

OWRD 2017



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.



2017 Government-to-Government Report
Oregon Water Resources Department

www.oregon.gov/owrd

KEY CONTACTS:

Thomas Byler, Director
(503) 986-0910

thomas.m.byler@Oregon.gov

Diana M. Enright, Tribal Liaison
(503) 986-0874

diana.m.enright@Oregon.gov

Douglas Woodcock, Deputy Director
(503) 986-0878

douglas.e.woodcock@Oregon.gov

Agency Division Administrators:

Field Services

Ivan Gall

(503) 986-0847

ivan.k.gall@Oregon.gov

Water Right Services

Dwight French

(503) 986-0819

dwight.w.french@Oregon.gov

Technical Services

Brenda Bateman

(503) 986-0879

brenda.o.bateman@Oregon.gov

Administrative Services

Lisa Snyder

(503) 986-0921

lisa.j.snyder@Oregon.gov

Regional Managers:

Northwest Region

Mike McCord

(503) 986-0893

mike.l.mccord@Oregon.gov

Southwest Region

Mike McCord

(503) 986-0893

mike.l.mccord@Oregon.gov

North Central Region

Mike Ladd

(541) 278-5456

michael.f.ladd@Oregon.gov

South Central Region

Kyle Gorman

(541) 306-6885

kyle.g.gorman@Oregon.gov

East Region

Jason Spriet

(541) 523-8224 ext. 224

jason.d.spriet@Oregon.gov

DEPARTMENT STATEMENT AND POLICY

The Oregon Water Resources Department (OWRD) 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 nine Federally Recognized Tribes on issues related to water supply, watershed management, and water distribution, including matters related to water rights held or claimed by Tribes. In addition, the Department works with 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 a competitive process for a variety of instream and out-of-stream water projects.

Based on input from the Tribes and the Legislative Commission on Indian Services, the Department's Water Project Grants and Loans application and review process includes:

- The application requires submission of a project location map, description of ground-disturbing activities, and other information identified by Tribes as pertinent to their review of projects.
- The Department's Tribal Liaison identifies projects located in traditional territories identified by the Tribe and sends project summaries, a map including latitude and longitude coordinates, and any identified 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.

As a requirement of the Water Projects Grants and Loans program, storage projects receiving Water Project Grant or Loan funding and meet certain requirements must have a Seasonally Varying Flow (SVF) developed for the project. An 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.

OWRD is required to develop a Seasonally Varying Flow prescription to act as a permit condition for the Kingsley Reservoir Project (Grant # GA-0308-17). OWRD is engaging both the Confederated Tribes of the Umatilla Indian Reservation and the Confederated Tribes of the Warm Springs to consult on the development of the underlying scientific information and on the development of the permit condition.

WORKING WITH OREGON'S TRIBES

Burns Paiute Tribe

Water Rights

The Department works with the Burns Paiute Tribe on general water right issues, including transfer applications and groundwater development. The Department issued a final order for an instream lease between the Tribe and the Freshwater Trust (IL-1582). The instream lease provides for the conservation, maintenance and enhancement of fish and wildlife habitat. A final order was also issued to the Burns Paiute for a water right transfer allowing a change in place of use and character of use from supplemental to primary irrigation.

Water Management

Department staff in the Eastern Region 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.

The legislature provided funding for the Department to construct dedicated observation water wells to track groundwater levels in Harney County. The Tribe, which takes a strong interest in Harney County's water issues, considers water to be one of its most significant cultural resources.

In 2017, the District 4 Watermaster's Office helped coordinate a single season instream lease on Beech Creek and Little Beech Creek.

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 broader planning group and various working groups. For more information:

www.hcwatershedcouncil.com.

The Department invited the Burns Paiute Tribe to participate on the 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 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. Although the project scope has changed, the discussions between these parties and other irrigation districts are ongoing.

As part of the settlement negotiation work, a technical team was established to work with the Bureau of Reclamation and a consultant to provide input on development of a water resources modeling tool, and that work is ongoing. 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.

Negotiations have expanded to include Oregon Department of Fish and Wildlife, Stanfield Irrigation District, Hermiston Irrigation District, and some ditch companies in the basin. The Department continues to engage all parties in negotiation of the settlement process and terms through individual and group meetings.

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 has been working with the CTUIR and The Freshwater Trust on a series of complex transactions, which include an instream lease, instream transfer and Allocation of Conserved Water. 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. The project should be complete by the end of 2017.

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.

During the 2017 legislative session, the Department participated in a weekly phone call with the Department of Environmental Quality, which updated the CTUIR on water-related bills and action in the legislature.

In 2017, the District 5 Watermaster's office worked with the CTUIR and other basin partners on a water right transfer. This moves the Dillon Irrigation District diversion upstream to the Westland Irrigation Diversion and allows for the removal of the Dillon Dam, which is a barrier to fish passage.

The District 5 Watermaster's office also worked with the CTUIR on the instream lease of a Wetland Enhancement water right for flow improvements in the Columbia River.

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 instream flows.
- Participating in the Walla Walla Steering Committee to find water supply solutions to improve instream flows in the Walla Walla River.
- Attending 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 to undertake collaborative water planning in the Upper Grande Ronde. Through this planning process, partners will develop strategies to meet their instream and out-of-stream water needs. The CTUIR are participating in the Upper Grande Ronde planning meetings. For more information: <http://union-county.org/planning/place-based-integrated-water-resources-planning/>

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)).

Representatives from the Umatilla's Natural Resources Department are participating in the meetings between OWRD, ODFW, CTUIR, CTWS, and Farmer's Irrigation District regarding the development of a Seasonally Varying Flow prescription for a grant awarded to Farmer's

Irrigation District. This included the review of ecological and hydrologic data and information that underlies the definition of ecological flow needs in the basin. This project will continue into 2018 and includes the opportunity to review and comment on technical studies, participate in a consultation meeting to discuss the draft technical findings, and the construction of the resulting permit condition.

Confederated Tribes of Warm Springs

Water Rights

In the Transfer Program, a final order was issued on April 10 for a historic point of diversion change for the Confederated Tribes of the Warm Springs (CTWS). This transfer is part of a large-scale habitat restoration project on the Upper Mainstem John Day River.

Water Management

- The District 21 Watermaster's office in Condon continues to work with the Confederated Tribes of Warm Springs (CTWS) to remove in-channel obstructions on Rowe Creek, tributary to the John Day River. Additionally, the office has been participating in the Place-Based Planning effort in the Lower John Day River.
- The CTWS transferred irrigation certificates C-25617, 25332, 25333, 25334, 25335, 25365, 25462, and 25523 from Pine Creek with priority dates ranging from 1870 – 1880 to instream resulting in Certificate C-85824 being issued in 2009. The District 21 Watermaster routinely monitors the flow at the Pine Creek Gage near Clarno.
- Cooperation continues between the District 3 Watermaster's office in The Dalles and the CTWS. Flow meters have been installed and data is being collected on significant diversion on Fifteenmile Creek. Seasonal use and streamflow data are available to the CTWS and others.
- A Memorandum of Agreement signed between the CTWS and the Department led to the purchase of equipment to install a new stream gaging station on Lower Fifteenmile Creek. The operation of the gaging station is 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. The Dee Irrigation District in Hood River and the CTWS jointly filed an Allocation of Conserved Water application and the water saved is being managed instream until the project is complete in 2018.

- 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 may 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, and continues to be processed.
- 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)).

A representative from the Warm Spring's Water Resources Division is participating in the meetings between OWRD, ODFW, CTUIR, CTWS, and Farmer's Irrigation District regarding the development of a Seasonally Varying Flow prescription for a grant awarded to Farmer's Irrigation District. This included the review of ecological and hydrologic data and information that underlies the definition of ecological flow needs in the basin. This project will continue into 2018 and includes the opportunity to review and comment on technical studies, participate in a consultation meeting to discuss the draft technical findings, and the construction of the resulting permit condition.

Siletz Tribe

Water Management

The Oregon Water Resources Department updated the state's 2012 Integrated Water Resources Strategy (IWRS) in 2017. The Department convened a Policy Advisory Group 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 Water Resources Commission adopted the IWRS 2017 update at its December meeting.

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.

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 fifth 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 2017, the District 17 Watermaster's office regulated water use consistent with the Upper Klamath Basin Comprehensive Agreement as it was intended, but realizing the agreement will end at some point. The Watermaster's office also investigated, validated and regulated water

use resulting from calls made by the Klamath 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 (FFOD). 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 worked 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 streamflow at locations identified in the BIA/Tribes determined instream 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 prior to construction. 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 the 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

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

The Cow Creek Band of Umpqua Tribe of Indians

Water Rights

The Water Rights Services Division approved two instream lease applications for the Cow Creek Band of Umpqua Tribe of Indians, which will help improve streamflows for fish and aquatic life.

The Coquille Indian Tribe

Water Rights

The Coquille Indian Tribe received a final order for a character of use change on a water right; changing the use from steam boiler supply to multipurpose storage.

ADDITIONAL TRIBAL COMMUNICATIONS AND ENGAGEMENT

- In 2017, the Oregon Water Resources Department chaired the Cultural Resources Cluster and was also 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 the classification of the groundwater and surface waters of the Smith River Watershed, classification of groundwater in the Walla Walla Subbasin for new exempt uses only, and conversion of hydroelectric water rights to instream water rights.
- 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 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.
- Department staff from the Director's Office and the Technical Services Division made presentations to the Cultural Resources Cluster on the Integrated Water Resources Strategy and stream gage installations.
- In 2017, eight Department employees 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 helps employees recognize artifacts and understand the notification procedures involved. This is especially beneficial for those installing surface water and groundwater monitoring equipment. The Department hopes to send another eight people to the training in 2018.

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.

