



2015 Government-to-Government Report
Oregon Water Resources Department
www.oregon.gov/owrd

The Oregon Water Resources Department (OWRD) acknowledges its long-standing working relationship with Oregon's federally recognized Tribes. This report contains key contact information, a summary of interactions, and related training attended by OWRD staff.

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DEPARTMENT STATEMENT

OWRD adopted its Government-to-Government Interest Statement on September 23, 1997, which provides that its relationship with the Tribes must be based on two essential attributes: OWRD must honor and protect existing tribal rights to use water, and continue to forge partnerships with the Tribes to share responsibility for water management.

OVERVIEW

The Oregon Water Resources Department works with Oregon's nine federally recognized Indian 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, OWRD 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.

Water Rights

OWRD 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 Executive Order 96-30, or specific provisions of federal and state law.

Watershed Management and Water Use Regulation

OWRD 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 measurement and monitoring, enforcement on 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.

WORKING WITH OREGON'S TRIBES

Burns Paiute Tribe

Work continues with the Burns Paiute Tribe on general water right issues, including potential transfer applications, and groundwater development. OWRD's Eastern Region and Groundwater section staff are participating with the Burns Paiute and others on a groundwater study in the Malheur Lake Basin. Eastern Region staff also continues to work with members of the Burns Paiute Tribe to discuss grant applications with the Oregon Watershed Enhancement Board's Region 5 Application Review Committee. In 2015, Eastern Region staff worked with the Burns Paiute Tribe to install measurement devices on diversions located in various watersheds.

Confederated Tribes of the Umatilla Indian Reservation

For nearly two decades, federal agencies, the State of Oregon, the Confederated Tribes of the 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, wildlife, and the broader community.

As part of the water supply efforts currently underway in Oregon's Umatilla Basin, OWRD is actively working with representatives of several federal agencies within the US 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. Examples are discussed below.

Water Right Settlement Negotiations

The Oregon Water Resources Department, CTUIR, Oregon Department of Justice, a federal 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.

As part of the settlement negotiation work, a technical team was established in 2013 to work with a consultant, Stetson Engineering, to provide input on development of a water resources modeling tool. Staff provided surface water data and anecdotal information, reviewed the tool, and provided feedback to CTUIR representatives. In 2014, OWRD signed a protocol for the review, completion, and use of CTUIR's Umatilla River Basin RiverWare Model. Staff spent considerable time analyzing the model and provided final comments in spring 2015.

Water Management Activities

Mainly through its North Central Region office, OWRD and CTUIR together are:

- Continuing to work with the Bonneville Power Administration on designs for the South Fork Walla Walla River fish hatchery to minimize impacts to the flows.
- Participating in the Walla Walla Steering Committee to find water supply solutions to improve instream flows in the Walla Walla River.
- Attending monthly Umatilla River Operations Group meetings with other stakeholders to share information regarding the protection of instream water right flows and irrigation demands.
- Coordinating on McKay Reservoir storage allotments including the amount of water released and remaining in McKay Reservoir.
- Working on water management issues related to operation of the Umatilla Basin Project Exchange, including coordinating canal startups and shutdowns in order to reduce the potential for fish take.

Out of the Salem office, OWRD continues to discuss possible groundwater studies with the CTUIR and the US Geological Survey. This includes studies for aquifer capacity and storage volume estimates.

Confederated Tribes of Warm Springs

Rowe Creek Streamflow Restoration

OWRD's District 21 watermaster office continues to work with the Confederated Tribes of Warm Springs (CTWS), 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

Cooperation continues between OWRD's District 3 watermaster office and the CTWS 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 CTWS and other Fifteenmile stakeholders.

Lower Fifteenmile Creek – Gaging Station

Installing a "near real-time" gaging station on Lower Fifteenmile Creek is also part of the cooperative work

between the District 3 office and the CTWS. A Memorandum of Agreement signed between the CTWS and OWRD led to the purchase of equipment to install the new stream gaging station. The cooperative operation of the gaging station will be ongoing.

Piping Project – Dee Irrigation District

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

Powerdale Dam Water Right Conversion

This involves converting the OWRD hydroelectric water right on the Hood River to an instream water right. OWRD has prepared a proposed order that was protested by the CTWS and three other parties. OWRD is working with the parties and has hired a facilitator.

Streamflow Measurement – East Fork Irrigation District

The CTWS, East Fork Irrigation District (EFID), and OWRD worked to develop a plan for measuring streamflow below EFID's new diversion dam. OWRD will oversee the installation of measurement devices and train EFID staff on measuring streamflows in the bypass reach. This work is ongoing with additional streamflow measurements in the fish ladder and bypass reach completed in 2015.

Lower McHaley Ditch Transfer Project

OWRD has been working with the CTWS Prairie City office on a transfer of a point of diversion for water rights on the Lower McHaley Ditch. This complex transfer proposal involves a number of interests. The proposed transfer application is expected to be submitted late 2015 to early 2016.

Project Funding in the John Day Basin

OWRD continues to participate as a stakeholder in the prioritization process for the CTWS funding of projects in the John Day River Basin. Several stakeholders are participating, including the US Bureau of Reclamation, US Forest Service, Grant County, Grant Soil and Water Conservation District, Monument Soil and Water Conservation District, landowners, and others.

Cow Creek Band of Umpqua Indians

OWRD's District 15 watermaster assisted a tribal subsidiary, KBar Ranches, with filing for 325 acres of irrigation rights using 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 in Oregon to include determinations on federal reserved water right claims. On March 7, 2013, the Oregon Water Resources Department filed the Adjudicator's Findings of Fact & Final Order of Determination (FFOD) with the Klamath County Circuit Court.

In the third year of water use regulation, OWRD and the Governor's Office continue to work closely with the Klamath Tribes, basin water users, and the US Department of the Interior to address regulatory questions and

concerns, and, as a group, to develop coordination protocols for calls on water. In 2015, the District 17 watermaster's office continued to respond 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 the early part of the irrigation season, the watermaster and staff responded to tribal calls for water to meet instream water rights above Upper Klamath Lake and above Klamath Marsh to meet tribal marsh level requirements. OWRD provides routine updates to tribal staff during the irrigation season regarding regulation activities and actions.

OWRD 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 hydrologic staff coordinated with the District 17 hydro-technician on streamflow measurements, archaeological surveys, gage installation, and protocols for data-sharing.

Upper Klamath Basin Comprehensive Agreement

As part of implementation of the Upper Klamath Basin Comprehensive Agreement, OWRD is working with the Klamath Tribes and the US Fish and Wildlife Service to install several gaging stations within the Klamath River Basin. These gages will monitor Specified Instream Flows and will be used to monitor and assess streamflow conditions as they apply to tribal determined claims. OWRD 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 OWRD 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, OWRD formed a rules advisory committee in October 2014 to assist with development of rules regarding the regulation of groundwater rights within the Sprague, Williamson, and Wood River drainages to benefit senior water right holders. The Klamath Tribes participated in the rules advisory committee. The rules were adopted by the Water Resources Commission in March 2015.

OWRD also introduced legislation in 2015, authorizing OWRD to participate as a voting member of the Joint Management Entity, which is responsible for administration of certain provisions of the 2014 Upper Klamath Basin Comprehensive Agreement. OWRD worked with the Klamath Tribes and local landowners to pass this legislation.

Klamath County Natural Resources Advisory Council

OWRD 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.

ADDITIONAL TRIBAL CONTACTS

Groundwater Observation Well Installation Program

OWRD did outreach to the appropriate Tribes regarding installation of groundwater observation wells at eight sites in five counties. All sites were assessed by the State Historic Preservation Office and, based on tribal input, OWRD contracted with the Southern Oregon University Laboratory of Anthropology to conduct pedestrian surveys at four sites prior to drill rig mobilization (two in Klamath County, one in Deschutes County, and one in Umatilla County).

Surface Water Stream Gaging Activities

OWRD's Hydrographics Measurement and Reporting Section had numerous conversations with Tribes regarding installation of stream gaging devices, including the Klamath Tribes, the Confederated Tribes of Grand Ronde, and the Confederated Tribes of Siletz Indians.

Other Rulemaking Activities

OWRD recently completed rulemaking for Division 51 administrative rules related to hydroelectric standards and applications; the rules take effect January 1, 2016. Audie Huber from the Confederated Tribes of the Umatilla Indian Reservation, Cris Brun from the Confederated Tribes of Warm Springs, and Julie Carter from the Columbia River Inter-Tribal Fish Commission participated in that rulemaking process.

Fee-to-Trust Transactions

OWRD's Director's Office continues to coordinate fee-to-trust applications sent through the Governor's Office. 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.

Hydroelectric Projects Construction and Reauthorization

As lead agency for Oregon's hydroelectric laws (ORS 543 and 543A), OWRD administers the Hydroelectric Application Review Team (HART) for state projects. Besides OWRD, the core HART is made up of representatives from DEQ and ODFW. 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, OWRD 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.

Environmental Justice Task Force

As part of the Environmental Justice Task Force, OWRD 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.

OWRD PROGRAMS AVAILABLE TO TRIBES

Water Resources Development Program

OWRD's Water Resources Development Program helps individuals and communities address instream and out-of-stream needs, including water quantity, water quality and ecosystem needs. Program components include Place-Based Integrated Water Resources Planning, Feasibility Study Grants, and Water Project Grants and Loans.

OWRD distributed information to the Tribes about the \$750,000 in grant funds available for **Place-Based Integrated Water Resources Planning**. Funding decisions will be made by the Water Resources Commission at a 2016 Commission meeting.

Tribes have also been encouraged to apply for **Feasibility Study Grants** for water conservation, reuse and storage. The grants are designed to fund 50 percent of qualifying costs of feasibility studies. Project elements include water needs analyses, engineering studies and geological analyses.

The **Water Project Grants and Loans** component of the program was passed by the legislature in 2013. Rules for this program were completed in 2015. (OAR 690, Division 93). Funds will be awarded through a competitive

process for a variety of instream and out-of-stream water development projects. Even if a Tribe is not an applicant for funding, there are several ways in which Tribes will be engaged in Water Project Grants and Loans process.

1. *Application for Water Project Loans or Grants to fund a water project*

Oregon's federally recognized Indian Tribes are eligible to apply for grants and loans to support a variety of water development projects.

2. *Consultation with applicants regarding proposed projects*

Applicants for the Water Project Grants and Loans are required to describe and document their consultation with appropriate Tribes regarding proposed projects. OWRD will recommend applicants contact the Tribes to discuss the proposed project, including identification of any natural or cultural resource concerns. The applicants will need to show compliance with all state laws, including cultural resource protection.

3. *Working with OWRD regarding the determination of Seasonally Varying Flows for select storage projects*

Storage projects that receive Water Project Grant or Loan Funding and meet certain requirements must have a Seasonally Varying Flow (SVF) developed for the project. A SVF is the water that must remain instream prior to diverting water for storage outside of the irrigation season in order to maintain key stream functions. SVFs will be established in conjunction with biologists and hydrologists from the Oregon Department of Fish and Wildlife and any appropriate Indian Tribes.

4. *Participating in the Technical Review Team that will score and rank projects.*

When reviewing funding applications to the Water Resources Development Program, a Technical Review Team will conduct the initial scoring and ranking for the projects, consider comments from applicants and the public, and make loan and grant funding recommendations to the Water Resources Commission. The Technical Review team will consist of representatives from a variety of state agencies and the appropriate Tribes.

GOVERNMENT-TO-GOVERNMENT MEETINGS AND TRAINING

Legislative Commission on Indian Services

Meeting three-to-four times a year, the Natural Resources Workgroup and the Cultural Resources Cluster offer a valuable forum to share information on agency programs, efforts, rulemaking and legislative concepts. OWRD attends both of these work groups and also participates in the annual May tribal information and training days, and the Annual Tribal-State Government-to-Government Summit. In 2015, OWRD attended the LCIS 40th Anniversary Celebration at the State Capitol.

Archaeology Awareness Training

In 2015, eight OWRD employees, including managers and field staff, attended this four-day training in The Dalles. Topics covered an overview of federal and state cultural resource regulations, Native American consultation and identification of complete and fragmented historic artifacts. The training will help OWRD employees recognize artifacts and understand the notification procedures involved. This is especially beneficial for those doing streamflow work.