



# Oregon

Theodore R. Kulongoski, Governor

## Water Resources Department

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### **2006 Annual Government-to-Government Report For the Oregon Water Resources Department Under Executive Order 96-30**

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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 Tribes and/or tribal members. In addition, pursuant to Governor Kitzhaber's Executive Order 96-30 and Senate Bill 670, 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 and 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 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 state and federal law.

b. Watershed Management and Water Use Regulation. The Department works with Oregon's 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, where possible, 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 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, to continue to forge partnerships with Tribes to share responsibility for water and watershed management.

#### 5. SOLUTIONS AND PROGRAMS

a. Confederated Tribes of the Warm Springs Indian Reservation. ORS 539.310 authorizes the Director of the Department 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 the Warm Springs Reservation and United States, as trustee for the Tribes and its members, in 1989. Formal negotiations began in 1991, and successfully concluded a water right settlement agreement on November 17, 1997. The settlement agreement defines the scope and attributes of the Warm Springs Reservation water rights.

On July 26, 2002, the Warm Springs Water Right Settlement 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 and Order and the Tribes' Water Right Settlement 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, was completed on April 30, 1997. With the support and assistance of the Klamath Tribes, the Department initiated an alternative dispute resolution (ADR) process to help resolve adjudication issues. The Department and the Klamath Tribes 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 Tribes and the Department have also been participating in discussions about the removal of Chiloquin dam, thus opening additional fish habitat.

c. Confederated Tribes of the Umatilla 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 Tribes and the United States. Resolution of the legal issues surrounding the reserved water rights of the Umatilla Reservation will be complex and time consuming. Pending resolution of the Reservation water right issues, the Department assisted the Tribes in securing a state water right permit for ground water use in the Tribes' newly developed facilities. In May 2006, the Department and the Tribes, along with the Economic and Community Development Department, entered into an Intergovernmental Agreement related to the Tribes use of water under the ground water permit.

As an element of the Intergovernmental Agreement, Department staff and Tribal staff have met several times during 2006 to discuss issues of mutual concern related to the management of ground water resources in the area of the Umatilla Reservation. The Department anticipates that these meetings will continue in 2007.

In late 2001, the Department and Tribes renewed discussions concerning resolution of the outstanding legal issues in particular and Umatilla Basin water management matters in general. Since that time, the Department, Tribes and local water users have continued to meet to discuss regional long-term water supply needs and restoration activities. In February 2006, the Department worked with the Tribes 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. The Department continues to work with the Tribes and the irrigation district to pursue these goals.

d. Coquille Indian Tribe. The Coquille Indian Tribe has acquired several parcels of land in Coos County. The Department has met several times with representatives of the Tribe to discuss the Tribe's water needs in general, and water rights associated with this land in particular. These activities will be ongoing. The Department has worked with the Tribe, other State agencies and various federal agencies to secure authorization for rehabilitation and enlargement of two existing reservoirs on land acquired by the Tribe in Coos County.

e. Burns Paiute Tribe. The Department has been working with representatives of the Burns Paiute Tribe and the United States Bureau of Indian Affairs to complete processing of a water right application and water right transfer application filed by the Tribe. In addition, the Department's watermaster in District 10 has been in contact with the Tribe with respect to other water right and water use issues.

f. Confederated Tribes of Siletz Indians. The Department has worked with the Siletz Tribes to develop strategies to protect the Tribes' existing water rights. These strategies include, but are not limited to, procedures for instream water right leasing and other transfer mechanisms.

g. Confederated Tribes of Grand Ronde. The Department has met with representatives of the Confederated Tribes of Grand Ronde on numerous occasions to discuss the Tribes' water needs and the requirements of state water law. In particular, the Department assisted the Tribes in a water lease program to protect a number of water rights held by the Tribes. The Tribes have entered into multiple multi-years instream leases extending beyond 2006.

The Tribes have developed a proposal to convert a number of their irrigation water rights to a quasi-municipal right for use in various tribal facilities. The new quasi-municipal right will allow the Tribes to reduce their demand on the Grand Ronde community water system. The Department worked with the Tribes to develop the conversion proposal along with a streamflow mitigation plan for protection of flows in the South Yamhill River. The Department took the lead in the Government-to-Government discussions with the Departments of Fish and Wildlife and Environmental Quality to ensure that the water right conversion and mitigation plan provide the greatest degree of development flexibility for the Tribes while protecting streamflows in the river and its tributaries. As a result of these discussions, the Department was able to approve applications for new water rights and transfer of existing rights to support a new water system for the Tribes' hotel/casino development.

The Department has also assisted the Tribes in developing an additional water right transfer application during the fall of 2005. The Department is currently processing this application under its expedited review process.

Finally, the Tribes assisted the Department with one of its rulemakings during 2006. A representative for the Tribes 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. On May 21, 2003, the representatives of the Cow Creek Band met with the Department to discuss the Band's proposed development at Canyonville, Oregon. The Band proposes to obtain water for the development from the South Umpqua River and to store water in a series of new reservoirs. The Band's engineers submitted preliminary dam plans to the Department's Dam Safety section. The Department has reviewed the Band's proposal and the dam plans and continues to work with the Band to complete the dam safety review process. Representatives of the Band and the Department continue to meet to discuss this project.

## 6. TRAINING

The Department's key contact person routinely attends the Natural Resource Cluster, including the February 28, September 22, and December 12 meetings in 2006. The Department's key contact person, the Director and most of the Regions Managers attended the Tribal Information Day on May 19, 2006. Additionally, the Department's key contact person and Director attended the 2006 Annual Government-to-Government Summit hosted by the Cow Creek Band of the Umpqua Indians at their Seven Feathers Hotel and Convention Center, Canyonville, Oregon.

## 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.