

2018

OWRD



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
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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 to assess water conservation, reuse, and storage projects. The grants are designed to fund 50 percent of qualifying costs of feasibility studies. Tribes are also eligible to apply for Water Project Grants and Loans, which provides funds for a variety of instream and out-of-stream water projects through a competitive process.

Tribes are also partners in reviewing applications for Water Projects Grants and Loans. 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.

In 2018, the Legislative Commission on Indian Services identified seven tribes (see Table 1) who may have an interest in the Water Project Grants and Loans project applications, based on the location of the proposed projects. An invitation was then sent to the identified tribes detailing three opportunities to participate in the review of applications seeking funding. Each tribe received a list of all proposed projects for which their tribe may have a potential interest along with links to the project applications and attachments. Additionally, a brief project description, the project location, and information regarding ground-disturbing activities were provided.

Table 1. Tribes Identified as Having an Interest in Proposed Water Project Grants and Loans Projects
Burns Paiute Tribe
Confederated Tribes of the Grand Ronde
Confederated Tribes of Siletz
Confederated Tribes of the Umatilla
Confederated Tribes of Warm Springs
Cow Creek Band of Umqua Indians
Klamath Tribes

A multi-agency Technical Review Team (TRT) scored and ranked the 2018 project proposals based on potential public benefits in three categories: economic, environmental and social/cultural. The TRT funding recommendation and an evaluation summary for each application were sent to all nine federally-recognized Oregon tribes to invite an opportunity to provide government-to-government comments.

By statute, storage projects receiving Water Project Grant and Loan funding and meeting 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 establishes 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 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 Seasonally Varying Flow.

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 planning. In 2018, the Department issued a final order for an instream lease renewal between the Tribe and the Freshwater Trust (IL-1693, reassigned from IL-1582). The instream lease provides for the conservation, maintenance and enhancement of fish and wildlife habitat.

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 has a strong interest in Harney County's water issues, considers water to be one of its most significant cultural

resources.

In May 2018, the Department Director met with the Tribal Chair and others to discuss the local groundwater study, Place-Based Planning and other Department programs and activities.

Water Resources Development Program

In 2016, 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 evaluating 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 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.

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. Staff continue to provide water right data to CTUIR and answer questions about the data.

Walla Walla Flow Restoration

The Oregon Water Resources Department is actively participating on the Walla Walla Steering Committee, which is looking at restoring flows in the Walla Walla River for fish in cooperation with the CTUIR and various other members of the committee. In addition, the Department has engaged with the State of Washington and CTUIR in high-level discussions on the mutual interests of water management across the state line.

Department Staff attended a meeting held by CTUIR in April for the Flow and Fish Restoration Co-Managers and Funder agencies working in the Walla Walla Basin.

Water Rights

Department staff continued working on processing applications for projects under the Allocation of Conserved Water Program. Projects in the Walla Walla basin from various irrigation districts were funded in part by CTUIR. These actions by CTUIR have and will result in increased stream flows in the Walla Walla River.

In the Wallowa River basin, staff has been working with CTUIR and The Freshwater Trust on a series of complex transactions, which include an instream lease, instream transfer, and Allocation of Conserved Water (ACW) project. This is the first ACW transaction in the basin, which will result in improved streamflows in both the Wallowa and Lostine Rivers.

Processing of the ACW project was completed on January 8, 2018, resulting in the issuance of instream water right certificate 93535. In February 2018, the application for an instream transfer was submitted. By the end of the year, the Department anticipates completion of the transfer and issuance of an instream water right.

Water Management

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

Through the North Central Region and East Region offices, 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.
 - Conducting a gaging program in the Grande Ronde Basin that is largely beneficial to the CTUIR and results in periodic consultation and/or collaboration associated with CTUIR stream habitat projects.
 - Communicating regarding the status of Lost Valley Dairy.
 - Monitoring and protecting instream leases negotiated by the CTUIR.

Water Resources Development Program

The Department awarded a grant to Union County to undertake collaborative water planning in the Upper Grande Ronde, in partnership with the Department. Through this planning process, the planning group will develop strategies to meet their instream and out-of-stream water needs. The CTUIR are participating in the Upper Grande Ronde planning meetings and serving on both the technical committee and the instream work group. For more information visit <http://union-county.org/planning/place-based-integrated-water-resources-planning/>

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

Representatives from CTUIR's Natural Resources Department are participating in meetings with OWRD, ODFW, 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 ecologic and hydrologic data and information that underlies the definition of ecological flow needs in the basin. This project is expected to be completed by early 2019. Consultation includes the opportunity to review and comment on technical studies, participate in a consultation meeting to discuss the draft technical findings, and development of the resulting permit condition.

CTUIR Geothermal Assessment Collaboration

North Central Region staff and Groundwater Section staff have been collaborating with the CTUIR Department of Science and Engineering and the CTUIR Department of Natural Resources on Phase II of the Umatilla Indian Reservation Geothermal Resource Assessment. OWRD will be working with DOGAMI and the USGS in addition to CTUIR to work on assembling the geologic framework for the Columbia River Basalt Group aquifer system in the Mission area East of Pendleton. This is projected to include the following work from OWRD: borehole geophysical logging of all geothermal gradient test holes, downhole camera surveys of all test holes, and geochemistry and stratigraphy for at least one test hole. Presently, this collaboration is in the planning stages and will continue into 2019.

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 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 rights 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 diversions 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. This ACW project was finalized in October 2018, resulting in the issuance of instream water right certificates totaling 3.0 cfs in the West Fork of Hood River.
- 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 visit <http://www.usbr.gov/pn/studies/deschutes/>.

Deschutes Basin Summit

The State of Oregon and CTWS jointly sponsored a Deschutes Basin Water Summit in October at Eagle Crest Resort. OWRD Director Byler, Region Manager Kyle Gorman, and Watermaster Jeremy Giffin attended the two day event where presentations by the Tribes and other partners were present.

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 conducted in partnership with the Department, the planning group 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 and the Data Committee.

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

A representative from CTWS's Water Resources Division is participating in the meetings with OWRD, ODFW, CTUIR, 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 is expected to be completed by early 2019. Consultation includes the opportunity to review and comment on technical studies, participate in a consultation meeting to discuss the draft technical findings, and development of the resulting permit condition.

Siletz Tribe

Water Resources Development Program

The Department awarded a grant to the City of Newport to undertake collaborative water planning in the Mid-Coast region, in partnership with the Department. Through this planning process, the planning group 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 the Mid-Coast Water Planning Partnership. For more information visit www.midcoastwaterpartners.com.

The Department invited the Confederated Tribes of Siletz Indians to participate on the Technical Review Team and considered tribal input in evaluation 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 sixth 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 to develop coordination protocols for calls on water as a group.

The Upper Klamath Basin Comprehensive agreement was terminated in December 2017. In 2018, the District 17 Watermaster's office regulated junior water users to protect Tribal determined claims for instream flows. The Watermaster's office 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 Amended and Corrected Finding of Fact and Order of Determination (ACFFOD) in the Klamath Adjudication. 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 ACFFOD.

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.

Water Resources Development Program

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

The Confederated Tribes of the 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 the evaluation of Water Project Grants and Loans applications (ORS 541.669(3)).

The Cow Creek Band of Umpqua Tribe of Indians

Water Management

The District 15 Watermaster in Roseburg continued to monitor and regulate two instream leases for the Cow Creek Band of Umpqua Tribe of Indians during the 2018 irrigation season. These leases helped to improve streamflows for fish, aquatic life, and other ecological values.

Water Rights

The Water Rights Services Division advanced one application to permit status for the Cow Creek Band of the Umpqua Indians (permit S-55144).

In 2018, the District 15 Watermaster's office assisted with five Land-into-Trust applications for tribal property acquisition within Douglas County. During late December 2017, but not included in the previous annual report, the Watermaster's office assisted with three additional Land-into-Trust applications.

Water Resources Development Program

The Department invited the Cow Creek Band of the Tribe of Indians to participate on the Technical Review Team and considered tribal input in evaluation of Water Project Grants and Loans applications (ORS 541.669(3)).

The Coquille Indian Tribe

Water Management

The Coquille Indian Tribe has been instrumental in creating the climate for restoration work in the Coquille Basin to occur, benefitting native species like Coho salmon and Lamprey. Local watershed groups such as the Coquille/Coos Watershed Associations and local ODFW in cooperation with OWRD gaging and regulation make this possible. Instream flow measurement/gaging/regulation by the District 19 Wastermaster are key components for ensuring the success of Coquille Basin restoration projects.

ADDITIONAL TRIBAL COMMUNICATIONS AND ENGAGEMENT

- The Director's Office will continue to coordinate fee-to-trust applications sent through the Governor's Office.
- As the 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 encourages public participation, and considers environmental justice issues in decisions that affect those traditionally underrepresented in public processes, including tribal communities.

GOVERNMENT-TO-GOVERNMENT MEETINGS AND TRAINING

- 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 October 2018, eight Department employees attended the four-day Archaeology Awareness Training in Coos Bay. The training included 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 2019.

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.