



June 5, 2008

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WATER RESOURCES DEPT.
SALEM, OREGON

MR. RUBEN OCHOA
STATE OF OREGON WATER RESOURCES DEPT
NORTH MALL OFFICE BUILDING
725 SUMMER STREET NE, SUITE A
SALEM, OR 97301-1271

GOVERNMENT

Re: Surface Water Usage Permit, Water Storage Permit and Draft Intergovernmental Agreement

OFFICES

Dear Mr. Ochoa:

2 3 7 1

Enclosed please find the Tribe's executed Surface Water Usage and Water Storage permit applications and related processing fees. Execution of the documents, as noted and initialed on the signature pages, is conditional on the completion of our Intergovernmental Agreement related to the Tribe's Creekside reservoirs. This was the agreement reached between the State of Oregon under the authority of Governor Kulongoski via Mike Carrier in our establishing meeting in Salem with, among others, Oregon WRD, DOJ and DSL represented. The Tribal Chairman and Tribal Board of Directors have asked me to emphasize this point so that it is clear that the Tribe's filing of these documents, as a partnership accommodation to the processing procedures and timelines within WRD, does not supercede our reliance on Oregon's agreement and commitment to conclude the Intergovernmental Agreement process.

NE STEPHENS

STREET

SUITE 100

Also enclosed is the penultimate draft of the Intergovernmental Agreement for comment and finalization. It has been fine tuned over a long period to remain clear, concise and true to the need and spirit of our partnership and agreements. I hope that we can conclude this process expeditiously. I would suggest that if it is necessary to push the Intergovernmental Agreement through another full round of WRD and/or DOJ review, that we call a face to face meeting for a wrap up session with any remaining sign-off parties available and attending.

ROSEBURG

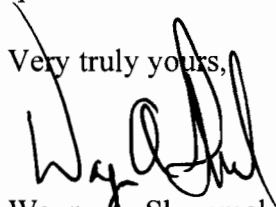
OREGON

The Tribe is pleased to be a partner with the State of Oregon and the WRD and we look forward to our continued positive association.

9 7 4 7 0

Very truly yours,

(541) 672-9405


Wayne A. Shammel
General Counsel

FAX NUMBER

jr
Enc.

(541) 673-0432

cc: Tribal Board
Governor Kulongoski

DRAFT

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
AND
THE STATE OF OREGON BY AND THROUGH THE
OREGON WATER RESOURCES DEPARTMENT**

This Intergovernmental Agreement ("Agreement") is entered into between the Cow Creek Band of Umpqua Tribe of Indians, a federally recognized Indian Tribe, hereinafter referred to as "the Tribe," and the State of Oregon, hereinafter referred to as "the State", by and through the Oregon Water Resources Department, hereinafter referred to as "WRD." The Tribe and the State are jointly referred to as "the Parties." The parties hereby agree as follows:

I. Introduction

This Agreement is entered into pursuant to ORS 190.110.

The Tribe is developing an off-channel reservoir near Canyonville, Oregon ("the reservoir") on tribal trust ground. The Tribe intends to fill the reservoir with surplus water from the South Umpqua River. The Tribe and the State agree that off-channel storage projects, such as the reservoir near Canyonville, should be fostered and encouraged to the greatest extent possible.

II. General Provisions

A. Interests and Responsibilities of the Tribe

1. The Tribe asserts that WRD does not have authority to require the Tribe to obtain a state water right for the appropriation and use of surplus water from the South Umpqua River for storage and use on lands held in trust by the federal government for the Tribe.
2. In recognition of the Parties' mutual interest in the region's water resources and government-to-government cooperation, the Tribe agrees to file State of Oregon water right applications and other supporting documents related to the diversion, storage and use of water, in conjunction with this Agreement.

B. Interests and Responsibilities of WRD

1. WRD asserts that it does not have authority to authorize the appropriation and use of water solely through an intergovernmental agreement.

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2. The State has established a system under the Oregon Water Code for regulating the use of water within the State through the water right permitting process, the purpose of which includes the orderly allocation of water and the protection of senior water rights. The State has a strong interest in the comprehensiveness of this system.
3. In recognition of the Parties' mutual interest in the region's water resources and government-to-government cooperation, WRD agrees to enter into this Agreement concurrently with the issuance of any permits resulting from the Tribe's applications referred to in paragraph A.2. above.
4. WRD agrees to accept and process the Tribe's water right applications filed pursuant to paragraph A.2. above and to work closely with the Tribe to assure that the applications and related information satisfy the minimum WRD application requirements. WRD agrees to process the Tribe's applications as promptly as possible in accordance with the standards and processes established in applicable statutes and rules.

C. Agreement of the Parties

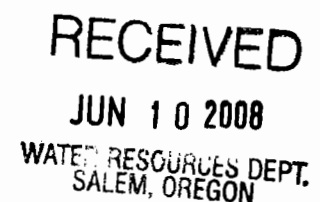
1. The circumstances of the Parties in entering this Agreement are unique. Hence, this Agreement is limited to the present circumstances, and it binds only the Parties to this Agreement.
2. The Parties agree that the Tribe intends to use water according to the following terms.
 - a. The Tribe will divert water from the South Umpqua River from points of diversion located as described in Attachment A.
 - b. The diverted water will be conveyed via pipeline from the point of diversion described in paragraph II.C.2.a. to be stored in a reservoir located as described in Attachment A.
 - c. The reservoir will store a maximum of 365 acre feet and the reservoir will be maintained full during the withdrawal season (November 1 through June 30).
 - d. The Tribe will divert water from the South Umpqua River pursuant to this Agreement and the related permits or certificates at a rate not to exceed 600 gallons per minute (gpm) for quasi-municipal use, and 600 gpm for reservoir maintenance.

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- e. The Tribe will divert water from the South Umpqua River for storage in the reservoir from November 1 through June 30 of each year, and only at times when sufficient water is available to satisfy all prior rights (including any prior Oregon water rights of the Tribe), including prior rights for maintaining instream flows.
- f. The Tribe will divert live flow from the South Umpqua River for quasi-municipal and reservoir maintenance from November 1 through June 30 of each year, and only at times when sufficient water is available to satisfy all prior rights (including any prior Oregon water rights of the Tribe), including prior rights for maintaining instream flows.
- g. The Tribe will use the water stored in the reservoir year round for quasi-municipal purposes.
- h. The Tribe will use water for quasi-municipal purposes in the place of use described in Attachment A.
- i. The Tribe will install a meter at the surface water point of diversion identified in paragraph II.C.2.a., and maintain the meter in good working order. The Tribe will allow the watermaster access to the meter upon reasonable notice.
- j. The Tribe will install and maintain a measuring device in the reservoir at a reasonably accessible location, and will allow the watermaster access to the measuring device after reasonable notice.
- k. The Tribe will keep, maintain and provide annually to WRD a record of the amount (volume) of water diverted and used, general water use information, the periods of water use and the place and nature of use of water under the permit and provide a copy to WRD annually.
- l. The Tribe will install, maintain, and operate fish screening and bypass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards.
- m. Within one year after putting all of the water to the proposed use, the Tribe will submit claims of beneficial use to WRD signed off by an Oregon licensed engineer.



3. The Tribe will provide WRD with a map identifying the source of water and location of water use, and clearly indicating the township, range, section, quarter/quarter section of the proposed reservoir location, place of use and tax lot numbers, as appropriate.

III. Administration

A. Authority

Each Party represents that the person who executes this Agreement on its behalf has the authority to enter into this Agreement on behalf of that Party.

B. Counterparts

This Agreement may be executed simultaneously or with separate signature pages and in more than one counterpart, each of which will be deemed an original, and all of which together shall constitute one and the same Agreement.

C. No Waiver of Sovereign Immunity

Nothing in this Agreement is intended to be a waiver of the sovereign immunity of either party to this Agreement.

D. Reservation of Rights

Nothing in this Agreement is intended to prejudice either the Tribe's right to claim a federal reserved water right in the future or the State's right to dispute any such claim in the future.

E. Amendment of this Agreement

This Agreement may be modified only by the mutual written agreement of the Parties.

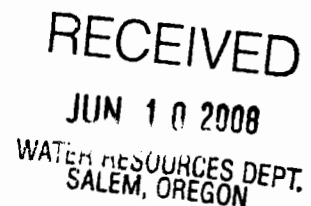
COW CREEK BAND OF UMPQUA TRIBE OF INDIANS

Dated: _____ By: _____

STATE OF OREGON BY AND THROUGH THE OREGON WATER RESOURCES DEPARTMENT

Dated: _____ By: _____

Phillip C. Ward,
Director





Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem Oregon 97301-1271
 (503) 986-0900
 www.wrd.state.or.us

Application for a Permit to Store Water in a Reservoir (Standard Review)

Standard Review Process (ORS 537): You must use this form for any reservoir storing more than 9.2 acre-feet and with a dam more than 10 feet high.

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Use a separate form for each reservoir

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. If any requested information does not apply, insert "n/a". A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/OWRD/PUBS/forms.shtml.

1. APPLICANT INFORMATION

Applicant: Cow Creek Band of Umpqua Tribe of Indians
First Last

Mailing Address: 2371 NE Stephens Street, Suite 100

Roseburg OR 97470
City State Zip

Phone: N/A (541) 677-5535 N/A
Home Work Other

*Fax: (541) 677-5527 *E-Mail Address: wshammel@cowcreek.com

*Optional Information

I(We) make application for a permit to construct a reservoir and store the following described waters of the State of Oregon. The name of the reservoir is _____.

2. SOURCE OF WATER for the proposed use: South Umpqua River,
 a tributary of Umpqua River

Is the proposed use an enlargement of an existing dam/reservoir? YES NO

If the reservoir is not in channel of a stream, state how it is to be filled: Pumped

For Department Use		
App. No. _____	Permit No. _____	Date _____

3. DAM HEIGHT AND COMPOSITION

The maximum height of the structure ~~will be~~ is 86 feet above streambed or ground surface at the centerline of the crest of the dam.

Note: If your dam height is greater than or equal to 10.0' above land surface AND your reservoir will store equal to or greater than 9.2 acre-feet, engineered plans and specifications must be approved prior to storage of water.

The dam will be (check one): Earthfill Concrete Flash board Other

If "other" give description: N/A

4. PRIMARY OUTLET WORKS

Describe the location and the dimensions of the outlet conduit through the dam: See Attachment 1.

NOTE: Most dams across a natural stream channel will need an outlet conduit having a minimum diameter of 8 inches or greater.

5. EMERGENCY SPILLWAY

Describe the location and the dimensions of the spillway channel: See Attachment 2.

6. THE USE(s) of the impounded water will be: Quasi-Municipal

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7. **THE AMOUNT OF WATER** to be stored is: 365 acre-feet.

The area submerged by the reservoir, when filled, will be 12 acres.

8. PROJECT SCHEDULE: (List Month and Year)

Proposed date construction work will begin: May 1, 2004

Proposed date construction work will be completed: June 30, 2007

Proposed date water use will be completed: June 30, 2007

9. PROPERTY OWNERSHIP

Do you own all the land where you propose to divert, transport, and use water?

Yes (*Skip to section 10*)

No (*Please check the appropriate box below*)

I have a recorded easement or written authorization permitting access.

I do not currently have written authorization or an easement permitting access to lands not under my ownership.

Written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigation and/or domestic use only (ORS 274.040).

You must provide the legal description of: (1) the property from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map.

List the names and mailing addresses of all affected landowners:

N/A

* *Attach additional sheet(s) if necessary.*

10. MAP REQUIREMENTS

The Department cannot process your application without accurate information showing the source of water and location of water use. You must include a map with this application form that clearly indicates the township, range, section and quarter/quarter section of the proposed reservoir location and place of use. The map must provide tax lot numbers. See the map guidelines sheet for detailed map specifications.

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11. SIGNATURE

By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application packet.
- ~~I cannot legally use water until the Water Resources Department issues a permit to me.~~
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be canceled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit to me, I may have to stop using water to allow senior water right holders to get water they are entitled to, and ...

I certify that the information I have provided in this application is an accurate representation of the proposed water use and is true and correct to the best of my knowledge:

*Applicant: *Joe M. Decker* 6/9/08
Signature (If more than one applicant, all must sign.) Date

*This signature and approval is contingent on the completion and execution of an intergovernmental agreement between the Cow Creek Band of Umpqua Tribe of Indians and the State of Oregon pertaining to the subject matter of this application. *shd*

Before you submit your application be sure to:

- Answer each question completely.
- Attach a legible map that includes township, range, section, quarter/quarter and tax lot.
- Include a Land Use Information Form or receipt stub signed by a local official.
- Include the legal description of all the property involved with this application. You may include a copy of your deed land sales contract or title insurance policy to meet this requirement.
- Include a check payable to the Oregon Water Resources Department for the appropriate amount. The Department's fee schedule can be found at www.wrd.state.or.us or call (503) 986-0900.

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Oregon Water Resources Department Land Use Information Form

This information is needed to determine compatibility with local comprehensive plans as required by ORS 197.180. WRD will use this and other information to evaluate the water use application. THIS FORM IS NOT REQUIRED IF: 1) water is to be diverted, conveyed, and/or used only on federal lands; or 2) the application is for a water right transfer, allocation of conserved water, or exchange and all of the following apply: a) only the place of use is proposed for change, b) there are no structural changes, c) the use of water is for irrigation, and d) the use is located in an irrigation district or exclusive farm use zone.

To Be Completed By Applicant

This section must be completed by the individual or group that is filing an application with the Water Resources Department. Attach a copy of the map from the application to this form.

A. Applicant

Name: Cow Creek Band of Umpqua Tribe of Indians
 Address: 2371 NE Stephens Street, Suite 100
 City: Roseburg State: OR Zip: 97470 Day Phone: (541) 677-5535

B. Land and Location

Please provide information as requested below for all tax lots on or through which water will be diverted, conveyed, or used. Check "diverted" if water is diverted (taken) from its source on tax lot, "conveyed" if water is conveyed (transported) on tax lot, and "used" if water will be put to beneficial use on tax lot. More than one box may be checked. (Attach extra sheets as necessary.) Applicants for municipal use, or irrigation uses within irrigation districts, may substitute existing and proposed service area boundaries for the tax lot information requested below.

Tax Lot I.D.	Plan Designation (e.g. Rural Residential/RR-5)	Water to be: (check all that apply)	Proposed Land Use
	<u>See Exhibit A.</u>	<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
		<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
		<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
		<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
		<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	
		<input type="checkbox"/> Diverted <input type="checkbox"/> Conveyed <input type="checkbox"/> Used	

List counties and cities where water is proposed to be diverted, conveyed, or used. _____

C. Description of Proposed Use

Indicate the type of application to be filed with the Water Resources Department.
 Water Use Permit Water Right Transfer Allocation of Conserved Water Exchange

Indicate the intended use of water and describe the key characteristics of the project.
 Commercial Industrial Instream Irrigation
 Municipal Quasi-municipal Domestic (indicate number of households) _____
 Other _____

Briefly describe: Operation of a water supply system and usual and ordinary municipal water use.

Indicate the source of the water to be used.
 Reservoir/Pond Ground Water Surface Water S. Umpqua River
(source)

Indicate the estimated quantity of water the use will require: 365 CFS GPM Acre-Feet

Last revised: 04/06/04

Receipt for Request for Land Use Information

State of Oregon
 Water Resources Department
 725 Summer Street NE, Suite A
 Salem, OR 97301-1271
 (503) 986-0900

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For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless the project will be located entirely within the city limits. In this case, only the city planning agency must complete this form. Please request additional forms as needed or feel free to copy.

A. Allowed Use

Check the appropriate box below and provide requested information.

- Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): _____ Go to section B "Approval" below.
- Land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below.

Type of Land Use Approval Needed (e.g. plan amendments, rezones, conditional use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Check the item that applies: Land Use Approval:	
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being pursued <input type="checkbox"/> Not being pursued

Note: Please attach documentation of applicable local land use approvals which have already been obtained. (Record of Action/land use decision and accompanying findings are sufficient.)

B. Approval

Please provide printed name and written signature.

Name: Sue M. Shaffer Date: 6/9/08
 Title: Chairman Phone: 541-672-9405
 Signature: Sue M. Shaffer

C. Additional Comments

Local governments are invited to express special land use concerns or make recommendations to the Department regarding this proposed use of water below, or on a separate sheet.

Note: If this form cannot be completed while the applicant waits, sign and detach the receipt stub as instructed below. You will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.

Receipt for Request for Land Use Information

Name of applicant: Cow Creek Band of Umpqua Tribe of Indians

This receipt must be signed by a local government representative and returned to the applicant at the time they present this form. This receipt must be included with the application filed with the Water Resources Department if the local government cannot provide the requested land use information while the applicant waits.

City or County: DOUGLAS CO.
 Staff contact: Wayne A. Shammel Phone: 541-677-5535
 Signature: [Signature] Date: 6/9/08

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LAND USE INFORMATION FORM
Exhibit A

Property ID No.	Property Name	Tax Lot	Water to be:			Land Use
			Diverted	Conveyed	Used	
R31658	Block	1800		X	X	
R31674		2200			X	
R31738		1900	X	X	X	
R31754		2000		X	X	
R31762		2100		X	X	
R30850	Brint	900			X	
R31050	Canyonville Storage	800		X	X	
R30994	Creekside 1	1110			X	
R30962		400			X	
R30970		502		X	X	
R33346		501		X	X	
R30914		501		X	X	
R30954		1111		X	X	
R30874		1101			X	
R30746		800			X	
R33498		200			X	
R30882		500			X	
R119530	Creekside 2 (rights of way)	1112			X	
R119531		1112			X	
R119532		504			X	
R35454	Creekside 3	4200			X	
R30826	Erickson	300			X	
R32834	Evergreen	2700			X	
R32850		2800			X	
R30842	Fat Harvey's	500		X	X	
R30906		500			X	
R30922		500			X	
R30930		500			X	
R30858		800			X	
R30890	Gilstrap	1100			X	
R30834	Hunt	400		X	X	

Land Use Information Form, Exhibit A

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Property ID No.	Property Name	Tax Lot	Water to be:			Land Use
			Diverted	Conveyed	Used	
R30818	Irwin	1000			X	
R31154	Klenke	1800		X	X	
R31122		900		X	X	
R31130		900		X	X	
R32866	Masonic	2901			X	
R32922		101				
R31666	McNeil Casino	1700			X	
R31786	Rigsby	2500			X	
R31794		2501			X	
R30762	Riverside	400			X	
R31218		600			X	
R31210	Valley View	2200	X	X	X	
R31202		2100	X	X	X	

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