



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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### 2014 Annual Government-to-Government Report

#### Oregon Water Resources Department

#### Under ORS 182.166

December 15, 2014

This report contains key contact information, a summary of interactions between the Oregon Water Resources Department and Oregon Indian Tribes in 2014, related trainings attended by Department staff, and activities anticipated for 2015. The Oregon Water Resources Department respectfully submits this report to Oregon Governor John Kitzhaber and the Oregon Legislative Commission on Indian Services.

#### AGENCY NAME

Oregon Water Resources Department

#### KEY CONTACT

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Since 2007, Mr. Ruben Ochoa has served as the Department's Tribal Liaison, participating in annual trainings and workgroup meetings, and preparing the Department's annual tribal reports. Ruben especially enjoyed his role as the agency's Tribal Liaison, and appreciated the relationships he had built with representatives from Oregon's nine federally-recognized tribes. Due to health reasons, Ruben was unable to participate in tribal-related activities this past year. After a long and courageous battle, Ruben passed away in October 2014.

## **MAJOR AREAS**

The Oregon Water Resources Department (Department) works with Oregon's federally-recognized Indian Tribes (Tribes) on issues related to water supply, watershed management, and water distribution, including issues related to water rights held or claimed by the Tribes and/or tribal members. In addition, pursuant to Governor Kitzhaber's Executive Order 96-30 (1996) and Senate Bill 770 (2001 Session; ORS 182.162-168), the Department works with the Tribes on a government-to-government basis to address water issues of mutual concern to the State of Oregon and the Tribes.

a. **Water Rights.** The Department is engaged in ongoing discussions with some of the Tribes on issues related to water rights and administration of water resources. Activities are generally conducted under EO 96-30, or specific provisions of federal and state law.

b. **Watershed Management and Water Use Regulation.** The Department works with the Tribes to plan and implement strategies for streamflow restoration and riparian protection on both reservation lands and other regions of interest to tribal communities. These strategies include streamflow measuring and monitoring, enforcement of illegal water uses, and the transfer or lease of out-of-stream water rights to instream water rights for the benefit of fish, wildlife, and water quality.

## **DEPARTMENT STATEMENT**

The Department adopted its Government-to-Government Interest Statement on September 23, 1997. The Interest Statement provides that the Department's relationship with the Tribes must be based on two essential attributes. The Department must honor and protect existing tribal rights to the use of water, and continue to forge partnerships with the Tribes to share responsibility for water management. The interest statement has not been updated since it was first adopted. The Department will review the statement in 2015 to determine any needed changes or adjustments.

## **INTERACTION WITH OREGON'S TRIBES IN 2014**

The following is a summary of the Department's 2014 activities and interactions with Oregon's federally-recognized tribes.

### **Burns Paiute Tribe**

The Department continues to work with the Burns Paiute Tribe (Burns Paiute) on general water right issues, including potential transfer applications. The Department's Eastern Region staff continue to participate with the Burns Paiute and others on a groundwater study led by the Harney County Watershed Council in the Malheur Lake Basin. Eastern Region staff continue to work with members of the Burns Paiute Tribe to discuss grant applications with the Oregon Watershed Enhancement Board Region 5 Application Review Committee. In 2014, Eastern

Region staff also worked with the Burns Paiute tribe to install measurement devices on significant diversions located in high priority watersheds.

### **Confederated Tribes of the Umatilla Indian Reservation**

For nearly two decades, federal agencies, the State of Oregon, the Confederated Tribes of Umatilla Indian Reservation (CTUIR), and a number of irrigation districts have worked to improve the Umatilla River Basin's water supply for local farmers and ranchers, fish, and wildlife, along with the broader community using collaborative measures. These measures include the successful completion of Phases I and II of the 1988 Umatilla Basin Project Act (P.L. 100-557), which is considered by many to have fostered the most successful salmon restoration project in the Columbia River Basin.

As part of the water supply efforts currently underway in Oregon's Umatilla Basin, the Department is actively working with representatives of several Federal agencies within the U.S. Department of the Interior, the Oregon Department of Justice, and CTUIR to achieve a shared goal of satisfying the region's long-term water needs, including CTUIR's needs. Examples are discussed below.

#### *Water Right Settlement Negotiations*

The Department, CTUIR, Oregon Department of Justice, a U.S. Government negotiation team, and representatives of the Westland Irrigation District initiated formal water right settlement negotiations in June 2012. The evaluation of water supply options and meetings with the various parties to the water rights settlement negotiations are ongoing. Discussions include protecting instream flows for fisheries and associated cultural traditions, while also providing water for economic and agricultural development. The sincere dedication of the parties to achieve mutually acceptable solutions is evident.

As part of the settlement negotiation work, a technical team was established in 2013 to work with CTUIR's consultant, Stetson Engineering, to provide input on the development of a water resources modeling tool. The Department participates in those meetings and conference calls. Staff also processed and provided the consultant with surface water data and anecdotal information. Staff have spent considerable time reviewing the modeling tool, providing feedback to CTUIR representatives. In 2014, the Department signed a protocol for the review, finalization, and use of CTUIR's Umatilla River Basin RiverWare Model. Staff are currently analyzing the model. The Department anticipates playing an active role in the settlement negotiations and modeling efforts in the years to come.

#### *Water Management Activities*

The Department, primarily through its North Central Region office, continues to work with the CTUIR on a variety of projects and water management activities:

- Seeking alternative water supply solutions for South Fork Walla Walla River fish hatchery.

- Participating in a collaborative effort, joining multiple agencies including CTUIR, to put on an exhibit entitled, “Today’s Water, Tomorrow’s Challenge – Working Together for the Umatilla River.” The exhibit is on display during 2014 at the Umatilla County Historical Society Museum in Pendleton.
- The Department participates in monthly Umatilla River Operations Group meetings with CTUIR and other stakeholders to share information regarding the protection of instream water right flows and irrigation demands.
- The Department provides periodic updates on the amount of water released and remaining in McKay Reservoir. This includes coordination on McKay Reservoir storage allotments, and providing storage reports to CTUIR fishery managers.
- The Department continues to coordinate with CTUIR and others on water management issues related to operation of the Umatilla Basin Project Exchange. Activities include:
  - Coordinating canal startups and shutdowns in order to reduce the potential for fish take;
  - Providing CTUIR fishery managers with monthly Phase I and Phase II Exchange reports; and
  - Providing the CTUIR fishery managers with the annual copy of the Northwest Power and Conservation Council Report. This report details the yearly total amount of water diverted by irrigators. The report also provides yearly totals of the amount of water exchanged and stored water released for the benefit of the fishery.

## **Confederated Tribes of Warm Springs**

### *Rowe Creek Streamflow Restoration*

The Department’s District 21 office worked with the Confederated Tribes of Warm Springs (Warm Springs), The Freshwater Trust, and a local water user to explore options for increasing streamflow in Rowe Creek, tributary to the John Day River. Discussions included relocating a diversion on Rowe Creek to the John Day River.

### *Fifteenmile Creek*

The Department’s District 3 office continued its cooperation with the Warm Springs to install measurement devices on significant diversions on Fifteenmile Creek. Flow meters have been installed and data is being collected. Seasonal use data and streamflow data is shared with the Warm Springs and other Fifteenmile stakeholders.

### *Lower Fifteenmile Creek – Gaging Station*

The Department’s District 3 office continued its cooperative agreement with the Warm Springs, installing a "near real-time" gaging station on Lower Fifteenmile Creek. The Department signed a MOA with the Warm Springs, which allowed the Department to purchase the recorder and

telemetry equipment to install the new stream gaging station. The cooperative operation of the gaging station will be ongoing.

#### *Piping Project – Dee Irrigation District*

The Department worked with the Warm Springs on a project to pipe the Dee Irrigation District canal. The piping project is complete and the Department is operating a gaging station that will be important in determining the actual amount of water saved through the piping project. A second gage will be installed in the pipeline in early 2015. Conserved Water Application (CW-76) was filed jointly by Dee Irrigation District and Warm Springs and was finalized by the Department. The water that was saved was transferred instream.

#### *Powerdale Dam Water Right Conversion*

The Department continues to work with Warm Springs and other stakeholders to convert the Powerdale hydroelectric water right on the Hood River to an instream water right. The Department has prepared a proposed order that was protested by the Tribes and three other parties. The Department is now working with the protesting parties to hire a facilitator to help in resolving the difficult issues. Hopefully, a solution will be found in 2015.

#### *Streamflow Measurement - East Fork Irrigation District*

The Department worked with the Warm Springs Tribe and East Fork Irrigation District (EFID) to develop a plan for measuring streamflow below EFID's new diversion dam, which is being partially funded by Warm Springs. The Department will be overseeing the installation of measurement devices and training EFID staff on measuring streamflows in the bypass reach. This work is ongoing with additional streamflow measurements planned for 2015.

#### *Lower McHaley Ditch Transfer Project*

The Department is currently working with the Warm Springs' Prairie City office on a transfer of a point of diversion for water rights on the Lower McHaley Ditch. The Department is coordinating with Warm Springs, the ditch water right holders, and other affected water users. Efforts are underway to contact and answer questions from numerous users who hold water rights to the Lower McHaley Ditch. There are many different interests involved in this complex transfer proposal and the Warm Springs has committed to making sure everyone is in support of the transfer before it is submitted to the Department. The proposed transfer application is expected to be submitted sometime in 2015.

#### *Project Funding in the John Day Basin*

The Department continues to participate as a stakeholder in the prioritization process for the Warm Springs' funding of projects in the John Day River Basin. Several stakeholders are participating, including the U.S. Bureau of Reclamation, U.S. Forest Service, Grant County, Grant Soil and Water Conservation District, Monument Soil and Water Conservation District, landowners, and many others. The stakeholder meetings are ongoing and positive strides are being made to meet the needs of all interests involved.

## **Cow Creek Band of Umpqua Indians**

The Department's District 15 watermaster assisted a tribal subsidiary, KBar Ranches, with filing a limited license to use stored water from Galesville Reservoir.

## **Klamath Tribes**

### *Klamath Basin Water Management Activities*

The Klamath Basin Adjudication is the most complex adjudication in Oregon's history and is the first to include determinations on federal reserved water right claims. On March 7, 2013, the Department filed the Adjudicator's Findings of Fact & Final Order of Determination (FFOD) with the Klamath County Circuit Court.

In the second year of water use regulation, the Department and the Governor's Office continue to work closely with the Klamath Tribes, basin water users, and the U.S. Department of the Interior, to address regulatory questions and concerns, and, as a group, to develop coordination protocols for calls on water.

In 2014, watermaster staff responded to concerns from tribal members regarding regulation activities relating to water right priority dates, instream flow needs, irrigation needs, and other general topics related to the newly implemented FFOD.

In July 2014, the watermaster and staff responded to Tribal calls for water to meet instream water rights above Klamath Lake, and Klamath Project calls for inflows to the Lake. The Department provides routine updates to Tribal staff during the irrigation season regarding regulation activities and actions.

Department staff also worked closely with Tribal staff on streamflow measurement and data collection activities, as validation of the call for regulation occurred. Additionally, the Klamath Tribes recently hired staff to measure streamflow. The Department's District 17 hydro-technician has been working closely with the newly hired staff person, providing training on streamflow measurement, gage installation, and protocols for data sharing.

### *Upper Klamath Basin Comprehensive Agreement*

In July 2013, a Klamath Basin Task Force was formed by Senators Wyden and Merkley, Congressmen Walden, and Governor Kitzhaber. The purpose of the Task Force was "to resolve the water, power and other resource management issues in the Klamath River Basin." The Task Force created three sub-groups to address funding, power, and water. The Department was actively involved in the sub-group activities.

After more than nine months of good-faith efforts from members of the Klamath Tribes and Upper Basin water users, the historic Upper Klamath Basin Comprehensive Agreement was signed on April 18, 2014. This Agreement implements several foundational elements of the Klamath Basin Restoration Agreement.

The Upper Klamath Basin Comprehensive Agreement will:

- Protect 30,000 acre-feet instream annually above Upper Klamath Lake through voluntary transfers of existing water rights instream.
- Provide stability for irrigated agriculture in the Upper Klamath Basin.
- Improve and protect riparian habitat.
- Create economic opportunities for the Klamath Tribes and its members and increased opportunities for the exercise of tribal cultural rights.

The Department has been actively involved in the negotiation process and various implementation aspects of the Upper Klamath Basin Comprehensive Agreement. Implementation meetings began right away and are held frequently. The Klamath Tribes are represented at every meeting.

As part of implementation of Upper Klamath Basin Comprehensive Agreement, the Department is working with the Klamath Tribes and the U.S. Fish and Wildlife Service to install several gaging stations within the Klamath River Basin. These gages will monitor Strategic Instream Flows (SIF) and will be used to monitor and assess streamflow conditions as they apply to tribal determined claims. The Department consulted with the State Historic Preservation Office and the Klamath Tribal Liaison to determine if there were significant cultural resources present in the vicinity of the proposed site locations. It was agreed that the Department would contract with Southern Oregon University to conduct the necessary archeological surveys. The survey report found evidence of significant cultural resources at several proposed sites and suggested further investigation. The process is ongoing.

Consistent with the Agreement, the Department formed a rules advisory committee in October 2014 to assist with development of rules regarding the regulation of groundwater users within the Sprague, Williamson, and Wood River drainages to benefit senior water right holders. The Klamath Tribes are participating in the rules advisory committee.

#### *Klamath Hydroelectric Settlement Agreement – Implementation Committee*

The Department continues to participate in the Interim Measures Implementation Committee (IMIC) for the Klamath Hydroelectric Settlement Agreement. The purpose of the IMIC is to foster collaboration with PacifiCorp on ecological and other issues related to the implementation of interim measures prior to removal of Pacific Corps' dams. The IMIC includes several representatives from tribal, state, and federal agencies, and typically meets several times throughout the year.

#### *Klamath County Natural Resources Advisory Council*

The Department shared and presented information during meetings of the Klamath County Natural Resources Advisory Council. Klamath Tribal Council Chairman Don Gentry is a member of this council, among other stakeholder interests. This advisory council provides input to the Board of County Commissioners on county natural resources issues such as wildlife, hydrology, and water quality concerns.

## **OTHER PROJECTS OR DEPARTMENT PROGRAMS**

### *Hydroelectric Projects Construction and Reauthorization*

The Department is the lead agency for implementation of the state's hydroelectric laws (ORS 543 and 543A). Under these laws, the Department administers the Hydroelectric Application Review Team (HART) for state projects. The core HART is made up of representatives from the departments of Water Resources, Environmental Quality, and Fish and Wildlife. Where an Indian tribe may be affected by a project or is involved as a project applicant, the HART members work with the tribe to ensure coordination. In addition, the Department notifies the Legislative Commission on Indian Services of any new applications filed for hydroelectric projects and this notice is forwarded to the appropriate tribal representatives.

### *Oregon's Integrated Water Resources Strategy*

The Department continues to work with other state natural resource agencies to ensure that tribal communities have adequate and safe water supplies. This cooperative and coordinated effort is particularly evident in the Department's ongoing endeavors to develop and implement a long-term Integrated Water Resources Strategy for the State of Oregon. Oregon's Water Resources Commission adopted this Strategy in August 2012. The Department will continue to engage tribal interests during implementation of the Strategy.

As part of the Strategy, the state has committed time and resources to develop a water supply program that will provide funding for both instream and out-of-stream projects. In 2014, the Governor's Office convened two task forces to provide recommendations regarding the protection of seasonally varying flows (SVF Task Force), and to review the funding structure and criteria used for various state-funded projects (Governance Task Force). Mr. Eric Quaempts of the Confederated Tribes of the Umatilla Indian Reservation is participating as a member of both task forces.

### *Environmental Justice Task Force*

The Department participated as a state agency representative to the Environmental Justice Task Force and will continue to do so in 2015. The Department's Citizen Advocate is responsible for ensuring that the agency encourages public participation, and considers environmental justice issues in agency decisions that affect communities traditionally underrepresented in public processes, including tribal communities.

### *Rulemaking Activities*

The Department initiated a number of rulemaking activities in 2014. As mentioned earlier, the Klamath Tribes are participating in a rules advisory committee pertaining to groundwater regulation in the Klamath Basin. The Department has also initiated rulemaking for Division 51 administrative rules pertaining to hydroelectric standards and applications. Audie Huber from the Confederated Tribes of the Umatilla, Cris Brun from the Confederated Tribes of Warm Springs, and Julie Carter from the Columbia River Inter-Tribal Fish Commission are participating in that rulemaking process.

### *Fee-to-Trust Transactions*

The Department's Director's Office continues to coordinate fee-to-trust applications sent through the Governor's Office. In 2014, staff provided water rights research involving land acquisitions for the Burns Paiute Tribe, Cow Creek Band of Umpqua Indians, Confederated Tribes of Grand Ronde, and the Confederated Tribes of the Umatilla Indian Reservation.

## **GOVERNMENT-TO-GOVERNMENT MEETINGS OR TRAINING**

### *Natural Resources Cluster Workgroup*

Department staff continue to participate in this workgroup. During the March 2014 meeting, Alyssa Mucken, Program Coordinator for the Integrated Water Resources Strategy, gave a presentation regarding implementation efforts under the Strategy, and distributed a discussion paper examining regional or local water planning models from neighboring states. Members of the workgroup were encouraged to participate in workshops or submit comments to help shape Oregon's approach to "place-based integrated water resource planning." The Confederated Tribes of the Umatilla Indian Reservation submitted comments and participated in two workshop discussions held in Boardman and Portland. During the August 2014 cluster meeting, the Department's Deputy Director Tom Paul provided an update regarding drought conditions throughout the state.

### *Legislative Commission on Indian Services' Spring Gathering*

Hosted by the Confederated Tribes of Grand Ronde, Deputy Director Tom Paul attended the May 2014 Spring Gathering event, titled "Tradition & Innovation: Learning From Our Past to Build Strong Communities." The gathering was well attended by state agencies, key Tribal leaders and staff, as well as state legislators. Deputy Director Paul attended the pre-Gathering event on Wednesday evening that included a dinner graciously hosted by the Grand Ronde. The event was a great opportunity to engage with Oregon's tribes; the Department looks forward to participating in similar events in 2015.

### *Oregon Coast Economic Summit*

Department staff attended the 2014 Oregon Coast Economic Summit, organized by Oregon's Legislative Coastal Caucus members. The Confederated Tribes of Coos, Lower Umpqua, & Siuslaw Indians graciously hosted the event at their facilities in Florence, Oregon. The event kicked off with a panel discussion on tribal contributions to the economic health of Oregon's coastal communities.