

April 24, 2007

MEMORANDUM

TO: Oregon Watershed Enhancement Board

FROM: Ken Bierly, Deputy Director

**SUBJECT: Agenda Item M: OWEB Policy Regarding Interaction with Tribes
May 15-16, 2007 OWEB Board Meeting**

I. Introduction

This staff report proposes a Board policy regarding interaction of agency actions with Oregon Tribes. The policy is developed to comply with ORS 182.162 to 182.168. (Attachment A)

II. Background

Oregon is the first state to adopt a formal legal government-to-government relationship with Oregon Tribes through both executive action and legislation. In 1996, Governor Kitzhaber issued an Executive Order (EO 96-30) that directed state agencies to develop formal policies relating to the nine federally recognized tribal governments in Oregon. At the request of the Commission on Indian Services, SB 770 was drafted to direct state agencies in government-to-government relations with Oregon's Tribes. SB 770 was enacted as ORS 182.162 to 182.168 in 2001. Since OWEB was created after the Executive Order, it did not develop the formal policies for government-to-government relationships with tribes as other agencies have.

III. Proposed Policy

The attached proposed policy (Attachment B) was developed to reflect the ongoing working relationship with the Oregon Tribes. The policy addresses the requirements of the statute and identifies OWEB's specific efforts to work cooperatively with tribal interests.

IV. Recommendation

Staff recommend the Board adopt the proposed policy and direct staff to follow the OWEB commitments referenced in the policy.

Attachments

- A. ORS 182.162 to 182.168
- B. Draft OWEB Statement of Policy

RELATIONSHIP OF STATE AGENCIES WITH INDIAN TRIBES

182.162 Definitions for ORS 182.162 to 182.168. As used in ORS 182.162 to 182.168:

- (1) "State agency" has the meaning given that term in ORS 358.635.
- (2) "Tribe" means a federally recognized Indian tribe in Oregon. [2001 c.177 §1]

Note: 182.162 to 182.168 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 182 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

182.164 State agencies to develop and implement policy on relationship with tribes; cooperation with tribes. (1) A state agency shall develop and implement a policy that:

- (a) Identifies individuals in the state agency who are responsible for developing and implementing programs of the state agency that affect tribes.
- (b) Establishes a process to identify the programs of the state agency that affect tribes.
- (c) Promotes communication between the state agency and tribes.
- (d) Promotes positive government-to-government relations between the state and tribes.
- (e) Establishes a method for notifying employees of the state agency of the provisions of ORS 182.162 to 182.168 and the policy the state agency adopts under this section.

(2) In the process of identifying and developing the programs of the state agency that affect tribes, a state agency shall include representatives designated by the tribes.

(3) A state agency shall make a reasonable effort to cooperate with tribes in the development and implementation of programs of the state agency that affect tribes, including the use of agreements authorized by ORS 190.110. [2001 c.177 §2]

Note: See note under 182.162.

182.166 Training of state agency managers and employees who communicate with tribes; annual meetings of representatives of agencies and tribes; annual reports by state agencies. (1) At least once a year, the Oregon Department of Administrative Services, in consultation with the Commission on Indian Services, shall provide training to state agency managers and employees who have regular communication with tribes on the legal status of tribes, the legal rights of members of tribes and issues of concern to tribes.

(2) Once a year, the Governor shall convene a meeting at which representatives of state agencies and tribes may work together to achieve mutual goals.

(3) No later than December 15 of every year, a state agency shall submit a report to the Governor and to the Commission on Indian Services on the activities of the state agency under ORS 182.162 to 182.168. The report shall include:

- (a) The policy the state agency adopted under ORS 182.164.
- (b) The names of the individuals in the state agency who are responsible for developing and implementing programs of the state agency that affect tribes.
- (c) The process the state agency established to identify the programs of the state agency that affect tribes.

(d) The efforts of the state agency to promote communication between the state agency and tribes and government-to-government relations between the state and tribes.

(e) A description of the training required by subsection (1) of this section.

(f) The method the state agency established for notifying employees of the state agency of the provisions of ORS 182.162 to 182.168 and the policy the state agency adopts under ORS 182.164. [2001 c.177 §3]

Note: See note under 182.162.

182.168 No right of action created by ORS 182.162 to 182.168. Nothing in ORS 182.162 to 182.168 creates a right of action against a state agency or a right of review of an action of a state agency. [2001 c.177 §4]

OREGON WATERSHED ENHANCEMENT BOARD

STATEMENT OF POLICY STATE/TRIBAL GOVERNMENT-TO-GOVERNMENT RELATIONS

PURPOSE

The Oregon Legislature adopted Senate Bill 770 in the 2001 Legislative Session. This bill directs state agencies to promote government-to-government relations with Oregon's Indian Tribes. State agencies are to develop and implement policies to include tribes in the development and implementation of state programs that affect tribes. The Oregon Watershed Enhancement Board (OWEB) policy is to involve and include tribal members and governments in the development of policies and programs administered by the agency. OWEB recognizes and respects the sovereign status of the Oregon federally recognized Tribes and their respective authorities on tribal lands.

STATUTORY AUTHORITIES

OWEB is a state agency with statutory authority to administer constitutionally dedicated funds for the purpose of protecting and enhancing Oregon's fish and wildlife habitats. The responsibilities of the agency include:

- Managing a grant program for watershed protection and enhancement.
- Assisting in the development and implementation of watershed scale restoration efforts.
- Coordinating the efforts of watershed councils throughout the state.

The Oregon Watershed Enhancement Board is a state agency led by a 17-member policy oversight and decision-making board. Board members represent the public at large, federally recognized tribes, state natural resource agency boards and commissions, Oregon State University Extension Service, and six federal land management and natural resource agencies. The agency provides grants and services to citizen groups, organizations and agencies working to restore healthy watersheds in Oregon. OWEB actions support the Oregon Plan for Salmon and Watersheds, created in 1997. Funding comes from the Oregon Lottery as a result of a citizens' initiative in 1998, sales of salmon license plates since 1997, federal salmon funds, and other sources.

MISSION

The MISSION of OWEB is *“To help create and maintain healthy watersheds and natural habitats that support thriving communities and strong economies.”*

APPROACH AND PRIORITIES

Created in 1999, OWEB has embraced a community based problem-solving approach to carry out statutory responsibilities. This has occurred in response to the need to maximize the use of available resources and identify ways to achieve environmental gains in the most efficient manner. The agency has four operational groups; Grant Management, Grant Fiscal, Policy and Oregon Plan Coordination, and Monitoring and Reporting. Each group is headed by a manager responsible for on-going staff-to-staff OWEB Tribal working relationships.

TRIBAL GOVERNMENT PARTICIPATION IN OWEB POLICY

It is important to OWEB that Tribal concerns and interests are known and considered at the front end of policy and planning developments. OWEB will provide Tribal key contacts notice of policy and planning efforts, and consult with tribes as necessary in considering and addressing identified issues of concern. Issues of specific involvement will be; potential participation in Small Grant Teams, solicitation of information concerning proposed land or water acquisitions, participation in regional review groups, and changes or adoption of administrative rules.

TRIBAL RELATIONS PROTOCOL

The following OWEB commitments describe the approach to be taken to create and maintain strong tribal relations:

- OWEB will maintain a Tribal Liaison on Tribal Relations.
- The OWEB Director, Tribal Liaison and Board Tribal Representative will meet at least annually to discuss any known upcoming issues.
- The OWEB Tribal Liaison will actively participate as a member of the State Agency-Tribal Natural Resources Work Group.
- OWEB will maintain organization information and contact sources and will provide updates annually to the Tribal Key Contacts.
- OWEB will support the exchange of data collected by its staff or by tribal government.
- OWEB will ensure that regional staff are aware of the sovereign authority and self-government of Native American Tribes and of the organization structure of the tribal governments.
- OWEB will support and participate in cooperative efforts between the tribal government, federal, state, and local governments on environmental concerns that cross jurisdictional boundaries.
- OWEB will invite tribes to participate on advisory committees.
- OWEB will utilize advice and guidance when appropriate from the Legislative Commission on Indian Affairs and staff on tribal government matters.

Oregon Watershed Enhancement Board Approval of this Statement of Policy:

Daniel Heagerty, OWEB Board Co-Chair

Date

Jane O’Keeffe, OWEB Board Co-Chair

Date

Thomas M. Byler, Executive Director

Date