

**Oregon Department of Justice Annual Government to Government Report 2009**  
Pursuant to ORS 182.166(3)

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**I. Introduction**

The Department of Justice is unusual among state agencies in that it functions in two capacities. The Department administers programs pursuant to the Attorney General's independent statutory authority. However, much of the Department's work involves providing advice and representation to other state agencies in the pursuit of the programs and policies of those agencies. The Department of Justice does not set policy for those agencies.

As before, the Department's tribal relations policy, as well as this report, reflects the Department's role as advisor to other agencies, as well as its role in administering its own independent programs.

**II. Tribal Relations Policy**

**A. Policy**

In 2002 the Department of Justice Executive Staff and Attorney General adopted the attached Tribal Relations Policy. The policy has been incorporated into the Department's Policy Manual.

**B. Dissemination of Policy**

As noted above, the policy has been incorporated into the Department's Policy Manual, which is presented to new employees. In addition, pursuant to the policy, the Tribal Key Contact annually sends out by email a reminder regarding the policy. In 2009 the policy was distributed and discussed at an in-house Continuing Legal Education program on Indian law and tribal relations. Discussion of the policy has been incorporated into the Orientation program for new employees.

**III. Updated List of Department of Justice Programs that Affect Tribes**

Below is an updated list of Department of Justice programs compiled pursuant to the Tribal Relations policy. It is noted where the programs are known to affect tribes. We will continue our process of conferring regarding DOJ programs pursuant to the policy to determine where we may learn of further potential impacts on tribes.

**A. Advice and Representation of State Agencies**

As noted above, much of DOJ's work is to advise state agencies as to their legal options in the course of pursuing the programs of those agencies, and to represent state agencies in litigation, including appeals. Many of our efforts involve working to build good relationships with tribal attorneys, including in situations in which we are adverse to tribes in litigation.

In addition, in connection with advising state agencies, the DOJ pursues some specific programs: (David Leith, General Counsel Division Administrator)

**Client Legal Training/Public Law Conference.** On occasion the Department holds seminars for state agencies about various areas of public law, and Indian law has often been included in the program.

**Legal Sufficiency Review.** Pursuant to statute, the Department is required to review certain kinds of contracts for "legal sufficiency." This responsibility affects tribal-state agreements.

**B. Ballot Titles (Appellate Division, Jerry Lidz, Solicitor General)**

DOJ drafts ballot titles for initiatives and litigates challenges to ballot titles. On more than one occasion in the past, the subject matter of the initiative (lottery authority, private casino) affected tribes.

**C. Criminal Appeals (Appellate Division, Jerry Lidz, Solicitor General)**

From time to time DOJ handles appeals of criminal cases involving tribes or questions of criminal jurisdiction relating to tribes.

**D. Law Enforcement Programs of the Criminal Justice Division  
(Sean Riddell, Division Administrator)**

The Criminal Justice Division engages in a variety of law enforcement programs: Election Law Investigation and prosecution, Official Corruption, Organized Crime (investigation and information collection and dissemination); Criminal Intelligence Unit (criminal intelligence), High Intensity Drug Trafficking Areas (law enforcement support), Tobacco Tax compliance, Internet Crimes Against Children, the Terrorism Intelligence and Threat Assessment Network (TITAN), the Oregon TITAN Fusion Center, District Attorney Assistance, and the Annual Institute for Prosecutors (training program).

Through the **District Attorney Assistance Program**, from time to time DOJ assists in prosecutions involving tribes or questions of criminal jurisdiction relating to tribes.

**Environmental Crimes Unit.** The Environmental Crimes Unit was created by the 2009 Senate Bill 797 to launch a new enforcement program focusing on violations of Oregon environmental laws.

**Domestic Violence prosecution.** DOJ is in the process of hiring a domestic violence prosecutor with federal grant funds.

**E. The Crime Victims Services Division (CVSD) (Cynthia Stinson, Director)**

In 2008 the Crime Victims Assistance Program became a separate division, Crime Victims Services Division. That Division from time to time provides grants to tribes or tribal members. (Cynthia Stinson). CVSD also has the following programs:

The **Address Confidentiality Program** for victims of domestic violence, sexual assault and stalking became operational January 1, 2007.

A federal grant program, the **Violence Against Women Act** grant, was administered for several years by the Oregon State Police. Due to reorganization of several of their units, this grant is administered by CVAS, effective November 2006.

**F. Financial Fraud/Consumer Protection (Drew Lianopoulos, Attorney in Charge)**

The Department engages in a variety of consumer protection programs: responses to consumer complaints; Trade Practices Act enforcement, antitrust enforcement, and consumer education.

The consumer education program has included work with tribes. (Althea Rodgers)

**Scam Alert Network.** This network coordinates the Department's regular scam alerts with the media, elected leaders, consumer watchdogs, and advocates for the elderly and disabled in partnership with the Department of Consumer and Business Services, Oregon District Attorneys' Association, Oregon State Sheriffs' Association, Oregon Association of Police Chiefs, AARP and Elders in Action.

**G. Medicaid Fraud (Rodney Hopkinson, Attorney in Charge)**

This section investigates and prosecutes fraud by Medicaid providers.

**H. Charitable Activities (Elizabeth Grant, Attorney in Charge)**

A number of tribally affiliated charities register as Oregon charitable corporations.

**I. Public Records Laws** (Michael Kron, Government Transparency Counsel)

The Attorney General issues orders on petitions under the Public Records Law. In 2009 the Attorney General has been working to consider internal administrative changes -- as well as potential regulatory and legislative reforms -- to improve transparency, efficiency and coherence under the Public Records Law.

**J. Appropriate Dispute Resolution** (Mike Niemeyer, ADR Coordinator)

The Department of Justice promotes and provides training with respect to appropriate dispute resolution, which would include disputes involving tribes.

**K. Civil Rights Unit** (Diane Sykes)

The new Department of Justice Civil Rights Unit has been established to fight discrimination based on age, race, ethnicity, gender, sexual orientation, disability, and national origin; protect Constitutional free speech and reproductive rights; and to defend Oregon veterans at work and in the marketplace. Such discrimination may include Native Americans.

**K. Task Forces**

Attorney General Kroger chairs the **Alcohol and Drug Policy Commission**, which was established by 2009 House Bill 3353 to bring together state leaders, law enforcement and treatment providers to overhaul the state's drug treatment and prevention system. DOJ sought input from Oregon tribes regarding recommendations for membership on the Commission.

**L. Child Support** (Jean Fogarty, Director)

The Division of Child Support (DCS) interacts with tribes on enforcement of child support.

**IV. Training**

Members of DOJ have participated in a variety of seminars and Continuing Legal Education programs relating to Indian law and culture.

**A. Training pursuant to ORS 182.166(1)**

Members of DOJ attended the training on Tribal Government Day.

**B. Other Training**

DOJ members attended the following programs during the year:

**Tribal Government Day** at the Capitol. In addition to attendance at the training DOJ members also participated in learning about Oregon tribes on Tribal Government Day 2009.

**Conference of Western Attorneys General.** Stephanie Striffler attended the annual meeting of the Conference of Western Attorneys General, and participated in a panel on tribal gaming. The conference included a presentation by Larry Echohawk, the new Assistant Secretary of Interior for Indian Affairs.

**Internal Indian Law CLE.** In June Tribal contact Stephanie Striffler presented a DOJ CLE on *Introduction to Indian Law*, which included training on DOJ's tribal relations policy.

**Oregon State Bar CLE.** The Attorney in charge of the Contracts, Condemnation and Environmental litigation section attended an Oregon State Bar CLE with Professor Robert J. Miller discussing *Native America, Discovered and Conquered: Thomas Jefferson, Lewis & Clark, and Manifest Destiny*.

**Indian Child Welfare Act.** In October, several DOJ attorneys from the Appellate Division and Child Advocacy Section, as well as Special Counsel Margaret Olney, attended a Juvenile Law Training Academy that included a presentation by the Native American Program of Oregon Legal Services on the Indian Child Welfare Act.

**Division of Child Support orientation** includes a two hour module on tribal relations.

DOJ maintains a library of Continuing Legal Education videotapes audiotapes and materials, including Indian law presentations.

## **V. Efforts to Promote Good Government to Government Relations**

### **A. Annual Summit**

The following DOJ representatives attended all or part of the annual summit:

Chief of Staff and Special Counsel Keith Dubanevich  
Special Counsel Brent Foster  
Tribal Contact Stephanie Striffler

### **B. Cluster Participation**

DOJ representatives participated regularly in three of the Government to Government clusters: Public Safety, Human Services, and Cultural Resources, and hope to participate in the Natural Resources cluster in the future.

**Public Safety.** Stephanie Striffler, Ben Unger and Shannon Sivell participated at varying times during the year.

**Human Services.** Division of Child Support representatives participated.

**Cultural Resources.** Stephanie Striffler participated.

**Economic Development Cluster.** Crime Victims Services Director Cynthia Stinson attended the cluster meeting held at Grand Ronde in May to participate in presentations about economic stimulus grants.

### **C. Special Activities**

Attorney General John Kroger met with the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation.

Attorney General John Kroger and Stephanie Striffler attended the Commission on Indian Services meeting in March.

Attorney General John Kroger and Stephanie Striffler met with Warm Springs Tribal Council members to discuss cultural resources and other issues in April.

Special Counsel Brent Foster met with the Board of Trustees of the Umatilla Indian Reservation to discuss environmental issues.

Tribal contact Stephanie Striffler met regularly with Governor's office representatives and the Board of Trustees of the Umatilla Indian Reservation.

Tribal contact Stephanie Striffler attended the Coquille Tribe's Restoration Day celebration.

Tribal contact Stephanie Striffler visited the Umatilla Tribe's new governance center and Tamastalikt with representatives of OSP and the Governor's office.

Tribal contact Stephanie Striffler joined representatives of the Governor's office to meet with members of the Grand Ronde Tribal Council at their government office.

Stimulus funding: DOJ coordinated a conference call with tribal representatives to present information and brainstorm opportunities to seek stimulus funding. In addition, DOJ made a presentation about stimulus grants at the public safety cluster.

#### **D. Efforts during Representation of State Agencies**

As noted above, much of what DOJ does involves the representation of the State or state agencies, including interactions of those agencies with tribes. We work to develop and maintain respectful and productive relationships with tribes and tribal attorneys, even when we are taking differing positions in litigation.

It is not possible to detail all of these efforts, some of which are confidential. Some examples of efforts in the course of representing the State or other state agencies follow:

***United States v. Oregon*** (ongoing Columbia River treaty rights case).

In recognition of a Spring Chinook run that was smaller and later than had been predicted, DOJ worked with Oregon Department of Fish and Wildlife to negotiate an amendment to the recently concluded ten year agreement guiding harvest and hatchery production. The parties are also engaged in negotiations regarding the location of tribal harvest. The continuing goal is to resolve these complex matters without resort to court.

***Yakama Nation v. USA***. (Hanford litigation). DOJ has represented the State of Oregon, which intervened as plaintiff in this CERCLA suit filed by the Yakama Nation against the US and the Dept. of Energy to recover costs for assessing natural resource damages at Hanford. DOJ has continued to cooperate with Columbia River Tribes, including the Confederated Tribes of the Umatilla Indian Reservation, who also intervened as a plaintiff. The district court has ruled that the issue of DOE's liability for Natural Resource Damage Assessment costs is ripe for determination; since that decision the parties have been in continued negotiations.

**Klamath Basin Negotiations.** DOJ attorneys continued to participate in significant efforts to resolve Klamath Basin water and fish habitat issues through negotiations of dam removal and water rights settlements, with the Klamath Tribes, among others.

**Tax issues.** DOJ attorneys continued to work with Department of Revenue and tribal representatives to discuss DOR's guidelines on tax issues related to tribes, in particular tribal corporations.

***Maybe* appeal.** DOJ consulted with tribal attorneys before filing a brief in the Oregon Court of Appeals concerning the state's authority to enjoin untaxed sales of certain brands of cigarettes to Oregon consumers by a Seneca tribal member.

**Indian Child Welfare Act.** DOJ attorneys have collaborated and consulted with several Oregon tribes in the past year in multiple cases involving the Indian Child Welfare Act.

## **E. Gaming**

The tribal key contact serves on the Governor's negotiating team for tribal gaming compacts. In 2009 there were no significant new compact negotiations. However, we have worked respectfully on some disputes arising under the compacts.

### **Challenge to validity of gaming compacts.**

Ongoing litigation challenging the Governor's authority to enter into tribal gaming compacts continued into 2009. In late December 2005, the federal district court issued a decision in favor of the state and tribes. The plaintiffs then revived an appeal of an earlier state court case. In 2009 the Oregon Supreme Court remanded to the trial court for further proceedings. Department of Justice attorneys continued to work closely with tribal attorneys on that appeal and on the current remand.

## **F. *Amicus curiae* brief decision making**

We have continued to use an email list that was set up in 2003 to alert tribal attorneys when we become aware of cases in which the Attorney General is called upon by other states or associations to participate in appellate court briefing in an *amicus curiae* role by joining briefs that have been drafted by other states. This process has resulted in meaningful input from tribal representatives in the state's decision-making process. In 2009 we consulted with tribal attorneys about one case, and the state did not sign on to the amicus brief.

## **G. Law Enforcement Coordination**

### **Internet Crimes Against Children (ICAC)**

The Criminal Justice Division has MOUs with four Oregon tribes.

**HIDTA** (High Intensity Drug Trafficking Areas). The HIDTA program began outreach to the Confederated Tribes of the Warm Springs Reservation about designating their area a HIDTA area and forming a HIDTA Task Force to investigate and prosecute drug crimes.

**Western States Information Network.** DOJ is working to include Oregon tribes in the Western States Information Network, a criminal intelligence database maintained by the California DOJ and in cooperation with California, Washington, Oregon, Alaska and Hawaii.

**Umatilla tribal prosecutions.** DOJ worked with the Governor's office, OSP and ODFW in discussions with the Tribe regarding the Tribe's interest in prosecuting hunting violations.

## **H. Crime Victim's Assistance (Crime Victims Services Division)**

The focus of CVSD work during 2009 has been on continuing to increase understanding, improve communication and build partnerships.

### **1. Inclusion of Tribal Representation on Funding Advisory Boards**

Inclusion of tribal representatives assures that the voices and concerns of tribal victims are represented on advisory boards during planning, allocation and application review. The Siletz Tribes Charitable Trust staff member was appointed to the Oregon domestic and Sexual Violence Services Fund (ODSVS) Advisory Council in April 2008, joining the Family Services Director of the Native American Youth and Family Center (NAYA), which serves urban Native populations in Oregon. During the reporting year, the NAYA program coordinator continued to serve on the ODSVS Membership Committee, developing membership and recruitment priorities. The Siletz Tribal Advisory Council member accompanied the ODSVS Fund coordinator on a visit to the Domestic Violence and Sexual Assault (DVSA) program serving the county in which the Tribe's reservation and trust lands are primarily located. The purpose of the visit was both general (to increase general knowledge and understanding of funded programs) and specific (to support increased collaboration between the DVSA program and the Tribes).

The Program Coordinator for victim services within the Klamath Tribes Social Services Department was appointed to the Oregon STOP VAWA (Violence Against Women Act) Advisory Board in January 2007 and continued membership throughout this reporting year. As the VAWA Advisory Board begins planning for the statewide implementation plan for 2010-13, the Klamath Tribal member has been included in the Implementation Plan committee that will guide the process. The VAWA Fund Coordinator is also reaching out to other tribes for their input on the draft plan through the participation and contacts noted above. These will include the ODSVS Advisory Board Siletz Tribal member, the NAYA Program Director, as well as the victims' services program coordinators from the Confederated Tribes of the Umatilla Indian Reservation and the Confederated Tribes of Warm Springs.

### **2. Making Grant Funding Available to Programs that Serve Native American Victims**

CVSD continued to use established and new strategies to make tribal leadership and victim services programs aware of funding opportunities available through CVSD. During this reporting period available funding was offered through two Requests for Applications (RFPs). The VOCA Project and Recovery Act Application availability was advertised in a number of culturally specific publications, including the "*Confederated Umatilla Journal*" of the Confederated Tribes of the Umatilla Indian Reservation. The VAWA Recovery Act RFP availability was communicated to the Commission on Indian Services and cluster email lists, and the CVSD Director discussed the RFP and the application process at a public safety cluster meeting. In

addition, individual CVSD staff members reached out to tribal victim services programs through emails and individual telephone conversations.

### **3. Improving Access to Services for Tribal Member Victims and Survivors**

All CVSD grant programs prioritize services to underserved populations, including Native American victims. CVSD continues to work with non-tribal grantees to be sure they are making their services fully accessible to Native American survivors and victims in their service areas. Grantee programs make this connection in a number of ways. Several programs have recruited tribal members onto their Boards of Directors. Some programs have formal contracts for services with tribal governments. In other cases the collaboration is informal.

## **I. Consumer Protection/Education (Althea Rodgers)**

Chief of Staff and Special counsel Keith Dubanevich attended and spoke at the Native Caring Conference, a conference for Native American caregivers, held this year on the Warm Springs Reservation at Kah Nee Ta.

## **J. Cultural Resources Protection.**

DOJ successfully proposed SB 217 in the 2009 legislative session, to establish a funding mechanism for Attorney General's office civil and criminal enforcement of cultural resource protection laws. Representatives from the Confederated Tribes of Warm Springs and the Confederated Tribes of the Umatilla Indian Reservation testified in support of the bill, and the Coquille Tribe submitted testimony as well. The bill passed, although without funding, and DOJ hopes to find ways to obtain funding in the future, including grants.

## **K. Child Support**

**Tribal Government Day:** All DCS branches were represented, including the director, and managers or tribal liaisons from the branches with active tribal partnerships.

Director Jean Fogarty attended the Region X State and Tribal IV-D Director's conference September 2009.

Director Jean Fogarty toured the new Umatilla Tribal Governance Center.

## **IV-D Programs:**

**Quarterly Tribal IV-D Child Support Meetings.** These meetings are structured for tribes that have applied for Tribal Child Support Start-up funds or already have a child support program. The focus of the meetings is to improve communication between DCS leadership and individual branch offices and tribal courts and child support staff. Two

meetings were held in 2009, one in Pendleton in April and one in Bend in November. Invited to the meetings are Confederated Tribes of the Umatilla and the Pendleton branch manager and tribal liaison, the Confederated Tribes of Warm Springs and the Bend managers and tribal liaisons, and the Klamath Tribes and Medford managers and tribal liaisons. In addition, Lin Wolfe from the DCS leadership team attended. Director Jean Fogarty attended the November meeting, and Special Counsel Margaret Olney attended the April meeting. At the November meeting, it was agreed to expand the invited attendees to include all interested tribal representatives interested in child support issues and the partnering DCS branch manager and tribal liaisons.

**Statewide Collection Activities:** DCS has tribal liaisons at the DCS offices and works in cooperation with tribes throughout the state to collect child support.

*The Confederated Tribes of the Umatilla Indian Reservation* have a tribal child support program with a caseload of approximately 60, including cases from DCS and new cases from tribal members. With the support of Sue Sams, the Pendleton office Tribal Liaison, the Tribal child support staff have generated “interstate” actions with Canada, an amazing accomplishment!

*The Confederated Tribes of Warm Springs:* are in the application for start-up stage.

*The Cow Creek Band of Umpqua Tribe of Indians:* the DCS Roseburg office continues to receive notices for registration which are processed by the branch liaison. Tribal court is now held twice a month which has helped expedite registration and enforcement of cash support and medical support orders.

*Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians:* continue to honor DCS wage withholdings and will be considering a registration process to enforce child support and medical support.

*Coquille Indian Tribe:* The registration process has been put on hold pending further review and possible revision of their domestic relations code by the Coquille Tribe. The Tribe is continuing to honor wage withholdings.

*Confederated Tribes of Siletz Indians of Oregon:* DCS appeared in tribal court to collect \$98,000 for child support from tribal dividends. Trial Court Judge Gantenbein presented the Albany office tribal liaisons with an “Oath of Admittance,” which allows them to perform their duties as spokesperson for DCS in the Siletz Tribal Court.

*Klamath Tribe:* The program has been in full operation since 2009. The Tribal program works closely with the Medford office tribal liaison, Kay Westland, managing 70 cases which have been transferred to the Tribe since April. DCS completed its case audits in preparing to transfer all tribal cases to the Tribal program.

## **Policy 2-95 Tribal Relations Policy**

*Applicability: All full and part time employees, temporary employees and volunteers*

*References:*

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### **(1) Purpose**

This tribal relations policy is adopted pursuant to ORS 182.162 – 182.168, which requires state agencies to develop and implement tribal relations policies.

### **(2) General Policies and Principles**

It is DOJ's policy to promote the principle stated in Executive Order No.96-30 that "[a]s sovereigns the tribes and the State of Oregon must work together to develop mutual respect for the sovereign interests of both parties." DOJ interacts with tribes in differing roles: in its role as legal advisor to and representative of other state agencies; and in its role as independent administrator of certain DOJ programs. In all of its roles, it is DOJ's policy to promote positive government to government relations with the federally recognized tribes in Oregon ("tribes") by

- (a) Facilitating communication and understanding and appropriate dispute resolution among DOJ, other state agencies and those tribes;
- (b) Striving to prevent unnecessary conflict with tribes;
- (c) Interacting with tribes in a spirit of mutual respect;
- (d) Involving tribal representatives in the development and implementation of programs that affect them; and
- (e) Seeking to understand the varying tribal perspectives.

### **(3) Native American Affairs Coordinator**

- (a) The state is best served through a coordinated approach to tribal issues. The Attorney General has designated a Native American Affairs Coordinator, who serves as the Department's key contact with tribal representatives.
- (b) Individuals in the Department who are working on a significant matter involving or affecting a tribe shall notify the Native American Affairs Coordinator.
- (c) The Native American Affairs Coordinator will develop with each Division Administrator an appropriate means for that Division to keep the Native American Affairs Coordinator regularly informed of the status of significant matters involving or affecting tribes.

### **(4) Dissemination of tribal relations policy**

- (a) Upon adoption, this policy shall be disseminated to members of the Department, and shall be incorporated into the DOJ Policy Manual. In addition, this policy and information regarding ORS 182.162 – 168 shall be included in new employee orientation, and on the Department's intranet.

- (b) The Native American Affairs Coordinator will distribute an annual reminder regarding the policy.

**(5) Training**

- (a) The DOJ CLE Committee and Diversity Committees shall strive to incorporate topics regarding Indian law and culture in their agency training and CLE programs.
- (b) The Native American Affairs Coordinator will assist Divisions and sections in arranging training on specific topics relevant to the work of that particular division or section.
- (c) Appropriate DOJ representatives will attend annual training provided by the Department of Administrative Services pursuant to ORS 182.166(1).
- (d) DOJ attorneys who come into significant contact with tribes are encouraged to consider taking advantage of outside CLE opportunities on Indian law and culture.

**(6) Guidelines for Advising and Representing other State Agencies**

The Department of Justice is uniquely situated to aid implementation of ORS 182.162 – 182.168 through its contact with and advice to various state agencies. DOJ attorneys should promote other agencies' compliance with ORS 182.162 to 182.168 by means including:

- (a) Considering the represented agency's obligations under the statute in the course of advice and representation and
- (b) Striving to ensure involvement of the agency's tribal key contact in significant matters affecting or involving tribes.

**(7) Identification of DOJ Programs Affecting Tribes.**

The Native American Affairs Coordinator will compile a list of DOJ programs that affect tribes, as well as the DOJ individuals responsible for implementing them, through the following process:

- (a) Division Administrators will provide to the Native American Affairs Coordinator a list of Division programs, noting those they believe affect tribes. The entire list will be shared with tribal representatives identified through Government to Government cluster groups, tribal attorneys known to the Department, the Indian Law Section of the Bar, the Native American Program of Oregon Legal Services, and tribal chairs.
- (b) Annually, the Native American Affairs Coordinator will update the list of DOJ programs that affect tribes, in consultation with Executive staff and tribal representatives

**(8) Guidelines for Independent DOJ Programs**

- (a) Managers of programs identified as potentially affecting tribes shall adopt guidelines for cooperating with tribes in the development and implementation of those programs in consultation with the Native American Affairs Coordinator.
- (b) DOJ will invite tribal participation on Task Forces of interest to tribes.