



COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
GOVERNMENT OFFICES
2371 NE STEPHENS STREET, SUITE 100
ROSEBURG, OR 97470-1399
Phone: 541-672-9405
Fax: 541-673-0432

June 12, 2024

VIA E-MAIL TO:

Laura Hartt
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301
WRD_DL_rule-coordinator@water.oregon.gov

RE: Comment of Cow Creek Band of Umpqua Tribe of Indians on
Notice of Proposed Rulemaking: Groundwater Allocation Rulemaking

Dear Ms. Hartt,

I am the Chair of the Cow Creek Band of Umpqua Tribe of Indians (“Cow Creek Umpqua”), a federally recognized Indian tribe headquartered in Roseburg, Oregon. Cow Creek Umpqua submits these comments regarding the Groundwater Allocation Rulemaking. We have been the stewards and protectors of water in southwestern Oregon since time immemorial. Cow Creek Umpqua serves as a co-manager of the natural resources within its Ancestral Territory. Cow Creek Umpqua recognizes that its culture and history are directly tied to the land, with even its name coming from a life-giving river. Cow Creek Umpqua has made it its mission to protect and enhance tribal lands, natural resources on these lands, and the Tribe’s aboriginal and cultural heritage, ensuring that all natural and cultural resources are managed in a sustainable, well-balanced manner that reflects the ecological, cultural, and economic priorities of the Tribe. The main purpose of these comments is to ensure the State is on notice that the Tribe’s sovereignty, water rights, and Treaty rights are not impacted by your Rulemaking. We do not waive any right or defense.

I. Rulemaking Fails to Recognize Tribal Rights

In 1853, Cow Creek Umpqua executed a Treaty with the United States, which promised Cow Creek Umpqua the creation of a permanent reservation. However, the Treaty was not honored, the United States failed to fulfill the promises contained in the Treaty and the promised

reservation was not created. Instead, in 1954, the United States terminated Cow Creek Umpqua and dozens of other Tribes in western Oregon. But we never went away. Like our ancestors who lived in and around the Umpqua and Rogue watersheds, we are the first stewards of the land and water that you now call Oregon. After the United States terminated us, we fought for decades for restoration. When the United States finally reversed its termination of Cow Creek Umpqua in 1982, part of our federal re-recognition included the ability to rebuild our reservation. When we take land into trust in the Umpqua River watershed upstream from Scottsburg, Oregon, or the northern slope of the Rogue River watershed upstream from Agness, Oregon, it becomes part of our reservation and “all rights and privileges of the tribe and the members of the tribe under [the Treaty] are restored[.]” 25 U.S.C. § 712e.

State water laws are preempted and do not govern the use of water by Cow Creek Umpqua on our lands. With the existence and restoration of our reservation lands, come the water rights that are defined by Tribal and federal law, not Oregon law. We reserve all rights to the Tribe’s water resources now and in the future. To the extent your Rulemaking intends to impact in any way the rights and the privileges of Cow Creek Umpqua, or our ability to restore the lands due to us under the Treaty of 1853 and 25 U.S.C § 712e, and Cow Creek Umpqua’s ability to appropriate water resources now and into the future, we do not consent.

The Rulemaking and its supporting documents fail to take into consideration the rights of the Nine Oregon Tribes. The importance of water to Cow Creek Umpqua cannot be understated. Water is life and is essential to our Tribe. The Rulemaking fails to provide information on how the State intends to engage the Nine Oregon Tribes in meaningful consultation on this matter. It does not acknowledge the sovereignty of the Nine Oregon Tribes or recognize any of the federally and treaty derived water rights possessed by the Nine Oregon Tribes. Cow Creek Umpqua must have a say in the allocation of groundwater in its Ancestral Territory and the Rulemaking should reflect the need for consultation, additional consultation procedures, and a recognition of the unique water rights possessed by the Tribe.

II. Lack of Tribal Consultation

The changes proposed do not recognize the importance of tribal rights or incorporate a process to allow meaningful consultation with the Nine Oregon Tribes throughout the groundwater allocation process. The Draft Statement of Need, Racial Equality Impacts, and Economic and Fiscal Impacts indicates that the only consultation even attempted was an invitation for Tribes to serve on the Advisory Rules Committee. This is insufficient to meet the State’s consultation requirements. The very brief comments concerning the potential impact on Tribes was very cursory. The Rulemaking, and its supporting documents, fail to take into consideration the complex water rights possessed by Tribes and fail to provide for meaningful consultation.

Further, to the extent you believe you have invited the Nine Oregon Tribes to engage with you regarding the Rulemaking, we have not consulted with OWRD and do not consider consultation with Cow Creek Umpqua to be complete under ORS § 182.164. We expressly reserve the right to provide additional comments and to request a government-to-government consultation regarding the Rulemaking.

III. Need for Additional Analysis and Study

We agree with the State that more information is needed to understand the status of groundwater in the State of Oregon. *See* HB 2018 (2021). The State should further collect information on groundwater levels and use. Then you should formally consult with Tribes both to take into account our millennia of experience managing these resources and to ensure your activities honor and uplift Tribal sovereignty.

Sincerely,


Carla Keene, Chairman

Cow Creek Band of Umpqua Tribe of Indians