

5-11-2007

# 2007 Shoshone-Bannock Tribal Water Resource Code

The Shoshone-Bannock Tribes

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## Preferred Citation

Shoshone-Bannock Tribal Water Resources Code, WATR-07-S1 (2007)

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P.02/02



THE SECRETARY OF THE INTERIOR  
WASHINGTON

MAY 11 2007

The Honorable Alonzo Coby  
Chairman, Shoshone-Bannock Tribes  
P.O. Box 306 Pima Drive  
Fort Hall, Idaho 83203

Dear Chairman Coby:

This letter responds to your letter dated March 15, 2007. As you know, the Shoshone-Bannock Tribes and the Department of the Interior have worked together for over two decades to develop and implement the 1990 Fort Hall Indian Water Rights Act (Act) and the 1990 Fort Hall Indian Water Rights Agreement (Agreement) as part of the overall collaborative resolution of the Snake River Basin Adjudication. As requested in my March 6, 2007 letter, your March 15 letter submitted directly to this Office the final, amended 2007 Shoshone-Bannock Tribal Water Code for review and approval by the Department. Approval of the Code represents one of the final remaining actions required by the Act and Agreement.

The Department has reviewed the Code, which was amended and certified by the Fort Hall Business Council pursuant to Ordinance WATR-07-S1 (enacted March 2007). As authorized by the Act, Public Law No. 101-602, § 4, 104 Stat. 3059, and Article 8.3 of the Agreement, and in accordance with the actions taken by the Fort Hall Business Council pursuant to Ordinances WATR-97-S2, WATR-04-S2, and WATR-07-S1, I hereby approve the Shoshone-Bannock Tribal Water Code.

Sincerely,

DIRK KEMPTHORNE

*Thank you, Mr. Chairman.*



# The SHOSHONE-BANNOCK TRIBES



FORT HALL INDIAN RESERVATION  
PHONE (208) 478-3700  
FAX # (208) 237-0797

FORT HALL BUSINESS COUNCIL  
P.O. BOX 306  
FORT HALL, IDAHO 83203

March 15, 2007

The Honorable Dirk Kempthorne  
Secretary of Interior  
Department of Interior  
1840 C Street, NW  
Washington, DC 20006

Dear Secretary Kempthorne:

It was a great pleasure meeting with you to discuss the Shoshone-Bannock Tribes Water Code. We sincerely appreciate your willingness to promptly address the Water Code. Following our meeting, Solicitor David Barnhardt informed us that the Solicitor's Office was recommending approval.

Again, we are grateful for your expedited attention to this important Tribal matter. As you recommended in your letter of March 6, 2007, we are forwarding the Tribes' Water Code directly to your Office for final action. We look forward to having the final review being completed by your office.

Best regards,

Alfonzo Coby

w/enclosure

EXECUTIVE SECRETARIAT  
OFFICE OF THE

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## ORDINANCE

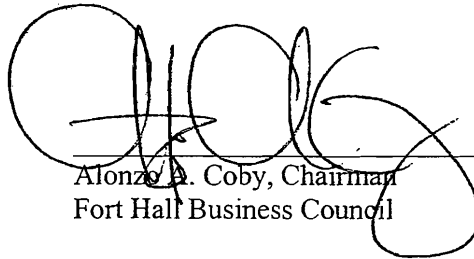
**WHEREAS**, in 1997 the Shoshone-Bannock Tribes enacted Ordinance WATR-97-S2, which was subsequently amended by WATR-04-S2, Shoshone-Bannock Tribal Water Code, to govern the regulation and protection of the Tribes' water resources on the Fort Hall Reservation; and

**WHEREAS**, the Tribal Attorney, Water Resources Department and Commission have been working with the U.S. Solicitor's Office to amend the Code to include provisions that the U.S. Solicitor's Office believes is necessary;

**NOW, THEREFORE, BE IT ENACTED BY THE BUSINESS COUNCIL OF THE SHOSHONE-BANNOCK TRIBES**, the attached Shoshone-Bannock Tribal Water Code is hereby amended.

Authority for the foregoing ordinance is found in the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended and under Article VI, Section 1 (a, c, k, l, ,s) and the Shoshone-Bannock Tribes Constitution and Bylaws of the Fort Hall Indian Reservation.

Dated this 16<sup>th</sup> day of March 2007.

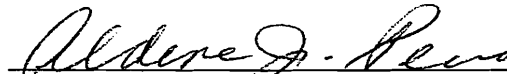


Alonzo A. Coby, Chairman  
Fort Hall Business Council

SEAL

## CERTIFICATION

**I HEREBY CERTIFY**, that the foregoing ordinance was enacted while a quorum of the Business Council was present by a vote of 4 in favor, 2 absent (AJP, MS), and 1 not voting (AAC) on the date this bears.



Aldene J. Pevo, Tribal Secretary  
Fort Hall Business Council

WATR-07-S1

cc: Elese Teton, Tribal Water Engineer  
Jeanette Wolfley, Special Counsel  
Tribal Attorneys Office

# SHOSHONE-BANNOCK TRIBES



2007  
TRIBAL WATER  
RESOURCES CODE

**2007 SHOSHONE-BANNOCK TRIBAL WATER RESOURCE CODE  
TABLE OF CONTENTS**

SECTION 1. GENERAL PROVISIONS .....	1
A. Title .....	1
B. Findings .....	1
C. Purposes .....	1
D. General Powers and Authorities .....	2
E. Construction .....	2
F. Scope .....	2
G. Allottee Water Rights .....	3
H. Definitions .....	3
SECTION 2. ESTABLISHMENT OF THE TRIBAL WATER RESOURCES COMMISSION AND THE TRIBAL WATER RESOURCES DEPARTMENT .....	6
A. Tribal Water Resources Commission Established .....	6
B. Tribal Water Resources Department Established .....	8
SECTION 3. SYSTEM FOR WATER USE AND RESOURCE MANAGEMENT .....	12
A. General Policies .....	12
B. Beneficial Uses of Water .....	13
C. Water Allocation Guidelines .....	13
SECTION 4. PERMIT AND LICENSE SYSTEM .....	14
A. Permit and License Required .....	14
B. The Permit System .....	15
C. The License System .....	17
D. Application Procedure for License or Permit .....	18
SECTION 5. VOLUNTARY RELINQUISHMENT OF CLAIMS OR RIGHTS, TRANSFERS, SECURITY INTERESTS, NO LOSS BY ADVERSE POSSESSION, PRESCRIPTION, ESTOPPELS OR ACQUIESCENCE, LOSS BY NONUSE, AND REVISION TO TRIBES .....	19
A. Voluntary Relinquishment of Claims or Rights .....	19
B. Transfers .....	19
C. Security Interests .....	20
D. No Loss By Adverse Possession, Prescription, Estoppels or Acquiescence .....	20
E. Loss by Non-Use .....	20
F. Reversion to Tribes .....	21
SECTION 6. ENFORCEMENT .....	21
A. Prohibited Acts .....	21
B. Penalties .....	21
C. Appeals .....	22
SECTION 7. HEARINGS AND APPEALS .....	23
A. Hearings on Permits and Licenses .....	23
B. Review of Tribal Water Engineer Decisions and Actions .....	24
C. Tribal Court of Appeals – Review of Commission Decisions .....	24
SECTION 8. MISCELLANEOUS PROVISIONS .....	25
A. Sovereign Immunity .....	25
B. Rules, Regulations, and Standards .....	25
C. Records Access .....	26
D. Amendment .....	26
E. Severability .....	26
F. Extension of Time Limits .....	26
G. Effective Date .....	27
H. Repeal .....	27

## 2007 SHOSHONE-BANNOCK TRIBAL WATER RESOURCES CODE

### SECTION 1. GENERAL PROVISIONS

#### A. Title

This Code shall be known as the "2007 Shoshone-Bannock Tribal Water Resources Code" (Code).

#### B. Findings

1. Whereas, the Tribes find that all Reservation natural resources are interconnected; and that water resources have cultural, spiritual and economic values that guide the appropriate use, management and protection of water resources and land use activities in the watersheds and drainage basins of the Reservation; and

2. Whereas, the Tribes find that surface and ground water are directly interconnected by the hydrologic cycle of the region and the Reservation, and therefore water is a unitary resource, whether occurring as ground water, springs, mineral water, soil moisture, precipitation, percolating water, recharge, drainage waters, or surface water; and

3. Whereas, the Tribes recognize that clean water is vital to the health and welfare of reservation residents and to the vitality of the Reservation economy. Because resource uses may contribute to the degradation of water supply, it is necessary to protect the environmental quality and integrity of all surface and ground water; and

4. Whereas, the Tribes find that all waters reserved by the Fort Bridger Treaty are held by them in trust for the benefit of the Tribal membership and the Reservation itself, and for certain inalienable public uses, and that as an essential attribute of sovereignty, is the power to determine the proper uses of the Tribal water right and the management thereof.

#### C. Purposes

The purposes of the "2007 Shoshone-Bannock Tribal Water Resources Code" are:

1. To provide an orderly system for all tribal departments and entities for the use, management, and protection of Reservation water resources now and for future uses by generations to come in accordance with the "1990 Fort Hall Indian Water Rights Agreement," and subsequent "Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin;"

2. To ensure that Reservation residents have sufficient water for cultural, domestic, agricultural, stock, instream, and other uses, and that the Tribes have sufficient water for reservation economic development;



3. To protect Reservation water from over-appropriation, degradation, contamination, exploitation, and any acts injurious to the quantity, quality or integrity of the water;

4. To encourage optimal development and multiple use of the Reservation water resources, to promote stability of investment in water use and delivery systems, and to permit all reasonable uses; and

5. To protect the health and welfare of Reservation residents, the political integrity of the Tribes, and the economic security of the Reservation through effective management and protection of the Reservation's water resources and water quality.

6. To protect traditional, religious and cultural uses of water resources and other resources dependent upon water.

#### **D. General Powers and Authorities**

This Code is enacted pursuant to the inherent sovereign powers expressly delegated to the Business Council (Business Council) by the Constitution and By-Laws of the Shoshone-Bannock Tribes, Article IV, Section (a,i,k,l,q,r) to promulgate, adopt, amend, repeal, and enforce rules, regulations, standards, and procedures for the protection of the Tribes' reserved water rights on the Fort Hall Reservation and by the inherent authority of Shoshone-Bannock Tribes. The Business Council, to provide for the development of the Tribal Water Management system as set forth under the Agreement hereby provides that monies originally set aside under the Agreement and interest generated there under and future monies generated by the Tribal Water Resources Department and the Shoshone-Bannock Tribal Water Resources Commission will be used for those purposes for which the monies were originally set aside, and as further defined by the Shoshone-Bannock Tribal Water Resources Commission and the Shoshone-Bannock Tribes Water Resources Department with final approval of the Business Council.

#### **E. Construction**

This Code shall not be construed in any manner, which is inconsistent with the provisions of the "1990 Fort Hall Indian Water Rights Agreement" and the "Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes and the Use of Water in the Upper Snake River Basin" and other applicable Tribal and federal law.

#### **F. Scope**

This Code applies to all persons desiring to use or using or undertaking activities on Reservation lands affecting Reservation Water Resources. Management of the Snake River and the Blackfoot River shall be consistent with Section 8.2 of the "1990 Fort Hall Indian Water Rights Agreement" and the "Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes and the Use of Water in the Upper Snake River Basin."

### G. Allottee Water Rights

Any allottee holding an allotment that was allotted for agricultural purposes, pursuant to the General Allotment Act, 25 U.S.C. Section 381 (which secures water to allottees) is entitled to request and be provided an equitable distribution of a portion of the Tribal water right to carry out the agricultural purposes of the allotment. In administering and managing this Water Code, the Tribal Water Department and Commission shall ensure that the Allottee's rights are secured as provided under Section 381. Section 381, however does not apply to allotments established for grazing purposes on the Fort Hall Reservation.

### H. Definitions

For the purposes of this Code:

1. "Agreement" means the proceeding entitled "1990 Fort Hall Indian Water Rights Agreement" as ratified by the Shoshone-Bannock Tribes in June 1991, and as approved by the United States in P.L. 101-602, 104 Stat. 3061, on November 16, 1990, and as approved by the State of Idaho in 1991 Idaho Session Laws Chapter 228 at 547.2.
2. "Allottee" means an individual who holds a trust allotment for agricultural purposes within or without the exterior boundaries of the Fort Hall Reservation, which was allotted in accordance with the Agreement of May 13, 1880, ratified by Act of February 23, 1889, ch. 203, 25 Stat. 687; and/or the Act of March 3, 1911, ch. 210, 36 Stat. 1058, 1063.
3. "Beneficial Use" means any use of water for Domestic, Commercial, Municipal, Industrial, irrigation, hydropower generation, recreation, stockwatering, fish propagation and instream flow uses as well as any other uses that provide a benefit to the user of the water.
4. "BIA" means the Fort Hall Agency of the Bureau of Indian Affairs of the U.S. Department of the Interior unless otherwise indicated.
5. "Business Council" means the Business Council of the Shoshone-Bannock Tribes of the Fort Hall Reservation.
6. "Commission" means the Shoshone-Bannock Tribes Water Resources Commission of the Fort Hall Reservation.
7. "Diversion" means the removal of water from its natural course or location by means of a ditch, canal, flume, bypass, pipeline, conduit, well, pump, or other act of man, or the impoundment of water in a reservoir for rediversion.
8. "Fort Hall Reservation" or "Reservation lands" or "Reservation" means those lands within the boundaries of the Reservation, as originally established under the Second Treaty of Fort Bridger of July 3, 1868, 15 Stat. 673, and companion executive orders of June 14, 1867, 1 C. Kappler 835-837 (1904), and July 30, 1869, 1 C. Kappler 838-839 (1904), as fixed by the

federal survey of 1873 that have not been ceded by the Tribes to the United States pursuant to the following Tribal/federal agreements:

- a. Agreement of May 14, 1880, ratified by the Act of February 23, 1889, ch. 203, 25 Stat. 687;
- b. Agreement of July 18, 1881, ratified by the Act of July 3, 1882, ch. 268, 22 Stat. 148;
- c. Agreement of May 27, 1887, ratified by the Act of September 1, 1888, ch. 936, 25 Stat. 452, excepting those lots within the Pocatello Townsite not ceded by such agreement; and
- d. Agreement of February 5, 1898, ratified by the Act of June 6, 1900, ch. 813, 31 Stat. 672, excepting Allotment Nos. T-8, 45, 46, 48, 50, 61, and 71 owned by the Tribes or held in restricted fee or trust status for the Tribes by the United States.

9. "Indian lands" means all lands within the exterior boundaries of the Reservation that are held in trust for the Tribes or owned by Indians and those lands outside of the exterior boundaries of the Reservation held in trust by the United States for the Tribes or an enrolled member thereof.

10. "Instream Flow" means a quantity of water in a stream reach to maintain or to enhance the integrity of an ecosystem.

11. "Irrigation use" means application of water to the land surface or root zone of the soil for the purpose of producing crops, lawn or landscaping on that land.

12. "Person" means any individual or group or combination thereof acting as a unit, however associated, or any organization of any kind, whether organized for profit or not, and regardless of the manner of form in which it does business, whether as a sole proprietorship, receiver, partnership, joint venture, trust, estate, firm, unincorporated association, corporation, or government, including, but not limited to, any part, subdivision, or agency of any of the foregoing; any pronoun used herein shall refer to any gender and to any number as the context requires for permits.

13. "Place of Use" means the location where the water is used.

14. "Point of Diversion" or "POD" means any location at which water is diverted from the water system.

15. "Point of Rediversion" means the location at which water that has been diverted from the water system and then placed back into the water system is again diverted from the water system.

16. "Priority date" means the priority date assigned to the water rights as established by tribal, federal or state law.

17. "Project" means the Fort Hall Irrigation Project that is the federal project constructed, in part, to provide water for the irrigation of lands on the Reservation and as further defined in the Agreement and Consent Decree and includes the Michaud Project.

18. "Purpose of Use" means the nature of use of the water right.

19. "Relinquish" means abandonment of a water claim or water right.

20. "Reservation water resources" means any and all waters underlying, flowing through or otherwise occurring or contained within the Reservation over which the Tribes have jurisdiction.

21. "Source" means the named or described source of water within the water system.

22. "Transfer" means any change in a point of diversion, place of use, period of use or purpose of use for a water right.

23. "Tribal Court" means the Shoshone-Bannock Tribal Court of the Fort Hall Reservation.

24. "Tribal lands" means those lands owned by the Shoshone-Bannock Tribes.

25. "Tribal Water Engineer" or "TWE" means Shoshone-Bannock Tribal Water Engineer also referred to as the "Reservation Watermaster" in the "1990 Fort Hall Indian Water Rights Agreement."

26. "Tribal Water Resources Department" or "Department" means the Shoshone-Bannock Tribes lead agency responsible for Tribal water rights administration on the Fort Hall Reservation.

27. "Tribal water rights" means those water rights confirmed in the "1990 Fort Hall Indian Water Rights Agreement" as rights held in trust for the Tribes by the United States, including those rights so held for the benefit of individual Indians on Indian lands, and any other water hereafter acquired by the Tribes.

28. "Tribes" or "Tribal" means the Shoshone-Bannock Tribes of the Fort Hall Reservation.

29. "Water system" means all rivers, streams, lakes, springs, groundwater or other water sources within the Fort Hall Reservation.

## **SECTION 2. ESTABLISHMENT OF THE TRIBAL WATER RESOURCES COMMISSION AND THE TRIBAL WATER RESOURCES DEPARTMENT**

### **A. Tribal Water Resources Commission Established**

1. The Shoshone-Bannock Tribal Water Resources Commission of the Fort Hall Reservation is hereby established as the primary enforcement and management agency responsible for administering Tribal water rights on the Reservation. The Shoshone-Bannock Tribes' Business Council shall appoint five (5) members of the Commission from a list of nominees. Nominees shall be selected following application through public notice by the Business Council and shall be Tribal members of the Shoshone-Bannock Tribes who are qualified, giving due weight to education, experience, and other qualities judged significant by the Business Council. The selected Commission members shall not hold any other elected or appointed position with the Tribes, nor otherwise employed by the Tribal Water Resources Department.

- a. The Water Resources Commissioners shall serve three (3) year staggered terms and may be reappointed by the Business Council upon the expiration of their initial term. Commissioners shall serve the following terms: One (1) shall be appointed for three years, two (2) Commissioners shall serve for two years; and two (2) Commissioners shall be appointed for one year. It shall be up to the Commission to determine which commissioners shall serve in which term after the reappointment. Thereafter the appointments shall be advertised and appointments shall be for three-year terms.
- b. A Commissioner may be removed by vote of the Business Council for failure to attend scheduled Commission meetings and functions, or for failure to carry out duties and responsibilities as assigned by this Code. In addition, the Commission may establish their own regulations regarding the removal of Commissioners, as is appropriate.
- c. If a permanent vacancy occurs because of removal, resignation, or death, the Business Council shall appoint a replacement for the remainder of the term of the person being replaced.

2. No Commissioner shall vote on a decision that could have a direct financial effect or other conflict of interest. A member shall disclose to the Commission any such financial effect or conflict of interest at the time of such vote and may participate in the discussion of the matter without voting upon it. The Commission shall adopt regulations that govern the disqualification.

3. Three (3) members of the Commission shall constitute a quorum.

4. The powers, duties and responsibilities of the Commission are to:
- a. Supervise the execution and enforcement of this Code provisions and regulations there under;
  - b. Approve or deny water use permits and/or licenses in accordance with the water code and regulations implemented to enforce this Code;
  - c. Conduct hearings and render decisions regarding water permit applications and licenses and hear disputes regarding the water management decisions and actions of the Tribal Water Engineer and/or water management staff in accordance with the procedures adopted pursuant to this Code and regulations;
  - d. Request production of documents or other information and attendance of witnesses before the Commission; and, if necessary, seek judicial assistance from the Tribal Court to compel production of documents or to compel witnesses to attend the hearings;
  - e. Adopt such rules, regulations, permit forms, and additional materials, and propose amendments to this Code as necessary to interpret and execute its authority and to implement the objectives and purposes of this Code;
  - f. Advise the Business Council on all aspects of this Code and Reservation water resources including on-Reservation water marketing, provided that the Off-Reservation Water Marketing shall be handled directly by the Business Council;
  - g. Organize and operate its offices in order to discharge its duties and responsibilities effectively;
  - h. Coordinate with the officials of the Tribal Land Use Policy Commission, the Tribal Land Use Department, the Tribal Fish and Wildlife Department, and other applicable tribal, state and federal agencies to ensure comprehensive oversight of the Reservation's inter-related water quantity, water quality, land use, and fish and wildlife resources;
  - i. Advise the general membership of the Shoshone-Bannock Tribes on all aspects of this Code and Reservation water resources and Tribal water rights in coordination with the Tribal Water Engineer and other applicable Tribal departments;
  - j. Review the proposed budget developed by the Tribal Water Engineer and make recommendations to the budget in coordination with the Tribal Water Engineer. The Tribal Water Engineer and the Chair of the Commission shall be available to discuss such budget with the Business

Council as requested. The Tribal Water Engineer shall be responsible for the day-to-day operation of the budget;

- k. At any time the Commission identifies a dispute among the Shoshone-Bannock Tribes, State of Idaho, and United States involved in the Agreement, it shall promptly bring that matter to the attention of the Business Council for action consistent with Article 9 of the Agreement;
- l. Impose reasonable charges for water use by regulations promulgated by the Commission. The Commission may grant waivers of charges if the use is shown to be of benefit to the Tribes.
- m. The Business Council may delegate any other duties and authorities after amendment of this Code.

5. The Business Council shall fix the compensation of Commissioners. The rates of compensation so established may not be decreased during a member's term of office. Commissioners shall receive compensation only for those days they sit as members of the Commission, including meetings they are required to attend as members of the Commission.

#### **B. Tribal Water Resources Department Established**

1. There is hereby created the Tribal Water Resources Department and the position of Tribal Water Engineer. The Tribal Water Engineer is the executive arm of the Commission and is responsible directly to the Commission for water administration, and responsible to the Business Council for the administration of the Tribal Water Resources Department. The Tribal Water Engineer has the authority to administer the water laws of the Tribes and enforce regulations established pursuant to this Code, and the general instructions of the Commission or the Business Council. The Commission may delegate any of its duties and authority to the Tribal Water Engineer except the duty and authority to:

- a. Hear disputes and conduct hearings in accordance with the procedures set forth in this Code;
- b. Approve or deny water use permits and licenses in accordance with this Code and regulations promulgated to enforce this Code; and
- c. Adopt regulations to implement this Code.

2. For water development and all other water issues excluding office administration and personnel matters, the Tribal Water Engineer is responsible directly to the Commission.

3. The Tribal Water Engineer shall be a qualified hydrologist and water resource manager with a minimum educational level of a Bachelor's degree in civil or agricultural engineering or a water-resource management field and not less than four (4) years experience in water resource management, water rights administration, and water development and

engineering, or shall be a trainee who will be selected to undertake intensive training under a Tribal Water Engineer training program which is approved by the Business Council. The Tribal Water Engineer shall have the right to delegate responsibilities to staff provided that the ultimate responsibility shall remain with the Tribal Water Engineer.

4. Reservation water resources being the lifeblood of the community and critical to the conservation and enhancement of its resources, the Tribal Water Engineer shall equitably guard all the interests involved in carrying out the duties and authorities of the Department. The Tribal Water Engineer shall be issued an official Tribal Water Engineer identification for enforcement purposes.

5. The Tribal Water Engineer shall have the following duties and authorities:

a. Enforcement Functions

- (i) To administer Tribal water rights, and ensure maximum compliance with the Code and with the conditions of all permits, determinations, orders, regulations, plans, policies, guidelines, and other actions taken by the Commission and coordinate such activities with the Bureau of Indian Affairs Project Engineer and non-Indian water users as is consistent with the Agreement, and Consent Decree;
- (ii) To enter upon Reservation lands with reasonable notice to owner or occupant to investigate and inspect methods of diversion, withdrawal, and other activities affecting water quantity, to install measuring devices on surface and ground water diversions for the purpose of enforcing and administering this Code, and to monitor water use, water quality, and the diversions in conjunction with Article 8 and to accompany the BIA Project Engineer off-Reservation;
- (iii) In an emergency, to remove, render inoperative, shut down, close, seal, cap, modify, or otherwise control methods of diversion and withdrawal, obstructions to the flow of water, and activities adversely affecting Reservation water resources, subject to expedited appeal to the Commission by the affected person, as provided in Section 7(B)(4) of this Code, provided that this matter is coordinated with the BIA Project Engineer where appropriate;
- (iv) To initiate, by citation and other means, enforcement proceedings before the Commission, or in Tribal Court, for violations of this Code, including injunctive relief; provided that before any enforcement actions occur, the Tribal Water Engineer shall ensure such enforcement is consistent with the Agreement, Consent Decree, and any applicable federal and Tribal law.



- (v) Except as otherwise provided, the Tribal Water Engineer shall ensure that water delivery systems on the Reservation shall divert only that quantity of water to which they are legally permitted.

b. Advisory Functions

- (i) To advise the Commission on all water resource related development planning issues consistent with the Tribal Water Master Plan, provide the Commission and Business Council with a semiannual report on water quantity and quality and the status of water use on the Reservation, and provide suggestions, alternatives, and recommendations for water management;
- (ii) To declare water supply conditions and to prepare alternative water supply scenarios for different climatic trends and conditions for the Commission's use in setting priorities and preferred uses during drought;
- (iii) To recommend, after coordination with other agencies or departments, designation of certain land areas, waters, and surface and ground water regions on the Reservation for dedication to certain beneficial uses or as "critical management areas" requiring specialized provisions for management;
- (iv) To closely coordinate Reservation water resource activities with the BIA Project Engineer;
- (v) To recommend to the Commission proposed changes to this Code and to its regulations; and
- (vi) To assist all applicants for permits or licenses in assembling and analyzing hydrologic and environmental data required to be submitted with the application and otherwise to assist in the preparation of the application, and, if appropriate, to seek assistance from other Tribal departments.

c. Information and Research Functions

- (i) To conduct hydrologic investigations to determine water supply and quality characteristics, analyze existing uses, identify water needs and development possibilities, and study means of developing, managing, conserving, and otherwise protecting Reservation water resources;
- (ii) To collect, maintain, and analyze, on a continuing basis, information regarding Reservation-and basin-wide water resources,

including data on water, land, air quality, rangeland, and other factors actually or potentially affecting Reservation water resources or Tribal water rights, after conferring with other Tribal departments;

- (iii) To perform regular research regarding the overall carrying capacity of the Reservation's water system, with a view in particular to discovering and reporting the levels above or below which specific water use impairs or injures overall water availability and use;
- (iv) To conduct public educational programs and develop educational material regarding Reservation water resources and Tribal water rights and administration, irrigation management, water quality, environmental issues, water conservation, and any other pertinent issues as may be determined by the Commission or the Business Council;
- (v) To determine the extent of potential effects on existing water users, given hydrologic conditions, from proposed uses of Reservation water resources;
- (vi) To identify sources of financial support for water management and development;
- (vii) To identify promising research areas regarding Reservation water resources and to solicit research proposals by government, university, or private sources;
- (viii) Coordinate joint and separate studies with Tribal departments, meeting at least quarterly to prevent duplication of services;
- (ix) One month before each irrigation season, the Tribal Water Engineer shall prepare a water supply forecast for the coming season. The Tribal Water Engineer will provide periodic updates on hydrologic conditions to the Commission and the Business Council; and
- (x) Provide appropriate notices to the other entities as required under Section 8.5 of the Agreement.

d. Administrative Functions

- (i) To employ, supervise, and terminate Department and technical staff that are employed to enforce and administer this Code, provided that all hiring and firing decisions are subject to the provision contained within the Tribes' current Personnel Policies

and Procedures Manual. This includes the right to delegate certain duties to staff members provided that the ultimate responsibility for such duties lies with the Tribal Water Engineer;

- (ii) To develop the internal tribal technical and managerial capabilities to promote the direct involvement of tribal staff that are employed to administer this Code, in the development and construction of water resource supply, distribution, and management facilities and devices; and
- (iii) To develop and submit an office budget in coordination with the Commission as set forth in Section 2(A)(4)(j) of this Code to submit to the Business Council and shall develop Department policies and procedures as is consistent with tribal policies for the orderly operation of the Department.

6. The Business Council, will appropriate from available funds sufficient resources to administer the provisions of this Code.

### **SECTION 3. SYSTEM FOR WATER USE AND RESOURCE MANAGEMENT**

#### **A. General Policies**

The following general policies shall guide the use and management of Reservation water resources:

1. Existing uses, established duties of water, and relative priorities concerning the use of Reservation water resources are to be protected and preserved, subject to the Tribes' obligations to protect Tribal water rights.
2. Surface water use may be adjusted for the varying water conditions each year, and overall water use allocation decisions will be guided by the hydrologic conditions, which require different water management strategies. Water development decisions will recognize hydrologic variability and will consider alternative sources of supply, should dry conditions prevail.
3. Ground water use will be guided by the overall condition of each aquifer system, the expected long-term yields, and the cumulative impacts of existing and proposed uses on ground and surface water supply and quality.
4. All land, water or other resource strategies, decisions, regulations shall consider the potential effect on all Reservation natural resources and will safeguard against surface and ground water degradation.

5. Decisions involving land use or significantly affecting a stream bank, bed or channel, or water storage facility shall seek to maintain and enhance the fishery and wildlife resources.

6. Drainage strategies will be developed with due consideration for the conjunctive or integrated use of surface and ground water.

## **B. Beneficial Uses of Water**

1. The uses to which water on the Reservation may beneficially be applied include, but are not limited to:

- a. Domestic use;
- b. Commercial;
- c. Municipal use;
- d. Agricultural use;
- e. Stock water use;
- f. Industrial use;
- g. Instream flow use, including instream flow for fisheries, wildlife, and pollution control, aesthetic and cultural purposes;
- h. Mineral resource development;
- i. Water storage;
- j. Marketing;
- k. Ground water recharge and supply enhancement;
- l. Recreational use;
- m. Cultural use;
- n. Religious use;
- o. Power generation, including but not limited to hydropower;
- p. Pollution control; and
- q. Resource development.

2. No presumption of preference of use shall be given to the order in which beneficial uses are listed above.

## **C. Water Allocation Guidelines**

In addition to the policies contained in Section A, the Tribal Water Engineer and Commission shall take appropriate action for:

1. Water allocation. Water allocation is to be assigned a date of initial use in accordance with historic practices of rotation and scheduling or upon other allocations established by the Commission.

2. Surplus. The Commission will allocate surplus water that may be used beneficially and efficiently after a recommendation of the Tribal Water Engineer, ratably among senior users first; later priorities are then allocated a proportionate share of the remainder.

3. Drought. In drought conditions, water will be strictly allocated according to priority date, unless special agreements between the Tribes and other entities provide for a temporary change of water allocation formulas. If a drought condition prevails such that not enough water exists to satisfy even senior users, all senior water users will have partial water uses met, but at a lesser diversion rate than that specified in the Tribal Water Permit. The diversion rate shall be set according to the specific demands in relation to overall supply. The Commission may set temporary use priorities during periods of drought after notice and hearing. The Tribal Water Engineer is to develop a drought management plan and corresponding regulations by the Commission.

## **SECTION 4. PERMIT AND LICENSE SYSTEM**

### **A. Permit and License Required**

1. No person shall divert Tribal water or undertake an activity affecting or involving such water without first obtaining a permit or license under this section. If such diversion or activity is required by federal law on behalf of the Fort Hall Irrigation Project or by the Fort Hall Agency, an exemption will be granted as set forth in subsection 3 of this section. All persons shall notify the Tribal Water Engineer, regardless of exemption status, in order to give notice to the Tribes of all such activities on the Fort Hall Reservation. A permit or license is required for any of the following activities:

- a. Diversion of water from any stream course, spring or well;
- b. Drilling of any new well or modification of any existing well, including domestic, irrigation, industrial, municipal, or oil and gas development-related wells provided that permits or licenses for domestic use;
- c. Discharging, injecting, or depositing any waste, wastewater, or other contaminant into Reservation water;
- d. Altering any stream course or stream bank for any purpose, including but not limited to road construction and repair;
- e. Developing ground water recharge projects;
- f. Generating hydropower;
- g. Storing or impounding water;
- h. Dedicating water to instream flow; and
- i. Other activities herein not mentioned but determined as necessary by the Tribal Water Engineer.

2. The issuance of a permit or license allows the activity therein described and constitutes an undertaking by the permittee or licensee to comply with the conditions therein stated and all Tribal laws and regulation of general application and applicable federal laws covering such activity.

3. Any person proposing to undertake an activity that may affect Reservation water resources may apply to the Tribal Water Engineer for an exemption. The Tribal Water Engineer may issue such an exemption if the Tribal Water Engineer finds the activity will have a minimal impact on Reservation water resources or if federal law preemptively allows the activity or diversion. The exemption shall be limited to the facts represented by the applicant. No fee shall be required for such application.

4. If, upon reviewing an action which is presumptively allowed by federal law, the Tribal Water Engineer determines such action will have more than a minimal impact on Reservation water resources or on the Fort Hall Reservation, the Tribal Water Engineer shall set forth this issue as a conflict for resolution pursuant to Section 2(A)(4)(k) of this Code and Article 9 of the Agreement.

5. All permits and licenses issued under this Code are provisional and shall not be construed to create an entitlement in the user beyond the provisional period or to allow reliance thereon by any other person.

6. No person shall be authorized to use or otherwise take any action affecting the Reservation water resources administered under this Code unless he or she shall consent to reasonable entry upon his or her land by the Tribal Water Engineer, Tribal Water Resource employees, or Commissioners engaged in the administration of this Code. Every permit or license issued under this Code shall contain the condition that no use or other action affecting the waters in question may be made unless the applicant consents to such reasonable entry on his or her land.

## **B. The Permit System**

1. The Permit System is established to regulate, inventory and monitor the use of Reservation water resources, including Tribal water rights. There are four (4) categories of permits. Any two or more categories may be combined into a single permit, as appropriate. Any permit may be made subject to such reasonable conditions and stipulations, as the Commission may deem necessary in the public interest.

2. Such permitted uses shall include:

- a. **Tribal Water Use Permit.** Grants or confirms a right to use a share of Tribal water rights, and guides the present and future use and appropriation of the Tribal water set forth in the use permit. The permit applies to surface water and ground water. There shall be one Water Permit for any use of water and shall be permitted, as follows:

- (i) Members of the Shoshone-Bannock Tribes shall have preference to the use of Tribal water, the methods and procedures for exercise of such preference to be established by the Commission by regulation.
  - (ii) An existing permit for Tribal or individual lands within the Reservation may be assigned to a lessee when the land included within the permit is leased, subject to the approval of the Commission. Where there is no existing permit, the lessee may apply for a permit. A permit issued to a lessee shall be valid only as long as the lease is valid.
  - (iii) A Tribal water use permit may be granted to a non-Tribal member person or non-Tribal entity to use Tribal water, upon payment to the Tribes at rates to be established by the Business Council as recommended by the Commission, in addition to any applicable operations and maintenance charges.
- b. **Transfer Permit for Changing Place of Use, Purpose of Use, or Method of Application, or Point of Diversion.** Grants the right to change the location or purpose of water use, method of application, or method or point of diversion. This may include the right to divert Tribal water outside the watershed of origin or to other water users in accordance with applicable federal law. The Commission shall establish specific regulations regarding such changes or transfers.
  - c. **Instream Flow Permit.** Grants the right only to the Tribes to maintain specified instream flows and/or lake levels in reaches of or for entire streams or reservoirs on the Reservation.
  - d. **Storage Permit.** Grants the right to impound surface or ground water for a beneficial use.

3. The Commission shall cause an inventory of all current water uses and any existing diversions and uses on the Reservation. An inventory list of current water users and permittees of Tribal Water Rights shall be published as public notice within one hundred twenty (120) days of adoption of this Code. This list shall be published in public places and in a newspaper of general circulation for ninety (90) days. The Commission shall promulgate regulations regarding the public notice process, objections, and hearing. The Commission may issue permits to any and all water users on the inventory list. No application for a permit shall be required for any use listed on the inventory. Once this initial inventory list is completed, water users shall update the Tribal Water Resources Department with any changes, including name and address changes.

4. Any Tribal member who is applying for a permit for water and whose land is also part of the Fort Hall Irrigation Project Land must ensure compliance with both Tribal regulations and Project regulations and applicable federal law.

5. Permits shall be granted for no more than five years as determined by the Commission but may be considered for automatic additional five years as set forth by the Commission regulations.

6. The Commission shall establish a process for changing the point of water diversion, whether surface or ground water, changing the use of waters, or the place of use or the method of diversion or application of waters, and transferring Tribal water outside the watershed of origin.

### **C. The License System**

1. The License System recognizes four (4) categories of licenses for activities or actions affecting Reservation water resources. Any two or more categories may be combined into single license, as appropriate. Any license may be made subject to such conditions and stipulations, as the Commission may deem necessary in the public interest. Categories of licenses include:

- a. Stream Zone Alteration License. Grants the right to alter the streambed or banks. A Stream Zone Alteration License is required for all person engaging in activity that affects the bed or banks of Reservation streams, including but not limited to construction of temporary diversion structures, road, bridges, culvert construction and repair, logging operations, grazing activities on the stream bank, and other activities affecting the stability of the stream channel.
- b. Discharge License. Grants the right to discharge waste, or wastewater, or other media, into the surface or ground water of the Reservation, through the point discharge of any substance, through the non-point discharge through landfills, septic tanks, or disposal pits, or through injection into ground water, provided that any domestic septic tanks may be exempted from obtaining a license if an Indian Health Service approved and designed septic system is proposed for installation and licensing and a copy of approval and design is filed with the Tribal Water Engineer before such tank is utilized;
- c. Well Construction License. Grants the right to drill or construct a new well, deepen or modify an existing well, and requires the submission of specific technical data, including construction plans, effects on aquifer level and water quality if such information is readily available, well pump test data, and lithologic logs. This shall be coordinated with the Tribal Land Use Department with regard to building permits issued by the Land



Use or other Tribal Department. The issuance of this license is also contingent upon the well contractor:

- (i) Meeting Tribal requirements for technical competence;
- (ii) Posting a bond in favor of the Tribes in an amount, established pursuant to Commission regulations, conditioned upon the faithful performance and completion of all conditions and stipulations of the license;
- (iii) Certifying in writing that all Tribal laws and regulations regarding record keeping, logging, well development, supervision and inspection by the Tribal Water Engineer shall be observed; and
- (iv) Any other requirements established in the Tribal Well Construction Standards.

d. A combination of any of the above.

#### **D. Application Procedure for License or Permit**

1. Applications for any license or permit under this Section shall be made on forms developed by the Tribal Water Engineer, including particular information of facts that in the judgment of the Tribal Water Engineer and the Commission is required for the proper processing of such applications.

2. Unless exempted by other provisions of this Code, the Commission shall establish, in the regulations promulgated hereunder, a schedule of applications fees for permits and licenses, which shall be paid in advance to and collected by the Office of the Tribal Water Engineer. The Commission may waive the fee in the case of financial hardship or for tribal members. Such fees shall be used in part to defray the cost of reviewing and processing the application and conducting a hearing where necessary.

3. The Tribal Water Engineer shall provide public notice of the requirements of this Section. For purposes of this Code, any existing water use which was proven in the Agreement and/or Consent Decree and which formed the basis for a quantification of reserved water under the Agreement and/or Consent Decree shall presumptively entitle the person to a permit under this Section following the inventory and completion of existing water users under subsection B3 of this Section.

4. The Tribal Water Engineer, or his or her designee, as consistent with the procedures in established regulations, shall meet with and assist each applicant in the collection of data and the preparation of the application to the extent the applicant, through lack of resources or technical knowledge, requires such assistance. The Tribal Water Engineer will notify an applicant of any errors or omissions to their application.

5. Within sixty (60) days of receipt of the application, the Tribal Water Engineer shall: review each permit or license application; perform investigations and determine whether the proposed use or activity is technically feasible; prepare a report on each application; and recommend approval or denial to the Commission.

6. The Commission shall review all applications to determine whether the proposed use or activity adversely affects Tribal resources or other Tribal interests, and whether the proposed use or activity is consistent with the policies, purposes, and procedures described by this Code and with Tribal water and land use laws and any other applicable Tribal or federal law. The Commission shall have the authority to grant or deny a permit or license within thirty (30) days of receipt of the recommendation by the Tribal Water Engineer. Every decision of the Commission must include factual findings, which justify the decision.

7. If the Commission does not approve the application or approves it with conditions, which are not accepted by the applicant, the applicant shall be entitled to a hearing pursuant to Section 7(A).

8. If the Commission approves the application, the Tribal Water Engineer shall issue the appropriate permit or license in conformity with the Commission's decision.

## **SECTION 5. VOLUNTARY RELINQUISHMENT OF CLAIMS OR RIGHTS, TRANSFERS, SECURITY INTERESTS, NO LOSS BY ADVERSE POSSESSION, PRESCRIPTION, ESTOPPELS OR ACQUIESCENCE, LOSS BY NONUSE, AND REVISION TO TRIBES**

### **A. Voluntary Relinquishment of Claims or Rights**

Any holder or claimant of any right, other than a Tribal water right, in or to the waters of the Reservation may voluntarily relinquish all or a portion of such right to the Tribes by any affirmative act indicating an intent to relinquish and, if appropriate, consistent with the Agreement and Consent Decree.

### **B. Transfers**

1. No Transfer Except In Accordance with this Section. No permit granted under this Code may be transferred, exchanged, sold, or otherwise conveyed except as provided in this Code.

2. Transfers Between Tribal Members. A Tribal water use permit may be transferred from one Tribal member to another Tribal member only upon the transfer of land on the Reservation from one Tribal member to another Tribal member.

3. Transfer of Water Permit Upon Transfer or Sale of Allotment Out of Trust. A Tribal water use permit held by tribal member may be transferred to the initial purchaser in fee of an allotment, provided the quantity of water transferred under the permit does not exceed the

amount of water being validly used by the tribal member at the time of transfer, and does not adversely impact Tribal water rights, and provided, that, a water permit may be transferred from an allottee or his or her successor(s) in interest to any person for agricultural purposes with the transfer of land on the Reservation from an allottee to another person.

4. Applications for transfer, assignment, exchange shall be made on forms prepared and made available by the Tribal Water Engineer.

### **C. Security Interests**

No person may create a security interest or authorize the creation of a security interest, in a water permit without the express written consent of the Commission. Upon foreclosure of Reservation land, a permit may be transferred to a mortgage lender or his assignee only for use of water on the land described in the permit, and only for the purpose designated in the permit. A request for transfer shall be filed with the Commission prior to completion of the foreclosure proceeding and before any use of the water by the mortgage lender or his assignee. Failure to file a request for transfer will result in the loss of the water permit.

### **D. No Loss By Adverse Possession, Prescription, Estoppels or Acquiescence**

No right to use or otherwise affect the quantity, level, flow, pressure, quality, or temperature of water may be acquired by adverse possession, prescription, estoppels, or acquiescence.

### **E. Loss by Non-Use**

A permit shall become null and void in whole or part and the water revert to the Tribes, if the water user fails to use all or a portion of the water for a period of five consecutive years, without sufficient cause, provided that a tribal member may request and be granted reinstatement of all or a portion of his or her permit without reapplication, provided, that, the water permit of an allottee may be restored upon request by the allottee, or his or her Indian successor.

“Sufficient cause” shall include:

1. Drought or other unavailability of water;
2. Active service in the armed forces of the United States;
3. The operation of legal proceedings;
4. The application of any laws restricting water use;
5. Incarceration in a penal institution;
6. Confinement in a mental institution, whether voluntary or in-voluntary;
7. Incompetence by reason of age or mental incapacity;
8. Provisions for future use as provided in this Code; or
9. Other causes of nonuse beyond the control of the holder or holders or the Tribal water use permit.

The Commission shall serve notice of loss by nonuse on the permit holder. A hearing to show cause why such permit should not be deemed null and void shall be held before the Commission not less than 30 days or more than 60 days from the date of notice. A decision of the Commission may be appealed in accordance with Section 7.

#### **F. Reversion to Tribes**

If any permitted use is voluntarily relinquished or is lost by nonuse before the term of the permit expires, or is terminated for reasons of permit violation(s) or violations of this Code, the subject water use right shall revert to the Tribes, including Tribal waters.

### **SECTION 6. ENFORCEMENT**

#### **A. Prohibited Acts**

No person shall:

1. Forcibly, or through bribery, attempted bribery, threat, or other corrupt practice, obstruct or impede the due administration of this Code;
2. Commit fraud, or knowingly assist another in the commission of fraud, with the intent to evade or defeat the administration of this Code or costs imposed or assessed;
3. Falsely verify by written declaration any permit, form, or other document, or to intentionally withhold data required to be submitted by law;
4. Violate the conditions or stipulations of his or her permit or license including taking more water than is allowed by permit;
5. Willfully take, waste, alter or damage Reservation water resources or Tribal water rights;
6. Knowingly make use or take action affecting the use of Tribal waters within the Reservation without the authorization required; or
7. Willfully obstruct or interfere with Tribal employees performing their lawful duties under this Code.

#### **B. Penalties**

Any person that commits any of the above prohibited acts, or whose employees or agents in the course of their employment or agency commit any of the above-prohibited acts, shall be subject to civil proceedings before the Commission or citation by the Tribal Water Engineer. The policy of the Commission is to assess and initiate penalties that are appropriate for the violation committed, and to ensure that penalties are sufficient to deter persons from committing

violations and that compliance is achieved. On finding a violation, the Commission may impose any of the following sanctions, or any combination thereof, subject to compliance with applicable tribal and federal law:

1. Monetary damages;
2. Restitution;
3. Recommend cancellation of the holder's lease, if the lands to which the permit applies are Tribal lands;
4. Injunctive relief;
5. Affirmative remedial action;
6. Additional conditions or limitations upon the holder's permit or license, including limitation of the amount of water permitted for diversion;
7. Suspension of the permit or license for a certain term;
8. Recommend to the Business Council for exclusion from the territory of the Reservation, if the violator is subject to exclusion under the tribal or federal law;
9. Forfeiture of any permit or license;
10. Temporary or permanent disqualification from eligibility for any permit or license, subject to limitations set forth by applicable Tribal or federal law; or
11. Costs.

### **C. Appeals**

Appeal from a decision of the Commission by any affected person shall be in accordance with the provisions of Section 7(C) of this Code. An affected person shall mean any person or entity that can demonstrate harm or potential harm because of a decision of the Commission.

## **SECTION 7. HEARINGS AND APPEALS**

### **A. Hearings on Permits and Licenses**

1. An applicant who is not satisfied with the issuance or non-issuance of a permit by the Commission shall request a hearing within twenty (20) days, and shall receive a hearing before the Commission within twenty (20) days of filing the request. The applicant shall be provided an opportunity for a full factual presentation and for public comment and testimony on the proposed use or activity.

2. Notice of such hearing will be published at the Commission's expense in a newspaper of general circulation within the Reservation at least one (1) week prior to the date of hearing. Notice shall also be posted in the Tribal and BIA offices and other such areas as may be deemed appropriate by the Commission.

3. At least 3 members of the Commission shall be present and preside over the hearing. The applicant shall have the right to present oral and written testimony under oath. The Commission shall have the authority to administer oaths to witnesses, to take evidence under oath and compel attendance of witnesses or production of documents and other evidence. The Commission shall promulgate regulations for the hearing procedure to ensure that due process requirements are met.

4. After the hearing, the Commission shall render a written decision based solely on the application and record within ten (10) days:

- a. Approving the permit or license with or without conditions;
- b. Denying the permit or license;
- c. Tabling action pending receipt of additional data or information.

5. The decision shall be adopted by a majority vote of the Commission, and shall be delivered to all parties by certified mail.

6. All proceedings of the hearing shall be recorded, and, if an appeal is sought, the applicant or any other affected party at their sole cost and expense may request a transcript of the hearing.

7. An appeal shall be filed by a petition, which has the decision of the Commission attached.

8. Any and all appeals shall go directly to the Shoshone-Bannock Tribal Court as set forth in Section 7 of this Code.

## **B. Review of Tribal Water Engineer Decisions and Actions**

1. Request for Hearing. Any affected person may file a written petition for a hearing before the Commission not later than fifteen (15) working days after issuance of a decision by the Tribal Water Engineer.

2. Hearing Before Commission. Upon the proper and timely filing of a petition for a hearing, the Commission will conduct a recorded hearing to receive evidence from the appellant. The Tribal Water Engineer shall provide to the Commission, on its request, copies of all documents and other information, which formed the basis for the decision or action. The Commission may modify or reverse such action of the Tribal Water Engineer only where such decision or action is not supported by hydrologic fact, Tribal policy or law, or is clearly arbitrary and capricious. The Commission will issue a written final decision. Appeals of final decisions of the Commission shall be made only to the Shoshone-Bannock Tribal Court.

3. Finality of Decisions. If no request for hearing before the Tribal Court is filed within twenty (20) days, the decisions or rulings of the Commission shall be binding and enforceable and not be subject to further appeal.

4. Proceedings on Exercise of Tribal Water Engineer's Emergency Enforcement Powers. When in the exercise of the Tribal Water Engineer's authority under Section 2(B)(5)(a)(iii), the Tribal Water Engineer removes, renders inoperative, shuts down, closes, seals, caps or otherwise controls any method of diversion or withdrawal, any obstruction to the flow of water, or any activities adversely affecting the quality or quantity of treaty-based or Tribally-permitted water, the affected person shall have the following appeal deadlines:

- a. A written petition must be filed with the Commission not later than 7 working days from the date of the Tribal Water Engineer's action;
- b. The Commission will conduct a hearing to receive evidence from the person adversely affected by the Tribal Water Engineer's action within three (3) days of filing such petition after having, in good faith, attempted to notify any affected permit holders; and
- c. The Commission shall within forty-eight (48) hours issue a written decision stating the grounds therefor.

## **C. Tribal Court of Appeals – Review of Commission Decisions**

1. Tribal Court Review. The Tribal Appellate Court is empowered to hear appeals from any final decisions or ruling of the Commission if filed within the time period prescribed in subsection (2).

2. Filing of Appeal. Appeals of Commission decisions or rulings shall be filed with the Tribal Appellate Court no later than twenty (20) days from issuance of such decision or ruling of the Commission. Such notice of appeal shall be sent to the Commission.

3. Exhaustion. No person may seek review by the Tribal Appellate Court of a decision or ruling of the Tribal Water Engineer or the Commission, unless such person has first exhausted his administrative appeal rights provided by this Code.

4. Standard of Review. Appeals to the Tribal Appellate Court shall be limited to review of the record of the Commission's administrative decisions or rulings and shall not be a trial de novo. The Tribal Appellate Court may modify, reverse, or remand a decision or ruling of the Commission only where such decision or ruling is without substantial basis in fact, is contrary to tribal policy or tribal law, or is clearly arbitrary or capricious.

5. Administrative Record. Upon receipt by the Commission of notice that an appeal has been filed with the Tribal Court. The Secretary for the Commission shall certify and transmit to the Clerk of Tribal Court the administrative record within fourteen (14) days, including all documents, transcripts and other information, which formed the basis for the decision or ruling being appealed.

## **SECTION 8. MISCELLANEOUS PROVISIONS**

### **A. Sovereign Immunity**

1. The Business Council hereby waives sovereign immunity from suit which may inure to the benefit of the Commission, or the Tribal Water Engineer, provided that any suit against the Commission, and the Tribal Water Engineer must be brought in the Tribal Appellate Court under Section 7 of this Code and further provided that such waiver is limited to the extent necessary to subject the Commission, and the Tribal Water Engineer, to suit for the sole purposes of declaring, adjudicating, and enforcing the parties' rights and duties as more fully described in this Code and any regulations promulgated hereunder; and

2. The waiver specifically does not waive the Commission's, or the Tribal Water Engineer's, immunity from suits for monetary or punitive damages, and specifically does not waive the sovereign immunity of the Business Council or the Tribes or any other departments; and

3. The waiver specifically does not allow any further action in any other court or jurisdiction or for any other purpose in the Shoshone-Bannock Tribal Court.

### **B. Rules, Regulations, and Standards**

1. Any rules or regulations promulgated under this Code shall be consistent with the Tribes' present Ground Water Protection Act of 2002 and Well Construction Standards of 2002 and any future revisions of the same, and applicable Tribal and federal law.

2. The Tribal Water Engineer shall review regulations with the Commission set for approval by the Commission.



3. Pursuant to Section 2(A)(4)(e), before the formal adoption of proposed regulations, the Commission shall publish such regulations in order to provide interested parties an opportunity to comment. The notice will invite written comments give a deadline for their submission of not less than seven (7) days after publication of notice. The Commission will hold a public hearing in order to receive oral testimony to the proposed regulations. The Commission shall also establish procedures for emergency regulations.

- a. A regulation will become effective twenty-four (24) hours after the closing date for comments or on the date otherwise specified therein.
- b. A copy of the regulations will be filed and made available for public inspection at the Tribal Water Engineer office.

#### **C. Records Access**

1. All records required to allowed to be maintained by the Tribal Water Engineer or the Commission are considered Tribal records as such these records may not be disclosed unless authorized by the Fort Hall Business Council in writing pursuant to the Shoshone-Bannock Tribes Privacy Act.

2. No employee may alter or destroy these records unless authorized by the Fort Hall Business Council in writing.

3. Nothing in this section shall prohibit other Tribal departments from sharing the data or other information necessary for performance of their job(s) as long as all confidential information is maintained in conformance with Tribal policies and procedures.

#### **D. Amendment**

The Business Council in accordance with the Constitution of the Tribes may amend this Code. The Commission shall notify Tribal members of any amendment in the manner considered appropriate by the Commission under Tribal laws.

#### **E. Severability**

In the event any provision of this Code or the application thereof to any person or circumstances is held invalid, the remainder of this Code shall not be affected thereby and to this end the provisions of this Code are declared to be severable.

#### **F. Extension of Time Limits**

Time limits provided by provisions of this Code may be extended, for good cause shown, by the Tribal Water Engineer or Commission before which the proceeding is pending when the ends of justice so require and when all applicable requirements have been met.

**G. Effective Date**

The provisions of this Code shall be in effect on the 10th day after the Secretary of Interior approves of this Code and the Business Council approves the Code by ordinance. This ordinance shall remain in effect until repealed or amended.

**H. Repeal**

Any act, ordinance, resolutions, rules or regulations, or provision of law of the Shoshone-Bannock Tribes in conflict with the provisions of this Code are hereby repealed to the extent that they are inconsistent with, conflict with, or are contrary to, the purpose of this Code. Those acts, ordinances, resolutions, rules or regulations, or provisions of law that do not conflict shall remain in effect.

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