once they have the strategy then they are going to start soliciting from some richer gaming tribes. They liked out brochure and they are going to try and develop their own. Toyota gives away 100 cars a year to non-profits. They are looking to get involved with ONR (Our Natural Resources). See how ONR fits with WTCAC. There is a private foundation listing service. Madison Community Foundation – Tina can get Jerry contact information.

## **11. Program Manager Report**

Jerry handed out the budget. Two weeks ago EPA said that they have GLRI funds available. Jerry put it in through NRCS. It came back from the Region so he emailed EPA directly. They are proposing a TribalCorps similar to AmeriCorps; we would like to do this. A proposal for almost \$1 million got sent to EPA for this. This would entail hiring Tribal members and students for invasive species work, stream restoration work, etc.

We still need to look into directors insurance. We need to get David Armstrong here to talk about it.

**MOTION:** Motion to approve an increase of 100 hours for the WTCAC Engineer through the end of September 2011. Motion by Stockbridge-Munsee, seconded by FCPC. All ayes, zero opposed, motion carried.

**MOTION:** Motion move carry over money from Travel for TCAC Training. Motion by FCPC, seconded by Stockbridge-Munsee. All ayes, zero opposed, motion carried.

**MOTION:** Motion to increase the WTCAC Engineer's salary to \$25/hour starting October 1, 2011. Motion by FCPC, seconded by Oneida. All ayes, zero opposed, motion carried.

Taxes – Jonathan just got a letter from IRS for 2008. It was the year Dave filed our taxes. They are saying we had an employee in 2008. We did not have an employee that year. We are cleared on most tax issues, so we are still waiting. We need to call them and see where we are at.

Jerry will send out an email to call for small project proposals and EQIP and WHIP to be presented at the next meeting.

Do we want to pursue the floating raceway idea? Someone from Stevens Point is interesting in giving a presentation on floating raceways. Try to get him at next meeting.

## **12. Next Meeting**

The next meeting is scheduled for November 2 at Oneida.

**MOTION:** Motion to adjourn. Motion by FCPC seconded by Stockbridge-Munsee. All ayes, zero opposed motion carried. Meeting adjourned at 4:59 pm.

**1. ECM 10-2 Erodes Tribal Self-Determination:** ECM 10-2 adds undue complication to BIA's fee-to-trust application process, further delaying and adding cost to acquisitions. These further incremental delays and costs are eroding tribal sovereignty pertaining to jurisdiction over tribal lands. Jurisdictional control of land is essential for tribal governments for self-determination, to provide adequate governmental services, infrastructure, subsistence and income for its members. There is an enormous pent up demand for housing in Indian Country. In the Midwest Region alone, tribal governments own 20,000 acres of land in fee that are pending in BIA's fee-to-trust process, a process that has already evolved to a gauntlet of political and legal twists and turns. Nation-wide, there are approximately 1,300 pending trust applications. Of that, roughly 400 pending applications are from tribes administered by BIA's Midwest Region. Timely real property acquisitions are a strategically crucial aspect of tribes' self-determination. Unfortunately, ECM 10-2 policy adds time, cost and complication to the critical path of BIA's fee-to-trust procedures that are already challenging for BIA and tribal staff to navigate.

It is also conceivable that liabilities identified using ECM 10-2 might prevent acquisition of a parcel that is key to a tribe's self-determination. Many of the liabilities identified so far in the Midwest are manageable, if tribes are given some flexibility in finding other federal resources. See issues 12 and 13. Following paragraphs explain details of the delays and further costs due to ECM 10-2.

**2. ECM 10-2 Liability Concerns are out of Balance with Trust Responsibility:** ECM 10-2 seems to have been written by staff that are unfamiliar with tribal trust responsibility and focused only on environmental liability. The singular focus on documenting potential liability has led to a process that is needlessly lengthy and expensive, beyond due diligence. As the Assistant Secretary is aware, DOI must prioritize tribal trust responsibility to its proper place among other duties, including responsibilities regarding environmental liability. Trust responsibility springs from treaties and related Congressional expressions that are the law of the land, superior to statutes that established liabilities addressed in ECM 10-2. Trust responsibility springs from the law of the land, but in comparison, ECM 10-2 is only a departmental policy. Trust responsibility is based on lands held in trust by the United States for beneficial uses of tribes. But as BIA's fee-to-trust evolves, unbalanced procedural changes such as ECM 10-2 begin to breach the trust responsibility. A tipping point of sorts is occurring and requires a course correction, that being simplification of the ECM 10-2. Tribes generally recognize that we must have due diligence in identifying environmental liabilities. But in some aspects, ECM 10-2 goes way beyond due diligence.

**3. ECM 10-2 is Inconsistent with the Secretary's Position on Expediting Trust Acquisitions:** Some months ago, the Secretary recognized the critical need of tribes to have land for self-

determination purposes. The backlog is approximately 1,300 trust application packages waiting for decisions by BIA. The Secretary and Assistant Secretary urged BIA staff to expedite review and decisions for trust applications. But then in another corner of the Department, the Office of Environmental Policy and Compliance (OEPC) and environmental staff from the bureaus worked on the concept of the ECM 10-2. The draft ECM 10-2 policy was reviewed internally and then made policy without tribal consultation to consider how it might adversely impact the BIA fee-to-trust process. Further delays from ECM 10-2, unclear requirements and additional cost to comply with ECM 10-2 are all inconsistent with the Secretary's statement of priority for BIA to expedite trust acquisition applications and decisions.

**4. Environmental Liability on Tribal Trust Lands versus at BIA Facilities:** Tribes also wish to avoid environmental costs and additional environmental health threats to its members with regard to hazardous-substance and other liabilities encountered in real property acquisitions. Ultimately, tribes pay for environmental liabilities, in various ways, as part of their business plan for using lands. As trustee, DOI is not automatically responsible to fund abatement of environmental liabilities on tribal trust lands, as ECM 10-2 assumes. One reason for this is that EPA recognizes tribal environmental jurisdiction over tribal fee lands and lands held in trust by the United States. For tribal fee lands, EPA assists tribes in environmental due diligence of properties using EPA's Brownsfield authorities to assess and clean up properties for tribal uses. With regard to environmental liability for lands held in trust, EPA looks to tribal governments to be responsible, not the Secretary as trustee. For example, if a tribe experiences a leak from a storage tank at a tribal facility, EPA holds the tribal government responsible, not DOI. On the other hand, if BIA experiences a leak from a storage tank at a BIA facility, say a roads garage, then EPA will look to BIA to remediate the spill. ECM 10-2 should recognize the difference between land acquisitions for tribal trust versus for BIA facilities because the environmental liabilities are different for these two cases.

For fee-to-trust acquisitions, some of the liabilities added by ECM 10-2 don't need to be abated by tribes prior to trust acquisition because BIA won't be liable for them. For example, trust acquisition of pre-1978 housing with non-friable lead based paint or asbestos. The tribal housing department, as manager, is responsible for lead paint and asbestos liabilities, not the Secretary as trustee. In this sense, some real property acquisitions by BIA are different than acquisitions by the other bureaus because the other bureaus are in effect the beneficial user of all of their real property acquisitions. BIA is not the beneficial user for tribal trust acquisitions. Further, tribes have other federal partners that share the federal trust responsibility to tribes and have authority and resources to help tribes address liabilities. This is also different than the other DOI bureaus and ECM 10-2 needs to reflect all of these differences.

**5. Substantially Redundant of ASTM E 1527-05:** Much of the information required to complete the three worksheets in Appendix A of ECM 10-2 is redundant of the current ASTM. It is recommend that the three Appendix A worksheets be edited to substantially reduce redundancy with report contents of the ASTM. The repetitive approach of ECM 10-2 requires the environmental professional to prepare the normal ASTM report and then go back and fill in the three worksheets with identical information. This does not add value to the ASTM due diligence process. Worse yet, in a few places, ECM 10-2 says put some of the ECM worksheet information in *several* places in the standard Phase I report format.

There are related problems caused by the redundancy of content. Phase I ESA reports for DOI bureaus have become non-standard, thicker and consume more resources to produce. In other words, Phase I ESAs for DOI have become unique compared to Phase I ESAs done for the remainder of the Nation. DOI Phase I ESAs are longer and more difficult to follow and review. Due to these factors, consultants are asking much higher fees, up to several times that charged for a non-DOI Phase I. It is conceivable that DOI’s unique contents may even confuse EPA and the Courts in the event that DOI might need to attempt to establish an innocent landowner defense regarding some liability on some specific property at some point in the future.

Here are some specific examples of redundancy caused by ECM 10-2:

**Examples of ECM 10-2 Redundancy  
With ASTM E 1527-05 Standard Requirements**

<b>Information Required by ECM 10-2</b>	<b>Section in ASTM E 1527-05 Where the ECM Information is already required</b>
Worksheet 1 – Section I Gathering Existent Records, Section 1.	8.3.4 Standard Historical Sources , except items k through t of the ECM are not covered in the ASTM. Items k to t could remain in Worksheet 1.
Worksheet 1 – Section I Gathering Existent Records, Section 2.	8.2.1 Standard Environmental Record Sources, except that items aa and bb of the ECM are not explicitly covered and could remain in Worksheet 1.
Worksheet 1, Page 20, item 1 asks whether the chain of title indicates commercial or industrial uses of the property;	8.3.4.4.Recorded Land Title Records

Worksheet 1, Page 20, items 2 through 4 on records of past land use history;	8.3 Historical Use Information
Worksheet 1, Page 21, items 1 and 3 on records on hazardous substance uses;	8.2.1 Standard Environmental Record Sources
Worksheet 1, Page 21, items 2 on previous environmental investigation;	8.4 Prior Assessment Usage
Worksheet 1, Page 23, items 6 on records of PCB records;	8.2.1 Standard Environmental Record Sources
Worksheet 1, Page 24, items 1, 3 & 4 on records of wells & onsite waste water disposal systems;	8.2.1 Standard Environmental Record Sources
Worksheet 1, Page 25, items 1 through 3 on environmental permits & compliances;	8.2.1 Standard Environmental Record Sources
Worksheet 1, Page 25, item 4 on records of environmental liens;	8.2.1 Standard Environmental Record Sources 8.3.4.4 Recorded Land Title Records
Worksheet 1, Page 26, item 5 on records of pending lawsuits or proceedings;	10.9 Proceedings Involving the Property
Worksheet 1, Page 26, item 6 on records of storage tanks;	8.2.1 Standard Environmental Record Sources
Worksheet 1, Page 26, item 7 on records of non-potable water supply wells;	9.4.4.6 Wells
Worksheet 1, Pages 28 & 29, items 1 and 2 on records for adjoining and surrounding properties;	8.2.1 Standard Environmental Record Sources except a few items of the ECM are not covered in the ASTM and could remain in Worksheet 1
Worksheet 1, Page 30, item 5 on records releases from adjoining and surrounding properties that might affect Property;	8.2.1 Standard Environmental Record Sources
Worksheet 1, Page 31, item 6 on records of up-gradient dumps or waste sites adjoining and surrounding properties that might affect	8.2.1 Standard Environmental Record Sources

Property;	
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environmental liabilities on that property will become DOI's financial liability. That is simply a false assumption, albeit a conservative approach that one might expect from OEPC and the other bureaus. But encouraging flexibility when dealing with tribal governments needs to be explicitly addressed in ECM 10-2. For example, flexibility and innovation should be encouraged regarding documented expressions of assistance from other agencies as explained in issue number 12.

**14. ECM 10-2 is Silent or Unclear Regarding Specific Potential Liabilities Before Trust Acquisitions can Proceed:**

**a. Asbestos containing Materials (ACM):** ECM 10-2 does not say whether all ACM must be abated prior to acquisition. But BIA Midwest staff is taking that approach. ECM 10-2 should be clarified to say that only friable ACM needs to be abated. ECM 10-2 should say that unless a REC was identified using the current ASTM, non-friable ACM can be left in place for the trust acquisition for the tribe to properly address with help from non-DOI agencies, as explained in issues 12 and 13 above.

**b. Lead Based Paint (LBP):** ECM 10-2 does not say whether all LBP must be abated prior to acquisition. ECM 10-2 should be clarified to say that only peeling, chipping, flaking or chalky LBP needs to be abated. ECM 10-2 should say that unless a REC was identified using the current ASTM, properly encapsulated LBP can be left in place for the trust acquisition to be properly managed and addressed by tribes with help from others, as explained in issues 12 and 13 above.

**c. Radon:** ECM 10-2 does not say whether radon must be tested in all buildings and abated, as needed, prior to acquisition. ECM 10-2 also does not say whether a building with radon levels above 4 pCi/L that has been properly abated can be taken into trust. ECM 10-2 should be clarified to say that properly abated buildings can be acquired in trust. ECM 10-2 should say that buildings untested for radon can be part of a trust acquisition, to be properly managed and addressed by tribes with help from others, as explained in issues 12 and 13 above.

**d. On Site Water Supply Systems:** ECM 10-2 is silent regarding what constitutes a properly operating on site water supply system. ECM 10-2 does not specify what needs to be done to inspect a water supply system to determine what environmental liabilities exist. Because the tribes have EPA, IHS and potentially others to help assess and correct water supply systems, it is recommended that ECM 10-2 should say that untested water supply systems can be acquired in trust, unless a REC was identified regarding the system using the current ASTM. There is also the problem of water supplies being impacted in a region by agricultural or other regional activities that elevate levels of nitrates, pesticides or similar contaminants. What is a tribe's

entire land base is located in such a region? It is recommended that systems in such areas be acceptable for trust acquisition only in no specific REC was identified using the current ASTM.

**e. On Site Waste Water Systems:** ECM 10-2 is silent regarding what constitutes a properly operating on site waste water system. ECM 10-2 does not specify what needs to be done to inspect a waste water system to determine what environmental liabilities exist. Because the tribes have EPA, IHS and potentially others to help assess and correct water supply systems, it is recommended that ECM 10-2 should say that uninspected on site waste water systems can be acquired in trust, unless a REC was identified regarding the system using the current ASTM. The ECM 10-2 worksheets might ask whether an inspection has been done and remains valid. Did the inspection identify a problem and was that problem repaired?

**15. Training Identified in ECM 10-2 is Expensive & Not Specific to ECM 10-2 Issues:** In Appendix C on page 85, ECM 10-2 identifies training available from the FWS, BLM, EPA and OSHA that may, in part, qualify as “relevant experience” for an environmental professional that intends to use ECM 10-2 and the current ASTM for all appropriate inquiries. But there is no specific training available regarding the additional liabilities of concern raised by ECM 10-2. Further, EPA typically provides it’s training to tribal staff at no cost for tuition as part of its trust responsibility. But FWS and BLM often charge full tuition to tribal staff, even though tribal staff may there for training to help comply with DOI requirements. Training at the FWS and BLM training centers should be free to tribal staff for purposes of trust responsibility and mutual capacity building.

**16. ECM 10-2 Encourages Expensive Checker Board Ownership:** Checkerboard ownership, particularly in rural areas, causes substantially increased costs to tribal governments as they provide infrastructure for community development. ECM 10-2 makes land acquisitions much more challenging for tribes as they attempt to acquire contiguous and nearby parcels to help keep infrastructure costs reasonable. Parcels separated by long distances tend to require multiple systems, increasing costs of sewer, water supply systems, storm water, transportation and other infrastructure.

**17. ECM 10-2 Helps Subject Tribal Governments to Jurisdiction of Local Governmental Units (LGUs):** It is not unusual in rural areas for properties to contain pre-1978 housing and out buildings with older water supply and waste water systems. Before ECM 10-2, tribes could acquire such properties, get them into trust and then work on upgrades with assistance from agencies like EPA, IHS and HUD. But ECM 10-2 changes the order of which comes first, trust acquisition or updates to structures and infrastructure. By requiring updates before trust acquisition establishes tribal jurisdiction, tribes can be forced to make updates to comply with ECM 10-2 that would not otherwise be the path taken by the tribe. It is often the case that tribal governments have priorities and objectives that differ from that of neighboring LGUs. A

related issue is that with ECM 10-2 forcing the tribe's decision-making schedule, resources from other federal programs are often not available on such short notice, so the tribe bears more of the cost in order to get lands into trust to establish tribal jurisdiction earlier.



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## FSA REPORT TO WTCAC – SEPTEMBER 2011

By Susan Hunter, FSA Tribal Liaison (715) 362-5941 ext 104, [susan.hunter@wi.usda.gov](mailto:susan.hunter@wi.usda.gov)

**Not much to report this month....**

### **Another reminder on the September 30th Deadline for Orchardists and Nursery Tree**

**Growers to apply for loss assistance with FSA:** Individuals who suffered commercial tree, bush or vine losses from January 2008 through September 2011 can apply for loss assistance under the Tree Assistance Program (TAP) by September 30<sup>th</sup>. This program provides help to orchardists and nursery tree growers who produce trees, bushes and vines for commercial purposes, to replant or rehabilitate their plants that were damaged or destroyed by natural disasters. Eligible trees, bushes and vines are those from which an annual crop is produced for commercial purposes. Nursery trees include ornamental, fruit, nut and Christmas trees produced for commercial sale. **Trees used for pulp or timber are ineligible.**

**FSA Loss Coverage Deadlines in September for Non-Insurable Crops.** The following September and November deadlines are coming up for crops that cannot be insured by local crop insurance agents and can be covered by catastrophic loss policies through FSA's Non-Insured Assistance Program (NAP) at \$250 per crop:

- September 1<sup>st</sup> – Final date to obtain a NAP policy for Value Loss and controlled crops which includes Ornamental Nursery, Christmas Trees, Aquaculture, Ginseng Root, Turfgrass Sod, Floriculture and Mushrooms
- **September 30<sup>th</sup>** – Final date to obtain a NAP policy for Mixed Forages, Grass, Pasture, Winter and Spring Wheat, Oats for Forage, Mint, Cultivated and **possibly Tribal Lake Wild Rice??**
- November 20<sup>th</sup> – Final date to obtain a NAP policy for Honey, Maple Sap and Perennial Crops which includes Apples, Cranberries, Raspberries, Blueberries, Grapes, Strawberries and Blackberries

**Wild Rice Eligibility** – I have been making some progress. There have been many conference calls in the past month with the State FSA Specialists in Wisconsin, MN, GLIWFC, Intertribal Agricultural Council (IAC) and tribes in MN who currently have a policy on Tribal Lake Wild Rice. Most likely only the wild rice beds that are on water bodies located within the tribal reservations where the tribe has 100% control over the management and production of the beds will be eligible. The State FSA office specialist and Dan Cornelius from IAC will now be working closely with Washington DC on this issue. **I will keep WTCAC informed of future developments before the September 30<sup>th</sup> deadline to obtain a NAP policy for \$250 on Tribal Lake Wild Rice.**

**1. ECM 10-2 Erodes Tribal Self-Determination:** ECM 10-2 adds undue complication to BIA's fee-to-trust application process, further delaying and adding cost to acquisitions. These further incremental delays and costs are eroding tribal sovereignty pertaining to jurisdiction over tribal lands. Jurisdictional control of land is essential for tribal governments for self-determination, to provide adequate governmental services, infrastructure, subsistence and income for its members. There is an enormous pent up demand for housing in Indian Country. In the Midwest Region alone, tribal governments own 20,000 acres of land in fee that are pending in BIA's fee-to-trust process, a process that has already evolved to a gauntlet of political and legal twists and turns. Nation-wide, there are approximately 1,300 pending trust applications. Of that, roughly 400 pending applications are from tribes administered by BIA's Midwest Region. Timely real property acquisitions are a strategically crucial aspect of tribes' self-determination. Unfortunately, ECM 10-2 policy adds time, cost and complication to the critical path of BIA's fee-to-trust procedures that are already challenging for BIA and tribal staff to navigate.

It is also conceivable that liabilities identified using ECM 10-2 might prevent acquisition of a parcel that is key to a tribe's self-determination. Many of the liabilities identified so far in the Midwest are manageable, if tribes are given some flexibility in finding other federal resources. See issues 12 and 13. Following paragraphs explain details of the delays and further costs due to ECM 10-2.

**2. ECM 10-2 Liability Concerns are out of Balance with Trust Responsibility:** ECM 10-2 seems to have been written by staff that are unfamiliar with tribal trust responsibility and focused only on environmental liability. The singular focus on documenting potential liability has led to a process that is needlessly lengthy and expensive, beyond due diligence. As the Assistant Secretary is aware, DOI must prioritize tribal trust responsibility to its proper place among other duties, including responsibilities regarding environmental liability. Trust responsibility springs from treaties and related Congressional expressions that are the law of the land, superior to statutes that established liabilities addressed in ECM 10-2. Trust responsibility springs from the law of the land, but in comparison, ECM 10-2 is only a departmental policy. Trust responsibility is based on lands held in trust by the United States for beneficial uses of tribes. But as BIA's fee-to-trust evolves, unbalanced procedural changes such as ECM 10-2 begin to breach the trust responsibility. A tipping point of sorts is occurring and requires a course correction, that being simplification of the ECM 10-2. Tribes generally recognize that we must have due diligence in identifying environmental liabilities. But in some aspects, ECM 10-2 goes way beyond due diligence.

**3. ECM 10-2 is Inconsistent with the Secretary's Position on Expediting Trust Acquisitions:** Some months ago, the Secretary recognized the critical need of tribes to have land for self-

determination purposes. The backlog is approximately 1,300 trust application packages waiting for decisions by BIA. The Secretary and Assistant Secretary urged BIA staff to expedite review and decisions for trust applications. But then in another corner of the Department, the Office of Environmental Policy and Compliance (OEPC) and environmental staff from the bureaus worked on the concept of the ECM 10-2. The draft ECM 10-2 policy was reviewed internally and then made policy without tribal consultation to consider how it might adversely impact the BIA fee-to-trust process. Further delays from ECM 10-2, unclear requirements and additional cost to comply with ECM 10-2 are all inconsistent with the Secretary's statement of priority for BIA to expedite trust acquisition applications and decisions.

**4. Environmental Liability on Tribal Trust Lands versus at BIA Facilities:** Tribes also wish to avoid environmental costs and additional environmental health threats to its members with regard to hazardous-substance and other liabilities encountered in real property acquisitions. Ultimately, tribes pay for environmental liabilities, in various ways, as part of their business plan for using lands. As trustee, DOI is not automatically responsible to fund abatement of environmental liabilities on tribal trust lands, as ECM 10-2 assumes. One reason for this is that EPA recognizes tribal environmental jurisdiction over tribal fee lands and lands held in trust by the United States. For tribal fee lands, EPA assists tribes in environmental due diligence of properties using EPA's Brownsfield authorities to assess and clean up properties for tribal uses. With regard to environmental liability for lands held in trust, EPA looks to tribal governments to be responsible, not the Secretary as trustee. For example, if a tribe experiences a leak from a storage tank at a tribal facility, EPA holds the tribal government responsible, not DOI. On the other hand, if BIA experiences a leak from a storage tank at a BIA facility, say a roads garage, then EPA will look to BIA to remediate the spill. ECM 10-2 should recognize the difference between land acquisitions for tribal trust versus for BIA facilities because the environmental liabilities are different for these two cases.

For fee-to-trust acquisitions, some of the liabilities added by ECM 10-2 don't need to be abated by tribes prior to trust acquisition because BIA won't be liable for them. For example, trust acquisition of pre-1978 housing with non-friable lead based paint or asbestos. The tribal housing department, as manager, is responsible for lead paint and asbestos liabilities, not the Secretary as trustee. In this sense, some real property acquisitions by BIA are different than acquisitions by the other bureaus because the other bureaus are in effect the beneficial user of all of their real property acquisitions. BIA is not the beneficial user for tribal trust acquisitions. Further, tribes have other federal partners that share the federal trust responsibility to tribes and have authority and resources to help tribes address liabilities. This is also different than the other DOI bureaus and ECM 10-2 needs to reflect all of these differences.

**5. Substantially Redundant of ASTM E 1527-05:** Much of the information required to complete the three worksheets in Appendix A of ECM 10-2 is redundant of the current ASTM. It is recommend that the three Appendix A worksheets be edited to substantially reduce redundancy with report contents of the ASTM. The repetitive approach of ECM 10-2 requires the environmental professional to prepare the normal ASTM report and then go back and fill in the three worksheets with identical information. This does not add value to the ASTM due diligence process. Worse yet, in a few places, ECM 10-2 says put some of the ECM worksheet information in *several* places in the standard Phase I report format.

There are related problems caused by the redundancy of content. Phase I ESA reports for DOI bureaus have become non-standard, thicker and consume more resources to produce. In other words, Phase I ESAs for DOI have become unique compared to Phase I ESAs done for the remainder of the Nation. DOI Phase I ESAs are longer and more difficult to follow and review. Due to these factors, consultants are asking much higher fees, up to several times that charged for a non-DOI Phase I. It is conceivable that DOI’s unique contents may even confuse EPA and the Courts in the event that DOI might need to attempt to establish an innocent landowner defense regarding some liability on some specific property at some point in the future.

Here are some specific examples of redundancy caused by ECM 10-2:

**Examples of ECM 10-2 Redundancy  
With ASTM E 1527-05 Standard Requirements**

<b>Information Required by ECM 10-2</b>	<b>Section in ASTM E 1527-05 Where the ECM Information is already required</b>
Worksheet 1 – Section I Gathering Existent Records, Section 1.	8.3.4 Standard Historical Sources , except items k through t of the ECM are not covered in the ASTM. Items k to t could remain in Worksheet 1.
Worksheet 1 – Section I Gathering Existent Records, Section 2.	8.2.1 Standard Environmental Record Sources, except that items aa and bb of the ECM are not explicitly covered and could remain in Worksheet 1.
Worksheet 1, Page 20, item 1 asks whether the chain of title indicates commercial or industrial uses of the property;	8.3.4.4.Recorded Land Title Records

Worksheet 1, Page 20, items 2 through 4 on records of past land use history;	8.3 Historical Use Information
Worksheet 1, Page 21, items 1 and 3 on records on hazardous substance uses;	8.2.1 Standard Environmental Record Sources
Worksheet 1, Page 21, items 2 on previous environmental investigation;	8.4 Prior Assessment Usage
Worksheet 1, Page 23, items 6 on records of PCB records;	8.2.1 Standard Environmental Record Sources
Worksheet 1, Page 24, items 1, 3 & 4 on records of wells & onsite waste water disposal systems;	8.2.1 Standard Environmental Record Sources
Worksheet 1, Page 25, items 1 through 3 on environmental permits & compliances;	8.2.1 Standard Environmental Record Sources
Worksheet 1, Page 25, item 4 on records of environmental liens;	8.2.1 Standard Environmental Record Sources 8.3.4.4 Recorded Land Title Records
Worksheet 1, Page 26, item 5 on records of pending lawsuits or proceedings;	10.9 Proceedings Involving the Property
Worksheet 1, Page 26, item 6 on records of storage tanks;	8.2.1 Standard Environmental Record Sources
Worksheet 1, Page 26, item 7 on records of non-potable water supply wells;	9.4.4.6 Wells
Worksheet 1, Pages 28 & 29, items 1 and 2 on records for adjoining and surrounding properties;	8.2.1 Standard Environmental Record Sources except a few items of the ECM are not covered in the ASTM and could remain in Worksheet 1
Worksheet 1, Page 30, item 5 on records releases from adjoining and surrounding properties that might affect Property;	8.2.1 Standard Environmental Record Sources
Worksheet 1, Page 31, item 6 on records of up-gradient dumps or waste sites adjoining and surrounding properties that might affect	8.2.1 Standard Environmental Record Sources

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environmental liabilities on that property will become DOI's financial liability. That is simply a false assumption, albeit a conservative approach that one might expect from OEPC and the other bureaus. But encouraging flexibility when dealing with tribal governments needs to be explicitly addressed in ECM 10-2. For example, flexibility and innovation should be encouraged regarding documented expressions of assistance from other agencies as explained in issue number 12.

**14. ECM 10-2 is Silent or Unclear Regarding Specific Potential Liabilities Before Trust Acquisitions can Proceed:**

**a. Asbestos containing Materials (ACM):** ECM 10-2 does not say whether all ACM must be abated prior to acquisition. But BIA Midwest staff is taking that approach. ECM 10-2 should be clarified to say that only friable ACM needs to be abated. ECM 10-2 should say that unless a REC was identified using the current ASTM, non-friable ACM can be left in place for the trust acquisition for the tribe to properly address with help from non-DOI agencies, as explained in issues 12 and 13 above.

**b. Lead Based Paint (LBP):** ECM 10-2 does not say whether all LBP must be abated prior to acquisition. ECM 10-2 should be clarified to say that only peeling, chipping, flaking or chalky LBP needs to be abated. ECM 10-2 should say that unless a REC was identified using the current ASTM, properly encapsulated LBP can be left in place for the trust acquisition to be properly managed and addressed by tribes with help from others, as explained in issues 12 and 13 above.

**c. Radon:** ECM 10-2 does not say whether radon must be tested in all buildings and abated, as needed, prior to acquisition. ECM 10-2 also does not say whether a building with radon levels above 4 pCi/L that has been properly abated can be taken into trust. ECM 10-2 should be clarified to say that properly abated buildings can be acquired in trust. ECM 10-2 should say that buildings untested for radon can be part of a trust acquisition, to be properly managed and addressed by tribes with help from others, as explained in issues 12 and 13 above.

**d. On Site Water Supply Systems:** ECM 10-2 is silent regarding what constitutes a properly operating on site water supply system. ECM 10-2 does not specify what needs to be done to inspect a water supply system to determine what environmental liabilities exist. Because the tribes have EPA, IHS and potentially others to help assess and correct water supply systems, it is recommended that ECM 10-2 should say that untested water supply systems can be acquired in trust, unless a REC was identified regarding the system using the current ASTM. There is also the problem of water supplies being impacted in a region by agricultural or other regional activities that elevate levels of nitrates, pesticides or similar contaminants. What is a tribe's

entire land base is located in such a region? It is recommended that systems in such areas be acceptable for trust acquisition only in no specific REC was identified using the current ASTM.

**e. On Site Waste Water Systems:** ECM 10-2 is silent regarding what constitutes a properly operating on site waste water system. ECM 10-2 does not specify what needs to be done to inspect a waste water system to determine what environmental liabilities exist. Because the tribes have EPA, IHS and potentially others to help assess and correct water supply systems, it is recommended that ECM 10-2 should say that uninspected on site waste water systems can be acquired in trust, unless a REC was identified regarding the system using the current ASTM. The ECM 10-2 worksheets might ask whether an inspection has been done and remains valid. Did the inspection identify a problem and was that problem repaired?

**15. Training Identified in ECM 10-2 is Expensive & Not Specific to ECM 10-2 Issues:** In Appendix C on page 85, ECM 10-2 identifies training available from the FWS, BLM, EPA and OSHA that may, in part, qualify as “relevant experience” for an environmental professional that intends to use ECM 10-2 and the current ASTM for all appropriate inquiries. But there is no specific training available regarding the additional liabilities of concern raised by ECM 10-2. Further, EPA typically provides it’s training to tribal staff at no cost for tuition as part of its trust responsibility. But FWS and BLM often charge full tuition to tribal staff, even though tribal staff may there for training to help comply with DOI requirements. Training at the FWS and BLM training centers should be free to tribal staff for purposes of trust responsibility and mutual capacity building.

**16. ECM 10-2 Encourages Expensive Checker Board Ownership:** Checkerboard ownership, particularly in rural areas, causes substantially increased costs to tribal governments as they provide infrastructure for community development. ECM 10-2 makes land acquisitions much more challenging for tribes as they attempt to acquire contiguous and nearby parcels to help keep infrastructure costs reasonable. Parcels separated by long distances tend to require multiple systems, increasing costs of sewer, water supply systems, storm water, transportation and other infrastructure.

**17. ECM 10-2 Helps Subject Tribal Governments to Jurisdiction of Local Governmental Units (LGUs):** It is not unusual in rural areas for properties to contain pre-1978 housing and out buildings with older water supply and waste water systems. Before ECM 10-2, tribes could acquire such properties, get them into trust and then work on upgrades with assistance from agencies like EPA, IHS and HUD. But ECM 10-2 changes the order of which comes first, trust acquisition or updates to structures and infrastructure. By requiring updates before trust acquisition establishes tribal jurisdiction, tribes can be forced to make updates to comply with ECM 10-2 that would not otherwise be the path taken by the tribe. It is often the case that tribal governments have priorities and objectives that differ from that of neighboring LGUs. A

related issue is that with ECM 10-2 forcing the tribe's decision-making schedule, resources from other federal programs are often not available on such short notice, so the tribe bears more of the cost in order to get lands into trust to establish tribal jurisdiction earlier.



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## FSA REPORT TO WTCAC – SEPTEMBER 2011

By Susan Hunter, FSA Tribal Liaison (715) 362-5941 ext 104, [susan.hunter@wi.usda.gov](mailto:susan.hunter@wi.usda.gov)

**Not much to report this month....**

### **Another reminder on the September 30th Deadline for Orchardists and Nursery Tree**

**Growers to apply for loss assistance with FSA:** Individuals who suffered commercial tree, bush or vine losses from January 2008 through September 2011 can apply for loss assistance under the Tree Assistance Program (TAP) by September 30<sup>th</sup>. This program provides help to orchardists and nursery tree growers who produce trees, bushes and vines for commercial purposes, to replant or rehabilitate their plants that were damaged or destroyed by natural disasters. Eligible trees, bushes and vines are those from which an annual crop is produced for commercial purposes. Nursery trees include ornamental, fruit, nut and Christmas trees produced for commercial sale. **Trees used for pulp or timber are ineligible.**

**FSA Loss Coverage Deadlines in September for Non-Insurable Crops.** The following September and November deadlines are coming up for crops that cannot be insured by local crop insurance agents and can be covered by catastrophic loss policies through FSA's Non-Insured Assistance Program (NAP) at \$250 per crop:

- September 1<sup>st</sup> – Final date to obtain a NAP policy for Value Loss and controlled crops which includes Ornamental Nursery, Christmas Trees, Aquaculture, Ginseng Root, Turfgrass Sod, Floriculture and Mushrooms
- **September 30<sup>th</sup>** – Final date to obtain a NAP policy for Mixed Forages, Grass, Pasture, Winter and Spring Wheat, Oats for Forage, Mint, Cultivated and **possibly Tribal Lake Wild Rice??**
- November 20<sup>th</sup> – Final date to obtain a NAP policy for Honey, Maple Sap and Perennial Crops which includes Apples, Cranberries, Raspberries, Blueberries, Grapes, Strawberries and Blackberries

**Wild Rice Eligibility** – I have been making some progress. There have been many conference calls in the past month with the State FSA Specialists in Wisconsin, MN, GLIWFC, Intertribal Agricultural Council (IAC) and tribes in MN who currently have a policy on Tribal Lake Wild Rice. Most likely only the wild rice beds that are on water bodies located within the tribal reservations where the tribe has 100% control over the management and production of the beds will be eligible. The State FSA office specialist and Dan Cornelius from IAC will now be working closely with Washington DC on this issue. **I will keep WTCAC informed of future developments before the September 30<sup>th</sup> deadline to obtain a NAP policy for \$250 on Tribal Lake Wild Rice.**