

*STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION  
As Amended Through Resolution No. 20-090 (September 28, 2020)*

# WATER CODE

CONFEDERATED TRIBES  
OF THE  
UMATILLA INDIAN RESERVATION

**WATER CODE**

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## WATER CODE

### CHAPTER 1. GENERAL PROVISIONS

#### SECTION 1.01. INTRODUCTION

**“Plíx iwá čúuš”  
(Water is medicine)**

The world of the *šiyápu* is linear where life begins and ends in a series of separate events. The world of the *natítayt* is circular and continuous. *Natítaytwít* is *tamánwit* (religion/law), it is *láqayxit* (light), it is *ha?ášwít* (air/breath), it is *táatpas* (dress/clothing), it is *ínít* (dwelling/house), it is *tk<sup>w</sup>átat* (food), it is *sinwit* (speech), it is *tiičám* (land), it is *čúuš* (water) and it is the *natítayt* (Indian). All are one and inseparable. *Tamánwit* is both religion and law. It is the respect of all aspects of Indian life and it is the way of life.

*Cúuš* is *tamánwit* and we must teach and live *tamánwit*. We must share water with all living things. If we do not share, our greed will harm us. We must not look upon *waqíšwít* (life) as the *šiyápu*. We must take care of the water. Seven generations in the past we had good water. Seven generations in the future we must give back the same that was lent to us by *Anilá* (the Creator); cold, clean water. So we think of fourteen generations of cold, clean, plentiful water. As we did seven generations back, so should we be able to do seven generations in the future, go to any stream or river and get cold clean water to drink.

“*Cúušnimna inaknúwiyaša náaman ááax<sup>w</sup> wáwnak<sup>w</sup>šáš*” Water keeps all our bodies for us. *Čúuš* is a part of everything. It is within *natítayt*, it is within *tiičám*, and it is within *núsux* (the salmon). It is essential for the survival of all life. Cold, clean, healthy water is the life blood of the land. We drink water to remind us of who we are. *Cúuš* cleanses and heals our bodies, “*Plíx iwá čúuš*”.

#### SECTION 1.02. PURPOSE

- A. Water management, allocation, and development shall benefit the Confederated Tribes of the Umatilla Indian Reservation, its members and residents, and promote the purposes for which the Umatilla Indian Reservation was created: to provide a permanent homeland for the members of the Confederated Tribes, protect the exclusive fishing rights as set forth in the Treaty of 1855, and preserve the cultural and religious integrity of its members.
- B. To this end the purpose of the Water Code is:
1. To provide an orderly system for the sustainable use and development of the water resources of the Umatilla Indian Reservation;
  2. To insure that all residents of the Reservation have an adequate quantity of clean water for domestic purposes;
  3. To protect the water resources of the Reservation from over appropriation, pollution, contamination, degradation, or other acts injurious to the quantity or quality of the waters on the Reservation;
  4. To protect and conserve the quality and quantity of the natural and cultural resources in the stream zones of the Reservation; and
  5. To insure that the water rights reserved pursuant to the Treaty of 1855 receive the highest priority in use and appropriation, are protected and developed for the benefit of current and future generations of Tribal members of the Umatilla Indian Reservation, and that the Confederated Tribes of the Umatilla Indian Reservation retains full management authority over all reserved water rights sufficient to satisfy the purpose of the Treaty of 1855, to provide a homeland for the members of the Confederated Tribes.

**SECTION 1.03. SCOPE**

This Code shall apply to all persons, property, and diversions within the boundaries of the Umatilla Indian Reservation. See map in Appendix B.

**SECTION 1.04. JURISDICTION**

- A. Sovereignty. The Confederated Tribes possesses inherent sovereign authority to govern the use of water within the Reservation boundaries. The governing body of the Confederated Tribes, the Board of Trustees, exercises that authority pursuant to Article VI, Section 1 of the Constitution and Bylaws of the Confederated Tribes..
- B. Authority. The Confederated Tribes is qualified, as of October 2001, to administer the provisions of the Clean Water Act pursuant to 33 U. S. C. § 1377(e) as the Clean Water Act relates to waters within the exterior boundaries of the Reservation.
- C. Jurisdiction. The Umatilla Tribal Court is hereby granted jurisdiction to hear, review and decide issues brought before it pursuant to the provisions of this Code or applicable regulations.
- D. Civil Authority. In ruling on matters arising under this Code, the Umatilla Tribal Court shall have authority to assess and collect civil penalties in amounts commensurate with the damage, danger or risk created by a violation of this Code and shall also have authority to enjoin or mandate action in the enforcement of this Code.

**SECTION 1.05. STATEMENT OF POLICY**

The Board of Trustees hereby establishes and declares the following as the Tribal water policy which shall govern the interpretation and all administrative functions of this Code.

- A. Use of Waters Permitted by Confederated Tribes. Management, allocation, and development of water resources shall be pursued subject to the principle that the water resources of the Reservation belong to Confederated Tribes and that the Confederated Tribes has the sole authority to permit the development or use of said waters.
- B. Goals of Water Management. The primary goals of water management are to conserve the quantity and maintain or improve the quality of water resources; protect and restore cold clean pure water consistent with the Tribal Water Quality Standards; maximize the beneficial use of water resources; promote diversity and protection of beneficial uses; promote the orderly economic development of the Reservation; and coordinate water use with land use and other planning on the Reservation.
- C. Treaty Water Rights. Water management, allocation, and development shall benefit the Confederated Tribes and its members, and further promote the purposes for which the Reservation was created, namely to provide a permanent homeland for the members of the Confederated Tribes. Therefore, in the allocation of water for beneficial use, preference in use of water resources shall be retained by the Confederated Tribes and Tribal members, consistent with the Treaty of June 9, 1855 (12 Stat. 945).
- D. Use of Water without Waste. In developing and utilizing water resources, water users shall appropriate water for beneficial purposes without waste. Regulations shall be developed and implemented to discourage the misuse or waste of water, and penalties shall be imposed on persons who misuse water or fail to cease practices that waste water.
- E. Water Conservation Required. All official actions that allow persons to divert and use water resources shall be promulgated under the principle that the water user appropriates the minimum quantity of water required to accomplish the purpose of the diversion. To this end, standards and regulations shall be promulgated which require conservation in the allocation,

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- use, and development of water resources and shall provide incentives for water users to practice water conservation.
- F. Groundwater Conservation. Groundwater supplies are vitally important to the health and welfare of the citizens of the Reservation and to the progressive development of the Reservation economy. Development of water resources shall be controlled and regulated to prevent the depletion of aquifers and the overdraft of groundwater. Management of water resources shall protect and improve the quality of the groundwater resources.
- G. Competition for Water; Well Interference. Development of water resources shall be controlled and regulated to reduce or prevent well interference and competition for water between users.
- H. Water Use in the Development of the Reservation Economy. It is in the Tribal interest to direct the allocation and promote the development of water for all beneficial uses which benefit the overall economic development of the Reservation.
- I. Impoundments and Artificial Obstructions. Impoundments and artificial obstructions to instream flow shall be constructed in conformance with the standards set forth in the Confederated Tribes' statutes and regulations on safety of dams and hydraulic embankments, stream zone alterations, water quality standards, and any other regulations and standards promulgated by the Confederated Tribes that may apply. In the planning and construction of impoundment structures or other artificial obstructions, due regard shall be given to protecting human health and safety, property, fish and wildlife resources, and the associated aquatic community. Multipurpose impoundment structures are preferred over single purpose impoundments, and upstream impoundments are preferred over downstream impoundments. Impoundments and artificial obstructions shall be designed and sited to minimize the impact on anadromous fish habitat and to improve water quality and quantity for instream uses. The Board of Trustees shall review proposals for large dams and shall make the final determination if the large dams will be approved for construction. Dams or artificial obstructions extending greater than five feet vertically above the river bed of the main stem Umatilla River are prohibited.
- J. Reserve Water for Human Consumption. Adequate and safe supplies of water shall be reserved for human consumption by residents of the Reservation.
- K. Provide Water For Fish And Wildlife Resources. The fish and wildlife populations and traditional plants of the Reservation are important subsistence, cultural, and recreational resources, and as such, in managing water resources, the Confederated Tribes shall allocate water and provide sufficient water quality for the protection and conservation of these resources. Alterations of physical and vegetative features along streams and wetlands which degrade wildlife or fish habitat or destabilize soils or stream banks shall be discouraged.
- L. Provide Water for Wetland Resources. Wetlands provide critical habitat for fish and wildlife populations, traditional plants, and other natural resources of the Reservation; therefore, wetlands shall be preserved and restored to assure the continued production of these resources for use by future generations.
- M. Protection of Stream Flows. Streams are an integral and vital element of the culture of the Confederated Tribes. Protection of streams for their cultural, spiritual, recreational, economic, and ecological values shall be paramount to the management of water resources. Stream flows that are required to maintain habitat for anadromous and resident fish, recreational opportunities, and the integrity of the stream environment shall be established and protected.
- N. Protection of Stream Zones. Protection of stream zones of the Umatilla Indian Reservation is vital to the preservation of Tribal traditional values and religion, and the Confederated Tribes' hunting, fishing, and gathering rights and the way of life that depends on them as provided by the Treaty of 1855. Stream zones are vital to the integrity of the stream environment and the

protection and enhancement of beneficial uses. Activities or alterations which promote the establishment, growth, and protection of riparian vegetation shall be encouraged.

- O. Watershed Protection. Watershed practices which serve to capture water or reduce its rate of flow from the Reservation shall be promoted. Alterations to watersheds which foster increased runoff rates, increased water temperatures, and increased sediment delivery to streams shall be discouraged. Best management practices shall be prepared and implemented to improve or prevent the degradation of the quality and quantity of water produced by watersheds that supply water to Reservation streams.
- P. Water Quality. The Water Code will be the primary source of regulation and enforcement for water quality standards and the TMDL for the Umatilla Indian Reservation. The quality of the water resources shall be maintained and improved to support the beneficial uses of water established in this Code. Land use and water development activities shall be regulated to ensure the improvement of the quality of degraded waters and to implement the anti-degradation policy for existing water quality. The Water Quality Standards shall be applied in a manner that promotes the maximum beneficial use of the water resources of the reservation and is consistent with Tribal law.
- Q. Anti-degradation Policy. The protection of existing instream uses and the level of water quality and quantity necessary to provide full support to those uses must be maintained and protected. No provision or conditioned activity is to be interpreted as suspending basic water quality protection. This policy is not intended to prevent the restoration of instream uses that existed prior to human caused alteration of a water body.
- R. Pollution and Contamination Prohibited. Activities that pollute or contaminate water resources in a manner that substantially endangers or has a long-term adverse impact on human health and welfare, safety, and/or the environment are prohibited. No person or entity shall place, spill, discharge, release or introduce any compound, chemical, contaminant, product, pollutant or substance either directly or indirectly, into the ground or surface waters of the Reservation.
- S. Pollution Prevention. To prevent and control the pollution of the waters of the Reservation, any present or future actions that are likely to cause or contribute to the lowering of water quality of any waters of the Reservation must, at a minimum, use all known, available, and reasonable methods of prevention, control and treatment that apply to the action.
- T. Intergovernmental Cooperation and Coordination. The nature of the Clean Water Act governing the use and protection of water make it necessary for close intergovernmental cooperation and coordination to ensure successful implementation of the Clean Water Act. Concurrent jurisdiction between the Confederated Tribes and the State of Oregon over particular water bodies or courses can be complex. The policy of the Confederated Tribes is to seek and enter into cooperative agreements with the appropriate state, federal and/or local governmental bodies to carry out their respective obligations in a cooperative manner.

#### SECTION 1.06. ADMINISTRATION

The Director or his designees shall be responsible for administering this Code. The Director shall perform administrative duties as set forth in this Code.

#### SECTION 1.07. DEFINITIONS

- A. As used in this Code, the following words and phrases shall mean:
  - 1. “401 Certification”: a written declaration by the Confederated Tribes to either grant, conditionally grant, deny or waive, an applicant’s request to discharge to surface waters of the Reservation, as part of a federally permitted or licensed activity as per 33 U.S.C. § 1341.

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2. “Abatement”: generally a lessening or a reduction.
3. “Actual damages”: includes, but is not limited to the cost of investigations, inspections or monitoring surveys which lead to the removing, correcting, or terminating any adverse effects upon human health and the environment resulting from the violative activity whether or not accidental; and compensation for loss or destruction of wildlife, fish or aquatic life, or their habitat, or for any other damages caused by the violative activity, either to the Confederated Tribes or to any residents of the Umatilla Indian Reservation who are directly aggrieved by the violative activity, or both.
4. “Animal Feeding Operation (AFO)”: includes an area, location, or operation where animals have been, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility (40 CFR 122.23(b) (1)).
5. “Aquifer”: an underground geological formation, or group of formations, containing water.
6. “Bank or Stream bank”: the land alongside a stream that is normally immersed or subject to immersion by annual high water flows.
7. “Beneficial Uses”: the purpose or benefit to be derived from any groundwater or surface water body or the diversion of water, as designated by the Confederated Tribes, whether or not it is currently being attained.
8. “Best Management Practices”: methods that have been determined to be an effective and practical means of preventing or reducing pollution from non-point sources.
9. “Board of Trustees” or “Board”: the governing body of the Confederated Tribes of the Umatilla Reservation of Oregon established by Article VI of the Constitution and Bylaws of the Confederated Tribes of the Umatilla Indian Reservation.
10. “Bond”: a written instrument with sureties or personal property guaranteeing faithful performance of acts or duties contemplated.
11. “Clean Water Act”: the Federal Water Pollution Control Act, codified at 33 U.S.C. §§ 1251 et seq., the objective of which is to restore and maintain the chemical, physical and biological integrity of the Nation’s waters, and where attainable, to achieve a level of water quality that provides for the protection and propagation of fish, shellfish, and wildlife, and for recreation in and on the water.
12. “Comment Period”: the time provided for the public to review and comment on a proposed action or rulemaking after notice and publication. Calendar date(s) will be provided indicating the period provided for public comment.
13. “Contaminant”: dredge spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, dirt, and industrial, municipal, and agricultural waste discharged to water, and includes any pollutant or other characteristic element which may result in pollution of the waters of the Reservation.
14. “Contraband”: property which was or is being used to violate or is possessed in violation of this Code (or regulation promulgated hereunder) or obtained by violation of this Code (or regulation promulgated hereunder).
15. “Confederated Tribes”, “Tribes” or “C.T.U.I.R.”: The Confederated Tribes of the Umatilla Indian Reservation.



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16. “Debris”: deadwood, broken vegetation, and foreign matter.
17. “Defendant”: the person against whom an action is filed under this Code.
18. “Department”: the Department of Natural Resources of the Confederated Tribes.
19. "Director": the Director of the Department of Natural Resources of the Confederated Tribes or a designated subordinate to whom he/she has delegated administrative and/or enforcement responsibilities.
20. “Discharge”: Flow of surface water in a stream or canal or the outflow of ground water from a flowing artesian well, ditch, or spring. Can also apply to discharge of liquid effluent from a facility or to chemical emissions into the air through designated venting mechanisms.
21. “Divert”: physically removing or exercising in some other way control over waters of the Reservation.
22. “Diversion Works”: a structure, such as a ditch, dam, pump, or well, constructed or installed to intercept a water source and divert water.
23. “Effluent”: Wastewater--treated or untreated--that flows out of a treatment plant, sewer, or industrial outfall. Generally refers to pollutants discharged from any source into surface waters.
24. “Enforcement Officer”: the Director, department staff designated by the Director to serve as an Enforcement Officer and/or a tribal law enforcement officer.
25. “Emergency”: a situation of any kind, normally unforeseeable and unpreventable by ordinary prudence, in which either human life or health is endangered, or there is a clear and imminent threat of damage to or destruction of houses, buildings, roads, bridges, sewer works, waterworks, public facilities of any kind, livestock, or growing crops of such nature that only immediate action can prevent such loss of life, threat to public health, or damage to property.
26. “Endangered Species”: any species of fish, wildlife, or plant which has been determined to be endangered under Section 4 of the Endangered Species Act as amended; listed species are found in 50 CFR §17.11-17.12.
27. “Fill”: soil, silt, sand, gravel, or rock deposited in the stream zone by artificial means.
28. “Forfeiture”: the permanent loss of property for failure to comply with the law.
29. “Groundwater”: the supply of fresh water found beneath the earth’s surface, usually in aquifers, which supply a source of water to wells and springs.
30. “Hardship”: a detrimental condition that is beyond the control of the individual(s) and is not personal or self-inflicted.
31. “Instream”: the surface water within the stream zone and the land area within the stream zone that is covered by flowing or standing surface water.
32. “Instream Flow”: the amount of surface flow in a stream.
33. “Instream Water Use”: cultural, fish and aquatic life habitat, salmonid fish rearing, salmonid fish spawning, anadromous fish passage and wildlife habitat uses.
34. “Irreparable Harm, Injury, Loss or Damage”: includes any removal of any water, any discharge to a water body, or any disturbances in a riparian zone or wetland habitat

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without a required permit or in violation of the terms of a permit approved by the Director.

35. “Lien”: a charge, hold, claim or encumbrance upon the property of another as security for a debt or charge.
36. “Livestock”: animals of any kind, including fowl, kept or raised for sale, resale, pleasure, or other purposes.
37. “Navigable”: waters that are sufficiently deep and wide enough for navigation; such waters in the United States come under federal jurisdiction and are protected by the Clean Water Act, 33 U.S.C. §§ 1251 et seq.
38. “Non-Point Source”: diffuse or unconfined sources of pollution where waste can enter into or be conveyed by the movement of water into surface waters of the Reservation.
39. “Outstanding Resource Waters”: those waters designated by the Board of Trustees where existing high quality waters constitute an outstanding Tribal resource based on their extraordinary water quality, ecological or cultural values, or where special water quality protection is needed to maintain critical habitat areas.
40. “Perennial Stream”: a stream that contains flowing water throughout the year, with the possible exception of drought years.
41. “Person”: any individual or group or combination thereof acting as a unit, however associated.
42. “Point Source”: any discernable, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.
43. “Pollutant”: can include dredge spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, dirt, and industrial, municipal, and agricultural waste entering, existing in or discharged into water.
44. “Pollution” includes such contamination, or other alteration of the physical, chemical, or biological properties, or any waters of the Reservation including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gas, solid, radioactive, or other substance into any waters of the Confederated Tribes as will or is likely to create a nuisance or impair any beneficial use of such waters.
45. “Premises”: land with its appurtenances.
46. “Reservation”: means the same as Umatilla Indian Reservation.
47. “Revetment”: any type of artificial facing or reinforcement of a bank.
48. “Riparian Management Zone”: a Riparian Management Zone is defined as a buffer area along a stream channel established by the Water Commission for the purpose of restoration of stream channels and riparian zones.
49. “Riparian Zone”: Areas adjacent to rivers and streams with a differing density, diversity, and productivity of plant and animal species relative to nearby uplands. It includes wetlands and those portions of floodplains and valley bottoms that support riparian vegetation..

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50. “Stream”: a natural watercourse, including any seep, creek, or spring, with a definite bed and banks as it existed under natural conditions. Any act of obliteration of the bed or banks of a stream does not cancel the existence of the stream, if natural processes will in the course of time and in the absence of human intervention restore it to a condition similar to that existing prior to such acts of obliteration.
51. “Stream Channel”: the bed and banks of a stream.
52. “Stream Zone”: For purposes of this code, the “stream zone” shall include the bed, banks and area of riparian vegetation of any stream, natural watercourse, seep, bog, meadow, pond, spring, or lake, with a definite bed and banks as it existed under natural conditions. Stream zones also include the bed, banks and area of riparian vegetation of man-made impoundments and constructed wetlands.
53. “Stream Zone Alteration”: any change in the course, depth, width, or topography of the bed or any bank of a stream, or change in the vegetative cover in the defined stream zone, due to activities other than the results of nature.
54. “Traditional Tribal Cultural Activities”:
- a. land or resource-use activities required for:
    - i. the gathering, harvesting, processing, or preparation of roots, berries, fruits, herbs, medicinal plants, fish, and wildlife;
    - ii. the construction and maintenance of facilities used for the purpose of religious, spiritual, and other ceremonial activities; and
    - iii. any other activity not specifically listed herein which is determined by the Water Commission to be a traditional Tribal subsistence activity.
  - b. Traditional Tribal subsistence activities include, but are not limited to the following:
    - i. digging and gathering roots and plants for ceremonial and subsistence purposes;
    - ii. gathering wood for personal use;
    - iii. construction and use of sweatshouses;
    - iv. erecting structures for drying and curing subsistence foods; and
    - v. erecting temporary shelters necessary for religious, spiritual, ceremonial, gathering, fishing, and hunting activities.
55. “Treaty of 1855”: the Treaty of June 9, 1855, 12 Stat. 945, ratified March 8, 1859, proclaimed April 11, 1859, between the Cayuse, Umatilla and Walla Walla Tribes and the U.S. Government.
56. “Trespass”: wrongful interference with or disturbance of the possession of property.
57. “Tribe” or “Tribal”: of or pertaining to the Confederated Tribes of the Umatilla Indian Reservation
58. “Tribal Waters”:
- a. All water arising upon, traversing, or bordering the Umatilla Indian Reservation, whether the water is flowing or stationary, whether it is above or

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- below the surface of the ground, and whether it is diffused or contained within a defined water course or body of water of any kind; and
- b. all water reserved at any time to the Tribes or the Reservation by the United States and the Tribes; and
  - c. all water which in the course of nature or as a result of artificial works, flows into or enhances said waters.
59. “Triennial Review Process”: refers to Section 303(c)(1) of the Clean Water Act, which requires that the Confederated Tribes shall, from time to time, but at least once every three years, hold public hearings to review the Water Quality Standards and, as appropriate, to modify and adopt standards. The public will be notified of proposed changes and be provided with the opportunity to comment. The Confederated Tribes will follow guides provided in Chapter 6 “Procedure for Review and Revision of Water Quality Standards” from EPA’s Water Quality Standards Handbook to conduct all triennial reviews.
60. “Turbidity”: the clarity of water or a measure of the transmission of light through a column of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.
61. “Umatilla Indian Reservation”: all lands within the diminished boundary of the Umatilla Indian Reservation and all Tribally owned lands and Trust lands located outside the diminished boundary but within the original treaty boundary.
62. “Violation”: a transgression of any statute, rule, order, license, permit, certification or any part thereof and includes both acts and omissions.
63. “Water Commission”: the governmental body of the Confederated Tribes charged by the Board of Trustees.
64. “Water Quality”: the chemical, physical, biological, and radiological characteristics of a water body which protect and enhance the existing and designated beneficial uses of waters of the Umatilla Indian Reservation.
65. “Water Quality Standards”: numeric and narrative criteria used to maintain designated use(s) for Reservation waters and to protect and restore the physical, chemical and biological integrity of Reservation waters and protect Tribal health and welfare, enhance the quality of water and serve the purposes of this Code and the Clean Water Act.
66. “Waters of the Reservation”: ground water, deep and shallow alluvial/basalt aquifers lakes, rivers, ponds, streams (including intermittent and ephemeral streams) wetlands, ponds, impounding reservoirs, canals, and all other waters, natural or artificial, within the boundaries of the Reservation.
67. “Wetlands”: any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, swales, riparian zones, and similar areas with hydrophytes and hydric soils.
68. “Wildlife Habitat”: the waters and stream zones of the Reservation used by, or that directly or indirectly provide food, shelter, migration corridors and other support to, fish, other aquatic life, and wildlife for any life stage or history.

**SECTION 1.08. WATER MANAGEMENT REGIONS**

- A. Water Management Regions Established. For the purposes of this Code, the Board of Trustees hereby establishes the following Water Management Regions:
1. Mission Basin;
  2. South Reservation;
  3. North Reservation;
  4. Umatilla River Valley;
  5. McKay Creek Valley;
  6. Blue Mountains;
  7. Northeast Foothills; and
  8. Johnson Creek.
- B. Water Management Region Map:
1. The locations of the water management regions are indicated on the Water Management Region Map of the Reservation dated July 19, 1995, which is hereby adopted by reference. The water management map shall be certified by the Board of Trustees as the official Water Management Region Map on the date certain.
  2. The boundaries of water management regions shall be section lines, half section lines, quarter section lines, centerline of roads and highways, streams, and ridges, bluffs or other readily recognizable natural features.
  3. The Water Management Region Map shall only be amended by resolution by the Board of Trustees. A person who wishes to amend the Water Management Region Map shall submit a complete application for map amendment and the filing fee to the Department of Natural Resources. Within forty-five (45) calendar days after an application is filed, the Water Commission shall hold a public hearing on the application for map amendment. Within forty (40) calendar days after closing the hearing, the Commission shall transmit its recommendation for approval or denial of the requested amendment to the Board of Trustees. Within thirty-five (35) calendar days after receiving the Commission's transmittal, the Board of Trustees shall act on the Commission's recommendation, by granting or denying the amendment. The thirty-five (35) day time limitation may be extended an additional thirty-five (35) calendar days if the Board of Trustees chooses to hold its own public hearing on the amendment request.
  4. The Water Commission shall use the following criteria for evaluating a request for map amendment and making its recommendation to the Board of Trustees:
    - a. The change is needed to improve water conservation and development for beneficial use on the Reservation as a whole;
    - b. The change will promote the availability of water for the high priority uses in the regions proposed for modification;
    - c. The change is needed to alleviate water management or use problems associated with changes in land use patterns on the Reservation;

- d. The proposed new boundaries conform to the provisions of paragraph 2 of this section.
5. The Confederated Tribes shall maintain at least two (2) sets of official Water Management Region Maps. One set shall be located in the office of the Secretary of the Board of Trustees, and another set shall be located at the Department of Natural Resources.

#### SECTION 1.09. BENEFICIAL USES OF WATER

A. The Board of Trustees establishes and defines the following beneficial uses of water:

1. Domestic. Use of water from one supply system for drinking, bathing, culinary, sanitation and other household purposes at three or fewer dwelling units and for irrigation of less than one half (0.5) acre of lawn and garden area per dwelling unit.
2. Community. Use of water from one supply system for drinking, bathing, culinary, sanitation, and other household purposes at more than three dwellings and for irrigation of less than one half (0.5) acre of lawn and garden area per dwelling unit.
3. Municipal. Use of water by a community that is situated on the Reservation or by a community that has been incorporated under the laws of the State of Oregon outside the Reservation boundaries, where such water use includes at least community, public, commercial, and industrial beneficial uses which are served through a single water supply system that is maintained and operated by the Tribal government or a city government.
4. Public. Use of water at government buildings; schools; public parks, pools, and campgrounds; churches; and other facilities open to the general public.
5. Agricultural Irrigation. Application of water to the land for the purpose of growing crops.
6. Stock Watering. Diverting water for the purpose of providing livestock with water to drink.
7. General Farm. Use of water for farm activities other than stock watering, agricultural irrigation, or domestic uses.
8. Commercial. The use of water at establishments where goods or services are sold or exchanged. This use includes such establishments as apartment complexes, commercial greenhouses, commercial fish hatcheries, restaurants, and private campgrounds and recreational vehicle parks.
9. Industrial. Use of water for the purpose of processing or reprocessing raw materials or agricultural crops; or manufacturing, assembling, or fabricating products.
10. Fire Protection. The use of water for the purpose of fighting fires.
11. Cultural. Use of water for practicing traditional tribal religious ceremonies, subsistence activities, customs, habits, or other tribal activities that transmit traditional knowledge or social behavior to succeeding generations of tribal members.
12. Mining. Use of water for the purpose of extracting and processing rock, ore, minerals, or fossil fuels from the soil or geological formations.
13. Fish and Aquatic Life Habitat. Use of water for the purpose of providing spawning, egg incubation, holding, living, rearing habitat and passage conditions for anadromous and resident fish and other appropriate native resident plant and animal communities.

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14. Wildlife Habitat. Use of water for the purpose of providing wildlife with drinking water and providing aquatic and semi aquatic wildlife with resting, denning, nesting, migrating and foraging habitat.
  15. Pollution Abatement. Use of water for the purpose of preventing or minimizing air or water pollution.
  16. Recreation. Use of water for the purpose of providing conditions suitable for boating, fishing, swimming, and other water contact activities.
  17. Power Generation. Use of water for the purpose of generating electric and/or mechanical power.
  18. Fish Hatcheries. Use of water for the non-commercial purpose of artificially rearing, feeding, or spawning of fish or incubation of fish eggs.
- B. No person shall divert, withdraw, or otherwise use waters of the Reservation for purposes other than the beneficial uses in this section.

**SECTION 1.10. WATER COMMISSION**

- A. Water Commission – Establishment. The Board of Trustees hereby establishes the Water Commission. The Water Commission shall serve as the liaison between the Board of Trustees, the Department of Natural Resources, and other bodies or agencies having functions relating to water appropriation, water quality or water management. In addition, the Water Commission shall establish policies and provide for general oversight for the Department of Natural Resources in the administration and interpretation of this Code. The Water Commission shall participate in hearings and such other duties as are delegated by the Board of Trustees.
- B. Jurisdiction. The territorial jurisdiction of the Water Commission shall coincide with the territorial jurisdiction of the Confederated Tribes of the Umatilla Indian Reservation and shall be exercised by the Water Commission as authorized by the Board of Trustees in this Water Code.
- C. Membership. The Water Commission shall be composed of five (5) members of the General Council, of whom at least one (1) member of the Commission shall be a member of the Board of Trustees. A quorum of three (3) members shall be required to conduct the business of the Water Commission. By-laws for the Commission shall be approved by the Board of Trustees.
- D. Meeting Schedule. The Water Commission shall meet once each month or more often at the discretion of the Commission. The Commission shall establish its own meeting schedule and agenda. Minutes shall be prepared and approved for all meetings.
- E. Powers and Authorities. The Water Commission shall have the following general powers and authorities to:
  1. Promulgate rules and regulations as authorized by this Code or as required to implement this Code after providing notice and the opportunity for comment upon said regulations;
  2. Review and make recommendations relating to the enactment, enforcement, or administration of laws, codes, ordinances, standards, and regulations affecting Tribal water resources;
  3. Establish and appoint such technical or advisory Committees as the Water Commission deems necessary for the administration and enforcement of this Code;

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4. Reserve and allocate groundwater and surface water to the beneficial uses established in this Code;
  5. Conduct hearings and issue appropriate orders;
  6. Grant, deny, modify or revoke any permits required or authorized by this Code;
  7. Interpret the provisions of this Code, either on its own motion or at the request of the Director;
  8. Make determinations of availability of water and the allocation of water resources to the beneficial uses established in this Code;
  9. Establish priorities of beneficial uses of water resources within each water management region established by this Code;
  10. Recommend to the Board of Trustees the purchase or sale of real or personal property or other interests as they may pertain to the protection of the quality and quantity of Tribal water;
  11. Serve as liaison between the Board of Trustees and the Department of Natural Resources, and other bodies or agencies having functions or activities relating to water use, water quality or water management;
  12. Provide recommendations to the Board of Trustees, regarding administrative or intergovernmental agreements, exchange of information, cooperation with other governmental agencies involving the development, use, or management of Tribal waters;
  13. Take action to insure adequate flows or water levels in streams and lakes for wildlife, aquatic life, and other resources;
  14. Determine existing and foreseeable uses of and needs for water;
  15. Reserve and set aside water for future utilization;
  16. Coordinate the activities of this Code, as necessary, with other committees and commissions of the Confederated Tribes;
  17. Reserve and allocate surface water for non-consumptive, instream uses that are necessary for fish habitat, wildlife habitat, recreation, and pollution abatement purposes;
  18. Define surface water and/or groundwater local management areas and sub-areas for specialized administration under this Code and establish standards on development and use of water resources in those areas;
  19. Direct the preparation of and adopt water conservation plans when necessary to insure the availability of water resources required to protect the political integrity, economic security and the health, safety, and welfare of the Confederated Tribes and the residents of the Umatilla Indian Reservation;
  20. Take any other actions that are permissible under the provisions of this Code.
- F. Rules and Regulations.
1. The Water Commission is directed to write, adopt, and modify such rules and regulations as the Commission deems necessary to implement the provisions of this



Code. This directive shall include, but not be limited to, rules, regulations, and standards to cover the following activities on:

- a. Well construction and maintenance;
  - b. Groundwater protection and development;
  - c. Construction and maintenance of dams and hydraulic embankments;
  - d. Impoundments and other water storage projects;
  - e. Water budget for management regions;
  - f. Water quality standards;
  - g. Water conservation.
  - h. Standards for beneficial use of water;
  - i. Surface water diversions;
  - j. Wetlands protection;
  - k. Best Management Practices for non-point source pollution;
  - l. Stream zone alterations; and
  - m. Any other activities which affect the quantity or quality of the water resources but have not become apparent at this time.
2. The above noted topics may be included in one or more documents of rules or regulations. Such rules and regulations shall not be valid until they have been approved and adopted by the Water Commission.

G. Procedures for Promulgating Rules and Regulations.

1. The Water Commission shall prepare draft rules and regulations and ensure that the drafts are available for public review and comment.
2. Notice of the rules and regulations shall be published in a newspaper of general circulation on the Reservation. The notice shall include a summary of the proposed rule or regulation, where copies of the proposed rule or regulation may be obtained, where to submit comments, and the deadline for making comment.
3. The Water Commission shall provide a public comment period of at least thirty (30) calendar days.
4. The final rules and regulations adopted by the Water Commission shall be consistent with the policies of this Code and take into consideration the public comments received.
5. The rules and regulations shall become effective on the date of adoption by the Water Commission or at a later date as specified by the Water Commission.

H. Emergency Rule-making Authority.

1. The Water Commission is authorized to promulgate emergency rules and regulations governing activities related to water use, water quality or stream zone activities to

respond to emergencies which threaten the health and safety of the residents of the Reservation or the Reservation environment.

2. The emergency rules and regulations shall become effective immediately and shall be effective for a period not to exceed ninety (90) calendar days.
3. The Water Commission shall provide for the immediate publication of written notice of the emergency regulations.

#### SECTION 1.11. PERMITS AND CERTIFICATIONS

A. Permits and certifications authorized under this Code are limited to:

1. Water System Development Permit: is required this Code for the purpose of constructing water diversion works for appropriating Tribal water resources.
2. Water Use Permit: is required under this Code for the purpose of appropriating Tribal water resources for beneficial use.
3. Temporary Water Use Permit: is required under this Code for the purpose of appropriating Tribal water resources for beneficial use for a specified and limited period of time.
4. Stream Zone Alteration Permit for Major Alteration: is required under this Code, for the purpose of performing any activity that alters streamflow, water quality, ground contours, or perennial vegetation which may cause environmental impacts that are of general public concern.
5. Stream Zone Alteration Permit for Minor Alteration: is required under this Code, for the purpose of performing any activity that alters streamflow, water quality, ground contours, or perennial vegetation which may cause negligible negative environmental impacts.
6. Anti-degradation Review is required under this Code for the purpose of conducting any activity which may result in any fill, removal, or discharge into the waters of the Reservation.
7. §401 Water Quality Certification is authorized under this Code for the purpose of approving or denying the issuance of a Federal permit which would allow any activity which may result in any fill, removal or discharge into the navigable waters of the Reservation.

B. Form and Content of Permits. The Water Commission shall establish the form and content of applications, permits, notices, and certifications established under this Code through administrative rules. Application forms for acquiring Tribal Permits, Permit Renewals or Certifications administered through this Code shall be available at the Department of Natural Resources.

C. Filing Applications. The applicant shall submit a complete application for a Tribal permit or certification and the appropriate application filing fee with the Director or his representative. The applicant shall sign and date the application form and shall file the application under oath that the information provided therein is truthful and accurate. Incomplete applications shall not be accepted by the Director or his designee. The act of filing an application for a permit or certification shall not be construed as the issuance of a permit or certification and does not authorize otherwise regulated action by the applicant.

D. Application Amendments and Withdrawal.

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1. An application filed with the Director may be amended or withdrawn only upon written notice by the applicant to the Director. However, no person shall amend or withdraw an application after the permit requested if the application has been approved or denied.
  2. The Confederated Tribes shall promptly refund all of the application filing fee to an applicant who files the written notice required above prior to the Director granting or denying the permit and, if the application requires a public hearing, the applicant makes the withdrawal or all substantial amendments more than twenty (20) calendar days before a scheduled public hearing on the application. An applicant failing to meet these requirements shall forfeit the entire fee, and the application shall be canceled. Substantial amendments include any changes of fact required in a public notice or any changes, under the control of the applicant, that cause a postponement or cancellation of a scheduled public hearing.
- E. Development of Rules. Subject to the provisions of this Code, the Water Commission shall promulgate administrative rules for filing and processing applications for Tribal permits, renewal of Tribal permits, and Certifications, including but not limited to, information required on applications, application fees, review period, notification, public hearing procedures and issuance of permits.
- F. Pre-Application Consultation. Prior to the submission of an application the prospective applicant shall consult with the Director for determination of the scope of the project and the necessary documentation or clearances, if any, that are required for approval of a permit or certification. Such documentation or clearances shall include but are not limited to:
1. Tribal Planning Office/Zoning clearance;
  2. Cultural Resources clearance for ground disturbing activities;
  3. Tribal Fisheries and/or Wildlife Habitat Report;
  4. A Water Quality Certification;
  5. Any applicable Federal Regulations; and
  6. Any other documents necessary for evaluation of the proposed project.
- G. Reporting and Monitoring.
1. The Water Commission may establish procedures for inspection, monitoring, and entry with respect to facilities or activities for which a permit or authorization has been issued pursuant to this Code.
  2. The procedures discussed in paragraph (1) of this subsection may provide as follows and shall be delegated to the Director.
    - a. The Director may require the owner or operator of any facility, or the permittee to any activity for which a permit has been issued, to:
      - i. Establish and maintain records;
      - ii. Make reports;
      - iii. Install, use and maintain monitoring equipment or methods (including where appropriate biological monitoring methods); and
      - iv. Sample effluents.

- b. The Director, upon presentation of credentials:
  - i. Shall have a right of entry to, upon, or through, any premises or area for which a permit has been issued pursuant to this Code or in which any records are required to be maintained;
  - ii. May at reasonable times have access to and copy any records, inspect monitoring equipment or method required and sample any effluents, which the owner or operator of such facility is required to sample.
- 3. Any records, reports, or information obtained under this section for the purposes of compliance with Water Quality Standards or certifications issued under this Code:
  - a. Shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards, and
  - b. Shall be available to the public, except upon a satisfactory showing to the Director, by any person that records, reports, or information, or a particular part thereof (other than effluent data), to which the Director has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person. The Director shall then consider the record, report or information, or particular portion thereof confidential. Authorized representatives of the Director who knowingly or willfully publish, divulge, disclose, or make known in any manner or to any extent not authorized by law any information which is required to be considered confidential under this subsection will be subject to civil remedies provided by Tribal law or otherwise. The Director or his/her authorized representative are not prohibited from disclosing records, reports, or information to other officers, employees, or authorized representatives of the Confederated Tribes charged with carrying out this Code or when relevant in any legal proceeding under this Code.
- H. Conditions. All permits and permit renewals issued under this Code shall be conditioned to conform with all the applicable standards for the beneficial use of water, the protection of water quality and any other standards relevant to the protection of water, stream zones, and any other water related resources established by this Code. The Water Commission and the Director shall impose any other special conditions necessary to fulfill the purposes of this Code and Tribal Water Policy.
- I. Validation of Permits and Certifications. To be valid, any Permit or Certification issued under this Code must bear the signature of the Director and the date of validation by the Director. Permits must also include their expiration date.

#### SECTION 1.12. VARIANCES

- A. Any person may request a variance from one or more requirements of this Code by submitting a written request to the Water Commission. The variance request must specify the section(s) of the Code and/or associated standards or regulations adopted in reference to this Code the applicant wants a variance from. The request must address and satisfy all of the circumstances listed below:
- B. Variances in General.
  - 1. A variance may be granted only in the event all of the following circumstances exist:
    - a. Special circumstances or conditions affecting the water body, water source or the property surrounding the water source which make strict application of the provisions of this Code or associated standard and regulations impracticable or unreasonable;

- b. Strict compliance with the requirements of this Code or associated standard and regulations would result in extraordinary hardship to the applicant because of unusual conditions over which the applicant has no control or would result in inhibiting the achievement of the goals of this Code;
  - c. Granting the variance will not be detrimental to the public welfare or injurious to other property in the area in which the variance is granted;
  - d. Granting the variance will not violate any other provision of Tribal (or federal) law;
  - e. The variance requested is the minimum variance which would alleviate the hardship; and
  - f. Granting the variance will not adversely impact threatened or endangered species or their critical habitat.
2. Upon receipt of a completed variance request application, application fee, and any supporting documents, The Director shall conduct a staff review of the variance request.
  3. Upon completion of the staff review, the variance request shall be subject to a public hearing before the Water Commission following the public hearing process set forth in the Administrative Rules of this Code.
  4. Upon the granting of a variance, the Water Commission may attach conditions which it finds necessary to protect the interests of affected parties or would otherwise achieve the purposes of this Code.
  5. The Director of the Department of Natural Resource shall be responsible for enforcing or carrying out the decision of the Commission.
- C. Variances for Water Quality Standards. The Water Commission is responsible for determining if a variance to any specific water quality standard will be permitted. Any such variance shall be consistent with the variance requirements of the Water Quality Standards.
1. Criteria for Variance. The Water Commission may grant a variance to the approved Water Quality Standards provided the variance meets the following requirements:
    - a. The variance will be pollutant and source specific, and
    - b. The applicant demonstrates that meeting the standard is unattainable.
  2. A Water Quality Standard may be deemed unattainable and eligible for a variance by the Water Commission if the applicant for a variance demonstrates one or more of the following:
    - a. The concentration of a naturally occurring pollutant prevents the attainment of the water quality standard, or
    - b. The natural physical (substrate cover, depth, pools, or riffles) or flow conditions of the water prevent attainment of the water quality standard, or
    - c. Pre-existing conditions or sources of pollutants prevent the attainment of the water quality standard and cannot be remedied or would cause more environmental damage to correct than to leave in place, or

- d. Man-made hydrologic modifications (dams, diversions, levees, etc.) preclude water quality attainment and cannot be modified to operate in a manner that would achieve the water quality standard, or
  - e. Physical conditions related to the natural features of the water body, unrelated to water quality such as lack of proper substrate cover, depth, pools, or riffles preclude attainment of the standard, or
  - f. Controls more stringent than technology-based effluent limitations would result in substantial and widespread economic and social impact.
3. The discharger must submit to the Tribes documentation that treatment more advanced than required by technology-based effluent limitations were considered and that alternative effluent control strategies were evaluated.
  4. A variance shall not exceed a five (5) year period and the Water Commission shall limit the variance to as short a time as feasible.
    - a. Upon expiration of the five-year time period or permit, the applicant must either meet the water quality standard or must re-apply for the variance according to this section.
    - b. In considering a re-application for a variance, the Water Commission will require the applicant to demonstrate reasonable progress toward meeting the water quality standard.
  5. Any variance request from the Tribal Water Quality Standards shall be subject to the public hearing process set forth in the Administrative Rules of this Code.
  6. Variances to the Water Quality Standards approved by the Water Commission shall be submitted to EPA for review and approval.

### SECTION 1.13. APPEALS

- A. Any decision of the Director or the Water Commission on an application for a Tribal Permit or Certification may be appealed to the Umatilla Tribal Court by the applicant or any person with a direct interest in or who is otherwise directly and adversely affected by the decision made under the provisions of this Code.
- B. Persons intending to appeal a decision must file a Statement of Appeal with the Umatilla Tribal Court within fifteen (15) calendar days after the date of the decision by the Director or the Water Commission. Any decision that is not appealed within the fifteen (15) day time limitation shall be final and binding as rendered by the Director or Water Commission.
- C. The appeal to the Umatilla Tribal Court is limited to the question of whether the decision of the Director or the Water Commission is in accordance with Tribal law. The appeal of the Water Commission's decision shall be heard on the record of the hearing unless the Court directs the parties to submit written briefs and/or present oral argument on the issues.
- D. In order to file an appeal the party appealing shall pay the designated fee and file a Statement of Appeal with the Court which sets forth:
  1. The time, date, and nature of the action being appealed;
  2. The reasons why the appealing party feels the Director's or the Water Commission's decision is not in accordance with Tribal law; and
  3. any requested relief.

- E. Upon receipt of a Statement of Appeal, the Umatilla Tribal Court shall direct the Water Commission to transmit a copy of the hearing record to the Court. If it is an appeal of the Director's decision, the Court shall specify the documents or information the Director must submit to the Court.
- F. The court shall render a decision on the appeal no later than thirty (30) days from the date the Statement of Appeal is filed and the Court's decision shall be final and binding.
- G. Any decision rendered by the Court shall set forth findings of fact and conclusions of law justifying the decision. If necessary, the Court shall remand the case to the Director or the Water Commission to act in accordance with its decision.

#### SECTION 1.14. FEES

The Board of Trustees hereby establishes a fee schedule for licenses, permits, certifications, registration statements, and the review of applications required by this Code. The Water Commission shall develop and have the authority to determine the fee schedule (including the establishment or deletion of fee categories and to increase or decrease the fee amounts) as is necessary to carry out the administration of this Code. The fee schedule shall be adopted through administrative rule. The Director shall prepare and maintain a current fee schedule which is available for public inspection.

#### SECTION 1.15. LIABILITY

All Tribal employees, Tribal bodies or branches of government shall be immune from any civil or criminal liability for their actions in the administration and enforcement of this Code. Water administrators and enforcement officers shall have the authority to enter upon private property for the purpose of inspections and enforcement and shall incur no liability there from.

#### SECTION 1.16. SEVERABILITY

If any provision of this Code or application thereof to any person or circumstance is held invalid, this code shall be given effect without the invalid provision or application. Accordingly the provisions of this Code are declared to be severable.

#### SECTION 1.17. COMPUTATION OF TIME

Whenever a time period is specified within this Code where action is required within a specified number of days, such reference shall mean calendar days, except where specified as working days, unless the final day falls upon a weekend or holiday in which case the specified action shall be due on the next working day.

### **CHAPTER 2. WATER RESOURCE USE AND DEVELOPMENT**

#### SECTION 2.01. PRIOR WATER RIGHTS

- A. The Confederated Tribes of the Umatilla Indian Reservation shall have the sole authority for permitting or authorizing the withdrawal or use of water within the boundaries of the Reservation.
- B. All water rights granted to any person or entity, or for any property, within the boundaries of the Reservation by the Oregon Water Resources Board, the Office of the State Engineer or any other agent or authority of the State of Oregon are hereafter null and void.
- C. Any water right with a priority date prior to August 5, 1981 obtained under the authority of the State of Oregon, whether for surface or ground water, shall be recognized as valid until such time as the status of the Confederated Tribes' reserved water right is resolved.

**SECTION 2.02. WATER SYSTEM DEVELOPMENT AND WATER USE PERMITS**

- A. Actions Requiring a Water System Development or Water Use Permit. Any person seeking to divert, use, or initiate any action to divert or use Reservation water resources which use or uses have been allowed and defined as a beneficial use under this Code shall file an application for a Water System Development Permit or Water Use Permit. No person shall:
1. Divert or use any water unless pursuant to a Water Permit issued in accordance with the provisions of this Code. A permit shall be required for each beneficial use and for each diversion works.
  2. Drill any new well, whether domestic, irrigation or otherwise, or construct or install a diversion works to divert surface water unless done pursuant to a Water Permit issued in accordance with the provisions of this Code.
  3. Drill for the purposes of extending or deepening an existing well unless pursuant to a Water Permit issued in accordance with the provisions of this Code.
- B. Permits Required for Developing and Using Water.
1. Except for the exemptions specified in this Code below, a valid Water System Development Permit is required prior to:
    - a. Beginning construction of new water diversion works or enlarging, deepening, relocating, or performing any alteration of an existing well; or
    - b. Changing one or more of the following:
      - i. point of diversion,
      - ii. place of use,
      - iii. beneficial use,
      - iv. rate of diversion,
      - v. rate of application of water, or
      - vi. water source.
  2. Except for the exemptions specified in this Code below, a valid Water Use Permit is required prior to the appropriation of any Tribal water resources for beneficial use.
  3. Except for the exemptions specified in this Code below, a Temporary Water Use Permit is required, in lieu of a Water Use Permit, by any person who appropriates Tribal water resources for beneficial use for a period of three (3) years or less.
- C. Exemptions to Requirement for Acquiring a Water System Development or Water Use Permit.
1. Prior Water Rights. Exempt wells drilled or users holding a valid Oregon State Permit issued prior to the adoption of the original Interim Water Code, August 5, 1981, shall not be required to obtain a Tribal Water Permit until the water user changes any of the original Oregon State permit conditions.
  2. Emergencies. The following uses of water are allowed without a Water Permit provided the user notifies the Director within 48 hours of diverting water and obtains the permission of the owner of the diversion works.



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- a. Water from any source may be diverted to control fire in case of emergency.
  - b. Water from any source may be diverted for domestic or community use for a period not to exceed thirty (30) calendar days when water is unavailable due to drought or other emergency or during the construction or alteration of a permitted diversion works.
  - c. Water from any source may be diverted for stock watering for a period not to exceed thirty (30) calendar days in time of drought or other emergency which renders water unavailable for stock purposes. The diversion shall be the minimum necessary to alleviate the emergency.
- D. **Effect of Permits.** Water System Development or Water Use Permits issued under the provisions of this Code do not create, recognize, or convey and shall not be construed as creating or recognizing, or conveying ownership of water to the permittee.
1. Any Water System Development Permit issued in accordance with the provisions of this Code is authorization by the Confederated Tribes for the permittee to develop, construct, alter, or prepare a diversion works for operation of a water use system or to effect a change in use, subject to the terms and conditions of the permit, this Code and any amendments hereto, and to actions taken pursuant to this Code.
  2. Any Water Use Permit and Temporary Water Use Permit issued in accordance with the provisions of this Code is authorization by the Confederated Tribes for the permittee to use water resources, subject to the terms and conditions of the permit, to this Code and amendments hereto, and to actions taken pursuant to this Code.
- E. **Duration of Permits.** Subject to renewal, modification, and cancellation procedures of this Code, Water System Development or Water Use Permits shall have the following terms:
1. A Water System Development Permit validated by the Director shall be valid for a period not to exceed three (3) years.
  2. A Water System Development Permit validated by the Water Commission shall be valid for a period not to exceed five (5) years.
  3. Temporary Water Use Permits shall have a term not to exceed three (3) years.
  4. Valid permits for non-temporary domestic, community, and municipal use shall have a term of thirty (30) years. This provision is retroactive to all domestic, community, and municipal permits issued since adoption of the original Interim Water Code on August 5, 1981.
  5. Valid non temporary permits that are approved by the Director for all other uses shall have a term of ten (10) years.
  6. Valid non-temporary permits that are approved by the Water Commission for uses not covered above shall have a term not to exceed thirty (30) years. If the Water Commission approves a permit with a term of greater than ten (10) years, the permit shall contain a condition that the Director shall periodically review the use authorized by the permit. Periodic review of a permit shall occur at least once every ten (10) years as specified by the Water Commission on the permit. The purpose of the periodic review is to determine compliance of the use with the conditions of the permit, the provisions of this Code and amendments hereto, and with rules and regulations adopted hereunder.
- F. **Restricted Applicants for Specific Beneficial Uses.** Only the Confederated Tribes or its agencies, committees or commissions shall be authorized to apply for and receive any Water Permit to use water for fish habitat, wildlife habitat, or noncommercial fish hatchery

beneficial uses, or for instream flows for pollution abatement, recreation or power generation beneficial uses. The Water Commission is authorized to approve or deny requests for Water System Development Permits for these uses.

- G. Water Conservation Plans. The Director and the Water Commission may require applicants for Water System Development or Water Use Permits and permit holders to prepare and implement water conservation plans for water use authorized under this Code. The Water Commission shall adopt regulations which establish the procedures and standards for preparing water conservation plans.
- H. Entry on Land as a Condition of Permits. All Water System Development or Water Use Permits shall contain consent by the permittee for access by Tribal representatives upon permittee's land and appurtenances for the purpose of administration and enforcement of permits issued under the provisions of this Code.
- I. Metering of Water Use. All Water System Development or Water Use Permits that are approved by the Director or the Water Commission for non-domestic uses that pump or divert more than twenty-five (25) gallons per minute shall contain a condition requiring the installation and maintenance of a flow and totalizing metering system. The Director or Water Commission may exempt the totalizing feature of a metering system if the permit authorizes a non-consumptive use of water.
- J. Construction of Diversion Works. All diversion works, including but not limited to wells, pumps, canals, and head gates authorized by Water System Development Permits shall be constructed to comply with Tribal standards for the development and construction of wells and surface water diversions.
- K. Prior Permitted Uses.
  - 1. Any water user who possesses a valid permit issued prior to August 5, 1981, must apply for and obtain a Water System Development Permit approved by the Director, if the user intends to deepen, enlarge or recondition an existing well. If the only action is the alteration of the structure of an existing well, a Water Use Permit is not required.
  - 2. Any water user who possesses a valid permit issued prior to August 5, 1981, must obtain a Water System Development Permit and a Water Use Permit, in accordance with the provisions of this Code, if the user intends to change one or more of the following: the beneficial use, rate of diversion, rate of application, or water source.
  - 3. Any water user who possesses a valid permit issued prior to August 5, 1981, must obtain authorization from the Director prior to changing the point of diversion or the place of use of the permit. Persons intending to change the point of diversion or place of use shall file an application with the Director for a modified Water System Development Permit. The Director shall approve the proposed change and issue the permit only if the request conforms to the provisions Modifications of Water Rights, Water System Development, or Water Use permits as specified below in this Code.

#### SECTION 2.03. CRITERIA FOR APPROVAL OF WATER SYSTEM DEVELOPMENT PERMITS

- A. Director's Authority and Criteria.
  - 1. The Director shall have the authority to approve or deny Water System Development Permit requests for:
    - a. Domestic use withdrawing water from any water source,

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- b. Community use withdrawing water from any groundwater source provided the requested pumping or diversion rate is less than two hundred (200) gallons per minute,
- c. Any temporary beneficial use withdrawing water from:
  - i. The basalt aquifer provided the maximum rate of diversion is twenty-five (25) gallons per minute and the maximum annual usage is two (2) acre feet if the point of diversion is located in the Mission Basin Water Management Region; or a maximum rate of diversion of one-hundred fifty (150) gallons per minute and maximum annual usage of ten (10) acre feet if the point of diversion is located in any Water Management Region other than the Mission Basin,
  - ii. The alluvial aquifer or surface water source provided the maximum rate of diversion is one-hundred fifty (150) gallons per minute and the maximum annual usage is five (5) acre feet,
- d. Agricultural irrigation withdrawing water from:
  - i. the basalt aquifer provided the maximum rate of diversion is twenty-five (25) gallons per minute and the maximum annual diversion is five (5) acre feet if the point of diversion is in the Mission Basin Water Management Region; or a maximum rate of diversion of one-hundred fifty (150) gallons per minute and a maximum annual usage of forty (40) acre feet if the point of diversion is located in any Water Management Region other than the Mission Basin,
  - ii. the alluvial aquifer provided the maximum rate of diversion is fifty (50) gallons per minute and the maximum annual usage is ten (10) acre feet,
- e. Cultural use withdrawing water from any water source provided the maximum rate of diversion is twenty-five (25) gallons per minute and the maximum annual usage is five (5) acre feet,
- f. Stock watering use withdrawing water from:
  - i. the basalt aquifer provided the maximum rate of diversion is fifteen (15) gallons per minute and the maximum annual usage is one (1) acre foot if the point of diversion is located in the Mission Basin Water Management Region; or a maximum rate of diversion of twenty-five (25) gallons per minute and maximum annual usage of two (2) acre feet if the point of diversion is located in any Water Management Region other than the Mission Basin,
  - ii. the alluvial aquifer or surface water source provided the maximum rate of diversion is fifteen (15) gallons per minute and the maximum annual usage is one (1) acre foot,
- g. General farm use withdrawing water from any groundwater source provided the maximum rate of diversion is twenty-five (25) gallons per minute and the maximum annual usage is one (1) acre foot if the point of diversion is located in the Mission Basin Water Management Region; or a maximum rate of diversion of fifty (50) gallons per minute and maximum annual usage of three (3) acre feet if the point of diversion is located in any Water Management Region other than the Mission Basin,

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- h. Fire protection use from any source provided the applicant and proposed user is a fire protection district or Tribal Fire Department and the maximum pumping rate or rate of diversion is three-hundred (300) gallons per minute,
  - i. Pollution abatement use, for dust control only, withdrawing water from any water source provided the maximum diversion rate is twenty-five (25) gallons per minute and the maximum annual usage is two (2) acre feet,
  - j. Public, commercial, and industrial uses withdrawing water from any groundwater source provided the maximum rate of diversion is fifty (50) gallons per minute and the maximum annual usage is five (5) acre feet if the point of diversion is located in the Mission Basin Water Management Region; or a maximum rate of diversion of one hundred (100) gallons per minute and maximum annual usage of ten (10) acre feet if the point of diversion is located in any Water Management Region other than the Mission Basin.
2. Upon receiving a complete application and the filing fee, the Director shall approve a Water System Development Permit provided the applicant demonstrates that all of the criteria listed below are met. The Director shall deny the request if the request fails to comply with one or more of the review criteria.
- a. The requested use is a beneficial use of water as defined in this Code;
  - b. The request conforms to the standards for beneficial uses;
  - c. The request conforms to the Director's criteria for approval as specified in this Code;
  - d. The requested development and beneficial use supports a land use that is consistent with the policies and standards of the Confederated Tribes' Land Development Code;
  - e. Construction activities associated with the requested development do not discharge pollutants into the waters of the Reservation in violation of the Water Quality Standards;
  - f. If the request is for developing a new diversion works to replace an existing diversion works or for altering an existing diversion works, that the existing diversion works is unable to provide the needed quantity or quality of water to support the requested beneficial use; and
  - g. The applicant demonstrates that the owner(s) of the land where the point of diversion and place of use are located approves the filing of the application;
  - h. There is water available from the proposed water source for the requested development and beneficial use.
- B. Water Commission's Criteria.
1. Upon receiving a complete application and the filing fee, the Water Commission shall hold a public hearing and evaluate the request for a Water System Development Permit based on the following criteria.
- a. The requested use is a beneficial use of water as defined in this Code;
  - b. The request conforms to the standards for beneficial uses;
  - c. The requested development and beneficial use supports a land use that is consistent with the policies and standards of the Land Development Code;

- d. Construction activities associated with the requested development do not discharge pollutants into the waters of the Reservation in violation of the Water Quality Standards;
  - e. If the request is for developing a new diversion works to replace an existing diversion works or for altering an existing diversion works, that the existing diversion works is unable to provide the needed quantity or quality of water to support the requested beneficial use;
  - f. The applicant demonstrates that the owner of the land where the point of diversion and place of use are located approves the filing of the application;
  - g. There is water available from the proposed water source for the requested development and beneficial use;
  - h. The request is consistent with the policies and purposes of this Code;
  - i. The quantity, diversion rate, point of diversion, place of use, and season of use of the proposed development will not interfere with higher priority uses, either permitted or reserved; and
  - j. The request utilizes the minimum amount of water to accomplish the purposes of the proposed development.
2. When rendering a decision the Water Commission may:
- a. Approve the request without conditions if the request conforms to all of the criteria 1(a) through 1(j) above;
  - b. Approve the request with conditions if condition(s) are needed to satisfy criteria 1(h), 1(i), and 1(j) above;
  - c. Deny the request if the request does not conform to one or more review criteria 1(a) through 1(g) above; or
  - d. Deny the request if no condition(s) will satisfy one or more of the criteria 1(h), 1(i), and 1(j).
- C. Obtaining a Water Use Permit.
1. Upon the approval of the Water System Development Permit, the permit holder shall complete construction and put water to beneficial use in accordance with the terms and conditions of the permit prior to the expiration date on the permit. If water has not been put to beneficial use prior to the specified expiration date, the Director shall cancel the Water System Development Permit in accordance with the provisions of this Code.
  2. If water is put to beneficial use in accordance with the terms and conditions of the Water System Development Permit, the applicant shall register the development and the Director shall issue the Water Use Permit.
  3. Registration and filing for a Water Use Permit requires the permittee to:
    - a. Show proof of completion of the appropriation pursuant to the approved permit;
    - b. Obtain and return a completed registration statement form for the water development authorized for each Water System Development Permit to the Department of Natural Resources;

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- c. Each registration statement shall be in a form prescribed through the administrative rules and shall be under oath (except for domestic use);
- d. Each registration statement shall be accompanied by such maps and drawings and other data as the Department of Natural Resources deems necessary;
- e. The Department of Natural Resources may require that any registration statement be supplemented after any diversion works is fully completed by a statement containing such additional information as the Department of Natural Resources deems necessary.

**SECTION 2.04. WATER USE PERMIT RENEWALS**

- A. The Director of the Department of Natural Resources shall have the authority to approve or deny the renewal of any non-temporary Water Use Permit with a term of more than three (3) years. All Temporary Water Use Permits shall be cancelled automatically upon the expiration of the permit and shall not be renewable by the Director.
- B. Within thirty (30) calendar days after the expiration date of a Water Use Permit, the permittee or water user shall either file a request for renewal of the permit or voluntarily cancel the permit.
- C. The Director shall notify the permittee of the expiration or pending expiration of a Tribal Water Use Permit issued pursuant to the Code. The notification shall be sent to the permittee via certified mail at the address last known to the Director.

**SECTION 2.05. TRANSFERS OR CANCELLATION OF WATER SYSTEM DEVELOPMENT AND WATER USE PERMITS**

- A. **Transfer of Water System Development or Water Use Permits.** Any valid Water System Development or Water Use Permit issued in accordance with the provisions of this Code may be transferred to another person or persons without any other change as a result of the sale of land upon which the water is permitted for use, or the final distribution of an estate. Transfers must conform to the permit conditions, standards, and policies of this Code and regulations and amendments hereto.
- B. **Subdivision and Apportionment.** Water System Development or Water Use Permits issued under the provisions of this Code may be subdivided or apportioned subject to the conditions of the permit and provided there is no change in the beneficial use, place of use, pumping rate, flow rate, or rate of application from a permitted diversion works. Water permit subdivisions or apportionments shall be subject to approval by the Director.
- C. **Authorization to Cancel Permits.** The Director, Water Commission, and the Umatilla Tribal Court are hereby and severally authorized to cancel Water System Development or Water Use Permits in accordance with the provisions of this Code.
- D. **Reasons for Cancellation.** A Water System Development or Water Use Permit may be totally or partially cancelled for the following causes:
  - 1. Failure to comply with any terms and conditions of the permit, a provision of this Code, or with any order or decision of the Director, Water Commission or the Umatilla Tribal Court,
  - 2. Nonuse of water as specified in this Code,
  - 3. Expiration of time for permits issued with a specified time limit,
  - 4. Any misrepresentation of a material fact in an application for permit, or in any other statement made as part of the application, modification, or cancellation process,

5. Voluntary relinquishment of a Water System Development or Water Use Permit.
- E. Voluntary Relinquishment of Water Permits. Any person holding a Water System Development or Water Use Permit may voluntarily cancel all or a portion of the permit at any time by filing a Voluntary Cancellation of Water System Development or Water Use Permit form with the Director. Upon receiving a completed Voluntary Cancellation of Water System Development or Water Use Permit form from the permit holder, the Director shall cancel the portion of the permit relinquished by the holder.
- F. Cancellation of Water System Development Permits.
1. If water has not been diverted for beneficial use in conformance with permit conditions, prior to the expiration date of the Water System Development Permit, the Director shall notify the permit holder, by certified mail, that permit cancellation proceedings are being initiated. The notice shall include, at a minimum, the permit number, permit expiration date, beneficial use of water, the general cancellation procedure, the deadline for submitting a written response, and the permit holder's recourse. The holder shall be given twenty (20) calendar days to show, in writing, that:
    - a. Failure to put water to beneficial use was due to factors beyond the control of the permit holder; and
    - b. The holder intends to complete project work and put water to beneficial use within one year after the expiration date on the permit.
  2. The Director shall extend the permit expiration date by one year if the permit holder shows that the failure to use water was not self inflicted and that water will be put to beneficial use within one (1) year. The Director shall cancel the permit, effective on the expiration date as stated on the Water System Development Permit, if the permit holder fails to respond, in writing, within the twenty (20) day deadline, or if the reason for failure to put water to use was self inflicted, or if the holder does not intend to put water to use within one (1) year. Appeals of the Director's decision shall be made to the Umatilla Tribal Court. The expiration date on a Water System Development permit may not be extended more than once.
- G. Cancellation of Water Use Permits.
1. Any permit authorizing the use of water resources shall become void to the extent of nonuse or abandonment when the permit holder wholly or partially abandons the use permitted, or voluntarily ceases, without sufficient cause, to use all or a portion of the water authorized under the permit for a period of five (5) consecutive years.
  2. Any permit authorizing the use of water resources shall not become void to the extent of nonuse or abandonment when the permit holder wholly or partially abandons the use permitted with sufficient cause. Sufficient cause shall include:
    - a. Drought or other unavailability of water,
    - b. Active service in the armed forces of the United States during military crisis,
    - c. Non-voluntary service in the armed forces of the United States,
    - d. The operation of legal proceedings,
    - e. The application of any laws restricting water use,
    - f. Incarceration in a penal institution,
    - g. Confinement in a mental institution, whether voluntary or not,

- h. Other causes of nonuse determined by the Water Commission to be beyond the control of the holder of the permit.
- H. Non-Use or Abandonment. Before any portion of a Water Use Permit is cancelled because of non-use or abandonment, the Director shall notify, by certified mail, the holder of the permit that the Department of Natural Resources is initiating proceedings to cancel the permit. The Director shall follow procedures established by administrative rule. The cancellation of the Water Use Permit for nonuse or abandonment shall become effective thirty (30) calendar days after notice has been provided to the permit holder unless said permit holder appeals the decision to the Umatilla Tribal Court.
- I. Loss by Adverse Possession, Prescription, Estoppels or Acquiescence. No Water Permit may be acquired or lost by adverse possession, prescription, estoppel or acquiescence.
- J. Loss by Outside Proceedings. No Water System Development or Water Use Permit granted under this Code may be reduced or otherwise affected in any procedure or determination or adjudication except as provided in this Code.

**SECTION 2.06. MODIFICATION OF WATER RIGHT, WATER SYSTEM DEVELOPMENT  
OR WATER USE PERMITS**

- A. Modification of Water Permits by the Water Commission. Water Rights or Water System Development/Water Use Permits may be modified by the Water Commission where:
  - 1. The permitted or allowed water use creates conditions that cause a hardship on the surrounding water users,
  - 2. A change of conditions requires a modification of the permit,
  - 3. All applicable requirements of this Section have been satisfied.
- B. Hardship on Surrounding Water Users. Where one or more permitted water use(s), whether granted prior or subsequent to the adoption of this Code, creates a hardship upon the surrounding water users, that water right or permit may be modified, temporarily or permanently, by the Water Commission in such manner as may be necessary to alleviate the hardship. For purposes of Section 2.05, "hardship" shall be defined as a detrimental condition that is beyond the control of the individual(s) and is not personal or self-inflicted.
  - 1. The Water Commission, upon finding that a hardship exists, and that such hardship may be relieved by temporarily modifying one or more permits, may order a temporary modification of a permitted water use(s) for a period not to exceed one-hundred eighty (180) calendar days in any calendar year. Such order shall be enforced by the Director. Failure of the permittee(s) to comply with the order shall be a violation of this Code.
  - 2. The Water Commission shall conduct a public hearing prior to permanently modifying a water right or permit. A permit may be permanently modified provided that the Water Commission finds that:
    - a. A hardship exists;
    - b. The use or uses experiencing the hardship are higher priority uses than the uses proposed for modification;
    - c. The act of using water, as authorized under the permits or rights which are subject to modification, is causing the hardship; and
    - d. A permanent modification is needed to alleviate the hardship.



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3. The Water Commission shall order a modification of the permit or water right only to the extent necessary to alleviate the hardship. The Director shall carry out such order. Failure of a permittee to comply with the order shall be a violation of this Code.
- C. Modification of Water Permits by the Director. The Director of the Department of Natural Resources may modify existing Water Permits or prior permits either temporarily or permanently provided that:
1. There is no change in the beneficial use of water;
  2. There is no increase in the allocation (rate and/or duty) of water;
  3. The proposed modification is consistent with the remaining condition(s), except for the Point of Diversion and Place of Use as specified in items five (5) and six (6) below, of the original permit;
  4. The proposed modification is consistent with the provisions of this Code;
  5. There is no evidence of an adverse impact on surrounding water users in the modification of the Point of Diversion (POD) provided that the applicant or permittee provides proof of authorization to use water and of access to the Point of Diversion;
  6. If the modification is a change in the Place of Use provided that the applicant or permittee provides proof of authorization to use water and of access to the Place of Use and, if the beneficial use is irrigation, that there shall be no increase in the irrigated acres as authorized in the original permit.
- D. Procedures for Water Permit Modification. A modification of an existing permit may be requested by submitting an application to the Director of the Department of Natural Resources. The application form shall be promulgated by the Director. Any request for a modification pursuant to subsection (c) above of this Code shall be acted upon within thirty (30) calendar days after receipt of a completed application. Any modification to an existing water permit that is not specifically defined in the subsections above may only occur by applying for a new water permit as specified in this Code.

**SECTION 2.07. WELL CONSTRUCTOR LICENSING**

- A. Well Constructor License.
1. No person shall be authorized to construct wells within the boundaries of the Reservation unless licensed to do so by the Confederated Tribes.
  2. No well constructor shall commence constructing any well on the Reservation until all the permit requirements of this code have been complied with.
  3. Any well constructor operator intending to drill wells on the Reservation shall obtain a well constructor's license upon application and execution of a sworn document agreeing to abide by this Code and upon successfully completing qualification and experience requirements and a written examination as adopted by the Water Commission. In addition, the well constructor must execute a bond, insuring compliance with this Code, in favor of the Confederated Tribes. The bond shall be in the amount of five thousand dollars (\$5,000.00).
  4. Any well constructor must notify the Department of Natural Resources five (5) days prior to constructing any well within the boundaries of the Reservation.
- B. Well Constructor Standards and Regulations. The Water Commission shall establish rules and standards for Well Constructor's License procedures and well construction on the Umatilla Indian reservation through Administrative Rules.

### **CHAPTER 3. WATER QUALITY PROTECTION**

#### **SECTION 3.01. AREA OF APPLICATION**

The Water Quality Standards apply to all waters of the Umatilla Indian Reservation.

#### **SECTION 3.02. RESPONSIBILITIES**

The Board of Trustees delegates the responsibility for implementing this chapter as follows:

- A. The Water Commission. The Water Commission is responsible for policy direction and implementation of the Water Quality Standards, Beneficial Uses and Treatment Criteria and for interpreting narrative water quality criteria.
- B. The Fish and Wildlife Committee. The Fish and Wildlife Committee is responsible for reviewing information on fish and wildlife species, habitat and critical life stages to determine the specific stream reach designations. The Fish and Wildlife Committee will assist the Water Commission in ensuring that the fish and aquatic resources of the Reservation are protected by the adopted Water Quality Standards and Treatment Criteria.
- C. The Director of the Department of Natural Resources. The Director is responsible for monitoring and managing the water resources of the Umatilla Indian Reservation and for providing technical assistance to the Board of Trustees, the Water Commission and the Fish and Wildlife Committee.
- D. The Umatilla Tribal Court. The Umatilla Tribal Court is responsible for hearing appeals of administrative actions and for adjudicating cases under the civil and/or criminal penalty provisions of this Code.

#### **SECTION 3.03. ANTI-DEGRADATION POLICY AND WATERS OF THE RESERVATION**

- A. Purpose of the Anti-degradation Policy. The purpose of the anti-degradation policy is to provide for the maintenance and protection of the waters of the Reservation by the prevention of any further degradation of the quality of the water in its present state. The anti-degradation policy will be used to guide decisions that affect water quality such that degradation from point and non-point sources of pollution are prevented, and to protect, maintain and enhance surface water quality to protect all existing and designated beneficial uses.
- B. Anti-degradation Policy. The protection of existing instream uses and the level of water quality and quantity necessary to provide full support to those uses must be maintained and protected. No provision or conditioned activity in this chapter is to be interpreted as suspending basic water quality protection; also, this provision is not intended to prevent the restoration of instream uses that existed prior to human caused alteration of a water body.
- C. Anti-degradation Policy and Classification of Tribal Water. The Water Commission may classify the surface waters of the Reservation as “Water Quality Limited” or as “High Quality Waters”. The Board of Trustees may classify waters of exceptional quality as “Outstanding Resource Waters”. The classification of Tribal waters into one of these three classifications enables the application of Tier I, II, or III, protections respectively. The Water Commission will establish tiered levels of protection for classified waters, in addition to those specifically listed in the Water Quality Standards, Beneficial Uses and Treatment Criteria and shall establish water quality requirements for water bodies, where determined necessary, to provide support for existing uses.
  - 1. Tier I Protection of “Water Quality Limited” Waters.
    - a. No further lowering of quality is allowed for water quality parameters not currently meeting standards in any or all waters of the Reservation. These

- “Water Quality Limited” (or Tier I) waters are governed at a Tier I level of protection, allowing no further degradation.
- b. Except where directly authorized in this Code, where a water quality parameter is not meeting narrative or numeric criteria established to protect designated or existing beneficial uses, no new or expanded actions will be allowed that will contribute to loading or concentrations in the water body for that parameter or other parameters that in combination have a detrimental effect on the beneficial uses.
  - c. For parameters not meeting water quality standards, the Water Commission will take appropriate and definitive steps, through development of Total Maximum Daily Loads (TMDL) with associated controls and water quality management, and/or implementation plans, to bring the water quality back to levels which meet the water quality standards and provide full support for existing and designated beneficial uses.
  - d. Where numeric and narrative water quality criteria are not attained due to natural conditions, human actions and influences are not allowed to further lower the water quality for those parameters except where specifically provided for in a criterion itself.
2. Tiers II and III Level of Protection – Maintaining High Quality Water The degrading of existing water quality to lower water quality, as determined by a potential change in any parameter(s) by any action, either point or non-point, is prohibited except when all of the following criteria are met:
- a. The Water Commission determines, after review of all relevant alternatives, that allowing a lowering of water quality is necessary to provide benefits that are in the overriding public interest. In that case, the entity proposing the action must adopt the alternative identified under an Anti-degradation Review that minimizes the lowering of water quality to the greatest degree;
  - b. All wastes or other materials and substances from new and existing point sources that drain or are discharged into those waters are provided with all known, available, and reasonable methods of prevention, control, and treatment before they drain or discharge;
  - c. All actions which result in the pollution of waters from non-point sources are provided with all known, available, and reasonable best management practices which are approved by the Water Commission;
  - d. In the case of an entity having planning, managerial, or operational control over multiple actions affecting a water body, the entity has evaluated and documented in writing whether better controls on those other actions can be established to offset any lowering of water quality from the new or expanded action. In addition, the entity must ensure those other actions are meeting, or are on a formal schedule, fully enforceable by this Code, to meet all applicable Water Quality Standards;
  - e. The lowered water quality would still be of high enough quality to meet established numeric standards and narrative criteria and provide full support for all existing and designated instream uses taking into account the cumulative effect of foreseeable increases in water withdrawals and uncontrolled degradation by unregulated sources, and taking into account the additive effect of multiple pollutants; and

- f. The Water Commission determines how much assimilative capacity remains and what portion of the remaining assimilative capacity may be allocated to this proposed action.
  3. Where a distinction cannot be made between tier classifications of surface water, wetlands, or groundwater, the applicable standards will depend on the existing and designated beneficial use(s) that may be adversely affected. When two or more classifications apply in one area, the more stringent water quality standards shall prevail. If the designated beneficial use of more than one resource is affected, the most protective criteria shall apply.
- D. Anti-degradation Implementation.
1. The support of designated and existing uses, along with numeric water quality standards and narrative criteria, set the minimum level of protection required for beneficial uses.
  2. No existing or planned actions may be allowed to cause water quality conditions to violate Tribal water quality standards established for water bodies, except where specific allowances have been otherwise provided in this Code.
- E. Clean Water Act Compatibility. In cases where potential water quality impairments associated with thermal discharge are involved, the Anti-degradation Policy and implementing methods shall be consistent with Section 316 of the Clean Water Act, as amended.

#### SECTION 3.04. WATER QUALITY CERTIFICATION AND ANTI-DEGRADATION REVIEW OF TRIBAL PERMITS

- A. Water Quality Certification Required. Any applicant for a Tribal permit to conduct any activity which may result in any discharge into the waters of the Reservation must provide the Tribal permitting program or department with a Water Quality Certification from the Director that any such activity will comply with this Code, regulations implementing this Code, and the Water Quality Standards. The certification is obtained through the completion of an anti-degradation review.
- B. Anti-degradation Review Process.
1. A completed Anti-degradation Review application with all necessary supporting documentation shall be filed with the Director. Anti-degradation applications may be obtained from the Department of Natural Resources.
  2. The Water Commission will determine, through administrative rules, the information required on the Anti-degradation Review application.
  3. Each Anti-degradation Review application submitted must be accompanied by the appropriate fee based upon the fee schedule maintained through administrative rules.
  4. The Director is authorized to require an applicant to submit any additional information necessary to complete an anti-degradation review or to assist the Director to adequately evaluate the impacts of the project on water quality.
- C. Director's Evaluation. In order to make findings for certification, the Director's evaluation of an application for an anti-degradation review shall include but need not be limited to the following:
1. Existing and potential beneficial uses of surface or groundwater which could be affected by the proposed facility;

2. Potential water-related impacts from the generation and disposal of waste chemicals or sludge at a proposed facility;
3. Potential modification of surface water quality or water quantity as it affects water quality;
4. Potential modifications of groundwater quality;
5. Potential impacts from the construction of intake or outfall structures;
6. Potential impacts from waste water discharges;
7. Potential impacts from construction activities;
8. The project's compliance with water quality related to standards established by the Water Commission.

D. Director's Determination.

1. Upon completion of the Anti-degradation Review, the Director shall make a finding that either:
  - a. The proposed activity probably meets the Tribal Water Quality Standards; or
  - b. The proposed activity probably does not meet the Tribal Water Quality Standards.
2. The Director shall render a determination as to whether or not the request will meet the Tribal Water Quality Standards based upon the following review criteria:
  - a. The proposed activity will affect the existing and potential beneficial uses listed in Table 1 of the Tribal Water Quality Standards;
  - b. The proposed activity will affect water quantity, or flows, as it relates to water quality;
  - c. Any activity related to the construction or operation of the proposed project will or potentially will discharge pollutants into surface or groundwaters of the Reservation;
  - d. The proposed activity complies with the Tribal Anti-degradation policy of the Water Quality Standards;
  - e. The proposed activity complies with the biological and wildlife criteria of the Tribal Water Quality Standards; and
  - f. The proposed activity complies with the numeric and/or narrative criteria of the Tribal Water Quality Standards.
3. Upon a finding that the proposed activity probably does meet the Tribal Water Quality Standards, the Director will issue a Water Quality Certification so stating that conclusion.
4. Upon making a finding that the proposed activity probably does not meet the Tribal Water Quality Standards, but could meet Standards with modifications to the request, the Director may issue a Water Quality Certification provided that certain conditions are met. These conditions may include but are not limited to:
  - a. Limitations on effluent discharges;

- b. Monitoring, by the applicant of effluent discharge on a regular basis;
  - c. Minimum stream flow conditions;
  - d. Criteria and use restrictions necessary to advance the Tribal anti-degradation policy;
  - e. Any other water quality protective measures deemed necessary by the Director to maintain and protect water quality on the Reservation; or
  - f. Termination of the operation upon evidence that such operation violates or threatens to violate the Water Quality Standards.
5. Upon a finding of that the proposed activity probably does not meet the Tribal Water Quality Standards and will result in a violation, the Director will so certify and deny the certification. The Director shall notify the applicant and/or the Tribal agency issuing the permit of the his findings in writing.
  6. A Tribal permit shall not be granted until the certification required by this chapter has been obtained or has been waived as provided below. A permit will not be granted if certification has been denied by the Director.
  7. If the Director fails to act on a request for a certification within 60 days after receipt of a completed Anti-degradation Review Application, the review and certification requirements of this section shall be waived with respect to the application for a Tribal permit.
  8. Certifications granted pursuant to these rules are valid for the applicant only and are not transferable to another person or entity without prior approval of the Director or his designated representative.

#### SECTION 3.05. SALMONID SPAWNING AREAS

- A. Review of Information. The Director working in conjunction with the Water Commission and the Fish and Wildlife Committee, will review and update the information available from Fisheries and Water Resources Programs to identify the following:
  1. Water bodies where cold-water aquatic life and cool-water aquatic life exists;
  2. Specific reaches within individual water bodies where salmonid spawning, rearing, holding and migration take place;
  3. If there is insufficient information available, further information shall be developed and specific water bodies will be designated and approved by the Water Commission with recommendations from the Fish and Wildlife Committee;
  4. Water Quality Standards for these stream reaches will be reviewed and modified, if necessary, in the triennial review process.
- B. Application of Standards. The information provided above will be utilized to determine which Water Quality Standards apply in each specific water body on the Reservation.

#### SECTION 3.06. CERTIFICATION OF CLEAN WATER ACT SECTION 401 WATER QUALITY PERMITS

- A. Director's Authority. The Confederated Tribes has the delegated authority under the Clean Water Act to conduct Section 401 Water Quality Certification (hereinafter "Section 401 Certification") of federal permits issued on the Umatilla Indian Reservation. The Director of the Department of Natural Resources, under the oversight of the Water Commission, shall be

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responsible for collecting, reviewing, evaluating, processing, approving, or denying all applications for certification pursuant to §401 of the Clean Water Act.

**B. Certification Required.**

1. Any application for a federal permit to conduct any activity which may result in any discharge into the waters of the Reservation must obtain a certification from the Director that any such activity will comply with the Clean Water Act, this Code, regulations implementing this Code, and the Water Quality Standards of performance for new sources, and toxic and pretreatment effluent standards.
2. All correspondence and notifications with regard to Section 401 Certification applications are to be delivered to the Director. Completed applications for certification shall be filed directly with the Director.

**C. Forms and Documents.**

1. A completed Section 401 Certification application with all necessary supporting documentation shall be filed with the Director. Section 401 Certification application forms may be obtained from the Department of Natural Resources.
2. The Water Commission will determine, through administrative rule, the information required on the Section 401 Certification application.
3. Each Section 401 Certification application submitted must be accompanied by the appropriate fee based upon the fee schedule maintained by the Director in this Code.
4. The Director is authorized to require an applicant to submit any additional information necessary to complete a Section 401 Certification or to assist the Director to adequately evaluate the impacts of the project on water quality.

**D. Director's Evaluation.** In order to make findings required for a Section 401 Certification, the Director's evaluation of an application for project certification may include but need not be limited to the following:

1. Existing and potential beneficial uses of surface or groundwater which could be affected by the proposed facility;
2. Potential water related impacts from the generation and disposal of waste chemicals or sludge at a proposed facility;
3. Potential modification of surface water quality or water quantity as it affects water quality;
4. Potential modifications of groundwater quality;
5. Potential impacts from the construction of intake or outfall structures;
6. Potential impacts from waste water discharges;
7. Potential impacts from construction activities;
8. The project's compliance with water quality related to standards established by the Water Commission.

**E. Section 401 Certification Procedures.**

1. Within 120 days after an application is deemed complete pursuant to this chapter the Director shall serve written notice on the applicant that the certification is granted or

denied or that a further specified time period is required to process the application. Written notice shall be served by sending such notice by certified mail to the address of the applicant as shown in the application except that granting of certification may be by regular mail. Any extension of time shall not exceed one year from the date of filing a completed application.

2. In order to inform potentially interested persons of the application, the Director shall prepare and circulate a public notice announcement of each certification request in a manner approved by the Water Commission. Notice shall be mailed to all parties known to be interested in the matter, including but not limited to adjacent property owners as cited in the application. If the Water Commission deems that mailed notice is impracticable such public notice may be provided in a newspaper of general circulation in the area where the activity is proposed to be conducted. The notice shall inform interested parties of an opportunity to comment on the certification request in a manner that the Tribal Water Committee deems appropriate, shall encourage comments by interested parties, and shall tell of any related documents available for public inspection and copying. The Director shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit written views and comments. All comments received during the 30 day period shall be considered in formulating the Director's position. The Director will add the name of any person or group upon request to a mailing list to receive copies of public notice.
3. The Director shall provide an opportunity for the applicant or any interested agency, person, or group of persons to request or petition for a public hearing with respect to certification applications. If the Director determines that new information may be produced thereby, a public hearing will be held prior to the Director's final determination. Instances of doubt shall be resolved in favor of holding a hearing. There shall be public notice of such a hearing. All interested and affected parties will be given reasonable opportunity to present evidence and testify at the public hearing.
4. If, after considering the completed application, the record of a hearing, if any, and such other information and data as the Director deems relevant, the Director determines that there is a reasonable assurance that the proposed activity will not result in a violation of the Water Quality Standards, or the Water Quality Standards are not applicable to waters which may be affected by the proposed activity, the Director will so certify. If the Director determines that the Water Quality Standards are not applicable to waters which might be affected by the proposed activity, the Director will notify the applicant and the federal licensing or permitting agency in writing and will provide the federal licensing or permitting agency with advice, suggestions, and recommendations with respect to conditions to be incorporated in any permit to maintain compliance with the purposes of the Clean Water Act. In such case, certification will not be required.
5. Conditions for Certification Approval. The Director's certification for a project shall include but need not be limited to the following conditions:
  - a. Limitations on effluent discharges;
  - b. Requirements that the applicant monitor effluent discharge on a regular basis;
  - c. Termination of the operation upon evidence that such operation violated or threatens to violate Water Quality Standards;
  - d. Minimum flow conditions;
  - e. Turbidity criteria;



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- f. Criteria and use restrictions necessary to advance the Confederated Tribes' anti-degradation policy; and
    - g. Any other established water quality standard deemed necessary by the Water Commission to maintain and protect water quality on the Reservation.
  - 6. Request for Public Hearing. If the applicant is dissatisfied with the conditions of any granted certification, the applicant may request a hearing before the Water Commission. Such requests for a hearing shall be made in writing to the Director within 20 days of the day of mailing the certification. Any hearing shall be conducted pursuant to the Public Hearing procedures established by the Water Commission through administrative rule.
  - 7. Waiver of Certification. If the Director fails or refuses to act on a request for certification within one year after receipt of such request, the certification requirements of this chapter and section 401 of the Clean Water Act shall be waived with respect to the application for a federal permit. A permit will not be granted until the certification required by this chapter has been obtained or has been waived as provided above. A permit will not be granted if certification has been denied by the Confederated Tribes.
  - 8. Certification Non-Transferable. Certifications granted pursuant to these rules are valid for the applicant only and are not transferable without prior approval of the Director or his designated representative.
- F. Denial of Section 401 Certification. If the Director proposes to deny certification for a project, a written notice setting forth the reasons for the denial shall be served upon the applicant in the manner set forth in Subsection (c)(1) above. The written notice shall advise the applicant of appeal rights and procedures. A copy shall also be provided to the federal licensing or permitting agency. The denial shall become effective 20 days from the date of mailing of the notice unless within that time the applicant requests a hearing before the Water Commission. A request for a hearing shall be made in writing to the Director and shall state the grounds for the request.
- G. Revocation or Suspension of Section 401 Certification.
  - 1. Cause for Revocation or Suspension. Certification granted pursuant to these rules may be suspended or revoked if the Director determines that:
    - a. The application contained false information or otherwise misrepresented the project; or
    - b. Circumstances related to approval of the certification have changed since the application was filed; or
    - c. The conditions, limitations, or standards of the certification are being violated.
  - 2. Notification of Revocation or Suspension. Written notice of intent to suspend or revoke shall be served upon the applicant following the procedures set forth above. The suspension or revocation shall become effective 20 days from the date of mailing the notice. The applicant may appeal the revocation/suspension as provided in Chapter 1.
- H. Inspection Before Operation.
  - 1. Purpose of Inspection. Where a facility or activity has received certification pursuant to this Code in connection with the issuance of a federal permit for construction or any other activity that affects the Water Quality Standards, or where such a facility or activity is not required to obtain an operating permit, the Director shall be afforded the

opportunity to inspect such facility or activity for the purpose of determining the manner in which such facility or activity will be operated or conducted if the activity:

- a. May result in any discharge to waters of the Reservation; or
  - b. Will violate applicable the Water Quality Standards.
2. Notice of Deficiency. If the Director, after an inspection pursuant to the paragraph above, determines that operation of the proposed facility or activity may result in any discharge to waters of the Reservation or will violate the Water Quality Standards, the Director shall notify the applicant and the federal licensing or permitting agency. Such notice shall include the Director's recommendation as to remedial measures necessary to bring the operation of the proposed facility or activity into compliance with such standards.

### SECTION 3.07. WATER QUALITY MANAGEMENT PLANNING

#### A. Goals and Objectives.

1. The goals and objectives of the Water Quality Management Plan, hereinafter the WQMP, are to achieve compliance with Tribal water quality standards for the waters of the Umatilla Indian Reservation. The WQMP is designed to be adaptive in nature as more information and knowledge is gained regarding pollutants, allocations for pollutant loading of water bodies, management measures, and other related parameters. Watershed planning and management involve a number of activities, including:
  - a. Identifying water quality problems in a watershed;
  - b. Targeting priority problems for resolution;
  - c. Promoting involvement by interested and affected parties;
  - d. Developing solutions to problems through the use of the expertise and authority of multiple agencies and organizations; and
  - e. Measuring success through monitoring and other data gathering.
2. The Water Commission shall prepare and review, every five years, a WQMP for all waters of the Reservation.
3. The WQMP shall be designed to protect the quality of water resources consistent with this Code.
  - a. The WQMP shall focus on priority issues and impaired water bodies.
  - b. The WQMP shall have a watershed focus, yet also identify specific stream reaches that are impaired.
  - c. The WQMP shall draw upon water quality assessments to identify point and non-point source water quality problems, recommend control measures and best management practices, and consider alternative solutions, including the financial and institutional measures necessary for implementing recommended solutions.
4. The Water Commission shall have the authority to approve and modify WQMP's.

#### B. Elements of the Water Quality Management Plan. The following elements shall be included in the WQMP or referenced as part of the Plan if contained in separate documents when

needed to address water quality problems. The WQMP will be developed using the best information that is available at the time and is not intended to be an exhaustive study of watershed systems.

1. Goals and Objectives. The WQMP shall include a statement of the water quality improvement and protection goals and objectives including the intent, policy and desired outcome or future condition of the water body.
2. Condition Assessment and Problem Description. The WQMP shall include:
  - a. A description of the Water Quality Standards and criteria of concern, including the beneficial uses being impaired;
  - b. A list of water bodies on the Reservation that do not meet the water quality standards without application of additional pollution controls. This list shall be ranked by priority and shall be called the List of Water Quality Limited Streams;
    - i. Water bodies may only be removed from the List of Water Quality Limited Streams in the following ways:
      - a). The data or analysis used by the Water Commission to list the water is shown to be inaccurate or inadequate;
      - b). The water quality standard violated by the water body is changed so that the water body is no longer in violation. This includes the possibility that local conditions may be officially recognized as the local standards (e.g., allowing a higher stream temperature in a particular water body in recognition of “natural” conditions);
      - c). Water quality improves to meet standards;
    - ii. Water bodies may be re-listed by the Water Commission any time the Commission becomes aware of anything that weakens, compromises, cancels, or otherwise reduces the effectiveness of the WQMP below the level necessary to make adequate progress toward achieving the Water Quality Standards.
  - c. The WQMP shall include objectives which quantify the desired change in water quality, pollution loading or other measurable indicators of a water body or watershed condition. These objectives shall be realistic, achievable, measurable and shall include:
    - i. A systematic identification of pollution problems;
    - ii. Links to watershed characteristics and management practices;
    - iii. Objectives for water quality improvement; and
    - iv. The identification of implementation measures and mechanisms to achieve water quality objectives in the form of a Total Maximum Daily Load (TMDL) or similar plan;
  - d. Elements of a TMDL or similar plan shall include:
    - i. The identification of pollutants causing water quality impairments;

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- ii. Sources of pollution in terms of location, land management practices, natural causes, or other sources, and the relative contribution of each source;
  - iii. The identification of maximum permissible loading capacities for specific water bodies for the pollutants of concern; and
  - iv. The assignment, for each relevant pollutant, of load allocations to each source, point and non-point, in the Reservation watershed.
3. Proposed Management Measures.
- a. Management measures that improve the watershed shall include specific activities to control the pollution problem and achieve the plan's goals and objectives. Management measures shall include:
    - i. A demonstration of the effectiveness of each measure in addressing the pollution problem;
    - ii. What mechanisms will be used, and by whom, to ensure each measure will be applied;
    - iii. The time frame in which each measure is expected to be successful in attaining the Water Quality Standards for a specific water body; and
    - iv. A tracking plan for evaluating the implementation and effectiveness of each measure.
  - b. A decision making process shall be developed to determine how future management measures will be selected, how monitoring and evaluation will be factored into the selection of future management measures, and how interested parties will be involved in future decisions.
  - c. Adaptive Management Plans shall be developed through the periodic analysis and review of monitoring data for the future refinement of management strategies, water quality management plans, source-specific implementation plans, and/or TMDL.
  - d. Effluent limitations, including water quality based effluent limitations and schedules of compliance.
  - e. Non-point source management and control.
    - i. The plan shall describe the regulatory and non-regulatory programs, activities, and Best Management Practices (BMP) which have been selected as the means to control non-point source pollution where necessary to protect or achieve approved water uses. Economic, institutional, and technical factors shall be considered in a continuing process of identifying control needs and evaluating and monitoring the BMP'S as necessary to achieve water quality goals.
    - ii. When the Water Commission determines that regulatory programs are necessary to attain or maintain an approved beneficial use, or that non-regulatory approaches are inappropriate in accomplishing that objective, the Water Commission shall identify those programs.
    - iii. BMP's shall be specified for the non-point sources as follows:
      - a). Control of the disposition of residual waste;

- b). Control of the disposal of pollutants on land or in subsurface excavations;
  - c). Control of agricultural sources of pollution;
  - d). Control of silvicultural sources of pollution;
  - e). Control of construction related sources of pollution;
  - f). Control of urban stormwater runoff;
  - g). Control of runoff and erosion from transportation systems;
  - h). Control of mine-related sources of pollution.
- f. Identification and development of programs for control of groundwater pollution, if groundwater quality is identified as a water quality problem. Programs for groundwater pollution control should include identification of assessment and monitoring issues, time frames, technical assistance needs, and financial requirements.
- g. Identification of anticipated municipal and industrial waste treatment works, including facilities for treatment of stormwater-induced combined sewer overflows; programs to provide necessary financial arrangements for such works; establishment of construction priorities and schedules for initiation and completion of such treatment works including an identification of open space and recreation opportunities from improved water quality.
4. Timeline for Implementation. Identification of when implementation will occur; when various tasks or action items will begin and end; when mid-term and final objectives will be met; establishment of target dates for meeting water quality goals; and identification of strategies for maintaining implementation and a commitment to improving water quality over the long term.
5. Identification of Responsible Participants.
- a. Identification of Tribal departments, programs and/or staff necessary to develop and carry out the plan.
  - b. Identification of the roles, responsibilities and commitments of all participants, including those outside the Confederated Tribes, if desirable.
  - c. Identification of relationship to any applicable basin TMDL or water quality management plans.
6. Reasonable Assurance of Implementation. The WQMP shall identify the authorities, regulations, permits, contracts, agreements, education efforts, or other commitments to ensure that implementation will occur.
7. Monitoring and Evaluation. A monitoring program shall be developed to track elements of the WQMP to ensure implementation. The monitoring program shall provide for the collection and analysis of data to measure the effectiveness of BMP'S and other implementation tools used in achieving water quality goals. The analysis shall be used in the periodic updates provided for in this Chapter. The monitoring program should include:
- a. The goals and objectives of the monitoring program;
  - b. What measurable indicators will be monitored and why;

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- c. The monitoring program tasks; who is responsible for those tasks; and the timeline for those tasks;
  - d. Sampling methods that will be employed;
  - e. Quality assurance and quality control procedures;
  - f. Protocol for how and by whom data will be handled, stored and made available for review;
  - g. Analytical methods used;
  - h. How the information that is collected will be used to improve the effectiveness of the overall Water Quality Management Plan; and
  - i. Funding.
8. **Public Involvement Plan.** The WQMP will be developed with input from the Tribal membership, Tribal staff, reservation residents, affected parties, interested agencies and others in an effort to maximize the success of the plan. It is the responsibility of the Water Commission to determine the appropriate level of public involvement.
  9. **Maintenance Over Time.** The WQMP will have a strategy for maintenance over time resulting in water quality improvements in the long term, a demonstration of an ongoing commitment to the long-range plan implementation and how this will be assured over the lifetime of the plan. The commitments to ongoing implementation shall also be reflected in the number of the WQMP elements and the responsible parties for fulfilling these requirements.
  10. **Costs and Funding.**
    - a. Identification of potential and realistic costs associated with the implementation of the Water Quality Management Plan;
    - b. Committed funding sources which will support implementation of the plan during the first three years;
    - c. Potential funding sources for the support of the plan in the long term.
- C. **Approval.** The WQMP, and any updates or modifications, shall become effective when approved by the Water Commission.
  - D. **Updates.** The WQMP shall be updated as needed to reflect changing water quality conditions, results of implementation actions, new or revised policies, or new requirements.
  - E. **Consistency.**
    1. All permits issued under this Code will be consistent with the Water Quality Management Plan.
    2. The Water Quality Management Plan will be developed so as to be consistent with the provisions of this Code, and all applicable Tribal law and regulations.

## **CHAPTER 4. STREAM ZONE ALTERATIONS**

### **SECTION 4.01. AREA OF APPLICATION**

This chapter applies to any person conducting construction or earth-moving work, debris placement or removal, or vegetation removal or modification within the named Stream Zones within the external boundaries of the Umatilla Indian Reservation as named below.

- A. Any intermittent or perennial stream, lake, pond, spring, or any naturally occurring water body located in the G-1, Big Game Winter Grazing Zone, or the F-2, Restricted Indian Forest Zone, as described in the Umatilla Indian Reservation Land Development Code of the Umatilla Indian Reservation.
- B. Mid-Umatilla River Drainage.
  - 1. Main-stem Umatilla River
  - 2. Spring Creek,
  - 3. Mission Creek,
  - 4. Cottonwood Creek,
  - 5. Moonshine Creek,
  - 6. Coonskin Creek,
  - 7. Buckaroo Creek,
  - 8. Squaw Creek, and
  - 9. Meacham Creek.
- C. Wildhorse Creek Drainage.
  - 1. Main-stem Wildhorse Creek,
  - 2. Eagle Creek, and
  - 3. Spring Hollow Creek.
- D. McKay Creek Drainage.
  - 1. Main-stem McKay Creek,
  - 2. South Fork McKay Creek,
  - 3. North Fork McKay Creek, and
  - 4. Spring Hollow Creek.
- E. Tutuilla Creek Drainage.
  - 1. Tutuilla Creek,
  - 2. North Coyote Creek,
  - 3. South Coyote Creek,

4. Main-stem Patawa Creek, and
5. South Patawa Creek.

#### SECTION 4.02. GENERAL PROVISIONS

- A. **Permits Required.** Any person who performs any activity that alters streamflow, water quality, ground contours, or perennial vegetation or that introduces or displaces debris in the above named stream zones on the Reservation shall first obtain a valid Stream Zone Alteration Permit, issued by the Director.
- B. **Permit Conditions.** Any permit issued for a stream zone alteration project may be made subject to such terms and conditions that will fulfill the policies, procedures, and provisions of this Code, Administrative Rules, Water Use standards, Water Quality Standards, and any other applicable Tribal codes.
- C. **Displaying Permit at Project Site.** A copy of the permit shall be present at the project site during all phases of construction or alteration work. The permit shall be made available to the Director, or his representative, upon request.
- D. **Conduct of Work.** All stream zone alteration activities shall be performed in a manner that avoids damage or minimizes and mitigates damage, both temporary and permanent, to water quality and fish and wildlife habitat.. Mitigation measures including re-vegetation must be done in accordance with appropriate tribal specialists recommendations and approval.
- E. **Traditional Activities.** Tribal members who alter stream zones or wetlands while engaged in traditional tribal subsistence activities (excluding the grazing of livestock and the operation of animal feeding operations) are exempted from obtaining Stream Zone Alteration permits.
- F. **Endangered Species Act and Federal Regulations.** Where applicable, all Stream Zone Alteration Permits shall be conditioned to comply with the Endangered Species Act of 1973as amended. It shall be the responsibility of the applicant to provide proof of clearance and/or compliance with any Federal regulations.
- G. **Water Quality Certification.** All Stream Zone Alteration Permits shall require Water Quality Certification showing compliance with Tribal Water Quality Standards, as provided for in this Code, prior to the approval or issuance of the permit.
- H. **Cultural Resources Clearance.** All Tribal Stream Zone Alteration Permits must have clearance for ground disturbing activities from the Cultural Resource Protection Program of the Confederated Tribes prior to the approval and issuance of the permit.
- I. **Waiver of Permit Requirements.**
  1. **Management Plans.** The permit procedures of this chapter may be waived by the Director provided that the proposed activities are consistent with of an approved Tribal Management Plan, including Tribal Water Quality Management Plans, Tribal Range Management Plans, Tribal Forest Management Plans, or Tribal Agricultural Management Plans. Proof must be provided to the Director that the project meets or exceeds the requirements set forth in the Stream Zone Alteration Standards.
  2. **Flood Hazard Sub-District.** Activities which occur in the Flood Hazard Sub-District, as defined in the Tribal Land Development Code and which require a permit from the Tribal Planning Office for those activities, may be exempted from obtaining a Stream Zone Alteration Permit provided that the project is approved and a permit is issued by the Tribal Planning Department in consultation with the Director of the Department of Natural Resources. Proof must be provided to the Director that the project meets or exceeds the requirements set forth in the Stream Zone Alteration Standards.



**SECTION 4.03. MINOR ALTERATIONS**

- A. Alterations causing negligible negative impacts, both temporary and permanent, on water quality and fish and wildlife habitat are hereinafter termed "minor alterations".
- B. To qualify as a minor alteration, the proposed work must conform to all the following criteria:
  - 1. The time period for completion of work in the stream channel falls within the standard work period, as defined below, for the particular stream or reach of stream proposed for alteration;
  - 2. The anticipated negative impacts on water quality last no more than a (cumulative) total of 24 hours during and after the alteration activities are performed. Negative impacts on water quality include:
    - a. Increases in stream turbidity;
    - b. Increases in water temperature; and
    - c. Increases in chemical, mineral, or organic content.
  - 3. The proposed activity does not increase streambank erosion in the reach of stream proposed for alteration; and
  - 4. The proposed activity does not stop streamflow, except as necessary to temporarily divert flow around a work site.
- C. Permit requests for minor alterations shall be subject to review and action by the Director.
- D. Any proposed alteration that does not qualify as a minor alteration shall be a major alteration.

**SECTION 4.04. MAJOR ALTERATIONS**

- A. Proposed stream zone alterations which involve activities or changes in land use which may cause significant environmental impacts or that are of a general public concern are hereinafter termed "major alterations".
- B. Stream Zone Alteration Permit requests for major alterations shall be approved or denied by the Water Commission and shall be made subject to public hearings conducted by the Water Commission.
- C. Major Alterations may include, but are not limited to:
  - 1. Construction of permanent roads or railroads;
  - 2. Construction of any new bank-stabilization or flood control structure extending more than 1 foot above the elevation of the natural banks or extending more than 1000 feet along a stream bank;
  - 3. Construction of canals or flumes or installation of pipelines or casings;
  - 4. Relocation of stream flow outside the existing stream channel;
  - 5. Diverting streamflow from one drainage to another;
  - 6. Establishment of new or continued operation of existing, animal feeding operations in any stream zone that is not otherwise regulated under the Tribal Land Development Code or the Tribal Environmental Health Code;

7. Extraction of sand, silt, clay, or rock for the primary purpose of commercial use that is not regulated under the Tribal Land Development Code;
8. Construction of new bridges or relocation of existing bridges;
9. The operation of equipment in the stream bed or below the water table in the stream bank during periods outside the standard and/or preferred work periods for Minor Stream Zone Alterations;
10. Any alteration which the Director determines to be of general public concern.

#### SECTION 4.05. EMERGENCY ALTERATIONS

- A. Emergency Alterations. Emergency stream zone alterations may only be performed without a permit in the event of an existing or imminent threat to life or property. Emergency stream zone alterations must be limited to the minimum amount of work necessary to protect against the threat to life or property. Any person performing an emergency stream zone alteration must contact and obtain approval from the Water Code Administrator prior to commencing work. Depending on the nature of the threat, the Water Code Administrator may either provide immediate verbal approval, or if time allows, may require a site visit and written approval by the Director.
- B. Mitigation. The Director may require additional alteration activity under a new Stream Zone Alteration Permit to bring the emergency alteration into compliance with the provisions of this Code.
- C. Violation. Any emergency stream zone alteration activity performed without compliance with this Section is a violation of this Code. Violations of this section and any subsequent appeals are subject to Chapter 5 of this Code.

#### SECTION 4.06. INSTREAM WORK PERIODS FOR ALTERATIONS

- A. All Stream Zone Alteration permits shall be conditioned such that all work must be conducted within the following work periods. Stream alterations may only be conducted outside of these standard work periods for:
  1. Emergency alterations performed in compliance with Section 4.05;
  2. For Major Stream Zone Alterations, where an alternative work period is requested and approved by the Water Commission following a public hearing;
  3. For Minor Stream Zone Alterations, where an alternative work period is approved by the Director in response to the applicant providing clear evidence that harm to life or property is reasonably foreseeable if action is not taken outside of the standard work period; or
  4. Where the Director approves an extension of the instream work period pursuant to Section 4.07(E) below.
- B. Standard Work Periods. The standard work periods for stream channel alterations are established as follows:
  1. For the main stem Umatilla River, Meacham Creek, and McKay Creek - July 1 through October 31, annually;
  2. For all other streams - July 1 through October 31, annually, and other periods when no surface flow is present.

- C. Preferred Work Periods. The preferred work periods for in-stream alterations are established as follows:
1. For the Umatilla River; West Reservation Boundary to Buckaroo Creek - July 1 through October 15, annually;
  2. For the Umatilla River; Buckaroo Creek to East Reservation Boundary - July 1 through August 15, annually;
  3. For Meacham Creek - July 1 through August 15, annually.

#### SECTION 4.07. STREAM ZONE ALTERATION PERMITS

- A. Determination of Minor or Major Alteration. Within 10 working days of receipt of a complete application and the necessary supporting documents the Director shall determine whether or not the request is a major alteration and shall notify the applicant of his decision. Any application not classified as a Major Alteration shall be classified a Minor Alteration.
- B. Minor Alterations.
1. Upon receipt of a complete application with the necessary supporting documents for a minor alteration, the Director shall mail a notification of application for a permit to persons owning property adjacent to the proposed project site. Letters of notification shall be mailed within 5 working days after acceptance of a completed application by the Director.
  2. Any person who has property or interests that may be affected by the implementation of the proposed stream zone alteration project may file a written protest, along with the appropriate fee, with the Director. Protests must be submitted to the Director within 15 days after the date specified on the notification of application for a permit. In the event a protest is filed on an application for a minor alteration, the application shall be subject to the hearing provisions established for major alterations.
  3. If no protest is filed within 15 days after notification of property owners, the Director shall take action on the permit request and inform the applicant of the decision.
  4. In making a decision on an application for a minor alteration, the Director shall consult with the Tribal technical staff and base his decision on the following criteria:
    - a. The request is consistent with Tribal policy and the policies of this Code;
    - b. The request conforms to the preferred or standard work periods for stream zone alterations as specified above;
    - c. The request conforms to standards for Stream Zone Alterations as adopted by the Water Commission;
    - d. The request conforms to the Tribal Water Quality Standards and provisions developed under the Water Quality Standards;
    - e. The request has the necessary approvals and certifications (e.g. cultural resources clearance).
  5. The decision of the Director on a request for a minor stream zone alteration may be appealed following the provisions for appeals in this Code.
- C. Major Alterations.

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1. After receiving a complete application, supporting documents, and the application review fee for a major alteration, the Director shall, within ten (10) days, notify the applicant and commence a staff review of the proposed action.
2. The staff review shall be completed no less than ten (10) days prior to the public hearing and shall consist of a staff report and a fish and wildlife habitat report on the proposed alteration. The fish and wildlife report shall constitute an appendix to the staff report.
3. The Director shall notify, by mail, persons owning property adjacent to the proposed project site. The notification shall include information about the proposed project and where and when a public hearing will be held for the requested alteration.
4. The Director shall publish a notice of public hearing in the local newspaper at least to (10) days prior to the public hearing date. Such notice shall specify the matters for consideration at the hearing. The Director shall provide the applicant with notice of the date, time and place of the hearing at which the subject application will be considered.
5. The request shall be subject to action by the Water Commission through the public hearing process provided for in the Administrative Rules. The request shall be placed on the Commission's agenda, and the public hearing shall be scheduled and held in chronological sequence with other matters referred to the Commission.
6. The Water Commission shall evaluate and render decisions to approve, approve with conditions, or deny Major Stream Zone Alteration requests based upon the following criteria:
  - a. The request is consistent with Tribal policy and the policies of this Code;
  - b. The request conforms to the Standards for Stream Zone Alterations as adopted by the Water Commission;
  - c. The request conforms to the Tribal Water Quality Standards and provisions developed under the Water Quality Standards.
7. The Director shall notify the applicant, in writing, of the decision of the Water Commission.
8. The decision of the Water Commission may be appealed following the provisions for appeals in this Code.

**D. Duration of Permits.**

1. Unless otherwise indicated on the permit, the duration of a Stream Zone Alteration Permit shall have a term of one year.
  - a. Minor Stream Zone Alteration Permits shall be valid for the instream work period of the year in which they are issued.
  - b. Major Stream Zone Alteration Permits shall be valid for one year from the date in which they are issued.
2. If a permit is issued for work in multiple years, the permit shall state the specific date in which work shall begin, the work shall end and the date in which the permit will expire.
3. No permit shall be approved for a period greater than three (3) years.

- E. Extension of Instream Work Period.
1. If the permittee will be unable to complete instream activities within the permitted time established for a valid Stream Zone Alteration Permit, the permittee shall, as soon as practical, file a written request with the Director for an extension of the permitted time.
  2. The Director shall review the circumstances of the request and shall have the discretionary authority to approve, conditionally approve, or deny the requested time extension. The Director's decision shall be final and shall not be appealed.
  3. The Director shall base the decision to approve or deny the request for the time extension on the increased detrimental impacts on anadromous fish and aquatic life, and the consequences of non-completion of the project on the stream zone environment and fish habitat.
  4. If the Director approves an extension to the instream work period, the extension shall be limited to the minimum time period needed to complete the instream work.
  5. For each minor alteration permit, the permittee shall be limited to one request for extension of the deadline for instream alteration. The Director may extend the permit only if the request for extension is made prior to the expiration of the Work Period in which the project occurs.

#### SECTION 4.08. RIPARIAN MANAGEMENT ZONES

- A. Purpose. The Riparian Management Zone creates a protective buffer along stream channels that are in need of restoration for the purpose of improving water quality and protecting the natural and cultural resources of the Umatilla Indian Reservation that have been degraded due to the impacts of land development and other human activities.
- B. Scope. A Riparian Management Zone may be established on any stream or stream reach, current or historical, within the exterior boundaries of the Umatilla Indian Reservation whether or not that stream or stream reach is currently regulated under the provisions of this Chapter.
- C. Establishment of Riparian Management Zones. Riparian Management Zones shall be established by the Water Commission as authorized in this Code. The Water Commission shall commence proceedings for the establishment of Riparian Management Zones upon a request by the Director.
1. The Director shall prepare a written report on the request for a riparian Management Zone providing the reasons for its establishment and the data that supports those reasons.
  2. The Water Commission shall hold a public hearing as provided in the Administrative Rules to review the proposal and to compile a record of public comment.
  3. The Water Commission shall consider impacts to the community as determined by public comment in making a decision as whether or not to establish a Riparian Management Zone.
  4. The Water Commission shall establish specific standards for the Riparian Management Zone to promote and achieve the purpose for which the Riparian Management Zone was created.
  5. The Water Commission shall establish the width and aerial extent of the Riparian Management Zone.

6. In the absence of a specific standard for a particular activity within the Riparian Management Zone, the standards for Stream Zone Alterations as established through this Water Code shall apply.
- D. Effect of Riparian Management Zones. Once a Riparian Management Zone has been established, the full effect of the Water Code shall apply within the aerial extent of the zone.

## **CHAPTER 5. ADMINISTRATION AND ENFORCEMENT**

### **SECTION 5.01. GENERAL PROVISIONS**

- A. Purpose.
1. A violation of this Code shall be a civil offense in which the remedy involved is a civil fine or penalty which has been pre-determined by the Board of Trustees as provided in this Code. Unless otherwise provided, a violation of this Code is not a crime and the punishment imposed therefore shall not be deemed for any purpose a penal or criminal punishment and shall not affect or impair the credibility of a witness or otherwise of any person convicted thereof.
  2. These procedures are intended to be remedial and not punitive and should compensate the Confederated Tribes for the damage done to the peace, security, health and welfare and natural resources of the Umatilla Indian Reservation and for the actions taken by the Confederated Tribes to protect the Reservation, its resources and people.
- B. Application and Procedure. Unless otherwise provided by specific language elsewhere, this Code shall apply to any violation, bond procedure or forfeiture action listed in this Code or regulation adopted thereunder.
- C. Enforcement.
1. The Director shall be responsible for enforcing the provisions of this Code; the compliance with the conditions of all permits, determinations, and orders; with regulations, and other actions taken under this Code; the policies and guidelines expressed throughout this Code; and rules and regulations adopted pursuant to this Code. To this end the Director and his staff shall have right of access to all land and water use facilities and are authorized to:
    - a. Investigate water uses and other activities affecting water resources to determine whether they are in compliance with this Code and with applicable regulations, orders, determinations, permits, and the Water Quality Standards issued under this Code;
    - b. Inspect methods of water diversion and withdrawal, to inspect other activities affecting water quality and quantity, and to install and monitor measuring and recording devices;
    - c. Issue warnings, stop work orders, abatement orders, compliance orders, stop use orders, citations as provided by this Chapter, and any other action authorized by this Code;
    - d. Remove, render inoperative, shut down, close, seal, cap, modify, or otherwise control methods of water diversion and withdrawal, obstructions to the flow of water, and other activities which are in violation of this Code.
  2. The Umatilla Tribal Police Department and the Tribal Prosecutor shall provide assistance to the Enforcement Officer in the enforcement of this Code.

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- D. Court Procedure. Except in the case of those offenses defined as Criminal under this Code, The Umatilla Tribal Court shall schedule proceedings under this Code as part of its civil caseload and shall hear the case pursuant to the following:
1. All proceedings held pursuant to this Code shall be before a judge of the Umatilla Tribal Court without a jury;
  2. The Confederated Tribes shall have the burden of proving the allegation in the citation or complaint by the preponderance of the evidence;
  3. The Umatilla Tribal Court shall have the authority to exercise any and all of the Confederated Tribes' inherent judicial powers in order to facilitate adjudication of any proceedings under this Code; and
  4. In ruling on violations arising under this Code, the Umatilla Tribal Court shall have the authority to assess and collect civil penalties established as provided in this Code, and shall have the authority to enjoin or mandate action in the enforcement of this Code.
- E. Final Judgment.
1. Any of the following shall constitute final judgment:
    - a. The issuance of a citation as provided by this Code, unless contested as provided by this Code;
    - b. A final Court order in favor of either the Confederated Tribes or the defendant as a result of an enforcement action under this Chapter;
    - c. A determination by the Umatilla Tribal Court that property is subject to forfeiture under this Code.
  2. Any final judgment in favor of the Confederated Tribes shall be an obligation of the defendant to the Confederated Tribes and is subject to collection including the issuance of writs of attachment, execution, garnishment or recovery. Such judgment shall become a lien upon any available real, personal or other property of the defendant located within the boundaries of the Umatilla Indian Reservation or within the jurisdiction of the Umatilla Tribal Court. When necessary, the Confederated Tribes may bring suit in any court to reach property of the defendant located outside the boundaries of the Umatilla Indian Reservation or outside the jurisdiction of the Umatilla Tribal Court.
- F. Additional Remedies.
1. Nothing in this Code shall be deemed to preclude the Umatilla Tribal Court from:
    - a. Ordering the defendant to perform corrective or remedial work to alleviate the violation;
    - b. Conditioning any permit operation on terms appropriate to a given situation;
    - c. Ordering the defendant to pay compensation or restitution to an individual or any other entity injured by the actions of the defendant. Compensation or restitution shall reflect the actual documented damages or loss suffered as determined by the Umatilla Tribal Court and shall not include compensation for emotional distress, pain or suffering or other special damages; or
    - d. Imposing any other remedy for civil violations to the extent authorized by Tribal law.

2. As directed by the Board of Trustees, the Director shall prepare for the approval of the Board, and from time to time shall review and, as necessary, propose revisions to a schedule of offenses for which a mandatory hearing will take place and in which this section may be applied.
3. The Court may order any owner and/or operator to pay a fine, perform corrective or remedial work, or to pay compensation or restitution for offenses under this Chapter in which a mandatory court appearance applies as provided by this section.

#### SECTION 5.02. CITATIONS

- A. **Determination of Identification.** If an Enforcement Officer has reasonable grounds to believe that a person has committed a violation of this Code or any regulation issued under this Code either in or out of the Officer's presence, the officer may identify himself/herself to the alleged violator and promptly request any personal and/or professional identifying information necessary to carry out the enforcement procedures under this Section. In making such determination, the Enforcement Officer may demand identification and ask questions as he/she reasonably believes necessary to making the determination.
- B. **Citation.**
  1. A citation constitutes a notice of infraction or violation and is the basis for the enforcement of this Code and shall satisfy all requirements for the filing of a civil complaint under the laws of the Confederated Tribes. The content of the citation shall include the following:
    - a. A statement that the citation represents a determination that a violation has been committed by the person named in the citation and that such person may contest the determination as provided in this Section;
    - b. A statement that a violation is a non-criminal offense for which imprisonment cannot be imposed as a sanction;
    - c. A statement of the specific act or omission for which the citation was issued and the specific violation alleged;
    - d. Unless the offense is one in which the Board determines that an additional or alternative remedy applies as provided in this Code, a statement of the Civil Fines established for the violation;
    - e. A statement of the options provided in this Section for responding to the citation and the procedures necessary to exercise those options, including:
      - i. A statement that, at any hearing to contest that a violation took place, the Confederated Tribes has the burden of proving, by a preponderance of the evidence, that the violation was committed; and
      - ii. A statement that, at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the violation, the person will be deemed to have committed the violation and may not subpoena witnesses;
    - f. A statement that failure to respond to the citation within the time prescribed or to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances will result in the imposition of an additional fee representing the added expenses incurred by the Confederated Tribes, and the entering of an order against the person named;





- D. Enforcement Orders.
1. If in the judgment of the Director, any delays in stopping the violation would cause irreparable harm, injury, loss or damage to Tribal property or resources or would threaten health and/or human safety, the Director may order the owner, operator or manager of the property (or the person responsible for the violation) to carry out specified remedial actions necessary to abate the hazard or damage. Any such order shall specify the person or entity to whom it is issued, when it was issued, and where it was issued and shall specify any required immediate action. If the person so ordered by the Director is unwilling or unable to carry out such order, the Director may enter the premises and otherwise take action reasonably necessary to abate the hazard or damage.
  2. If the Director exercises his abatement authority under this section, he shall file a petition for a temporary restraining order with the Umatilla Tribal Court as provided in this Water Code by the end of the next business day. An abatement order shall remain in effect until the end of the third business day after issuance of the enforcement order or until the Tribal Court issues an order for a temporary restraining order upon the filing of a petition as provided in this Chapter. The scheduling of a hearing shall not prevent enforcement of the order pending the hearing. If necessary, the Confederated Tribes may be represented by the Tribal Attorney.
- E. Compliance Orders. Whenever, on the basis of available information, the Director finds that any person, Indian or non-Indian, is in violation of any condition or limitation of a permit and/or certification issued under this Code, or is in any violation of any of the Water Quality Standards, the Director, on behalf of the Confederated Tribes, may issue an order requiring such person to comply with such conditions or limitations.
1. If the Director issues a compliance order which will specify the nature of the violation, the violation shall be corrected within fifteen (15) days. If the violation is not corrected within fifteen (15) days, the Department shall issue a citation to the violator.
  2. In any case under this under this Code where an order is issued to a corporation, a copy of the order shall be served upon any appropriate corporate officer.
- F. Warnings. In any case where the Enforcement Officer in his/her discretion determines that issuance of a warning instead of a citation as provided in this Chapter is appropriate, the Officer may issue such warning. The content of the warning shall include the following:
1. A statement that the warning represents a determination that a violation has been committed by the person named in the warning;
  2. A statement that a violation is a non-criminal offense;
  3. A statement of the specific act or omission for which the warning was issued and the specific violation alleged; and
  4. A statement that future or continuing violations of the same offense may result in the imposition of a fine or other remedy as provided by this Code.
- G. Stop Work Orders. If the violation observed is one which requires immediate remedial action to prevent irreparable harm, injury, loss or damage to Tribal property or resources or is a threat to health and/or human safety, the Director may issue a written order directing that work, action, or use of equipment which is violating this Water Code, or regulations promulgated there under, stop immediately. Any such order shall specify the person or entity to whom it was issued, when it was issued, where it was issued, by whom it was issued and shall specify the facts which warranted immediate action. If the Director exercises his stop work authority under this section, he shall file a petition for a temporary restraining order as provided in this Water Code by the end of the next business day. A stop work order shall

remain in effect until the end of the third business day following issuance of the order or until the Tribal Court issues a temporary restraining order with the Umatilla Tribal Court upon the filing of a petition as provided in this Chapter. The scheduling of a hearing shall not prevent enforcement of the order pending the hearing. The Confederated Tribes may be represented by the Tribal Attorney.

### SECTION 5.03. HEARINGS AND CIVIL FINES

#### A. Hearings - Rules of Practice.

1. All violations that are not resolved pursuant to Section 6.02 of this Code shall be determined by a hearing before the Umatilla Tribal Court pursuant to this Section. The Court shall notify the defendant in writing of the time, place, and date of the hearing. The date of the hearing shall be not less than fourteen (14) days from the date the Notice of Hearing is mailed, except by agreement of all parties.
2. Any person subject to proceedings under this Section may be represented by counsel admitted to practice before the Umatilla Tribal Court, provided that the Confederated Tribes shall not have any duty to either appoint counsel for or compensate a person for his/her attorney's fees. The Tribal Prosecutor, or in the case of conflict of scheduling or interest, such other counsel for the Confederated Tribes as the Board of Trustees may designate, shall represent the Confederated Tribes in all actions under this Code.
3. Hearings held under this Subsection to contest the determination that the violation took place shall be as follows:
  - a. A hearing shall be held without a jury;
  - b. The Court may consider the citation and any other written report made under oath submitted by an Enforcement Officer who issued the citation, or whose written statement formed the basis for the issuance of the citation in lieu of the officer's personal appearance at the hearing, provided that the person named in the citation may subpoena witnesses, including the officer, and has the right to present evidence and examine witnesses in Court;
  - c. The burden of proof is on the Confederated Tribes to establish the commission of the violation by a preponderance of the evidence;
  - d. After consideration of the evidence and argument the Court shall determine whether the violation was committed. Where the Court finds that the violation was not committed, an order dismissing the case shall be entered in the Court's records. Where the Court finds that the violation was committed, an appropriate order shall be entered in the Court's records. The court shall also send a copy of the order to all parties to the case by regular mail to the last know address of such party;
  - e. Any person found to have committed a violation may appeal the Court's order to the Umatilla Tribal Court of Appeals. When an appeal is filed, under this section, the Umatilla Tribal Court of Appeals shall hereby retain jurisdiction over any violation of this Code.
4. Hearings held under this Section to explain mitigating circumstances shall be as follows:
  - a. A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of a violation shall be for the purpose of assisting the Court in making a determination on the amount of fine and/or the nature of any other remedy;

- b. After the Court has heard the explanation of the circumstances surrounding the commission of the violation, the Court may affirm the Civil Fine established for the violation or may reduce the Civil Fine as the circumstances dictate;
          - c. There shall be no appeal from the Court's determination under this Subsection.
  5. Additional procedures for hearings provided for under this Subsection may be established by rule of the Umatilla Tribal Court.
- B. Civil Fines/Liquidated Damages.
1. As directed by the Board of Trustees, the Director shall prepare for the approval of the Board, and from time to time shall review and, as necessary, propose revisions to a schedule of Civil Fines consisting of a dollar determination(s) calculated to closely approximate the cost of providing equitable restitution to the Confederated Tribes for the damage or loss which would be caused by specified violation(s) of this Code or regulation adopted thereunder. In calculating a Civil Fine, the Board of Trustees may consider, in addition to any other factors they reasonably deem relevant:
    - a. The cost to the Confederated Tribes of producing and/or protecting the Tribal property or interest affected;
    - b. The cost of replacing or restoring the Tribal property or interest affected;
    - c. The costs of enforcement including the general overall costs and costs particularized to individual violations where appropriate;
    - d. The loss to the Confederated Tribes of any revenue affected by the violation;
    - e. Damages for Trespass;
    - f. The costs incurred in representing the Confederated Tribes in an action under this Code;
    - g. The need to discourage repeat or continuing violations.
  2. The Director preparing or updating the Civil Fines schedule shall post notice of the adoption of the schedule in a conspicuous place in the Administrative Offices of the Confederated Tribes. Such notice shall provide that schedules will be available at the Umatilla Tribal Police Department and the Department of Natural Resources.
  3. If, on a showing of good cause, the defendant is unable to pay the Civil Fine when due, the Court shall grant one (1) three (3) month extension, and may grant additional extensions of time in which such fines shall be paid or may allow payment in installments. The Court may, in its discretion, waive, reduce, or suspend the Civil Fine prescribed for the violation after a hearing. At the option of the defendant named in the citation, the Court may, but need not allow, alternate forms of payment such as personal property or services in the discretion of the Court, in lieu of payment of the Civil Fine. Subject to available funding or programs, work performance shall be credited against the Civil Fine at the rate of the then federal minimum wage per hour.
  4. Any Civil Fine assessed and determined due under this Section by the Umatilla Tribal Court order for which a judgment has been entered or through failure to contest the amount shall be collected in the same manner as any other judgment entered in a civil action. In any action on collection, the Court may award reasonable attorney's fees and costs to the prevailing party.
  5. Except as provided in this subsection, jurisdiction for the collection of a judgment shall be in the Umatilla Tribal Court. If the domicile of the defendant subject to a

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judgment under this Section, is or any assets in which such defendant may have an interest are, located off the Umatilla Indian Reservation, the Prosecutor may seek enforcement of the judgment by filing it in any court of competent jurisdiction.

C. Liquidated Damage Presumption.

1. It shall be presumed by the Court adjudicating any violation of this Code that the amount fixed by the schedule of Civil Fines under this Section represents the damages owed to the Confederated Tribes as restitution if the defendant is found to be liable. This presumption may be rebutted by evidence which shows that the amount indicated by the schedule of Civil Fines is excessive, or that special circumstances warrant a reduction of the damage amount in the particular case. In any case in which the presumption is successfully rebutted, the parties may introduce evidence to prove the actual damages as in any other civil case.
2. All persons shall be deemed to have consented to the Civil Fines provision of this Section by their residence in or entry onto the Reservation, and where applicable, by their signature on a Tribal application for a permit or permits.

D. Default Judgment. Unless otherwise provided by this Subsection, the Umatilla Tribal Court shall enter a default judgment against any defendant who is cited for a violation of any provision of this Code or regulations promulgated under this Code and does not appear at the hearing or otherwise respond to the citation as provided in this Code. If a default judgment is entered, the Court Clerk shall, issue notice of judgment to the defendant advising the defendant that payment of the judgment must be made by a date certain which shall not be less than fifteen (15) days after the date of the notice. The notice shall state that failure to pay the judgment may result in forfeiture of a bond held pursuant to this Code, if any, and/or a civil proceeding in Umatilla Tribal Court to collect the Civil Fine and an additional fee of one hundred and fifty dollars (\$150.00) to cover administrative costs will be assessed.

E. Disposition Of Fees, Penalties, and Damages. Unless otherwise provided by specific language found elsewhere in this Code, all fees resulting from all fines, costs, monies, penalties or damages collected for a violation of this Code or regulations promulgated there under or any cash bond posted as provided by this Code shall be deposited in the Tribes' general funds to be appropriated through the normal tribal budget process consistent with the Tribes' Fiscal Management Policies.

**SECTION 5.04. TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS**

A. Petition. If in the judgment of the Director, any delays in stopping the violation would cause irreparable harm, injury, loss or damage to Tribal property or resources or would threaten health and/or human safety, the Director may petition the Court for a Temporary Restraining Order, by filing a petition. The petition or citation must be accompanied by an affidavit with specific facts clearly showing that immediate and irreparable injury, loss or damage will result before a hearing can be held.

B. Court Order.

1. The Court may issue a temporary restraining order, a preliminary injunction or other appropriate relief at any time after commencement of the action and before judgment when:
  - a. It appears that the Confederated Tribes is entitled to the relief, demanded in a pleading, under this Code, and the relief, or any part of the relief, seeks to restrain the commission or continuance of some act, which, if allowed during the litigation, would injure the Confederated Tribes; and/or



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1. No preliminary injunction shall be issued without notice to the defendant at least five (5) days before the time specified for the hearing, unless a different period is fixed by order of the Court.
  2. Before or after the commencement of the hearing of a motion for preliminary injunction, the parties may stipulate that the trial of the action on the merits shall be advanced and consolidated with the hearing of the injunction. The parties may also stipulate that any evidence received upon a motion for a preliminary injunction, which would be admissible in the trial on the merits, becomes part of the record on trial and need not be repeated at trial.
- G. Violations. Any violation of a Temporary Restraining Order or the terms of a preliminary injunction is punishable as a contempt of Court.

**SECTION 5.05. BONDS**

- A. Demand for Bond. If a defendant alleged to have committed a violation of this Code:
1. Cannot be identified, refuses to be identified, or is not a member of the Confederated Tribes and is not a permanent resident of the Reservation, and
  2. An Enforcement Officer determines that seizure of the defendant's property is necessary to assure that sufficient assets of the defendant remain within Tribal jurisdiction to secure payment of restitution to the Confederated Tribes for any damages determined by the Court to have resulted from a violation of this Code, and
  3. There is a need for prompt action because it is likely that the defendant will leave the Reservation and the jurisdiction of the Confederated Tribes with his property and not return,
  4. then the officer may demand that the defendant post a bond in an amount equal to the sum of the Civil Fines or bail for which he could be found liable by the Umatilla Tribal Court pursuant to this Code or the criminal procedure provisions of this Code for the violation(s) the officer has alleged in the citation.
- B. Bond Notices.
1. Except as otherwise provided by this subsection, an Enforcement Officer shall prepare and issue a Bond Notice to the defendant, and allow the defendant to read and sign the Bond Notice before the officer takes possession of any bond property.
  2. The Bond Notice shall contain:
    - a. A statement of the officer's authority under this Section to demand and, if necessary, seize the bond property;
    - b. A description of the property seized;
    - c. A description of the violation(s) or criminal violation(s) alleged, the Civil Fine or bail for each, and the total amount;
    - d. A description of the alternative methods of posting bonds as set forth in this Section;
    - e. A statement that failure to appear at the trial or hearing or failure to otherwise respond to the citation as directed will result in entry of a default judgment and forfeiture of bond; and,

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- f. A statement that a property bond may be redeemed at any time during normal business hours at the Umatilla Tribal Court at Mission, Oregon, by the posting of a cash bond, or payment of damages but that post judgment redemption must occur, if at all, within thirty (30) days of the entry of judgment unless an appeal is filed.
  3. Bond Notices shall be prepared in duplicate and the original, may be signed by the defendant and shall be filed by an Enforcement Officer with the copy of the citation along with proof of service issued by the Officer. A copy of the Bond Notice shall be given to the defendant. If the defendant chooses not to sign the citation, the Officer shall indicate such failure to sign on the citation.
  4. Bond Notices shall contain the name and address of the defendant, the serial number of the citation which has been issued, the date, and the signature and identification number of the issuing officer, and such other information as the Water Commission deems necessary.
  5. The officer may seize bond property first and then issue a Bond Notice in any case in which he has reasonable grounds to believe that the delay caused by the Bond Notice Procedure could:
    - a. Jeopardize the safety of the officer;
    - b. Lead to a breach of the peace;
    - c. Cause the officer to lose the opportunity to seize the bond property; or
    - d. Give the defendant the opportunity to flee the jurisdiction of the Confederated Tribes.
- C. Bond Alternatives.
1. Cash Method. The defendant may post a cash bond with an Enforcement Officer in the form of a certified check or money order made out to the order of "C.T.U.I.R." or cash paid to the Tribal Finance Office, in the specified amount. The decision to accept a personal check shall be within the discretion of the Officer who shall consider whether the alleged violator lives on the Reservation, whether the alleged violator has other ties with the Reservation, the nature of the violation, and whether persons exist with Reservation ties who will vouch for the alleged violator.
    - a. Upon receipt of the cash bond, the Officer shall prepare a Bond Receipt for the amount received, which shall be on the official form provided by the Umatilla Tribal Court for that purpose, and which shall contain the name of the defendant, the serial number of the citation issued, the date, the bond amount, and the signature and identification number of the issuing officer. One copy of the bond receipt shall be issued to the defendant.
    - b. The defendant shall sign the Bond Receipt and the Enforcement Officer shall retain and file the signed copy with the filed copy of the citation, and shall give the defendant a copy.
  2. Property Method. The defendant may post as bond with an Enforcement Officer any property which the Officer reasonably believes is valued at an amount at least equal to the required bond amount.
    - a. Upon receipt of bond property, the Enforcement Officer shall give to the person from whom it was received a Bond Receipt as provided by this Section, except that instead of the cash amount received the receipt shall contain a completed description of the property including all serial and model numbers.



The bond receipt shall also contain the Enforcement Officer's estimate of the value of the property.

- b. The defendant shall sign the Bond Receipt and the Enforcement Officer shall retain and file a signed copy as provided by this Section.
3. The defendant may choose between the following alternatives as to the disposition of his bond property:
- a. Leave the property in the custody of the Confederated Tribes until after the trial or hearing or forfeiture of the Civil Fine or bail at which time, if the defendant has not been found liable to the Confederated Tribes, it shall be returned to the defendant. If the defendant is found to be liable to the Confederated Tribes, is in default as provided by this Code or otherwise fails to appear, the property will be held as security for payment of the judgment, and will be returned upon payment in full. If the payment in full is not received within thirty (30) days of the date of judgment or default, and if an appeal is not filed as provided by this Code, the property shall be sold at a public auction, and the amount received shall be applied to the judgment and the costs of sale and storage. Any excess shall then be returned to the judgment debtor; or
  - b. Redeem the property at any time during normal business hours at the Umatilla Tribal Court, Mission, Oregon, by posting a cash bond in an amount equal to the sum of the Civil Fine or bail for the violations with which the defendant is charged, or by paying damages as determined by the Court. Redemption must occur, if at all, within thirty (30) days of the entry of judgment unless an appeal is filed. If the defendant does not redeem the property within 30 days, the property shall be sold at a public auction and the amount received shall be applied as provided in subsection (a) above.
- D. Seizure of Contraband. Nothing in the Bond Procedures shall affect or diminish the authority of an Enforcement Officer to seize any item taken or used in violation of this Code or regulation promulgated thereunder.
- E. Cash Bond Trust Bond. Within three (3) business days of being posted all cash bonds shall be deposited in a trust account established by the Umatilla Tribal Court for disposition as provided by this Code.
- F. Bond Property Storage. All bond property shall be placed in secure storage within twenty-four (24) hours, excluding weekends and holidays, of being posted and the Umatilla Tribal Court shall be notified of the nature of storage. The Umatilla Tribal Court may direct the alternative arrangements to store the property to the extent necessary to safeguard the property and/or protect the health and welfare of the community.
- G. Involuntary Summary Seizure of Bond Property. If an Enforcement Officer has followed the procedures of this Section, he/she may use any reasonable force necessary to seize bond property from a defendant who refuses to comply with the bond procedures provided by this Section.

#### SECTION 5.06. FORFEITURE

- A. Forfeiture, Generally. Property shall be forfeited to the Confederated Tribes pursuant to this Section when it is found to be "contraband." Contraband is defined as property which was or is:
1. Being used to violate or possessed in violation of this Code or regulation promulgated hereunder; or

2. Obtained by violation of this Code or regulation promulgated hereunder.
- B. Search and Seizure of Contraband with Warrant. Upon a presentation of a written or oral complaint based upon probable cause, supported by oath or affirmation, it shall be made to appear to the judge that contraband as defined in this Section is possessed or used on the Reservation, the judge shall issue a warrant directed to a Tribal Police Officer, commanding a search for and seizure of any such contraband, to keep it safely and to make a return of the warrant within three days showing all acts and things done there under, with a specification of all contraband seized and the name of the person in whose possession it was found, if any. No warrant for search and seizure of contraband shall be valid unless it contains a description of the property to be seized and bears the signature of a judge of the Umatilla Tribal Court.
  - C. Search and seizure of Contraband without Warrant. A Tribal Police Officer may search or seize contraband as defined in this Section without a warrant in circumstances under which searches and seizures without a warrant are permitted by federal law. The officer shall keep such contraband safely and report the seizure to a judge of the Umatilla Tribal Court within three days after seizure, showing all acts and things done, with a specification of all contraband seized and the name of the person in whose possession it was found, if any.
  - D. Notice, Hearing, Disposal of Contraband.
    1. When property is seized under the provision of this Section, a hearing shall be held within ten (10) days after such seizure, and notice of such hearing shall be given in writing to the person in whose possession the property was found, if any. If the owner or possessor of the property is not known, then such notice of hearing shall be posted for ten (10) days in a public manner on the premises from which the property was seized. Upon a finding by a preponderance of the evidence of the judge that the property is contraband, the judge shall order the contraband to be destroyed immediately, or disposed of, and all proceeds there from shall be the sole property of the Confederated Tribes. If the property may be adapted to any lawful use, it shall be forfeited to the Confederated Tribes for its use.
    2. If the property seized under the provisions of this Section is not found to be contraband pursuant to this Section, it shall be immediately returned to the person(s) from whom it was taken. In such case, no storage, impoundment or other charges shall be assessed against the owner or person from whom the property was taken.

#### SECTION 5.07. OTHER RELIEF

In addition to or in lieu of an other enforcement procedure provided by this Code, the Director is authorized to commence a civil action for appropriate relief, including permanent or temporary injunction, for any violation. Any action under this subsection may be brought within Tribal, state or Federal Court (if jurisdictional grounds are satisfied).

- A. Actual Damages. The civil action authorized under this subsection includes, but is not limited to, an action for equitable relief or an action to recover actual damages. See Section 1.06 for a definition of “actual damages.”
- B. Recovery of Costs. In any action brought by the Department, the Director may recover the Tribes’ reasonable costs incurred in enforcing the provisions of this Code, including its reasonable attorney fees.
- C. Notice of Civil Remedy. In any case in which the civil remedy provided under this section is issued or brought against a corporation, a copy of such notice of civil remedy shall be served on any appropriate corporate officer.
- D. Res Judicata/Collateral Estoppel.

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1. No plea, finding or proceeding regarding any violation adjudicated under this Subsection shall be used for the purpose of res judicata or collateral estoppel, nor shall any plea, finding or proceeding upon any violation be admissible as evidence, in any civil proceeding. This subsection shall not be interpreted to authorize additional enforcement proceedings under this Chapter for the same offense.
2. If a person commits both a crime under Tribal law and a violation under this Code as part of the same episode, the prosecution or action with respect to one offense shall not bar the prosecution or action with respect to the other. However, the final judgment in one action shall not be admissible as evidence in any subsequent action.

**SECTION 5.08. CRIMINAL ACTIONS**

- A. Clean Water Act. Any person who is subject to the criminal jurisdiction of the Tribes and who commits a violation or crime as defined in the Federal Clean Water Act 33 U.S.C. § 1319(c) (1996), shall be guilty of an offense and may be prosecuted under tribal criminal law. Upon conviction, such person shall be subject to a penalty or punishment of not greater than imprisonment for a term of one year and a fine of not more than \$5,000 or both.
- B. Federal Enforcement. The Confederated Tribes may refer any person who commits a violation as defined in the federal Clean Water Act 33 U.S.C. § 1319(c) (1996) to the United States Environmental Protection Agency for appropriate action pursuant to federal law.
- C. Notice of Remedy. In any case where the criminal penalty provided under this section is issued to or brought against a corporation, a copy of such notice of remedy shall be served on any appropriate corporate officers.

## APPENDIX A

### LEGISLATIVE HISTORY

## WATER CODE

### LEGISLATIVE HISTORY

The Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation enacted the Interim Water Code in Resolution 81-61 (August 5, 1981).

The Interim Water Code was amended eight times, by the following resolutions: Resolution 81-71 (September 23, 1981), Resolution 83-03 (October 20, 1982), Resolution 84-38 (June 6, 1984), Resolution 88-43 (March 16, 1988), Resolution 89-10 (November 16, 1988), Resolution 90-40 (July 18, 1990), Resolution 94-33 (May 4, 1994), and Resolution 94-47 (June 15, 1994).

The Board of Trustees adopted a comprehensive revision of the Interim Water Code in Resolution 95-72 (July 19, 1995). Following enactment of the revised Interim Water Code, the Board amended Section V(C) in Resolution No. 96-70 (August 7, 1996).

In the *Statutes of the Confederated Tribes of the Umatilla Indian Reservation, July 1999 Compilation*, three editorial changes were made to the revised Interim Water Code. One of these changes was to remove the word “Interim” from the name of the Code. The other changes are described in detail in the legislative history published with the Code in the *July 1999 Compilation*. The Board of Trustees approved these changes in Board Resolution No. 99-63 (July 28, 1999).

Following Board approval of the *Statutes of the Confederated Tribes of the Umatilla Indian Reservation, July 1999 Compilation*, the Board amended Section V(C) of the Code once again, this time in Resolution No. 02-080 (September 30, 2002).

Aside from the Water Code, the Board has occasionally enacted other legislation regulating uses of water and impacts to water on the Umatilla Indian Reservation. The first of these was the Stream Zone Alteration Regulations, which were originally enacted in Board Resolution No. 83-04 (October 20, 1982). They were subsequently amended or revised by the following resolutions: No. 84-50 (July 18, 1984), No. 90-35 (May 16, 1990) and No. 95-73 (July 19, 1995).

In addition, the Board enacted the Tribal Water Quality Standards and Implementing Provisions in Board Resolution No. 99-68 (September 1, 1999). The Water Quality Standards were amended in Board Resolution No. 01-040 (March 26, 2001). The Tribal Water Quality Standards and Implementing Procedures are the vehicle through which the Confederated Tribes enforces section 401 of the Clean Water Act. In order for the standards and procedures to take full effect, the U.S. Environmental Protection Agency had to determine that the Confederated Tribes qualified for “treatment as a state” under section 518 of the Clean Water Act. In a letter dated April 30, 2001, the EPA formally determined that the Confederated Tribes qualified for treatment as a state status. In a letter dated October 18, 2001, the EPA approved the Tribes’ Water Quality Standards.

In the years 2000-2003 tribal staff and the Water Commission developed a comprehensive revision to the Water Code, which integrated the Stream Zone Alteration Regulations and the Water Quality Implementing Provisions into the text of the Code. The Tribal Water Quality Implementing Provisions became chapter 3 of the Code, and the Stream Zone Alteration standards became chapter 4 of the Code. The Tribal Water Quality Standards, unlike the Implementing Provisions, were not integrated into the text of the revised Code. Instead, the Code treats them as regulations under the authority of the Water Commission. Thus, the Commission can amend these standards on its own authority, without subsequent approval of the Board of Trustees.

The revised Code eliminated procedural inconsistencies and conflicts between these various enactments. In addition, the revised Code added new, more comprehensive procedures covering subjects that were not previously addressed by any Tribal statute. Thus, new provisions were included that address water quality management planning, water quality review of Tribal permits, and enforcement. The Board of Trustees enacted the new comprehensive Water Code in Resolution No. 03-100 (November 10, 2003). Resolution No. 03-100 specified that the new Water Code would take effect January 1, 2004.

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In Resolution No. 04-047 (July 26, 2004), the Board of Trustees enacted an amendment to section 1.10(C) of the Water Code, changing the number of Board Members allowed on the Commission from “one” to “at least one”. In Resolution No. 05-027 (March 7, 2005), the Board of Trustees corrected an unintended omission in the list of protected streams in section 4.01(B) by adding the Main-stem Umatilla River and Spring Creek to the list.

In Resolution 20-090 (September 28, 2020), the Board of Trustees amended Sections 4.05 and 4.06, the provisions pertaining to Emergency Stream Zone Alterations, to require advance notice and approval from the Water Code Administrator prior to engaging in such work, and to clarify the circumstances under which stream alterations may be conducted outside the standard instream work windows. Resolution 20-090 also revised the definition of “Emergency” to require that a threat of damage to life, health, or property be imminent in order to qualify as an emergency.

## APPENDIX B

### MAP OF THE UMATILLA INDIAN RESERVATION

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