

Statement/Assessments on projects (Timber sales, roads, trails, etc.).

-BIA - 25 CFR 166.6 as Trustee, Land Operations, in cooperation with Tribal Natural Resources, administers range lands in conjunction with the Tribe's Range Management Plan and Zoning Ordinance. Enforcement: Tribal and BIA.

#### OPTIONS:

1. No Action
2. Implement monitoring program for soils and reduce compacted acreage
3. Define responsibility/authority, develop laws on soils
4. Adopt & implement IRMP by enforcing standards
5. Amend Range and Agriculture Code; Section 460.104. Add a mandatory section dealing with riparian protection to grazing unit plans.

JOINT COMMITTEE RECOMMENDS #'s 2-5

#### B. Lagoons

**ISSUE STATEMENT:** Existing lagoon sewage treatment facilities (4 community and 2 industrial) are nearing capacity and no longer comply with the Clean Water Act. New methods to meet EPA standards could be additional ponds, filtering systems, or possibly a new sewage treatment plant. All three methods are expensive and require additional yearly operating funds. A proposal is being considered to allow the over-flow of treated water into wetlands.

- Managing existing lagoons/need tribal permit system for discharges
- Permitting/building new sites
- Oil Ponds, wastewater lagoons (mostly at WSFPI), and clean-up procedures
- Tertiary treatment (nutrient removal) i.e. sludge
- Sewer System (pipe) upgrade by BIA
- Kah/Nee/Ta lagoon adequacy
- Water Quality in Deschutes River
- Odor

Wastewater treatment facilities discharge into rivers. Discharges require a National Pollutant Discharge Elimination System (NPDES) Permit issued by EPA.

**Need:** Facilities are at or near capacity for discharge standards (requires tribal permit for sighting and construction and EPA permit for discharge). There is a need to upgrade lagoons to meet standards. The systems have main and service line infiltration problems (groundwater and leaky faucets) along with storm drains adding to the near capacity flows. Therefore, continuing with EPA enforcement and updating systems to meet tribal growth (as to EPA and Tribal standards) is appropriate. Considering that the tribe is lacks suitable sites for new systems, emphasis will be given to the design of cost effective alternative methods.

#### Responsibility:

**Enforcement:** EPA and Tribe  
**Monitoring:** EPA, IHS and Tribal  
**Management:** Tribal

#### OPTIONS:

1. No Action
2. Upgrade systems to comply with Tribal/EPA standards, use 20 yr population growth projections, and explore alternative methods to discharge/treatment.
3. Update Water Code Standards for design and discharge once water negotiations are complete.

THE JOINT COMMITTEE RECOMMENDS #2.

#### C. Hazardous Materials:

**ISSUE STATEMENT:** Several spills have occurred near water sources on Hwy 26 within the reservation boundaries. Concern that a Burlington Northern Railroad spill could cause a major pollution problem in the Deschutes River has also been expressed. -Response and enforcement authority unclear

- Transportation of hazardous materials (BIA spilled herbicides while transporting)
- Mill wastes (oil products, waste water, and chemicals)

- Underground storage tanks
- Solid waste
- Upstream hazardous waste spills in the

Deschutes River drainage

#### OPTIONS:

1. No Action
2. Prepare a formal action plan involving government-to-government agreements and/or law on transportation of hazardous materials through reservation.
3. Install protective barriers at likely spill sites.

JOINT COMMITTEE RECOMMENDS #'s 2-3.

#### EXISTING TRIBAL ENVIRONMENTAL LAWS

**WATER CODE** - Ordinance No. 45 adopted the official Water Code which consists of the "Water Resource Inventory and Water Management Plan for the Warm Springs Reservation", the "Implementing Provisions of the Warm Springs Management Plan," and established a three-member Water Control Board (hereinafter WCB).

The Water Code provides that, before an activity is initiated in a watershed area, a plan must be submitted to ensure that water quality is not impaired. The Watermaster makes periodic water quality checks of public domestic water sources and reports infractions of the Implementing Provisions to the WCB.

-Tribal Law and Order Code and resources of the Tribal Police and Tribal Court can be used to enforce provisions using fines not to exceed \$360.00, up to six months in jail or both.

-Water quality guidelines provide that any public water supply system, serving fifty or more people must record information for Tribal Council or its delegated authority; monthly analysis of public water supplies that serve twenty five families or more, samples to be submitted to an approved laboratory. If reports indicate unsafe water, the individual responsible for operation of the water supply will immediately take action to correct sanitary defects.

-Incorporated into guidelines are criteria for aerobiotic digestion sewage treatment plants and the design of domestic sewage lagoons and stabilization ponds. WCB supervises management of these guidelines.

The "Implementing Provisions of the Water Management Plan" were established by the WCB and approved by Tribal Council in Resolution 5772 in 1980. The Provisions require permits for use of water, and provide that:

- Watermaster has authority to refer permit applications for hearings before WCB if public interest adversely affected;
- WCB can deny permit;
- Appeals can be made to Tribal Council;
- Tribal Court has full equitable powers;
- Tribal Police have full powers;
- Watermaster can initiate "Critical Ground Water Area" proceedings if water quality issues arise in connection with new wells or alterations of an existing well;
- WCB can make "Critical Ground Water Area" determinations and issue orders to abate or seal wells that pollute ground water supplies;
- Watermaster shall use 1977 Safe Drinking Water Act standards for drinking water; utility departments to monitor the public water supply system, sampling for coliform bacteria, chlorine residuals turbidity, organic and inorganic chemicals. No wastes shall be discharged and no activities shall cause violation of water quality standards. Section 4.5 of the Implementing Provisions requires treatment prior to discharge of any waste from any new or modified facility into any waters of the reservation;
- WCB may use Health and Sanitation Ordinance No. 54.

**HEALTH AND SANITATION ORDINANCE NO. 54 (1973)** - Governs construction and use of water supply and waste disposal facilities; sewage disposal system must meet public health standards; discusses solid waste management, storage, collection and disposal. Ordinance is lacking in detail and substance.

**ORDINANCE NO. 62** - Rules and Regulations of the Warm Springs Utility

Commission. Adopted September 9, 1981

- Section 2 - This governs conditions under which water supplies, sewage disposal and solid waste collection will be provided by Warm Springs Utility Commission (Tribal Utility Department and Plant Management of the BIA).

- Ordinance contains no provisions relating to water quality, pollution or other environmental regulation.

**ZONING AND LAND USE CODE** - WSTC Chapter 411.001 - Purpose of Zoning and Land Use Code is to provide protection and orderly development of reservation lands and resources. The code establishes various zones and the permitted uses and standards within those zones.

**ANTIQUITIES ORDINANCE NO. 68** - WSTC Chapt. 490 - Protection and Management of Archeological, Historical and Cultural Resources.

490.001 - Policy and intent is to protect and preserve cultural sites and materials which include foods and other natural resources; information on ancient, cultural and historic sites will be incorporated into land use management planning.

490.001(4) - All land use actions taken pursuant to tribal land use code must take into consideration possible impact of land use action on archeological, historic and cultural sites and materials.

490.010(4) - Cultural material includes fish, game, roots, berries, cedar bark and water having special significance.

490.100 - No person knowing or having reason to know that a protected site (which includes cultural materials) is impacted shall excavate, injure or remove damage or alter the site unless authorized by Tribal Council permit. Land Use Committee develops procedural rules before permits are issued.

#### EXISTING FEDERAL/STATE ENVIRONMENTAL LAWS

The United States Environmental Protection Agency (EPA) is charged with administering most federal environmental laws. Some of these laws allow EPA to authorize states and Indian tribes to develop their own environmental protection agencies to enforce the minimum federal standards or more stringent state and tribal laws. In 1984, EPA issued a policy recognizing tribal governments as the primary parties for making environmental policy decisions and managing environmental programs for their reservations, consistent with EPA standards and regulations.

The State of Oregon has its own environmental laws, some of which mirror the federal laws. These laws do not apply to the reservation. EPA has authorized Oregon to administer most of the various programs relating to water quality.

Since Oregon does not have jurisdiction to operate water quality programs on the reservation, EPA retains authority. However, as discussed below, some federal laws allow EPA to delegate authority to Indian tribes.

#### Safe Drinking Water Act (SDWA)

The Safe Drinking Water Act was enacted in 1974 and amended in 1977 and 1986. The 1986 amendments afforded tribes the same treatment as states for specific purposes of the Act. One of the provisions allows tribes to achieve "primacy" to assume control of the Public Water Supply System and Underground Injection Control programs under the Act.

Basically, the Act requires compliance with drinking water standards that set the amount and type of contaminants that can be present in drinking water. The Act only applies to public water systems, which include systems that serve water to at least 25 persons. Currently the 1977 SDWA Standards are in effect on the reservation under the Implementing Provisions.

Another program under the Act deals with

the protection of underground sources of drinking water. For example, the Act prohibits well injections in areas where an underground water source is present.

**The Clean Water Act** - The Clean Water Act, formerly known as the Federal Water Pollution Control Act, was passed in 1972 and amended in 1987. The Act regulates the discharge of pollutants into waters of the Nation through a permit system known as the National Pollutant Discharge Elimination System (NPDES). The Act's goal is to eliminate of the discharge of pollutants into the nations waters. The Act makes unlawful the discharge of pollutants if in violation of the standards set forth in the NPDES permit.

The 1987 amendments afforded Indian tribes the same treatment as states for specific purposes of the Act. One provision allows tribes to take over control of certain Clean Water Act programs within reservation boundaries.

**Integrated Resource Management Plan (IRMP) - Forested Area** - It's purpose is to provide guidelines for future use and preservation of forest resources and to serve as a basis for decision-making by Tribal Council and Tribal Management. Non-forest areas will also be covered by the plan.

#### IRMP Overall Goals:

1. Provide for long-term productivity of all resources.
2. Provide for sustainable economic and employment opportunities for present and future.
3. Preserve, protect and enhance environmental and cultural values.
4. Sustain traditional, subsistence and other cultural needs of current and future generations of tribal members.
5. Provide for the protection of public health and safety.
6. Manage for diversity and stability of the forest ecosystem.

**Water Quality** - On-reservation streams meet the chemical water quality standards adopted in the Implementing Provisions of the Tribal Water Code most of the time; temperatures exceed standards for weeks during the late summer and early fall months; sediment and turbidity levels are also a problem in some streams during run-off events; over 50% of the streams have been impacted by management activities.

Water Resources Objective No. 4 is to establish and enforce water quality standards to provide protection of public health and the conservation of plant, aquatic and animal life.

#### National Indian Forest Resources Management Act

-In November of 1990, Congress passed the National Indian Forest Resources Management Act (NIFRMA). Section 309 of the Act requires the Secretary of the Interior to comply with tribal laws pertaining to forest lands, including laws regulating the environment, and to assist tribes in the enforcement of such laws.

#### OTHER

**IHS - Environmental Health Program** - The IHS branch of Environmental Health Services currently has no enforcement authority or direct responsibility. IHS provides technical assistance, consultation, advice and training, rather than direct performance of services for environmental implementation. This is a critical and often misunderstood distinction. One function of Environmental Health Services is designed to assure safe water supplies, and prevent waterborne diseases. This is done through a program of surveillance of water supplies and by encouraging the proper use, operation and maintenance of water supplies. Sanitary surveys of community water systems are a part of surveillance. Technical assistance and consultation is provided in regard to water quality, water availability, construction of water systems, operation and maintenance, and related topics. (see ENVIRONMENTAL HEALTH PROGRAM UNMET NEEDS ASSESSMENT for the Warm Springs Indian Reservation, Jan., 1988)