



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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2009 Annual Government-to-Government Report

Oregon Water Resources Department

Under Executive Order 96-30

December 15, 2009

This report contains key contact information, brief summaries of specific interactions the Oregon Water Resources Department has had with Oregon Indian tribes in 2009 (including any special issues anticipated in 2010) 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 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

Legislative Commission on Indian Services

At the Natural Resources Work Group meeting and Annual State/Tribal Government-to-Government Summit held respectively on November 12 and 13, 2008 at the Three Rivers Casino and Hotel in Florence, the Department made a commitment to co-sponsor and help coordinate a Tribal/State Water Summit to be held in the fall of 2009. In 2009 the Department worked closely with the Legislative Commission on Indian Services (Legislative Commission), Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife 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 is to provide a forum for Oregon's Tribes to express their views regarding the state's development of a statewide and long-term integrated water resources strategy. The Department greatly appreciates the guidance and effort put forward by the Legislative Commission's Executive Director and Executive Assistant to make the *Water Forum* a reality. The Department and Oregon Water Resources Commission anticipate and look forward to a continuing dialogue with Oregon's Tribes throughout the development of the state's integrated water resources strategy.

Confederated Tribes of Warm Springs

In 2009 the Department visited with government officials of the Confederated Tribes of the Warm Springs (Warm Springs) and their legal representatives in Bend, Oregon to discuss issues of mutual interest regarding implementation of certain provisions of a 1997 Settlement Agreement (Agreement) entered into by Warm Springs, the State of Oregon and several federal agencies of the United States. The Department anticipates that the parties to the Agreement will continue these discussions in 2010.

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:

- Discussion of laws and rules governing wells located on “fee” lands located near the Warm Springs Reservation. This discussion concerned the submittal of Start Card information to the Department by the well driller at commencement of drilling and coordination between the Department and the Warm Springs Natural Resource Office should any problems arise as a result of the well drilling.
- Water rights research.
- The transfer of water rights to instream uses.
- Efforts to secure funds to acquire measuring devices to monitor significant diversions in Pine Creek, John Day River, Fifteenmile 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.
- Coordinating funding opportunities to improve 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.
- Assisted on a water rights application from the West Fork Hood River for fish acclimation ponds. These are hatchery fish that are acclimated and then released into the West Fork Hood River.
- Securing funding for a real time gaging station on Fifteenmile Creek.
- Measurement of water levels in wells at the Warm Springs Parkdale Fish Hatchery as part of a growing quarterly well net in the Hood River Basin, and
- Assisting Warm Springs staff in Prairie City with a determination of the “public” status of a spring.

Klamath Tribe

In 2009 Department representatives staff from the Director’s Office and local Watermaster office) met with members of the Klamath Tribal Council, including Chairman Joe Kirk, and their legal representative to discuss legislation of mutual interest passed during the 75th Oregon Legislative session and to discuss issues related to groundwater use by tribal and non-tribal members of the local community. This meeting included a preliminary discussion of approaches that the Department and Klamath Tribe could pursue to establish agreement regarding the management and use of groundwater by certain tribal members. The Department anticipates further discussions with the Klamath Tribes on this subject matter 2010. In addition, the Department continues to participate in the Klamath Basin Restoration Agreement (KBRA) discussions.

Coquille Tribe

The Coquille Indian Tribe (Coquille) has acquired several parcels of land in Coos County. In 2009, 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.

Confederated Tribes of 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 is committed to taking a positive and active role in this effort in 2010.

The Oregon Legislature appropriated \$50,000 for use in the Umatilla River Basin and Walla Walla River Basin to facilitate the development of new and/or enhanced water supply. In 2009, 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. [Barry update here](#)

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. These discussions have continued in 2009 and the Department anticipates that that will be the case in 2010 as well.

In 2009 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.
- Response to complaints or questions about improper use of water.
- Performance of water right research.
- 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 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 on feasibility study with Corps of Engineers and Umatilla Tribes on their proposed flow augmentation project for restoring fish in the Walla Walla Basin.
- Consultation with the Umatilla Tribes as participants of a Rules Advisory Committee to consider changes to the Department's Walla Walla sub-basin administrative rules regarding diversion of water for storage.

In addition, Department staff from its Eastern Regional Office, worked with both the Nez Perce Tribe and Umatilla Tribes 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 provided the Umatilla Tribes with information available through the Department's gauging network and have discussed a cooperative arrangement with the Tribe to enhance the network to also provide stream temperature information.

Burns Paiute Tribe

The Department has continued in 2009 to work with the Burns Paiute Tribe 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.

Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation

In mid-summer 2009, the Department was contacted by representatives of the Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation (Fort McDermitt), a federally-recognized Tribe with reservation lands in Oregon and Nevada. The chairman of Fort McDermitt's tribal council wanted to discuss a number of issues regarding privately-controlled diversions located on Fort McDermitt reservation lands in Oregon and general water right issues related to future development of tribal lands located in Oregon. Staff from the Department's Eastern Regional Office travelled to the Oregon portion of the Fort McDermitt reservation and

met with the chairman and other tribal representatives for an on-site visit and exchange of ideas and information.

Confederated Tribes of Siletz.

For several years the Department has been an active participant in efforts by the Confederated Tribes of Siletz to secure a source of water that would allow the Siletz to proceed with certain economic development opportunities. In 2009, the Department continued to meet with representatives of the Siletz to provide input on approaches the Siletz are advancing with the local community to secure the new water supplies.

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 continued to work with the Cow Creek in 2009 in a government-to-government fashion and have successfully negotiated agreed-to provisions of an intergovernmental agreement and achieved state-issued surface water and reservoir permits for the Cow Creek that are ready signature-ready. The Department is in consultation with the Cow Creek to schedule an appropriate setting and time for a joint signing ceremony.

Confederated Tribes of Grande Ronde

Work-in-Progress

Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians

Work-in-Progress

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 Legislative Commission on Indian Services at the State Capital in Salem on April 14, 2009 and

by the Confederated Tribes of Siletz at their government headquarters in Siletz, Oregon, on August 13, 2009.

Tribal Information Day

Work-in-Progress

Annual State/Tribal Government-to-Government Summit

Work-in-Progress

7. COOPERATION AMONG DEPARTMENTS

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.