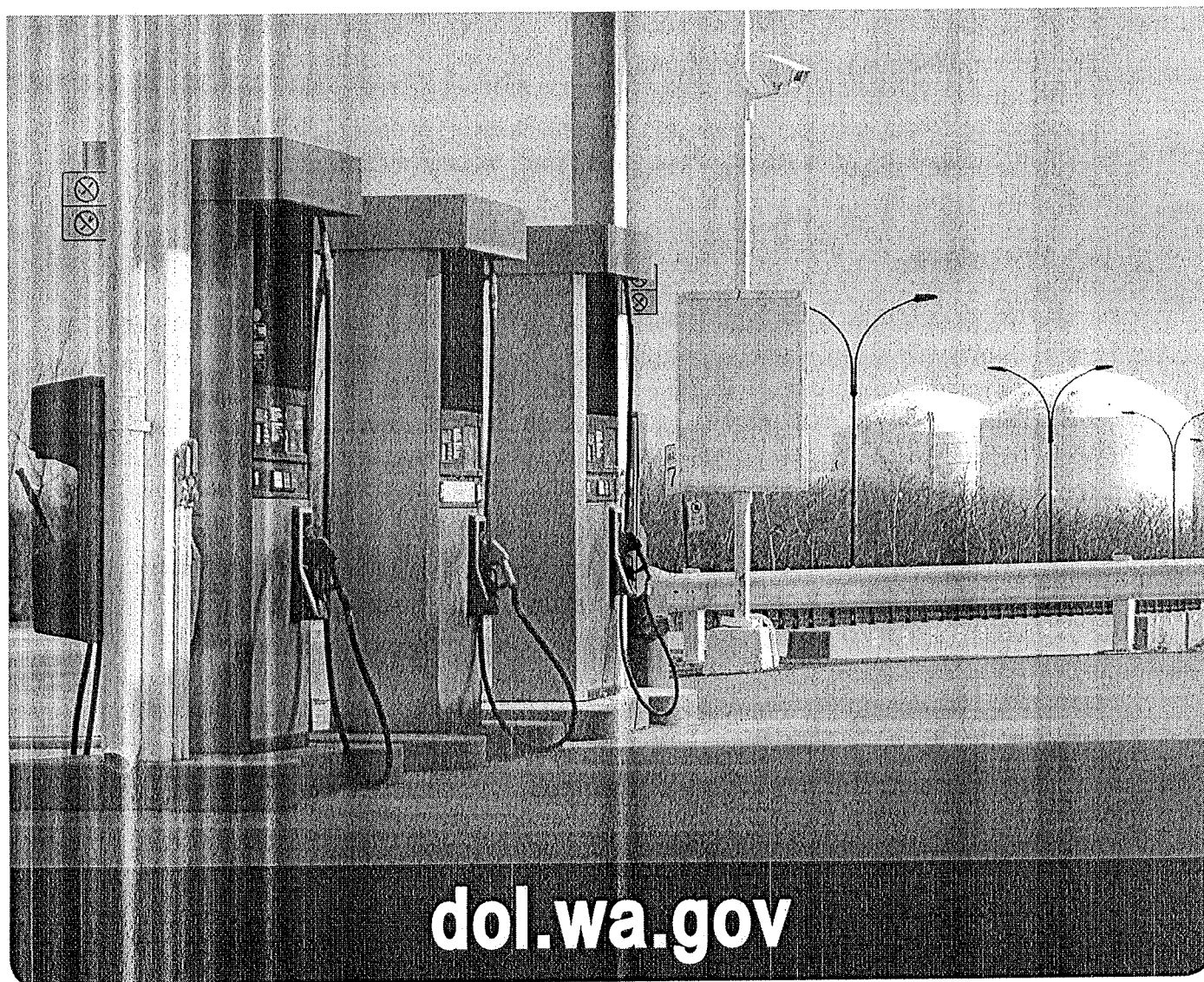


WASHINGTON STATE DEPARTMENT OF

**LICENSING**

# 2010 Tribal Fuel Tax Agreement Report

Updated February 2011



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## **Reporting Requirement**

SB5272 (Chapter 515, Laws of 2007) requires the Department of Licensing (DOL) to submit an annual report to the Legislature on existing compact agreements and ongoing negotiations on motor vehicle fuel tax agreements with federally recognized tribes within Washington State. This report has been submitted by the Tribal Liaison within the Director's Office of DOL. This report includes background information, tribal fuel tax agreement data and a summary for January through December 2010.

## **Background**

The fuel tax legislation, passed in 2007, provided the framework to improve communication and cooperation between the Department of Licensing and tribes regarding the taxation of fuel delivered onto tribal reservations or trust lands. Prior to the legislation, tribal fuel tax issues often resulted in legal action in state or federal courts. By providing clearly defined agreement authority, the Legislature offered a means for resolution for the state to work with the tribal governments.

The Director of DOL (by delegated authority from the Governor) may enter into motor vehicle fuel tax compact agreements with any federally recognized Indian Tribe. These agreements are limited to motor vehicle fuel and special fuel taxes included in the price of fuel delivered to a tribally-licensed retail station entirely owned by a tribe, tribal enterprise, or tribal member on reservation or trust land.

## **Key Provisions**

- a) Requires the tribe or the tribal retailer to acquire all motor vehicle fuel from a licensed distributor, supplier, importer, or blender, or from a tribal distributor, supplier, importer, or blender lawfully doing business according to all applicable laws;
- b) Tribe or the tribal retailer only purchase fuel which have applicable tax has been paid;
- c) The tribe will spend fuel tax proceeds on: planning, construction, and maintenance of roads, bridges, and boat ramps; transit services and facilities; transportation planning; police services; and other highway-related purposes;
- d) Includes provisions for audits or other means of ensuring compliance to certify the number of gallons of motor vehicle fuel purchased by the tribe for resale at tribal retail stations, and the use of fuel tax proceeds or their equivalent for the purposes identified in (b);
- e) The provisions of this section do not repeal existing state/tribal fuel tax agreements or consent decrees in existence on May 15, 2007;
- f) Information from the tribe or tribal retailers received by the state or open to state review under the terms of an agreement shall be deemed to be personal information under RCW 42.56.230(3)(b) and exempt from public inspection and copying.

## **Definitions**

Per Capita Agreement – The per capita agreement with tribes is based upon a computational formula which takes into account the average per capita consumption of gasoline by Washington State drivers (as determined by the Washington State Department of Transportation), the number of enrolled tribal members located on or near the reservation (commonly called the tribal service area) and the current state fuel tax rate. The result is an estimate of the amount of fuel tax most likely paid by tribal members purchasing fuel on the reservation. This formula provides an annual amount of fuel tax to be refunded to each tribe.

75% Refund/25% State Tax Agreement – Tribes agree to purchase fuel for sale at tribally owned retail stations with the state fuel tax included, as the state tax is imposed on the supplier. Tribes report their purchases to the DOL and receive 75 percent of the state motor vehicle fuel tax revenue collected as a refund and the state retains 25 percent as state tax.

Consent Decree – A consent decree is a judicial decree issued by the court expressing voluntary agreement between parties to a dispute.

## **Fuel Tax Agreements, Revenues and Refunds**

DOL is party to 22 fuel tax agreements or consent decrees. At the time of the original report, DOL only had records for refunds through October 31, 2010. DOL has updated the records to include November 1, 2009 to December 31, 2010. Annual tribal fuel tax refunds from all tribal fuel agreements for the time period of November 1, 2009 through December 31, 2010 is approximately \$31.72 million. The fuel tax for revenue retained by Washington State for fuel purchases by the tribes with 75% refund/25% state tax agreements during the same period is approximately \$7.65million. The fuel tax refund for fuel purchases by the tribes with a per capita formula agreement during the same period is approximately \$3.5 million. Yakama Nation, which has a consent decree stipulating they can have fuel delivered with 25% of the state fuel tax included, has received approximately \$5.26 million of tax-free fuel.

## **Audits**

All 16 of the post-2007 fuel tax agreements included audit provisions. Of those agreements with audit provisions, ten of the 12 audits were completed and reports submitted to DOL in 2010. Four audits are not due until 2011.

As noted in the “Key Provisions” section of this report, audit reports may not be disclosed per RCW 82.36.450 and 82.38.310, which states in part, “...information from the tribe or tribal retailers received by the state or open to state review under the terms of an agreement shall be deemed to be personal information under RCW 42.56.230(3) (b) and exempt from public inspection and copying.” However, some of the tribes agreed to allow DOL to share some

detailed information about their expenditures, which is contained in the "Transportation Projects" section of this report.

## Summary

From November 2009 through October 2010, DOL is currently in negotiation with one tribe for a Fuel Tax Agreement. The Shoalwater Bay Indian Tribe successfully negotiated a new Fuel Tax Agreement; a 75%/25% refund type effective June 2010. They also notified DOL of the opening of a new fuel station. Kalispel Tribe of Indians notified DOL of the opening of their new fuel station. The DOL has received ten of the audit reports due from Tribes with audit requirements in their fuel tax agreements. DOL has been in communication with the Tribes of the two outstanding reports due in 2010.

All fuel tax agreements and refund types		
Tribe	Agreement type	Refund type
Chehalis	Agreement	75% Refund 25% State Tax
Colville	Agreement	Per Capita Formula
Jamestown S'Klallam	Agreement	75% Refund 25% State Tax
Kalispel	Agreement	75% Refund 25% State Tax
Lummi	Agreement	Per Capita Formula
Makah	Agreement	Per Capita Formula
Muckleshoot	Agreement	Per Capita Formula
Nisqually	Agreement	75% Refund 25% State Tax
Nooksack	Agreement	75% Refund 25% State Tax
Port Gamble S'Klallam	Agreement	75% Refund 25% State Tax

Puyallup	Agreement	75% Refund 25% State Tax
Quileute	Agreement	Per Capita Formula
Quinault	Agreement	Per Capita Formula
Shoalwater Bay	Agreement	75% Refund 25% State Tax
Skokomish	Agreement	75% Refund 25% State Tax
Spokane	Agreement	75% Refund 25% State Tax
Squaxin Island	Agreement	75% Refund 25% State Tax
Suquamish	Agreement	75% Refund 25% State Tax
Swinomish	Agreement	75% Refund 25% State Tax
Tulalip	Agreement	75% Refund 25% State Tax
Upper Skagit	Agreement	75% Refund 25% State Tax
Yakama Nation	Consent Decree- Delivery to tribal and tribally licensed outlets with 25% of tax included	75% Refund to distributors 25% State Tax

## Transportation Projects

### Jamestown S'Klallam Tribe

Transportation Planner – A quarter time (.25 FTE) Tribal Transportation Planner position was funded with fuel tax revenues in 2010. Having the ability to dedicate tribal staff resources to transportation planning allowed the Tribe to effectively plan for upcoming transportation funding opportunities, to focus on updating the BIA Indian Reservations Roads inventory, to devote time to participating in the Tribal Transportation Planning Organization (a Jamestown staff person has served as the Recording Secretary/Treasurer since 2004) and to provide project management resources for projects under construction during 2010.

Tribal Transportation Planning Organization Support – The Tribal Transportation Planning Organization (TTPO) is comprised of Tribal planners from the Northwest. It serves as an education forum that allows tribal planners to keep abreast of the latest transportation related information as well as to network with colleagues and agency representatives in the

transportation field. The Jamestown Tribe made a contribution to the TTPO to support operational expenses.

Zaccardo Road Right Turn Land Project – In conjunction with WSDOT the Tribe was able to begin to plan for the addition of a right turn lane from SR 101 onto a local county road serving the Tribe's South Campus to initiate a safety and mobility improvement. WSDOT required an advance payment to authorize the work and to process the change order necessary to add this work to an existing paver project in the vicinity of the Tribal governmental campus. This actual construction of the turn lane will be completed in 2011.

Septic Treatment Plant Road Paving – Solid waste from the Tribal governmental campus is collected in tanks and pumped away from Sequim Bay to be processed through a state of the art membrane treatment system. This system produces virtually clean water that is then released into a drain field. The road to the septic processing facility was paved this summer to provide year around access to the plant.

Jamestown Family Medical Clinic Access Road – The Tribe completed construction of the Jamestown Family Medical Clinic in April of this year. The facility, which serves both Tribal and non-tribal clients, was opened to the public in May. The access road to the clinic, which intersects with the city of Sequim's Fifth Avenue, was constructed as a part of the site work for the clinic construction project.

Pay down of Longhouse Market Road Loan – SR 101 and the county road intersection at Sophus Road, which now leads to the Longhouse Market and Deli, were improved to meet state specifications for vehicle ingress and egress. The Tribe is amortizing those road costs over a 5-10 year term using fuel tax revenues to pay down a loan used to construct the road improvements.

### **Nisqually Tribe**

The funds dedicated to transportation and police services has allowed the Tribe to provide some services and facilities for its members that it has never been able to afford in the past.

#### Roads

- Year-round street cleaning program
- Road-sealing program in residential neighborhoods
- New roads (planned): Frontage Road, North-South Connector Road; preliminary engineering and right-of-way purchase in 2009-10, construction in 2011-12 (*new*).
  - Frontage Road: a safety and mobility project; will connect five dead-end residential cul-de-sacs laterally, allowing reservation traffic to access government and retail services and the casino without traveling on State Route 510.
  - North-South Connector Road: a safety and mobility project; will connect the Tribe's largest residential area (Cuyamuca Village) and the new Youth/Community Center (both at the north end of the reservation) to the

proposed new Frontage Road, and thus to government and retail services and the casino without the need to travel on SR-510.

#### Road Maintenance

- Road Striping (new)
- Asphalt Street Repair (new)
- Road Culvert Repair (new)

#### Planning

- Trails Plan (2009): Develop a plan to upgrade existing informal paths and identify the need and location for new trails; trails will provide pedestrian/bike access from residential areas to government and retail services and to the day care/elders center; will study the need for a separate ORV facility (*new; Draft Plan completed 10-10*).
- Trail Construction (2011): Build new and improve existing pedestrian/bike trails (*new*).
- Sidewalk Plan (2011): Study and prioritize areas for new sidewalks (*new*).
- Sidewalk Construction (2011): Build new sidewalks in priority areas (*new*).
- Transportation Planning (2010-11): One full-time, permanent planning staff.
- Safety Study: join with Thurston County to conduct a study to improve the safety of the Reservation Road/Yelm Highway/SR-510 intersections (2010-11) (*new*)

#### Transit (2011-12)

- Nisqually Tribe cash match for Rural/Tribal Transit program, administered by Thurston Regional Planning Council.

#### Miscellaneous/Other

- Bus shelter installation (3), 2011: Will be installed in residential areas and adjacent to the new Community Center (*new*).
- Pedestrian safety improvements, 2010-11: Connect pedestrian crossing of SR-510 to the Day Care/Elders Center and retail services (*new*).
- New street sign program, 2010-11: Design and install street signs on the Nisqually reservation.

#### **Puyallup Tribe of Indians**

WSDOT HOV Interstate Improvement Project - Partnering between Tribal staff and WSDOT personnel in the pre-permitting activities, environmental and realty (easements) required for the realignment of Interstate 5 and the relocation of the Puyallup River Bridge.

Grandview Avenue Project - Engineering, design and other work necessary for road construction and maintenance on Grandview Avenue from Grandview Learning Center to 32<sup>nd</sup> Street (construction will begin on October 25, 2010).

Wilkeson Access Road Project - Engineering, design and other work necessary for road construction and maintenance on Wilkeson Access Road (construction will begin on October 25, 2010).

#### Pacific Highway Projects:

- Design development of a three-lane, curb, gutter and sidewalk arterial road including utility infrastructure from Pacific Highway South to 12<sup>th</sup> Street in the City of Fife with complete signalization at 12<sup>th</sup> Street; completion of civil engineering for road right-of-way acquisition for the above described roadway development.
- Designing and engineering for signal and intersection improvements at 59th and Pacific Highway East.
- Designing for frontage improvements along Pacific Highway, including an additional driving lane from just east of 59th Ave. to 300' east of 62nd Ave., new sidewalk, street lighting, landscaping and re-striping of Pacific Highway (construction planned to begin in late December or early January).
- Designing and permitting for 62<sup>nd</sup> Avenue improvements, including new curb, gutter and sidewalk, landscaping and asphalt (construction scheduled to be done during November and December).

Browning Street Project - Engineering, design, NEPA/SEPA/TEPA, ROW purchases, City/County permit work for future road construction and maintenance project on Browning Street from Grandview to Pioneer; safety turn lane on Pioneer, protection of wetland with storm water detention/treatment.

Huckleberry Bridge Project - Designing new 120ft bridge and access road over the Huckleberry Creek.

32<sup>nd</sup> Street Bridge Project - Coordinating with the City of Tacoma related to work on the 32<sup>nd</sup> Street Bridge.

R Street Project - Coordinating with the City of Tacoma for the redevelopment of R Street (terminates with connection to Bay Street) and the architectural, engineering and civil work necessary for the creation of a three-lane arterial with curb, gutter and sidewalks including all underground utilities.

Road Maintenance Projects - Working with City of Tacoma on annual road maintenance schedule for community area roads.

Emergency Access Road Project- Working with City of Tacoma on opening up Division from Grandview to Roosevelt; construct a road behind the Grandview Learning Center and Housing project to connect to Division – working with School District on gaining an easement for the road.

Police Services - Supporting police services for patrol of roads.



## **Skokomish Indian Tribe**

Public Works - A primary responsibility of our Public Works Department is road maintenance within the Reservation. The fuel tax funds were used during 2010 to maintain the new ditches and storm drainage channels that were completed in FY 2009, so that they function effectively during the flood season, allowing us to keep affected roads open to the public. The funds are also used for a variety of transportation operating and administrative costs, including repair and maintenance of equipment such as the Tribe's new tractor with boom mower as well as our extremely aged road equipment such as the dump truck, snow plows and backhoe. This equipment is essential to maintain the roads in good working order. The fuel tax funds also provide a portion of the salaries for the two employees of the Public Works Department to the extent their efforts are directed at eligible transportation projects.

Public Safety - Fuel tax revenues provide much needed support for our law enforcement services directly related to patrol of roads within the reservation, including patrol vehicle fuel and maintenance and MACECOM dispatch services.

Infrastructure Development - The Tribe is utilizing the fuel tax revenues for continuing improvements and further work on the road system up to and within a new housing development that is above the floodplain. The development will eventually provide about 100 sites for residential housing.

## **Spokane Tribe of Indians**

Tribal Logging Units - Tomnee Unit, Nixon Rock Unit, and Kalastan Unit, these three logging units The Tribal Roads Department maintained the Tribal Roads leading to these Units. We Graded, Rolled, Watered, hauled Gravel in, on these roadways so the Tribal Logging businesses had safe roadways to haul the timber off the mountains.

Gravel & Magnesium Chloride Project - This project was to place 6" of gravel on various Tribal Roads for safer driving conditions. The following roads were graveled - Wellpinit Catholic Church Roadway 0.2 miles, Mathews Cutoff roadway 1.3 miles, Pascal Loop Roadway 1.7 miles, Cotton Wood roadway 8.0 miles, Jackson Springs roadway 5.7 miles. The following roads had Magnesium Chloride applied to them - Smokey Lane 0.2 miles, Richard Peone Court 0.2 miles, Frank Wynne Court 0.3 miles Jessie Kenney Court 0.2 miles, Daisy Court 0.1 miles. This project put 13 men and women to work for 3.5 months (Truck Drivers, Grader Operator, Roller Operator, Laborers, etc.).

Ford Cluster Project - This project was to reconstruct roads for Ford Cluster Housing, Satchmo Way IRR 201 and Sleepy Drive IRR 202 these roads are approximately 0.6 miles combined which included site preparation, drainage, aggregate placement, asphalt paving and traffic control. This project put 17 men and women to work in the fields of Heavy Equipment Operators, Laborers, Flaggers, Construction site Foreman's, truck drivers, etc.

Child Care Development Center Project - This project was to reconstruct driveway and parking area for Child Development center, this project was approximately 564 feet long which included, construction of an access road with curb, parking lot, and concrete pad for the center. This project also put 12 men and women to work in the fields of Heavy Equipment Operators, Laborers, Flaggers, Construction site Forman's, Truck Drivers etc.

The Spokane Tribal roads department contracted with a local Diesel Mechanic this year to maintain all our equipment. The equipment we have right now is very old and our employees have been spending many hours on the maintenance of this equipment. With this on call Mechanic they will be doing all our routine maintenance and will fix all our break downs, which will leave the Tribal Roads Department employees to do our regular required work.

The Spokane Tribal Roads Department is trying a new Snow Removal process this year, Magnesium Chloride. With Magnesium Chloride we can stop the ice on the roadways that are most dangerous - (Canyons, Hills, sharp Corners, etc.) which will make it safer for our local school busses, police force, ambulance drivers, and local commuters. This will be applied along with the standard snow plow & sander trucks.

### **Suquamish Tribe**

Fuel tax proceeds for 2010 were spent on:

- Purchase of a bus and construction of bus stop enclosures.
- Probation Administration: Funds costs associated with the probation officer.
- SV Parking Lot Repair: Funds the costs associated with the repair of a road/parking lot intersection at the Tribal Administration office.
- ELC Busing: Funds a busing program to get children to the Tribe's Early Learning Center and back home again.
- Cap X – Roads: Funds new road construction and on occasion repair of existing roads within the reservation.
- Op Txfr to Masi Shop Turn Lane: Right turn lane construction to mitigate traffic on State Highway 305.

### **Swinomish Indian Tribal Community**

WSDOT Roundabout Extension Project – The purpose of this \$2 million project is to construct a new roadway extension south of SR20 from an existing roundabout and interchange road that serves several economic enterprises located in the area. Activities included preliminary engineering, design, NEPA compliance, and federal permitting. Tribal Staff continue to work with federal, state, and county agencies on this important project.

Swinomish Village Road Improvements and Reconstruction – Work continued on various road improvement projects adjacent to tribal housing. Specifically, the Tribe supported improvements

to correct deficiencies in the road-related storm-water drainage system in the Swinomish Village. Activities included preliminary engineering, design, NEPA, and right of way. Additionally, plans were completed for the reconstruction of Sahalie Drive, a residential roadway.

Tribal Road Maintenance Projects - Work on these road maintenance projects continues with staff meeting with engineers on preliminary design and permitting for surface repair of Squi Qui Lane, and for surface overlays of selected roads within the Swinomish Village. Activities include mowing, brush cutting, ditch maintenance, patch repair, crack sealing, street sweeping, equipment maintenance, and signage.

Transportation Planning and Administration – Additional transportation planning work and administrative expenses related to future road projects

Police Services - Including tribal and non-tribal local government police agencies that provide road patrol services.

### **Tulalip Tribes**

Totem Beach Road Improvement Project - \$486,000.00 This is a road that borders the north side of Tulalip Bay within the Tulalip Reservation and serves this residential community.

Interstate 5, 116th Street (Exit 202) Overpass Project, Design and Engineering - \$1,600,000. 116th Street Overpass is used by residential citizens and commercial customers of the greater Marysville Tulalip area. The overpass is currently a three lane road that becomes congested during peak commuting hours during the week and most shopping hours on the weekends/holidays. It is Tulalip's desire to widen the bridge deck and change the on-off ramps to improve the traffic flow for the approximately 28,000 car trips per day currently utilizing this exit.

