

# 2016 Government-to-Government Report

## *Oregon Water Resources Department*



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





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**Oregon Water Resources Department**  
[www.oregon.gov/owrd](http://www.oregon.gov/owrd)

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## **DEPARTMENT STATEMENT AND POLICY**

The Oregon Water Resources Department adopted a Government-to-Government Interest Statement on September 23, 1997 and focused on two main points; the Department must honor and protect existing tribal rights to use water, and it must continue to forge partnerships to share responsibility for water management. That interest statement became a policy, which is attached at the end of this report.

## **OVERVIEW**

The Oregon Water Resources Department works with Oregon's Tribes on issues related to water supply, watershed management, and water distribution, including matters related to water rights held or claimed by the Tribes and/or tribal members. In addition, the Department works with the Tribes on a government-to-government basis to address water issues of mutual interest.

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

### **Water Management and Water Use Regulation**

The Department works with 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 may 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.

### **Water Resources Development Program**

The Department's Water Resources Development Program helps Tribes, individuals and communities address instream and out-of-stream needs, for both groundwater and surface water. Program components include Place-Based Integrated Water Resources Planning, Feasibility Study Grants, and Water Project Grants and Loans.

Tribes can 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. Water Project Grants and Loans are also available to Tribes. The Department awards funds through an annual competitive process for a variety of instream and out-of-stream water projects.

Tribes will be engaged in the Water Project Grants and Loans process, including review of applications. For example, 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 to maintain key stream functions. The Department will establish SVFs in consultation with biologists and hydrologists from the Oregon Department of Fish and Wildlife and appropriate Tribes.

The Department also revised the Water Project Grants and Loans application and review process thanks to input from Tribes and the Legislative Commission on Indian Services:

- The application now requires submission of a map, description of ground-disturbing activities, and other information identified by tribes as pertinent to their review of projects.
- The Department's Tribal Liaison will identify the projects in traditional territories identified by the Tribe and send project summaries, maps including latitude and longitude coordinates, and any ground-disturbing activities. Tribes can participate in the Technical Review Team (TRT) that scores, ranks, and recommends projects for funding and/or submit comments for the TRT to consider in their evaluation.

## **WORKING WITH OREGON'S TRIBES**

### **Burns Paiute Tribe**

#### **Water Rights**

The Department works with the Burns Paiute Tribe on general water right issues, including potential transfer applications, and groundwater development. The Department issued a Preliminary Determination in November 2016 approving the Tribe's transfer application related to irrigation water. The Tribe's request to lease some of its water to The Freshwater Trust for instream purposes was also approved through a Final Order.

#### **Water Management**

In 2016, Eastern Region staff continued their work with the Burns Paiute Tribe to install measurement devices on diversions located in various watersheds.

The Department and the U.S. Geological Survey are undertaking a five-year groundwater study in the Greater Harney Valley Area in the Malheur Lake Basin. In conjunction with the Harney County Court, the Department appointed members of a local Groundwater Study Advisory

Committee to track progress and provide input as the study progresses. A representative of the Burns Paiute Tribe is serving on this committee. For more information:

[www.oregon.gov/owrd/Pages/Place/Malheur\\_Lake\\_Basin.aspx](http://www.oregon.gov/owrd/Pages/Place/Malheur_Lake_Basin.aspx).

The 2016 legislature provided funding for the Oregon Water Resources Department to construct dedicated observation water wells to track groundwater levels in Harney County. As part of its communication policy, the Department reached out to the Burns Paiute with information about the proposed drilling. The Tribe, which takes a strong interest in Harney County's water issues, considers water to be one of its most significant cultural resources.

#### **Water Resources Development Program**

The Department awarded a grant to the Harney County Watershed Council to undertake collaborative water planning in the Malheur Lake Basin. Through this planning process, partners will develop strategies to meet their instream and out-of-stream water needs. A representative from the Burns Paiute Tribe is participating in this process as a member of the coordinating committee and as a member of the broader planning group. For more information: [www.hcwatershedcouncil.com](http://www.hcwatershedcouncil.com).

The Department invited the Burns Paiute Tribe to participate on Technical Review Team and considered tribal input in review of Water Project Grants and Loans applications (ORS 541.669(3)).

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

The State of Oregon, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), federal agencies and irrigation districts have worked for about 20 years to improve the Umatilla River Basin's water supply for farmers and ranchers, fish, wildlife, and the community. As part of the water supply efforts underway in the Umatilla Basin, the Department is working with representatives of several federal agencies, the Oregon Department of Justice, and the CTUIR to achieve a shared goal of satisfying the region's long-term water needs.

#### **Water Right Settlement Negotiations**

The Oregon Water Resources Department, CTUIR, Oregon Department of Justice, a federal negotiation team, and the Westland Irrigation District initiated formal water right settlement negotiations in June 2012. Discussions include protecting instream flows for fisheries and cultural traditions, while also providing water for economic and agricultural development. The discussions between these parties and other are ongoing.

As part of the settlement negotiation work, a new technical team was established in 2016 to work with the Bureau of Reclamation and a consultant to provide input on development of a water resources modeling tool. The scope of the model was expanded to include the lower reaches of the Umatilla River basin. Staff provided surface water data and other information, reviewed the tool, and gave feedback to Reclamation and CTUIR representatives.

### **Water Rights**

In the Salem office, work continued with the CTUIR on the Allocation of Conserved Water Program. Applications for various irrigation districts in the Walla Walla basin are funded in part by CTUIR. These actions by the Tribes have and will result in increased stream flows in the Walla Walla River.

In the Wallowa River basin, staff is working with the CTUIR and The Freshwater Trust on a complex instream lease, instream transfer and Allocation of Conserved Water transaction. This is the first allocation of conserved water transaction in the basin, which will result in improve streamflows in both the Wallowa and Lostine Rivers.

### **Water Management**

The Salem office provided the CTUIR periodic updates on the Umatilla Water Supply Project and associated applications for new water rights out of the Columbia River.

The Department is working with the CTUIR and others to address declining groundwater levels in the Walla Walla Subbasin.

A member of the CTUIR participated on the Task Force on Drought Emergency Response, which made recommendations on how the state could better prepare for and respond to drought. The task force met seven times in 2016 and submitted its report to the Oregon Legislature on November 1.

Mainly through its North Central Region office, the Department 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 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 to reduce the potential for fish take.

### **Water Resources Development Program**

The Department awarded a grant to Union County and the Gilliam Soil and Water Conservation District (SWCD) to undertake collaborative water planning in the Upper Grande Ronde and Lower John Day basins, respectively. Through this planning process, partners will develop strategies to meet their instream and out-of-stream water needs. The CTUIR have been participating in both the Upper Grande Ronde and Lower John Day planning meetings for the past 3-4 months. For more information: <http://union-county.org/planning/place-based-integrated-water-resources-planning/%E2%80%8B>.

The Department invited the CTUIR to participate on Technical Review Team and considered tribal input in review of Water Project Grants and Loans applications (ORS 541.669(3)).

## **Confederated Tribes of Warm Springs**

### **Water Rights**

In the Instream Lease and Instream Transfer Programs, there were several tribal leases in place in 2016. These include IL-1341, IL-1430 and IL-1432 from the Confederated Tribes of Warm Springs.

### **Water Management**

- The District 21 Watermaster's 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 have included relocating a diversion on Rowe Creek to the John Day River.
- Cooperation continues between the District 3 Watermaster's 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 are shared with the CTWS and others.
- 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 the Department led to the purchase of equipment to install the new stream gaging station. The cooperative operation of the



gaging station will be ongoing.

- The Department worked with the CTWS to complete a piping project on the Dee Irrigation District canal. A gaging station will be important in determining the actual amount of water saved through the piping project. A second gage was installed in the pipeline in 2015 and has been operated for two irrigation seasons. The Dee Irrigation District and the CTWS jointly filed an Allocation of Conserved Water application and the water saved is being managed instream until the project is complete.
- The Powerdale Dam Water Right Conversion involves converting a hydroelectric water right on the Hood River to an instream water right. The Department prepared a proposed order that was protested by the CTWS and three other parties. Though it worked with the parties and hired a facilitator, the Department was unable to resolve the issues associated with the conversion of the water right. The Department will invite the Tribes to participate in the rules advisory committee, which will provide more clarity regarding processing these conversions.
- The CTWS, East Fork Irrigation District (EFID), and the Oregon Water Resources Department worked to develop a plan for measuring streamflow below EFID's new diversion dam. This work is ongoing and additional streamflow measurements in the fish ladder and bypass will continue.
- The Department 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 numerous interests, but through coordination, an application was submitted to the Department for processing.
- The Department continues to participate as a stakeholder in the prioritization process for the CTWS funding of projects in the John Day River Basin. Several others are participating, including the Bureau of Reclamation, U.S. Forest Service, Grant County, Grant Soil and Water Conservation District, Monument Soil and Water Conservation District, and landowners.
- The CTWS are participating as a partner in the Bureau of Reclamation's WaterSmart Basin Study in the Upper Deschutes Basin. The study is looking at options for instream and out-of-stream water needs. The Department is participating as a cost-share partner. For more information: <http://www.usbr.gov/pn/studies/deschutes/>.

### **Water Resources Development Program**

The Department awarded a grant to the Gilliam Soil and Water Conservation District to undertake collaborative water planning in the Lower John Day basin. Through this planning process, partners will develop strategies to meet their instream and out-of-stream water needs. The Confederated Tribes of Warm Springs have been participating in the Lower John Day planning meetings.

The Department invited the Confederated Tribes of Warm Springs to participate on Technical Review Team and considered tribal input in review of Water Project Grants and Loans applications (ORS 541.5669(3)).

## **Siletz Tribe**

### **Water Management**

The Oregon Water Resources Department is updating the state's 2012 Integrated Water Resources Strategy (IWRS) for 2017. The Department convened a Policy Advisory Group during 2016 to help develop additional recommended actions and provide input to current actions. The Aquatic Program Leader from the Confederated Tribes of Siletz Indians served as one of 18 Policy Advisory Group members. The group's recommendations will go to the Water Resources Commission and Department as they develop the IWRS update.

### **Water Resources Development Program**

The Department awarded a grant to the City of Newport to undertake collaborative water planning in the Mid-Coast region. Through this planning process, partners will develop strategies to meet their instream and out-of-stream water needs. A representative from the Confederated Tribes of the Siletz is participating in this process as a member of the coordinating committee and as a member of the Mid-Coast Water Planning Partnership. For more information: [www.midcoastwaterpartners.com](http://www.midcoastwaterpartners.com).

The Department invited the Confederated Tribes of Siletz Indians to participate on Technical Review Team and considered tribal input in review of Water Project Grants and Loans applications (ORS 541.669(3)).

## **The Klamath Tribes**

### **Klamath Basin Water Management**

The Klamath Basin Adjudication is the most complex adjudication in Oregon. 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 fourth year of water use regulation, the Department and the Governor's Office continue to work closely with the Klamath Tribes, basin water users, the Bureau of Reclamation, 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 2016, the District 17 Watermaster's office regulated water use consistent with the Upper Klamath Basin Comprehensive Agreement. The Watermaster's office also investigated, validated and regulated water use resulting from calls made by the Tribes and BIA for water to satisfy the Tribes' determined claims contained in the Director's Klamath Adjudication Finding of Fact and Order of Determination. Additionally, staff continued to respond to questions from tribal members regarding regulation activities relating to water right priority dates, instream flow needs, irrigation needs, and other general topics related to the FFOD.

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' 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, 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 Specified Instream Flows 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 near the proposed site locations. The Department contracted with Southern Oregon University to conduct the necessary archeological surveys.

#### **Water Resources Development Program**

The Department invited the Klamath Tribes to participate on Technical Review Team and considered tribal input in review of Water Project Grants and Loans applications (ORS 541.669(3)).

## **The Confederated Tribes of the Grand Ronde**

### **Water Rights**

In the Instream Lease and Instream Transfer Programs, there were several tribal leases in place in 2016, including IL-647 from the Confederated Tribes of Grand Ronde.

### **Water Resources Development Program**

Thanks to input from the Grand Ronde, the Department has an improved approach for tribal review of applications for Water Project Grants and Loans. The Department met with the Tribes' Cultural Resources staff and:

- Identified information the Tribes would like to have for its review.
- Updated the application materials to better collect that information.
- Updated the consultation/review process so the Department will share the requested information for each project application with the Grand Ronde and other Tribes.

The Department invited the Confederated Tribes of the Grand Ronde to participate on Technical Review Team and considered tribal input in review of Water Project Grants and Loans applications (ORS 541.669(3)).

## **ADDITIONAL TRIBAL COMMUNICATIONS AND ENGAGEMENT**

- One of the new members appointed to the Oregon Water Resources Commission is Eric Quaempts, who is the Director of Natural Resources for the Confederated Tribes of the Umatilla Indian Reservation. Quaempts was appointed to the commission by Governor Brown and confirmed by the Oregon Senate on September 22, 2016. Commissioners serve four-year terms, and are appointed from each of the five regional river basin areas across the state. Two other members are selected at-large. Quaempts was chosen as the North Central Region commissioner.
- For 2016-2017, the Oregon Water Resources Department will chair the Cultural Resources Cluster and be a member of the Natural Resources Working Group as part of the Government-to-Government process.
- Tribes participated on the Department's Rulemaking Advisory Committees, including rules related to reserving water for future economic development.

- The 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.
- As lead agency for Oregon's hydroelectric laws (ORS 543 and 543A), the Department administers the Hydroelectric Application Review Team (HART) for state projects. Besides the Oregon Water Resources Department, the core HART is made up of representatives from DEQ and ODFW. Where a Tribe may be affected by a project or is involved as a project applicant, the HART members work with to ensure coordination. The Department also 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.
- As part of the Environmental Justice Task Force, the Department is responsible for encouraging public participation, and considering environmental justice issues in decisions that affect those traditionally underrepresented in public processes, including tribal communities.

## **GOVERNMENT-TO-GOVERNMENT MEETINGS AND TRAINING**

- Meeting three to four times a year each, the Natural Resources Workgroup and the Cultural Resources Cluster offer a valuable forum to share information on agency programs, efforts, rulemaking and legislative concepts. The Department attends these work groups and participates in the annual tribal information and training day, Spring Gathering, and State-Tribal Summit.
- In 2016, Department employees, including one person from each of the five regional offices, attended the four-day Archaeology Awareness Training. 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 employees recognize artifacts and understand the notification procedures involved. This is especially beneficial for those doing streamflow work.

## **2007 OREGON WATER RESOURCES DEPARTMENT POLICY ON RELATIONSHIPS WITH TRIBES**

The Water Resources Commission and Department will communicate and collaboratively problem solve with the nine Oregon tribes. The Water Resources Department has established the following guidelines to foster and maintain its relationship with each of the nine tribes:

1. Maintain parallel contact directories, one of agency personnel who are available to the tribes(s) for immediate contact, the other a list of tribal leaders or staff who can be contacted to initiate discussion quickly. (In WRD's case the initial contact is at our Regional office, with a Salem office follow-up.)
2. Spot issues quickly, and get accurate details as soon as possible. That is, be aware of water use issues that may create conflict between state government and a tribe or the federal government as the tribe's trustee. Once the issue is identified, research the details, factual and legal, so that the issue can be scoped and accurate and appropriate contact can be initiated.
3. When an issue arises, Department staff will offer to meet face-to-face with tribal leadership as soon as possible to ensure that clear, constructive communication is initiated promptly.
4. During initial contact on an issue, be positive and stress common interests and goals indicating that a cooperative solution is most likely possible.
5. Keep the agencies' other (non-Indian) constituents advised, and where appropriate involve the non-Indian community in discussions with the tribal leadership.
6. As issues arise and are addressed, establish a system or protocol for the future issues—building on successes.

The Department believes that its relationship with Oregon's nine tribes must be based on two essential attributes. First, we must honor and protect existing tribal water rights to the use of water, and second, we must continue to forge partnerships with tribes to support our mutual interest in water issues.

