



# Oregon

John A. Kitzhaber, MD, Governor

**Water Resources Department**

North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
FAX 503-986-0904

## **2011 Annual Government-to-Government Report**

### **Oregon Water Resources Department**

#### **Under ORS 182.166**

November 15, 2011

This report contains key contact information, brief summaries of specific interactions the Oregon Water Resources Department has had with Oregon Indian Tribes in 2011 (including any special issues anticipated in 2012) 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  
725 Summer Street, Suite A  
Salem, OR 97301-1271  
Telephone: (503) 986-0874  
Fax: (503) 986-0903  
E-Mail: [Ruben.E.Ochoa@state.or.us](mailto:Ruben.E.Ochoa@state.or.us)  
Web Site: [www.wrd.state.or.us](http://www.wrd.state.or.us)

### 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 continued to contribute 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 ongoing development of the Strategy.

##### Confederated Tribes of Warm Springs

Primarily through its North Central and South Central regional offices, the Department worked with Confederated Tribes of Warm Springs (Warm Springs) in 2011 in the following areas and on the following projects:

- The Department followed through on numerous 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.
- Representatives from Warm Springs played a major role in coordination with the Department in discussions with various users regarding the delivery of water to individuals who share Upper McHaley and Lower McHaley ditches and options available under a rotation agreement.
- The Department conducted on-site meetings with Warm Springs representatives to assist with measuring device installations as part of the Warm Spring's "Ditch Loss Study".
- 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 to install a "near real-time" gauging station on Lower Fifteenmile Creek. In this regard, the Department is currently working on a MOA with the Warm Springs that will allow the Department to purchase the recorder and telemetry equipment.
- 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.
- 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.

### Klamath Tribes

In 2011 the Department continued to work closely with representatives of the Klamath Tribes as part of a working group effort to develop a Drought Plan required under the Klamath Basin Restoration Agreement (KBRA). On an expanded level, in 2011 the Department worked with the Klamath Tribes on 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 2012. In addition, Department staff worked with the Warm Springs on issues related to the Deschutes River Conservancy and oversight of the Pelton Round Butte mitigation fund.

#### 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, 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. The Department participated in these evaluations in 2011 and welcomes the opportunity to play a positive and active role in this ongoing effort in 2012.

The Umatilla partnered with the Department, irrigators, counties and others in the Umatilla Basin during the 2011 Oregon Legislative Session to support passage of HB 2134, a technical bill that moves forward the Umatilla Basin Aquifer Recharge and Aquifer Storage and Recovery Project. HB 2134 passed with full support in both legislative chambers.

Representatives of the Department and members of the Oregon Water Resources Commission (Commission) want to express their appreciation for the invitation extended by the Umatilla to join them and others for a "First Foods" dinner on the reservation during the Commission's quarterly meeting in September 2011. The Commission meeting and the dinner provided opportunities for the Department, Commission and the Umatilla to engage in productive discussions related to water resources and water rights.

Primarily through its North Central Regional Office, in 2011 the Department worked with the Umatilla in the following areas and on the following projects:

- The Department coordinated with Umatilla fishery managers on water releases from McKay Reservoir which included periodic updates/reports on the amount of water released and remaining in McKay Reservoir for instream purposes.
- The Department coordinated with the Umatilla on McKay Reservoir storage allotments which included the sharing of Department beginning and ending McKay Reservoir storage reports with the Umatilla fishery managers.

- The Department coordinated with the Umatilla on water management issues related to operation of the Umatilla Basin Project exchange which included:
  - Coordination on Canal start ups and shut downs in order to help reduce potential “fish take” issues,
  - Providing Umatilla fishery managers with monthly Phase One and Phase Two Exchange reports.
  - Providing Umatilla fishery managers with an annual copy of the Northwest Power and Conservation Council Report. The report details the annual total amount of water that is diverted by irrigators, the annual total amount of water that is exchanged, and the amount of stored water released for the benefit of the fishery.
- The Department coordinated with the Umatilla on transfers to facilitate removal of diversion dams to aid in fish passage.
- The Department collected water use data from well flowmeters drawing from the basalt aquifer within the Reservation boundary and shared this data with the Umatilla.
- The Department coordinated with the Umatilla on a feasibility study with the U.S. Corps of Engineers on their proposed flow augmentation project for restoring fish in the Walla Walla Basin.
- The Department coordinated with the Umatilla on the Bureau of Reclamation water supply study for Phase II of the Umatilla Basin Project and assessment of Umatilla water rights claims.

#### Burns Paiute Tribe

The Department has continued in 2011 to work with the Burns Paiute Tribe (Burns Paiute) on general water right issues and water right transfer applications. More specifically, the Department’s regional staff met with the Burns Paiute to discuss surface water bodies in the area of Malheur Lake Basin and the possibility of conducting a groundwater study of the Malheur Lake Basin.

#### Confederated Tribes of Coos, Lower Umpqua & Siuslaw

Department staff participated 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.

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 2011, 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. In 2011 the Siletz concluded an agreement with Lincoln City that allows an additional point of diversion from Devils Lake under an existing city water right to provide water for use on their Chinook Winds Golf Course expansion project.

### 6. GOVERNMENT-TO-GOVERNMENT MEETINGS/TRAINING:

#### *Tribal Information Day*

On May 12, 2011 Tom Paul, Department Deputy Director, and Ruben E. Ochoa, Intergovernmental Relations Liaison (Director's Office) represented the Department at a pre-Tribal Government Day invitation-only "First Foods" presentation and discussion with several tribal representatives at the Oregon State Capitol. On May 13, 2010, Mr. Ochoa represented the Department at the Tribal Government Day events at the state capitol and attended presentations and discussions on "First Foods" and "Sovereignty & Resources".

#### *Annual State/Tribal Government-to-Government Summit*

In accordance with the wishes expressed by the Legislative Commission on Indian Services, this Government-to-Government report was prepared and submitted to the Commission in advance of the November 15, 2011 Annual State/Tribal Government-to-Government Summit to be held at the Chinook Winds Convention Center. Department Director, Phil Ward, and Mr. Ochoa are scheduled to attend the 2011 Annual State/Tribal Government-to-Government Summit.

### 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 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.

