



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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2008 Annual Government-to-Government Report Oregon Water Resources Department Under Executive Order 96-30

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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 2008 (including any special issues anticipated in 2009) and information regarding related training attended by Department staff. The Oregon Water Resources Department respectfully submits this report to the 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 nine 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 should endeavor to identify and help protect existing tribal rights to the use of water; and second, the Department should continue to forge partnerships with the Tribes to share responsibility for water and watershed management.

5. SOLUTIONS AND PROGRAMS

Confederated Tribes of Warm Springs

In 2008 the Department, primarily through its North Central Regional Office, worked with Warm Springs in the following areas and on the following projects:

- Water rights research.
- The transfer of water rights to instream uses.
- Flow studies along Pine Creek.
- Efforts to secure funds to acquire measuring devices to monitor significant diversions in the Pine Creek and other drainage basins. Warm Springs has agreed to work directly with the Department's regional office to obtain the needed measuring devices and to install and maintain the devices at previously identified significant points of diversion, and
- Examination of infrastructure and other operational changes in the Widows Creek basin to address potential landowner disputes and to provide adequate stream flows for fish passage and migration.

Klamath Tribe

Tom Paul, the Department's Deputy Director, and Ruben Ochoa, Policy Analyst in the Director's Office, made several trips to the Klamath Falls area in January and February of 2008 to discuss issues related to the Klamath Basin Adjudication and the proposed Klamath Basin Restoration Agreement (KBRA) with community members that included representatives of the Klamath Tribe. Throughout the year, the Department maintained direct contact with representatives of the Klamath Tribe regarding the Klamath Basin Adjudication and KBRA.

The Klamath and the Department participated in discussions regarding the removal of Chiloquin dam in an effort designed to open additional fish habitat. These discussions continued into 2008 and culminated in the removal of the dam structure on August 20, 2008.

In 2008, field staff from the Department's Eastern Regional Office worked with members of the Klamath Tribe to set up stream gaging stations at sites that the Tribe utilizes for measurement purposes; data collected via these stations is shared with the Department.

Confederated Tribes of Umatilla Indian Reservation

In January 2008 Debbie Colbert, the Department's Field Services Division Administrator, and Ruben Ochoa, Policy Analyst in the Director's Office, represented the Department at a Tribal government meeting of the Confederated Tribes of Umatilla Indian Reservation (Umatilla Tribes) held in Portland and attended by representatives of the Governor's Office.

For nearly two decades, federal agencies, the State of Oregon, the Umatilla Tribes 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 2008, representatives of the Department's Director's Office took actively participated in discussions with representatives of the U.S. Bureau of Reclamation (BOR), the Umatilla Tribes and others to address water supply issues in the Umatilla River Basin. These discussions included the identification of new water supply options and efforts to address outstanding legal issues. Many of the water supply options and legal issues that are being discussed, instream flow needs for fisheries associated with important cultural traditions, consumptive use rights associated with economic and agricultural development, and water right administration all benefit from the sincere dedication of the parties to achieve mutually acceptable solutions. The Department is committed to taking a positive and active role in this effort in the future.

The Oregon Legislature appropriated \$50,000 in 2007 for use in the Umatilla River Basin and Walla Walla River Basin to facilitate the development of new and/or enhanced water supply. In 2008, the Department worked closely with the Umatilla Tribes and sought their input on how best to put the funds to work for the benefit of the Umatilla Tribes, irrigation districts, local communities and the ecological integrity of the two river systems.

As part of the Department's implementation of SB 1069 (2008 Oregon Legislature), the Department worked closely with the Umatilla Tribes and sought their input on the feasibility of using infrastructure from the Bureau's Umatilla Basin Project Phase II to deliver surface water from the Columbia River to the Stage Gulch critical ground water area and to coordinate the Bureau of Reclamation study of the water supply in the Umatilla Basin with the Department's Umatilla Basin regional aquifer recovery assessment.

In 2008 the Department, primarily through its North Central Regional Office, worked with the Umatilla Tribe in the following areas and on the following projects:

- Coordination on fish water releases from McCay Reservoir storage with Umatilla Tribe fishery managers.
- Coordination on McKay Reservoir storage allotments.
- Coordination on water management issues related to operation of the Umatilla Basin Project exchange.
- Coordination on transfers to facilitate removal of diversion dams to aid in fish passage.
- Collection of water use data from well flowmeters drawing from the basalt aquifer within the Reservation boundary.
- Response to complaints or questions about improper use of water.
- Coordination and participation in measuring stream flows as a part of the Umatilla River seepage run.
- Coordination on operation of the Meacham Creek gage station, including stream flow measurements and station tending.
- Performance of water right research when requested.
- Share data collected from flowmeters with the Umatilla Tribe.
- Coordination on permit condition compliance issues related to Bonneville Power Administration fish acclimation facilities on the Umatilla River and South Fork Walla Walla.
- Coordination on well construction compliance issues on the Reservation.
- Coordination on BOR water supply study for Phase III of the Basin Project and assessment of Indian Water Rights Claims.
- Coordination and cooperation in the development of an intergovernmental agreement between the Department, Umatilla Tribe and Oregon Economic and Community Development Department to facilitate economic development at the Coyote Business Park while addressing state water law needs, and
- Coordination and assistance to the Umatilla Tribe in their preparation of a time extension request and a permit amendment that was filed with the Department.

Coquille Tribe

The Coquille Indian Tribe (Coquille) has acquired several parcels of land in Coos County. In 2008, the Department continued discussions with representatives of the Coquille to examine ways in which the Coquille could meet its water needs in general, and in particular, water rights associated with Coos County lands. The Department has worked with the Coquille and various federal and state agencies to secure authorization for the rehabilitation and enlargement of two existing reservoirs on land acquired by the Coquille in Coos County.

Burns Paiute Tribe

The Department continues to work with representatives of the Burns Paiute Tribe (Burns Paiute) and the United States Bureau of Indian Affairs (BIA) to complete processing of a water right application and water right transfer application filed by the Burns Paiute. The Department has undertaken this effort with BIA and the Burns Paiute in order to ensure that the Burns Paiute are able to meet their domestic and irrigation water needs.

The Department has continued in 2008 to work with the Burns Paiute Tribe on general water right issues and water right transfer applications, particularly as they relate to an interest the Tribe has expressed in providing water supplies to some new property that have recently acquired.

Confederated Tribes of Siletz.

In 2008, the Department actively assisted the Confederated Tribes of Siletz in their efforts to find a feasible water source to satisfy ongoing development needs in the City of Lincoln area.

Confederated Tribes of Grand Ronde.

In February 2008 Ruben Ochoa, Intergovernmental Relations Liaison (Director's Office), Attended a two-day government-to-government Natural Resources Work Group Meeting held in Grand Rhonde, Oregon at the Confederated Tribes of Grand Ronde (Grande Ronde) Spirit Mountain Hotel and Casino. Activities at this event included a field tour of the Grand Ronde Administrative Office area, newly established war memorial site, newly constructed fish weir on agency lake, and the Grand Ronde forestry operations.

The Department has met with representatives of the Grand Ronde on numerous occasions to discuss their water needs and the requirements of state water law. In particular, the Department assisted the Grande Ronde in a water lease program to protect a number of water rights held by Grande Ronde. As a result of this effort, the Grand Ronde has entered into several multi-year instream leases extending beyond 2008.

It should be noted that the Grande Ronde assisted the Department with one of its rulemakings during 2006. A representative for the Grande Ronde participated on the Department's rules advisory committee working on revisions to the agency's Division 77 rules related to instream water rights. These rules continue to add value to the Department's instream water rights program activities.

Cow Creek Band of Umpqua Indians.

Several years ago, representatives of the Cow Creek Band of Umpqua Tribe of Indians (Cow Creek) met with the Department to discuss the development of an off-channel reservoir near Canyonville, Oregon that involved the diversion of water from the South Umpqua River. Cow Creek engineers submitted preliminary dam plans to the Department's Dam Safety section. The Department continues to work with Cow Creek to provide the necessary state water rights and to resolve various dam safety issues. This effort included Department discussions with representatives of the Cow Creek throughout 2008 for the purpose of finalizing an intergovernmental agreement that recognizes the value of government-to-government cooperation and Cow Creek's and the state's mutual interest in and responsibility for public safety and management of the region's water resources. The Department assisted the Cow Creek in their submission in 2008 of formal applications for surface water and reservoir permits. The

Department will continue to work with the Cow Creek in 2009 in a government-to-government fashion to successfully negotiate an intergovernmental agreement and achieve final approval of state-issued surface water and reservoir permits for the Cow Creek.

Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians

Tom Paul, Department Deputy Director, and Ruben Ochoa, Intergovernmental Relations Liaison (Director's Office), attended the Natural Resources Cluster meeting and 2008 Annual State/Tribal Government-to-Government Summit held respectively on November 12th and 13th at the Confederated Tribes of Coos, Lower Umpqua & Siuslaw Three Rivers Casino and Hotel in Florence, Oregon.

6. GOVERNMENT-TO-GOVERNMENT MEETINGS/TRAINING:

Natural Resource Cluster Meetings:

Ruben Ochoa, Intergovernmental Relations Liaison (Director's Office), represented the Department at Natural Resource Cluster meetings and associated events hosted by the Confederated Tribes of Grande Ronde in Grande Ronde, Oregon, in February and by the Confederated Tribes of Coos, Lower Umpqua & Siuslaw in Florence, Oregon, in November of 2008.

Tribal Information Day

Phillip Ward, Department Director, and Ruben Ochoa, Intergovernmental Relations Liaison (Director's Office), attended the Tribal Information Day & Annual State Agency Training event held at the Oregon State Capital on Friday, May 16, 2008. Mr. Ochoa attended a state agency training session entitled, "*Honoring, Protecting and Enhancing Our Cultural and Natural Resources*".

Legislative Commission on Indian Services

Tom Paul, Department Deputy Director, and Ruben Ochoa, Intergovernmental Relations Liaison (Director's Office), provided an overview of the Department, update on the Department's government-to-government activities, and answers to questions posed by Commission members at the Legislative Commission on Indian Services quarterly meeting held in Roseburg, Oregon, on Wednesday, October 8, 2008.

Annual State/Tribal Government-to-Government Summit

Tom Paul, Department Deputy Director, and Ruben Ochoa, Intergovernmental Relations Liaison (Director's Office), attended the Natural Resources Cluster meeting and 2008 Annual State/Tribal Government-to-Government Summit held respectively on November 12th and 13th at the Three Rivers Casino and Hotel in Florence, Oregon. The Department made a commitment at the Government-to-Government Summit to co-sponsor and help coordinate a Tribal/State Water Summit to be held in the Fall of 2009; the Cow Creek Band of Umpqua Indians has offered to provide facilities for the water summit.

7. COOPERATION AMONG DEPARTMENTS

During the Warm Springs negotiations noted earlier, the Department worked closely with the Departments of Fish and Wildlife, Parks and Recreation, and Environmental Quality. As part of the Klamath Basin Adjudication and proposed 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.

The Department is the lead agency for implementation of the state's hydroelectric project reauthorization law (ORS 543A.005 through 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 is 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 tribes.