TITLE 47. WATER CODE

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TITLE 47. WATER CODE

CHAPTER 1. FINDINGS AND GENERAL PROVISIONS

SECTION 46-1-1. Findings

(a) The Tribe finds that all Reservation Natural Resources are interconnected; and that the Water Resource has Cultural, Spiritual, and Economic values that guide the appropriate use, management, and protection of the resource and that condition all water and land use activities in the watersheds and drainage basins of the Reservation.

(b) The Tribe finds that surface and ground water are directly interconnected by the hydrologic cycle of the region of and the Reservation, and therefore water is a unitary resource, whether occurring as ground water, springs, mineral water, soil moisture, precipitation, percolating water, recharge, drainage waters, surface water, or otherwise.

(c) The Tribe recognizes that clean water is vital to the health and welfare of Reservation residents and to the vitality of the Reservation economy. Because resource uses may contribute to the degradation of water supply and quality, it is necessary to protect the environmental quality and integrity of all surface and ground water.

(d) The Tribe finds that all waters reserved by treaty are held by them in trust for the benefit of the Reservation public and for certain inalienable public uses and that, as an essential attribute of sovereignty, the power to determine the proper uses of said waters and the management thereof is the Tribes alone.

SECTION 46-1-2. Definitions.

(a) For the purpose of this Title:

(1) "Council" shall mean the Governing Body of the Omaha Tribe of Nebraska

(2) "Person" shall mean any individual or group or combination thereof acting as a unit however associated; any organization of any kind, whether organized for profit or not, and regardless of the manner of form in which it does business, whether as a sole proprietorship, receiver, partnership, joint venture, trust, estate, firm, unincorporated association, corporation, or government, including but not limited to, any Chapter, subdivision, or agency of any of the foregoing; and any combination of individuals or organizations in whatever form, and the plural as well as the singular number.

(3) "Reservation lands" shall mean all lands within the exterior boundaries of the Omaha Indian Reservation, including all lands which may hereafter be added to or made a Chapter of the Reservation

(4) "Tribal Court" shall mean the Omaha Tribal Court of the Omaha Indian Reservation.

(5) "Tribe" shall mean the Omaha Tribe of Nebraska of the Omaha Indian Reservation

(6) "Tribal Water Rights" shall mean those rights to divert or affect Reservation water which are granted pursuant to the provisions of This Title

(7) "Reservation Water" shall mean any and all waters underlying, flowing through or otherwise occurring or contained within the Reservation

(8) "Mean annual flow" shall mean that flow which is calculated using historical average annual flow data for the period of conception till future unknown

SECTION 46-1-3. Purpose.

The purposes of this Title are:

(a) To provide an orderly system for the use and management of all 1854 tribal water and 1865 allottee derivative water

(b) To provide effective guidelines and mechanism for the administration and protection of tribal and allottee reserved rights, and State-held water rights to Reservation water.

(c) To ensure that Reservation residents have sufficient water for cultural, domestic, agriculture, stock, instream, and other uses, and that the Tribe have sufficient water for Reservation economic development

(d) To conserve, manage, and protect reservation water for future uses by generations to come

(e) To protect Reservation water from over-appropriation, degradation, contamination, exploitation, and any acts injurious to the quantity, quality, or integrity of the water

(f) Within the limits of Tribes' public trust obligations, to encourage optimal development and multiple use of the water resource, to promote stability of investment in water use and delivery systems, and to permit all reasonable uses.

(g) To maintain minimum perennial stream flows and to promote optimal recharge of aquifers to supply beneficial uses

(h) To protect the health and welfare of Reservation Residents, the political integrity of the Tribe, and the economic security of the Reservation through the effective management and protection of the Reservation's water supply and water quality of said supply

SECTION 46-1-4. Scope.

This Title applies to all persons desiring to use or using or undertaking activities on Reservation Lands which effect Reservation water.

SECTION 46-1-5. Beneficial Uses of Water.

(a) The uses to which water on the Reservation may beneficially be applied include but are not limited to:

(1) Domestic Use

(2) Municipal Use

(3) Agricultural Use

(4) Stock Water Use

(5) Industrial Use

(6) Instream Flow Use, including instream flow for fisheries, wildlife, and pollution control, aesthetic and cultural purposes

(7) Mineral Resource Development

(8) Water Storage, Marketing and Transfer

(9) Ground Water recharge and supply enhancement

(10) Recreational Use

(11) Cultural Use

(12) Religious Use

(13) Hydro Power Generation

(14) Pollution Control

(15) Resource Development

(b) No presumption of preferences of use shall be given to the order in which beneficial uses are listed above.

SECTION 46-1-6. Policies

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

(a) Existing uses, established duties of water, and relative priorities concerning the use of Reservation water are to be protected and preserved, subject to the Tribes' Public Trust obligations to protect tribal and allottee derivative water.

(b) Surface water use will be adjusted for the varying water conditions each year, and overall water use allocation decisions will be guided by the declaration of drought, normal, and surplus hydrologic conditions that require different water management strategies. Water development decisions will recognize hydrologic variability and will consider alternative sources of supply, should dry conditions prevail.

(c) Ground Water will be guided by the overall condition of the aquifer system, the expected long-term yields, and the cumulative impacts of existing and proposed uses on ground and surface water supply and quality.

(d) The Planning and development of water and land resources will safeguard against surface and ground water degradation.

(e) For long-term or carry-over storage, multipurpose impoundment structures are preferred over single purpose structures.

(f) Land use decisions involving or significantly affecting a stream bank, bed, or channel, or water storage facility shall seek to maintain and enhance the fishery and wildlife resource.

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

(h) All land, water, or other resource strategies, decisions, or regulations shall consider the potential effect on all Reservation natural resources.

(i) Allocation decisions are subject to periodic consideration and review for their net effect on trust resources and values and, may require adjustment or existing uses to protect trust purposes where appropriate.

CHAPTER 2. ESTABLISHMENT OF THE WATER RESOURCES CONTROL BOARD

AND THE OFFICE OF THE TRIBAL WATER ADMINISTRATOR

SECTION 46-2-1. Establishment of the Water Resources Control Board

(a) There is hereby established the Omaha Tribe of Nebraska's Water Resources Control Board ("Board") as the primary enforcement and management agency responsible for controlling water resources on the Reservation. The Omaha Tribal Council shall appoint Six (6) members of the Board. Three (3) members of the initial Board to serve for a term of Three (3) years and Three (3) members of the Board to serve for a term of Two (2) years. Each Board member appointed, or reappointed after serving the initial term, shall serve for a term of Two (2) years and until his or her successor is duly appointed and qualified. The Council who appointed the Board member, whose term has or is expiring, also shall appoint such member's successor. No Board member shall vote on a decision which could have a material financial effect personally or directly upon such member or his or her business. A member shall disclose to the Board any such financial effect at the time of such vote and may participate in the discussion of the matter without voting upon it. Six (6) members of the Board shall constitute a quorum.

(b) The duties and authority of the Board are to:

(1) Oversee the development of water resource management plans and supervise the execution and enforcement of Code provisions and regulations there-under,

(2) Approve or Disapprove of water use permits in accordance with the principles and procedures set forth in this Title,

(3) Conduct hearings regarding water permit applications and hear disputes regarding the actions of the Tribal Water Engineer and/or water development/management staff in accordance with the procedures adopted pursuant to Board regulations,

(4) Compel production of documents or other things and compel attendance of witnesses before the Board,

(5) Adopt such rules, regulations, permit forms, and additional materials, and propose amendments to the Code, as necessary to interpret and execute its authority and to implement the objectives and purposes of this Title,

(6) Establish and maintain a technical staff qualified by training and experience to enforce and administer this Title,

(7) Research and define, based on the best available data, the most effective ways of managing, conserving, and protecting Reservation Water,

(8) Hire and supervise the Tribal Water Engineer,

(9) Advise the Council on all aspects of the Code and Reservation Water,

(10) Organize and Operate its offices in order to discharge its duties and responsibilities effectively.

SECTION 46-2-2. Establishment of the Office of Tribal Water Administration

(a) ESTABLISHMENT: There is hereby created the office and position of Tribal Water Administrator ("TWA"). The TWA is the executive arm of the Board for water management, is responsible directly to the director of the Natural Resources Department, and has the authority to administer the water laws of the Tribe according to this Title, its regulations, and the general

instructions of the Board and the Director of the Natural Resources Department. The TWA shall be qualified by training or experience in the fields of hydrology, water rights engineering, irrigation, water development, watersheds management, and water supply.

(b) STANDARD FOR CARRYING OUT DUTIES: Regulation of water being the lifeblood of the Tribe and Critical to the conservation and enhancement of its resources, thee TWA shall equally guard all interests involved in carrying out the duties and authorities of his office.

(c) DUTIES AND AUTHORITIES: The TWA shall have the following duties and authorities:

(1) Administrative and Enforcement Functions:

(A) To administer Tribal Water Rights, and Ensure maximum compliance with this Title and with the conditions of all permits, determinations, orders, regulations, plans, policies, guidelines, and other actions taken by the Board.

(B) To enter upon lands within the Reservation to inspect methods of diversion, withdrawal, and other activities affecting Reservation waters, to install measuring devices for the purpose of enforcing and administering This Title, and to monitor water use on the Reservation or that may affect the Reservation.

(C) In an Emergency, to remove, render inoperative, shut down, close, seal, cap, modify, or otherwise control methods of diversion and withdrawal, obstructions to the flow of water, and activities adversely affecting Reservation waters, subject to expedited appeal by the affected person as provided in This Title.

(D) To initiate, by citation and other lawful means, enforcement proceedings before the Board or in Tribal Court, or other Court of competent jurisdiction for violations of This Title, including injunctive relief.

(E) To monitor and report all uses of Trial water and to provide an annual report to the Board on the status and use of Tribal Resources.

(F) To give notice to the State of new uses of the Tribal water right as provided in a a compact, and to appear on behalf of the Tribe in any proceedings involving such use.

(2) Advisory Functions;

(A) To advise the board on all water resource related development planning issues, provide the Board with an annual report on water quantity and the status of water use on the Reservation, and provide suggestions, alternatives, and recommendations for water management.

(B) To recommend to the Board changes to This Title and to its regulations.

(C) To develop and submit an annual budget and office policies and procedures to the Board for approval.

(D) To recommend certain land areas and waters on the Reservation to the Board as suitable for dedication to certain permitted uses.

(E) To recommend designation of surface and groundwater regions on the Reservation as "critical management areas" and to propose specialized provisions for management within those areas.

(3) Fact-Finding and Information Functions;

(A) To research and determine water supply characteristics and development possibilities by hydrologic basin.

(B) To collect all data and to prepare all reports as required by the Compact or the Act.

(C) To perform ongoing research regarding the overall capacity of the Reservation's watercourses and aquifers, with a view in particular to discovering and reporting the levels above or below which specific water use impairs or affects overall water availability and use, and to determine the extent of potential effects on existing water uses, given hydrologic conditions, from proposed uses of Reservation Water.

(D) To conduct public educational programs and materials regarding water and water rights.

(E) To determine watershed-wide rotation schedules for water diversion to meet demands in water short years.

(F) To recommend appropriate water duties for adoption by the Board for Reservation lands and watersheds and to recommend technological changes or modifications to improve water use and efficiency.

(G) To coordinate with other Tribal Departments regarding water quality and quantity issues.

(4) Research and Development Functions;

(A) To initiate and undertake research and development activities directed toward identifying financial support for water management and development.

(B) To identify new or analyze existing uses and means of developing, managing, conserving, and otherwise protecting Tribal Water Resources.

(C) To identify promising research areas regarding Trial Water Resources and to solicit research proposals by government, university, or private sources.

(D) To develop the internal Tribal Technical and managerial capabilities to promote the direct involvement of Tribal staff in the development and construction of Water Resources supply, distribution, and management facilities and devices.

(E) To conduct hydrological investigations to determine water needs.

(F) To study the feasibility of and make recommendations concerning a Reservation-based water quality laboratory.

CHAPTER 3. PERMIT SYSTEM FOR WATER USE ON THE OMAHA INDIAN RESERVATION

SECTION 46-3-1. Permit or License Required

(a) (1) No person shall divert Treaty-based water or undertake an activity affecting or involving such water without first obtaining a permit or license under this Chapter. Except when such diversion or activity is preemptively allowed by federal law, a permit or license is required for any of the following activities:

(1) Diversion of water from any stream course, spring or well,

(2) Drilling of any new well or modification of any existing well, including domestic, irrigation, industrial, municipal, or oil and gas development-related wells,

(3) Discharging, injecting, or depositing any waste, wastewater, or other contaminate into Reservation Water,

(4) Changing the point of water diversion, whether of surface or groundwater,

(5) Changing the use of waters, or the place of use or the method of diversion or application of waters,

(6) Transferring Reservation water outside the watershed origin,

(7) Altering any stream course or stream bank for any purpose, including but not limited to road construction and repair,

(8) Developing groundwater recharge projects,

(9) Generating hydropower,

(10) Storing or impounding water, and

(11) Dedicating water to instream flow.

(b) The issuance of a permit or license allows the activity therein described and constitutes an undertaking by the permittee or licensee to comply with the conditions therein stated and all tribal laws and regulations of general application covering such activity.

(c) For purpose of This Title, any person possessing appropriative rights under Nebraska Law may receive a General Water Permit. Proof of appropriative rights under Nebraska Law shall be submitted to the TWA in accordance with regulations of the Board.

(d) Any person proposing to undertake an activity which may affect Reservation Water may apply to the TWA for a statement of No Permit Required, and the TWA may issue such a statement if he/she finds the activity will have a minimal impact on Reservation water or that the activity or diversion is preemptively allowed by federal law. The statement shall be limited to the facts represented by the applicant. No fee shall be required for such application.

(e) All permits and licenses issued under This Title are provisional and shall not be construed to create an entitlement in the user beyond the provisional period or to allow reliance thereon by any other person.

SECTION 46-3-2. The Permit System

(a) The Permit System recognizes six (6) categories of permits. Any two or more categories may be combined into a single permit, as appropriate. Any permit may be made subject to such conditions and stipulations as the Board may deem necessary in the Public interest.

(b) Categories of Permits

(1) 1865 Water Permit. Grants or confirms a right to use a share of 1865 tribal water or 1865 allotee derivative water to a user, and guides the present and future use and appropriation of the 1865 water right. The permit applies to surface water and groundwater. There shall be three (3) types of 1865 Water Permit, as follows;

(A) TYPE I: 1865 tribal water permit, granted to a tribal member, Indian Allotee, or Tribal entity, enterprise or political subdivision.

(B) TYPE II: 1865 allotee derivative water permit, granted to a successor in interest of an allotee.

(C) TYPE III: 1865 tribal water lease permit, granted to a person to use 1865 tribal water, upon payment to the Tribes rates to be established by the Board, hi addition to any applicable O&M charges.

(2) Permit for Changing Place of Method of Use, or Method of Application, or Point of Diversion. Grants the right to change the location or purpose of water use, method of application, or method or point of diversion

(3) Instream Flow Permit. Grants the right to the Tribes to maintain specified instream flows and/or lake levels in reaches of or the entire streams or reservoirs on the Reservation.

(4) Watershed Transfer Permit. Grants the right to transfer treaty-based water outside the watershed of origin.

(5) Storage Permit. Grants the right to impound surface or groundwater for beneficial use.

(6) General Water Permit. Grants or recognizes rights of use, appropriation, or development of water not otherwise covered by another permit.

SECTION 46-3-3. The License System

(a) The License System recognizes four (4) categories of licenses. Any two or more categories may be combined into a single license, as appropriate. Any license may be made subject to such conditions and stipulations as the Board may deem necessary in the Public Interest.

(b) Categories of Licenses

(1) Drillers License. Grants a license to drill or cause to be drilled a well within the Reservation, to persons meeting tribal requirements for technical capability and bonding. The issuance of a Driller's License is contingent upon the applicant's providing a satisfactory description of his technical competence and financial stability, including a description of relevant training and experience, procedures and equipment, current financial condition, and disclosure of prior or existing claims; upon the posting of a bond in favor of the Tribe in an amount, established pursuant to Board regulations, conditioned upon the faithful performance and completion of all conditions and stipulations of the license; and upon the applicant's written undertaking to comply with tribal laws and regulations regarding record-keeping, logging, well development, supervision and inspection by the TWA.

(2) Stream Zone Alteration License. Grants the right to alter the streambed or banks. A Steam Zone Alteration License is required for all person engaging in activity that affects the bed or banks of Reservation streams, including but not limited to construction of temporary diversion structures, road and culvert construction and repair, logging operations, grazing activities on the stream bank, and other activities affecting the stability of the stream channel.

(3) Discharge License. Grants the right to discharge waste, or wastewater, or other contaminant into the surface or groundwater of the Reservation, through the point discharge of any substance, through the non-point discharge through landfills, septic tanks, or disposal

pits, or through injection into groundwater.

(4) Well Construction License. Grants the right to construct a new well or modify an existing well, and requires the submission of specific technical data, including construction plans, effects on aquifer level and water quality, well pump test data, and lithologic logs.

SECTION 46-3-4. Application Procedure

(a) Application for any license or permit under this Chapter shall be made on forms developed by the TWA, including particular information of facts that in the judgment of the TWA is required for the proper processing of such applications.

(b) An application fee for permits and licenses shall be established in the regulations promulgated hereunder and shall be paid in advance to and collected by the Office of the TWA. The fee may be waived by the Board in the case of financial hardship. Such fees shall be used in Chapter to defray the cost of reviewing the application and conducting a hearing.

(c) The TWA shall provide public notice of the requirements of this Chapter and shall allow continued historic water uses pending processing of the applications.

(d) The TWA shall assist each applicant in the collection of data and the preparation of the application to the extent the applicant, through lack of resources or technical knowledge, requires such assistance.

(e) Within sixty (60) days of receipt of the application, the TWA shall: review each permit application; perform investigations; prepare a report on each application; and recommend approval or denial to the Board, which shall have the authority to grant or deny the permit. Every decision of the Board must include factual findings which justify the decision, and must be consistent with tribal water and land use laws, and Nebraska state water law when applicable.

(f) The Board shall review all applications to determine whether the proposed use or activity adversely affects tribal resources or other tribal interests, whether the proposed use or activity is technically feasible, and whether the proposed use or activity is consistent with the policies, purposes, and procedures described by This Title, and Nebraska State water law when applicable.

(g) All applicants shall on request receive a hearing before the Board to provide an opportunity for a full factual presentation and for public comment and testimony on the proposed use or activity.

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

(2) After the hearing, the Board shall promptly render a written decision on the application:

(A) Approving the permit without conditions,

(B) Approving the permit with conditions,

(C) Denying the permit, or

(D) Tabling action pending receipt of additional data or information

(3) All proceedings of the hearing shall be recorded, and, if an appeal is sought, a transcript of the hearing may be requested by the applicant or any other affected party at his sole cost and expense.

(h) If the Board approves the application, the TWA shall issue the appropriate permit or license in conformity with the Boards decision.

SECTION 46-3-5. Relinquishment of Tribal Water Rights: Sole Method of Acquisitions

(a) Voluntary Relinquishment of Claims or Rights. Any holder or claimant of any right in or to the waters of the Reservation may voluntarily relinquish all or a portion of such right to the Tribe by any affirmative act including an intent to relinquish.

(b) No loss by Adverse Possession, Prescription, Estoppel, or Acquiescence; Nontransferability.

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

(2) No right granted under This Title may be transferred, exchanged, sold, or otherwise conveyed except as provided by This Title

SECTION 46-3-6. Prohibited Acts: Violations of Permit Conditions or Code

(a) Prohibited Acts:

(1) Forcibly, or by bribery, attempted bribery, threat, or other corrupt practice, obstruct or impede the due administration of This Title;

(2) Commit fraud, or knowingly assist another in the commission of fraud, with the intent to evade or defeat the administration of his Code or costs imposed or assessed;

(3) Falsely verify by written declaration any permit, form, or other document, or to intentionally withhold data required to be submitted by law;

(4) Violate the conditions or stipulations of his permit or license including taking more water than is allowed by permit;

(5) Willfully take, alter, or damage treaty-based water quality or water rights.

(b) Any Indian who commits any of the above prohibited acts, upon conviction thereof, shall be sentenced to a term of imprisonment not to exceed six (6) months, or be ordered to pay a fine not to exceed $1,000.00, or both.

(c) Any person who commits any of the above prohibited acts, or whose employees or agents in the course of their employment or agency commit any of the above prohibited acts, shall be subject to civil proceedings before the Board on citation by the TWA. On a finding of violation, the Board may impose any of the following sanctions, or combination thereof:

(1) Money damages,

(2) Restitution,

(3) Cancellation of the holder's lease, if the lands to which the permit applies or on which the violation occurred are tribal lands,

(4) Injunctive relief,

(5) Affirmative remedial action,

(6) Additional conditions or limitations upon the holder's permit or license, including limitation of the amount of water permitted to be diverted,

(7) Suspension of the permit or license for certain term, .

(8) Exclusion from the territory of the Reservation, if the violator is subject to exclusion under federal law,

(9) Forfeiture of any permit or license

(10) Temporary or permanent disqualification from eligibility for any permit or license.

(11) Costs.

(d) Appeal from a decision of the Board may be had by the affected person to Tribal Court in accordance with the provisions of Chapter 6. The interest of the Tribe shall be represented by the TWA or legal counsel of the Tribe.

(e) In the cases of criminal prosecutions of any Indian, proceedings for penalties under this section shall be brought in the name of the Omaha Tribe of Nebraska by the Tribal Court, by the Tribal Prosecutor.

CHAPTER 4. PROCEEDINGS ON EXERCISE OF TWA'S EMERGENCY POWERS

SECTION 46-4-1. Appeal Rights.

(a) When in the exercise of his/her authority under Section 46-2-2(c) (1) (C), the TWA removes renders inoperative, shuts down, closes, seals, caps, or otherwise controls any method of diversion or withdrawal, any obstruction to the flow of water, or any activities adversely affecting the quality or quantity of treaty-based or tribally permitted water, the affected person shall have the following appeal rights:

(1) Upon petition, files with the Board not later than 14 days from the date of the TWA's action, the Board within Three (3) days of filing such petition, will conduct a hearing to receive evidence from the person affected adversely by the TWA's action. The TWA shall provide to the Board on its request certified copies of all documents, things, or other information which formed the basis for his/her action. The Board may modify or reverse such action of the TWA only where such action is not supported by hydrologic fact, tribal policy, or law, or is clearly arbitrary and capricious. The Board shall within forty-eight (48) hours issue a written decision stating the grounds therefore.

CHAPTER 5. WATER MANAGEMENT PROCEDURES

(a) Declaration of Hydrologic Conditions. At the beginning of each irrigation season, the TWA shall prepare a water supply forecast, and shall declare the existence of surplus, normal, and drought conditions and the approximate extent of time in which each condition will exist each year. As a result of widely-varying hydrologic conditions, the TWA may designate one portion of the Reservation in surplus and another n drought condition. These designations shall be based on hydrologic evidence, in consideration of total demand, as follows;

(1) Normal Condition: a condition in which the mean flow for the watershed is achieved

(2) Surplus Condition: a condition in which the mean annual flow of the watershed is exceeded and there is excess water above demand on an entire stream or a specific reach of stream including the needs of downstream users, for purposes of determining demand under this paragraph, appropriative rights under state permits shall be limited to 2 cfs/70 acres.

(3) Drought Condition: a condition in which the mean annual flow of the watershed is not achieved and insufficient water exists to satisfy the demand on tan entire stream or a specified reach of stream, including the needs of downstream users. For purposes of determining demand under this paragraph, appropriative rights under State permits shall be limited to 1 cfs/70 acres.

(b) Water Allocation

(1) Guidelines

(A) Water is to be allocated according to priority date and in accordance with historic practices of rotation and scheduling

(B) Water delivery systems on the Reservation shall divert only that quantity of water to which they are legally entitled except during surplus and drought conditions as specified in this Chapter

(2) Surplus. Surplus water that may be used beneficially and efficiently will be allocated by the Board, based on the recommendation of the TWA, ratably among 1865 users first; later priorities are then allocated a proportionate share of the remainder;

(3) Drought. In Drought conditions, water will be allocated on a priority basis, unless special agreements between the Tribe and other entities provide for a temporary change of water allocation formulas.

(A) 1865 water rights will receive first priority for water, with all later rights honored as supply is available

(B) All rights later than 1865 are than satisfied,

(C) If a drought condition prevails such that not enough water exists to satisfy even 1865 claims, all 1865 water users will have water claims met, but at a lesser diversion rate than the specified in the 1865 water permit. The diversion rate shall be set according to the specified demands in relation to overall supply. The Board may set temporary use priorities during periods of drought after notice and hearing.

SECTION 46-5-2. Public Safety Emergencies

To prevent or to cope with an emergency involving water quality, water quantity, water supply, drought, flood, or potentially dangerous environmental conditions, the Board is authorized to take any steps necessary to secure prompt and effective assistance and corrective action to protect the health and welfare of the Tribe and Reservation Natural Resources. Such action includes, but not limited to:

(a) (1) Seeking assistance from federal and state emergency management agencies for contamination clean up, flood, or other emergency situations involving public safety;

(b) (2) Developing the internal tribal capabilities for emergency response teams, including training and equipment purchases;

(c) (3) Developing an emergency communications network for Reservation lands and people for the purpose of flood or other emergency warnings; and

(d) (4) Developing additional groundwater or authorizing additional storage facilities for Reservation residents and activities and establishing specific waste-prevention or conservation incentives for Reservation water users

SECTION 46-5-3. Surface Water Resources

(a) Use and Transfer

(1) In evaluation of a new use or transfer of surface water use within the Reservation or off Reservation, the TWA shall consider:

(A) The impact of the surface diversion on other existing surface water users;

(B) The impact of the surface diversion on groundwater recharge and the overall water balance, including return flow, in the immediate and relevant area;

(C) The impact of the surface water use upon the capture zone of any existing well in the immediate and relevant area, the size of the capture zone being determined by regulation;

(D) The impact on the surface water use and return flow upon surface or alluvial groundwater quality.

(2) In evaluation of the use or transfer of alluvial groundwater, within the Reservation or off Reservation, the TWA shall consider:

(A) The impact of the Groundwater pumping upon surface water resources;

(B) Overall proposed use in comparison to hydrologic availability of water for each watershed as prescribed in the Code;

(C) The impact of proposed alluvial groundwater use upon surface or groundwater quality

(3) Any use of surface or groundwater off the Reservation must be approved by the tribal council.

CHAPTER 6. APPEALS

SECTION 46-6-1. Review of TWA Decisions

(a) Request for Hearing. Unless sooner required by other provisions of This Title, within thirty (30) days after issuance of a decision of the TWA, any affected person may file a written request for a hearing before the Board, which shall review and hear the matter.

(b) Finality of TWA Decision. If no request for a hearing before the Board is made with the time allowed, the decision of the T\\TA shall be final and not be subject to appeal to the Board or to any court.

(c) Hearing before the Board. Upon the proper and timely filing of an appeal, the Board will conduct a recorded hearing to receive evidence from the appellant and the TWA. The Board will issue a written final decision. Appeals from final decisions of the Board shall be made only to the Tribal Court pursuant to Section 46-6-2 of this Chapter.

SECTION 46-6-2. Court Appeals

(a) Tribal Court Review. The Tribal Court is empowered to hear appeals from any final decisions or ruling of the Board.

(b) Filing of Appeal. Appeals of Board decisions or rulings shall be filed with the Tribal Court no later than Thirty (30) days from issuance of such decision or ruling of the Board.

(c) Exhaustion. No person may seek review by the Tribal Court of a decision or ruling of the TWA or Board unless such person has first exhausted his administrative appeal rights provided by This Title.

(d) Standard of Review. Unless otherwise provided by This Title, appeals to the Tribal Court shall be limited to review of the record of the Boards administrative decision or ruling. The Tribal Court may modify, reverse, or remand a decision or ruling of the Board only where such decision or ruling is without substantial basis in fact, is contrary to tribal policy or tribal law, or is clearly arbitrary or capricious.

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