

LAW AND ORDER CODE
OF THE
SHOSHONE AND ARAPAHOE TRIBES
OF THE WIND RIVER RESERVATION

WIND RIVER WATER CODE

Effective March 18, 1991

CITE AS "S&ALOC 11-8-

CHAPTER 8

WIND RIVER WATER CODE

Section 11-8-I

PART I - FINDINGS AND GENERAL PROVISIONS

Section 11-8-I(A)

FINDINGS

(1) The Tribes find 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 that resource and that condition all water and land use activities in the watersheds and drainage basins of the Reservation.

(2) The Tribes find 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.

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

(4) The Tribes find 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 11-8-I(B)

DEFINITIONS

For the purposes of this Code:

(1) "Board" shall mean the Water Resources Control Board of the Wind River Reservation.

(2) "JBC" shall mean the Joint Business Council of the Shoshone and Northern Arapaho Tribes of the Wind River Reservation.

(3) "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 part, 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.

(4) "Reservation lands" shall mean all lands within the Wind River Reservation, which Reservation is defined to include:

(a) All lands within the limits or exterior bounds of the reservation as delimited in the Treaty of July 3, 1868, 15 Stat. 673, less the portions ceded under the Acts of December 15, 1874, 18 Stat. 291, and June 7, 1897, 30 Stat. 93, notwithstanding the issuance of any patent, and including rights-of-way running through the Reservation;

(b) All lands which may hereafter be added to or made a part of the Reservation.

(5) "Tribal Court" shall mean the Shoshone and Northern Arapaho Tribal Court of the Wind River Reservation

(6) "Tribes" shall mean the Shoshone and Northern Arapaho Tribes of the Wind River Reservation.

(7) "Tribal water rights" shall mean those rights to divert or affect Reservation water which are granted pursuant to the provisions of this Code.

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

(9) "General Adjudication" shall mean the proceeding entitled In re: The General Adjudication of All Rights to Use Water in the Big Horn River System, 753 P. 2d 76 (Wyo. 1988), affirmed 492 U.S. 406 (1989).

(10) "1868 tribal water" shall mean that water reserved by treaty and adjudicated in the General Adjudication and bearing a priority date of 1868.

(11) "1868 allottee derivative water" shall mean that water adjudicated to the use of a successor in interest to an Indian allottee, the right to appropriate and the amount thereof which was determined by the General Adjudication and bearing a priority date of 1868, popularly referred to as "Walton rights".

(12) "General Councils" shall mean the General Council of the Shoshone Tribe and the General Council of the Northern Arapaho Tribe of the Wind River Reservation.

(13) "Mean annual flow" shall mean that flow which is calculated using historical average annual flow data for the period 1940-1989.

(14) "Treaty-based water" shall mean 1868 tribal water and 1868 allottee derivative water.

(15) "State-held water right" shall mean a water right held pursuant to Wyoming state water law.

Section 11-8-I(C) PURPOSES

The purposes of the Wind River Water Code are:

(1) To provide an orderly system for the use and management of all 1868 tribal water and 1868 allottee derivative water.

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

(3) To ensure that Reservation residents have sufficient water for cultural, domestic, agricultural, stock, instream, and other uses, and that the Tribes have sufficient water for Reservation economic development.

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

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

(6) Within the limits of the 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.

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

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

Section 11-8-I(D) **SCOPE**

This Code applies to all persons desiring to use or using or undertaking activities on Reservation lands which affect Reservation water.

Section 11-8-I(E) **BENEFICIAL USES OF WATER**

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

- (a) Domestic Use
- (b) Municipal Use
- (c) Agricultural Use
- (d) Stock Water Use
- (e) Industrial Use
- (f) Instream Flow Use, including instream flow for fisheries, wildlife, and pollution control, aesthetic and cultural purposes
- (g) Mineral Resource Development
- (h) Water Storage, Marketing and Transfer
- (i) Ground Water recharge and supply enhancement
- (j) Recreational Use
- (k) Cultural Use
- (l) Religious Use
- (m) Hydropower Generation
- (n) Pollution Control
- (o) Resource Development

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

Section 11-8-I(F) **POLICIES**

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

(1) 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.

(2) 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.

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

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

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

(6) 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.

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

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

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

Section 11-8-II

PART II - ESTABLISHMENT OF THE WATER RESOURCES CONTROL BOARD, AND THE OFFICE OF THE TRIBAL WATER ENGINEER

Section 11-8-II(A)

ESTABLISHMENT OF THE WATER RESOURCES CONTROL BOARD

(1) There is hereby established the Wind River Water Resources Control Board ("Board") as the primary enforcement and management agency responsible for controlling water resources on the Reservation. The Shoshone and Arapaho Tribes each shall appoint six (6) members of the Board. Each Tribe shall designate three (3) members of the initial Board to serve for a term of two (2) years and three (3) members of the initial Board to serve for a term of one (1) year. 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 Tribe 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. Eight (8) members of the Board shall constitute a quorum, provided at least four (4) members from each Tribe are present.

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

- (a) Oversee the development of water resource management plans and supervise the execution and enforcement of Code provisions and regulations thereunder,
- (b) Approve or disapprove of water use permits in accordance with the principles and procedures set forth in this code.
- (c) 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,
- (d) Compel production of documents or other things and compel attendance of witnesses before the Board,
- (e) 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 Code,
- (f) Establish and maintain a technical staff qualified by training and experience to enforce and administer this Code,
- (g) Research and define, based on the best available data, the most effective ways of managing, conserving, and protecting Reservation water,
- (h) Hire and supervise the Tribal Water Engineer,
- (i) Advise the General Councils of the Tribes on all aspects of the Code and Reservation water,
- (j) Organize and operate its offices in order to discharge its duties and responsibilities effectively.

Section 11-8-II(B) ESTABLISHMENT OF THE OFFICE OF THE TRIBAL WATER ENGINEER

(1) There is hereby created the office and the position of Tribal Water Engineer ("TWE"). The TWE is the executive arm of the Board, is responsible directly to the Board, and has the authority to administer the water laws of the Tribes according to this Code, its regulations, and the general instructions of the Board. The Board may delegate any of its duties and authority to the TWE except the duty and authority:

- (a) to hire and supervise the TWE,
- (b) to hear disputes regarding the actions of the TWE and/or water development/management staff in accordance with the procedures set forth in this Code,
- (c) to approve or disapprove of water use permits in accordance with the principles and procedures set forth in this Code, and
- (d) to adopt regulations.

(2) The TWE shall be a qualified hydrologist and water resource manager, with a minimum educational level of a Master's degree in a water-related field, or with a Bachelor's degree and not less than four (4) years experience or water resource management, water rights administration, or water development or engineering. The TWE will be hired by the JBC.

(3) Regulation of Reservation water being the lifeblood of the community and critical to the conservation and enhancement of its resources, the TWE shall evenhandedly guard all the interests involved in carrying out the duties and authorities of his office.

(4) The TWE shall have the following duties and authorities:

(a) Administrative and Enforcement Functions.

- (i) To administer Reservation water rights, and ensure maximum compliance with the Code and with the conditions of all permits, determinations, orders, regulations, plans, policies, guidelines, and other actions taken by the Board.
- (ii) To enter upon Reservation lands to inspect methods of diversion, withdrawal, and other activities affecting water quality and quantity, to install measuring devices for the purpose of enforcing and administering this Code, and to monitor water use, water quality, and diversions.
- (iii) In an emergency, to remove, render inoperative, shut down, close, seal, cap, modify, or otherwise control methods of diversion and withdrawal, obstructions to the flow of water, and activities adversely affecting water quality and quantity, subject to expedited appeal to the Board by the affected person, as provided in Part IV of this Code.
- (iv) To initiate, by citation and other means, enforcement proceedings before the Board, or in Tribal Court or other Court of competent jurisdiction for violations of this Code, including injunctive relief.
- (v) To hire, supervise, and fire office and technical staff, provided that all hiring and firing decisions are subject to the approval of the JBC.

(b) **Advisory Functions**

- (i) To advise the Tribes on all water resource related development planning issues, provide the Board with a semiannual report on water quality and quantity and the status of water use on the Reservation, and provide suggestions, alternatives, and recommendations for water quality management.
- (ii) To recommend to the Board changes to this Code and to its regulations.
- (iii) To develop and submit an office budget, and office policies and procedures to the Board for approval,
- (iv) To recommend certain land areas and waters on the Reservation to the Board as suitable for dedication to certain beneficial uses.
- (v) To recommend designation of surface and ground water regions on the Reservation as "critical management areas" and to propose specialized provisions for management within those regions.

(c) **Fact-Finding and Information Functions.**

- (i) To research and determine water supply and quality characteristics and development possibilities.
- (ii) To collect, maintain, and analyze, on a continuing basis, information regarding Reservation- and basin-wide water resources and quality, including data on water, land, air quality, rangeland, and other factors actually or potentially affecting Reservation water or tribal water rights.
- (iii) To organize and develop a computerized database of Reservation water resource information, organized in a form useful to tribal decision makers and Reservation residents, and provide periodic reports describing the overall structure, use, and application of the database.
- (iv) To perform regular research regarding the overall carrying capacity of the Reservation's water system, with a view in particular to discovering and reporting the levels above or below which specific water use impairs or injures overall water availability and use.
- (v) To conduct public educational programs and develop educational material regarding Reservation water rights and administration, irrigation management, water quality, environmental issues, water conservation, and any other pertinent issues as the latter may be determined by the Board.
- (vi) To declare "surplus" or "drought" water supply conditions, such determination to be made on the basis of hydrologic analysis and other substantial evidence and in consideration of existing demands for water; and to prepare, at the Board's request, alternative scenarios for water supply given different climatic trends and conditions for

the use of the Board in setting priorities and preferred uses during drought.

- (vii) To determine the extent of potential effects on existing water users, given hydrologic conditions, from proposed uses of Reservation water.
- (viii) To assist all applicants for permits or licenses in assembling and analyzing all hydrologic and environmental data required to be submitted with the application and otherwise to assist in the preparation of the application.

(d) Research and Development Functions.

- (i) To initiate and undertake research and development activities directed toward identifying financial support for water management and development.
- (ii) To identify new or analyze existing uses and means of developing, managing, conserving, and otherwise protecting tribal water resources.
- (iii) To identify promising research areas regarding tribal water resources and to solicit research proposals by government, university, or private sources.
- (iv) To develop the internal tribal technical and managerial capabilities to promote the direct involvement of tribal staff in the development and construction of water resource supply, distribution, and management facilities and devices.
- (v) To conduct hydrologic investigations to determine water needs.
- (vi) To study the feasibility of and make recommendations concerning a Reservation-based water quality laboratory.

Section 11-8-III

PART III - PERMIT SYSTEM FOR WATER USE ON THE WIND RIVER RESERVATION

Section 11-8-III (A) PERMIT OR LICENSE REQUIRED

(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 Part. Except when such diversion or activity is preemptively allowed by federal law, a permit or license is required for any of the following activities:

- (a) Diversion of water from any stream course, spring or well,
- (b) Drilling of any new well or modification of any existing well, including domestic, irrigation, industrial, municipal, or oil and gas development-related wells,
- (c) Discharging, injecting, or depositing any waste, wastewater, or other contaminant into Reservation water,
- (d) Changing the point of water diversion, whether of surface or ground water,
- (e) Changing the use of waters, or the place of use or the method of diversion or application of waters,
- (f) Transferring Reservation water outside the watershed of origin,
- (g) Altering any stream course or stream bank for any purpose, including' but not limited to road construction and repair,
- (h) Developing ground water recharge projects,
- (i) Generating hydropower,
- (j) Storing or impounding water, and
- (k) Dedicating water to instream flow.

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

(3) For purposes of this Code, any person possessing appropriative rights under Wyoming Law may receive a General Water Permit. Proof of appropriative rights under Wyoming Law shall be submitted to the TWE in accordance with regulations of the Board.

(4) Any person proposing to undertake an activity which may affect Reservation water may apply to the TWE for a Statement of No Permit Required, and the TWE may issue such a Statement if he 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.

(5) All permits and licenses issued under this Code are provisional and shall not be construed to create an entitlement in the user beyond the provisional period nor to allow reliance thereon by any other person.

Section 11-8-III(B) THE PERMIT SYSTEM

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.

Categories of Permits

- (1) 1868 Water Permit. Grants or confirms a right to use a share of 1868 tribal water or 1868 allottee derivative water to a user, and guides the present and future use and appropriation of the 1868 water right. The permit applies to surface water and ground water. There shall be three (3) types of 1868 Water Permit, as follows:

Type I. 1868 tribal water permit, granted to a tribal member, Indian allottee, or tribal entity, enterprise or political subdivision.

Type II. 1868 allottee derivative water permit, granted to a successor in interest of an allottee.

Type III. 1868 tribal water lease permit, granted to a person to use 1868 tribal water, upon payment to the Tribes at rates to be established by the JBC, 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 for 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 ground water for a beneficial use.
- (6) General Water Permit. Grants or recognizes rights of use, appropriation, or development of water not otherwise covered by another permit.

Section 11-8-III(C) THE LICENSE SYSTEM

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

Categories of Licenses

- (1) Driller's 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 Tribes 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 TWE.

- (2) Stream Zone Alteration License. Grants the right to alter the streambed or banks. A Stream Zone Alteration License is required for all person engaging in activity that affects the bed or banks of Reservation streams, including but not limited to construction of temporary diversion structures, road 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 ground water of the Reservation, through the point discharge of any substance, through the non-point discharge through landfills, septic tanks, or disposal pits, or through injection into ground water.
- (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 11-8-III(D) APPLICATION PROCEDURE

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

(2) 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 TWE. The fee may be waived by the Board in the case of financial hardship. Such fees shall be used in part to defray the cost of reviewing the application and conducting a hearing.

(3) The TWE shall provide public notice of the requirements of this Part and shall allow continued historic water uses pending processing of the applications.

(4) For purposes of this Code, any existing water use which was proven in the General Adjudication and which formed the basis for a quantification of reserved water under the General Adjudication shall presumptively entitle the applicant to a permit under this Part.

(5) The TWE 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.

(6) Within sixty (60) days of receipt of the application, the TWE 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 Wyoming state water law when applicable.

(7) 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 Code, and Wyoming state water law when applicable.

(8) 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.

- (a) Notice of such hearing will be published at the Board's expense in a newspaper of general circulation within the Reservation at least one (1) week prior to the date of hearing. Notice shall also be posted in the tribal and BIA offices and such other areas as may be deemed appropriate by the TWE.
- (b) After the hearing, the Board shall promptly render a written decision on the application:
 - (i) Approving the permit without conditions,
 - (ii) Approving the permit with conditions,
 - (iii) Denying the permit, or
 - (iv) Tabling action pending receipt of additional data or information.
- (c) 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.

(9) If the Board approves the application, the TWE shall issue the appropriate permit or license in conformity with the Board's decision.

Section 11-8-III(E) RELINQUISHMENT OF TRIBAL WATER RIGHTS: SOLE METHOD OF ACQUISITION

(1) 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 Tribes by any affirmative act indicating an intent to relinquish.

(2) No Loss by Adverse Possession. Prescription. Estoppel, or Acquiescence: Nontransferability.

- (a) No right to use or otherwise affect the quantity, level, flow, pressure, quality, or temperature of water may be acquired by adverse possession, prescription, estoppel, or acquiescence.
- (b) No right granted under this Code may be transferred, exchanged, sold, or otherwise conveyed except as provided hi this Code.

**Section 11-8-III(F) PROHIBITED ACTS: VIOLATION OF PERMIT CONDITIONS OR
CODE**

(1) Prohibited Acts.

- (a) No person shall:
 - (i). Forcibly, or by bribery, attempted bribery, threat, or other corrupt practice, obstruct or impede the due administration of this Code;
 - (ii) Commit fraud, or knowingly assist another in the commission of fraud, with the intent to evade or defeat the administration of this Code or costs imposed or assessed;
 - (iii) Falsely verify by written declaration any permit, form, or other document, or to intentionally withhold data required to be submitted by law;
 - (iv) Violate the conditions or stipulations of his permit or license including taking more water than is allowed by permit;
 - (v) Wilfully 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, 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 TWE. On a finding of violation, the Board may impose any of the following sanctions, or any combination thereof:
 - (i) Money damages,
 - (ii) Restitution.
 - (iii) Cancellation of the holder's lease, if the lands to which the permit applies or on which the violation occurred are tribal lands.
 - (iv) Injunctive relief.
 - (v) Affirmative remedial action.
 - (vi) Additional conditions or limitations upon the holder's permit or license, including limitation of the amount of water permitted to be diverted.
 - (vii) Suspension of the permit or license for a certain term.
 - (viii) Exclusion from the territory of the Reservation, if the violator is subject to exclusion under federal law.
 - (ix) Forfeiture of any permit or license.

- (x) Temporary or permanent disqualification from eligibility for any permit or license.
- (xi) Costs.

(2) Appeal from a decision of the Board may be had by the affected person to Tribal Court or Wyoming courts, in accordance with the provisions of Part VI. The interest of the Tribes shall be represented by the TWE or legal counsel of the Tribes.

(3) In the case of criminal prosecutions of any Indian, proceedings for penalties under this Section II-8-III(F) shall be brought in the name of the Shoshone and Northern Arapaho Tribes in the Tribal Court, by the tribal prosecutor.

Section 11-8-IV

PART IV - PROCEEDINGS ON EXERCISE OF TWE'S EMERGENCY ENFORCEMENT POWERS

When in the exercise of his authority under Section 11-8-II(B)(4)(a)(iii), the TWE 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:

Section 11-8-IV (A) Upon petition, filed with the Board not later than 14 days from the date of the TWE'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 TWE's action. The TWE shall provide to the Board on its request certified copies of all documents, things or other information which formed the basis for his action. The Board may modify or reverse such action of the TWE 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 therefor.

Section 11-8-IV(B) If the Board affirms the TWE's action, the affected person may appeal the decision of the Board to the Tribal Court or Wyoming courts pursuant to Part VI of this Code.

Section 11-8-V

PART V - WATER MANAGEMENT PROCEDURES

Section 11-8-V(A) **WATER SUPPLY MANAGEMENT**

(1) Declaration of Hydrologic Conditions. At the beginning of each irrigation season, the TWE 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 TWE may designate one portion of the Reservation in surplus and another in drought condition. These designations shall be based on hydrologic evidence, in consideration of total demand, as follows:

- (a) Normal Condition: a condition in which the mean annual flow for the watershed is achieved.
- (b) 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.
- (c) 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 an 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.

(2) Water Allocation.

(a) Guidelines.

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

(ii)" 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 Part.

(b) Surplus. Surplus water that may be used beneficially and efficiently will be allocated by the Board, based on the recommendation of the TWE, ratably among 1868 users first; later priorities are then allocated a proportionate share of the remainder;

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

(i) 1868 water rights will receive first priority for water, with all later rights honored as supply is available,

(ii) All rights later than 1868 are than satisfied,

(iii) If a drought condition prevails such that not enough water exists to satisfy even 1868 claims, all 1868 water users will have water claims met, but at a lesser diversion rate than that specified in the 1868 Water Permit. The diversion rate shall be set according to the specific demands in relation to overall supply. The Board may set temporary use priorities during periods of drought after notice and hearing.

Section 11-8-V(B) PUBLIC SAFETY EMERGENCIES

To prevent or to cope with an emergency involving water quality, 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 Tribes and Reservation natural resources. Such action includes, but is not limited to:

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

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

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

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

Section 11-8-VI PART VI- APPEALS

Section 11-8-VI(A) REVIEW OF TWE DECISIONS

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

(2) Finality of TWE Decision. If no request for a hearing before the Board is made within the time allowed, the decision of the TWE shall be final and not be subject to appeal to the Board or to any court.

(3) Hearing Before 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 TWE. 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 11-8-VI(B) of this Part.

(4) Finality of Board Decision. If no appeal to the Tribal Court is filed within the time allowed, any decision or ruling of the Board shall be binding and enforceable and is not subject to review by any court.

Section 11-8-VI(B) COURT APPEALS

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

(2) 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.

(3) Exhaustion. No person may seek review by the Tribal Court of a decision or ruling of the TWE or Board unless such person has first exhausted his administrative appeal rights provided by this Code.

(4) Standard of Review. Unless otherwise provided by this Code, appeals to the Tribal Court shall be limited to review of the record of the Board's 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.

(5) 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.

(6) Wyoming Court Review. Decisions of the Board on a State-held water right may, in addition to other remedies provided herein, be appealed to the Wyoming courts pursuant to applicable provisions of Title 41 of the Wyoming statutes.

Section 11-8-VII

PART VII - MISCELLANEOUS PROVISIONS

Section 11-8-VII(A) The Tribes, through the JBC, will appropriate from available funds sufficient resources to administer the provisions of this Code.

Section 11-8-VII(B) The General Councils of both Tribes and the JBC hereby waive any sovereign immunity from suit which "may inure to the benefit of the Board, or the TWE, provided that any suit against the Board, and the TWE must be brought in Tribal Court, or in the case of State-held water rights to the Wyoming courts, and further provided that such waiver is limited to the extent necessary to subject the Board, and the TWE to suit for the sole purposes of declaring, adjudicating, and enforcing the parties' rights and duties as more fully described in this Code and any regulations promulgated hereunder. The waiver specifically does not waive the Board's, or the TWE's immunity from suits for monetary damages, and specifically does not waive the sovereign immunity of the JBC, of either of the Tribes, or their General Councils.

Section 11-8-VII(C) Before formal adoption of a proposed regulation, the Board shall publish proposed regulations in order to provide interested parties an opportunity to comment. The notice will invite written comments and give a deadline for their submission of not less than seven (7) days after publication of notice. The Board may, but is not obligated to, hold a public hearing; in that event, it will announce the time and place at which oral testimony will be heard.

- (1) A regulation will become effective immediately after the closing date for comments or on the date other wise specified therein.
- (2) A copy of the regulations will be filed and made available for public inspection at the TWE office.

Section 11-8-VII(D) Any pronoun used herein shall refer to any gender and to any number as the context requires or permits.

Section 11-8-VII(E) All records required or allowed to be maintained by the TWE or the Board shall be public records, provided however, that the TWE shall deny the right of public inspection of the following records, unless otherwise provided by law, on the ground that disclosure would be contrary to the public interest:

- (1) Investigatory files compiled for any law enforcement or prosecution purposes;
- (2) Interagency or intraagency memoranda or letters which would not be available by law to a private party in litigation with the agency;
- (3) Medical, psychological, and sociological data on individual persons, exclusive of autopsy reports;
- (4) Records that are protected from disclosure by court order or federal or tribal law;
- (5) Personnel files and letters of reference, except those files shall be available to the duly elected and appointed officials who supervise the work of the person in interest;
- (6) Trade secrets, privileged information and proprietary commercial, financial, geological, or geophysical data furnished by or obtained from any person.

Any persons denied the right to inspect any record described above may apply to the Tribal Court for an order directing the custodian of the record to show cause why he should not permit the

inspection. Notwithstanding the fact that the record might otherwise be available to public inspection, any persons, including the TWE, may apply to the Board for an order restricting disclosure of the particular record, and the Board, after hearing, may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. The Board's decision shall be reviewable de ново by the Tribal Court.

Section 11-8-VII(F) In the event any provision of this Code or the application thereof to any person or circumstances is held invalid, the remainder of this Code shall not be affected thereby and to this end the provisions of this Code are declared to be severable.

Section 11-8-VIII PART VIII - EFFECTIVE DATE

The provisions of this Code shall be effective as of March 18, 1991 and shall remain in effect until repealed or amended.

Adopted by the Shoshone General Council on March 16, 1991, Resolution No. 6680 Adopted by the Northern Arapaho General Council on March 18, 1991, Resolution No. 6675 Joint Business Council Resolution No. 6681

* Shoshone and Northern Arapaho Tribes
 of the Wind River Reservation
 P.O. Box 217
 Fort Washakie, WY 82514

usr/john/water5.cod