



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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2010 Annual Government-to-Government Report

Oregon Water Resources Department

Under ORS 182.166

December 15, 2010

This report contains key contact information, brief summaries of specific interactions the Oregon Water Resources Department has had with Oregon Indian Tribes in 2010 (including any special issues anticipated in 2011) and information regarding related training attended by Department staff. The Oregon Water Resources Department respectfully submits this report to Governor Theodore R. Kulongoski and the Legislative Commission on Indian Services.

1. AGENCY NAME Oregon Water Resources Department

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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, Oregon Department of Environmental Quality (DEQ), Oregon Department of Fish and Wildlife (ODFW) and members of the Natural Resources Work Group to develop and implement plans for a *Water Forum* to be held in Salem on November 19, 2009. One of the primary purposes of the *Water Forum* was to provide a venue for Oregon's Tribes to express their views regarding the state's development of a statewide and long-term Integrated Water Resources Strategy (Strategy).

By all accounts, the *Water Forum* was a success and provided a strong foundation for the Department to continue a dialogue with the Tribes in 2010. In March 2010, the directors of the Department, DEQ, ODFW and the Oregon Department of Agriculture jointly sent a letter to each of Oregon's Tribes, formally inviting them to attend a Spring 2010 Strategy-related open house event, participate in the discussion, and/or showcase a local water resources project.

Representatives from Oregon's Tribes attended four of the open house events: They included:

- Confederated Tribes of the Umatilla Indian Reservation (Umatilla Open House)
- Coquille Indian Tribe (Bandon Open House)
- Cow Creek Band of Umpqua Tribe of Indians (Eugene Open House)
- Confederated Tribes of the Grande Ronde (Salem Open House)

In addition to attending the open house event in Umatilla, the Confederated Tribes of the Umatilla Indian Reservation helped sponsor the event by helping the Department advertise and encourage the local community to participate.

In 2010 a number of Tribes submitted comments to the Department regarding the content of draft issue papers under development by the Department and Oregon Water Resources Commission (Commission) as part of the overall Strategy development. For example, the Department

received detailed public comments from the Confederated Tribes of Warm Springs Reservation (Warm Springs) in early 2010 concerning the issue papers, overall Strategy process, and specific needs and projects of interest to the Warm Springs within the Deschutes River Basin. The Department and Commission have also welcomed the membership and participation of tribal representatives on the Strategy's Policy Advisory Group and as subscribers to the Strategy communication and information network. The Department and Commission anticipate continued interaction with Oregon's Tribes as the development of the Strategy continues in 2011.

Confederated Tribes of Warm Springs

In 2010, issues regarding the Department's implementation of SB 788 related to the drilling of exempt wells were brought to the Department's attention by representatives of the Confederated Tribes of Warm Springs (Warm Springs). In response, the Department entered into negotiations with the Warm Springs and together the Department and Warm Springs were able to reach an interim agreement. The Department anticipates this issue will be an item of continuing discussion in 2011 as part of a broader review of consultation procedures contemplated by the 1997 Settlement Agreement entered into by Warm Springs, the State of Oregon and several federal agencies of the United States.

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

- Warm Springs assisted the Department in the installation of measuring devices on significant diversions (one in 2009 – French Ditch, Warm Springs paid for concrete and ODFW labor, Department supplied device from BOR)(2010 – Galbraith Ditch – Department supplied device, Warm Springs supplied parts, labor and concrete)(2010 - Lower McHaley Ditch, Warm Springs supplied device and labor, Department assisted)
- The Department performed numerous small water right research requests for Warm Springs for several neighboring properties to theirs as well as their own.
- The Department assisted the Warm Springs in the installation of measuring devices on Dad's Creek.
- The Department assisted the Warm Springs with measuring device installation ideas to resolve neighbor disputes regarding the sharing of water below a point of diversion – Lower McHaley ditch. This involved several on site visits, office visits and tailgate type discussions with the Warm Springs and neighbors.
- The Department sought Warm Springs assistance with measuring device funding for significant diversions as well as for other users on other streams for fisheries enhancement projects (Widows Creek, Dixie Creek, John Day River).
- The Department engaged in informal discussions with the Warm Springs on issues concerning water use, duty, rate and how to live within water right limits. Legal changes to water rights, point of diversion movement.
- The Department worked with representatives of the Warm Springs on delivery of water to individuals who share Upper McHaley and Lower McHaley ditches.

- The Department has engaged the Warm Springs in discussions regarding formal rotation agreement timing and implementation – one planned for the 2011 season that is being drafted this winter for Upper McHaley and Lower McHaley ditches.
- The Department worked with Warm Springs on the renewal of an existing lease (IL-512) on the Middle Fork John Day River system.
- The Department assisted the Warm Springs on an exempt spring determination for a neighboring land owner who uses spring waters for domestic purposes. A civil agreement was reached between the parties.
- The Department continues to work with the Warm Springs on getting measuring devices installed on significant diversions on Fifteenmile Creek as well installation of a gaging station.
- The Department continues to coordinate with the Warm Springs on a project to pipe the Dee Irrigation District Canal.
- Department staff met with Joe McCanna of Warm Springs to discuss options for a conserved water project and general water right issues. The Department has completed a final proof map for Dee Irrigation District which was part of this project.

Klamath Tribes

In 2010 the Department worked closely with representatives of the Klamath Tribes as part of a working group effort to develop a Draft Drought Plan under the Klamath Basin Restoration Agreement (KBRA). On an expanded level, in 2010 the Department worked with the Klamath Tribes on drought related planning meetings, KBRA technical coordination committee meetings, Klamath Basin Coordination meetings and Secretarial Determination meetings. The Department anticipates a continuation of this working relationship in all of these areas in 2011.

Coquille Indian Tribe

The Coquille Indian Tribe (Coquille) has acquired several parcels of land in Coos County. In 2009, the Department engaged in 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. In 2010 the Department continued to assist the Coquille and Coos County in their efforts to reach agreement to temporarily transfer all or a portion of storage rights to an instream water right in the Coquille River.

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 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 2009, Department representatives 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 has continued to take a positive and active role in this effort in 2010.

In August 2010 Department staff from the Director's Office visited with the Umatilla Tribe's Director of Natural Resources and staff over the course of two days for the express purpose of seeking and understanding tribal views, perspectives, and interests regarding the allocation, protection and management of groundwater resources associated with lands located within and around the Umatilla Reservation. In November 2010 the Chairman of the Umatilla Tribe formally invited the Department to engage in discussions regarding groundwater resource co-management, groundwater modeling and associated groundwater allocation issues. The Department anticipates active engagement with the Umatilla Tribes in 2011 on these and a number of other important issues of mutual interest.

In 2010 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 water releases for fish from McKay 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.
- Department sharing of 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 feasibility study with Corps of Engineers and Umatilla Tribes on their proposed flow augmentation project for restoring fish in the Walla Walla Basin.
- Coordination on BOR water supply study for Phase III of the Basin Project and assessment of Indian Water Rights Claims.

- Coordination on a feasibility study with the Corps of Engineers and Umatilla Tribes on their proposed flow augmentation project for restoring fish in the Walla Walla Basin.

In addition, Department staff from its Eastern Regional Office, continued to work with both the Nez Perce and Umatilla Tribe's fisheries staffs on water right issues related to tribal-sponsored riparian enhancement projects, or projects with private landowners who were soliciting tribal support and funding for related projects. Department staff continued to provide the Umatilla Tribes with information available through the Department's gauging network and have continued discussion of a cooperative arrangement with the Umatilla Tribe to enhance the network to also provide stream temperature information.

Burns Paiute Tribe

The Department has continued in 2010 to work with the Burns Paiute Tribe (Burns Paiute) on general water right issues and water right transfer applications, particularly as they relate to an interest they have expressed in providing water supplies to new acquisitions of property. More specifically, the Department's regional staff met twice in spring 2010 with fisheries and natural resource staff of the Burns Paiute to discuss water right, water diversion, and streamflow information for the Malheur River system. The Burns Paiute are conducting studies to evaluate the feasibility of re-introducing salmonids to the Malheur River system.

Confederated Tribes of Siletz.

For several years the Department has been an active participant in efforts by the Confederated Tribes of Siletz (Siletz) to secure a source of water that would allow the Siletz to proceed with certain economic development opportunities. In 2010, the Department continued to meet with representatives of the Siletz providing input on approaches the Siletz are advancing with the local community to secure the new water supplies. The Department anticipates participating in these on-going discussions in 2011.

Cow Creek Band of Umpqua Tribe of Indians.

In 2010 Department staff worked closely with the General Counsel's Office of the Cow Creek Band of Umpqua Tribe of Indians (Cow Creek) to complete the transfer of water rights associated with an RV Park and campground located on property in Canyonville that the Cow Creek had purchased from Rivers West Development a number of years ago.

6. GOVERNMENT-TO-GOVERNMENT MEETINGS/TRAINING:

Tribal Information Day

On May 14, 2010 Tom Paul, Department Deputy Director, and Ruben E. Ochoa, Intergovernmental Relations Liaison (Director's Office) represented the Department at Tribal Government Day at the Oregon State Capitol. On the previous day, May 13, 2010, Deputy Director Paul and Mr. Ochoa attended separate invitation-only informal discussion sessions with tribal representatives and legislators at the Oregon State Capitol. Mr. Ochoa participated in the discussion entitled, "Tribal Governments: Structure, Services, Planning and Budgets". Mr. Paul participated in the discussion entitled, "Tribal Governments: The Role of Tribal Values, Traditions and Relations with Other Governments".

Annual State/Tribal Government-to-Government Summit

The Annual State/Tribal Government-to-Government Summit was not held in 2010.

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 a long-term integrated water resources strategy for the State of Oregon.

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 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 tribal representatives.