



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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2007 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 2007 (including any special issues anticipated in 2008) 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 Water Resources Department (Department) works with Oregon Indian tribes on issues related to watershed management and water distribution, including issues related to water rights held or claimed by Indian 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 Oregon's nine federally recognized Indian tribes on a government-to-government basis to address water issues of mutual concern to the State of Oregon and the Indian tribes.

a. Water Rights. Under state law, the Director of the Department is authorized to negotiate water right agreements with all federally recognized Indian tribes in Oregon. In addition, pursuant to EO 96-30, the Department is engaged in ongoing discussions with most of Oregon's Indian 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 Oregon's Indian 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 Oregon's nine federally recognized Indian 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 Indian tribes to share responsibility for water and watershed management.

5. SOLUTIONS AND PROGRAMS

a. Confederated Tribes of Warm Springs

Oregon law (ORS 539.310) authorizes the Department's Director to negotiate water right settlements with any federally recognized Indian tribe claiming a reserved water right in Oregon. The Director began preliminary water right discussions with the Confederated Tribes of Warm Springs (Warm Springs) and the United States, as trustee for the Indian tribes and its members, in 1989. Formal negotiations began in 1991, and a water right settlement agreement was successfully concluded on November 17, 1997. The settlement agreement defines the scope and attributes of the Warm Springs water rights.

On July 26, 2002, the Warm Springs Water Right Settlement Agreement (Agreement) was submitted to the Deschutes County Circuit Court for incorporation into the Court's adjudication records. The Department completed the administrative portion of a supplemental adjudication of the Warm Springs Reservation and submitted its Findings of Fact and Order of Determination to the Deschutes County Circuit Court. On January 7, 2003, the Circuit Court issued its final judgment and decree incorporating the Department's Findings of Fact, Order of Determination, and Agreement into the adjudication records for the Deschutes River.

b. Klamath Tribes

The Klamath Basin adjudication was initiated in 1975. After a number of delays during two major court cases, the claiming period for the adjudication of pre-1909 and federal reserved water rights in the Klamath Basin, including the rights of the Klamath Tribes (Klamath), was completed on April 30, 1997. With the support and assistance of the Klamath, the Department initiated an alternative dispute resolution process to help resolve adjudication issues. The Department and the Klamath have also participated in negotiations on a case-by-case basis to settle contests to claims in the adjudication. To date, more than 93 percent of the contests to

adjudication claims have been settled or otherwise resolved. The Klamath and the Department have participated in discussions regarding the removal of Chiloquin dam in an effort designed to open additional fish habitat. It is anticipated that these discussions will proceed to a final determination on the issue of dam removal in 2008.

c. Confederated Tribes of the Umatilla Indian Reservation

The Umatilla River water rights were adjudicated in 1916. The issue of the scope and finality of this adjudication has been raised by the Confederated Tribes of the Umatilla Indian Reservation (Umatilla Tribes) and the United States. Resolution of complex legal issues regarding Umatilla Tribes claim to reserved water rights may prove to be a lengthy process. In May 2006 the Department, Umatilla Tribes, and Oregon Department of Economic and Community Development, entered into an Intergovernmental Agreement (Agreement) regarding the Umatilla Tribes use of water under a ground water permit.

As an element of the Agreement, Department staff and representatives of the Umatilla Tribes met several times during 2006 to discuss issues of mutual concern related to the management of the ground water resources in the area of the Umatilla Reservation. Discussion continued with the Umatilla Tribes into 2007 and led to the Department issuing an extension on the permit the state issued to the tribes and an amendment to the ground water permit to allow a modification of the Umatilla Tribes service area. These actions helped pave the way for the Umatilla Tribes to expand their economic development opportunities on the Reservation.

In late 2001 the Department renewed discussions with the Umatilla Tribes concerning resolution of outstanding legal issues in particular and of Umatilla Basin water management matters in general. Since that time, the Department, the Umatilla Tribes and local water users have met regularly to discuss regional long-term water supply needs and restoration activities. In February 2006 the Department worked with the Umatilla and Westland Irrigation District to develop a joint letter (signed by the Governor) to then Secretary of the Interior Gale Norton requesting appointment of a Federal Indian Water Rights Assessment Team and acceleration of the Bureau of Reclamation's ongoing Phase III Engineering Study.

In 2007 the Federal Water Rights Assessment Team was appointed by the Secretary of the Interior. Department staff participated in numerous conference calls, meetings, and site tours to discuss issues related to process, timelines, and scopes of work for the Assessment Team. The Department continues to work with the Bureau of Reclamation (BOR) as well as the Umatilla and Westland Irrigation District regarding BOR water supply studies to identify options for Phase III of the Umatilla Basin Project.

d. Coquille Indian Tribe

The Coquille Indian Tribe (Coquille) has acquired several parcels of land in Coos County. The Department has met several times with representatives of the Coquille to discuss their water needs in general, and in particular, water rights associated with the Coos County lands. The

Department has worked with the Coquille and various federal and state agencies to secure authorization for rehabilitation and enlargement of two existing reservoirs on land acquired by the Coquille in Coos County.

e. 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 is hopeful that it will be able to complete work on the water right and water right transfer applications by early 2008.

f. Confederated Tribes of Siletz.

The Department is actively assisting the Confederated Tribes of Siletz to find a feasible water source to satisfy ongoing development needs in the City of Lincoln area.

g. Confederated Tribes of Grand Ronde.

The Department has met with representatives of the Confederated Tribes of Grand Ronde (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 2007.

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.

h. Cow Creek Band of Umpqua Tribe of Indians.

Representatives of the Cow Creek Band (Cow Creek) met with the Department to discuss a proposed development at Canyonville, Oregon. The Cow Creek proposal involved diversion of water from the South Umpqua River for subsequent storage in a series of new reservoirs. 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 includes Department discussions with Cow Creek to formulate 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 management of the region's water resources. The Department anticipates a continuation of these discussions in 2008.

6. TRAINING

In 2007 the Department's Deputy Director attended the Natural Resources Cluster meeting and Annual State/Tribal Government-to-Government Summit held respectively on November 7th and 8th at the Kah-Nee-Ta High Desert Resort & Casino in Warm Springs. In addition, Department staff attended and participated in Tribal Information Day: *Sovereignty and Tribal Resources: Past, Present and Future* held in Salem at the Oregon State Capitol on May 18, 2007. A number of Department staff attended the event's state agency training sessions.

7. COOPERATION AMONG DEPARTMENTS

During the Warm Springs negotiations, the Department worked closely with the Departments of Fish and Wildlife, Parks and Recreation, and Environmental Quality. As a part of the Klamath adjudication and ADR process, the Department is working with the Governor's Office; the state Departments of Fish and Wildlife, Environmental Quality, and Agriculture; various California state agencies; and the federal Departments of Interior, Agriculture, and Commerce. Lastly, the Department continues to work with other state natural resource agencies to ensure that tribal communities have adequate 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.