



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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2012 Annual Government-to-Government Report

Oregon Water Resources Department

Under ORS 182.166

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This report contains key contact information, brief summaries of specific interactions the Oregon Water Resources Department has had with Oregon Indian Tribes in 2012 (including any special issues anticipated in 2013) and information regarding related training attended by Department staff. The Oregon Water Resources Department respectfully submits this report to Oregon Governor John Kitzhaber and the Oregon Legislative Commission on Indian Services.

1. AGENCY NAME Oregon Water Resources Department

2. KEY CONTACT Ruben E. Ochoa
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3. MAJOR AREAS

The Oregon Water Resources Department (Department) works with Oregon's federally recognized Indian Tribes (Tribes) on issues related to meeting water needs, watershed management and water distribution, including issues related to water rights held or claimed by the Tribes and/or tribal members. In addition, pursuant to Governor Kitzhaber's Executive Order 96-30 (1996) and Senate Bill 770 (2001 Session; ORS 182.162-168), the Department works with the Tribes on a government-to-government basis to address water issues of mutual concern to the State of Oregon and the Tribes.

a. 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. Some of these activities are conducted under EO 96-30 and some are conducted under specific provisions of federal and state law.

b. Watershed Management and Water Use Regulation. The Department works with the Tribes to plan and implement strategies for streamflow restoration and riparian protection on both reservation lands and other geographical regions of interest to tribal communities. These

strategies include streamflow measuring and monitoring, enforcement of illegal water uses, and the transfer or lease of out-of-stream rights to instream flows.

4. DEPARTMENT STATEMENT

The Department adopted its Government-to-Government *Interest Statement* on September 23, 1997. The *Interest Statement* provides that the Department's relationship with the Tribes must be based on two essential attributes: First, the Department must honor and protect existing tribal rights to the use of water; and second, the Department must continue to forge partnerships with the Tribes to share responsibility for water management.

5. SOLUTIONS AND PROGRAMS

Legislative Commission on Indian Services

In 2009, the Department worked closely with the Legislative Commission on Indian Services to provide a venue (known as the *Water Forum*) for Oregon's Tribes to express their views regarding the state's development of a statewide and long-term Integrated Water Resources Strategy (Strategy). Building upon this and other activities, the Tribes have contributed to the content and tone of the Strategy by providing formal comments at important junctures of Strategy development.

In early September 2011 the Strategy's Project Team was invited by the Legislative Commission on Indian Services to present an update of the Strategy at the State-Tribal Government-to-Government Natural Resources Workgroup meeting. The Project Team presented its update and solicited ideas and comments from the tribal representatives in attendance at the meeting. Eric Quaempts, Natural Resources Director for the Confederated Tribes of the Umatilla Reservation, continues to serve as a valuable member of the Policy Advisory Group formed specifically to provide policy recommendations central to the development of the Strategy. The Strategy was adopted by the Oregon Water Resources Commission in August 2012. The Department anticipates keeping the Legislative Commission on Indian Services informed of steps taken in 2013 to implement the Strategy.

Confederated Tribes of Warm Springs

Primarily through its North Central and South Central regional offices, the Department worked with the Confederated Tribes of Warm Springs (Warm Springs) in 2012 in the following areas and on the following projects:

- The Department followed through on some small water right research requests for the local Warm Springs office in Prairie City, OR regarding properties owned by the Warm Springs and those of several neighboring properties.
- The Department provided assistance and advice to help resolve issues regarding the allocation of water below the Lower McHaley Ditch diversion. This included the presentation of ideas for installing measuring devices during discussions between the Warm Springs and their neighbors and several on-site visits by regional staff.

- The Department conducted informal discussions with Warm Spring's staff concerning water use, duty, rate, and how to legally change certain aspects of an authorized water right including changes to points of diversion. The discussions and answers offered by the Department were designed to give the Warm Springs a better understanding of their water rights and to allow them to explore options to improve their operations.
- The Department continued its cooperation with the Warm Springs to install measuring devices on significant diversions on Fifteenmile Creek.
- The Department continued its cooperation with the Warm Springs and installed a "near real-time" gauging station on Lower Fifteenmile Creek. In this regard, the Department signed an MOA with the Warm Springs which allowed the Department to purchase the recorder and telemetry equipment to install in the new gauge. The MOA was renewed for 2012/13 which allow for the continued funding to operate and maintain the gage.
- The Department worked with the Warm Springs on a project to pipe the Dee Irrigation District Canal. This involved assistance with stream flow measurements to determine canal loss and a meeting with the Warm Springs and representatives of the Dee Irrigation District to discuss the project in terms of a conserved water project. In addition, the Department drafted a letter in support of utilizing an Oregon Water Enhancement Board grant to help fund the project. This work is ongoing. A new gaging station was installed with telemetry near the headgate and the old gage was discontinued. We are reviewing a Conserved Water Application associated with this project.
- The Department worked with the Warm Springs and other stakeholders to analyze a conversion of the Powerdale Dam hydroelectric water right to an instream water right. In this regard, Department staff attended meetings and provided water rights information. This work is ongoing.
- The Department worked with the Warm Springs on providing water right information on Rowe Creek and introduced them to our interactive mapping program and gave staff a brief tutorial about how to navigate through the program.
- The Department worked with the Warm Springs on issues related to the Deschutes River Conservancy and oversight of the Pelton Round Butte mitigation fund.

Klamath Tribes

In 2012 the Department met with the Klamath Tribes to discuss the Klamath Basin Adjudication in general, and in particular, the effects on regulation once the Adjudicator's Findings of Fact and Order of Determination of Rights (FOD) is filed with the Klamath County Circuit Court. It is anticipated that the FOD will be filed with the Klamath County Circuit Court sometime during the first half of 2013. The Department will be available to discuss with the Klamath Tribes any regulatory issues of concern to the Klamath Tribes after the filing of the FOD.

Confederated Tribes of the Umatilla Indian Reservation

For nearly two decades, federal agencies, the State of Oregon, the Confederated Tribes of Umatilla Indian Reservation (Umatilla) and a number of irrigation districts have worked to

improve the Umatilla River Basin's water supply for local farmers, ranchers, fish and wildlife and the broader community through collaborative measures. These measures include the successful completion of Phases I and II of the 1988 Umatilla Basin Project Act (P.L. 100-557), which is considered by many to have fostered the most successful salmon restoration project in the Columbia River Basin.

Throughout 2011 and the first half of 2012, evaluation of water supply options and legal issues related to Umatilla interests in instream flows for fisheries associated with important cultural traditions, consumptive use rights associated with economic and agricultural development, and water right administration continued to benefit from the sincere dedication of the parties to achieve mutually acceptable solutions. Representatives of the Umatilla, a U.S. Government negotiation team, staff from the Department and the Oregon Department of Justice representing the State of Oregon and representatives of the Westland Irrigation District initiated formal water rights settlement negotiations in the fall of this year. The Department anticipates playing a positive and active role in this important effort in 2013.

Primarily through its North Central Regional Office, in 2012 the Department worked with the Umatilla in the following areas and on the following projects:

- Coordination on water releases for fish from McKay Reservoir storage with Umatilla Tribe fishery managers.
 - Periodic updates/reports on the amount of fish water released and remaining in McKay Reservoir.
- Coordination on McKay Reservoir storage allotments.
 - Beginning and Ending McKay Reservoir storage reports supplied to CTUIR Fishery managers.
- Coordination on water management issues related to operation of the Umatilla Basin Project exchange.
 - Coordination on Canal start ups and shut downs in order to help reduce any possible problems with a fish take.
 - Provide CTUIR Fishery managers with monthly Phase One and Phase Two Exchange reports.
 - Provide CTUIR Fishery managers with an Annual copy of the Northwest Power and Conservation Council Report. The report details the yearly total amount of water that is diverted by irrigators. The report also provides yearly totals of the amount of water that is exchanged and stored water released for the benefit of the fishery.
- Coordination on the Bureau of Reclamation water supply study for Phase III of the Basin Project and assessment of Indian Water Rights Claims.
- The Department's Groundwater Section continued in 2012 to work with the CTUIR as a member of a technical advisory team on a groundwater study of the Columbia River Basalt Group aquifers located within and adjacent to the CTUIR reservation.

Burns Paiute Tribe

The Department continues to work with the Burns Paiute Tribe (Burns Paiute) on general water right issues including any potential transfer applications. Staff from the Department's East Regional Office continued to partner with the Burns Paiute in conducting a groundwater study in the Malheur Lake Basin as well as water right researches. East Region staff joined members of the Burns Paiute to discuss Natural Resource Conservation Service (NRCS) project goals for 2012 with NRCS staff and grant applications with the Oregon Water Enhancement Board Region 5 review committee.

Confederated Tribes of Coos, Lower Umpqua & Siuslaw

In 2012 Department staff continued its participation on the Water Quality and Quantity Committee of the Siuslaw Estuary Partnership, a collaborative effort to protect and improve water quality and fish and wildlife habitat in the lower Siuslaw River watershed. This interdisciplinary team includes representatives of the Confederated Tribes of Coos, Lower Umpqua, & Siuslaw.

Confederated Tribes of Siletz.

In 2012 the Department continued its oversight and regulation of instream water rights in water bodies of interest to the Confederated Tribes of the Siletz.

Cow Creek Band of Umpqua Tribe of Indians

In 2012 the Department's tribal liaison worked closely with the Director of Natural Resources for the Cow Creek Band of Umpqua Tribe of Indians (Cow Creek) to bring the Cow Creek's concerns regarding placer mining in the Umpqua River to the attention of the Department's Regional Watermaster Office and appropriate federal agencies. The Department anticipates working with the Cow Creek, the Oregon Department of Environmental Quality, and other state and various federal agencies in 2013 to address placer mining issues in the region.

6. GOVERNMENT-TO-GOVERNMENT MEETINGS/TRAINING:

Natural Resources Work Group

Ruben E. Ochoa, Intergovernmental Relations Liaison (Director's Office) actively participated in all of the government-to-government Natural Resources Work Group (cluster) meetings held in 2012. The Department appreciates the opportunities afforded by the Work Group meetings to discuss issues of mutual interest with representatives of tribal governments and to be made aware of various issues of general interest to all of Oregon's Tribes.

Tribal Information Day

On May 11, 2012 Ruben E. Ochoa, Intergovernmental Relations Liaison (Director's Office) represented the Department at events held at Oregon's State Capitol to commemorate American Indian Week in Oregon 2012 and the signing by Governor Kitzhaber of an associated proclamation.

Annual State/Tribal Government-to-Government Summit

. Department Deputy Director, Tom Paul, and Mr. Ochoa attended the 2012 Annual State/Tribal Government-to-Government Summit hosted by the Coquille Indian Tribe (Coquille) and held in North Bend, Oregon. The Department wants to express its sincere gratitude to the Coquille Indian Tribe for the truly memorable experiences that were provided for representatives of the Department and other guests during the annual summit meeting. A field trip to the TarHeel Dam project revealed impressive efforts by the Coquille in partnership with the several state agencies to make it possible for the Coquille to reintroduce salmonid runs and revive a tradition of major cultural significance. The exuberance of the Young Coquille Dancers and Don Ivy's heartfelt presentation on the building of the Plankhouse were memorable additions to the overall experience.

7. COOPERATION AMONG DEPARTMENTS

As part of the Klamath Basin Adjudication and negotiated Klamath Basin Restoration Agreement, the Department is working with the Governor's Office; the state Departments of Justice, Fish and Wildlife, Environmental Quality, and Agriculture; various California state agencies; and the Federal Departments of Interior, Agriculture, and Commerce. As part of the water supply efforts currently underway in Oregon's Umatilla Basin, the Department is actively working with representatives of several Federal agencies within the U.S. Department of the Interior, the state Department of Justice, and the Umatilla Tribes to achieve a shared goal of satisfying the region's long-term water needs—needs that include those of the Umatilla Tribes. Lastly, the Department continues to work with other state natural resource agencies to ensure that tribal communities have adequate and safe water supplies. This cooperative and coordinated effort is particularly evident in the Department's ongoing endeavors to develop and implement a long-term Integrated Water Resources Strategy for the State of Oregon. As noted earlier, Oregon's first Strategy was adopted by the Oregon Water Resources Commission in August 2012.

The Department is the lead agency for implementation of the state's hydroelectric project reauthorization law (ORS 543A.005 - 543A.805). Under this law, the Department administers the Hydroelectric Application Review Team (HART) for state projects. The core HART is made up of representatives from the Departments of Water Resources, Environmental Quality, and Fish and Wildlife. Where an Indian tribe may be affected by a project or is involved as a project applicant, the HART members work with such tribe to ensure coordination. In addition, the Department 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.