

**CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION
WATER RIGHTS SETTLEMENT AGREEMENT**

November 17, 1997

This Water Rights Settlement and Intergovernmental Agreement is entered into by and between **THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON**, the **STATE OF OREGON** and the **UNITED STATES OF AMERICA**, and shall become effective as set forth hereinafter.

RECITALS

WHEREAS, pursuant to their Treaty with the United States, the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribes) have a federally reserved Indian water right to the water of the Reservation;

WHEREAS, the Parties agree that it is in the best interest of the Parties and the public to define the scope and attributes of the federally reserved Indian water right claims for the Warm Springs Indian Reservation;

WHEREAS, the Parties desire to establish the principles and mechanisms for mutually beneficial government to government good faith negotiations to resolve water issues affecting the Parties, to protect the interests of all Existing State Water Rights holders and to provide the

Indian and non-Indian citizens of the Deschutes Basin with certainty regarding water rights that will allow them to plan their future;

WHEREAS, Chapter 81, Laws of Oregon 1987 authorizes the Director of the Oregon Water Resources Department (Director) to negotiate with representatives of the Tribes and the United States as trustee for the Tribes, to define the scope and attributes of the Tribes' rights to water under the treaty between the United States and the Tribes of Middle Oregon;

WHEREAS, ORS 190.110 authorizes the State to enter into intergovernmental agreements with Indian Tribes in Oregon to establish agreements, compacts or other mutually beneficial arrangements for the administration and/or management of matters of mutual interest to the respective governments;

WHEREAS, by Resolution Numbers 6894 and 8046 the Tribal Council of the Tribes designated an official negotiating task force of the Tribes for the negotiation of their Indian water rights for the Reservation;

WHEREAS, the policy of the federal Executive Branch is to facilitate negotiations among Indian tribes, states and federal agencies to avoid litigation;

WHEREAS, on April 23, 1986 the United States Secretary of the Interior created an official negotiating team to act as the official representative of the Secretary of the Interior for negotiation of the Tribes' reserved water rights and water administration;

WHEREAS, the Parties agree that it is in the best interest of water resource management and protection for the Tribes to manage the water resources of the Reservation;

WHEREAS, in addition to the interest of the Parties in settling the scope and attributes of the Tribes' reserved water rights, the Parties have a mutual interest in assuring the long-term

protection of stream flows necessary to support and sustain the natural ecosystem and fisheries of the Deschutes River Basin, and therefore desire to cooperate in the protection of such Instream Flows;

WHEREAS, the Tribes have a long-standing history of protection of Instream Flows on the Reservation to sustain, preserve, and enhance fisheries and have as their most important objective the maintenance of healthy, viable fish stocks, both resident and anadromous, in the Deschutes Basin;

WHEREAS, the Tribes also desire to provide a viable homeland in perpetuity for the Tribes and its members and to maintain the maximum flexibility possible in the use and administration of all water on the Reservation;

WHEREAS, the Parties recognize that the unique hydrology of the Deschutes River Basin and the favorable pattern of existing water use creates an opportunity for successful negotiations; and,

WHEREAS, because of the area's unique geology, virtually all water arising on the Reservation remains on the Reservation until it joins Reservation boundary streams, and return flows of water diverted in the upper Deschutes River basin reenters the Deschutes River systems at or above Lake Billy Chinook; and

WHEREAS, there are few non-Indian water rights on the Reservation competing for water arising on the Reservation, and because the unique situation in the Deschutes River Basin made it prudent for the Tribes to offer that future uses of tribal reserved water rights are subordinated to existing state water rights, potential conflict between tribal water uses and established state water use patterns is negligible; and

WHEREAS, the Parties have special obligations under United States v. Oregon (Case No. 68-513MA) to protect the fisheries in the Columbia River and its tributaries; ~~and~~

WHEREAS, the Parties agreed to commence good faith government-to-government negotiations; and

WHEREAS, this Agreement is the culmination of these negotiations.

NOW THEREFORE, the Parties agree as follows:

ARTICLE I

GENERAL PURPOSES

A. PURPOSE OF THIS AGREEMENT. The purpose of this Agreement is to ~~determine~~ fully and forever the scope and attributes of the federally reserved Indian water right of the Tribes, and collectively of all Persons claiming water rights under the Treaty, for ~~lands~~ within the Reservation held in trust by the United States, including tribal members and Allottees, and all claims to such water rights by the United States for the benefit of the Tribes, secured by the Treaty; and to establish the quantities of water reserved by the Treaty. This Agreement is intended to settle disputes and remove causes of future controversy between or among the Tribes, the State, the United States, any other Person, or any of them concerning ~~the~~ use of water as described in this Agreement.

B. PROTECTION OF FISH AND WILDLIFE. The Parties recognize and support the long-standing commitment of the Tribes to the protection of Instream Flows necessary to sustain the Aquatic Ecosystem for the benefit of the fish and wildlife resources of the Reservation and to provide for the equitable management of the water resources on the Reservation without duplication of governmental authority or process. The Parties further recognize the importance of tributary waters in providing long-term protection of the Deschutes River fisheries beyond the Reservation boundaries and their mutual desire to exercise their respective authority in a cooperative manner in order to establish appropriate measures for the long-term protection of the resident and anadromous fisheries of the Deschutes River and its tributaries.

C. COOPERATIVE MANAGEMENT. By entering into this Agreement, the Parties desire to both describe the scope and attributes of the Tribal Reserved Water Right for the Reservation and to establish a mechanism for long-term cooperative management of the waters that affect the interests of the Parties.

ARTICLE II

AUTHORITY

A. STATE OF OREGON. The State has authority to execute this Agreement pursuant to ORS 539.300 through .350 to define the scope and attributes of the Tribal Reserved Water Right, and pursuant to ORS 190.110 to enter into an agreement with the Tribes to provide for the joint exercise of their respective authority over the water resources of the Deschutes Basin.

B. TRIBAL COUNCIL. The Chairman and Secretary-Treasurer of the Tribal Council have authority to execute this Agreement on behalf of the Tribes and all tribal members and their successors by Tribal Council Resolution No. 9425, adopted pursuant to Article V, Section 1(a) and (l) of the Tribal Constitution, and attached hereto as Exhibit B; provided, however, that this Agreement shall not be effective until either:

1. No referendum of the tribal members shall have been called pursuant to Article VI of the Tribal Constitution within 30 days after the vote of the Tribal Council approving this Agreement; or
2. A referendum vote of the tribal members shall have been called and held pursuant to Article VI of the Tribal Constitution and the action of the Tribal Council approving this Agreement shall not have been disapproved by the tribal voters.

C. SECRETARY OF THE INTERIOR. The Secretary of the United States Department of the Interior has authority to execute this Agreement on behalf of the United States and in his trust capacity for the Tribes and Allottees pursuant to 25 U.S.C. §§ 2 and 9 and 43 U.S.C. § 1457.

D. ATTORNEY GENERAL OF THE UNITED STATES. The Attorney General of the United States has authority to execute this Agreement on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-517.

E. SIGNATORY AUTHORITY. Each signer for the State, Tribes and United States, by executing this Agreement, represents and states that the signer has actual authority to sign it.

F. FEDERAL LEGISLATIVE AUTHORITY. Should it be determined that federal legislative action may be necessary in order to allow transfer of all or any portion of the Tribal Reserved Water Right as described in Paragraph IV B.4 of this Agreement, any Party may seek such legislative action.

ARTICLE III

DEFINITIONS

For purposes of this Agreement, and for no other purposes, the following definitions apply:

- (1) "Agreement" means this water rights settlement agreement, including Exhibits A (Existing Tribal Uses) and B (Tribal Council Resolution).
- (2) "Allottee" means an individual with a beneficial interest in Allotted Lands.
- (3) "Allotted Lands" means lands within the Exterior Boundary of the Reservation, which were allotted to individual Indians in accordance with the Treaty and/or federal statutes, and which are held in trust for the benefit of one or more Indians

and which are presently owned by Indians and subject to federal restrictions against alienation or encumbrance.

- (4) **"Aquatic Ecosystem"** means the biological community of rivers, streams, lakes and other water bodies together with its physical environment considered as a whole. Attributes of an aquatic ecosystem include, but are not limited to, water quality and quantity, populations of fish and other aquatic life, riparian vegetation and channel morphology.
- (5) **"Category I Water"** means all surface water within the Exterior Boundary of the Reservation, but not including waters in the Deschutes and Metolius Rivers, Pelton Lakes, and the Willamette River Basin.
- (6) **"Category II Water"** means of the surface waters arising on the Reservation, waters in the Deschutes or Metolius Rivers, or Pelton Lakes, where those rivers or lakes flow by or through the Reservation.
- (7) **"Cubic Foot per Second" or "CFS"** means a rate of water flow equivalent to one cubic foot per second in time or approximately 448.8 gallons per minute.
- (8) **"Director"** means the Director of the Oregon Water Resources Department or any successor agency.

- (9) **"Diversion"** means the removal of water from its natural water course or location by means of a ditch, canal, flume, bypass, pipeline, conduit, well, pump, or other structure or device, or the impoundment of water within or without a natural water source.
- (10) **"Existing State Water Rights"** means any water use authorized by the State with a Priority Date prior to September 16, 1996.
- (11) **"Existing Tribal Uses"** means Out-of-Stream Uses of the Tribal Reserved Water Right on the Reservation listed in Exhibit A attached to this agreement.
- (12) **"Exterior Boundary of the Reservation"** means the boundary of the Warm Springs Indian Reservation established by the Treaty.
- (13) **"Indian"** means any Person who holds, or is recognized by the Secretary of the Interior as eligible to hold, trust or restricted property on the Reservation.
- (14) **"Instream Flow"** means a quantity of water remaining in a stream.
- (15) **"Out-of-Stream Use"** means the use of water which requires the diversion of water from its natural source.

- (16) **"Parties"** means the Tribes, the State, and the United States.
- (17) **"Pelton Lakes"** means the lakes formed by the Pelton Hydroelectric Project commonly referred to as Lake Billy Chinook, Lake Simtustus and the Reregulating Dam Pool.
- (18) **"Person"** means an individual or any other entity, public or private.
- (19) **"Place of Use"** means the location where water is used, or, where such term is used with respect to an Instream Flow, the designated reach of the natural water course.
- (20) **"Point of Diversion"** means the location at which water is diverted from a natural water course.
- (21) **"Priority Date"** means the date assigned to a water right which denotes the relative priority of such right with regard to other rights for the use of water from the same general body of water, whether surface or ground water.
- (22) **"Reservation"** means the Warm Springs Indian Reservation in Oregon as established by the Treaty.

- (23) **"Source"** means the natural body of water or man-made reservoir from which water is diverted or withdrawn, or which is identified for purposes of Instream Flow.
- (24) **"State"** means the State of Oregon and all officers, agents, departments, and political subdivisions thereof.
- (25) **"Transfer"** means any change in the nature of use, place of use, or point of diversion of a water right.
- (26) **"Treaty"** means the Treaty dated June 25, 1855, between the United States and the Tribes and Bands of Middle Oregon (12 Stat 963).
- (27) **"Tribal Constitution"** means the Constitution of the Tribes enacted pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).
- (28) **"Tribal Reserved Water Right"** means the right to use water instream or out-of-stream as confirmed by Article IV of this Agreement.
- (29) **"Tribes"** means The Confederated Tribes of the Warm Springs Reservation of Oregon, a federally recognized Indian tribe organized pursuant to Sections 16 and

17 of the Indian Reorganization Act of 1934, and all officers, agents, departments and business enterprises or subordinate organizations thereof.

(30) "United States" means the United States of America and all officers, agents, and departments thereof.

(31) "Walton Right" means a water right held by a non-Indian successor to an Indian reserved right as described in *Colville Confederated Tribes v. Walton*, 547 F.2d 42 (9th Cir. 1981).

ARTICLE IV

TRIBAL RESERVED WATER RIGHT

A. **BASIS OF TRIBAL RESERVED WATER RIGHT.** The basis of the Tribal Reserved Water Right is the Treaty.

B. **TRIBAL RESERVED WATER RIGHT.** The Tribal Reserved Water Right is held by the United States in trust for the benefit of the Tribes and Allottees. The Tribal Reserved Water Right consists of water in amounts described below to satisfy the Treaty purposes:

1. Existing Tribal Uses on the Reservation as identified in Exhibit A attached hereto, provided, no non-consumptive Existing Tribal Uses may be converted to consumptive uses;

2. Subject to the provisions of Article IV.B.3., Category I Water in the amount of the entire natural flow of the Warm Springs River, the Whitewater River, Jefferson Creek, Mariel Creek, Shitike Creek, Walker Creek, Sheep Creek, Code Creek, Camp Creek, Racing Creek, Rainy Creek, Cache Creek, Box Canyon Creek, Seekseequa Creek, Dry Hollow Creek, Dry Creek, Skookum Creek, Oak Creek, Antoken Creek, Eagle Creek, Nena Creek, Byzantine Gulch, Kelly Gulch and Paquet Gulch, and their tributaries for Instream Flows to sustain or enhance the aquatic ecosystem of the Reservation for the benefit of the fish and wildlife resources of the Deschutes River Basin which shall be protected and preserved for such purposes in perpetuity.

3. Category I Water for Out-Of-Stream Uses in amounts of up to 250 cfs for uses on the Reservation. Such amounts may be used from each of the streams and rivers listed in Article IV.B.2. so long as such use does not result in a net degradation of the fishery, if any, on the individual streams or rivers as measured by the attributes of the Aquatic Ecosystem together with any mitigation, and so long as the total consumptive use from all streams does not exceed 250 cfs.

4. Category II Water in amounts of up to 200 CFS from the Deschutes and Metolius Rivers, and the Pelton Lakes, combined (of which not more than 25 CFS may be diverted from the Metolius River before it enters Lake Billy Chinook). Such water may be used on the Reservation, or off the Reservation as described in Article IV.D.

5. Instream Flows in the Deschutes and Metolius Rivers for the benefit of the Aquatic Ecosystem of the Reservation. The amount of water set out below for each of the rivers is the amount the Parties agree is the flow necessary to support the Tribes' Treaty water rights as exercised on the Reservation.

(a) In the Deschutes River, along the reach of the River from the Madras gauge to the mouth of the Deschutes River at the Columbia River according to the following monthly schedule:

January	3000 cfs
February	3000 cfs
March	3500 cfs
April	3500 cfs
May	3500 cfs
June	3500 cfs
July	3000 cfs
August	3000 cfs
September	3000 cfs
October	3000 cfs
November	3000 cfs
December	3000 cfs

(b) In the Metolius River, according to the following monthly schedule as measured at the Grandview Gauge:

January	1150 cfs
February	1150 cfs
March	1160 cfs
April	1160 cfs
May	1240 cfs
June	1200 cfs
July	1170 cfs
August	1140 cfs
September	1100 cfs
October	1080 cfs
November	1140 cfs
December	1110 cfs

C. PRIORITY DATES. The Priority Date of the Tribal Reserved Water Right shall be earlier than any other water right in the Deschutes River Basin, and Existing State Water Rights shall have a Priority Date as recognized under State law; provided, however, notwithstanding a senior Priority Date for the Tribal Reserved Water Right, Existing State Water Rights shall not be curtailed in favor of the Tribal Reserved Water Right.

D. USE OF TRIBAL RESERVED WATER RIGHT OFF RESERVATION. Use of the Tribal Reserved Water Right off the Reservation shall be subject to and in accordance with state, federal and tribal law applicable to transfers, distribution and regulation of water and siting, construction and operation of any off-Reservation facilities for the transportation or delivery of water. Off-Reservation use of any water held by the Tribes under the Tribal Reserved Water Right is restricted to the water identified in Article IV.B.4. and shall comply with

Article IV.G.5. Nothing in this Agreement shall be so construed or interpreted to affect any Party's position with regard to whether or not a state, federal or tribal law is valid or applicable.

E. FORFEITURE. The Tribal Reserved Water Right when used on the Reservation shall not be subject to forfeiture except as specified in Article VII.B. Nothing in this Agreement shall be so construed or interpreted to affect any Party's position with regard to whether or not uses of the Tribal Reserved Water Right off the Reservation is subject to forfeiture under State law.

F. USES OF THE TRIBAL RESERVED WATER RIGHT ON THE RESERVATION. Except for Category I water described in Article IV.B.2., and Category II Water described in Article IV.B.5., the Tribes may authorize use of the Tribal Reserved Water Right on the Reservation for any purpose.

G. PERSONS WHO MAY USE THE TRIBAL RESERVED WATER RIGHT. The Tribal Reserved Water Right may be used by any of the following Persons:

1. The Tribes and any Person authorized by the Tribes, including all tribal members, within the Exterior Boundary of the Reservation.
- 2 Individual Allottees using water within the Exterior Boundary of the Reservation.

3. Individual Indian fee land holders using water within the Exterior Boundary of the Reservation.
4. Persons holding a *Walton* Right using water within the Exterior Boundary of the Reservation.
5. Any Person authorized by the Tribes to use a portion of the Tribal Reserved Water Right described in Article IV.B.4. outside the Exterior Boundary of the Reservation; provided, however, no portion of the Tribal Reserved Water Right may be used outside the Exterior Boundary of the Reservation except as described in Paragraph IV.D. of this Agreement.

H. ALLOTTEE USE OF THE TRIBAL RESERVED WATER RIGHT. Individual Allottees shall have the right to use the Tribal Reserved Water Right within the Exterior Boundary of the Reservation, subject to the regulatory authority of the Tribes and the authority and obligations of the United States under 25 U.S.C. §381 and other applicable laws.

I. OFFSETS FROM THE TRIBAL RESERVED WATER RIGHT. The water uses of Allottees and individual tribal members are a part of, and shall be satisfied out of, the Tribal Reserved Water Right. Any water right established by an Indian fee holder based on the Treaty and the water right of any person establishing a *Walton* Right shall be taken from the Tribal Reserved Water Right.

ARTICLE V
ADMINISTRATION OF WATER RIGHTS

A. TRIBAL ADMINISTRATION.

1. Tribal Administration of Tribal Reserved Water Rights on the Reservation.

The use of the Tribal Reserved Water Right within the Exterior Boundary of the Reservation shall be administered by the Tribes in accordance with this Agreement.

2. Ground Water. The Tribal Reserved Water Right described in Article IV.B.

may be exercised in whole or in part from ground water within the Reservation.

Except for minor withdrawals which under state law would be exempt uses as that term is defined in ORS 537.545 (which shall not be counted against the sums set forth in Articles IV.B.3 and IV.B.4.), it shall be presumed that ground water withdrawals within the Reservation are hydrologically connected to the rivers and streams running through and bordering the Reservation and shall be counted against the quantities set forth in Article IV.B.3. or IV.B.4. as is appropriate on a gallon for gallon basis, unless it can be established that there is no connection.

3. Tribal Authority to Allocate the Tribal Reserved Water Right. Subject to the

provisions of this Agreement and the authority and obligations of the Secretary

of the Interior under 25 USC §381 and other applicable law, except for Category I Water described in Article IV.B.2., and Category II Water described in Article IV.B.5., the Tribes have authority to allocate the Tribal Reserved Water Right within the Exterior Boundary of the Reservation.

4. **Tribal Administration of State Water Rights on the Reservation.** Water rights established under State law and *Walton* Rights established pursuant to federal law or the interests of their successors within the Exterior Boundary of the Reservation shall be administered by the Tribes. Administration and enforcement of the state water rights used on the Reservation shall be governed by State law. By separate memorandum of understanding the Tribes and State shall establish a process for designation of a qualified Tribal watermaster as agent for the enforcement of state water rights used on the Reservation and to resolve all disputes between users of a state water right, or disputes between users of a state water right and users of the Tribal Reserved Water Right, within the Exterior Boundary of the Reservation. Any Person diverting or using water pursuant to a state water right within the Exterior Boundary of the Reservation, may appeal a decision of the Tribes to the Director. Appeals to the Director shall be in writing and shall be submitted within 60 days of the Tribes' final decision. The appeal must set out the facts of the matter in question and the circumstances of the Tribal decision. The appeal documents must identify the state water right which is the subject of the appeal by application, permit or certificate number or

decree reference. The appeal must include an affidavit signed by the water right holder that the water right is valid and has not been forfeited or abandoned. The Oregon Administrative Procedures Act will govern any appeal of a decision of the Director.

5. **Construction of Off-Reservation Facilities in Connection with Use of the Tribal Reserved Water Right.** Development or construction of any off-Reservation facility for the diversion, withdrawal, impoundment and use of the Tribal Reserved Water Right may not be initiated until all local, state, federal and Tribal licenses, permits, certificates, variances and other legal requirements applicable to the siting, construction and operation of such facilities have been secured. Nothing in this Agreement shall be so construed or interpreted to affect any Party's position with regard to whether or not a state, federal or tribal law is valid or applicable.

6. **Lands Added to the Reservation.** In the event land is added to the Reservation as it is defined in Article III.(22), any water rights appurtenant to those lands shall be administered in accordance with Article V.A. Any such lands shall have such state or federal water rights as shall have been appurtenant to them prior to their addition to the Reservation. Prior notice of any addition of land to the Reservation shall be given to the State. The Parties agree to enter into

negotiations to quantify a reserved water right, if any, which may be appurtenant to such added lands.

B. STATE ADMINISTRATION. Nothing in this agreement shall limit or expand the State's authority to administer all rights to the use of surface water and ground water outside the Exterior Boundary of the Reservation. To the extent allowed by law, the State shall have the final and exclusive jurisdiction to resolve all disputes between users of water rights established under State law where such water is used outside the Exterior Boundary of the Reservation. No transfer of a State water right in the Deschutes Basin shall be made unless the State finds that no injury to the Tribal Reserved Water Right shall result.

C. NOTICES. Except as otherwise provided, for purposes of this Agreement any notices to the Parties shall be sent to the Persons designated below by certified mail, return receipt requested, or to such other Person as may later be designated in writing by any Party:

STATE OF OREGON: Director
Oregon Water Resources Department
158 12th Street NE
Salem, Oregon 97310

TRIBES: Secretary Treasurer
The Confederated Tribes of the
Warm Springs Reservation of Oregon
P.O. Box 1299
Warm Springs, Oregon 97761

Chairman of the Tribal Council
The Confederated Tribes of the

Warm Springs Reservation of Oregon
P.O. Box 1299
Warm Springs, Oregon 97761

UNITED STATES:

Secretary of the Interior
Office of the Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Area Director
Bureau of Indian Affairs
911 N.E. 11th
Portland, Oregon 97232

Superintendent, Bureau of Indian Affairs
Warm Springs Agency
P.O. Box 1239
Warm Springs, Oregon 97761

Regional Solicitor
U.S. Department of the Interior
500 N.E. Multnomah, Suite 607
Portland, Oregon 97232

D. RECORDS. The Parties shall maintain a copy of the transcript of their formal negotiations proceedings as a public record that may be used in connection with the administration and interpretation of this Agreement.

ARTICLE VI

DISCLAIMERS AND RESERVATION OF RIGHTS

A. GENERAL DISCLAIMERS. Nothing in this Agreement shall be so construed or interpreted:

1. To establish the nature, extent, transferability, or manner of enforcement of water rights of any Indian reservation other than the Warm Springs Indian Reservation;
2. To establish any standard to be used for the quantification of federal reserved water rights or other Indian water claims of any other Indian tribes in any judicial or administrative proceeding;
3. To preclude the acquisition or exercise of an appropriative right to the use of water under State law by the Tribes or any individual Indian within or outside the Reservation by purchase of land, by water right exchange or transfer under state law or by application to the State;
4. To limit in any way the rights of the Parties or any other Person to litigate any issues or questions not resolved by this Agreement;
5. To limit the right of Allottees, Indian fee land holders or *Walton* Right holders to claim or to exercise their legal entitlement to a portion of the Tribal Reserved Water Right or to restrict the right of non-Indian fee land holders within the Exterior Boundary of the Reservation to apply for or maintain a water right under state law to be administered as set forth in Article V.A.4;

6. To authorize the taking of a water right which is vested under Tribal, State or federal law;
7. To create, affect, or deny substantive rights through headings or captions used in this Agreement;
8. Except as specifically provided in this Agreement, to limit the authority of the Parties to carry out their obligations in accordance with applicable Constitutions, Statutes, regulations and procedures;
9. Except as specifically provided in this Agreement, to limit or confer upon the State any jurisdiction or authority over the Reservation or the Tribes.
10. To alter the trust responsibility of the United States;
11. To define the quality standards that water described in this Agreement must meet;
12. To alter, modify, establish, or define the position of any Party with respect to the location of the boundary of the Reservation;
13. To limit the discretion of any federal, state or tribal agency to repeal, amend or promulgate regulations consistent with this Agreement;

14. To obligate funds, or require any Party to expend any sum not appropriated and made available for expenditure;
15. To affect any Party's authority to relinquish, tax, diminish or abandon any part of the Tribal Reserved Water Right;
16. To affect any Party's position with regard to whether or not there is a tribal reserved water right outside the Exterior Boundary of the Reservation or the extent of any such right;
17. To quantify water rights claimed by any Federal agency or appurtenant to other Federal property, nor does it limit in any way the right and power of the United States to reserve or otherwise acquire land or rights to the use of water in the future, subject to applicable law;
18. To affect the rights and obligations of the parties to the agreement between the Tribes and the Juniper Flat District Improvement Company dated June 29, 1971, and recorded July 8, 1971, in the records of Wasco County, Oregon, under microfilm numbered 711138;
19. To affect the allocation of unallocated storage associated with the Prineville Reservoir Project; or

20. To affect any Party's position with respect to the appropriate conditions that may apply to the relicensing of the Pelton Project.

B. PELTON PROJECT. The Tribes currently operate a hydroelectric generating facility at the Re-regulating Dam of the Pelton Project, FERC No. OR-2030. The Tribes are a co-licensee with Portland General Electric Company for FERC License No. OR-2030 and joint licensees for the regulating dam portion of State of Oregon License No. 222. State of Oregon License No. 222 specifically recognizes that there is a disagreement between the Tribes and the State as to the legal necessity of the Tribes acquiring a State license, which disagreement does not require resolution for purposes of this Agreement. Notwithstanding any other provision of this Agreement, the Parties agree that this Agreement shall not create, change or alter any legal basis, authorization or priority of tribal water use for hydroelectric generation and the use of water for hydroelectric power purposes shall not be deemed an Existing Tribal Use or otherwise included in the Tribal Reserved Water Right. Nor shall anything in this Agreement alter, expand, or diminish the Secretary of the Interior's exercise of authority pursuant to the Federal Power Act, including, but not limited to, the provisions of §§4(e), 10(j), and 18; provided however, that no action or event in the Pelton-Round Butte Hydroelectric Project relicensing proceeding shall serve to increase or decrease the Tribal Reserved Water Right.

C. RESERVATION OF RIGHTS. The Parties expressly reserve all rights except to the extent that such rights are specifically relinquished, foregone, or subordinated pursuant to the terms of this Agreement.

ARTICLE VII
BINDING EFFECT

Upon the effectiveness of this Agreement, its terms will be binding upon:

- A. The State and all Persons claiming or asserting any right under the authority of the State; provided, that for purposes of authorization, the validity of consent, ratification, or authority is to be determined by State law.

- B. The Tribes and all Persons claiming or asserting any right to the use of the Tribal Reserved Water Right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribes, or any right arising under Tribal law; provided, however, that a *Walton* right may be subject to forfeiture for non-use.

- C. The United States.

ARTICLE VIII
FINALITY AND EFFECTIVENESS OF AGREEMENT

- A. **REQUIRED ACTION.** This Agreement shall be binding upon the signatories when it is signed; provided however, approval by the Tribal Council is subject to the provisions of Article VI of the Tribal Constitution as set forth in Article II.B. of this Agreement. The

Agreement shall not be effective until it is incorporated in a final judgement and decree of the Circuit Court of Oregon for Deschutes County pursuant to ORS 539.320 through 539.340. In the event that this Agreement is not approved by such Court within two years of its execution by the Parties, the Parties shall develop a mutually agreeable course of action to secure final approval of the Agreement.

B. FINAL COURT DECREE. The State and United States shall jointly petition the Circuit Court of Oregon for Deschutes County to have this Agreement incorporated without alteration into a final court decree. This Agreement shall be effective as to all the Parties and all Persons claiming or asserting any right under the laws and/or authority of such Parties upon the issuance of the final court judgment and decree by the Circuit Court of Oregon for Deschutes County pursuant to ORS 539.340(1).

C. MODIFICATION. This Agreement, the decree and the order approving this Agreement, may not be modified in any manner whatsoever except with the joint written consent of the duly authorized representatives of the Parties and the consent of the court approving this Agreement, after providing notice and an opportunity to be heard to all parties who may be affected by such proposed modification. Subject to the consent of the Parties and the Court having jurisdiction over the decree, this Agreement may also be modified, amended or amplified in the event of substantial changes in climatic conditions, significantly affecting physical, hydrologic or other conditions, which justify or require such modification, amendment or amplification.

D. MODIFICATIONS OF SUBSTANTIVE LAW. The Parties recognize that the law dealing with federal reserved Indian water rights is the subject of ongoing litigation and agree that subsequent changes, developments, or interpretations in such law shall not change the enforceability of this Agreement as written.

E. WAIVER. By entering this Agreement, the Tribes waive and release any claims against the United States arising out of the negotiation of this Agreement or the adoption of the specific terms of the Agreement.

ARTICLE IX

COORDINATION AND COOPERATIVE ADMINISTRATION

A. COOPERATIVE MANAGEMENT. In recognition of the concerns of separate sovereigns as well as the hydrologic and economic inter-relationships of water use within the Deschutes River Basin, the Parties agree to continue cooperative efforts to efficiently manage water, water quality, and other aquatic resources and to fairly resolve disputes arising under this Agreement without resorting to litigation. This Agreement will be implemented through a memorandum of understanding between the Parties, all of which will be consistent with the terms of this Agreement. The Parties agree to meet and describe in the memorandum of understanding the process for determining injury to the Tribal Reserved Water Right.

B. INTERGOVERNMENTAL BOARD. There is hereby created a three member Intergovernmental Board composed of a representative appointed by each Party.

C. INTERGOVERNMENTAL BOARD DUTIES. The Intergovernmental Board shall operate by consensus and assist in the implementation of this Agreement and may mediate disputes regarding the interpretation of this Agreement, the timing and method of calls to satisfy uses with senior priority dates and other matters relating to, or arising out of, this Agreement.

The Parties have executed this Agreement on the date following their respective signatures.

John A. Kitzhaber
Governor, State of Oregon

Joseph Moses
Chairman, Tribal Council

Date

Date

Nelson Wallulatum
Chief, Wasco Tribe

Delvis Heath
Chief, Warm Springs Tribe

Date

Date

Vernon Henry
Chief, Paiute Tribe

Irene Wells
Vice Chair

Date

Date

Zane Jackson
Tribal Council Representative

Jacob Frank
Tribal Council Representative

Date

Date

Wilson Wewa, Sr.
Tribal Council Representative

Kathleen Heath
Tribal Council Representative

Date

Date

Raymond F. Calica, Sr.
Secretary-Treasurer and
Tribal Council Representative

Bruce Brunoe, Sr.
Tribal Council Representative

Date

Date

Martha O. Pagel, Director
Oregon Water Resources Dept.

Bruce Babbitt
Secretary of the Interior

Date

Date

Hardy Myers
Attorney General
State of Oregon

Lois Schiffer
Assistant Attorney General
United States Dept. of Justice

Date

Date